S. Hrg. 105–764

AGENCY MANAGEMENT OF THE IMPLEMENTATION OF THE COAL ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

OCTOBER 6, 1998

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
51–892 cc WASHINGTON : 1998

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

51–892

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TUESDAY, OCTOBER 6, 1998

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING,
AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:19 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Sam Brownback, Chairman of the Subcommittee, presiding.

Present: Senators Brownback and Specter.

OPENING STATEMENT OF SENATOR BROWNBACK

Senator BROWNBACK. Good afternoon. The hearing will come to order. Thank you all for joining us this afternoon for this meeting. I am sorry for the delay. We had another meeting that was going on over near the Senate floor and I apologize for the delay. But I do appreciate all of you attending.

I would like to welcome everyone here today. I particularly appreciate Senator Cochran, who was here earlier, but had to go back to the floor, and Senators Rockefeller and Conrad, for being here with us. I look forward to our next panel of witnesses, as well. They represent the various agencies involved in the implementation of the Coal Act.

During this oversight hearing, we are going to examine the 1992 Coal Act, why the Coal Act is important, and look towards its future. It is important for many reasons, but first of all, it is important because the legislation put into effect a mechanism to ensure that retired coal miners and their dependents would have health insurance that they could count on. It is important that the fund remain solvent to protect those who need the benefits afforded them in the original legislation.

The Board of Trustees for the fund received a report in June of this year prepared by the former actuary of the Health Care Financing Administration, Guy King. In the report, Mr. King looked at a baseline scenario and three other scenarios to illustrate the impact of particular changes in the operations of the fund. He found that, "Under all four scenarios, liabilities are first projected to exceed fund assets in Plan Year 2000." That actuarial assessment concerns me greatly.

I am also concerned about how the Coal Act is being implemented and how the recent Supreme Court ruling in the *Eastern*

Enterprises v. Apfel case will impact the financial management of the fund.

The Coal Industry Retiree Health Benefit Act, or what I referred to as the Coal Act, was enacted as part of the Energy Policy Act of 1992. This Act changed the financing of health benefits for retired UMWA (United Mine Workers of America) miners and their dependents. Congress created the Combined Benefit Fund to manage and administer benefits and injected the Federal Government into the operation of the health care plans for retired miners.

Several government agencies were involved in implementing the Act—including some of whom we will hear from today. The Social Security Administration, the Health Care Financing Administration, and the Internal Revenue Service were all involved in making the Coal Act work.

Previous to the Coal Act, employers had contributed to the UMWA benefit funds based on the number of coal production hours worked by their current employees. The Coal Act changed the formula to an annual per capita payment (or a premium) for each beneficiary assigned to a particular company who was the beneficiary's last employer of record. This is what is known as the "reachback tax"—the "tax" or premium for fiscal year 1999 is $2,420.19 per beneficiary.

Now, the reason it is called "reachback" is because in enacting this legislation, Congress "reached back" to assign beneficiaries to companies other than those who had signed a 1988 bargaining agreement. Companies could be forced to pay this tax if they had ever signed a National Bituminous Coal Wage Agreement since 1946 and prior to 1988, or if they met any of the other requirements under the Act.

A company that, prior to 1974, had either stopped mining coal or was not signatory to a UMWA contract is required to pay its assigned retirees' health care premiums under a "super-reachback" status. The retiree can be assigned to a mining company who had signed any of the coal wage agreements before 1978 and who is still in business of any kind, whether or not in the coal industry. The assigned company's obligation is perpetual. With one Act of Congress, the Federal Government literally reached back over decades to find companies, their successors, and legal skeletons to companies to partially finance this plan.

Since enactment, the mechanisms for funding coal miner retirees' health benefits in the Energy Policy Act have yielded a number of court decisions wrestling with their constitutionality. Until recently, the court decisions have upheld the constitutionality of the Coal Act. But this year, the U.S. Supreme Court ruled in the *Eastern Enterprises v. Apfel* case, that the Coal Act is an unconstitutional taking due to its super-reachback (retroactive) provision.

Justice O'Connor, writing in the majority opinion, stated this: "In enacting the Coal Act, Congress was responding to a serious problem with the funding of health benefits for retired coal miners. While we do not question Congress' power to address that problem, the solution it crafted improperly places a severe, disproportionate, and extremely retroactive burden on Eastern."

This ruling, handed down June 25, calls into question the financial mechanisms used to finance the fund as well as the ability to

administer and manage the funds. The ruling could potentially affect approximately 250 reachback companies; however, at this time, it is unclear who will be affected and who will continue in litigation.

I believe the financial status of the fund combined with the recent Supreme Court decision is cause for this Subcommittee to look into the implementation of the Coal Act. It is my hope that the testimony provided by our witnesses today will highlight for us the issues raised by the *Eastern Enterprises v. Apfel* case and help us understand the long-term financial implications for the funds. Through government oversight of the implementation of the Coal Act here today, we help to ensure that Congressional action is living up to its intended purpose to help coal miners in a fair and equitable manner for all those involved.

These are the reasons that I wanted to hold the hearing today, and what I am going to be looking forward to from the various witnesses is to talk about these various issues that have been raised about the actuarial fund being able to live past the plan year 2000. What can Congress do to ensure solvency of the fund and to protect the health insurance of retired coal miners? The second question I have, is the Supreme Court ruling of this year that the Coal Act was an unconstitutional taking, does the Congress need to act to clarify the situation? And third, is the Coal Act being implemented in a fair and equitable manner by the Federal agencies involved? I hope we can shed some light on those issues amongst some others as we go through this hearing.

I appreciate the panel of Senators that are here today. I think, Senator Specter, if you would not mind, I will go to these witnesses that have been here and hear their presentation, or do you have an opening statement you would prefer to make at this time?

Senator SPECTER. I do, but I would be delighted to defer to my colleagues who are here.

Senator BROWNBACK. In a first-in-time gesture, if you do not mind, I will go ahead and do that because they were very kind to be here.

Senator SPECTER. Mr. Chairman, might I make a suggestion? There are a lot of people standing outside. There are some chairs here that were reserved for witnesses, and I think we might allow quite a few more people in here, maybe even occupy some of the chairs on the dias until we have more Senators here. It is always uncomfortable to see taxpayers in the hallway when they want to see what is going on inside.

Senator BROWNBACK. That is a wonderful suggestion. If we could have the guards let some people in for the reserved seating here, I think that would be a good thing so that we can have some more people moving in, if they could do it as quietly as possible and we will go ahead and proceed with the hearing and not hold up too much of the time. But let us go ahead and let in as many as we possibly can. If some of you standing in the back can move on over some to the side, too, or if we can get some people moving up, as well, that will help get more people in.

Thank you very much. Our two panelists that are up on this first panel, Senator Jay Rockefeller, U.S. Senator, and Senator Kent

Conrad. I do not know if either of you have an order you would prefer to go in.

Senator ROCKEFELLER. It is up to the Chairman.

Senator BROWNBACK. Senator Rockefeller, we will call on you first. Thank you for joining us and being here today.

TESTIMONY OF HON. JOHN D. ROCKEFELLER, IV,[1] A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator ROCKEFELLER. Mr. Chairman, with all due respect, I want to clarify one statement that you made in introducing this subject, when you said that the U.S. Supreme Court had ruled the Coal Act unconstitutional. That is manifestly inaccurate. It took one tiny part representing a very small fraction of retired coal miners, and in what I would consider very faulty decision making on that part, exempted them or the companies that represent or are declining to take care of them. But by no means did it call the Coal Act unconstitutional.

The Coal Act is in effect. Benefits will be paid. It only exempted that very small portion done by Eastern, and as others will determine, maybe up to 6,000 out of the total of 77,000 that remain.

In any event, thank you for allowing me to testify. This law was passed in 1992. Senator Specter and I and others worked very hard to pass this. At that time, there was no interest in the legislation whatsoever, and as a result, which I found ironic and disturbing, we were able to get it done just before Christmas, primarily because I said I would hold the Senate in through Christmas, a thought I enjoyed very much.

At that time, there were 120,000 retired coal miners. I think it is interesting to point out that there are now somewhat over 70,000 remaining because, as we said at the time, 5,000 to 6,000 miners are dying every single year while we continue year after year after year to try and take this thing apart, or at least some are trying to take this apart. They claim not to be, but that is what they are trying to do.

Before I begin, let me recognize that there are a lot of coal miners in this hearing room today. Their presence is the most compelling testimony. I do not know if either the Chairman or if my fellow witness have ever spent much time in a coal mine or been in a coal mine, but let me only say that if you go into a coal mine for about 2 hours, you will spend the next 2 days blowing coal dust out of your nostrils. If you spend 30 or 40 years, you will have grievous injury and broken bones and broken lungs and all kinds of other things, the likes of which most Americans have absolutely no idea.

Even in my own State of West Virginia, I would say that 95 percent of the people have never been underground. They know coal mining, but they do not know coal mining the way coal miners know it. They do not know the dangers of it. They do not know what it is to work up to their knees in cold water, the threat, particularly in former times when these miners here are affected, of roof falls, slate falls, the horrible, horrible conditions, hunched over doing their work so that the Nation and its industrial might would survive.

[1] The prepared statement of Senator Rockefeller appears in the Appendix on page 22.

I think there are three basic things that we should agree on, I hope that the entire Congress would agree on. The 71,000 retired miners who are left, and that is all there are—it used to be 122,000, now it is 71,000 because they are dying between 5,000 and 6,000 a year—first, that those 71,000 retired miners and their family members who today depend on the Coal Act must not have their rights traded away for the interests of companies who want to be relieved of their responsibility so they do not have to pay for their responsibilities.

Second, that health benefits were promised to these miners when they went underground and they must be kept. That was not an incidental occasion. It involved a man by the name of Harry S Truman, and John L. Lewis, in which hundreds of thousands, maybe a half-a-million coal miners were willing to lose their jobs in an exchange of mechanization on the one hand and return on the other hand for pension and health benefits, of which health benefits are the most important and what this argument and hearing and last 6 years has been all about.

And third, those of us who support and defend the program have always been open to suggestions to improving the program. But we have a moral obligation for which some of us will absolutely not retreat under any conditions based upon a firm historical basis to fight any effort in any way that gets a company out of their obligations to their workers.

The Coal Industry Retiree Benefits Act, known as the Coal Act, as I say, was passed in 1992. It was basically crafted in its final analysis by the Bush administration and therefore was, and is a bipartisan effort and was government operating at its very best.

I just want to try to humanize this a little bit to say that there is a lot more about the Supreme Court and Congress. This is about individual people, people who have had to stand up for their families, who have lived difficult lives, who have worked in ways that the rest of us have absolutely no idea what even the word "work" means when it comes to working underground.

In the back of the room, there is a man by the name of Nick Pascovich. Nick, will you stand? Nick is here from Clarksville, Pennsylvania. He is one of the 71,377 miners and widows who rely on the Coal Act. There are tens of thousands of them that live in Pennsylvania, men and women also in West Virginia and Pennsylvania. Those are two of the very biggest States. In fact, every single State and the District of Columbia has these folks.

Mr. Pascovich is 78 years old. That is the exact average age of all of the folks that we are talking about, people in their late 70's. He worked in the coal mines for 43 years. I cannot imagine the effect on a human being of working in a coal mine underground for 43 years, Mr. Chairman. He has to sleep sitting up in a chair so he can breathe. Without the Coal Act, he would not breathe.

His employer and every company in the coal industry knew that health and retirement benefits were for life. You could quibble with the commas, but that, they knew. Every company that signed a bituminous coal wage agreement made that promise. Every company that signed such an agreement from 1974 had that promise explicitly written in the contract. Nick Pascovich is what this program is all about and the miners like him.

One more person, and that is all I will take advantage of your courtesy on this matter, Mr. Chairman, and this is May Shukart, who is over here. She is a person who should make it very plain why the Coal Act has to be protected. Mrs. Shukart is 67 years old and lives—and Senator Specter, help me on this—in Nemacolin, Pennsylvania. Her husband, Charles, worked for 30 years in the mines, underground. Mr. Shukart passed away years ago, but he died knowing that he had taken care of his family through the sweat of his labors and with the protection of the Coal Act.

Mrs. Shukart herself, and I hope she does not mind my saying this, has been diagnosed with cancer, which is currently in remission, thank God, but remission does not mean clearance, and should it come back, she has every reason to fear if the Coal Act is not there. Does she deserve peace of mind? By law and by God's judgment, she surely does.

I want to assure my colleagues, in case there is any confusion, that when it comes to the Mr. Pascoviches and the Mrs. Shukarts that there is nothing I will not do to protect them and to protect their rights under a law which was passed 6 years ago, signed, and which has been fought out to the extent that there is never a meeting of the Finance Committee in which I do not have Ellen Dineskie sitting over there at that Finance Committee, no matter what the subject is, because I have to be aware of the fact that there are those who want to undermine it, to repeal it, to subvert it, put good words on it, but basically take away. So she is always there when the Finance Committee meets in case somebody wants to slip in an amendment.

The subject of this hearing is agency implementation of the Coal Act, and I understand that, but I believe the real concern of many here is that the longtime push of certain reachback companies to be relieved of their obligations under the Act, that is what this is really about.

As the Chairman is aware, the Finance Committee, on which I serve and which Senator Conrad serves, has sole jurisdiction over the Coal Act. This Committee has no jurisdiction whatsoever. Certain Chairmen and ranking members of the Finance Committee have made that particularly clear to this Committee. The Finance Committee, I would point out, has not chosen to have a hearing on the Coal Act and reachback companies have sought other forums and have succeeded.

Some members may believe that the recent Supreme Court decision on *Eastern Enterprises v. Apfel* is a rationale to review or reopen the Coal Act. Anything is a rationale to reopen the Coal Act. The way I read the Court decision is, in fact, different. It strongly reaffirms that a promise was made to coal miners that must be kept that all reachback and signatories from 1988 and later must keep up their end of the promise. The Court only ruled that the Act as it narrowly applied to Eastern Enterprises was unconstitutional, period.

While other courts may rule that similarly situated super-reachback companies should also be relieved of their obligation to pay, this is and will be by any interpretation a very small subset of payers in the UMW Combined Benefit Fund and will not disturb the basic functioning of the Act as intended by Congress, as passed

by Congress, and as signed by the President. Let me repeat for those retired miners who are concerned about their health benefits, the Coal Act remains in effect and benefits will continue to be paid.

I understand that Social Security and the Department of the Interior will testify about their management policies, and I will be right here listening to that testimony.

I should remind my colleagues that reachback companies signed coal wage agreements promising lifetime health benefits, just as the group of 1988 and later operators also did. Nevertheless, a group of reachback companies have consistently appealed to Congress to relieve them of their responsibilities under the Coal Act. Congress has not supported these requests, but it has not diminished their efforts.

Senator Cochran has introduced such a bill, which seeks to provide the reachbacks with relief. In my view and the view of the United Mine Workers of America, Senator Cochran's proposal would jeopardize the health benefits of 71,000-plus retired miners and widows who depend on the Act. On that basis alone, I could never support it and will do everything I can to defeat it if it ever raises its head.

Moreover, I cannot support any proposal that would put those companies who are paying for their former employees' health benefits at an unfair competitive advantage with competitors who decide they do not want to pay theirs.

Now, one piece of irony, and then I will conclude. Since the enactment of the Coal Act, various reachback companies have claimed that there was a large and growing surplus in the Combined Benefit Fund. This was the early years. That was the cry. Oh, there is this terrific surplus. We are going to be able to take all of this and give tax relief to all of these companies. They will not have to pay. And that was the argument that we heard back in the years around 1995.

Now, 2 years later after 1995, in 1997, the argument changes. Some of the same reachback companies say that there was a large looming deficit in the Coal Act, in the Combined Benefit Fund, and that Congress should reduce their tax obligations under the Act and at the same time nearly double the taxes on their competitors who signed a 1988 or later coal wage agreement to save the fund. It is interesting how obligations and viewpoints change.

In any event, in concluding, I am told that 10 of our Nation's largest companies—and I would be happy to read off the names and, in fact, I will, LTV Steel, Pittston Mining, A.T. Massey Coal, NACO Industries, Allied Signal, YNA Coal Company, Blue Diamond Coal, Eastern Enterprises, Berlin Resources, and Barnes and Tucker, Milburn/Imperial Collieries—will get three-fourths of the $40 to $50 million of tax relief under proposals like Senator Cochran's. This is not something which I consider in the American tradition and it is something that you can be sure that I will do my best to oppose.

The relationship between all of this and Medicare, Mr. Chairman, just like Medicare recipients, retired coal miners were promised that they would have certain health benefits when they retire. I am on the Medicare Commission for the future of Medicare and we are trying to figure out now how to take money that we do not

have and money which we are going to have even less of in the future to be sure that we guarantee Medicare beneficiaries what they were promised even back at a time when Medicare medical benefits were insufficient compared to what they need to be today.

We will find that money, because Medicare is well-known and popular. Well, in West Virginia and Pennsylvania, and a number of other places, the Coal Act is well-known and popular and there are those of us who will do everything we can to defend it. I thank the Chairman.

[Applause.]

Senator BROWNBACK. If we could, I would like to hold the applause down on future witnesses, if possible. I appreciate your support for Senator Rockefeller and I appreciate your attendance, but we do like to try to keep a certain demeanor about the Committee room, if we can.

I hope Senator Rockefeller can answer some of the questions that I posed at the outset when we go to the questioning time period, such as how do we pay past the year 2000 and the impact of the Supreme Court's ruling of constitutionality regarding the super-reachback, as I noted correctly in my opening statement.

Senator Conrad, thank you for joining us.

TESTIMONY OF HON. KENT CONRAD,[1] A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator CONRAD. I thank the Chairman and Members of the Subcommittee, and I thank my colleague, Senator Rockefeller. I appreciate the willingness of this Subcommittee to hold this oversight hearing on the state of the UMWA Combined Benefit Fund and the reachback tax.

I think, at the first, we should make very clear that we all share an obligation to the more than 70,000 UMWA retirees and their families whose benefits are covered by the fund. We are all committed to sound and secure financing for their health benefits.

First of all, I want to acknowledge the extraordinary leadership of Senator Rockefeller on this issue. These benefits would not have been provided for without his determined fight to make certain that these miners and their families were appropriately covered, and that principle ought to be observed by all of us. These retirees deserve to have the promises to them kept, and I can say that nobody has been more determined or more effective as a fighter than Senator Rockefeller. Rarely have I seen a colleague put forth the personal effort that he has to make certain that rights of people that he represent are addressed. I think that needs to be said right at the outset.

I also want to say that I believed right from the start that while the goal was right, the means were not the best. My own view is that the reachback tax has severe deficiencies, not only in its ability to actually provide the funds necessary to keep the benefits, but also that it is unfair to certain of the companies that are called upon to pay.

Now, let me acknowledge right up front that I was one who thought 3 or 4 years ago that we were going to have a surplus in

[1] The prepared statement of Senator Conrad appears in the Appendix on page 26.

this fund, and, in fact, we had a surplus at that time and it appeared as though we would continue to have a surplus. That was wrong. We were mistaken. I was mistaken, and I want to acknowledge that right here. Senator Rockefeller is entirely correct on that matter, as well.

But I still believe that this means of financing is mistaken, at least in part, and I think that is the reason that we have seen the Court determination that came down in the *Eastern* case.

In addition, the report to the fund's trustees last June by Guy King, the former chief actuary for Medicare, confirmed what many of us now believe, that under even the most optimistic economic assumptions, the fund's liabilities are going to exceed its assets by plan year 2000. What has happened here, in part, is that these costs continue to go up more rapidly than was anticipated, and that is because, of course, of medical inflation. Medical inflation is running ahead of general inflation. There is really no question anymore that the 106th Congress will have to act to ensure the security of these benefits.

Let me also say there are some who do not care about that. Senator Rockefeller is also correct about that. There are some who do not care whether or not these benefits are paid. I mean, we have colleagues, and Senator Rockefeller and I know very well, who really do not care. They want to protect the companies at any cost, and that is wrong. I do not agree with those people. I think, as a basic principle, the first should be that the promises to these retirees be kept. The question is, how should it be done?

When the Coal Industry Retiree Health Benefit Act was passed in 1992, the then-Chairman of the Ways and Means Committee observed that it created numerous inequities among the companies that will be required to pay for those benefits. He predicted that those many difficulties would force the Committee to reconsider this arrangement in the very near future. Now, he was wrong as to timing in 1992. He thought it was going to happen more quickly. But I think he is right with respect to the question of inequities between companies.

