

**Written Testimony of Lorraine Lewis
Executive Director, UMWA Health and Retirement Funds**

**Subcommittee on Energy & Mineral Resources
United States House of Representatives**

July 24, 2019

I am Lorraine Lewis, Executive Director of the UMWA Health and Retirement Funds (“Funds”). The Funds is the name used for a group of multiemployer pension and health plans that provide benefits to retired union coal miners and their dependents. These plans consist of two qualified employer pension plans and four health plans: the UMWA 1974 Pension Plan is a defined benefit plan that provides monthly pensions to retired mine workers and their surviving spouses; the UMWA Cash Deferred Savings Plan of 1988 is a 401(k) plan for active mine workers; and the four health plans are the UMWA Combined Benefit Fund, UMWA 1992 Benefit Plan, UMWA 1993 Benefit Plan and UMWA Prefunded Benefit Plan.

The main subjects of today’s hearing are the 1974 Pension Plan and the 1993 Benefit Plan. Representative Scott’s bill, H.R. 934, proposes changes to the Surface Mining Control and Reclamation Act (“SMCRA”) that would add a new group of beneficiaries to the 1993 Benefit Plan, principally those participants and beneficiaries whose last signatory employer filed for bankruptcy in 2018. Representative McKinley’s bill, H.R. 935, addresses funding for the 1974 Pension Plan by proposing to amend SMCRA through an increase in the \$490 million annual cap on transfers to the Funds’ plans to \$750 million and providing for transfers of funds available under the annual cap to the 1974 Pension Plan.

On behalf of the Trustees of these plans, I am pleased to accept the Subcommittee’s invitation to submit this testimony today.

The Origins of the Pension and Health Plans

The Funds are continuations of the multiemployer Welfare and Retirement Fund created in 1946 through an agreement signed by the United Mine Workers of America’s (“UMWA”) John L. Lewis and Secretary of the Interior Julius Krug, when President Truman seized the nation’s coal mines to resolve a nationwide strike. They are Taft-Hartley trusts directed by trustees appointed in equal numbers by the UMWA and coal industry employers represented by the Bituminous Coal Operators Association (“BCOA”). Prior to 1974, the Funds paid pension and health benefits from one plan. In 1974, the Employee Retirement Income Security Act of 1974 (“ERISA”) required pension and health plans to be administered through separate trusts. Accordingly, the UMWA and BCOA established new pension and health plans that are by statute continuations of the original Welfare and Retirement Fund.

Since 1974, employers have participated in the Funds through a collective bargaining agreement called the National Bituminous Coal Wage Agreement (“NBCWA”) and similar related agreements. The NBCWA of 1974 created four trusts (two pension plans and two health plans),

funded by royalties on coal production and contributions based on hours worked by UMWA-represented mine workers. Contributions to the 1974 Pension Plan and 1993 Benefit Plan currently are based on hours worked by active UMWA-represented miners and tons of coal purchased for which contributions to the plans had not been made.

The 1974 Pension Plan and Its Financial Difficulties

The 1974 Pension Plan's financial condition has deteriorated since 2007. The decline is due to several factors outside the control of the Plan's Settlers and Trustees, including the recession and financial market collapse of 2008, a declining base of contributing employers, the high ratio of retirees and inactive participants to current employees, a high number and percentage of "orphan" beneficiaries whose former employers are not contributing to the Plan, and the substantial number of major coal companies filing for bankruptcy and withdrawing from the Plan.

As of July 1, 2019, the 1974 Pension Plan had approximately 81,500 pensioners. There are an additional 6,000-7,000 participants vested and terminated from employment but not yet in pension status, and approximately 2,045 active mine workers for whom credit hours were reported for May 2019. Ninety-five percent (95%) or more of our pensioners are orphan retirees whose former employers are not contributing to the Plan. The average monthly benefit of all pensioners is currently \$596, with approximately 30% of pensions under \$250, and 58% under \$500. About 31% of the pensioners are surviving spouses of deceased miners, and 9% are receiving a disability pension as the result of a mine accident.

As of July 1, 2018, the date of the Plan's most recent valuation, the 1974 Pension Plan's market value of assets was \$2.4 billion (down to \$2.1 billion by July 1, 2019), and its liabilities were \$6.6 billion. Its funded percentage was 37.7%. The Plan has been in Critical and Declining Status under the Pension Protection Act of 2006, since July 1, 2015.

Decline in the Number of Contributing Employers

The 1974 Pension Plan is funded primarily through contributions paid by signatory employers on hours worked by classified employees. Because so many large employers have left the industry, the 1974 Pension Plan has not had sufficient contributions to maintain a funding level that can sustain earned benefit payments. In plan year 2018, the Plan paid \$613,836,000 of pension benefits but took in only \$30,067,000 in contributions. The 1974 Pension Plan is projected to become insolvent in the 2022-2023 plan year, at which time former mine workers and their surviving spouses will face significant benefit cuts to their very modest pensions.

The 1974 Pension Plan is facing unprecedented challenges from bankruptcies, mine closures, and layoffs in the coal industry. Bankruptcies have had a devastating effect on the Plan:

- In April 2012, the second largest signatory coal company, Patriot Coal Corporation, filed for bankruptcy. Patriot attempted to reorganize and remain a signatory employer, but it was not successful. On May 12, 2015, Patriot filed for bankruptcy a second time and proceeded to sell substantially all of its assets "free and clear" of all liability to the 1974 Pension Plan. On October 25, 2015, Patriot withdrew from the 1974 Pension Plan.

Through the bankruptcy process, Patriot was able to avoid paying more than \$900 million in withdrawal liability.

- On July 15, 2015, Jim Walter Resources filed for bankruptcy protection in the Northern District of Alabama. Through the bankruptcy process, Jim Walter Resources also was able to withdraw from the 1974 Pension Plan and avoid paying over \$900 million in withdrawal liability to the 1974 Pension Plan.
- On August 3, 2015, Alpha Natural Resources filed for bankruptcy in the Eastern District of Virginia. Alpha received bankruptcy court approval to terminate its collective bargaining agreement, withdraw from the 1974 Pension Plan and avoid paying over \$1 billion in withdrawal liability to the 1974 Pension Plan.
- On October 14, 2018, Mission Coal Company filed for bankruptcy in the Northern District of Alabama. Mission received approval from the bankruptcy court to terminate its collective bargaining agreements and cease all contributions to the 1974 Pension Plan. The bankruptcy court issued an order approving the sale of substantially all of Mission's assets "free and clear" of all liability, including approximately \$1 billion in withdrawal liability to the 1974 Pension Plan.

