

1 OPEN EXECUTIVE SESSION TO CONSIDER AN ORIGINAL BILL
2 ENTITLED "THE MINERS PROTECTION ACT OF 2016" AND
3 AN ORIGINAL BILL ENTITLED "THE RETIREMENT ENHANCEMENT AND
4 SAVINGS ACT OF 2016"

5 WEDNESDAY, SEPTEMBER 21, 2016

6 U.S. Senate,
7 Committee on Finance,
8 Washington, DC.

9 The meeting was convened, pursuant to notice, at
10 10:03 a.m., in room 215, Dirksen Senate Office Building,
11 Hon. Orrin G. Hatch (chairman of the committee)
12 presiding.

13 Present: Senators Grassley, Crapo, Roberts, Enzi,
14 Cornyn, Thune, Burr, Isakson, Portman, Toomey, Coats,
15 Heller, Scott, Wyden, Schumer, Stabenow, Cantwell,
16 Nelson, Menendez, Carper, Cardin, Brown, Bennet, Casey,
17 and Warner.

18 Also present: Republican Staff: Chris Campbell,
19 Staff Director; Mark Prater, Deputy Staff Director and
20 Chief Tax Counsel; Nicholas Wyatt, Tax and Nominations
21 Professional Staff Member; Preston Rutledge, Tax Counsel;
22 and Mark Ness, Detailee. Democratic Staff: Joshua
23 Sheinkman, Staff Director; Michael Evans, General
24 Counsel; Kara Getz, Senior Tax Counsel; and Tiffany
25 Smith, Chief Tax Counsel. Non-Designated Staff: Joshua
26 Levasseur, Chief Clerk and Historian; Jewel Harper,

1 Deputy Clerk; Bryan Palmer, Deputy Clerk; Athena Schritz,
2 Hearing Clerk; and Maddie Davidson, Staff Assistant.

3 Also present: Thomas A. Barthold, Chief of Staff, Joint
4 Committee on Taxation; and Mark J. Mazur, Assistant
5 Secretary for Tax Policy, Department of the Treasury.

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1 OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR
2 FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee will come to order.
5 Before we begin, I want to inform members of the staff
6 and committee about a medical emergency that has severely
7 affected a member of our staff.

8 Those who have worked in and around the Finance
9 Committee for the last eight years are likely to be well
10 acquainted with our tax counsel, Jim Lyons. Jim came to
11 the committee in 2008, when Senator Grassley was
12 Chairman, bringing with him a distinguished record of
13 academic achievement, in addition professional
14 accomplishment and of course public service.

15 Those of us lucky enough to associate with Jim knew
16 him to be a smart, tough, but fair tax policy expert with
17 a very quick and mischievous wit.

18 Normally during a tax markup, Jim would be right
19 here sitting behind me with the rest of the Republican
20 tax staff. Today, however, Jim is in the intensive care
21 unit of a local hospital after suffering what appears to
22 be a massive episode of cardiac arrest yesterday evening
23 while participating in a charity basketball game.

24 As an aside, I want to thank Ian Nicholson of
25 Senator Wyden's staff -- who was playing in the game

1 along with Jim -- for his alert and careful actions in
2 the emergency situation. My thanks to those in
3 attendance who, like Ian, took it upon themselves to
4 assist the first responders.

5 We know that Jim will, as always, give it his all
6 and God willing, he will be back among us doing his great
7 work on this committee, teasing and of course
8 entertaining his coworkers and tending to Buddy, his
9 beloved Labrador.

10 I hope everyone listening will send their thoughts
11 and prayers out to Jim and his parents, Stephen Lyons, a
12 distinguished senior tax attorney in the Department of
13 Justice and Jim's warm, kind, and creative mother, Anne
14 Lyons. Also, please keep Jim's brother, Steve, and other
15 family members in your prayers. I think I speak for
16 everyone here when I say we all hope and pray for Jim's
17 successful recovery.

18 With that weighing heavily on our minds, let us move
19 forward with committee business at hand. Today the
20 committee has before it a Chairman's mark that includes
21 the Miners Protection Act of 2016, as modified, as well
22 as the Retirement Enhancement and Savings Act of 2016, as
23 modified.

24 These are two very important pieces of legislation.
25 I will briefly address them in turn.

1 The first bill, once again, is the Miners Protection
2 Act. We have discussed this legislation in past Finance
3 Committee hearings and markups. And, I know that a
4 number of my colleagues -- including members of the
5 committee and the leadership in both parties -- are
6 interested in finding a solution to the pending crises in
7 the United Mineworkers health and pension plans.

8 There is good reason for members to be concerned.
9 After all, between the Obama Administration's war on coal
10 and declining economic conditions in a number of coal-
11 mining regions in the U.S., the outlook for this pension
12 plan and its beneficiaries appears pretty bleak.

13 The bill before us today represents months of hard
14 work and compromise on the part of members on both sides
15 of the aisle in this committee. And I would say in the
16 Senate too.

17 As is the case with any major compromise, no one
18 involved thinks the product is perfect, and I certainly
19 do not support everything in this package. Though, I
20 will note that there are a number of praiseworthy
21 elements of the bill, not the least of which is the fact
22 that it is fully offset.

23 Still, given that so many members -- including, once
24 again, the Senate leaders in both parties -- have a keen
25 and intense interest in this matter, I want work with my

1 colleagues, despite my own concerns, to move this bill
2 forward to be considered -- and hopefully improved -- in
3 the remaining steps of the legislative process. I want
4 to thank my colleagues for their work on this legislation
5 and their willingness to find bipartisan solutions.

6 The second bill before us today is, once again, the
7 Retirement Enhancement and Savings Act of 2016. If
8 enacted, this legislation would make some much needed
9 changes to our nation's retirement system and address the
10 priorities of a number of our members and their
11 constituents.

12 As I have noted several times before the committee,
13 the most important factor in determining whether workers
14 will save adequately for retirement is their ability to
15 participate in a retirement plan through their employer.
16 This legislation will provide a number of options that
17 will expand access to employer-sponsored retirement plans
18 for workers in companies of all sizes. Among other
19 things, the bill will enhance 401(k) retirement plans and
20 make them more accessible by offering startup and
21 automatic enrollment tax credits for small businesses.

22 It will also make some common-sense changes to
23 Individual Retirement Accounts, or IRAs. And, it will
24 increase the portability of retirement plans and the
25 reliability of lifetime income by making it easier for

1 employers to offer annuity contracts, a form of life
2 insurance, as part of their employee retirement benefits.
3 This provision, and others in the bill, is something I
4 have been working on for some time, and others as well.

5 There are others whose work and priorities are
6 reflected in this legislation, and I would like to
7 acknowledge their efforts here today. Senator Enzi has
8 been a leader in this effort to allow multiple employer
9 plans to be open to participation by unrelated employers,
10 otherwise known "Open MEPS," which is included in the
11 modified mark. This has also been a priority of mine and
12 many other members on both sides of the aisle. And I
13 compliment Senator Enzi for his work.

14 Senators Grassley and Isakson have pushed hard for
15 the Lifetime Income Safe Harbor provision, another item
16 in the mark. Senator Isakson has also led on the
17 Lifetime Income Disclosure provision.

18 Senators Crapo and Roberts should be recognized for
19 their work on the church-related retirement plans that
20 made it into the mark. And, Senator Thune worked to
21 ensure that we included his S Corporation IRA rule.
22 Senator Burr, as always, has been a leader on issues
23 related to the ABLE Act.

24 Now, I also want to recognize Senator Toomey for his
25 work with Senator Enzi on the 401(k) loan rules and

1 acknowledge Senator Heller's leadership on his employee
2 stock ownership bill. Last, but certainly not least, I
3 want to thank Senator Scott for his support for Open MEP.

4 All of these items are important and I want to thank
5 my colleagues for their work in putting this legislation
6 together and moving it forward.

7 I would also like to let members know that Senator
8 Wyden and I are prepared to approve for discharge four
9 amendments that were filed to the Retirement Enhancement
10 and Savings Act. Since these proposals were not related
11 to retirement security, we asked the Senators involved to
12 work through the recently-developed bipartisan Finance
13 Committee discharge process. The four amendments
14 represent bills referred to this committee.

15 The first two were filed as Amendment 23, by
16 Senators Burr and Casey, and Amendment 49, filed by
17 Senators Casey, Burr, and Brown. These amendments
18 improve ABLE Act accounts. Committee staff have worked
19 with the member offices to ensure that the proposals are
20 not controversial and fully offset, and Senator Wyden and
21 I have committed to work with our respective leaders in
22 the Senate to discharge the committee and move these
23 measures to the next stages in the legislative process.

24 There are two other amendments queued up for the
25 discharge process, but they are awaiting scoring and

1 analysis from the Joint Committee on Taxation. Those
2 amendments are Amendment 21, filed by Senator Cornyn,
3 relating to tax relief for Armed Forces members serving
4 in Egypt, and Amendment 35, filed by Senators Cantwell,
5 Crapo, and Thune, relating to tribal pension parity.
6 Senator Wyden and I will work with these members to
7 complete the process to approve those measures for
8 discharge.

9 Finally, before I conclude my remarks, I want to
10 note that we received news this week that Marjorie
11 Hoffman, a valuable and long-time staffer at the Joint
12 Committee on Taxation, is retiring. Those of us who have
13 been on the Finance Committee for a while are well
14 acquainted with Ms. Hoffman's efforts, and I know Tom
15 Barthold -- who is with us today -- will definitely miss
16 her services there at JCT. So I want to wish Marjorie
17 all the best of luck in all of her future endeavors and
18 thank her for her years of service at JCT and to the
19 Finance Committee.

20 Again, I will mention our own colleague who is in
21 the hospital and ask for all of your hopes and prayers
22 for and on his behalf.

23 With that, I will turn to Senator Wyden for his
24 opening remarks.

25 Senator Wyden. Thank you very much, Mr. Chairman.

1 We have got a number of Senators who have markups this
2 morning. And I would like to speak for a moment or two
3 about Jim Lyons and then have Senator Stabenow -- who is
4 very much under the gun -- make any comments she would
5 like for purposes of opening, and I will speak later.

6 Like you, Mr. Chairman and colleagues, my thoughts
7 this morning are with Jim Lyons. The reality is today we
8 take up very important legislation, but the fact is our
9 loved ones always have to come first. And as far as I am
10 concerned, Mr. Chairman, until Jim is back, it really is
11 not going to feel like the Finance Committee around here.

12 So this morning we are all thinking of him and wishing
13 him the absolute best.

14 I want to make mention of one other point that
15 Chairman Hatch touched on very eloquently, the basketball
16 game -- all of you know I was dreaming of playing in the
17 NBA. When Jim had this emergency, Ian Nicholson -- of
18 our staff -- immediately got a sense of what the problem
19 was. He reached out to Josh Sheinkman, who is the
20 Democratic staff Director. Josh Sheinkman immediately
21 called Chris Campbell, Chairman Hatch's Staff Director,
22 so Chris and Mark could all get to the hospital.

23 So we have big battles around here folks. We all
24 know that. We have differences of opinion. But last
25 night, again, Mr. Chairman, we saw your folks and my

1 folks come together because no matter what the battle is
2 around here, loved ones always come first. So I thank
3 you for your comments and we all know that we are waiting
4 for Jim to come right back here -- the Finance Committee
5 -- and pitch in and continue to help us be bipartisan.

6 So if it would be acceptable to you, Mr. Chairman,
7 Senator Stabenow could make her remarks on the substance.

8 I will make comments later.

9 The Chairman. Senator Stabenow, we will call on
10 you.

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1 OPENING STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR
2 FROM MICHIGAN

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4 Senator Stabenow. Thank you very much, Mr.
5 Chairman. To our Ranking Member, thanking you for
6 allowing me -- I have to join Senator Roberts at
7 Agriculture meeting that has started, and I appreciate
8 you allowing me to go ahead.

9 I also just want to send my prayers to Jim, and
10 appreciate the comments this morning.

11 I am pleased that we are having this markup today to
12 move forward on legislation to guarantee hard-earned
13 pensions and retirement health care benefits for coal
14 miners and their families who, frankly, have been waiting
15 a long time. At the same time, we will also move forward
16 on legislation to protect retirement savings and help
17 retirement savers -- also important.

18 There is no question that we are running out of time
19 to prevent thousands of coal miners and their surviving
20 spouses from losing their benefits. It is encouraging we
21 are able to come together today to advance legislation
22 that would keep this from happening. I hope that this
23 will only be the first step to making sure that all
24 Americans get the pension benefits they need, deserve,
25 and have earned over a lifetime of hard work.

1 Tens of thousands of workers and retirees in
2 Michigan are facing the loss of their pension benefits
3 through no fault of their own if the Central States
4 Pension Fund is allowed to go bankrupt. We cannot sit
5 back and allow this to happen.

