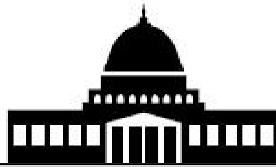

NRLN Focus

Volume 8, Issue 3 Fall 2011

The NRLN Clarion Call … Report on 2011 Washington, DC Fly-In

By Bill Kadereit, NRLN President

With much of the attention of members of Congress and their staffs focused on the deliberations of the 12-member *Joint Select Committee on Deficit Reduction*, the third annual NRLN Washington, DC Fly-In on September 19th and 20th, 2011 came at an opportune time for NRLN and retiree association leaders to urge lawmakers to protect Social Security and Medicare and advocate other NRLN top priorities.

Because members of Congress are paying so much attention to reducing spending, the Legislative Agenda initiatives that we advocated at this year's Fly-In were those that would not require federal funding and in one case—prescription drugs—would save billions of federal budget dollars.

Specific group meetings of 10 to15 attendees were arranged with Senate Finance and Senate Health, Education, Labor and Pension Committees and with the House Education and Workforce Committee staff leaders. Legislative Directors, lawyers and other staff members from both political parties attended. We were able to discuss our proposals in detail and noted our dissatisfaction with politics as usual in Washington. Marta Bascom and I met with Food and Drug Administration (FDA) officials to collect cost and policy information that will be helpful in lobbying for our prescription drug proposals.

Don't Cut Social Security and Medicare

At our meetings on Capitol Hill, we reminded members of Congress that Social Security and Medicare did not cause the federal budget deficit and Congress should not attempt to reduce the current deficit on the backs of retirees by cutting Social Security and Medicare benefits. The Congressional Budget Office (CBO), reported in August that 2011 debt will be $1.3 trillion with $.3 trillion attributable to these two programs and Medicaid combined. Medicaid was $.250 trillion of that debt. The real issue is that income tax revenue alone will fail to cover $1.0 trillion in 2011 other spending!

Social Security is fully funded for the next 25 years. The NRLN believes its long-range funding gap should be closed through modest increases in the payroll tax rate and increasing the cap on maximum wages subject to the tax, which is currently $106,800 a year. In the face of the impending Social Security Trust Fund crisis, it was a mistake in 2010 for Congress to reduce the Social Security payroll tax for workers from 6.2% to 4.2%. It would be even more devastating for Congress to pass the proposal in "The

Michael Kreps (center), Democratic Counsel to the Senate Committee on Health, Education, Labor and Pensions (HELP) uses his hands to illustrate a point to NRLN Fly-In participants' concerns about the protection of pension assets

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American Jobs Act" that the FICA tax be reduced to 3.1% and to cut employers' share for the payroll tax in half through the first $5 million in payroll. This action may buy votes but it will worsen the very problem they claim they need to solve.

Bobby Cornett (left), Legislative Director to Rep. Trent Franks (AZ-02), listens to NRLN Fly-In participants from Arizona (r-l) Joe Dombrowski, LRO President; Martha Deahl and Rick Giffin, AUSWR Legislative Leaders, and Del Polad, Utah AUSWR Legislative Leader

Opposed Chained CPI and Age Increase

We opposed a proposal that would shift the current accounting calculations for the Social Security Cost of Living Adjustment to the less accurate and less-generous Chained Consumer Price Index (CPI). The chained CPI is a deceptive way to cut benefits for Social Security beneficiaries because seniors have higher expenses for healthcare than the average American. Health care costs are rising at double the total rate of inflation.

The NRLN also opposed raising Social Security's full and early retirement ages. Congress' 1983 decision to move full retirement age to 67 by 2022 has not decreased the federal budget deficit, nor will a further increase in the retirement age do so now. A higher retirement age will require older Americans to continue working when employment trends in the private sector favor younger rather than older workers.

Medicare Must Be Protected

In our Capitol Hill meetings we made our case that Medicare is not a welfare program. It is a covenant with the American people. There is an obligation to meet, not run from, this covenant. We believe that cutting benefits is not appropriate as long as there is genuine and obvious waste to remove from the federal budget (see $1.0 trillion above). In 1990 the Medicare tax on workers funded 63% of the Medicare budget, but it funds just 47% today. Congress must increase the tax on workers and employers until such time as it can again fund 60-65% of the annual Medicare budget.

Income taxes and Social Security and Medicare payroll taxes are collected to fund specific expenditures but in fact are comingled and spent where Congress chooses. Congress owes the combined trusts $2.7 trillion dollars that has been used to pay for excessive spending when income taxes can't cover their tab. This shell game has to stop. Calling the covenants made to employers and employees the problem is wrong!

