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The RECLAIM Act Won't Help Coal Communities—Rolling Back Regulations Will

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Congress is moving quickly on a massive omnibus bill, which is likely to be the only major legislative vehicle for the year. Consequently, Congress will attach policy measures to the omnibus spending legislation, loading it up as a "Christmas tree" bill. One potential ornament for the tree is the Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act (H.R. 1731).[1]

As appealing as the name sounds, the RECLAIM Act would be a billion-dollar boondoggle that shifts coal-tax funds from their intended purpose of remediating abandoned mine lands and reducing public health and safety risks to economic revitalization projects in distressed coal communities. Moreover, the act would exacerbate the well-known problems that already exist with federally funded efforts to stimulate certain regions of the economy. If Congress truly wants to help coal communities, it should move away from the tried-and-failed approach of taxpayer-funded economic revitalization, and reduce ineffective, burdensome regulations that drive up the costs for mining and using coal as an abundant, affordable power source.

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The Abandoned Mine Land Reclamation Program

The Abandoned Mine Land (AML) Reclamation Program imposes a tax on current coal mining in the United States to pay for the reclamation of abandoned mine land sites across the country. The AML Program remediates sites mined prior to 1977, before there was any law stipulating how mines should be reclaimed. In 1977, Congress created the program through the Surface Mining Control and Reclamation Act (SMCRA), which also established that companies must post bonds to reclaim current sites.[2]

States and tribes rate abandoned mine land sites on a priority scale of one to three, with one given the highest priority for protecting public health and safety. For instance, a Priority 1 (P1) site that could leach toxic substances or harbor unsafe structures, such as improperly sealed shafts, would have higher priority than a P3 site that requires simply restoring the land to its original state.

Twenty-six coal-producing states and three Indian tribes receive annual AML grants and have active AML programs.[3] The Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) collects funds through a fee on active coal-mining operations. Surface mine coal companies pay a 28-cent-per-ton fee; subsurface mining companies pay 12 cents per ton; and lignite coal companies pay 8 cents per ton.[4] As of November 2016, the OSMRE had collected $10.9 billion, which includes more than $1.5 billion generated from interest.[5] States that received the largest grants that fiscal year (FY) were Wyoming, Pennsylvania, West Virginia, Kentucky, and Illinois.

Currently, the fund has an unappropriated balance of $2.4 billion, and the coal tax is up for reauthorization at the end of FY 2021.[6]

The program as it exists today is not without its faults. According to the National Mining Association (NMA), only $2.8 billion of the $8.5 billion dispersed from the AML fund resulted in the reclamation of priority coal sites and only one in three dollars paid for reclamation.[7] Nearly half (45 percent) of the $8.5 billion was spent on P3 and non-coal projects.[8] Acting OSMRE Director Glenda Owens agreed with the NMA's assertion and that it was "low standard of performance."[9] Furthermore, Congress used $1.3 billion of the interest generated by the fund to bail out health care plans administered by the United Mine Workers of America.[10]

What the RECLAIM Act Would Do

The RECLAIM Act would authorize the Secretary of the Interior to distribute an additional $200 million per year beyond regular distributions for "economic revitalization" reclamation projects for economically distressed coal-mining communities.[11] Such activities are clearly beyond the original and necessary purpose of the AML Program. The funds would only be made available if they contribute to the future, sustained economic development of a distressed community or in communities that have recently experienced a downturn in mining.[12] A project would quality if development plans for a reclaimed site include industrial, commercial, residential, agricultural, or recreational purposes. The Congressional Budget Office estimates that enactment would increase AML-fund spending by $1.04 billion from 2018 to 2027.[13]

Problems with the RECLAIM Act

The RECLAIM Act is problematic for a number of reasons: It would violate the original purpose of the AML fund, duplicate existing federal and state efforts, and continue to prop up a broken policy. The federal government has a long history of attempting to rejuvenate Appalachia and distressed communities with dismal success rates.

In 2016, the OSMRE launched a $30 million Reclamation Economic Development Pilot Program for FY 2016 to FY 2017, which has similar objectives as the RECLAIM Act.[14] The use of pilot funds demon-

1 H.R.1731, RECLAIM Act of 2017, 115th Congress, 1st Session, https://www.congress.gov/115/bills/hr1731/BILLS-115hr1731rh.pdf (accessed February 28, 2018).