Another senior member of the Ways and Means Committee, Jake Pickle, criticized the Coal Act as creating a terrible injustice by levying a tax on companies who had left the industry to support a benefit plan negotiated by those remaining in the industry who did not want to pay for its cost. Mr. Pickle saw the Act as a bad precedent in the pension area which we would all live to regret.

Now, a number of things have happened in the meantime that show, I believe, that Chairman Rostenkowski and Mr. Pickle were correct. Even if the fund were not facing a fiscal crisis, the Supreme Court in the case of *Eastern Enterprises v. Apfel* found a major portion of the Coal Act to be unconstitutional. We could argue about whether it is a major part or a minor part. The fact is, the Supreme Court has said a group of companies, Eastern and others who are similarly situated, should not be paying into the fund. It found that reaching back to the 1960's to tax companies which had left the bituminous coal industry to pay for miner benefits in the late 1990's was barred by the Constitution.

Mr. Chairman, I genuinely believe that, above all, these benefits ought to be paid. The promise ought to be kept. But I believe that

those companies who are the signatories have the financial obligation.

The problem is, that may be too big a burden for those companies. One alternative would be to ask for the AML fund to pay a greater share than it currently does and to relieve some of those companies that are really far removed from the business. Those are companies that could be relieved and we could take on as a public obligation some of the financing requirement, in addition to those companies that remain as signatories.

The effect of the Coal Act was to attempt to supplant a private multi-company pension contract under which benefits were paid only by the parties to the contract. Because those private parties did not want to pay the full cost, they went to Congress and persuaded us to enact a Federal law that placed a major part of the costs on companies who are no longer signatories to the contract and had already left the industry. I believed at the time that we passed the measure that it was simply the wrong way to meet the very legitimate needs of the retirees.

The Coal Act compounded its unfairness by enforcing taxes through particularly harsh penalties. Part of the result has been that some of the very small companies have been forced to the brink of bankruptcy. Some have even been forced out of business. I do not think that is in anybody's interest. It is certainly not in the interest of the workers for those companies or their retirees.

In prior hearings, we have seen that many small companies are being placed in a very difficult and precarious position because of these premiums. The litigation expense relating to the Act's assignments of beneficiaries and other matters has run into the millions of dollars, and in light of the Supreme Court's decision in *Eastern Enterprises,* it is reasonable to expect even more litigation.

I believe we ought to take this opportunity to keep the commitment to the retirees and their families and to do it in a way that is not vulnerable to legal challenge nor to the depletion of the resources available to meet the requirements of their benefits.

The facts are plain. Congress will be forced to address this matter again. I believe today's hearing is only a beginning of that process, and again, I want to acknowledge what Senator Rockefeller has indicated, that the Finance Committee has the jurisdiction over this matter, although I would certainly acknowledge that this Committee has an ability to oversee the agencies' handling of the fund. You have that jurisdiction.

I look forward to working with the Chairman and others of our colleagues who are interested in helping the Finance Committee fashion a reasonable framework for a solvent and reliable health benefit plan for these retired miners and their families.

Mr. Chairman, if I could just say on a personal note, nothing is going to happen here without Senator Rockefeller being convinced that it is in the interests of the people that he represents. I can tell you nothing is going to happen because I have seen him defend this Coal Act with a ferocity that I have never seen by any other member on any other issue in my 12 years in the U.S. Senate. So nobody should be under any illusion on this matter. Senator Rockefeller is going to protect those retirees. He feels morally bound by

the commitment that he has made. I, for one, have enormous respect for him because of that commitment.

I also believe that there is going to be a need to find a way to provide other financing. I also believe that the Act is unfair to certain of the companies that are asked to contribute. I believe there is a way, ultimately, to resolve these issues in a way that, (1) assures the retirees of the benefits that they have been promised; that, (2) corrects the unfairness in the Coal Act in terms of the reachback nature of the levies on some of those companies that I believe should not have been asked to step up; and (3) that will deal with some of the legal challenges that face the Coal Act with respect to some of the companies that are now being taxed.

Mr. Chairman, Senator Rockefeller faced an extraordinary challenge when he put the Coal Act together. He knew the need that existed. He understood it with greater clarity than perhaps anybody else in the Congress. That motivated him to fight, again, with a commitment that I have never seen by any other member on any other issue.

He had to make compromises. It was not a case where Senator Rockefeller was able to sit down at the table and just write it the way he would like to do it. He had to deal with not only the Senate of the United States, he had to deal with the U.S. House of Representatives, he had to deal with an administration, and the result was a compromise. The underlying goal, I think, was laudable and correct. I think part of the financing mechanism has problems, and I know Senator Rockefeller feels very strongly that if you start to deal with any of this, you could unwind the whole agreement, and that is what he is desperately afraid of.

I just want to say to Senator Rockefeller and others who might be listening, I would not be party to anything that would jeopardize the benefits of these retirees. This promise must be kept to those retirees. It must be kept.

But I also believe that there are things we could do to reduce the unfairness in terms of some of the companies affected and to assure a more reliable source of financing. Perhaps reliable is not the word so much as one that will assure that the funds are adequate, because I do think we face, according to the actuary, a problem in the near future, and I say that as somebody who thought we were going to have a surplus. We were wrong about that, completely wrong. Now we have an actuary telling us that there is going to be a shortfall.

We ought to, as we go through this, assure that there is not going to be a shortfall, that these retirees are covered, but that we reduce the unfairness of the Act. I thank the Chair.

Senator BROWNBACK. Thank you very much, Senator Conrad. I appreciate that statement. I appreciate also the spirit in which it is put forward, because that is the spirit in which this hearing is being called, is that nobody is suggesting whatsoever to do away with the Coal Act. That is not being suggested. What is being suggested and asked about here is the legitimate concerns about whether we are going to have money for it and what other options are available. So I appreciate very much you being willing to put forward some suggestions that you would have, and hopefully we can dig into those more as we go on into the hearing, because this

Act needs to be protected. It needs to be financed. It has to be financed if it is going to be protected.

Senator Specter has been very gracious in being willing to wait as we have gone around the horn here, and Senator Specter, I want to make sure to get you in on this for an opening statement or otherwise that you might like to make at this time.

OPENING STATEMENT OF SENATOR SPECTER

Senator SPECTER. Thank you very much, Mr. Chairman. For those who are standing, there is room in the back room on closed-circuit television, where there are some chairs. Quite a few people are watching back there. There are a couple more seats up here. If you want to be a part-time Senator, you can sit at the dias.

Senator BROWNBACK. It is a great view from up here.

Senator SPECTER. It is always disheartening, and I know Chairman Brownback agreed, to have taxpayers standing in the hallway and not being able to participate. There are a great many people who have a very keen interest and a lot of people have come from a long way.

I do have a few comments to make at this point. I am pleased to hear Chairman Brownback's comment about retaining the Coal Act and I am pleased to hear what Senator Conrad has said about his determination to continue the commitment made to the coal miners for health care, even though Senator Conrad has introduced legislation, S. 1102, which would give some of the smaller companies relief. The question really is how we maintain the coverage under the Coal Act.

Senator Rockefeller is correct that the legislation was enacted, signed by a Republican President, President Bush, in 1992. I recall very well the day. We have a lady from Nemacolin, which is the hometown of Richard Trumpka, who used to be President of the United Mine Workers and is now Secretary General, the No. 2 officer of the AFL–CIO. But 1 day many years ago, I took a trip to Southwestern Pennsylvania—Washington, Pennsylvania—and in a Holiday Inn talked to a large group of retirees who did not have health benefits. This Act was structured, and I think Senator Conrad accurately characterizes the work that Senator Rockefeller did. He had a little bit of help here and there. Some of us pushed along with him.

When the decision came down in *Eastern Enterprises,* I wrote to Michael Holland, Chairman of the Board of Trustees to the UMW health and retirement funds, and also Commissioner Kenneth Apfel, Social Security Administration, on July 31, and I would ask that those letters be made a part of the record, Mr. Chairman.[1]

Senator BROWNBACK. Without objection.

Senator SPECTER. And also the response by Commissioner Apfel to me dated August 10 and the response by Mr. Holland dated October 6.[2]

Senator BROWNBACK. Without objection.

Senator SPECTER. In the body of this correspondence, I raised the question as to what was going to happen to the funding. How many

[1] Letter submitted by Senator Specter from Mr. Apfel appears in the Appendix on page 28.
[2] Letter submitted by Senator Specter from Mr. Holland appears in the Appendix on page 30.

companies can be relieved of obligations under the Supreme Court decision and what would be done to make sure that there was an adequate fund?

I was pleased by Social Security Commissioner Apfel's response that the intention was, as he put it, "Our intention is to place all voided assignments into an unassigned pool until a permanent decision can be made on placement in order to ensure continuing funding of the health benefit plans." It is worth noting that some 124 companies have been relieved of liability and some 6,167 miners formerly assigned to these companies have been placed in an unassigned pool, but they are continuing to receive benefits, and that is the critical part.

I am concerned about these issues, obviously, as a U.S. Senator, because this issue goes far beyond Pennsylvania, but we have almost 15,000 Pennsylvanians who are covered here and many of them are in this room today, who have come a long distance to hear what we are undertaking to do.

So I believe that our task is plain. When the Supreme Court hands down a decision, that is the law of the land, and it is a confusing decision. It is a 5-to-4 decision and four justices said one thing and one justice said something else to make up the five, and four other justices said the contrary, and that puts the issue back in the lap of the Congress and we have to figure out how to make sure that the funding is adequate for the retirees.

I like the emphasis which everybody has placed, Chairman Brownback, Senator Conrad, of course, Senator Rockefeller, and I, too, that the maintenance of the commitment to the miners is most important. I think that should be very substantial reassurance to the retirees who are here who are very much concerned about what may occur.

We are scheduled to have a vote in the Senate at 3:15 and I intend to sit through until we have to leave for the vote and then I have other commitments, but I will be watching the proceedings very closely through staff and will work hard to maintain the commitment to the miners. Thank you.

Senator BROWNBACK. Thank you very much, Senator Specter. Thank you for your commitment and the commitment of the other Senators, as well.

I would like to address this, if I could, to Senator Rockefeller at the outset. We do have a vote at 3:15. What I think we will try to do is go ahead and go to that vote at the time and then we will recess for a few minutes until I can get back and then go to the second panel, because I do not think we can get nearly through that second panel.

Senator Rockefeller, obviously, there are concerns on financing of this Act. I think you would have to agree with that, as well, and probably as one of the supporters of the Act, you would have to be one who is very concerned about that. How do you propose to finance this Act, given the recent Supreme Court ruling and the presentation by the former head of HCFA that the plan does not have sufficient assets and starts to run in liability with plan year 2000?

Senator ROCKEFELLER. I would agree with the Chairman, as I would agree with Senator Conrad, that there are deficiencies loom-

ing and they worry me greatly, as they ought to, because health care does not come for free. It has to get paid for. One of the things I think that Senator Conrad, and I agree with him on this, talked about the Abandoned Mine Reclamation Fund——

Senator BROWNBACK. Start accessing that.

Senator ROCKEFELLER. I have always felt that there is some reserve there. The Department of the Interior has a reserve fund which will probably take care of the consequences of the *Eastern* ruling. But, as I say, that is not a very large number of people. My guess, it will turn out between 5,500 and 7,000 retired coal miners out of the total number of 71,000.

In any event, I think that people are a lot more important than reclamation. If I have to make my choice, it is a very easy one for me. On the other hand, I also think that we have the Department of the Interior and others testifying here this afternoon and I am open. As I said at the beginning, one of my three tenets is, I will do absolutely anything to protect these rights of these coal miners who have gone through what virtually only those who have gone to war go through.

But my third point was that I have always been open for suggestions for ways of doing this, other ways of doing this or ways of doing this better, provided that there was no compromise contemplated on the basic integrity of all of those miners and their widows, where that is a requirement, would be protected.

Part of the problem, Mr. Chairman, has been that I have, in fact, at one or two points have had a bill to give relief to small companies, but I have not dared bring it up because of the fact that in the climate which has existed here—please remember that the Coal Act in the Senate Finance Committee passed very closely. Now, that was a difference in the Finance Committee at a different time, but the votes are always very close. It was by the good graces of Senator David Durenberger from Minnesota, who voted present and his vote therefore did not count as a negative vote. That is the way the thing passed.

So we are living here very precariously, which is, indeed, what gives encouragement to those who want to see all of their favorite companies get out from underneath these obligations. So I have never really presented the legislation, although I want very much to, to protect precisely the small operations that Senator Conrad talked about because it has been my fundamental and honest fear that in the case of many, at least, who were going after this, who were talking about this, that their real purpose was to unwind the bill, and that I could not risk.

Senator BROWNBACK. I appreciate your statement in that regard. Let me make it clear, as I tried to already, that it is not my purpose to unwind this bill. This is a significant problem——

Senator ROCKEFELLER. I am not suggesting that, Mr. Chairman.

Senator BROWNBACK. This is a government oversight hearing and so we are trying to figure out what it is that we can do, and I also can appreciate that different people hear things that are being rumbled about by one group or by another. At the end of the day, something will have to take place here because the financing of it may be or may not be impacted by the Supreme Court ruling. It does impact somewhere, as you know, between 5,000 and 7,000

mine workers as far as who was paying in that super-reachback category.

I would ask either you or Senator Conrad briefly if you could say to me, do you think that the Congress needs to clarify the Act since the *Eastern* case, where they have ruled a certain way in the super-reachback category, or do you think it is just something that does not need to be addressed, we just need to figure the financing out on this?

Senator ROCKEFELLER. I am against clarification. I am for funding, because funding is carried out by the Executive Branch in coordination with us and is what I call a neutral act of trying to do the right thing. Clarification has to do with precisely the basic and very real, and I hope the Chairman understands that, fear on my part that once you start to clarify a law that was passed, indeed, as a compromise, as Senator Conrad indicated, in the compromise that came from the Bush administration, that once one gets into the clarification of the language of law, I start to sweat.

Senator BROWNBACK. Senator Conrad.

Senator CONRAD. Mr. Chairman, I think you have really gotten right at the nub of the issue. How can you resolve this for the long term, one, assuring that the retirees get their benefits, two, making certain that there is a flow of funds that assure that, and three, I would put on the agenda, correcting some of the unfairness and the potential additional legal challenges to the Act?

The trick has always been, how do you do that without making the Act vulnerable to what Senator Rockefeller fears, because make no mistake, there are people who would like to unravel the thing. I mean, that is just hard reality. So how do you do that in this legislative environment?

We have on a number of occasions had legislation that was basically prepackaged, that we all understood that this was going to be the legislative solution that met all of the goals: (1) Protect the retiree benefits, (2) correct the unfairness, and (3) assure the long-term funding. My own belief is it has to be precooked. You have to go and you have to get agreement of the relevant players on the House side, you have to get the agreement of the relevant players on the Senate side, and you have to get the administration to bless it, and then it has to move through as an amendment to some other package or freestanding in a way that everybody agrees that what you start with is what you end with.

I honestly believe that is the only way to solve this and I believe that the AML fund offers the best source of funding for the long-term to assure that the retiree benefits are kept and that some of the companies are relieved of their responsibilities because of the Court case and others who are similarly situated.

Senator BROWNBACK. Senator Specter, do you have any questions for the panelists?

Senator SPECTER. I do not.

Senator BROWNBACK. Thank you very much for your presentations. I do not have any further questions.

Let us go ahead and call our second panel in case that maybe the vote does not come on up at this time.

Kathy Karpan is the Director of the Office of Surface Mining Reclamation and Enforcement, Department of the Interior. Next is

Bill Fant, Special Assistant, Office of Tax Policy, Department of Treasury. Then we have Marilyn O'Connell, Associate Commissioner, Office of Program Benefits Policy, Social Security Administration.

[Applause.]

Ms. Karpan, let us go ahead with your presentation. I appreciate very much you attending here today, and if you would like to summarize, we can put your full testimony in the record.

TESTIMONY OF KATHY KARPAN,[1] DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Ms. KARPAN. Thank you, Mr. Chairman. Yes, I would. My name is Kathy Karpan, I am the Director of the Office of Surface Mining in the Department of Interior and with me, Mr. Chairman, seated right behind me, is Bob Ewing, who is the Assistant Director for Finance and Administration for our agency and is familiar with the investments and general operation of the Abandoned Mine Land Fund.

Mr. Chairman, we in our Office of Surface Mining administer the Surface Mining Control and Reclamation Act, which Congress passed in 1977. Under Title IV of that Act, Congress called for reclamation of mine land that had been abandoned prior to passage of the Act. In providing for that cleanup, it created a reclamation fee and that fee consists of 35 cents a ton for surface coal mining, 15 cents for underground, and 10 cents for lignite. That reclamation fee goes into what is called the Abandoned Mine Land Fund, or what we will call the AML Fund.

Since that fee was created, up until September 30, 1998, approximately $5 billion has been collected into that fund. Congress in that same period of time has appropriated approximately $3.7 billion, and that leaves an unappropriated balance in that AML fund of $1.3 billion.

We do have an inventory of AML sites, of about 5,000 priority one and priority two sites, that we estimate would take about $2.6 billion at a minimum to correct.

The fee is destined to expire on September 30, 2004, except that the fee is authorized to continue in the amount needed to continue the transfer to the United Mine Workers Combined Benefit Fund in such amount as would be necessary. To explain that, in 1992 in the Energy Policy Act, Congress directed that the interest that OSH earned on its investments could be made available to the United Mine Workers Combined Benefit Fund. If I could back up for a second, Mr. Chairman, we did not collect any interest for our agency or for the fund until beginning in 1992. That was authorized by Congress in 1990.

As the Chairman well knows, the Combined Benefit Fund is used to pay for the health benefits of former coal mine employees covered by prior agreements that have been discussed the previous witnesses. The way it works as a practical matter is the Social Security Administration has the responsibility for determining those who are unassigned beneficiaries. That information is then proc-

[1] The prepared statement of Ms. Karpan appears in the Appendix on page 51.

essed through the trustees of the United Mine Workers Combined Benefit Fund, and then once a year, the Combined Benefit Fund will send to our agency, if you will, a statement indicating the amount of money it expects to need for the coming year and then we make that money available, and we do it right around the start of the fiscal year. This year, it was October 1.

As has been noted earlier, on June 25, 1998, in the U.S. Supreme Court case of *Eastern Enterprises v. Apfel,* the Court did, in effect, add some beneficiaries to the coverage of our agency and we have made the payment for this year, including those covered by the *Eastern Enterprises* decision. On September 25 of this year, the trustees of the Combined Benefit Fund sent us a request for $81 million. That covered all of their current needs, adding in *Eastern Enterprises,* including the adjustments to date for prior years. Mr. Chairman, I am very pleased to report, and Senator Rockefeller, that we were able to make that transfer of money on October 1 of $81 million to the Combined Benefit Fund.

We also believe that for the short term, Mr. Chairman, we can continue to meet this need because, fortunately, back when——

Senator BROWNBACK. Ms. Karpan, I am going to cut in here because we are going to be going to a vote. To really get right to the point of this, if you do not mind, for how many years do you anticipate being able to make the sort——

Ms. KARPAN. That was my next paragraph, Mr. Chairman. This is how long we think we can go. Our interest has been averaging around $80 million a year right now. With interest rates going down, it may drop. We would anticipate, if we did not have any more additions, that we would have to spend about $50 million a year, somewhere—and these are very rough, rough figures. So if we used purely the interest income that comes in, if we kept this universe the same, we would have a surplus and we would be able to meet it.

Senator BROWNBACK. Indefinitely, then? You are projecting off of what you currently have?

Ms. KARPAN. Mr. Chairman, we do not have enough time to make a long-term calculation. The increases are such that I am just telling you for the next few out years, we have only had——

Senator BROWNBACK. For the next how many years, would you anticipate?

Ms. KARPAN. Two-thousand-two. But I want to underscore one thing that I think is important for the Chairman to understand. When this Combined Benefits Fund was created back in 1992, a reserve fund was created. Congress directed that we take all of the interest for fiscal year 1993, 1994, 1995, put it in the AML Fund, and that AML Fund has been generating interest. There is now $132.5 million in that reserve fund. We have never had to resort to that.

So what I am saying to the Chairman, to get to the bottom line, we could make available all of the interest income, $80 million, plus that $132.5 million to meet the needs for the short-term future. We would appreciate an opportunity to study this in greater depth before we are held to any projections in out years.

Senator BROWNBACK. That is very good. Senator Specter would like to ask a question if he could before we break here.

Senator SPECTER. Ms. Karpan, I cannot return after the break, so I would like to ask you if you have any idea, even an approximation, as to how much revenue will be lost by those who will be excluded by virtue of the Supreme Court decision.

Ms. KARPAN. You mean how much revenue that we will pick up?