Advocated Other Retiree Issues

We continued to advocate legislation that stops corporations from taking pension assets from defined pension plan trusts to pay for lump sum severance and early retirement incentives. Nor should pension funds be used—as they often are—to pay executive non-qualified pensions and other deferred compensation.

In August, an NRLN task force completed work on a whitepaper that set forth our position on legislation needed to protect retirees' pensions and benefits in corporate mergers, acquisitions and spin-offs. In our appointments we advocated that Congress should immediately enact our proposals because of the churn in American companies due to competition and globalization.

Preventing corporations from using pension plan assets for non-pension expenses and protecting retirees from the negative things that happen to pensions and benefits due to restructuring decisions made in corporate board rooms would not cost the federal budget a penny and would protect retirees' financial security.

Need to Reduce Rx Cost

The NRLN developed its whitepaper on prescription drug costs two years ago and updated it prior to the

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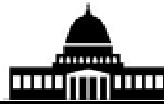


(Continued from page 2) ***The NRLN Clarion Call …***

Fly-In with even more compelling evidence that the federal government could save a projected $730 billion over the next 10 years by enacting the NRLN's prescription drug cost-saving proposals. These include (1) Allow re-importation and importation of safe prescription drugs approved by the FDA; (2) Develop Medicare formularies and take competitive bids for prescription drugs; (3) Prevents drug companies from colluding to control pricing or subvert free market practices; (4) Reduce the FDA's approval backlog on generic drugs.

Bill Gabbard (left), President, John Deere Retiree Organization, and Steve Darling (right), JDRO Vice President, meet with Iowa Senator Charles Grassley's staff members Theresa Pattara and Rodney Whitlock.

We lobbied lawmakers to support the following bills that would accomplish the first three NRLN prescription drug proposals.

S. 319: Pharmaceutical Market Access and Drug Safety Act of 2011 would allow the re-importation and importation of FDA-approved medications from countries with tough safety standards. This would make it possible for Americans to buy more affordable prescription drugs from countries where drug prices are 35% to 55% percent lower than in the U.S.

S. 44, Medicare Prescription Drug Price Negotiation Act of 2011 and **H.R. 2248, Medicare Prescription Drug Price Negotiation Act of 2011** would direct the Secretary of Health and Human Services (HHS) to negotiate with pharmaceutical manufacturers the prices that may be charged to Medicare Part D prescription drug plans.

S. 27, Preserve Access to Affordable Generics Act would (1) enhance competition in the pharmaceutical market by stopping anticompetitive agreements between brand name and generic drug manufacturers; and (2) support the purpose and intent of antitrust laws by prohibiting anticompetitive practices in the pharmaceutical industry that harm consumers.

Read Articles on NRLN Documents

Included in this newsletter are articles that are abbreviated versions of the documents that were in a folder presented to members of Congress to educate them on the legislative issues that I've noted above. The

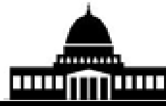
Executive Summaries included in the folders can be read at http://www.nrln.org/NRLN-Fly-in.pdf. The entire whitepapers are available at http://www.nrln.org/_pvtflyin.html. I urge you to read them.

Also, I encourage you to read the retirement hardship stories recently submitted by NRLN members for inclusion in the folders presented to members of Congress. The "*Retirees' Testimonials*" document is available at: http://www.nrln.org/flyin%20whtpprs/Retiree%20Testimonials.pdf. This version of the "*Retirees' Testimonials*" is without the names of the retirees since the posting is available to the public. However, the names were included in the version given to lawmakers so they would know a real person provided the story.

New Book: Retirement Heist

At the NRLN's orientation session on September 19th, Ellen Schultz, an award-winning writer for the Wall Street Journal, made a presentation about her newly released book, *Retirement Heist: How Companies Plunder and Profit from the Nest Eggs of American Workers.* Ms. Schultz's talk was videotaped and aired on C-SPAN2 BOOK TV on October 2nd and 3rd. An article about the book is in this newsletter

I want to give credit to the retiree associations who sent representatives to the Fly-In. They are: Association of US West Retirees (AUSWR – CenturyLink / Qwest); AT&T Ameritech / SBC Retirees (AASBCR); AT&T Concerned Employee Retiree Council on Retirement Protection (ACER); Detroit Edison Alliance of Retirees (DEAR); General Motors Retirees Association (GMRA); Delta Pilots' Pension Preservation Association (DP3); EKRA – An Association of Kodak Retirees; JDRO – A Family of John Deere Retirees; Lucent Retirees Organization (LRO); National Chrysler Retirement Organization (NCRO), and TelCo Retirees Association (TelCo – Pacific Bell retirees).



