THE REPUBLICAN STUDY COMMITTEE

Rep. Rob Woodall, Chairman

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Legislative Bulletin……………………………………….………December 11, 2014

Contents:

A previous Legislative Bulletin provided analysis of the appropriations provisions in the bill.

Rules Committee Print for H.R. 83 — Consolidated and Further Continuing Appropriations Act, 2015 (Rogers, R-KY) - Non-Appropriations Provisions

Order of Business: The bill is expected to be considered on December 11, 2014 under a rule.

Several conservatives offered an amendment to specifically prohibit funding of the President's executive amnesty actions.

Summary: In addition to appropriations provisions, the bill includes a number of other provisions:

Dodd-Frank Push-out: The bill amends the "swaps push-out" requirements included in the Dodd-Frank Financial Reform law. The regulation "requires banks to separate, or push out, their derivatives business from the part of the institution that is federally insured…. Opponents of the push out provision say it will be costly to financial institutions while not actually reducing risk to the financial system. Former Fed Chairman Ben S. Bernanke has expressed opposition to the provision."

The House approved H.R. 992, the Swaps Regulatory Improvement Act, on October 30, 2013 by a 292 – 122 vote.

Political Contribution limits: The bill would modify campaign finance restrictions to increase the limits on what individuals can contribute to national political party organizations.

Under current law, donors are prohibited from contributing more than $32,400 per year to each of the national party committees (Democratic National Committee, Republican National Committee, Democratic Senatorial Campaign Committee, National Republican Senatorial Committee, Democratic Congressional Campaign Committee and the National Republican Congressional Committee.)

Under the bill, a donor would be permitted to contribute $97,200 to each of the primary committees, and make additional contributions to separate segregated funds for specific purposes within the political committees.

Internet Tax Moratorium: The Internet Tax Freedom Act is extended through October 1, 2015.

Pay Increases for Members of Congress: The bill prohibits cost of living increases for Members of Congress in FY 2015.

Payments in Lieu of Taxes (PILT): The bill provides $372 million for PILT.

Expatriate Health Care: The bill includes the text of the Expatriate Health Coverage Clarification Act. H.R. 4414 was passed by the House on April 29, 2014, by a 268 – 150 vote. The bill would modify the treatment of expatriate health plans under Obamacare with regard to the minimum essential coverage requirements.

Study of Electric Rates in the Insular Areas: The bill would require the Department of the Interior to study energy issues in the territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Puerto Rico, Guam, and the Virgin Islands.

Multiemployer Pension Amendment — (Rep. Kline, R-MN)

This amendment makes reforms to multiemployer pensions with the goal of stabilizing pension plans by allowing troubled plans the ability to take action and save themselves.

Title I: Modifications to Multiemployer Plan Rules

SUBTITLE A – AMENDMENTS TO PENSION PROTECTION ACT OF 2006

- Repeals the sunset date (December 31, 2014) of funding rules for multiemployer plans in endangered or critical status found within the Pension Protection Act of 2006 (PPA). This will ensure these rules are permanently extended.
- The PPA created the "critical" funding classification for seriously underfunded multiemployer pension plans. This amendment allows multiemployer pension plans that are not in critical status for a plan year, but are projected to be in critical status in any of the succeeding five plan years to voluntarily elect to be deemed as "critical" for the effective plan year. The plan will be required to notify to participants, beneficiaries, the Secretary of the Treasury, and the Pension Benefit Guaranty Corporation (PBGC) of this decision. A plan will remain in critical status until it is certified to not have an accumulated funding deficiency for the plan year or any of the nine succeeding plan years and the plan is not projected to become insolvent for any of the 30 succeeding plan years.

- A funding improvement plan is required for plans that are classified as endangered or critical status and may not be amended after the date of adoption so as to increase benefits, including future benefit accruals, unless certified by the plan actuary.
- Certain reorganizational rules for multiemployer plans found in both the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC) are repealed or modified to take into account plans placed in the critical classification.
- A special rule allows for an increase in contribution rates that is required to be made in order to enable a plan to meet the requirements of the funding improvement plan. Once the plan emerges from endangered or critical status this special rule no longer applies and will be disregarded in determining the highest contribution rate.
- It ensures, for the purposes of a qualified preretirement survivor annuity which is payable to the surviving spouse of a participant under a multiemployer plan, that if a plan becomes insolvent or is terminated, such annuity will not be treated as forfeitable. This provision is retroactive for plan benefits becoming payable on or after January 1, 1985, except in cases where a surviving spouse died before the enactment of this amendment.
- Plan administers are required to provide a copy of the current plan document, summary the plan, periodic actuarial reports, audited financial statements of the plan, and if applicable, the latest funding or rehabilitation plan, to any plan participant, employee representative or employer.