Outside of bankruptcy, there have been many layoffs, closures, and sales of signatory operations that formerly contributed to the 1974 Pension Plan. The result of these shutdowns and bankruptcies is a tremendously-diminished employer base supporting the Plan. In the past, there were thousands of coal industry employers that contributed to the 1974 Pension Plan helping to make it a stable, well-funded multiemployer plan. Today there are only 10. Of those ten, 97% of the contributions come from one related group of companies. This decline in the employer base resulted in reduced contributions for hours worked by active mine workers. In 1984, approximately 160 million contribution hours were worked by classified employees. By 2004, the contribution hours declined to approximately 25 million hours. For 2014, the number of contribution hours further declined to 18.3 million hours, and by the plan year ending June 30, 2018, contribution hours declined to an all-time low of approximately 4.6 million hours. Employer contributions for 2018 were approximately \$30 million (including some delinquent contributions and contributions on purchased coal), compared to plan year 2018 benefit payments of over \$613 million.

Effects of the 2008 Wall Street Crash

While the assets of the 1974 Pension Plan have always been well diversified and prudently managed, the recession of 2008 and its impact on financial markets had a significantly negative effect on the Plan. By June 30, 2009, the 1974 Pension Plan's investment returns were -18%. Because of the 1974 Pension Plan's small and declining contribution base, the Plan's investment returns are its most important source of revenue. At the same time the 1974 Pension Plan's assets were diminished by the collapse of the financial markets, the Plan was making record pension payouts. For example, annual pension payouts were well over \$600 million in 2008 and 2009.

Despite the decline in the 1974 Pension Plan's employer contribution base, the Plan was well funded for more than a decade preceding the financial markets' collapse of 2008 and 2009. The Plan's funded status was 93% in 2008, but following the crash, it was under 74% in 2009, and is now 38% funded. As the result of the investment losses, combined with the high level of benefit payments, the Plan cannot invest its way out of its financial problems. Although the 1974 Pension Plan has had strong investment returns since 2008, even annual investment returns in excess of 10% are not sufficient to cover annual Plan expenditures (we estimate that an annual investment return of 24% or more would be needed to continue paying all benefits provided for under the Plan – an unachievable goal). In the plan year ending June 30, 2013, for example, the 1974 Pension Plan's investment return was 9.5% and its investments appreciated by approximately \$377 million, but benefit payments were approximately \$573 million. More recently, for plan year 2018, the 1974 Pension Plan's annual cash outflow for benefits exceeded its investment income by nearly one-half billion dollars. This continued cash drain has caused a substantial reduction in the 1974 Pension Plan's assets available for investment and made it impossible for strong investment performance in the future to remedy the Plan's financial difficulties.

Additionally, because the 1974 Pension Plan is approaching insolvency, its investment mix has been adjusted to increase the liquidity of its assets. This adjustment is incorporated in the Plan's earnings assumption for funding purposes, which was reduced from 7.25% to 6.00% over the past two years. The 1974 Pension Plan's asset mix will continue to shift to reflect the need for increased liquidity, which likely will further reduce its investment returns. At this point, the diminution of the Plan's assets has proceeded to the point that the Plan's investment return will have minimal effect on its impending insolvency.

Lack of Funding from Hours Worked by Active Mine Workers

The 1974 Pension Plan cannot recover its funding status through increased employer contributions. The number of contributing employers and the number of hours worked has declined substantially. As of July 1, 2018, the ratio of retirees receiving benefits from the Plan to the number of active employees was 28 to 1. When the terminated participants who have earned the right to future benefits are included, the ratio of active employees to inactive participants increases to approximately 30 to 1. This ratio of 30 participants to each active employee shows why the 1974 Pension Plan cannot contribute its way out of its funding problems.

For the 1974 Pension Plan, the number of orphan beneficiaries is extremely high and has increased substantially in the last several years. As of 2014, 67% of the 1974 Pension Plan's beneficiaries were orphan beneficiaries. By 2018, 95% were orphan beneficiaries. In other words, as a result of recent coal industry bankruptcies and employers going out of business, approximately 95% of the beneficiaries who currently are receiving benefits from the 1974 Pension Plan last worked for employers that are not contributing to the Plan. This has placed significant financial stress on the 1974 Pension Plan.

Actions Taken by the Settlers

Since 2007, the settlers have taken several actions to address the 1974 Pension Plan's financial condition. These include:

- Increasing the contribution rate paid by signatory employers;
- Freezing accrual rates for active miners to the rates in effect under the 2007 NBCWA;
- Freezing pension benefits for retirees to the amounts in the 2007 NBCWA;
- Eliminating annual lump sum bonuses for retirees;
- Closing the Plan to new entrants after January 1, 2012; and
- Reducing death benefits by half, from \$10,000 to \$5,000.

Despite these actions, and for all the reasons discussed above, the 1974 Pension Plan will become insolvent in the 2022-2023 plan year.

Historical Information on the Health Plans

In 1992, Congress passed the Coal Industry Retiree Health Benefit Act (the "Coal Act"), which merged the Funds' two existing retiree health plans into a new multiemployer plan called the Combined Benefit Fund. The Coal Act provided funding for certain beneficiaries from two sources: employers that previously employed the beneficiaries, and annual transfers from interest earned by the Abandoned Mine Land Reclamation Fund ("the AML Fund"), a fund managed by the Department of the Interior under SMCRA that receives fees from coal operators. The Coal Act also required responsible coal operators to continue to provide benefits to their eligible retirees, and provided for the creation of the 1992 Benefit Plan to provide health care to retirees who did not receive those required benefits.