Saving Social Security and Retirees' Faith in America's Promise

(Abbreviated version of NRLN's position on Social Security)

There is a straight-forward solution to ensuring Social Security for current and future retirees, but from the outset elected officials must be clear that, first and foremost, Social Security is not a welfare program paid for by the U.S. Government. The current 55 million Social Security beneficiaries and their former employers have paid into the Social Security Trust that was created in 1937. Every year since 1983, the payroll tax for Social Security has generated tens of billions of dollars in surplus, every dollar of which was borrowed by Congress to cover other federal spending.

Our predecessors and current taxpayers have built up an enormous nest egg sufficient to cover 100% of promised benefits for at least another 25 years (to 2036). At the end of 2010, the Social Security, Old Age and Disability Income combined Trusts held $2.7 trillion in government bonds. Although last year was the first year since 1983 that the fund paid out more than it received in tax revenue, it still continued to grow because of the interest accrued — and it is estimated to continue to grow through 2022.

While Social Security is fully funded for the next 25 years, its long-range funding gap should be closed—but not by cutting its modest benefits. The NRLN supports closing the funding gap through modest increases in the payroll tax rate and increasing the cap on maximum wages subject to the tax, which is currently $106,800 a year.

With America's retirees shouldering the burden of higher health care costs, reduced savings and declining home values, Social Security should be strengthened, not diminished.

NRLN Opposes the Chained Consumer Price Index

There have been NO benefits added to the Social Security system, other than Cost of Living Adjustments (COLA), since 1961, and there has not been a COLA for the past two years. The NRLN opposes any changes in the way the annual Cost-Of-Living Adjustment (COLA) is calculated. One such proposal would shift the current accounting calculations to the less accurate and less-generous Chained Consumer Price Index (CPI) for the current CPI in calculating the COLA.

Over the next 10 years alone, the Chained CPI would take $112 billion directly out of the pockets of Social Security beneficiaries. For typical seniors who retire at age 65, their Social Security benefits would be $1,000 less by the time they are 85, based on a benefit of just $16,000 a year.

The chained CPI is a deceptive way to cut benefits for Social Security beneficiaries. Adopting the Chained CPI goes in the wrong direction. The current CPI already understates the cost-of-living increases facing seniors because they spend more on medical care than the average American.

On the tax side, the Chained CPI would likely draw more revenue. Tax brackets would rise more slowly than incomes, so seniors would fall into higher brackets more quickly with more income subject to taxation.

NRLN Opposes Raising the Social Security Eligibility Age

The NRLN opposes the recommendations by Alan Simpson and Erskine Bowles in their December 2010 *"The Moment of Truth"* Deficit Commission report to raise Social Security's full and early retirement ages. Their proposal would reset the full retirement age to 68 by 2050 and 69 by 2075; the early retirement age would rise to 63 and 64 in those same years. This comes on the heels of the increases already made in 1983 by the Greenspan Commission which moved full retirement age to 67 by 2022, in essence spreading out benefits.

The 1983 increase in the eligibility age for Social Security didn't decrease the federal budget deficit then, nor will it do so now. Moreover, longevity gains that proponents cite for increasing the eligibility age have been concentrated among more affluent Americans. A higher retirement age will require Americans to attempt to remain employed when hiring trends in the private sector favor younger rather than older workers.

Conclusion: Increase the Payroll Tax

The number of Social Security beneficiaries will double to over 80 million over the next 30 years, starting in 2010. By 2040, the number of beneficiaries stabilizes. Current and past Administrations and Congresses have known these facts and have done nothing to effectively prepare for them since the last round of changes in 1983.

The NRLN believes a small increase in the combination of tax rate (possibly between 0.5% and 1.5%) and the maximum earnings subject to the payroll tax would maintain Social Security's solvency. It is in the best interests of its more than 2,000,000 NRLN members that Congress should raise the Social Security tax rate and increase the cap on maximum wages taxed, until such time as the Social Security Trust is again adequately funded actuarially. This commitment should also require that once the Trust is

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(Continued from page 4) Saving Social Security and Retirees' Faith in America's Promise

adequately funded, tax rates and maximum wages taxed should be lowered to maintain actuarial funding only. The Social Security Trust in the future should be insulated from access by Congress and its funds should never again be loaned out (as a piggybank) to cover other government spending.

The NRLN maintains that this is the only practical and ethical solution, and one that keeps faith with the American public.

Protecting Medicare and Trimming the Deficit

(Abbreviated version of NRLN's position on Medicare)

Over 2,000,000 NRLN retirees from 125 U.S. corporations and public entities urge Congress and the 12-member *Joint Select Committee on Deficit Reduction* to avoid any reductions in Medicare expenditures that could negatively impact the care that current and future retirees receive from doctors, hospitals and other health care services. Medicare benefits and Social Security income payments have become an inextricable part of our culture and are indeed the third rail in American politics. As the NRLN recommends below, there are ways to reduce Medicare and health cost inflation more generally without cutting benefits or quality of care.

