



**U.S. Department of the Interior
Office of Inspector General**

AUDIT REPORT

**FUNDS TRANSFERRED TO THE
UNITED MINE WORKERS OF AMERICA
COMBINED BENEFIT FUND BY THE
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**

**REPORT NO. 01-I-187
FEBRUARY 2001**

EXECUTIVE SUMMARY

**Funds Transferred to the United Mine Workers of
America Combined Benefit Fund by the Office of
Surface Mining Reclamation and Enforcement
Report No. 01-I-187
February 2001**

The United Mine Workers of America Combined Benefit Fund (CBF) provides health care and death benefits for approximately 65,000 retired union coal mine workers and their dependents. The United Mine Workers of America Health and Retirement Fund (UMWAF) manages the CBF and annually submits a bill to the Office of Surface Mining Reclamation and Enforcement (OSM) to transfer a portion of the interest earned on the Abandoned Mine Reclamation Fund to the CBF. The transferred interest is used to reimburse the costs of "unassigned" beneficiaries, representing mine workers whose former employers are out of business or cannot be identified to pay the workers' health care premiums.

The former Director of OSM requested this audit to determine whether the amounts transferred to the CBF for unassigned beneficiaries were accurate and whether the amounts paid for the health care of these beneficiaries were accurate. Our review included the transfer bills for fiscal years 1996 through 2000.

We concluded that, in general, the transferred amounts were accurately determined and that amounts paid for the health care of beneficiaries were accurate. We found, however, that the UMWAF understated the transfer bills for fiscal years 1999 and 2000 by \$885,000 and \$427,000, respectively. When informed of these matters, the UMWAF properly recovered the \$885,000 in an adjustment to the fiscal year 2000 bill and agreed to recover the \$427,000 in an adjustment to the fiscal year 2001 bill.

We recommended that the OSM ensure that the funds transferred to the CBF for fiscal year 2001 are increased by the amount of the understated fiscal year 2000 transfer bill.

During our audit, the OSM raised concerns about the provision of benefits to individuals who were added as beneficiaries after enactment of the Coal Act in July 1992. Because of differing legal opinions on the eligibility of these "after-acquired beneficiaries" between our office and the General Counsel for the UMWAF, we suggested that the OSM work with the Congress, the Office of Management and Budget, and other stakeholders to resolve this matter.

AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL EVALUATION

The OSM concurred with the report's recommendation and agreed to ensure that the recommendation is implemented. Based on the response, the recommendation was considered resolved but not implemented. OSM also agreed to work with all interested parties to resolve the issue involving the after-acquired beneficiaries.



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

FEB 5 2001

AUDIT REPORT

Memorandum

To: Director, Office of Surface Mining Reclamation and Enforcement

From: Roger La Rouche *Roger La Rouche*
Assistant Inspector General for Audits

Subject: Audit Report on Funds Transferred to the United Mine Workers of America Combined Benefit Fund by the Office of Surface Mining Reclamation and Enforcement (No. 01-I-187)

INTRODUCTION

This report presents the results of our audit of funds transferred during fiscal years 1996 through 2000 from the Office of Surface Mining Reclamation and Enforcement's (OSM) Abandoned Mine Reclamation Fund to the United Mine Workers of America Combined Benefit Fund (CBF). We performed this audit at the request of the former Director of OSM. The objective of our audit was to determine whether (1) the amounts of the fund transfers to the CBF for unassigned beneficiaries were accurately determined and (2) the amounts paid for the health care of these beneficiaries were accurate.

BACKGROUND

The CBF is a private employee benefit trust fund that provides health care and death benefits for eligible union coal mine workers who retired before July 21, 1992 and their dependents. The United Mine Workers of America Health and Retirement Funds (UMWAF), with administrative offices located in Washington, D.C., manages the CBF under the direction of a seven-member board of trustees.

