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February 22, 2009

The Honorable George Miller, Chairman
Committee on Education and Labor
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Representative Miller:

The purpose of this letter is to inquire as to whether the House Committee on Education and Labor has any plans to introduce legislation to stem the tide of the harm being done to millions of America's retirees.

The National Retiree Legislative Network (NRLN) recognizes that for a number of years employers have used the legal loophole of the "Reservation of Rights" clauses in their benefit plan descriptions to circumvent their verbal, and often written, promises to Medicare eligible workers and retirees. However, such actions taken against retirees ran the risk of an age discrimination lawsuit. This risk of litigation was a deterrent, especially to large corporations where the loss of a class action age discrimination lawsuit could be very costly. But, the age discrimination risk to employers went away when the Equal Employment Opportunities Commission (EEOC) published its final rule on December 27, 2007 allowing employers to reduce or eliminate health care benefits once retirees turn age 65 and become Medicare-eligible. As a result, tens of thousands of retirees age 65 and older have suffered the loss of their former employer-provided health care. The permanent loss of catastrophic coverage and far superior company prescription drug plans has been enormous.

The EEOC reasoning was that by allowing employers to discriminate and treat older retirees less favorably, employers would have the incentive to continue to offer health care benefits for younger retirees and active employees. However, nowhere in the EEOC rule or elsewhere is it written that those under age 65 have any assurances this will happen. The EEOC rule is a retiree lose/lose proposition.

The fallacy of the EEOC's logic that employers would have an incentive to maintain health care benefits for pre-65 retirees has begun to surface. On Feb. 11, the Detroit Free Press published an article that effective January 1, 2010, General Motors will cut company-provided health care coverage to retired salaried workers who are younger than 65 and eligible for Medicare. As a GM spokesperson termed it, "a few thousand" retirees would be affected. For someone under 65 to be eligible for Medicare usually means he or she is disabled. These are the very individuals who need catastrophic health care insurance.

These retirees will be given a $260 per month medical expense credit to be used for qualified health care expenses, such as monthly premiums, deductibles and co-pays. As anyone who purchases health care insurance knows, $260 per month will not buy much coverage. GM's elimination of its company-sponsored health care plan causes Medicare-eligible salaried retirees to lose catastrophic coverage as this benefit is not included in Medicare. They will have $260 to replace $1,000 worth of benefits for two people, according to GM data. The spouses who are still years away from being eligible for Medicare are particularly frightened. Life savings could be wiped out with a single operation and several days in a hospital.

NRLN members—both pre-65 and post-65—who still have at least some health care and prescription drug benefits from their former employers are concerned that their former companies will see GM's action as a way to cut their retirement benefits costs. In spite of the EEOC's reasoning, this is a real possibility not only by employers under financial distress but also for profitable companies. This is not just a GM problem; it is a snowballing national crisis in the making, a shifting of corporate responsibility. The cost of health care is not rising for companies! They are shifting inflation and coverage costs to retirees and taxpayers simultaneously.

On September 25, 2008, I had the privilege to testify and present a whitepaper to your House Education and Labor Committee. At the hearing that was chaired by Representative John Tierney, I proposed that legislation be drafted that adds catastrophic coverage to Medicare and allows retirees between ages 50 and 64 the opportunity to purchase Medicare coverage at cost. Also, I proposed a Maintenance of Cost Payment plan that would establish a fixed monthly payment to retirees equivalent to the value an employer provided prior to the reduction or cancellation of retirement benefits such as health care, prescription drugs, life insurance, long-term care and other benefits. Companies would be entitled to tax credits as an offset against MCP payments. With the MCP, retirees would be able to purchase replacement benefit coverage. In addition, employers would be assured that their costs would not rise and a portion of their costs would be offset by the tax credit.

When the new Chairman of the EEOC is confirmed, I urge you to request the new Chairman to reexamine the wisdom of keeping the rule in place. If the EEOC does not eliminate the rule, I encourage you to introduce legislation to overturn the rule or consider our MCP proposal as the antidote. Action should be taken soon to stop the further erosion of the already diminished purchasing power of America's retirees who are a large and vital segment of our economy.

I have asked Marta Bascom, the NRLN's Executive Director in Washington, to contact your staff to learn whether your Committee is considering any legislation that will protect employer-promised health care and other benefits. Marta can be reached on 703-863-9611. I hope she will have something positive to report to our members after talking with your staff.

Sincerely,

Bill Kadereit

President, National Retiree Legislative Network