Medicare is not a welfare program; it is a covenant with the American people that is consistent with the democratic principle of an elected government choosing to provide for its constituency. There is an obligation to meet, not run from this covenant. We believe that cutting benefits is not appropriate as long as there is genuine and obvious waste to remove from the federal budget.

The 2011 debate regarding whether or not Medicare is affordable prospectively is far more complex than the debate regarding Social Security income payments. The "X" factor in the Medicare debate is the fact that health care costs in general are rising at double the Consumer Price Index (CPI). It's not just Medicare that is at stake: the impact of rising health care costs on all middle income families, and especially on fixed-income retirees, is undermining sales of other products and services, choking off new jobs and our economic future.

Medicare Spending Growth

The May 2011 Medicare Trustees report indicates that spending for the program will increase faster than either workers' earnings or the economy over all. Medicare spending is growing at a 7.2% annual rate—far faster than the economy. The Medicare Trustees report also states that from 1985 through 2010 Medicare expenditures grew at a rate of 8.2%. The trustees predict that average Medicare spending per beneficiary will increase from $11,000 in 2010 by more than 50%, to $17,000 in 2018. Given rising costs and an aging population, Medicare's unfunded liabilities over the next 75 years would amount to about $31 trillion.

While this may lead some to conclude that Medicare is unsustainable, a more rational and ethical conclusion is to address the root causes of the high costs and take adequate steps to eliminate them. For example, there is an enormous Medicare fraud problem that requires immediate attention. Centers for Medicare and Medicaid Services (CMS) estimates that $48 billion of Medicare's total outlays of $509 billion in fiscal 2010 (Trustee report says $523 billion) went to improper payments, including fraudulent ones.

Adding to the complexity, as the 2007 recession deepened, the Medicare program's financial health deteriorated. Higher unemployment levels drove payroll tax revenues precipitously lower, from 62.2% of Medicare revenue in 1990 to 38.9% in 2010, a nearly 40% decline. If health care costs are not curbed by 2020, it is estimated that Medicare payroll taxes and premiums will only cover 33% of Medicare costs.

Tax Revenues Cover Less of Medicare Costs

General tax revenues covered 27.9 % of Medicare's costs in 1990, but due to the shortfall in payroll tax revenue, health care cost inflation and the onset of baby boomer eligibility for Medicare, the share covered by general revenue rose to 44.0% in 2010, and is predicted to rise further to

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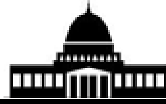

(Continued from page 5) **Protecting Medicare and Trimming the Deficit**

45.9% by 2020, according to the Trustees report. This pressure on general revenue is increasing despite the fact that participant premiums used to cover costs increased from 9.8% in 1990 to 13.2% in 2010, a 35% increase. Premiums paid by participants are predicted to cover 15.1% of Medicare's cost by 2020. Under the debt ceiling bill passed in August 2011, Congress is now forced to cut the federal budget elsewhere or trigger a huge automatic cut in Medicare spending..

Private insurers with 12-to-16% overhead and 4% plus profit margins could never improve upon Medicare as the low-cost provider when Medicare's total overhead is just 3-4%. They both purchase from the same health care product and service providers and Medicare has the larger purchasing leverage. The NRLN agrees with the CBO's analysis that concludes that adding of private insurance plans into the mix would raise administrative costs and would not keep medical inflation as low as traditional Medicare has done.

NRLN Recommendations

- **Eliminate waste, cut back federal budgets for projects, non-strategic grants and planned budget expenditures and stop authoring wasteful preferential bills and amendments.**
- **Attack Medicare fraud with the full force and effect of the government. Congress must enact laws that contain stiffer federal penalties including prison time, for defrauding the Medicare system.**
- **Pass legislation that would compel safe importation, competitive bidding, funding to accelerate generic drug sales and eliminate non-competitive practices in the prescription drug industry.**
- **Set fair and equitable rate formulae for determining physician fees and make adjustments up or down annually. Examine costly referrals and redundant visit practices and disallow them.**
- **Finally, Congress must honor its covenant with the American people. The effect of unemployment on payroll tax revenue, the surge in baby boomer eligibility and rising health care costs can't be offset by slashing Medicare benefits without regard for this covenant. Congress must increase the Medicare tax on workers and employers until such time as taxes can again fund 60-65% of the Medicare budget.**

Prescription Drug Costs and Expenditures - A Call For Action

(Abbreviated version of NRLN whitepaper Executive Summary)

The NRLN believes that taking immediate steps to implement the initiatives below will generate the sort of substantial and measurable savings needed to reach a positive solution to unjustifiably high prescription drug costs. These initiatives will simultaneously create hundreds of billions of dollars in savings that can offset national health care reform costs and reduce out-of-pocket spending by American consumers. Savings of this magnitude will dampen health cost inflation and stimulate long-term economic growth for the U.S. economy.

