DESCRIPTION OF THE PROVISIONS OF H.R. 5021, THE "HIGHWAY AND TRANSPORTATION FUNDING ACT OF 2014" WITHIN THE JURISDICTION OF THE HOUSE COMMITTEE ON WAYS AND MEANS

Scheduled for Markup
By the
HOUSE COMMITTEE ON WAYS AND MEANS
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JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The House Committee on Ways and Means has scheduled a markup on July 10, 2014, of H.R. 5021, the "Highway and Transportation Funding Act of 2014," a bill to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund, and for other purposes. This document,[1] prepared by the staff of the Joint Committee on Taxation, describes the provisions of the bill.[2]

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[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Provisions of H.R. 5021, The "Highway and Transportation Funding Act of 2014" Within the Jurisdiction of the House Committee on Ways and Means* (JCX-79-14), July 8, 2014. This document can be found on our website at www.jct.gov.

[2] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

A. Extension of Highway Trust Fund Expenditure Authority

In general

Six separate excise taxes are imposed to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. A substantial majority of the revenues produced by the Highway Trust Fund excise taxes are derived from the taxes on motor fuels. The annual use tax on heavy vehicles expires October 1, 2017. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, the remaining taxes are scheduled to expire October 1, 2016. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent.[3]

Revenues from the excise taxes generally are dedicated to the Highway Trust Fund. Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by the Code.[4] As discussed below, the Code authorizes expenditures (subject to appropriations) from the Highway Trust Fund through September 30, 2014.

Highway Trust Fund expenditure purposes

Section 9503 contains the operative rules for the transfer of revenues to the Highway Trust Fund and for the expenditure of monies from the Highway Trust Fund. In general, these rules provide for transfer from the General Fund of "gross receipts" from the Highway Trust Fund excise taxes to the Highway Trust Fund. Amounts deposited in the Highway Trust Fund are divided between a Mass Transit Account and a residual account, the "Highway Account."[5] The Mass Transit Account generally receives 2.86 cents per gallon of the Highway Trust Fund motor fuels excise taxes.[6] The balance of the motor fuels tax receipts and all receipts from the three non-fuels excise taxes are deposited in the Highway Account.

The Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act, currently the Moving Ahead for Progress in the 21st Century Act or "MAP-21"[7]) are specified by the Code as Highway Trust Fund expenditure purposes.[8] The Code

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[3] This portion of the tax rates was enacted as a deficit reduction measure in 1993. Receipts from it were retained in the General Fund until 1997 legislation provided for their transfer to the Highway Trust Fund.

[4] Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

[5] Sec. 9503(e)(1).

[6] Sec. 9503(e)(2).

[7] The short title for Pub. L. No. 112-141 is "MAP-21" and the law is also known as the "Moving Ahead for Progress in the 21st Century Act."

provides that the authority to make expenditures from the Highway Trust Fund for these purposes expires after September 30, 2014. Thus, no Highway Trust Fund expenditures may occur after September 30, 2014, without an amendment to the Code.

Description of Proposal

The expenditure authority for the Highway Trust Fund is extended through May 31, 2015. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the "Highway and Transportation Funding Act of 2014." The proposal also updates the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund.

Effective Date

The proposal is effective on the date of enactment.

[8] Sec. 9503(c)(1).

B. Funding of the Highway Trust Fund

Present Law

Public Law No. 110-318, "an Act to amend the Internal Revenue Code of 1986 to restore the Highway Trust Fund balance" transferred, out of money in the Treasury not otherwise appropriated, $8,017,000,000 to the Highway Trust Fund effective September 15, 2008. Public Law No. 111-46, "an Act to restore sums to the Highway Trust Fund," transferred, out of money in the Treasury not otherwise appropriated, $7 billion to the Highway Trust Fund effective August 7, 2009. The Hiring Incentives to Restore Employment Act transferred, out of money in the Treasury not otherwise appropriated, $14,700,000,000 to the Highway Trust Fund and $4,800,000,000 to the Mass Transit Account in the Highway Trust Fund.[9]

MAP-21 provided that, out of money in the Treasury not otherwise appropriated, the following transfers were to be made from the General Fund to the Highway Trust Fund:

	FY 2013	FY 2014
Highway Account	$6.2 billion	$10.4 billion
Mass Transit Account	_____	$2.2 billion

MAP-21 also transferred $2.4 billion from the Leaking Underground Storage Tank Trust Fund to the Highway Account in the Highway Trust Fund.[10]

Description of Proposal

The proposal transfers from the General Fund $7,765,000,000 to the Highway Account of the Highway Trust Fund and $2 billion to the Mass Transit Account of the Highway Trust Fund. The proposal also transfers $1 billion from the Leaking Underground Storage Tank Trust Fund to the Highway Account of the Highway Trust Fund.