6 As we have done here, I hope we will be able to work
7 across the aisle to build a solution to protect the
8 benefits of the Central States workers and retirees.
9 Frankly if we do not, those workers will have their plans
10 for a financially secure retirement vaporized right
11 before their eyes.

12 There is no question it is going to be difficult,
13 but I do not believe failure is an option on behalf of
14 those families. Our Central States retirees depend on
15 their benefits to put food on their tables, keep their
16 homes, buy their prescriptions at the pharmacy, live a
17 good life for themselves and their families -- like we
18 all want.

19 So I look forward to continue our work with my
20 colleagues on that exceptionally important issue. I
21 would ask unanimous consent for further comments that I
22 have about amendments to be submitted for the record.

23 Thank you Mr. Chairman.

24 The Chairman. Without objection.

25 [The prepared statement of Senator Stabenow appears

1 at the end of the transcript.]

2 The Chairman. Senator Wyden?

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1 OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM
2 OREGON

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4 Senator Wyden. Thank you, Mr. Chairman.

5 Mr. Chairman and colleagues, seventy years ago our
6 country made a commitment to coal miners that we would be
7 there for their health care and their pensions. Today
8 tens of thousands of mineworkers and their families,
9 including so many widows, are in serious danger of losing
10 that lifeline, losing that security.

11 These are hardworking people who come from
12 communities where broken promises, bad policies and
13 bankruptcies have hit like one wrecking ball after
14 another for decades. These miners put in backbreaking
15 work in one of the toughest jobs imaginable, and it is
16 certainly no fault of theirs that the industry that they
17 worked on has fallen on hard times.

18 Yet the reality is, tens of thousands of mineworkers
19 and their widows and families are headed towards a cliff
20 at the end of this year. Their health benefits are set
21 to expire in just a few months. Their pension benefits
22 go after that -- very shortly.

23 The Congress, in my view, has an obligation to step
24 in and make good on the promise that America made back in
25 1946. That is the first order of business for the

1 committee today. We will be voting on a bipartisan
2 proposal, the Miners Protection Act, championed by
3 Senators Manchin and Capito. We are glad that they are
4 here in the front row.

5 And I particularly want to also commend my
6 colleagues who for months and months on this this
7 committee -- I am looking at Senator Brown, Senator
8 Casey, Senator Warner on our side. Senator Portman has
9 cared about this as well -- have been championing this
10 legislation.

11 I also want to thank Chairman Hatch for bringing us
12 together on a bipartisan basis to move this bill forward.
13 This is a very consequential step, but we are just
14 getting out of the starting gate, colleagues. This
15 legislation is long, long, long, long overdue, and it has
16 to get to the President's desk. So when this bill gets
17 to the Senate floor, my hope is that we will continue to
18 work together to see that there are no other delays or
19 mischief that holds back the passage of this bill.

20 It is also important to recognize that the emergency
21 that our mineworkers face today is a part of a broader
22 crisis in multi-employer pension plans that you see
23 rippling through communities across the country.
24 Generations of Americans have been protected by a
25 longstanding principle of pension law that said that the

1 benefits -- the earned benefits of Americans are not
2 going to be snatched away. Yet with the crisis unfolding
3 in multi-employer pension plans, it is clear that now
4 that principle is in danger. So there is a lot of work
5 ahead to do to solve that problem.

6 Now as Chairman Hatch noted, we are going to be
7 dealing with a second important piece of legislation, the
8 Retirement Enhancement and Savings Act. This is a
9 bipartisan package that includes many smart, targeted
10 improvements to pension policies.

11 As far as I can tell, requests that have come from
12 both sides of the aisle have been incorporated into this.
13 I appreciate you working with me on that, Mr. Chairman.

14 One of the proposals is a measure I put forward that
15 says if you want to save with an IRA past the age of 70
16 and a half, you ought to be able to go ahead and do it.
17 Talk about a need for an update -- that certainly helps
18 us to, again, move towards more modern policies that
19 reflect the fact that so many Americans are living
20 longer. If they can afford to keep saving for
21 retirement, they sure as heck ought to be allowed to do
22 it. So that is what that would do.

23 I also want to thank Chairman Hatch for including in
24 his modification a proposal that would help small
25 businesses that want to offer a savings plan to their

1 employees. It is focused on what are called "open
2 multiple-employer plans" and wiping out some of the costs
3 and red tape that are associated with maintaining that
4 sort of plan. In my judgement, once again, we are talking
5 about common sense. In this case, more American workers
6 would be in a position to set money aside, and I
7 appreciate, Mr. Chairman, you working with me on that.

8 And then finally, as Chairman Hatch noted, we are
9 particularly pleased to recognize Marjorie Hoffman who
10 after 40 years of service is retiring. We have long-
11 called her a part of the pension team.

12 She joined the Committee on Taxation in 2008 after
13 25 years at the IRS. She has provided invaluable advice
14 to this committee for years and years, including on
15 today's markup. So she has made contribution to the
16 pension and health legislation that we have passed,
17 including the Pension Protection Act and the Affordable
18 Care Act. Marjorie and her husband, Chris, have been
19 married for 30 years. And I just want her to know that,
20 again, on both sides of the aisle, members are very
21 appreciative of the outstanding work done by Marjorie
22 Hoffman.

23 I look forward to hearing from our colleagues and
24 moving expeditiously, Mr. Chairman.

25 The Chairman. Well, thank you, Senator Wyden. I

1 would note that West Virginia Senators Manchin and
2 Shelley Capito are here with us today, and have great
3 interest in this legislation, and both have participated
4 in the best of ways to get us to this point.

5 I will now recognize Senators who want to make
6 opening statements. As always, our hope is the committee
7 members will forego opening statements to allow us to
8 move more quickly to the mark.

9 Obviously, we will enter any opening statements into
10 the record. That said, I ask that any Senator who wants
11 to give an opening statement limit their comments to no
12 more than three minutes.

13 So at this point --

14 Senator Wyden. Mr. Chairman, I know that several
15 colleagues on your side wish to make comments. On our
16 side, I have been told Senator Cardin, Senator Brown,
17 Senator Warner, and Senator Casey would all like to make
18 brief comments as well.

19 The Chairman. All right. Well, we will go to
20 Senator Enzi first, then.

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1 OPENING STATEMENT OF HON. MICHAEL B. ENZI, A U.S. SENATOR
2 FROM WYOMING

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4 Senator Enzi. Thank you, Mr. Chairman. I thank
5 you for holding this markup to consider retirement
6 issues.

7 Private sector pensions are relied upon by millions
8 of Americans for retirement security, and thousands of
9 those plans are underfunded. We need to find a solution
10 to all of those problems.

11 Unfortunately, the bill before us today does not
12 solve that problem. Rather than addressing the thousands
13 of underfunded pension plans, today we are considering
14 one bill that helps one underfunded plan and it does so
15 at the expense of the U.S. taxpayer.

16 In 2006, I chaired the HELP Committee, and then I
17 chaired the Pension Protection Act Conference Committee
18 that gave workers' pensions they were promised without
19 putting lots of companies out of business. I am
20 concerned about pensions for coal miners, all coal
21 miners. I am concerned about pensions for anyone who has
22 been promised a pension.

23 I also want everyone to have health insurance,
24 especially coal miners. In fact, many of you will
25 remember how I worked with Senator Rockefeller in 2006 to

1 provide health insurance to miners whose companies had
2 gone out of business.

3 We did that by extending a tax, the Abandoned Mine
4 Land Tax, and giving the interest to orphaned miners.
5 Our calculations were not too good.

6 I very much would like to work with this committee
7 to address the UMWA's health care concerns. And I know
8 that issue is pressing, but I cannot support the Miners
9 Protection Act.

10 I believe the bill sets a dangerous precedent for
11 the other 1,237 multiemployer pension plans that are
12 currently underfunded. The bill bails out a private
13 sector pension plan with taxpayer dollars, which I do not
14 support. The bill helps only some of the thousands of
15 coal miners that are hurting because of the
16 administration's war on fossil fuels. They would rather
17 have their jobs back.

18 There is no federal commitment to provide pension
19 benefits to retired miners. In fact, there has been too
20 much confusion on that point, and I want to clear that up
21 now.

22 Mr. Chairman, I ask consent to insert in the record
23 a legal opinion from the Congressional Research Service
24 stating that the U.S. government has never and does not
25 have any obligation to provide retirement benefits to

1 United Mine Worker miners. I know this is a contentious
2 point, and that is precisely why I asked the nonpartisan
3 research arm of Congress to examine this issue in depth.

4 It took CRS almost a month to complete the 2.5 page
5 legal memo that says very clearly, the promise that I
6 have heard about for months did not and does not exist.

7 Additionally, this bill will not save the PBGC.
8 There are 20 other multiemployer pension plans that are
9 expected to become insolvent before this UMWA plan, and
10 hundreds that are expected to become insolvent after it.

11 Many of those plans would also jeopardize the solvency
12 of the PBGC. Taking this unprecedented step will not
13 stop the PBGC's multiemployer program from its projected
14 insolvency.

15 Finally, this bill does not solve the UMWA's pension
16 problem. The most recent reported pension underfunding
17 by the UMWA was \$5.5 billion. This bill is projected to
18 provide \$1.2 billion in taxpayer funds to the pension
19 plan over the next 10 years.

20 The Miners Protection Act sends us down a
21 dangerously slippery slope, and only kicks the UMWA
22 pension plan problem further down the road. And it does
23 set a precedent.

24 I will be happy to discuss these points in more
25 detail with my colleagues during the debate on this bill.

1 Thank you, again, Mr. Chairman.
2 The Chairman. Thank you, Senator.
3 Senator Brown?

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1 OPENING STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR
2 FROM OHIO

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4 Senator Brown. Well, thank you, Mr. Chairman.
5 This committee is taking two steps important to the
6 retirement security of working families. That
7 demonstrates how this body and this committee should
8 work. I want to thank Chairman Hatch and Ranking Member
9 Wyden for their leadership.

10 First, we markup the Miners Protect Act. This is an
11 important first step in keeping our promises to tens of
12 thousands of coal miners and their families. Our mine
13 workers literally built this country. They performed
14 dangerous and difficult work. So many of them are
15 veterans and have fought in our wars. They perform work
16 that has dignity, work that was supposed to help these
17 workers -- workers like Norm Skinner from Ohio who joins
18 us in the audience today -- help them build better lives
19 for their families.

20 Miners organized to form a strong union, and
21 negotiated a contract that said if you give your life's
22 blood to this vocation, you will have health care and a
23 modest pension when you retire. Workers have more than
24 held up their part of the bargain.

25 In spite of the anti-union sentiment from many of my

1 colleagues, this bill is extremely important. It is
2 bipartisan. It is an extension of current policy. We
3 are using an existing source of funding to complete this
4 bipartisan compromise.

5 This process has been too slow. I believe most of
6 us in both parties in this committee would have moved on
7 it. I appreciate the interest of Senator Hatch and
8 Senator Wyden. I do know that leadership in this body
9 has been resistant. It is up to each of us in both
10 parties on this committee to push leadership to move more
11 quickly.

12 The second issue -- I share the concerns of many of
13 my colleagues regarding the larger crisis in the multi-
14 employer pension system. We need to address those
15 problems more on that later. Second and especially when
16 you look at the number of Teamsters that are facing loss
17 of benefits in the years ahead, this Congress has been
18 far too derelict on that issue.

19 Second issue -- we are marking up a series of
20 important provisions that were included in the bipartisan
21 report on savings and investment that Senator Crapo and I
22 assembled at the behest of Chairman Hatch and Ranking
23 Member Wyden. Again, these are important measures that
24 will help more Americans save for investment. I thank my
25 colleagues for working together.

1 I want to mention the amendment I am offering with
2 the Chairman and the Ranking Member, "Open MEPs" were the
3 first proposal that Senator Crapo and I identified in our
4 work co-chairing the working group on savings and
5 investment. They have the potential to dramatically
6 expand workers access to tax-deferred retirement savings
7 through their employers. It is an almost perfect
8 solution -- partial solution -- to the pension problems
9 in our country.

10 Thank you, Mr. Chairman.

11 The Chairman. Thank you.

12 Senator Warner, you are next.

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1 OPENING STATEMENT OF HON. MARK R. WARNER, A U.S. SENATOR
2 FROM VIRGINIA

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4 Senator Warner. Thank you, Mr. Chairman. I would
5 like to thank you and the Ranking Member, as well,
6 joining a lot of my other colleagues on moving on the
7 Miners Protection Act. I want to, again, recognize
8 Senators Capito and Manchin, particularly Senator Manchin
9 for being relentless on this issue.

10 We are taking this first step today, getting this
11 bill out of committee. A number of us were with
12 literally thousands of miners who assembled here at the
13 Capitol a couple of weeks back.

14 I know Senator Portman and I spoke in tandem where
15 these miners simply said, move on this legislation. Do
16 not allow our health care and then our pension benefits
17 to expire.

