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NATIONAL RETIREE
LEGISLATIVE NETWORK

Restore Pension Security

Pass Keep Our Pension Promises Act

2/1/2017

Executive Summary

Congress Pulled Rug Out from Under Retirees in Multiemployer Pension Plans

In December 2014, Congress passed pension reforms as part of the $1.1 trillion FY 2015 spending bill known as the Consolidated and Further Continuing Appropriations Act (H.R. 83). Included in H.R. 3 was the Multiemployer Pension Reform Act of 2014 (MPRA) that permitted trustees of severely underfunded multiemployer pension plans to cut the earned pension benefits of current retirees. Over 10 million workers, retirees, and their families are counting on these earned retirement benefits for their retirement security.

To be clear: MPRA allows pension plan administrators to cut the monthly fixed income of retirees who are already retired and receiving their pensions, many of whom have few or no other income options other than Social Security.

Wall Street banks, automakers and insurance giants got bailouts during the economic meltdown that started in 2008. Retirees are expendable as far as Congress is concerned. When it comes to the multiemployer pension plans for retired truck drivers, construction workers, mine workers and food retail workers, etc., Congress decided that there would not be a bailout for these retirees and their surviving spouses.

Industries with Multiemployer Pension Plans

Multiemployer pension plans are typically found in construction, trucking, and other industries in which several employers, often small businesses, negotiate collectively with unions to cover a group of workers in a region. About 1.5 million of those participants are in approximately 150 to 200 plans that could run out of money in the next two decades. Overall, there are about 1,400 multiemployer pension plans, many of which remain in good fiscal health and would be untouched by the enacted law.

Congress Made Major Changes to ERISA

The Multiemployer Pension Reform Act of 2014 changed 40 years of established ERISA (Employee Retirement Income Security Act of 1974) law. Congress revised ERISA to grant pension plan trustees broad powers to cut retired workers' pension benefits by 60% or more if they can show that would prolong the life of the pension plan. The change to ERISA is a big shift that many retiree and consumer groups as well as several lawmakers fear could set a precedent for other troubled retirement programs, including single-employer pension plans. Since 1974, the federal law governing the nation's private-sector pensions has prohibited cuts to the benefits of workers who have already retired — a precedent that is now endangered.

Teamsters Pension Fund Submits Proposal to Cut Benefits

The Central States Pension Fund, a prominent Teamsters pension plan with 407,000 participants, was the first in September 2015 to file a proposal with the U.S. Department of Treasury to reduce benefits under the Multiemployer Pension Reform Act of 2014. The Treasury Department has 225 days to evaluate Central States' plan. If officials approve the reductions, the cuts would then be voted on by plan participants. But even if participants vote the plan down, the law says it could still be imposed.

NRLN Opposed Congress' Sanctioning of Pension Cuts

The National Retiree Legislative Network (NRLN), which represents the interest of more than 2 million retirees who predominately have single-employer defined benefit pension plans, strongly opposed the MPRA bill in Congress. NRLN members sent letters to their members of Congress stating: *"Negotiations to cut retirees' pension benefits at the last minute of the legislative session are WRONG!...Cuts to certain multiemployer pension plans have dire ramifications for all retirees – if it can happen to one, it can happen to all. You should be looking at other solutions in the new Congress instead of cutting benefits to retirees who aren't in any position to shore up their income."*

Other Retiree Advocate Groups Opposed Cutting Pension Benefits

The abrupt action by Congress has alarmed a number of pension rights advocates, who are concerned about a decline in retirement security for all Americans. They also worry about a creeping trend toward trimming pensions, citing retirement benefit cuts for government employees in Detroit and elsewhere.

Others who spoke out against the passage of the MPRA included the Pension Rights Center, AARP, Boston College's Center for Retirement Research, the Teamsters and the International Association of Machinists and Aerospace Workers.

NRLN Supports the *Keep Our Pension Promises Act*

The National Retiree Legislative Network (NRLN) supports the passage of the Keep Our Pension Promises Act (S. 1631 and H.R. 2844) to restore ERISA's original commitment that America's retirees do not need to doubt their retirement income security.

Congress must pass the Keep Our Pension Promises Act to rectify the mistake by the lame duck 113th Congress that gave trustees of severely underfunded multiemployer pension plans the authority to cut the earned pension benefits of current retirees. By doing so, Congress would restore the integrity of the Employee Retirement Income Security Act of 1974. America's workers and retirees need to be able to have faith that their pension income is as secure as possible.

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To be clear: MPRA allows pension plan administrators to cut the monthly fixed income of retirees who are already retired and receiving their pensions, many of whom have few or no other income options other than Social Security.

