The National Council of Social Security Management Associations, Inc.
GREYSTONE GROUP WASHINGTON REPORT
Legislative Report 8-2015
November 2, 2015

Fiscal Year (FY) 2016 Appropriations Update

On Friday, October 30, 2015, by a vote of 64-35, the Senate cleared the Bipartisan Budget Act of 2015. The measure was approved approximately 90 minutes after a vote to cut off debate on the legislation. That debate included a speech by Sen. Rand Paul (R-KY) criticizing the legislation as a blank check for President Obama to add to the nation's debt.

The two-year, $80 billion ($50 billion for FY 2016 and $30 billion for FY 2017) increase above the sequester level in defense and nondefense spending is combined with a suspension of the debt limit until March 15, 2017. The legislation is awaiting President Obama’s signature.

Eighteen Republicans voted in favor of final passage, while 35 voted against it. Senate Labor-HHS Appropriations Subcommittee Chairman Roy Blunt (R-MO) was one of those voting against the measure. Forty-four Democrats and two Independents backed the package.

The House passed the measure on Wednesday, October 28, 2015, by a vote of 266-167. The legislation was unveiled last Monday and leaders tweaked the package late Tuesday evening to address Republican concerns related to its Congressional Budget Office (CBO) score, which suggested the agreement cost more than it saved. The fix came in the form of an amendment, which effectively squeezed out new revenues to generate additional savings and also made a technical change to the war-related Overseas Contingency Operations account to address a drafting error. An updated score estimated that the agreement as modified would reduce the deficit by $79.9 billion over 10 years, slightly more than the $79.4 billion cost of raising the spending caps.

Next, House and Senate Appropriations chairs will provide new allocations for each appropriations subcommittee, including the Labor-HHS Appropriations Subcommittee which has jurisdiction over SSA’s administrative funding. These revised allocations will be based on the new top line number negotiated in the budget deal. House and Senate Appropriations committees will then have about 6 weeks to produce an omnibus spending bill by December 11, 2015, when the current Continuing Resolution (CR) expires.

Social Security Changes Included in the Bipartisan Budget Act of 2015

Title VIII of the measure is titled "Social Security" and the package of changes included is one of the most significant parts of the legislation. The agreement includes the reallocation of payroll tax revenue from the Old-Age and Survivors Insurance Trust Fund (OASI fund) to the Disability Insurance Trust Fund of an additional 0.57 percentage points (for a total of 2.37 percentage points of the total combined 12.4 percent payroll tax) in 2016, 2017, and 2018. This would be sufficient to pay benefits until 2022, and the total rate would not change. The projected depletion date for the OASI fund remains 2035 under the plan.

Republicans had opposed a reallocation, arguing that a loan from the OASI fund to the disability fund would maintain the pressure necessary to come up with a longer-term solution. While in the end Republicans agreed to the reallocation, it is shorter than the fix sought by President Obama in the FY 2016 Budget Request.

Of perhaps even more interest are the other provisions included in the Social Security title of the legislation. In broad strokes, these provisions are:

Subtitle A—Ensuring Correct Payments and Reducing Fraud
Subtitle B—Promoting Opportunity for Disability Beneficiaries
Subtitle C—Protecting Social Security Benefits
Subtitle D—Relieving Administrative Burdens and Miscellaneous Provisions

Some of the changes included in the package have a cost, but according to a cost estimate by the CBO and Joint Committee on Taxation the overall package reduces spending by $4.4 billion while also lowering revenue by $81 million over a decade. It is reported that most of the savings come from ending the Single Decision Maker pilot program currently underway in 20 states.

In a letter to House Speaker John A. Boehner (R-OH), SSA's Chief Actuary Stephen Goss estimated that the changes will save $5 billion to $9 billion in Social Security program costs through 2025, savings that would multiply to $168 billion over an extended 75-year period. Goss also said the bill "does in fact provide a significant improvement in the overall financial status" of the overall Social Security program.

The inclusion of these cost-savings provisions allows the House to comply with the rule written earlier in the session by Republican lawmakers that bars a transfer to the disability fund unless it is accompanied by other changes that strengthen the actuarial balance of the combined trust funds.

The package has received generally favorable reviews, but as you can imagine once you examine the provisions, you can't please everyone. The "Closure of unintended loopholes" section of the legislation has already received a great deal of coverage in the press.

Included below is an excerpt from the Section-by-Section Summary of the Social Security-related provisions that accompanied the legislation when it was introduced. If you are interested in reviewing the actual legislative language, see: Bipartisan Budget Act of 2015.

Title VIII – Social Security

Sec. 801. Short title.

This section establishes that the short title for this title is the "Social Security Benefit Protection and Opportunity Enhancement Act of 2015".