18 We take that first step today with joining many of
19 my colleagues. This is only the first step. We have got
20 to make sure that we pass this bill, get it to the
21 President so that these health care benefits, in
22 particular, do not start expiring at the end of this
23 calendar year.

24 I want to make two brief comments on the Retirement
25 Enhancement Act. One -- and thank, again, both the

1 Chairman and the Ranking Member for including these two
2 amendments in the Chairman's mark.

3 One was an item that Senator Heller and I have been
4 working on. A number of startup companies -- that was my
5 old field -- offer stock options. I think we all believe
6 there ought to be shared participation. The challenge is
7 many times companies who do not go public within 10
8 years, those stock options vest -- lower paid employees
9 are not able to pay the tax bills, often times. Those
10 stock options then expire without the lower paid
11 employees being able to gain the opportunities.

12 Our legislation -- which we have carved down in
13 scope -- extends for five years the ability for these
14 individuals -- not the top 1 percent of the workforce in
15 these companies, but the majority. Companies that offer
16 80 percent of their stock options -- gives them an
17 additional 5 years in which to exercise those options so
18 they do not lose the upside benefit that had been gained
19 by their employment.

20 Let me also mention a small piece of legislation
21 that is included as well, with Senator Collins. I think
22 we all want to have more people take up retirement plans.

23 With those plans, companies that have more than 500
24 employees, 80 percent of the employees take up retirement
25 plans -- with those companies under 500, only about 20

1 percent. Part of that is because there is a lot
2 bureaucracy in setting up a retirement plan for small
3 firms.

4 We put together legislation that would make it much
5 easier for small firms to file a single form 5500,
6 lowering the cost and making sure that employees of
7 smaller firms have the opportunity to get retirement
8 plans as well.

9 I thank the Chairman and the Ranking Member for
10 including both of these pieces of legislation in the
11 mark.

12 The Chairman. Well, thank you.

13 Senator Portman is next. Senator Portman?

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1 OPENING STATEMENT OF HON. ROB PORTMAN, A U.S. SENATOR
2 FROM OHIO

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4 Senator Portman. Thank you, Mr. Chairman.

5 I have a longer statement I would like to submit for
6 the record if I might.

7 The Chairman. Without objection.

8 [The prepared statement of Senator Portman appears
9 at the end of the transcript.]

10 Senator Portman. Let me just start by thanking you
11 for holding this markup. I appreciate it. I know we
12 hoped to do it last week.

13 We hope to get this legislation through today with
14 regard to the Miners Protection Act and also get it to
15 the floor before the end of the year because there is
16 some critical elements here, including about 20,000 coal
17 miners who are going to lose their health benefits if we
18 do not do that. So thank you and Senator Wyden for
19 agreeing to move forward with this.

20 I also want to thank Senators Capito and Manchin for
21 being here and for their hard work on this, and Senator
22 Brown and others who have helped us on this. I also want
23 to thank you for what you are doing in terms of allowing
24 people to save more for retirement, the second part of
25 this markup.

1 As you know, it is something that I have worked on
2 with Senator Cardin many times over the years, and I
3 agree with Senator Warner, there are some very good
4 provisions in here to help small businesses. We have
5 also got our own bill that you have included, Retirement
6 Security Preservation Act with Senator Cardin. I thank
7 you for including that. I think it is a really important
8 step forward to help people to be able to save for their
9 own retirement, help small businesses, in particular.

10 On the Miners Protection Act, I both agree and
11 disagree with my friend and colleague, Senator Enzi. He
12 makes some good points about the fact that the coal
13 business today is under a lot of pressure.

14 This so-called war on coal is real. If you look at
15 the statements from the miners and the companies with
16 regard to things like the stream buffer rule, it is very,
17 very clear. The United Mine Workers have said with
18 regard to the clean power plan, it has long-term and
19 irreversible job losses.

20 So whether it is the stream buffer rule, the clean
21 power plan, or several other regulatory overreaches, the
22 coal companies and mine workers are under a lot of
23 pressure, as are the pensions in part because of that,
24 because of the bankruptcies. So that is the situation we
25 find ourselves in. It is not one that any of us would

1 hope for, that you would have 100,000 miners about to
2 lose significantly their pensions, and 20,000 miners
3 losing their health care, but that is where we are. So
4 we need to do something.

5 Where I would disagree with my colleague, Senator
6 Enzi -- we will talk more about this later -- is whether
7 this is the right response or not. I think that this is
8 the best way to approach it because it is consistent, not
9 just with promises that were made back in the 1940s, but
10 promises that were made back in 2006 with regard to how
11 we would use the fund that is available that provides the
12 ability for us to move forward here.

13 It is the fund that has about -- based on 2006 law -
14 - \$490 million in annual spending for retired miners. It
15 is currently spending close to \$225 million. So
16 basically, this uses the rest of this fund spending
17 authority to help save these miners' pensions, make sure
18 that none of them lose their health coverage.

19 I believe, actually, this solution may end up
20 costing the taxpayers a lot less money for a very simple
21 reason, that otherwise the PBGC is going to be in big
22 trouble. We could have a major taxpayer bailout. It
23 also is entirely paid for as the Chairman said earlier.
24 And I appreciate that as well. So this is completely
25 paid for. This is an appropriate response given the 2006

1 legislation and given the situation we find ourselves in,
2 this wave of coal company bankruptcies and endangering
3 the pensions of 100,000 coal miners and, again, 20,000
4 losing their health care at the end of the year.

5 I am hopeful that we can get this completed today in
6 this committee, but then again, move it to the floor so
7 that before the end of this year we can, indeed, keep
8 this otherwise horrible situation from happening where
9 you would see 20,000 retired miners losing their retiree
10 health coverage at the end of the year and many other
11 having their pensions cut significantly or losing them
12 after they have worked hard, played by the rules, and
13 done everything that was asked of them.

14 So I thank you, Mr. Chairman, again, for holding
15 this hearing. I will have a longer statement for the
16 record.

17 The Chairman. Thank you, Senator.

18 Senator Toomey?

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1 OPENING STATEMENT OF HON. PATRICK J. TOOMEY, A U.S.
2 SENATOR FROM PENNSYLVANIA

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4 Senator Toomey. Thanks, Mr. Chairman.

5 Let me just briefly point out -- underscore a point
6 that Senator Portman alluded to, and that is the fact
7 that the main reason that we are here today, the main
8 reason that we need to have the taxpayers bail out this
9 pension and health care obligation is because of the all-
10 too successful war on coal. That is why we are here.

11 The administration decided they wanted to put these
12 people out of work. They decided they wanted to bankrupt
13 this industry. And sadly, they have been pretty
14 successful so far.

15 In 2008, the President declared that his policies
16 would bankrupt the industry. Congratulations. He is
17 well on his way.

18 Since 2010, the war on coal has resulted in the
19 closing of 350 coal electric generating units. If there
20 is no market for coal, there will surely be no jobs to
21 mine the coal. That is enough power to power 20 million
22 homes. Pennsylvania has lost 10, at least 10 of these
23 coal fired electric units. That is a direct loss of
24 1,000 jobs and many more jobs lost in the related fields.

25 Of course, this continues. So I support this

1 legislation, but it is maddening to me to know that it
2 was the federal government that contributed enormously to
3 the fact that we are here today.

4 The Chairman. Thank you, Senator.

5 Senator Coats?

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1 OPENING STATEMENT OF HON. DANIEL COATS, A U.S. SENATOR
2 FROM INDIANA

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4 Senator Coats. Thank you, Mr. Chairman.

5 I want to echo some of the comments that have been
6 made by my colleagues -- and echo what Senator Toomey
7 just said -- that it is clear the policies of this
8 administration have brought us to this place. And there
9 is no denying that.

10 I think we will rue the day from an energy
11 standpoint when extreme cold, or extreme heat, or extreme
12 use of energy -- as hopefully our economy will continue
13 to grow -- will deny us the energy needed, and that
14 thousands if not millions of people will suffer for that
15 reason. Regulation after regulation -- all issued with
16 an ideological decision reached by the current
17 administration -- puts us in this situation.

18 Now regarding the pension, I have great sympathy for
19 those who have borne the consequences of these policies.

20 And is not fair. It is not fair to them in terms of
21 their plight. It is policy, federal policy that has
22 driven this and put them in this position. I have every
23 sympathy for them, and some of them are retirees that
24 live in my own state.

25 But I think what we are failing to realize is that

1 we are potentially setting a precedent that will start an
2 avalanche of requests coming in future years because
3 there are so many pension plans that are horribly
4 underfunded. We will be putting at risk those who are
5 already in government retirement plans for their health
6 care through Medicare and for their daily living costs
7 through Social Security.

8 Those programs are similar to a pension plan that
9 will become insolvent or less solvent in the near future.

10 All you have to do is look at the CBO comments and the
11 trustees' reports in terms of the status of these
12 programs.

13 So what we are doing here today is a little bit of a
14 fix driven by a bad policy that is going to set a
15 precedent and put us in a situation where we will
16 continue to plunge into debt in a way that will cause
17 great harm to this country.

18 Now, on this current bill, I have filed several
19 amendments that I think would make the bill better. I am
20 aware that none of these amendments is going to secure
21 anywhere near a majority vote. In the interests of
22 moving forward at a time when the hours are counting down
23 on this cycle, I will not be asking for a roll call vote,
24 but I will want to take a little bit of time to explain
25 some of the reasons why I have offered these amendments.

1 Thank you, Mr. Chairman.

2 The Chairman. The Senator has that right.

3 Senator Carper?

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1 OPENING STATEMENT OF HON. THOMAS R. CARPER, A U.S.
2 SENATOR FROM DELAWARE

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4 Senator Carper. Thanks, Mr. Chairman.

5 I want to join my colleagues in expressing our
6 sorrow at the very serious health challenges that our
7 colleague, Jim Lyons, faces and also to remember his
8 family in our prayers this day.

9 Thanks to our leaders of this committee for your
10 leadership to bring us here today, for all of our staff
11 members who have worked hard to craft the two bills on
12 which this whole hearing is being held.

13 I was born in West Virginia. My dad was once a coal
14 miner when he was just out of high school. I lived in a
15 community where we were surrounded by coal miners. So
16 the idea of trying to make right what we are trying to
17 make right today is something that I understand and have
18 a special appreciation for.

19 I also support the second bill that is before us. I
20 think of it as a targeted set of reforms that are
21 designed to make saving for retirement easier. We heard
22 recently -- just in the last week -- a report that said
23 that less than half of baby boomers have really saved
24 much of anything for their retirement. And we just need
25 to continue to focus on encouraging people to set money

1 aside.

2 I think the work the committee has done in
3 finalizing these two bills shows that we are making at
4 least some progress in dealing with the challenges that
5 we face on our retirement in this country. More work
6 remains.

7 I filed an amendment -- one on which I will not ask
8 for a vote today -- that would create a new payroll
9 deposit, automatic IRA, for employees of small
10 businesses. This provision is based on a proposal that
11 is actually in the President's budget that Senator
12 Whitehouse introduced last year.

13 I look forward to working with you, Mr. Chairman,
14 with the Ranking Member, and others on this committee to
15 see if we might move that legislation forward in the near
16 future.

17 I also want to raise just another issue if I can.
18 During the negotiations a year ago on the tax extender
19 package, last December there was a bipartisan agreement -
20 - you may recall -- to extend all of Section 48 Advanced
21 Energy Tax credits through the end of 2021.
22 Unfortunately, due to a drafting error, a simple case of
23 human error, the extension of these tax credits was
24 accidentally excluded during the final drafting of the tax
25 legislation.

1 Solar and wind credits were extended as part of the
2 agreement, but other small alternative power
3 technologies, including fuel cells, small wind, micro
4 turbines, combined heat and power, along with geothermal
5 were inadvertently dropped out. This mistake was
6 identified within hours of release of the bills text, as
7 you may recall. But, unfortunately, due to time
8 restraints and a desire to move expeditiously, House and
9 Senate leaders determined that modification to correct
10 the error was not possible at that time.

11 Instead, there was a bipartisan agreement --
12 bipartisan agreement, House and Senate -- to work
13 together to address the mistake early in 2016. As you
14 can imagine, these emerging alternative energy companies
15 require predictable tax credits beyond the energy in 2016
16 as we have done for wind and solar. They need that
17 predictability for research and development for
18 capitalization and cash flow reasons.

19 Delays in extending these tax credits could put not
20 just a couple of hundred jobs in my state and other
21 states, but 1000s of jobs across the country at risk. So
22 I would say to our colleagues, I know we have missed some
23 opportunities to get this issue resolved. It is
24 unfortunate. But I would welcome the opportunity to work
25 with you, with your staffs, our colleagues to find ways

1 to get these advanced credits extended.

2 I want to thank our friend and colleague from
3 Nevada, Senator Heller for joining me in an amendment
4 that addresses this issue, especially with respect to
5 geothermal, I believe. We will not be asking for a vote
6 today. However, we want to raise this issue as a
7 reminder to our colleagues that we must act on this
8 issue. We cannot afford for the delays. We need to act
9 this year.