Wall Street banks, automakers and insurance giants got bailouts during the economic meltdown that started in 2008. Retirees are expendable as far as Congress is concerned. When it comes to the multiemployer pension plans for retired truck drivers, construction workers, mine workers and food retail workers, etc., Congress decided that there would not be a bailout for these retirees and their surviving spouses.

Industries with Multiemployer Pension Plans

Multiemployer pension plans are typically found in construction, trucking, and other industries in which several employers, often small businesses, negotiate collectively with unions to cover a group of workers in a region. These pension plans tend to be in worse financial condition than single-employer plans because many of the companies in them have gone out of business, leaving the survivors to pick up the slack for workers who never even worked for them. About 1.5 million of those participants are in approximately 150 to 200 plans that could run out of money in the next two decades. Overall, there are about 1,400 multiemployer pension plans, many of which remain in good fiscal health and would be untouched by the enacted law. Two large plans are believed to be much closer to failure - the Teamsters' Central States fund and the United Mine Workers of America fund.

Congress Made Major Changes to ERISA

The Multiemployer Pension Reform Act of 2014, which amended the Pension Protection Act of 2006, changed 40 years of established ERISA (Employee Retirement Income Security Act of 1974) law. Congress revised ERISA to grant pension plan trustees broad powers to cut retired workers' pension benefits by 60% or more if they can show that would prolong the life of the pension plan. The legislation marked a major change in ERISA which had called for retirees to be paid full benefits unless plan assets are exhausted; in such cases, the Pension Benefit Guaranty Corporation (PBGC) steps in to pay benefits. The legislation allows the multiemployer pension plans' trustees to cut benefits without having to shut down their pension plan and the plan taken over by the PBGC. The change to ERISA is a big shift that lawmakers and others believe could set a precedent for other troubled retirement programs, including single-employer pension plans. Since 1974, the federal law governing the nation's private-sector pensions has prohibited cuts to the benefits of workers who have already retired — a precedent that is now endangered.

NCCMP Proposed Cuts to Pensions

The National Coordinating Committee for Multiemployer Plans (NCCMP), a coalition of multiemployer pension plan sponsors and some major unions, developed the plan that went into the bill passed by Congress. The bill received bipartisan supported by a majority in Congress. Some labor unions supported the bill, but not all. The AFL-CIO's Building and Construction Trades Department was generally supportive of the Congressional "fix". However, the Teamsters and the International Association of Machinists and Aerospace Workers unions were adamantly opposed.

The funding challenges in multiemployer plans are not overstated. They do face a funding shortfall. The PBGC reported assets for multiemployer pension plans of $1.8 billion and liabilities of $44 billion. Some of the largest multiemployer plans are underfunded and have low ratios of workers to retirees. Congress' decision to deregulate the trucking industry in the 1990's led to a spike of companies exiting the plans, often because of bankruptcy. Today, about half of the individuals receiving benefits from the plan are "orphans," or individuals left behind in retirement plans by an employer that exited the plan or went bankrupt, often leaving unfunded liabilities for the companies remaining in the plan.

The problem with multiemployer plans is partly structural. Multiemployer pension plans were thought to be safer than single employer plans, owing to the pooling of risk. As a result, the level of PBGC insurance protection behind the multiemployer plans is lower. Other risks were unanticipated. M any industries in the system have seen declining employment and have a growing proportion of retirees to workers paying into the pension funds, And many of the pension funds still have not fully recovered from the recession beginning in 2008.

These problems pose a financial threat to the PBGC. The agency reported recently that the deficit in its multiemployer program rose to $42.2 billion in the fiscal year ending Sept. 30, 2014 up from $8.3 billion the previous year. If big plans fail, the entire multiemployer system would be at risk of collapse. The PBGC premiums for sponsors of multiemployer pension plans doubled under the legislation from $13 to $26 per year.

A Few Safeguards for Older Retirees

The bill passed by Congress has some safeguards built in for older retirees. Those older than age 80 would be spared cuts, and workers 75 to 80 would suffer only part of the cut. Retirees and current workers have the right to reject cuts, although that veto can be overridden by the plan's trustees. Trustees would not be allowed to cut benefits to less than 1.1 times the minimum provided by plans that are taken over by the PBGC.

Teamsters Pension Fund Submits Proposal to Cut Benefits

The Central States Pension Fund, a prominent Teamsters pension plan with 407,000 participants, was the first in September 2015 to file a proposal with the U.S. Department of Treasury to reduce benefits under the Multiemployer Pension Reform Act of 2014. The Treasury Department has 225 days to evaluate Central States' plan. If officials approve the reductions, the cuts would then be voted on by plan participants. But even if participants vote the plan down, the law says it could still be imposed.