The CBF was created by the Coal Industry Retiree Health Benefit Act of 1992 (26 U.S.C. § 9701-9722), replacing two health benefit plans established in 1950 and 1974 that were experiencing severe financial difficulties. Commonly known as the Coal Act, this legislation holds coal operators and related companies responsible for paying monthly premiums for the costs of health benefits relating to their retired mine workers and dependents (known as "assigned" beneficiaries). In addition, if the OSM transfer explained in the paragraphs that follow is insufficient, coal operators and related companies are required to pay a monthly premium for the health care costs of retired mine workers (and dependents) who were employed by coal operators that are no longer in business, have no related successor

company, or whose former employer cannot be identified (known as "unassigned" beneficiaries). Also, these companies pay a premium for the death benefits covering all beneficiaries. As of October 1999, the CBF served a total population of 65,261, consisting of 48,289 (74 percent) assigned beneficiaries and 16,972 (26 percent) unassigned beneficiaries.

Under the Coal Act, the Social Security Administration is responsible for computing the per beneficiary health premium and for assigning the retired mine workers to their former employers or related companies. In September of each year, the Social Security Administration provides this information to the UMWAF, where the list of assigned beneficiaries is reviewed and adjusted as necessary. UMWAF computes the premium liability for each coal operator by multiplying the per beneficiary health premium by the number of assigned beneficiaries, and it issues the bills to the operators on a monthly basis. At the beginning of fiscal year 2000, the UMWAF prepared a total of 401 premium assessment bills for coal operators and related companies.

Although the Coal Act obligates operating coal companies to pay the health care premiums for unassigned beneficiaries, the Act provides for a Federal subsidy. Specifically, the Coal Act authorizes a transfer of up to \$70 million of the interest earned on the principal balance of the Abandoned Mine Reclamation Fund¹ in a fiscal year to the CBF to pay the estimated expenditures of unassigned beneficiary premiums. If interest is insufficient to cover the estimated expenditures, the OSM may access a reserve² consisting of interest earned from October 1, 1992 through September 30, 1995.

In accordance with the Coal Act, the OSM has completed the transfers to the CBF at approximately the beginning of each fiscal year since fiscal year 1996. The amounts transferred are based on bills submitted by the UMWAF, which include current medical and administrative costs, as well as any adjustments to these costs for prior years. The details of each transfer are presented in Appendix 1.

With an average beneficiary age of 78 and the CBF statutorily closed to additional retirees, the population served by the CBF gradually decreases in size as the beneficiaries die. To illustrate, the population of about 112,000 beneficiaries at the CBF's creation in 1992 decreased to 65,261 as of October 1999, during which time the annual mortality rate rose from 5 percent to about 8 percent. An analysis prepared by the UMWAF's actuarial

¹The Surface Mining Control and Reclamation Act of 1977 established the Abandoned Mine Reclamation Fund (30 U.S.C. §1231) for the purpose of reclaiming and restoring land and water resources adversely affected by past coal mining. Contributions to this fund are derived from fees assessed on coal operators for each ton of coal produced. As manager of the Abandoned Mine Reclamation Fund, the OSM invests the unappropriated balance of the fund in short-term U.S. Treasury bills.

²The reserve had accumulated \$132.5 million in interest as of September 30, 1995. In December 1999, the OSM, at the direction of the Department of the Interior and Related Agencies Appropriations Act of 2000, transferred \$68 million from the reserve to cover a shortfall in the CBF's premium accounts. As a result of the transfer, the reserve had a balance of \$64.5 million at the end of our fieldwork.

consultant projected that the CBF will serve a diminishing number of beneficiaries each year, estimating that the CBF will have 337 beneficiaries in 2045.

SCOPE OF AUDIT

Our audit scope consisted of a review of the annual transfers made from the Abandoned Mine Reclamation Fund to the CBF during fiscal years 1996 through 2000. The audit fieldwork was conducted primarily at the offices of the UMWAF in Washington, D.C., where we interviewed cognizant officials and reviewed relevant records, including audit reports of CBF activities prepared by the UMWAF's independent public accounting firm, KPMG, LLP. We also interviewed officials of the public accounting firm. We visited the Social Security Administration in Baltimore, Maryland, to interview officials knowledgeable of the process of assigning fund beneficiaries. We also interviewed cognizant OSM officials in Washington, D.C., and Lakewood, Colorado, and reviewed their records relating to the transfer of funds.

Our audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. As part of the audit, we reviewed the internal controls to the extent we considered necessary to accomplish our audit objective. We found no significant weaknesses in internal controls; however, we noted one minor weakness, that the UMWAF had not conducted an independent quality control review of the annual transfer bill (see Results of Audit section of this report). If the UMWAF implements our suggestion, we believe that its internal controls will be improved.

