



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

OVERSIGHT OF ANNUAL FUND TRANSFER FOR MINER BENEFITS NEEDS IMPROVEMENT




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MAR 29 2017

Memorandum

To: Richard Cardinale
Acting Assistant Secretary for Land and Minerals Management

From: Mary L. Kendall 
Deputy Inspector General

Subject: Final Audit Report – Oversight of Annual Fund Transfer for Miner Benefits
Needs Improvement
Report No. C-IN-OSM-0044-2014A

This memorandum transmits the findings of our audit of the Office of Surface Mining Reclamation and Enforcement's (OSMRE) oversight of its annual funds transfer to the United Mine Workers of America Health and Retirement Funds (UMWAF) to provide benefits for retired miners and their families. Our audit objectives were to determine whether OSMRE has administered the transfer of funds to UMWAF consistent with the Federal Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), and to what extent OSMRE has provided oversight to ensure that UMWAF managed the transferred funds in accordance with regulations and statutes.

We make 21 recommendations to assist OSMRE in improving its oversight to ensure that UMWAF administers federally funded benefits in accordance with regulations and statutes. The monetary impact of our finding totaled \$58.8 million.

In response to our draft report, OSMRE concurred with 10 recommendations, did not concur with 5 recommendations, and did not specify whether it concurred with 6 recommendations. We will refer the recommendations to the Office of Policy, Management and Budget for resolution and implementation tracking.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions concerning this report, please do not hesitate to contact me at 202-208-5745.

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Results in Brief

As part of its mission, the Office of Surface Mining Reclamation and Enforcement (OSMRE) distributes Federal funds intended for the welfare of retired mine workers and their dependents. Each year, OSMRE transfers millions of dollars drawn from two Government sources—the interest account of the Abandoned Mine Land Reclamation Fund and the U.S. Treasury’s General Fund—to the United Mine Workers of America Health and Retirement Funds (UMWAF). From 2011 through 2015, OSMRE transferred \$961.3 million in funds to UMWAF to provide benefits for retired miners and their families.

Our audit objectives were to determine whether OSMRE has administered the transfer of funds to UMWAF consistent with the Federal Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), and to what extent OSMRE has provided oversight to ensure that UMWAF managed the transferred funds in accordance with regulations and statutes.

We found that OSMRE has provided minimal oversight of UMWAF’s federally supported health benefit plans, leaving the Federal Government without sufficient insight into how UMWAF has been using the transferred funds. As a result, OSMRE has not ensured that UMWAF managed the federally supported health benefit plans in accordance with regulations and statutes.

Federal regulations and statutes do not explicitly provide a mechanism for oversight by OSMRE. In addition, OSMRE personnel do not have experience with health benefit plans, leaving a large knowledge gap at all levels. Despite these limitations, OSMRE has continued to fund the annual transfer requests to UMWAF without obtaining and validating the necessary information and supporting documentation from UMWAF.

Without adequate oversight and guidance from the Federal Government, UMWAF made decisions on how to spend the funds transferred through OSMRE without considering the impact on the Federal Government, which is responsible for a majority of the costs for providing these benefits. As a result, OSMRE certified the annual fund transfers without requiring UMWAF to provide appropriate supporting documentation. Specifically, we found that OSMRE—

- did not verify beneficiary enrollments and assignments;
- used unreconciled information to support the fund transfers;
- received inadequate documentation to support administrative expenses;
- did not require UMWAF to report delinquent operators to the IRS;
- did not require UMWAF to apply residual funds to shortfalls; and
- did not require UMWAF to remit interest earned on Federal funds.

OSMRE’s inadequate oversight has allowed many decisions to reside with UMWAF, rather than the Federal Government. We make 21 recommendations to assist OSMRE in improving its oversight to ensure that UMWAF administers federally funded benefits in

accordance with regulations and statutes. With a substantial amount of Federal funding, the Federal Government should be more involved in reviewing these decisions. Specifically, OSMRE needs to provide greater oversight of how these funds are spent and UMWAF needs to be transparent in sharing transactions and information so the Federal Government can provide better accountability to taxpayers, who ultimately fund these health benefit plans.

Introduction

We reviewed the Office of Surface Mining Reclamation and Enforcement's (OSMRE) administration of the annual fund transfer to the United Mine Workers of America Health and Retirement Funds (UMWAF) to cover federally supported health benefit plans for retired miners and their families. We also audited information about the federally supported health benefit plans at UMWAF to determine the extent to which OSMRE provided the oversight necessary to conform to regulations and statutes.

Objectives

Our objectives were to determine—

1. whether OSMRE has administered the transfer of funds to UMWAF consistent with the Federal Coal Industry Retiree Health Benefit Act of 1992 (Coal Act); and
2. to what extent OSMRE has provided oversight to ensure that UMWAF managed the transferred funds in accordance with regulations and statutes.

Details regarding our scope and methodology are included in Appendix 1.

Background

Relevant Laws and Regulations

The Coal Act and the Surface Mining Control and Reclamation Act of 1977 (SMCRA) are the primary statutes that authorize the federally supported health benefit plans and guide the administration of these plans and the fund transfers from OSMRE. In addition, the federally supported health benefit plans are organized under the Employee Retirement Income Security Act of 1974 (ERISA), which protects the interests of beneficiaries in employee benefit plans.

The Coal Act states that health benefits will be provided for eligible retirees, even those who are without an employer providing health benefits. SMCRA supplements premiums for those mine workers who have been assigned to coal operators when the costs associated with their benefits exceed the premiums collected from coal operators.

Health Benefit Plans

UMWAF administers a total of 16 pension and health benefit plans. Seven of these plans are for mine workers and nine are for UMWAF employees and trustees. Of the seven plans for mine workers, three are supported by the Federal Government—the UMWA Combined Benefit Fund (CBF), the UMWA 1992 Benefit Plan (1992 Plan), and the UMWA 1993 Benefit Plan (1993 Plan) (see Appendix 2). Although the Federal Government financially supports these plans and OSMRE facilitates the annual fund transfers, it does not have explicit statutory oversight authority.

The UMWA 1974 Pension Plan (1974 Pension Plan), which is not supported by the Federal Government and not under OSMRE's purview, accumulates and pays for the majority of administrative costs for all plans, then allocates the expenses to the respective

plans. In this manner, the nine plans for employees and trustees are indirectly supported by the Federal Government because 55 percent of the total administrative expenses were charged to the CBF, the 1992 Plan, and the 1993 Plan for the years we reviewed.

Federal Funding

Annually, UMWAF receives money from the Federal Government to provide health benefits to retired mine workers and their dependents enrolled in the CBF, the 1992 Plan, and the 1993 Plan. Over the last 5 years, UMWAF received \$961.3 million in federal funds transferred through OSMRE, which came from the Abandoned Mine Land Reclamation Fund interest account and the Treasury General Fund. This amount does not include other Federal monies provided to UMWAF to support the plans, including Medicare reimbursements and benefits from the U.S. Department of Labor's (DOL) Federal Black Lung Program. While total Federal funds constituted 88 percent of the health benefit plan contributions for 2015, the Federal Government is not represented in the boards of trustees governing the federally supported health benefit plans. Specifically, the Coal Act defines the board of trustees but does not give the Federal Government the right to appoint representation.

To facilitate the annual transfer of funds, UMWAF and OSMRE entered into a Memorandum of Understanding (MOU) on October 31, 1996. This MOU outlined both parties' responsibilities regarding the annual transfer of monies to the federally supported health benefit plans. Subsequently, OSMRE and UMWAF developed an audit plan agreement to improve the reliability of data provided to OSMRE by UMWAF. The audit plan agreement provides that an independent external auditor perform additional agreed-upon procedures as negotiated by OSMRE and UMWAF. The audit plan agreement and the MOU were updated on September 30, 2014.

The U.S. Department of the Interior's (DOI) 2017 proposed budget contains provisions to expand funding for the 1993 Plan, and to begin providing payments to the 1974 Pension Plan. If enacted, the proposal would add millions of dollars in Federal appropriations.

Social Security Administration Assignment List

Under the Coal Act, as revised, the U.S. Social Security Administration (SSA) was tasked with two major roles for the CBF—assigning eligible beneficiaries to coal operators and calculating the “per beneficiary premium” for each year (beginning in 1993). SSA's beneficiary assignments and the premium calculations are for the CBF only—not the 1992 Plan or the 1993 Plan.

In 2007, the Coal Act required SSA to remove assignments to all operators, except those operators that signed a labor agreement in 1988. SSA provided a final assignment list in October 2009 and considers that responsibility complete.

SSA calculates the per beneficiary premium annually, and the operators are then responsible for paying the premiums for each beneficiary assigned to them. The Federal Government is responsible for paying all costs for unassigned mine workers and any costs that exceed the premiums collected from coal operators for assigned mine workers.

SSA sends the per beneficiary premium calculation to UMWAF each year in September for the upcoming plan year. This leaves UMWAF to calculate the premium for the 1992 Plan without Federal Government involvement. Like the CBF, the Federal Government pays for any difference between premiums collected and actual expenses. The Federal Government is responsible for the entire cost of providing benefits for the beneficiaries enrolled in the 1993 Plan as of December 31, 2006, while coal operators are responsible for any beneficiaries enrolled after that date.

Additional background information is included in Appendix 2 and a summary of our prior audit coverage is included in Appendix 3.

Results

OSMRE has administered the transfer of funds to UMWAF, as required by the Coal Act, but has provided minimal oversight of UMWAF's federally supported health benefit plans. Overall, OSMRE's ineffective oversight has left it uninformed as to how UMWAF has been using the transferred funds. As a result, OSMRE has not ensured that UMWAF managed the federally supported health benefit plans in accordance with regulations and statutes. We identified problems with UMWAF's enrolled and assigned beneficiaries, population data, support for administrative expenses, indirect cost rate, operator delinquencies, unused appropriations, and earned interest. OSMRE's inadequate oversight has allowed these issues to persist and, as a result, many decisions reside with UMWAF unchecked by the Federal Government.

OSMRE Provided Minimal Oversight of UMWAF

From 2011 through 2015, UMWAF received \$961.3 million from OSMRE, but the Federal Government had minimal oversight as to how these funds were spent. The legislative language of the Coal Act and SMCRA do not provide OSMRE with the necessary oversight provisions to ensure that UMWAF's federally supported health benefit plans conform to regulations and statutes.

Neither the Coal Act nor SMCRA provide explicit oversight authority to OSMRE. In the absence of oversight provisions in these Acts, OSMRE has generally relied on its MOU with UMWAF. This MOU does not adequately ensure effective oversight of the annual fund transfers because it is focused on the transfer process but does not address oversight.

Fund transfers from OSMRE accounted for 53 percent of total funding for the federally supported health benefit plans in 2015. Altogether, Federal funds (including Medicare) supported 88 percent of the health benefit plans in 2015 (see Appendix 2). The Federal Government, however, is not represented on the boards of trustees responsible for executing the federally supported health benefit plans' missions. Therefore, the Government is paying for these benefits but it does not have involvement in how this money is spent. For example, if the Federal Government was on the boards of trustees, it could assist with making decisions on the management of the plans such as changing the eligibility requirements for beneficiaries to be enrolled in the plans.

We recommend that OSMRE:

- Seek express authority to provide meaningful oversight through legislation.
- Negotiate meaningful oversight authority within the MOU.
- Partner with a Federal agency that has experience with health benefit plans, such as the U.S. Department of Labor's Employee Benefits Security Administration or the Pension Benefit Guaranty Corporation, and engage specialists, such as actuaries or accountants with expertise related to health benefit plans, to aid the review of data provided by UMWAF.

In addition, health benefit plans are outside of OSMRE's primary mission and the fund transfer to UMWAF for health benefit plans is the only such transfer within OSMRE's purview. While OSMRE personnel are experienced in financial accounting, they do not have experience with health benefit plans, leaving a large knowledge gap at all levels. OSMRE placed the responsibility of reviewing the transfer requests and supporting documentation on a single grants financial specialist. The review of support was minimal because this accounts for only a fraction of the individual's job responsibilities.

This issue was also raised in 2006, when the Secretaries of the Interior and Health and Human Services issued a joint letter to the Secretary of Labor asking for assistance with establishing "a unified system for financial reporting and accountability for Federal funds expended by [UMWAF]." The February 21, 2006 letter cited:

[T]he complexities, issues and responsibilities surrounding the funding of this private program are many and diverse. We believe that goals of accountability and efficient management would be promoted by periodic, unified reporting by [UMWAF] to an entity with expertise and an overarching interest in this area.

This collaboration never came into fruition, leaving OSMRE as the sole agency conducting any oversight of the fund transfers. Likewise, since SSA provided a final beneficiary assignment list in October 2009 and considers that responsibility complete, OSMRE has no assurance that necessary reassignments were completed appropriately. Further, OSMRE never obtained or reconciled SSA's final assignment list. Correct assignment data are necessary for OSMRE to ensure the Government is only paying for beneficiaries for which it is legitimately liable. UMWAF has been left to update the assignment list, taking bankruptcies and mergers into consideration.

Further, OSMRE reported difficulty obtaining supporting documentation from UMWAF for the yearly transfer, but has failed to take action and has continued to fund the transfer requests. OSMRE officials told us that when they asked questions about benefit costs, UMWAF personnel did not provide certain information and stated that the information was not within OSMRE's purview. Knowing that many problems existed, OSMRE asked us to conduct an audit.