The NRLN has advocated free-market competition while also advocating safety in the production and marketing of prescription drugs. Congress should enable the safe and controlled importation of prescription drugs, as well as competitive bidding and robust formularies for Medicare Part D. Congress should also ensure that the FDA accelerate access to generic prescription drugs. Backlogs of generic drugs awaiting approval have exceeded five (5) years and must be eliminated by providing for user fees and the staff needed to expedite approvals. Equally important, agreements that might restrain competition among brand-name and generic manufacturers, such as "pay-for-delay" agreements that may keep lower-priced generic drugs off the market, must be further investigated and, if warranted, outlawed.

The NRLN projects that if Congress acts to implement these initiatives, the nation's $4,060 billion in projected prescription drug expenditures over the next ten (10) years can be reduced by 18%. This 18% savings would

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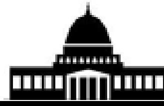

(Continued from page 6) ***Prescription Drug Costs and Expenditures - A Call For Action***

amount to $730 billion:

Recommended Initiatives	***$ Savings***	***% Savings***
Importation, Re-importation	*$203 billion*	*5%*
Competitive Bidding	*$203 "*	*5%*
Generic Drug Market Share Growth of 16%	*$243 "*	*6%*
Elimination of Restraint if Trade Practices	*$ 81 "*	*2%*
TOTALS	*$730 "*	*18%*

If the pledge of $80 billion in savings by the Pharmaceutical Research and Manufacturers of America (PhRMA) in June of 2009 will close 50% of the Medicare D doughnut-hole, then Congress could allocate $160 billion of this $730 billion savings to pay for the virtual elimination of the doughnut hole. This would leave $570 billion that could offset a substantial portion of the $1 trillion or higher cost of national health care over the next ten (10) years. *In other words, the savings from the four prescription drug reforms in this paper could close 100% of the Medicare D doughnut hole and reduce the deficit by $160 billion over ten (10) years, and offset the total cost of U.S. health care by $57 billion annually.*

Draining Pension Assets Threatens Retirement Security (Abbreviated version of NRLN whitepaper Executive Summary)

The use of pension assets to make severance payments during a corporate restructuring is the largest and most widespread "back door reversion" by which some companies are seeking to circumvent the Congressional policy against reverting pension assets for corporate purposes. When pension funds were used to finance hostile takeovers and the mass layoffs that typically followed, in 1990 Congress stopped the practice by imposing a 50 percent excise tax on pension reversions. But today's "back door reversions" are more insidious. Although ERISA explicitly prohibits the use of qualified pension assets for "layoff benefits," companies can amend a plan at any time not merely to offer older workers enhanced early retirement benefits (by awarding extra years of service credit), but even to offer lump sum severance payments equal to a year's salary or more as part of a corporate restructuring.

The 2006 Pension Protection Act tightened up on this practice somewhat by requiring plan sponsors to pre-fund a plan amendment that increases benefit liabilities to the extent the plan's funding level would fall below 80 percent (after taking account of the new benefit liability). However, as the 2008 stock market meltdown demonstrated, a plan that is only 80 percent funded during a bull market could easily end up below 60 percent funded in a bear market – and in default with the PBGC if the plan sponsor declares bankruptcy. Moreover, any significant reduction below full funding not only leaves all plan participants insecure, it also reduces the ability of the plan to build a surplus that could be used to grant cost-of-living adjustments to longtime retirees, whose fixed monthly benefits erode with inflation, or to offset the cost of retiree health benefits through a Section 420 transfer.

Pension Assets Used for Restructuring

The trend toward distressed companies using employee pension assets to pay severance costs – instead of relying on a restructuring reserve or other corporate assets – is not new to the current financial crisis. Lucent, United Airlines, AT&T, Verizon, Qwest, Federal Express, Delta and Delphi are among the other companies that have tapped pension assets to pay corporate restructuring costs. Some of these companies drained pension assets for severance payments as they spiraled downhill toward bankruptcy and an eventual taxpayer bailout courtesy of the PBGC. Other companies, left under-funded, cut other retiree benefits across the board. And some others, although their plans remained solvent, used up "surplus" assets that could have benefitted the vast majority of plan participants if used instead for cost-of-living adjustments or offset the cost of retiree health care benefits. In the current crisis, General Motors used pension assets to pay for billions in severance payments during 2008 – and ended up with such a dangerous degree of under-funding that in early 2009 the Treasury Department restricted the practice as a condition of the federal bailout loan.