We also reviewed the Secretary's Annual Statements and Reports to the President and the Congress for fiscal years 1994 and 1995, which were required by the Federal Managers' Financial Integrity Act; the Departmental Reports on Accountability for fiscal years 1996 through 1998, which include information required by the Act; and the OSM's annual assurance statements on management controls for fiscal years 1996 through 1999. We determined that none of the reported weaknesses were directly related to the objective and scope of this audit.

In addition, we reviewed the OSM's Annual Performance Plan for fiscal year 2000, as required by the Government Performance and Results Act. We determined that the transfer of funds was not covered by any of the established mission and performance goals contained in the Plan. Therefore, we did not perform specific audit steps regarding the Government Performance and Results Act.

PRIOR AUDIT COVERAGE

Neither the Office of Inspector General nor the General Accounting Office has issued any audit reports during the past 5 years concerning the CBF. Additionally, the Offices of Inspector General of the Social Security Administration and the Department of Health and Human Services have not issued any audit reports on the CBF. However, the organizations

involved in the CBF have been audited annually by independent public accounting firms (see Results of Audit section).

RESULTS OF AUDIT

We found that, in general, the amounts transferred from the Abandoned Mine Reclamation Fund to the CBF for fiscal years 1996 through 2000 were accurately determined in accordance with the Coal Industry Retiree Health Benefit Act of 1992 and that the amounts paid for the health care of beneficiaries were accurate. We found, however, that the UMWAF understated the transfer bill for fiscal year 1999 by about \$885,000 and understated the transfer bill for fiscal year 2000 by about \$427,000. We attributed these errors to the lack of a quality control verification over the very complex computations of the fund transfer amounts. After we brought this matter to the attention of the UMWAF officials, the understatement for fiscal year 1999 was appropriately recovered in an adjustment to the transfer for fiscal year 2000. The officials stated that the understatement for fiscal year 2000 would be corrected by an addition to the transfer for fiscal year 2001. Since the two audit exceptions represented only about 1 percent of the total transfer for the applicable fiscal year, we concluded that the exceptions were not a material misstatement of the transfers. Finally, in the Other Matters section, we discuss the need for clarification of who is eligible to receive benefits from the CBF.

Annual Fund Transfers

The Coal Act amended the Surface Mining Control and Reclamation Act (30 U.S.C. §1232) to provide for annual transfers from the Abandoned Mine Reclamation Fund to the CBF. The Coal Act states, "If, for any fiscal year, the amount transferred is more or less than the amount required to be transferred, the Secretary shall appropriately adjust the amount transferred for the next fiscal year." Accordingly, the amount of each fund transfer since the initial transfer made in fiscal year 1996 has been adjusted in subsequent years. These annual adjustments have ranged from 5 to 48 percent of the amount originally transferred. The adjustments were made for two reasons. First, the transfer represents a prepayment for the estimated health costs for the upcoming year and, according to the Coal Act, must be revised when the actual costs become known. The process of accumulating the actual cost data takes up to 2 years to complete because of time delays in receiving medical claims documentation from care providers. Second, the number of beneficiaries classified as unassigned has varied widely since the Coal Act was enacted in 1992 because of appeals and lawsuits filed by coal operators challenging both the assignments made by the Social Security Administration and the adjustments made by the UMWAF. For example, a June 1998 Supreme Court decision in favor of the plaintiff in Eastern Enterprises v. Apfel resulted in the reclassification of at least 4,000 beneficiaries previously assigned to Eastern Enterprises and other similar companies to the unassigned category. Other lawsuits in litigation at the end of our fieldwork could have similar impacts on the number of unassigned beneficiaries.

Based on our audit, we concluded that the computations for the original fund transfers and the subsequent adjustments contained in the bills for fiscal years 1996 through 2000 were

generally accurate and established the correct amount of health benefit and administrative costs associated with unassigned beneficiaries. However, we found two exceptions. First, on the bill for fiscal year 1999, we found an incorrect prior period adjustment and a misstatement of actual costs pertaining to fiscal year 1996, which resulted in an \$884,702 net understatement of the transfer. We informed UMWAF officials of this matter, and they made the necessary adjustments on the bill for fiscal year 2000. We verified that the adjustments were appropriate and resulted in a correct recovery of funds. Second, on the bill for fiscal year 2000, we found errors pertaining to fiscal years 1996 and 1997 as follows: an incorrect adjustment and incorrect unassigned population numbers in calculating the drug expenses and various errors in computing the medical expenses. These errors resulted in a \$427,117 net understatement of the transfer. We informed UMWAF officials of this matter, and they agreed with our determination and said that they would make the necessary corrections to the transfer for fiscal year 2001.

