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1 public assistance and social services. In addition, the
 2 committee agreed several months ago to go along with the
 3 President's proposals for budgetary purposes to save money
 4 in Medicare and Social Security, with the recognition that
 5 if it were not possible, then it is not possible. But,
 6 at least, an allowance would be made for those savings so
 7 that if the committee does legislate in this area, it might
 8 achieve those savings.

9 Basically our recommendation is simply that we follow
 10 the amounts that the Budget Committee has assumed. In filing
 11 a report, this committee has adopted the practice of saying
 12 that it will stick within the totals, and if it spends more
 13 in one area, then it will find savings in another area.

14 So, we would simply recommend going along with the
 15 Budget Committee assumptions and filing the report, both
 16 for Fiscal 77 and for Fiscal 78.

17 Senator Talmadge. Any questions?

18 (No response.)

19 Senator Talmadge. Any objections?

20 (No response.)

21 Senator Talmadge. Without objection, that is approved.

22 Mr. Stern. The next item, Item Number 3 on the agenda,
 23 is related to three provisions in the social service - public
 24 assistance area which have a June 30 deadline.

25 The first of these relates to Food Stamp eligibility

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for recipients of Supplemental Security Income. These are payments for the needy aged, blind, and disabled persons.

If no action is taken, on July first Food Stamp eligibility for SSI recipients will be based on an individual assessment of a very complex set of factors which is generally thought to be unworkable.

The provision continuing Food Stamp eligibility on the present basis has been extended from time to time in the past, and the House bill would extend it through the end of Fiscal Year 1978.

We would recommend taking that provision, plus two other provisions which I will describe in a minute, out of this major public assistance bill that the House has passed and enact those now so that you have the month of July to work on the balance of this much more complicated bill.

The second provision relates to child support. There is a provision for Federal matching funds in the case of providing child support collection and paternity establishment services for people who are not on the AFDC. That would expire June 30.

We would recommend that you extend that through the end of the next Fiscal Year also. The sheet before you says October 1, 1979; we are recommending October 1, 1978.

The third item relates to an HEW study of Day Care Standards. This study was to have been completed with a

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report and recommendations submitted to the Congress by June 30. HEW says it is not going to be able to complete the study by then, and the House bill extends the deadline until April 1, 1978.

We would recommend taking those three provisions out of the public assistance bill and instead putting them on a minor tariff bill. The one that we would recommend is the one which allows the entry of carillons duty free for Smith College.

Senator Talmadge. Why are you recommending that, Mike?

Mr. Stern. Well, there are three noncontroversial tariff bills and that seemed to be the most innocuous of the three. I would believe that the House would accept these three provisions.

Senator Talmadge. Are you talking about that Medicaid provision now?

Mr. Stern. No, sir. I have not yet brought that up. I believe Senator Dole is going to bring that up next.

Senator Talmadge. Are there any questions, gentlemen?

Senator Moynihan.

Senator Moynihan. Mr. Chairman, I would like to say that Mr. Stern discussed this with me and the Subcommittee on Public Assistance will be holding hearings on H.R. 7200, which, as Mr. Stern says, is a major piece of legislation. This committee will want to look very closely at it.



1 In the meantime, the three provisions he proposed that
2 we deal with today take the pressure of time off the committee
3 in dealing with the large substantive issues.

4 Senator Talmadge. Are you urging the committee to follow
5 Mr. Stern's recommendation?

6 Mr. Moynihan. I very much am, sir. I wanted to say
7 that the subcommittee will be holding hearings.

8 Senator Talmadge. Are there any questions?

9 (No response.)

10 Senator Talmadge. Are there any objections to following
11 the recommendation of Mr. Stern and advocated by the Chairman
12 of the Subcommittee?

13 (No response.)

14 Senator Talmadge. Without objection, it is so ordered.

15 Now I believe an amendment is in order at this time
16 on the problem that some states are having with Medicaid,
17 is it not?

18 Mr. Stern. Yes, sir.

19 Senator Talmadge. Did you want to put it on that
20 same bill? Mr. Constantine?

21 Mr. Constantine. I believe that Senator Dole is going
22 to speak to that.

23 Senator Talmadge. Oh, yes. Senator Dole is recognized.
24 Senator Dole. Thank you, Mr. Chairman.

25 I think I will just briefly refer to a statement.

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On June 8, HEW announced that it reduced July Medicaid payments for 20 states, and I might add, as Senator Moynihan has pointed out, New York was one of the primary states, as was Ohio and others. They are going to reduce Medicaid payments to 20 states by a total of \$142 million because of noncompliance with statutory requirements for independent medical review of Medicaid patients in skill nursing and intermediate care facilities.

States such as my own will experience a substantial reduction, although Kansas has a fairly high compliance, though there are still about 13 which I think are not in compliance.

There is no need -- and I do not suggest that there is not a need for patient reviews -- but I am concerned about the severity of the reductions in terms of state budgetary difficulties balanced against the need to assure that federal funds are expended only for patients receiving proper care in the appropriate setting.

The statute requires that reductions take place unless the states can demonstrate that they have all completed the required review of all patients in all facilities. But unfortunately, even though even though we have that statute, the present law does not differentiate between significant and minor noncompliance.

For instance, in my own state of Kansas, 13 out of 385

1 I offered which the Senata passed last year. I think that
2 bill will be back to us within the next 60 days. So, the
3 amendment which you have offered will, I think, preserve
4 the states' integrity until that time. Then we can look into
5 the matter of reform more fully. I would suggest that we
6 follow that course of action.

7 Are there any questions?

8 Senator Curtis. Mr. Chairman?

9 Senator Talmadge. Senator Curtis.

10 Senator Curtis. I hope that we can accept Senator
11 Dola's suggestion and that also before long we can correct
12 the situation.

13 Senator Talmadge. I think we can in the bill that is
14 coming over from the House. They have held joint hearings and
15 things are moving very rapidly. That is the bill, incidentally,
16 that this committee originated.

17 Senator Curtis. In my statement there were 295 nursing
18 homes, and there were 5 which did not get their inspections
19 comleted. There were extenuating circumstances in each
20 one. The money for all of them was held up.

21 Now they said they held it up because of an opinion
22 of the General Counsel. I think this committee ought to know
23 what the law is so that we can change if it we need to.

24 I would like to ask the General Counsel to provide us
25 with a copy of his opinion that compels them to withhold all

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of the money when there are only a few which are not in compliance.

Senator Talmadge. The staff is directed to have the General Counsel submit that information.

I am informed that half of these 20 states merely are in a technical noncompliance, rather than a real one.

Mr. Constantine. That was the Controller General's opinion, Senator, from the GAO in the last year, that is, that it was mandatory. In our review of it, it appears to be mandatory.

The problem is that the House is going to correct that and I believe we will want to correct it too when it comes over here.

Senator Curtis. I think it will be helpful if we have the counsel's opinion.

Mr. Constantine. Yes, sir.

Senator Dole. Mr. Chairman, then if there is no objection, I will offer the amendment, which simply is a 90 day extension.

I would like to make a part of the record to clarify what has been stated a list of the states which will show that some are very minor and that some have only one or two which are not in compliance, but that they are still penalized to the full extent.

The Chairman.(presiding). Witout objection, it is agrsed.

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(The list of states provided by Senator Dole follows:)

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The Chairman. All right, let's go on to Black Lung.

Mr. Stern. That assumes that you have ordered reported favorably that bill, H.R. 1404

The Chairman. Without objection, the bill will be reported favorably.

Senator Byrd. Mr. Chairman?

The Chairman. Yes, Senator Byrd.

Senator Byrd. The Subcommittee on Taxation held a hearing on Black Lung legislation, S. 1538. This past Monday a conference was held by representatives of the staff of the Joint Committee on Internal Revenue Taxation and representatives of the Departments of Labor, Treasury, and Human Resources, and the Finance Committee to try to work out some details and some suggestions.

The staff will submit to the committee certain thoughts in this regard. The subcommittee itself has not had an opportunity to get together to discuss the staff objections.

But, with your permission, I will ask the staff to give to the committee the results of the discussion which you had with the representatives of the various groups which I just mentioned.

The Chairman. Is there any objection, Senator Byrd, to the full committee voting on this black lung bill?

Senator Byrd. I think that is the way it should be done.

The Chairman. Very well. Mr. Chabot, would you explain

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it to us.

Mr. Chabot. Yes, Mr. Chairman.

Let me give a little bit of the setting. I am sure that just about all of the members are aware that a number of years ago the black lung program was enacted. That part which was originally enacted is now called Part B of the program. That is a permanent program which is financed entirely from federal revenues. That is the expensive part of the black lung program about which you are generally aware.

Legislation was enacted a few years ago creating what we call Part C of the black lung program, and it is Part C that we are mainly concerned with in the bill that is before the committee now.

Under the present structure of Part C, for all claims that were filed after June 30, 1973 and approved for payment after December 31, 1973, the basic approach is supposed to be that if there is a state workers compensation law that qualifies under various standards set up in the act that is approved by the Secretary of Labor, then the black lung payments are supposed to be handled under that same law.

So far, not a single state has a law that qualifies under those standards. So, as a practical matter, the entire program is being run under what was contemplated as only the backup part of the program when this was first enacted.



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Under that structure, if the Secretary of Labor determines that a particular coal mine operator is the responsible operator in a given black lung case -- and as I understand it, generally that means that that is the operator for whom that miner last worked in the mines, last worked for at least one year in the mines -- in that situation, that operator is responsible for the payments of the black lung benefits.

If a responsible operator cannot be found, then the Labor Department is supposed to pay those benefits out of the general fund to the Treasury.

At the present time, substantially all of the benefits under Part C are , in fact, being paid out of the general fund of the Treasury.

Now, the bill that is before us, as reported out from the Senate Human Resources Committee, would expand the benefits of the program by making it more easy to qualify for benefits. It would also provide that either directly or indirectly, the entire costs of the program would be borne by the coal industry. It would continue the concept of responsible operator, and of course where there is one, that operator pays the benefits. But the other costs that are now being borne by the general fund of the Treasury would instead be borne by a trust fund which is supposed to be funded entirely from a tax on coal that would be imposed by the bill.

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By the way, the present Part C program is also scheduled to expire at the end of 1981, and another provision in the Senate Human Resources Committee's bill would make the Part C program permanent. The thing that is before the committee is the tax provisions and the trust fund provisions.

One of the difficulties in the committee's being able to arrive at a decision, I am afraid, is the fact that we have varying estimates on the costs of those parts of the bill that increase the availability of benefits.

The Human Resources Committee, when it reported the bill, estimated the costs over the next five years as a total of about three quarters of a billion dollars. When the Department of Labor testified before Senator Byrd's subcommittee, the Department of Labor estimated the costs at almost double that, or just shy of \$1.5 billion over the next five years.

Senator Byrd. Mr. Chairman, if I might interrupt at this point, I have a letter which I received today from the Department of Labor which deals with the question of costs. I think it might be advisable to make that a part of the record...

The Chairman. That will be done.

(The letter referred to follows:)

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1 Mr. Chabot. Let me say that after the staff meeting
2 which Senator Byrd had referred to, there seemed to be a
3 general agreement fixing costs at an amount of about \$1 1/3
4 billion over the next five years.

5 The Chairman. That would be about \$250 million a year,
6 is that it?

7 Mr. Chabot. It would be just a little over that, yes.

8 Now that would not be the basic level of costs.

9 Over the first three years there would be a bulge, because
10 under the approach of the bill, the trust fund would assume
11 the obligation, would have to repay the general fund of the
12 Treasury basically for the Department of Labor's expenditures
13 since 1974. That would create a bulge that would be spread
14 out over the first three years, so that the current estimates
15 are that the normal range of expenditures would be somewhat
16 under \$200 million a year, once this bulge had been taken
17 care of. But over the five year period, it would average
18 out, as the Chairman had indicated, to something over
19 \$250,000 a year.

20 The trust fund obligations, because part of these
21 costs would be borne by the responsible operators, would
22 under those estimates come to just about \$250 million a year.
23 It would be \$1.2 billion over the five year period.

24 The bill in the form reported by the Human Resources
25 Committee would have imposed a tax, a three-tiered tax, on

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coal, depending on its BTU value. I will go into a bit more detail on this later. Now I will give you the overview.

Our estimate of the revenue that would be raised by that over the first five years is a little over \$900 billion, or just shy of \$200 million a year. So, that tax would not raised enough over the first five years of the program --

Senator Curtis. Which tax did you say?

Mr. Chabot. The tax in the Human Resources bill, the tax on coal based on estimated BTU value. This would not raised enough over the first five years of the program to pay for the expected expenditures from the trust fund. Because of the fact that the tax would be at a rate which is more than the basic normal expenditures of the program, I would guess that somewhere out around 8 or 9 years the tax would probably have gotten to the point where it covered the total costs, if our estimates of cost are correct.

We have had some technical difficulties with the precise structure of that tax, and we have some alternatives to suggest to you. Let me briefly indicate that one alternative would be an ad valorem tax, that is, a tax based upon the manufacturers sale price of the coal. We have estimated that a 1 percent tax on the sale price would raise almost exactly the same amount of money as would the tax that is under the Human Resource Committee's proposal.

Senator Packwood. What is this tax you are proposing?

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Mr. Chabot. It is 1 percent of the manufacturers sale price for the coal.

Senator Packwood. The reason I ask is this. As I understand it, black lung is caused more by deep coal mining than surface coal mining.

Mr. Chabot. Yes, sir. At least that is the general understanding which we have.

Senator Packwood. Yes, that is the general impression. We have in Wyoming basically surface coal. Any kind of a tax that is levied the same on surface coal, based on a tonnage basis or otherwise, as levied on deep mined coal is disproportionately unfair to surface coal.

Mr. Chabot. If you are focusing on the cause of the problem with which we are trying to deal, as Senator Packwood has indicated, there is a general feeling that the deep mining, especially the deep mining of the harder grades of coal, seems to be more apt to cause black lung disease than would surface type mining.

Senator Packwood. In this bill, S. 1538, it bases its tax on the BTU content.

Mr. Chabot. That's right, without regard to whether it is deep mined or surface mined.

Senator Packwood. But by and large, isn't the high BTU content deep mined coal?