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(Continued from page 7) *Draining Pension Assets Threatens Retirement Security*

NRLN Proposal to Protect Pensions

The most effective way for Congress to protect plan participants (and taxpayers) from unfunded liabilities from severance, layoff or any other benefit increase is simply to increase the target funding level threshold required for unfunded benefit increases and lump sum payouts from the 80 percent level, currently required under the PPA, to 120 percent. Severance or other benefit increases to selected individuals that are not funded should be paid out of the company's operating expenses, not from the pension trust. This would not limit the ability of plan sponsors to enhance benefits. What it does do is require companies to currently fund lump sum payouts or other benefit increases that would otherwise cause the plan to become under-funded or worsen its level of under-funding. Amendments increasing benefits that are collectively bargained or negotiated between a plan sponsor and bona fide union representatives, or in the context of a jointly-trusteed Taft-Hartley plan, should be exempted from this more restrictive funding level.

Protecting Retirees in Mergers, Acquisitions and Spin-offs (Abbreviated version of NRLN whitepaper Executive Summary)

For workers, retirees and taxpayers alike, the stakes are high when an under-funded pension plan is terminated or abandoned. Despite the partial benefit guarantees provided by the Pension Benefit Guarantee Corporation (PBGC), when an under-funded pension plan terminates it imposes an *immediate and permanent loss of income* on many retirees and other plan participants. The permanent loss of vested but *non-guaranteed* benefits, due to various PBGC limitations, can be devastating to the individuals affected. The PBGC itself reports that the proportion of participants negatively impacted has tripled over the past decade – and the share of vested benefits permanently lost has risen substantially to 28% on average per participant.

Certain corporate transactions – particularly the spin-off of under-performing subsidiaries – greatly increase the risk of distress termination and benefit losses for retirees. The strategic spin-off of an under-performing unit is a well-established tactic that holds even greater appeal when legacy pension, health and welfare benefits can be taken off the books of the parent company. Preventing under-funding of plans – and taking action to avoid terminations that trigger losses for both retirees and the PBGC – needs to be a higher policy priority for Congress and the Administration. To not do so unnecessarily increases the risk of permanent pension losses for plan participants to an unacceptable level.

Globalization Is Increasingly Common

As globalization and the acquisition of American companies by foreign firms and investors becomes increasingly common, there is a particular concern about the PBGC's ability to deter plan terminations by, or recover assets from, foreign-owned or foreign-based plan sponsors and named fiduciaries. The PBGC has had great difficulty persuading either U.S. or foreign courts to attach or enforce a lien against the assets of a plan sponsor outside the territorial jurisdiction of the U.S. Actually collecting on a liability in practice requires that the foreign entities have sufficient assets within the jurisdiction of U.S. courts.

Unfortunately, the PBGC and other federal regulators lack the tools to protect retirees from unnecessary – and unnecessarily severe – terminations. ERISA's outdated and narrow protections create a number of gaps that will do increasing harm to both retirees and to the PBGC's reported deficits unless Congress enacts at least a few modest changes. To its credit the agency in recent years has become more aggressive in using its very limited statutory levers to negotiate additional contributions that at least delay or mitigate the negative impacts of a distress termination. However, these tools are neither broad enough in scope nor flexible enough with respect to the remedies available when dealing with an under-funded plan. There are major gaps in the effort to prevent a merger, spin-off, increase in foreign ownership, or other material transactions from making a pension plan more likely to default on its pension promises:

Major Gaps in Protecting Retirees

First, the PBGC and Department of Labor (DOL) have a very limited ability to either attach or enforce a lien against the tangible assets of a contributing sponsor or other named fiduciary located outside the

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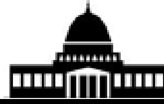


(Continued from page 8) **Protecting Medicare and Trimming the Deficit**

jurisdiction of

the U.S. federal courts. It is not even clear that the PBGC can perfect a lien against other U.S.-based assets or subsidiaries of a foreign company that are not part of the plan's controlled group.

Second, ERISA's definition of who is potentially liable as a plan "fiduciary" will prove meaningless in a growing number of situations where the DOL and PBGC will be unable to hold certain non-U.S. fiduciaries accountable even for knowing and willful breaches of fiduciary duty that deplete plan assets.

Third, the PBGC's authority to seek increased funding for a plan or other remedies under ERISA §4042(a)(4) is too limited, since in practice it is restricted to seeking the "nuclear option" of involuntary plan termination, which is itself a worst-case scenario for retirees. Regulators need the ability to temporarily enjoin a spin-off or other M & A activity and convince a court that a more tailored remedy, short of plan termination – such as bonds backed by tangible assets or amortizing the under-funded amount – is appropriate and practical.

