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BLACK LUNG BENEFITS PROGRAM

Continued Inaction on Coal Operator Self-Insurance Increases Financial Risk to Trust Fund

Statement of Thomas Costa, Director,
Education, Workforce, and Income Security

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GAO-22-105546

DRAFT

GAO Highlights

Highlights of GAO-22-105546, a testimony before the Committee on Education and Labor, Subcommittee on Workforce Protections, House of Representatives

Why GAO Did This Study

The Trust Fund, which pays benefits to coal miners disabled due to black lung, faces financial challenges. It has borrowed from the U.S. Treasury's general fund almost every year since 1979 to make needed expenditures. In February 2020, GAO found that DOL's limited oversight of coal mine operator insurance exposed the Trust Fund to additional financial risk.

This testimony is based on reports GAO issued in 2020 and 2018. GAO found in 2020 that in overseeing coal operator self-insurance DOL did not (1) estimate future benefit liability when setting the amount of collateral required to self-insure, (2) regularly review operators to assess whether the required amount of collateral should change, or (3) always take action to protect the Trust Fund by revoking an operator's ability to self-insure as appropriate.

To obtain updated information for this hearing statement, GAO interviewed DOL officials in November 2021 and reviewed agency documentation.

What GAO Recommends

DOL agreed with the recommendations made in GAO's 2020 report that DOL should establish procedures for self-insurance renewals and coal operator appeals. Doing so could better position DOL to take action to protect the Trust Fund should an operator not submit its renewal application or comply with DOL's collateral requirements. In addition, appeals procedures could help ensure that DOL is able to revoke an operator's ability to self-insure, when warranted. Both recommendations remain open.

View GAO-22-105546. For more information, contact Thomas Costa at (202) 512-4769 or costat@gao.gov.

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Continued Inaction on Coal Operator Self-Insurance Increases Financial Risk to Trust Fund

What GAO Found

The Department of Labor (DOL) took initial steps to implement GAO's recommendations to improve its oversight of self-insured coal mine operators, but its reform effort was hindered by the COVID-19 pandemic and a review of the program by the current administration, according to DOL officials. Black lung benefits are generally paid by liable coal mine operators, and federal law generally requires coal mine operators to secure their black lung benefit liability. Operators are allowed to self-insure if they meet certain DOL conditions. The federal government's Black Lung Disability Trust Fund (Trust Fund) pays benefits when no responsible mine operator can be identified or the liable mine operator does not pay. This can happen, for example, when an operator goes bankrupt.

As GAO reported in 2020, the bankruptcies of some self-insured operators that occurred from 2014 through 2016 led to the transfer of $865 million in estimated benefit responsibility to the Trust Fund, according to DOL. This occurs when the amount of collateral DOL requires from a self-insured coal operator does not fully cover the operator's benefit responsibility should the operator become insolvent. Since 2016, several other self-insured operators have also filed for bankruptcy, according to DOL.

In February 2020, DOL sent letters to 14 self-insured operators asking them to provide about $251 million in total collateral. Half of the coal operators provided the collateral DOL requested and the other half appealed, according to DOL. DOL officials said their ability to resolve the appeals was hindered by the COVID-19 pandemic and they suspended reviews of coal operator appeals.

In December 2020, DOL issued a preliminary bulletin for coal operator self-insurance that described significant changes and included actions that would have addressed GAO's recommendations. For instance, DOL set a goal to resolve coal operator appeals within 90 days after receiving supporting documents or meeting with the operator to discuss their concerns.

However, in February 2021, DOL rescinded the preliminary bulletin due to a program review by the current administration, according to DOL officials. DOL officials said they have taken no further actions to resolve appeals or to collect any additional collateral or other information from self-insured operators. As a result, DOL has not obtained about $186 million in requested collateral from self-insured operators that appealed DOL's requested collateral. In addition, one of these operators, Lighthouse Resources, filed for bankruptcy in December 2020; this could result in a transfer of about $2.4 million in estimated benefit responsibility to the Trust Fund, according to DOL. In addition, two operators DOL said no longer met their requirements to self-insure almost two years ago remain self-insured.

In November 2021, DOL officials said the current administration's program review is complete, but could not describe any anticipated changes to coal operator self-insurance going forward. Given that the Trust Fund had to borrow about $2.3 billion from the U.S. Treasury in fiscal year 2021 to make needed expenditures, we reiterate that DOL should take action to address our previous recommendations to help prevent additional benefit liabilities from transferring to the Trust Fund.

