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LEGISLATIVE NETWORK

Protecting Retirees in Pension Risk Transfers – "De-Risking"

Talking Points

One of the core principles of the Employee Retirement Income Security Act (ERISA) is its anti-cutback rule. No pension risk transfer should make a retiree or other participant worse off.

Throughout their working lives, retirees believed that the guaranteed monthly pension income they earned came with a number of ERISA protections - most importantly a reinsurance guarantee by the federal Pension Benefit Guaranty Corp.

The decline in defined-benefit pension plan sponsorships has taken an alarming turn as more companies do a Pension Risk Transfer (PRT) of their pension plans, also known as "de-risking". Plan sponsors are spending billions on group annuities with third party insurance companies – and, in the process, stripping retirees of critical pension plan protections.

A particularly worrisome trend is the increasing role of private equity firms (hedge funds) in the life insurance and annuity sector. Members of Congress should not wait for the next unpredictable financial crisis to update the fiduciary standard for annuity contracts that replace a pension.

Foremost among the protections that should be in an annuity contract is full reinsurance of the monthly benefit itself. Only a group annuity contract that requires independent, third-party reinsurance; a sale or transfer of assets must be to a state-regulated entity, and a highly-rated insurance company maintains third-party reinsurance – can protect pension plan participants.

Here are two examples of "de-risking". In September 2022 IBM transferred $16 billion in pension assets to Prudential and to Metropolitan Life to pay annuity benefits to 100,000 retirees. In May 2023 AT&T announced annuitization for 96,0000 retirees for $7.7 billion with Athene Life & Annuity Company and Athene Annuity & Life Assurance Company. Athene is a Bahamas company that is part of Apollo, a private equity company.

The NRLN advocates that the most straightforward remedy to prevent the potential harms of "de-risking" is for Congress to amend the safe harbor fiduciary rules in ERISA Section 404 to require that annuity contracts:

1. Reinsurance: Group annuity contracts must require the purchase of reinsurance that is sufficient to provide a replacement annuity of equal value from a third-party insurer that is independent of the annuity provider and financially capable.
2. Prohibit an insurer from offering to convert or exchange individual annuity contracts for a lump sum or other change in the form of benefit.
3. Prohibit the re-sale or transfer of all or a portion of the annuity contracts to an entity that is not a state-licensed insurance company under the jurisdiction of U.S. courts and that also satisfies the safest available annuity requirements of IB 95-1.
4. Require the annuity provider to send a short-form annual report that confirms the reinsurance provider and the current rating and financial status of the annuity provider.
5. Prohibit the assignment or alienation of any payment or of the present value of the annuity.
6. Prohibit the annuity provider from reducing the benefit amount transferred from the plan to the annuity provider, including to correct a miscalculation of the benefit transferred to the annuity provider.
7. Require that an annuity provider accept and follow a state domestic relations order dividing the annuity in a manner that would satisfy ERISA § 206(d)(3)(B)(i).
8. Prohibit the assessment of fees against the annuitant by the annuity provider.
9. Establish a claim and appeals procedure for annuitants that conforms to the claims and appeals procedure under ERISA.
10. Finally, plan sponsors should affirm that the transfer of benefit liabilities to the insurer does not substantially impair the funded status of the plan after the de-risking transaction (based on a standard to be promulgated by Treasury in consultation with DOL).

Ask: Will you check with your Member of Congress and let me know whether he/she is willing to support a bill with the attached statutory amendments to ERISA

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Social Security Is Essential to Keeping America's Promise

Talking Points

Addressing the obligation of ensuring Social Security for current and future retirees, members of Congress must recognize that first and foremost **Social Security is not a welfare program paid for by the U.S. Government**. The current 67 million Social Security beneficiaries and their former employers have paid into the Social Security Trust that was created in 1935.

Social Security is funded by payroll taxes and cannot add a penny to the federal debt. Social Security cannot pay benefits unless it has sufficient income to cover the cost. It can't borrow money.

The Social Security Old-Age and Survivors Insurance (OASI) Trust Fund will only be able to pay 100% of total scheduled benefits until 2033, according to the 2024 Trustees report. At that time, reserves will be depleted, and program income will only be sufficient to pay 79% of benefits.

Social Security's funding gap should be closed – but not by cutting its benefits. The NRLN supports closing the funding gap through a modest increase (possibly between 0.5% and 1.5%) in the current payroll tax rate of 6.2% for employees and 6.2% for employers and **make all wages subject to the payroll tax** by removing the cap of $168,600 a year in 2024.

The Social Security Administration's Office of the Chief Actuary calculated that **completely eliminating the taxable maximum would close about 70% of the shortfall** and extend the trust fund's life to about 2060.

The NRLN opposes the House Study Committee's Fiscal Year 2025 Budget proposal to cut $1.5 trillion from Social Security and raise the retirement age to 69 from the current age 67.

