



February 2020

BLACK LUNG BENEFITS PROGRAM

Improved Oversight of Coal Mine Operator Insurance Is Needed

Why GAO Did This Study

In May 2018, GAO reported that the Trust Fund, which pays benefits to certain coal miners, faced financial challenges. The Trust Fund has borrowed from the U.S. Treasury's general fund almost every year since 1979 to make needed expenditures. GAO's June 2019 testimony included preliminary observations that coal operator bankruptcies were further straining Trust Fund finances because, in some cases, benefit responsibility was transferred to the Trust Fund.

This report examines (1) how coal mine operator bankruptcies have affected the Trust Fund, and (2) how DOL managed coal mine operator insurance to limit financial risk to the Trust Fund. GAO identified coal operators that filed for bankruptcy from 2014 through 2016 using Bloomberg data. GAO selected these years, in part, because bankruptcies were more likely to be resolved so that their effects on the Trust Fund could be assessed. GAO analyzed information 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. GAO also interviewed DOL officials, coal mine operators, and insurance company representatives, among others.

What GAO Recommends

GAO is making three recommendations to DOL to establish procedures for self-insurance renewals and coal operator appeals, and to develop a process to monitor whether commercially-insured operators maintain adequate and continuous coverage. DOL agreed with our recommendations.

View [GAO-20-21](#). For more information, contact Cindy Brown Barnes (202) 512-7215, brownbarnesc@gao.gov, or Alicia Puente Cackley (202) 512-8678, cackleya@gao.gov.

BLACK LUNG BENEFITS PROGRAM

Improved Oversight of Coal Mine Operator Insurance Is Needed

What GAO Found

Coal mine operator bankruptcies have led to the transfer of about \$865 million in estimated benefit responsibility to the federal government's Black Lung Disability Trust Fund (Trust Fund), according to DOL estimates. The Trust Fund pays benefits when no responsible operator is identified, or when the liable operator does not pay. GAO previously testified in June 2019 that it had identified three bankrupt, self-insured operators for which benefit responsibility was transferred to the Trust Fund. Since that time, DOL's estimate of the transferred benefit responsibility has grown—from a prior range of \$313 million to \$325 million to the more recent \$865 million estimate provided to GAO in January 2020. According to DOL, this escalation was due, in part, to recent increases in black lung benefit award rates and higher medical treatment costs, and to an underestimate of Patriot Coal's future benefit claims.

Self-Insured Coal Mine Operator Bankruptcies Affecting the Black Lung Disability Trust Fund, Filed from 2014 through 2016

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

Source: Department of Labor (DOL). | GAO-20-21

DOL's limited oversight of coal mine operator insurance has exposed the Trust Fund to financial risk, though recent changes, if implemented effectively, can help address these risks. In overseeing self-insurance in the past, DOL did not estimate future benefit liability when setting the amount of collateral required to self-insure; regularly review operators to assess whether the required amount of collateral should change; or always take action to protect the Trust Fund by revoking an operator's ability to self-insure as appropriate. In July 2019, DOL began implementing a new self-insurance process that could help address past deficiencies in estimating collateral and regularly reviewing self-insured operators. However, DOL's new process still lacks procedures for its planned annual renewal of self-insured operators and for resolving coal operator appeals should operators dispute DOL collateral requirements. This could hinder DOL from revoking an operator's ability to self-insure should they not comply with DOL requirements. Further, for those operators that do not self-insure, DOL does not monitor them to ensure they maintain adequate and continuous commercial coverage as appropriate. As a result, the Trust Fund may in some instances assume responsibility for paying benefits that otherwise would have been paid by an insurer.

Contents

Letter		1
	Background	6
	Some Self-Insured Operator Bankruptcies Shifted Liability to the Trust Fund, but Commercial Insurance Coverage Can Help Limit Trust Fund Exposure	11
	DOL's Limited Oversight Has Exposed the Trust Fund to Financial Risk, and Its New Self-Insurance Process Lacks Enforcement Procedures	18
	Conclusions	27
	Recommendations for Executive Action	28
	Agency Comments and Our Evaluation	28
Appendix I	Comments from the U.S. Department of Labor	31
Appendix II	GAO Contact and Staff Acknowledgments	33
Tables		
	Table 1: Self-Insured Coal Mine Operator Bankruptcies That Affected the Black Lung Disability Trust Fund, Filed from 2014 through 2016	13
	Table 2: Self-Insured Coal Mine Operator Reauthorization Date, Collateral, and Estimated Benefit Liability Under DOL's Former Self-Insurance Process	19
Figures		
	Figure 1: Black Lung Beneficiaries, Fiscal Years 1979 through 2019	7
	Figure 2: Most Common Reasons Black Lung Benefits May Be Paid from the Black Lung Disability Trust Fund	9
	Figure 3: Coal Mine Operator Bankruptcies Filed from 2014 through 2016	12

Abbreviations

BRB	Benefits Review Board
DOL	U.S. Department of Labor
Treasury	U.S. Department of the Treasury
NCCI	National Council on Compensation Insurance
NIOSH	National Institute for Occupational Safety and Health
OALJ	Office of Administrative Law Judges
OWCP	Office of Workers' Compensation Programs
EIA	U.S. Energy Information Administration

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



February 21, 2020

The Honorable Robert C. “Bobby” Scott
Chairman
Committee on Education and Labor
House of Representatives

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
House of Representatives

The federal government’s Black Lung Disability Trust Fund (Trust Fund) finances medical and cash assistance to certain coal miners who have been totally disabled due to pneumoconiosis (also known as black lung disease).¹ Black lung benefits are generally to be paid by responsible coal mine operators. However, the Trust Fund pays benefits in certain circumstances, including in cases where no responsible mine operator can be identified or when the liable mine operator does not pay.

As we reported in May 2018, the Trust Fund faces financial challenges.² Its expenditures have consistently exceeded revenue and the Trust Fund has essentially borrowed with interest from the Department of the Treasury’s (Treasury) general fund almost every year since 1979, which was its first complete fiscal year.³ In fiscal year 2019, the Trust Fund

¹A 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. See <https://www.cdc.gov/niosh/docs/2019-130/default.html>.

²GAO, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, GAO-18-351 (Washington D.C.: May 30, 2018).

³Under 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 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.

borrowed about \$1.9 billion to cover its expenditures, according to Department of Labor (DOL) officials.

Trust Fund revenue is primarily obtained through a tax on coal produced and sold domestically, which we refer to in this report as the coal tax.⁴ 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, the rate of the coal tax increased to pre-2019 levels. However, it is scheduled to decrease again beginning in 2021. With less revenue from the coal tax, the Trust Fund will likely need to borrow more from Treasury's general fund, and taxpayers will ultimately be responsible for repaying this accumulating debt.

In June 2019, we reported preliminary observations that coal operator bankruptcies were further straining Trust Fund finances because, in some cases, responsibility for benefit payments was transferred from the bankrupt operator to the Trust Fund.⁵ This may occur, for instance, 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.

This report examines (1) how coal mine operator bankruptcies have affected the Trust Fund, and (2) how DOL managed coal mine operator insurance to limit financial risk to the Trust Fund. To address both objectives, we reviewed relevant federal laws, regulations, and DOL procedures. We also interviewed DOL officials, coal mine operators, and insurance company representatives. Additionally, we interviewed officials from the National Mining Association, National Council on Compensation Insurance (NCCI), National Council of Self-Insurers, and the American Academy of Actuaries, among others.

To assess how coal mine operator bankruptcies affected the Trust Fund, we analyzed Bloomberg Terminal (Bloomberg) data and consulted DOL

⁴The coal tax is imposed on the sale of all domestically produced coal with two exceptions: (1) lignite coal and (2) exported coal.

⁵GAO, *Black Lung Benefits Program: Financing and Oversight Challenges Are Adversely Affecting the Trust Fund*, [GAO-19-622T](#) (Washington D.C.: June 20, 2019).

to identify coal operators that filed for bankruptcy from 2014 through 2016, and whose cases had progressed far enough such that the outcome (or likely outcome) was known. During these years, domestic coal production declined from about 1 billion tons in 2014 to about 728 million tons in 2016, which was the lowest annual production level since 1978, according to U.S. Energy Information Administration (EIA) data.⁶ Additionally, bankruptcies filed during these years were more likely to be resolved at the time we conducted our work than more recently filed bankruptcies, so their effects on the Trust Fund could be assessed.⁷ We identified eight coal mine companies that filed for bankruptcy during our selected years.⁸ To assess the reliability of the Bloomberg data, we interviewed Bloomberg officials and reviewed relevant system documentation. In addition, to assess the completeness of the Bloomberg data, we conducted a limited legal search for bankruptcy filings and verified our results with DOL. We determined that the data were sufficiently reliable for the purposes of this report. To examine how each of the eight coal mine operator bankruptcies affected the Trust Fund, we interviewed DOL officials and reviewed DOL-provided documentation. For instance, we reviewed bankruptcy settlement agreements and reorganization plans, where applicable. We did not conduct a legal analysis of the relevant bankruptcy court dockets, and relied solely on documentation DOL provided to describe these bankruptcies.