OSMRE certified the annual fund transfers without requiring UMWAF to provide appropriate supporting documentation. As a result, OSMRE transferred \$961.3 million over the 5 years we reviewed without validating the data provided by UMWAF. Specifically, we found that OSMRE—

- did not verify beneficiary enrollments and assignments;
- used unreconciled information to support the fund transfers;
- received inadequate documentation to support administrative expenses;
- did not require that UMWAF report delinquent operators to the IRS;
- did not require UMWAF to apply residual funds to shortfalls; and
- did not require UMWAF to remit interest earned on Federal funds.

Beneficiary Enrollments and Assignments Not Verified

Thousands of beneficiaries were enrolled in the federally supported health benefit plans without any opportunity for the Government to review or verify that these enrollments and assignments were done correctly. UMWAF made these decisions without any input from OSMRE, even though the Federal Government is responsible for a majority of the cost of providing these benefits.

Combined Benefit Fund

OSMRE never attempted to verify the eligibility of the beneficiaries, such as reconciling UMWAF's beneficiary population with SSA's final assignment list to ensure that the assignments were correct and that all included individuals were eligible to receive benefits. In fact, since 2006, OSMRE never obtained the population data from UMWAF or SSA. UMWAF stated that it did not test SSA's final assignment list against its beneficiary population. Further, SSA concluded that its assignment responsibilities were complete as of October 2009, which left UMWAF to change assignments without Government oversight.

We compared UMWAF's assignments for the 2010 CBF population to SSA's final assignment list and found that over 9,000 individuals had assignments that were different from SSA's list. As shown in Figure 1, we also reconciled UMWAF's 2010 paid claims to the two lists and could not trace 8,923 beneficiaries (4,429 plus 4,494), with \$81.1 million in claims paid on their behalf (\$41,368,200 plus \$39,691,236), to the SSA final assignment list. Of these 8,923 beneficiaries, 4,494 had claims paid but did not show up on either list. UMWAF asserted that the beneficiaries in question relate to a large group that were previously added to the CBF by operators through a process called voluntary acceptance.¹

We recommend that OSMRE:

- Verify eligibility of beneficiaries receiving benefits from the federally supported health benefit plans.
- Reconcile the beneficiaries of the federally supported health benefit plans and move legitimate beneficiaries to the appropriate assigned operators or health benefit plans.
- Work with UMWAF to take appropriate action for those individuals inappropriately receiving benefits from the federally supported health benefit plans.
- Ensure that all beneficiaries have the appropriate assignment and are eligible to receive benefits.
- Annually reconcile changes in the beneficiary population, including additions, reductions, and changes in assignment.
- Resolve the \$36.8 million in claims paid for "after-acquired" beneficiaries.

¹ A group of large coal operators voluntarily accepted liability for premiums for certain mine workers.

Traced to UMWAF 2010 Population List	Traced to SSA Final Assignment List	Number of Beneficiaries	Claims Paid
Yes	Yes	15,656	\$149,940,948
Yes	No	4,429	\$41,368,200
No	Yes	1,015	\$10,813,436
No	No	4,494	\$39,691,236
Total		25,594	\$241,813,820

Figure 1. Discrepancies between UMWAF's 2010 claims paid, 2010 population list, and SSA's final assignment list. Source: OIG analysis of UMWAF data.

Further, without OSMRE's input, UMWAF continued to enroll beneficiaries in the CBF after the cutoff date established by the Coal Act. The Coal Act² states that in order to have membership in the CBF, individuals had to be enrolled and receiving benefits by July 20, 1992. The legislative history and statutory language do not provide for any exception to the July 20, 1992 cutoff date; however, UMWAF has added more than 1,693 beneficiaries that it refers to as "after-acquireds." Claims paid on behalf of "after-acquired" beneficiaries between 2009 and 2013 totaled \$36.8 million. We are questioning this amount.

We also raised this issue in our 2001 audit report and recommended that OSMRE work with DOI's Office of the Solicitor, UMWAF, Congress, and the U.S. Office of Management and Budget (OMB) to clarify eligibility. UMWAF claimed that this issue was resolved; however, we found no evidence of resolution during our current audit and found that UMWAF continued to add "after-acquired" beneficiaries as of the years we reviewed.

1992 Benefit Plan

The Coal Act states that the last signatory operators³ are required to maintain coverage for beneficiaries as long as the operators remain in business. We found that since 2000, UMWAF has added more than 7,000 unassigned beneficiaries who were previously the responsibility of assigned operators. OSMRE never questioned the addition of these beneficiaries.

Some coal operators stopped providing coverage for beneficiaries even though they continued in business, in violation of the provisions of the Coal Act, while others filed for bankruptcy or reorganized. Some of the coal operators that did file for bankruptcy liquidated; however, we found that others reorganized and continued operations without honoring the financial responsibility for benefits coverage.

While enrolling beneficiaries into the 1992 Plan is not prohibited, we are concerned that the current statute and OSMRE's oversight practices create an opportunity for assigned

² 26 U.S.C. § 9703(e) states: "The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992."

³ An individual who is or was a signatory to a coal wage agreement, 26 U.S.C. § 9701(c)(1).

operators, UMWA, and UMWAF to add beneficiaries without OSMRE's knowledge. These decisions are made without any input from the Federal Government, which pays costs for all unassigned beneficiaries and a portion of the costs for assigned beneficiaries.

1993 Benefit Plan

OSMRE has provided minimal oversight of the 1993 Plan to ensure that the Government only pays its fair share of costs. OSMRE has not obtained the population details from UMWAF. This allowed UMWAF to make changes to the beneficiary population without OSMRE's knowledge.

On December 19, 2006, UMWA entered into agreements with coal operators to allow previously ineligible beneficiaries into the plan. SMCRA, as revised, states that the Federal Government is responsible for paying the cost of providing health benefits for certain beneficiaries within the 1993 Plan who were eligible as of December 20, 2006. The date of the agreements coincides with the date required by statute, leaving the Federal Government responsible. Without OSMRE's knowledge, UMWAF backdated beneficiary enrollment letters for at least 1,038 individuals due to special agreements between UMWA and assigned operators. The statute specifies that the Federal Government is responsible for paying the cost of providing health benefits for eligible beneficiaries who were "actually enrolled" in the 1993 Plan as of December 31, 2006.

We found, however, that many applications were not received until 2007 or later, yet these individuals had enrollment letters dated December 19, 2006. Assigned operators are responsible for covering any beneficiaries that become eligible after December 31, 2006. Since these special agreements were dated the day before the eligibility cutoff date, the cost of providing benefits for these individuals became the responsibility of the Federal Government instead of the assigned operators. The ability to revise eligibility criteria and OSMRE's minimal oversight created an opportunity for assigned operators, UMWA, and UMWAF to retroactively enroll beneficiaries.

UMWAF officials explained that these eligibility agreements commonly occur when new collective bargaining agreements are negotiated. The Federal Government continues to pay the cost of benefits for the individuals added because of the special agreements. These agreements are not expressly prohibited by the current statute, and therefore we do not formally question the costs associated with these agreements.

Unreconciled Information Used to Support the Annual Fund Transfer

OSMRE did not reconcile actuarial reports and financial statements, population data, and assigned operator contributions for beneficiary premiums.

Actuarial Reports and Financial Statements

OSMRE relied upon the information provided in UMWAF's actuarial reports and financial statements. When we reviewed the actuarial reports, we found errors in the projections used to support the Federal funding request. We also found that UMWAF's independent auditors did not test the beneficiary populations against the requirements of the Coal Act and SMCRA. Further, the independent auditor relied on UMWAF's direction on how Federal funds were to be managed. OSMRE never obtained additional supporting documentation to verify the projections and beneficiary populations, and instead relied on this inaccurate information as support for the annual fund transfer request.

We recommend that OSMRE:

- Require UMWAF to submit detailed, complete, and accurate beneficiary information at the end of each year.
- Annually reconcile the beneficiary information with the actuary reports.
- Calculate the expected assigned operator contributions for each year using the number of assigned beneficiaries and the SSA premium and compare it to the contributions UMWAF received from assigned operators.

Population Data

As part of our population testing, we requested details of the beneficiary populations. In response to our requests, UMWAF provided four sets of data to support the actuarial projections. We found a number of inconsistencies among the files when we attempted to link beneficiary detail files, actuarial reports, and paid claims. For example, one set of CBF beneficiary detail files contained 1,800 individuals that were born in the 1800s and did not have associated termination dates. We knew this data could not be correct because 764 beneficiaries would have been 120 years of age or older in 2013.

Further, the data did not match the number of beneficiaries provided in the actuarial report. We asked UMWAF about the inconsistencies and it provided additional versions. For example, we compared the last version of beneficiary detail files, including beneficiary status of assigned or unassigned, to the actuarial report we found that the actuarial report listed 2,803 more beneficiaries than the population details file. OSMRE used the actuarial report as a basis for the annual funds transfer. If OSMRE had the beneficiary details, it could have done a simple comparison to note the differences between the files and actuarial reports.

Assigned Operator Contributions

The Coal Act requires operators pay the premiums for each CBF beneficiary assigned to them (calculated annually by SSA). OSMRE has not reconciled the assigned operator contributions for beneficiary premiums.

We found that the total CBF contributions by assigned operators was substantially less, \$55.5 million over 5 years, than the anticipated contributions if we used the number of assigned beneficiaries in the actuarial report multiplied by the premium prescribed by SSA. UMWAF stated that a group of individuals became unassigned as a result of the revisions to the Coal Act in 2006, which changed certain beneficiaries to unassigned. The revisions to the Coal Act specifically stated that beneficiaries assigned to coal companies

that were not part of the 1988 Bituminous Coal Wage Agreement, also known as 1988 Agreement Operators, should have their assignments removed.⁴ UMWAF did not change the assignments for these beneficiaries in the actuarial reports and OSMRE used the actuarial reports to support the annual fund transfers. Further, when we reviewed the billing information, we noted that UMWAF also removed assignments for beneficiaries that had been assigned to 1988 Agreement Operators, which is a violation of the Coal Act.

The Federal Government is responsible for covering any amounts not collected from coal operators. OSMRE relied on the actuarial report to support the annual fund transfer; however, it did not notice this discrepancy and failed to ensure that UMWAF appropriately billed and collected operator premiums.

Administrative Expenses Supported with Inadequate Documentation

OSMRE did not require adequate supporting documentation for the administrative expenses within UMWAF's annual fund transfer request.

Transparency of Reporting

We found that OSMRE did not obtain detailed information supporting the administrative expenses in the fund transfer request; however, it still certified the annual fund transfers. The DOI Cash Management Handbook requires offices to keep detailed records to support the transfer of funds from DOI.⁵

OSMRE could not determine the nature of these expenses because UMWAF used a single, unified accounting system for all plans and reported aggregated administrative expenses on its financial statements. As a result, OSMRE could not ensure that the Government was only paying its fair share of expenses.

OSMRE officials told us that they requested details for indirect administrative expenses for the federally supported health benefit plans. UMWAF would not provide this information to OSMRE because UMWAF claimed that the details contained information for plans not under the Federal Government's purview.

Nine of the 16 plans managed by UMWAF are for its employees and trustees' post-retirement benefits. All 16 plans are managed in a single, unified accounting system and most administrative expenses for all plans are paid through the 1974 Pension Plan.

We recommend that OSMRE:

- Require UMWAF to provide the details necessary for a thorough review of expenses underlying its financial statements.
- Obtain the services of an independent accountant and enrolled actuary who are familiar with health benefit plans to review the supporting documentation provided by UMWAF.
- Ensure that UMWAF conforms to OMB Circular A-122 (or succeeding requirements) by submitting and negotiating an approved indirect cost rate proposal to DOI's Interior Business Center.

⁴ 26 U.S.C §9706 (h)(1).

⁵ DOI Cash Management Handbook, Chapter 5, Section 18, "How are unvouchered expenditures handled?"

UMWAF allocated a percentage of the administrative expenses to the federally supported health benefit plans without providing details to OSMRE.

For example, one expense not included in the details is contributions to post-retirement benefits for the employees and trustees of the 1974 Pension Plan. The Federal Government contributed \$9 million of the total \$18.9 million in administrative expenses for these post-retirement benefits (48 percent) from 2009 through 2013. This was not listed as a separate line-item in the financial statements and instead was included in the total administrative expenses. UMWAF did not include these details in the annual fund transfer request. OSMRE did not have access to the detailed information and therefore could not perform the necessary oversight or ensure that Federal money was spent properly.

Indirect Cost Rate Proposal

We found that OSMRE has never required UMWAF to submit an indirect cost rate proposal to any Government agency for negotiation or approval, which violates OMB Circular A-122. OMB Circular A-122⁶ requires non-profit organizations to allocate indirect costs (in this case, to the federally supported health benefit plans) based on preapproved rates. It also instructs non-profit organizations on the processes for getting the rates approved. OMB Circular A-122 directs that all non-profit organizations (such as UMWAF) must submit initial indirect cost rate proposals to its cognizant agency for negotiation and approval.⁷ The non-profit organization must continue to submit a new indirect cost proposal each fiscal year. Moreover, the results of each negotiation must be formalized in a written agreement between the cognizant agency and the non-profit organization.

For example, the federally supported health benefit plans paid approximately \$40 million of the \$82.5 million in employee (non-trustee) salaries, or 48 percent, over the 5-year period we reviewed. UMWAF allocated these employee salaries based on multiple factors, including time studies, which have not been reviewed by the Interior Business Center. OSMRE should review the methodology used to allocate salaries and verify that it was calculated properly.