Internal Controls

We attributed the primary cause of the two calculation errors to the lack of an independent quality control review over the complex computations of the fund transfer amounts. Specifically, to determine the amount of funds to be transferred from the Abandoned Mine Reclamation Fund to the CBF, the UMWAF obtains voluminous data from the Social Security Administration and the health provider organizations that provide medical and drug care to the beneficiaries. While medical costs are directly recorded, allocations are necessary to determine the administrative expenses charged to the CBF. To develop this information for the transfer bill, numerous spreadsheets are prepared that calculate and distribute the health costs associated with unassigned beneficiaries. Consequently, many opportunities for error exist in the process of computing the fund transfer amounts. The transfer bill and the supporting computation worksheets, however, have not been subjected to an independent quality control review for accuracy. At the end of our fieldwork, UMWAF officials agreed with our suggestion to institute a quality control review of the computations on the bills, beginning with the bill for fiscal year 2001, before they are submitted to the OSM. This quality verification, in our opinion, will improve the accuracy of the transfer process.

Except for the errors discussed previously, we concluded that the various internal controls involved in the CBF provided reasonable assurance that a significant error would not occur in the transfer of funds from the Abandoned Mine Reclamation Fund. The internal controls also served to verify that the amounts of the payments for the health care of beneficiaries were correct. More specifically, each principal organization (the UMWAF and the medical and drug provider companies) performing functions related to the CBF had a formal quality control system in place. For example, the UMWAF's Internal Audit Department conducts an audit on a biennial basis of the medical and drug provider companies to verify the accuracy of health claims. These audits include examinations for payments of unallowable benefits, excessive payments, duplicate payments, accurate reporting of claims processing activities, and compliance with applicable laws and regulations. Additionally, the medical and drug provider companies have internal quality assurance departments that similarly evaluate the accuracy of health benefit claims submitted to the UMWAF. Another level of verification is provided by the independent public accounting firms engaged each year by the

UMWAF and the medical and drug provider companies to audit their respective financial statements. Specifically, in the past year, KPMG, LLP, audited the UMWAF; Arthur Andersen, LLP, audited United HealthCare Corporation (the medical claims manager) and Advance Paradigm, Inc. (the prescription drug provider); and Deloitte & Touche, LLP, audited First Health Group Corporation (the medical care provider). Each organization received an "unqualified opinion" on its most recent audit, indicating that the financial statements were fairly presented without material misstatement. Further, the UMWAF engaged its public accounting firm to perform a special review, known as the Agreed Upon Procedures, to verify the unassigned beneficiary listing of the CBF for fiscal years 1997 through 1999. This special review found no misstatements for fiscal years 1998 and 1999 and disclosed only minor exceptions in the listing for fiscal year 1997. In summary, our review of selected reports issued by these organizations concluded that the internal controls over the CBF were effective.

Recommendation

We recommend that the Director of OSM ensure that the funds transferred to the United Mine Workers of America Combined Benefit Fund for fiscal year 2001 are increased by the \$427,117 amount of the understated funds relating to fiscal year 2000.

OSM Response and Office of Inspector General Reply

In the October 13, 2000 response (Appendix 4) to the draft report, the Acting Director, OSM, the OSM said that it will ensure that the understated amount of \$427, 117 is accounted for in the fiscal year 2001 bill and that it will work with the UMWAF in resolving the "after-acquired" beneficiaries issue. Subsequent to the response, the OSM notified us that the interpreted amount was corrected in the transfer bill. Based on the response and the subsequent information, we consider the recommendation resolved and implemented.