2 Office of Surface Mining, Reclamation and Enforcement, "Laws, Regulations, and Guidance: Surface Mining Control and Reclamation Act (SMCRA)," https://www.osmre.gov/lrg.shtm (accessed February 28, 2018).

3 Office of Surface Mining, Reclamation and Enforcement, "Oversight: What Is Oversight?" https://www.osmre.gov/programs/oversight.shtm (accessed February 28, 2018).

4 U.S. Department of the Interior Natural Resources Revenue Data, "How it Works: Abandoned Mine Land Reclamation Program," https://revenuedata.doi.gov/how-it-works/aml-reclamation-program/#fn:13 (accessed February 28, 2018).

5 Office of Surface Mining, Reclamation and Enforcement, "Fiscal Year 2017 Grant Distribution," https://www.osmre.gov/resources/grants/docs/FY17GrantDist.pdf (accessed February 28, 2018).

6 Per the 2006 reauthorization of the AML Program, certified states, such as Wyoming, receive their funding through the U.S. Treasury, not the AML fund. See U.S. Department of the Interior Natural Resources Revenue Data, "How it Works: Abandoned Mine Land Reclamation Program."

7 Hal Quinn, testimony before the Subcommittee on Energy and Mineral Resources Committee on Natural Resources U.S. House of Representatives, National Mining Association, June 7, 2017, http://docs.house.gov/meetings/II/II06/20170607/106068/HHRG-115-II06-Wstate-QuinnH-20170607.pdf (accessed February 28, 2018).

8 National Mining Association, "AML Management Is Equally Inefficient and Ineffective," https://www.eenews.net/assets/2017/10/17/document_gw_06.pdf (accessed February 28, 2018).

9 Dylan Brown, "Advocates, Lawmakers Prepare for Battle Over Reclamation Fee," *E&E Daily*, October 20, 2017, https://www.eenews.net/stories/1060064163 (accessed February 28, 2018).

10 Quinn, testimony before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, U.S. House of Representatives, National Mining Association.

11 H.R.1731, RECLAIM Act of 2017.

12 Ibid.

13 Congressional Budget Office, "Cost Estimate: H.R. 1731 RECLAIM Act of 2017," October 6, 2017, https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1731.pdf (accessed February 28, 2018).

14 Office of Surface Mining, Reclamation and Enforcement, "Guidance for Project Eligibility Under the Abandoned Mine Land Reclamation and Economic Development Pilot Program for Fiscal Year 2017," https://www.osmre.gov/programs/AML/pilotProgramGuidance.pdf (accessed February 28, 2018).

strate the problems with expanding the AML fund's use. The RECLAIM Act:

- **Violates the purpose of the fund.** By attaching economic revitalization and community development to reclamation sites, the RECLAIM Act prioritizes politically enticing projects over those that would reduce environmental and public health risks. Although the act would technically fund reclamation projects, the OSMRE would be able to allocate funds that stretch far beyond the bounds of reclamation. The RECLAIM Act would exacerbate the problem of the OSMRE distributing funds to low-priority sites.

  Projects more closely connected to the prospects of economic recovery would likely receive funding, even if it is less of an environmental priority. For instance, the six projects in Kentucky that received funding through the pilot program are all P3 sites.[15] Some of the projects are P3 areas that companies have already reclaimed and one project is merely adjacent to a P3 area. The projects include job-training programs, primarily for displaced coal miners and a $1.9 million water supply line for a campground that will create 10 to 15 jobs and "increase economic development through adventure tourism."[16] That equates to between $127,000 and $190,000 of taxpayer dollars per job created. Other projects consist of an outdoor adventure ground that includes an archery center and a horse barn, and an infrastructure for a production plant that produces wood pellets to sell as biomass fuel.[17] These spending activities are far beyond AML's intended purpose; enacting the RECLAIM Act would increase funding for politically preferred projects rather than addressing more environmentally at-risk areas.