NRLN Opposed Congress' Sanctioning of Pension Cuts

The National Retiree Legislative Network (NRLN), which represents the interests of more than 2 million retirees who predominately have single-employer defined benefit pension plans, issued a national news release on December 4, 2014 strongly opposing the MPRA proposed in Congress which allows benefit cuts for certain multiemployer pension plan participants in an effort to address shortfalls in multiemployer plans.

The NRLN has consistently argued that changes in the manner in which defined-benefit pension plans are regulated by the federal government without consumer protections threatens the most vulnerable Americans who have no opportunity to supplement this most relied-upon benefit.

"Gutting the defined-benefit system, both single or multiemployer plans, fundamentally undercuts the foundation of the DB system and threatens all retirees and taxpayers as a whole," stated Bill Kadereit, NRLN President. *"The stakes are high for retirees, older workers and their families who have relied for many years on the promise of a fixed income."*

The NRLN urged members of Congress to consider all other avenues before taking such a step without the benefit of further hearings and public commentary. The financial livelihood of too many retirees were at stake.

NRLN members sent letters to their members of Congress stating: *"Negotiations to cut retirees' pension benefits at the last minute of the legislative session are WRONG!...Cuts to certain multiemployer pension plans have dire ramifications for all retirees – if it can happen to one, it can happen to all. You should be looking at other solutions in the new Congress instead of cutting benefits to retirees who aren't in any position to shore up their income."*

NRLN President's Message Expressed Concern

In a message to NRLN Grassroots Advocates on February 2, 2015, NRLN President stated:

*"H.R. 83 [*the Consolidated and Further Continuing Appropriations Act, 2015*] contains an amendment to the Employee Retiree Income Security Act's (ERISA) multiemployer plan section that is complicated with rules and protections and established an extremely dangerous precedent:*

> *The amendment permits in-status (retirees receiving benefits)* ***reductions in pension benefits*** *where multiemployer plans are severely underfunded and headed for termination. These* ***reductions are permanent.***
>
> *The amendment has the* ***same effect as Reservation of Rights (ROR) clauses have on health care benefits*** *except that companies have to prove they can't fund multiemployer plans whereas health care plan benefits may be indiscriminately reduced or eliminated at the sole discretion of the plan sponsor.*
>
> *The H.R. 83 amendment opens the doors for lobbyists to pressure Congress to do the wrong thing down the road:*
>
> > ***Lobbyists*** *seek to create a weakness in the law and then wedge it open with successive proposals that are strategically designed to poison the water and achieve their end goals. In this case, that goal would be the elimination of defined pension plan benefits.*

> ***Congress*** *may have helped multiemployer plan participants and the amendment may only apply to multiemployer plans today but they* ***failed miserably*** *in that that they did not include a poison pill or a sunset date or a written prohibition against considering such benefit cuts to single-employer plans now protected by ERISA."*

Other Retiree Advocate Groups Opposed Cutting Pension Benefits

The abrupt action by Congress alarmed a number of pension rights advocates, who were concerned about a decline in retirement security for all Americans. They also worried about a creeping trend toward trimming pensions, citing retirement benefit cuts for government employees in Detroit and elsewhere.

Congress' allowing cuts to pension benefits was strongly opposed by the Pension Rights Center (PRC), an organization backed by foundations and unions. It's *"a huge breach of ERISA,"* the Employment Retirement Income Security Act of 1974 whose 40th birthday was celebrated in September 2014. Karen Friedman, the PRC's Executive Vice President and Policy Director, said: the measure *"would set a terrible precedent."* The bill could encourage similar cutbacks in troubled state and local pension plans, and possibly even Social Security and Medicare, she said.

Friedman called the move *"outrageous". "We think that Congress is sneaking through a provision that would torpedo the most sacred protections of the federal private pension law and will devastate retirees."*

Friedman maintained that this would mean gutting the fundamental principle underlying the federal ERISA law governing private sector pensions*. "The law says that once a retiree has earned a benefit, it must continue to be paid, until the day the fund is depleted,"* Friedman said. She noted that may sound like financial brinksmanship, but it's really a guarantee that all pension beneficiaries will be treated equally--pension trustees can't slash the benefits of the already-retired in order to preserve those for members still working.

