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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 109–34

REQUESTING THE PRESIDENT TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES CERTAIN INFORMATION RELATING TO PLAN ASSETS AND LIABILITIES OF SINGLE-EMPLOYER PENSION PLANS

APRIL 12, 2005.—Referred to the House Calendar and ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

ADVERSE REPORT

[To accompany H. Res. 134]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the resolution (H. Res. 134) requesting the President to transmit to the House of Representatives certain information relating to plan assets and liabilities of single-employer pension plans, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

REPORT OF THE COMMITTEE ON EDUCATION AND THE WORKFORCE ON H. RES. 134

PURPOSE

H. Res. 134, a resolution of inquiry, requests the President to transmit to the House of Representatives certain specified information relating to plan assets and liabilities of certain single-employer pension plans for the previous two plan years.

COMMITTEE ACTION

109th Congress

On March 2, 2005, Representative George Miller introduced H. Res. 134, a resolution of inquiry requesting the President to transmit to the House of Representatives certain information relating to plan assets and liabilities of certain single-employer pension plans. Clause 7 of rule XIII of the Rules of the House of Representatives provides that if a resolution of inquiry is not reported by the committee(s) of jurisdiction to the House within fourteen legislative days of its introduction, a motion to discharge such committee(s) from consideration of the resolution shall be privileged on the Floor of the House.

39–006

H. Res. 134 was referred to the Committee on Education and the Workforce on March 2, 2005. The Committee held no hearings on the bill.

On April 6, 2005, the Committee by unanimous consent reported H. Res. 134 unfavorably to the House of Representatives with the recommendation that the resolution not be adopted.

SUMMARY

H. Res. 134 directs the President[1] to transmit to the House of Representatives within fourteen days certain specified information relating to plan assets and liabilities of certain single-employer pension plans for the previous two plan years.

Specifically, the resolution calls for the production of all information filed with the PBGC by contributing sponsors of certain single-employer defined benefit pension plans pursuant to sections 4010.8(a)(1) and (2) of title 29 of the Code of Federal Regulations for the two most recent plan years. By way of explanation, section 4010.8(a)(1) requires that contributing sponsors of certain single-employer pension plans provide the PBGC with the fair market value of the plan's assets; section 4010.8(a)(2) requires sponsors to provide the PBGC with the value of the plan's benefit liabilities at the end of the plan year.

The resolution also requests information relating to the identities of the contributing sponsors of each single-employer pension plan from whom the PBGC has obtained this information, as well as the members of those plans' sponsors' controlled group.[2]

COMMITTEE STATEMENT AND VIEWS

Background: ERISA Reporting Requirements

Title I of ERISA contains fundamental protections for participants and beneficiaries of employee benefit plans. Part 1 of Title I sets forth the duties of plan administrators to notify participants and beneficiaries of the terms of the benefit plans in which they participate, their rights under these plans, and the benefits which have accrued under the terms of their plans. When ERISA was enacted in 1974, Congress provided for such disclosure of meaningful plan information to protect employees' retirement security.

Title IV of ERISA contains provisions dealing with the PBGC's Plan Termination Insurance Program, which insures the pension benefits of participants and beneficiaries in single- and multi-employer pension plans.[3] In general, section 4010(a) of ERISA requires that the contributing plan sponsor (as well as members of the contributing sponsor's controlled group) of single employer plans that are underfunded by a certain dollar amount in the aggregate must provide certain specified information annually to the PBGC. These filings are commonly known as "4010 filings."

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[1] Although the resolution does not so state, the information requested is filed with the Pension Benefit Guaranty Corporation ("PBGC"), and presumably is to be transmitted to the House of Representatives via the President.

[2] Under the Employee Retirement Income Security Act ("ERISA"), a "controlled group" is generally a group of related businesses or trades (whether or not incorporated) which are under common control. The Department of Labor generally does not find common control where the common ownership interest in a group of related businesses or trades is less than 25 percent.

[3] Under the single-employer insurance program, the PBGC pays guaranteed and certain other pension benefits to participants and beneficiaries if their plan terminates with insufficient assets.

The purpose of the 4010 filing requirement is to improve PBGC's ability to monitor companies with underfunded pension plans, which represent potential liabilities that PBGC may have to assume in the future.[4] The standards for determining whether a plan is required to make a 4010 filing were set by amendments to ERISA that were contained in the Retirement Protection Act of 1994 ("RPA"). Section 4010(b) requires information to be provided to the PBGC if, at the end of the preceding plan year, the aggregate unfunded vested benefits of all underfunded plans maintained by the contributing sponsors and members of its controlled group is greater than $50 million; if minimum funding waivers exceeding $1 million have been granted with respect to any plan maintained by the contributing sponsor or controlled group member; or if there were missed required plan contributions in excess of $1 million for the preceding plan year.

In addition to setting the 4010 filing standards, the RPA amended ERISA to expand 4010 reporting requirements for underfunded plans to include generally: (1) Identifying information about the plan sponsor and its controlled group; (2) actuarial information regarding the plan's fair market value of assets and the value of liabilities on a termination basis; (3) financial information of the company including, but not limited to, audited financial statements, income statements, cash flow statements, and proprietary information; and (4) any other financial information that PBGC requires by regulation.

