

BACKGROUND

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Government Intervention in Coal Mining Seven Decades Ago No Justification for Pension Bailout Today

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Abstract

Two bills introduced in Congress would bail out the United Mine Workers of America (UMWA) pension plan with up to \$490 million per year. Such action would set an incredibly dangerous precedent, opening the door to taxpayer bailouts of other unfunded pension liabilities across the country. The government facilitated a temporary agreement in 1946 that established the UMWA's health and welfare program, but specified that the plan funding was solely the responsibility of the union and the fund trustees.

Two bills introduced in Congress—S. 1714 in the Senate and H.R. 2403 in the House—would bail out the United Mine Workers of America (UMWA) pension plan with up to \$490 million per year.¹ Such action would set an incredibly dangerous precedent, opening the door to taxpayer bailouts of more than \$600 billion in unfunded union pensions, not to mention trillions of dollars in other unfunded public and non-union private pension liabilities across the country.² Pension bailouts would encourage employers, unions, and pension fund trustees to promise substantial pension benefits to their employees without setting aside the funds to pay for those benefits.

Proponents of a UMWA bailout argue that the UMWA has a unique relationship with the federal government—some even argue the government itself made promises of pensions and health care to UMWA workers. History tells a different story. While the government helped to facilitate an agreement that established the UMWA's health and retirement funds nearly seven decades ago, it has had no role in the private negotiations of the UMWA and coal operators since. The federal government certainly did not guarantee the suf-

KEY POINTS

- Two proposed bills—S. 1714 and H.R. 2403—would bail out the United Mine Workers of America (UMWA) pension plan, opening the door to \$600 billion in other union pension bailouts.
- Bailout proponents argue that the government made a promise to coal workers through the 1946 Krug-Lewis agreement. But the agreement covered temporary government control of coal mines, which were returned to private operators in 1947.
- The government never guaranteed the sufficiency of the plan's funds to pay promised benefits, and specified that it was solely the responsibility of the union and fund trustees.
- Instead of bailing out the UMWA's unfunded pension promises and setting the stage for future bailouts, Congress should treat private union plans like other private pension plans, making them less likely to become underfunded, and should reform the Pension Benefit Guaranty Corporation's multiemployer program so that recipients of failed union pension plans at least receive insured benefits.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3151>

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iciency of the plans' funds to pay promised benefits; that was solely the responsibility of the union and the funds' trustees.

What's at Stake?

The UMWA has about \$5.6 billion in unfunded pension promises.³ Absent a bailout, UMWA pensions would be reduced to the level guaranteed by the Pension Benefit Guaranty Corporation (a maximum of \$12,870 per year for a worker with 30 years of service) when the UMWA pension plan runs out of funds within 10 years, and workers of recently bankrupt coal companies would lose access to retiree health care benefits. These workers would likely turn to Medicare (if they are 65 or older), Medicaid, or Affordable Care Act coverage to receive health care benefits.

A small portion of the proposed nearly half-billion-dollar annual bailout would come from interest earned on the Abandoned Mine Land Reclamation Fund (AML) while the rest would come from taxpayers. Additionally, the proposed bills would extend existing bailouts of the UMWA's retiree health benefits plan to about 20,000 additional workers of recently bankrupt coal companies unionized by the UMWA.

Historical Federal Intervention in Coal Mining

Proponents of the bailouts have argued that past interventions by the federal government in the coal mining industry justify the claim on taxpayers now. During the first half of the 20th century, the federal government intervened numerous times in coal strikes. In 1902, President Teddy Roosevelt set a new tone for federal intervention in industrial disputes when he served as "peacemaker," rather than

"strikebreaker," in the anthracite coal strike of 1902.⁴ After a nearly five-month strike, Roosevelt stepped in and created an anthracite coal commission. The commission's recommendations were agreed to by both the operators and UMWA, and the strike ended shortly thereafter.