Mr. Chabot. The anthracite, which is hardest, is all



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or just about all deep mined. The lignite, which is the lowest, is all surface coal.

In the bituminous area, it varies. You can get bituminous of various grade from deep mining and from surface mining.

Senator Packwood. All I want to be sure of, Mr. Chairman, is that if indeed the theory of the tax is to place the cost on those who cause the problem, it is not fair to treat surface and deep coal the same way. If it is just a question of how to raise the money and spread it across the industry, that is another matter. I believe we ought to resolve that latter question first.

Senator Curtis. Does black lung disease occur in any mining operations other than coal?

Mr. Chabot. I am not aware of its occurring any place other than with coal mining. There apparently often is a question as to whether a person who has had a variety of experiences in fact has had black lung disease or some other type of respiratory illness. My understanding is that in those cases where it is determined to really be black lung disease, which they call pneumoconiosis, they concluded in, I believe, all cases that that comes from exposure to coal in coal mines.

Senator Curtis. The question I have in mind is whether or not the mining for some other substance can produce the

1 same disease.

2 Mr. Chabot. My understanding is that other diseases
3 may be produced, but not black lung disease.

4 Senator Dole. Would you yield there?

5 Senator Curtis. Yes.

6 Senator Dole. Does this have anything to do with
7 brown lung disease?

8 Senator Hathaway. Isn't that what textile workers
9 get? I don't think it covers that.

10 Senator Dole. Have there been any suggestions in that
11 area? Have any studies been done on that?

12 Mr. Chabot. No, sir, we have not.

13 Senator Dole. I know that there have been some articles
14 written about that.

15 Senator Hansen. Mr. Chairman?

16 The Chairman. Yes, Senator Hansen.

17 Senator Hansen. I appreciate what Senator Packwood
18 says. I would have to agree with him. I think that most
19 objective viewers would regard the exposure in an underground
20 mine to impose a more severe strain upon a person's physical
21 well being than a strip mining operation. Out of fairness,
22 it should be noted that I don't believe there is any record
23 at all of any incidence of black lung from strip mining,
24 as such, and if there is, I am unaware of it. We do have
25 black lung in Wyoming because we have had over the past years

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1 a number of underground mines, as the Senators know.

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3 When we talk about BTU, it is true that the underground
4 mined coals generally are a little higher in BTU than is
5 the surface mined coal. So, everything else being equal,
6 if exposure just to a mining operation were the same -- and
7 I agree with Senator Packwood that it is not --then it could
8 be argued that the higher the BTU, some compensation would be
9 made for the added exposure that might be involved. If
10 you were strip-mining coal with high BTU, you would have a
11 little more exposure, given the same period of time, as you
12 would again in a low BTU case.

13 There is one other factor, though. Most of the coal that
14 is used nowadays is treated, pulverized, and broken up, so
15 that there may be further exposure in that regard. I am
16 just trying to be fair and to point out that there are some
17 arguments which might be contended for putting it on a BTU
18 basis. So I come down on the same side that Senator Packwood
19 does.

20 I might ask, if I could, Mr. Chabot, for you to comment
21 at the same time on my amendment, which is S. 1656.

22 Mr. Chabot. Yes, Senator, I was going to get to that.
23 I wanted first to skim through, if you have the pamphlet
24 in front of you, a few things first.

25 We indicated on page 3, Item II, the Issues. I was
going to skim through the Issues so that we could get an

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1 overview of what was before the committee before the
2 committee started its decision-making. I just wanted to mention
3 one more thing before getting to Senator Hansen's proposal.

4 This was that we have a trust fund before us. The
5 Treasury Department has raised some technical questions as
6 to the trust fund. The most significant policy question is
7 whether the trust fund should be permitted to set up an
8 insurance program for coal operators' obligations under the
9 payment system.

10 There are several other more technical points that
11 the Treasury Department has raised on the trust fund.

12 The fifth of the issues that are listed there deals
13 with Senator Hansen's proposal, which is embodied in S. 1656.
14 The proposal would create another category of exempt organizations
15 The exempt organization would be a trust that the coal mine
16 operator could set up to make contributions which would be
17 used to fund that operator's obligations under the responsible
18 operator portion of this system that I described before.

19 There was testimony before Senator Byrd's subcommittee
20 about the difficulties that a number of operators have in
21 security insurance for their obligations. In some cases, no
22 companies will write insurance for some of the operators.
23 In other cases, insurance will be written, but premiums,
24 especially in the case of companies which operate deep mines,
25 can be remarkably high.

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1 There was testimony of at least one instance where the
2 premiums would amount to 28 percent of current payroll.

3 Under another part of the existing law, which would be
4 modified in some small respects by the bill, the Labor
5 Department has the obligation to require every operator to
6 either take out insurance or establish that it is a responsible
7 self-insurer of whatever its obligations might be under the
8 program. There is no part of the bill which deals with
9 the difficulties that people have in satisfying one or another
10 of these requirements, and Senator Hansen's proposal is addressed
11 precisely to those difficulties.

12 So, it is clearly an appropriate part of the
13 consideration that is before you.

14 Senator Hansen. If you would yield at that point, I
15 would like to make a couple of observations to more precisely
16 define what the problems are.

17 A coal operator, as it has been pointed out, either can
18 set up a program that will provide the assurance of benefits
19 at a later date, or he can buy insurance. The troubles
20 with buying insurance are perhaps three. One is that
21 insurance premiums can rise astronomically, and an operator
22 may have been paying insurance for 20 years and suddenly
23 get a notice from the insurance company that it will no longer
24 insure anybody. So, all of the money which he has put in
25 for practical purposes is down the drain. That ought to be



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avoided.

I think the advantage of my amendment is this. I have a letter from the Treasury Department which I would like to have permission to include in the record.

The Chairman. (Nods affirmatively.)

Senator Hansen. They are opposed to the amendment, feeling that it raises some issues, which I believe Mr. [Lubig] would like to speak about later.

(The letter from Treasury referred to follows:)

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Senator Hansen. Essentially, what my bill does is to provide a method of financing claims against operators. As I pointed out, an operator could carry private insurance, but if he wanted to self-insure himself, then this bill would provide him with the option of establishing an irrevocable nontaxable trust fund. The money that would go into this trust fund would not be taxable. The contributions to the trust fund would be deductible, just as insurance premiums would be.

There is no danger of using the fund as a tax shelter. The only use to which the income from this private fund could be put would be for the payment of black lung claims.

I think it has a lot of advantages.

Now, I understand that yesterday the joint committee raised questions on the employer trust fund, and the potential revenue loss from the deduction of contributions was brought into view. I would respond to that concern by saying that I would be perfectly willing to have some limitation on the annual contributions that could be made, such as percentage of the value of the coal mined.

The second point raised by the joint committee was that there was a doubt as to whether the fund would be subject to ERISA limitations. I would respond to that concern by saying that it would suit me fine to specifically provide that the fund would be subject to ERISA fiduciary limitations.

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I simply want to afford the industry, Mr. Chairman, an opportunity to do the things that it is required to do by law and to see that the funds that they put into the program, if they want to set up an employer trust fund, would be possible for them to do. Whatever is reasonable, I am willing to do.

The Chairman. How much limitation do you want to suggest? You said that you would be willing to have a limitation on the amount that they could put into the fund.

Mr. Chabot. Senator, let me say at this point that we have so little of an understanding as to precisely who would use the trust fund approach that we are not prepared to say that there would be substantial revenue losses under it. It is conceivable that if the trust fund approach were used, for example, only by people who would otherwise be paying premiums to insurance companies, there might be no revenue loss at all. They would be simply getting deductions for contributions to the fund where otherwise they would be getting deductions for contributions to the insurance company. So, we are not prepared to say that this proposal would involve any significant revenue loss, or even at this point, any revenue loss at all. We just don't know enough about how it would be used.

So, for that reason, if the committee were to wish to go along that line, it would be difficult to establish any



1 limit in terms of tonnage. I would think that it would be
2 appropriate at this stage, with our lack of knowledge, to go
3 in terms of the actuarial requirements in accordance with
4 regulations set down by the Treasury Department.

5 Senator Hansen. I did not mean to imply that there
6 should be a limitation on the tonnage. I simply meant
7 a percentage of the value of the coal mined. I think that
8 what could be put in ought to be in direct proportion to
9 the amount of coal mined.

10 Mr. Chabot. The difficulty even there, Senator, is
11 that a company that may be mining relatively little coal now,
12 but still be in the coal mining business, may turn out to
13 have very substantial liabilities because of miners who have
14 already left the mines. So, if you have your contributions
15 limited to what the company is currently earning from coal,
16 that might turn out in some cases to be too low a limit.

17 Senator Hansen. It seems to me as though you are trying
18 to go both ways. You may be successful in doing that, but
19 I don't know.

20 Mr. Chabot. That is why I am suggesting an actuarial
21 approach, which would be based on Treasury Department
22 regulations.

23 Senator Hansen. But how quickly could that be implemented?

24 Mr. Chabot. That I would not know.

25 Senator Hansen. Could you guess? Are you talking about

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1 months or years, or what?

2
3 Mr. Chabot. I would certainly hope that the Treasury
4 Department would be able to produce this in months, rather
5 than in years, but I had better not talk for the Treasury
6 Department on this.

7 The Chairman. Look, why don't we just say, as the
8 Senator suggested to begin with, that the Secretary may,
9 by regulation, require or limit the amount that could be
10 put into the fund? Ordinarily, I would not like to leave the
11 regulations to the Secretary, but that would answer the
12 problem for the time being, and later on, when we get more
13 information, we can change it to make it do that.

14 Senator Hansen. Well, that would suit me fine, if we
15 could include language which would limit the liability of
16 the miner in proportion to what he had been able to do.
17 I mean, if he wants to do more and Treasury says he can't
18 do more, then I don't think Treasury or anyone else ought to
19 come back later and say that you didn't put enough in so
20 that you have a bigger obligation.

21 Now are you willing to agree to that kind of proposition?

22 Mr. Chabot. Yes. I would assume that this would not be
23 in terms of minimum funding standards. I would assume that
24 it is up to the Labor Department to decide whether or not
25 the operator has set aside enough money, and that is part of
the basic operation. It is the same sort of decision-making



1 that they go through now in determining whether or not you
2 have adequate insurance and whether or not you can be a
3 self-insurer.

4 The Chairman. I thought he was talking about a maximum
5 limitation?

6 Mr. Chabot. I was talking about a maximum.

7 The Chairman. That's what I thought.

8 Senator Hansen. That's what I thought, too.

9 The Chairman. Then we all agree. Why don't we just
10 say that the Secretary may, by regulation, if he deems it
11 appropriate, set what the maximum limitation could be on
12 what one could set aside in the fund to protect the miners.

13 Mr. Chabot. Uh-huh.

14 Senator Talmadge. Would the Senator yield at that point?

15 Senator Hansen. Yes.

16 Senator Talmadge. Isn't it true now that all of these
17 payments come directly out of the federal Treasury?

18 Senator Hansen. Absolutely.

19 Senator Talmadge. How can the government lose money
20 on a deal where you are going to shift the responsibility
21 from the taxpayers to the coal miners?

22 Senator Hansen. Now I don't know how they can. Here is
23 an industry that is trying to do something to help itself
24 and I gather that Treasury find fault with this, and it amazes
25 me.



1 The Chairman. I really think they are trying to
2 cooperate with you.

3 Senator Hansen. Maybe so. Perhaps I misread it.

4 The Chairman. At least Mr. Chabot is trying to cooperate
5 with you, it seems to me.

6 (General laughter.)

7 The Chairman. If we modify it as suggested, that fills
8 in the blank spots in the amendment and I don't know why we
9 should not agree to it.

10 Mr. Chabot. Let me suggest two other points, Senator.
11 One is the question of the restrictions against self-dealing
12 and other types of fiduciary limitations.

13 As I said, at this point there Labor Department people
14 to whom we have spoken do not know whether that sort of
15 trust fund would come under the Labor title of ERISA.
16 That title would provide for various fiduciary requirements.

17 The reason for the uncertainty is there is a definition
18 of employee welfare benefit plan, and it appears that this
19 provides the sort of welfare benefits that would be included
20 under it.

21 But there is also a provision that plans set up solely
22 to comply with Workmen's Compensation laws are excluded
23 from ERISA, and the people there tell me that at this point,
24 since the concept of these obligations, of these coal mine
25 operator obligations, are so much like Workers Compensation

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laws that they are not sure whether that causes these plans to be outside of ERISA.

So, what you might wish to do is to, in effect, come to a policy decision that fiduciary obligations ought to be imposed, that you don't want to impose two sets of fiduciary obligations, one through the tax law and another one applying to the same plans through the labor laws.

Under these circumstances, you might leave it up to the staff, and if we conclude that the labor law ERISA limitations do apply, then that is it and that will satisfy those obligations. If we conclude, with the concurrence of the Labor Department, that the labor law limitations don't apply, then we will draft up a similar set of limitations to be applied through the tax laws. So, you will end up with one set of limitations.

At this point, I cannot tell you whether the labor law limitations apply.

Senator Hansen. I think, Mr. Chairman, as Senator Byrd has pointed out, this is rather unique and novel legislation. We make some presumptions, as we did a few years ago, that anyone who has worked in a mine for 25 years has black lung, period; that he does not require any examination or doctor's certification; that if he has worked there, he has black lung.

I think that Senator Randolph wanted to expand that

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definition to include asthma, emphysema, and lung cancer, along with a doctor's definition. I would not speculate on what might happen there.

Really, we have put quite a burden on Treasury, as you know, and a further burden on operators. I am simply trying to get something done to bring some relief now to those operators. I hope we can work it out this way.

Senator Byrd. Would the Senator yield?

Senator Hansen. I would be happy to yield.

Senator Byrd. As I understand your proposal, there is no way that a company could benefit from this. The trust fund can be used only to pay black lung benefits.

Senator Hansen. Right.

Senator Byrd. It cannot at any time revert to the company.

Senator Hansen. That's right.

Senator Byrd. It's an irrevocable trust.

Senator Hansen. Right.

Senator Byrd. I support the suggestion of Senator Long and Senator Hansen.

I do submit for the record a letter from the American Insurance Association which opposes Senator Hansen's bill.