"This proposal would devastate retirees and their surviving spouses," said Friedman. *"The proposal would also torpedo basic protections of the federal private pension law…that states that once benefits are earned, they can't be cut back."*

"For the NCCMP or any member of Congress to try to sneak this onto an end-year bill is outrageous," Friedman said. *"It's nefarious, because they're basically trying to sneak through provisions that would have a huge impact on millions of retirees, potentially set a dangerous precedent and torpedo a fundamental part of private pension law. And they're trying to do all this in the last few weeks as Congress is getting ready to leave before the new Congress starts? That's ridiculous. They should be ashamed of themselves."*

After Congress passed the bill, Friedman said, *"We're totally outraged by this legislative deal, which was done in the middle of the night."* She added that the federal private pension law ERISA recognized that retirees' earned pensions deserve the most protection. Now Congress has betrayed that principle. This is not just about multiemployer plans – this is about protecting retirement promises.

The AARP, which represents millions of retirement-age Americans, also attacked the agreement as a *"secret, last-minute, closed-door deal between a group of companies, unions and Washington politicians to cut the retirement benefits that have been promised to them."*

"Retirees, most of whom are living on modest incomes, have few alternatives and no ability to plan for or absorb cuts in their benefits," said Joyce Rogers, AARP's Senior Vice President of Government Affairs. *"Before demanding reductions in the pension income of current retirees, Congress should first require the key stakeholders to take every possible action permitted under current law to restore their plans to solvency."*

Alicia Munnell, director of Boston College's Center for Retirement Research, said the change to multiemployer plans *"is letting the genie out of the bottle. Once it becomes legal to cut accrued benefits, then it's a different world. It's really precedent-making change."* While not opposed to giving trustees flexibility, she said, *"It needs to be applied very, very judiciously."*

"Today, we have seen the ugly side of political backroom dealings as thousands of retirees may have their pensions threatened by proposed legislation that reportedly contains massive benefit cuts," said Teamsters President James Hoffa.

R. Thomas Buffenbarger, International President of the International Association of Machinists and Aerospace Workers said, *"While there is a genuine retirement crisis in this country today, the solution must not be borne by retirees who worked hard and faithfully contributed to their pension plans and have no practical means to replace lost income."*

"This is nothing less than a declaration of war by Congress on American retirees," said Buffenbarger. *"Allowing cuts to existing retirees' pensions is simply the wrong way to address the problems of a few troubled pension plans. . . . The long-standing promise of a secure pension system must not be overturned by unaccountable lawmakers in a lame-duck session of Congress."*

"Changing ERISA to allow cuts in promised benefits is a ticket to poverty and dependence on government assistance," Buffenbarger, wrote members of Congress in November 2014.

"It's almost certain that other situations where plans are distressed from a funding standpoint are going to be viewed from the prism that it's now possible to" cut benefits," said Brian Graff, Chief Executive of the American Society of Pension Professionals & Actuaries, a trade group. *"There are other situations where plans are similarly funded at extremely low levels where you could see this possibly coming up."*

Sept. 10, 2015 Hearing on Multiemployer Pension Reform Act of 2014

The Treasury Department released proposed and temporary regulations for implementing the Multiemployer Pension Reform Act of 2014 (MPRA) on June 17, 2015. The Treasury Department and IRS are in charge of developing rules governing any benefit cuts, in consultation with the PBGC and the Labor Department.

Kenneth Feinberg, the special master appointed to oversee implementation of the new law, told attendees at a Sept. 10, 2015 hearing at the Treasury Department *that "We can't change the law. We are obligated to implement it. But we want to try to manage the impact of the law."*

“This is a dangerous precedent for all types of pensions,” Karen Ferguson, Executive Vice President and Policy Director of the Pension Rights Center, told the hearing panel. *“This proposal would devastate retirees and their surviving spouses,”* she said. *“The proposal would also torpedo basic protections of the federal private pension law. . . that states that once benefits are earned, they can’t be cut back.*

“MPRA is unprecedented, overturning 40 years of law by allowing trustees to reduce the benefits of retirees in ongoing plans. It has also established a dangerous precedent that could lay the foundation for cuts in earned pensions well beyond the multiemployer sphere.”

"And believe me, the retirees here (at the Sept. 10 public hearing) represent only a fraction of those affected. Hundreds of thousands of retired food workers, bricklayers, pipefitters and other retirees are also in danger of losing up to 60 percent of their pensions. Most of them just don't know it yet," said Friedman, *"This isn't just unfair—it is outrageous and undemocratic."*

Affected Retirees Testify at Hearing

The vast majority of the people testifying at the hearing were retirees who would be harmed by cuts to their benefits.