The Coal Act left to the UMWA and BCOA (the settlers of the plans) the negotiation of any health benefits for retirees who retired after September 30, 1994. In successive collective bargaining agreements from 1993 to 2016, the settlers continued retiree health benefits for these retirees on a single employer plan basis, with the 1993 Benefit Plan established as the new plan for "orphan retirees" whose last signatory operators were out of business.

In 2006, the Tax Relief and Health Care Act was enacted. It amended the Coal Act to provide for transfers to the Combined Benefit Fund, 1992 Benefit Plan and 1993 Benefit Plan from the AML Fund, supplemented as needed by U.S. Treasury funds, equal to the expenses of each of the three health plans, reduced by the amount of operator premiums and contributions and payments received from other Federal agencies, primarily from Medicare reimbursements. Transfers to the three plans, in combination with certain transfers to various states related to environmental reclamation, are limited to an annual cap of \$490 million. For the 1993 Benefit Plan, the transfers only covered beneficiaries enrolled in the Plan at the time the legislation was enacted in 2006, and the 1993 Plan provided healthcare coverage to its post-legislative population for the next decade through employer contributions. The 1993 Benefit Plan's population consists solely of orphan beneficiaries and their dependents.

Pursuant to the Continued Health Benefits for Miners Act of 2016, the 1993 Benefit Plan enrolled those retirees and their dependents whose employer filed for bankruptcy in 2012 or 2015. Thereafter, the Health Benefits for Miners Act of 2017 provided for funding to the 1993 Benefit Plan through federal transfers under SMCRA to pay for the health benefits of all beneficiaries of the 1993 Benefit Plan as of May 5, 2017 whose benefits are subject to federal transfers.

In 2018, two large coal operators filed for bankruptcy, Westmoreland Coal Company and Mission Coal Company. In both cases, the bankruptcy court ruled that the companies were no longer required to provide retiree health benefits.

The Health Plans' Population

For over 70 years, the Funds has provided health care benefits to eligible retired or disabled UMWA coal miners and their dependents. Currently, the Funds' health plans are providing benefits to approximately 42,000 pensioners and their dependents who are covered by federal transfers. Approximately 18% of the Funds' population is over 80 years old, over half are women, and more than 71% are Medicare recipients.

Pursuant to the Coal Act and in accordance with the terms of the NBCWA, the Funds delivers health care programs tailored to the specific health and medical requirements of its covered populations. As of July 1, 2019, the 1993 Benefit Plan was providing health benefits to 28,432 retirees and their dependents who are covered by federal transfers. After the enactment of the Health Benefits for Miners Act of 2017, approximately 45 additional orphan beneficiaries have been enrolled in the 1993 Benefit Plan, whose health care is currently funded through employer contributions.

Thank you for the opportunity to testify today before the Subcommittee on Energy & Mineral Resources. The Funds stands ready to implement Congress's directives.



Background Information

UMWA Health & Retirement Funds

Plan	Type of Plan	Population	Covered by Coal Act
1974 Pension Plan	Pension	81,507	No
Combined Benefit Fund (CBF)	Health	6,649	Yes
1992 Benefit Plan	Health	6,662	Yes
1993 Benefit Plan	Health	28,432 ¹	Yes

¹Excludes approximately 20,000 active and retired miners whose health benefits are administered by the 1993 Benefit Plan but whose benefits are funded entirely by their last employer.

1974 Pension Plan Benefits Are Very Modest

Average 1974 Pension Plan Monthly Payment

Total Population	\$596
Regular Pensioners	\$714
Disability Pensioners	\$581
Surviving Spouses	\$368