Delinquent Operators Not Penalized

OSMRE did not ensure that UMWAF reported the delinquent operators to the Internal Revenue Service (IRS). The Coal Act provides that coal operators who are delinquent in making payments to the CBF are subject to penalties levied through the IRS. The Coal Act does not require these delinquencies to be reported to the IRS and, as such, UMWAF did not notify the IRS of delinquencies. Rather, UMWAF charged uncollected premiums

⁶ OMB Circular A-122, Attachment A, Section E, "Negotiation and Approval of Indirect Cost Rates."

⁷ OMB Circular A-110 defines an "award" as "financial assistance that provides support or stimulation to accomplish a public purpose."

to the Federal Government as a shortfall. UMWAF's financial reports did not include details related to these delinquencies as a separate line-item.

We issued a Notice of Potential Findings and Recommendations to UMWAF on reporting these delinquencies to the IRS. In its written response, UMWAF stated that it is not in its interest to report the delinquent coal operators because "it would not result in any further income to the [CBF]," as the penalties would be paid to the U.S. Treasury and not UMWAF. If penalties were levied, coal operators would have a greater incentive to pay and the IRS would have higher standing in bankruptcy proceedings and the debt to the IRS may not be discharged. As of September 2013, the CBF had at least \$48.1 million in delinquencies without a single operator being reported to the IRS to levy penalties.

We recommend that OSMRE:

- Require UMWAF to provide the details necessary for a thorough review of assigned operator delinquencies.
- Obtain information from UMWAF on delinquent operators and report them to the IRS.

Residual Funds Not Applied to Shortfalls

We found that OSMRE has not required UMWAF to address residual money associated with the 2000 Appropriations Act. The 2000 Appropriations Act authorized a \$68 million transfer to cover "the amount of any shortfall in any premium account for any plan year under the [CBF]." Rather than using these funds to cover all shortfalls, UMWAF requested additional annual fund transfers from OSMRE. As a result, OSMRE and the U.S. Treasury have unnecessarily transferred an additional \$19.9 million to the CBF.

We recommend that OSMRE:

- Resolve the \$19.9 million in funds to be put to better use for unused appropriated funds held by the CBF related to the 2000 Appropriations Act.

UMWAF did not use the appropriated funds when premiums paid by operators were short of actual expenses incurred. Instead, UMWAF only used these funds when an assigned operator failed to make any payment. Had these funds been used appropriately, they would have been expended in 2000, however, \$19.9 million remained in the CBF General Fund in September 30, 2013, while UMWAF continued to request additional funds from OSMRE. The treatment of the appropriation and related balances was specifically listed in UMWAF's financial statements, which OSMRE received as support for the annual fund transfer request.

In 2000, Congress asked the U.S. Government Accountability Office (GAO) to review a proposal regarding many aspects of the CBF, including the solvency of the CBF. GAO's report on the CBF noted that the CBF's financial statements showed a \$12.2 million cumulative deficit for fiscal year (FY) 1999.⁸ The report added that in November 1999: "Congress appropriated an additional \$68 million in interest from the AML Fund to allow the [CBF] to meet its fiscal year 2000 commitments." The GAO report stated that if

⁸ GAO report: "Analysis of the Administration's Proposal to Ensure Solvency of the United Mine Workers of America Combined Benefit Fund," dated August 15, 2000 (Report No. GAO/AIMD-00-267R).

UMWAF used the appropriated funds to cover the shortfalls then it would be left with a positive fund balance of \$1 million as of September 30, 2000.

Since 2000, UMWAF incurred shortfalls for both benefit costs and administrative expenses, which would have used the entire \$68 million appropriation. We identified \$19.9 million as funds to be put to better use that instead remained in UMWAF'S investment accounts. Since UMWAF did not apply the invested funds to other shortfalls, OSMRE and the U.S. Treasury have unnecessarily transferred an additional \$19.9 million. Further, UMWAF earned interest on this \$19.9 million, which should have been returned to the U.S. Treasury. This issue is discussed in more detail in the following section of this report.

Earned Interest Not Remitted

We found that OSMRE failed to require UMWAF to remit interest earned on Federal funds to the Treasury General Fund. Federal appropriations law states that any interest earned on Federal funds belongs to the Government and must be reported to the Treasury and repaid to the Treasury General Fund.⁹ UMWAF held all monies transferred from OSMRE and Treasury in investment accounts earning interest, without remitting such interest proceeds to the Treasury. As a result, UMWAF has \$2.1 million in earned interest that should have been returned to the Treasury General Fund.

We recommend that OSMRE:

- Obtain authoritative Federal guidance from GAO for the disposition of interest earned.
- Ensure appropriate treatment of interest earned.
- Resolve the \$2.1 million in earned interest.

SMCRA requires OSMRE to pay funds in advance for the federally supported health benefit plans and provides a framework for the annual transfers.¹⁰ The details regarding computation, timing, reconciliation, and other procedures are outlined in the MOU between OSMRE and UMWAF.

SMCRA does not address investments and the disposition of interest earned on the advance of funds. The Coal Act, however, states that the monies transferred to UMWAF are only to be used to pay benefit costs and administrative expenses for beneficiaries. During the 2009 MOU negotiations for the individual federally supported health benefit plans, the combined plans were receiving approximately \$170 million in advance. OSMRE and the UMWAF officials disagreed on the matter of interest earned. Working with DOI'S Office of the Solicitor, OSMRE drafted an Advance Notice of Proposed Rulemaking which, if promulgated in regulation, would have required UMWAF officials to reduce the annual transfer request by the amount of interest earned on the prior year's fund transfer. This regulation was never issued by the Department. UMWAF officials asserted that any interest earned on the transferred funds belonged to UMWAF, but the trustees for the CBF and the 1992 Plan agreed to credit back the interest earned to

⁹ See GAO'S "Principles of Federal Appropriations Law," Vol. II, page 10-79 (February 2006), and cases cited therein.

¹⁰ 30 U.S.C. § 1232(h).

OSMRE under the terms of the MOU. The trustees for the 1993 Plan did not approve of this condition, and those interest earnings remain with UMWAF.

Further, UMWAF only credited back investment earnings related directly to the prior year's transfer. Amounts related to prior funding, such as the residual \$19.9 million from the 2000 Appropriations Act, were not included in the credit back of earnings.

Over the 5-year period, UMWAF earned \$2.7 million in interest on the federally supported health benefit plans. UMWAF credited OSMRE \$651,721 in the annual transfer requests, leaving \$2.1 million in earned interest with UMWAF (see Figure 2). We are questioning the \$2.1 million in earned interest.

	2009	2010	2011	2012	2013	Total
Total Plan* Investment Earnings	\$1,676,856	\$223,579	\$ 264,435	\$ 354,068	\$211,331	\$2,730,269
Less Amount Credited to OSMRE	336,968	41,815	83,930	117,140	71,868	651,721
Amount Remaining with UMWAF	\$1,339,888	\$181,764	\$180,505	\$236,928	\$139,463	\$ 2,078,548
*Federally supported health benefit plans						

Figure 2. Treatment of UMWAF investment earnings. Source: OIG analysis of UMWAF data.

Conclusion and Recommendations

Conclusion

OSMRE has provided minimal oversight of UMWAF's federally supported health benefit plans, leaving it without sufficient insight into how UMWAF has been using the transferred funds. As a result, OSMRE has not ensured that UMWAF managed the federally supported health benefit plans in accordance with regulations and statutes.

The Coal Act, SMCRA, and the MOU do not provide for sufficient oversight by OSMRE. In addition, OSMRE personnel do not have experience with health benefit plans, causing a large knowledge gap at all levels. OSMRE has funded the annual transfer requests without obtaining and validating the necessary information and supporting documentation from UMWAF.

Without adequate oversight and guidance from the Federal Government, UMWAF made decisions on how to spend the funds transferred through OSMRE, even though the Federal Government is responsible for a majority of the cost for providing these benefits. We found issues with UMWAF's beneficiary enrollments and assignments, population data, administrative expenses, operator delinquencies, unused appropriations, and earned interest. OSMRE's inadequate oversight has allowed these issues to persist and, as a result, many decisions regarding Federal funds resided with UMWAF without Government input or oversight.

Over the 5 years we reviewed, OSMRE transferred \$961.3 million to UMWAF to fund its federally supported health benefit plans. With a substantial amount of Federal funding, the Federal Government should be more involved in reviewing decisions. OSMRE needs to provide greater oversight over how these funds are spent and UMWAF needs to be transparent in its transactions and information so the Federal Government can provide better accountability to taxpayers, who substantially fund these health benefit plans.

Management Response

In response to our draft report, OSMRE generally agreed that additional oversight of the fund transfers to UMWAF is needed; however, OSMRE does not believe it has the authority to provide this oversight. OSMRE took exception to our conclusion that its oversight was inadequate, asserting that the inadequacy lies in the current legislative authority and not with its current processes.

While the Coal Act and SMCRA do not provide explicit authority, neither statute precludes OSMRE from exercising due diligence to protect taxpayer interests, as would be expected under any appropriation. Appropriations law requires Government agencies to ensure that Federal funds are expended only for the purposes intended under the law. We agree that explicit authority would assist OSMRE in providing improved oversight. We have seen little evidence, however, that OSMRE has done anything to address what it considers inadequate legislative authority, nor has it taken proactive steps to address many of the issues in this report that have been identified for years. In our opinion, the

past actions OSMRE outlined in its response are not sufficient. The response also included a number of technical points of different positions or interpretations. OSMRE's full response is included in Appendix 5.

OSMRE also provided us with UMWAF's comments on our draft report. We considered UMWAF's comments while revising our final report. Overall, UMWAF disagreed with our findings and conclusions. UMWAF suggested that Congress never intended for OSMRE to have any oversight of the Federal funds transferred to UMWAF, asserting that oversight was only to come from fiduciary trustees under ERISA. We do not see anything in ERISA that addresses the oversight of Federal funds, nor anything that would prevent such oversight. We find it unlikely that Congress intended for this amount of Federal funds to be expended without oversight or accountability. Further, we reiterate our concern that the trustees are appointed by the union and coal industry, and do not represent the interests of the Federal Government.

Recommendations Summary

We recommend that OSMRE:

1. Seek express authority to provide meaningful oversight through legislation.

OSMRE Response: OSMRE neither agreed nor disagreed with this recommendation, and stated that it will evaluate the feasibility and appropriateness of seeking additional authority through legislation. It plans to consider many factors in its evaluation, such as determining (1) whether OSMRE is the best qualified Federal agency to provide this oversight; (2) an effective way to ensure that the Federal Government is represented when decisions are made by UMWAF; and (3) a mechanism for ensuring transparency, efficiency, and accountability in this process.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. OSMRE recognized that decisions are being made by UMWAF; however, the Government needs to ensure that those decisions are appropriate and within the law. Evaluating the feasibility and appropriateness is not enough to resolve this recommendation. OSMRE stated that its oversight authority is limited by the current statute, as such it must seek legislative remedy. We will refer this recommendation to the Office of Assistant Secretary for Policy, Management and Budget (PMB) for resolution.

2. Negotiate meaningful oversight authority within the MOU.

OSMRE Response: OSMRE said that it will negotiate with UMWAF to ensure it has access to the full range of information necessary to ensure compliance with applicable laws and regulations.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

3. Partner with a Federal agency that has experience with health benefit plans, such as the U.S. Department of Labor's Employee Benefits Security Administration or the Pension Benefit Guaranty Corporation, and engage specialists, such as actuaries or accountants with expertise related to health benefit plans, to aid the review of data provided by UMWAF.

OSMRE Response: OSMRE neither agreed nor disagreed with this recommendation, and said that it will assess (1) the possibility of partnering with other Federal agencies with expertise in health benefit plans, and (2) the need for additional resources to assist with oversight.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. Assessing the feasibility of partnering with another agency is not enough to resolve this recommendation. OSMRE has acknowledged that it does not have the skills necessary to provide meaningful oversight of health benefit plans. We will refer this recommendation to PMB for resolution. OSMRE needs to provide PMB with a plan of action to include what assistance it will seek and from whom.

4. Verify eligibility of beneficiaries receiving benefits from the federally supported health benefit plans.

OSMRE Response: OSMRE did not concur with this recommendation, citing the absence of specific statutory oversight authority regarding eligibility. In addition, OSMRE said that it would not be feasible for it to test all current beneficiaries throughout the year.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. We consider this issue to be linked with the need for legislative remedy (Recommendation 1). Further, the intent of this recommendation is for OSMRE to conduct a one-time data analysis to validate changes in the enrolled population since 2006. OSMRE's response indicates that since November 2016, it has already investigated nearly 98 percent of the claims paid, so the remaining 2 percent should be feasible. We will refer this recommendation to PMB for resolution.

5. Reconcile the beneficiaries of the federally supported health benefit plans and move legitimate beneficiaries to the appropriate assigned operators or health benefit plans.

OSMRE Response: OSMRE concurred with this recommendation and will explore options for reconciling the beneficiary populations and validating operator assignments.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

6. Work with UMWAF to take appropriate action for those individuals inappropriately receiving benefits from the federally supported health benefit plans.