To examine how DOL managed coal mine operator insurance to limit financial risk to the Trust Fund, we analyzed data and documentation on commercially-insured and self-insured coal mine operators. Specifically, we reviewed NCCI data on the commercial workers' compensation insurance policies purchased by coal mine operators to secure their black lung benefit liability from 2016 through 2018, the most recent three complete years of data available.⁹ We reviewed the data to identify, among other things, whether operators had lapses in coverage.

⁶EIA, *Annual Coal Report 2018* (Washington D.C.: October 2019).

⁷Bankruptcies proceedings can vary in duration. We identified coal mine operator bankruptcies that were filed from 2014 through 2016 because they were more likely to be resolved. Bankruptcies filed more recently may still be ongoing and their effects on the Trust Fund may not yet be known.

⁸Our search focused on the bankruptcies of parent operators rather than individual subsidiaries.

⁹NCCI officials said that once they transmit data to DOL it effectively becomes DOL data. Therefore, for reporting purposes, we will refer to this data as DOL data.

Specifically, we verified whether the 13 largest coal producers that were not authorized to self-insure maintained adequate and continuous commercial coverage during these years.¹⁰ We also reviewed DOL documentation on each of the 22 coal mine operators that were self-insured at the time we conducted our work.¹¹ For instance, we identified the amount of collateral DOL required from these operators to self-insure and DOL's most recent reauthorization memo that documented its periodic review of these operators.

We assessed the reliability of the NCCI data in several ways. Specifically, we interviewed DOL and NCCI officials on how policy data is obtained, processed, stored, and shared; reviewed documentation including a data dictionary and users guide; reviewed DOL's procedures and error checks for validating that the NCCI data conforms to established parameters; and reviewed the data for obvious errors, outliers, or missing information and for logical connections between policy and endorsement data. We determined that the data were sufficiently reliable for the purposes of this report. However, we concluded that the beneficiary data we reviewed in an attempt to determine the extent to which the Trust Fund paid benefits during fiscal year 2018 on behalf of uninsured operators were not sufficiently complete and consistently recorded. Thus, we were unable to assess the effect on the Trust Fund of DOL not monitoring coal operator compliance with commercial insurance requirements. This condition and its causes are further described in the report, which form the basis for one of our recommendations.

We also examined workers' compensation insurance practices in four states—Kentucky, Pennsylvania, West Virginia, and Wyoming—to identify relevant practices that could inform DOL's administration of coal operator insurance at the federal level. Such practices may be informative because both workers' compensation and federal black lung disability payments generally support workers with conditions, such as black lung, that were contracted as a result of their employment. Workers' compensation is

¹⁰The coal operators represented approximately 25 percent of all coal produced in 2017. See EIA, *Annual Coal Report 2017* (Washington D.C.: November 2018).

¹¹The 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, owns subsidiaries that no longer actively mine 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 DOL.

generally mandated by state law and employers are typically required to purchase workers' compensation insurance to secure these liabilities, or may self-insure.¹² Thus, state practices in monitoring and overseeing workers' compensation insurance may provide informative context for examining DOL's practices in overseeing federal black lung insurance.

To review state practices for monitoring and overseeing workers' compensation insurance, we interviewed state insurance commissioners and reviewed selected workers' compensation laws, regulations, and guidance in the four states we contacted. We selected Kentucky, Pennsylvania, West Virginia, and Wyoming because they were among the top five coal producing states in 2017, according to EIA data, and therefore may be most familiar with workers' compensation insurance that covers black lung. Additionally, these states provided geographic variation covering EIA's three main domestic coal producing regions: the Appalachian coal region, the Interior coal region, and the Western coal region. Kentucky is divided between EIA's Appalachian and Interior coal regions. These states also provided variation in terms of the options available to coal mine operators to secure their workers' compensation benefit liability. For instance, with the exception of Wyoming, all selected states allowed operators to self-insure. In Wyoming, coal mining is considered an "extra-hazardous" occupation and mine operators must purchase workers' compensation insurance from a state-provided option. In our selected states, we obtained information on, among other things, state practices for determining the amount of collateral required from coal mine operators to self-insure their workers' compensation benefit liabilities, if applicable. We also obtained information about the extent to which state officials reviewed self-insured coal mine operators to assess whether the amount of collateral they required changed based on an operator's changing financial condition.

We conducted this performance audit from May 2018 through February 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe

¹²National Academy of Social Insurance, *Workers' Compensation: Benefits, Costs, and Coverage* (Washington, D.C.: October 2019). Also see Congressional Research Service (CRS), *Workers' Compensation: Overview and Issues*, R44580 (Washington D.C.: Sept. 6, 2019).

that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Black lung benefit payments include both cash assistance and medical care. Maximum cash assistance payments ranged from about \$670 to \$1,340 per month in 2019, depending on a beneficiary's number of dependents.¹³ Miners receiving cash assistance are also eligible for medical treatment of their black lung-related conditions, which may include hospital and nursing care, rehabilitation services, and reimbursement for drug and equipment expenses, according to DOL documentation. DOL estimates that the average annual cost for medical care in fiscal year 2019 was approximately \$8,225 per miner.

During fiscal year 2019, about 25,700 beneficiaries received black lung benefits (see fig. 1).¹⁴ The number of beneficiaries has decreased from about 174,000 in 1982 as a result of declining coal mining employment and an aging beneficiary population, according to DOL. Black lung beneficiaries could increase in the near term due to the rise in the occurrence of the disease in its most severe form, progressive massive fibrosis, particularly among Appalachian coal miners, according to the National Institute for Occupational Safety and Health (NIOSH).¹⁵ NIOSH reported that coal miners in central Appalachia are disproportionately affected; as many as 1 in 5 show evidence of black lung, which is the

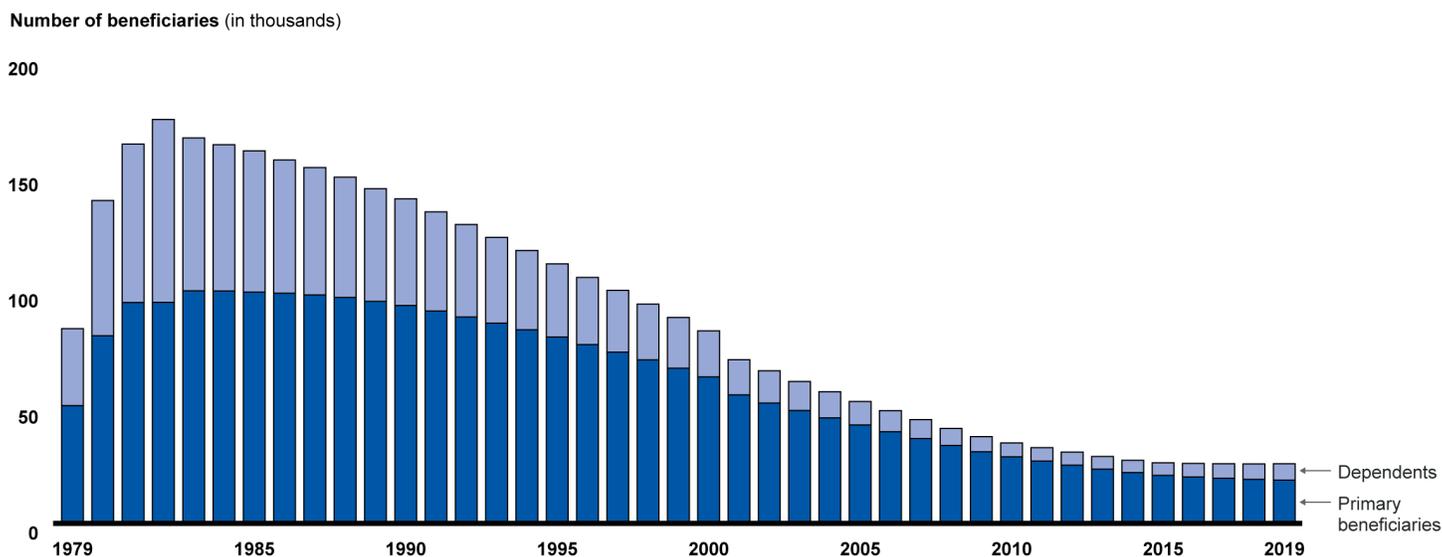
¹³Benefit rates are set by federal law, which specifies that in the case of total disability, a miner receives 37.5 percent of the monthly pay rate of a federal employee at grade GS-2, step 1. Benefit levels are increased by 50 percent if the miner has one dependent, 75 percent if the miner has two dependents, and 100 percent if the miner has three or more dependents. If state workers' compensation benefits are less than federal black lung benefits, then the federal benefits cover the difference. Social Security Disability Insurance benefits are also reduced for recipients of black lung benefits.