SUBTITLE B – MULTIEMPLOYER PLAN MERGERS AND PARTITIONS

- ERISA and the IRC are amended to allow the merger of two or more multiemployer plans if it is determined, after consultation with the Participant and Plan Sponsor Advocate, that the transaction in in the interest of the participants and beneficiates of a least one of the plans and is not reasonably expected to be adverse to the overall interests of the participants of any of the plans. A merger would be initiated to enable one or more of the plans involved to avoid or postpone insolvency. In order to facilitate a merger, the PBGC may provide financial assistance to the merged plan if:
    - One or more of the plans participating is in critical or declining status;
    - PBGC expects the financial assistance to reduce their long term loss with respect to the plans involved and is necessary for the plans to remain solvent;
    - PBGC certifies its ability to meet existing financial assistance obligations; and,
    - The assistance is paid exclusively from the fund for basic benefits guaranteed for multiemployer plans.

STRENGTHENING THE PENSION BENEFIT GUARANTY CORPORATION

- The per capita premium rate is indexed to inflation and increased to $26 (up from $13) beginning on January 1, 2015.
- For plan years after 2015, a formula is used to determine the per capita premium instead of a fix dollar amount.
- The PBGC is required to submit to Congress an analysis of where the premium levels enacted are sufficient to meet its projected mean stochastic basic benefit guarantee obligation, and if the premium levels are insufficient, a proposal to meet such obligations.

Title II: Remediation Measures for Deeply Troubled Plans

- A new status – critical and declining – for multiemployer plans is created under ERISA and the IRC. A plan will fall under this status if:
  - The plan is projected to become insolvent in the current plan year or any of the 14 succeeding plan years; or,
  - The plan is projected to become insolvent in the 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2:1 or the funded percentage of the plan is less than 80 percent.
- The plan actuary is required to submit annual certification to the Secretary indicating whether or not the plan will be in critical and declining status for each plan year.
- Annual funding plan notices for plans that are in critical and declining status are required to be sent to the PBGC in addition to each plan participant and beneficiary, and to each labor organization representing such participant detailing the projected date of insolvency, a clear statement that insolvency may result in benefit reductions, and a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency.
- The plan sponsor of a plan in critical and declining status may suspend benefits when deemed appropriate.
- The suspension of benefits is defined as the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of suspension.
  - The plan will not be liable for any benefit payments not made as a result of the suspension.
- The plan sponsor of a plan in critical and declining status may suspend benefits if the following conditions are met:
  - The plan actuary certifies the plan is projected to avoid insolvency assuming the suspension of benefits continue; and
  - The plan sponsor determines the plan is still projected to become insolvent unless benefits are suspended. Factors that can lead to this determination include:
    - Current and past contribution levels;
    - Levels of benefit accruals;
    - Prior reductions of adjustable benefits;
    - Prior suspension of benefits'; and ,
    - The impact of past and anticipated contribution increases under the plan on employer attrition and return levels.
- The suspension of benefits are subject to the following limitations:
  - The monthly benefit of any participant many not be reduced below 110 percent of the monthly benefit which is guaranteed by the PBGC.
  - <u>Suspensions will be phased out for participants and beneficiaries aged 75 and older at the date of the benefit suspension. Participants and beneficiaries age 80 and older at the date of suspension are exempt from benefit suspensions.</u>
  - <u>Disability pensions are exempt from benefit suspensions.</u>
  - Any suspension of benefits shall be reasonably achieved to avoid insolvency.

    - Any suspension of benefits will be equability distributed across the participant and beneficiary population, and age, number of years to retirement, and participants' benefit history can be taken into consideration.
- The plan sponsor must provide notice and an application for approval of each suspension of benefits to the Secretary of the Treasury before any suspension of benefits occurs. The Secretary, in consultation with the PBGC, has 225 days to approve or deny the suspension of benefits.
- If a suspension of benefits is approved by the Secretary and PBGC, it cannot take effect prior to a vote of the participants which must occur within 30 days. If the majority of participants and beneficiaries reject the suspension, the plan sponsor may submit a new suspension application to the Secretary.
- In the event the suspension of benefits is voted down, the Secretary and the PBGC will determine whether the plan is a systemically important plan, as defined as a plan in which the PBGC project the present values of financial assistance payments to exceed $1,000,000,000 if suspensions are not implemented. If the plan is determined to be a systemically important plan, the Secretary has the authority to implement the suspension or modify the benefits in a manner to prevent insolvency.