Other Matters

At our exit conference, OSM officials stated that the transfer bill should not include health costs for any beneficiaries added after the enactment of the Coal Act in July 1992 and that this position was supported by the Office of the Solicitor. Specifically, in a memorandum dated December 29, 1999 to the Department of the Interior's Director of Budget, the Solicitor stated that the eligibility provisions of the Coal Act limited CBF health benefit coverage to "individuals actually receiving benefits as of July 20, 1992." Reviewing the eligibility of beneficiaries was not part of our original audit scope. To address the concerns raised by the OSM, however, we performed a legal analysis of the eligibility requirements of the Coal Act, requested the opinion of the UMWAF on eligibility, and identified the number of beneficiaries added to the CBF population after passage of the Coal Act in July 1992 (known as "after-acquired beneficiaries").

As stated in a July 12, 2000 memorandum (Appendix 2), our General Counsel concluded that after-acquired beneficiaries were not eligible to receive benefits as follows:

Based on the plain language of the statute, it appears that children born of or adopted by and individuals who marry eligible workers on or after July 21, 1992 are not eligible to receive benefits from the United Mine Workers of America Combined Benefit Fund. There is no language in the statute that contradicts this conclusion, and the legislative history does not further describe what Congress meant when it explicitly and narrowly defined the class of retirees and dependents of retirees to be included in the coverage of the Fund.

In a July 6, 2000 letter (Appendix 3) to our office, the General Counsel for the UMWAF, regarding the provisions cited by the Office of Inspector General, stated, "On their face . . . would seem to preclude the enrollment of the after-acquired beneficiaries." However, the General Counsel also stated that "the U.S. Court of Appeals for the District of Columbia Circuit has held, with respect to another provision of the Coal Act, that, where a court can conclude that the plain meaning of the statute is contrary to the evident intent of Congress, the intended result should prevail over the plain meaning."

In this regard, the General Counsel concluded:

Congress stated its intention that the 1950 and 1974 Benefit Plans should continue under the Coal Act, with the same level of coverage and for the same beneficiaries as were covered by these plans prior to the Coal Act; and both plans then included provisions that dependent family members were covered. . . . [Therefore] a reasonable construction of [the sections cited by the Office of Inspector General], in light of Congressional intent to have the CBF continue the prior coverage of the 1950 and 1974 Benefit Plans, is to view the limitations of those sections to those individuals who were eligible and receiving benefits as of July 20, 1992 as applying to coal industry retirees or their surviving spouses, who would be primary beneficiaries of the CBF, but as not applying to the dependents of these primary beneficiaries. Accordingly, it would be reasonable to exclude retirees or primary beneficiaries who were not eligible and receiving benefits from either the 1950 or 1974 Plan as of July 20, 1992, but nevertheless to include the after-acquired beneficiaries of retirees or primary beneficiaries who were eligible and receiving benefits at the cut-off date. This has been the approach taken by the CBF.

Regarding the impact of the after-acquired beneficiaries on the CBF, we found, using unaudited data provided by the UMWAF, that as of June 16, 2000 the CBF was providing health benefits for 956 after-acquired beneficiaries, consisting of 753 assigned (reimbursed by the coal operators) and 203 unassigned (reimbursed by the OSM under the AML fund transfer) beneficiaries. In comparison, at the time of the first transfer bill made by the OSM in October 1995, the CBF population had 147 unassigned after-acquired beneficiaries. The OSM paid about \$2.3 million in health benefit costs for after-acquired beneficiaries in its transfer bills for fiscal years 1996 through 2000, representing 1 percent of the total amount transferred. We estimate that the health care costs incurred for these beneficiaries in fiscal

year 2000 will be approximately \$590,000. We also noted that the after-acquired beneficiaries were dependents of mine workers or related persons who had satisfied the Coal Act's eligibility requirements for the CBF. The 203 dependents consisted of 143 spouses, 40 children, 18 grandchildren, and 2 disabled adults.

We suggest that the OSM work with the Office of the Solicitor, the UMWAF, the Congress, and the Office of Management and Budget to clarify who is eligible to receive benefits from the CBF because of the differing legal opinions and the impact on beneficiaries.

Since the recommendation is considered resolved and implemented, no further response to this report is required (see Appendix 5).

Section 5(a) of the Inspector General Act (5 U.S.C. app. 3) requires the Office of Inspector General to list this report in its semiannual report to the Congress. In addition, the Office of Inspector General provides audit reports to the Congress.

