

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

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Abandoned Mine Land Fund Reauthorization: Selected Issues

Robert Bamberger, Resources, Science, and Industry Division

March 8, 2005

Abstract. The Surface Mining Control and Reclamation Act (SMCRA) established reclamation standards for all coal surface mining operations and for the surface effects of underground mining. It also established the Abandoned Mine Land (AML) program to promote the reclamation of sites mined and abandoned prior to the enactment of SMCRA. This report summarizes major features and some of the differences between the Administration proposal and congressional alternatives to reauthorization legislation.

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Abandoned Mine Land Fund Reauthorization: Selected Issues

Updated March 8, 2005

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Abandoned Mine Land Fund Reauthorization: Selected Issues

Summary

The Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87), enacted in 1977, established reclamation standards for all coal surface mining operations and for the surface effects of underground mining. It also established the Abandoned Mine Land (AML) program to promote the reclamation of sites mined and abandoned prior to the enactment of SMCRA. To finance reclamation of abandoned mine sites, the legislation established fees on coal production. These collections are divided into federal and state shares; subject to annual appropriation, AML funds are distributed annually to states with approved reclamation programs. Since the program's inception and through FY2004, collections have totaled \$7.1 billion; appropriations from the fund have totaled \$5.5 billion. The unappropriated balance in the fund approached \$1.7 billion at the end of FY2004. As of the end of FY2004, roughly \$1.1 billion of this sum is credited to the state share accounts, of which nearly \$430 million alone is in Wyoming's account, because — even though most of the sites awaiting cleanup are in the eastern part of the nation — coal production has shifted westward. Consequently, the western states have been making significantly larger contributions to the fund in recent years.

Authorization for collection of AML fees was scheduled to expire at the end of FY2004, and was extended nine months to the end of June 2005 by the Consolidated Appropriations Act for 2005 (P.L. 108-447) while Congress continued to debate changes to the program. A number of bills were introduced during the 108th Congress to reauthorize fee collections and make changes to the program that would address concerns about the mechanics of the program, the fee structure, and the unappropriated balances. A Bush Administration proposal (S. 2049/H.R. 3778) proposed to refund, through a significant increase in appropriations, unobligated state balances over a 10-year period. These balances would be returned to states and Indian tribes that had completed reclamation of their Priority 1 sites. These states would no longer receive grants from the AML fund itself, freeing up funds to be targeted to states with sites awaiting cleanup.

House and Senate legislation — H.R. 3796 and S. 2086 — differed greatly in some respects from the Administration proposal. These bills would have maintained the distinction between state and federal shares and would have required that 50% of annual contributions be returned to states even if cleanup of priority abandoned mine sites had been completed. States and tribes would have been allowed to use the money for other purposes if cleanup of AML sites had been completed. The House, Senate, and Administration proposals were in agreement to end an allocation of a portion of AML collections to the Rural Abandoned Mine Land Program, a program that has received no appropriation since FY1995. The FY2006 budget submitted by the Administration is essentially the same as the plan proposed for FY2005 with the exception that the fees based on coal production would not be lowered in the FY2006 request. As of mid-March, no legislation had been introduced. This report will be updated as developments warrant.

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Abandoned Mine Land Fund Reauthorization: Selected Issues

The Surface Mining Control and Reclamation Act (SMCRA, P.L. 95-87), enacted in 1977, established reclamation standards for all coal surface mining operations, and for the surface effects of underground mining. It also established the Abandoned Mine Land (AML) program to promote the reclamation of sites mined and abandoned prior to the enactment of SMCRA. To finance reclamation of abandoned mine sites, the legislation established fees on coal production, which are deposited in an AML fund administered by the Department of the Interior (DOI) Office of Surface Mining (OSM). Authorization to collect these fees was scheduled to expire on September 30, 2004, but the 108th Congress was unable to reach any agreement among a number of proposals to make some changes to the mechanics of the program, the fee structure, and distribution of the unappropriated balances. Authorization to collect AML fees was extended for a brief time — nine months — to the end of June 2005, by the Consolidated Appropriations Act for 2005 (P.L. 108-447).

Debate over legislation to extend authorization further into the future, and to make other adjustments to the program, is almost certain to continue in the 109th Congress. To set the stage for that debate, this report summarizes the current structure of the AML program and fund distribution, and reviews some of the major proposals considered in the 108th Congress. As of mid-March, no legislation had been introduced in the 109th Congress.