31% of Beneficiaries receive less than \$250 per month

58% of Beneficiaries receive less than \$500 per month

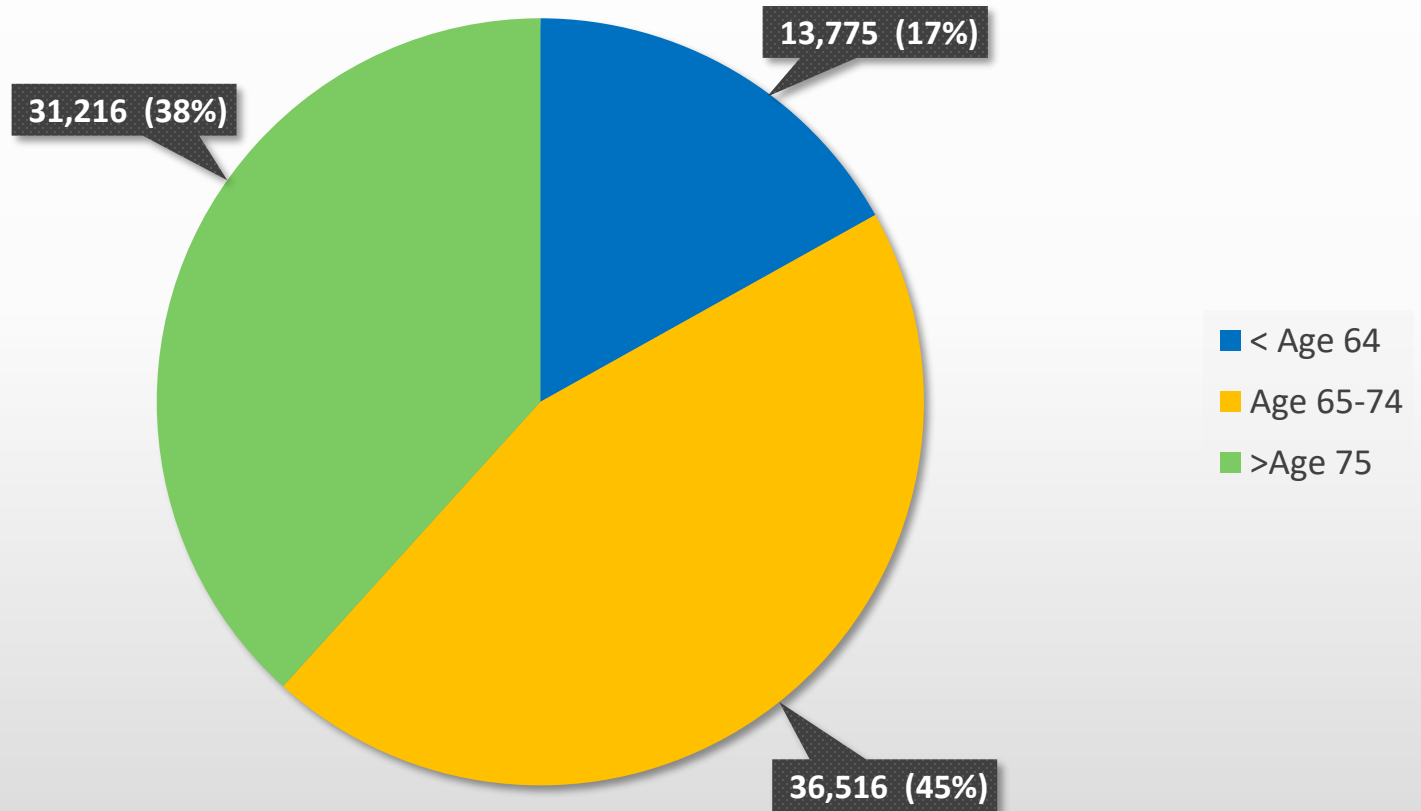
1974 Pension Plan Population

Age	Regular Pensioner	Disability Pensioner¹	Surviving Spouse	Total Pensioners
< 55	24	68	289	381
55-64	9,518	1,429	2,447	13,394
65-74	25,620	3,769	7,127	36,516
75-84	11,171	1,696	8,040	20,907
> 85	3,048	187	7,074	10,309
Total	49,381	7,149	24,977	81,507
Percent	60.6%	8.8%	30.6%	100%

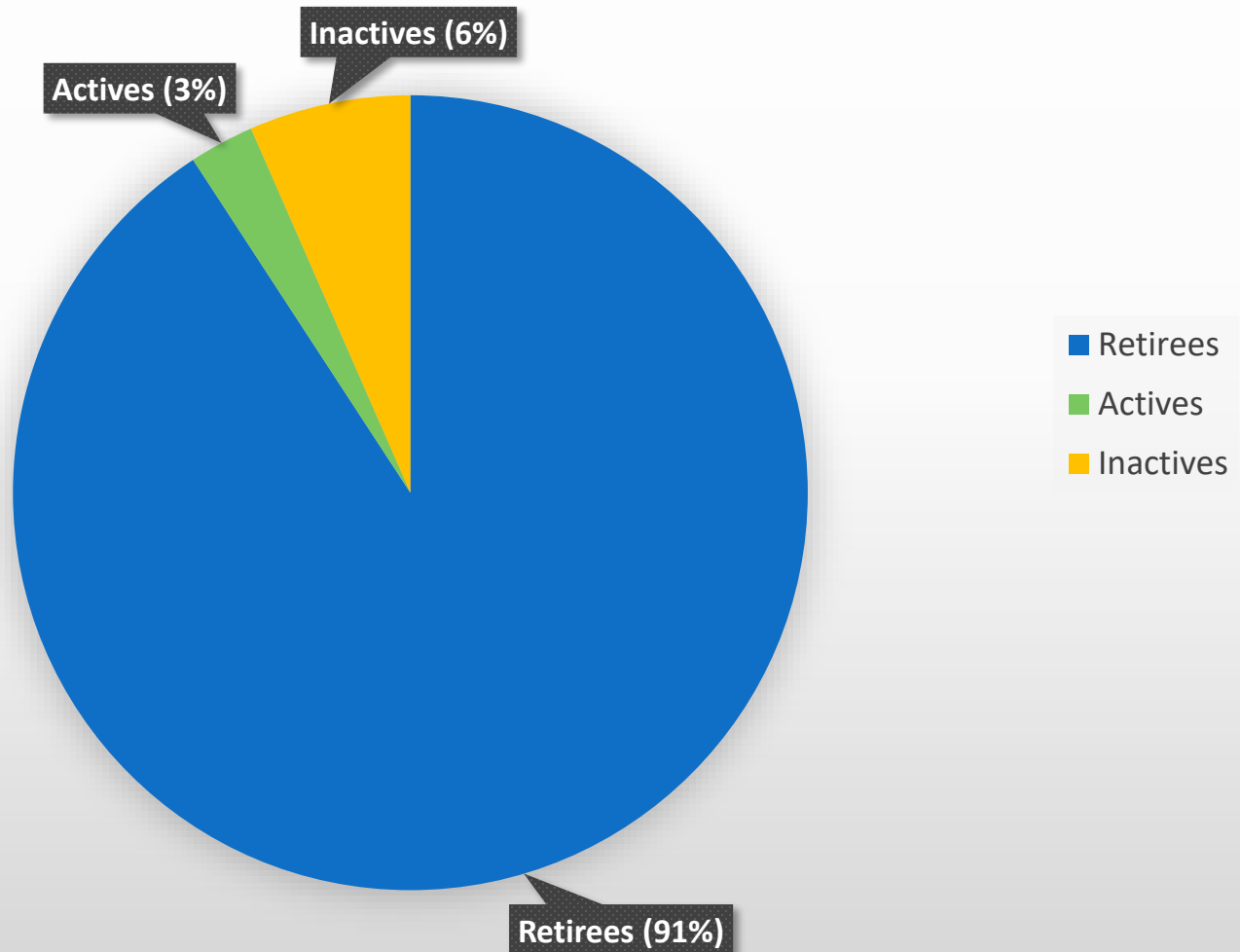
Data as of July 2019

¹Disability pensioners must be disabled as a result of a mine accident.