OSMRE Response: OSMRE agreed that UMWAF should take action against individuals inappropriately receiving benefits; however, OSMRE questioned its role in requiring UMWAF to take appropriate action.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. OSMRE should not be releasing funds for ineligible recipients. Further, the Improper Payments Act of 2012 requires agencies to have appropriate procedures in place prior to releasing funds, to prevent overpayments. OSMRE must not certify the amount requested in the annual fund transfers when ineligible beneficiaries are included. We will refer this recommendation to PMB for resolution.

7. Ensure that all beneficiaries have the appropriate assignment and are eligible to receive benefits.

OSMRE Response: OSMRE did not concur with this recommendation, citing the absence of specific statutory oversight authority.

OIG Reply: Similar to Recommendation 6, we consider this recommendation unresolved. OSMRE should not be releasing funds for ineligible recipients. Further, the Improper Payments Act of 2012 requires agencies to have appropriate procedures in place prior to releasing funds, to prevent overpayments. We will refer this recommendation to PMB for resolution.

8. Annually reconcile changes in the beneficiary population, including additions, reductions, and changes in assignment.

OSMRE Response: OSMRE concurred with this recommendation.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

9. Resolve the \$36.8 million in claims paid for "after-acquired" beneficiaries.

OSMRE Response: OSMRE concurred with this recommendation and requested a legal opinion from the Office of the Solicitor and will take action based on that legal advice.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

10. Require UMWAF to submit detailed, complete, and accurate beneficiary information at the end of each year.

OSMRE Response: OSMRE concurred with this recommendation.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

11. Annually reconcile the beneficiary information with the actuary reports.

OSMRE Response: OSMRE neither agreed nor disagreed with this recommendation, stating that it will evaluate the potential benefits of this recommendation.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. OSMRE uses the actuarial reports as a basis for the annual fund transfers, as such a reconciliation would assure validity of the reports. We will refer this recommendation to PMB for resolution.

12. Calculate the expected assigned operator contributions for each year using the number of assigned beneficiaries and the SSA premium and compare it to the contributions UMWAF received from assigned operators.

OSMRE Response: OSMRE did not concur with our original recommendation, indicating that reconciliation is UMWAF's responsibility and not OSMRE's. Further, OSMRE's response included figures provided by UMWAF for anticipated contributions.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. We revised the wording of the original recommendation to clarify what we expect OSMRE to do. We do not know the basis for the figures provided by UMWAF, and to our knowledge, OSMRE has not tested these figures for accuracy. Relying on information provided by UMWAF contradicts OSMRE's oversight responsibility. We will refer this recommendation to PMB for resolution.

13. Require UMWAF to provide the details necessary for a thorough review of expenses underlying its financial statements.

OSMRE Response: OSMRE concurred with this recommendation.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

14. Obtain the services of an independent accountant and enrolled actuary who are familiar with health benefit plans to review the supporting documentation provided by UMWAF.

OSMRE Response: OSMRE neither agreed nor disagreed with this recommendation, stating that it will evaluate the feasibility of this recommendation.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. We will refer this recommendation to PMB for resolution.

15. Ensure that UMWAF conforms to OMB Circular A-122 (or succeeding requirements) by submitting and negotiating an approved indirect cost rate proposal to DOI's Interior Business Center.

OSMRE Response: OSMRE neither agreed nor disagreed with this recommendation and requested a legal opinion from the Office of the Solicitor and will take action based on that legal advice. OSMRE suggested that the Federal Cost Principles may not apply because the transfers to UMWAF are mandatory under SMCRA.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. We note that Federal Cost Principles apply to mandatory or discretionary transfers, which is also described in GAO's "Principles of Appropriations Law." We will refer this recommendation to PMB for resolution.

16. Require UMWAF to provide the details necessary for a thorough review of assigned operator delinquencies.

OSMRE Response: OSMRE concurred with this recommendation.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

17. Obtain information from UMWAF on delinquent operators and report them to the IRS.

OSMRE Response: OSMRE did not concur with this recommendation, citing the absence of specific statutory oversight authority.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. We revised the wording of this recommendation to charge OSMRE with the responsibility to report delinquent operators, rather than UMWAF. We will refer this recommendation to PMB for resolution.

18. Resolve the \$19.9 million in funds to be put to better use for unused appropriated funds held by the CBF related to the 2000 Appropriations Act.

OSMRE Response: OSMRE neither agreed nor disagreed with this recommendation and requested a legal opinion from the Office of the Solicitor and will take action based on that legal advice.

OIG Reply: Based on OSMRE's response, we consider this recommendation unresolved. This money should be applied to any shortfall and should have been used for FY 2000 expenses, as GAO noted in its analysis. We will refer this recommendation to PMB for resolution.

19. Obtain authoritative Federal guidance from GAO for the disposition of interest earned.

OSMRE Response: OSMRE concurred with this recommendation.

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

20. Ensure appropriate treatment of interest earned.

OSMRE Response: OSMRE stated that it will take appropriate action when it receives an opinion from the Comptroller General regarding the treatment of interest earned (Recommendation 19).

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We will refer this recommendation to PMB for implementation tracking.

21. Resolve the \$2.1 million in earned interest.

OSMRE Response: OSMRE agreed that the earned interest should be resolved; however, it believes that the amount questioned should be reduced. OSMRE stated that it will take appropriate action when it receives an opinion from the Comptroller General regarding the treatment of interest earned (Recommendation 19).

OIG Reply: Based on OSMRE's response, we consider this recommendation resolved but not yet implemented. We note that the reduced amount of questioned costs, as suggested by OSMRE, did not take into account interest on all Federal funds held by UMWAF. We recommend that OSMRE take action on the full amount, as the cognizant Federal agency. We will refer this recommendation to PMB for implementation tracking.

Appendix I: Scope and Methodology

Scope

Our audit scope included funds transferred through the Office of Surface Mining Reclamation and Enforcement (OSMRE) to the United Mine Workers of America Health and Retirement Funds (UMWAF) for the United Mine Workers of America (UMWA) Combined Benefit Fund, the UMWA 1992 Benefit Plan, and the UMWA 1993 Benefit Plan, collectively referred to as the federally supported health benefit plans. Specifically, our scope included transfers made for fiscal years 2011 through 2015, which includes the federally supported health benefit plans' financial statements for 2009 through 2013. In order to fully develop our understanding and findings, however, we also reviewed supporting documentation pre-dating this audit period.

Methodology

We analyzed population data, expenditures, fund balance additions, and allocations. We relied on computer-generated data from OSMRE, UMWAF, and other entities. We also tested internal controls at UMWAF as they related to our objective. Please see details below regarding our testing methodology.

We also conducted interviews with OSMRE and UMWAF officials and staff, as well as other entities, to fully understand the transfers, benefit plans, and administrative expenses. In addition, we observed activities performed by UMWAF staff and reviewed documentation from UMWAF's financial system.

We visited or contacted the following OSMRE and U.S. Department of the Interior offices—

- Accounting and Financial Management;
- Finance and Administration Directorate;
- Office of Planning, Analysis, and Budget; and
- Office of Solicitor.

We visited or contacted the following UMWAF offices—

- Office of Executive Director;
- Finance and General Services;
- Research and Analysis;
- Office of General Counsel;
- Operations and Eligibility Services;
- Human Resources;
- Investments; and
- Systems.

We also visited or contacted—

- U.S. Department of Labor;
- U.S. Social Security Administration;
- U.S. Office of Management and Budget;
- U.S. Congressional Budget Office;
- Centers for Medicare and Medicaid Services;
- Big Sandy Area Development District;
- UMWAF's external accountants;
- UMWAF's actuaries; and
- UMWAF's bank.

Our audit also included reviewing eligibility information, benefit costs, administrative expenses, investment income, and certain liabilities.

In order to test beneficiary eligibility, we reviewed computer-generated lists provided by UMWAF that contained details of the beneficiaries enrolled in the federally supported health benefit plans. For the CBF, we traced the beneficiary information in the beneficiary detail lists to the final assignment list provided by the U.S. Social Security Administration.

For the 1992 and 1993 Plans, we used random samples of the beneficiaries included in the beneficiary detail lists to select beneficiaries and review the supporting documentation for eligibility in the federally supported health benefit plans. For the 1992 Plan, the population size was 7,066 and our total sample size was 47. For the 1993 Plan, the population size was 11,021 and our total sample size was 71. The supporting documentation resided in UMWAF's information system and included applications, work histories, documented statements, and other general support. In multiple cases, the documentation was not available immediately as it was reported to be on microfiche or hardcopies located off site. In addition, when reviewing the beneficiaries' supporting documentation for the 1992 and 1993 Plans, we selected additional beneficiaries based on professional judgement.

We reviewed the administrative expenses by sampling specific transactions from computer-generated lists provided by UMWAF and reviewed supporting documentation. The supporting documentation included invoices, internal UMWAF reports, and transaction details produced from UMWAF's accounting system. For the 1992 Plan, 1993 Plan, and the CBF, we used sampling software to determine our samples. Our universe consisted of general ledger transactions, filtered to include only direct administrative-management fee expenses. For the CBF, our population was 124 transactions and our resulting sample size was 32 items. For the 1992 Plan, our population was 126 transactions and our resulting sample size was 18 items. For the 1993 Plan, the population was 125 transactions and the resulting sample size was 11 items. For the 1974 Pension Plan, we randomly selected a month from each of the 5 fiscal years we reviewed as our universe. The population included 2,139 transactions and the resulting sample size was 82 items. We did not project our findings in the report. We encountered difficulties obtaining the entire universe of expenses due to limited access to

UMWAF's records and UMWAF's inability to produce the reports from the accounting system.

Other information used or reviewed in the course of the audit includes—

- annual transfer requests from UMWAF to OSMRE;
- annual financial statements for each plan contained within the Annual transfer requests;
- Form 5500 filings from the Department of Labor;
- confirmations from UMWAF's investment bank;
- workpapers from UMWAF's independent auditors and actuaries; and
- internal policies and documentation provided by UMWAF.

We calculated the monetary impact based on actual dollars identified, based on UMWAF's data regarding claims paid.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix 2: Additional Background

Krug-Lewis Agreement

In 1945, the labor union now known as the United Mine Workers of America (UMWA) first tried to create a medical fund for mine workers. Coal operators refused to pay royalties to cover the cost of these benefits, and negotiations continued into 1946. During the National Bituminous Wage Conference in 1946, coal operators rejected the United Mine Workers of America Health and Retirement Funds' (UMWAF) proposal again, and mine workers went on strike.

In order to stop the strike, the Federal Government intervened. President Harry S. Truman directed the Secretary of the Interior, Julius Krug, to take over the coal mines in the United States and negotiate the necessary changes in medical care reform for mine workers with John L. Lewis, the president of the labor union. In 1946, the resulting Krug-Lewis Agreement created a welfare and retirement fund for mine workers to be managed by three trustees, one appointed by the Federal Government, one appointed by UMWA, and one to be chosen by the other two. UMWAF was created in 1946 in order to provide medical care for mine workers and their dependents.

In 1947, the Federal Government turned over the management of the health and retirement plans to UMWA. Since then, many coal operators have gone out of business or have discontinued providing benefits, which disregards the coal operators' agreement of guaranteed lifetime benefits. As such, many mine workers and their dependents would have been left without health benefits had the Federal Government not intervened in 1992 with laws and regulations protecting the mine workers' health benefits.

Government Representation

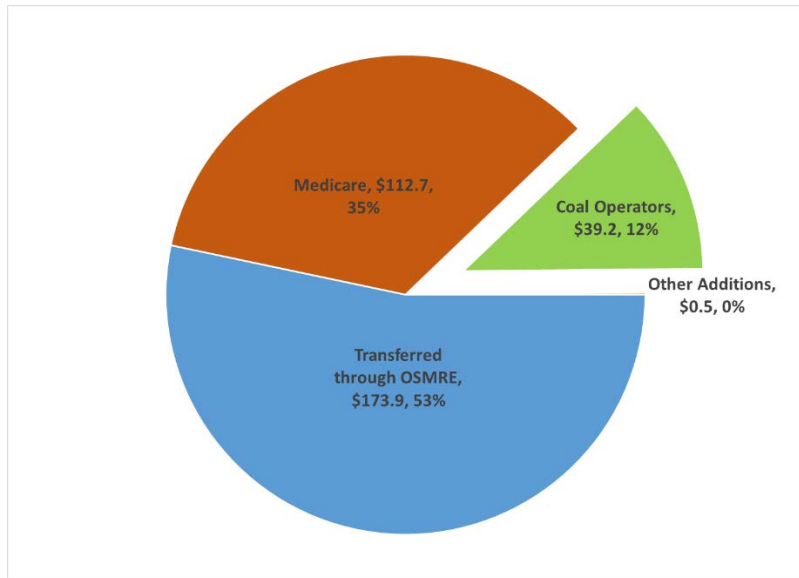
While the Krug-Lewis Agreement originally included Federal representation, the legislation superseding the agreement did not provide for such representation. The Coal Act provides that the coal operators and UMWA appoint members of the board of trustees for the Combined Benefit Fund. Specifically, the coal operators and UMWA each appoint two trustees; those four individuals then appoint three additional members. The Coal Act provides less guidance for the 1992 Benefit Plan and the 1993 Benefit Plan boards of trustees.