Decades later, in 1943, President Franklin Delano Roosevelt also intervened in a coal strike, this time taking control of the coal mines amidst a war-time virtual shutdown of coal production. Following the 1941 attack on Pearl Harbor, the UMWA and other unions agreed to a no-strike pledge for the duration of the war. Despite that pledge, UMWA president John L. Lewis led multiple coal strikes beginning in 1943.⁵ When the UMWA refused to settle its disputes through the War Labor Relations Board, Roosevelt ordered Interior Secretary Harold Ickes to take over the mines. Ickes oversaw months of negotiations between the operators and the UMWA before a new agreement was reached and the mines were returned to their private operators.⁶

A few years later, on April 1, 1946, UMWA President Lewis initiated another coal strike, this time seeking to establish a health care plan for the union workers and retirees. Using his powers under the War Labor Disputes Act, and recognizing the economic effects of the strike, President Harry Truman placed the mines under government control. By the end of May 1946, Lewis and U.S. Secretary of the Interior Julius Krug negotiated a deal—the Krug-Lewis agreement—which ended the strike.⁷

The Krug-Lewis Agreement

The Krug-Lewis agreement, enacted on May 29, 1946, covered the terms and conditions of employ-

1. Rachel Greszler, "Congress Can Help Pensioners, But Not Through a Bailout," Heritage Foundation *Issue Brief* No. 4529, March 14, 2016, <http://www.heritage.org/research/reports/2016/03/congress-can-help-pensioners-but-not-through-a-bailout>.
2. Rachel Greszler, "Why a Coal Miner Pension Bailout Could Open the Door to a \$600 Billion Pension Bailout for All Private Unions," Heritage Foundation *Issue Brief* No. 4600, August 15, 2016, <http://www.heritage.org/research/reports/2016/08/why-a-coal-miner-pension-bailout-could-open-the-door-to-a-600-billion-pension-bailout-for-all-private-unions>.
3. According to the UMWA's form 5500 filing for the year ended December 2014, the plan has \$5.6 billion in "current value" unfunded liabilities, with assets of \$4.165 billion and liabilities of \$9.735 billion.
4. Jonathan Grossman, "The Coal Strike of 1902—Turning Point in U.S. Policy," U.S. Department of Labor, originally published in the *Monthly Labor Review*, October 1975, <https://www.dol.gov/oasam/programs/history/coalstrike.htm> (accessed August 16, 2016).
5. Franklin D. Roosevelt, "Fireside Chat 24: On the Coal Crisis," May 2, 1943, speech transcript, <http://millercenter.org/president/fdroosevelt/speeches/speech-3330> (accessed August 16, 2016).
6. Richard A. Brisbin Jr., *A Strike Like No Other Strike: Law and Resistance During the Pittston Coal Strike of 1989–1990* (Baltimore & London: The Johns Hopkins University Press, 2002), p. 37.
7. *Ibid.*, pp. 38–39.

ment in government-possessed mines for the *temporary* period of government possession, and was never intended to extend further.

UMWA President Lewis acknowledged the limited nature of the agreement, stating in a newsreel after its signing: “It settles *for the period of government operation* all the questions at issue.” (Emphasis added.)⁸ Once the mines were returned to their private operators in June 1947, the government relinquished its role as operator of the mines and its involvement in coal employees’ compensation.⁹

The Krug–Lewis agreement had a very limited role in health and welfare funds, establishing them “in broad outline” only, and specifying that “the trustees shall have full authority with respect to questions of coverage and eligibility...and all related matters.”

Among other factors, the Krug–Lewis agreement included improvements in employee pay and vacation, mine safety, and worker’s compensation. The agreement also established a “welfare and retirement fund” financed by a five-cent-per-ton fee assessed on coal producers and a “medical and hospital fund” financed by existing wage deductions and additional deductions as authorized by the UMWA.