In its FY2006 budget submission for OSM, the Bush Administration once again proposed changes in the AML program that were proposed with the FY2005 budget. The FY2006 proposal does not include a lowering of the AML fees that was part of the plan introduced with the FY2005 budget. On February 2, 2004, in company with the Administration budget request for the Department of the Interior (DOI), the Department released a reauthorization proposal that would have made changes in the collection of fees for, and disbursement of grant monies from, the AML Fund. Prominent among the provisions was a phased reduction in the AML fees assessed on coal production. Under the Administration plan, unobligated balances that have accumulated in individual state share accounts would be returned over a 10-year period. This proposal, and other changes sought by the Administration requiring congressional action to implement, are intended to address a number of long-standing complaints about the formulas that are applied to the fees and the calculation of grants disbursements. Full initial implementation of the Administration proposal (introduced in the 108th Congress as H.R. 3778/S. 2049), would have required a substantial increase in the FY2005 AML appropriation — from \$190.6 million in FY2004 to \$243.9 million, an increase of \$53.3 million. The FY2006 budget

proposes a comparable increase of \$58 million over the final appropriation for FY2005 of \$188.2 million.¹

There are a number of issues for Congress in the disposition of the reauthorization. A prominent issue raised by the Administration proposal was whether the changes proposed by the Administration would leave the fund with adequate resources over time to meet all the fund's obligations. The United Mine Workers Combined Benefit Fund (CBF), which provides health care benefits to retired miners, is also dependent upon transfers from the AML fund. Meeting the expenses of the CBF has been one of the most important issues in the debate.

A second issue concerns the geographic balance between collections and disbursements. As coal production has moved westward, western states have been paying larger sums into the AML fund while grants distribution has favored eastern states that have a larger number of priority sites to be reclaimed. At issue, too, will be how the return of unobligated state share balances should be funded. The Administration approach to program reform would finance the return through a higher appropriation from the AML fund at a time of growing concern over federal spending. A competing approach in the 108th Congress, H.R. 3796, would have partly financed the return of these balances with proceeds from federal coal leasing. That bill and one in the Senate, S. 2086, would have also — among other provisions — provided for the return to states of a greater portion of current fee collections.

Grants Distribution: The Current Structure

Collections for the AML fund are divided into federal and state shares; subject to annual appropriation, AML funds are distributed annually to states with approved reclamation programs.² Since the program's inception and through FY2004, collections have totaled \$7.1 billion; appropriations from the fund have totaled \$5.5 billion. The unappropriated balance in the fund approached \$1.7 billion at the end of FY2004. Of this figure, the federal share represents roughly \$620 million, and the unobligated balances in state share accounts approaches \$1.1 billion.³ OSM, which runs the program, has estimated that it will require roughly \$3 billion to address the remaining high-priority sites.⁴

The design and purpose of the AML fund has raised some significant issues, some of which are common to trust funds in general. The AML program touches

¹ Consolidated Appropriations Act of 2005, P.L. 108-480. A summary of the FY2006 appropriation and AML distribution appears in **Tables 1 and 2** at the end of this report.

² Twenty-three states and three Indian tribes received reclamation grants during FY2003.

³ Current figures are available from the OSM website. See [<http://www.osmre.gov/fundstat.htm>].

⁴ See, for example, Statement of Jeffrey D. Jarrett, Director, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, before the [House Committee on Resources] Subcommittee on Energy and Mineral Resources, U.S. House of Representatives, on H.R. 3778 and H.R. 3796, March 30, 2004. Available at [<http://www.osmre.gov/reports/033004statement.txt>].

upon long-held state concerns about levying fees on residents or businesses operating in one state to remedy nationwide problems — albeit for the “common good” — but which dot the landscape disproportionately among the several states. The allocation and distribution of AML collections are designed to preserve a rough equity, given the anomaly that the states with the greatest inventory of priority AML sites are no longer among the largest coal producers. But not all states have been comfortable with the distribution.

Nor are they sanguine about the level of annual congressional appropriations from the fund. From the inception of the program, the fund has had unappropriated balances. This places the AML fund in company with other trust funds held by the federal government (such as the Highway Trust, and Land and Water Conservation Funds) in which some states — eyeing the unappropriated balances — believe their citizens, and businesses operating within their borders, pay more into the fund than the state receives in benefits.

