



The ERISA Industry Committee

**WRITTEN STATEMENT
OF**

SCOTT J. MACEY

*Senior Vice President, Government Affairs
Aon Consulting*

**ON BEHALF OF
THE ERISA INDUSTRY COMMITTEE**

**BEFORE THE
COMMITTEE ON EDUCATION AND LABOR
U. S. HOUSE OF REPRESENTATIVES**

**HEARING
SAFEGUARDING RETIREE HEALTH BENEFITS**

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Good morning, Mr. Chairman and members of the Committee. I very much appreciate the opportunity to speak with you and the Committee today about retiree health benefits.

I am Senior Vice President and Director of Government Affairs of Aon Consulting, a leading human capital and management consulting firm. I am appearing today on behalf of The ERISA Industry Committee, also known as “ERIC.” I am also a member of ERIC’s Executive Committee and its former Chairman. ERIC is a nonprofit association committed to the advancement of the employee retirement, incentive, and welfare plans of America's largest employers. ERIC's members provide comprehensive benefits directly to some 25 million active and retired workers and their families. Together, ERIC member companies have provided benchmark life security plans directly to more than 10% of the U.S. population.

ERIC commends the Committee for its focus on retiree health benefits. Our nation's senior citizens need and deserve access to quality, affordable post-retirement health care. Years of double-digit inflation in medical costs have eaten away at workers' retirement income, making it increasingly difficult for retirees to afford even the most basic post-retirement health benefits. This is true especially for workers who retire before they become eligible for Medicare.

Employers also feel these pressures acutely. As American companies struggle to compete in a global economy, they labor under the burden of a health care system that is among the most expensive in the world. National expenditures on health care now consume 16 percent of our gross domestic product. In the United States, this burden falls much more heavily on private companies than it does in other developed nations, where the government plays a larger role in providing health care and controlling medical costs.

ERIC's members share the Committee's concern over the loss of health care access and coverage for workers, retirees, and other Americans. Indeed, we and others have warned repeatedly that increasing health care costs, changes to accounting rules, and insufficient funding rules would result in increasing pressure on both retiree and active health care coverage.

Although we welcome the Committee's attention to this important national issue even in the midst of a national financial crisis, we are concerned, however, about the approach being proposed. The bill that is the focus of today's hearing misinterprets the underlying reasons for the problem, i.e., that employers are the problem, and proposes a solution that is likely to have significant unintended adverse consequences. The Emergency Retiree Health Benefits Protection Act would single out large employers that have voluntarily provided post-retirement health coverage to their workers, and would require these employers—and *only* these employers—to preserve for the remainder of a retiree's

life the coverage that was in effect at his retirement. The bill would prohibit employers from changing these benefits regardless of future, and unknown, changes in economic conditions, costs of medical care or company financial status, and would ignore potential future changes in the nation's healthcare system.

I would like to raise four key points for the Committee's consideration.

First, if an employer promises lifetime health benefits to its retirees, that commitment is well-protected under current law. There is no need for legislation to safeguard benefit commitments.

Second, if an employer has lawfully reserved the right to change retiree benefits – and employees have been informed of that right, that legal right should also be protected. Employers that have voluntarily offered post-retirement health benefits in the past should not be penalized making a more generous set of compensation promises at one point in time by having those benefits retroactively locked in.

Third, if employers are prohibited from changing the benefits in place when a worker retires, this mandate will have the unintended consequence of depriving millions of future retirees of employer-provided health benefits. Employers will cease to offer retiree health coverage if they do not have the flexibility to modify the coverage as necessary to reflect changing circumstances. Indeed, in spite of earlier warnings to policy makers by employer groups and others, employers have in fact curtailed new retiree health arrangements due to increasing costs and new accounting rules.

Fourth – and most important as it addresses the real root of the problem - the effort to safeguard retiree health benefits will succeed only if it addresses the pervasive problems in the American health care system that force employers to reduce post-retirement health benefits, and that impede access to

affordable health coverage by both working and non-working Americans. These are societal problems that require a comprehensive solution. A proposal that subjects a small group of companies to punitive measures will not, in the end, help to resolve the much greater issues and concerns that are at stake.

Existing Law Protects Promised Benefits

The Emergency Retiree Health Benefits Protection Act rests on a mistaken assumption: that employers are breaking their promises to provide retirees with lifetime post-retirement health benefits. This is simply not the case. If an employer has made an unconditional commitment to provide post-retirement benefits, that commitment will be enforced under current law.