Senator SPECTER. That you will lose as a result of some companies being excluded from their obligation by the Supreme Court decision.

Ms. KARPAN. We would say that those covered by the *Eastern Enterprises* situation is about 6,600 beneficiaries.

Senator SPECTER. Sixty-six-hundred beneficiaries?

Ms. KARPAN. Yes, sir.

Senator SPECTER. How much revenue will you lose? They have paid a certain sum of money to those beneficiaries which will now have to be covered otherwise. What would the revenue loss be, income stream loss?

Ms. KARPAN. We have already transferred all of the money that we need for *Eastern* to catch up with the U.S. Supreme Court decision with the $81 million.

Senator SPECTER. You have transferred that money? So you are making the payments?

Ms. KARPAN. Yes, sir. We have covered that decision up to today.

Senator SPECTER. And as of this time, although you cannot project it with precision, as you said, your expectation is to be able to cover those payments?

Ms. KARPAN. For the next couple of years. We have taken care of all of the *Eastern Enterprises* companies in our payment. Now, there may be an adjustment. This periodically happens.

Senator SPECTER. So all the beneficiaries are currently being covered by that adjustment?

Ms. KARPAN. Yes, sir. We have sent enough money and we believe that there is more than adequate money to cover the next year or two.

Senator SPECTER. That is very important. Thank you very much, Mr. Chairman.

Senator BROWNBACK. Ms. O'Connell, let us go ahead and get a few minutes of your testimony in before we have to rush off. Thank you for joining us.

TESTIMONY OF MARILYN O'CONNELL,[1] ASSOCIATE COMMISSIONER, OFFICE OF PROGRAM BENEFITS POLICY, SOCIAL SECURITY ADMINISTRATION

Ms. O'CONNELL. I am Marilyn O'Connell from the Social Security Administration. The previous witnesses have described what the Coal Act is for and what it does.

Social Security was given three responsibilities under the Coal Act. One of these was to calculate the health benefit premium for each beneficiary and provide that to the fund. The second responsibility is to assign each miner to a coal operator who will be responsible for the health and death benefit premium for the beneficiaries related to that miner and notify the operators and the fund of those

[1] The prepared statement of Ms. O'Connell appears in the Appendix on page 57.

assignments, and finally, to decide requests by the coal operators for review of those assignments.

Social Security has calculated the premium timely each year since the beginning of the Coal Act and notified the trustees, and we made the original assignments timely, which was October 1, 1993. Since that time, we have been working on the third responsibility, which turned out to be extremely complex, and that was to review each of the individual assignments if the operators requested it.

The law provides that an assigned operator may, within 30 days of receipt of the assignment notice, request detailed information about the miner's work history and the basis for the assignment. The assigned operator then has 30 days from receipt of that additional information to request review of the assignment.

Since the start of our work on the Coal Act, we have reviewed assignments for approximately 665 coal operators concerning the assignments of 36,256 miners. The miner count includes some duplicates because we got appeals on the same miner more than once, and the coal operator count includes many companies relieved of assignment responsibilities. As of today, we have assignments to 399 coal operators.

Senator BROWNBACK. Ms. O'Connell, if I could, I am sorry to interrupt, but I would like to have the rest of your testimony in on the record so we will be able to have that.

Ms. O'CONNELL. We will submit it for the record.

Senator BROWNBACK. Does the Social Security Administration anticipate a need for Coal Act reform to ensure the fund's solvency? Are you anticipating that?

Ms. O'CONNELL. Actually, the Social Security Administration has played a role almost as contractor, in that SSA simply assigns the miners to the companies.

Senator BROWNBACK. So you have not made those determinations of funds——

Ms. O'CONNELL. SSA was charged with the assignment either to a company or to the unassigned fund, which would be covered by the Department of the Interior. The issue of fund solvency rests with the Department of the Interior.

Senator BROWNBACK. If I could ask both of you, because I am going to have to leave for a vote just momentarily, I am very concerned about the ability to be able to finance this over a period of some time. I was pleased by your comments, Ms. Karpan, that you feel like you are in fine shape through 2002 so that perhaps the window is longer than what was anticipated by the former actuary for HCFA when he made his comments by the year 2000.

I would like for you to, if you could, present in writing to this Subcommittee your projections for financing that you can handle, given the *Eastern* case that the Supreme Court ruled and the nearly 250 companies, the 5,000 to 7,000 mine workers that would not be covered now of a fund flow under the super-reachback companies that have now been declared unconstitutional reachback. How long can we go under the current system that we have? I would appreciate that submitted, if you could, in writing so that we could go back through that.

If the Social Security Administration has any input on that, as well, I would appreciate being able to have it, but it sounds like most of that is just conceded to the Department of the Interior——

Ms. O'CONNELL. It really is.

Senator BROWNBACK [continuing]. And that is fine. I just want to make sure if you have something that you want us to hear about, either on that or on the need to change this Act to be able to continue it, I would like to be able to have that to put forward.

Nothing is going to be taking place this Congress. Nobody is trying to take anybody's benefits. I want to reiterate and underline that three times. What we are talking about here is the ability to be able to finance these, given the recent Supreme Court rulings and the things that have taken place. So if you could help us out with that, that would be most appreciated.

Ms. KARPAN. Mr. Chairman, if I could just clarify one point, I would not want to mislead you. I will take a minute. All of my comments have been directed to interest on the Abandoned Mine Land Fund. I think the idea has always been that that principal was there to clean up the land, but the interest income could appropriately be used for these purposes. So when I have talked about the interest on the fund being available to meet the needs, it is there. The $132.5 million is there, and that is my projection out to 2002. It is just on the interest income.

Senator BROWNBACK. Good. Thank you very much. I would like to keep the record open for 3 days for you to submit further information and I would also like for you to submit back in writing to the Subcommittee the answers to these questions.

I would like to enter into the record a written statement from Deborah Walker, Acting Deputy to the Benefits Tax Counsel at the Treasury Department.[1]

I would also like to enter into the record a letter from Cynthia Fagnoni, Director, Income Security Issues, U.S. General Accounting Office, regarding the status of the UMWA Combined Benefit Fund.[2]

I want to thank you for coming and I want to thank the patience of the people here for participating in this hearing. It is a very important issue. It affects people's lives directly. We want to make sure we continue to be able to do so in a constitutional fashion. Thanks for joining us. God bless you all.

The hearing is adjourned.

[Whereupon, at 3:26 p.m., the Subcommittee was adjourned.]

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[1] The prepared statement of Ms. Walker appears in the Appendix on page 64.
[2] The letter from Ms. Fagnoni appears in the Appendix on page 69.

APPENDIX

PREPARED STATEMENT OF SENATOR THAD COCHRAN

Mr. Chairman, thank you for calling this very important hearing and allowing me the opportunity to make a few comments in support of congressional reform of the Coal Industry Retiree Health Benefits Act of 1992.

I am gratified that your Subcommittee is willing to bring some needed oversight to the implementation of the Coal Act that has affected people and companies all over the country, including some in my State of Mississippi.

Mr. Chairman, simply stated, the 1992 Coal Act's Reachback Tax has compelled individuals or companies to pay health care benefits for retired union coal miners and their dependents—regardless of whether these companies actually signed contracts promising these benefits.

This prompted my colleagues and me to introduce legislation in July of 1997 to mitigate the inequities associated with the retroactive tax provisions of the Coal Act. Our legislation would ensure the solvency of the Combined Benefit Fund established by the Coal Act and will guarantee retiree health care benefits to approximately 74,000 retired unionized bituminous coal miners, their spouses or widows, and dependents.

Since our bill's introduction, the U.S. Supreme Court ruled in June of this year that the 1992 Coal Act violated both the takings and due process amendments of the constitution in *Eastern Enterprises v. Apfel.* The Court concluded that the Constitution does not grant Congress the ability to reach back over the decades and assess taxes, whether on individuals or companies, simply because they had been party to an expired contract.

While the ruling was limited to the liability of Eastern Enterprises, the Court's decision clearly has significant implications for other companies who have been charged with millions of dollars of retroactive liability. In fact, last week the Social Security Administration notified 149 Reachback companies that they are no longer responsible for payments under the Coal Act.

While retiree health benefits must be maintained, the companies that actually promised lifetime health care benefits to retired miners must be made responsible for payments not the companies that have no contractual obligation and never made such promises.

Thank you again, Mr. Chairman, for calling this hearing and for focusing such badly needed oversight on this issue.

Statement of Senator John D. Rockefeller IV Before the Senate Government Affairs Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia — Hearing on "Agency Management of the Implementation of the Coal Act"

October 6, 1998

Thank you for allowing me to testify before you today on the Coal Act. This law was passed in 1992 in order to protect the health benefits of over 120,000 retired coal miners and their widows who were on the verge of losing their promised health benefits. Senator Specter and I worked hard to pass this bill, and we continue to work hard to protect the benefits it guarantees coal miners.

Before I begin, let me recognize the many coal miners who are in this hearing room today. Their presence is the most compelling testimony available on just how important this Act is to those who labored for years, knee-deep in ice cold water, hunched over in the black pitch of the earth, digging coal to fuel our nation's industrial development. It is for these people that I come here today to tell you that our nation must honor the promise it made of lifetime health benefits for coal miners and their widows.

As the author of the Coal Act, I hope to explain why I believe this Committee and the entire Congress should agree on 3 basic points: 1) the more than 71,000 retired miners and family members who today depend on the Coal Act must not be traded away for the interests of companies who want to be relieved of their responsibilities; 2) these health benefits were promised to these miners when they went into the mines and this sacred promise must be kept; and 3) those of us who support and defend the program have always been open to suggestions to improve it — but we have a moral obligation and a firm historical basis for blocking any effort to help companies get out of their obligations to their former workers.

The Coal Industry Retiree Health Benefits Act, known as the Coal Act, was passed in 1992 with strong bipartisan support in Congress, and with the active support of the Bush Administration. Democrats and Republicans alike agreed that miners and their widows were entitled to the benefits they earned and were promised. This promise was forged by a unique set of circumstances in our nation's history.

Fifty years ago, during President Truman's Administration, miners agreed to mass mechanization and job reductions in a flat exchange for protection of their health and retirement benefits. This deal forged a new national commitment — by both the federal government and employers — to retired miners and their families Fifty years later, I believe it is a promise that we are morally bound to maintain. For this reason, I will fight attempts by any Congress or Administration to weaken the guarantee of Coal Act or take any action that would put miner's health benefits in jeopardy.

The reality, of course, is that this is about far more than simply honoring a deal that

was made several decades ago. It is fundamentally about standing up for families who lived difficult lives, and who labored hard and risked their health and life for the progress of our nation. I understand Mr. Nick Paskovich is here today from Clarksville, Pennsylvania. Mr. Paskovich is just one of the 71,377 miners and widows who rely on the Coal Act. There are tens of thousands like him in Pennsylvania and in my home state of West Virginia. And, in fact, in every single state in our nation there is someone alive today who relies on this program. Mr. Paskovich is 78 years old. He worked in the mines for 43 years and suffers from black lung which requires him to sleep sitting up in a chair so he can breathe. Without the Coal Act, he would not be able to afford the health care he needs to live.

His employer, and every company in the coal industry, knew that health and retirement benefits were for life. Every company that signed a bituminous coal wage agreement made that promise, and every company that signed such an agreement from 1974 had that promise explicitly written in its contract. Mr. Nick Paskovich is what this program is all about, and he and miners like him are who we need to guarantee continued protection to.

I am told Mrs. Mae Shuckhart is also here today. She is a person who should make it plain why the Coal Act must be protected. Mrs. Shuckhart is 67 years old and lives in Nemacolin, Pennsylvania. Her husband, Charles, worked 30 years in the mines. Mr. Shuckhart passed away years ago, but he died knowing that he had taken care of his family through the sweat of his labors — and with the protection of the Coal Act. Mrs. Shuckhart has been diagnosed with cancer, which is currently in remission, but she fears that the cancer could return. Mrs. Shuckhart deserves the peace of mind that comes from knowing her health care benefits will be there when she needs them.

I am here to ask all of my colleagues to join Sen. Specter and myself in fighting for Mr. Paskovich and Mrs. Shuckhart, and for all retired miners and their families, to retain their health security which the Coal Act guaranteed.

The subject of this hearing is about agency implementation of the Coal Act, but I believe that the real concern of some here is the long-time push made by certain so called "reachback companies" to get special relief from their obligations under the Act. As the Chairman is aware, the Finance Committee, on which I serve, has jurisdiction over the Coal Act. I believe Chairman Roth and his ranking member, Senator Moynihan, have written the subcommittee on this issue. The Finance Committee has not chosen to have a hearing on the Coal Act and so the reachback companies have sought other forums like this one.

Some members may believe that the recent Supreme Court decision in *Eastern Enterprise v. Apfel* is a rationale to review or reopen the Coal Act. The way I read the Court's decision, it in fact strongly reaffirms that a promise was made to coal miners that must be kept — and that all reachbacks and signatories from 1988 and later must keep up their end of the promise. The Court only ruled that the Act, as it narrowly applied to Eastern Enterprises, was unconstitutional.

While other courts may rule that similarly situated super reachback companies should also be relieved of their obligation to pay, this is a small subset of payors in the UMWA Combined Benefit Fund, and will not disturb the basic functioning of the Act as intended by Congress. Let me repeat for those retired miners who are concerned about their health benefits — the Coal Act remains in effect and benefits will continue to be paid.

I understand Social Security and the Department of Interior will testify about their management policies as the *Eastern* decision is implemented.

I should remind my colleagues that reachback companies signed coal wage agreements promising lifetime health benefits just as the group of 1988 and later operators did. Nevertheless, a group of reachback companies have consistently appealed to Congress to relieve them of their responsibilities under the Coal Act. While Congress has not supported these requests, over the years there has been legislation introduced that would relieve reachbacks of much, if not all, of their obligations under that Act.

Senator Cochran introduced such a bill which seeks to provide the reachbacks with relief. In my view, and in the view of the United Mine Workers of America, Senator Cochran's proposal would jeopardize the health benefits of the 71,000-plus retired miners and widows who depend on the Act. On that basis alone, I can never support it. Moreover, I cannot support any proposal that would put those companies who are paying for their former employee's health benefits at an unfair competitive disadvantage with competitors who are not paying benefits.

Since the enactment of the Coal Act, various reachback companies have claimed that there was a large and growing surplus in the Combined Benefit Fund and that this surplus should be used to finance a tax break for them. We heard that argument in 1995. Two years later, in 1997, some of the same reachback companies said that there was a large looming deficit in the Combined Benefit Fund and that Congress should reduce their tax obligations under the Act, and at the same time nearly double the taxes on their competitors who signed a 1988 or later coal wage agreement to save the Fund.

I regret to suggest that we should doubt whether the health of the coal miners' trust fund is of any interest to these companies. Most legislation proposed by reachback companies would unfairly relieve major coal, steel and energy companies of their appropriate Coal Act obligations. I'm told ten of our nation's largest companies in these industries would receive almost three-quarters of the $40-50 million of tax relief under proposals like Senator Cochran's. I am adamantly opposed to a corporate tax break at the expense of retired coal miners and their widows. I cannot imagine that any Senator could tell the men and women sitting behind me today that a tax break is more important than protecting people against losing their health benefits.

That does not mean that I don't worry about the short and long term financing of the

Coal Act. We will need to carefully consider the effects of the *Eastern* decision and other court rulings related to the premium rate for Coal Act payors to determine the appropriate way to ensure that coal miners and their widows continue to receive health benefits. I hope to work with my colleagues on this matter.

There is an obvious parallel that I would like to highlight for my colleagues. I am a member of the Medicare Commission which is charged with reviewing the Medicare Trust Fund and finding ways of ensuring its solvency. Just like Medicare recipients, retired coal miners were promised they would have certain health benefits when they retire. For this reason, the fight to protect coal miners' benefits is every bit as important to me as our nation's fight to protect Medicare beneficiaries. Both groups deserve to know that the programs they rely on for their health care will be there when they need them.

On the subject of possible Coal Act amendments, I again would state clearly that my focus is ensuring that miners and their widows are protected first and foremost. If that promise is kept, I am willing to review how we can limit the liabilities of small companies in order to help them meet their obligations. I do not think there are sufficient resources within the Fund to afford that relief, as I had originally proposed in 1995. The financial condition of the Fund has worsened for reasons beyond its control. But if some other financing source were to become available, I would have to seriously review what changes deserve support.

Whatever action we take regarding the Coal Act, my test remains that miners and their families must come first. I suggest that this should be the test for all Members of Congress. As long as I serve in the United States Senate, I will fight to make certain that miners receive the health care that they have been promised, and that they deserve for their contribution to the progress of our nation.

STATEMENT BY
SENATOR KENT CONRAD

Mr. Chairman, I appreciate your willingness to hold this oversight hearing on the state of the UMWA Combined Benefit Fund and the reachback tax. This Subcommittee's action today reflects an understanding of the obligation we all share toward the 74,000 UMWA retirees and their families as well as our commitment to sound and secure financing for their health benefits.

The report to the Fund's trustees last June by Guy King, the former chief actuary for Medicare, only confirmed what many of us have believed for some time. Under even the most optimistic economic assumptions, the Fund's liabilities are going to exceed its assets in Plan Year 2000. There is no question anymore — the 106th Congress will have to act to ensure the security of these benefits. It is my hope that when Congress turns to this important issue, it will find a more equitable way.

Unfortunately, the situation we confront today does not come as a surprise. When the Coal Industry Retiree Health Benefit Act was passed in 1992, the chairman of the Ways and Means Committee at that time observed that it created "numerous inequities among the companies that will be required to pay for these benefits" and created "an unfortunate precedent of legislating a solution to what is in essence a private dispute." He predicted that the Coal Act's "many difficulties" would force the committee to "reconsider this arrangement in the very near future."

Another senior member on the Ways and Means Committee — Jake Pickle, one of the chief architects of the 1983 reforms that kept Social Security from insolvency — criticized the Coal Act as creating a terrible injustice by levying a tax on companies who had left the coal industry to support a benefit plan negotiated by those remaining in the industry who did not want to pay for its cost. Mr. Pickle saw the Act as a bad precedent in the pension area which we would all live to regret.

A number of things have happened in the meantime that show how prescient Chairman Rostenkowski and Mr. Pickle were. Even if the Fund were not facing a fiscal crisis, the Supreme Court, in the case of *Eastern Enterprises* v. *Apfel*, found a major portion of the Coal Act to be unconstitutional. It found that for the Coal Act to reach back to the 1960's to tax companies which had left the bituminous coal industry to pay for miner benefits in the late 1990's was barred by the Constitution.

This is not the time to go into an extensive analysis of the *Eastern Enterprises* decision. However, the facts presented to the Supreme Court illustrate how unfair and inequitable the Coal Act has been in practice. Eastern Enterprises' connection to the coal industry was through its ownership of a coal mining subsidiary — a relationship that was severed in late 1987.

The effect of the Coal Act was to attempt to supplant a private multi-company pension contract under which benefits were paid only by the parties to the contract. Because those parties did not want to pay the full cost, they went to Congress and persuaded us to enact a federal law that laid off a major part of the costs of those retirement benefits on companies who were no longer signatories to the contract and had already left the industry. Looking back on the 12 years I have been a member of the United States Senate, it is difficult for me to think of a more ill-

conceived and shortsighted initiative than the reachback tax.

The Coal Act compounded its unfairness by enforcing its taxes through particularly harsh penalties. At a time when the focus of much of our work in the Finance Committee has been to move away from penalties as a primary enforcement tool, the Coal Act is again out of step.

In prior hearings, we have seen that many small companies are being totally destroyed by the burden of these premiums. The litigation expense relating to the Act's assignments of beneficiaries and other matters has run into the millions of dollars — and in light of the Supreme Court's decision in *Eastern Enterprises*, is it unreasonable to expect even more litigation? I can only conclude that proponents of the current system must believe that endless litigation and perhaps the destruction of a few small companies may be the price we have to pay in order to ensure a safe and secure benefit plan. That is simply not a rational way to make policy.

The facts are plain. Congress will be forced to address this matter again. I believe today's hearing is only the beginning of that process. I look forward to working with the Chairman and any other of our colleagues who are interested in helping the Finance Committee fashion a reasonable framework for a solvent and reliable health benefit plan for these retired miners and their families.

United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510-6375

July 31, 1998

The Honorable Kenneth S. Apfel
Commissioner
Social Security Administration
Baltimore, MD 21235

Dear Commissioner Apfel:

I am writing regarding the implementation of the Eastern Enterprises Supreme Court decision as part of my effort to determine what should next be done under the Coal Act.