I ask that that be put into the record.

(The letter referred to follows:)

COMMITTEE INSERT



1 The Chairman. Well, should we vote on the amendment?

2 Senator Curtis. May I ask a question first?

3 The Chairman. Of course.

4 Senator Curtis. These standards that are in ERISA,
5 which you are not sure whether or not they apply, do they
6 have to do merely with the investment policy of the trust
7 fund?

8 Mr. Chabot. No, sir. The major standard that I think
9 we should be concerned with is to avoid what we in the
10 past have called self-dealing between the trust and the employer.
11 For example, if the employer were to make a contribution to
12 the trust, then turn around and borrow it back from the trust,
13 the employer still has the money. He would be paying interest
14 for it, but he gets a deduction for the interest as well
15 as for the contribution that he has made, even though he still
16 has the money.

17 It would be that series of limitations that I would be
18 most concerned about.

19 The fiduciary provisions, however, of ERISA go far
20 beyond that and impose various obligations on trustees, and
21 do impose obligations on investment policies as well as
22 dealing with self-dealing.

23 Senator Curtis. In fact, they probably go farther
24 than is necessary here.

25 Mr. Chabot. I would suspect so.

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Senator Curtis. Your fund here can only be used for one thing, to pay these benefits.

Mr. Chabot. I would assume that if the decision was that it does not come under ERISA and that we should draft a tax limitation, we would not be anywhere near as comprehensive in the tax limitations as the ERISA proposal.

Senator Curtis. Does this proposal for which we are asked to approve the tax benefits enlarge the scope of the program?

Mr. Chabot. This proposal -- no, sir. The overall bill does, but this proposal simply is a method of meeting the coal mining operators obligations under the program.

Senator Curtis. I know, but we are imposing the tax to do that. I think we have to look beyond that.

Mr. Chabot. Senator, if I may interrupt for just one moment, the Part C program has two parts and will continue to have two parts. If a responsible operator is determined, in the case of a particular claimant, then that responsible operator has the obligation of making all the payments.

What we are talking about now in Senator Hansen's proposal deals only with that responsible operator obligation. The general tax part would be to deal with the other part of these obligations, that is, where there is no responsible operator that can be determined.

So, you have the tax part spreading the obligations to

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1 the industry as a whole; but then there remains the part
2 that falls on specific coal mine operators. It is the specific
3 coal mine operator obligation that Senator Hansen's amendment
4 is going to.

5 Senator Curtis. Yes. But what I am asking is this.
6 In the payment of benefits, does this proposal, which comes
7 from the other committee, enlarge the program or liberalize
8 it in any way?

9 Mr. Chabot. Yes.

10 Senator Curtis. In what way?

11 Mr. Chabot. I would ask Mr. Humphreys to comment on
12 that.

13 Mr. Humphreys. It has a number of features to it that
14 enlarge the benefits under the program. The most significant
15 of them is that it authorizes the Labor Department to draw
16 up new definitions of what constitutes disability and how you
17 determine whether an individual is [disabled].

18 The Labor Department estimates that that change will
19 result in increased benefits, both federal responsibility and
20 the individual operator responsibility, of \$800 million over
21 the next five years.

22 Senator Curtis. Is that the usual custom in laws of
23 this kind, that they let disability be determined by regulation
24 or do statutes fix that?

25 What is the pattern in Workmen's Compensation Law and

1 what is the pattern in this program prior to that?

2 Mr. Humphreys. Previously, I believe, the standards
3 were supposed to be about the same as Social Security's.

4 Mr. Guttman. Mr. Chairman, if I may, under the black
5 lung bill, the Department of HEW was given authority to
6 prescribe the definition. They prescribed two sets of
7 definitions. One is the so-called interim standards, which
8 were applicable to the claims filed in early 1972 and 1973,
9 which are substantially more liberal in their so-called
10 permanent standards, which are applicable to the Part C
11 program.

12 Under this bill, the Labor Department would be authorized
13 to revise those permanent standards.

14 Senator Curtis. My question is this. Have we done
15 this in any other program, that is, granted to an executive
16 agency the authority by regulation to define disability, or
17 is it usually done by statute?

18 Mr. Humphreys. I understand that it is generally a
19 matter of statute, although this involves both the standards
20 and how you apply them. I would imagine that some parts of
21 how you apply them are a matter of regulation in programs
22 such as Social Security, for example.

23 Senator Curtis. So, it is an additional delegation of
24 authority to the Labor Department?

25 Mr. Humphreys. Yes, sir.

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Senator Curtis. Now, in what way does it enlarge the benefits or liberalize the program?

Mr. Humphreys. The assumption under that part of it is that under these new standards, more miners and survivors would qualify than under existing law. It also includes a number of other provisions. One is a prohibition against the Labor Department's challenging X-ray findings of the claimant's own radiologist, provided that the X-ray is basically clear and so forth; that the Labor Department would not be permitted to have their own experts challenge the claimant's radiologist's finding that the X-ray shows the existence of disability.

The Labor Department now estimates that to cost \$250 million over the next five years. They earlier estimated that there would also be an \$800 million cost, but they are assuming that they will be able to better train the claimants' radiologists.

Senator Curtis. Did they establish in the hearings a good case for taking the position that any bit of evidence cannot be refuted by the opposing side?

Mr. Humphreys. The Labor Department opposes that particular provision of the bill.

Senator Curtis. Did the hearings establish any reason for putting it in there?

It seems like a rather queer law to me to say that one

1 side can submit evidence but that another side cannot refute
2 it.

3
4 Maybe there is something about the history of the case
5 that I do not know about, so I do not want to unjustly criticize
6 it.

7 Mr. Humphreys. I believe the main argument is simply
8 on the basis that it has taken a considerable amount of time
9 to go through this reinterpretation process in the past. I
10 don't know of any other rationale for that.

11 Senator Hansen. Senator Curtis, you were not under the
12 illusion that my amendment addressed that question, were you?

13 Senator Curtis. Oh, no.

14 Senator Talmadge. Would the Senator yield?

15 Senator Curtis. I yield.

16 Senator Talmadge (presiding). That, of course, is
17 outside the purview of our jurisdiction. Our jurisdiction
18 relates solely to the tax aspects of it.

19 Senator Curtis. Yes, but because of the jurisdiction
20 which I exercise here, I want to know what a tax is going
21 to be levied for and to be sure it has certain elements of
22 justice, and so on. We cannot change that part of the bill,
23 however, I agree with that.

24 Senator Talmadge. Are we ready for a vote, gentlemen?

25 Senator Hathaway. Mr. Chairman, may I ask a question.

SENATOR TALMADGE. SENATOR HATHAWAY.

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Senator Hathaway. What happens to the trust fund under your bill if the company goes out of business?

Senator Hansen. My understanding would be that the amount of money in that trust would remain in the trust and would be subject to call by anyone who could show a relationship between employment in that company and his future health and well being. If the company went out of business, it would not change any of the terms of the trust as far as its guaranteeing moneys to pay claims to a person who had been employed by the company. That would be my feeling.

Senator Talmadge. Who would be the trustee, Senator Hansen?

Senator Hathaway. They would have to set up a separate trustee in the first place, wouldn't they?

Senator Hansen. I would presume so, though I am not an expert in trusts.

Senator Hathaway. Would your bill call for that?

Senator Hansen. Yes. I would assume that there is a pattern that is well established that would be useful here.

Senator Talmadge. Would there be any objection to making the Treasury Department or the Labor Department a trustee?

Senator Hansen. I personally would not have any. Let me seek a little advice here.

(Pause)

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Mr. Chabot. Under the bill, as Senator Hansen has introduced it --

Senator Hansen. I think that perhaps Mr. Willan might speak to that point.

The advantage of the trust not being in the hands of the government, as I understand it, is that there might be other investments that could be made that would result in an accumulation of a greater amount of interest in the trust so as to anticipate the ability to make larger payments or more payments than would otherwise be the case. I would hope that we might reckon with that.

If the Treasury Department were the trustee, I would assume that the investment might be made in --

Senator Talmadge. Government bonds, and added to the Debt.

Senator Hansen. Right. Thank you.

Senator Talmadge. Suppose you have a trust fund now that has been in existence for 20 or 25 years and no claims are made. What is going to happen to that trust fund? Should not at some time or some date, rather than leave it in perpetuity, sterilized, revert to the government -- that is, within a reasonable length of time, such as 50 years or 100 years.

I see someone holding up a hand over there.

Who are you and what do you have to say?

1 Mr. Lubick. Senator, I am Mr. Lubick from the Treasury
2 Department. I wonder if I might say a word on this.

3 Senator Talmadge. We will accept your comments.

4 Mr. Lubick. In answer to your specific question, the
5 bill provides that on satisfaction of all liabilities under
6 the trust, the amount goes to another trust as designated by
7 the contributor, which may be a black lung trust or a
8 401 trust. It could be a general pension trust. That is the
9 way the bill was drafted.

10 My general comment from the point of view of the
11 Treasury Department is that we are hesitant about Congress
12 introducing for the first time a deduction for reserves for
13 a self-insurance fund. Back in 1954, the Congress did adopt
14 a general provision permitting current deductions for
15 employers for reserves for estimated expenses, and that
16 led to a tremendous revenue loss, so Congress repealed it the
17 next year.

18 This seems to be starting down that same road. I think
19 there is a very real problem here and I believe Senator
20 Hansen's bill does address this.

21 Senator Talmadge. Let me ask you this.

22 As I understand it, the present program is financed
23 directly out of the taxpayers Treasury, out of the Deficit,
24 isn't that right?

25 Mr. Lubick. That's correct.

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Senator Talmadge. All right. Now Senator Hansen is trying to shift that burden to the owners of the mines. It looks to me like that is a reasonable thing to do, to try to relieve the taxpayers of that burden.

Now you tell us how we can do it?

Mr. Lubick. I believe that S. 1538, by levying a tax the original bill levies a tax on coal operators which was designed for that very purpose. It was designed to levy a tax upon the coal industry which has responsibility for the payments of these benefits.

I think that the two bills, S. 1538 and Senator Hansen's bill, are both addressed to the same objective. They just do it through different means.

At any event, they are both designed to take the onus off the general revenues of the Treasury Department.

Senator Curtis. In either case, the tax would be a deduction, wouldn't it?

Mr. Lubick. That is correct, Senator Curtis, except that in S. 1538, you have a general excise tax which is paid over to a trust fund which is administered, as it is drawn, by three Secretaries, and we would hope it would be the Secretary of Labor. Senator Hansen's bill permits each employer to, in effect, self-insure his own trust fund. I think you are for the first time introducing a concept of an immediate deduction for a self-insurance fund. I think you are going to

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face the problem of the [product's] liability insurance in a number of other areas where it is a pressing and difficult problem.

Senator Curtis. Well, we do it in the pension area now.

Mr. Lubick. We do it in pensions, and we do it in bad debt reserves. We do not do it with insurance type losses.

Senator Hansen. If I could, let me ask the representative from Treasury if the bill introduced by Senator Byrd, which I support, does not simply try to provide insurance and benefits for persons who are unable to find a responsible employer. Isn't that a fact?

Mr. Lubick. I believe that is correct, Senator Hansen.

Senator Hansen. Well, you see, I am trying to deal with another group. I am trying to deal with responsible operators who are here and who are willing to make a contribution. Isn't that right?

You are having the same trouble I am. It is a little hard to hear in this room.

Mr. Lubick. You are basically dealing with a different group, that is correct.

Mr. Chabot. It does have to be borne in mind, as the last comment of Senator Hansen expressed, that the basic bill which is before us deals with the responsibility of the coal industry as a whole to take over the obligations that are now being paid out of the general funds of the Treasury.

1 The basic bill would leave the responsibility that exists
 2 in existing law on responsible operators. Senator Hansen's
 3 bill is addressing that part of it, the responsibility that
 4 exists in existing law, and it would be a responsibility of
 5 greater monetary importance because of the other changes of
 6 the bill that would be under the laws, as amended by the
 7 Human Resources Committee's bill.

8 So, there are two different parts.

9 Senator Byrd. Mr. Chairman, I think it is important to
 10 realize that Senator Hansen's proposal supplements the bill.

11 Senator Hansen. It's not either/or.

12 Senator Byrd. That's right. It supplements the bill
 13 and does not take its place.

14 Senator Curtis. It seems to me that if action is to
 15 be taken in this area, where there are so many unknowns and
 16 where we have to work with another committee, maybe if we
 17 give them this tax in Senator Hansen's proposal, perhaps
 18 we should do it with a cut-off period of about two years and
 19 see what happens. Then we can see what kind of standards
 20 and regulations are put up, how the tax works, and how the
 21 reserves work, and then we can take another look at it.

22 Senator Hathaway. Your bill takes the position of a
 23 person who cannot get insurance, is that right?

24 Senator Hansen. No, no. The troubles with buying
 25 insurance are at least two. One is the premiums may go up

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2 very sharply, and two is the insurance company may just decide
3 that it is not going to carry on that insurance.

4 Senator Talmadge. And in some states they do not have
5 the insurance available, isn't that right?

6 Senator Hansen. Right.

7 Senator Hathaway. Your bill is a substitute, isn't
8 it, for the Human Resources one?

9 Senator Hansen. No. I think it compliments Senator
10 Byrd's bill to address this responsible group of employers
11 who are not identified in terms of earlier claimants against
12 these funds because of the disease. It may be that Mr. Willan
13 can help to fill in some gaps here.

14 Mr. Willan. I think one of the major objectives of
15 Senator Hansen's amendment, and a change in the approach by
16 the Labor Committee or the Human Resources Committee, is to
17 keep this responsibility for financing this new employer
18 liability in the private sector. While the insurance approach
19 might be a temporary approach, I think clearly down the line
20 the time would come when that would be inadequate and then
21 you would be faced with imposing additional taxes with a
22 federal trust fund.

23 So, this approach of Senator Hansen's is merely to
24 allow the private industry sector the opportunity to set
25 aside the funds, which would clearly be there to meet this
liability which has been imposed now in the future.

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to certify that that coal mine operator is not going to have any further obligations under the program, then perhaps the funds in the trust could go to the basic trust fund, the trust fund that is otherwise being funded from the industry as a whole through some coal tax.