Chairwoman Adams, Ranking Member Keller, and Members of the Subcommittee:

Thank you for the opportunity to highlight GAO's prior work that describes the financial challenges facing the Black Lung Disability Trust Fund (Trust Fund). I will describe how the Department of Labor's (DOL) limited oversight of coal mine operator self-insurance has affected the Trust Fund, and I will provide an update on actions DOL has taken to implement our recommendations to improve oversight of coal operator self-insurance.[1]

The Black Lung Benefits Program provides medical and cash assistance to certain coal miners who are totally disabled due to pneumoconiosis, also known as black lung disease.[2] About 24,500 total beneficiaries (primary and dependents) were receiving black lung benefits during fiscal year 2021.[3] The number of beneficiaries has decreased over time as a result of declining coal mining employment and an aging beneficiary population, according to DOL officials. However, black lung beneficiaries could increase in the near term due to the increased occurrence of black lung disease in its most severe form, progressive massive fibrosis,

[1]GAO, *Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance Is Needed*, GAO-20-21 (Washington, D.C.: Feb. 21, 2020) and GAO, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, GAO-18-351 (Washington, D.C.: May 30, 2018).

[2]A miner's surviving dependents can also receive compensation. Black lung is caused by breathing coal mine dust, and the severity of the disease can range from mild—with no noticeable effects on breathing—to advanced disease, which could lead to respiratory failure and death, according to the Department of Health and Human Service's Centers for Disease Control, National Institute for Occupational Safety and Health.

[3]This number excludes black lung beneficiaries whose claims were filed on or before December 31, 1973, as these awards are generally funded from Treasury's general fund, and not the Trust Fund. It also excludes beneficiaries that only receive medical benefits.

particularly among Appalachian coal miners, according to National Institute for Occupational Safety and Health (NIOSH) officials.[4]

Black lung benefits are generally to be paid by liable coal mine operators. However, the federal government's Trust Fund pays benefits in certain circumstances, including in cases where no responsible mine operator can be identified or when the liable mine operator did not pay.

This statement is based on prior work.[5] In producing our February 2020 report, we identified coal operators that filed for bankruptcy from 2014 through 2016 using Bloomberg data. We selected these years, in part, because the bankruptcies were more likely to be resolved so that their effects on the Trust Fund could be assessed. We also analyzed data and documentation on commercially-insured and self-insured coal operators, and examined workers' compensation insurance practices in four of the nation's top five coal producing states. In addition, we interviewed DOL officials, coal mine operators, and insurance company representatives, among others. In November 2021, we interviewed DOL officials to obtain information on actions taken to implement the self-insurance related recommendations we made in February 2020 and we also reviewed agency documentation. The work upon which this statement is based was conducted in accordance with generally accepted government auditing standards.

The Black Lung Disability Trust Fund Faces Financial Challenges

In May 2018, we reported that the Trust Fund faces financial challenges.[6] The Trust Fund's expenditures have consistently exceeded revenue and

[4]NIOSH studies found increases in the prevalence of black lung disease among long-tenured Appalachian coal miners and have documented hundreds of miners with the most severe form of the disease, progressive massive fibrosis, receiving care at two clinics in Kentucky and Virginia. See D.J. Blackley, L.E. Reynolds, C. Short, R. Carson, E. Storey, C.N. Halldin, and A.S. Laney, "*Progressive Massive Fibrosis in Coal Miners From 3 Clinics in Virginia*," Journal of the American Medical Association, 319(5):500–501 (February 6, 2018); and D.J. Blackley, J.B. Crum, C.N. Halldin, E. Storey, and A.S. Laney, "*Resurgence of Progressive Massive Fibrosis in Coal Miners — Eastern Kentucky 2016,"* Morbidity and Mortality Weekly Report, 65:1385–1389 (December 16, 2016).

[5]GAO-20-21 and GAO-18-351.