¹⁴This 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 receive medical-benefits only.

¹⁵Recent 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).

highest level recorded in 25 years.¹⁶ NIOSH has attributed the rise in occurrence of black lung to multiple factors, including increased exposure to silica.¹⁷

Figure 1: Black Lung Beneficiaries, Fiscal Years 1979 through 2019



Source: GAO analysis of Department of Labor data. | GAO-20-21

Notes: We excluded 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. For reporting purposes, we refer to a coal miner or their spouse (if the miner is deceased) as a primary beneficiary. If there is no surviving spouse, benefits can be awarded to certain dependents, such as surviving children, which we refer to as dependent beneficiaries.

Black lung claims are processed by the Office of Workers’ Compensation Programs within DOL. Contested claims are adjudicated by DOL’s Office of Administrative Law Judges, which issues decisions that can be

¹⁶David J. Blackley, Cara N. Halldin, and A. Scott Laney, “Continued Increase in Prevalence of Coal Workers’ Pneumoconiosis in the United States, 1970–2017,” *American Journal of Public Health* 108, no. 9 (September 1, 2018).

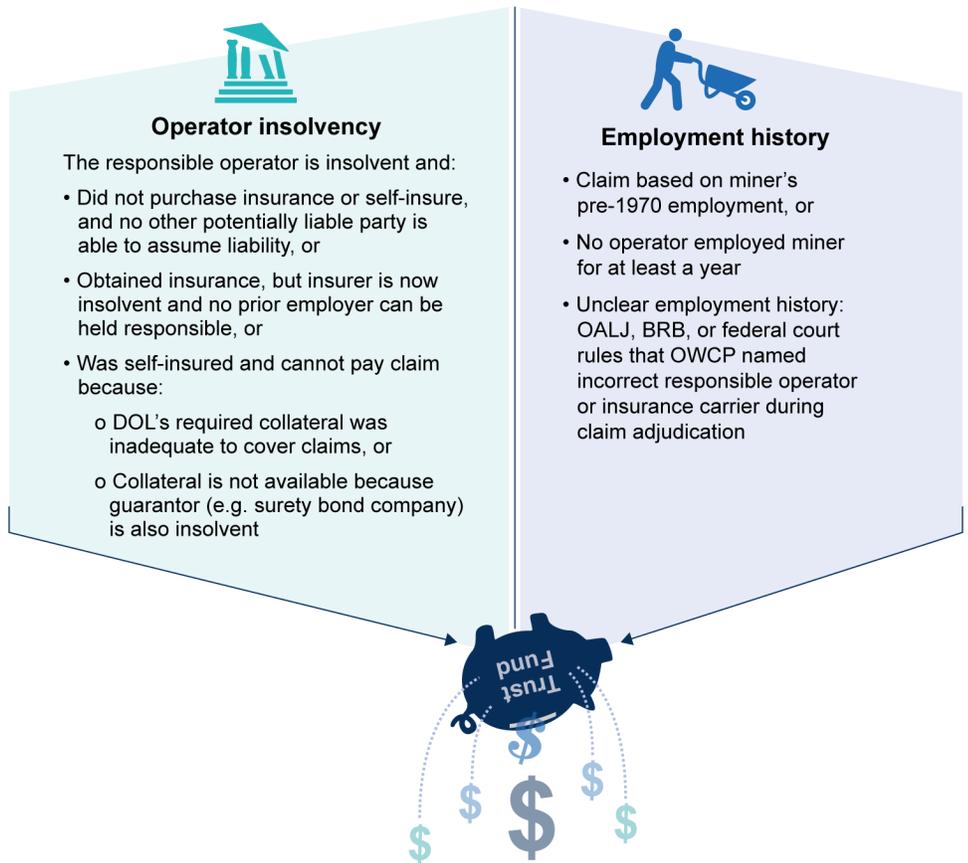
¹⁷NIOSH reported that there has been a transition in the coal industry to mine thinner coal seams, which increases a miners’ potential exposure to crystalline silica. Department of Health and Human Services, *Current Intelligence Bulletin #64, Coal Mine Dust Exposures and Associated Health Outcomes: A Review of Information Published Since 1995*, NIOSH Publication No. 2011–172 (April 2011).

appealed to DOL's Benefits Review Board.¹⁸ Claimants and mine operators may further appeal these DOL decisions to the federal courts. If an award is contested, claimants can receive interim benefits until their case is resolved, which are generally paid from the Trust Fund, according to DOL. In fiscal year 2019, about 33 percent of black lung claims were approved, according to DOL data. Final awards are either funded by mine operators—who are identified as the responsible employers of claimants—or the Trust Fund, when responsible employers cannot be identified or do not pay. Of the approximately 25,700 beneficiaries receiving black lung benefits in 2019, 13,335 were paid from the Trust Fund; 7,985 were paid by responsible mine operators; and 4,380 were receiving interim benefits, according to DOL data. DOL officials told us that the more common reasons that beneficiary claims are paid from the Trust Fund include operator insolvency and unclear employment history of miners, among other reasons (see fig. 2). The operator responsible for the payment of benefits is generally the operator that most recently employed the miner.¹⁹

¹⁸For additional information on the black lung claim adjudication process, see GAO, *Black Lung Benefits Program: Administrative and Structural Changes Could Improve Miners' Ability to Pursue Claims*, [GAO-10-7](#) (Washington, D.C.: Oct. 30, 2009).

¹⁹In cases where the operator that most recently employed the miner is no longer in business or otherwise unable to pay the claim, the responsible operator generally becomes the one that next most recently employed the miner. 20 C.F.R. § 725.495(a).

Figure 2: Most Common Reasons Black Lung Benefits May Be Paid from the Black Lung Disability Trust Fund



Source: Department of Labor (DOL) officials. | GAO-20-21

Notes: This figure depicts the most common reasons why a black lung claim may be paid by the Black Lung Disability Trust Fund (Trust Fund) instead of by a responsible mine operator, according to DOL officials. It is not intended to be an exhaustive list of all reasons why a claim may be paid by the Trust Fund. The Office of Administrative Law Judges (OALJ), Benefits Review Board (BRB), and the Office of Workers' Compensation Programs (OWCP) are part of DOL.

Black Lung Insurance

Federal law generally requires coal mine operators to secure their black lung benefit liability.²⁰ 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 allowed

²⁰30 U.S.C. § 933(a). Employers that are not coal mine operators are not required to secure their liability with respect to employees engaged in the transportation of coal or in coal mine construction. 30 U.S.C. § 932(b).

to self-insure if they meet certain DOL conditions. For instance, operators applying to self-insure must obtain collateral in the form of an indemnity bond, deposit or trust, or letter of credit in an amount deemed necessary and sufficient by DOL to secure their liability.²¹

Operators that do not self-insure are generally required to purchase coverage from commercial insurance companies, state workers' compensation insurance funds, or other entities authorized under state law to insure workers' compensation.²² DOL regulations require commercial insurers to report each policy and federal black lung endorsement issued, canceled, or renewed in a form determined by DOL.²³ DOL accepts electronic reporting of this information from insurers via their respective rating bureaus.²⁴ DOL retains this information—insured company name, address, federal employer identification number, and policy and endorsement data—so that DOL staff can later research claims to determine which operator and insurer may be liable.

As we have noted in prior reports, insurance companies are regulated primarily by the states with state law providing state regulators with the authority and funding to regulate insurance.²⁵ State insurance regulation is designed to, among other things, help insurers remain solvent and able

²¹A letter of credit may only be used in conjunction with another acceptable form of collateral.

²²According to DOL regulations, an endorsement affording coverage under the Federal Coal Mine Health and Safety Act of 1969, as amended, shall be attached and applicable to the standard workers' compensation and employer's liability policy prepared by NCCI. See 20 C.F.R. § 726.203(a). An endorsement, sometimes called a rider, amends a policy's coverages, terms, or conditions.