Senator Curtis. Would you yield right there for a question?

Mr. Chabot. Yes, Senator.

Senator Curtis. I agree that eventually there ought to be something there to direct where the money goes if it is not needed anymore. But it seems to me that in the bill as a whole, whatever we agree to here today, we should have a so-called "sunset" provision, and that to a considerable extent would take care of this problem about which you are talking, because something could be addressed when the tax was extended.

Mr. Chabot. The difficulty, Senator, is that if you simply would allow that at the expiration of this program the money would revert to the employer, then you will have ended up with a situation where the employer would have an incentive to perhaps contribute large amounts of money, get current deductions, and know that in ten years or five years the program money would go back to them.

Senator Curtis. The point is this.

Suppose we put a sunset date on this, perhaps for two years. Now there is no fund that is going to terminate . .

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1 within two years.

2 Mr. Chabot. I expect not.

3 Senator Hansen. What would be the effect of the sunset
4 law on contributions to the trust fund?
5

6 Senator Curtis. Whatever we do here, I would limit
7 the tax for two or three years just so we can come back and
8 take a look at it.

9 Senator Byrd. I think it is important, is it not, that
10 Senator Hansen's trust fund not revert back. Isn't that a
11 fundamental part of it?

12 Senator Hansen. That's right.

13 Senator Curtis. That's all right. I have no objection
14 to that.

15 Senator Talmadge. Of course, if you have a two year
16 provision, you are setting up something on a permanent long-
17 term basis. If you are going to stop this thing dead in
18 two years, you will still have that trust fund money available,
19 and down the road you will have a lot of claims for which
20 you will not have sufficient money to cover. Then you will
21 have to meet the whole issue head-on again two years from now.

22 It seems to me, gentlemen, that what we ought to do is
23 this. I think that Senator Hansen has made a good suggestion
24 here. The only thing I find any objection at all to is the
25 indefinite life of the trust and the possibility that it could
go into other trusts and the possibility that it could even

1 revert to the contributor at some future date., It seems
2 to me that Mr. Chabot has made a good suggestion. Why don't
3 you amend your proposal there in this way. When the Secretary
4 of Labor certifies that there is no longer any claimant for
5 that particular fund, that fund should then be transferred
6 to the total funds available for the payment of black lung.
7 Either that, or that it will revert to the Treasury itself.
8 Then, I think, you will have what you want. I would suggest
9 that we agree to your amendment with Mr. Chabot's suggestion
10 that when there is a certification that there is no longer
11 any claimant on that fund, that fund should then be transferred
12 to the general black lung trust fund or to the Treasury.

13 How does that sound to you, Senator Hansen?

14 Senator Hansen. That is agreeable.

15 Senator Talmadge. Do you modify your amendment accordingly?

16 Senator Hansen. I so modify it.

17 Senator Talmadge. Senator Hathaway.

18 Senator Hathaway. What do we do about the cap on
19 deductions.

20 Senator Talmadge. The Treasury regulation, I believe, was
21 what we had agreed to.

22 Senator Hathaway. Will we leave that up to Treasury?

23 Mr. Chabot. I understood that it would be maximum
24 limitations on contributions based on Treasury regulations,
25 which in turn will have to be based on actuarial limits.



1 have any authority to limit the other parts.

2 Senator Curtis. That is really what I mean, just the
3 part that we are acting upon.

4 Senator Byrd. I think there should be a limitation
5 on it, but I am doubtful about three years. It seems to me
6 that that might be too short a period of time.

7 Senator Curtis. Well, what would you think?

8 Senator Byrd. I might think five years perhaps.

9 Senator Curtis. Well, if I can't get three, I will
10 take five. I do think that somewhere down the line we
11 should.

12 Senator Byrd. I agree with you. I think sometime
13 down the line we should.

14 Senator Curtis. We are levying the tax here for a
15 program that somebody else worked out. It's true that we
16 can't touch that program, but we may want to look at the tax.

17 The Chairman. Very well, the tax will expire in
18 five years then.

19 All in favor so indicate by saying aye.

20 (A chorus of ayes.)

21 The Chairman. Opposed, no?

22 (No response.)

23 The Chairman. The ayes have it.

24 Now, have we agreed on the tax?

25 Mr. Chabot. We have not agreed on the nature or size

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1 of the tax. That is the next point for us to consider.

2 Assuming that we are agreeing that there is not only
3 a tax, but that the tax is to be earmarked for the trust
4 fund and that the tax is to be dealt with through a trust
5 fund, there is a question of the sort of tax and the amount
6 of the tax.

7 Let me suggest that we go first to the sort of tax
8 that we are going to have.

9 As the bill came from the Senate Human Resources Committee,
10 it was a three-tiered tax based on the BTU value of the coal.
11 The Bureau of Mines was supposed to certify what the BTU
12 value was.

13 It was to be 30 cents a ton where the BTU value was
14 11,000 BTU per pound or more; for an intermediate group it
15 would be 15 cents a tone; for the lowest group it would
16 be 7.5 cents a ton.

17 There appear to be essential technical difficulties in
18 that. The Bureau of Mines is not going to be able to certify
19 in essence every carload of coal as to which of the categories
20 it falls into. Of course, the Internal Revenue Service people
21 do not have the technical capacity to do that, nor does the
22 Service have the number of people necessary to go through
23 all the coal mine operations.

24 One of the alternatives that the staff had examined
25 that would appear to do rough justice would be to set up a

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1 tax fund on an ad valorem basis that is based on the coal
2 mine operators' price for the coal. It would be a manufacturers
3 tax, operated the same way in this essence as a truck tax
4 or a parts tax or the tax on bows and arrows that we have in
5 present law.

6 The feeling is that that is technically possible for the
7 IRS to administer. It has some difficulties, but they are
8 precisely the same sort of difficulties which the IRS is
9 used to dealing with.

10 The same amount of revenue over the five year period
11 that would be raised by the Senate Human Resources Committee's
12 bill could be raised by a tax of this sort, that is only
13 1 percent on the sales price. The feeling was that a 1 percent
14 increase in the sales prices almost certainly could be easily
15 passed on to the consumers, and would be a sufficiently
16 small amount so as not to cause any pricing distortions or
17 any discrimination among operators.

18 As Senator Packwood has pointed out, in situations where
19 you have some surface mining that produces high priced coal,
20 most surface mined coal is being sold at prices significantly
21 lower than most deep mined coal. But there is still some overlap
22 and you will occasionally have some surface mined coal that
23 is being sold at a price comparable to the price of some deep
24 mined coal. Arguably this puts an unfairly high burden on
25 that operator.



1 The policy consideration with which you have to deal
2 is whether a tax at a level of about 1 percent is sufficiently
3 small so that even if you don't get the precise answer, you
4 get an answer that is close enough and that has the advantage
5 of being administarable.

6 Senator Byrd. What is the price of coal these days?
7 Is it about \$30 a ton?

8 Mr. Chabot. On an overall national average, it is
9 about \$20 a ton. But lignite, for example, sells at an
10 average of about \$4 a ton, and anthracite sells at about an
11 average of \$35 a ton. The various types of bituminous and
12 sub-bituminous range in between.

13 The Chairman. How much lignite are we mining here in
14 this country now?

15 Mr. Chabot. It is the fastest growing proportion
16 percentage-wise, but it is still a very small portion of the
17 total. I would say that about 4 percent of the coal that is
18 mined at the present time is lignite. By the end of the
19 five-year period that might grow to perhaps 6 percent or so.

20 Senator Hansen. I would like to ask Mr. Chabot a question.
21 When you speak about the average price being about \$20 a ton,
22 is that the [mine mouth] price or the delivered price?

23 Mr. Chabot. The [mine mouth] price.

24 Senator Hansen. I see. That would be where this tax
25 would apply.

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Mr. Chabot. Yes. If you have an ad valorem, then of course the lower priced coals would pay considerably less per ton. The lignite would average 4 cents a ton on \$4 per ton coal; the anthracite would average about 35 cents a ton on \$35 per ton coal.

Senator Curtis. In general, it is with anthracite coal where black lung problems are?

Mr. Chabot. The anthracite is just about all deep mined.

Senator Hansen. The harder the coal is, the greater is the incidence of black lung. Isn't that right?

Mr. Chabot. That is the general impression. I have to be vague about this because my understanding is that even at this stage, people still have only general impressions. But that is the current general impression.

The Chairman. About what percent of this coal comes out of deep mines as compared to strip mining?

Mr. Chabot. All of the anthracite is mined. Just about all of the lignite is surface mined or strip mined.

Senator Hansen. Surface mined coal last year I believe was about 665 million tons.

Mr. Chabot. That is the total coal production last year.

Senator Hansen. Oh, I'm sorry. I guess you are right.

Mr. Chabot. I think that the strip mines in the bituminous area, which is the great bulk of all the coal that

1 is mined -- bituminous and sub-bituminous -- I believe that a
2 little over half is from deep mines and just a bit under
3 half is from strip mines. Probably the strip mined portion
4 is growing faster, I believe, than the deep mined portion.

5 The Chairman. It could be argued that since you are not
6 getting the black lung from the open mines or the strip mines,
7 that the tax ought to just go on the deep mined coal on the
8 theory that that is where the black lung is coming from.

9 Mr. Chabot. We were considering that, Mr. Chairman. The
10 difficulty is that there are many cases in the bituminous
11 and sub-bituminous area where a single operation involves
12 both strip mining and deep mining. Perhaps here strip mining
13 is not the appropriate term. I should say surface mining
14 and deep mining.

15 In fact, many mines nowadays start off as essentially
16 a surface mining operation, and as they get deeper and deeper
17 into the seam of coal, they just change the operation as they
18 go along. When the open burden gets to be too great, they will
19 continue going after that seam of coal, but will change their
20 method to a basically deep mining one.

21 So, there will be difficulties in determining when a
22 mine has changed over. As I said, in many operations, the
23 same mine is producing, at any given moment, both some coal
24 from surface mining operations and some from deep mining.

25 So, we did explore that, but there would be technical

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difficulties in imposing the tax that way.

Senator Byrd. Let me ask you this. Last year the tax was on a tonnage basis. What was that tax per ton?

Mr. Chabot. It was 10 cents per ton, except in the case of deep mined anthracite coal, which was 15 cents a ton. Since very little of the coal in the country, just about 1 percent, is anthracite, as a practical matter you could say that it was 10 cents across the board for the ton.

Senator Byrd. Well, then, this 1 percent ad valorem would be considerably higher, wouldn't it?

Mr. Chabot. It would be higher for the higher priced coal, which is in almost all cases deep mined coal. It would be lower for the lower priced coal. As I said, the lignite sells at an average price of \$4 per ton. I forget what the sub-bituminous average price is, but I think it is around \$7.50 a ton. These would all be paying significantly less than last year.

Senator Byrd. But the bulk of the coal would be paying significantly more, wouldn't it?

Mr. Chabot. The bituminous and the anthracite, that is, much of the bituminous, would be paying significantly more, yes. This would raise more money overall than would have been raised in the last year or two.

Senator Byrd. Then it is a higher tax also than that approved by the Committee on Human Resources?

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Mr. Chabot. No. You will have to make a decision as to how much money you wanted to raise. I suggested that a 1 percent tax would raised almost exactly the same amount of money over this five year period as the Human Resources Committee's tax would raise. If that is the total amount of revenue you want to get from a tax, then this would be an equivalent. This would produce the same total amount of tax. It averages to just under \$200 million a year. We have estimated \$925 million over the five year period.

Senator Byrd.(presiding). Give me a comparison. Take the average ton of bituminous coal. How would this 1 percent compare with what the Human Resources Committee proposed?

Mr. Chabot. I would say that about half of the bituminous coal under the Human Resources bill would pay a tax of 30 cents a ton!

I'm sorry -- let me back off from that.

The great bulk of the bituminous coal would pay 30 cents a ton under the Human Resources Committee's bill. The great bulk of the sub-bituminous coal, probably just about all of it, and a portion of the bituminous would pay 15 cents a ton under the Human Resources Committee's bill.

So, under this 1 percent approach, the sub-bituminous would all pay a lesser rate of tax than the Human Resources Committee's bill; the bituminous would probably be paying --



1 Senator Byrd. I am just trying to understand, which
2 I do not yet, why the Human Resources Committee chose the
3 BTUs.

4 Senator Moynihan. I suspect that this was a probable
5 answer, that the disease was associated with BTU content.
6 But so is price. How many laboratories will the IRS have to
7 set up to examine the BTU content of a sample of every 50
8 cars on the Norfolk and Western Railroad? I mean, this is just
9 bizarre.

10 Senator Byrd. Suppose the committee were to go back
11 to the same proposal that it approved last year. How would
12 the amount of money raised under that proposal compare with
13 the 1 percent ad valorem?

14 Mr. Chabot. The proposal of last year that was reported
15 out by the committee, as I said, as a practical matter imposed
16 a flat-rate tax across the board. That was the higher
17 rate for anthracite, which was 15 cents per ton, but
18 substantially all of the coal was taxed at 10 cents per ton.

19 That would produce approximately a little over 40 percent
20 of the revenues that would be produced under the Human
21 Resources Committee bill tax, or, for that matter, under the
22 1 percent tax.

23 Senator Byrd. Is this another way of saying, then, that
24 the cost of the program in the one year has increased
25 about two and a half times?

1 Mr. Chabot. Senator Byrd, the increased costs under
2 the substantive part of this bill are substantially greater
3 than the increased costs under the substantive part of last
4 year's bill.

5 I don't know to what extent this is because the
6 definitional changes have been made in the bill, or to what
7 extent this results from a more careful analysis of the costs.
8 But in point of fact, the estimated costs under last year's
9 bill would have totalled for a five year program less than
10 \$0.5 billion. We are now talking about estimating costs for a
11 five year program of \$1 1/3 billion.

12 So, in part, this may be due simply to more careful
13 analyses of the costs. But clearly, in substantial part it
14 is due to the fact that the bill before you now is more
15 generous in expanding its definitions and in making more people
16 eligible for benefits.