The Krug–Lewis agreement had a very limited role in these health and welfare funds, establishing them “in broad outline” only, and specifying that “the trustees shall have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions of benefits and all related matters.”¹⁰ The trustees of the welfare and retirement fund were to be three in

number: “one appointed by the Coal Mines Administrator, one appointed by the president of the United Mine Workers, and the third chosen by the other two.”¹¹

Although trustees of the welfare and retirement fund were supposed to be equally representative of the UMWA and coal operators, the Krug–Lewis agreement gave the UMWA exclusive control over the separate medical and hospital fund. Per the agreement, the medical and hospital fund was “to be administered by trustees appointed by the president of the United Mine Workers,” and “[t]he trustees shall administer this fund to provide, or to arrange for the availability of, medical, hospital, and related services for the miners and their dependents.” Moreover, the use of the funds, under the indicated purposes, was specified to be at “the discretion of the trustees of the fund.”¹²

While the government was a party to the Krug–Lewis agreement of 1946, which enabled the creation of the UMWA’s “welfare and retirement” and “medical and hospital” funds, the agreement specifically designated the responsibility of operating the funds to the UMWA and the funds’ trustees. The UMWA—not the federal government—has been responsible for managing its retirement and health care funds, including negotiating employers’ contribution levels and establishing benefits paid from the funds.

The government’s involvement in coal miners’ pensions ended nearly seven decades ago, in 1947, when the mines were returned to their private operators.¹³ There was no promise, or even implication, that the government’s involvement in helping negotiate the agreement that established these funds included a federal guarantee of future promises made by the funds. Any such promise including the potential for future federal payments would have required congressional approval—not just a signature from the Secretary of the Interior. It is precisely because the federal government has no obligation to

8. Text of argument made by Attorney General Tom C. Clark before the United States Supreme Court in the case of *The United States of America v. United Mine Workers of America and John L. Lewis, Individually and as President of the United Mine Workers of America*, January 14, 1947, p. 5, <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/12/01-14-1947pro.pdf> (accessed August 16, 2016).

9. Brisbin Jr., *A Strike Like No Other Strike*, p. 39.

10. Krug–Lewis Agreement, 11 F.R. 5593, May 21, 1946.

11. *Ibid.*

12. *Ibid.*

13. After the funds were returned to private ownership in June 1947, a second welfare and retirement fund, the “United Mine Workers of America Welfare and Retirement Fund-1947,” was created through the 1947 National Bituminous Coal Wage Agreement entered into on July 8, 1947.

the UMWA's unfunded pension promises that the UMWA is now seeking a bailout from Congress.

The UMWA Violation of the Krug–Lewis Agreement

Despite the fact that the Krug–Lewis agreement was supposed to cover the entire period of government possession of the mines, Lewis subsequently pushed for substantial changes to the contract. Krug directed Lewis to seek the union's desired changes either through the National Wage Stabilization Board or through direct negotiations with the mine owners. Lewis refused to take either of these actions and instead notified Secretary Krug that the UMWA was terminating its contract established through the Krug–Lewis agreement. Secretary Krug notified Lewis that he did not have the power to unilaterally terminate the contract, but Lewis nevertheless signaled his workers that “no contract” meant “no work.”¹⁴

The government issued an injunction against the ensuing strike and Lewis was held in contempt of court for creating a “threat to orderly constitutional government, and to the economic and social welfare of the nation.” During the government's case against Lewis and the UMWA, Attorney General Tom C. Clark stated: “One of the most striking things in this case is the continued defiance of the defendants towards the law, the courts, and the rights of the people of the United States.”¹⁵ Lewis and the UMWA “were found guilty beyond a reasonable doubt of both criminal and civil contempt,” and Lewis was assessed \$10,000 in fines while the UMWA was fined \$3.5 million.¹⁶

UMWA's Control of Retirement and Health Funds

Although the UMWA's health and welfare fund was supposed to include equal representation from the UMWA and coal operators, the UMWA had effective control of the fund in its early decades when crucial decisions were made that set the fund on a path toward insolvency.

Through an informal agreement with the mine operators, Lewis was given authority to nominate the welfare and retirement fund's “neutral” trustee. Lewis appointed his personal friend, Jacqueline Roche, to serve as the neutral trustee from 1947 to 1971, giving the UMWA effective control of the fund.¹⁷ Lewis also gained exclusive control over the fund's investments through the National Bituminous Coal Wage Agreement of 1950.