To finance reclamation of abandoned mine sites, SMCRA established a fee on coal production that is paid by coal producers into an Abandoned Mine Land Reclamation trust fund.⁵ SMCRA authorized collection of AML fees through the end of 1992; the Energy Policy Act of 1992 (EPACT, P.L. 102-486) extended the AML authorization through the end of FY2004. In between the passage of those two bills, the Omnibus Budget Reconciliation Act of 1990 (OBRA, P.L. 101-508) had extended authority for AML collections through FY1995. Additionally, OBRA authorized the OSM to invest the unappropriated balance of AML funds in U.S. Treasury securities. The investment interest is deposited in the AML fund; however, EPACT authorized transfer of up to \$70 million annually of this interest income, beginning in FY1996, to the United Mine Workers of America (UMW) to help pay the health benefits of retired miners. In recent years, low interest rates have generated less money to be transferred to the UMWA Combined Benefits Fund (CBF).⁶

SMCRA also provided that 50% of AML collections would be allocated to the states; this is generally referred to as the “state share” of AML fees. The balance of the collections is under the control of the Secretary of the Interior and is generally referred to as the “federal share.” As amended by P.L. 101-508, 40% of this federal share (or 20% of the whole of AML collections) is designated for (1) emergency projects in states and on tribal lands; (2) projects in states and on tribal lands without approved reclamation plans; (3) the Small Operator Assistance Program (SOAP); and (4) federal administrative costs. Twenty percent (or 10% percent of total AML collections) is set aside to be transferred to the Department of Agriculture for its Rural Abandoned Mine Program (RAMP).⁷ The RAMP program has had no

⁵ The current schedule is \$.35/ton of coal produced by surface mining; \$.15/ton of coal produced by underground mining; and \$.10/ton of mined lignite.

⁶ No appropriation is required for this transfer.

⁷ RAMP was designed to restore agricultural land that had been disturbed by strip mining. While entitled by SMCRA to one-fifth of AML collection, the program had been receiving significantly less — \$10 million in the years before appropriations to the program ceased after FY1995. There have been repeated attempts to abolish RAMP. Critics claimed it was

(continued...)

appropriation since FY2005, and has an unappropriated balance of slightly more than \$300 million which, under the current structure of the AML program, is not available for grants distribution. House, Senate, and Administration proposals in the 108th Congress were in agreement that the allocation to RAMP should end. However, there were differences among the proposals on disposition of the RAMP balances.

An additional earmark is made for the Appalachian Clean Streams Initiative (ACSI). The ACSI program was initiated in FY1994 to clean up and restore streams damaged by acid mine drainage, largely the result of past coal mining. The remaining 40% of the federal half of total AML collections constitutes a pool from which supplemental grants may be awarded to the states for remedy of Priority 1 and 2 sites,⁸ based upon historic coal production.

Congress annually appropriates money from the AML fund. OSM then calculates the distribution to each eligible state and Indian tribe from its shares of state and federal apportionments of AML collections. Annual distributions are paid from both shares. The formula is complex and applies differently to the state and federal share of AML collections.⁹ While the draw from the pool of AML revenues allocated to individual state shares is fairly straightforward and proportional, more complex adjustments affect the proportionality of the final distribution paid from the federal share. This makes it difficult to measure a direct transfer of wealth among individual states.

Calculation of the distribution of grants to a state from its share of AML collections is based on the state's share of previously collected but yet undistributed AML fees. The distribution to a state from the federal share is based on (1) a state's coal production prior to 1978, before enactment of SMCRA that established the AML fund; and (2) adjustments to the distribution made on behalf of minimum program states to bring their grants up to a designated minimum level of funding for reclamation.

Minimum program states are states with relatively low annual coal production. For these states, SMCRA was amended in 1990 to authorize appropriations for the reclamation of the most dangerous sites (so-called Priority 1 and 2 sites) listed in the AML inventory at the lesser of (1) the estimated cost to reclaim those sites, or (2) a

⁷ (...continued)

duplicative and that sites subject to regular AML grants were higher priority. More than \$300 million of the total unappropriated balance has been allocated to RAMP. See archived CRS Report 95-706 ENR, *The Rural Abandoned Mine Program — A Fact Sheet*, by Duane Thompson, June 12, 1995.

⁸ SMCRA defines Priority 1 sites as those warranting “the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.” Priority 2 sites are similarly defined, with the exception that the “adverse effects” do not pose “extreme danger,” as with Priority 1 sites. Sec. 403(a) of SMCRA, 30 U.S.C. 1233.

⁹ **Table 2** shows the breakdown in the distributions from the federal and state share accounts.

minimum program level of \$2.0 million per state. Prior to that, appropriations had provided \$1.5 million annually to minimum program states.