According to ERISA, the boards of trustees are responsible for overseeing the use of plan assets "in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan."¹¹

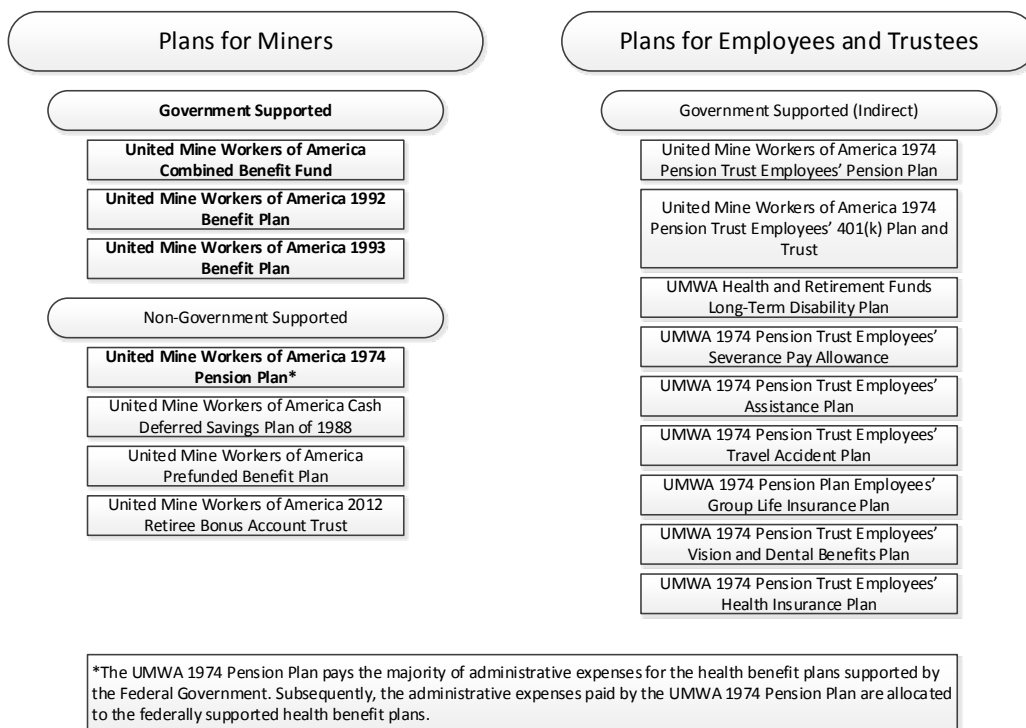
While Federal funds constitute 88 percent of the health benefit plan contributions, the Federal Government is not represented in the governance of the federally supported

¹¹ 29 U.S.C. § 1104(a)(1)

health benefit plans. In 2015, UMWAF provided benefits to more than 26,000 beneficiaries at a total cost of \$326.3 million. Funding for these expenses was primarily provided by three sources: (1) fund transfers from the Federal Government through OSMRE – \$173.9 million; (2) Medicare – \$112.7 million; and (3) coal operators – \$39.2 million.



Health Benefit Plans Managed by UMWAF



Eligibility and Funding Requirements for Federally Supported Health Benefit Plans

	Combined Benefit Fund	1992 Benefit Plan	1993 Benefit Plan
Statute	Coal Act	Coal Act	SMCRA
Eligibility	Individuals receiving benefits under the 1950 or 1974 UMWA Benefit Plans as of July 20, 1992. 26 U.S.C. § 9703 (f)	Individuals not eligible for the CBF who would have been eligible for the 1950 and 1974 UMWA Benefit Plans. Individuals who retire after September 30, 1994 are not eligible for these benefits. 26 U.S.C § 9712 (b)	Federal transfers are calculated based only on individuals who were actually enrolled as of December 31, 2006. 30 U.S.C. § 1232 (h)(2)(C)
Cutoff Date	July 20, 1992 26 U.S.C § 9703 (e)		December 31, 2006 30 U.S.C. § 1232 (h)(2)(C)
Specifications	The CBF is specifically prohibited from enrolling any individuals not receiving benefits under the 1950 or 1974 UMWA Benefit Plans as of July 20, 1992. 26 U.S.C. § 9703 (e)	Individuals that should receive benefits from a coal operator that signed a coal wage agreement since 1978 but do not. Coverage provided by coal operators that signed a coal wage agreement since 1978 should be provided as long as the last signatory operator or related person remains in business. 26 U.S.C § 9712 (b)(2)(B) 26 U.S.C § 9711 (a)	An individual is “considered enrolled” who was “eligible to receive benefits from the Plan as of [December 20, 2006], even though benefits were being provided to the individual pursuant to a settlement agreement approved by order of a bankruptcy court entered on or before September 30, 2004.” 30 U.S.C. § 1232 (h)(2)(D)
Funding	Coal operators pay a premium for each beneficiary assigned to them. 26 U.S.C. § 9704 (a)	Coal operators pay premiums for each beneficiary assigned to them. 26 U.S.C § 9712(d) (1)(A)	Coal operators pay all costs for individuals that did not meet enrollment requirements for federally funded benefits (post-2006 population). 30 U.S.C. § 1232 (h)(2)(C)
	The Federal Government pays all costs associated with unassigned beneficiaries and shortfalls related to assigned beneficiaries. 30 U.S.C. § 1232 (h)(2)(A)	The Federal Government pays all costs associated with unassigned beneficiaries and shortfalls related to assigned beneficiaries. 30 U.S.C. § 1232 (h)(2)(B)	The Federal Government pays all costs for individuals that met enrollment requirements for federally funded benefits (pre-2006 population). 30 U.S.C. § 1232 (h)(2)(C)

Appendix 3: Prior Audit Coverage

We issued an audit report and advisory letter regarding the Combined Benefit Fund (CBF) in February 2001, as well as an inspection report about the federally supported health benefit plans in December 2013.

Our 2001 audit report focused on the accuracy of the transfer. We concluded that both dollar amounts were accurate, but the United Mine Workers of America Health and Retirement Funds (UMWAF) had understated the transfer bills for 1999 and 2000. In addition, our 2001 audit report cited that UMWAF was inappropriately enrolling beneficiaries who did not qualify for the CBF because they were not eligible and enrolled as of July 20, 1992, the bright-line date established in the Federal Coal Industry Retiree Health Benefit Act of 1992 (Coal Act). The 2001 advisory letter focused on the long-term sustainability of the CBF and concluded that without additional funding, the CBF may not be able to meet its future obligations.

Our 2013 inspection was initiated after the Office of Surface Mining Reclamation and Enforcement (OSMRE) expressed concerns regarding increasing administrative costs associated with UMWAF's administration of the federally supported health benefit plans. We determined that administrative costs associated with the funding request were aligned with industry standards and appeared reasonable based on industry benchmarks. We noted that UMWAF actuaries project costs and that the cost projections are determined in part based on data received from the U.S. Social Security Administration as prescribed by the Coal Act. We also reviewed UMWAF's independent auditor's financial reports and the budget information provided by OSMRE, which indicated that administrative costs are at or below the 12 percent observed in private industry. The report also acknowledged that OSMRE has limited programmatic oversight authority under Surface Mining Control and Reclamation Act of 1977 (SMCRA) and serves primarily as a pass-through for funds transferred to the federally supported health benefit plans.

Appendix 4: Monetary Impact

Description	Category	Amount (in millions)
"After-acquired" Beneficiaries	Questioned Costs (Ineligible)	\$36.8
Shortfalls	Funds to be Put to Better Use	19.9
Retained Interest	Questioned Costs (Ineligible)	2.1
Total		\$58.8

Total Monetary Impact by Category

Category	Amount (in millions)
Questioned Costs	\$38.9
Funds to be Put to Better Use	19.9
Total	\$58.8

Appendix 5: Response to Draft Report

The Office of Surface Mining Reclamation and Enforcement's response follows on page 34.



United States Department of the Interior

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT Washington, D.C. 20240



MAR - 9 2017

Memorandum

To: Mary L. Kendall
Deputy Inspector General

Through: Richard T. Cardinale *Richard T. Cardinale*
Acting Assistant Secretary, Land and Minerals Management

From: Glenda H. Owens *Glenda H. Owens*
Acting Director

Subject: Draft Audit Report – Oversight of the Annual Fund Transfer For Miner Benefits Needs Improvement, No. C-IN-OSM-0044-2014A

Thank you for the opportunity to provide comments on Draft Audit Report No. C-IN-OSM-0044-2014A entitled "Oversight of the Annual Fund Transfer For Miner Benefits Needs Improvement," dated February 23, 2017. The stated objective of your audit was "to determine whether OSMRE has administered the transfer of funds to UMWAF consistently with the Federal Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), and to what extent OSMRE has provided oversight to ensure that UMWAF managed the transferred funds in accordance with regulations and statutes." (Draft Audit Report at 1.) We appreciate the Office of Inspector General (OIG) providing an independent review of this important program.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) agrees with the Draft Audit Report's main point that significant amounts of Federal funds are being transferred to the United Mine Workers of America Health and Retirement Funds (UMWAF) with no existing statutory provisions for Federal oversight in the authorizing legislation. The draft report, however, attempts to support that point by stating that OSMRE's oversight is inadequate, when, in fact, the inadequacy lies in the current legislative authority. There is, no doubt, room for improvement, but given its existing statutory authority, OSMRE has been providing significant oversight. Absent a change in OSMRE's statutory authority that enhances its direct oversight abilities, OSMRE's role in this process is to ensure that the transfers made to the three UMWAF health care plans comply with the requirements of the Surface Mining Reclamation and Control Act of 1977 (SMCRA), as amended. The current narrative in the draft report that OSMRE's oversight is inadequate omits important information. We recommend that the final

report be revised to draw a sharper distinction between the inadequacy of the legislative authority and the areas where OSMRE could improve its oversight in the absence of additional authority.

In addition, we believe that the Draft Audit Report does not sufficiently acknowledge the positive actions that OSMRE has taken since 2006 to increase accountability, to provide more assurances that the amount of the Federal funds transferred by OSMRE to the UMWAF are properly accounted for, and to improve the UMWAF funds transfer process. Instead, the Draft Audit Report leaves the reader with the erroneous impression that OSMRE has been lax and has done little to ensure that the transfers to the UMWAF are being made in accordance with transfer requirements in SMCRA. This is simply not true. One example of our attempts to gain the information necessary to support the annual transfers is the Memorandum of Understanding (MOU) that was executed between OSMRE and the UMWAF in 2009 and revised in 2014.

Although the Draft Audit Report mentions this document, it dismisses it as simply an outline of both parties' responsibilities regarding the annual transfer. It fails to mention that, among the UMWAF's responsibilities, the MOU includes requirements to provide OSMRE with statements containing specific information and certifications to support the UMWAF's estimates. (Draft Audit Report at 4.) While the Draft Audit Report briefly mentions OSMRE's Audit Plan Agreement and Agreed Upon Procedures with the UMWAF, it does not sufficiently detail the provisions they contain that allow OSMRE to gain additional information from the UMWAF's existing independent auditors. The Agreed Upon Procedures allow OSMRE to identify specific areas of interest for the independent auditors to focus on each year. Work performed by the independent auditors includes the review of UMWAF administrative expenses, reconciliation of the "true-up" to financial statements, and sampling of benefit payments to test whether payments were proper. Moreover, a few years ago, because OSMRE was not satisfied with the supporting documents that it obtained from the UMWAF, this office sought assistance from your office, which led to the Inspection Report titled United Mine Workers of America Health and Retirement Funds (Revised), issued on December 13, 2013. Your final report should thus be revised as appropriate to take these oversight actions into account.

Finally, the Draft Audit Report identifies six findings that purport to show how OSMRE has provided minimal oversight of the transfers to the UMWAF: (1) OSMRE did not verify beneficiary enrollments and assignments; (2) OSMRE used unreconciled information to support the fund transfers; (3) OSMRE received inadequate documentation to support administrative expenses; (4) OSMRE did not require the UMWAF to report delinquent operators to the Internal Revenue Service (IRS); (5) OSMRE did not require the UMWAF to apply residual funds to shortfalls; and (6) OSMRE did not require the UMWAF to remit interest earned on Federal funds. (Draft Audit Report at 1.) We reviewed each finding and our response to each is discussed below. We trust that the final report will be revised to correct several inaccurate or misleading facts that appear in the Draft Audit Report. In addition, we have prepared a separate response to your Recommendations. (See Attachment 1.) Additional technical details related to your findings are contained in Attachment 2. Finally, we received a response to the Draft Audit Report from the UMWAF, with a request that we forward it to you. (See Attachment 3.)

Response to Findings

Verification of Beneficiary Enrollment and Assignments.

The Draft Audit Report concludes that the UMWAF made decisions about beneficiary enrollment and assignment without any input from OSMRE. However, the report fails to acknowledge that neither SMCRA nor the Federal Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act) contemplate any role for OSMRE in the enrollment and assignment of beneficiaries. Congress clearly knows how to assign a Federal agency such a role. For instance, as originally enacted in 1992, the Coal Act specifically tasked the Secretary of Health and Human Services (HHS) with a role in assigning beneficiaries. By contrast, Congress only tasked the Secretary of the Interior with the responsibility for transferring money from the Abandoned Mine Reclamation Fund (the AML Fund) to one of the UMWAF's health care plans—the Combined Benefit Fund—in an amount up to \$70 million.¹ Congress significantly amended Title IV of SMCRA in 2006 (the 2006 amendments), which, in part, changed the formula for calculating the transfers to the Combined Benefit Fund and added a requirement for Interior to make transfers to the two other UMWAF health care plans.² At that time, Congress also made revisions to the Coal Act.³ These revisions to the Coal Act and to SMCRA did not confer any additional roles or responsibilities on OSMRE, other than as the transferor of Federal funds. Based on this history, it appears that Congress envisioned a narrow role for OSMRE in the process.