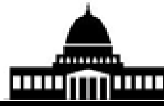
Fourth, a plan sponsor's immediate liability to fund vested benefits is triggered under ERISA §4062(e) *only if* more than 20% of the *active* participants are separated from the plan, typically due to a plant closing or mass layoff. However, the PBGC has no ability to seek catch-up contributions in even worse situations, such as when a plan sponsor transfers unfunded pension liability to a weak spin-off, or retains all of the pension liability while spinning off profitable units needed to cover future contributions.

Finally, the PBGC needs to expand the transactions it scrutinizes under its Early Warning Program. The PBGC does not routinely monitor and review in advance two types of transactions that expose the agency and retirees to potentially greater risk of loss: spin-offs (whether or not pension liabilities are transferred) and acquisitions of plan sponsors by non-U.S. firms (whether in whole or in substantial part). While the greater productivity, profitability and efficiency that result from a very large percentage of corporate transactions and restructurings, it is equally important to update the rules of the road to ensure that plan sponsors and fiduciaries do not abuse gaps in the law - and in enforcement - to deny retirees and workers any part of their earned pension benefits, or to transfer a share of those losses onto taxpayers by abandoning an under-funded plan to the PBGC.

Five NRLN Recommendations

The NRLN recommends five changes for legislation, regulatory reform and stepped-up enforcement:

1. Congress needs to clarify that the PBGC has the authority to enforce a lien against all U.S.-based assets of the parent company of a foreign-owned plan sponsor even if those other assets or subsidiaries are not considered part of the controlled group sponsoring the plan.
2. The Department of Labor should revise its regulations related to breaches of fiduciary duty to clarify that fiduciaries under ERISA – at a minimum contributing sponsors and "named fiduciaries" – must be subject to the jurisdiction of federal district courts with respect to the enforcement of judgments for potential breaches of fiduciary duty.
3. Congress should give regulators broader and more flexible authority under § 4042(a) to negotiate or seek court approval for a more tailored remedy, short of plan termination, to address spin-offs, mergers, or other transactions that greatly increases the risk of future loss to the PBGC and participants.
4. Congress should expand the events that trigger immediate liability for pension under-funding pursuant to Section 4062(e), calculated on a termination basis, to include transactions that pose even greater risk to *all* plan participants. Triggers should include spin-offs, control group break-ups and takeovers by foreign firms that transfer more than 20% of a firm's under-funded plan liabilities, or which transfer more than 20% of the plan sponsor's assets or revenues without obligation for funding plan liabilities.
5. The PBGC should add foreign ownership, and proposed sales or spin-offs to foreign owners, along with such transactions among U.S. corporations, to the list of transactions triggering special scrutiny under the PBGC's Early Warning Program and, if possible, to the list of transactions requiring an Advance Notice of Reportable Events.



'Retirement Heist' Exposes Corporations' Abuse of Retirees' Pensions and Benefits

(Ellen Schultz, a Wall Street Journal writer, was a guest at the NRLN Fly-In to talk about her new book.)

It is no secret to NRLN members that hundreds of companies have been slashing pensions and health coverage earned by millions of retirees. Employers blame an aging workforce, stock market losses, and spiraling costs— what they call "a perfect storm" of external forces that has forced them to take drastic measures. But this so-called retirement crisis is no accident.

In ***RETIREMENT HEIST: How Companies Plunder and Profit from the Nest Eggs of American Workers,*** Ellen E. Schultz, award-winning investigative reporter for *The Wall Street Journal*, reveals how large companies and the retirement industry—benefits consultants, insurance companies, and banks—have all played a huge and hidden role in the death spiral of American pensions and benefits.

Companies Exploit Loopholes In Laws

A little over a decade ago, most companies had more than enough set aside to pay the benefits earned by two generations of workers, no matter how long they lived. But by exploiting loopholes, ambiguous regulations, and new accounting rules, companies essentially turned their pension plans into piggy banks, tax shelters, and profit centers.

Drawing on original analysis of company data, government filings, internal corporate documents, confidential memos, and interviews with affected retirees, Schultz uncovers that for decades employers have exaggerated their retiree burdens while lobbying for government handouts, secretly cutting pensions, tricking employees, and misleading shareholders. And the employers perpetrating this upon their retirees are household names:

Aetna, **AT&T**, **Bank of America**, **Caterpillar**, **CenturyTel**, **Deere & Co.**, **Delta Air Lines**, **IBM**, **General Motors**, **Lucent**, **Raytheon**, **UPS**, and **Verizon Communications**, just to name a few.