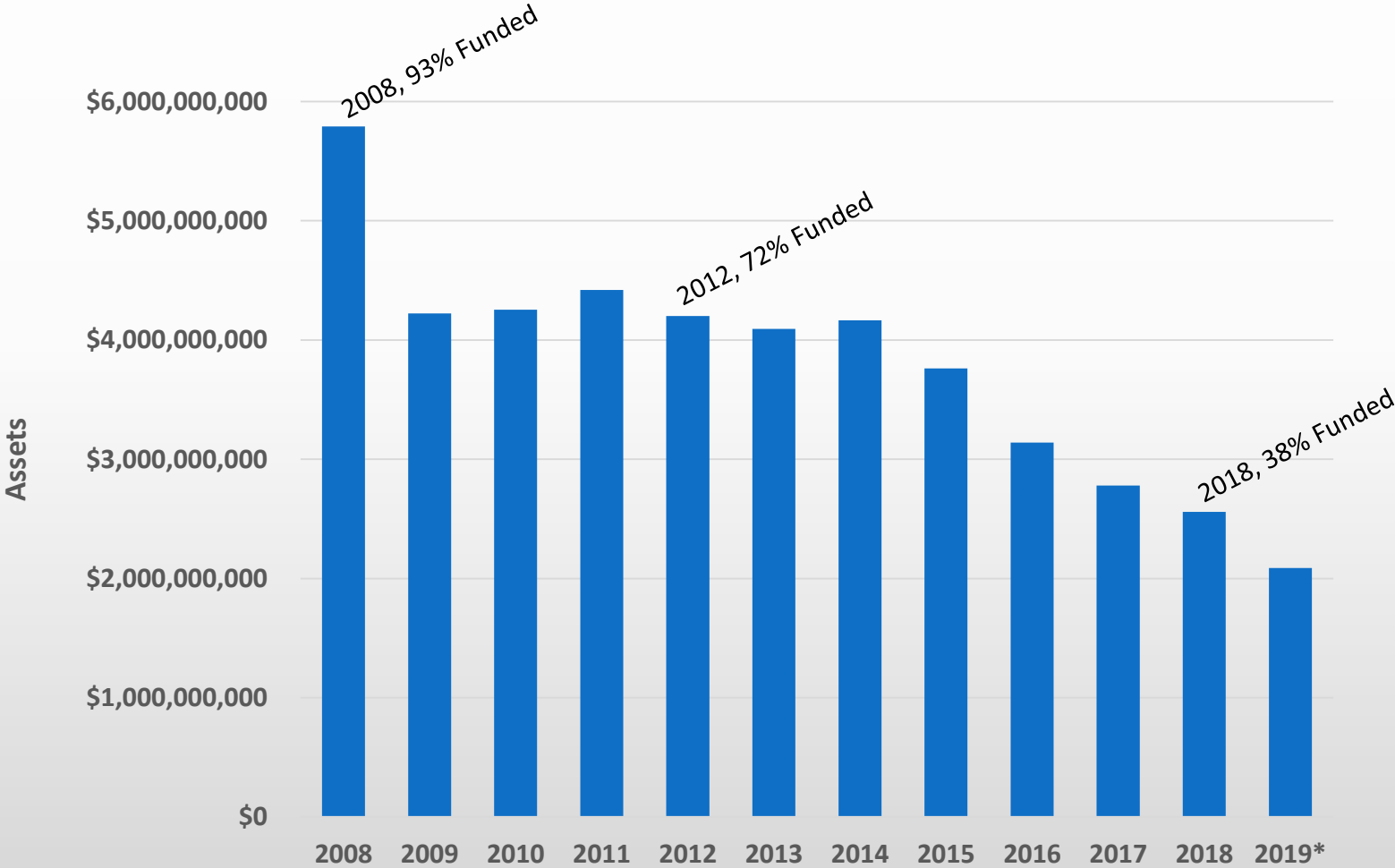
1974 Pension Plan by Age



1974 Pension Plan Liabilities (2018 Actuarial Valuation)



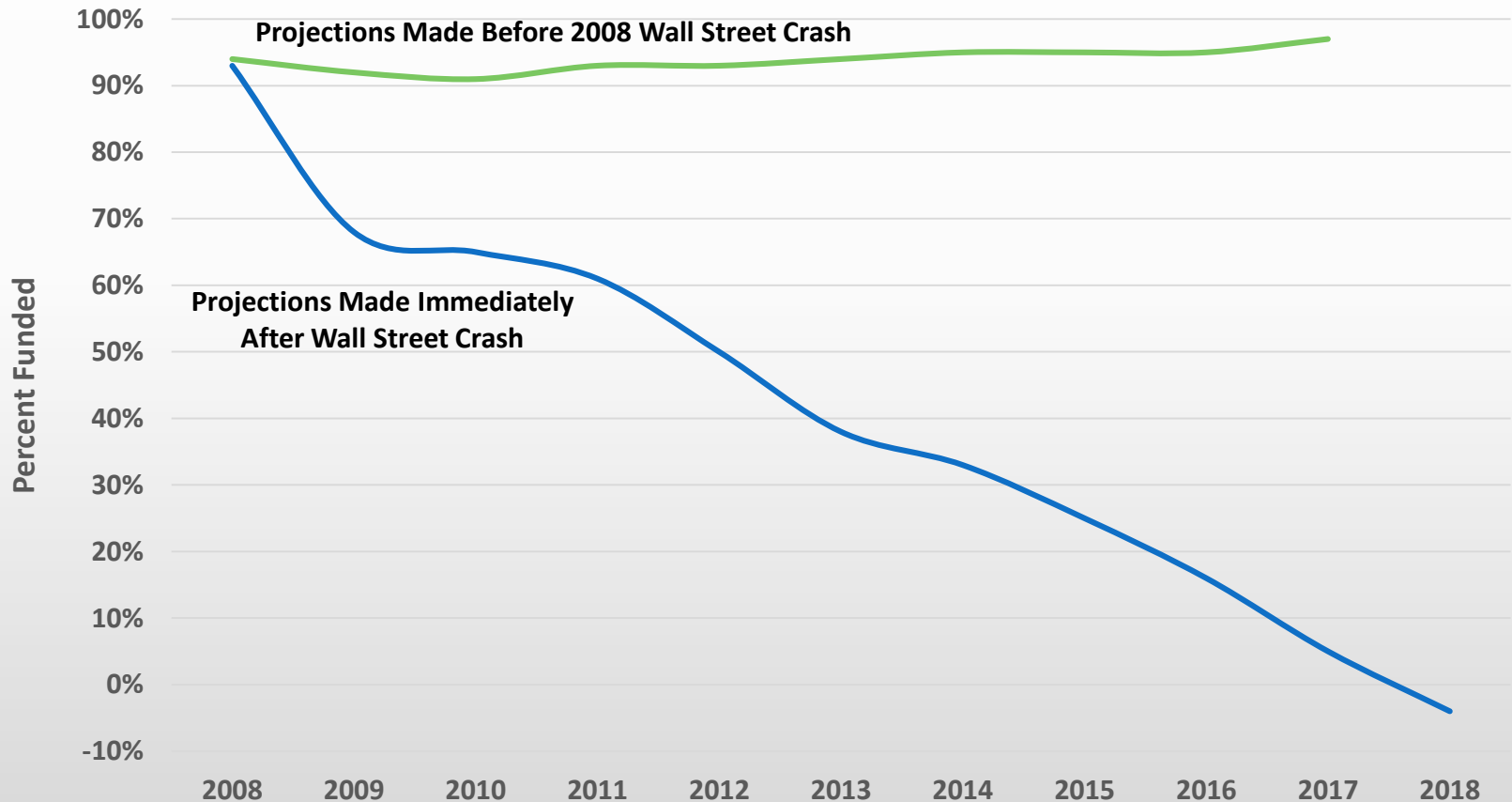
The 2008-2009 Wall Street Crash Wiped Out Significant Market Value