**ABANDONED MINE RECLAMATION FUND STATISTICS AND
TRANSFERS TO THE COMBINED BENEFIT FUND**
(Amounts in Thousands)

<u>Description</u>	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2000</u>
AML* Fund balance at beginning of year	\$1,292,066	\$1,400,574	\$1,525,363	\$1,637,119	\$1,751,965
Interest collections	\$69,383	\$81,006	\$67,031	\$82,830	\$75,035 (Estimated)
Amount transferred to Combined Benefit Fund	\$47,184	\$31,374	\$32,562	\$81,766	\$40,960**

*The Abandoned Mine Reclamation Fund is commonly referred to as the AML Fund.

**This amount is exclusive of a \$68 million special appropriation from the interest reserve (see Background section of the report).



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

APPENDIX 2
Page 1 of 2

MEMORANDUM

TO: Roger LaRouche
Acting AIG for Audits

FROM: Robin L. Greenwald *RJG*
General Counsel

RE: Definition of Beneficiary Under the Coal Industry Retiree Health
Benefit Act of 1992 (26 U.S.C. §§ 9701 - 9722)

DATE: July 12, 2000

You requested a legal opinion regarding the definition of beneficiary as that term is used in the Coal Industry Retiree Health Benefit Act of 1992 (CIRBA), 26 U.S.C. §§ 9701 - 9722. Specifically, you have asked whether children born of or adopted by and individuals who marry eligible workers on or after July 21, 1992 are eligible to receive benefits from the United Mine Workers of America Combined Benefit Fund. Because of the need to obtain an opinion quickly, I have previously given you an oral opinion that children born of or adopted by and individuals who marry eligible workers on or after July 21, 1992 are not beneficiaries under the CIRBA. I am now providing you my opinion in writing, together with citations in support of that opinion.

DISCUSSION

The Fund provides health care and death benefits to eligible union coal workers who retired on or before July 20, 1992, and their dependents. 26 U.S.C. § 9703. The statute denies enrollment in the Fund to any individual "who is not receiving benefits . . . as of July 20, 1992." 26 U.S.C. § 9703(e). The statute also defines eligible beneficiaries to include an individual who "(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits . . . [and] (2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree."

Based on the plain language of the statute, Congress left little room to provide benefits to children who were not yet born or adopted and spouses who were not yet married to an eligible retiree as of July 20, 1992. It has been suggested, however, that language in the statute suggests Congress' intent to provide coverage to these categories of individuals. For example, in section 9703(b)(1), Congress stated that coverage under the Fund should "to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992." Since the subject dependents would have been covered under the 1950 and 1974 Plan, it has been suggested that this language means they should be included under the Plan as well. There

are several problems with this analysis. First, it is not clear in section 9703 that term "coverage" is referring to the class of people covered under the Plan of the type and extent of benefits available under the Plan. A fair reading of the language certainly would suggest that is means the type and extent of available benefits. Moreover, even if it means the class of individuals covered by the Plan, the language states "to the maximum extent feasible," and in section 9703(f) Congress seems to have limited that class of people who are covered under the Fund to those individuals receiving benefits as of July 20, 1992, and no one after that date.

Furthermore, the "subject to the same limitations of" language of 9703(b)(1) merely means those limitations under the 1950 and 1974 Plans continue as limitations under the Fund. It does not mean that no new limitations may be added to the eligibility criteria under the Plan.

CONCLUSION

In summary, based on the plain language of the statute, it appears that children born of or adopted by and individuals who marry eligible workers on or after July 21, 1992 are not eligible to receive benefits from the United Mine Workers of America Combined Benefit Fund. There is no language in the statute that contradicts this conclusion, and the legislative history does not further describe what Congress meant when it explicitly and narrowly defined the class of retirees and dependents of retirees to be included in the coverage of the Fund.

July 6, 2000

Robin L. Greenwald, Esq.
General Counsel
Office of Inspector General
U.S. Department of Interior
1849 C Street, NW
Mail Stop 5341
Washington, DC 20240

Dear Ms. Greenwald:

Pursuant to our telephone conversation of June 29, 2000, I am writing to provide you with the legal and practical reasons for the decision of the Trustees of the UMWA Combined Benefit Fund (CBF) to include among the beneficiary population of the CBF those dependents of coal industry retirees who became dependents by birth, marriage or adoption after July 20, 1992. This group of beneficiaries has become known as the "after-acquired beneficiaries."