These minimum program levels, however, remain subject to annual appropriations by the Congress. Congress may appropriate all, or less than, the \$2.0 million currently authorized. For FY1995, Congress provided a minimum program appropriation to \$1.5 million and it has remained there into FY2004.

As noted above, the Energy Policy Act of 1992 provided that payments of up to \$70 million (referred to as the “cap”) from interest earned annually on AML funds would be transferred to the retired miners health benefits fund, the United Mine Workers of America Combined Benefit Fund (CBF). This fund pays the premiums of retirees who worked for companies that went bankrupt, or which no longer exist. Prior to 1992, expenses of the CBF were less than the annual interest generated by the AML fund, leaving interest balances that have been transferred as needed in subsequent years when CBF expenses exceeded the annual interest generated. Transfers of roughly \$680 million have been made to the CBF as of the end of March 2004.¹⁰

Major Features of the Administration Proposal and Competing Proposals (108th Congress)

As of early March 2005, legislation reauthorizing AML collections had not been introduced in the 109th Congress, but the FY2006 budget request indicates that the Administration will seek most of the changes proposed in the Administration proposal introduced in the 108th Congress (S. 2049/H.R. 3778). It was intended to address the major concerns outlined above. The Administration plan would have:

- extended the program through FY2018;
- reduced the AML fee assessed on each ton of coal produced by 15% during the period FY2005-FY2009, and by 25% from FY2010 until the expiration of the reauthorization in FY2018. The FY2006 budget request does not include a lowering of the fees from current levels;
- returned unobligated state share balances over a 10-year period to states that have been certified to have completed reclamation of their Priority 1 sites — these states would no longer receive AML grants from the remaining unappropriated balances in the fund or from new collections; non-certified states would have their state share balances

¹⁰ Office of Surface Mining. The Energy Policy Act of 1992 provided that the unobligated balances would begin to earn interest in FY1993; however, transfers did not begin until FY1996, so as not to violate deficit-control measures included in the Budget Enforcement Act of 1990 provisions of P.L. 101-508. For a complete discussion of the genesis and implications of this transfer payment, see Nonna Noto, “Interest Transfers from the Abandoned Mine Reclamation Fund,” in U.S. Congress, House Committee on Ways and Means, *Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992*, June 22, 1995, WMCP: 104-3, pp. 50-54.

returned to them as part of their annual grants for reclamation activities;¹¹

- ended the division and assignment of fee collections into state and federal shares; all future AML collections would be deposited in a single account;
- removed the \$70 million cap on the amount of interest to be transferred annually to the United Mine Workers' Combined Benefits Fund, and make other changes to provide the CBF with \$310 million over the next few years;
- provided minimum program states with \$2 million each annually. The FY2006 budget request seeks \$1.5 million for minimum program states, the level at which Congress has set this appropriation since FY1995; and
- ended the reservation of AML funds for the Rural Abandoned Mine Land Program, which is under the jurisdiction of the Department of Agriculture, and which has received no appropriation since 1995.

The cessation of assigning AML collections to a “state share” is one of the most interesting features of the Administration proposal. This assignment has been responsible for one of the greatest pressures on OSM. The creation of the separate state and federal funds was more an accounting convenience than intended to be literal. However, states have been displeased with the accumulating unobligated balances in their state share accounts and regard these balances as “state” money to which they are entitled.

Certain states have a special interest in how this particular issue is resolved. As shown in **Table 3**, more than half of the nearly \$1 billion in unobligated state share balances is held in the accounts of Wyoming, West Virginia, and Kentucky.¹² The Administration proposed to return the state share balances over a 10-year period, and has requested in the FY2005 budget an additional \$53 million to begin disbursement of the unobligated state share balances in FY2005. This figure is \$58 million in the FY2006 request. Under the Administration plan, states that have been certified would receive only the disbursement from their unobligated state share balances; they would

¹¹ Section 1240a provides for states to apply for certification that they have completed reclamation of high priority sites. However, under the Administration proposal, certified states would only receive return of unobligated balances in the state share account. Non-certified states would receive both a return of state share balances and reclamation grants from the federal portion of the AML fund, creating a disincentive to apply for certification. The Administration proposal would allow the Department of the Interior to initiate certification without waiting for states to make application. At present, Louisiana, Wyoming, Montana, Texas, and the Hopi and Navajo tribes are certified.

