

114<sup>TH</sup> CONGRESS }  
2nd Session }

SENATE

{ REPORT  
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## MINERS PROTECTION ACT OF 2016

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November \_\_, 2016—Ordered to be printed

Mr. Hatch, from the Committee on Finance,  
submitted the following

### REPORT

[To accompany S. \_\_]

The Committee on Finance, having considered an original bill, S. \_\_, to amend the Surface Mining Control and Reclamation Act of 1977 to transfer certain funds to the Multiemployer Health Benefit Plan and the 1974 United Mine Workers of America Pension Plan, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

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## I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. \_\_\_, the Miners Protection Act of 2016, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to transfer certain funds to the Multiemployer Health Benefit Plan and the 1974 United Mine Workers of America Pension Plan, and for other purposes, reports favorably thereon and recommends that the bill do pass.

### **Background and need for legislative action**

*Background*—Based on a proposal recommended by Chairman Hatch, the Committee on Finance marked up original legislation (the “Miners Protection Act of 2016”) on September 21, 2016, and, with a majority present, ordered the bill favorably reported.

*Need for legislative action*—The Chairman, Ranking Member, and a majority of the members of the Committee believe legislation is necessary to prevent the imminent loss of health benefits to “orphan” UMWA retirees, reduce the likelihood of insolvency of the UMWA pension plan and protect the Pension Benefit Guaranty Corporation’s multiemployer pension insurance program. Previously, Senators Manchin and Capito introduced miner protection legislation (S. 1714, the Miners Protection Act of 2015, 114th Congress, 1st Session). In addition, as noted below, during this Congress the Committee held a hearing at which it received testimony regarding coal miner health and pension benefits. The legislative proposal and the hearing informed the content of this bill.

### **Hearings**

On March 1, 2016, the Committee held a hearing on the Multiemployer Pension Plan System: Recent Reforms and Current Challenges, which included testimony on the condition of the United Mine Workers of America health and retirement funds.

## II. EXPLANATION OF THE BILL

### A. Inclusion of Certain Retirees in Multiemployer Health Benefit Plan (sec. 2 of the bill and sec. 402 of the SMCRA)

#### Present Law

#### United Mine Workers of America (“UMWA”) retiree health benefits

##### In general

Three multiemployer plans<sup>1</sup> 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”).<sup>2</sup>

The Combined Fund and the 1992 Benefit Plan were established under the Coal Industry Retiree Health Benefit Act of 1992 (the “Coal Act”).<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> provided that the participant retired from the coal industry by September 30, 1994.

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<sup>1</sup> Under section 414(f) of the Internal Revenue Code of 1986 (“Code”) and section 2(37) of the Employee Retirement Income Security Act of 1974 (“ERISA”), a multiemployer plan is a plan maintained pursuant to one or more collective bargaining agreements with two or more unrelated employers and to which the employers are required to contribute under the collective bargaining agreement(s).

<sup>2</sup> 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.

<sup>3</sup> Pub. L. No. 102-486, which enacted Chapter 99 of the Code (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.

<sup>4</sup> The previous plans were the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan.

<sup>5</sup> 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.

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 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.<sup>6</sup> 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”).<sup>7</sup>

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.<sup>8</sup>

In the case of transfers of interest from the AML Fund to the 1993 Benefit Plan,<sup>9</sup> 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

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<sup>6</sup> Code 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.

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

<sup>8</sup> 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.

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

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.

### **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 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 ERISA, including reporting with respect to the funded status of the plan.<sup>10</sup> 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.

### **Reasons for Change**

The contraction of the coal industry, including the bankruptcy of some coal companies, has adversely impacted the financing of the funds that provide health and pension benefits to retired coal miners, thus jeopardizing retiree benefits and the financial security of retirees. The Committee wishes to help stabilize these funds by providing additional resources.

### **Explanation of Provision**

#### **Transfers to the UMWA 1993 Benefit Plan**

The provision 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 provision, and who are eligible for benefits on the first day of the calendar year for which the transfer is made,<sup>11</sup> and

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<sup>10</sup> See, for example, Code secs. 432(b)(3)(A) and (D) and 6057-6059 and ERISA secs. 101(f), 103, 104 and 305(b)(3)(A) and (D).