You have correctly identified sections 9703(e) and (f) of the Coal Act, 26 U.S.C. sections 9703(e) and (f), as the provision of concern in this analysis. Section 9703(e) states that,

The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

Section 9703(f) defines the term "eligible beneficiary" to mean,

an individual who (1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from [one of the two predecessor plans] or (2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

On their face, these provisions would seem to preclude the enrollment of the after-acquired beneficiaries.

Robin L. Greenwald, Esq.
Office of Inspector General, DOI
Page 2
July 6, 2000

As I pointed out in our telephone conversation, however, the U.S. Court of Appeals for the District of Columbia Circuit has held, with respect to another provision of the Coal Act, that, where a court can conclude that the plain meaning of the statute is contrary to the evident intent of Congress, the intended result should prevail over the plain meaning. See R.G. Johnson Co. v. Apfel, 172 F3d 890, 895 (D.C. Cir. 1999). Indeed there are other provisions of the Act that raise a strong inference that Congress did not intend to exclude the after-acquired beneficiaries. First, the statement of policy for the Coal Act, section 20142 (b)(3) of the Energy Policy Act of 1992, includes the following language:

It is the policy of this subtitle to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans. (emphasis added)

Second, section 9703(b)(1) states, with respect to the Combined Benefit Fund, that,

[t]he trustees shall utilize all available plan resources to ensure that, consistent with paragraph 2, coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMW Benefit Plan and the 1974 UMW Benefit Plan as of January 1, 1992.

(The qualifying reference, to paragraph 2 of section 9703(b), is to limitations on payment rates not to any restriction regarding who may be eligible for coverage.)

Thus Congress stated its intention that the 1950 and 1974 Benefit Plans should continue under the Coal Act, with the same level of coverage and for the same beneficiaries as were covered by these plans prior to the Coal Act; and both plans then included provisions that dependent family members were covered. (See UMW 1950 Benefit Plan and Trust, Article II. Section C, and UMW 1974 Benefit Plan and Trust, Article II. Section C., attached) Indeed, the UMW Benefit Plans and their predecessor, the UMW Welfare and Retirement Fund of 1950 had provided health care coverage to family members of retirees through most of their history and at all times since 1974. See generally, the discussion of the history of these plans in Eastern Enterprises v. Apfel, 141 L. Ed. 2d 451 at 460-63 (plurality opinion) and at 495-6 (Justice Breyer dissenting) (1998).

Although it is apparent that Congress intended sections 9703(e) and (f) to provide a limit on enrollment, so that the CBF population would be a closed set, it is also likely that Congress did not think of the after-acquired dependents. Congress may well have perceived the beneficiary population of the 1950 and 1974 Benefit Trusts as of July 20,

Robin L. Greenwald, Esq.
Office of Inspector General, DOI
Page 3
July 6, 2000

1992, as a relatively elderly, all retiree population, to be static at that time, with no potential for growth so long as no new retirees not already enrolled were added. There is nothing in the Coal Act or its legislative history, other than the general language of sections 9703(e) and (f), that suggests that Congress considered the likelihood of future additions to the households of this population and expressly decided to exclude such after-acquired dependents.

For evidence that Congress did not consider the after-acquired dependents as a separate matter, see the first four paragraphs of the draft "Conference Report" submitted to the Congressional Record as a technical explanation by Senator Wallop, the Energy Policy Act's sponsor and Senate floor manager. This explanation refers first to the continuation of health care coverage for the "existing population" of "retirees and their dependents" of the 1950 and 1974 Plans; then it describes the additional required coverage under individual employer plans and the new limited "safety net" plan for additional retirees retiring on or before September 30, 1994 and their dependents. Cong. Rec. October 8, 1992, page S17603. There is no mention of after-acquired dependents, although the description appears to be intended to be all-inclusive of those covered by the Act, and the explanation subsequently states that, "All benefit eligibility limitations in the current Plans shall be continued under the Combined Fund." *Id.*, page S17604. Those benefit eligibility limitations would have included any after-acquired beneficiaries.