We obviously need to preserve the solvency of the Combined Benefit Fund and protect health care benefits for the covered beneficiaries.

As you know, the Supreme Court has held that the payments of the so-called super-reachback companies were unconstitutional. Thus, the continuation of payments by those companies — including 3 Pennsylvania companies, Berwind Corporation, The Hillman Company and Pardee Resources Company — will no longer be available and their claims must be dealt with regarding payments already made.

I am very much concerned about the criteria which your agency will use in making determinations as to the reassignment of beneficiaries. I would further appreciate your providing me with your insight as to the ultimate impact of the Eastern Enterprises decision on the health benefits provided to the retired miners who are beneficiaries under the Coal Act and as to whether legislation is necessary to protect the solvency of the Combined Benefit Fund or deal with other issues arising out of the Eastern Enterprises decision.

I would also be interested to know your thinking on refunds for the super-reachback companies for premiums already paid into the Combined Benefit Fund and what the timetable is for making a decision on that issue.

The Eastern Enterprises decision raises immediate issues as to whether legislation is necessary and what action will be taken on the claims of the super-reachback companies.

Thank you for your assistance in this matter.

Sincerely,

Arlen Specter

AS/ml

SOCIAL SECURITY

Office of the Commissioner
August 10, 1998

The Honorable Arlen Specter
United States Senate
Washington, DC 20510-6375

Dear Senator Specter:

This is in response to your July 31, 1998 letter regarding the United States Supreme Court's decision in Eastern Enterprises v. Apfel, et al. We appreciate your concern for the miners covered by the Coal Act and the continued funding of their health benefits under the Act.

Due to its complexity and potential impact, we are working closely with the Department of Justice (DOJ) on the implementation of the Supreme Court's decision. As a result of these discussions, we have already decided to void the assignments to some of the companies, one of which is Eastern Enterprises, that did not sign United Mine Workers of America (UMWA) coal wage agreements after 1974, and whose cases are currently in litigation. Our intention is to place all voided assignments into the unassigned pool, until a permanent decision can be made on placement, in order to ensure the continued funding of the health benefit plans.

We are reviewing the remaining cases currently in litigation to determine the impact of the Eastern decision on them. Based on our review, the assignments in those cases that fall squarely within the parameters of the Eastern Enterprises decision will also be voided. As to assignments that are not currently in litigation, we are awaiting further guidance from DOJ before we proceed. We want to make sure that the Eastern decision is implemented in a consistent and equitable manner.

Since the Social Security Administration has no authority regarding the refund of premiums, I would suggest that your question regarding the refund be directed to the UMWA Combined Benefit Fund which is responsible for the collection of the premiums and the operation of the Fund.

Please do not hesitate to call me with any additional concerns.

Sincerely,

Kenneth S. Apfel

Kenneth S. Apfel
Commissioner
of Social Security

United States Senate
COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510-6375

July 31, 1998

Mr. Michael Holland
Chairman, Board of Trustees
UMWA Health and Retirement Funds
445 Connecticut, NW
Washington, DC 20008

Dear Mr. Holland:

I am writing regarding the implementation of the Eastern Enterprises Supreme Court decision as part of my effort to determine what should next be done under the Coal Act.

We obviously need to preserve the solvency of the Combined Benefit Fund and protect health care benefits for the covered beneficiaries.

As you know, the Supreme Court has held that the payments of the so-called super-reachback companies were unconstitutional. Thus, the continuation of payments by those companies — including 3 Pennsylvania companies, Berwind Corporation, The Hillman Company and Pardee Resources Company — will no longer be available and their claims must be dealt with regarding payments already made.

I am very much concerned about the criteria which your agency will use in making determinations as to the reassignment of beneficiaries. I would further appreciate your providing me with your insight as to the ultimate impact of the Eastern Enterprises decision on the health benefits provided to the retired miners who are beneficiaries under the Coal Act and as to whether legislation is necessary to protect the solvency of the Combined Benefit Fund or deal with other issues arising out of the Eastern Enterprises decision.

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The Eastern Enterprises decision raises immediate issues as to whether legislation is necessary and what action will be taken on the claims of the super-reachback companies.

Thank you for your assistance in this matter.

Sincerely,

Arlen Specter

AS/ml

UMWA HEALTH AND RETIREMENT FUNDS
4455 Connecticut Avenue, NW • Washington, DC 20008 • *Telephone:* (202) 895-3700

October 6, 1998

Senator Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

This is a further response to your letter of July 31, 1998 in which you inquired about implementation of the Eastern Enterprises decision.

You inquired about the criteria to be used in reassigning beneficiaries. As you know, the Combined Benefit Fund does not assign or reassign beneficiaries under the Coal Act. That function is assigned to the Social Security Administration ("SSA"). We are advised that the SSA has voided the assignments of beneficiaries formerly assigned to 124 coal industry operators. A list of these operators is attached.

You further asked for our insight as to the ultimate impact of the Eastern Enterprises decision on the health benefits provided to retirees under the Coal Act and whether legislation is necessary to protect the solvency of the Combined Benefit Fund or to deal with other issues arising out of the Eastern Enterprises decision. We are enclosing a copy of the latest actuarial report, prepared by Roland E. King, an independent actuary retained as a consultant to the Combined Fund. Mr. King concludes that the Combined Fund will begin to have a net deficit position in the year 2000, irrespective of the effect of the Eastern decision. The financial effects of Eastern are difficult to predict at this time, except to observe that the decision, and SSA's action pursuant to it, results in a smaller number of employers contributing premiums to the Combined Fund.

Finally, you expressed interest in our thinking on refunds for the "super-reachback" companies for premiums already paid and in the timetable for making decisions on this issue. The Combined Fund will make refunds promptly to those companies who are entitled to them. There are some issues relating to refunds that remain to be decided, however. These relate to the status of employers against whom the Combined Fund obtained final judgments or settlements prior to the Eastern decision and whether premiums paid by these companies should be refunded. These issues are or soon may be in litigation and are under further review by the Trustees.

Sincerely,

Michael H. Holland
Co-Chairman
UMWA Combined Benefit Fund

MHH:as
(w\lvens\Sen.Specter)

Attachment

Company Assignments Voided by the Social Security Administration September, 1998

1 A B LONG QUARRIES, INC.
2 A K P COAL CO.
3 ACTAVA GROUP, INC. (THE)
4 ALABAMA POWER COMPANY
5 ALTA RESOURCE GROUP
6 AMERICAN PREMIER UNDERWRITERS
7 ANDERSON BROS COAL CO
8 ARCADIA COMPANY, INC.
9 B & M COAL CO.
10 BARNETTE (GEORGE) COAL CO.
11 BEECH GROVE MINING
12 BENJAMIN COAL CO.
13 BLACK HAWK COAL CO.
14 BLUE DIAMOND COAL CO.
15 BOC GROUP, INC./GASPRO
16 BONANZA COAL COMPANY, INC.
17 BRIDGEVIEW COAL CO
18 BRYNER CLINIC
19 BURLINGTON NORTHERN RAILROAD
20 BUTLER CONSOLIDATED COAL CO.
21 C & H COAL & COKE
22 C R & R TRUCKING CO., INC.
23 CALAVERAS PORTLAND CEMENT CO.
24 CAMBRIA MILLS COAL CO.
25 CANE PATCH CREEK CO.
26 CARDIFF COAL CO.
27 CENTENNIAL DEVELOPEMENT CO.
28 CHESS COAL CO.
29 CHRISTIAN COLLIERY CO.
30 COLLINS FUEL CO.
31 COLOWYO COAL CO.
32 COLT INDUSTRIES, INC
33 CONSOLIDATED FUEL CO., INC.
34 COONEY BROS COAL CO.
35 DAVON, INC
36 DEER FIELD COAL CO.
37 DESROSIERS BROTHERS
38 DIXIE FUEL CO OF PREMIUM INC
39 DIXIE PINE COAL
40 DRYDOCK COAL CO.
41 EASTERN ENTERPRISES
42 ELK HORN COAL CORP., INC.
43 FAYETTE FUEL CO.
44 FERKO,JR JOHN J
45 FERNDALE MINING CO.
46 FKG OIL COMPANY
47 FORSYTH CARTERVILLE COAL CO.
48 FRANK CALANDRA, INC.
49 FREEPORT BRICK CO.
50 FRESA CONSTRUCTION CO., INC.
51 GATLIFF COAL COMPANY
52 GAY COAL AND COKE CO. (THE)
53 GENT BROS COAL CO.
54 GLEN-GERY CORP.
55 H & W COAL COMPANY
56 H & W COAL COMPANY
57 HARBAUGH DIESEL ENGINE CO INC
58 HARLAN FUEL CO., INC.
59 HAWKINS COAL CO.
60 HAZARD MINING CO.
61 HELM COAL COMPANY
62 HILLMAN COAL & COKE COMPANY
63 HILLMAN COMPANY & SUBS
64 HOCKING VALLEY MINING CO.
65 HOLBROOKS MINING CO.
66 J.R.M. COAL COMPANY
67 JACK W TURNER - TURNER COAL CO
68 JOHN E SAUL
69 JOHNSON ELKHORN COAL CO INC
70 JOHNSTOWN COAL & COKE CO.
71 KARST & ROBBINS COAL CO., INC.
72 KARST & ROBBINS COAL CO., INC.
73 KELLICO, INC.
74 KESSLER PLASTERING CO., INC.
75 KITTANNING BRICK CO.
76 KNISELEY COAL COMPANY
77 KODAK MINING CO., INC.
78 L C COAL CO.
79 L G WASSON COAL MINING CORP.
80 LINDSEY COAL MINING CO.
81 LOGAN CLAY PRODUCTS
82 LONE STAR STEEL CO
83 LOUISVILLE GAS & ELECTRIC CO
84 LYNN CAMP COAL CORP.
85 M & A COAL MINING CO., INC.
86 MARIAH HILL SUPER BLOCK COAL C
87 MARSOLINO CONSTRUCTION CO INC
88 MARY HELEN COAL CORP., INC.
89 MASTELLER COAL CO.
90 MORRIS RUN MINING CO.
91 MORRISON KNUDSON CORP.
92 NORFOLK AND WESTERN RY CO.
93 P & N COAL COMPANY, INC.
94 P P G INDUSTRIES & SUB
95 PARDEE RESOURCES COMPANY
96 PATSY JANE COAL CORP.
97 PENNSYLVANIA COAL & COKE CORP.
98 PENNSYLVANIA ELECTRIC CO.
99 PHELPS DODGE
100 PHELPS DODGE MORENCI, INC.
101 PRESTON COUNTY COAL & COKE COR
102 PRINCETON MINING CO.
103 ROCKET COAL CO., INC.
104 ROSEDALE COAL CO.
105 S J GROVES & SONS CO.
106 SAGER COAL COMPANY
107 SHERWOOD-TEMPLETON COAL CO INC
108 SIZEMORE MINING CORP.
109 SMALLWOOD & SON COAL CO
110 SOUTH EAST COAL CO., INC.
111 STANDARD BANNER COAL CORP.
112 STEARNS CO LTD
113 TASA CORP.
114 TEMPLETON COAL CO.
115 TRACE BRANCH COAL CO., INC.
116 TRI-K MINING COMPANY
117 UNION PACIFIC CORP.
118 VERNICE DAY JR FIRST CENTER
119 VIRGINIA LEE CO., INC.
120 WEST PENN POWER CO.
121 WESTMORELAND MINING CO.
122 WILBUR E TATE RIDGE COAL CO 13
123 WILLIAMS ENTERPRISES COAL CO.
124 YOCUM CREEK COAL CO.

UMWA Health and Retirement Funds

Combined Benefit Fund

Actuarial Projections
1998-2007

Prepared by King Associates
June 17, 1998

TABLE OF CONTENTS

I. Overview.

King Associates was engaged by the Board of Trustees of the United Mine Workers of America ("UMWA") Combined Benefit Fund to assist in the projection of long term revenue and expenses. This report analyzes revenue and expenses related to funding the health and death benefits of the approximately 74,000 covered beneficiaries of the Combined Fund. This report is intended for the sole use of the Board of Trustees.

The operations of the Fund are governed by the provisions of the Coal Industry Retiree Health Benefit Act of 1992. The Combined Fund is the result of a merger of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. The administrative staff of the UMWA Funds provided historical claim and enrollment data, Medicare reimbursement information, administrative expense data and plan documents.

II. Executive Summary.

Projections were developed for scenarios to illustrate the impact of particular changes in the operations of the Fund. In addition to the Baseline Scenario, this report includes projections for three alternatives to the Baseline Scenario. The first alternative to the Baseline Scenario assumes a four percent reduction in expenditures for medical benefits and a four percent savings under the Medicare Part A demonstration project; the second alternative assumes an eight percent reduction in expenditures for medical benefits and an eight percent savings under the Medicare Part A demonstration project; the third alternative assumes a twelve percent reduction in expenditures for medical benefits and a twelve percent savings under the Medicare Part A demonstration project. These scenarios are explained in more detail in Section III, "Development of the Projections" and Section IV, "Differences in the Four Scenarios."

All projections are on an accrual basis. The Baseline Scenario was based on expected mortality, morbidity, and levels of revenues and expenditures. The alternative scenarios incorporated the same assumptions as the Baseline scenario except for the changes specifically noted. The alternative scenarios are presented not to illustrate the full range of uncertainty in the projections but to illustrate the impact of specific changes in the operations of the Combined Fund.

Under the Baseline Scenario, the Fund balance at the end of Fiscal Year 2007 is projected to be a negative $619 million. Under the 4% Savings Scenario, the Fund balance at the end of Fiscal Year 2007 is projected to be a negative $438 million. Under the 8% Savings Scenario, the Fund balance at the end of Fiscal Year 2007 is projected to be a negative $256 million. Under the 12% Savings Scenario, the Fund balance at the end of Fiscal Year 2007 is projected to be a negative $107 million. Under all four scenarios, liabilities are first projected to exceed Fund assets in Plan Year 2000.

III. Development of the Projections.

Detailed trust fund projections of the financial impact on the Combined Fund of each of the four scenarios are displayed in Section V. The assumptions and methods described below were used to develop the projections for each of the scenarios. Each assumption represents a projection of the most likely future outcome. Projections respecting the Combined Benefit Fund, like all projections, are subject to projection error. There is a greater than normal degree of uncertainty in projections for the UMWA Combined Benefit Fund that is due primarily to certain circumstances affecting the revenue for the Fund. The AML transfer is subject to several different limits, and these can affect the unassigned premiums. Assigned premiums are subject to the possibility of changes in the number of assigned beneficiaries and to the rate of payment delinquency by assigned operators. In documenting the assumptions used in the projections below, the text explains the justification for using each assumption as the most likely future outcome.

A. General Assumptions:

1. **Economic and Health Care Inflation Assumptions.** All of the economic and health care assumptions underlying this report are based upon those used in the 1998 Annual Report of the Board of Trustees of the Federal Supplementary Medical Insurance (SMI) Trust Fund. This report reflects the projected impact of the Balanced Budget Act (BBA) of 1997. Use of these assumptions should not be interpreted to mean that trend factors or other assumptions from the SMI Trustees report were used which are not applicable to the Combined Fund population. The projections reflect, in all respects, the specific demographic makeup and health care characteristics of the population covered by the Combined Fund. The use of modified SMI Trustees' Report projections provides a consistent basis for projecting medical inflation rates and Medicare trend factors which affect specific aspects of the income to the Combined Fund.

2. **Population Projections.** Base year population figures for October 1, 1997 were used for UMWA Combined Fund beneficiaries distributed by age, sex, assigned status, and Medicare status. The population was aged to each year from 1998 through 2008 using a mortality assumption developed from a previous analysis of the specific mortality experience of the UMWA Combined Fund beneficiaries. The projections also reflect an assumption that beneficiaries under the age of 22 would lose eligibility for benefits when they reached the age of 22.

3. **Mortality Assumption.** All scenarios in this projection incorporate mortality assumptions of 96.6% of the US Life Table for Medicare eligible beneficiaries and 151% of the US Life Table for non-Medicare eligible beneficiaries. These assumptions are consistent with the previous mortality experience of Combined Fund beneficiaries.

4. **Development of Medical Costs.** A per capita claim assumption developed from an examination of Combined Fund claims costs was used for both Medicare and non-Medicare beneficiaries for sex and age group categories. The following annual per capita medical claim cost assumptions were trended forward to produce projected gross medical claim costs:

	MEDICARE		NON-MEDICARE	
AGE	MALE	FEMALE	MALE	FEMALE
Under 22	$1,860	$1,353	$862	$893
22-29	2,029	1,691	913	2,029
30-34	2,198	1,860	1,353	3,044
35-39	2,368	2,029	2,029	3,720
40-44	2,435	2,029	3,368	3,994
45-49	2,537	2,368	2,706	3,998
50-54	2,833	2,960	3,213	3,858
55-59	3,076	4,600	3,584	3,845
60-64	3,436	4,539	2,976	4,731
65-69	3,114	3,028	4,566	5,073
70-74	3,289	3,221	4,904	5,412
75-79	3,425	3,347	5,242	5,750
80-84	3,594	3,563	5,581	6,088
85-89	3,775	3,775	5,919	6,426
90+	4,128	3,673	6,426	6,764

5. **Development of Trend of Increase in Medical Costs.** The staff of the UMWA Health and Retirement Funds provided aggregate trend data for the eleven-year period 1987 through 1997. Aggregate trend over the period for gross health expense per capita was a 6.8% annual increase. In 1993, the Combined Fund actually experienced a 8.4% reduction in per capita trend due to changes in provider reimbursement. Excluding the 1993 experience results in a gross health expense per capita trend of 8.5%.

   To project future plan trend, the Combined Fund's experience was compared to the experience of Medicare's aged population in general and assumed that past differentials would continue in the future. Excluding the 1993 experience, it was observed that the Combined Fund's trend was 0.2% higher than the Medicare aged trend experience. The Combined Fund's trend was 0.9% lower than the Medicare aged trends when the 1993 results were included. Under the assumption that the one time reduction which was achieved in 1993 would be difficult to replicate in the future, the projection incorporated the 0.2% positive margin in the future. An adjustment was made for medical trend in FY 1998 to reflect the Combined Fund's most recent experience. The chart below summarizes the trend assumptions used in the projections.

Trend Projection Assumptions

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Medicare Aged	10.6%	8.8%	7.0%	7.9%	4.8%	5.5%	7.2%	7.9%	6.8%	7.0%
Adjusted Medicare Aged*	10.4%	8.6%	6.8%	7.7%	4.6%	5.3%	7.0%	7.7%	6.6%	6.8%
Trend Projection#	8.0%	8.8%	7.0%	7.9%	4.7%	5.5%	7.2%	7.9%	6.8%	7.0%

*The Medicare Aged trend factors include an assumption of 0.2% trend for demographic aging which would be inappropriate to include for projection purposes.

#The trend projection represents the projected increase in the per capita gross medical benefit cost for a Combined Fund beneficiary.

B. Expense Assumptions and Calculations:

1. **Medical Benefits.** Gross medical benefits of the Combined Fund were developed for each year of the projection period by applying the projected per capita benefits for each demographic category to the projected population for that category. Paragraph 4 of Section A, "Development of Medical Costs" and paragraph 2 of Section A, "Population Projections" describe the assumptions and methodology in more detail. The projected per capita benefits were trended forward to the appropriate year using the trend factors developed in accordance with the method described in paragraph 5 of Section A, "Development of Medical Trend."

2. **Death Benefits.** Death benefits were estimated for each year of the projection period by the application of the mortality rates, developed as described in Paragraph 3 of Section A, "Mortality Assumption," to the projected population for the specific year. A death benefit of $5,000 is payable to a surviving beneficiary and a death benefit of $4,000 is payable to the estate of the deceased if there is no surviving beneficiary. Based on an analysis of the past experience, the projections assume that the $5,000 death benefit will be payable in 75 percent of the cases and the $4,000 death benefit will be payable in the other 25 percent of the cases.

3. **Administrative Expenses.** Administrative expenses were projected as the average of the following two scenarios: Under the first scenario, administrative expenses per beneficiary were assumed to remain at the same level as in Fiscal Year 1995. Under the second scenario, administrative expenses in aggregate were assumed to remain at the same level as in Fiscal Year 1995. The resulting projections represent a reasonable mix of administrative costs that a) vary according to the number of beneficiaries covered by the Fund, and b) are constant regardless of the number of beneficiaries covered by the Fund.

4. **Borrowing Cost.** Borrowing cost has been estimated using a 6 percent interest assumption on the projected balance of the Fund. Borrowing cost occurs only when the Fund balance is negative.