The government's involvement in coal miners' pensions ended nearly seven decades ago, in 1947, when the mines were returned to their private operators.

Under the control of Lewis and the UMWA, the fund made generous pension and health care payments that “exceeded actuarially sound levels for a pay-as-you-go system that drew its income from a tonnage royalty that did not change from 1952 to 1971.”¹⁸ Lewis's fight for generous benefits won him popularity and ensured his continued leadership of the union, but his actions were the basis for the fund's downfall. Now, not only do the funds face shortfalls because current contributions are not sufficient to pay promised benefits, but the UMWA is left with a declining contribution base to pay off the unfunded, windfall benefits given to past and current retirees.

Why the UMWA and other Union-Run Plans Are Insolvent

The insolvencies of virtually all defined-benefit pension plans (including the UMWA plan) result from three failures on the part of plan trustees and union pension negotiators: (1) paying benefits to workers who did not earn them; (2) neglecting to adequately adjust contribution and accrual rates over time; and (3) using inappropriate assumptions

14. Text of argument made by Attorney General Tom C. Clark before the United States Supreme Court in the case of *The United States of America v. United Mine Workers of America and John L. Lewis, Individually and as President of the United Mine Workers of America*.

15. *Ibid.*

16. Lewis's \$10,000 fine is equivalent to \$123,600 in 2016 dollars, while the UMWA's \$3.5 million fine is equivalent to \$43.3 million.

17. Brisbin Jr., *A Strike Like No Other Strike*, p. 44.

18. *Ibid.*, p. 45.

for investment earnings and life expectancies. The combination of these three failures led the UMWA to promise \$5.6 billion more in pension benefits to its members than it can pay.

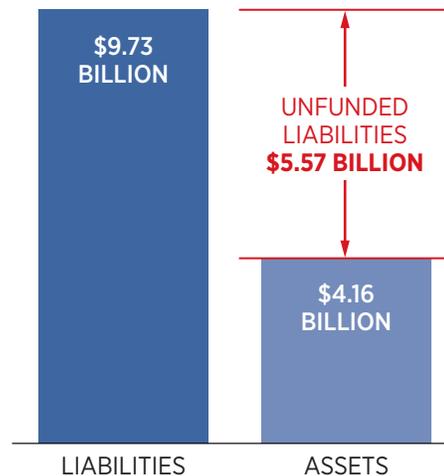
The primary reason the UMWA cannot pay promised pensions to workers who earned them is because it gave pensions to an entire generation of coal workers who did not earn them. Right after the fund was established in 1947, the UMWA fought dogmatically to begin paying pension benefits immediately to workers who did not earn them. It fought so hard, in fact, that the plan's neutral trustee resigned in frustration and the miners walked out in March 1948. The UMWA got its way, and the first pension check was issued months later in September 1948.¹⁹ This proved an incredibly costly action, as the recent decline in the coal industry and, in particular, union coal producers, has made it virtually impossible for current UMWA workers to pay off the cost of providing those initial pension benefits to workers who did not earn them.

Second, the UMWA trustees have failed to adequately adjust benefits and contributions over time to ensure that promised benefits would be paid. A decline in UMWA-participating coal producers and lower-than-expected investment returns should have triggered either an increase in contributions or a decline in benefit accruals. However, because pension benefits and contributions are negotiated separately as part of union contracts, the UMWA consistently bargained to provide promised pension benefits that were inconsistent with contribution levels. Despite the declining value of incoming contributions from the fund's per-tonnage royalty (caused both by declining production and inflation), the UMWA continued to provide generous benefits that "exceeded actuarially sound levels."²⁰

Finally, the UMWA and other union-run pension plans can get away with inadequate pension contributions through their use of unrealistic investment assumptions, and to a lesser extent, life expectancies. By assuming higher investment returns, a plan can reduce its required contributions by more than 40 percent.²¹

CHART 1

UMWA Pension Plan Promised \$5.6 Billion More than It Can Pay



SOURCE: United Mine Workers of America, 1974 Pension Plan's 2014 form 5500 filing with the U.S. Department of Labor, <http://www.FreeERISA.com> (accessed August 19, 2016). Reported figures are the "Current Value of the Assets and 'RPA 94' Current Liability."