Effective Date

The proposal is effective on the date of enactment.

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[9] The Hiring Incentives to Restore Employment Act (the "HIRE" Act), Pub. L. No. 111-147, sec. 442.

[10] Moving Ahead for Progress in the 21st Century Act ("MAP-21"), Pub. L. No. 112-141, sec. 40201(a)(2) and sec. 40251.

C. Pension Funding Stabilization

Present Law

Minimum funding rules

A defined benefit plan maintained by a single employer is subject to minimum funding rules that generally require the sponsoring employer to make a certain level of contribution for each plan year to fund plan benefits.[11] The minimum funding rules for single-employer defined benefit plans were substantially revised by the Pension Protection Act of 2006 ("PPA").[12]

Minimum required contributions

In general

The minimum required contribution for a plan year for a single-employer defined benefit plan generally depends on a comparison of the value of the plan's assets, reduced by any prefunding balance or funding standard carryover balance ("net value of plan assets"),[13] with the plan's funding target and target normal cost. The plan's funding target for a plan year is the present value of all benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is generally the present value of benefits expected to accrue or to be earned during the plan year.

If the net value of plan assets is less than the plan's funding target, so that the plan has a funding shortfall (discussed further below), the minimum required contribution is the sum of the plan's target normal cost and the shortfall amortization charge for the plan year (determined as

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[11] Sec. 412 of the Code and section 302 of the Employee Retirement Income Security Act of 1974 ("ERISA"). For purposes of whether a plan is maintained by a single employer, certain related entities, such as the members of a controlled group, are treated as a single employer. Different funding rules apply to multiemployer and multiple-employer defined benefit plans, which are types of plans maintained by two or more unrelated employers. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies if the minimum funding requirements are not satisfied.

[12] Pub. L. No. 109-280. The PPA minimum funding rules for single-employer plans are generally effective for plan years beginning after December 31, 2007. Subsequent changes were made by the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), Pub. L. No. 110-458; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 ("PRA 2010"), Public Law 111-192; and the Moving Ahead for Progress in the 21st Century Act ("MAP-21"), Pub. L. No. 112-141, discussed further herein.

[13] The value of plan assets is generally reduced by any prefunding balance or funding standard carryover balance in determining minimum required contributions. A prefunding balance results from plan contributions that exceed the minimum required contributions. A funding standard carryover balance results from a positive balance in the funding standard account that applied under the funding requirements in effect before PPA. Subject to certain conditions, a prefunding balance or funding standard carryover balance may be credited against the minimum required contribution for a year, reducing the amount that must be contributed.

described below).[14] If the net value of plan assets is equal to or exceeds the plan's funding target, the minimum required contribution is the plan's target normal cost, reduced by the amount, if any, by which the net value of plan assets exceeds the plan's funding target.

Shortfall amortization charge

The shortfall amortization charge for a plan year is the sum of the annual shortfall amortization installments attributable to the shortfall bases for that plan year and the six previous plan years. Generally, if a plan has a funding shortfall for the plan year, a shortfall amortization base must be established for the plan year.[15] A plan's funding shortfall is the amount by which the plan's funding target exceeds the net value of plan assets. The shortfall amortization base for a plan year is: (1) the plan's funding shortfall, minus (2) the present value, determined using the segment interest rates (discussed below), of the aggregate total of the shortfall amortization installments that have been determined for the plan year and any succeeding plan year with respect to any shortfall amortization bases for the six previous plan years. The shortfall amortization base is amortized in level annual installments ("shortfall amortization installments") over a seven-year period beginning with the current plan year and using the segment interest rates (discussed below).[16]

The shortfall amortization base for a plan year may be positive or negative, depending on whether the present value of remaining installments with respect to amortization bases for previous years is more or less than the plan's funding shortfall. If the shortfall amortization base is positive (that is, the funding shortfall exceeds the present value of the remaining installments), the related shortfall amortization installments are positive. If the shortfall amortization base is negative, the related shortfall amortization installments are negative. The positive and negative shortfall amortization installments for a particular plan year are netted when adding them up in determining the shortfall amortization charge for the plan year, but the resulting shortfall amortization charge cannot be less than zero (i.e., negative amortization installments may not offset normal cost).