10 Thank you, sir.

11 The Chairman. Well, thank you, Senator.

12 Senator Casey?

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1 OPENING STATEMENT OF HON. ROBERT P. CASEY, JR., A U.S.
2 SENATOR FROM PENNSYLVANIA

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4 Senator Casey. Thank you, Mr. Chairman. I
5 appreciate the opportunity to talk very briefly. I will
6 have a longer statement for the record just on the Miners
7 Protection Act.

8 I want to thank you and the Ranking Member for
9 having this hearing. I do want to express the sentiments
10 of others regarding Jim Lyons, wishing him well and his
11 family.

12 We are honored by the presence of Senator Manchin
13 and Senator Capito to be here with us. I know we want to
14 go to the work of the markup.

15 Two points really, just two. One is on the promise
16 and two is on Pennsylvania.

17 One is on the promise. I think we will have other
18 debates and longer discussions and sharp disagreement
19 about how we got here. But at least we have consensus
20 today on what we must do to fulfill that promise.

21 Number one, I think the federal government did make
22 a promise to these miners and their families. Two, they
23 kept their promise on their side. They had a promise to
24 their employers that they would do good work, and they
25 did that, in some cases for decades, doing work that I am

1 not sure anyone on this committee has ever done. I
2 certainly have not.

3 Two, they kept their promise to their families to
4 provide for them. They fulfilled that promise. They
5 also kept faith, in many instances, this is not true of
6 every miner, but a lot of these miners kept faith with
7 the promise they made to their country when they served
8 in World War II, or Korea, or Vietnam, or beyond. So
9 they made a lot of promises that they kept.

10 All we have to do is put our hand up and vote the
11 right way. That is a pretty easy thing to do in light of
12 what they have done.

13 A second point about Pennsylvania, we have had --
14 the number in Pennsylvania in terms of the pension issue
15 only is, at last count, 12,951. All of those miners
16 deserve fidelity when it comes to this promise.

17 In our state it goes -- as Senator Toomey knows from
18 just alphabetically and geographically -- all the way
19 from Allegheny and Armstrong County to Washington and
20 Westmorland County. In between you have very small
21 counties where you have 1000s of people, 1000s of miners
22 whose pensions are at stake and those of their families -
23 - Fayette County, Green County, Cambria County where the
24 numbers are in the low 1000s for each of those counties.

25 So I think we can get this done. I think it would

1 show that with all of the rancor and discord in the
2 Congress, at least, at least on this day we can agree
3 that miners kept their promise. It is time to keep ours.

4 Thank you, Mr. Chairman.

5 The Chairman. Well, thank you Senator.

6 Senator Heller?
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1 OPENING STATEMENT OF HON. DEAN HELLER, A U.S. SENATOR
2 FROM NEVADA

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4 Senator Heller. Mr. Chairman, thank you for
5 holding this important markup. I want to share, also,
6 the sentiments of Jim Lyons. He has been great for our
7 office and helped us through some difficult challenges
8 when it came to renewable energy. So my heart and
9 prayers are with him and his family at this time.

10 Mr. Chairman, last year nearly every member of this
11 committee voted with legislation that Senator Heinrich
12 and I introduced that would repeal the Cadillac tax. We
13 were able to deliver a 90-10 vote for the American people
14 during a highly partisan debate over Obamacare.

15 As we all know, that Cadillac tax is a 40 percent
16 excise tax on employer-sponsored health care. That would
17 affect 1.3 million Nevadans, 120 million Americans. This
18 means premiums and deductibles will continue to
19 skyrocket. Wellness and prevention care services will be
20 cut. This is why I filed my amendment to fully repeal
21 the Cadillac tax, and I hope in the coming year we can
22 work together, again, to permanently repeal the Cadillac
23 tax.

24 Second, Mr. Chairman, I want to thank my friend and
25 colleague, Senator Warner, for -- our legislation called

1 it Powering Employees through Stock Ownership Act. In
2 order to strengthen startup businesses, I believe it is
3 crucial that employers have the tools to retain talent by
4 giving their employees and ownership stake in their
5 company's success.

6 Currently cash-strapped privately held startup
7 companies provide stock options as a way to compensate
8 employees and compete with more established firms.
9 However, because these companies are private, there is
10 generally not a market for employees to sell their share
11 to cover their tax liabilities.

12 Our legislation would address this challenge by
13 providing non-highly compensated employees -- I want to
14 repeat that -- non-highly compensated employees the
15 ability to defer their income tax liabilities. I was
16 pleased to see the Ways and Means Committee pass our
17 companion bill last week, and I expect it to pass the
18 full House later this week.

19 Finally, Mr. Chairman, Nevada is a national leader
20 on solar, geothermal, and other innovative technologies.

21 As a result of last year's solar tax deal, which you
22 helped with, Mr. Chairman and as did Jim -- Nevada
23 expects an additional \$2 billion in solar to be invested
24 in our state alone, expanding clean energy production and
25 creating 100s of good paying jobs.

1 As a leader on this issue, I believe it is crucial
2 and critical that we provide parity across the renewable
3 energy sector so that all Section 48 technologies are
4 created equally. So I am disappointed that Section 48
5 parity is still an outstanding issue within the tax code,
6 and it should have been resolved, I believe, last year.

7 I appreciate my colleagues, specifically Senator
8 Carper and Cantwell. They are here today, they helped
9 raise this issue and remain committed to working with
10 them and you, Mr. Chairman to resolve this issue before
11 the end of the year.

12 Thank you.

13 The Chairman. Senator Burr?

14 Senator Burr. Mr. Chairman, I will be very brief.

15 Thank you for including the extensions that we make
16 in this bill for the ABLE 529 Act, and for the tax
17 provision that Senator Bennet and I have put into the
18 bill to hopefully allow small businesses to create
19 retirement plans more easily, and cost effectively, and
20 create incentives for auto enrollment. I think this
21 makes a big difference.

22 I thank the chair.

23 The Chairman. We are grateful for your work.

24 Okay. Then we will go to Senator Cantwell.

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1 OPENING STATEMENT OF HON. MARIA CANTWELL, A U.S. SENATOR
2 FROM WASHINGTON

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4 Senator Cantwell. Thank you, Mr. Chairman. I want
5 to thank you and the Ranking Member for moving forward on
6 this long overdue bipartisan bill to protect the health
7 and retirement benefits of 120,000 retired miners and
8 their families.

9 This bill has taken far too long to get before the
10 committee, but I am glad we are getting it over this
11 finish line today. I hope that we will consider other of
12 the committee's to do list before the end of the year.
13 My colleague from Nevada just mentioned there are 36
14 provisions that expire at the end of this year, including
15 important provisions for biofuels, renewable energy, and
16 protection for homeowners and others.

17 Just yesterday, a coalition of 52 organizations sent
18 us a letter to this committee. I would like to enter
19 that into the record, calling on those provisions to be
20 expanded.

21 The Chairman. Without objection.

22 [The letter appears at the end of the transcript.]

23 Senator Cantwell. That is why my colleagues and I
24 are continuing to work to find a path forward on these
25 provisions before the end of the year.

1 I would also like to note this is not the last time
2 the Finance Committee is going to confront this unfolding
3 crisis. My colleagues mentioned these issues as it
4 related to the other pensions. There are other
5 struggling multi-employer plans that are threatened, and
6 we need to make sure that the PCBG's latest annual report
7 that shows that pension funds are facing a deficit of \$76
8 billion is addressed. So I hope that we can all come
9 together on this issue.

10 One-third of Americans have no pension plan, no
11 retirement savings, and will rely entirely on Social
12 Security when they retire. So we are increasingly
13 relying on employers to offer their workers retirement
14 options, but as of 2014, only 65 percent of works had
15 access to an employment-based retirement savings plan,
16 and only 50 percent participated. In young people, there
17 was only 70 percent participation.

18 So all of these issues, the total American worker,
19 are \$6.6 trillion short of what they need for retirement.

20 So this is going to, in the end, come back to us in the
21 cost to the federal government. So I hope that our
22 colleagues continue to work on this.

23 I want to thank Senator Isakson for working with us
24 on the inclusion of the lifetime income disclosure that
25 is in this legislation. It will require individuals to

1 benefit from statements that show what their expected
2 monthly income is going to be for retirement, so
3 providing a better understanding of the value of that and
4 hoping to get people to do a better job on savings.

5 Also the annuity portability provision that was
6 included here working with Senator Isakson, because
7 annuities should be able to be portable from job to job.

8 Obviously, there was more work to done with Senators
9 Thune and Crapo on a provision working with tribes to
10 make sure that the provision relating to fairness of
11 plans for pensions for tribal board members are also
12 covered under this. But I know the committee has
13 legislation, hopefully, we can work on moving that before
14 the end of the year.

15 Thank you, Mr. Chairman.

16 The Chairman. Well, thank you.

17 Senator Cardin?

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1 OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S.
2 SENATOR FROM MARYLAND

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4 Senator Cardin. Well, thank you, Mr. Chairman.

5 I would ask consent that a longer statement be put
6 in the record.

7 The Chairman. Without objection.

8 Senator Cardin. I want to thank you and Senator
9 Wyden for the manner in which these bills have come
10 before our committee. It has been a very inclusive
11 process. I particularly want to thank the staff -- the
12 both Democratic and Republican staff, and our personal
13 staff for the manner in which we were able to bring this
14 bill together. A lot of hard work went into it, and we
15 very much appreciate it.

16 I certainly strongly support the Miners Protect Act.

17 It does keep our commitment to our miners. And the
18 Retirement Enhancement Act provides commonsense
19 improvements and clarifications to our retirement system.

20 Senator Portman already mentioned, I just really
21 want to build on this, that we have worked hard together
22 while we were in the House, now in the Senate, to improve
23 retirement savings for Americans. We know that we have
24 made progress, still more needs to be done, and this
25 legislation, I think, builds on the progress that needs

1 to be made.

2 I want to thank you for including three provisions
3 that I suggested. Senator Portman mentioned one already,
4 dealing with the frozen DB plans.

5 That is an important provision to protect some of
6 our older workers on DB plans so that they preserve those
7 benefits. Otherwise, they are going to be lost.

8 We appreciate that Treasury has tried to deal with
9 this through regulation. We think this amendment builds
10 on that and provides that type of protection, and we
11 appreciate the Chairman and Ranking Member including it
12 in the modified mark.

13 I might ask consent that Senator Stabenow be made a
14 cosponsor of that amendment.

15 The Chairman. Without objection.

16 Senator Cardin. I also appreciate you including
17 the church plan provisions. Last year, working with
18 Senator Roberts and Crapo, this committee passed
19 legislation that provided certain technical fixes related
20 to church plans. That became law.

21 Unfortunately, in the past few weeks, I have heard
22 of changes in the established practice that is affecting
23 the implementation. The clarifications that are included
24 in this bill should provide the help that we need in
25 regards to church plans.

1 I also appreciate you including the S Corporation
2 Bank IRA provision that Senator Thune and I have worked
3 on. It is pretty straight forward -- provide banks with
4 IRA shareholders the opportunity to make S Corporation
5 elections and to have S Corporation shareholders.

6 One last point, if I might mention -- I have noted
7 an amendment, and I will not offer it, that deals with Es
8 Corporation, ESOPs, that gives them the same rights that
9 C Corporations have, incentivize them to be able to have
10 ESOP plans. As we all know, ESOP plans provide
11 retirement security and wealth to their shareholders.

12 This is built on legislation that I authored,
13 S.1212, with 34 bipartisan cosponsors -- 11 of who are
14 members of this committee. I know we cannot move forward
15 today. I have looked at the report from the Joint Tax
16 Committee. I know we still have a little bit of work to
17 be done, but I would ask the committee, through its
18 leadership, that we continue to work on how we can
19 advance S Corporation ESOPs.

20 With that, Mr. Chairman, I would yield the floor.

21 The Chairman. Thank you, Senator.

22 Senator Menendez?

23 Senator Menendez. Mr. Chairman, I was ready to
24 vote.

25 The Chairman. Good.

1 Senator Menendez. I have been around long enough
2 to know when you have the votes, you vote. I yield
3 anytime I have.

4 The Chairman. Now, that is a very good statement,
5 I think. But I would have preferred it be issued at the
6 beginning of this, rather than --

7 [Laughter.]

8 The Chairman. Senator Nelson?

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1 OPENING STATEMENT OF HON. BILL NELSON, A U.S. SENATOR
2 FROM FLORIDA

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4 Senator Nelson. I will be very quick. I want to
5 thank Senator Enzi. He has done a lot of hard work. I
6 am his cosponsor of the SEAL Act. It is in the mark.

7 It is a good balance between giving folks more time
8 to pay back loans from their retirement accounts, and
9 therefore, safeguard their retirement savings.

10 I want to thank all of you for including provisions
11 that allow small business to pool together and offer
12 their employees retirement plans. This is part of a bill
13 that Senator Susan Collins and I teamed up to introduce,
14 the Retirement Security Act. Part of it is in this
15 modified mark. So I thank you for including it.