Raising the retirement age diminishes lifetime benefits. While some are willing and able to work more years, individuals who have worked in physically demanding jobs and/or have health issues **may not be capable of extending their labor for two more years.**

The NRLN commends Social Security Commissioner Martin O'Malley's efforts to cease the practice of intercepting 100% of an overpaid beneficiary's monthly Social Security benefit by default if they fail to respond to Social Security's demand for repayment. Also, the Social Security Administration is taking a more reasonable default withholding rate of 10% of monthly benefits. **Congress still requires that every effort be made to recover overpaid benefits regardless of the number of years ago a mistake was made.**

The NRLN proposes that the existing SSA overpayments be waived, and the current Social Security Code of Federal Regulations be replaced with statutory language similar to the NRLN's proposal on pension recoupment that was enacted in the SECURE 2.0 Act of 2022.

Prior to the 2022 law, a company could "recoup" or recover pension overpayments made to a retiree when it discovered them, no matter how long it had been. **With the 2022 law, the Company doesn't have a fiduciary obligation to recoup; but if it does recoup it must be done within three years of initial overpayment and may not recoup more than 10% of overpayment per year. The same rules should apply to Social Security overpayment recovery.**

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NATIONAL RETIREE LEGISLATIVE NETWORK

NRLN Members Say Medicare Advantage Extra Benefits Should Be Provided to Traditional Medicare Beneficiaries

Talking Points

The Medicare Payment Advisory Commission (MedPAC) who advises Congress on Medicare issues reported at is meeting on January 12, 2024, that 31.6 million Americans, 52% of all Medicare beneficiaries, are now enrolled in Medicare Advantage (MA) plans – up from 26% in 2010.

Commissioner Cheryl Damberg, director of the RAND Center of Excellence on Health System Performance, said, "MA has never yielded aggregate savings to the Medicare program, despite that being one of the core goals."

Commissioner Lynn Barr, founder of Caravan Health, said, "We have allowed MA to buy the market. And that is why MA is growing. It's not because the quality's so great."

"Overall, we estimate that coding and [patient] selection will cause MA payments to be 23% above [traditional Medicare] Fee-For-Service spending in 2024," said Luis Serna, MedPAC policy analyst.

The 31.6 million MA enrollees receive 22 chronic disease benefits approved by Congress. These benefits, such as, vision, hearing, dental, transportation to doctor appointments, meal deliveries, carpet shampooing for asthmatics are denied to the 27 million traditional Medicare beneficiaries.

The NRLN received the following comments from its members after posting information on www.nrln.org **July 29 - Aug. 5, 2024, about where MA receives its funding** (See post on page 2.)

"I support Congress providing more funding for traditional Medicare to provide the same Medicare Advantage chronic disease benefits for traditional Medicare." **NRLN Avaya Chapter member**

"I am a [traditional] Medicare person enrolled in a supplement plan. Each time I question why Medicare Advantage receives all those extra benefits I am told, join a Medicare Advantage plan. No one listens, this is extremely unfair." **NRLN CenturyLink Retirees Association member**

"It is difficult to understand why the Medicare program would continue to support paying more for an enrollee in a Medicare Advantage plan than those in traditional Medicare. It seems almost illegal for that to happen. Why are there two sets of standards when we are all covered under Medicare? I feel Medicare needs to reduce the monies currently paid to MA insurers in light of their continued cost increases. After seeing that MA plan costs have not shown to be cost effective, why would Medicare continue to increase funding for them?" **NRLN General Motors Retirees Chapter member**

"That is not fair. All retirees should get the same benefits." **NRLN Lucent/Nokia Chapter member**

"I am a Medicare Advantage participant. I acknowledge we are getting benefits not afforded to regular Medicare. I believe this started as an attempt to privatize Medicare that has backfired. Seniors are taking advantage of what is offered. If extra benefits are offered by private insurers, they should not be paid by the government trust funds. Actions must be taken to secure Medicare (and Social Security) for future generations. A responsible and accountable Congress is sorely needed." **NRLN Villages (FL) Chapter member**

"I say backtrack and return to traditional Medicare plans. This is not only unfair, but MA is a burden on the public cost. Whoever thought of Advantage plan is trying to bankrupt Medicare when it was under siege already," **NRLN National Chrysler Retirement Association member**

"From what I have seen, it seems that the Medicare Advantage enrollees are getting insurance with many free perks at much lower rates than those who buy a traditional Medigap supplement insurance plan. The rise in the number of people wanting Advantage insurance is alarming. Let's face it. These are the insurance plans you see advertised on TV that promise really low rates - a great advertising ploy. These insurance companies must be making a lot of money on these plans to afford so much advertising. So, if more people are turning to these plans because of this advertising, then our government is letting down its senior citizens. I have always seen as a drawback the fact that you have to stay within their network and take the doctors that are in it (no matter how good or bad they are) and possibly wait a long time to see one." **NRLN At-Large member**

"Privatization of Medicare (aka Medicare Advantage) is wrong and not cost effective. Even the playing field and support the same benefits to both programs to allow both programs to compete fairly for the funding they receive. Why does the government continue to support Medicare Advantage when it has been proven to be more expensive while at the same time more restrictive regarding denial of claims for medical services provided?" **NRLN DuPont Retirees Chapter member**

"I would support Congress providing more funding to provide the same chronic disease benefits for traditional Medicare." **NRLN AT&T/Ameritech/SBC Retirees Association member**.