[6]GAO-18-351.

it has essentially borrowed with interest from the Department of the Treasury's general fund almost every year since 1979, which was its first complete fiscal year.[7] In fiscal year 2021, the Trust Fund had to borrow about $2.3 billion to cover its expenditures, which included debt and interest repayments, according to the Department of Labor.[8] In May 2018, we reported that Trust Fund debt could exceed $15 billion by 2050.[9]

Trust Fund revenue is primarily obtained through a tax on coal produced and sold domestically, which we refer to in this statement as the coal tax.[10] The coal tax rate has varied over the years. From 1986 through 2018, the coal tax rate was $1.10 per ton of underground-mined coal and $0.55 per ton of surface-mined coal, up to 4.4 percent of the sales price. In 2019, the rate of the coal tax decreased to $0.50 cents and $0.25 cents per ton of underground-mined and surface-mined coal, respectively, up to 2 percent of the sales price. In 2020 through 2021, the rate of the coal tax increased to pre-2019 levels. Beginning in 2022, the coal tax is scheduled to decrease again to 2019 levels. With less revenue from the coal tax, the Trust Fund will likely need to borrow more from Treasury's general fund.

To pay benefits to coal miners disabled by black lung, federal law generally requires coal mine operators to secure their black lung benefit liability. Operators may purchase coverage from commercial insurance companies, or may self-insure. A self-insured coal mine operator assumes the financial responsibility for providing black lung benefits to its eligible employees by paying claims as they are incurred. Operators are permitted to self-insure if they meet certain DOL conditions. For instance, operators applying to self-insure must secure collateral in the form of an

[7]Under federal law, when necessary for the Trust Fund to make relevant expenditures, funds are appropriated to the Trust Fund as "repayable advances," and then those advances must be repaid with interest to the general fund of the U.S. Treasury. 26 U.S.C. § 9501(c). For reporting purposes, we refer to this process as "borrowing" from Treasury's general fund, which is distinct from the borrowing authority provided by law to some agencies. According to the Treasury, the general fund includes assets and liabilities used to finance the daily and long-term operations of the U.S. government as a whole.

[8]According to DOL's fiscal year 2021 agency financial report, the net position of the Trust Fund continued to decline in fiscal year 2021.

[9]GAO-18-351.

[10]The coal tax is imposed on the sale of all domestically produced coal with two exceptions: (1) lignite coal and (2) exported coal.

indemnity bond, deposit or trust, or letter of credit in an amount deemed necessary and sufficient by DOL to secure their liability.[11]

Coal operator bankruptcies have further strained Trust Fund finances. We reported in February 2020 that the bankruptcies of some self-insured operators that occurred from 2014 through 2016 led to the transfer of $865 million in estimated benefit responsibility to the Trust Fund, according to DOL (see table 1).[12] This may occur when the amount of collateral DOL requires from a self-insured coal operator does not fully cover the operator's benefit responsibility should the operator become insolvent. For example, the collateral DOL required from Alpha Natural Resources was about $12 million and approximately $494 million of estimated benefit liability was transferred to the Trust Fund, according to DOL.

Table 1: Self-Insured Coal Mine Operator Bankruptcies That Affected the Black Lung Disability Trust Fund, Filed from 2014 through 2016

Coal operator	Amount of collateral at time of bankruptcy	Estimated benefit liability transferred to the Trust Fund	Estimated number of beneficiaries for whom liability has been transferred to the Trust Fund[a]
Alpha Natural Resources	$12 million	$494 million	1,839
James River Coal Company	$0.4 million	$141 million	490
Patriot Coal	$15 million	$230 million	993
Total	**$27.4 million**	**$865 million**	**3,322**

Source: GAO presentation of Department of Labor data. | GAO-22-105546

[a]These totals include claims in active pay status as of September 2019, and estimates of newly awarded claims in fiscal year 2020 and into the future, according to the Department of Labor.

Since 2016, several other self-insured operators have also filed for bankruptcy, according to DOL. For instance, the bankruptcies of Westmoreland Coal and Murray Energy, which occurred in October 2018 and October 2019, respectively, will lead to the transfer of about $61.1 million in additional estimated benefit responsibility to the Trust Fund, according to DOL officials.

[11]A letter of credit may only be used in conjunction with another acceptable form of collateral.

[12]GAO-20-21.

Limited DOL Oversight Increased Financial Risk to the Black Lung Disability Trust Fund

In February 2020, we reported that DOL's limited oversight of coal mine operator insurance exposed the Trust Fund to additional financial risk.[13] Specifically, we found that DOL did not (1) estimate future benefit liability when setting the amount of collateral required to self-insure, (2) regularly review operators to assess whether the required amount of collateral should change, or (3) always take action to protect the Trust Fund by revoking an operator's ability to self-insure as appropriate.