17 Senator Byrd. But a 1 percent ad valorem tax would not
18 finance this bill, is that right?

19 Mr. Chabot. Yes, that is correct. Under our present
20 estimates, the tax proposed by the Senate Human Resources
21 Committee would not be sufficient to finance the five year
22 program. Since the 1 percent tax is just being set before
23 you as an equivalent, as a way of raising the same amount of
24 revenue differently, then obviously the 1 percent tax would
25 not be sufficient either. If you wanted to finance the

1 entire program over the next five years, I think that you
2 would have to have something like a 1 1/3 percent tax
3 approximately.

4 We should recognize that the program costs more in this
5 first five year period because of a hump in costs, because
6 of picking up some prior expenditures from the general funds
7 in the Treasury that are to be reimbursed. So the general
8 ongoing rate of the program, although it would be expensive,
9 would not be quite this expensive.

10 Senator Byrd. I take it that the consensus is that it
11 would be better not to go to BTU's for the purpose of
12 determining the tax, and to put the tax either on an ad valorem
13 basis or on a tonnage basis. Is that about it? I repeat,
14 I assume that the consensus is that the committee should not
15 accept the BTU tax, but should go either to a tonnage
16 tax or an ad valorem tax, to one or the other.

17 Mr. Chabot. The BTU tax was tonnage, but the different
18 tax rates were set by BTU.

19 Now, if you want to go with a flat across-the-board
20 tonnage tax, you would have to come up with a tax of about
21 24 cents a ton.

22 Senator Byrd. To raise the same revenues as the
23 1 percent ad valorem tax?

24 Mr. Chabot. Yes, sir. That, of course, would be
25 technically feasible also. But we would think that you would

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1 probably conclude that that does not impose enough of a
2 burden on the higher priced coal and that it imposes too much
3 of a burden on the lower priced coal. In the case of the
4 lignite, you would be talking about a tax which might be
5 6 percent of the price.

6 That is why we thought that a combination of technical
7 feasibility and the policy line that we believe the committee
8 would be more interested in would probably best be served
9 by an ad valorem tax.

10 Senator Byrd. I think the significant point that was
11 brought out today was not brought out in the hearing last
12 week. That is the greatly increased cost of this program
13 vis-a-vis the program which was approved last year.

14 I don't know that we have enough members present to
15 attempt to decide this tax matter at the moment.

16 If we set aside this tax itself for the time being,
17 what other items do you have to bring up?

18 Mr. Chabot. Well, we have a number of elements of the
19 trust fund provisions that we feel ought to be decided upon.

20 Senator Byrd. Have we decided on the trustee?

21 Mr. Chabot. Yes, sir. The trust fund under the bill
22 would have three trustees: the Secretary of the Treasury,
23 the Secretary of Labor, and the Secretary of Health, Education
24 and Welfare. By the way, it is Health, Education, and Welfare
25 that administers the Part B program, the one that is funded

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entirely from federal funds, that is a permanent program.

The Treasury Department would much prefer that the Secretary of the Treasury have the role essentially of fund manager, that the office that deals with receipts and pays out the expenditures essentially be under the certification of the Labor Department, and that the policy aspects of the fund be handled by the Secretary of Labor as sole trustee.

So, the Treasury Department recommends that the Secretary of Labor be the sole trustee and that the Secretary of Treasury be essentially the money manager of the fund and not have responsibilities for substantive policy matters.

Senator Byrd. What is the thinking of the committee in that regard?

Senator Hansen?

Senator Hansen. I'm sorry, Mr. Chairman, but I was temporarily inattentive.

Senator Byrd. The question is whether the Secretary of Labor should be the principal trustee and the Secretary of the Treasury be responsible only for managing the assets of the fund.

Under the proposal that came to the committee, the Secretaries of Labor, Treasury, and HEW would be joint trustees.

Senator Packwood. My intuitive feeling, although it is probably correct in terms of substance, is that the



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Secretary of Labor as the trustee would end up costing more than the Secretary of the Treasury.

(General laughter.)

Senator Byrd. I'm sorry, but I could not hear you. What was that?

Senator Packwood. My hunch is that if the Secretary of Labor is the paramount trustee for the substance of it, it will only cost you more in the long run than if you have a tripartite trusteeship.

Senator Curtis. This is the public fund?

Mr. Chabot. Yes, sir.

Senator Curtis. In which the taxes are placed?

Mr. Chabot. Correct.

Senator Hansen. I share the confidence in the Department of Labor that has been expressed by the Senator from Oregon.

(General laughter.)

Senator Packwood. May I say that that is a bipartisan remark, regardless of the parties present and the party of the Secretary of Labor.

Senator Byrd. Why don't we leave it the way the bill came to the committee, then?

Senator Curtis. What does the staff suggest?

Mr. Chabot. The staff is simply at this point reporting the proposal of the Secretary of the Treasury.

Senator Byrd. Without objection, then, why don't we



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leave it as it came to this committee, with the three trustees?

Senator Packwood. May I interrupt for just a moment?

Senator Byrd. Of course.

Senator Packwood. I want to bring up, if I may, the bill that I talked with you and with others about. This is the political tax credit bill. I have talked with all of the Senators about this. It is sponsored by Senator Moynihan, Senator Talmadge, and me.

I am going to suggest that we attach it to H.R. 3340, which is the day care bill that we have here, the substance of which we have taken out and put into another bill. We have no more need for the bill, and I have talked with Russall about this.

The bill very simply increases the tax credit for political contributions to up to 75 percent, up to a maximum credit of \$100 per person. Also, based upon discussion we had during hearings on this, I have entered a provision, too, that would allow you to either take it as a tax credit on your income tax, or, if you want your money sooner, you can file a form prepared by the Internal Revenue Service and they will simply send you a check in the amount to which you are entitled in about 60 days. This is at the suggestion of the Chairman. Many people do not want to wait for a year or more to get their tax credit. That, very simply, is the bill. Frankly, it



1 is intended to be sent down and placed on the calendar along
2 with the public financing bill. When we get to this subject,
3 I intend to argue that this is a much better method of financing
4 political campaigns.

5 Senator Curtis. What limits did you propose?

6 Senator Packwood. A 75 percent tax credit, up to a
7 maximum of \$100. I chose the tax credit route rather than
8 the deduction because the argument is always made that the
9 deduction favors the rich and the credit favors the poor and
10 I am trying to encourage smaller contributions. If you give
11 a \$10 contribution, you will have a \$7.50 credit.

12 Senator Curtis. Well, isn't there \$100 in the law now?

13 Senator Packwood. No, there is a \$100 deduction in the
14 law. I am changing that to a maximum of \$100 credit, and
15 \$200 for a couple. What you now have is a deduction of
16 \$100 for an individual and \$200 for a couple. Mine would be
17 a credit. So, you can get \$75 off your income tax if you give
18 \$100. I have limited it to \$100 because I did not want the
19 argument to be used that this was meant to benefit large
20 donors. It is not.

21 Senator Byrd. Then yours would be a substitute for
22 the other public funding?

23 Senator Packwood. Well, we would have them both on the
24 calendar. The basic philosophical debate on the issue will
25 come down to are we better off financing our campaigns by

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1 straight-out appropriations from the Treasury in one form or
2 another, or, are we better off encouraging millions of
3 small donors by enacting a tax credit. This bill uses the
4 latter approach.

5 Senator Byrd. Is there any further discussion?

6 Senator Hansen. I move the bill be approved.

7 Senator Curtis. I am for it.

8 Senator Packwood. Mr. Chairman, I would indicate that I
9 have seven proxies in my pocket, including Senator Moynihan's.

10 Senator Byrd. I will call for a vote.

11 All those in favor please so indicate by saying aye.

12 (A chorus of ayes.)

13 Senator Byrd. I vote aye, and I vote Senator Hathaway's
14 proxy no.

15 Senator Packwood. I vote Senators Dole, Moynihan, Roth,
16 Laxalt, and Danforth as aye. I will check with Senator
17 Talmadge, but he is a co-sponsor of the bill. I do not have
18 Senator Long's proxy.

19 Senator Byrd. The bill is reported.

20 What other business do we have to take up besides the
21 tax itself? I don't believe that we can settle that today?

22 Mr. Chabot. Still in the trust fund, the bill as it
23 came to us would require the Secretary of the Treasury -- let
24 me back up a moment.

25 Under the bill, if the Labor Department determines that

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a person is a qualified claimant and let's say that Company X is a responsible operator, the Labor Department would start making payments to this qualified claimant. If Company X does not reimburse the Labor Department, that company's liability having been established, then a lien arises in favor of the trust fund against the assets of Company X.

Under the bill, the Secretary of the Treasury is required to go to court to enforce that lien. The lien would generally have the same characteristics as a tax lien.

The Treasury Department points out that it does not go to court to enforce tax liens. It merely refers these cases to the Justice Department and the Justice Department sues to enforce federal tax liens. The Treasury Department would be satisfied with providing either that the Justice Department should enforce the liens or that the Secretary of Labor should enforce these liens, so long as it is not the Treasury, since they are not in the habit of bringing those suits.

The Labor Department would prefer that the Secretary of Labor be the one to sue to enforce these liens.

I would like to point out that in the Pension Act, when we established an insurance program that has some similarity to this with liens arising in favor of the Pension Benefits Guarantee Corporation, in that situation, even though we said that those liens were similar to tax liens, we gave the right to enforce the liens, the right to go to court, to the

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1 Pension Benefits Guarantee Corporation itself.

2 Under that approach, it would seem appropriate to give
3 the Secretary of Labor the right to go into court, rather than
4 the Secretary of the Treasury.

5 This is a mechanical and essentially ministerial type
6 of tax. You have already determined that a lien exists. It is
7 just that imposing the tax upon the Treasury Department gives
8 them the type of job that they have not had up to now and
9 that they would just as soon not have under the bill.

10 So, under this proposal, the idea would be to change
11 the bill so that it is the Secretary of Labor that sues to
12 enforce the lien that arises in favor of the trust funds,
13 rather than the Secretary of the Treasury, as under the bill
14 that is before you now.

15 Senator Byrd. Are there any observations on this?

16 (No response.)

17 Senator Byrd. If there is no objection, it is agreed
18 to.

19 Mr. Chabot. The question arises as to investment
20 of the trust funds.

21 The bill has a requirement that the assets that are not
22 needed to meet current withdrawals be invested basically only
23 in U.S. obligations or obligations guaranteed by the U.S.
24 Then there are a whole series of further restrictions specifying
25 what the terms would have to be if a special obligation is

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issued, specifying the circumstances under which an obligation would be redeemed or an obligation would be sold.

The Treasury Department recommends that basically the restriction be simply that the trust fund would have to invest only in U.S. debt obligations and not have all the further restrictions. The Treasury Department has suggested that those further detailed restrictions would not particularly protect the fund, but would serve the purpose of hampering the effective money management function of the Treasury Department.

Senator Byrd. Is there any objection to that change?

Senator Curtis. No objection.

Senator Byrd. Without objection, it is agreed to.

Mr. Chabot. Expenses of administration and operations --

I am not sure that there really is a substantive dispute, but a question has arisen because in this year's bill the language is different from that of the bill that was reported by the Senate Finance Committee last year.

The language in this year's bill is that the trust fund would bear not only the cost of the claims, but also all expenses of operation and administration under this part, which is the Part C program, including those of the Department of Labor. Now last year's bill was precisely the same except that it did not have that language, "including those of the Department of Labor."

As we have understood it, without this language, since

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1 the Part C program is essentially administered by the Labor
 2 Department, the expenses of operation would clearly include
 3 the Labor Department's expenses in receiving the Part C claims
 4 and in deciding the Part C claims. It would also include the
 5 Treasury Department's expenses in administering the trust
 6 fund and in collecting the taxes that go into the trust fund.

7 I am raising the question only because of this change
 8 in the language which has sort of confused us as to what is
 9 intended.

10 If the committee agrees that the intension is that the
 11 trust fund should bear the costs of both of the Departments
 12 that are involved in administering the program, the Labor
 13 Department on the substantive side and the Treasury Department
 14 on the tax collection and money management side, then we
 15 could work out the appropriate language to get that result.

16 Senator Byrd. If that is done, I think there should be
 17 a full accounting of the administrative costs.

18 Mr. Chabot. I would think that to be most appropriate.
 19 There is a provision that there be an annual report on the
 20 status and operation of the trust fund, and we could set forth
 21 either in the statute, or certainly in the committee report,
 22 that this annual report should include specific information
 23 as to how much of these expenses were the administrative
 24 and operational expenses as distinguished from the expenses
 25 of paying out the claims.



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Senator Byrd. I think that would be desirable, and also perhaps to require reporting of the number of personnel involved in the administrative side.

Mr. Chabot. In addition to the amount of money involved?

Senator Byrd. In addition to the amount of money involved, yes.

Mr. Chabot. Certainly that could be done.

Senator Byrd. With those provisos, Senator Curtis and Senator Dole, do you feel it appropriate for the fund to bear the administrative costs?

Senator Curtis. I do. I think the staff's recommendations are good.

Senator Byrd. Without objection, it is so ordered.

Mr. Chabot. There is one other point in the trust fund that I think should be brought before the committee. It was discussed to some extent at the hearings.

Unlike last year's bill, this year's bill provides that the trust fund is to have authority, it is not mandated, but it has authority, to make available a system of insurance of the liabilities of responsible operators. In this respect, it is going at some of the same problems that Senator Hansen's proposal provided for. Concerning the difficulty of finding private insurance, presumably if the trust fund's trustees concluded that difficulty was sufficiently grave, it would have authority to set up a system under which it would offer



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insurance, in effect in competition with insurance companies.

This was contemplated as a method of in effect having the possibility of insurance provided in this way be a deterrent for insurance companies to establish premiums as high as we had been told in the subcommittee's hearings had been established in many cases.

When this was presented, the Treasury Department at the hearing indicated its concern that the government, or at least the fund, should not be permitted to establish an insurance program, and specific concern was expressed that the trust fund, the assets arising from the earnings and the taxes that were designed for one part of the Part C program should not be able to be jeopardized by having those assets subject to claims on the insurance part, which is really designed for a different part of the program.

One way in which it appears that you can meet the objectives of the Human Resources Committee, that is, having this standby available that would cause the private insurers perhaps to operate on a more reasonable premium basis than they otherwise would and yet protect these assets, the tax assets, would be to give authority to the trust fund to establish an insurance program, but provide that it must be funded entirely from premiums and earnings on premiums; in effect, that there be a separate accounting; that the tax money in the trust fund and the earnings on the tax money not

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be available to pay any of those claims. So, the insurance program would have to stand completely on its own.