A reasonable construction of sections 9703(e) and (f), in light of Congressional intent to have the CBF continue the prior coverage of the 1950 and 1974 Benefit Plans, is to view the limitations of those sections to those individuals who were eligible and receiving benefits as of July 20, 1992 as applying to coal industry retirees or their surviving spouses, who would be primary beneficiaries of the CBF, but as not applying to the dependents of these primary beneficiaries. Accordingly, it would be reasonable to exclude retirees or primary beneficiaries who were not eligible and receiving benefits from either the 1950 or 1974 Plan as of July 20, 1992, but nevertheless to include the after-acquired beneficiaries of retirees or primary beneficiaries who were eligible and receiving benefits at the cut-off date. This has been the approach taken by the CBF. See Fawn Mining Corp. v. Hudson, 878 F.Supp. 240 (D.D.C., 1995); *aff'd*, 80 F.3d 519 (D.C. Cir. 1996)

While there may be a basis for an argument that the after-acquired beneficiaries could be covered by the UMW 1992 Benefit Plan, while the primary beneficiaries in their households remained in the CBF (See sec. 9712(b)), the Trustees of the 1992 Plan have not considered this issue, and I can make no representation regarding their likely views on the matter. In addition, there are practical as well as legislative intent considerations for including the after-acquired beneficiaries in the CBF, even if they might qualify for coverage under the 1992 Plan. First, the CBF and the 1992 Plan over time could have different levels of coverage, as the levels of benefits in the 1992 Plan are guaranteed by the 1988 Agreement Operators (See section 9712(d)), while the CBF


Robin L. Greenwald, Esq.
Office of Inspector General, DOI
Page 4
July 6, 2000

Trustees have authority to adjust benefits if necessary. Second, both plans provide for an annual co-payment to be met by beneficiaries, but this payment is based upon a family. See CBF Plan document Article IV sec. 9, attached. If different members of the same household were covered by different plans, there would be a reduction of benefits if co-payment totals were required separately for each plan.

Finally, although it does not count as legal authority, the assigned operators have generally paid their assessments to the CBF, including those for the after-acquired beneficiaries, without complaint. Approximately 97% of the assessed premiums have been paid. Some operators have raised questions regarding the after-acquired beneficiary assessments, the issue having been presented in pleadings or discovery requests in a small number of our collection cases, but it has never been decided by a court, and the cases where it has arisen have been decided on other grounds or settled. To my knowledge, we have not conceded the issue as a separate matter in any settlement.

I hope this information will be helpful. If you have further questions, you may call me at (202) 521-2246.

Sincerely,


David W. Allen
General Counsel

DWA:as
(w/ma/Greenwaldltr3)

Attachment



United States Department of the Interior

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Washington, D.C. 20240

OCT 13 2000

MEMORANDUM

To: Roger La Rouché
Acting Assistant Inspector General for Audits

Through: *for* Sylvia V. Baca *Kathy Karpman*
Assistant Secretary, Land and Minerals Management

From: Kathrine L. Henry *Kathrine L. Henry*
Acting Director, Office of Surface Mining

Subject: United Mine Workers of America Combined Benefit Fund Audit
E-IN-OSM-002-99(A)-R

Thank you for the draft report on the transfer of funds by the Office of Surface Mining (OSM) to the United Mine Workers of America Combined Benefit Fund (UMWACBF).

We generally concur with the recommendation of the audit and as appropriate will ensure that the understated amount of \$427,117, relating to fiscal year 2000, is appropriately accounted for in the transfer of funds to the UMWACBF for fiscal year 2001 (see attached). As suggested in the Other Matters section of the audit report, we will work with the UMWA, the Congress, OMB, and other stakeholders in resolving the secondary issue of "after-acquired beneficiaries".

If you have any questions concerning our response, please contact Victor Christiansen, Audit Liaison, at (202) 208-7387.

Attachment

Attachment

OIG Audit Recommendation Implementation Schedule			
Responsible Official	Finding	Recommendation	Completion Date
Robert Ewing, Assistant Director Finance	FY 2000 transfer payment understated by \$427,117	Adjust FY 2001 payment by the amount understated in FY 2000	October 2000

STATUS OF AUDIT REPORT RECOMMENDATION

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
A.1	Implemented.	No further action is required.

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