In front of the crowd at the Treasury Department hearing, Alex Adams, 73, from Ohio, a truck driver for 37 years and former president of Teamsters Local 407, lifted his shirt so the panelists and audience could see the bandages and feeding tube. *"This is how I eat,"* he said in a halting voice. He didn't want pity as he told a group of federal officials about his circumstances, including bouts with larynx and tonsil cancer.

But he wanted to explain why he needs his pension -- all of it, even though Congress has not only allowed it to be cut but, as he and others see it, facilitated the cut.

"I have already cut the newspaper," Adams said, explaining his need to eliminate frills amid ongoing bills for his health care and his wife's recent episode with cancer. *"Cable,"* he continued, ticking off other things he decided to do without. *"We'll cut the landline in January for our telephone. All of our luxuries will be gone.*

"We thought this stage of our lives would be comfortable. But this is devastating. And not just for me, but to so many others out there -- the men and women who banked on the American Dream."

NRLN Supports the Keep Our Pension Promises Act

When Congress passed the Employee Retirement Income Security of 1974 (ERISA) it represented a commitment to America’s workers that companies who sponsored pension plans would never renege on a pension promise. That changed with the passage of the Multiemployer Pension Reform Act of 2014 that permitted trustees of severely underfunded multiemployer pension plans to cut the earned pensions of current retirees. The legislation did not stipulate that this change applied only to multiemployer plans. Therefore, Congress did not preclude sponsors of underfunded single-employer plans to seek authorization to cut single-employer pension benefits in the future.

The National Retiree Legislative Network (NRLN) supports the passage of the Keep Our Pension Promises Act (S. 1631 and H.R. 2844) to restore ERISA's original commitment that America's retirees do not need to doubt their retirement income security.

Protect Retirees by Passing Keep Our Pension Promises Act

The Keep Our Pension Promises Act of 2015 (S. 1631 and H.R. 2844) would repeal the "benefit suspension" provisions of the Multiemployer Pension Reform Act of 2014 (MPRA) enacted at the end of the 113th Congress in December 2014. The Keep Our Pension Promises Act would ensure that pensioners will continue to get their full benefits.

Instead of permitting ongoing multiemployer plans to cut retiree benefits the bills would ensure that plans will have enough money to continue to pay promised pensions. The bills would do this by modifying the "partition" sections of MPRA. All other MPRA provisions would remain intact, including provisions that authorize the PBGC to assist plans interested in merging with each other. The legislation is revenue neutral, thanks to the elimination of two tax breaks used by the very wealthy to accumulate expensive artwork and avoid estate and gift taxes.

How Partitioning Would Work Under the Keep Our Pension Promises Act

1. Trustees of a financially-troubled multiemployer plan that is likely to run out of money within 10 to 20 years will be able to apply to the PBGC for a partition order.
2. If the partition order is issued, the plan will not have to pay the full benefits of its "orphaned" pensioners who are retired as of the date of the partition order. (Orphaned retirees are those whose former employers went bankrupt or withdrew from the plan without fully paying what they owed.)
3. The PBGC will transfer money to the plan each year in an amount equal to the "guaranteed benefits" the PBGC would have had to pay to these orphaned retirees if the plan were "insolvent" without enough money to pay promised benefits in that year.
4. A new Legacy Fund will be created at the PBGC supported by general revenue from the U.S. Treasury. The revenue cost will be offset by money raised from closing two tax loopholes that primarily benefit high-income individuals and their estates, the "like-kind exchange" and "minority valuation discount" provisions of the Internal Revenue Code.
5. The money that the PBGC transfers to the partitioned plan will come from both its current multiemployer pension insurance fund and the new Legacy Fund.
6. The plan that has been partitioned will pay the difference between the guaranteed benefit amounts funded by the PBGC and the retirees' full benefits, up to specified limits.

Plans will continue to pay full benefits for non-orphaned retirees.

Protects Employers Participating in Multiemployer Plans

This bill ensures pension obligations are prioritized during bankruptcies. This helps the remaining employers in the plan by making it less likely they become responsible for underfunded orphans.

Unlike the "reform" legislation slipped into FY 2015 omnibus spending bill that put the largest financial burdens on plan participants who have few other sources of income for a secure retirement, the Keep Our Pension Promises Act is a plan of shared sacrifice.

NRLN’s Conclusion: Pass Keep Our Pension Promises Act

Congress must pass the Keep Our Pension Promises Act to rectify the mistake by the lame duck 113th Congress that gave trustees of severely underfunded multiemployer pension plans the authority to cut the earned pension benefits of current retirees. By passing the Keep Our Pension Promises Act, Congress will restore the integrity of the Employee Retirement Income Security Act of 1974. America’s workers and retirees need to be able to have faith that their pension income is as secure as possible.