The NRLN's advocates providing traditional Medicare beneficiaries with the same 22 chronic decease benefits as the MA enrollees receive. Or eliminate the failed privatization effort and return MA enrollees to traditional Medicare.

NRLN website posting July 29 – August 5, 2024:

Where Medicare Advantage (Part C) Receives Its Funding

Funds for Medicare Advantage Part C benefits are drawn from the Hospital Insurance (HI) Trust Fund (accounting for 48% of total spending on Medicare Part A benefits in 2023). Funds for Part B and Part D (outpatient prescription drugs) benefits are drawn from the Supplementary Medical Insurance (SMI) trust fund. Beneficiaries enrolled in Medicare Advantage plans pay the Part B premium (same as traditional Medicare) and may pay an additional premium for their plan.

In addition, 17% of payments made to Part C plans are for extra-benefits like Part D premiums, Part B copays, coinsurance, dental, hearing and vision benefits, and insurance company costs and profit. These subsidies come from SMI Trust Fund general revenue.

Rise in Medicare Advantage Enrollment: With enrollment in Medicare Advantage plans projected to increase to 33.8 million by the end of 2024 the payments to private Medicare Advantage plans account for a growing share of total Medicare spending under Part A and Part B. Medicare Advantage enrollment is projected to grow to 62% of the total Medicare enrollment by 2033.

Increases in Medicare Advantage Spending. According to current projections, payments to Medicare Advantage plans are projected to rise as a share of total Part A spending from 48% in 2023 to 54% in 2033, a shift that could impact the HI trust fund solvency. Medicare Advantage is also projected to rise as a share of total Part B spending, from 55% in 2023 to 65% in 2033, which could impact both beneficiary premiums and general revenue spending. In 2024, MedPAC estimates that the Medicare program will spend 22% more per Medicare Advantage enrollee than for similar beneficiaries in traditional Medicare – an additional $83 billion in total.

- Medicare Advantage plans offer up to 22 chronic disease benefits ranging from vision, hearing, dental to shampooing carpets for asthma patients. The 27 million traditional Medicare enrollees are denied those 22 chronic disease benefits. **Is this fair? Would you support Congress providing more funding to provide the same chronic disease benefits for traditional Medicare?**

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Pass the Susan Muffley Act to Help Delphi Salaried Retirees

The federal government picked winners and losers in the General Motors and Delphi auto industry bankruptcies of 2009. The Delphi salaried retirees were singled out to have their pension plan terminated and taken over by the Pension Benefit Guaranty Corporation (PBGC). Actions taken by the Federal Government's Auto Team, which intervened in the bankruptcies, assured certain union-represented GM and Delphi workers and retirees received their full earned pensions. But 20,000 Delphi salaried retirees losing up to 70% of earned and promised pensions.

The Susan Muffley Act - supported by many Republicans and Democrats in the House and the Senate - would restore the terminated pensions. This bill would make up the difference between the pension benefits earned by Delphi salaried retirees and what they received following the GM bankruptcy in 2009. This means beneficiaries who have already begun receiving benefits will receive a lump sum payment of the difference between what was actually paid by PBGC and would have been paid without the limitations, plus interest. Retirees may pay income taxes on this lump sum over three years to ease the tax burden. All beneficiaries will receive their full earned benefit amount moving forward.

The restoration of the Delphi salaried retirees' pensions is not a bailout! It corrects wrongful government action in 2009! Passage of the Susan Muffley Act would not set a precedent. The bill has been in the House Committees on Education and Workforce and Ways and Means since February 1, 2023. The Senate Committee on Finance has had the bill since July 12, 2023. Time is way overdue for action by the Committees!

Make Health Coverage Tax Credit (HCTC) Permanent

For several years Congress passed year-to-year legislation to reauthorize the Health Coverage Tax Credit (HCTC) Act. However, Congress failed to do so for 2022 to help Americans ages 55-64 cover the cost of health insurance if they are retired and their pensions have been taken over by the Pension Benefit Guaranty Corporation, or if their job was outsourced abroad and they qualify for Trade Adjustment Assistance.

The NRLN urges passage of **H.R.3912, Bob von Schwedler Permanent Health Coverage Tax Credit Expansion Act**, which would make HCTC permanent and would increase the benefit from 72% to 80% of health insurance costs for workers and retirees who claim the credit.

If HCTC isn't made permanent, the NRLN urges passage of **H.R.2914, Health Coverage Tax Credit Reauthorization Act of 2023**, which would reauthorize HCTC through 2027.

The House Committee on Ways and Means has had H.R.3912 since June 7, 2023, and H.R.2914 since April 25, 2023. It is time now for the Committee members to vote for passage on at least one of the HCTC bills!

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