

**DESCRIPTION OF THE CHAIRMAN'S MARK OF
THE MINERS PROTECTION ACT OF 2016**

Scheduled for Markup
by the
SENATE COMMITTEE ON FINANCE
on September 21, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



September 19, 2016
JCX-84-16

CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Funding of Retiree Health and Pension Benefits for Employees in the Coal Industry.....	2
B. Clarification of Financing Obligations	8
C. Customs User Fees.....	9

INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on September 21, 2016, of an original bill, the Miners Protection Act of 2016. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of the Miners Protection Act of 2016* (JCX-84-16), September 19, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended ("Code"), unless otherwise indicated.

A. Funding of Retiree Health and Pension Benefits for Employees in the Coal Industry

Present Law

United Mineworkers of America (“UMWA”) retiree health benefits

In general

Three multiemployer plans provide retiree health benefits for employees in the coal industry (and their beneficiaries): the UMWA Combined Benefit Fund (“Combined Fund”), the UMWA 1992 Benefit Plan (“1992 Benefit Plan”), and the UMWA 1993 Benefit Plan (“1993 Benefit Plan”). In addition, retiree health benefits are provided to some retirees through plans maintained by their particular employers (“individual employer plans”). Moreover, pension benefits are provided by the UMWA 1974 Pension Plan (the “Pension Plan”).²

The Combined Fund and the 1992 Benefit Plan were established under the Coal Industry Retiree Health Benefit Act of 1992 (the “Coal Act”).³ The Combined Fund provides health benefits with respect to retirees (and related beneficiaries) who, on July 20, 1992, were receiving health benefits under previous UMWA plans.⁴ The 1992 Benefit Plan provides benefits with respect to participants (and related beneficiaries) who were eligible for health benefits under previous UMWA plans based on age and service earned as of February 1, 1993, or to whom coverage was required to be provided by an individual employer plan but who does not receive coverage,⁵ provided that the participant retired from the coal industry by September 30, 1994.

The 1993 Benefit Plan was established under the National Bituminous Coal Wage Agreement of 1993. Generally, the 1993 Benefit Plan provides health benefits to certain retired and disabled mine workers who are not eligible for benefits under the Combined Fund or the 1992 Benefit Plan and would have been eligible for benefits under the previous UMWA plans, but for enactment of the Coal Act. The UMWA 1993 Benefit Plan also provides benefits to certain retirees under the Pension Plan whose last employer contributed to the 1993 Benefit Plan and whose retiree health benefits would end because, *inter alia*, the employer is no longer

² Another plan, the UMWA 1950 Pension Plan, generally covering employees who retired before 1976, was merged into the Pension Plan on June 30, 2007. Section 9701(a)(3) refers to the Pension Plan as the “1974 UMWA Pension Plan” and describes participation in the Pension Plan as being substantially limited to individuals who retired in 1976 and thereafter.

³ Pub. L. No. 102-486, which enacted Chapter 99 of the Code (secs. 9701-9722). Section 9702 provides for the establishment of the Combined Fund, and section 9712 provides for the establishment of the 1992 Plan. Chapter 99 also contains provisions relating to benefits under the plans and funding of the plans.

⁴ The previous plans were the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan.

⁵ Section 9711 requires coverage under individual employer plans to be provided to participants (and related beneficiaries) receiving benefits as of February 1, 1993, or with respect to whom the age and service requirements for eligibility were met as of that date and who retired by September 30, 1994.

engaged in mining operations, is financially unable to provide the benefits, and has no related entity that is financially able to provide the benefits.

Retiree health plan funding

The Combined Fund and the 1992 Benefit Plan are funded in part by premiums required under the Code to be paid by coal mining operators.⁶ The 1993 Benefit Plan is funded in part by contributions by employers that are bargaining agreement signatories. The three plans (collectively, the “UMWA Health Plans”) are funded also in part by transfers under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”).⁷

Under the SMCRA, coal mining operators are required to pay certain fees to the Secretary of the Interior, which are deposited in the Abandoned Mine Reclamation Fund (commonly referred to as the “AML Fund”). In addition to transfers to States and Indian tribes relating to mining reclamation, the Secretary of the Treasury (“Secretary”) is authorized to transfer interest earned on the AML Fund to the UMWA Health Plans for financial assistance. To the extent interest transferred from the AML Fund is not sufficient to provide benefits under the UMWA Health Plans, the Secretary is authorized under SMCRA to make supplemental payments on an annual basis from the General Fund of the U.S. Treasury. The supplemental payments to the UMWA Health Plans, together with payments from the General Fund for certain States and Indian Tribes, are subject to a combined annual limit of \$490 million.⁸

In the case of transfers of interest from the AML Fund to the 1993 Benefit Plan,⁹ the benefits due under the plan are determined by taking into account only those retirees (and related beneficiaries) who were actually enrolled in the plan as of December 31, 2006, and who are eligible for benefits on the first day of the calendar year for which the transfer is made. Thus, benefits for retirees (and related beneficiaries) who become eligible for benefits under the 1993 Benefit Plan after December 31, 2006, are not taken into account in determining the amount that can be transferred to the 1993 Benefit Plan. For example, if retirees (and related beneficiaries) become eligible for the 1993 Benefit Plan after 2006 because of the loss of retiree health benefits under an individual employer plan through the employer’s bankruptcy proceeding, benefits for those retirees and beneficiaries are not taken into account in determining the amount that can be transferred from the AML Fund to the 1993 Benefit Plan.