- **Duplicates existing and federal, state and private efforts.** A number of federal, state, and private-sector programs already exist to help communities that are struggling economically. The Appalachian Regional Commission (ARC) spent $152.3 million of the taxpayers' money in FY 2017 across the 13 Appalachian states.[18] To help coal communities adversely impacted by an onslaught of federal regulations targeting coal, Congress and the Obama Administration launched the Partnerships for Opportunity and Workforce and Economic Revitalization (POWER) Initiative in 2015. A program housed within ARC, the POWER Initiative "supports efforts to create a more vibrant economic future for coal-impacted communities by cultivating economic diversity, enhancing job training and re-employment opportunities, creating jobs in existing or new industries, and attracting new sources of investment."[19] Since POWER's inception, the program has spent $94 million across 250 Appalachian counties.[20]

  Furthermore, in 2014 President Obama signed the Workforce Innovation and Opportunity Act of 2014 that provides National Dislocated Worker Grants for "assistance in response to large, unexpected economic events which cause significant job losses."[21] The Department of Labor awarded $2 million in dislocated worker grants to 140 Wyoming coal workers in January 2017.[22] Under

15 Office of Surface Mining, Reclamation and Enforcement, "Report on Abandoned Mine Land Reclamation Economic Development Pilot Program for FY 2016–FY 2017," March 28, 2017, https://www.osmre.gov/programs/AML/2016_Annual_Report_AML_Economic_Development_Pilot_Program.pdf (accessed February 28, 2018).

16 Ibid.

17 Ibid.

18 Appalachian Regional Commission, "Investments in the Appalachian Region October 1, 2016-September 30, 2017," https://www.arc.gov/images/appregion/fact_sheets/ARCFactSheet2-18.pdf (accessed February 28, 2018).

19 Appalachian Regional Commission, "POWER Initiative: What Is POWER?" September 2017, https://www.arc.gov/funding/power.asp (accessed February 28, 2018).

20 Ibid.

21 U.S. Department of Labor, "US Labor Department Awards Grant to Help Displaced Wyoming Coal Workers," January 24, 2017, https://www.dol.gov/newsroom/releases/eta/eta20170124 (accessed February 28, 2018).

22 Ibid.

the National Emergency Grant program, the predecessor of the National Dislocated Worker Grant program, the Secretary of Labor used discretionary funds to award multi-million-dollar grants to displaced coal workers.[23] Additionally, state government agencies, private-sector groups, and universities throughout the country worked to bring economic life to distressed communities. There is no need for an additional funding stream.

- **Creates a new avenue to prop up a failed program.** The existence of federally funded economic revitalization efforts does not mean it is a good use of the taxpayers' money, nor is it a legitimate function of the federal government. Anecdotally and systemically, federal job-training programs have had dismal rates of success. In November 2017, Reuters reported on the pathetic participation in the Obama Administration's POWER Initiative. In two Pennsylvania counties, sign-ups for retraining programs were only at 15 percent of capacity.[24] In an ARC-funded computer coding class, only 20 people signed up out of 95 slots available.[25] The failures of the POWER Initiative are a microcosm of ARC's long history of systemic failure.

  Despite spending tens of billions of dollars since the 1960s on infrastructure, health care, education, and other "investment" assistance in the Appalachian region, ARC has largely failed to achieve its goals. Throughout the decades of taxpayer-funded infusion, employment, income, and overall economic gains had little sustainability.[26] A 1996 study by the Government Accountability Office found no causal link between ARC spending and economic growth in Appalachia.[27] Dr. Abigail Hall of George Mason University attributes ARC's failures to the planner's "inability to engage in rational economic calculation" and the perverse incentives created by the program.[28] As Hall explains, because ARC is not a private actor driven by profits and losses but rather a central planner, ARC cannot effectively determine what to build, where to build it, and why it should be built in the first place.[29] Moreover, the program creates perverse incentives for the ARC bureaucracy, politicians who stand to benefit from ARC grants and the consumers of ARC grants. ARC has an incentive to grow both in budget and personnel, rather than maximize the efficacy of the program. Politicians have an incentive to secure grants for projects that have greater political rates of return than economic ones. Analysis of more than 20,000 ARC projects from 1966 through 1998 found that, out of the five counties that received the most funding, none was ever distressed, which is defined as ranking nationally in the bottom 10 percent.[30] Moreover, ARC grant recipient regions remain impoverished because it establishes aid dependence.[31] In many instances, business ventures incurred losses or went under after ARC funding ceased. Congress should not divert coal taxes meant for environmental cleanup for similar purposes.