16 Lastly, I want to say that Senator Manchin has
17 absolutely worn us out.

18 [Laughter.]

19 Senator Nelson. As he should in reminding us of
20 the plight of the miners and thank goodness you put it
21 here. It is long overdue, and it is taking a step
22 forward to ensure that miners and their families are able
23 to keep the benefits they have earned.

24 Thank you.

25 The Chairman. Well, thank you. I am weary of both

1 of this West Virginia Senators. I do not want them
2 killing me. I tell you.

3 [Laughter.]

4 The Chairman. They have really worked hard to try
5 and resolve these problems. We owe them the best we
6 could do.

7 Well, I am glad we are at the end. I do not see
8 anybody else.

9 Senator Thune, if you care to make any remarks here?
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1 OPENING STATEMENT OF HON. JOHN THUNE, A U.S. SENATOR FROM
2 SOUTH DAKOTA

3

4 Senator Thune. Mr. Chairman, thank you. I will be
5 very brief, but I also want to express my best wishes to
6 Jim Lyons and his family. I heard about what happened
7 and am deeply sorry, and we just want to keep them in our
8 thoughts and our prayers.

9 Thank you for helping with our amendment, a Thune-
10 Cardin amendment to assist S Corporations and the
11 community banking community. Also, we appreciate your
12 comments, Mr. Chairman, of a Cantwell-Crapo-Thune tribal
13 pension amendment that was not included in the mark, but
14 that I hope we can consider in some other opportunity.
15 So we appreciate your help with both of those amendments
16 and we will look forward to processing, hopefully, the
17 tribal pension amendment at a later date.

18 So with that, I thank you and --

19 The Chairman. Thank you, Senator.

20 All right. Once again, the committee has before it
21 a Chairman's Mark that includes the Miners Protection Act
22 of 2016 as modified, as well as the Retirement
23 Enhancement and Savings Act of 2016 as modified. All
24 modifications are hereby incorporated into the mark.

25 We will now briefly walk through the mark and its

1 modifications and address any questions you might have.
2 As is always the case when the committee considers tax
3 legislation, we have witness the Chief of Staff of the
4 Joint Committee on Taxation, Tom Barthold. We are
5 grateful to him.

6 Mr. Barthold, could you briefly describe the mark
7 and modification and then we will go from there.

8 Mr. Barthold. Thank you, Mr. Chairman. The
9 committee members have before them Joint Committee
10 document JCX-84 which describes the mark of the Miners
11 Protection Act.

12 Very simply, the proposal expands the group of
13 recipients whose retiree and health benefits are taken
14 into account into determining amounts transferred by the
15 Secretary to the 1993 benefit plan. It provides for
16 transfers of certain funds from a voluntary employees'
17 benefit association for the same purposes.

18 It directs the Secretary to transfer certain excess
19 funds from the Surface Mining Control and Reclamation
20 Act's fund to the UMWA Pension Plan, and it provides for
21 additional reporting requirements related to that plan.

22 I am happy to answer any questions in more detail
23 that the members might have.

24 The Chairman. Well, thank you so much. Does any
25 member have any questions for Mr. Barthold?

1 Senator Enzi. Mr. Chairman?

2 The Chairman. Senator Enzi?

3 Senator Enzi. I have heard in speeches that there
4 is a precedent for the Miners Protection Act in the 2006
5 legislation that Senator Rockefeller and I passed to
6 address the orphan miners health care. Does not the
7 Miners Protection Act expand on that deal with both
8 health care and now pension benefits?

9 Mr. Barthold. Yes, it does, compared to the
10 Pension Protection Act, sir.

11 Senator Enzi. Thank you. Proponents of this
12 legislation tell me the bill is paid for with a source of
13 funding that is industry generated. Can you walk us
14 through the score and explain what portion of the bill is
15 paid for by the coal industry and where other funds for
16 the bill would come from?

17 Mr. Barthold. Senator Enzi, I will not be able to
18 do a very good job in responding to that question. The
19 information that the members have before them is analysis
20 prepared by Congressional Budget Office, and it details a
21 number of different items.

22 A major offset is the use of funds from Customs
23 users fees, as a budgetary offset in the unified budget.

24 Senator Enzi. Is that not a Customs user fee from
25 2026?

1 Mr. Barthold. Under present law, certain Customs
2 user fees expire after about 2025, and this extends the
3 period under which those fees could be collected. So as
4 the table that you were provided details, the funds
5 collected under the Customs user fees provision would
6 fall into fiscal year 2026.

7 Senator Enzi. Borrowing from the future, again,
8 for a current problem.

9 Another argument I have heard is if we do not enact
10 the Miners Protection Act, the UMWA pension plan could
11 bankrupt the Pension Benefit Guaranty Corporation. The
12 Pension Benefit Guaranty Corporation's 2015 annual report
13 stated that the multiemployer program faces a significant
14 and increasing risk of insolvency during the latter part
15 of the coming decade.

16 Does this bill solve that problem?

17 Mr. Barthold. I am afraid, Senator Enzi, I cannot
18 assess the solvency of the PBGC.

19 Senator Enzi. I will rely on their report, then.
20 Thank you, Mr. Chairman.

21 The Chairman. Thank you, Senator.

22 Preston Rutledge from the Majority Staff, and Kara
23 Getz from the Minority Staff here on the Finance
24 Committee are here to answer any questions about the mark
25 or the modification thereof. We are also joined by Mark

1 Mazur, the Secretary for Tax Policy at the U.S. Treasury.
2 I want to welcome you before the committee.

3 Now, do Senators have any questions regarding the
4 mark or modification of any of these folks?

5 Let me recognize Senator Wyden.

6 Senator Wyden. Mr. Chairman, I want to wait for
7 our colleague from Wyoming, should he wish to offer his
8 amendments. I am just going to be very brief before we
9 vote on the Miners legislation.

10 Does my colleague have amendments?

11 Senator Enzi. Mr. Chairman, I do. I thought that
12 Senator Coats was going to have the first opportunity to
13 talk on amendments.

14 The Chairman. Well, let me recognize any Senators
15 for any questions on the mark, or any comments if they
16 have any.

17 Senator Coats?

18 Senator Coats. Thank you, Mr. Chairman. As I
19 indicated earlier, I learned years ago what Senator
20 Menendez raised, and that is you better know how to count
21 here before you make a final decision. And I have
22 counted and my number did not come up very high.

23 So I am not going to ask for a roll call vote, but I
24 would like to just state why I offered these amendments.

25 Primarily, I am going to talk about committee amendment

1 13, which is also Coats amendment number 6.

2 While that is distributed, let me just mention a
3 couple of the other amendments that I filed. Many of
4 them relate to the negative impact of the
5 administration's war on coal. We have talked about that,
6 and I will not be redundant in that regard.

7 One of the efforts through the regulatory process
8 has been the Stream Buffer Zone Rule that is threatening
9 hundreds of thousands of the remaining mining-related
10 jobs and will bankrupt even more health and pension
11 plans. I think we have to acknowledge the fact that
12 implementation of these policies has brought us to where
13 we are.

14 If this Stream Buffer Rule is imposed upon the
15 remaining coal miners, it is going to bring us back here
16 to do even more pension relief. So I think that is
17 something the committee ought to consider as we move
18 forward.

19 I also have some amendments that address the medical
20 device tax. Earlier we heard about an unfair excise tax.

21 Probably the worst tax the government can levy on
22 anybody is an excise tax, particularly when it doesn't
23 relate to the issue.

24 But it has had an enormous impact. Thankfully, we
25 joined in a bipartisan way. I headed up the Republican

1 caucus, and Amy Klobuchar, a colleague from Minnesota,
2 headed up the Democrat caucus, in an effort to at least
3 place a two-year moratorium on the excise tax.

4 I had a medical device company in Indiana that had
5 planned to open five new facilities, employing a
6 significant number of people at very well-paying jobs.
7 And that was all suspended when that tax was imposed.

8 So my amendment was trying to address that issue. I
9 hope the committee in the future -- while I will not be
10 here on the committee in the future -- will look
11 carefully about the impact of that, the amount of export
12 benefit to the United States for these cutting-edge
13 instruments and devices, as well as the substantial pay
14 to skilled workers that is paid to the people who develop
15 these things.

16 I think this has a very significant impact on growth
17 in the future, and I wanted to bring that question up.

18 The major amendment here, Coats number 6, deals with
19 a double-dip. This would address an unfair double-dip
20 opportunity for union officials that is not available to
21 the rank and file workers that they represent.

22 When you think about a coal miner down in the mine,
23 you think about someone going to work. It is not an easy
24 job, and it is not a clean job, and it is physically
25 taxing. You think about the fact that those who

1 administer their retirement plan and the trustees have
2 the opportunity to have a different pension plan, and in
3 fact, may qualify for both pension plans.

4 If I were a worker, I would say, what is the deal
5 here? I mean, these are the people that administer our
6 plans. Obviously, the ones that administer think it is
7 good enough for the workers, but not good enough for
8 themselves.

9 So they have the eligibility to participate in their
10 own separate plan. And if we are now providing taxpayer
11 money, taxpayers are essentially rewarding those who have
12 the need for it because they are working in the mines, as
13 well as those sitting in the office administering the
14 plan, and the trustees that are overseeing the plan.

15 So this amendment simply would say you have got to
16 choose one or the other. You cannot have both.

17 I would think trustees and administrators would want
18 to say, we are with you guys. We are not imposing
19 anything on you or denying you anything that we are not
20 getting ourselves.

21 Now some have said, this is not happening. Well,
22 even if it is not happening, it can happen. The PBGC
23 indicated it is possible for union leaders to qualify for
24 two sets of benefits, under both a generous management
25 plan and the troubled worker pension plan.

1 So does it not make sense that this is really an
2 unfair situation, particularly for the workers? I doubt
3 many of them know what takes place here.

4 Secondly, if it is not true, if both plans are not
5 being used, but it is possible to do so, why do we not
6 prevent that from happening in the future? That was the
7 basis for this amendment.

8 Given where we are, it does not have the support
9 that could bring it to a favorable conclusion. But that
10 is why I have offered these amendments. I will not go
11 through all of the rest of them, but I just wanted my
12 colleagues to know what we are doing here and what I was
13 trying to do to improve the bill.

14 Thank you, Mr. Chairman.

15 The Chairman. Well, thank you, Senator.

16 Are there any further questions or any amendments?

17 Senator Enzi. Mr. Chairman?

18 The Chairman. Senator Enzi?

19 Senator Enzi. I have a couple of amendments which
20 I will do the same thing with that Senator Coats did.
21 But I want to make the points.

22 My amendment number 1 would ensure that new UMWA
23 members are not added to the failing pension plan that we
24 are discussing today. It is kind of a fairness issue.

25 Of course, in my state we mine a lot of coal. We

1 mine 40 percent of the nation's coal. We have had three
2 companies go bankrupt because of the federal policies
3 that have been put in place.

4 Incidentally, none of those employees in my state
5 are included in this. So from a fairness standpoint, you
6 are leaving out my employer, my employees, the ones from
7 Wyoming that mine coal.

8 But we are also -- without this amendment --
9 allowing a major push for unions to be made based on
10 future benefits from this plan for future UMWA miners.
11 While I, again, state that I am very opposed to the
12 policy of providing direct federal financial assistance
13 to a private pension plan -- which I must remind my
14 colleagues, per the Congressional Research Service, has
15 never before occurred in the history of this country -- I
16 believe that we must ensure that this critical and
17 declining UMWA pension plan does not take on any new
18 liabilities and drive itself further into the red. It is
19 my understanding from reviewing the UMWA agreements that
20 no new participants have been added to the failing
21 pension plan since 2012.

22 I am glad to see that UMWA has taken important steps
23 to ensure the retirement solvency of its newer members.
24 That said, per the legislation that we are voting on
25 today, the UMWA pension plan would be receiving hundreds

1 of millions of dollars of taxpayer money. We need to
2 make sure that those taxpayer dollars are not used in any
3 way to help recruit any new members to this plan.

4 While I firmly believe that passing this legislation
5 as written cannot be described as anything close to
6 prudent, it is necessary that we at least put guards
7 around the plan to ensure the retirement solvency of any
8 future UMWA mines.

9 I would withdraw that amendment.

10 The Chairman. Thank you, Senator.

11 Senator Enzi. But I also want to speak on --

12 The Chairman. Senator Enzi?

13 Senator Enzi. -- my amendment number two.

14 The Chairman. Senator Enzi, you have every right
15 to do that.

16 Senator Enzi. Thank you. This one would chip away
17 at the primary roadblock preventing the success of the
18 coal industry and the availability of more AML fund
19 interest dollars for the UMWA health care plans.

20 That is something that is disappearing as those in
21 positions within this administration say they are going
22 to keep all of the coal in the ground. This
23 administration's burdensome regulations seek to keep coal
24 and other fossil fuels in the ground, such as the
25 proposed Stream Protection Rule.