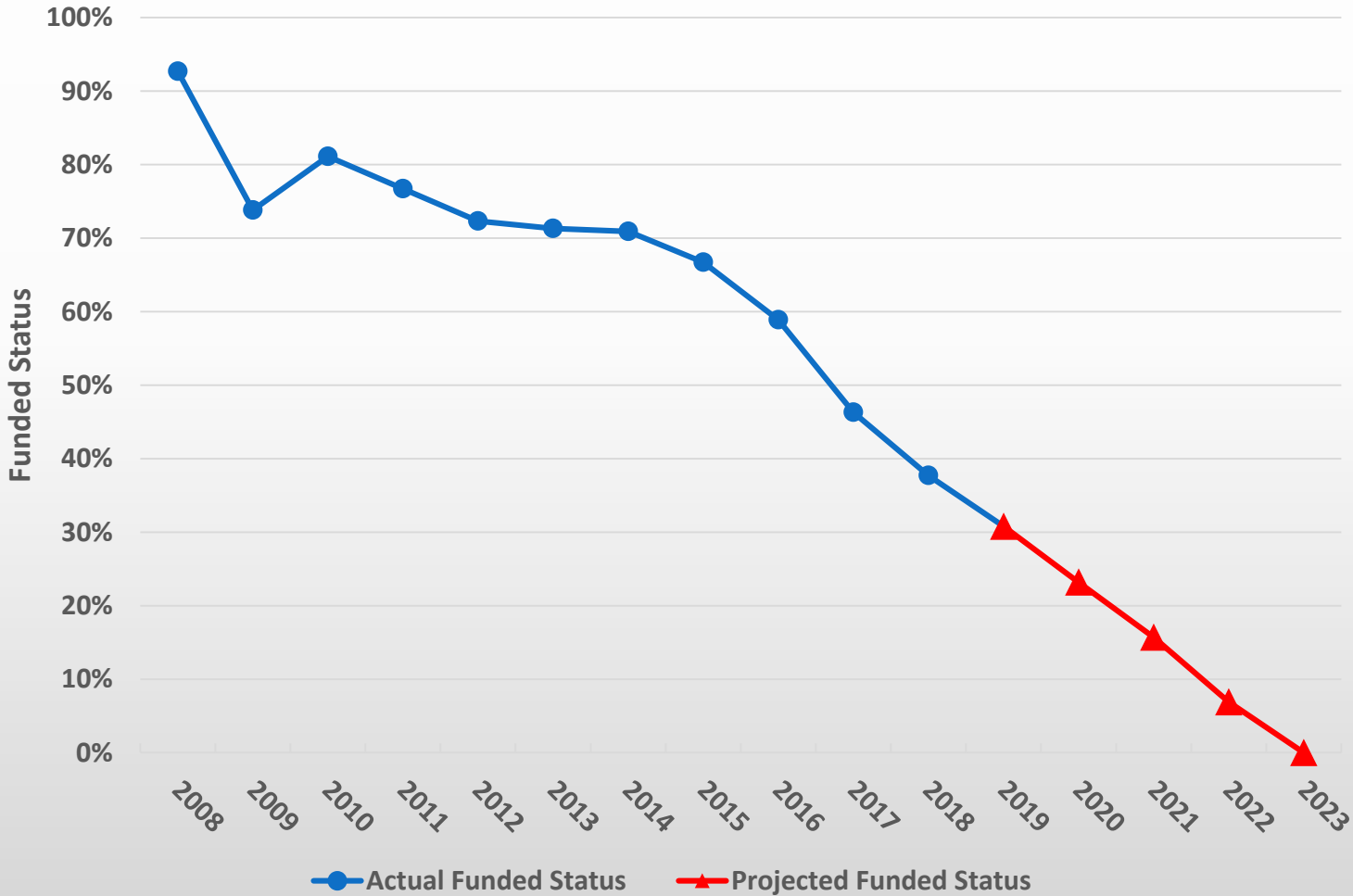
*Unaudited financial statements as of June 30, 2019

1974 Pension Plan Funding Projections

(Actuary's Projections from 2007 and 2009)