²³20 C.F.R. § 726.208.

²⁴Rating bureaus collect statistical data for the purpose of developing rating information that is filed with state insurance regulators and that is used by insurers to develop premium rates. Beginning in 2012, NCCI began providing a daily file of policy and endorsement information reported to it by insurers domiciled in states that require this type of reporting to their respective rating bureaus. In addition to the data it collects as the rating bureau for various states, NCCI collects similar information from states with independent state rating bureaus and submits it to DOL as part of the daily data file. These electronic file submissions replaced a process wherein insurers submitted paper reports to DOL for issued, renewed, and cancelled policy and endorsement transactions.

²⁵GAO, *International Insurance Capital Standards: Collaboration Among U.S. Stakeholders Has Improved but Could Be Enhanced*, [GAO-15-534](#) (Washington, D.C.: June 25, 2015); and *Insurance Markets: Impacts of and Regulatory Response to 2007-2009 Financial Crisis*, [GAO-13-583](#) (Washington D.C.: June 27, 2013).

to pay claims when due. Effective insurer underwriting²⁶ and risk management practices—such as reinsurance²⁷—serve a similar function. While insurer insolvency occurs infrequently, when it does state insurance commissioners are typically appointed as receiver and supervise the rehabilitation or liquidation of these insurers, and state guaranty funds may assume liability for paying covered claims of insolvent insurers that have liquidated.²⁸

Some Self-Insured Operator Bankruptcies Shifted Liability to the Trust Fund, but Commercial Insurance Coverage Can Help Limit Trust Fund Exposure

Self-Insured Operators Transferred About \$865 Million in Estimated Liability to the Trust Fund, More than Double DOL's Previous Estimate

Of the eight coal mine operator bankruptcies we identified, three resulted in a transfer of estimated benefit liability from the coal operator to the Trust Fund and five did not, according to DOL. Using Bloomberg data, we identified coal mine operators that filed for bankruptcy from 2014 through

²⁶Underwriting is the process by which an insurer examines the risks posed by a prospective policyholder to determine whether the insurer will accept the risk and, if so, establishes the appropriate rate for the coverage provided.

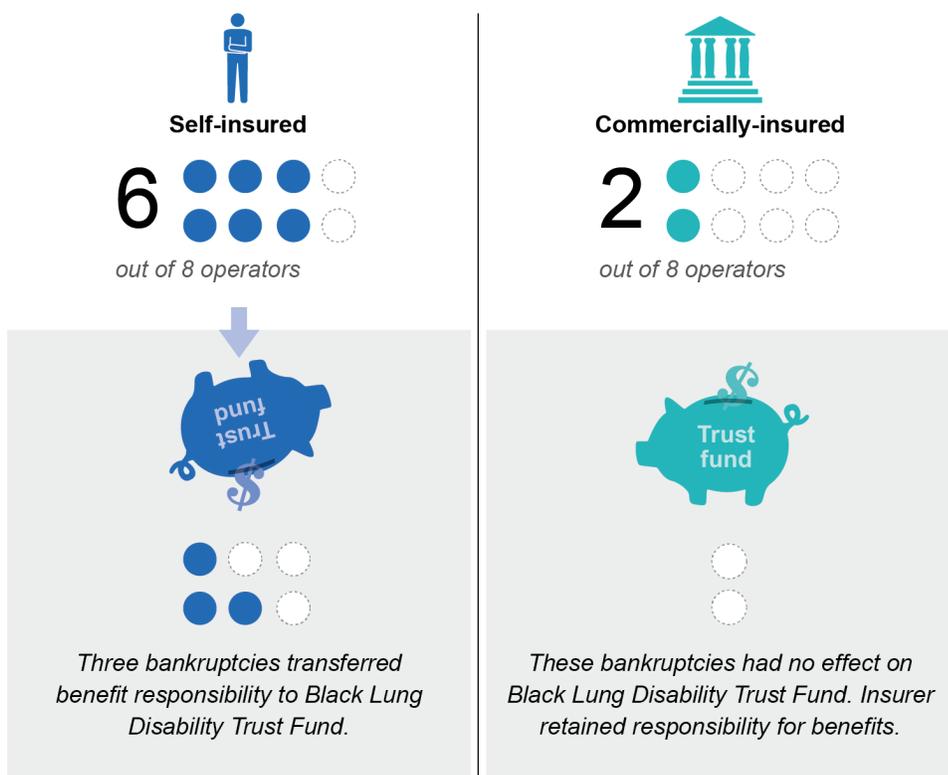
²⁷Reinsurance is a risk-management practice that involves one insurer transferring, or "ceding," all or part of a risk to another insurer who assumes responsibility for sharing in the cost of benefits under an insurance contract.

²⁸Property and casualty insurers, which provide black lung coverage, generally pay assessments to state guaranty funds based on the amount of premium written to finance the cost of resolving insolvent insurers.

2016.²⁹ Figure 3 shows how many operators were self-insured or commercially-insured at the time of bankruptcy, and if responsibility for benefits was shifted from the bankrupt operator to the Trust Fund.

Figure 3: Coal Mine Operator Bankruptcies Filed from 2014 through 2016

Number of bankrupt coal mine operators that were:



Source: Bloomberg data and Department of Labor officials. | GAO-20-21

Three self-insured coal mine operator bankruptcies affected the Trust Fund. Specifically, the bankruptcies of Alpha Natural Resources (Alpha), James River Coal (James River), and Patriot Coal (Patriot) resulted in a

²⁹Our search focused on the bankruptcies of parent operators rather than individual subsidiaries. Bankruptcy proceedings can vary in duration. We identified coal mine operator bankruptcies that were filed from 2014 through 2016, in part, because they were more likely to be resolved. Bankruptcies filed more recently may still be ongoing and their effects on the Trust Fund may not yet be known.

transfer of benefit liability to the Trust Fund of an estimated \$865 million, according to DOL.³⁰ DOL officials said that the amount of collateral they required from these three operators to self-insure was inadequate to fully cover their estimated benefit liability. When this occurs, benefit liability in excess of the collateral can be transferred to the Trust Fund. For example, the collateral DOL required from Alpha was about \$12 million and approximately \$494 million of estimated benefit liability transferred to the Trust Fund, according to DOL’s estimate (see table 1).

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	\$0.4 million	\$141 million	490
Patriot Coal	\$15 million	\$230 million	993
Total	\$27.4 million	\$865 million	3,322

Source: Department of Labor (DOL). | GAO-20-21

^aThese 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 DOL.

DOL estimates for how these three operator bankruptcies will affect the Trust Fund have more than doubled from what DOL had previously reported.³¹ In June 2019, we reported that DOL estimated that between \$313 million to \$325 million in benefit liabilities would transfer to the Trust Fund as a result of these bankruptcies.³² In January 2020, however, DOL provided updated estimates stating that \$865 million in benefit liabilities would transfer to the Trust Fund as a result of these bankruptcies. According to DOL, their estimates increased to account for higher black lung benefit award rates that occurred from fiscal years 2016 through 2019; higher medical treatment cost inflation in recent years; and different discount rate assumptions.³³ Additionally, DOL’s prior estimate for the

³⁰DOL officials said benefit liability transfers to the Trust Fund over time as claims accrue and are paid over future decades.

³¹Fiscal Year 2020 Congressional Budget Justification, Black Lung Disability Trust Fund.

³²[GAO-19-622T](#).

³³Discount rates are interest rates used to determine the current value of estimated future benefit payments.

Patriot bankruptcy did not account for future claims and the effect of those claims on the Trust Fund.

The three other self-insured coal mine operator bankruptcies we identified did not affect the Trust Fund. Specifically, Arch Coal, Peabody Energy, and Walter Energy were also self-insured operators, but DOL officials said that their federal black lung benefit liabilities were assumed by a reorganized company or by a purchaser, and therefore did not transfer to the Trust Fund.

DOL officials said that they take three key actions, as appropriate, to protect the financial interests of the Trust Fund during self-insured operator bankruptcies.

1. DOL officials said that they file a claim in every case with the bankruptcy court for the reimbursement of an operator's full estimated federal black lung benefit liability.³⁴
2. If an operator plans to reorganize or if it is acquired by a purchaser, DOL officials said that they negotiate with the company or the purchaser, as appropriate, to help ensure benefit responsibility will be "passed through" to a reorganized operator or purchaser, rather than be discharged and become the responsibility of the Trust Fund.
3. If benefit liabilities are not "passed-through" to an operator, DOL officials said that they seek settlement agreements, whereby the Trust Fund receives an allowed general unsecured claim in an amount based on an operator's estimated benefit liability.