1 According to the U.S. Department of Energy, there is
2 an estimated 255.07 billion tons of coal that is
3 recoverable at this time with current technology. If all
4 the coal were to be harvested, over \$48 billion would be
5 deposited in the abandoned mine land fund. Over half of
6 that would be returned to states for reclamation
7 projects. The remainder would stay in the fund and earn
8 interest on Treasury securities. That interest is the
9 initial source of dollars for the three United Mine
10 Worker health care funds that are supplemented pursuant
11 to the Surface Mining Control and Reclamation Act.

12 If we mine all of America's coal, we could pay for
13 the health care of a lot of miners with that money
14 generated by the AML fund interest. I have heard
15 proponents of the bill mistakenly saying that the bill
16 will be paid for with the interest from the AML fund, but
17 that fund has not covered the current cost of health
18 benefits since 2008. Instead, this bill requires to
19 spend more money from the general fund of the U.S.
20 Treasury to the tune of \$3.5 billion over 10 years to
21 supplement the AML interest directed to the UMWA health
22 plans.

23 And we are just talking about health plans here. We
24 are here trying to figure out how to provide health care
25 to orphan union miners because the administration's rules

1 have forced coal companies out of business.

2 According to the U.S. Energy Information
3 Administration, U.S. coal production is projected to be
4 down by over 25 percent this year as compared to 2014.
5 If the Stream Protection Rule or SPR is finalized and
6 enacted, those numbers are going to get worse. This
7 massive one-size-fits-all regulation would radically
8 change the way coal operators across the country are
9 required to permit, to monitor, and to reclaim bodies of
10 water near coal mine operations.

11 If the SPR is finalized and enacted, the National
12 Mining Association estimates that over 77,000 mining jobs
13 would be lost, and \$6.04 billion in federal and state tax
14 revenue would be lost annually because of reduced coal
15 production.

16 If we want to provide health care for orphan miners
17 using interest generated by the AML fund, the government
18 has to get out of the way and let the companies mine the
19 coal.

20 We have talked about retraining these people. Do
21 you know many jobs that you can retrain to for \$80,000 a
22 year? That is what the average coal miners in my state
23 make, or made.

24 The administration and the proponents of this bill
25 cannot have it both ways. You cannot be trying to crush

1 the industry in one hand and bailing them out on the
2 other. That is why my amendment would rescind the
3 proposed Stream Protection Rule one day after it is
4 finalized, or if implemented, would make deductible any
5 ordinary or necessary business or trade expenses incurred
6 to comply with the rule.

7 This amendment would help get the administration off
8 the back of the coal industry. It would give miners what
9 they really want, that is to get back to work producing
10 reliable, affordable, and efficient energy for this
11 country.

12 I understand that this amendment is non-germane to
13 the bill, so I am going to withdraw it. But it is a
14 conversation we really need to have to stop the war on
15 coal.

16 Senator Brown. Mr. Chairman?

17 The Chairman. Senator Brown?

18 Senator Brown. Just a comment on my friend from
19 Wyoming's comments -- I have heard at least five members
20 across the semi-circle here blaming, virtually all, of
21 the jobs lost in coal country on the Obama
22 Administration. I have heard nobody on our side,
23 including me, respond.

24 I do not want to get into a tit-for-tat here. But
25 we have all seen -- I have seen signs in Southern Ohio,

1 Obama's war on coal, Brown's war on coal. That is,
2 obviously, not the entire story.

3 The environmental issues play a role, of course.
4 But not one of my colleagues has mentioned the price of
5 natural gas. And we know the price of natural gas has
6 been constant, has been low, has been -- it is predicted
7 to stay at three or four dollars as many years into the
8 future as people that can do that analysis can observe or
9 can predict.

10 To be honest about this -- if you are going to blame
11 everything on the Obama Administration -- and I know that
12 that is sort of a cottage industry in this body -- then
13 maybe you ought to at least be a little more honest to
14 talk about the role of natural gas. Anybody that really
15 looks at this knows that that is the case.

16 I remember some years ago, I was at a plastics
17 manufacturer in Avon Lake, Ohio and in those days the CEO
18 showed me the cost of natural gas -- this was 15 years
19 ago -- and how volatile it was. It would be \$5, then it
20 would be \$11, then it would be back to \$8. Those of you
21 that have chemicals and plastics plants know this, that
22 natural gas was both the feed stock and the energy, and
23 this companies -- it was so hard to predict.

24 Now that natural gas prices have been constantly
25 low, it has put far too many miners out of work. I am

1 very distressed about that, but I think it is up to all
2 of us to be a little more honest when we talk about these
3 issues.

4 Surely lots of people are to blame. George Bush is
5 partly to blame. Look at the economy that he created
6 that imploded in 2008. Blame Barack Obama, blame the
7 EPA, blame the Sierra Club, but also just understand
8 natural gas prices are a big part of the reason far too
9 many of my constituents in Southeast Ohio are out of
10 work.

11 We need a real investment in coal country, in
12 Appalachia in my state, in Western Pennsylvania, and
13 Southwestern Virginia, and Southern Indiana. We need a
14 real commitment, and it is going to take public dollars
15 to invest in these communities because far, far too many
16 people are out of work.

17 One other observation, a manufacturing company in a
18 small town in Indiana, or Ohio, or Pennsylvania -- when a
19 manufacturing company in a town of 4,000 people goes out
20 of business, as we have seen, it is the entire family
21 income wiped out. If a plant in Cleveland goes out of
22 business, it is a disaster for that family, and that
23 plant, and those stockholders, but usually only one
24 person works there in the family. In a small town when a
25 plant goes out of business, the entire family income is

1 wiped out.

2 So we need a real commitment to small town, Indiana,
3 Ohio, Georgia, Wyoming, everywhere that this body seems
4 incapable of addressing. But let us be honest about it.

5 Let us talk about it together so we can actually
6 accomplish some things.

7 Senator Enzi. Mr. Chairman?

8 The Chairman. Senator Enzi?

9 Senator Enzi. If this Stream Protection Rule goes
10 into effect, regardless of who is responsible for putting
11 it into effect, there will be thousands more coal mine
12 jobs lost. We do not hear much about this from the power
13 companies. I am a little disappointed in that.

14 But I am an accountant, and I know that the Public
15 Service Commissions allow them to make a 12 percent
16 return on their investment. If you put out the residual
17 value on the coal fired power plants that are there and
18 allow them to put in more expensive stuff, they make more
19 money.

20 So I have heard from the Rural Electric Associations
21 that are investor-owned, and I have heard from a few
22 power plants that sell their coal directly to industry.
23 They do not sell it to the normal consumer, they sell it
24 to industry.

25 One of them is in Indiana, and some of these rules

1 are very likely to put them out of business. If they do
2 -- all of their electric supply goes to the steel mills
3 of Pennsylvania -- who if the cost of their electricity
4 goes up, will find another place to do their steel mills.

5 So there are a whole lot of interconnected things
6 with these. You are going to affect a lot more pension
7 plans than what we are talking about.

8 But as I said, that is not germane to this bill. So
9 I am withdrawing it.

10 The Chairman. Thank you.

11 Senator Cantwell? Senator Cantwell will be the last
12 person to speak, then we are going to vote on this.

13 Senator Cantwell. Well, thank you --

14 The Chairman. We have another bill, so --

15 Senator Cantwell. I know, Mr. Chairman. I will be
16 brief on this. Although, I could go long for sure
17 because I certainly support the Stream Rule, and I
18 certainly support enforcing the Clean Air Act. So if we
19 want to have a debate about whether Americans think we
20 should enforce the Clean Air Act or not and how companies
21 modernize to adhere to that, we can have that discussion.

22 More importantly, I would just like to make the
23 point on this notion because I do respect the Senator
24 from Wyoming and my colleagues on the other side. This
25 issue is not going to go away, but the facts are that

1 between 2008 and 2009, this pension fund plummeted from
2 92 percent funded to 74 percent funded. That is the
3 plummet.

4 The plummet was caused by the downturn. Now, some
5 of us here -- not me -- voted to bail out Wall Street.
6 So this is about whether we are going to do something for
7 the aftermath -- according to the Dallas Fed, we blew a
8 \$14 trillion hole in the economy. So you can look at all
9 of these pension funds and see that they have never
10 recovered.

11 So that compared to what you might think has
12 happened between 2014 and 2015 pales in comparison. It
13 might be, as my colleague from Ohio said, about other
14 factors in the energy market, but the biggest drop that
15 we have seen in this pension plan was the downturn in
16 2009, and this body has to come to terms with the fact
17 that there is a lot of people making a lot of money, very
18 recovered on Wall Street. But these pension plans and
19 the retirement of American workers, they have not
20 recovered, and unless we do something about it, we are
21 going to be stuck here looking at huge Medicaid budgets
22 and budget impacts for the future.

23 So I hope that we can come to terms on this for the
24 future. Thank you, Mr. Chairman.

25 The Chairman. Well, thank you, Senator.

1 Now, if there is no further debate, I would
2 entertain a motion that the committee order the Miners
3 Protection of 2016 reported as modified.

4 Senator Wyden. I so move.

5 The Chairman. All Right. Then the clerk will call
6 the roll.

7 The Clerk. Mr. Grassley?

8 The Chairman. Pass.

9 The Clerk. Mr. Crapo?

10 Senator Crapo. Aye.

11 The Clerk. Senator Roberts.

12 The Chairman. Aye by proxy.

13 The Clerk. Mr. Enzi?

14 Mr. Enzi. No.

15 The Clerk. Mr. Cornyn?

16 The Chairman. No by proxy.

17 The Clerk. Mr. Thune?

18 The Chairman. No by proxy.

19 The Clerk. Mr. Burr?

20 The Chairman. Aye by proxy.

21 The Clerk. Mr. Isakson?

22 Senator Isakson. No.

23 The Clerk. Mr. Portman?

24 Mr. Portman. Aye.

25 The Clerk. Mr. Toomey?

1 Mr. Toomey. Aye.
2 The Clerk. Mr. Coats?
3 Senator Coats. No.
4 The Clerk. Mr. Heller?
5 Mr. Heller. No.
6 The Clerk. Mr. Scott?
7 The Chairman. No by proxy.
8 The Clerk. Mr. Wyden?
9 Senator Wyden. Aye.
10 The Clerk. Mr. Schumer?
11 Senator Wyden. Aye by proxy.
12 The Clerk. Ms. Stabenow?
13 Senator Wyden. Aye by proxy.
14 The Clerk. Ms. Cantwell?
15 Senator Cantwell. Aye.
16 The Clerk. Mr. Nelson?
17 Senator Nelson. Aye.
18 The Clerk. Mr. Menendez?
19 Senator Wyden. Aye by proxy.
20 The Clerk. Mr. Carper?
21 Senator Carper. Aye.
22 The Clerk. Mr. Cardin?
23 Senator Cardin. Aye.
24 The Clerk. Mr. Brown?
25 Senator Brown. Aye.

1 The Clerk. Mr. Bennet?
2 Senator Wyden. Aye by proxy.
3 The Clerk. Mr. Casey?
4 Senator Casey. Aye.
5 The Clerk. Mr. Warner?
6 Senator Warner. Aye.
7 The Clerk. Mr. Chairman?
8 The Chairman. Aye.
9 The Clerk. Mr. Grassley?
10 Mr. Grassley. No.
11 The Chairman. The Clerk will state the vote.
12 The Clerk. Mr. Chairman, the final tally is 18
13 ayes, 8 nays.
14 The Chairman. The bill is passed.
15 Now let us move forward on the Retirement
16 Enhancement and Savings Act of 2016 as modified. It is
17 now open for debate and amendment.
18 We will begin by recognizing Senators, whoever wants
19 to talk about it.
20 Senator Wyden. Mr. Chairman?
21 The Chairman. Senator Wyden?
22 Senator Wyden. Mr. Chairman, I am going to be
23 brief. It is clear that what we are doing with this
24 legislation, colleagues, is beginning to modernize
25 retirement and savings policy in this country. The fact

1 is -- you look at the provision that I authored that is
2 in this proposal that would allow people beyond 70.5 to
3 save with an IRA.

4 Colleagues, we have Senators that are younger than
5 these outdated policies. So what we are talking about is
6 playing catchup ball, and it is mine workers today, but
7 it is going to be truckers tomorrow. It can be
8 woodworkers and construction workers the day after. So
9 we have got some heavy lifting here to do.

10 This amendment that I am going to discuss briefly
11 would allow employers to make retirement matching
12 contributions on student loan repayments. Here is why I
13 am seeking to do this -- it is also part of a recent
14 retirement savings proposal I offered called the RISE Act
15 -- because we are looking at the prospect that millions
16 of young people who have been clobbered by student debt
17 are going to get hit twice. They are not going to find
18 it possible to pay off their student loan debt quickly,
19 and they are going to find it hard to save for
20 retirement.