What Congress Should Do

Congress's bipartisan attempt to help economically disadvantaged coal communities may be well intentioned but, as is so often the case, this policy proposal would do more harm than good. The RECLAIM Act would lay the groundwork for more federal ineptitude and the promotion of functions

23 U.S. Department of Labor Employment and Training, "National Emergency Grant Awards," August 4, 2016, https://www.doleta.gov/grants/NEG_Awards/cy_awards_LastSix.cfm?neg_cur_yr=2015 (accessed February 28, 2018).

24 Valerie Volcovici, "Awaiting Trump's Coal Comeback, Miners Reject Retraining," Reuters, November 1, 2017, https://www.reuters.com/article/us-trump-effect-coal-retraining-insight/awaiting-trumps-coal-comeback-miners-reject-retraining-idUSKBN1D14G0 (accessed February 28, 2018).

25 Ibid.

26 Abigail Hall, "Mountains of Disappointment: The Failure of State-Led Development Aid in Appalachia," SSRN, September 15, 2013, https://ssrn.com/abstract=2326141 (accessed February 28, 2018).

27 U.S. Government Accountability Office, "Economic Development: Limited Information Exists on the Impact of Assistance Provided by Three Agencies," April 1996, https://www.gao.gov/assets/230/222433.pdf (accessed February 28, 2018).

28 Hall, "Mountains of Disappointment: The Failure of State-Led Development Aid in Appalachia."

29 Ibid.

30 Ibid.

31 Ibid.

that do not belong in the purview of the federal government. Instead of enacting the RECLAIM Act, Congress should:

- **Reject attempts to divert AML funds.** Congress should not divert AML funds from its intended purpose of environmental remediation of abandoned mine lands. A number of federal and state programs already exist to help struggling coal towns and the results have been paltry.

- **Roll back coal regulations that have few or no environmental benefits.** If policymakers truly want to enact reform to help coal communities, they should eliminate the plethora of federal regulations that significantly increase the costs of mining coal, building new plants, and operating existing plants. Many of these regulations are devoid of any meaningful environmental benefits. For instance, climate regulations from the Obama Administration that particularly harmed the coal industry make it extremely difficult to build new coal-fired power plants, while making virtually no impact on abating global warming. Additionally, many federal regulations duplicate state efforts to protect air and water quality.[32] State regulators have the incentive to balance economic prosperity and environmental well-being, and can use local knowledge to manage the interests of all affected parties. If market factors result in a transition away from coal and toward more economical sources of energy, the economy will stand to benefit. More cost-effective electricity, whether derived from natural gas, nuclear power, or solar energy, will save money for individuals and families, and lower the cost of doing business for companies large and small. Cheap natural gas may not make coal a viable option in the near term, but eliminating onerous regulations will allow the market to determine the future of coal in America. The federal government should not get in its way with burdensome regulations.

- **Allow the AML coal tax to expire, and focus efforts on P1 and P2 sites.** The tax on existing coal operations is up for reauthorization at the end of FY 2021. Congress should allow the tax to expire and specify that the OSMRE can only disperse funds for projects that pose a clear public health and safety risk. Establishing a sunset date and implementing a clear focus on environmental remediation for the duration of the program will refocus the AML Program on its intentional purpose and provide ample time to shift lower priority reclamation projects to the states.

- **Eliminate federal funding programs.** Not only have programs like ARC failed to produce results, economic development assistance programs are beyond the scope of a limited federal government. State and local governments should work with the private sector to fund regional economic development programs. Not only would empowering states and the private sector better connect individuals with workforce needs, there would be less dependence on the taxpayer, and businesses would be better connected with the citizens who stand to benefit from such programs.

- **Fix a broken program, and fix a broken regulatory regime.** Despite its proponents marketing the RECLAIM Act as an economic and environmental revitalization, diverting abandoned mine land funds from high-priority public health and safety sites will only exacerbate the issues that plague the program today. Instead, Congress should specify that current AML funds be allocated to P1 and P2 reclamation sites and help Appalachia and other coal communities by reducing the regulatory burden that coal miners and operators face so that they can do their jobs without depending on the federal government.

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32 Nicolas D. Loris, "The Assault on Coal and the American Consumer," Heritage Foundation *Backgrounder* No. 2709, July 23, 2012, https://www.heritage.org/environment/report/the-assault-coal-and-american-consumers.