DOL officials said that during the bankruptcy of James River they negotiated a settlement agreement providing DOL with a general unsecured claim in an amount commensurate with its estimate of the operator's benefit liability at the time of bankruptcy. However, these officials said that given the low priority under bankruptcy law for their general unsecured claim, the payout they received was only about

³⁴The claim DOL submitted for the reimbursement of Patriot's estimated black lung benefit liability at the time of its bankruptcy in May 2015 did not include future claims for which the operator may be named liable for as claims accrue and are paid over future decades, according to DOL.

\$400,000, which was just a small portion of the estimated benefit liability that transferred to the Trust Fund.³⁵

DOL officials said that during the bankruptcy of Alpha they negotiated both a “pass through” and a settlement agreement in which certain liabilities would be transferred to the Trust Fund, while other liabilities would be retained by Alpha. DOL officials said that they received a payout from Alpha of \$7.4 million, although \$494 million in estimated benefit liability transferred to the Trust Fund. Further, as a condition of the agreement, DOL officials said that they agreed to let Alpha self-insure after it emerged from bankruptcy.

Since 2016, several other self-insured operators have also filed for bankruptcy, according to DOL officials, including Cambrian Coal, Cloud Peak Energy, Murray Energy, and Westmoreland Coal. DOL officials said that \$17.4 million in estimated black lung benefit liability will transfer to the Trust Fund as a result of Westmoreland Coal’s bankruptcy. Given the uncertainty of the bankruptcy process in terms of whether liabilities will or will not transfer to the Trust Fund, however, DOL officials said that they could not speculate on how the other bankruptcies may affect the Trust Fund.

State Insurance Regulation and Insurer Practices Help to Protect the Trust Fund from Assuming Responsibility for Paying Benefits of Commercially-Insured Operators

Insurance contracts or policies to secure operators’ benefit liabilities are required by law to include a provision that insolvency or bankruptcy of an operator does not release the insurer from the obligation to make benefit payments.³⁶ As previously discussed, state insurance regulation, insurer underwriting and risk management practices, and state guaranty funds also help to protect the Trust Fund from having to assume responsibility for paying black lung benefits on behalf of bankrupt coal operators. Thus, by being commercially insured, the two operator bankruptcies we identified that filed for bankruptcy between 2014 and 2016—Energy Future Holdings and Xinerger Ltd—did not affect the Trust Fund, according to DOL (see fig 3).

State insurance commissioners monitor the financial health of insurers, including performing periodic examination of insurer financial statements. Further, rating agencies, such as Standard & Poor’s, Moody’s, and AM Best, issue insurer financial strength ratings, which represent the

³⁵According to DOL officials, the settlement agreement of about \$400,000 they received was in addition to the \$400,000 that James River had in collateral.

³⁶30 U.S.C. § 933(b)(2).

agencies' opinions on insurers' financial strength and ability to pay policy and contract obligations. Eight of the nine insurers that issued approximately 90 percent of the workers' compensation policies with federal black lung coverage from 2016 through 2018, according to our review of DOL data,³⁷ had at least an "A-" financial strength rating from AM Best (with the one remaining being a state insurer that was not rated).³⁸

In deciding whether to provide federal black lung coverage, insurers we interviewed said they consider an operator's historical black lung claim losses, financial condition, and mine location among other factors.³⁹ However, insurance company officials identified various challenges in writing and pricing black lung coverage that produces an appropriate amount of premiums to cover expected losses. The challenges cited by these officials included the long latency period of black lung disease; changes in law regarding benefit eligibility and how the disease is defined; the ability of miners to refile claims indefinitely; and the inability of insurers and operators to settle claims.⁴⁰ One official noted that there is much risk and little profit in black lung coverage.

Insurance companies can use reinsurance to protect themselves from catastrophic losses that could threaten their solvency and ability to pay claims, and to reduce wide fluctuations in their annual losses. For example, workers' compensation claims can take years to fully develop after premiums have been set, which in turn can adversely affect an insurer's financial position if premiums have underestimated actual claims. Insurance company officials said that they reinsure their workers'

³⁷The DOL data included policies with federal black lung endorsements as reported by insurers in the 36 states, and the District of Columbia, for which NCCI collects data. The data also includes information from the Pennsylvania Compensation Rating Bureau and the Coal Mine Compensation Rating Bureau of Pennsylvania. These data did not include coverage provided to employers through the North Dakota, Ohio, Washington, or Wyoming state workers' compensation funds or the nine states other than Pennsylvania with independent rating bureaus.

³⁸AM Best is a worldwide provider of insurance ratings that help the financial industry and consumers assess an insurer's financial strength, creditworthiness, and ability to honor obligations to policyholders.

³⁹Insurers we interviewed also said that they inspect every coal mine before they provide coverage, including reviewing ventilation plans, dust sampling results from DOL's Mine Safety and Health Administration, and other workplace safety measures.

⁴⁰For example, a miner may file a claim many years after working for a mine operator because of the extended latency between exposure to dust and identification of black lung disease.

compensation coverage, but some said that their reinsurance policies either explicitly excluded occupational disease claims, including black lung, or cover black lung but have conditions and loss thresholds that would generally result in the exclusion of such claims. However, reinsurance, even if it does not explicitly cover federal black lung claims, can help manage the risk of workers' compensation losses and losses in other lines of insurance that an insurer writes, thereby indirectly helping to ensure that the insurer can pay all types of claims, including federal black lung.

If an insurer becomes insolvent, state guaranty funds reduce the potential for the Trust Fund to assume responsibility for paying claims. States have different rules for guaranty fund benefit coverage and limits. In the states we reviewed, state guaranty funds generally pay federal black lung benefits, although there may be certain limitations on the claims they will pay.⁴¹ For example, in West Virginia, there is no maximum claim limit that the state guaranty fund will pay on standard workers' compensation claims; but in Kentucky, a state guaranty fund official told us that, in the guaranty fund's opinion, state law limits federal black lung claims to \$300,000.⁴² Also, a guaranty fund could reject a federal black lung claim, which could result in the Trust Fund having to assume responsibility for paying the claim. An official from one state guaranty fund that maintained data on rejected black lung claims said that the most common reason for rejection is that claims are filed after the date set by the bankruptcy court for receiving claims. DOL officials said it is very uncommon for the Trust Fund to assume responsibility for federal black lung claims of insolvent insurers. However, DOL does not maintain data to readily determine the extent to which this actually occurs, as discussed later in this report.

⁴¹Wyoming requires employers in extra-hazardous industries to obtain workers' compensation coverage from a state insurance fund rather than from a commercial insurer. Therefore, a state guaranty fund would not be applicable for these claims.

⁴²The official noted, however, that no federal black lung claim handled by the association has reached the maximum per claim threshold.

DOL's Limited Oversight Has Exposed the Trust Fund to Financial Risk, and Its New Self-Insurance Process Lacks Enforcement Procedures

In overseeing coal mine operator self-insurance in the past, DOL did not estimate future benefit liability when setting collateral; regularly review operators to monitor their changing financial conditions; or always use enforcement tools available to protect the financial interests of the Trust Fund, such as by revoking an operator's ability to self-insure, if warranted. In July 2019, DOL began implementing a new self-insurance process that, if implemented effectively, should help to address some of these past deficiencies. Specifically, DOL plans to consider an operator's future benefit liability when setting collateral and to review self-insured operators more frequently. However, the new process still lacks procedures for self-insurance renewals and coal operator appeals, which could hinder DOL from taking enforcement actions to protect the Trust Fund as needed. Additionally, DOL does not monitor whether operators that do not self-insure maintain adequate and continuous commercial insurance coverage as required by law.

DOL Did Not Estimate Future Benefit Claims When Setting Collateral and Regularly Review Self-Insured Operators

Agency regulations require DOL to obtain collateral from coal mine operators applying to self-insure in an amount deemed by DOL to be necessary and sufficient to secure the payment of the operators' liability.⁴³ To determine collateral amounts under the former process, agency procedures stated that DOL first assess an operator's net worth by reviewing, among other factors, the operator's audited financial statement and black lung claims information. DOL then determined the amount of collateral equal to 3, 5, or 10 years of the operator's annual black lung benefit payments made at the time of the operator's self-insurance application, depending on its net worth. Specifically, if net worth was \$1 billion or greater, agency procedures stated that DOL set collateral equal to 3 years of benefit payments. If net worth ranged from \$500 million to \$1 billion, DOL set collateral equal to 5 years of benefit payments. If net worth ranged from \$10 million to \$500 million, DOL set collateral equal to 10 years of benefit payments. Agency procedures did not permit operators with net worth less than \$10 million to self-insure.