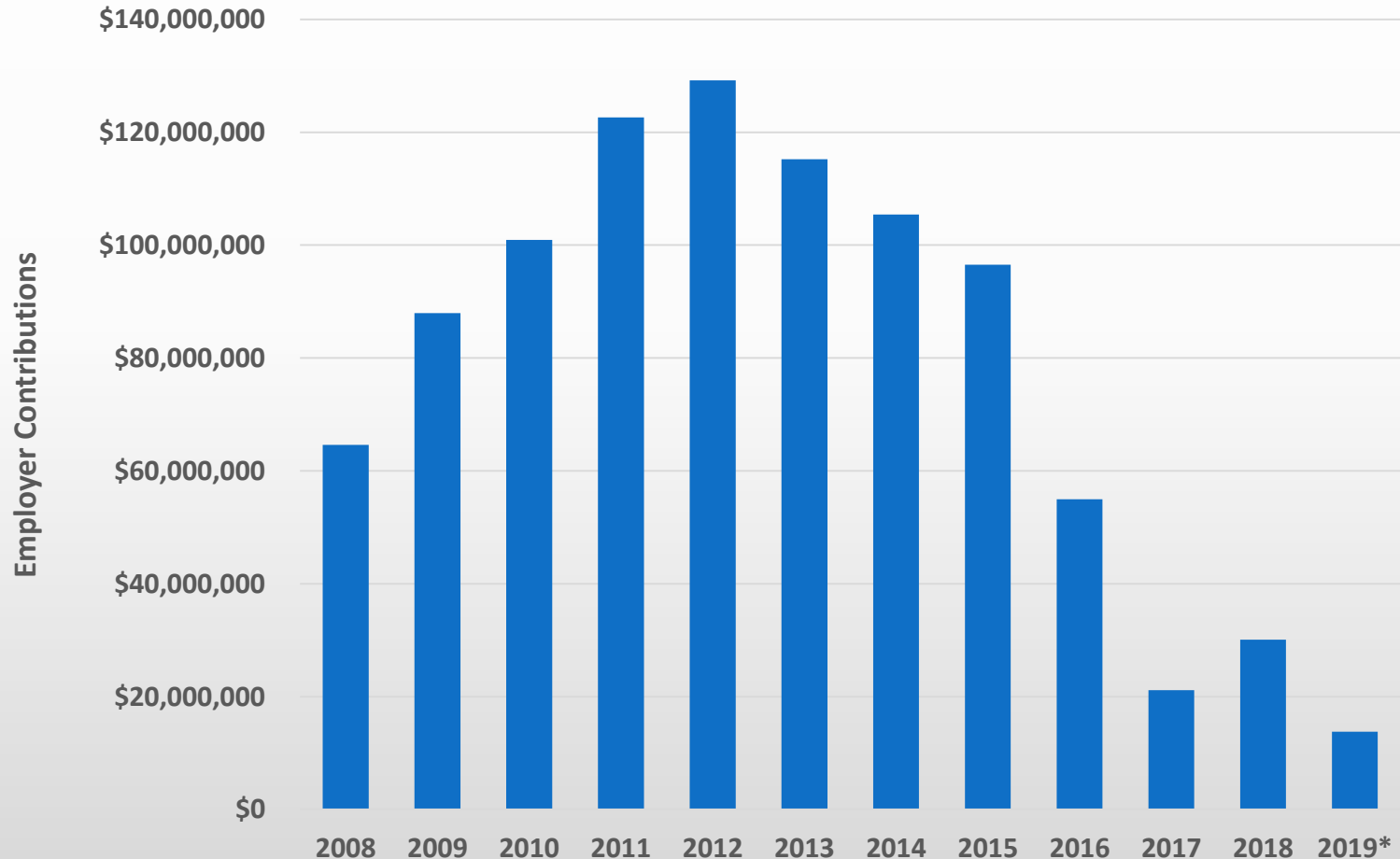


1974 Pension Plan Funded Status Actual and Projected



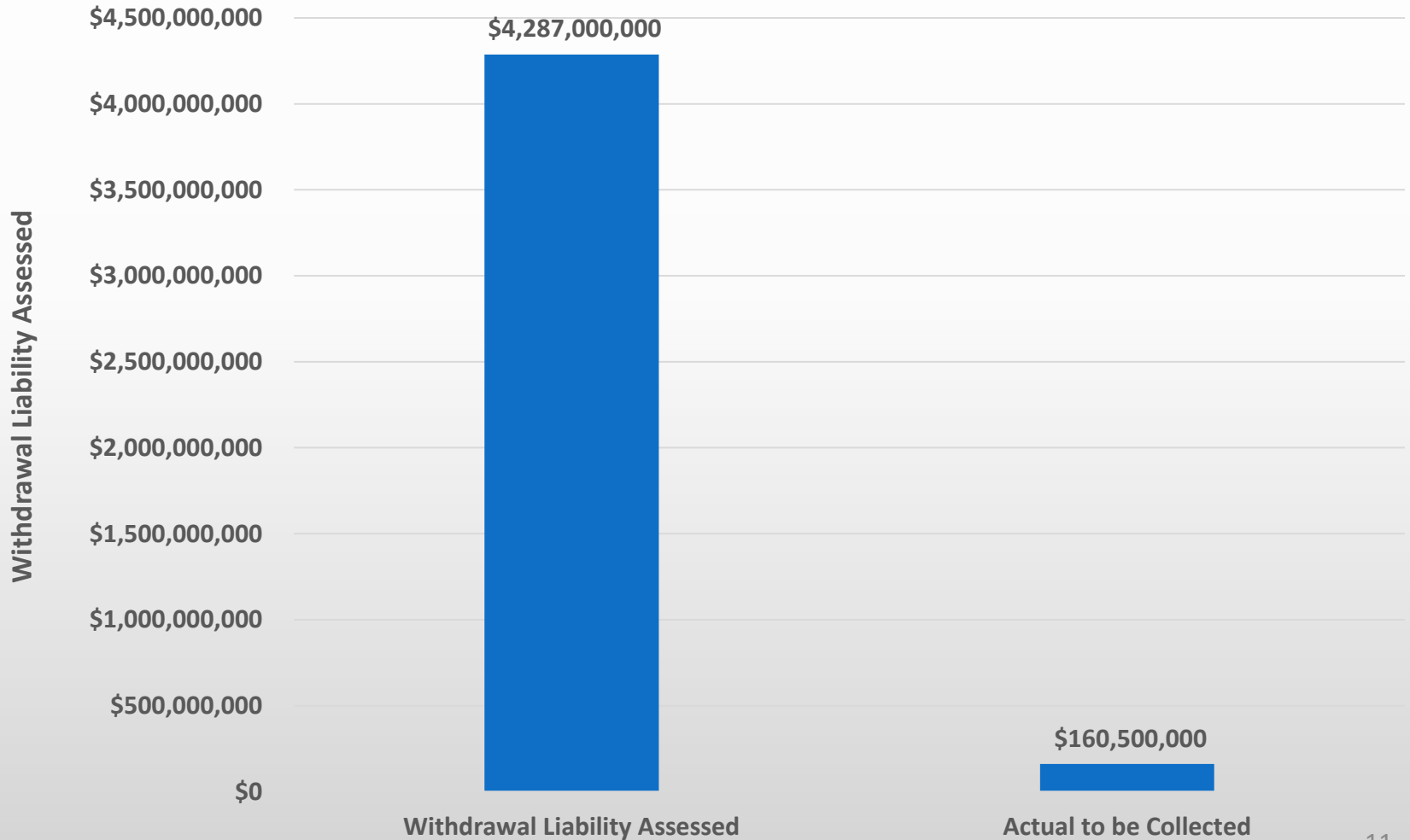
As of July 1 of each year

Bankruptcies Have Devastated the 1974 Pension Plan's Contribution Base



*2019 includes contributions through May (11 Months)