Nevertheless, during the process of responding to the Draft Audit Report, the UMWAF has voluntarily provided us with a large amount of information about its enrollment and assignment practices. After reviewing this information, we have concluded that the statistics and examples provided in the Draft Audit Report to support the conclusion that the UMWAF's beneficiary enrollment and assignments are not validated are incorrect or potentially misleading. One example of this is the analysis in the Draft Audit Report which compares the Combined Benefit Fund paid claims for 2010 with what appears to be an incomplete list of miners and dependents. (Draft Audit Report at 8-9.) Because the draft report used an incomplete list for comparison, it is not surprising that it could not trace 8,923 beneficiaries to their paid claims. Using more comprehensive data, OSMRE was able to trace at least 97.9% of the claims paid for

¹ Compare Pub. L. No. 102-486, § 19143(a) (adding 26 U.S.C. § 9706 requiring the assignment of beneficiaries by HHS) with *id.* at § 19143(b) (revising SMCRA to require Interior to transfer AML Fund moneys to the Combined Benefit Fund). In addition, the Coal Act also specified how the AML Fund transfers were to be used by the Combined Benefit Fund. See *id.* at § 19143(a) (adding 26 U.S.C. § 9705(b)).

² Pub. L. No. 109-432, Division C, Title II, § 202(d).

³ *Id.* at §§ 211-213.

2010 to eligible beneficiaries.⁴ Some of the remaining 2.1% that we could not reconcile falls into the category of beneficiaries known as “after-acquireds”, which are the subject of differing legal interpretations. *See* Attachment 2 for a more detailed discussion of our comparison of claims paid by the Combined Benefit Fund, including the after-acquireds issue.

As another example, the Draft Audit Report states with respect to the 1992 Benefit Plan that “we found that since 2000, UMWAF has added more than 7,000 unassigned beneficiaries who were previously the responsibility of assigned operators. OSMRE never questioned the addition of these beneficiaries.” (Draft Audit Report at 9.) This statement ignores the fact that OSMRE did not begin making transfers to the 1992 Benefit Plan until 2007. The Draft Audit Report criticizes OSMRE’s minimal oversight of the assignments made by the 1992 Benefit Plan from 2000-2006, a time when OSMRE did not have any involvement with the 1992 Benefit Plan. Moreover, as the Draft Audit Report recognizes: “[E]nrolling beneficiaries into the 1992 Benefit Plan is not prohibited.” (*Id.* at 10.) The addition of unassigned beneficiaries is a requirement of the Coal Act and a normal consequence of mining companies going out of business. (*See, e.g.*, 26 U.S.C. § 9712(b).) The draft report, moreover, does not demonstrate that any of these beneficiaries were added in violation of any law.

The draft report also raises a concern about back-dating of beneficiary enrollment letters in the 1993 Benefit Plan, but makes no finding on that point. As explained in Attachment 2 at 3, the UMWAF’s routine practice of automatically enrolling beneficiaries in order to assure those individuals would not suffer a lapse in coverage and subsequently verifying the eligibility of each individual, was legal and was the reason for the differences between enrollment and application dates. OSMRE recommends that the OIG review the information provided by the UMWAF in Attachment 3 and consider revising or deleting this section from the final report.

Use of Unreconciled Information to Support Annual Fund Transfers.

The Draft Audit Report finds that OSMRE did not have adequate information to support the annual transfers to the UMWAF because “OSMRE did not reconcile actuarial reports and financial statements, population data, and assigned operator contributions for beneficiary premiums.” (Draft Audit Report at 10.) This conclusion omits the fact that, as required by section 402(h)(3) of SMCRA, OSMRE performs an annual reconciliation or “true up” of the UMWAF’s transfer request and audited financial statements to assure that the funds transferred to the UMWAF are fully accounted for in accordance with 30 U.S.C. § 1232(h)(3). This adjustment ensures that the Federal government does not transfer more funds to the UMWAF than SMCRA allows. This reconciliation process is necessary because SMCRA requires that OSMRE advance annual transfer of funds to the UMWAF based on an estimate from each health care plan’s trustees regarding their projected funding needs; these estimates are based on actuarial reports. Once the UMWAF’s fiscal year has ended and actual expenses for that year

⁴ The fact that we could not trace the remaining 2.1 percent of the claims paid in 2010 to eligible beneficiaries does not mean that these claims were improper. Given the short time frame we had to respond to the Draft Audit Report, we did not have time to manually reconcile this remaining 2.1 percent.

have been calculated, OSMRE and the UMWAF compare the amounts transferred (which were based on an actuarial estimate) with the actual expenses and receipts, based on the audited financial statements, and make any necessary adjustments to the next fiscal year's transfer to ensure that the Federal government neither overpaid nor underpaid the UMWAF. While this process would not provide OSMRE with information about any improperly enrolled or assigned individual (if there are any), the desire of both OSMRE and UMWAF to minimize the amounts that need to be reconciled has led to improved actuarial estimates from the UMWAF. In addition, OSMRE has also identified errors in UMWAF calculations through this process. The efficacy of this process is demonstrated in the results. Since implementing this process with the 2007 transfer, the cumulative net variance between actuarial-based estimates and actual expenses is less than one percent across the three UMWAF health benefit plans. The Draft Audit Report fails to acknowledge this aspect of OSMRE's oversight of the Federal funds it transfers to the UMWAF, and, instead, criticizes OSMRE for relying on the "actuarial report as a basis for the annual funds transfer." *Id.* at 11. The implication is that, despite a less than one percent variance between actuarial estimates and actual expenses that occurred between 2007 and 2016, OSMRE should not rely on those actuarial estimates because they are inaccurate. Instead, the draft report suggests OSMRE should attempt to reconcile the UMWAF's transfer request to actual numbers before the transfer is made. Such a burdensome process is not required by SMCRA and would require significant time and expense with questionable benefit. Indeed, section 402(h)(3) of SMCRA already requires that adjustments be made to ensure that the Federal government only pays for the actual expenses, less actual receipts, regardless of the initial estimate that supported the initial transfer of funds. 30 U.S.C. § 1232(h)(3). OSMRE requests that the final report be revised to explain that OSMRE performs a comprehensive reconciliation process every year as required by SMCRA and that this process has been effective in resolving data discrepancies.

The draft report also states that the auditors "found that the total [Combined Benefit Fund] contributions by assigned operators was substantially less, \$55.5 million over 5 years, than the anticipated contributions if we used the number of assigned beneficiaries in the actuarial report multiplied by the premiums prescribed by SSA." (Draft Audit Report at 11.) However, as explained in detail in Attachment 2, the UMWAF has provided OSMRE data that shows that the calculations in the Draft Audit Report were incorrect. The UMWAF's calculations show that the UMWAF collected all but \$315,394 of the premiums that their actuary originally estimated. In light of this error, we recommend that, before a final report is issued, the OIG review the data provided by the UMWAF and make any necessary revisions to this portion of the final report to incorporate the correct calculations.

Inadequate Documentation to Support Administrative Expenses.

The Draft Audit Report states that OSMRE received inadequate documentation to support the administrative expenses contained within the UMWAF's annual fund transfer request. Draft Audit Report at 12-13. Although OSMRE has expressed concerns about the allocation of administrative expenses between the individual plans covered by the UMWAF over the years, it does not agree with the analysis in the Draft Audit Report. The majority of the administrative expenses included within the transfer requests were for salaries and benefits. The

Draft Audit Report opines that the “UMWAF allocated these employee salaries based on multiple factors, including time studies, which have not been reviewed by the Interior Business Center.” *Id.* at 13. The Draft Audit Report does not indicate why the Interior Business Center would be required to review this information or why it is in a better position to review this information than OSMRE. Indeed, the Draft Audit Report does not identify any erroneous allocations or any impact on the amounts transferred to the UMWAF. Significantly, moreover, another Federal agency, the Centers for Medicare & Medicaid Services (CMS) within HHS, performs an annual review of the UMWAF’s allocation of administrative expenses. The Draft Audit Report’s conclusion that OSMRE does not have access to the information necessary to perform adequate oversight or ensure that Federal money was spent properly (*id.* at 13) appears speculative at best in view of its failure to identify any erroneous allocations and the fact that another Federal agency already performs an annual review of the UMWAF’s administrative expenses.

OSMRE agrees with the Draft Audit Report that there is a need for OSMRE to have documentation to substantiate the reasonableness of the methodology for allocating administrative expenses. OSMRE, however, was under the impression that in 2013 the OIG had reviewed the UMWAF’s independent auditor’s financial reports, and the budget information provided by OSMRE, which included administrative costs for all three trust funds, and substantiated the reasonableness of UMWAF’s administrative cost methodology when it issued an Inspection Report entitled *United Mine Workers of America Health and Retirement Funds* (Revised) (December 13, 2013). In that report, the OIG stated “the administrative costs associated with the UMWAF appear reasonable.” 2013 Report at 3. In reaching that conclusion the OIG stated that its “review of the independent auditor’s financial reports and of the budget information provided by OSMRE, which included administrative costs for all three trust funds, indicated that administrative costs are at or below the 12 percent observed in private industry.” *Id.* at 2. Significantly, that report did not cite any inadequacies in the UMWAF’s documentation. Moreover, the OIG went on to state in that report that “SMCRA does not expressly require OSMRE to oversee management of UMWAF, including how administrative costs are spent. The law requires that OSM make payments to the three health trusts.” *Id.* at 3. That statement is in sharp contrast to the current Draft Audit Report, which now criticizes OSMRE for not providing more oversight of the management of the UMWAF since 2006, even though there have been no significant legislative changes to SMCRA or the Coal Act relating to OSMRE’s oversight since that 2013 report. In addition, there have not been any problems identified in the Draft Audit Report related to the allocation of administrative expenses between 2013 and now. If the OIG no longer believes that the conclusions reached in the 2013 report are accurate, OSMRE requests that the OIG explain the basis for its revised conclusions. If, on the other hand, the OIG stands by its conclusions in the 2013 report, OSMRE requests that it revise this section of the Draft Audit Report to acknowledge and reflect that fact.

Finally, the Draft Audit Report finds that “OSMRE has never required UMWAF to submit an indirect cost proposal to any Government agency for negotiation or approval, which violates OMB Circular A-122.” (Draft Audit Report at 13.) OMB Circular A-122 established “Cost Principles for Non-Profit Organizations.” Although we have not yet reached a final

decision on the applicability of OMB Circular A-122 to the annual transfers we make to the UMWAF, the Solicitor's Office has provided preliminary legal advice that OMB Circular A-122 does not apply to the annual mandatory transfers that OSMRE makes to the UMWAF. There are two reasons for this preliminary conclusion. First, OMB Circular A-122 has been superseded by 2 C.F.R. 200 subpart E, which relates to cost principles. *See* 2 C.F.R. § 200.104(f); 78 Fed. Reg. 78,590, 78,691 (Dec. 26, 2013). Second, on its face, OMB Circular A-122 only applied to "determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement."⁵ OMB Circular A-122 3.a. The transfers that OSMRE makes to the UMWAF are *mandatory* transfers required by SMCRA and are fundamentally different from the *discretionary* instruments, such as grants and cooperative agreements, covered by former OMB Circular A-122 and 2 C.F.R. 200 subpart E. Therefore, there appears to be no requirement that OSMRE require the UMWAF to follow OMB Circular A-122.

Not Requiring UMWAF to Report Delinquent Operators to the IRS.

The Draft Audit Report states that "OSMRE did not ensure that UMWAF reported the delinquent operators to the Internal Revenue Service (IRS). (Draft Audit Report at 13.) The Coal Act provides that coal operators who are delinquent in making payments to the [Combined Benefit Fund] are subject to penalties levied through the IRS." However, OSMRE has no authority to require the UMWAF to report coal operator delinquencies to the IRS. Moreover, the Draft Audit Report also acknowledges that "[t]he Coal Act does not require these delinquencies to be reported and, as such, UMWAF did not notify the IRS of delinquencies." *Id.* Thus, the draft report criticizes OSMRE for not doing something that neither it nor the UMWAF are required to do.

Furthermore, the draft report erroneously states that the \$86.4 million in premiums not paid by delinquent operators was attributed to the Combined Benefit Fund. In actuality, the \$86.4 million in delinquent premiums was attributable to the 1992 Benefit Plan. . This distinction is critical because there is no comparable provision in the Coal Act that requires the IRS to collect penalties from operators that are delinquent in their payments to the 1992 Benefit Plan. Moreover, of the \$86.4 million in delinquent premiums cited in the Draft Audit Report, the UMWAF asserts that \$77.2 million was owed by two coal operators who had their Coal Act obligations terminated by the Bankruptcy Court for the Eastern District of Kentucky in August 2004 - over two years before the 2006 amendments to SMCRA were enacted. Thus, contrary to the OIG assertions, OSMRE never transferred funds to the UMWAF to replace the \$77.2 million in unpaid premiums related to those two operators. In fact, the most OSMRE would have paid of the \$86.4 million was \$9.2 million to cover delinquent premiums under the 1992 Benefit Plan. Accordingly, OSMRE requests that the OIG revise the final report to either correct or delete this section of the report.