C. Income Assumptions and Calculations:

1. **Health Benefit Premiums.** The staff of the UMWA Health and Retirement Funds provided data on the per capita premiums already determined for FY1996 and FY 1997. These premiums were determined in accordance with the decision of the United States District Court for the Northern District of Alabama in National Coal Association v. Chater. Premiums were projected for all years through FY 2007 using a projection of the MCPI (Medical Care Component of the Consumer Price Index). As indicated earlier in this memorandum, this projection is based upon the assumptions used in the 1998 Annual Report of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund. The SMI Trustees' Report does not

directly project the increase in the MCPI, but, rather, projects the physician fee component of the CPI. An adjustment to establish the level of the MCPI for these projections was based on an analysis of the relationship of the physician fee component of the CPI to the MCPI over several recent years. The two indexes are highly correlated, except that the MCPI generally increases 0.3 percentage points faster than the physician fee component of the CPI. Thus, 0.3 percent was added to the increase in the physician fee component of the CPI for a projection of the MCPI. The table below shows the resulting projections of per capita premiums.

HEALTH BENEFIT PREMIUMS
Fiscal Year

1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
$2,343	$2,432	$2,534	$2,649	$2,781	$2,923	$3,075	$3,235	$3,406	$3,590

These per capita premiums were multiplied by the projected assigned population at the beginning of each Fiscal Year to arrive at a projected aggregate premium estimate for each year in the projection period. A premium delinquency rate of ten percent has occurred since the inception of the Combined Fund, and it appears that this delinquency rate has not decreased. Note, however, that the Fund is enforcing a rigorous delinquency collection program. This collection program makes it reasonable to assume that the delinquency rate will decrease from past levels. On the basis of consultations with the Funds' staff, the projections reflect a reduced delinquency rate of 3 percent for years after 1997. In the event that any of the delinquent operators goes completely out of business and related business entities do likewise, the Coal Act provides for the assigned beneficiaries of such operators to be designated unassigned beneficiaries and their premiums pro-rated to the remaining assigned operators. However, this form of increase in premiums to assigned operators takes effect only if the AML Transfer (discussed in a later paragraph) is inadequate to cover the premiums for unassigned beneficiaries. Under the baseline projections, this premium increase does not come into effect until 2005, after the authority for the AML transfer expires. Thus the Medical Premiums for 2005 in the attached scenarios include unassigned beneficiary premiums resulting from the expiration of authority for the AML transfer.

Death Benefit Premiums. The Act requires that death benefit premiums be based upon the actuarially determined death benefits that the Combined Fund will be required to pay during the plan year. Therefore, the annual projected death benefit premium is equal to the projected death benefits paid in each plan year.

Unassigned Beneficiary Premiums. Unassigned beneficiary premiums are payable only when the 1950/AML Transfer is inadequate to cover the cost of the unassigned beneficiary premium. This does not occur until 2005, when the authority for the AML transfer sunsets. As indicated in Paragraph 1, "Health Benefit Premiums,"

unassigned beneficiary premiums received in 2005 are included with Medical Premiums in the attached scenarios.

4. **Medicare Capitation Payments.** The Combined Fund demonstration project with the Medicare program covers all Medicare Part B services that are paid for by the Medicare Program through its Part B carriers. Thus, it covers all Medicare Part B services with the exception of outpatient hospital and home health services. The capitated payment has been set for the period through June 30, 1998. For periods after 1998, if the demonstration were to continue under provisions similar to those now in place, the demonstration would require that the payment be increased by the increase in the cost of those Medicare Part B services covered by the demonstration except that an adjustment is made to increase the capitation payment for the aging of the Fund's population rather than the aging of the Medicare population. The projection of the medical benefit component of the capitation payment uses the increases in the cost of Medicare Part B services covered by the demonstration as projected in the 1998 SMI Trustees' Report. These increases have been adjusted to remove the impact of the aging of the Medicare population and to substitute the aging of the UMWA Combined Fund population to estimate payments for each plan year through 2007. The administrative cost component of the payment was increased by 3.5 percent per year. The aggregate Medicare capitation income for each year is the product of the annual capitation payment for that year and the average number of Medicare-eligible UMWA Combined Fund beneficiaries in that year. The annual capitation payments, per Medicare-eligible Combined Fund Beneficiary, projected using this methodology are shown in the table below. To the extent that total capitation payments under the ongoing Part B portion of the demonstration exceed costs, these revenues are included explicitly in the projections.

ANNUAL MEDICARE CAPITATION PAYMENTS
YEAR ENDING JUNE 30

1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
$1,835	$1,994	$2,134	$2,301	$2,422	$2,565	$2,749	$2,964	$3,158	$3,370

5. **Medicare Part A Risk Contract Settlements.** The Fund has contracted with the Health Care Financing Adfiinistration (HCFA) for a demonstration project which expands to involve all Medicare services, including those covered by Part A of Medicare and paid through Medicare Part A intermediaries. The revenues under the expanded Part A portion of the demonstration are expected to exceed costs slightly during the first 18 months of the demonstration and to be somewhat less than costs during the ensuing twelve months. During the entire period of the demonstration, revenues are expected to exceed costs by less than one million dollars annually in the absence of reductions in expenditures for medical benefits.

6. **DOL Black Lung Transfer.** The Combined Fund receives an annual transfer from the DOL Black Lung program to reimburse the cost of DOI. Black lung benefits which

paid by the Combined Fund. The DOL Black Lung benefits, and the associated transfer, were projected as a constant percent (2.3 percent) of benefits paid by the Combined Fund for Medicare beneficiaries.

7. **1950/AML Transfer.** Three transfers of $70 million each from the 1950 UMWA Pension Plan were authorized by the 1992 legislation. The last of these transfers occurred on October 1, 1994. Future transfers from the Abandoned Mine Reclamation (AML) Fund are very complex, because they affect the unassigned premiums, and because the AML transfer itself is subject to limitations. The authority for the transfer sunsets on September 30, 2004. After that date, the unassigned beneficiary premium will begin to be paid by assigned operators.

   There are two limitations on the AML transfer. First, the amount transferred from the AML Fund to the Combined Fund in any year cannot exceed the expenditures of the Combined Fund that were charged to the unassigned premium account for that year. For purposes of these projections, this limitation has been interpreted to mean that the amount transferred in any year cannot exceed the expenditures of the Combined Fund for unassigned beneficiaries in that year, other than expenditures by the Combined Fund for unassigned beneficiaries for medical services covered by Medicare Part B or the DOL Black Lung program. The limitation has been interpreted in this manner because the Medicare Part B and Black Lung services are not obligations of the Combined Fund. Rather, they are obligations of the Medicare SMI Trust Fund and the DOL Black Lung Program which, for administrative convenience, are being paid through the Combined Fund.

   The amount of this limitation for each year was estimated by assuming that the proportion of Medicare and DOL Black Lung benefits for unassigned Medicare-eligible beneficiaries is the same as for assigned Medicare-eligible beneficiaries. Using this method, the projections include an estimate that 39.3 percent of all benefits paid by the Combined Fund for Medicare-eligible unassigned beneficiaries are for medical services covered by Medicare Part B or the DOL Black Lung Program. Based on this estimate, the projections show that this first limitation will operate to limit the AML transfer in every year through 2004. The projections reflect the assumption that the AML transfer in every year through 2004 (i.e., through September 30, 2004, when the AML transfers sunset) will be limited by the expenditures of the Combined Fund charged to the unassigned premium account, other than expenditures by the Combined Fund for unassigned beneficiaries for medical services covered by Medicare Part B or the DOL Black Lung Program. Moreover, the projections indicate that the funds that are available for AML transfers and that fall within this limitation are more than adequate to cover the unassigned beneficiary premiums, so the projections do not require that any unassigned beneficiary premiums will be paid into the Combined Fund through September 30, 2004. However, for the plan year 2005, the projections reflect an anticipation that assigned operators will be billed for the first time for unassigned beneficiary premiums. In the attached scenarios, the additional anticipated premiums are reflected in the line for Medical Premiums for that year.

Second, the AML transfer is also limited by the amount of interest earned by the AML Fund. There are two components of this limitation: (a) Yearly Limitation. For any given year, the AML transfer is limited to the interest earnings of the AML Fund for the year or $70 million, whichever is greater. (b) Cumulative Limitation. For all years combined, the transfers from the AML Fund, exclusive of the interest earned by the AML Fund, cumulatively cannot exceed the interest earned by and paid to the AML Fund after September 30, 1992 and before October 1, 1995. Members of the staff of the UMWA Health and Retirement Funds have conferred with representatives of the Department of the Interior who manage the AML Fund. Based on the estimates of these staff members, there is no reason to believe that either the yearly or cumulative limitation will come into play, and, therefore, these limitations have not been factored into the projections.

8. **Investment Income.** Investment income has been estimated using a 6 percent interest assumption on the projected balance of the Fund.

9. **Evergreen and Other Income.** After consultation with the staff of the UMWA Health and Retirement Funds, a number of assumptions were made regarding Evergreen and other income. Income arising from the settlement of Evergreen litigation has been virtually exhausted. However, there are other miscellaneous small sources of income such as COBRA premiums, receipts from withdrawn operators, first year contributions from 1988 agreement operators, and contributions for delinquencies before February 1, 1993. In aggregate, these miscellaneous sources of income amount to less than $1 million annually.

IV. Differences in the Four Scenarios.

In addition to the Baseline Scenario, the projections include three alternatives to the Baseline Scenario. The first alternative to the Baseline Scenario assumes a four percent reduction in expenditures for medical benefits, including services covered by the Medicare Part B component of the demonstration and a four percent savings under the Medicare Part A component of the project. The second alternative assumes an eight percent reduction in expenditures for Part B medical benefits and an eight percent savings under the Medicare Part A component of the demonstration project. The third alternative assumes a twelve percent reduction in expenditures for Part B medical benefits and a twelve percent savings under the Medicare Part A component of the demonstration project. The paragraphs below discuss how the three alternatives differ from the Baseline Scenario in each component of the Fund projection.

Under the Part B component of the Medicare Demonstration project, the Fund receives a nationally established monthly Part B capitation payment for each Medicare beneficiary and is fully at risk for the services that payment is meant to cover. Under the Part A component, the Fund shares risk on a limited basis with the Health Care Financing Administration (HCFA) within prescribed corridors established around geographic area-specific target rates. All savings or losses within two percent of the target rate accrue entirely to HCFA. The next ten percent of savings or losses are shared equally by the Funds and HCFA. Savings or losses beyond the twelve percent level again accrue entirely to HCFA.

Under the alternative savings scenarios, reductions in medical benefit expenditures of the Combined Fund are assumed to be four percent, eight percent, and twelve percent, respectively. The same reductions are assumed to occur in Medicare Part A expenditures under the demonstration project. Because of the Part A risk sharing arrangement between the Funds and HCFA, these levels translate to effective savings rates of one percent, three percent, and five percent.

Payments from HCFA representing the Combined Fund share of savings under the demonstration are shown as Part A Risk Contract Settlements. The projected payments are consistent with the phasing in of the pilot areas according to the terms of the demonstration and, in the pilot areas, are expected to amount to one percent, two percent, and three percent, respectively, in 1999 and four percent, eight percent, and twelve percent, respectively, in 2000 and later. Part A savings will be allocated in the manner described above. The settlements are expected to be paid to the Combined Fund during the Fiscal Year following the year in which the savings occurs.

V. Appendix

Operations of the Fund. These projections reflect King Associates' interpretation of the provisions of the Coal Industry Retiree Health Benefit Act of 1992, which governs the operations of the fund. The interpretation of the provisions of the Act was based upon a reading of the legislation supplemented by discussions with the Funds staff. King Associates provides its interpretation of the various provisions of the Act which govern the operations of the Fund in the documentation of the various elements of the projections. It should be noted that negative fund balances are hypothetical, since the legislation requires that payment rates be set so that aggregate payments do not exceed total premium payments with certain adjustments.

UMWA Combined Benefit Fund

Baseline Scenario

Fund Projection	1997 Actual	1998	1999	2000	2001	2002
Beginning Fund Balance	$111,086,000	$95,517,000	$52,203,706	$4,101,071	($52,561,486)	($115,082,957)
Expenses						
1. Medical Benefits	$328,363,000	$344,444,436	$350,051,972	$348,766,942	$349,346,794	$338,554,327
2. Death Benefits	$10,919,000	$10,389,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
3. Administrative Expense	$26,532,000	$25,036,987	$24,277,660	$23,535,370	$22,814,721	$22,122,852
4. Total	$365,814,000	$379,871,361	$384,205,081	$381,648,015	$380,968,232	$368,940,443
Income						
1. Medical Premiums	$151,499,000	$139,449,206	$135,254,907	$131,233,630	$127,262,619	$123,638,176
2. Part A Risk Contract Settlements		$380,969	$470,407	($3,344,975)	$870,410	$862,733
3. Death Benefit Premiums	$10,896,000	$10,389,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
4. Medicare Capitation	$130,997,000	$136,346,717	$127,796,463	$127,785,729	$127,363,293	$124,575,590
5. DOL Black Lung	$5,905,000	$7,213,081	$7,361,885	$7,370,071	$7,421,763	$7,235,146
6. 1950 / AML Transfer[1]	$42,138,000	$45,043,634	$47,613,509	$46,905,622	$46,436,008	$44,565,777
7. Investment/(Borrowing Cost)	$8,455,000	$7,207,757	$7,412,890	$4,382,166	($12,257)	($2,055,677)
8. Other Income / Evergreen	$355,000	$326,764	$316,936	$307,513	$298,308	$289,715
9. Total	$350,245,000	$336,558,067	$336,102,446	$324,985,458	$318,446,760	$307,374,725
Ending Fund Balance	$95,517,000	$52,203,706	$4,101,071	($52,561,486)	($115,082,957)	($176,648,674)

Fund Projection	2003	2004	2005	2006	2007
Beginning Fund Balance	($176,648,674)	($241,954,585)	($312,711,958)	($409,271,124)	($510,886,765)
Expenses					
1. Medical Benefits	$329,593,935	$325,039,651	$321,720,713	$314,293,031	$306,470,424
2. Death Benefits	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
3. Administrative Expense	$21,461,352	$20,832,463	$20,333,403	$19,667,685	$19,131,077
4. Total	$358,747,470	$353,028,810	$348,683,212	$340,073,057	$331,215,907
Income					
1. Medical Premiums	$119,872,944	$116,002,639	$136,294,716	$132,284,964	$126,771,755
2. Part A Risk Contract Settlements	$848,309	$845,729	$844,699	$833,667	$832,404
3. Death Benefit Premiums	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
4. Medicare Capitation	$122,213,902	$120,573,748	$118,788,378	$115,727,194	$112,839,494
5. DOL Black Lung	$7,070,774	$6,982,791	$6,923,229	$6,777,912	$6,633,378
6. 1950 / AML Transfer[1]	$43,001,617	$42,062,123	$0	$0	$0
7. Investment/(Borrowing Cost)	($7,539,062)	($11,624,112)	($17,775,446)	($23,588,638)	($29,773,071)
8. Other Income / Evergreen	$280,892	$271,823	$319,373	$309,977	$297,058
9. Total	$293,441,559	$282,271,438	$252,024,045	$238,457,416	$223,215,425
Ending Fund Balance	($241,954,585)	($312,711,958)	($409,271,124)	($510,886,765)	($618,887,348)

[1] AML Transfer is limited to the costs of unassigned beneficiaries. The amount of the Fiscal Year 1996 and 1997 AML Transfers was estimated. The Fiscal Year 1998 AML Transfer includes an adjustment of ($2,081,028) for 1996 and 1997, which represents the difference between current cost estimates and amounts transferred in 1996 and 1997 for unassigned beneficiaries.

UMWA Combined Benefit Fund

4% Savings Scenario

Fund Projection	1997 Actual	1998	1999	2000	2001	2002
Beginning Fund Balance	$111,086,000	$95,517,000	$52,203,706	$7,126,076	($36,756,794)	($79,355,055)
Expenses						
1. Medical Benefits	$328,363,000	$344,444,436	$346,551,452	$334,816,264	$335,372,922	$325,012,153
2. Death Benefits	$10,919,000	$10,389,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
3. Administrative Expense	$26,532,000	$25,036,987	$24,377,660	$23,535,370	$22,814,721	$22,122,852
4. Total	$365,814,000	$379,871,361	$380,704,561	$367,697,337	$366,994,360	$355,398,269
Income						
1. Medical Premiums	$151,499,000	$139,449,206	$135,254,907	$131,233,630	$127,263,619	$123,638,176
2. Part A Risk Contract Settlements		$580,969	$470,407	($1,806,062)	$7,676,816	$7,609,455
3. Death Benefit Premiums	$10,896,000	$10,389,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
4. Medicare Capitation	$130,997,000	$126,346,717	$127,796,462	$127,785,729	$127,363,293	$124,575,590
5. DOL Black Lung	$5,905,000	$7,213,081	$7,288,266	$7,075,268	$7,124,892	$6,945,741
6. 1950 / AML Transfer[1]	$42,138,000	$45,043,634	$47,137,374	$45,029,397	$44,578,567	$42,783,146
7. Investment(Borrowing Cost)	$8,455,000	$7,207,757	$7,487,129	$4,843,290	$1,304,986	$447,907
8. Other Income / Evergreen	$355,000	$326,764	$316,936	$307,513	$298,208	$289,715
9. Total	$350,245,000	$336,558,067	$335,626,931	$322,814,467	$324,416,099	$314,552,994
Ending Fund Balance	$95,517,000	$52,203,706	$7,126,076	($36,756,794)	($79,355,055)	($120,180,331)

Fund Projection	2003	2004	2005	2006	2007
Beginning Fund Balance	($120,180,331)	($163,930,665)	($212,000,688)	($282,868,373)	($357,638,649)
Expenses					
1. Medical Benefits	$316,410,178	$312,038,065	$308,851,884	$301,721,310	$294,211,607
2. Death Benefits	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
3. Administrative Expense	$21,461,352	$20,832,463	$20,233,403	$19,667,685	$19,131,077
4. Total	$345,563,713	$340,027,224	$335,714,383	$327,501,336	$318,957,090
Income					
1. Medical Premiums	$119,872,944	$116,002,639	$136,294,716	$132,284,964	$126,771,755
2. Part A Risk Contract Settlements	$7,483,249	$7,459,446	$7,450,641	$7,353,349	$7,343,002
3. Death Benefit Premiums	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
4. Medicare Capitation	$123,213,902	$120,573,748	$118,788,378	$115,727,194	$112,839,494
5. DOL Black Lung	$6,787,943	$6,703,479	$6,646,300	$6,506,795	$6,368,043
6. 1950 / AML Transfer[1]	$41,281,552	$40,379,638	$0	$0	$0
7. Investment(Borrowing Cost)	($3,798,287)	($6,590,268)	($11,281,805)	($15,563,560)	($20,143,901)
8. Other Income / Evergreen	$280,892	$271,823	$319,373	$309,977	$297,038
9. Total	$301,813,378	$291,937,201	$264,846,698	$252,731,061	$239,089,857
Ending Fund Balance	($163,930,665)	($212,000,688)	($282,868,373)	($357,638,649)	($437,505,881)

[1] The AML Transfer is limited to the costs of unassigned beneficiaries. The amount of the Fiscal Year 1996 and 1997 AML Transfers was estimated. The Fiscal Year 1998 AML Transfer includes an adjustment of ($2,081,028) for 1996 and 1997, which represents the difference between current cost estimates and amounts transferred in 1996 and 1997 for unassigned beneficiaries.