Subtitle A: Ensuring Correct Payments and Reducing Fraud

Sec. 811. Expansion of cooperative disability investigations units

Requires nationwide coverage by Cooperative Disability Investigations (CDI) units, jointly run by the Social Security Administration (SSA) and the Office of the Inspector General (OIG), and consisting of staff from local SSA offices, the OIG, State Disability Determination Services (DDS), and local law enforcement. CDI units generally investigate suspected fraud before benefits are awarded.

Sec. 812. Exclusion of certain medical sources of evidence

Prevents evidence submitted by unlicensed or sanctioned physicians and health care providers from being considered when determining disability. (Effective for determinations made on or after one year after enactment)

Sec. 813: New and stronger penalties

Creates a new specific felony for conspiracy to commit Social Security fraud, punishable by up to 5 years in prison, fines generally up to $250,000, or both. Increases the maximum felony penalty from 5 years to 10 years for individuals in positions of trust (including claimant representatives, doctors and other health care providers, translators, and current or former SSA employees) who use their specialized knowledge to defraud the SSA, in addition to fines (generally up to $250,000).

Increases the maximum Civil Monetary Penalty (CMP) that the SSA can levy against individuals in a position of trust from $5,000 to $7,500 for each false statement, representation, conversion, or omission the individual makes or causes to be made.

Disqualifies individuals from receiving benefits during a trial work period if they are assessed a CMP for fraudulently concealing work activity. (All provisions effective upon enactment)

Sec. 814. References to Social Security and Medicare in electronic communications

Clarifies that the prohibitions and penalties contained in Section 1140 of the Social Security Act, regarding the misuse of symbols, emblems, and names associated with Social Security and Medicare, also apply to electronic and Internet communications, and treats each Internet viewing as a separate offense. (Effective upon enactment)

Sec. 815. Change to cap adjustment authority

Increases the level of the cap adjustment spending for program integrity as allowed under the Budget Control Act. Additional funding totals $484 million FY 2017-2020. Expands the use of funds to include CDI units, Special Assistant United States Attorneys who prosecute Social Security fraud, and work-related continuing disability reviews.

Subtitle B: Promoting Opportunity for Disability Beneficiaries

Sec. 821. Temporary reauthorization of disability insurance demonstration project authority.

Reinstates the Social Security Administration's demonstration authority through December 31, 2021 and requires all projects using the authority to terminate on December 31, 2022.

Sec. 822. Modification of demonstration project authority.

Updates requirements for the Congressional review period, under which the Commissioner must notify Congress in advance of any experiment or demonstration project conducted under this authority. Requires additional information to be sent to the Committee on Ways and Means and Committee on Finance prior to beginning. The proposal must now include a description of objectives, expected annual and total costs, start date, and end date. Specifies that participation in demonstration projects is voluntary and requires informed consent.

Sec. 823. Promoting opportunity demonstration project.

Requires the Social Security Administration to test the effect on beneficiary earnings of changing how earnings are treated for purpose of ongoing benefit eligibility. Under the demonstration, the existing "cash cliff" would be replaced with a benefit offset, under which the DI benefit would be reduced by $1 for every $2 of earnings in excess of a threshold. The SSA could test multiple thresholds at or below the current level of earnings that constitute a trial work month ($780 in 2015). Under the demonstration, there would be no trial work period and no extended period of eligibility, but beneficiaries could receive partial benefits if their earnings in a month exceeded the substantial gainful activity amount ($1,090 a month in 2015). In addition, the threshold amount could be adjusted upward to reflect an individual's itemized Impairment Related Work Expenses. Once an individual's benefit is fully offset, entitlement to benefits would end, but Medicare coverage would continue for 93 months.

Sec. 824. Use of electronic payroll data to improve program administration

Authorizes Social Security to obtain, with beneficiary consent, data on beneficiary earnings from payroll providers and other commercial sources of earnings data through a data exchange. Individuals for whom the SSA obtains earnings data from these sources would be exempt from the requirement to report their own earnings. The SSA would be required to publish regulations governing this process prior to implementation. (Effective one year after enactment)

Sec. 825. Treatment of earnings derived from services.

When a DI beneficiary works, the SSA must consider which month the income was earned in determining whether the individual's earnings exceed the Substantial Gainful Activity amount. The SSA would be permitted to streamline the process of evaluating a beneficiary's earnings by presuming that wages and salaries were earned when paid, unless information was available to the SSA that showed when the income was earned. Beneficiaries would receive a notification when such presumption is made, and afforded an opportunity to provide additional wage information regarding when the services were performed. (Effective upon enactment)

Sec. 826. Electronic reporting of earnings.

Requires the SSA to permit DI beneficiaries to report their earnings via electronic means, including telephone and internet, similar to what is available to Supplemental Security Income recipients. (Effective not later than September 30, 2017)

Subtitle C: Protecting Social Security Benefits

Sec. 831. Closure of unintended loopholes

Closes several loopholes in Social Security's rules about deemed filing, dual entitlement, and benefit suspension in order to prevent individuals from obtaining larger benefits than Congress intended. (Effective for individuals who attain age 62 after 2015, with respect to dual entitlement and deemed filing; and effective for benefits payable beginning 6 months after enactment, with respect to benefit suspension.)