⁵ This applicability was carried into the current regulations at 2 C.F.R. 200 subpart E. *See, e.g.,* 2 C.F.R. § 200.101(b)(1) (making clear that subpart E only applies to grants, cooperative agreement, and certain procurement contracts).

Not Requiring the UMWAF to Apply Residual Funds to Shortfalls.

The Draft Audit Report further suggests that “OSMRE and the U.S. Treasury have unnecessarily transferred an additional \$19.9 million to the [Combined Benefit Fund].” (Draft Audit Report at 14.) This statement is based on the OIG’s legal interpretation of a provision of the Consolidated Appropriations Act for Fiscal Year 2000 (the 2000 Appropriation Act), which provided the Combined Benefit Fund with \$68 million from AML Fund interest to cover “the amount of any shortfall in the premium account for any plan year”⁶ The Draft Audit Report notes that, of this \$68 million, the UMWAF still retains \$19.9 million, which it has not used despite the fact that, since 2000, it has run annual deficits. According to the draft report, the UMWAF needed to apply the remaining \$19.9 million to the annual deficits, or shortfalls, which would have reduced OSMRE transfers to the Combined Benefit Fund by \$19.9 million. Under the OIG’s interpretation, then, the plain and unambiguous language of the 2000 Appropriation Act requires that the UMWAF use the \$68 million appropriation for *any* shortfall.

In contrast, the UMWAF interprets the 2000 Appropriation Act differently. Under its interpretation, this \$68 million appropriation can only be used for those shortfalls that result when assigned operators are delinquent in paying their premiums and collection efforts are unsuccessful.⁷ Both interpretations appear plausible, and, as such, we have requested that the Office of the Solicitor further analyze the issue, and provide us with advice and a recommendation. Once we received the Solicitors Office’s recommendation, we will review it and take appropriate action, if any is necessary.

Regardless which legal interpretation is proper, OSMRE believes the OIG’s draft report is incorrect in its assumption that OSMRE has transferred funds unnecessarily. (Draft Audit Report at 14.) It is our understanding that the UMWAF uses the remainder of this appropriation whenever circumstances arise consistent with its interpretation. In those situations, it reduces the amount of the requested annual transfer for that year. Therefore, regardless of whether the remaining \$19.9 million should have been used to reduce the amount of Federal funds in a prior or future fiscal year⁸, the funds will have eventually been used to reduce the overall amount of

⁶ Pub. L. No. 106-113.

⁷ As an example, one fact that supports UMWAF’s interpretation that the language of the 2000 Appropriation Act should not be construed to apply to all shortfalls is that Congress knew how to write plain language that did just that. For fiscal year 2001, Congress transferred additional AML Fund money to the Combined Benefit Fund in an amount necessary “to offset the amount of any deficit in net assets.” Pub. L. No. 106-291, Title VII, § 701(a). Similar language was used again for fiscal year 2003 and again in the 2006 amendments to SMCRA. See Pub. L. No. 108-7, Title VII, § 153(a) and 30 U.S.C. § 1232(h)(1)(A). Such language unambiguously relates to a “shortfall” of the entire plan’s revenues compared its deficits.

⁸ As discussed in footnote 8, in fiscal year 2001, Congress required a transfer “to offset the amount of any deficit net assess.” Under the interpretation in the draft report, it presumably would have been this transfer, and not any annual

Federal funds that OSMRE will have transferred to the UMWAF. It is thus unclear to OSMRE how the Draft Audit Report could conclude that these funds could be put to better use at this point in time.

Not Requiring the UMWAF to Remit Interest Earned on Federal Funds.

Section 402(h)(1) of SMCRA requires OSMRE to make the annual transfers to the UMWAF “as soon as practicable after the beginning of . . . each fiscal year” based on estimates. 30 U.S.C. § 1232(h)(1). Because the transfer of the entire estimate is required to be made early in the fiscal year, even though claims are paid on a rolling basis throughout the year, it stands to reason that Congress was aware that the UMWAF would be able to earn interest on the transfers during the fiscal year.

OSMRE has, in fact, struggled with the issue of how to treat the interest earned by the UMWAF on the annual transfers since the 2006 amendments to SMCRA were enacted. On the one hand, as the Draft Audit Report indicates, general appropriation law principles indicate that “any interest earned on Federal funds belongs to the Treasury . . .” (Draft Audit Report at 15.) On the other hand, SMCRA provides a formula detailing how OSMRE is to calculate the annual transfers to the UMWAF. That formula expressly tells the trustees to estimate their annual expenses and reduce it by certain enumerated estimated revenues, such as premiums and Medicare payments, but not interest earned. As a result of this tension between general appropriations law principles and SMCRA, in 2009, OSMRE negotiated an MOU with the UMWAF that reflected a compromise. It provided that the UMWAF will credit the interest earned on the annual transfers provided to the Combined Benefit Fund and the 1992 Benefit Plan back to OSMRE as part of the reconciliation process described above. Citing their fiduciary responsibilities under ERISA, the trustees of the 1993 Benefit Plan did not agree to credit back the interest earned on the annual transfers.⁹ At the time, the parties agreed this was a reasonable solution of a legally gray issue because it would save the Federal Government money while not impacting the ERISA fiduciary responsibilities of the 1993 benefit plan trustees. After reviewing the Draft Audit Report, however, OSMRE agrees that a potential solution to this issue is to obtain an authoritative opinion from the Government Accountability Office (GAO) on how the interest earned by the UMWAF should be treated. Accordingly, OSMRE will seek a GAO opinion on this matter.

Putting aside this legal issue, however, the Draft Audit Report overstates the amount of interest earned that is attributable to OSMRE and that has not been remitted to the Treasury.

transfer that resulted from the 2006 amendments to SMCRA, that was reduced by remainder of the fiscal year 2000 appropriation.

⁹ ERISA requires that a fiduciary act solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them. *See, e.g.*, 29 U.S.C. § 1104. Because the Combined Benefit Fund and the 1992 Benefit Plan are fully funded by the SMCRA annual transfers, the amount of benefits they could provide would not be affected by crediting the interest back to the Federal Government. However, because the 1993 Benefit Plan is not fully funded by the SMCRA annual transfers, returning the interest without clear statutory authority to do so could affect their ability to provide benefits to some beneficiaries.

(Draft Audit Report at 15-16.) The Draft Audit Report maintains that the auditors found \$2.1 million in earned interest from 2008-2013, that has not been remitted to the Treasury. OSMRE believes that this figure is improperly inflated because it includes interest earned by the UMWAF on all funds received, not just the funds transferred by OSMRE. The UMWAF also invests funds that they receive from other sources such as Medicare and operator premiums. As a result, the \$2.1 million in interest cited in the draft report is not solely attributable to the annual transfers made by OSMRE and, therefore, cannot be considered by OSMRE for remittance to Treasury. OSMRE thus requests that the final report address only the interest earned in connection with payments to beneficiaries that are funded by the annual transfers that OSMRE provides. Adjusting for these considerations, OSMRE's estimate of the unremitted interest is approximately \$399,566, not \$2.1 million.

Conclusion

OSMRE appreciates the OIG's efforts in identifying areas where OSMRE can improve its oversight of the funds transfers to the UMWAF. OSMRE recognizes that there is some room for improvement with regard to ensuring its annual transfers are accurate, and believes that the Draft Audit Report provides valuable suggestions on how OSMRE can further improve its oversight under existing or revised statutory authority. To this end, while OSMRE agrees with some of the recommendations in the Draft Audit Report, it has identified a number of unsupported findings and inaccuracies in the Draft Audit Report. OSMRE requests that the OIG reflect its responses in the final report.

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT RESPONSE
TO THE OFFICE OF INSPECTOR GENERAL
DRAFT AUDIT REPORT AND RECOMMENDATIONS –
OVERSIGHT OF THE ANNUAL FUND TRANSFER FOR MINER BENEFITS NEEDS
IMPROVEMENT, NO. C-IN-OSM-0044-2014A**

Recommendation No. 1: Seek express authority for providing oversight through legislation.

OSMRE Response to Recommendation No. 1: OSMRE will evaluate the feasibility and appropriateness of seeking additional authority through legislation. In evaluating this recommendation, a large number of factors need to be considered, including, but not limited to: (1) Whether OSMRE is the best qualified Federal agency to oversee the day-to-day operations of complex health benefit plans; (2) Determining the most effective way of ensuring that Federal interests are represented when decisions are made by the UMWAF that affect eligibility for the Federally-assisted health care plans; (3) Determining the best mechanism to ensure transparency, efficiency and accountability in this process; (4) Determining how the additional resources necessary to strengthen oversight will be provided; and (5) Determining whether OSMRE is legally authority to seek Congressional authority of this nature.

Recommendation No. 2: Negotiate meaningful oversight authority within the MOU.

OSMRE Response to Recommendation No. 2: OSMRE generally agrees with this recommendation and will carefully examine and evaluate the recommendation further. After this evaluation, we will further engage in negotiations with the UMWAF to ensure that OSMRE has access to the full range of information necessary to ensure compliance with SMCRA and all generally applicable Federal laws, regulations, and guidance that apply to the annual transfers to the UWMAF.

Recommendation No. 3: Partner with a Federal agency that has experience with health benefit plans, such as the U.S. Department of Labor's Employee Benefit Security Administration or the Pension Benefit Guaranty Corporation, and engage specialists, such as actuaries and accountants with expertise related to health benefit plans, to aid the review of data provided by UMWAF.

OSMRE Response to Recommendation No. 3: OSMRE will further explore the feasibility of partnering with other Federal agencies to share, obtain, and otherwise secure the necessary expertise in health benefit plans. We will also assess the need for additional resources to obtain specialized experience to assist with oversight.

Recommendation No. 4: Verify eligibility of beneficiaries receiving benefits from the federally supported health benefit plans.

OSMRE Response to Recommendation No. 4: OSMRE does not agree with this recommendation because it is not practical or actionable in the absence of specific statutory oversight authority. Moreover, even if OSMRE had statutory authority, the only way that OSMRE could verify the eligibility of all beneficiaries would be to continually review 51,631 of the current beneficiaries throughout the year, which would not be feasible without substantial increase in resources.

Recommendation No. 5: Reconcile the beneficiaries of the federally supported health benefit plans and move legitimate beneficiaries to the appropriate assigned operators or health benefit plans.

OSMRE Response to Recommendation No. 5: OSMRE agrees with this recommendation and will explore options for how it can work with the UMWAF to accomplish this recommendation in the absence of specific statutory authority.

Recommendation No. 6: Work with UMWAF to take appropriate action for those individuals inappropriately receiving benefits from the federally supported health benefit plans.

OSMRE Response to Recommendation No. 6: OSMRE agrees that the UMWAF should take appropriate action against those individuals inappropriately receiving benefits from the federally supported health benefit plans. OSMRE will explore the extent to which it has a role in that effort.

Recommendation No. 7: Ensure that all beneficiaries have the appropriate assignment and are eligible to receive benefits.

OSMRE Response to Recommendation No. 7: OSMRE does not agree with this recommendation because it is not practical or capable of implementation in the absence of specific statutory oversight authority.

Recommendation No. 8: Annually reconcile changes in the beneficiary population, including additions, reductions, and changes in assignment.

OSMRE Response to Recommendation No. 8: OSMRE agrees with this recommendation.

Recommendation No. 9: Resolve the \$36.8 million in claims paid for “after-acquired” beneficiaries.

OSMRE Response to Recommendation No. 9: OSMRE agrees that the issues surrounding the “after-acquired” beneficiaries need to be resolved. OSMRE has requested that the Solicitor’s Office to provide legal advice. See discussion in Attachment 2 at 2. OSMRE will review and take any appropriate action based on that advice.

Recommendation No. 10: Require UMWAF to submit detailed, complete, and accurate beneficiary information at the end of each year.

OSMRE Response to Recommendation No. 10: OSMRE agrees with this recommendation.

Recommendation No. 11: Annually reconcile the beneficiary information with the actuary reports.

OSMRE Response to Recommendation No. 11: OSMRE will evaluate whether implementing this recommendation would improve the results of OSMRE’s current reconciliation process.

Recommendation No. 12: Reconcile the assigned operator contributions for each year using the number of assigned beneficiaries and the SSA premiums.

OSMRE Response to Recommendation No. 12: OSMRE agrees that the reconciliation should occur. That responsibility, however, resides with the UMWAF. Accordingly, OSMRE will require the UMWAF to include this in the transfer requests.

Recommendation No. 13: Require UMWAF to provide details necessary for a thorough review of expenses underlying its financial statements.

OSMRE Response to Recommendation No. 13: OSMRE agrees with this recommendation and will continue to request additional details necessary for a thorough review of expenses, as OSMRE deems appropriate within its statutory authority.

Recommendation No. 14: Obtain the services of an independent accountant and enrolled actuary who are familiar with health benefit plans to review the supporting documentation provided by UMWAF.

OSMRE Response to Recommendation No. 14: OSMRE will evaluate the feasibility of this recommendation.

Recommendation No. 15: Ensure that UMWAF conforms to OMB Circular A-122 by submitting and negotiating an approved indirect rate proposal to DOI's Interior Business Center.

OSMRE Response to Recommendation No. 15: As discussed previously, OSMRE has doubts concerning the applicability of OMB Circular A-122 in this area, but has sought a review of the issue by the Office of the Solicitor. Once OSMRE receives advice from the Office of the Solicitor, it will determine an appropriate course of action related to this recommendation.

Recommendation No. 16: Require UMWAF to provide the details necessary for a thorough review of assigned operator delinquencies.