UMWA Combined Benefit Fund

6% Savings Scenario

Fund Projection	1997 Actual	1998	1999	2000	2001	2002
Beginning Fund Balance	$111,086,000	$95,517,000	$52,203,706	$10,151,081	($20,952,103)	($43,587,153)
Expenses						
1. Medical Benefits	$328,363,000	$344,444,436	$343,050,932	$320,865,587	$321,399,050	$311,460,980
2. Death Benefits	$10,919,000	$10,589,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
3. Administrative Expense	$26,532,000	$25,036,987	$24,277,660	$23,535,370	$23,814,721	$22,172,852
4. Total	$365,814,000	$379,871,361	$377,204,041	$353,746,660	$353,020,488	$341,896,096
Income						
1. Medical Premiums	$151,499,000	$139,449,206	$135,254,907	$131,233,630	$127,262,619	$123,638,176
2. Part A Risk Contract Settlements		$580,969	$470,407	($1,267,149)	$14,483,223	$14,356,176
3. Death Benefit Premiums	$10,896,000	$10,589,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
4. Medicare Capitation	$130,997,000	$126,346,717	$127,796,463	$127,785,729	$127,363,395	$124,575,590
5. DOL Black Lung	$5,905,000	$7,213,081	$7,214,647	$6,780,465	$6,828,022	$6,656,335
6. 1950 / AML Transfer [1]	$42,158,000	$43,043,634	$46,661,239	$43,153,172	$42,721,127	$41,000,515
7. Investment/(Borrowing Cost)	$8,455,000	$7,207,757	$7,561,368	$5,904,413	$2,628,330	$2,981,491
8. Other Income / Evergreen	$355,000	$326,764	$316,936	$307,513	$298,208	$289,715
9. Total	$350,245,000	$336,558,067	$335,151,416	$322,643,476	$330,385,438	$321,731,263
Ending Fund Balance	$95,517,000	$52,203,706	$10,151,081	($20,952,103)	($43,587,153)	($63,711,987)

Fund Projection	2003	2004	2005	2006	2007
Beginning Fund Balance	($63,711,987)	($85,906,745)	($111,289,418)	($156,465,622)	($204,390,532)
Expenses					
1. Medical Benefits	$303,226,420	$299,036,479	$295,983,056	$289,149,589	$281,952,790
2. Death Benefits	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
3. Administrative Expense	$21,461,352	$20,832,463	$20,233,403	$18,667,685	$18,131,077
4. Total	$332,379,955	$327,025,638	$322,845,555	$314,929,615	$306,698,273
Income					
1. Medical Premiums	$119,872,944	$116,002,639	$136,294,716	$132,284,964	$126,771,755
2. Part A Risk Contract Settlements	$14,116,189	$14,073,162	$14,056,589	$13,873,032	$13,853,600
3. Death Benefit Premiums	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
4. Medicare Capitation	$122,213,902	$120,573,748	$118,788,378	$115,725,194	$112,839,494
5. DOL Black Lung	$6,505,112	$6,424,168	$6,369,370	$6,235,679	$6,102,708
6. 1950 / AML Transfer [1]	$39,561,487	$38,697,153	$0	$0	$0
7. Investment/(Borrowing Cost)	($57,512)	($1,556,425)	($4,788,165)	($7,538,481)	($10,514,711)
8. Other Income / Evergreen	$280,892	$271,823	$319,371	$309,977	$297,058
9. Total	$310,185,198	$301,642,965	$277,669,351	$267,004,705	$254,964,290
Ending Fund Balance	($85,906,745)	($111,289,418)	($156,465,622)	($204,390,532)	($256,124,515)

[1] AML Transfer is limited to the costs of unassigned beneficiaries. The amount of the Fiscal Year 1998 and 1997 AML Transfers was estimated. The Fiscal Year 1998 AML Transfer includes an adjustment of ($2,081,028) for 1996 and 1997, which represents the difference between current cost estimates and amounts transferred in 1996 and 1997 for unassigned beneficiaries.

UMWA Combined Benefit Fund

12% Savings Scenario

Fund Projection	1997 Actual	1998	1999	2000	2001	2002
Beginning Fund Balance	$111,086,000	$95,517,000	$52,203,706	$13,176,085	($5,147,412)	($11,791,907)
Expenses						
1. Medical Benefits	$328,363,000	$344,444,436	$339,550,413	$306,914,909	$307,425,179	$297,927,807
2. Death Benefits	$10,919,000	$10,389,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
3. Administrative Expense	$26,532,000	$25,036,987	$24,277,660	$23,535,370	$22,814,721	$22,122,852
4. Total	$365,814,000	$379,871,361	$373,703,522	$339,795,982	$339,046,617	$328,313,923
Income						
1. Medical Premiums	$151,499,000	$139,449,206	$135,254,907	$131,233,630	$127,262,619	$123,638,176
2. Part A Risk Contract Settlements		$580,969	$470,407	($728,236)	$17,452,099	$17,299,067
3. Death Benefit Premiums	$10,896,000	$10,389,938	$9,875,449	$9,345,703	$8,806,717	$8,263,264
4. Medicare Capitation	$130,907,000	$126,346,717	$127,796,463	$127,785,729	$127,963,893	$124,575,590
5. DOL Black Lung	$5,905,000	$7,213,081	$7,141,028	$6,485,662	$6,531,151	$6,366,929
6. 1950 / AML Transfer[1]	$42,138,000	$45,043,634	$46,185,104	$41,276,947	$40,863,687	$38,217,884
7. Investment/(Borrowing Cost)	$8,455,000	$7,207,757	$7,635,607	$5,765,537	$3,894,547	$5,103,800
8. Other Income / Evergreen	$355,000	$326,764	$316,936	$307,513	$298,208	$289,715
9. Total	$350,345,000	$336,558,067	$334,675,901	$321,472,485	$332,402,121	$324,754,416
ding Fund Balance	$95,517,000	$52,203,706	$13,176,085	($5,147,412)	($11,791,907)	($15,351,414)

Fund Projection	2003	2004	2005	2006	2007
Beginning Fund Balance	($15,351,414)	($20,329,519)	($27,612,364)	($51,955,311)	($78,134,479)
Expenses					
1. Medical Benefits	$290,042,663	$286,034,893	$283,114,227	$276,577,868	$269,693,972
2. Death Benefits	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
3. Administrative Expense	$21,461,352	$20,832,463	$20,233,403	$19,667,685	$19,131,077
4. Total	$319,196,198	$314,024,052	$309,976,726	$302,357,894	$294,439,456
Income					
1. Medical Premiums	$119,872,944	$116,002,639	$136,294,716	$132,284,964	$126,771,755
2. Part A Risk Contract Settlements	$17,009,878	$16,958,025	$16,938,086	$16,716,911	$16,693,607
3. Death Benefit Premiums	$7,692,183	$7,156,696	$6,629,096	$6,112,341	$5,614,406
4. Medicare Capitation	$123,313,902	$120,573,748	$118,788,378	$115,727,194	$112,829,494
5. DOL Black Lung	$6,222,281	$6,144,856	$6,092,441	$5,964,563	$5,837,373
6. 1950 / AML Transfer[1]	$37,841,423	$37,014,658	$0	$0	$0
7. Investment/(Borrowing Cost)	$3,084,590	$2,618,752	$571,689	($937,223)	($2,615,303)
8. Other Income / Evergreen	$280,892	$271,821	$319,373	$309,977	$297,058
9. Total	$314,218,093	$306,741,207	$285,633,779	$276,178,726	$265,438,490
Ending Fund Balance	($20,329,519)	($27,612,364)	($51,955,311)	($78,134,479)	($107,135,445)

[1] AML Transfer is limited to the costs of unassigned beneficiaries. The amount of the Fiscal Year 1996 and 1997 AML Transfers was estimated. The Fiscal Year 1998 AML Transfer includes an adjustment of ($2,081,028) for 1996 and 1997, which represents the difference between current cost estimates and amounts transferred in 1996 and 1997 for unassigned beneficiaries.

TESTIMONY
OF
KATHY KARPAN, DIRECTOR
OFFICE OF SURFACE MINING
BEFORE THE
COMMITTEE ON GOVERNMENT AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA
UNITED STATES SENATE
ON
AGENCY MANAGEMENT OF THE IMPLEMENTATION OF THE COAL ACT
October 6, 1998

Mr. Chairman, I appreciate the opportunity to appear before the Senate Government Affairs Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia. I always enjoy discussing the Abandoned Mine Land (AML) Program, one of the most successful government reclamation programs around. The combined partnership of State and Tribal programs and the Federal Reclamation Program so far has reclaimed over 180,000 acres of lands and waters disturbed and abandoned by past mining activity.

My testimony today will concentrate on describing why the AML Fund was established, how the AML Program works, and how we allocate, invest, and distribute the money.

Why AML Fund Was Established and How The Program Works

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) established the AML Reclamation Program in response to concern about threats to human health and safety and extensive environmental damage caused by past coal mining activities. The program is funded primarily from a fee collected on each ton of coal sold, used or transferred in the country: 35 cents for surface mined coal, 15 cents for underground mined coal, and 10 cents for lignite coal. This fee is deposited into a special interest-earning fund, the Abandoned Mine Reclamation Fund (AML Fund). With the exception of the amount transferred each year to the United Mine Workers Combined Benefit Fund (Combined Benefit Fund), for which

there is a permanent appropriation, the President requests and the Congress appropriates annually money from the AML Fund to address abandoned and inadequately reclaimed mining areas where there is no continuing reclamation responsibility by any person or party under State or Federal law. At present, the authority to collect the reclamation fee expires on September 30, 2004, except for that amount necessary to provide for continuing transfers to the Combined Benefit Fund as provided in section 402(b) of SMCRA.

We pursue this reclamation in a spirit of State/Tribal/Federal cooperation. In accordance with SMCRA, States with primary coal mining regulatory authority, and three Indian tribes designated in SMCRA, have the lead role in on-the-ground reclamation. To date, over $2.7 billion has been granted to States and Indian tribes for reclamation work. OSM supports the State/Tribal programs with technical support and training, grants management, and by conducting cooperative enhancement and performance reviews of the programs. Currently, 23 States and 3 Indian Tribes (Crow, Hopi, Navajo) have authority to receive grants from the AML Fund and are implementing Title IV reclamation programs in accordance with 30 CFR Subchapter R and through implementing guidelines published in the Federal Register on March 6, 1980 (45 FR 27123), and revised on December 30, 1996 (45 FR 68777). In States, such as Tennessee, that do not have an approved reclamation program, and on Indian lands, other than for the three noted above, OSM operates the coal reclamation program.

The primary emphasis of the AML program is to correct the most serious problems first: those related to public health, safety, property and general welfare. As possible, we also focus on the important goal to restore the environment where land, water and other natural resources have been impacted by abandoned mines. While we have been successful in eliminating many of the problems that were created prior to the passage of SMCRA, much remains to be done. Our national inventory shows that over $2.6 billion of coal-related health, safety and general welfare problems remain to be rectified. This includes nearly 730 miles of dangerous, unstable man-made cliffs ("highwalls"), 5,200 portals and vertical openings, 10,000 acres of dangerous piles and embankments, over 7,200 acres of subsidence problems, and over 2,400 pieces of hazardous equipment and facilities. In addition, over 8,000 miles of streams, primarily in Appalachia, have been damaged or destroyed by acid mine drainage resulting from

abandoned coal mines. This acid drainage affects potable water supplies, kills fish and wildlife, and impacts the general welfare of the residents of numerous communities. Further, there are multi-billions of dollars worth of serious environmental problems that are known but not statutorily required to be inventoried.

An extensive description of the requirements for a State/Tribal reclamation plan can be found at 30 CFR Part 884. For example, the agency must have written policies and procedures which outline how it will comply with the requirements of SMCRA and implementing regulations in conducting a reclamation program, how projects will be ranked for reclamation priority, how the public will be given an opportunity to comment on proposed reclamation projects and how it will comply with all applicable Federal and State laws and regulations.

States and Indian Tribes with approved reclamation plans submit grant applications in accordance with procedures established by OSM in 30 CFR Part 886 and the Federal Assistance Manual. They must certify with each grant that the requirements of all applicable laws and regulations are met, including the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, and the Endangered Species Act. They may only undertake coal projects that are eligible for funding as described in section 404 of SMCRA, or non-coal projects under the conditions specified in either sections 409(c) or 411. OSM requires that the State Attorney General or other chief legal officer certify that each reclamation project to be undertaken is an eligible site.

The State or Indian Tribe chooses individual projects based upon the selection criteria in its reclamation program. While these criteria differ between programs, they all consider the priority of the problem, public input, cost effectiveness, technical feasibility and how the area will be used once reclaimed.

Under its re-engineered grants program, OSM provides a consolidated administration and construction grant rather than approving grants for individual projects. But before the State or Tribe begins actual construction of any project, OSM ensures that the State/Tribe has met all the requirements of the National Environmental Policy Act of 1969 (NEPA).

OSM then provides the State/Tribe an authorization to proceed on the project.

OSM annually reviews the State and Tribal AML programs to ensure that program requirements are properly met, including site eligibility, proper financial policies and procedures, and reclamation accomplishments. Further, OSM and the State/Tribe evaluate selected completed AML reclamation projects to determine the effectiveness of the overall reclamation program.

Allocation and Distribution of Funds

From the inception of the AML Fund in 1977 through September 30, 1998, approximately $5 billion has been deposited into the AML Fund. Investment in public debt securities was authorized in the 1990 amendments to SMCRA. Of the $5 billion, approximately $381 million is interest earned on the investment of the AML Fund. Total appropriations from the AML Fund have been approximately $3.7 billion.

The 1990 amendments also revised the allocation of AML fees collected to provide for the following "shares" in the AML Fund:

- 50% State/Tribal Programs
- 10% Rural Abandoned Mine Program (RAMP)
- 20% Historical Coal Distribution
- 20% Federal Expenses

The allowable uses of each of these "shares" is set out in section 402 of SMCRA and in our regulations at 30 CFR 872.11. For example, the State/Tribal share is used for grants to the States and Tribes to operate their reclamation programs and undertake eligible coal and non-coal projects. The Historical Coal Distribution share is used to make supplemental grants to the States for high priority reclamation projects, and is based on the amount of coal production prior to the passage of SMCRA. The Federal Expenses share is used for the minimum program adjustment, Federal Reclamation Program in non-Program States/Tribes, Emergency Program, Small Operator Assistance Program, fee collection, and Federal operational expenses. The RAMP share is dedicated for use by the Department of Agriculture for eligible reclamation of rural lands as set out in section 406 of SMCRA and in the Department of Agriculture regulations. As mentioned, only $3.7 billion of

the total $5 billion AML Fund income has been appropriated. This results in an unappropriated balance of $1.3 billion.

Upon appropriation of AML grant funds, OSM applies a distribution formula to determine the specific amount that each reclamation program State and Tribe will receive. The specific procedures were developed with input from the States, Tribes and Congress, and are published as part of OSM's Federal Assistance Manual. Each year, OSM documents the annual grant distribution in a booklet for each State/Tribal reclamation program containing the distribution specifics and information on fee collections, grant awards and deobligations, etc.

Investment Interest

As mentioned previously, in 1990 Congress authorized the investment of that portion of the AML Fund not required to meet current withdrawals. In the Energy Policy Act of 1992, Congress directed that interest earned on investment of the AML Fund be made available, under specified conditions, for transfer to the United Mine Workers Combined Benefit Fund. The Combined Benefit Fund is used to pay health benefits for former coal mining employees or their beneficiaries associated with mining companies that are no longer in business. The Social Security Administration is responsible for determining those individuals who are not the responsibility of a mining company (i.e., "unassigned" beneficiaries). The Trustees of the Combined Benefit Fund are responsible for administering that Fund. Annually, based on the number of unassigned beneficiaries, the Trustees inform OSM of the amount of the earned investment interest from the AML Fund that they anticipate will be necessary to transfer to the Trustees to pay the health benefits for those unassigned beneficiaries.

Beginning in FY 1996, the transfer for any fiscal year was required to be an amount equal to the interest which OSM estimates will be earned and paid to the AML Fund during the fiscal year with a minimum payment of $70 million. That amount, however, is not to exceed the amount that the Trustees of the Combined Benefit Fund estimate will be needed for the unassigned beneficiaries. Provision also was made for a situation where the yearly interest to the AML Fund might not be sufficient to meet the amount requested by the Trustees. The amount of all investment interest earned and paid to the AML Fund during fiscal years 1993,1994, and 1995 totals

$132.5 million. The Act also requires that the Secretary make adjustments for any fiscal year when it is determined that adjustments are necessary. Since the yearly investment interest to date has been greater than the amount needed by the Trustees, the $132.5 million earned during fiscal years 1993-1995 is available, as provided in the Energy Policy Act of 1992.

OSM has a permanent appropriation to transfer the necessary amount of funds each year to the Trustees of the Combined Benefit Fund. Any interest not required by the Trustees is allocated to the Federal Shares of the AML Fund in proportion to the percentage of collections allocated (i.e., RAMP receives 20%, Historical Coal receives 40%, and Federal Expenses receives 40%). Thus, the interest not required by the Trustees for payment of health benefits becomes available for appropriation for eligible abandoned mine reclamation purposes.

Investment interest on the AML Fund from FY 1992 thru June 30, 1998, is $381.3 million. Transfers to the Combined Benefit Fund to date (i.e., FY 1996, 1997, and 1998) total $111.1 million. Based on the June 1998 Supreme Court decision in the Eastern Enterprises case, we expect that there will be a need for additional funds for new unassigned beneficiaries. Once the Social Security Administration completes its analysis, we will know the exact number of such new beneficiaries. However, we estimate that the unassigned population could increase by 1,300 to 6,600 new beneficiaries depending on how many employers are in a similar situation to Eastern Enterprises. Thus, the total number of unassigned beneficiaries could increase from approximately 15,500 at present to up to 22,100. The current transfer payment to the Combined Benefit Fund could rise from the current annual average of approximately $37 million to an annual average of approximately $52 million. This increase can be accommodated within the current projected annual interest earnings of approximately $80 million. In addition, the entire supplemental amount earned during FY 1992-1995 ($132.5 million) remains available for transfer if needed. If as a result of the Eastern Enterprises case it becomes necessary to make an adjustment to the payments for past fiscal years, the $132.5 million will be used for that purpose.

This concludes my prepared statement and I appreciate this opportunity to appear before the Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia. I will be pleased to answer any of the Subcommittee's questions.

For Release on Delivery

HEALTH BENEFITS FOR RETIRED COAL MINERS

HEARING BEFORE THE
U.S. SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT, RESTRUCTURING,
AND DISTRICT OF COLUMBIA

October 6, 1998

STATEMENT BY
MARILYN O'CONNELL
ASSOCIATE COMMISSIONER FOR
PROGRAM BENEFITS

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the role of the Social Security Administration (SSA) under the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act). Let me begin by briefly reviewing the requirements of the law and the responsibilities which were assigned to SSA. Then, I will discuss SSA's progress in carrying out these responsibilities.

Requirements of the Law

The Coal Act merged the 1950 and 1974 benefit plans of the United Mine Workers of America (UMWA) into a new "Combined Fund," administered by a board of trustees as a private tax-exempt employee benefit plan. This new Fund is designed to provide lifetime health benefits (and death benefits) for beneficiaries of the old plans--retired miners (all of whom retired before 1976) and their dependents or survivors. Benefits are financed from funds transferred from UMWA pension plans, premiums paid by coal operators, and transfers from the Department of Interior's "Abandoned Mine Land Reclamation Fund."

Under the law, coal operators pay premiums for all beneficiaries who are determined to be their responsibility. The premiums are established by formulas in the law. The law provides for them to pay a pro rata share of the premium cost for beneficiaries for whom no assignment of responsibility can be made (unassigned beneficiaries). However, the assigned operators have not had to pay premiums for the unassigned miners as the Coal Act provides that the assigned operators are only
assessed premium costs for the unassigned miners if the funds transferred
from the Department of Interior's "Abandoned Mine Land Reclamation Fund" are
insufficient. Thus far, these funds have been sufficient.

SSA Responsibilities

SSA was assigned three responsibilities under the Coal Act:

- To calculate the amount of the health benefit premium for each beneficiary;
- To assign each miner to a coal operator who will be responsible for the health (and death) benefit premiums for that miner and any beneficiaries eligible because of their relationship to the miner, and notify the operator of that assignment; and
- To decide requests by the coal operators for review of assignments.

Let me now briefly discuss each of these responsibilities.

Calculating the Premium

The law states that the health benefit premium amount is to be based on the average dollar amount of health benefits paid per person under the old plans for the plan year beginning July 1, 1991, updated to take account of the increase in the medical component of the Consumer

Price Index (CPI). The law requires us to calculate the premium for each plan year beginning on or after February 1, 1993. The first plan year began on February 1, 1993, because that is the date the old plans were merged to create the Combined Fund. By law, subsequent plan years began on October 1, 1993, and each succeeding October 1.

The Coal Act requires that the premium calculation be based on the following information: (1) the aggregate amount of payments from both the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under the plans for that plan year, and (2) the number of such individuals covered under the plans for that plan year. The aggregate cost divided by the number of individuals, increased by the approximate percentage increase in the medical component of the CPI from 1992 to the year in which the plan year begins, produces the premium per individual.

SSA has calculated the premiums and timely notified the Trustees of the Combined Fund of the premiums for each year since the law was enacted. The premium amount beginning October 1, 1998 is $2,420.19.

Assignment Procedures

Our second task involved assigning responsibility for each miner to the appropriate coal operators. We were given this responsibility because SSA has the miner's wage records. These wage records are a key component in determining which coal operator is liable for the miner assignment.