Sec. 832. Requirement for medical review.

In order to make an initial determination of disability, the Commissioner must make every reasonable effort to ensure that a qualified physician, psychiatrist or psychologist has completed the medical portion of the case review. (Effective for determinations made beginning one year after enactment)

Sec. 833. Reallocation of payroll tax revenue.

Reallocates to the Disability Insurance Trust Fund an additional 0.57 percentage points (for a total of 2.37 percentage points of the total combined 12.4 percent payroll tax) in 2016, 2017 and 2018. This would be sufficient to pay benefit until 2022, and the total rate would not change.

Sec. 834. Access to financial information for waivers and adjustments of recovery

When an individual requests waiver of an overpayment because they are without fault and are unable to repay the funds, the SSA would be permitted to verify their financial information using its Access to Financial Institutions system (which provides data on beneficiary financial accounts). (Effective for determinations made 3 months after enactment)

Subtitle C: Relieving Administrative Burdens and Miscellaneous Provisions

Sec. 841. Interagency coordination to improve program administration.

Under current law, the Office of Personnel Management (OPM) must reduce disability payments made to a Federal Employee Retirement System (FERS) annuitant who also receives Social Security disability benefits. In some cases, OPM pays the FERS annuity before the SSA has determined whether the annuitant is also entitled to Social Security disability, resulting in a FERS overpayment. SSA would be permitted to repay OPM the amount of overpaid FERS benefits if an individual is found eligible for DI and is entitled to an award of past-due benefits, and deduct this overpaid amount from the past-due Social Security payment. This shall apply to past-due disability insurance benefits payable 1 year after enactment.

Sec. 842. Elimination of quinquennial determinations relating to wage credits for military service prior to 1957.

Eliminates the requirement that the SSA make quinquennial determinations for pre-1957 military service wage credits after the 2010 determination; the trust funds have been reimbursed for all costs attributable to granting these wage credits.

Sec. 843. Certification of benefits payable to a divorced spouse of a railroad worker to the Railroad Retirement Board.

Adds divorced spouses to the list of beneficiaries whose information is certified electronically.

Sec. 844. Technical amendments to eliminate obsolete provisions.

Technical change to remove subsections 226(j) and 226A(c) which are obsolete.

Sec. 845. Reporting requirements to Congress.

Requires the SSA to report on:
1. Fraud Prevention Activities and Improper Payments
2. Work-Related Continuing Disability Reviews
3. Overpayment Waivers

Sec. 846. Expedited examination of Administrative Law Judges
SSA hires new ALJs through the Office of Personnel Management, which holds periodic examinations for potential ALJ candidates. SSA would be allowed to request additional examinations for Administrative Law Judges (ALJs) when the need arises.

Medicare Part B Premium and Deductible Levels

The Bipartisan Budget Act of 2015 also includes provisions related to Medicare Part B premiums and deductible levels. For your convenience an excerpt detailing these provisions from the Section-by-Section of the Summary accompanying the legislation is included below.

Title VI – Health Care

SEC. 601. Maintaining 2016 Medicare Part B Premium and Deductible Levels Consistent With Actuarially Fair Rates.

In 2015, the monthly Part B premium rate is $104.90. Without Congressional action, the estimated monthly Part B premium in 2016 for beneficiaries not held harmless would be $159.30. This policy would maintain the hold harmless provision in current law and prevent a dramatic premium increase on beneficiaries not held harmless. This policy accomplishes this by setting a new 2016 basic Part B premium for the beneficiaries not held harmless at $120, which is the amount the Part B premium would otherwise be for all beneficiaries in 2016 if the hold harmless provision in current law did not apply. To effectuate this policy, in 2016, there would be a loan of general revenue from the Federal Treasury to the Supplemental Medical Insurance (SMI) Trust Fund. To repay the loan, starting in 2016, beneficiaries not subject to the hold harmless would pay an additional $3 in their monthly Part B premium until the loan is repaid. Medicare beneficiaries who currently pay higher income-related premiums would pay higher than $3, the amount of which would increase for beneficiaries in each higher-income bracket in proportion to income-related premiums under current law. If there is no cost of living adjustment increase for 2017, this provision would apply again.

House Leadership Changes

And finally, last but certainly not least, Rep. Paul Ryan (R-WI) was elected as the 54th Speaker of the House before the chamber adjourned for this past weekend. Speaker John A. Boehner's (R-OH) resignation from Congress was effective last Friday.

Greystone Group LLC
3303 South Wakefield Street
Arlington, VA 22206
202-547-8530
Contact: Rachel A. Emmons
E-mail: rachele@greystone-group.com