DOL's former process for determining collateral did not routinely consider potential future claims for which an operator could be responsible. DOL had periodically reauthorized coal operators to self-insure, by reviewing an operator's most recent audited financial statement and claims information, among other things. DOL prepared memos documenting these reviews and communicated with coal operators about whether their financial circumstances warranted increasing or decreasing their

⁴³20 C.F.R. § 726.105.

collateral. Estimating future costs based on sound actuarial practice is essential to the integrity of the insurance and the risk financing system and is key to fulfilling the promises embodied in insurance contracts, according to Actuarial Standards Board standards.⁴⁴ Additionally, in three of the four states we contacted, state insurance officials said that they used actuarial methods to assess an operator’s future estimated benefit liability when considering how much collateral should be required to self-insure.⁴⁵ The remaining state, Wyoming, did not allow coal mine operators to self-insure.

Table 2 provides information on the 22 operators that were self-insured under DOL’s former process, including the date of each operator’s last DOL reauthorization; the amount of DOL-required collateral; and the operator’s estimated black lung benefit liability, if available.

Table 2: Self-Insured Coal Mine Operator Reauthorization Date, Collateral, and Estimated Benefit Liability Under DOL’s Former Self-Insurance Process

Self-insured coal operator	Date of last reauthorization	Amount of collateral required by DOL to self-insure under its former process	Estimated black lung benefit liability
Coal operator 1	2018	\$3.6 million	\$18.4 million, as of 12/31/2017
Coal operator 2	2015	\$1.1 million	No estimate available
Coal operator 3	2015	\$2.5 million	\$206 million, as of 8/03/2015
Coal operator 4	2014	\$29.5 million	\$109 million, as of 12/31/2016
Coal operator 5	2013	\$8 million	No estimate available
Coal operator 6	2013	\$1 million	No estimate available
Coal operator 7	2012	\$8.4 million	\$668,000, as of 1/1/1992
Coal operator 8	2012	\$20.3 million	\$68.4 million, as of 4/13/2016
Coal operator 9	2012	\$1 million	No estimate available
Coal operator 10	2012	\$15 million	No estimate available
Coal operator 11	2012	\$21 million	\$21.8 million, as of 12/31/2014
Coal operator 12	2011	\$5.5 million	\$47 million, as of 12/31/1984
Coal operator 13	2003	\$0.4 million	No estimate available
Coal operator 14	2001	\$0.8 million	\$7.8 million, as of 01/01/1993

⁴⁴Actuarial Standards Board, Actuarial Standard of Practice, No. 53, Do. No. 190: *Estimating Future Costs for Prospective Property/Casualty Risk Transfer and Risk Retention*.

⁴⁵Kentucky state officials noted that they generally use the term “security” rather than “collateral”. For reporting purposes, however, we use the term collateral both for DOL and for the states we contacted.

Self-insured coal operator	Date of last reauthorization	Amount of collateral required by DOL to self-insure under its former process	Estimated black lung benefit liability
Coal operator 15	2000	\$0.4 million	No estimate available
Coal operator 16	2000	\$1.5 million	No estimate available ^a
Coal operator 17	1999	\$1.4 million	No estimate available
Coal operator 18	1999	\$29.2 million	No estimate available
Coal operator 19	1998	\$6.9 million	\$90 million, as of 12/31/2015
Coal operator 20	1997	\$1.4 million	No estimate available
Coal operator 21	1994	\$7.7 million	No estimate available
Coal operator 22	1988	\$24.8 million	\$15.1 million, as of 1/31/2005

Source: Department of Labor (DOL) data. | GAO-20-21

^aAccording to DOL officials, this operator was acquired by another self-insured operator who assumed their benefit liability.

Agency regulations state that DOL may adjust the amount of collateral required from self-insured operators when experience or changed conditions so warrant,⁴⁶ but DOL did not regularly monitor these operators to reauthorize their ability to self-insure. In reviewing DOL's most recent reauthorization memos for each of the 22 self-insured operators, we found that while some of these operators had been reauthorized more recently, others had not been reauthorized by DOL in decades. One operator in particular had not been reauthorized by DOL since 1988.

DOL officials stated that from 2009 to 2012, six employees handled coal operator reauthorizations and associated work actions. Due to attrition, however, this number dropped at times to three employees, according to DOL officials. Additionally, DOL had no written procedures that specified how often reauthorizations should occur after an operator's initial 18-month reauthorization. In contrast, in two of the four states we contacted, state insurance officials were required to review self-insured employers at least annually.⁴⁷

⁴⁶20 C.F.R. § 726.105.

⁴⁷Wyoming does not allow coal mine operators to self-insure, as previously mentioned.

DOL Did Not Always Use Enforcement Tools to Protect the Trust Fund

Revoking an operator's ability to self-insure, fining mine operators for operating without insurance, and placing liens on operator assets are tools DOL has available to mitigate financial losses to the Trust Fund.⁴⁸ Based on our review of DOL documentation, however, we found instances when DOL did not use these tools to protect the Trust Fund, or was hindered from doing so because of an operator's ongoing appeal or bankruptcy.

- In September 2001, DOL required \$5 million in additional collateral from James River, which would have increased its collateral from \$0.4 million to \$5.4 million. Although DOL did not receive the additional collateral, it did not revoke the operator's authority to self-insure, which is a potential option under agency regulations. Further, DOL had not reauthorized James River at any point from August 2001 until it filed for bankruptcy in April 2014. If DOL had revoked James River's ability to self-insure, it could have potentially prevented the Trust Fund from being responsible for claims based on a miner's employment from 2001 through 2016, when James River liquidated. Additionally, if the operator had been unable to obtain commercial insurance, DOL could have potentially fined the operator for each day it operated without insurance. Instead, DOL took no action during these years and estimated benefit liability of \$141 million was shifted to the Trust Fund, according to DOL. DOL officials stated that they do not have records explaining why James River did not provide the additional collateral or why they did not revoke its authority to self-insure.
- In August 2014, DOL required \$65 million in collateral from Patriot, increasing its collateral from \$15 million to \$80 million. Patriot appealed this decision and, in the 8 months that followed before Patriot filed for bankruptcy in May 2015, DOL did not obtain additional collateral, or revoke Patriot's ability to self-insure because the appeal was still pending. DOL officials said they would not typically revoke an

⁴⁸DOL regulations state that the agency, with good cause shown, may revoke the authority of any coal operator to self-insure. 20 C.F.R. § 726.115. Additionally, the Black Lung Benefits Act states that DOL can fine mine operators up to \$1,000 a day for operating without insurance. 30 U.S.C. § 933(d)(1). However, DOL officials said that, per the Inflation Adjustment Act, they can actually charge operators up to \$2,924. DOL officials said the last time they fined a coal operator for operating without insurance was in 2007, and that they do not have records of whether fines were used prior to 2007. If an operator is uninsured and is a corporation, the president, secretary, and treasurer of the operator can be liable for the assessed penalties and for benefit claims for the period in which the operator was uninsured. However, DOL officials said that they do not maintain records of those instances when DOL sought to hold company officials liable.

operator's authority to self-insure during an ongoing appeal. As a result, DOL was hindered from using this enforcement tool.

Liens on operator assets can be an effective tool to protect the Trust Fund if an operator defaults on its benefit liabilities, but DOL officials said that they are hindered from using this tool if an operator files for bankruptcy. DOL can place a lien on a coal operator's assets under federal law if they refuse the demand to pay the black lung benefit payments for which they are liable. In the event of bankruptcy or insolvency, federal law states that the lien imposed shall be treated in the same manner as a lien for taxes due and owing to the United States under certain laws.⁴⁹ However, DOL officials said that operators rarely stop paying benefits until after they file for bankruptcy. Once a bankruptcy occurs, DOL officials said that they are generally prevented by the court from placing a lien and taking an operator's assets in lieu of payment of current and future benefit liabilities. Under bankruptcy law, DOL officials said that they have no special status over other creditors with outstanding financial claims. Instead, DOL officials said that obtaining sufficient collateral is a better way to protect the Trust Fund.

DOL Has Implemented a New Self-Insurance Process, but It Lacks Procedures to Help Ensure Enforcement Actions

In July 2019, DOL began implementing a new process for coal mine operator self-insurance that should help to address some past deficiencies if implemented effectively. Specifically, DOL is to consider an operator's future benefit liability when setting collateral and plans to more frequently review self-insured operators (see text boxes). Under the new process, DOL officials plan to assess the risk of operator bankruptcy using various financial metrics related to profitability and solvency. As a result, DOL officials said that the amount of collateral they will require from operators to self-insure going forward will be based on both an estimate of an operator's current and future black lung liability and the risk of default due to insolvency. As of October 2019, DOL officials said that most self-insured operators had submitted their application and supporting documentation and that they were reviewing this information to decide whether these operators should continue to be self-insured.⁵⁰

⁴⁹30 U.S.C. § 934(b).