This process began with the Combined Fund identifying approximately 80,000 miners--both living and deceased--who were covered by the Act. The Bituminous Coal Operators Association (BCOA) provided us a list of approximately 15,000 of these miners for whom certain large coal operators voluntarily acknowledged premium responsibility.

The remaining 65,000 miners had to be assigned to a coal operator following the criteria set forth in the law. In general, there are three factors that are considered in determining to which coal operator a miner is assigned--length of a miner's employment with a coal operator who was a signatory to a UMWA wage agreement (also called a signatory operator), recency of that employment, and the date the wage agreement was signed by the operator and the UMWA.

More specifically, the law states that a miner must be assigned to a coal operator according to the following order of priority:

- First, to the last active signatory operator (as defined previously) for whom the miner worked at least 2 years under a UMWA agreement (or if an inactive signatory, to its related company, if any) provided that the operator is also a 1978 UMWA wage agreement signatory.

- If none, then to the last active signatory operator for whom the miner worked under a UMWA agreement (or if an inactive signatory, to an active related company, if any) provided the operator is also a 1978 signatory.

- If none, then to the active signatory operator of any agreement for whom the miner worked the longest under a UMWA agreement (or if an inactive signatory, to an active related company) in the period prior to 1978.

- If no assignment can be made under the above criteria, the miner is treated as "unassigned." This means that, because responsibility for the premium cannot be assigned to a particular signatory operator, the miner is placed in an unassigned pool.

Before we could even begin the assignment process, we had to develop lists of assignable coal operators. These lists were developed by SSA using information which was provided to us by the BCOA and the UMWA, as well as SSA's own records. This list was modified as we began the assignment process due to information provided by operators appealing their assignments, and other available sources of information, such as the Keystone Coal Industry Manual and State agencies. We continue to update the list of assigned operators as new information is obtained.

In order to make an assignment using the criteria I described above, we must perform two separate operations: reviewing Social Security earnings records which contain each miner's individual employment history; and matching that history against the lists of signatory coal operators and related companies. We then use the assignment criteria in the Coal Act to assign miners to the responsible signatory company. As an aside, I might mention that retrieving these records was a labor-intensive operation, as earnings information is only electronically available beginning with wages reported for 1978; earlier earnings information is maintained on microfilm and requires a manual search for earnings information dating as far back as 1946.

If a signatory operator is no longer in business, we must determine whether there is a company which, as of July 20, 1992, or, if earlier, as of the time immediately before the operator ceased to be in business, was "related" to the signatory operator. If so, and if the related company is still in business, it becomes responsible for the beneficiary's premiums.

There are now 57,861 coal miners assigned to 399 coal companies. The 57,861 figure includes miners assigned to companies that voluntarily accepted assignments. An additional 20,720 miners are in the unassigned category. The 20,720 figure includes those miners from companies that have been identified as meeting the criteria established by the Supreme Court's decision in Eastern Enterprises v. Apfel (Eastern). I will discuss the Eastern decision shortly.

Review of the Assignment Decisions

SSA's third responsibility under the Coal Act, which turned out to be very complex and time consuming, was to review each of the individual assignments, if requested by a coal

operator. The law provides that an assigned operator may, within 30 days of receipt of the assignment notice, request detailed information from us as to the work history of the miner and the basis for the assignment. The assigned operator then has 30 days from receipt of that additional information to request review of the assignment. The statute requires the operator to provide evidence constituting a prima facie case of error in order to have the assignment reviewed. SSA promulgated regulations governing reviews in 20 C.F.R. 422.601-607.

After the initial assignment notices were sent to the assigned operators, operators requested over 54,625 earnings records (due to reassignments to another company, a miner may have more than one earnings record request), as well as the basis on which the assignments were made.

To date, SSA has reviewed assignments for approximately 665 coal operators concerning assignments for 36,256 miners. (The miner count includes some miners who are counted more than once, as these miners had more than one review request filed on them, and the coal operator count includes companies relieved of assignment responsibilities.) The review requests were based on a wide range of allegations. For example, some companies claimed they were: never in the coal industry; never a signatory to a coal wage agreement; never a related company; or no longer in business.

As mentioned, the review process can be very complex and time consuming, and because of the difficulty some operators were having in securing evidence, they requested, and were granted, up to an additional 240 days to submit evidence to support their protests. In many situations the evidence submitted is difficult to interpret. Many of the documents were court orders, legal business transaction papers, business permits, contracts, and pages from old business publications. In addition, it was necessary to contact various organizations and agencies to determine the status and relationships of numerous companies. These contacts included State agencies, business bureaus, and public libraries. We also contact the UMWA Funds to verify signatory agreements, dates of the agreements, and coverage status of employees.

Those companies which were found not to be eligible for assignment were relieved of responsibility for all miners. These miners, as well as miners who were assigned to companies incorrectly, were reassigned to another company, or placed in the unassigned pool.

SSA has reached a sixth round of assignments. These 440 assignments, along with any reassigned miners resulting from the recent Supreme Court decision that I will discuss shortly, will no doubt generate additional reviews. Additional assignment rounds will result from the Supreme Court decision as well as from any miner assignments SSA reverses because of a review. Another factor that must be considered are cases currently in litigation. Twenty-one of the 40 cases that have been filed with the Federal courts are still pending. Since a number of companies involved in these court cases have recently had their miner assignments voided because of the Eastern decision, there is an expectation that the current pending court case workload will decrease. However, there is the unknown factor of additional court cases that may result from the Eastern decision.

Cost of SSA Workloads

The Coal Act did not provide funding for SSA to perform the work required. By law, SSA cannot use trust fund monies for work which is unrelated to Social Security programs. For this reason, SSA requested, and Congress provided, a supplemental appropriation of $10 million for Fiscal Year (FY) 1993 to give SSA the necessary initial funding for this work. The funds were adequate to complete the assignments and begin the reviews. Congress also approved a change to SSA's 1994 administrative funds to carry out the requirements of the Coal Act and provided for reimbursement to the Social Security trust funds on funds expended on this process, with interest, not later than September 30, 1996.

SSA spent $3.7 million in FY 1993, and carried over $6.4 million into FY 1994. SSA spent another $5.4 million in FY 1994, and carried over $0.9 million into FY 1995. Congress provided $10 million to fund coal mine health care activities in both FYs 1996 and 1997. SSA spent $2.4 million in FY 1996 and $0.8 million in FY 1997. Additional funds were not requested for FY 1998 and FY 1999 because the funding appropriated in FY 1996 and FY 1997 will remain available until expended.

Supreme Court Decision

On June 25 of this year, the Supreme Court, in Eastern Enterprises v. Apfel, held the Coal Act unconstitutional as applied to Eastern Enterprises. SSA had assigned miners to Eastern based on the Coal Act's third assignment priority; that of assignment "to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement." The Supreme Court found that the application of this third assignment priority to Eastern was unconstitutional and remanded the case to the United States Court of Appeals for the First Circuit.

Needless to say this has generated much work for SSA. Of immediate concern was the effect of the decision on current court cases. The Department of Justice and SSA's Office of General Counsel have provided advice to SSA on the legal interpretation of the Eastern decision. As a result we found that six of the pending court cases protesting their assignments under the Coal Act were similar enough to Eastern to warrant the voiding of their miner assignments.

As you can imagine, a number of assigned companies have written SSA to request that we void their miner assignments on the basis of the Eastern decision.

SSA, working with the Department of Justice and the UMWA Funds, has identified 124 companies that were in a situation similar to Eastern's as described in the Supreme Court decision. These companies will not be billed in the UMWA Funds' October 1998 billing. The 6,167 miners formerly assigned to these companies currently have been placed in the unassigned pool. This will enable the Department of Interior to transfer funds from its Abandoned Mine Land Reclamation Fund to the UMWA Funds for these miners and dependents, the same as they

do for the other miners and dependents in the unassigned pool. SSA will re-evaluate these newly unassigned miners to determine if they can be assigned to another eligible coal company under the remaining valid assignment rules of the Coal Act.

We will continue our efforts to identify companies which were assigned miners under that portion of the assignment scheme of the Coal Act that the Supreme Court has decided is unconstitutional and to take the appropriate actions.

Conclusion

In conclusion, Mr. Chairman, you can see that we have accomplished much but still have more to do. While we are taking actions in light of the Eastern decision, there is more work to be done. Additionally, there are other court cases that need to be resolved and miner appeals to be reviewed. I would be happy to answer any questions you may have.

EMBARGOED UNTIL 2 P.M.
Text as Prepared for Delivery
October 6, 1998

WRITTEN STATEMENT FOR THE RECORD
TREASURY ACTING DEPUTY TO THE BENEFITS TAX COUNSEL
DEBORAH WALKER

SENATE GOVERNMENTAL AFFAIRS SUBCOMMITTEE
ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING, AND THE DISTRICT OF COLUMBIA

Mr. Chairman and distinguished Members of the Subcommittee

I am pleased to submit the views of the Treasury Department on the Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act"), which was enacted as part of the Energy Policy Act of 1992, P.L. 102-486. In the letter of invitation, Chairman Brownback stated that the subject of this hearing is "Agency Management of the Implementation of the Coal Act."

In previous testimony before Congress on the Coal Act (before the House Committee on Ways and Means in September 1993 and June 1995), the Administration has expressed its strong support for the goal of ensuring adequate funding of retired miners' health benefits under the Coal Act. We continue to strongly support this goal.

Background

The Coal Act requires that former employers of retired coal miners finance, in part, the health benefits that previously were negotiated for those miners and their families by the United Mine Workers of America ("UMWA").

Prior to the Coal Act, these benefits were provided for retired miners and their families either by the miner's individual employer or through one of two multiemployer funds -- the 1950 UMWA Health Benefit Fund (the "1950 Fund") or the 1974 UMWA Health Benefit Fund (the "1974 Fund"). Contributions to both Funds were required of signatories to the national wage agreements negotiated between the UMWA and the Bituminous Coal Operators Association, Inc. ("BCOA"). Employers that were not signatories to the national wage agreement also contributed to the Funds under separate wage agreements negotiated with the UMWA.

The 1950 Fund covered miners who had retired as of December 31, 1975, and their beneficiaries. Miners who retired after 1975 generally received health benefits under the single plan of their former employer. However, if the employer went out of business or left the coal industry, the employer's retirees and their beneficiaries were covered by the 1974 Fund. As a result, all of the retirees and their beneficiaries covered under the 1974 Fund were "orphans" for whom no contributions were being made by their former employers. About half of the retirees and their beneficiaries in the 1950 Fund were orphans.

Beginning in the late 1980's, the Funds began to experience serious financial difficulties. As of March 31, 1992, the combined deficit of the Funds reached $140 million and was projected to grow dramatically if no changes were made. The deficit was caused by a number of factors, including medical inflation and the trustees' inability to impose certain kinds of containment mechanisms under the Funds. Moreover, the contribution base of the Funds was eroding. In the early 1980's, for example, approximately 2,000 employers contributed to the Funds. That number had fallen to about 300 in 1992.

In March 1990, as part of a compromise that helped settle the Pittston Coal Company strike, the Coal Commission was established to study the Funds. In its report, published in November 1990, the Coal Commission agreed that the problems of the Funds could not be solved through private bargaining alone. The Coal Commission recommended establishing a statutory obligation to contribute to the Funds. Although the Coal Commission was divided as to how this obligation should be implemented, there was general agreement that it should cover all then-current signatory employers (companies that had signed the 1988 collective bargaining agreement), as well as certain other employers who had signed previous collective bargaining agreements.

In response to the Coal Commission Report, and amid growing concerns about the continued viability of the Funds and the security of the retirees' benefits, legislation to address retired miners' health benefits was introduced in Congress. Ultimately, Congress passed the Coal Act as part of the Energy Policy Act of 1992.

The Coal Act

The Coal Act created two new benefit funds: (1) the UMWA Combined Benefit Fund (the "Combined Fund"), which services beneficiaries receiving health benefits from the 1950 and 1974 Fund as of July 20, 1992; and (2) the UMWA 1992 Benefit Plan (the "1992 Plan"), which services certain employees who retired between July 20, 1992, and September 30, 1994, and whose last signatory employer is not providing them with benefits. Employees retiring after September 20, 1994, are not covered under the provisions of the Coal Act, but rather their coverage is dependent on the provisions of later bargaining agreements.

Under the Coal Act, any employer that signed a wage agreement with the UMWA since 1950 and has retirees who benefit under the Funds could be obligated to pay premiums for the health benefits of those retirees and their beneficiaries. In addition, such signatory employers are obligated to finance the health benefits of "orphans" in the Combined Fund whose former employers are no longer in business. Each signatory employer's share of orphans is proportional to the number of the employer's retirees who receive health benefits under the Combined Fund.

The Coal Act thus imposed a statutory liability for financing the retiree health benefits not only on the operators that had signed the last union wage agreement prior to the passage of the Coal Act (the 1988 wage agreement), but also operators that had signed previous agreements. The Coal Act assigned retirees to operators in a priority that distinguished between signatories to the 1978 and later wage agreements and those operators that had only signed wage agreements prior to the 1978 wage agreement. This reflects in part the liability under the "evergreen" clause of signatories to the 1978 and later agreements for contributions. The evergreen clause, which was first included under the 1978 wage agreement, was incorporated into the agreement so that signatories would be required to contribute as long as they remained in the coal business, regardless of whether they signed a subsequent agreement. Under the evergreen clause, the Funds could "reach back" to operators that were not signatories to the current union wage agreement for contributions. To the extent that the Coal Act has codified this reach back financing mechanism, signatories to 1978 and later wage agreements that are not signatories to a current union wage agreement are often referred to as "reachback" operators; signatories only to agreements before the 1978 agreement are referred to as "super reachback" operators.

In order to reduce the premiums associated with orphan beneficiaries, the Coal Act authorized three annual transfers of $70 million each from the excess assets of the UMWA 1950 pension plan. In addition, beginning October 1, 1995, annual transfers of up to $70 million have come from the interest earnings[1] of the Abandoned Mine Land Reclamation fund ("AML fund") to cover the costs of orphans. The AML fund is financed by fees assessed on all coal mining companies.

Under the Coal Act, responsibilities for administering the Combined Fund are divided among three separate entities, as described below:

(1) The Social Security Administration (SSA) -- The SSA is responsible for assigning each coal industry retiree receiving benefits to a former employer or related party. The SSA also calculates the annual per-beneficiary premium charged to each former employer. Following assignment of beneficiaries to employers, the SSA is responsible for informing the former employers and the trustees of the Combined Fund of the assignments. Finally, the SSA is responsible for reviewing appeals raised by employers regarding assignments of retirees, and reassigning the retirees when appropriate.

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[1] The aggregate total amount transferred under this provision is limited to the interest earned and paid to the fund after September 30, 1992 and before October 1, 1995.

(2) Trustees of the Combined Fund -- As established by the Coal Act under section 9702 of the Internal Revenue Code, the Combined Fund is a private multi-employer plan. The Coal Act provides for the Board of Trustees[2] who are required, among other duties, to establish the Combined Fund, to determine benefits to be paid from the Combined Fund[3], to establish and maintain accounts of the premiums that are required to be paid to the Combined Fund, to collect the premiums, and to provide information to the SSA, as necessary, for carrying out the SSA's duties under the Coal Act.

(3) Department of the Treasury -- Section 9707 of the Internal Revenue Code imposes a penalty upon an assigned operator for failure to pay a required premium. The statute states that the penalty "shall be treated in the same manner as the tax imposed by section 4980B" and thus the IRS, as part of its general tax administration duties, is responsible for collecting the penalty.

The Coal Act does not address the reporting of delinquent operators by the Combined Fund to the IRS. The IRS has established a mechanism with the Combined Fund to ensure that information regarding delinquent payers is obtained when the Combined Fund determines that there has been willful nonpayment. To date, no referrals have been received from the Fund.

Supreme Court Decision in *Eastern Enterprises v. Apfel*

The United States Supreme Court issued a decision on June 25, 1998, *Eastern Enterprises v. Apfel*[4], holding the Coal Act unconstitutional as applied to Eastern Enterprises, a coal mine operator that did not sign the 1974 or 1978 wage agreements, a so-called super reachback company. We understand that the testimony of Marilyn O'Connell, Associate Commissioner for Program Benefits, SSA, discusses the effect of this decision on the Fund's operation.

Reimbursements of Overpayments of Premiums.

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[2] Section 9702(b) of the Internal Revenue Code provides for the appointment of a board of seven trustees. One trustee is designated by the BCOA to represent employers in the coal mining industry; one trustee is designated by the three reachback companies with the greatest number of eligible employees; and two trustees are designated by the UMWA. These four trustees select the other three.

[3] Under 9703(b) of the Internal Revenue Code, the trustees of the Combined Fund are generally directed to provide health care benefits "substantially the same as (and subject to the same limitations of) coverage" provided under 1950 and 1974 Funds as of January 1, 1992.

[4] 118 S. Ct. 2131, 141 L. Ed. 451, 66 U.S.L.W. 4566.

The statutory language of the Coal Act does not include a procedure for the United States to refund overpayments of premiums[5]. The IRS has no role in the initial collection of the premiums, which are paid directly to the Combined Fund. Notwithstanding that, the United States District Court for the Eastern District of Virginia held in *Pittston v. U.S.*, 1998 U.S. Dist. LEXIS 10175, Civil Action Number 3:97CV294, that the government is liable for refund of a portion of the premiums imposed under the Coal Act. (The refund claim concerned the overpayment of premiums based on a determination by the 11th Circuit in *National Coal Association v. Chater*[6] that the level of premiums set by SSA exceeded the level authorized under the statutory language of the Coal Act.) The government is currently considering whether to appeal the district court's holding that the government is liable for refunding a portion of the premium. Subsequently, the court ordered that the Combined Fund indemnify the U.S. for the reimbursements of overpayments made under the prior ruling.

Conclusion

The primary policy goal of the Coal Act is to ensure that the benefits promised to retired union miners and their families continue to be paid without interruption. The Administration strongly supports this goal. In prior testimony, the Administration has expressed its concern regarding amendments that could potentially weaken or undercut the contribution base from which retiree's benefits are funded. The Supreme Court decision, by holding unconstitutional the assignment of retired miners to a single super reachback coal operator, may reduce the number of employers required to pay premiums to the Combined Fund. We understand that testimony by Kathy Karpan, Director of the Department of Interior's Office of Surface Mining, suggests that the current sources of funding may be adequate to address changes in retiree assignments and other costs charged against the Combined Fund resulting from the *Eastern* decision.

There are many factors that could affect the ability of the Fund to continue to provide the health benefits promised to the retired miners, including the number of employers responsible for benefit payments, the level of the statutorily determined premiums, especially any increase in the health costs for the retirees' relative to the medical inflation index factor provided under the Coal Act, and the number and health of retirees and their families. We understand that the Combined Fund continues to collect premiums from those responsible for funding retiree health benefits under the Act. We would be happy to work with Congress to ensure that the security of the funds and the health benefits for retired miners and their beneficiaries are not jeopardized.

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[5] Section 9706(f) provides for a procedure for an assigned operator to appeal the assignment of a retiree, if it is believed that the information on which the assignment is based is incorrect. In cases where the assignment is in error, the trustees are directed to reduce the premiums of the operator by (or if there are not such premiums, repay) all premiums paid with respect to the miner.

[6] 81 F.3d 1077 (11th Cir. 1996)

GAO

United States
General Accounting Office
Washington, D.C. 20548

Health, Education and Human Services Division

B-281186

October 2, 1998

The Honorable Sam Brownback
Chairman, Subcommittee on Oversight of Government
Management, Restructuring, and the District of Columbia
Committee on Governmental Affairs
United States Senate

Subject: Employee Benefits: Status of the UMWA Combined Benefit Fund

Dear Mr. Chairman:

In 1947, the National Bituminous Coal Wage Agreement (NBCWA) established the United Mine Workers of America (UMWA) Welfare and Retirement Fund to provide health and retirement benefits to coal miners and their families. Subsequent agreements eventually led to the creation of trust funds to cover health care benefits.[1] Funded by contributions made by companies who had signed the NBCWA or a similar agreement, these trusts soon encountered financial difficulties. The 1978 amendments to the NBCWA attempted to ensure the trusts' solvency by requiring its signatory companies to make contributions sufficient to maintain the trusts for as long as those firms were in the coal business. As firms left the coal business, however, the remaining signatories were forced to absorb the cost of covering beneficiaries.