Section 4010(c) of ERISA provides that any of the information that a contributing sponsor or controlled group member provides to the PBGC will not be subject to public disclosure under the Freedom of Information Act.[5]

Section 4010's Determination of "Underfunded" Status is Outdated, Inaccurate, and Does Not Provide Meaningful Information Regarding Underfunded Plans

The resolution calls for the production of information pertaining to plan assets and liabilities based on the total of aggregate unfunded vested benefits in excess of $50 million. It is the view of the Committee that this standard is outdated, inaccurate, and does not provide a meaningful indication of whether a plan is underfunded or at risk of termination. Indeed, the disclosure or use of 4010 information based on an absolute dollar amount is neither practical nor useful in determining whether a plan is considered underfunded or at risk of termination. In light of this fact, the Committee opposes adoption of the resolution.

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[4] ERISA also requires that plans less than 90 percent funded generally must provide a notice to participants regarding the funding status of the plan and the limitations of the PBGC's benefit guarantee to workers and retirees annually. Specifically, ERISA section 4011 requires companies to provide an annual notice to participants and beneficiaries if the plan is less than 90 percent funded; notice is not required, however, if the plan is not subject to the variable rate premium requirements. Under current law, the variable rate premium is $9 for every $1,000 of unfunded vested benefits. No variable rate premium is required if the plan meets its full funding limitation under ERISA.

[5] Prior to the enactment of the RPA, the PBGC published an annual list of 50 companies with the largest plan underfunding. This list was initiated by the PBGC without statutory direction and was compiled from public sources, such as corporate annual reports and Form 5500 filings. However, because the new 4010 filings provided the PBGC with significant information in order to determine and monitor the financial health of single employer pension plans, it was no longer necessary to publish the annual list. On September 3, 1997, PBGC announced that it would no longer publish the annual list of 50 companies with the largest pension underfunding.

The threshold of $50 million as a measure for determining if a plan is severely underfunded and is therefore required to make a 4010 filing is inappropriate. A more appropriate threshold would reflect the percentage of plan underfunding, rather than an absolute dollar amount, which inherently penalizes large companies that offer multiple plans to their workforce or large defined benefit plans with a sizeable amount of assets. A $50 million (or any arbitrary, absolute dollar amount) threshold is not indicative of and should not serve as a proxy for significant plan underfunding or at-risk status, simply because pension plans governed by ERISA range in their assets from thousands to billion of dollars. Put more simply, while $50 million could represent a considerable amount of unfunded vested benefits to a small plan, it could represent only a fraction of unfunded vested benefits to a very large plan with billions of dollars in assets. That smaller plan might legitimately be considered "underfunded" and at risk, which the larger plan would not.

It is the view of the Committee that, because the threshold for determining when a plan is considered significantly underfunded is not appropriate, the disclosure of plan information based on such threshold is inherently misleading and should not be disclosed until a more accurate proxy for measuring the financial health of a plan is established.

The Committee fully believes and endorses the proposition that plan participants and beneficiaries are entitled to and should receive accurate and timely information as to their plans' funding status, and that the PBGC should monitor closely those plans which are genuinely underfunded or at risk. The Committee is committed to pursuing comprehensive reform of the defined benefit pension plan system that will address this issue in its proper context. At this time, the Committee does not support a piecemeal approach based on an outdated and misleading standard.

Conclusion

For each of the foregoing reasons, the Committee opposes the adoption of H. Res. 134, and reports it unfavorably to the House of Representatives with the recommendation that the resolution not be adopted.

SECTION-BY-SECTION

Section 1. Requests the President to transmit to the House of Representatives not later than fourteen days after adoption of the resolution copies of all information in his possession relating to the information described in paragraphs (1) and (2) of section 4010.8(a), title 29, Code of Federal Regulations, for the two most recent plan years. The resolution further requests information relating to the identities of all contributing sponsors, as well as members of their controlled group(s), of such plans. The information sought includes the name, address, telephone number, and Employer Identification Number of each plan sponsor and each member of the controlled group, and the legal relationship among each.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings

and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ESTIMATE

Clauses 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H. Res. 134. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H. Res. 134 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 12, 2005.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H. Res. 134, a resolution requesting the President to transmit to the House of Representatives certain information relating to plan assets and liabilities of single-employer pension plans.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Geoffrey Gerhardt.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

H. Res. 134—A resolution requesting the President to transmit to the House of Representatives certain information relating to plan assets and liabilities of single-employer pension plans

H. Res. 134 would request that the President provide the House of Representatives with certain data filed with the Pension Benefit Guaranty Corporation (PBGC) under section 4010.8 of title 29 of the Code of Federal Regulations. These data include information about assets and liabilities filed by tax-deferred, single-employer pension plans for the two most recent plan years. CBO estimates that implementing H. Res. 134 could affect PBGC's administrative costs, which are recorded as direct spending, but that any additional spending would be negligible.

Section 4010.8 of title 29 of the Code of Federal Regulations requires defined-benefit pension plans whose benefits are insured by PBGC to supply the agency with certain information about their finances. Regulations further state that financial information filed under section 4010 that is not already publicly available shall be treated as confidential and not released to the public. However, plans' data may be released to the Congress or to a Congressional committee upon formal request.

Based on information from PBGC, CBO expects that H. Res. 134 would cause PBGC to release data to the Congress that it would otherwise keep confidential. The costs of providing that data would be insignificant.

The CBO staff contact is Geoffrey Gerhardt. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

H. Res. 134 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the rule does not apply because H. Res. 134 is not a bill or joint resolution that may be enacted into law.

CHANGES IN EXISTING LAW MADE BY THE RESOLUTION, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes that H. Res. 134 makes no changes to existing law.

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