⁵⁰DOL officials said 18 of the 22 self-insured coal mine operators would be required to renew their self-insurance authority under the new process. These officials said that they did not ask Cambrian Coal, Cloud Peak Energy, or Westmoreland Coal to renew their self-insurance authority given their ongoing bankruptcies. Additionally, DOL officials said that they did not require one other operator to renew its self-insurance authority because it was acquired by a purchaser, and is now covered under the purchaser's self-insurance authority.

DOL's New Self-Insurance Process Will Include Estimates of Future Benefit Liability

Coal mine operators applying to DOL to self-insure will be required to submit:

- a completed application;
- a certified consolidated financial statement for each of the 3 years prior to its application;
- recent black lung claims information; and
- a certified actuarial report on the operator's existing and future black lung benefit liabilities.

DOL plans to use the information submitted by coal mine operators to assess the insolvency risk of each operator using various financial metrics related to profitability and solvency. Depending on the results of their analysis, DOL plans to categorize the risk-level of each applicant as low, medium, or high. DOL will then set the amount of collateral required to self-insure by linking the operator's risk category to a corresponding percentage of the operator's actuarial estimated benefit liability. DOL policies state that they would require a high-risk operator to secure with collateral 90 percent of estimated benefit liability, a medium-risk operator to secure 45 percent, and a low-risk operator to secure 15 percent. However, in February 2020, DOL officials said they plan to revise these percentages to 100 percent, 85 percent, and 70 percent for high-risk, medium-risk, and low-risk operators, respectively.

Source: Department of Labor (DOL) officials and coal mine operator self-insurance policies. | GAO-20-21

DOL's New Self-Insurance Process Will Require More Frequent Coal Mine Operator Reviews

Coal mine operators that are already authorized to self-insure will be required to submit:

- a self-insurance renewal application (annually);
- a financial summary (quarterly);
- a certified consolidated financial statement (annually);
- black lung claims information (annually); and
- actuarial estimate of benefit liability (to be submitted every three years).

DOL plans to use the information self-insured operators submit to update their insolvency risk analysis. If an operator's risk category changes (e.g., from low-to medium-risk), DOL plans to send a form to the operator requiring an additional amount or type of collateral. Upon receiving the completed form, and proof that the collateral has been obtained, DOL stated that they will notify the operator that its authority to self-insure has been reauthorized.

Source: Department of Labor (DOL) coal mine operator self-insurance policies. | GAO-20-21

DOL's new self-insurance process made important changes, but overlooked other key internal control improvements that are needed to protect the financial interests of the Trust Fund. DOL's new requirements for setting collateral and for the annual and quarterly review of self-insured operators are key components of internal controls, which call for

agency management to implement control activities through policy.⁵¹ However, DOL's new self-insurance process lacks procedures that could help to prevent past oversight deficiencies from reoccurring. Among other things, DOL's procedures do not specify (1) the duration of an operator's self-insurance authority, (2) the time frames for submitting renewal applications and supporting documentation, and (3) the conditions under which an operator's self-insurance authority would not be renewed. Without such procedures, DOL has no basis to take enforcement action should an operator not submit its self-insurance renewal application and supporting documentation.

DOL staff are also hindered from taking enforcement action during an operator's ongoing appeal, as previously mentioned. DOL policies state that an operator may request reconsideration if its self-insurance application has been denied or if it believes the collateral required by DOL is too high to secure its benefit liabilities. However, DOL lacks procedures that specify, among other things, the length of time that operators have to submit supporting information. Further, DOL does not specify a goal for how much time DOL appeals decisions should take. For example, in October 2015, DOL recommended revoking Murray Energy's (Murray) authority to self-insure due to deteriorating financial conditions. Murray appealed this decision, and DOL officials said they postponed responding to the appeal until their new self-insurance process was implemented so that they could evaluate Murray under its new process along with the other self-insured operators. However, Murray filed for bankruptcy in October 2019 and DOL had not revoked its authority to self-insure or requested additional collateral because Murray's appeal was still pending and DOL was still evaluating how much collateral it would require from the operator under its new self-insurance process.

DOL Does Not Monitor Whether Coal Mine Operators Maintain Commercial Insurance Coverage

DOL does not monitor coal mine operators that do not self-insure and, thus, must commercially insure their federal black lung liabilities to make certain they maintain adequate and continuous coverage as required by law. DOL previously monitored operators' compliance with the program's insurance requirements by annually sending letters to a selection of operators seeking confirmation that they had maintained adequate coverage, but discontinued the process once the agency began receiving NCCI policy data. In order to use the policy data for the purpose of identifying operators that have not maintained coverage, DOL would, as a

⁵¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington D.C., September 2014).

starting point, have to maintain a record of all employers that operate a coal mine. However, DOL officials explained that they do not currently maintain such a record.

In the absence of effective DOL monitoring of operator compliance, we evaluated the potential risk that uninsured operators could pose to the Trust Fund. Specifically, in examining the 13 largest coal operators that were not approved to self-insure their federal black lung liabilities and, therefore, had to obtain commercial coverage, we found that some insurers erred in reporting endorsements and in one instance an operator did not have adequate coverage.

- We found six operators (parent or subsidiary) that were not insured for the entire 3 year period from 2016 through 2018, according to our review of DOL data. When we discussed our findings with DOL, agency officials had to research each operator individually and in some cases contact the operator or their insurer to find out whether or not they had been covered. DOL concluded that these entities were insured. However, the insurers had not properly reported the federal black lung endorsement on new policies or subsequent renewals, in addition to other reporting issues.⁵²
- One of these six operators also had, inadvertently, not maintained adequate commercial coverage for its mining operations in Texas, and had not self-insured those operations. In this instance, the operator obtained an excess loss policy that only pays claims once they exceed a high threshold and, therefore, is not sufficient by itself to secure the payment of the operator's benefit liabilities.⁵³ DOL data does not include information on excess loss policies and, while the data NCCI provides on standard workers' compensation policies with federal black lung endorsements lists operators' addresses, they do not provide the specific states for which endorsements apply.

⁵²We found similar reporting issues with two self-insured coal operators that had subsidiaries that were commercially insured or insured by a state workers' compensation insurance fund.

⁵³When we raised the issue with the operator's insurer, they said they had inadvertently omitted Texas from the list of states covered by the federal black lung endorsement on the operator's standard workers' compensation policy. According to the insurer, they have corrected the error and made the changes retroactive to the endorsement's original effective date to ensure the operator's Texas operations will be covered.

Designing processes to achieve agency objectives and respond to risks is a principle of effective internal controls.⁵⁴ Without a process to monitor operator compliance with program insurance requirements, DOL risks not identifying a lapse or cancellation of operator coverage. This could result in the Trust Fund having to assume responsibility for paying benefits that would otherwise have been paid by an insurer.⁵⁵

DOL officials said the Trust Fund infrequently pays claims on behalf of uninsured operators due to the civil penalties that it can impose on operators and certain company officers. These officials also said that operators that do not maintain insurance coverage typically employ few miners and are out of business by the time a claim is filed and, thus, cannot be held liable for benefit claims. However, DOL officials acknowledged that they do not track how often claims are paid by the Trust Fund on behalf of uninsured operators that should have been insured.

We attempted to examine the extent to which claims were paid by the Trust Fund in fiscal year 2018 on behalf of uninsured operators that should have been insured.⁵⁶ We found that DOL's black lung claimant and payment system does not identify whether potentially responsible operators should have had commercial insurance coverage. The data on responsible operators and insurers, as well as the basis on which an operator was determined to be responsible, were not consistently recorded. DOL officials said that the data fields that identify responsible operators and their insurers should reflect the information collected from DOL's initial determination. DOL officials said that in some cases, after an adjudication decision determined the Trust Fund was responsible for paying benefits, claim examiners may have deleted the previously recorded responsible operator and insurer data, creating potential inconsistencies in the data.

⁵⁴[GAO-14-704G](#).

⁵⁵Another potential consequence of DOL's failure to monitor operator compliance with program insurance requirements is that responsibility for the payment of benefits can shift from operators that most recently employed a miner and are uninsured to other operators that previously employed the miner and are insured.

⁵⁶Such a figure, had we been able to calculate it, would have represented the losses the Trust Fund could have avoided that year had operators complied with the program's insurance requirements.