DIVISION P – OTHER RETIREMENT-RELATED MODIFICATIONS

- Amends ERISA to clarify definition concerning what constitutes a substantial cessation of operations as it relates to single-employer defined benefit plans.
    - A substantial cessation of operations is the result of a permanent workforce reduction of 15 percent or more of all eligible employees.
- This section would establish an alternative way for employers to satisfy their liability requirements found in section 4062(e) of ERISA.
- Note: This section mirrors langue from S. 2511 which passed the Senate by unanimous consent on September 16, 2014.
- Includes a new subsection to ERISA which creates a special rule for determining normal retirement age for certain defined benefit plans which mirrors language in H.R. 5792.
- Amends the cooperative and small employer charity pension plans to include certain organizations whose primary purpose is to provide services to children.

Additional Background: Multiemployer pension plans are created by collective bargaining agreements which include more than one employer making contributions. The PBGC was established in 1974 by the Employee Retirement Income Security Act (ERISA) to protect the pensions of participants and beneficiaries covered by private sector, defined benefit (DB) plans. Unlike defined contribution plans (DC), DB plans provide a specified monthly benefit at retirement, usually either a percentage of salary or a flat dollar amount multiplied by years of service. According to the Congressional Research Service, in FY2013, the PBGC insured about 24,835 DB pension plans covering 42.3 million people.

The PBGC is required by law to be self-supporting. This is accomplished through premiums collected from private-sector employers that sponsor DB pension plans, and assets from terminated plans taken over by the PBGC. The GAO notes, "The PBGC's financial portfolio is one of the largest of any federal government corporation, with more than $80 billion in assets.

Yet, because of long-term challenges related to PBGC's governance and funding structure, PBGC's financial future is uncertain. At the end of fiscal year 2012, PBGC's net accumulated financial deficit was $34 billion—an increase of over $23 billion from the end of fiscal year 2008, and significantly worse than in 2000, when PBGC reported a $10 billion surplus." The financial uncertainty of multiemployer program has caused it to be on the GAO's annual high risk list since 2009. Currently, one of the largest potential problems facing PBGC is the possibility that one of two of the largest DB pension plans becomes insolvent. It is highly unlikely the PBGC would have the resources to guarantee the participants' benefits. In this situation, the federal government may need to provide financial assistance to the PBGC.

The National Coordinating Committee for Multiemployer Plans (NCCMP), which represents multiemployer pension plans, issued a report detailing proposals which would reform and strengthen the program – many of which were included in this bill.

Committee Action: The Education and Workforce Committee has held hearings on multiemployer pensions on the Health, Education, Labor and Pensions subcommittee this Congress.

Outside Groups Support:
Associated General Contractors of America (AGC)
National Electrical Contractors Association (NECA)
Association of Food and Dairy Retailers, Wholesalers and Manufacturers
United Brotherhood of Carpenters and Joiners of America (UBC)
Service Employees International Union (SEIU)
The United Food & Commercial Workers International Union (UFCW)
United Association of Journeymen & Apprentices of the Pipe Fitting Industry
International Union of Operating Engineers (IUOE)
National Coordinating Committee for Multiemployer Plans (NCCMP)
Kroger
International Union of Painters and Allied Trades (IUPAT)
North America's Building Trades Union

Outside Groups Oppose:
AARP
International Brotherhood of Teamsters

Possible Conservative Concerns: There are concerns the provisions in this amendment have not had the opportunity to go through regular order. Without this going through the committee process, some have expressed concerns this could lead to an increase in financial expenditures that could have been prevented if the reforms were considered over a more extended period of time and through regular order.

Cost to Taxpayers: According to CBO, Division O – the multiemployer pension reform section – over the FY 2015-2019 budget window will result in a net direct spending – reduction of $481 million, while over the FY 2015-2024 budget window the net direct spending change would be $0. Revenues would be reduced by $518 million over the FY 2015-2019 budget window, and reduced by $1,120 million over the FY 2015-2024 budget window. Net changes in the deficit will be increased $37 million over the FY 2015-2019 budget window and increased $1,120 million over the FY 2015-2024 budget window.

According to CBO, Division P – other retirement-related modifications – over the FY 2015-2019 budget window will result in a net direct spending reduction of $4 million, while over the FY 2015-2024 budget window the net direct spending would be decreased by $15 million. Revenues will increase by $14 million over the FY 2015-2019 budget window, and $16 million over the FY 2015-2024 budget window. On net the deficit will be reduced by $18 million over the FY 2015-2019 budget window and reduced by $34 million over the FY 2015-2024 budget window.

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