

9704(a)(3) of each assigned operator for the plan year in which transferred.”

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE OF 2006 AMENDMENT**

Amendment by Pub. L. 109-432 applicable to plan years of the Combined Fund beginning after Sept. 30, 2006, see section 212(a)(4) of Pub. L. 109-432, set out as a note under section 9704 of this title.

#### **§ 9706. Assignment of eligible beneficiaries**

##### **(a) In general**

For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), 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.

##### **(b) Rules relating to employment and reassignment upon purchase**

For purposes of subsection (a)—

###### **(1) Aggregation rules**

###### **(A) Related person**

Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator.

###### **(B) Certain employment disregarded**

Employment with—

(i) a person which is (and all related persons with respect to which are) no longer in business, or

(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

###### **(2) Reassignment upon purchase**

If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such successor shall be treated as the assigned oper-

ator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

##### **(c) Identification of eligible beneficiaries**

The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the Commissioner of Social Security a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

##### **(d) Cooperation by other agencies and persons**

###### **(1) Cooperation**

The head of any department, agency, or instrumentality of the United States shall cooperate fully and promptly with the Commissioner of Social Security in providing information which will enable the Commissioner to carry out his responsibilities under this section.

###### **(2) Providing of information**

###### **(A) In general**

Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Commissioner of Social Security in connection with this section, cause a search to be made of the files and records maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Commissioner shall be advised whether the search disclosed the information requested, and, if so, such information shall be promptly transmitted to the Commissioner, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Commissioner shall be so advised.

###### **(B) Limitation**

Any information provided under subparagraph (A) shall be limited to information necessary for the Commissioner to carry out his duties under this section.

###### **(3) Trustees**

The trustees of the Combined Fund, the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, the 1950 UMWA Pension Plan, and the 1974 UMWA Pension Plan shall fully and promptly cooperate with the Commissioner in

furnishing, or assisting the Commissioner to obtain, any information the Commissioner needs to carry out the Commissioner's responsibilities under this section.

**(e) Notice by Commissioner**

**(1) Notice to Fund**

The Commissioner of Social Security shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

**(2) Other notice**

The Commissioner of Social Security shall notify each assigned operator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

**(f) Reconsideration by Commissioner**

**(1) In general**

Any assigned operator receiving a notice under subsection (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Commissioner of Social Security detailed information as to the work history of the beneficiary and the basis of the assignment.

**(2) Review**

An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Commissioner of Social Security shall conduct such review if the Commissioner finds the operator provided evidence with the request constituting a *prima facie* case of error.

**(3) Results of review**

**(A) Error**

If the Commissioner of Social Security determines under a review under paragraph (2) that an assignment was in error—

(i) the Commissioner shall notify the assigned operator and the trustees of the Combined Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

(ii) the Commissioner shall review the beneficiary's record for reassignment under subsection (a).

**(B) No error**

If the Commissioner of Social Security determines under a review conducted under paragraph (2) that no error occurred, the Commissioner shall notify the assigned operator.

**(4) Determinations**

Any determination by the Commissioner of Social Security under paragraph (2) or (3) shall be final.

**(5) Payment pending review**

An assigned operator shall pay the premiums under section 9704 pending review by

the Commissioner of Social Security or by a court under this subsection.

**(6) Private actions**

Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Commissioner.

**(g) Confidentiality of information**

Any person to which information is provided by the Commissioner of Social Security under this section shall not disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

**(h) Assignments as of October 1, 2007**

**(1) In general**

Subject to the premium obligation set forth in paragraph (3), the Commissioner of Social Security shall—

(A) revoke all assignments to persons other than 1988 agreement operators for purposes of assessing premiums for plan years beginning on and after October 1, 2007; and

(B) make no further assignments to persons other than 1988 agreement operators, except that no individual who becomes an unassigned beneficiary by reason of subparagraph (A) may be assigned to a 1988 agreement operator.

**(2) Reassignment upon purchase**

This subsection shall not be construed to prohibit the reassignment under subsection (b)(2) of an eligible beneficiary.

**(3) Liability of persons during three fiscal years beginning on and after October 1, 2007**

In the case of each of the fiscal years beginning on October 1, 2007, 2008, and 2009, each person other than a 1988 agreement operator shall pay to the Combined Fund the following percentage of the amount of annual premiums that such person would otherwise be required to pay under section 9704(a), determined on the basis of assignments in effect without regard to the revocation of assignments under paragraph (1)(A):

(A) For the fiscal year beginning on October 1, 2007, 55 percent.

(B) For the fiscal year beginning on October 1, 2008, 40 percent.

(C) For the fiscal year beginning on October 1, 2009, 15 percent.

(Added Pub. L. 102-486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3047; amended Pub. L. 103-296, title I, §108(h)(9)(B), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 109-432, div. C, title II, §212(a)(3), Dec. 20, 2006, 120 Stat. 3025.)

**Editorial Notes**

AMENDMENTS

2006—Subsec. (h). Pub. L. 109-432 added subsec. (h).

1994—Subsecs. (a), (c) to (g). Pub. L. 103-296 substituted “Commissioner of Social Security” for “Sec-

etary of Health and Human Services", "Commissioner" for "Secretary", and "Commissioner's" for "Secretary's", wherever appearing in text.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to plan years of the Combined Fund beginning after Sept. 30, 2006, see section 212(a)(4) of Pub. L. 109-432, set out as a note under section 9704 of this title.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

### PART III—ENFORCEMENT

Sec.

9707. Failure to pay premium.

#### § 9707. Failure to pay premium

##### (a) Failures to pay

###### (1) Premiums for eligible beneficiaries

There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

###### (2) Contributions required under the mining laws

There is hereby imposed a penalty on the failure of any person to make a contribution required under section 402(h)(5)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 to a plan referred to in section 402(h)(2)(C) of such Act. For purposes of applying this section, each such required monthly contribution for the hours worked of any individual shall be treated as if it were a premium required to be paid under section 9704 with respect to an eligible beneficiary.

##### (b) Amount of penalty

The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be \$100 per day in the noncompliance period with respect to any such failure.

##### (c) Noncompliance period

For purposes of this section, the term "noncompliance period" means, with respect to any failure to pay any premium or installment thereof, the period—

(1) beginning on the due date for such premium or installment, and

(2) ending on the date of payment of such premium or installment.

##### (d) Limitations on amount of penalty

###### (1) In general

No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

###### (2) Corrections

No penalty shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

##### (3) Waiver

In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

##### (e) Liability for penalty

The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

##### (f) Treatment

For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3050; amended Pub. L. 104-188, title I, § 1704(t)(65), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109-432, div. C, title II, § 213(b)(1), Dec. 20, 2006, 120 Stat. 3027.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 402 of the Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (a)(2), is classified to section 1232 of Title 30, Mineral Lands and Mining.

##### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-432 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary."

1996—Subsec. (d)(1). Pub. L. 104-188 struck out comma after "diligence".

### PART IV—OTHER PROVISIONS

Sec.

9708. Effect on pending claims or obligations.

#### § 9708. Effect on pending claims or obligations

All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the "evergreen" clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement op-