Senator Byrd. I wonder if it is necessary to go that far, to have an insurance program?

Mr. Chabot. As I said, the objective of the Human Resources Committee was not to mandate such a program, but to allow the black lung disability fund to view the same problem that was presented to us here before about the difficulties of obtaining private insurance, and to, in effect, be able to step in, if it is necessary, if the problem gets to be more widespread, if for one reason or another people do not in substantial numbers use the trust fund approach of Senator Hansen's proposal. If the problem still persists, then there would be at least some other alternative for coal mine operators that the trust fund might have the possibility of offering an insurance program.

I recognize that there are difficulties, conceptual and otherwise, with the government getting into the insurance business; but it would appear that if you believe that it is desirable to have this standby authority available, at least some of the potential problems could be avoided by requiring that that program stand entirely on its own two feet and be run entirely on its own premiums and whatever earnings there are on those premiums.

Senator Byrd. I am not very enthusiastic about the concept.

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I just wonder whether it is necessary to go that far at this time.

Does any member of the committee have any observation on that?

Senator Moynihan?

Senator Moynihan. I would certainly trust your instincts on this matter, sir, before I would trust those of the people who are advising us about this. I don't think we should go that far at this time.

Senator Curtis. I think it is a matter that probably should be explored when more members of the committee are here. I don't think it should be pushed right now.

Senator Byrd. Why don't we set that one aside, then, temporarily.

Mr. Chabot. I would think that that plus the decision as to the nature and level of the tax are essentially the remaining items that are before the committee.

Senator Byrd. Very well, sir, thank you very much. We won't be able to decide that tax matter today. We will, therefore, conclude with this particular bill for the moment until it is taken up at another meeting.

Senator Dole. Mr. Chairman?

Senator Byrd. Senator Dole.

Senator Dole. First of all, Mr. Chairman, I was attending another committee at 9:30 this morning and was not here for

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consideration of the nomination of Alan Wolff. What is the state of that nomination?

I don't have any desire to hold that up, but I am wondering, rather than to put a hold on the nomination on the floor, if I could submit questions for Mr. Wolff to respond to, hopefully today, so that I will have his answers for the record.

We are very concerned about having someone in that organization knowledgeable about agriculture. He does not have a strong background in agriculture. Of course, Bob Strauss testified at his confirmation hearing that he understood the important of that.

I guess I just wanted to get Mr. Wolff on record about that one item. I have some very difficult questions which I would like to submit to him and have his response appear in the record.

Senator Byrd. I think the nomination has already been favorably reported, but I am sure that Mr. Wolff would be glad to answer those question. Indeed, I think he should and would ask you to submit them.

Senator Dole. I would ask staff to convey that interest so that he can respond quickly and we can move quickly on his nomination.

In addition to that, Mr. Chairman, perhaps it is not possible to act today with the number of members present, but



1 there is an amendment that is co-sponsored by Senator Curtis,
 2 Senator Talmadge, Senator Humphrey, Senator Clark, and me,
 3 which would amend Section 613 of the Trade Act of 1974, which
 4 restricts the amount of government credits which can be
 5 extended to the U.S.S.R. All we are trying to do in this
 6 amendment is to make it possible for the Commodity Credit
 7 Corporation to extend credit to the Peoples Republic of China.
 8 We are not bringing in the U.S.S.R. or other non-market
 9 countries.

10 I don't know of any controversy about the amendment.
 11 I discussed it with the Chairman, but I don't know that we
 12 can act on it with the number we have present now.

13 Senator Packwood. As I understand it, Mr. Chairman,
 14 the rules indicate that we can act unless somebody present
 15 objects to a lack of a quorum.

16 Senator Byrd. That is correct.

17 Senator Moynihan. Mr. Chairman, while I would not personally
 18 wish to object, I fear I would have to object because I
 19 believe Senator Ribicoff feels that this is an important
 20 matter and he would be happy to hold hearings on it and
 21 go directly to its consideration. He feels that it is a matter
 22 that ought to have hearings, and he indicated that his
 23 subcommittee would be happy to have those hearings. He feels
 24 that while he cannot be present at this time, this is something
 25 that would require a little more consideration.

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1 Senator Dole. Even though it would be confined just
2 to the Peoples Republic of China?

3 Senator Moynihan. Senator, I think that would be his
4 view. I would not, not having his proxy at this time, wish
5 to say other.

6 Senator Packwood. While I would be inclined to support
7 Senator Dole's bill, I would join with Senator Moynihan
8 in this request. We have always had a very good relationship
9 on this committee, and to the extent that nobody objected
10 to an item, we sent it out. But if there were ever any
11 question or request for a delay or a hearing, we have always
12 agreed to that, and I think we should continue that practice.

13 Senator Byrd. I think that is appropriate.

14 May I ask you, Senator Dole, does this not apply to
15 the Soviet Union also?

16 Senator Dole. No, sir.

17 Senator Byrd. Did your original proposal apply to the
18 Soviet Union?

19 Senator Dole. No, not the one that was introduced.
20 In fact, we would make certain in the amendment, if necessary,
21 that it would not under any condition be interpreted as to
22 extend credit to Laos, Cambodia, Cuba, Vietnam, or North
23 Korea.

24 Senator Byrd. It does not expand the amount of credit
25 that is already available to the Soviet Union, does it?

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1 Senator Dole. No. That was one of the options that
2 was considered, I might say.

3 I have discussed this with Senator Jackson and he felt
4 very strongly about that portion of any possible amendment.

5 Senator Byrd. So do I.

6 Senator Dole. Yes, and I think there are many others,
7 too.

8 I don't quarrel with having a hearing, but I would hope
9 we could have it rather soon.

10 Senator Moynihan. I am sure that would be Senator
11 Ribicoff's intension, to have them forthwith.

12 Senator Dole. Probably another matter would fall into
13 the same category. There has been an administrative action
14 with reference to the sugar program, which is going to cost
15 about \$240 million, with the bulk of the payments going to
16 large grower - processors, some in estimated excess of
17 \$14 million, as to one grower-processor in Hawaii. As I
18 understand it, the only way to disapprove the action would be
19 by means of a concurrent resolution, which I am now in the
20 process of trying to draft, to the effect that we would
21 disapprove the action or the determination made by the President
22 under Section 203 of the Trade Act of 1974.

23 I think that may fall in the same category.

24 Senator Byrd. I think that there are other members
25 of the committee who are concerned with the sugar matter.

1 Senator Dole. Again, I discussed this with the Chairman.
2 I know he is concerned about it. It just seems to some of us
3 that there would be a \$240 million expense which would be of
4 little help to the sugar producers or the consumers.

5 Senator Byrd. Are you seeking action from the committee
6 at this time?

7 Senator Dole. Again, I think there are other members
8 with a direct interest in this who are not here who probably
9 should be, such as Senator Talmadge and Senator Long.

10 Senator Byrd. Yes, there are other members who have a
11 direct interest and I think it would be better if there were
12 more members present to consider this than are here at this
13 moment.

14 Is there any other business?

15 Senator Moynihan. Mr. Chairman, Senator Ribicoff
16 would like to be recorded as having voted against the Packwood-
17 Moynihan amendment.

18 Mr. Stern. Mr. Chairman, I might mention that there
19 will be Trade Subcommittee hearings on July 13 and 14,
20 which will deal with a whole range of proposals. That is
21 really right after the recess. That might be the appropriate
22 time to take this up.

23 Senator Byrd. Would that be satisfactory to you,
24 Senator Dole?

25 Senator Dole. That would be fine.

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Thank you very much.

Senator Byrd. Is there any further business?

(No response.)

Senator Byrd. If not, this committee will stand in recess at the call of the Chair.

(Whereupon, at 12:10 o'clock, p.m., the committee adjourned, to reconvene upon the call of the Chair.)

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AMERICAN INSURANCE ASSOCIATION

1025 Connecticut Ave., N.W.
 Washington, D.C. 20036
 (202) 293-3010

June 21, 1977

The Honorable Harry G. Byrd
 Chairman, Subcommittee on Taxation
 and Debt Management
 417 Russell Senate Office Building
 Washington, D. C. 20510

Dear Chairman Byrd:

Re: S. 1538, "The Black Lung Benefits Reform
 Act of 1977"

The American Insurance Association is a trade association of 147 property and casualty insurance companies whose members write 35 percent of the nation's workers' compensation insurance. The Black Lung Benefits Act is of particular significance to our member companies because it is the first Federal law setting standards for the states in the field of workers' compensation.

We are writing you to express our opposition to the concepts found in S. 1656, sponsored by Senator Hansen, which would permit coal operators to treat contributions to trusts established for the payment of black lung benefits as ordinary current business expenses and exempt black lung trust fund income from taxation. The American Insurance Association bases its opposition on the belief that exempting black lung trust fund income from taxation and permitting coal operators to treat contributions to these funds as ordinary current business expenses would (1) institute a means by which large corporate entities can manipulate the trust fund concept in order to realize substantial reductions in tax liabilities, and (2) establish a dangerous precedent for future legislation designed to create similar tax shelters for future liabilities related to other liability systems.

Enactment of the concepts found in S. 1656 would institute a method by which coal operators can manipulate the trust concept in order to realize substantial reductions in tax liabilities.

There is no demonstrable need for tax incentives to encourage the establishment of coal operator trust funds for the purpose of paying black lung benefits. The Ways and Means Committee Staff Report on the Disability Insurance Program, July, 1974, states, at page 418:

The insurance industry has responded to the need for insurance coverage for the black lung liability. We have received verification from thirty-seven (37) private insurance carriers and three (3) state funds reflecting coverages written in each of the thirty (30) coal mining states on one thousand nine hundred ninety-five (1,995) coal operators.

There is a clear distinction between permitting an exemption from taxation for accrued losses and permitting an exemption for contingent liability. Presently, the property and casualty insurance industry receives business expense deduction for benefits paid and for reserves made on outstanding claims which have not reached final disposition. The concepts found in S. 1656 would go far beyond this deduction by permitting payments into an irrevocable trust for future, unforeseen black lung claims to receive similar consideration as an ordinary current business expense.

By allowing a tax deduction for future, contingent black lung payments, a tremendous potential for manipulation of corporate income subject to taxation is created. During years in which large profits are realized by coal operators, large sums could be transferred into black lung trust funds. Little or no monies could be channeled into the trust funds during less profitable periods. There will be no correlation between corporate income and taxation, and tax deductions will not be based on the present tax policy of permitting deductions for accrued losses and disallowing deductions for future, contingent liabilities.

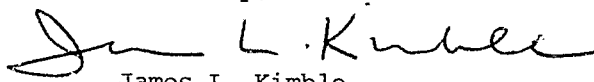
Enactment of the concepts found in S. 1656 would create a dangerous precedent for future legislation designed to create similar tax shelters for future liabilities related to other compensation systems.

The use of a trust fund mechanism to reserve monies for contingent liability can be applied to any liability system. Other similar trust fund mechanisms can be established by an individual who or corporate entity which wishes to self-insure. Senator Culver has sponsored a bill, S. 1611, which has been referred to the Finance Committee which would permit similar deductions for additions to trust fund reserves for the payment of future product liability losses.

A substantial drain on Federal revenues could result if insureds are permitted similar business expense deductions for trusts established to pay damages for other tort liability systems such as medical malpractice and product liability.

For the abovementioned reasons, we urge that the concepts found in S. 1656 not be included in the "Black Lung Benefits Reform Act" as reported by the Senate Finance Committee. We urge the Finance Committee to consider the concepts found in S. 1656 as a separate proposal in order to give all interested parties an opportunity to present their views.

Sincerely,



James L. Kimble
Associate Counsel

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

NOTE TO: JAY CONSTANTINE

SUBJECT: UTILIZATION CONTROL LEGAL OPINIONS

The General Council's office has indicated that there is no single, written, comprehensive memorandum regarding the reduction in federal payment for non-compliance with section 1903(g). The memoranda which exist include a four year history of our correspondence with the Comptroller General and Representative John Moss (California) together with concomitant legal opinions.

The Secretary made his decision based on these documents and significant oral legal advice from high level officials. Additionally, the June 1 directive for the Comptroller General stating that

"...the certifying officer should not certify the letter of credit authorizations unless he has a statement from the Secretary or his designee that (1) there is on file with the SRS Regional Commissioner showings required by 45 CFR 250.20, effective July 1, 1975, and (2) the Secretary or his designee has found them to be satisfactory."

was another essential element in the development of the Secretary's decision.

We are now developing a single, comprehensive statement of the legal background and reasons for the Secretary's decision. I expect this will be completed at the end of this week and I will send it to you then.

Best wishes,

Robert A. Derzon

Robert A. Derzon



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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-164031(3)

June 1, 1976

The Honorable
The Secretary of Health,
Education, and Welfare

Dear Mr. Secretary:

At the request of the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, we have been monitoring the Department's progress in implementing section 1903(g) of the Social Security Act which became effective July 1, 1973. The Chairman has asked us to invoke the authority contained in the Budget and Accounting Act, 1921, as amended (31 U.S.C. 41 et. seq.), and 31 U.S.C. 82c, to disallow payments for long-term care in institutions made in the quarter starting July 1, 1976, if States do not submit showings of compliance as required by section 1903(g)(1) and Department of Health, Education, and Welfare (HEW) regulations.

This letter is to advise you of our procedures and to bring to your attention the inadequacy of past HEW validation reviews undertaken pursuant to section 1903(g)(2).

As you are aware, utilization review is the system used to determine the appropriateness of care provided and to identify and avoid overutilization of medical services. The original utilization review requirements were added by the Social Security Amendments of 1967 which added section 1902(a)30, effective April 1, 1968. This section required that each State Medicaid plan provide for utilization review systems to safeguard against unnecessary use of medical care and services and to insure that payments are not in excess of reasonable charges consistent with efficiency, economy, and quality care.