[14] If the plan has obtained a waiver of the minimum required contribution (a funding waiver) within the past five years, the minimum required contribution also includes the related waiver amortization charge, that is, the annual installment needed to amortize the waived amount in level installments over the five years following the year of the waiver.

[15] If the value of plan assets, reduced only by any prefunding balance if the employer elects to apply the prefunding balance against the required contribution for the plan year, is at least equal to the plan's funding target, no shortfall amortization base is established for the year.

[16] Under PRA 2010, employers were permitted to elect to use one of two alternative extended amortization schedules for up to two "eligible" plan years during the period 2008-2011. The use of an extended amortization schedule has the effect of reducing the amount of the shortfall amortization installments attributable to the shortfall amortization base for the eligible plan year. However, the shortfall amortization installments attributable to an eligible plan year may be increased by an additional amount, an "installment acceleration amount," in the case of employee compensation exceeding $1 million, extraordinary dividends, or stock redemptions within a certain period of the eligible plan year.

If the net value of plan assets for a plan year is at least equal to the plan's funding target for the year, so the plan has no funding shortfall, any shortfall amortization bases and related shortfall amortization installments are eliminated.[17] As indicated above, if the net value of plan assets exceeds the plan's funding target, the excess is applied against target normal cost in determining the minimum required contribution.

Interest rate used to determine target normal cost and funding target

The minimum funding rules for single-employer plans specify the interest rates and certain other actuarial assumptions that must be used in determining the present value of benefits for purposes of a plan's target normal cost and funding target.

Present value is generally determined using three interest rates ("segment" rates), each of which applies to benefit payments expected to be made from the plan during a certain period.[18] The first segment rate applies to benefits reasonably determined to be payable during the five-year period beginning on the first day of the plan year;[19] the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable at the end of the 15-year period. Under the funding rules as enacted in PPA ("PPA" rules), each segment rate is a single interest rate determined monthly by the Secretary of the Treasury ("Secretary"), on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period. The corporate bond yield curve used for this purpose reflects the average, for the 24-month period ending with the preceding month, of yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available. The Internal Revenue Service ("IRS") publishes the segment rates each month.

Under MAP-21, for plan years beginning after December 31, 2011, a segment rate determined under the PPA rules is adjusted if it falls outside a specified percentage range of the average segment rates for a preceding period. In particular, if a segment rate determined under the PPA rules is less than the applicable minimum percentage in the specified range, the segment rate is adjusted upward to match the minimum percentage. If a segment rate determined under the PPA rules is more than the applicable maximum percentage in the specified range, the segment rate is adjusted downward to match the maximum percentage. For this purpose, an average segment rate is the average of the segment rates determined under the PPA rules for the

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[17] Any amortization base relating to a funding waiver for a previous year is also eliminated.

[18] Solely for purposes of determining minimum required contributions, in lieu of the segment rates, an employer may elect to use interest rates on a yield curve based on the yields on investment grade corporate bonds for the month preceding the month in which the plan year begins (i.e., without regard to the 24-month averaging described above) ("monthly yield curve"). If an election to use a monthly yield curve is made, it cannot be revoked without IRS approval.

[19] Subject to an exception for small plans with no more than 100 participants, the annual valuation date for a plan must be the first day of the plan year. Thus, except for small plans with valuation dates other than the first day of the plan year, the period for which the first segment rate applies begins on the valuation date.

25-year period ending September 30 of the calendar year preceding the calendar year in which the plan year begins. The Secretary is to determine average segment rates on an annual basis and may prescribe equivalent rates for any years in the 25-year period for which segment rates determined under the PPA rules are not available. The Secretary is directed to publish the average segment rates each month.

The specified percentage range (that is, the range from the applicable minimum percentage to the applicable maximum percentage) for a plan year is determined by reference to the calendar year in which the plan year begins as follows:

- 90 percent to 110 percent for 2012,
- 85 percent to 115 percent for 2013,
- 80 percent to 120 percent for 2014,
- 75 percent to 125 percent for 2015, and
- 70 percent to 130 percent for 2016 or later.