DOL began implementing a new self-insurance process in July 2019. However, we found that the new process lacked procedures for its planned annual renewal of self-insured operators and for resolving coal operator appeals should operators dispute DOL collateral requirements.[14] We noted that this could hinder DOL from revoking operators' ability to self-insure should they not comply with DOL requirements. To strengthen its oversight of self-insured operators, we recommended, among other things, that DOL:

- develop and implement procedures for coal mine operator self-insurance renewal that clarifies how long an operator is authorized to self-insure, when an operator must submit its renewal application and supporting documentation, and the conditions under which an operator's self-insurance authority would not be renewed, and
- develop and implement procedures for self-insured coal mine operator appeals that identify timelines for self-insured operators to submit documentation supporting their appeals and that identify a goal for how much time DOL should take to make appeals decisions.

We stated that establishing clear self-insurance renewal procedures could better position DOL to take action to protect the Trust Fund should an operator not submit its renewal application and supporting documentation, or comply with DOL's collateral requirements. In addition, procedures that identify time lines for self-insured operators to submit documentation supporting their appeals, and that identify a goal for how much time DOL should take to make appeals decisions could help to

[13] GAO-20-21.

[14] GAO-20-21.

ensure that DOL is able to revoke an operator's ability to self-insure, when warranted.

DOL Took Steps to Implement GAO's Recommendations, but Was Hindered by the COVID-19 Pandemic and a New Review

In February 2020, shortly before we last reported to this committee, DOL sent letters to 14 self-insured operators asking them to provide about $251 million in total collateral.[15] Half of the coal operators provided DOL's requested collateral, and the remaining half appealed, according to DOL. DOL officials said that five operators appealed based on the amount of collateral DOL requested and the other two operators appealed based on DOL's finding that the operators no longer met DOL requirements to self-insure. As a result, DOL did not secure about $186 million in requested collateral from the five self-insured operators that appealed DOL's requested collateral. Table 2 shows the status of the 14 self-insured coal operators as of November 2021 including the amount of collateral DOL requested and secured (if applicable) and operators' estimated benefit liabilities.

Table 2: Self-Insured Coal Mine Operators as of November 2021

	Coal mine operator	Amount of collateral DOL requested in February 2020, if applicable	Amount of collateral secured by operator as of November 2021	Most recent actuarial estimate of black lung benefit liabilities
Coal mine operators that provided DOL's requested collateral	Coal mine operator #1	$16,754,500	$17,197,698	$23,935,000
	Coal mine operator #2	$3,296,856	$3,301,390	$3,296,856
	Coal mine operator #3	$1,364,354	$1,364,354	$1,364,354
	Coal mine operator #4	$1,132,719	$1,132,719	$1,132,611
	Coal mine operator #5	$1,045,502	$1,045,502	$1,230,002
	Coal mine operator #6	$634,100	$634,100	$746,000
	Coal mine operator #7	$1,610,511 (later corrected by DOL to $557,793)	$557,793	$656,227
Coal mine operators that appealed	Coal mine operator #8	$78,062,566	$6,900,000	$111,517,952
	Coal mine operator #9	$65,678,185	$2,500,000	$93,825,978

[15]GAO, *Black Lung Benefits Program: Oversight Is Needed to Address Trust Fund Solvency Strained by Bankruptcies,* GAO-20-438T (Washington, D.C.: Feb. 26, 2020).

Coal mine operator	Amount of collateral DOL requested in February 2020, if applicable	Amount of collateral secured by operator as of November 2021	Most recent actuarial estimate of black lung benefit liabilities
Coal mine operator #10	$40,411,000	$8,400,000	$57,730,000
Coal mine operator #11	$39,761,129	$21,000,000	$58,801,613
Coal mine operator #12	$2,079,057	$1,000,000	$2,079,057
Coal mine operator #13	Not applicable. No longer met DOL requirements to self-insure and told to obtain commercial coverage	$24,797,512	$21,969,863
Coal mine operator #14	Not applicable. No longer met DOL requirements to self-insure and told to obtain commercial coverage	$400,000	$20,222

Source: GAO presentation of Department of Labor data. | GAO-22-105546

Note: The self-insured arrangements can include those that cover legacy federal black lung liabilities (e.g., formerly employed miners only). This may arise when an operator no longer actively mines coal or is using commercial insurance for its current mining operations and self-insurance for its past operations. Self-insured operators and their subsidiaries may use a combination of self-insurance and commercial insurance to cover their liabilities, according to the Department of Labor. Numbers rounded to nearest dollar.