Courts have ruled repeatedly that an employer may not change the benefits of a retired worker unless written plan documents reserve the employer's right to amend or terminate post-retirement benefits, and the employer communicates this right to its workers clearly and unequivocally before they retire. Accordingly, under current law, an employer may reduce post-retirement benefits only if the employer can show that it did not commit to provide these benefits permanently.

The Bill Will Penalize Employers That Voluntarily Provided Post-Retirement Benefits

The bill does not seek just to enforce existing promises—those promises are enforceable already under current law, and are routinely protected by the federal courts. Instead, the bill seeks to create new promises where none existed before.

The bill would prohibit an employer from reducing post-retirement benefits for workers who have already retired, even though the employer has included in its retiree health plan “a provision specifically authorizing the plan to

make post-retirement reductions in retiree health benefits.” The bill would permit an employer to terminate health benefits for current retirees only if the employer can show that the company otherwise will be unable to continue in business.

If an employer has already exercised its right to reduce post-retirement benefits—for example, by asking retirees to share a portion of rising medical costs through increased contributions—the bill would give each retiree the option to restore the benefits to their former level. The bill would apparently even prohibit an employer from implementing health care networks and other arrangements that are responsive to the changing environment of our health care delivery system.

In short, the bill would re-write private benefit plans retroactively in order to convert an employer’s voluntary, conditional decision to offer post-retirement health benefits into an unconditional lifetime guarantee. Employers that have been less generous, and have provided no post-retirement benefits to their employees, would be rewarded with a decades-long competitive advantage. We also have concerns about constitutional challenges to the retroactive provisions of the bill as well as the fundamental fairness of that approach.

**The Bill Will Push Employers to Eliminate
The Benefits They Provide Today**

If the bill is enacted, the unintended consequence will be a dramatic decline in the number of employers that are able to provide post-retirement benefits to their employees. Few companies will risk offering retiree health benefits if they are confined in the legal straitjacket that the bill would impose.

An employer must be able to change its benefit programs to reflect the changing conditions in which its business operates: it cannot lock in retiree health coverage without regard to escalating costs, increasing pressures from global competition, innovations in health care delivery, development of new government programs, or any of the myriad other factors that cause employers to exercise their

right to reduce post-retirement health benefits or signing up permanently to an unknown escalation of cost and price volatility. In fact, ERISA recognizes the clear distinctions between pension and health and welfare plans and has provided for the vesting of the former, but not the latter. The bill's retroactive imposition of new and possibly unaffordable liabilities will also have a chilling effect on employers' willingness to continue to sponsor other benefit plans that could be subject to similar mandates.

Faced with the prospect of permanent, unalterable retiree benefits, employers that today provide millions of retirees with access to affordable post-retirement health care will be presented with the Faustian bargain of either terminating health benefits for future retirees or signing up permanently to an unknown escalation of cost and price volatility. Employers must keep their costs under control in order to remain competitive in a challenging global economy. Accordingly, to the extent that the bill retroactively locks in coverage for current retirees, the inevitable result will be to divert employers' compensation resources from other compensation and benefit programs at the expense of other workers.

The Problem Calls For a Comprehensive Solution

Proposals that would lock-in companies retiree health benefits fail to address the factors that cause companies to reduce or eliminate these benefits in the first place. These proposals do not address the underlying problem of inadequate individual access to affordable health care in our society.

Many companies have gone to great lengths to preserve their post-retirement health benefits as long as they can, in the face of mounting pressures that are rapidly making these programs unsustainable. Employers that provide comprehensive health benefits today are under severe stress. They must contend with excessive medical cost increases, complex and inflexible rules governing benefits, burdensome and often unnecessary litigation, shifting accounting

standards, inadequate funding mechanisms, and federal and state mandates that constantly impose new obligations on a system that is already terribly overburdened.

The erosion of retiree health benefits is a symptom of the problems in the American health care system, not the cause. These are societal problems that call for a comprehensive solution involving all of the stakeholders. It will take the best efforts of federal and state policymakers, industry leaders, trade associations, and private individuals to address these problems.

I do not come before this Committee seeking to preserve the status quo or to ignore the serious issue that the bill attempts to address. Clearly America's health care system must change in fundamental ways if it is to provide our citizens with the care they deserve. ERIC is committed to working constructively to achieve meaningful and lasting change.

ERIC has proposed a "New Benefit Platform for Life Security" to create a framework for a 21st century life security plan that is more efficient, controls costs, is more transparent, leverages information technology to empower consumers, and ensures the delivery of high quality retirement and health coverage to all Americans. We would welcome an opportunity to work with the Committee to build solutions around this framework.

That completes my prepared statement. I will be pleased to answer any questions the Chairman or any members of the Committee might have. Thank you for your attention.