⁶ Secs. 9704 and 9712(d). Failure to pay the required premiums under section 9704 may result in the imposition of a penalty under section 9707. In addition, under section 9721, a civil action may be brought by a plan fiduciary, employer, or plan participant or beneficiary with respect to an obligation to pay the required premiums, in the same manner as a claim arising from an employer’s obligation to pay withdrawal liability under section 4301 of the Employee Retirement Income Security Act of 1974.

⁷ Section 402 of Pub. L. No. 95-87; 30 U.S.C. sec. 1232.

⁸ Section 402(i)(3) of SMCRA; 30 U.S.C. sec. 1232(i)(3). Amounts to be transferred to the recipients are adjusted as needed to come within this limit.

⁹ Under SMCRA, the 1993 Benefit Plan is referred to as the “Multiemployer Health Benefit Plan.”

UMWA 1974 Pension Plan

The Pension Plan is a multiemployer defined benefit plan established by the National Bituminous Coal Wage Agreement of 1974 between the United Mine Workers of America (“UMWA”) and the Bituminous Coal Operators Association (“BCOA”), effective December 6, 1974. The Pension Plan provides retirement, disability, and survivors’ benefits to employees in the coal industry and their beneficiaries in accordance with plan terms. SMCRA does not provide for funds to be transferred to the Pension Plan.

Like other pension plans, the Pension Plan is subject to various annual reporting and notice requirements under the Code and the Employee Retirement Income Security Act of 1974 (“ERISA”).¹⁰ Some of these reporting requirements are met by the filing of Form 5500, Annual Return/Report of Employee Benefit Plan. Additional requirements apply in the case of an underfunded multiemployer defined benefit plan in endangered or critical status, including with respect to a funding improvement or rehabilitation plan.¹¹

Description of Proposal

Transfers to the UMWA 1993 Benefit Plan

The proposal expands the group whose retiree health benefits are taken into account in determining the amount to be transferred by the Secretary to the 1993 Benefit Plan under SMCRA. As expanded, the group includes (1) retirees (and related beneficiaries) actually enrolled in the 1993 Benefit Plan as of the date of enactment of the proposal, and who are eligible for benefits on the first day of the calendar year for which the transfer is made,¹² and (2) retirees (and related beneficiaries) whose health benefits would be denied or reduced as a result of a bankruptcy proceeding commenced in 2012 or 2015.¹³

The proposal contains additional rules with respect to a voluntary employees’ beneficiary association (“VEBA”)¹⁴ established as a result of a bankruptcy proceeding described in (2). The administrator of the VEBA is directed to transfer to the 1993 Benefit Plan any amounts received as a result of the bankruptcy proceeding, reduced by the amount of the VEBA’s administrative costs. Further, the amount that would otherwise be transferred by the Secretary to the 1993

¹⁰ See, for example, secs. 6057-6059 and ERISA secs. 101(f), 103 and 104.

¹¹ For a discussion of the rules relating to plans in endangered or critical status, see Part I.D.3 of Joint Committee on Taxation, *Present Law, Data, and Selected Proposals Relating to Multiemployer Defined Benefit Plans* (JCX-9-16), February 26, 2016, available at www.jct.gov.

¹² However, this group does not include individuals (and related beneficiaries) enrolled in the 1993 Benefit Plan under the terms of a participation agreement with the current or former employer of the individuals.

¹³ The proposal further provides that individuals described in (2) are to be treated as eligible to receive health benefits under the 1993 Benefit Plan.

¹⁴ A VEBA is an organization exempt from tax under section 501(c)(9).

Benefit Plan under SMCRA, as amended by the proposal, is reduced by any amount transferred to the 1993 Benefit Plan by the VEBA.

Transfers to the UMWA 1974 Pension Plan

If amounts available for transfer under SMCRA's \$490 million annual limit exceed the amounts required to be transferred for other purposes (including to the UMWA Health Plans), the proposal directs the Secretary to transfer the excess to the Pension Plan to pay plan benefits.¹⁵ Transfers are to end as of the first fiscal year beginning after the first plan year for which the Pension Plan's funded percentage (as defined under the Code funding rules) is at least 100 percent.

During any fiscal year in which the Pension Plan receives a transfer, no plan amendment may be adopted that increases plan liabilities by reason of a benefit increase, a change in the accrual of benefits, or a change in the rate at which benefits vest under the plan unless the amendment is required as a condition for qualified retirement plan status under the Code. In addition, a transfer is not to be made for a fiscal year unless the persons obligated to contribute to the Pension Plan on the date of the transfer are obligated to make contributions at rates that are not less than those in effect on the date 30 days before the date of enactment of the proposal. Any amounts transferred to the Pension Plan are disregarded in determining the unfunded vested benefits of the Pension Plan and the allocation of unfunded vested benefits to an employer for withdrawal liability purposes.