21 Now, if you get a job at a company that offers
22 retirement savings match as a job benefit, prioritizing
23 your student loans mean you leave those matching dollars
24 on the table. Over a career, that is an extraordinarily
25 big lost opportunity. So this amendment states that you

1 should not have to give up your chance to be part of a
2 retirement package with your employer while you are
3 digging out from student loan debt.

4 Under the proposal, while workers pay down their
5 loans, employers would be allowed to make a matching
6 contribution to a 401(k).

7 I will just close by way of saying, my judgement is
8 whether you are getting out of student loan debt or
9 setting money aside for retirement, you are doing the
10 right thing. You are showing personal responsibility to
11 tackle these big financial issues.

12 Mr. Chairman, time is very short, and I think having
13 discussed this briefly, I am going to withdraw the
14 amendment. I look forward to working with you, and this
15 will, colleagues, be a big part of what we are going to
16 talk about as part of tax reform and looking at savings
17 and retirement.

18 With that, I withdraw the amendment.

19 The Chairman. Well, thank you, Senator.

20 We will turn to Senator Enzi now who has an
21 amendment.

22 Senator Enzi. Well, thank you, Mr. Chairman for
23 allowing me the opportunity to speak favorably on a
24 proposal I have worked on for many years. I would like
25 to thank the members of this committee, as well as the

1 members of the Senate HELP and the Aging Committees for
2 their work on Small Business Retirement Pooling.

3 A critical challenge in enhancing the retirement
4 security for all Americans is expanding plan coverage
5 among small businesses. To address this, I believe we
6 need to make retirement plans less complicated, less
7 intimidating, and less expensive for those entities.

8 That is exactly what Small Business Retirement
9 Pooling does. This proposal is bipartisan. In this
10 Congress alone, I have held bipartisan HELP Committee
11 Roundtables with the Junior Senator from Vermont and the
12 Senior Senator from Massachusetts, and in prior
13 Congresses, I worked with Senator Harkin, all to discuss
14 the best way to craft and implement this proposal.

15 I am very proud of the bipartisan work that has been
16 done at this point, and thank the committee for its work
17 on this issue. I look forward to the day in which the
18 retirement gap in America is closed. I believe we are
19 taking a very large step towards closing the gap with
20 this proposal that is before us today.

21 The Chairman. Well, thank you, Senator Enzi. And
22 thank you for your good work on this.

23 Senator Nelson?

24 The Chairman. Senator Nelson?

25 Senator Nelson. I am a cosponsor and just want to

1 say that we need to give folks more time to pay back
2 their loans from their retirement accounts, and as part
3 of the modernization that Senator Wyden was speaking
4 about, it is in this bill.

5 Thank you.

6 The Chairman. Well, thank you.

7 We are going to have to vote on this bill off the
8 floor. The first vote off the floor -- we will meet in
9 the room off the floor.

10 Senator Wyden. Mr. Chairman, if you would just
11 yield very briefly. Let me thank you. I think we will
12 get this passed quickly off the floor.

13 Just before we want to wrap up, I would like to note
14 that this pension issue often feels like prolonged root
15 canal work. You just dig, and you dig, and you dig, and
16 it gets more complicated and more byzantine. This
17 committee is very lucky to have two bipartisan gurus on
18 this issue, Kara Getz on the Democratic side, Preston
19 Rutledge on the Republican side. Many of my colleagues
20 have been appreciative of the staff, but there are a lot
21 of good proposals in this particular area. We have got a
22 lot of heavy lifting to do. We are very lucky to have
23 Kara and Preston to assist us, Mr. Chairman and
24 colleagues.

25 I look forward to our passing this bill off the

1 floor very quickly.

2 The Chairman. I agree with you. We were very
3 grateful for our staff and for Mr. Barthold, in
4 particular, and for our two staffs that have helped us
5 throughout this process.

6 I want to thank my colleagues for another good
7 markup. Throughout the 114th Congress, we have been
8 remarkably productive, accomplishing a number of
9 important tasks in bipartisan ways and in addressing
10 priorities for members throughout the committee.

11 I very much appreciate the hard work that our
12 committee members and their staffs have put into this
13 particular effort on these two bills and all of the
14 others that we have undertaken. I do look forward to
15 tackling more challenging efforts in the future, and I
16 look forward to the help of our colleagues here on the
17 Finance Committee.

18 I just want to mention there are a number of folks
19 from my home state who are here. I hope they will come
20 up and say hello. I just want to acknowledge that we
21 appreciate them being here, and we appreciate people from
22 all over the country being here on this very important
23 set of bills.

24 So with that, we will recess until we vote off the
25 floor. We will finish this second bill.

1 Well, that is what we will do. We will recess until
2 further notice.

3 [Whereupon, at 11:35 a.m., the meeting was recessed,
4 reconvening at 2:15 p.m. in room S-219, United States
5 Capitol.]

6 The Chairman. The committee will come to order. I
7 thank all Senators for their attendance so that we can
8 report out the Retirement Enhancement and Savings Act of
9 2016. I now entertain a motion that the committee
10 favorably report the bill.

11 Senator Wyden. So moved.

12 The Chairman. A recorded vote has been requested.

13 The clerk will call the roll.

14 The Clerk. Senator Grassley.

15 Senator Grassley. Aye.

16 The Clerk. Senator Crapo.

17 Senator Crapo. Aye.

18 The Clerk. Senator Roberts.

19 Senator Roberts. Aye.

20 The Clerk. Senator Enzi.

21 Senator Enzi. Aye.

22 The Clerk. Senator Cornyn.

23 Senator Cornyn. Aye.

24 The Clerk. Senator Thune.

25 The Chairman. Aye by proxy.

1 The Clerk. Senator Burr.
2 The Chairman. Aye by proxy.
3 The Clerk. Senator Isakson.
4 Senator Isakson. Aye.
5 The Clerk. Senator Portman.
6 Senator Portman. Aye.
7 The Clerk. Senator Toomey.
8 The Chairman. Aye by proxy.
9 The Clerk. Senator Coats.
10 Senator Coats. Aye.
11 The Clerk. Senator Heller.
12 Senator Heller. Aye.
13 The Clerk. Senator Scott.
14 Senator Scott. Aye.
15 The Clerk. Senator Wyden.
16 Senator Wyden. Aye.
17 The Clerk. Senator Schumer.
18 Senator Schumer. Aye.
19 The Clerk. Senator Stabenow.
20 Senator Stabenow. Aye.
21 The Clerk. Senator Cantwell.
22 Senator Cantwell. Aye.
23 The Clerk. Senator Nelson.
24 Senator Nelson. Aye.
25 The Clerk. Senator Menendez.

1 Senator Menendez. Aye.
2 The Clerk. Senator Carper.
3 Senator Carper. Aye.
4 The Clerk. Senator Cardin.
5 Senator Cardin. Aye.
6 The Clerk. Senator Brown.
7 Senator Brown. Aye.
8 The Clerk. Senator Bennet.
9 Senator Bennet. Aye.
10 The Clerk. Senator Casey.
11 Senator Casey. Aye.
12 The Clerk. Senator Warner.
13 Senator Warner. Aye.
14 The Clerk. Mr. Chairman.
15 The Chairman. Aye.
16 The Clerk. The final tally including proxies is 26
17 ayes, 0 nays.
18 The Chairman. The ayes have it. The original bill
19 entitled the Retirement Enhancement and Savings Act of
20 2016 is favorably reported.
21 I ask consent that staff be granted authority to
22 make technical, conforming and budgetary changes.
23 Without objection, it is so ordered.
24 [Whereupon, at 3:15 p.m., the meeting was
25 concluded.]

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**Senator Stabenow Opening Statement
September 21, 2016**

I am pleased that we are having this mark-up today, to move forward on legislation to guarantee hard-earned pension and retiree health care benefits for coal miners and their families. At the same time, we will also move forward on legislation to protect retirement savings and help retirement savers. There is no question that we are running out of time to prevent thousands of coal miners and their surviving spouses from losing their benefits.

It is encouraging that we are able to come together today to advance legislation that would keep this from happening. But I hope that this will be only the first step to making sure that all Americans get the pension benefits they need, deserve, and have earned over a lifetime of hard work.

Tens of thousands of workers and retirees in Michigan are facing the loss of their pension benefits through no fault of their own if the Central States pension fund is allowed to go bankrupt. We cannot sit back and allow this to happen. As we have done here, I hope we will be able to work across the aisle to find a solution to protect the benefits of the Central States workers and retirees. If we don't, those workers will have their plans for a financially secure retirement vaporized right before their eyes. There is no question that it will be a difficult task, but failure is simply not an option. Our Central States retirees depend on their benefits to put food on their tables, heat their homes, and buy their prescriptions at the pharmacy. So, I look forward to continuing to work with my colleagues on that exceptionally important issue.

I have also filed two amendments today that I will not be asking for a vote on, but I hope we will be able to continue working on those as well.

My first amendment, Stabenow-Nelson #1, would address an issue that affects foundations who own stock in companies that have an employee stock ownership plan. In my own state, the Mott Foundation, as just one example, is having to literally give away stock the foundation owns to avoid tax penalties. The resources they are losing as a result of this fix not being in place would clearly be better put to use working toward some of the very important projects the foundation is doing, such as helping with the severe and tragic impacts of the Flint water crisis. I hope we can continue working on a solution to this important issue.

My other amendment, Stabenow #2, would clarify the role of the Participant and Plan Sponsor Advocate at the PBGC. This is an important position that serves as a go-between to help participants and plan sponsors work with the PBGC. My amendment would help clarify that this position is independent, can advocate for both participants and plan sponsors, and can assist participants and plan sponsors of any plan that the PBGC insures. By clarifying these issues, we can make sure that the original Congressional intent is fulfilled and strengthen the position. I look forward to also continuing to work with my colleagues on this provision.

Senator Portman Statement for the Record Finance Committee Markup, September 21, 2016

Mr. Chairman, I want to start by thanking you for holding this markup, because the pension stakes are high for workers across Ohio.

That includes our miners. Nearly 100,000 miners across the country -- including 6,000 in Ohio -- are facing pension cuts because of bankrupt pension systems, and more than 20,000 retired miners may lose their retiree health coverage at the end of the year.

Good people who played by the rules, who did exactly what they were told to do, are losing their pensions and their health care through no fault of their own.

That's not fair.

In Ohio, coal miners keep the lights on for us. Fifty-eight percent of Ohio's energy comes from reliable and affordable coal. A few years ago, when many retired miners were still working, that number was more than 70 percent. We're in the top five states for coal consumption.

We use a lot of coal—but we're even better at mining it. We've been mining coal in Ohio since before we were even a state. All in all, Ohioans have mined nearly 4 billion tons of coal in our history. We're one of the top 10 coal-producing states in the country, and Ohio coal miners now produce more coal per day than ever before—48 tons each.

I've seen that work firsthand. About a month ago I got to visit Vail Mine with the Rosebud Mining Company in Freeport for the second time. The first time I got to go 300 feet underground in a very narrow mineshaft. I've also visited B&N Coal Company in Noble County. I've seen their work ethic.

They do dangerous jobs that put them at a higher risk of injury and diseases like cancer, so losing their health benefits or a pension would be even more devastating.

The Miners Protection Act would keep pension plans solvent and ensure that there's no interruption of health benefits. And it is totally paid for. That's a lot cheaper than allowing the plan to go bankrupt and then requiring a major bailout later.

And it's not just our miners who are facing a retirement crisis. Another bill, *the Retirement Security Preservation Act*, will help workers whose company pensions are facing changes.

Many companies are facing long-term pension liabilities, and have soft-frozen their

defined-benefit plans—that is, they’ve created a new defined-contribution plan, such as a 401(k) for future employees, while keeping their employees in their defined-benefit plan.

Unfortunately our current pension nondiscrimination laws, while well-intended, punish these companies who are just trying to improve their pension plans and keep them solvent over the long term.

Let me explain.

Imagine that a company, facing daunting liabilities in its defined-benefit pension plan, decides to create a new defined contribution plan, such as a 401(k), for the future employees it will hire. This new plan will likely help those future employees accumulate a large pension over several decades, while also minimizing the risk to the company’s liabilities.

While this deal is terrific for future employees, it would not be ideal for older, current employees. Why? Because regardless of whether someone has a defined-benefit or defined-contribution plan, benefits accelerate the longer he/she is in the plan. So hard-freezing their defined benefit plan just as it was accelerating, and instead starting them in a new defined-contribution plan would provide fewer benefits.

So, companies have sought a win-win solution: Allow existing employees to remain in the defined-benefit plan, while putting future employees in the new defined-contribution plan. This is called a “soft freeze” of the defined-benefit plan, because existing employees are grandfathered in.

Unfortunately, government rules inadvertently punish these companies. Pension non-discrimination rules -- which are meant to ensure that all employees in a company pension plan are treated equitably -- would eventually punish these companies for having two different pension systems, even if everyone is better off, and the pension benefits are roughly equivalent over the long-term.