<u>Funding-related benefit restrictions</u>

Special rules may apply to a plan if its funding target attainment percentage is below a certain level.[20] A plan's funding target attainment percentage for a plan year is the ratio, expressed as a percentage, that the net value of plan assets bears to the plan's funding target for the year. Because a plan's funding target is a component of the plan's funding target attainment percentage, the interest rate used in determining the plan's funding target generally applies also in determining the plan's funding target attainment percentage.[21]

Restrictions on benefit increases, certain types of benefit payments ("prohibited payments") and benefit accruals (collectively referred to as "benefit restrictions") may apply to a plan if the plan's adjusted funding target attainment percentage is below a certain level.[22] The plan's adjusted funding target attainment percentage is determined in the same way as funding target attainment percentage, except that the net value of plan assets and the plan's funding target

[20] For example, funding target attainment percentage is used to determine whether a plan is in "at-risk" status, so that special actuarial assumptions ("at-risk assumptions") must be used in determining the plan's funding target and target normal cost. A plan is in at risk status for a plan year if, for the preceding year: (1) the plan's funding target attainment percentage, determined without regard to the at-risk assumptions, was less than 80 percent, and (2) the plan's funding target attainment percentage, determined using the at-risk assumptions (without regard to whether the plan was in at-risk status for the preceding year), was less than 70 percent. A similar test applies in order for an employer to be permitted to apply a prefunding balance against its required contribution, that is, for the preceding year, the ratio of the value of plan assets (reduced by any prefunding balance) must be at least 80 percent of the plan's funding target (determined without regard to the at-risk rules).

[21] The adjustments to the segment rates under MAP-21 do not apply for certain other purposes for which the segment rates are used, for example, in calculating the limits on deductible contributions to single-employer defined benefit plans under section 404.

[22] Code secs. 401(a)(29) and 436 and ERISA sec. 206(g).

are both increased by the aggregate amount of purchases of annuities for employees, other than highly compensated employees, made by the plan during the two preceding plan years. Although anti-cutback rules generally prohibit reductions in benefits that have already been earned under a plan,[23] reductions required to comply with the benefit restrictions are permitted.

Under these rules, a prohibited payment generally means (1) any payment in excess of the monthly benefit amount paid under a single life annuity (plus any social security supplement), or (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits. Prohibited payments generally may not be made if the plan's adjusted funding target attainment percentage is less than 60 percent. If a plan's adjusted funding target attainment percentage is at least 60 percent, but less than 80 percent, prohibited payments may be made, but subject to limits. In addition, prohibited payments may not be made during any period in which the plan sponsor is a debtor in a bankruptcy proceeding under Federal or State law unless the plan's adjusted funding target attainment percentage is at least 100 percent.

Annual funding notice

The plan administrator of a single-employer defined benefit plan must provide an annual funding notice to each participant and beneficiary, each labor organization representing such participants or beneficiaries, and the Pension Benefit Guaranty Corporation ("PBGC").[24] In addition to the information required to be provided in all funding notices, in the case of a single-employer defined benefit plan, the notice must include (1) the plan's funding target attainment percentage for the plan year to which the notice relates and the two preceding plan years, (2) the value of the plan's assets and benefit liabilities (that is, the present value of benefits owed under the plan) for the plan year and the two preceding years, determined in the same manner as under the funding rules, and (3) the value of the plan's assets and benefit liabilities as of the last day of the plan year to which the notice relates, determined using the fair market value of plan assets (rather value determined under the funding rules) and, in computing benefit liabilities, the interest rates used in computing variable-rate PBGC premiums.[25]

Under MAP-21, additional information must be included in the annual funding notice in the case of an applicable plan year. For this purpose, an applicable plan year is any plan year beginning after December 31, 2011, and before January 1, 2015, for which (1) the plan's funding target, determined using segment rates as adjusted to reflect average segment rates ("adjusted" segment rates), is less than 95 percent of the funding target determined without regard to

[23] Code sec. 411(d)(6) and ERISA sec. 204(g).

[24] ERISA sec. 101(f), originally enacted by section 103 of the Pension Funding Equity Act of 2004, Pub. L. No. 108-218. Annual funding notice requirements, with some differences, apply also to multiemployer and multiple-employer plans.

[25] In applying the funding rules, the value of plan assets may be determined on the basis of average fair market values over a period of up to 24 months. PBGC variable-rate premiums are based on a plan's unfunded vested benefit liabilities, computed using the first, second and third segment rates as determined under the PPA rules (without adjustments under MAP-21), but based on a monthly corporate bond yield curve, rather than a yield curve reflecting average yields for a 24-month period.

adjusted segment rates, (2) the plan has a funding shortfall, determined without regard to adjusted segment rates, greater than $500,000, and (3) the plan had 50 or more participants on any day during the preceding plan year. Specifically, the notice must include (1) a statement that MAP-21 modified the method for determining the interest rates used to determine the actuarial value of benefits earned under the plan, providing for a 25-year average of interest rates to be taken into account in addition to a two-year average, (2) a statement that, as a result of MAP-21, the plan sponsor may contribute less money to the plan when interest rates are at historical lows, and (3) a table showing, for the applicable plan year and each of the two preceding plan years,[26] the plan's funding target attainment percentage, funding shortfall, and the employer's minimum required contribution, each determined both using adjusted segment rates and without regard to adjusted segment rates.