¹² Montana has completed reclamation of all 18 of its Priority 1 and 2 sites. In contrast, Kentucky has reclaimed 253 of 640 Priority 1 and 2 sites, and West Virginia has reclaimed 323 of 1,069 such sites. Source: Office of Surface Mining. Abandoned Mine Land Inventory System (AMLIS): [<http://www.osmre.gov/aml/inven/zintroin.htm>].

receive no further grants from the AML fund. By seeking an additional appropriation for returning state share balances — and assuming that the appropriation for grants from the AML fund remains around current levels — the Administration has argued that it will free up more grant resources to be awarded to those states with the most sites awaiting reclamation. A further benefit, the Administration argues, is that cleanup of these sites will be completed “decades sooner.”¹³ Grants to states and tribes still with high-priority sites would be drawn first on the state share account until the state share accounts for these states were also exhausted.

Under the Administration proposal, unobligated state balances would be largely divorced from OSM and current AML mechanics. All future collections would go into a single account, eliminating the state share designation altogether and ending any further accumulation of unobligated balances in the state share. By predicating return of these balances to a straightforward appropriation determined by Congress, it would also eliminate the argument that OSM and the current formula for grant distribution drawn on both federal and state share balances are the bottleneck for return of these funds.

The unobligated balances in the state AML fund account have especially nettled some states as coal production has shifted west of the Mississippi. Contributions to the AML fund have been increasingly borne by western states. In 1950, nearly 525 million tons of coal were mined in the eastern portion of the country, while western production was roughly 36 million tons. By 2003, western coal production was roughly 550 million tons, while production in the East had declined moderately to 376 million tons.¹⁴

However, the prospects for approval of the sort of significant increase in appropriated funds for this purpose sought in the FY2005 request (and again in the FY2006 request) are unclear in a climate of renewed concern over federal spending and borrowing. It is possible that, if the essential features of the reauthorization plan proposed by the Administration were enacted, the calendar for return of state share monies could be lengthened or even deferred. While disbursement of AML grants has always been dependent upon congressional appropriation, the congressional role in the AML program could have even more visibility if reimbursement of unobligated state balances is tied to congressional appropriation as well.

A competing proposal, S. 2086, introduced by Senator Thomas in the 108th Congress, differed from the Administration proposal in some important respects. That bill would have:

- extended the program through FY2014;
- reduced reclamation fees in a single stage to \$.25/ton of surface mined coal; \$.12/ton for underground mined coal; and \$.08/ton for lignite;

¹³ Summary sheet from DOI, *Abandoned Mine Land (AML) Reclamation Program Extension and Reform Act of 2004*, Feb. 2, 2004.

¹⁴ Energy Information Administration, *Annual Coal Report: 2003*.

- preserved the distinction between state and federal shares, requiring that 50% of state contributions be returned to states even if cleanup of abandoned mine sites had been completed;
- based grants on current, rather than historic, coal production, reflecting the shift of production westward;
- allowed transfer to the CBF of all interest generated by the AML fund prior to FY2005 if needed to cover health care costs of unassigned beneficiaries;
- funded the difference from land lease revenues paid to the Treasury under the Mineral Leasing Act, to the extent that grants to certified states and tribes from the AML appropriation fall short of the state-share allocation of collections; the transfer would not have been subject to appropriations, and states and tribes could have used the money for other purposes if cleanup of AML sites had been completed; and
- ended the reservation of AML funds for the Rural Abandoned Mine Land Program (RAMP), and released \$65 million of the current RAMP balance to pay for the return of unobligated state share balances to certified states and tribes that have no lands available for leasing. Grants would have been proportional to a state's or tribe's unappropriated state share balance.

The Thomas proposal would have reduced the fee assessed on surface-mined coal by nearly 30%, a significantly larger reduction than in the other proposals, thus changing the historic relationship between the fees assessed on the different categories of coal production. To more or less equalize collections from the eastern and western coal-producing states, the original fee structure may have been structured to reflect that western coal was generally surface-mined while eastern coal was largely produced from underground mines. Now that production has shifted westward, proponents of S. 2086 argued that the fee relationship between the various types of coal-mining should be adjusted. Whatever fee structure is settled upon will no doubt be a reflection of regional considerations as well as the size of the fee collections that a majority of policymakers favor, whether for the purpose of making reclamation grants or meeting the needs of the CBF.