<sup>11</sup> 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.

(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.<sup>12</sup>

The provision contains additional rules with respect to a voluntary employees' beneficiary association ("VEBA")<sup>13</sup> 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 Benefit Plan under SMCRA, as amended by the provision, 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 provision directs the Secretary to transfer the excess to the Pension Plan to pay plan benefits.<sup>14</sup> 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 provision. 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 provision 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 Secretary<sup>15</sup> and the Pension Benefit Guaranty Corporation ("PBGC") a

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<sup>12</sup> The provision further provides that individuals described in (2) are to be treated as eligible to receive health benefits under the 1993 Benefit Plan.

<sup>13</sup> A VEBA is an organization exempt from tax under section 501(c)(9).

<sup>14</sup> The provision 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.

<sup>15</sup> References in this description to "Secretary" include the Secretary's delegate, for this purpose, the Internal Revenue Service.

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;
- 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 provision 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 provision.

**B. Clarification of Financing Obligations**  
**(sec. 3 of the bill and secs. 9704 and 9712 of the Code)**

**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.<sup>16</sup> 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.<sup>17</sup> 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.

**Reasons for Change**

The SMCRA provisions requiring the transfer of moneys to the UMWA Combined Fund and 1992 Benefit Plan are sufficient to ensure that the required transfers occur. The Committee therefore considers it unnecessary to retain the present-law provisions under which unassigned beneficiaries premiums or backstop premiums would be owed in the event transfers under the SMCRA are less than the amount required to be transferred.

**Explanation of Provision**

The provision 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 provision, unassigned beneficiaries premiums do not apply. The provision also eliminates any requirement to pay backstop premiums.

**Effective Date**

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

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<sup>16</sup> Code secs. 9704-9706.

<sup>17</sup> Code sec. 9712(d).

**C. Customs User Fees**  
**(sec. 4 of the bill and sec. 13031 of COBRA 1985)**

**Present Law**

Under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA 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.

**Reasons for Change**

The Committee believes it is appropriate to extend the collection authority for the merchandise processing fee for budgetary offset purposes.

**Explanation of Provision**

The provision amends section 13031(j)(3)(A) of COBRA 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 May 6, 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 May 6, 2026.

**Effective Date**

The provision is effective on the date of enactment.

### **III. BUDGET EFFECTS OF THE BILL**

#### **A. Committee Estimates**

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate and section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974, as amended (the “Budget Act”), the following statement is made concerning the estimated budget effects of the revenue provisions of the Miners Protection Act of 2016, as reported.

The revenue effects of the bill will be included in the statement from the Congressional Budget Office that will be provided separately, as described in Part C below.

#### **B. Budget Authority and Tax Expenditures**

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the extent to which the provisions of the bill as reported involve new or increased budget authority or affect levels of tax expenditures will be included in the statement from the Congressional Budget Office that will be provided separately, as described in Part C below.

#### **C. Consultation with Congressional Budget Office**

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The statement from the Congressional Budget Office will be provided separately.

#### **IV. VOTES OF THE COMMITTEE**

In compliance with paragraph 7(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the Miners Protection Act of 2016, was ordered favorably reported on September 21, 2016, by a roll call vote of 18 ayes and 8 nays. The vote was as follows:

Ayes: Hatch, Crapo, Roberts (proxy), Burr, (proxy), Portman, Toomey, Wyden, Schumer (proxy), Stabenow (proxy), Cantwell, Nelson, Menendez (proxy), Carper, Cardin, Brown, Bennet (proxy), Casey, Warner.

Nays: Grassley, Enzi, Cornyn (proxy), Thune (proxy), Isakson, Coats, Heller, Scott (proxy).

## **V. REGULATORY IMPACT AND OTHER MATTERS**

### **A. Regulatory Impact**

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

#### **Impact on individuals and businesses, personal privacy and paperwork**

The bill revises the provisions of the SMCRA relating to transfers to UMWA benefit funds. The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses. The provisions of the bill do not impact personal privacy.

### **B. Unfunded Mandates Statement**

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104-4, the Unfunded Mandates Reform Act of 1995.

### **C. Tax Complexity Analysis**

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL,  
AS REPORTED**

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).