In addition to the 14 operators DOL contacted in February 2020 there are three additional self-insured operators, according to DOL.[16] DOL officials said two of these operators provided actuarial estimates they could not use to assess how much collateral they should require. DOL officials said they did not need to reassess the collateral required for the remaining operator because they had done so in 2019. DOL's 2019 review estimated that the operator's black lung liability was about $163 million and its required collateral was just over $24 million, which the operator secured.

DOL officials said their ability to resolve appeals was hindered by the COVID-19 pandemic as they and coal operator staff adjusted to different working conditions and experienced challenges in obtaining and processing needed documentation. As a result, DOL officials said that they suspended their review of coal operator appeals throughout 2020.

[16]As of November 2021, a total of 17 coal operators are self-insured according to DOL officials.

In December 2020, DOL issued a preliminary bulletin and sought public comment on updated guidelines for coal operator self-insurance.[17] This bulletin was the culmination of DOL's approximately 5-year effort to reform the self-insurance program.[18] The guidelines included actions that would have addressed our recommendations. For instance, DOL specified that it would authorize operators to self-insure for a period of one year (after which an operator would be required to submit a self-insurance renewal application), and it set a goal to resolve coal operator appeals within 90 days after receiving supporting documents or meeting with the operator to discuss their concerns. Additionally, DOL stated that it would set collateral requirements based on an operator's actuarial estimated benefit liabilities and risk of insolvency, and reassess the collateral requirements quarterly based on review of an operator's financial statements.

In February 2021, DOL rescinded the preliminary bulletin due to a review of the program by the current administration, according to DOL officials.[19] Since that time, DOL officials said they have taken no further actions to resolve appeals or to collect any additional collateral or other information from self-insured operators. As a result, DOL has not identified and collected necessary collateral to protect the Trust Fund. Moreover, another coal operator, Lighthouse Resources, filed for bankruptcy in December 2020; this could result in a transfer of about $2.4 million in estimated benefit responsibility to the Trust Fund, according to DOL. In addition, the two operators DOL said no longer met their requirements to self-insure almost 2 years ago remain self-insured. DOL officials also stated that disputes are ongoing with two self-insured operators about their actuarial estimated benefit liabilities and that it has not assessed whether the amount of collateral they required from these operators is appropriate.

As of November 2021, DOL officials said the administration's review is complete, but could not describe any anticipated changes to coal operator

[17]Department of Labor, Office of Workers' Compensation Programs, Division of Coal Mine Workers' Compensation BLBA Bulletin No. 21-01, *DCMWC Self-Insurance Process Guidelines* (Washington, D.C., Dec. 7, 2020).

[18]DOL officials said that beginning in summer 2015 they stopped permitting any new coal mine operators to self-insure as the agency worked with auditors, economists, and actuaries to develop new procedures for self-insurance.

[19]DOL issued a public notice withdrawing its request for comments on its preliminary bulletin. *Black Lung Benefits Act Self-Insurance: Withdrawal of Guidance*, 86 Fed. Reg. 8806 (Feb. 9, 2021).

self-insurance going forward, other than that they anticipate seeking public comment on updated self-insurance guidelines in the coming months. It is unclear how long this process may take. Given that the Trust Fund had to borrow about $2.3 billion from the Treasury in fiscal year 2021, and that the coal tax—the Trust Fund's primary revenue source—may decrease beginning in 2022, we reiterate the need for DOL to address our previous recommendations.

Chairwoman Adams, Ranking Member Keller, and Members of the Subcommittee, this concludes my prepared statement. I would be happy to respond to any questions you may have at this time.

If you or your staffs have any questions concerning this testimony, please contact me at (202) 512-4769 or costat@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Blake Ainsworth (Assistant Director), Justin Dunleavy (Analyst in Charge), and Lauren Shaman. Also contributing to this testimony were Caitlin Cusati, Alex Galuten, Jeffrey Miller, Almeta Spencer, and Kate van Gelder.

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