Bankruptcies Gutted the 1974 Pension Plan's Withdrawal Liability Program Costing the Plan About \$4 Billion

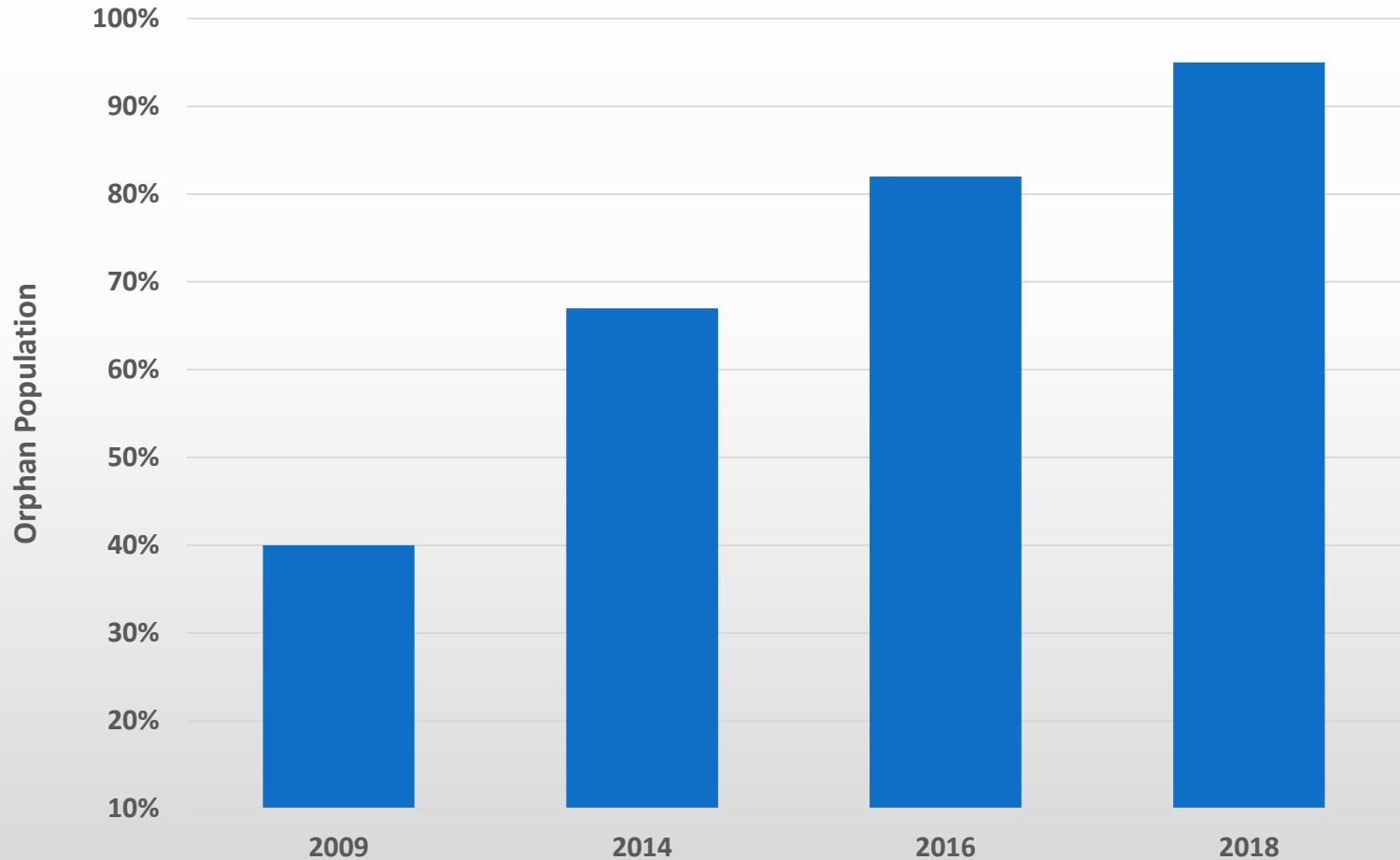


1974 Pension Plan Liabilities, Assets, Funded Status, Contributions, and Benefit Payments (2008-2018)

As of 7/1 Valuation	Unit Credit Accrued Liability (\$ Thousands)	Actuarial Value of Assets (\$ Thousands)	Funded Status based on Actuarial Value of Assets	Contributions ¹ (\$ Thousands)	Benefit Payments (\$ Thousands)
2008	6,947,338	6,439,878	92.7%	64,585	661,750
2009	6,861,119	5,066,644	73.8%	87,935	661,616
2010	6,757,439	5,481,125	81.1%	100,936	671,754
2011	6,618,702	5,077,338	76.7%	122,642	675,627
2012	6,438,715	4,658,185	72.3%	129,174	709,929
2013	6,324,923	4,508,468	71.3%	115,215	601,305
2014	6,153,250	4,362,514	70.9%	105,431	634,380
2015	6,166,660	4,111,940	66.7%	96,551	618,468
2016	6,150,445	3,623,832	58.9%	54,991	621,738
2017	6,541,766	3,025,625	46.3%	21,162	662,027
2018	6,606,055	2,493,367	37.7%	30,067	613,836

¹Excludes withdrawal liability payments

1974 Pension Plan's Orphan Population



*Orphan retirees whose last signatory employer is not making contributions to the plan

1974 Pension Plan Ratio of Inactive Participants to Active Mine Workers