The proposal applies additional reporting requirements to the Pension Plan. Not later than the 90th day of each plan year beginning after the date of enactment, the Pension Plan trustees must file with the Secretary¹⁶ and the Pension Benefit Guaranty Corporation ("PBGC") a report (including appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary) that provides--

- whether the Pension Plan is in endangered or critical status;
- the Pension Plan's funded percentage as of the first day of the plan year and the underlying actuarial value of assets and liabilities taken into account in determining the funded percentage;
- the market value of plan assets as of the last day of the preceding plan year;
- the total of all plan contributions made during the preceding plan year;
- the total benefits paid during the preceding plan year;

¹⁵ The proposal describes the Pension Plan as the 1974 UMWA Pension Plan under section 9701(a)(3), but without regard to the limitation on participation to individuals who retired in 1976 and thereafter, thereby reflecting the merger of the UMWA 1950 Pension Plan into the Pension Plan.

¹⁶ References in this description to "Secretary" include the Secretary's delegate, for this purpose, the Internal Revenue Service.

- cash flow projections for the plan year and either the six or 10 succeeding plan years, at the election of the trustees, and the assumptions relied on in making the projections;
- funding standard account projections for the plan year and the nine succeeding plan years, and the assumptions relied on in making the projections;
- the total investment gains or losses during the preceding plan year;
- any significant reduction in the number of active participants during the preceding plan year and the reason for the reduction;
- a list of employers that withdrew from the Pension Plan in the preceding plan year and the resulting reduction in contributions;
- a list of employers that paid withdrawal liability to the Pension Plan during the preceding plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to the withdrawal liability;
- any material changes to benefits, accrual rates, or contribution rates during the preceding plan year;
- any scheduled benefit increase or decrease in the preceding plan year having a material effect on plan liabilities;
- details of any funding improvement plan or rehabilitation plan and updates;
- the number of participants and beneficiaries during the preceding plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries;
- the information contained in the Pension Plan's most recent annual funding notice;
- the information contained in the Pension Plan's most recent Form 5500; and
- copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the Pension Plan and contribution obligations under those plans, a breakdown of the Pension Plan's administrative expenses, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary may require, in consultation with the Secretary of Labor and the Director of the PBGC.

This report must be submitted electronically, and the Secretary is directed to share the information in the report with the Secretary of Labor. A failure to file the report on or before the date required results in a tax reporting penalty of \$100 per day while the failure continues unless the Secretary determines that reasonable diligence was exercised by the plan sponsor in attempting to timely file the report.

Effective Date

The proposal generally applies to fiscal years beginning after September 30, 2016. The reporting requirement relating to the Pension Plan applies to plan years beginning after the date of enactment of the proposal.

B. Clarification of Financing Obligations

Present Law

The Combined Fund is financed by premiums paid by current and former signatories to labor agreements with the UMWA (referred to as “assigned operators”) and, as discussed above, transfers under SMCRA.¹⁷ Assigned operators are generally required to pay to the Combined Fund an annual amount equal to the sum of three types of premiums (1) premiums for participants (and their beneficiaries) assigned to the operator, (2) a “death benefit” premium, and (3) an “unassigned beneficiaries” premium. However, for plan years beginning on or after October 1, 2006, no unassigned beneficiaries premiums apply unless the transfers to the Combined Fund under the SMCRA are less than the amount required to be transferred under SMCRA.

The 1992 Benefit Plan is financed by premiums paid by “signatory operators” and as discussed above, transfers under SMCRA.¹⁸ Signatory operators are responsible for additional “backstop” premiums if the transfers to the 1992 Benefit Plan under the SMCRA are less than the amount required to be transferred under SMCRA.

Description of Proposal

The proposal eliminates the potential application of unassigned beneficiaries premiums in the case that the transfers to the Combined Fund under the SMCRA are less than the amount required to be transferred from SMCRA. Thus, under the proposal, unassigned beneficiaries premiums do not apply. The proposal also eliminates any requirement to pay backstop premiums.

Effective Date

The proposal applies to plan years beginning after September 30, 2016.

¹⁷ Secs. 9704-9706.

¹⁸ Sec. 9712(d).

C. Customs User Fees¹⁹

Present Law

Under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, the Secretary of the Treasury is authorized to charge and collect fees for the provision of certain customs services. Pursuant to section 13031(j)(3), the Secretary of the Treasury may not charge fees for the provision of certain customs services after September 30, 2025.

Description of Proposal

The proposal amends section 13031(j)(3)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to extend the period that the Secretary of the Treasury may charge for certain customs services for imported goods from September 30, 2025 to April 29, 2026, and extends the ad valorem rate for the Merchandise Processing Fee collected by Customs and Border Protection that offsets the costs incurred in processing and inspecting imports from September 30, 2025 to April 29, 2026.

Effective Date

The proposal is effective on the date of enactment.

¹⁹ This description has been provided by the staff of the Subcommittee on International Trade, Customs, and Global Competitiveness of the Senate Committee on Finance.