In the House, H.R. 3796, introduced by Representatives Cubin and Rahall, was very similar to S. 2086, with some differences. Among these, H.R. 3796 would have:

- extended the program through FY2019;
- reduced reclamation fees in a single stage to \$.28/ton of surface mined coal; \$.12/ton for underground mined coal; and \$.08/ton for lignite; and

- ended the allocation of any AML collections to RAMP, and made the money available for transfer to the CBF.¹⁵

The Combined Benefit Fund

The Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act), enacted as part of the Energy Policy Act of 1992 (P.L. 102-486, EPACT), established the United Mine Workers of America Combined Benefit Fund. The function of the CBF is to cover the unreimbursed health cost requirements of retired miners. Some such costs are assigned to former employers, and some comprise a category of “unassigned” beneficiaries. Premiums for assigned retirees are paid by former employers or entities to which these individuals have been assigned. EPACT provided that the expenses of the unassigned beneficiaries would be supported by interest generated by the unobligated balances in the AML fund, capping annual transfers at \$70 million. While the fund began to earn interest in FY1993, transfers to the CBF did not begin until FY1996 so as not to violate deficit-control measures included in the Budget Enforcement Act of 1990 provisions of P.L. 101-508.¹⁶ There are roughly 17,000 unassigned beneficiaries.

Assuring that there are sufficient funds to meet the expenses of the CBF is a major consideration in the AML reauthorization debate. While the CBF ran surpluses in its early years, it began to run deficits in FY1997. Interest generated prior to 1996 was transferred to the CBF by the Interior Appropriations Acts for FY2000 and FY2001. Low interest rates in recent years have reduced transfers to the CBF.

The Clinton Administration established a trial Medicare drug prescription program to provide reimbursement to the CBF for drug expenses. In January 2004, the Bush Administration announced that the program, set to expire in June 2004, would be extended through the end of FY2005. The United Mine Workers of America estimated that the extension would increase the CBF’s Medicare reimbursement by \$190 million.¹⁷ As noted earlier, the Administration also proposed to remove the \$70 million cap on the amount of AML interest that can be transferred annually, and estimated that — between the removal of this cap and extension of the Medicare drug program — the CBF could be provided with \$310 million over the

¹⁵ In this respect, H.R. 3796 incorporated the language of H.R. 313, the Coal Accountability and Retired Employee Act for the 21st Century, generally referred to as CARE-21. Introduced by Representative Rahall on January 8, 2003, it was reported from the House Committee on Resources, October 28, 2003. H.Rept. 108-328.

¹⁶ For a complete discussion of the genesis and implications of this transfer payment, see Nonna Noto, “Interest Transfers from the Abandoned Mine Reclamation Fund,” in U.S. Congress, House Committee on Ways and Means, *Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992*, June 22, 1995, WMCP: 104-3, pp. 50-54.

¹⁷ United Mine Workers of America, *Crisis Averted: United Mine Workers of America Praises Administration’s Plan to Increase Medicare Prescription Drug Demonstration Program Funding*, Press Release, January 29, 2003. The Administration projected that the drug program and other provisions of its AML reauthorization would provide \$310 million to the CBF during the next two years.

next few years. S. 2086 would have provided for the transfer of any interest earned prior to FY2005 if needed to cover the costs of benefits for unassigned beneficiaries.

While the UMWA has been favorably disposed toward some features of the AML reauthorization advanced by the Administration, the union supported provisions in H.R. 3796 that would have — in addition to the transfer of interest earned by the AML fund — allowed transfers to be used to cover any deficit in the expenses of the CBF for coverage of assigned beneficiaries as well.¹⁸

EPACT also provides that — in the event that authorization for collection of AML fees expires — “the fee shall be established at a rate to continue to provide for the deposit” of funds to the CBF. It is not apparent by what mechanism that fee would be determined or how it is to be designed to meet the needs of the CBF.¹⁹ Whatever resolution is reached on AML reauthorization, treatment of the CBF is likely to be a major piece in the negotiations and debate.

Conclusion

Dissatisfaction with the AML program has coalesced around perceptions that the current structure has not been even-handed in the distribution of AML collections. As noted earlier, the distribution formulas make it difficult to measure a direct transfer of wealth among individual states. While it is impossible to predict the outcome of this debate, opponents of the proposal advanced by the Administration seem intent on making annual distributions more predictable, particularly with respect to treatment of the balances in the state share accounts.

Some of the competing proposals, by establishing a component of distribution outside of regular appropriations, would isolate some grant elements from what states consider to be the vagaries of the current AML structure. In part, this may be due to continuing skepticism about the likelihood that Congress will raise AML appropriations sufficiently to institute the Administration’s proposed 10-year return of the unobligated state balances. However, it may be equally possible that Congress will not be inclined to free up the RAMP balance to the AML program, or the mineral leasing revenues.