Description of Proposal

Applicable minimum and maximum percentages and annual funding notice

The proposal revises the specified percentage ranges (that is, the range from the applicable minimum percentage to the applicable maximum percentage of average segment rates) for determining whether a segment rate must be adjusted upward or downward. Under the proposal, the specified percentage range for a plan year is determined by reference to the calendar year in which the plan year begins as follows:

- 90 percent to 110 percent for 2012 through 2017,
- 85 percent to 115 percent for 2018,
- 80 percent to 120 percent for 2019,
- 75 percent to 125 percent for 2020, and
- 70 percent to 130 percent for 2021 or later.

In addition, for purposes of the additional information that must be provided in a funding notice for an applicable plan year, an applicable plan year includes any plan year that begins after December 31, 2011, and before January 1, 2020, and that otherwise meets the definition of applicable plan year.

Prohibited payments in bankruptcy

Under the proposal, the adjusted segment rates do not apply for purposes of whether prohibited payments may be made from a plan during a period in which the plan sponsor is a debtor in a bankruptcy proceeding under Federal or State law, that is, for purposes of determining whether the plan's adjusted funding target attainment percentage is at least 100 percent. Thus, the plan's adjusted funding target attainment percentage, determined without

[26] In the case of a preceding plan year beginning before January 1, 2012, only the plan's funding target attainment percentage, funding shortfall, and the employer's minimum required contribution determined without regard to adjusted segment rates are required to be provided.

regard to the adjusted segment rates, must be at least 100 percent in order for prohibited payments to be made.

Periods for determining segment rates

The proposal revises the period of benefit payments to which the segment rates (or adjusted segment rates) apply. Under the proposal, the first rate applies to benefits reasonably determined to be payable during the five-year period beginning on the plan's valuation date (rather than the first day of the plan year as under present law); the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable at the end of the 15-year period.[27]

Effective Date

The proposals relating to the applicable minimum and maximum percentages, the annual funding notice, and periods for determining segment rates are generally effective for plan years beginning after December 31, 2012. Under a special rule, an employer may elect, for any plan year beginning before January 1, 2014, not to have these proposals apply either (1) for all purposes for which the proposals would otherwise apply, or (2) solely for purposes of determining the plan's adjusted funding target attainment percentage in applying the benefit restrictions for that year. A plan will not be treated as failing to meet the requirements of the anti-cutback rules solely by reason of an election under the special rule.

The proposal relating to prohibited payments in bankruptcy generally applies to plan years beginning after December 31, 2014, or, in the case of a plan maintained pursuant to one or more collective bargaining agreements, to plan years beginning after December 31, 2015. If certain requirements are met, a plan amendment made pursuant to the proposal may be retroactively effective, the plan will be treated as being operated in accordance with its terms during the period before the amendment, and the plan will not be treated as failing to meet the requirements of the anti-cutback rules solely by reason of the amendment. In order for this treatment to apply, the amendment must be made pursuant to the proposal (or pursuant to any regulation issued by the Secretary or the Secretary of Labor under the proposal), and the amendment must be made by the last day of the first plan year beginning on or after January 1, 2016, or such later date as the Secretary prescribes. In addition, the plan must be operated as if the plan amendment were in effect during the period (1) beginning on the date the proposal (or regulation) takes effect (or, in the case of a plan amendment not required by the proposal or regulation, the effective date specified in the plan), and (2) ending on the last day of the first plan year beginning on or after January 1, 2016, or such later date as the Secretary prescribes (or, if earlier, the date the amendment is adopted). The amendment must also apply retroactively for that period.

[27] The proposal does not change the requirement that the valuation date for plans other than certain small plans must be the first day of the plan year. Thus, the proposal does not change these periods for plans for which the valuation date must be the first day of the plan year.

D. Customs User Fees

Present Law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) authorizes the Secretary of the Treasury to collect passenger and conveyance processing fees and the merchandise processing fees. Section 412 of the Homeland Security Act of 2002 authorizes the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. COBRA has been extended on several occasions. The current authorization for the collection of the passenger and conveyance processing fees is through September 30, 2023. The current authorization for the collection of the merchandise processing fee is through September 30, 2023.

Description of Proposal

The proposal extends the passenger and conveyance processing fees and the merchandise processing fee authorized under Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) through September 30, 2024.

Effective Date

The proposal is effective on the date of enactment.