UTILIZATION REVIEW REQUIREMENTS OF THE
SOCIAL SECURITY AMENDMENTS OF 1972

Section 1903(g) of the Social Security Act was added to that act by section 207 of the Social Security Amendments of 1972, Public Law 92-603, 86 Stat. 1379. As enacted, section 207 is entitled "Incentives for States to Establish Effective Utilization Review Procedures Under Medicaid." One purpose of the section is to provide disincentives to

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discourage unnecessary prolonged stays in institutions. House Report 92-231, 92d Cong., 1st sess. 15 (1971).

As we have stated in numerous letters to the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce (see our letters of July 3, 1975, January 26, 1976, and April 7, 1976, B-164031(3), copies of which have already been furnished to you), the statute provides for a reduction in certain Federal Medicaid payments to the States unless they are able to demonstrate that they have in operation an effective plan of utilization review, as set forth in the statute. Unless the Secretary of HEW is satisfied by the State's showing that it has adequate utilization review procedures in effect, the Secretary has no choice but to impose the reductions set forth in section 1903(g).

Section 1903(g)(1) provides generally that after an individual has received care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility beyond 60 days or in a hospital for mental diseases beyond 90 days during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter in the same fiscal year "shall be decreased" by 33-1/3 percent. This section provides further that the reduction shall take place unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary of HEW with respect to each calendar quarter for which the State submits a request for payment of the full Federal assistance percentage for such additional services that there is in operation in the State an effective program of control over utilization of institutional services.

Under the statute, State showings must include evidence that:

"(A) in each case for which payment is made under the State plan, a physician certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and recertifies, where such services are furnished over a period of time, in such cases, at least every 60 days, and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services; and

"(B) in each such case, such services were furnished under a plan established and periodically reviewed and evaluated by a physician;

"(C) such State has in effect a continuous program of review of utilization pursuant to section 1902(a)(30) whereby the necessity for admission and the continued stay of each patient in such institution is periodically reviewed and evaluated (with such frequency as may be prescribed in regulations of the Secretary) by medical and other professional personnel who are not themselves directly responsible for the care of the patient or financially interested in any such institution or, except in the case of hospitals, employed by the institution; and

"(D) such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to section 1902(a)(26) and (31) whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams."

HEW REQUIREMENTS FOR IMPLEMENTING
SECTION 1903(g)(1)

The former Commissioner of the Medical Services Administration issued an Information Memorandum dated June 8, 1973, to State agencies administering approved medical assistance programs, advising them of their utilization review responsibilities in connection with the Social Security Amendments of 1972. This memorandum stated that "a satisfactory showing" by the State that it meets the requirements of section 207 of the Social Security Amendments of 1972 must be evidenced by a certification to that effect by the head of the State Medicaid agency each calendar quarter.

The Acting Administrator of the Social and Rehabilitation Service (SRS) issued an Information Memorandum dated August 22, 1974, to State agencies administering approved Medicaid plans, advising them of the requirements, timing, methods of the onsite review, and the criteria for the Department's validation of State adherence to section 1903(g). This memorandum stated that:

"To avoid imposition of the 33 1/3 percent reduction in FFP (Federal Financial Participation) for patients in institutions over 60 or 90 days, at the beginning of each quarter the State must submit to the SRS Regional Commissioner a showing that it has in place an effective system of control over utilization of institutional services. Until further notice, a statement from the State agency responsible for the administration of the plan that it meets the * * * UC (Utilization-Control) requirements is acceptable as a satisfactory showing * * *."

Federal regulations (45 CFR 250.20), effective July 1, 1975, state in part that:

"the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual in the same fiscal year shall be decreased 33 1/3 percentum unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Administrator that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services (including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days, or for inpatient mental hospital services furnished beyond 90 days, there is in operation in the State an effective program of control over utilization of such services.

(1) A satisfactory showing must be made by the State, in the form prescribed by the Social and Rehabilitation Service, that there is in operation an effective program of control over utilization of institutional services provided under the plan which complies with the requirements of 250.18, 250.19, 250.23, and 250.24. Such a showing must be made for each calendar quarter for which the State requests Federal financial participation at the full Federal medical assistance percentage for payments for institutional services.

(2) The showing must include a description of the methods used for assuring that records are available which show the number of days each individual has received institutional services, and such other information, records or data as may be required by the Administrator."

CERTIFICATIONS NOT OBTAINED
ON A TIMELY BASIS

On November 20 and December 17, 1975, we visited HEW regional offices in Region V (Chicago) and Region IV (Atlanta), respectively, and determined that from 1 to 6 of the 10 required quarterly certifications (fiscal years 1974 and 1975 and the first two quarters of fiscal year 1976) were not in the regional office files for 13 of the 14 States in these regions. When we brought this matter to the attention of the SRS staff they directed each of the 10 HEW regional offices to determine whether certifications were missing and, if so, to obtain the missing certifications from the States. The HEW regional office staffs determined that many State certifications were not in the regional office files and took action to obtain the missing certifications.

INADEQUATE SHOWINGS

Current HEW regulations require that, effective July 1, 1975, the States' quarterly showings must include a description of the methods used for assuring that records are available that show the number of days each individual has received institutional services.

This provision was apparently added to require information on the availability of records to compute the reduced matching payment for long-term institutional care and would not in itself provide enough additional information to improve the basis on which HEW makes its findings of compliance. Nevertheless, certifications covering quarters after July 1, 1975, which do not contain the information may not be accepted as satisfactory showings.

Your letter of March 31, 1976, to the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, stated that you were in the process of revising the requirements for State quarterly certifications and showings, which will be effective for the period April 1-June 30, 1976, and that you anticipate receiving the revised certifications for that quarter during July 1976.

On April 8, 1976, during hearings before the Subcommittee, you acknowledged that some showings submitted by the States have been inadequate but that the required reductions to the Federal matching payments had not been made.

We believe that the statute and legislative history are quite clear in requiring that you reduce Federal matching payments unless States have made a satisfactory showing to you of compliance with the utilization review requirements. Without such showings, it is our opinion that full Federal matching payments are not authorized, and this is to inform you that in accordance with our statutory responsibilities under the Budget and Accounting Act, 1921, as amended, we will disallow Medicaid payments for long-term care in institutions made in the quarter beginning July 1, 1976, to those States that have not submitted the required certifications and showings which are satisfactory to you of compliance with the utilization review requirements.

Because the statute relates the required quarterly showing to a State request for payment, exception will be taken to those letters of credit certified to the Department of the Treasury that are issued as a result of a State Quarterly Statement of Expenditures when such a statement is not supported by the required certifications and showings of compliance with section 1903(g)(1). This approach is based on our understanding of the procedures followed to provide Federal financial participation in State Medicaid costs which are as follows.

HEW advances funds to the States to pay Medicaid costs based on outstanding award authority. The award, in turn, is based on the State Quarterly Estimate of Expenditures (form SRS-DFM-65) as adjusted.

HEW liquidates advances to the States for quarterly Medicaid expenditures based on the submission by the States of their Quarterly Statement of Expenditures (form SRS-OA-41). For the purpose of 1903(g)(1), this statement will be deemed to represent the "request for payment" for which a satisfactory showing must be submitted. This statement is due in the HEW regional office 30 days after the end of a quarter. The SRS Regional Commissioner is required to determine the allowability of a State claim for expenditures and forward his decision and supporting material to the Division of State Grants Administration by the 45th day following the end of the quarter. The Division reviews the data submitted by the Regional Commissioner, makes any adjustments considered necessary, and computes the grant award (form SRS-DSGA-3 or 4). Copies of the grant award are sent to the region, State, and the SRS Division of Finance.

The Division of Finance records the award as an obligation and records the award on the letter of credit control register to maintain the amount of the State undrawn award balances. The authorized SRS certifying officer or the authorized certifying officer of the Departmental Federal Assistance Financing System signs a letter of credit (standard form 1193) to authorize a monthly deposit to the account of the State at the Federal Reserve bank. The certifying officer certifies to the Treasury that the payments are correct and proper for payment.

For letters of credit authorizations which are prepared based on Quarterly Statements of Expenditures submitted after July 1, 1976, the certifying officer should assure himself that appropriate reductions have been made to Medicaid long-term payments for States which have not submitted required showings of compliance with section 1903(g). The first Quarterly Statement of Expenditures required to be submitted after July 1, 1976, will be due July 30, 1976, and will be for the period ending June 30, 1976. If such reductions have been made he may certify the letter of credit authorizations.

If such deductions have not been made the certifying officer should not certify the letter of credit authorizations unless he has a statement from the Secretary or his designee that (1) there is on file with the SRS Regional Commissioner showings required by 45 CFR 250.20, effective July 1, 1975, and (2) the Secretary or his designee has found them to be satisfactory.

If no deduction has been made and these requisite statements are not provided, the certifying officer should seek an estimate of the required reduction from the Secretary or his designee and reduce the letter of credit authorization by that amount.

Finally, absent all of the above, the certifying officer should make a provisional deduction from the letter of credit authorization of 15 percent of the expenditures for skilled nursing facilities and intermediate care facilities shown on form SRS-OA(OFM)41.9 which is required to be filed with the form SRS-OA-41 and certify for payment only the remaining balance. This provisional deduction will be subject to adjustment on the basis of later calculation of the precise amount involved.

The letters of credit certified to the Treasury without appropriate reductions or evidence of assurance as outlined above will be subject to a formal disallowance by our Office. The amount of the disallowance will be estimated based primarily on the expenditures for skilled nursing facilities and intermediate care facilities shown on form SRS-OA(OFM)41.9.

VALIDATION SURVEYS

In addition to the question of compliance with section 1903(g)(1), we believe that HEW's implementation of the validation survey requirements of section 1903(g)(2) needs to be improved.

Section 1903(g)(2) of the statute provided for validation reviews by the Secretary of HEW. Specifically, this section provided that:

"(2) The Secretary shall, as part of his validation procedures under this subsection, conduct sample onsite surveys of private and public institutions in which recipients of medical assistance may receive care and services under a State plan approved under this title, and his findings with respect to such surveys (as well as the showings of the State agency required under this subsection) shall be made available for public inspection."

SRS conducted its first validation survey from October to December 1973 to evaluate the effectiveness of State utilization review systems in effect during the first half of fiscal year 1974. The results of that survey are presented in the following table

<u>Statutory requirement</u>	<u>Number of States not in compliance</u>
Physician certification	9
Physician recertification	32
Plan of care	15
State system of facility utilization review	26
Medical review by State	11

On January 24, 1975, the Administrator, SRS, informed us that SRS had limited capability with respect to validating the effectiveness of State institutional utilization review systems in 1973. He stated that the 1973 evaluation was a preliminary sample of State systems to allow SRS to refine its techniques for evaluating State compliance. According to the Administrator, SRS did not penalize any State as a result of this sample because SRS criteria for compliance was not specific. However, SRS obtained commitments from States to improve their systems when evaluations disclosed problems.

SRS conducted a second evaluation from July to September 1974 to evaluate the effectiveness of State utilization review systems in effect during the last quarter of fiscal year 1974. The results of the survey are presented in the following table:

<u>Statutory requirement</u>	<u>Number of States not in compliance</u>
Physician certification	5
Physician recertification	7
Plan of care	6
State system of facility utilization review	23
Medical review by State	5

On March 14, 1975, the Administrator, SRS, asked the Assistant General Counsel for Human Resources to approve a proposal prepared by the Utilization Control Division which provided for reductions in payments to 10 States for noncompliance with section 1903(g). The Assistant General Counsel informed the Commissioner on April 3, 1975, that the proposed penalties presented various problems, one of which was that the percentages calculated to determine compliance were totally unreliable.

On June 17, 1975, the Commissioner and the Associate Administrator for Management, SRS, sent a joint memorandum to the SRS Regional Commissioners requesting the regional staffs to recompute the utilization

control data that was gathered during the survey of the last quarter of fiscal year 1974 using the methodology included in the memorandum. This memorandum asked that the recomputation be made because of discussions with HEW's Office of General Counsel.

During August 1975, the regional office recomputations were provided to the Utilization Control Division for its review. On August 27, 1975, the Commissioner forwarded his recommendations to the Administrator for reductions to 11 States, including 7 of the original 10, for noncompliance with section 1903(g). On September 10, 1975, the Administrator requested that the General Counsel review the legal sufficiency of the utilization control data and the Commissioner's recommendations for reductions.

By memorandum dated October 24, 1975, to the Department's Acting Deputy General Counsel, an HEW attorney pointed out, as his preliminary findings, many technical and legal problems in the recalculated utilization control data for fiscal year 1974. The attorney then spent 4 weeks during October and November 1975 reviewing the utilization review data for the last quarter of fiscal year 1974. By memorandum dated December 19, 1975, the Acting General Counsel, HEW, informed you of the many deficiencies identified in the data.

During your testimony of January 26, 1976, before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, you stated:

- (1) A reduction for noncompliance with section 1903(g) for fiscal year 1974 could not be made against any State because of the unreliability of the SRS survey and
- (2) A new survey was planned to commence in March 1976, to determine State compliance with selected aspects of utilization control during fiscal year 1975.

The Acting Director of the Utilization Control Division informed us that the validation survey of fiscal year 1975 compliance was scheduled to start at the end of May 1976. An initial planning session for the validation survey was held on April 6-8, 1976, and a final training session to discuss the validation survey was completed on May 20, 1976. He stated that the States and jurisdictions have been asked to prepare and submit certain data to the regional offices so that the validation surveys can start in the States by late July.

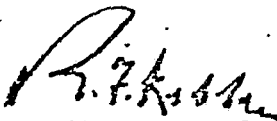
CONCLUSIONS

HEW has not received required certifications of compliance with section 1903(g)(1) from all States. HEW has not reduced long-term care payments as required, even though States have submitted inadequate certifications or failed to send in any certification. Accordingly, we are advising you and the Secretary of the Treasury that we will disallow payments made in the absence of the required showings for Quarterly Statements of Expenditures submitted on or after July 1, 1976. We will invoke the authority contained in the Budget and Accounting Act, as amended, and the provisions of 31 U.S.C. 82c by holding responsible the appropriate accountable officer or officers of the Government in the event they make payments for long-term care which have not been supported by required showings of compliance and a statement by the Secretary or his designee that these showings are satisfactory.