Resolution of a number of issues affecting provisions for the CBF could prove to have a major influence on any final resolution of the broader AML reauthorization. As noted earlier, if Congress and the Administration do not reach some compromise before the authority for AML collections expire once again at the end of June 2005, statute provides for the establishment of a fee expressly to provide for maintaining

¹⁸ See News from the United Mine Workers of America, “United Mine Workers of America International President Cecil Roberts Hails Introduction of Legislation by Reps. Rahall and Cubin to Extend America’s Vital Abandoned Mine Reclamation Program and Ensure the Federal Government Keeps Its Promise to America’s Coal Miners of Lifetime Health Care Benefits,” February 12, 2004.

¹⁹ Section 1232. The language does not vest the authority with the Secretary of the Interior or specify any particular mechanism. This and other dimensions and complexities of the issues concerning the Combined Benefits Fund are beyond the scope of this report.

a transfer of funds to the CBF. In the event of this scenario, Congress could continue, or suspend, disbursements from the AML fund through the appropriation process. Depending upon how statute is interpreted or upon the duration of the time collections are suspended, the broader AML mission could be significantly affected in the long term, given that the current AML balances are well short of the \$3 billion estimated cost of addressing remaining Priority 1 and 2 sites. In the short term, policymakers faced with a need for another short-term reauthorization could resist, arguing that nine months' collections would fully fund grants awarded during FY2005.

Table 1. FY2005 AML Fund Appropriation

| | |
|-------------------------------------|---------------|
| RAMP | \$0 |
| Federal Expenses | \$40,683,154 |
| Total AML Grant Appropriation | \$147,522,671 |
| Total FY2004 AML Fund Appropriation | \$188,205,825 |

Source: Office of Surface Mining (OSM).

Table 2. FY2005 State Reclamation Grant Distribution

| | |
|---|---------------|
| State Share Distribution 55% x \$142,160,169 | \$74,752,874 |
| Federal Share Distribution 45% x \$142,160,169 | \$61,161,442 |
| State Emergency Program | \$8,408,355 |
| Appalachian Clean Streams Initiative (ACSI) | \$3,200,000 |
| Total State Reclamation Grant Distribution | \$147,522,671 |

Source: Office of Surface Mining (OSM).

Table 3. State Share Balances and Distributions, FY2005

| State/Tribe | State Share Collections Through FY2004 | State Share Distributions Through FY2004 | State Share Balances as of 12/31/04 (see note below) | State Share Distribution, FY2004 |
|----------------|--|--|--|----------------------------------|
| Alabama | \$72,652,614 | \$55,360,798 | \$17,874,767 | \$1,324,615 |
| Alaska | \$5,770,291 | \$3,875,994 | \$2,027,118 | \$155,421 |
| Arkansas | \$402,959 | \$396,306 | \$9,468 | \$453 |
| Colorado | \$66,890,260 | \$44,092,455 | \$25,805,296 | \$1,741,088 |
| Illinois | \$138,834,244 | \$110,494,931 | \$29,771,083 | \$2,284,815 |
| Indiana | \$133,688,710 | \$94,298,550 | \$42,906,890 | \$3,076,525 |
| Iowa | \$1,208,092 | \$1,172,990 | \$32,374 | \$3,163 |
| Kansas | \$3,292,367 | \$2,881,020 | \$399,773 | \$33,932 |
| Kentucky | \$437,669,635 | \$317,087,406 | \$127,581,634 | \$9,663,661 |
| Louisiana | \$2,830,710 | \$1,531,582 | \$1,444,610 | \$98,715 |
| Maryland | \$10,856,477 | \$7,623,940 | \$3,677,805 | \$244,042 |
| Missouri | \$13,016,398 | \$12,103,814 | \$969,151 | \$75,855 |
| Montana | \$142,881,355 | \$98,686,568 | \$47,827,484 | \$3,512,316 |
| New Mexico | \$53,096,356 | \$32,695,400 | \$21,101,632 | \$1,612,445 |
| North Dakota | \$33,647,137 | \$22,080,625 | \$12,584,546 | \$901,550 |
| Ohio | \$107,818,760 | \$84,490,723 | \$24,667,667 | \$1,882,157 |
| Oklahoma | \$12,046,087 | \$10,014,560 | \$2,196,921 | \$164,598 |
| Pennsylvania | \$219,044,461 | \$162,833,587 | \$59,322,509 | \$4,522,117 |
| Texas | \$59,386,659 | \$40,234,829 | \$20,647,765 | \$1,518,154 |
| Utah | \$37,388,266 | \$23,479,746 | \$14,958,214 | \$1,093,044 |
| Virginia | \$93,267,896 | \$67,551,029 | \$27,715,129 | \$2,033,593 |
| West Virginia | \$363,668,998 | \$241,221,880 | \$132,536,810 | \$9,572,163 |
| Wyoming | \$883,932,837 | \$493,756,180 | \$445,144,496 | \$29,305,188 |
| Crow Tribe | \$16,971,153 | \$9,961,270 | \$7,867,118 | \$545,954 |
| Hopi Tribe | \$13,303,707 | \$8,104,934 | \$5,608,088 | \$414,114 |
| Navajo Tribe | \$88,999,943 | \$59,705,609 | \$31,904,869 | \$2,315,769 |
| National Total | \$3,010,578,780 | \$2,004,427,227 | \$1,106,583,221 | \$78,188,093 |