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The Employee Retirement Income Security Act (ERISA) of 1974 is supposed to protect employees from underfunding, but it provides preferential and arguably riskier treatment for union plans by allowing them to operate essentially using whatever assumptions they want. While non-union, or single-employer, pension plans are required to operate using a roughly 4 percent interest rate assumption, multiemployer plans consistently use rates between 7 percent and 8 percent.²²

These causes of underfunding highlight the fact that it is the UMWA pension plan trustees and the union itself—not the federal government or taxpayer—

19. United Mine Workers of America, "A Brief History of UMWA Health and Retirement Funds," <http://www.umwa.org/?q=content/brief-history-umwa-health-and-retirement-funds-0> (accessed March 9, 2016).

20. Brisbin Jr., *A Strike Like No Other Strike*, p. 45.

21. Government Accountability Office, "Pension Plan Valuation: Views on Using Multiple Measures to Offer a More Complete Financial Picture," September 2014, <http://www.gao.gov/assets/670/666287.pdf> (accessed August 16, 2016).

22. *Ibid.*

CHART 2

Understating Liabilities

By using higher interest rate assumptions, multiemployer plans can understate their liabilities and contribute less than necessary to fund promised benefits.

To provide a \$1,000 benefit 15 years into the future:

By assuming this interest rate this contribution is considered adequate funding.
4%	\$555
5%	\$481
6%	\$417
7%	\$362
8%	\$315

SOURCE: U.S. Government Accountability Office, “Pension Plan Valuation: Views on Using Multiple Measures to Offer a More Complete Financial Picture,” September 2014, <http://www.gao.gov/assets/670/666287.pdf> (accessed August 16, 2016).

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ers—who are at fault. While the federal government can and should be criticized for providing preferential treatment to union-run pension plans, the UMWA and its plan trustees acted on their own to exploit that preferential treatment to the detriment of UMWA workers and retirees.

How Congress Can Protect Union Pensioners

There are several things that Congress can do to help preserve as much as possible of workers’ promised pensions, and prevent future pension failures, without putting taxpayers on the hook. These include:

1. Congress should end its special treatment for union pension plans. This special treatment—including the ability to use whatever inter-

est rate assumptions they want—has contributed to union pension plan failures. There is no reason why union plans should be treated different from non-union plans. A promise is a promise, and the rules and regulations necessary to prevent broken pension promises should be the same, whether the promise is made by a union or individual employer.

Changing the rules governing multiemployer or union pension plans will help to improve the future solvency of many plans, but some plans have dug themselves into so deep a hole that there is no possibility of climbing back out. These plans will eventually become insolvent and turn to the government’s Pension Benefit Guaranty Corporation (PBGC). The PBGC’s multiemployer program, however, is itself on track to run out of money in less than a decade (2025). When that happens, the PBGC will be able to pay only pennies on the dollar in insured benefits.

- 2. Congress should reform the PBGC’s multi-employer program to make it more like that of its single-employer plan,** including the use of variable-rate premiums to discourage plans from becoming underfunded, and requiring PBGC to take over failed union plans instead of allowing those plans’ administrators to keep their jobs. Ultimately, Congress should consider devolving PBGC to the private sector where the government’s ineffective system could be replaced by one where private plans are required to purchase a certain level of insurance, but have a choice of providers and are charged premiums commensurate with their risk.
- 3. Congress should consider creating a new set of rules, and potentially early PBGC-intervention for significantly underfunded plans.** For example, “critically” underfunded plans could be prevented from adding any new beneficiaries, and “critical and declining” plans that have no possibility of recovering could be taken over by the PBGC prior to their ultimate insolvency, with benefit reductions similar to those enacted under the Multiemployer Pension Reform Act of 2014 (benefits equal to at least 110 percent of the PBGC guarantee).²³

4. Congress may want to consider its treatment of delayed forms of compensation, such as defined-benefit pensions. Pensions are considered a part of employees' salaries, and yet, employees have no redress if employers fail to make adequate contributions (nor are they even aware of the adequacy of contributions made on their behalf), and no right to promised benefits if the plan becomes insolvent. Congress could require greater disclosure from defined-benefit pension plans, such as a disclaimer to employees that their actual benefits could be significantly lower than promised, as well as annual notices of the funding status of the plan, including actuarial estimates of expected benefits based on the plan's funding status and a standard set of assumptions. This information would improve employees' understanding of their compensation and allow them to more appropriately save and plan for retirement.