These rules essentially tell companies to “hard-freeze” their pension instead -- which means to freeze the current pension levels for older employees, and then force them to open up a new defined-contribution plan just like younger, future employees.

That’s just not fair, and it does real harm, costing older people thousands of dollars in retirement benefits.

Everyone agrees that this is not the intended purpose of pension nondiscrimination rules. And in recent years Treasury -- in response to letters from Sen. Cardin and me -- has given relief to companies who had soft-frozen their pensions while Treasury drafted a permanent solution.

Unfortunately, Treasury's draft regulations, while well-intentioned, would provide relief to only a small number of the 600,000 employees whose pensions have been soft-frozen.

That's why Senator Cardin and I have spent the past three years working with affected companies, Treasury, and outside experts to craft a better solution. Our *Retirement Security Preservation Act* is completely bipartisan, it's supported by both Republican and Democrat leaders of the House Ways and Means Committee, and it has bipartisan supporters here on the Finance Committee.

This legislation will ensure that companies that soft-freeze their pensions are not punished as long as they maintain equitable systems. It will ensure larger retirement benefits for both younger and older workers, and strong pension systems for companies. I look forward to its passage here today.

September 20, 2016

The Honorable Paul Ryan
Speaker of the U.S. House
Washington, DC 20515

The Honorable Nancy Pelosi
U.S. House Democratic Leader
Washington, DC 20515

The Honorable Mitch McConnell
U.S. Senate Majority Leader
Washington, DC 20510

The Honorable Harry Reid
U.S. Senate Democratic Leader
Washington, DC 20510

The Honorable Kevin Brady
Chairman
U.S. House Committee on Ways and Means
Washington, DC 20515

The Honorable Sander Levin
Ranking Democratic Member
U.S. House Committee on Ways and Means
Washington, DC 20515

The Honorable Orrin Hatch
Chairman
U.S. Senate Finance Committee
Washington, DC 20510

The Honorable Ron Wyden
Ranking Democratic Member
U.S. Senate Finance Committee
Washington, DC 20510

Dear Speaker Ryan, Democratic Leader Pelosi, Majority Leader McConnell, Democratic Leader Reid, Chairman Brady, Ranking Member Levin, Chairman Hatch and Ranking Member Wyden:

The undersigned organizations, representing a variety of business, energy, transportation and agriculture stakeholders, strongly urge Congress to provide a seamless, multi-year extension of the tax provisions that are currently slated to expire at the end of 2016. These tax provisions impact sectors that are vital to the U.S. economy and support thousands of jobs nationwide.

Allowing these tax provisions to lapse would effectively increase taxes on the entities that create jobs and economic growth. Also, the on-again, off-again nature of credit eligibility will cause uncertainty and make it more difficult for businesses to make important tax planning decisions.

Accordingly, we respectfully ask that you provide a seamless, multi-year extension of these important tax provisions before Congress adjourns. We look forward to constructively working with you to achieve this important goal and thank you in advance for your consideration.

Sincerely,

Advanced Biofuels Business Council
Algae Biomass Organization
American Biogas Council
American Gas Association
American Farm Bureau Federation
American Council of Engineering Companies
American Council on Renewable Energy
American Institute of Architects
American Motorcyclist Association

Fuel Cell and Hydrogen Energy Association
Geothermal Energy Association
Growth Energy
Hearth, Patio & Barbecue Association
Independent Film & Television Alliance
NATIONAL ASSOCIATION OF REALTORS®
National Biodiesel Board
National Council of Farmer Cooperatives
National Employment Opportunity Network

American Sheep Industry Association
American Short Line and Regional Railroad Association
American Soybean Association
American Veterinary Medical Association
Asphalt Roofing Manufacturers Association
Association of American Railroads
Biomass Power Association
Biomass Thermal Energy Council
Biotechnology Innovation Organization
Business Council for Sustainable Energy
CHP Association
Coalition for Renewable Natural Gas
Directors Guild of America
Electricity Consumers Resource Council
Energy Recovery Council
Environmental and Energy Study Institute
Farm Credit Council

NGVAmerica
National Hydropower Association
National Lumber & Building Material Dealers Association
National Milk Producers Federation
National Railroad Construction & Maintenance
Association
National Renderers Association
National Roofing Contractors Association
National Thoroughbred Racing Association
Pellet Fuels Institute
Pennsylvania Biomass Energy Association
Railway Engineering-Maintenance Suppliers Association
Railway Supply Institute
Renewable Fuels Association
Spray Polyurethane Foam Alliance
Tile Roofing Institute
U.S. Canola Association
Window & Door Manufacturers Association

**MEMORANDUM**

August 8, 2016

To: Senate Committee on Health, Education, Labor, and Pensions
Attention: Hon. Michael B. Enzi

From: Jon O. Shimabukuro
Legislative Attorney
American Law Division

Subject: **Krug-Lewis Agreement**

This memorandum responds to your request concerning the so-called “Krug-Lewis Agreement,” a 1946 agreement between then Secretary of the Interior Julius A. Krug and John L. Lewis, then President of the United Mine Workers of America (“UMWA”).¹ The Krug-Lewis Agreement provided for the creation of a mine safety code, required the presence of a mine safety committee at every mine, and provided for the establishment of a health and welfare program to benefit mine workers and their dependents.² You asked whether the federal government has an obligation to provide either health or retirement benefits to mine workers based on the Krug-Lewis Agreement. This memorandum examines the agreement, which was effective between May 22, 1946 and June 30, 1947.³

The execution of the Krug-Lewis Agreement followed the seizure of the nation’s coal mines in 1946. In response to existing and threatened strikes by mine workers, President Truman issued Executive Order 9728, which directed the Secretary of the Interior to operate the nation’s coal mines.⁴ According to the order, federal control of the mines was necessary because the production of coal “was indispensable for the continued operation of the national economy during the transition from war to peace[.]”⁵

The Krug-Lewis Agreement was executed eight days after the issuance of Executive Order 9728. By its own terms, the agreement covered the terms and conditions of employment for mine workers only “for the period of Government possession[.]”⁶ The health and welfare program prescribed by the agreement

¹ The National Bituminous Wage Agreement, commonly known as the “Krug-Lewis Agreement,” was included in a Sept. 25, 1991, hearing conducted by the Senate Subcommittee on Medicare and Long-Term Care. See *Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing Before the S. Subcomm. on Medicare and Long-Term Care*, 102nd Cong. 80-82 (1991).

² The Krug-Lewis Agreement also preserved the terms and conditions of employment included in certain specified agreements, such as the National Bituminous Coal Wage Agreement (dated April 11, 1945). See Krug-Lewis Agreement § 1, *supra* note 1.

³ See H. Comm. on Ways & Means, 104th Cong., Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992 119 (Comm. Print 1995) (identifying the period of effectiveness for the Krug-Lewis Agreement as between May 22, 1946 and June 30, 1947); *Lewis v. Jackson & Squire*, 86 F.Supp. 354, 356 (W.D. Ark. 1949) (indicating that the period covered by the Krug-Lewis Agreement ended on June 30, 1947).

⁴ Exec. Order No. 9728, 11 Fed. Reg. 5593 (May 21, 1946).

⁵ *Id.*

⁶ Krug-Lewis Agreement, *supra* note 1.

would consist of three parts: (1) a welfare and retirement fund to be financed by five-cent payments on each ton of coal produced by mine operators for use or sale; (2) a medical and hospital fund that would be financed by wage deductions that were already being made and by any additional deductions authorized by the UMWA and its members for medical, hospital, and related purposes; and (3) an effort by the trustees of both funds to cooperate and coordinate in the development of policies and working agreements necessary for the effective operation of each fund.⁷ Notably, the agreement did not provide for federal financial contributions to either the welfare and retirement fund or the medical and hospital fund.⁸

In April 1947, the UMWA began negotiations with mine operators in anticipation of the mines being returned to their owners.⁹ A new agreement became effective on July 1, 1947, one day after operation of the mines was returned to the owners.¹⁰ The National Bituminous Coal Wage Agreement of 1947 addressed various conditions of employment for mine workers.¹¹ The agreement also established the United Mine Workers of America Welfare and Retirement Fund (“W&R Fund”), which was modeled after the funds described in the Krug-Lewis Agreement.¹² Unlike those funds, however, the W&R Fund was financed by ten-cent payments per ton of coal produced by mine operators for use or sale.¹³ The W&R Fund represented a merger of the two funds described in the Krug-Lewis Agreement by providing for the availability of medical, as well as retirement, benefits.¹⁴

The 1947 agreement indicated that it would supersede all existing and prior contracts except as incorporated and continued by reference.¹⁵ The agreement specified that it would carry forward and preserve the terms and conditions of the Appalachian Joint Wage Agreement, the Supplemental Six-Day Work Week Agreement, the National Bituminous Coal Wage Agreement (dated April 11, 1945), and all of the various district agreements executed between the UMWA and the various mine operators and coal associations, as they existed on March 31, 1946, subject to the terms and conditions of the 1947 agreement, and as amended, modified, or supplemented by the 1947 agreement.¹⁶

Because the Krug-Lewis Agreement did not require the federal government to provide health or retirement benefits to mine workers, and because the terms of the agreement seemed to expire once mine operators regained control of the mines, it appears unlikely that the federal government maintains any

⁷ *Id.* Trustees of the welfare and retirement fund were to make coverage and eligibility determinations, and establish benefit amounts and the methods for providing benefits. Trustees of the medical and hospital fund were to provide for the availability of medical, hospital, and related services for mine workers and their dependents.

⁸ Compare Krug-Lewis Agreement, with Tax Relief and Health Care Act of 2006, div. C, tit. II, subtit. B, § 212, 120 Stat. 2922, 3023 (2006) (authorizing transfer of reclamation fees collected by the Secretary of the Interior to the United Mine Workers of America Combined Benefit Fund, the United Mine Workers of America 1992 Benefit Plan, and the Multiemployer Health Benefit Plan).

⁹ Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992, *supra* note 3 at 121.

¹⁰ The National Bituminous Coal Wage Agreement of 1947 was included in hearings conducted by the Senate Committee on Banking and Currency. See *Economic Power of Labor Organizations: Hearings Before the S. Comm. on Banking and Currency (Part I)*, 81st Cong. 427-35 (1949).

¹¹ Nat’l Bituminous Coal Wage Agreement of 1947, *supra* note 10.

¹² *Id.* See also *Eastern Enterprises v. Apfel*, 524 U.S. 498, 505 (1998) (describing the United Mine Workers of America Welfare and Retirement Fund as “modeled after the Krug-Lewis benefit trusts.”).

¹³ Nat’l Bituminous Coal Wage Agreement of 1947, *supra* note 10.

¹⁴ See Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992, *supra* note 3 at 121 (describing the United Mine Workers of America Welfare and Retirement Fund as a “merger of the two Krug-Lewis funds into a single trust”).

¹⁵ Nat’l Bituminous Coal Wage Agreement of 1947, *supra* note 10 at 433 (“This agreement supersedes all existing and previous contracts except as incorporated and carried forward herein by reference; and all local agreements, rules, regulations, and customs heretofore established in conflict with this agreement are hereby abolished.”).

¹⁶ Nat’l Bituminous Coal Wage Agreement of 1947, *supra* note 10 at 428.

obligation to provide such benefits pursuant to the agreement. Further, even if such an obligation had been included in the Krug-Lewis Agreement, the failure to specifically identify that obligation as one that should be carried forward and preserved might arguably cast doubt on whether the obligation should still exist.¹⁷

A review of court decisions that have discussed the Krug-Lewis Agreement has not revealed an obligation on the part of the federal government to provide health or retirement benefits pursuant to the agreement.¹⁸ While the agreement has been recognized as an expression of the federal government's interest in making medical and other benefits available to mine workers, it does not appear to have imposed an obligation on the federal government to provide such benefits.¹⁹

¹⁷ References to the Krug-Lewis Agreement in the National Bituminous Coal Wage Agreement of 1947 are limited generally to provisions involving payments made by mine operators to the welfare and retirement fund, and the transfer of funds to the United Mine Workers of America Welfare and Retirement Fund. See Nat'l Bituminous Coal Wage Agreement of 1947, *supra* note 10 at 431-32.

¹⁸ See, e.g., *Davon, Inc. v. Shalala*, 75 F.3d 1114 (7th Cir. 1996); *Lewis v. Jackson & Squire*, 86 F.Supp. 354 (W.D. Ark. 1949).

¹⁹ See, e.g., Lillian M. Spiess, *Paying What Was Promised: The Guarantee of Benefits Under the Coal Industry Retiree Health Benefit Act of 1992*, 25 *Quinnipiac L. Rev.* 73, 76 (2006) ("It should be noted that the Krug-Lewis Agreement was important not only because it established a fund for miner pension and welfare benefits, but also because it exemplified the federal government's continued commitment and involvement to investigating the availability and standard of medical programs and services available to miners and their families and ensured the delivery of these services.").