OSMRE Response to Recommendation No. 16: OSMRE agrees with this recommendation and plans to work with the UMWAF to implement it.

Recommendation No. 17: Direct UMWAF to report delinquent operators to the IRS.

OSMRE Response to Recommendation No. 17: OSMRE does not agree with this recommendation. As explained above, OSMRE has no current statutory authority to direct the UMWAF to report delinquent operators to the IRS.

Recommendation No. 18: Resolve the \$19.9 million in funds to be put to better use for unused appropriated funds held by the CBF related to the 2000 Appropriations Act.

OSMRE Response to Recommendation No. 18: OSMRE has requested further analysis of this issue from the Office of the Solicitor. Upon receipt of the Solicitor's advice, OSMRE will review it and take any necessary action, as appropriate.

Recommendation No. 19: Obtain authoritative Federal guidance from GAO for the disposition of interest earned.

OSMRE Response to Recommendation No. 19: OSMRE agrees with this recommendation and will take steps necessary to request and obtain an authoritative opinion from the Government Accountability Office (GAO) on how the interest earned by the UMWAF should be treated.

Recommendation No. 20: Ensure the appropriate treatment of interest earned.

OSMRE Response to Recommendation No. 20: Once OSMRE receives GAO's opinion, regarding the appropriate treatment of interest earned, it will take action deemed necessary consistent with the GAO opinion.

Recommendation No. 21: Resolve the \$2.1 million in earned interest.

OSMRE Response to Recommendation No. 21: OSMRE agrees that the amount of earned interest referenced in this recommendation should be resolved. As noted above, however, OSMRE believes that the amount of interest involved is approximately \$399,566, not \$2.1 million. Once OSMRE receives GAO's opinion on this matter, it will take action, as necessary, consistent with the GAO opinion.

**OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
TECHNICAL EXPLANATIONS REGARDING THE OFFICE OF INSPECTOR
GENERAL DRAFT AUDIT AND RECOMMENDATIONS REPORT- OVERSIGHT OF
THE ANNUAL FUND TRANSFER FOR MINER BENEFITS NEEDS IMPROVEMENT,
NO. C-IN-OSM-0044-2014A**

Part 1: OIG Draft Audit Report Finding: OSMRE Did Not Verify Beneficiary Enrollment and Assignments.

OSMRE's response identifies concerns with the draft report's implication that OSMRE should be conducting oversight of the UMWAF's administration, enrollment, and assignment of beneficiaries when we have no specific authority to do so. OSMRE will not repeat that discussion here. However, we have identified additional inaccuracies or potentially misleading statements in this Finding in the Draft Audit Report.

The Draft Audit Report implies that OSMRE should have reconciled the population of beneficiaries that the UMWAF regards as eligible for benefits from the Combined Benefit Fund with the Final Assignment List prepared by the Social Security Administration (SSA) in 2009. Such a comparison, however, would be incomplete because, despite its name, the 2009 SSA Final Assignment List does not include all eligible miners. For example, approximately 12,605 miners that were eligible for benefits pursuant to the Coal Act do not appear on the 2009 SSA Final Assignment List. This is because the Bituminous Coal Operators Association (BCOA) voluntarily acknowledged responsibility for premiums. As a result, SSA did not have to make assignments for those miners. OSMRE recently examined the 2009 SSA Final Assignment List and a list of the BCOA miners provided by UMWAF, and confirmed that 12,605 BCOA miners do not appear on the 2009 SSA Final Assignment List. Our conclusion is also supported by testimony given by the Associate Commissioner for Program Benefits at SSA in 1998, which acknowledges the BCOA list and details SSA's plans for handling the BCOA list. Even if OSMRE should have been comparing the Combined Benefit Fund population with a list of eligible beneficiaries, the 2009 SSA Final Assignment List is not the proper vehicle for comparison. To our knowledge, the only list of all eligible beneficiaries is the one that the UMWAF compiled when the Coal Act was enacted.

The 2010 findings are also based on missing or incomplete data. The Draft Audit Report states:

We compared UMWAF's assignments for the 2010 CBF population to SSA's final assignment list and found that almost 10,000 individuals had assignments that were different from SSA's list. In addition, we also reconciled UMWAF's 2010 paid claims to the two lists and could not trace 8,923 beneficiaries to the SSA final assignment list. These individuals had \$81.1 million in claims paid on

their behalf. Of these 8,923 beneficiaries, 4,494 had claims paid but did not show up on either list (see Figure 1). UMWAF asserted that the beneficiaries in question relate to a large group that were previously added to the CBF by operators through a process called voluntary acceptance. (Draft Audit Report at 8.)

As discussed above, any comparison between the 2010 Combined Benefit Fund population with the 2009 SSA Final Assignment List is incomplete and, therefore, it is not surprising that almost 9,000 individuals with claims paid in 2010 could not be located on the 2009 SSA Final Assignment List. After receiving the Draft Audit Report, OSMRE compared the list of BCOA miners that were voluntarily accepted by operators and their dependents to the 2010 paid claims. We found that 4,429 of the 8,923 individuals that the Draft Audit Report could not trace were on the BCOA list. These individuals were responsible for \$41,368,199.67 in paid claims. In reviewing the data files, we also found that there were missing or incomplete data sets that contributed to the Draft Audit Report's inability to link claims paid in 2010 to beneficiaries that were clearly eligible to receive them. For instance, we found that \$10.7 million of this figure was actually paid for miners who were on the 2009 SSA Final Assignment List. In addition, many of these miners also had dependents that had claims paid in 2010; these claims totaled \$6.5 million. We also compared the remaining individuals that the Draft Audit Report could not trace with the comprehensive list of eligible beneficiaries created by the UMWAF at the time of the Coal Act's enactment, and we were able to trace an additional \$38 million in claims paid in 2010 to individuals on that list. We believe this discrepancy was due to the fact that the list of eligible beneficiaries for 2010 provided to you by the UMWAF had missing and incomplete data. This belief is supported by an examination that we performed that indicates that the year-by-year lists of Combined Benefit Fund beneficiaries contained errors. In sum, OSMRE was able to account for \$79.4 million, or 97.9% of the claims paid in 2010 to individuals that the Draft Audit Report was unable to trace to the 2009 SSA Final Assignment List. While OSMRE did not have enough time to investigate the remaining 2.1% of claims paid in 2010, it suspects that some of these individuals may belong to the group of individuals referred to in the Draft Audit Report as "after-acquired."

Id. at 9.

Claims attributable to after-acquireds are erroneous. As the Draft Audit Report correctly notes, the issue of whether after-acquireds are properly deemed eligible is an issue that your office raised in a 2001 audit report. OSMRE also agrees with you that this is an issue of statutory interpretation. As the Draft Audit Report notes, the Coal Act states: "The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992." 26 U.S.C. § 9703(e). Draft Audit Report at 9. While this language may be fairly interpreted to unambiguously bar any individuals, including after-acquired beneficiaries, from being considered eligible beneficiaries under the Coal Act unless they were eligible on July 20, 1992, other language in that section suggests that the issue is not as clear-cut as stated in the Draft Audit Report. The same section of the Coal Act also provides that the coverage provided by the Combined Benefit Fund should "to the maximum extent feasible be substantially the same as (and subject to the same limitations of)

coverage” of the two prior health care plans it replaced.” 26 U.S.C. § 9703(b)(1). Because the two health care plans that were merged by the Coal Act to create the Combined Benefit Fund both covered newly-acquired dependents, the UMWAF’s interpretation—that section 9703, when read as a whole, unambiguously allows the addition of after-acquired dependents to the list of those eligible for benefits—is also possible. This issue, however, was not affirmatively resolved by OSMRE after your 2001 report. Prior to the enactment of the 2006 amendments, however, we understand that the UMWAF supplied information about these after-acquired beneficiaries to Congress. It appears that, since the 2006 amendments did not address the after-acquireds, the UMWAF considered this issue to be resolved by Congress because the 2006 amendments acquiesced to the UMWAF treatment of the after-acquireds. OSMRE has nevertheless, requested an opinion from the Office of the Solicitor on this issue.

Regardless of the outcome of the legal issue presented, OSMRE believes the Draft Audit Report overestimates the magnitude of the after-acquired issues on the annual transfers by OSMRE. According to data that OSMRE obtained from the UMWAF, there were only 1,158 after-acquireds between 2009 and 2013, and their claims paid during that time totaled approximately \$44 million. Of that \$44 million, more than \$13 million was covered by Medicare and approximately \$10 million was covered by assigned operators. Thus, the OSMRE annual fund transfers that were used to pay expenses incurred as a result of after-acquired during those five fiscal years amounted to approximately \$21 million.

The description of the 1993 Benefit Plan is misleading. The draft report does not actually provide a finding on the 1993 Benefit Plan, but states that “[w]ithout OSMRE’s knowledge, UMWAF backdated beneficiary enrollment letters for at least 1,038 individuals due to special agreements between UMWA and assigned operators.” The 1993 Benefit Plan was established to cover retirees whose last employers were no longer in business and had ceased to provide benefits required by their collective bargaining agreements. On December 20, 2006, Congress added provisions to section 402(h)(2)(C) of SMCRA to mandate that we provide Federal funding to beneficiaries that were enrolled in the 1993 Benefit Plan as of December 31, 2006. 30 U.S.C. § 1232(h)(2)(C). At that time, Congress also provided funding for a group of beneficiaries whose benefits were then provided by Foundation Coal Company pursuant to a settlement in the Horizon Natural Resources bankruptcy and who were deemed to meet the December 31, 2006 enrollment. See 30 U.S.C. § 1232(h)(2)(D). UMWAF explains that its established practice is to automatically enroll beneficiaries who all appear to qualify at the same time, *i.e.*, they all worked for the same employer that has ceased business and ceased providing benefits. Automatically enrolling beneficiaries assures that the individuals would not suffer a lapse in coverage. When this occurs, the group has a common enrollment date and the beneficiaries are sent temporary identification cards and packets of materials explaining benefits. Just because an individual is automatically enrolled, however, does not guarantee they are eligible. Thus, the UMWAF requires everyone who is automatically enrolled to submit an application and the UMWAF verifies that each individual is actually eligible in order for them to receive a permanent identification card. Although OSMRE was not involved in the OIG’s fieldwork, it appears that the UMWAF’s routine practice of automatically enrolling beneficiaries is the cause of the statement in the draft report that “many applications were not received until 2007 or later, yet

these individuals had enrollment letters dated December 19, 2006.” (Draft Audit Report, at 10.) Despite raising the concern that something inappropriate occurred that caused these applications to post-date the enrollment, the draft report concludes that “[t]hese agreements are not expressly prohibited by the current statute, and therefore we do not formally question the costs associated with these agreements.” *Id.* Given the fact that the draft report does not actually question these costs because the practice of automatic enrollment is legal, but instead uses it to support the idea that more Federal oversight is needed, we recommend that the final report consider removing or revising this section in the final report.

Part 2: OIG Draft Audit Report Finding: OSMRE Used Unreconciled Information to Support the Fund Transfers.

To supplement its response, OSMRE provides the following additional information from the UMWAF regarding the collection of operator premiums.

The draft report states that the auditors “found that the total [Combined Benefit Fund] contributions by assigned operators was substantially less, \$55.5 million over 5 years, than the anticipated contributions if we used the number of assigned beneficiaries in the actuarial report multiplied by the premiums prescribed by SSA.” (Draft Audit Report at 11.) However, the UMWAF has provided OSMRE with data that shows that the calculation is incorrect. The UMWAF’s calculations show that the UMWAF collected all but \$315,394 of the premiums that their actuary originally estimated. The data the UMWAF provided states that:

“Contrary to OIG’s assertions, assigned operators’ contributions were not substantially less than anticipated. A correct analysis would have shown that the CBF collected \$139.2 million in contributions versus an estimated \$139.5 million. “See the table provided by UMWAF below:

	10/1/2009 FY 2010	10/1/2010 FY 2011	10/1/2010 FY 2012	10/1/2010 FY 2013	10/1/2010 FY 2014	Total
Total Anticipated Operator Contributions	\$35,522,818	\$29,488,541	\$26,380,203	\$24,576,922	\$23,511,910	\$139,480,394
Assigned Operator Contributions per Financial Statements	\$35,843,000	\$29,608,000	\$26,891,000	\$24,856,000	\$21,967,000	\$139,165,000
Difference:	(\$320,182)	(\$119,459)	(\$510,797)	(\$279,078)	\$1,544,910	\$315,394

In light of this apparent error, OSMRE recommends that the OIG’s final report be revised to reflect this information.

Appendix 6: Status of Recommendations

In its response to our draft report (see Appendix 5), the Office of Surface Mining Reclamation and Enforcement (OSMRE) concurred with 10 recommendations and we consider these resolved but not implemented. OSMRE did not concur with five recommendations and did not specify whether it concurred with six recommendations, and we consider these recommendations unresolved. Based on the response, we will refer the recommendations to the Office of Policy, Management and Budget (PMB) for resolution and tracking of implementation. We expect OSMRE to provide responsible officials and target dates for completion to PMB.

Recommendations	Status	Action Required
2, 5, 8, 9, 10, 13, 16, 19, 20, and 21	Resolved but not yet implemented	We will refer these recommendations to PMB to track implementation.
1, 3, 4, 6, 7, 11, 12, 14, 15, 17, and 18	Unresolved	We will refer these recommendations to PMB for resolution.

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