Taxpayers Should Not Be on the Hook for Any Further UMWA Liabilities

For a multitude of reasons, including irresponsible behavior and a dereliction of duty to its members, the UMWA promised \$5.6 billion more in pension benefits to its workers than it can afford to pay, and there is no basis for forcing taxpayers to back these unfunded promises.

The UMWA's website outrageously asserts that the *temporary* terms of the 1946 Krug-Lewis agreement (which the UMWA attempted, illegally, to terminate) somehow obligated the U.S. government to indefinitely uphold any promises made by the UMWA to its workers. If the federal government were in fact the guarantor of the UMWA's pension and health promises, what would prevent the UMWA from promising million-dollar pensions to all its workers? And why would the UMWA have to purchase pension insurance through the PBGC?

The UMWA website also includes a statement emphasizing the importance of a promise:

To the United Mine Workers of America (UMWA) a promise is never taken lightly and without careful consideration. The terms and conditions of any agreement establishes a binding arrangement that will last for years, decades or indefinitely. A promise creates a bond between parties that obligates everyone involved to honor. Living up to the terms of an agreement defines trustworthiness and integrity of the individual, institution, business or government making the promise.²⁴

The fact that promises to UMWA workers have been broken is distressing. UMWA coal workers were promised pension and health care benefits as part of their compensation, and they counted on those benefits. It is shameful, however, that instead of acknowledging its failure to live up to its promises, the UMWA is attempting to pass the buck to the United States government and taxpayers.

Current UMWA President Cecil Roberts recently claimed, "The promise made in the White House in 1946 did several things, but none was more important than guaranteeing retirement security for coal miners and their families for their service to the Nation, including cradle to grave health care."²⁵ The federal government's *only* role in the UMWA's pension plan, however, was to help establish the fund; control over the plan's operations and future viability was specifically designated to the UMWA and the fund's trustees.

The UMWA website goes on to argue: "Since that time, Union miners have continuously worked to energize and protect their Country. To this day UMWA Members faithfully uphold their end of the agreement, and we intend to hold the government accountable."²⁶ The government cannot be held accountable for a promise it did not make. UMWA members should hold the UMWA and pension trustees accountable for *their false promises*.

By arguing that coal miners have worked to "energize and protect their country," Roberts makes a broad leap that could imply that anyone providing a

23. Pension Benefit Guaranty Corporation, "Kline-Miller Multiemployer Pension Reform Act of 2014 FAQs," <http://pbgc.gov/prac/pg/mpira/kline-miller-multiemployer-pension-reform-act-of-2014-faqs.html> (accessed August 16, 2016).

24. UMWA, "The Promise of 1946," <http://umwa.org/news-media/journal/the-promise-of-1946/> (accessed August 17, 2016).

25. Ibid.

26. Ibid.

good or service to his country and its citizens should be entitled to a government bailout. If the unfunded promises of one private coal union are protected by the federal government, why not also the promises of all energy producers, all defense contractors, even all manufacturers in general? This line of reasoning leads to either a universal bailout of all unfunded retirement promises across the U.S., or the federal government picking winners and losers.

The government cannot be held accountable for a promise it did not make.

Instead of bailing out the UMWA's unfunded pension promises and setting the stage for future bailouts—whether widespread or isolated to the government's favored few—Congress should focus on reforming the PBGC's multiemployer program so that recipients of failed union pension plans will at least receive their insured benefits. Those promises include protection for pensioners from a complete loss of benefits, and assurance for taxpayers that they will not be on the hook for the PBGC's unfunded obligations.

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