We recognize that the mere certification required to be submitted by the States does not assure compliance with section 1903(g)(1). Accordingly, we believe that it is imperative that you exercise your responsibilities to make more timely and meaningful validation reviews as required by section 1903(g)(2) to assure State compliance with the utilization control requirements.

Copies of this letter have been sent to appropriate congressional committees, the SRS Regional Commissioners, the Governors of the States and jurisdictions, the appropriate HEW certifying officers and the Secretary of the Treasury.

Sincerely yours,



ACTING Comptroller General
of the United States

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS
WASHINGTON, D.C. 20210



JUN 21 1977

Honorable Harry F. Byrd
United States Senate
Washington, D.C. 20510

Dear Senator Byrd:

This letter is for the purpose of clarifying cost estimates related to S. 1538--the Black Lung Reform Act of 1977.

As you noted at the hearing on June 17 before your Subcommittee, the original cost estimates provided by the Congressional Budget Office and the preliminary estimates made by the Department of Labor differed markedly in several respects. After discussion with the Congressional Budget Office, the Department of Labor has recalculated its estimates for the 5-year period--Fiscal 1978-1982. For purposes of these estimates the annual average benefit for miners and their survivors is assumed to be \$3970 in Fiscal Year 1978 with 5% increases in subsequent years. In addition, all SSA claims found eligible under the provisions of this bill will be paid benefits retroactive to January 1, 1974. Department of Labor claims found eligible under this bill will receive retroactive benefits based on their year of filing under Part C (no earlier than January 1, 1974). For retroactive benefits back to 1974, as of October 1, 1977, the award is \$12,800. For benefits back to 1975 the award is \$9,820 and back to 1976 it is \$6,400. It is assumed that 30% of the claims filed under this bill will be completed in 1978, 40% in 1979 and the backlog eliminated in 1980.

Section 2(b)

This provision would expand the definition of "miner" and add 500 potential beneficiaries. The estimated cost is \$5.8 million.

Section 2(c)

Under this section, the Secretary of Labor will promulgate new regulations regarding total disability. These standards may not be as liberal as the interim medical standards in certain respects. The exact effect of the new standards is difficult to estimate since they have not been developed. However, it was previously estimated

that the impact of applying the interim standards to claims denied by DOL would increase the DOL approval rate from the current 7% to 37%, a difference of 30%. Based on the assumption that the impact of the new standards will be somewhere between the current and interim standards, we estimate that at least 15% of the claims denied by DOL will be approved under this provision. We have also used the same 15% assumption in relation to new claims that will be filed through 1982. Since the SSA population was denied under the interim standards, it is assumed that the only impact of this provision on that group would be caused by the passage of time and the progression of ill health. Therefore, to take account of these factors, it was estimated that 5% of denied claims would be approved. Based on these assumptions of the new beneficiaries, 24,200 will come from the 258,000 denied claimant population under Parts B and C and 7,500 from the estimated 54,000 new filings through 1982. The total cost is estimated to be \$800.5 million.

Section 3

This section provides for the elimination of offsets to workers' compensation benefits for the black lung program. Based upon Social Security estimates, this would affect approximately 3,300 beneficiaries and would increase costs only under Part B. Therefore, this provision will have no effect on either the Trust Fund or operator liability.

Section 4

This section requires the review of all claims denied solely because the miner was working and prohibits the denial of those claims solely on that basis. This provision, in and of itself, will not increase the approval rate. Claims that are determined to be approvable based on this review are counted in other sections which provide the basis for their approval.

Section 5

This section provides that the Secretary of Labor shall accept the opinion of a board-certified or board-eligible radiologist with regard to the reading of a chest X-ray. Our initial estimate was based on various assumptions gained from current experience with reading and reviewing X-rays. However, the Secretary will be given new authority under this

bill to establish medical standards for testing and the Department plans to make a concerted effort to provide opportunities for physicians to obtain specialized information and guidance regarding the diagnosis of pneumoconiosis. We have therefore revised our estimates to take these factors into consideration. In addition, it is assumed that all X-rays will be read by radiologists. Within these parameters, the number of positive readings will be significantly lower than assumed in our previous estimate. On the other hand, it is assumed that the number of positive readings by these radiologists will be slightly higher than is our current experience utilizing expert readers. Based on these assumptions, we estimate that 2% of the DOL denied and new claims and 5% of the SSA denied claims will be approved. The total number of new beneficiaries will be 8500--7700 from the denied and pending DOL and SSA populations and 800 from new filings. The total cost is estimated to be \$250 million.

Section 6

This section both establishes the trust fund and clarifies the conditions under which an operator can be found liable for claims. Although identification of responsible operators will be facilitated because of this section, the establishment of the January 1, 1970 employment cutoff date will significantly decrease the number of claims for which a responsible operator will be sought. Under the current law, it is estimated that responsible operators can be identified in 30% of approved claims. The cutoff date will reduce this percentage to 20% in 1978 through 1980. The additional cost to the trust fund due to this provision will be \$11.3 million.

Section 7(b)

This section provides for an entitlement for widows of miners who worked 25 years in the mines prior to June 30, 1971. Data on DOL denials have shown that 17.4 percent have alleged 25 or more years of coal mine employment. Applying this percentage to both the DOL and SSA widow denial populations, it is estimated that 3500 DOL survivor claimants and 5100 SSA survivor claimants will be allowed under this provision. Because the 25 years must have occurred before June 30, 1971, the percentage applied to new claims was significantly decreased to 5% of the prospective widow claimants, resulting in an estimated 500 beneficiaries. The total cost of this provision is estimated at \$176.9 million.

Section 7(i)

This section authorizes \$10 million each year for black lung clinical facilities. Thus, the total for the 5-year period is \$50 million.

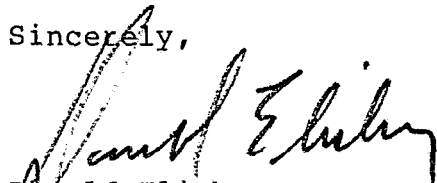
Section 8

This section authorizes the Secretary of Labor to establish necessary field offices to assist claimants with filing and processing. The total cost is estimated to be \$14.8 million.

Total Costs

The incremental costs of the provisions of the bill for the 5 years from 1978 through 1982 is slightly over \$1.3 billion. This amount does not include estimates of increased administrative costs as a result of this bill. (Our preliminary estimates indicate that the administrative costs will range from \$15 to \$20 million per year. These costs will include the review of pending and denied cases and transfer of cases to the Department of Labor from the Social Security Administration.) In addition, there is a current program cost of \$181.3 million over the 5-year period, a proportion of which will have to be assumed by the trust fund. Of the total of nearly \$1.5 billion, responsible operators will assume costs totalling \$324.3 million. Thus, the amount the trust fund will be responsible for will be close to \$1.2 billion.

Sincerely,



Donald Elisburg
Assistant Secretary

Cost Estimates of S.1538*
(in millions)

	1978	1979	1980	1981	1982	Total 5-year Costs
Section						
2(b) - Definition of Coal Miner	\$ 0.3	\$ 1.3	\$ 1.3	\$ 1.4	\$ 1.5	\$ 5.8
2(c) - New Medical Standards Set by DOL	105.1	197.6	266.2	112.9	118.7	800.5
5 - Limitation on X-ray Rereadings	36.0	69.1	76.9	33.4	34.6	250.0
6 - Date of Last Employment for Individual Operator Liability	3.4	3.8	4.1	0.0	0.0	11.3
7(b) - 25 year presumption for survivors	24.9	47.6	61.7	21.2	21.5	176.9
7(i) - clinical facilities	10.0	10.0	10.0	10.0	10.0	50.0
8 - Establishment of DOL Field Offices	2.6	2.8	3.0	3.1	3.3	14.8
Total New Bill Costs	\$182.3	\$332.2	\$423.2	\$182.0	\$189.6	\$1,309.3
Current Law Costs	34.3	38.8	40.2	34.0	34.0	181.3
Operator Liability	-40.2	-70.9	-89.2	-60.9	-63.1	-324.3
Total Trust Fund Costs	176.4	300.1	374.2	155.1	160.5	1,166.3

*Does not include increased administrative costs which would result from this bill



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DEPARTMENT OF THE TREASURY

WASHINGTON, D C 20220

ASSISTANT SECRETARY

Dear Mr. Chairman:

At the hearing on June 17 on S. 1538, the Black Lung Benefits Reform Act of 1977, Senator Hansen mentioned his interest in associating S. 1656, which he introduced on June 9, with the black lung legislation. Since Senator Hansen's bill was not on the agenda for the hearing, we had not reviewed it before the hearing, but upon subsequent examination the Treasury Department recommends that Senator Hansen's bill not be added to or associated with the black lung legislation.

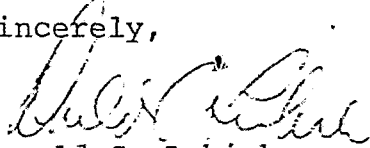
S. 1656 provides for the exemption from income tax of the income of a trust set up by any person to satisfy his liability for benefits under the Federal black lung program in the case of claims filed on or after January 1, 1974. As Senator Hansen pointed out when he introduced the bill, this is an exemption for a self-insurance fund of a mining company.

Payments to any type of self-insurance fund are not now deductible for income tax purposes; only the benefits paid out by the self-insurer. This rule was modified when the Internal Revenue Code of 1954 was enacted, but the 1954 revision was reversed in 1955. The 1954 legislation provided that taxpayers could deduct a reasonable addition to reserves for "estimated expenses," that is, expenses which are attributable to the income of the current year but, absent the reserve, would be deductible in a future year. The reversal of the 1954 legislation resulted from the fact that it soon became apparent that the new deduction would cause a revenue loss greatly in excess of that originally estimated while there also would be extensive litigation as to the reserves that could be maintained.

Senator Hansen's bill is quite narrow in scope relative to the 1954 law which was to be applicable to all businesses for any type of expense meeting the delayed payment concept set forth in the law. But Senator Hansen's bill was introduced the same day that Representative Whalen of Ohio introduced H.R. 7711 to provide an exemption for self-insurance trusts set up to pay product liability claims. Since the availability and cost of several types of insurance, not only for black lung compensation and product liability, has become a matter of concern in recent years, the passage of one or both of the above-mentioned bills would set a precedent for allowing the deduction of all self-insurance reserves. And this in turn, would raise the question as to why the broader reserve deduction provision originally in the 1954 Code should not be reinstated.

In the view of the implication for tax policy of Senator Hansen's bill and the problems inherent in implementing a deduction dependent upon actuarial assumptions, we recommend that S. 1656 not be made part of or associated with the black lung tax program. Any action looking toward the possibility of revising the tax treatment of self-insurers requires a full review of the scope of possible self-insurance programs, the relationship of a deduction for self-insurance to other deductions for reserves for estimated expenses, and the revenue implications of any such change.

Sincerely,


Donald C. Lubick
Deputy Assistant Secretary

The Honorable
Senator Harry F. Byrd, Jr.
Chairman, Subcommittee on Taxation
and Debt Management
Committee on Finance
Room 417
Russell Senate Ofc. Bldg.
Washington, D.C. 20510

Please lung program

0 0 0 0 0 0 3 0 TO BE PLACED IN RECORDS
 AT REQUEST OF SEN DOLE

CONTINUOUSLY CERTIFIED FACILITIES (4/1/76 - 3/31/77) AND
 NUMBER OF PERIODIC ON-SITE INSPECTIONS NOT PERFORMED

STATE	SKILLED NURSING FACILITIES - SNFS	NOT REVIEWED		NOT REVIEWED		MHS MENTAL HEALTH	NOT REVIEWED	
		R-VD	IGFS INTERMEDIATE CARE FACILITIES	R-VD	IGFS		R-VD	IGFS
Alabama	174	0	21	0	0	0	0	
Alaska	8	0	12	1	1	0	0	
Arizona	NO PROGRAM							
Arkansas	83	0	123	0	3	0	0	
California	1,150	166	360	21	33	25	0	
Colorado	143	10	36	1	2	0	0	
Connecticut	199	0	56	0	7	0	0	
Delaware	11	0	21	0	1	0	0	
District of Columbia	8	0	8	0	0	0	0	
Florida	248	0	107	0	4	0	0	
Georgia	223	0	262	0	0	0	0	
Guam	1	0	0	0	0	0	0	
Hawaii	21	0	12	0	0	0	0	
Idaho	50	0	58	0	0	0	0	
Illinois	337	10	475	0	18	0	0	
Indiana	126	1	385	0	3	3	0	
Iowa	12	1	405	36	0	0	0	
Kansas	48	0	334	13	3	0	0	
Kentucky	80	0	112	0	4	0	0	
Louisiana	13	0	198	0	2	0	0	
Maine	18	0	134	0	0	0	0	
Maryland	101	7	121	12	4	0	0	
Massachusetts	222	52	493	46	10	4	0	
Michigan	311	19	268	254	15	1	0	
Minnesota	252	0	544	0	10	0	0	
Missouri	85	35	136	21	8	0	0	
Montana	72	6	13	0	0	0	0	
Nebraska	29	1	218	4	2	0	0	
Nevada	18	0	18	0	0	0	0	
New Hampshire	21	0	61	0	1	0	0	
New Jersey	212	1	213	1	6	0	0	
New Mexico	3	0	34	0	0	0	0	
New York	531	168	255	31	39	0	0	
North Carolina	109	2	112	2	4	0	0	
North Dakota	50	50*	25	0	2	2*	0	
Ohio	332	183	378	207	18	18	0	
Oklahoma	3	0	349	0	3	0	0	
Oregon	42	0	146	0	4	0	0	
Pennsylvania	388	17	171	9	20	2	0	

* State conducted all inspections without physician being on-site

Rhode Island	49	0	95	0	1	0
South Carolina	80	0	59	0	1	0
South Dakota	56	0	103	0	0	0
Tennessee	23	6	180	37	4	0
Texas	195	0	745	0	0	0
Utah	36	0	63	0	2	0
Vermont	21	0	44	0	2	0
Virginia	36	0	125	0	4	0
Washington	245	0	285	0	2	0
West Virginia	29	0	30	0	0	0
Wisconsin	322	0	171	0	25	4
Wyoming	20	0	26	0	0	0

NOTE: Source-of Information-- States' Quarterly Showing Submittal
for Quarter Ending 3/31/77.