Source: Office of Surface Mining. **Note:** Subtraction of state distributions from total collections for FY2004 will be lower than the State Share Balances shown above. The State Share Balances include additional collections during the first quarter of FY2005.

Figure 1. FY2005 Grant Distribution

| FISCAL YEAR 2005 GRANT DISTRIBUTION | | Page 1 |
|--|---------------------------|---------------------------|
| Determination of FY 2005 State/Federal Share of AML Grant Appropriation | | |
| | | 02/01/05 |
| AML UNAPPROPRIATED BALANCE AS OF 9/30/04: | | |
| Total Collections (FY 1977 thru FY 2004+investment interest) (1) | \$7,181,725,425.40 | |
| Total Appropriations (FY 1977 thru FY 2004) (2) | <u>(5,493,809,291.42)</u> | |
| Unappropriated Balance | | <u>\$1,687,916,133.98</u> |
| ALLOCATION OF AML UNAPPROPRIATED BALANCE AS OF 9/30/04: | | |
| RAMP Allocation | \$331,419,542.03 | |
| Federal Expenses Allocation | 59,791,505.94 | |
| Historical Coal Distribution Allocation | 130,404,965.91 | |
| Reserve for UMWACBF | <u>96,622,213.88</u> | |
| Total Federal Share Allocation | \$818,238,227.74 | |
| Total State Share Allocation | <u>1,069,677,906.24</u> | |
| Total Allocation of Unappropriated Balance | | <u>\$1,687,916,133.98</u> |
| AML UNAPPROPRIATED BALANCE AVAILABLE FOR GRANTS: | | |
| State Share Allocation | \$1,069,677,906.24 | |
| Federal Expense Allocation | 59,791,505.94 | |
| Historical Coal Distribution Allocation | 130,404,965.91 | |
| Less: Appropriated Federal Expenses | <u>(40,683,154.00)</u> | |
| Total Unappropriated Balance Available for Grants | | <u>\$1,219,191,224.09</u> |
| FY 2005 AML FUND APPROPRIATION: | | |
| RAMP | \$0.00 | |
| Federal Expenses | 40,683,154.00 | |
| Total AML Grant Appropriation | <u>147,522,671.00</u> | |
| Total AML Fund Appropriation | | <u>\$188,205,825.00</u> |
| FY 2005 STATE RECLAMATION GRANT DISTRIBUTION: | | |
| Appalachian Clean Streams Program Funding | \$3,200,000.00 | |
| State Emergency Programs Funding | 8,408,355.00 | |
| State Share Distribution 55% x 135,914,316 | \$74,752,874.00 | |
| Federal Share Distribution 45% x 135,914,316 | <u>61,161,442.00</u> | |
| State Non-Emergency Program Funding | <u>\$135,914,316.00</u> | |
| Total State Reclamation Grant Distribution | | <u>\$147,522,671.00</u> |
| 1) Investment interest (cash receipts) for FY 1992 through FY 2004 totals \$775,490,525.31. OSM transferred \$678,869,311.45 to the United Mine Workers of America Combined Benefit Fund in the years 1995 - 2004, inclusive. Net investment interest after the transfers is \$96,622,213.86. Congress also authorized OSM to transfer \$7,000,000 in investment earnings to fund Appalachian Clean Streams Initiatives in FY 1999. This came from interest earned in FY 1992. | | |
| 2) Does not include \$1,178,271.71 in reimbursable activity in FY 1992 and FY 1993. | | |

Source: Office of Surface Mining.