

September 25, 2002

The Honorable John A. Boehner
Chairman
House Committee on Education and
the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable George Miller
Ranking Democratic Member
House Committee on Education and
the Workforce
2101 Rayburn House Office Building
Washington, DC 20515

Re: Preserving Employer-Sponsored Health Benefits for American Retirees

Dear Chairman Boehner and Ranking Member Miller:

As the Congress continues to focus on “must pass” legislation before the end of the year, we the undersigned organizations from the business, organized labor and older American communities believe there is one issue that needs to be addressed in order to preserve retiree health benefits for Americans across the country.

In 2000, the Third Circuit decided, in Erie County Retirees Association v. Erie County, that the practice of providing a higher level of health care benefits to pre-65 retirees than to Medicare eligible retirees may violate the Age Discrimination in Employment Act (“ADEA”). We strongly believe that this case was wrongly decided, and misinterpreted Congressional intent in regard to employer-sponsored retiree health benefits -- thus requiring Congressional clarification of present law.

We have enclosed legislative language that we believe would clarify present law and Congressional intent. Our proposed language would clarify that it is permissible for an employer to provide retiree health benefits during the gap period between retirement and Medicare eligibility, without incurring liabilities to retirees who are eligible for Medicare. We believe that a failure to clarify the law in this manner would have a devastating effect on employer-provided retiree health benefits. If the Erie County decision were to apply in all cases, there is little doubt that there would be a significant reduction in the health benefits provided to retirees who are not eligible for Medicare, with corresponding increases in costs to retirees, as well to the federal and state governments. This is obviously contrary to the interests of retirees across America and contrary to sound public policy.

In fact, employers are already facing huge hurdles in providing these retiree benefits, even without the Third Circuit’s interpretation – with dramatic annual increases in overall health care costs. For example, the U.S. Department of Health and Human Services’ Agency for Healthcare Research and Quality announced on September 12, 2002 that since 1997 (the first year that data on retirees were measured) there has been a significant decline in the number of employers who offer health insurance to their retirees of any age: offerings to retirees under age 65 dropped from 21.6 percent in 1997 to only 12 percent in 2000 and offerings to retirees 65 and

older dropped from 19.5 percent to 10.7 percent over the same period.¹ Moreover, in a recent survey, 17 percent of companies surveyed with at least 5,000 active employees have "virtually eliminated" their liabilities for retiree benefits by requiring retirees to pay the full premiums; 20 percent already have eliminated such plans altogether for new hires.² We believe these numbers will even more quickly worsen without this clarification of current law, particularly for pre-65 retirees.

Although the Equal Employment Opportunity Commission has signaled its intent to address this issue through a proposed rulemaking, we believe that immediate legislative clarification should be made. Time is of the essence. Collective-bargaining agreements and health insurance contracts, for example, are constantly being negotiated, so the sooner the law is clarified, the more Americans will benefit. We urge you to include this clarification in any available legislative vehicle before adjournment.

Sincerely,

Alliance for Retired Americans
American Association of Health Plans
American Benefits Council
American Federation of Teachers, AFL-CIO
ERISA Industry Committee
Financial Executives International, Committee on Benefits Finance
National Education Association
National Rural Electric Cooperative Association
60 PLUS Association
The Seniors Coalition
United Seniors Association

Enclosure – Proposed Legislative Language

¹ *Medical Expenditure Panel Survey (MEPS)*, U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, September 12, 2002.

² *Retiree Health Benefits: Time to Resuscitate?*, Watson Wyatt Research Report, 2002.

DRAFT LEGISLATION

107th CONGRESS
2d Session

To be inserted at an appropriate place in pending legislation:

SECTION ____ . RETIREE MEDICAL BENEFITS COORDINATED WITH MEDICARE BENEFITS-

(a) Section 4(*l*) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(*l*)) is amended by adding at the end the following:

"(4) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employee benefit plan (as defined in section 3 of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1002(3))) provides for medical benefits for retired participants that are altered, reduced, or eliminated when the participant is eligible for medical benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) or an employee benefit plan maintained by a State or an agency thereof."

(b) EFFECTIVE DATE. –

The amendment made by this section shall apply as of the date of the enactment of the Act, and is intended as a clarification of present law with respect to any plan described therein. No inference may be drawn from the amendment made by this Act with respect to the law applicable to plans or arrangements not described in this Act.