In an attempt to stabilize funding and provide benefits to retired coal miners and their dependents, the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act) merged the two existing health-care-related trusts to create the UMWA Combined Fund. Under the Coal Act, any coal mine operators who had ever been required to contribute to these health-care-related trusts were

[1]When the NBCWA was amended in 1974 to comply with the Employee Retirement Income and Security Act of 1974, it created separate trust funds for miners who retired before 1976 and those who retired in or after 1976. Those who retired in or before 1975 were covered under the 1950 Benefit Plan and Trust, while those who retired in or after 1976 were covered under the 1974 Benefit Plan and Trust.

required to contribute to the Combined Fund. Administered through UMWA Health and Retirement Funds, the Combined Fund provides health and death benefits to individuals who were eligible to receive and receiving benefits from either trust fund on July 20, 1992. In a decision handed down on June 25, 1998, the U.S. Supreme Court stated that the Coal Act was applied unconstitutionally when it was used to require a company that had sold its mining operation in 1987 to fund health benefits for retired mine workers employed by it before 1966.[2] This ruling will likely reduce the number of firms that are required to contribute to the Combined Fund and could reduce fund revenues.

In 1992, we issued a report describing beneficiaries and benefits of the 1950 and 1974 Benefit Plan and Trusts.[3] Additionally, we commented on the funding and solvency of those trusts. You asked us to provide information for your upcoming hearing by updating several sections of our report by answering four questions (as set forth below) on the current state of the Combined Fund. We obtained data from published reports of the UMWA Health and Retirement Funds Combined Benefit Fund and its actuary, interviews with Combined Fund officials, and data from the Social Security Administration. We did not independently verify the accuracy of the data provided to us. Although we did not receive agency comments on this correspondence, we did share our findings with officials from the Combined Fund.

Question 1

What is the current population of beneficiaries?

In 1992, we reported that 116,283 beneficiaries were covered under both the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust. Currently, the Combined Fund provides benefits to 71,337 individuals. Because Combined Fund benefits are only available to individuals who were eligible to receive and receiving benefits on July 20, 1992, the number of beneficiaries declines over time. The number, type, and distribution of beneficiaries is shown in table 1.

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[2]Eastern Enterprises v. Apfel, 118 S. Ct. 2131 (1998).

[3]Employee Benefits: Financing Health Benefits of Retired Coal Miners (GAO/HRD-92-130FS, July 22, 1992).

Table 1: Number of Beneficiaries of the Combined Fund

	Number of beneficiaries	% of beneficiaries
Retired miners	19,055	26.7
Surviving spouses	36,120	50.6
Spouses	13,540	19.0
Other beneficiaries	2,662	3.7

Other beneficiaries include parents of mine workers, unmarried children of mine workers under the age of 22, unmarried dependent grandchildren under the age of 22, dependent children of any age who are mentally impaired or disabled before the age of 22, and surviving dependent children of deceased miners.

Question 2

Describe the medical benefits provided to all classes of beneficiaries under the Combined Fund (including prescription drugs, pregnancy termination, contraceptives, and mental health benefits). To what extent do benefits provided by the fund represent the beneficiaries' primary medical coverage or do the benefits supplement other medical benefits? If the latter, what other medical benefits do the beneficiaries receive?

The Combined Fund provides beneficiaries with the array of medical benefits listed in table 2.

Table 2: Covered and Noncovered Medical Benefits of the Combined Fund

Major category	Coverage
Drugs and medication	Prescription medications
Home health services	If determined medically necessary by a physician, skilled nursing services, in-home physical and speech therapy, durable medical equipment, and oxygen
Inpatient hospital services	Semi-private room and board, intensive and coronary care, use of hospital facilities, diagnostic or therapeutic items, drugs or medications, administration of blood and plasma, renal dialysis
Mental health treatment	Individual psychotherapy, group therapy, psychological testing and counseling if the treatment is determined medically necessary by a physician and not available at no cost from another source; alcohol or drug rehabilitation, subject to prior approval **Not covered:** Encounter or self-empowerment group therapy, custodial care of mentally retarded or mentally deficient individuals, services rendered by private teachers, treatment for school-related behavioral problems
Obstetrical and family planning	Prenatal and postnatal care, certain childbirth classes, delivery, abortions when certified by a physician to be medically necessary, fees in connection with services for birth control **Not covered:** Birth control medications or devices
Preventive care	Physical exams and related medically necessary laboratory tests and x-rays, annual or semi-annual gynecological exams, preventative treatments such as immunizations and screening for hypertension or diabetes **Not covered:** Checkups necessary for applications for a marriage license, employment, or federal black lung disease
Surgery	The plan requires prior approval for certain surgical services
Treatment of illness or injury	Treatment for an illness or injury provided by a physician in an office or home; emergency medical treatment in an emergency room sought within 48 hours of onset
Other benefits	Certain outpatient hospital services, skilled nursing care facilities (subject to prior approval), vision treatment and routine eye care, use of extended care units (subject to prior approval) if prescribed by a physician, prosthetic devices, orthopedic appliances and shoes, physical and speech therapy, hearing aids, ambulance transportation, certain nonmedical transportation

Of the 71,337 individuals receiving benefits through the Combined Fund, 65,146 (about 90 percent) are also covered by Medicare. Combined Fund officials could not provide us with the exact number of beneficiaries covered by private insurance. However, they estimate that the number of beneficiaries is negligible.

Question 3

What are the major components of expenditures by the Combined Fund? How can these be expected to vary over time and why?

According to the June 1998 actuarial projections, the major expenses of the Combined Fund are medical benefits, death benefits, and administrative costs. The total expenditures for the Combined Fund in 1997 were about $366 million. In 1997, medical expenses constituted approximately 90 percent of expenditures, with death benefits and administrative costs amounting to about 3 percent and 7 percent, respectively. These expenses vary with both the size of the beneficiary pool and trends in the costs of medical treatment. Since a finite number of beneficiaries is covered by the Combined Fund, the beneficiary pool will likely decline as recipients die, driving down the number of individuals claiming benefits. Conversely, medical costs are expected to rise, thereby increasing per-capita medical expenses. Thus, as the beneficiary pool decreases over time, medical expenses may become a larger component of Combined Fund expenses in the future. Also, if the Combined Fund becomes insolvent, the cost of borrowing to pay benefits may add to expenses.

Question 4

How long do you expect the fund, as currently structured, to remain solvent and able to cover beneficiaries? Please give a year-by-year breakdown for the next 10 years.

It is difficult to accurately project the future solvency of the Combined Fund, primarily because of uncertainties created by the recent Supreme Court decision. The June 1998 Court ruling will likely reduce the number of firms that are required to pay into the fund. Regardless of the ultimate effect of the ruling on fund revenues, actuarial estimates made just before the decision show that the fund will be insolvent by 2000 and that its deficit will grow to between $107 million and $619 million by 2007, depending on the variation in Medicare-related expenses.

B-281186

Table 3 contains actuarial projections of the balance of the Combined Fund calculated before the June 1998 Court ruling. These projections include anticipated savings from agreements between the Combined Fund and the Health Care Financing Administration (HCFA) to cover certain Medicare benefits of Combined Fund beneficiaries. Under these agreements, the Combined Fund will finance Medicare services for Combined Fund beneficiaries who also have Medicare coverage. HCFA pays a premium to the Combined Fund for each Medicare-covered beneficiary. In return for this premium, the Combined Fund will cover payments for certain Medicare services for Combined Fund beneficiaries. Thus, if Medicare services cost more than the Medicare premium, the Combined Fund loses money. However, if these services cost less than the premium, the fund will realize a savings. The actuarial projections of the Combined Fund solvency for three levels of savings from the Medicare agreement and a baseline (zero savings) scenario are presented in table 3. As can be seen in table 3, even before taking into account the potential loss of revenue from the June 1988 Supreme Court ruling, the Combined Fund is expected to be insolvent by 2000 and its balance could continue to deteriorate thereafter.

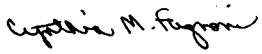
Table 3: Combined Fund's Year End Fund Balance (Shown in 000s)

Year	Baseline scenario	4% savings scenario	8% savings scenario	12% savings scenario
1997 (actual)	$95,517	$95,517	$95,517	$95,517
1998	52,204	52,204	52,204	52,204
1999	4,101	7,126	10,151	13,176
2000	(52,561)	(36,757)	(20,952)	(5,147)
2001	(115,083)	(79,335)	(43,587)	(11,792)
2002	(176,649)	(120,180)	(63,712)	(15,351)
2003	(241,955)	(163,931)	(85,907)	(20,330)
2004	(312,712)	(212,001)	(111,289)	(27,612)
2005	(409,271)	(282,868)	(156,466)	(51,955)
2006	(510,887)	(357,639)	(204,391)	(78,134)
2007	(618,887)	(437,506)	(256,125)	(107,135)

Note: Parentheses indicate negative numbers.

If you have any questions, please contact me on (202) 512-7215. Other major contributors are Francis Mulvey, Assistant Director, and Christy Muldoon, Evaluator-in-Charge.

Sincerely yours,



Cynthia M. Fagnoni
Director, Income Security Issues

(207050)

Statement of the Reachback Companies

We were very encouraged by this recent hearing and want to express our gratitude to Chairman Thompson and to Chairman Brownback for their courage in holding it. At the hearing we heard the start of a dialog between original sponsors of the Coal Act-- Senators Rockefeller and Specter -- and a proponent of Coal Act reform-- Senator Conrad. This is something which we have sought to bring about for the past five years. We are glad to see this process begin, and believe that the outcome will be productive for all concerned.

We here reiterate our concurrence in the commitment expressed by the five senators present for the hearing to a sound and stable funding basis for the health benefits of the beneficiaries of the Combined Fund--the retired UMWA miners and their dependents. It would be unfair and, as a practical matter, impossible to solve a funding problem by asking beneficiaries in the twilight of their lives to sacrifice the benefits that they currently have.

Despite the sometimes heated political rhetoric of Coal Act supporters, the reachback companies have never challenged the legitimate claim of the coal miner retirees and their dependents to fully funded health benefits. Our argument has been about how those benefits should be funded--i.e. who should pay for them. In the fierce debate over the legitimacy of the reachback tax the fears of the retired miners and their dependents have been thoughtlessly aroused as a political weapon against efforts to reform the Coal Act. Periodically the retirees have been frightened into thinking that their benefits could actually disappear if the reform efforts were ever to prevail. This is simply not the case and never has been. What has profoundly disturbed the reachback companies is the arbitrary and discriminatory method chosen to finance the Coal Act.

It is the reachback tax financing mechanism that has led us to wage a five-year fight for economic fairness.

Today Senator Conrad correctly pointed out that Senator Rockefeller was not the author of the so-called reachback tax. This concept was developed before the 1992 election in order to avert the threat of a national coal strike over retiree health benefits while, at the same time, presenting Congress with such an unpalatable option so that it would never be enacted. In order to ensure passage of the benefit protection provisions of the Coal Act, Senator Rockefeller felt compelled to accept the reachback tax even though we believe he knew it to be severely flawed.

Without reviewing the entire history of the Act there is some background that is worth repeating. Prior to the Act, health benefits for UMWA retirees had been financed on an industry-wide basis, from contract to contract, on a pay-as-you-go basis, by companies then in the bituminous coal industry. In the late 1980's the BCOA, with the agreement of the UMWA, made some significant changes in the way the production-based charge for health benefits was calculated in the national contract. This led one of the mid-sized BCOA companies to accept a severe strike in order to escape from what it saw as the unacceptable burden of the contract costs of retiree health care under the BCOA-UMWA.

Ultimately that company was successful and was able to sign a separate contract in 1988 that provided for much lower health benefit costs. The remaining industry accepted a much higher cost national contract containing explicit promises of financial guarantees for lifetime health benefits. This development coincided with rapidly rising inflation of healthcare costs.

These events produced threats by some BCOA operators even to dissolve the BCOA and thereby escape the health benefit guarantees of the national contract if some other way to lessen retiree healthcare costs could not be found. These events also led to the appointment of the Coal Commission and ultimately fueled a successful legislative campaign led by Senator Rockefeller in 1992 to pass the Coal Act.

Early in 1992 Senator Rockefeller included in an omnibus tax bill a nationwide coal tax to finance UMWA retiree health benefits. That bill was vetoed by President Bush. Opposition to that sort of tax from coal operators who never had anything to do with either the UMWA or its miners, much less the BCOA, doomed any effort to repass such a tax.

The focus then turned to an option discussed by the Coal Commission which involved forced contributions from companies which at one time had had something to do with the UMWA and the BCOA, but no longer had any legal relationship with either one. A long line of court decisions in the mid-1980's previously held that companies which left the national coal contract, and quit the bituminous coal industry, had no further obligation to continue to pay for retiree health benefits. Any promise of such benefits in the view of the courts was the responsibility of the trust entity created by the UMWA and the BCOA.

In an effort to overturn these decisions and lessen the cost of the benefit burden on its members, the BCOA and its supporters proposed the reachback tax as part of the Coal Act. This tax placed a large share of the cost on companies who had no enforceable obligation to share the

costs. These companies also had no coal production base upon which to recover the costs and no ability to pass them on to coal customers.

The economic dislocation and tragedy caused by the legislative imposition of this novel reachback concept has been substantial. The saga of the reachback companies clearly illustrates the problems that can occur when Congress attempts to override traditional principles of contract law by imposing retroactive legislation placing arbitrary and unfair financial obligations on certain selected companies.

Despite the absence of any legal obligation, the BCOA and other supporters of the Coal Act have worked hard to create a cloud of alleged moral obligation on the part of reachback companies to pay for retiree health benefits in perpetuity, despite the fact that no enforceable obligation ever existed. The entire history of the coal industry and its agreements contradicts the existence of any such obligation. One would expect in an extractive industry with resources (i.e. coal) continually being depleted, free entry and exit with no continuing financial obligations to be the rule, not the exception. Until the passage of the Coal Act this was in fact the case. A former operator could hardly be expected to pay for benefits from the non-existent proceeds of an exhausted mine.

The factual history of the National Bituminous Coal Wage Agreements has been greatly distorted, and even manufactured, in an effort to convince, first the Coal Commission and then the courts, that there was a colorable basis for Congress to impose by legislation retroactive liability for benefit costs which did not exist by contract. This effort was largely successful until the

Eastern Enterprises case. In that case, for the first time since the New Deal, the Supreme Court invalidated a significant section of a congressional economic enactment, largely on grounds of unconstitutional retroactivity, and left other aspects of the Coal Act in significant legal doubt. For the purposes of its analysis the Court treated Eastern as if it had left the coal industry prior to 1965 because at that time it set up a separate, wholly-owned subsidiary to conduct its coal mining operations. Eastern operated that subsidiary until it was sold in 1987. As the dissenting justices pointed out, in reality this made Eastern factually indistinguishable from virtually all other reachback companies. Thus, paradoxically, the Eastern decision has rendered the operation of the Coal Act even more arbitrary even though it did permit some companies to escape.

Recent projections by the actuary for the Combined Fund, Dr. Guy King, severely question the Fund's ability to provide retiree health benefits beyond the year 2000. That is the year the fund is projected to run out of money even under Dr. King's most optimistic scenario.

One other factor unmentioned at the hearing may exacerbate the Fund's current financial crisis to an even greater extent. The high premiums initially set under the Coal Act by HHS produced very healthy surplus projections for the life of the Fund. These projections of surpluses were previously relied upon by the reachback companies and Senator Conrad to say that reachback relief would be possible. When these premiums were challenged by a group of BCOA and other companies in the Chater case, the courts held that, in establishing the premiums, HHS had not taken proper account of high capitation payments to the Fund by HHS, and ordered HHS to lower the premium to account for these payments. The court-ordered lowering of the premiums has produced much of the deficit that is currently reflected in Guy King's estimates. In

addition, the Fund may also be forced to disgorge some $40 million of premiums improperly collected in the years before the Chater decision. This type of refund would make the Fund run out of money even sooner than Guy King projects. This possibility underlines the need for a prompt and effective solution.

The reachback companies believe that the current problems of the Fund offer an opportunity to fashion a more equitable way to finance the health benefits of the UMWA retirees and dependents than the approach currently taken by the Coal Act. Indeed, the need to ensure the permanent security of those benefits for the retirees requires the Congress to act soon. The goal of the retired miners for secure benefits and the goal of the reachback companies to finance these benefits more equitably are not in conflict. The reachback companies look forward to working with the Senators present at the Government Affairs hearing as well as with many other members of Congress to resolve the current financial difficulties confronting the Combined Fund in a fair and definitive way.

The LTV Corporation
Cleveland, Ohio

NACCO Industries, Inc.
Cleveland, Ohio

United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240

OCT 9 1998

Honorable Sam Brownback
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify on October 6, 1998, on behalf of the Office of Surface Mining Reclamation and Enforcement (OSM) before the Senate Governmental Affairs Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia on the issue of "Agency Management of the Implementation of the Coal Act."

As I indicated in my testimony on that date, OSM on October 1, 1998, transferred $81.8 million to the Combined Benefit Fund (CBF) based on CBF's estimates provided to OSM for Fiscal Year (FY) 1999. This $81.8 million payment covers both the original unassigned beneficiaries and those covered under the recent U.S. Supreme Court decision in Eastern Enterprises.

At the conclusion of my testimony, you requested that I provide you in writing projections on how long the Abandoned Mine Reclamation Fund interest would be able to pay the unassigned beneficiaries' premiums, including those beneficiaries covered by Eastern Enterprises. As the enclosed chart indicates, we have made projections out to FY 2004 using interest rates of 4.2 and 3.5 percent, respectively. Under either scenario, there is adequate interest to cover unassigned beneficiaries, including those covered by the decision in Eastern Enterprises, at least through FY 2004. The analysis for the out years assumes that receipts to the Abandoned Mine Reclamation Fund would be equal to the amount appropriated for the states and tribes by Congress. Historically, this has not been the case so the analysis is a conservative projection. The enclosed chart details our projections and the assumptions we used.

If we can provide further explanation or you need any additional information, please let me know.

Respectfully yours,

Kathy Karpan

Kathy Karpan
Director

Enclosure

cc: Members of the Subcommittee
Senator Thad Cochran
Senator John D. Rockefeller IV
Senator Kent Conrad
Mr. Bill Fant, Department of the Treasury
Ms. Marilyn O'Connell, Social Security Administration

PROJECTIONS ON ABANDONED MINE RECLAMATION FUND INTEREST EARNINGS AND PAYMENTS TO UMWA COMBINED BENEFIT FUND FOR UNASSIGNED BENEFICIARIES THROUGH FY 2004
in accordance with 1992 Energy Policy Act Amendments of SMCRA
(Projections from FY 1999 through 2004 are estimates)
(All dollar amounts in millions)

Description	FY 1992	FY 1993-95	FY 1996	FY 1997	FY 1998	FY 1999	FY2000 (1)		FY2001 (1)		FY2002 (1)		FY2003 (1)		FY2004 (1)	
							Int.Rate (2)		Int.Rate		Int.Rate		Int.Rate		Int.Rate	
							4.2%	3.5%	4.2%	3.5%	4.2%	3.5%	4.2%	3.5%	4.2%	3.5%
Interest Collected	39.3	132.5	69.4	81.0	67.0	86.0	67.2	56.0	67.2	56.0	67.2	56.0	67.2	56.0	67.2	56.0
CBF Transf. (3)			47.1	31.3	32.5	81.8	58.7	58.7	60.8	60.8	62.9	62.9	65.1	65.1	67.4	67.4
Balance	39.3	132.5	22.3	49.7	34.5	4.2	8.5	-2.7	6.4	-4.8	4.3	-6.9	2.1	-9.1	-.2	-11.4
Less Clean Streams(5)	2.8					4.2										
Balance	36.5	132.5	22.3	49.7	34.5	0										
FY93-95 Bal. (4)								132.5		129.8		125.0		118.1	132.5	109.0
Less Deficit								2.7		4.8		6.9		9.1	.2	11.4
Balance	$36.5	$132.5	$22.3	$49.7	$34.5	0	$8.5	$129.8	$6.4	$125.0	$4.3	$118.1	$2.1	$109.0	$132.3	$97.6

(1) Fiscal Years 2000-2004 Estimates are based on an AML balance of $1.6 billion with the premise that receipts and appropriations offset.

(2) Interest rate of 4.2% based on rates as of 10/98. Interest rate of 3.5% is a conservative projection. The reserve would not be exhausted by 2004 unless the interest rate drops below 2.28%.

(3) CBF transfer for FY 2000-2004 is based on 20,000 unassigned beneficiaries with the premise that unassigned beneficiary changes due to death rate and bankrupt companies will offset. The premium for FY 2000-2004 was incremented by 3.5% each year as an inflation factor.

(4) Balance of the FY 1993-95 reserve is decreased by projected deficits.

(5) The President's Budget includes $7 million for Clean Streams, but the appropriation has not been enacted.

Prepared by : Office of Surface Mining Reclamation and Enforcement -- October 9, 1998