In ***RETIREMENT HEIST*** Schultz reveals how employers:

- Siphon billions of dollars from their pension plans to finance downsizings and sell the assets in merger deals.
- Overstate the burden of rank-and-file retiree obligations to justify benefits cuts while simultaneously using the savings to inflate executive pay and pensions.
- Hide their growing executive pension liabilities, which at some companies now exceed the liabilities for the regular pension plans.
- Purchase billions of dollars of life insurance on workers and use the policies as informal executive pension funds. When the insured workers and retirees die, the company collects tax-free death benefits.
- Exclude millions of low-paid workers from 401(k)'s to make the plans more valuable to the top-paid.

The book keeps its focus nonpartisan: employees of all political persuasions and income levels—from managers to miners, pro-football players to pilots—have been slammed.

National Retiree Legislative Network, Inc.
The NRLN is the only nationwide organization solely dedicated to representing the interests of retirees and future retirees. Our mission is to secure federal legislation to protect retirees' employer-sponsored pensions and benefits plus keep Social Security and Medicare strong.

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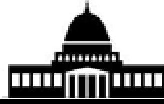


A View From Washington

By Marta Bascom, NRLN Executive Director

Retirees' Future Is in Hands of Congress' 'Super Committee'

The fate of America's future retirees lies in the hands of the so-called "Super Committee." This is a bi-partisan committee of both House and Senate members created under the Budget Control Act of 2011 that is tasked with reducing the federal budget by $1.2 trillion. If Congress does not agree to the committee's proposal, automatic cuts will be made across the board early next year, by operation of law. The power of this committee is enormous. Its proposal cannot be modified on the floor of either the House or Senate, no filibusters are permitted and the bill will be addressed by an up-or-down vote, also known as take it or leave it.

It's easy to understand the White House's and the Congress' interest in structuring the committee this way. Allowing the standing committees to go through the committee process, then having the House and Senate go through their machinations on the floor is not only painful, but extremely long. The whole initiative would be unraveled and the budget would never be cut in any meaningful way. This is Congress' way of saying the big kids at the table weren't big enough to tackle the big problems. They need bigger kids to take it on. Hence, America has the "Super Committee" to decide what is meaningful and what is frivolous or unnecessary to our American way of life.

Social Security & Medicare Are Not Culprits

For younger retirees and future members of the NRLN, a great deal is at stake. There are many policy makers in this country who erroneously believe that entitlement programs like Social Security and Medicare are major culprits in the overblown U.S. budget. That is too easy. There are a great many programs within the federal government that are completely unrelated to Social Security and Medicare that could be eliminated without causing harm - or evoking much notice - among the American people. These two particular programs can certainly be modified, especially in the case of Medicare, to ensure less waste or fewer unnecessary rising costs.

The NRLN has been on Capitol Hill with that message, showing where rising costs are the actual cause of harm to retirees, and not the entitlement programs themselves. To politicians who believe that free enterprise is always best in the marketplace, for example, we have been advocating competitive bidding for prescription drugs in Medicare to bring down costs. More generic prescription drugs in the marketplace would lead to robust sales and lower costs. Lower costs in just this area alone would lead to lower health insurance premiums.

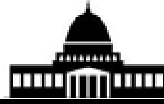
Quite simply, the "Super Committee" shouldn't look at maiming or dismantling Social Security and Medicare; they should be looking at lowering costs. Rising costs is what is hurting Americans in terms of financial security through Social Security and Medicare. This is what the NRLN is saying on Capitol Hill, and this is what retirees should be saying to their members of Congress.

Write to Your Members of Congress

We know that politicians are more responsive to their voters. All Americans need to contact their own members of Congress and demand that they write to the "Super Committee" telling them to keep Social Security safe (and not as Congress' piggy bank) and to not dismantle Medicare. This will be the only opportunity to influence the outcome of this exercise. Ask that your member of Congress write back to you with a copy of the letter they've sent to the "Super Committee." Let them know you are watching and that you want action. Don't accept a letter that simply explains the process and expresses their understanding of your concern. Tell them that as your representative you want them to act on your behalf and you want proof of their actions. Then tell your friends and relatives to do the same.

The "Write to Congress" link on the NRLN website home page at http://www.nrln.org is available for writing your personal message. Type in your zip code to identify your elected representatives and then select the "write to all" option above the lawmakers' photos.

This issue is too important to let it play out in a "politics as usual" scenario. In a democracy, the people aren't supposed to let life just happen to them; they have the right to take action and be in the driver's seat. Even if you no longer get behind the wheel of a moving vehicle, you are still in control of your government. Remember, if your representatives don't do what you want them to do, you are still in control on Election Day.



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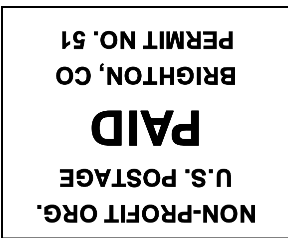

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