DOL officials acknowledged that its processes and guidance for recording information on responsible operators and the basis for those decisions resulted in inconsistent and potentially inaccurate recording of claim and benefit data. As a result, DOL issued preliminary guidance in February 2019 to field supervisors and claims examiners. However, the revised guidance does not include how to identify potentially responsible operators that should have had commercial coverage but did not.

Monitoring agency internal control systems and evaluating the results of those activities is a principle of effective internal control.⁵⁷ Without complete and consistently recorded information on potentially responsible operators and insurers, and the basis for determination decisions, DOL is not able to effectively evaluate the financial impact claims paid on behalf of uninsured operators have on the Trust Fund. Determining the financial impact of these claims would be important to DOL's evaluation of the effectiveness of a process for monitoring operator compliance with black lung program insurance requirements.

Conclusions

The Black Lung Disability Trust Fund faces financial challenges, and DOL's limited oversight of coal mine operator insurance has further strained Trust Fund finances by allowing operator liabilities to transfer to the federal government. DOL's new self-insurance process may help to address past deficiencies in setting collateral and reviewing self-insured operators if implemented effectively. However, DOL still lacks procedures on self-insurance renewals and coal operator appeals that could help to ensure that DOL staff will take enforcement actions when needed. 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. 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 ensure that DOL is able to revoke an operator's ability to self-insure, when warranted.

Commercially-insured federal black lung liabilities can limit the Trust Fund's exposure to financial risk, but only if operators maintain adequate and continuous coverage as required. Currently, DOL does not identify lapses or cancellations in coverage among commercially-insured operators until after a claim is filed. Establishing a process to identify

⁵⁷[GAO-14-704G](#).

lapses and cancellations in coverage before claims get filed could help prevent the Trust Fund from becoming responsible for these claims.

Recommendations for Executive Action

We are making the following three recommendations to the Department of Labor:

- The Director of the Office of Workers' Compensation Programs should 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. (Recommendation 1)
- The Director of the Office of Workers' Compensation Programs should develop and implement procedures for self-insured coal mine operator appeals 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. (Recommendation 2)
- The Director of the Office of Workers' Compensation Programs should develop and implement a process to monitor operator compliance with commercial insurance requirements and periodically evaluate the effectiveness of this process. This process should be designed to detect errors and omissions in reporting insurance coverage using complete, accurate, and consistently recorded data. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Labor (DOL) for review and comment. Their written comments are reproduced in appendix I. DOL also provided technical comments and clarifications, which we have incorporated, as appropriate. DOL agreed with our three recommendations and said it is acting to implement them to achieve further improvements in ensuring the effective oversight of coal mine operator insurance.

DOL acknowledged the importance of improving oversight of coal mine operator insurance and commented that it made major oversight improvements in recent years. DOL commented that it began developing a new coal mine operator self-insurance process in 2015, before GAO began its review, and DOL formally approved this process in 2017. In July 2019, DOL stated that its new process was finalized when the Office of Management and Budget (OMB) approved the forms to collect financial and other information from coal mine operators. DOL stated that it is now

reviewing information obtained from coal mine operators, and expects to set the amount of collateral required to self-insure under its new process in the first half of 2020. We commend DOL's efforts to address the deficiencies of its past self-insurance process. However, we remain concerned about continuing coal operator bankruptcies and the looming unsecured black lung benefit liabilities that still threaten the Trust Fund.

DOL commented that adopting GAO's recommendations would further improve its oversight of coal mine operator insurance going forward. Specifically, DOL reported that it will (1) ensure letters granting or renewing self-insurance authority will inform operators that their authorization expires in one year and that they must submit renewal information three months in advance of the expiration date, (2) ensure letters denying self-insurance will inform operators that they have a 30-day appeal period (limited to one extension) and that DOL has set a goal of resolving all appeals within 90 days of the denial letter, and (3) modify existing computer systems to identify lapses or cancellations of commercial insurance coverage, and require operators identified as having lapsed or cancelled coverage to obtain or provide proof of coverage within 30 days.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Labor, and other interested parties. In addition, the report will be available at no charge on GAO's web site at <http://www.gao.gov>.

If you or your staffs should have any questions about this report, please contact Cindy Brown Barnes at (202) 512-7215 or brownbarnesc@gao.gov, or Alicia Puente Cackley at (202) 512-8678 or cackleya@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.



Cindy Brown Barnes
Director, Education, Workforce,
and Income Security Issues



Alicia Puente Cackley
Director, Financial Markets
and Community Investment

Appendix I: Comments from the U.S. Department of Labor

U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, DC 20210



Cindy Brown Barnes
Director, Education, Workforce, and Income Security
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Via email

Dear Ms. Brown Barnes:

Thank you for the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report entitled "Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance Is Needed" (GAO-20-21). The Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), administers the coal mine operator insurance provisions of the Black Lung Benefits Act (BLBA). OWCP agrees with GAO on the importance of improving oversight of coal mine operator insurance and, as GAO acknowledges, has made major oversight improvements in recent years. OWCP also agrees with GAO's three recommendations to achieve further improvement, is acting to implement them, and is committed to ensuring effective oversight of coal mine operator insurance.

The BLBA requires coal mine operators to compensate coal miners and eligible survivors if the miner becomes totally disabled or dies as a result of pneumoconiosis (commonly referred to as "black lung disease"). Coal mine operators are required to secure the payment of their potential benefits liability either by qualifying as a self-insurer or by purchasing a commercial insurance policy. OWCP has the authority to authorize operators to self-insure and set security deposit amounts. Securing benefits liability helps protect the government's Black Lung Disability Trust Fund (the Trust Fund), which pays benefits when operators fail to make benefits payments due to bankruptcy or other reasons. Federal law requires the U.S. Treasury to make repayable advances to the Trust Fund to meet all benefit obligations; so, benefit payments to miners and survivors are never in jeopardy, even when operators do not pay them.

We appreciate that GAO has recognized the significant improvements OWCP has made in recent years to its process for authorizing self-insurers. Prior to these improvements, OWCP did not always consider potential future benefits claims in setting operators' security amounts, or regularly review operators to assess their continued eligibility to self-insure. Bankruptcies of several self-insured coal mine operators transferred benefits liability to the Trust Fund because inadequate security was required from them. OWCP has replaced that process with one that incorporates major improvements designed to address past deficiencies. *Report p. 16; see also report pp. 20, 25 (same)*. Under the new process, OWCP will set security amounts based on operators' actuarial-estimated liabilities and financial health/risk of default. The actuarial estimates used in the new process are based on OWCP's latest and most refined approaches for estimating black lung liability – the same updated information and revised assumptions that recently led DOL, as GAO observes, to increase its estimate of Trust Fund liability resulting from several bankruptcies. *See report p. 12*. The improvements in the new self-insurance process allow OWCP to estimate operator liability more accurately, require adequate initial security, recalculate security amounts as necessary in response to

**Appendix I: Comments from the U.S.
Department of Labor**

emerging developments, and better protect the Trust Fund from any future defaults by operators on benefits payments.

OWCP began developing the new self-insurance process in 2015, long before GAO issued its report or even initiated its engagement on this matter. Over a two-year period, OWCP staff worked with outside experts (actuaries and financial analysts) to review existing self-insurance practices and devise changes to them. The new self-insurance process that emerged from this work was formally approved by OWCP in 2017. OWCP then proceeded to develop, and secure Office of Management and Budget (OMB) approval of, forms to collect financial and other information from coal mine operators for the new process. In July 2019, OMB approved the forms, and OWCP began implementing the new process. The agency is now reviewing information obtained from coal mine operators, and expects to set security amounts under the new process in the first half of this year.

Adopting GAO's recommendations will further improve OWCP's oversight of coal mine operator insurance arrangements. To implement GAO's first recommendation (clarification of self-insurance procedures), OWCP's letters granting or renewing self-insurance authority will inform operators their authorization expires in one year and that they must submit renewal information three months in advance of the expiration date. For the second recommendation (procedures for self-insured coal mine operator appeals), OWCP letters denying self-insurance will inform operators that they have a 30-day appeal period (limited to one extension); also, OWCP has set a goal of resolving all appeals within 90 days of the denial letter. For the third recommendation (procedures to monitor commercial insurance compliance), OWCP will modify existing computer systems to identify lapses or cancellations of commercial insurance coverage, and will require operators identified as having lapsed or cancelled coverage to obtain or provide proof of coverage within 30 days.

Finally, as noted by GAO, the Trust Fund is currently \$5.8 billion in debt, and that debt is projected to exceed \$12.6 billion (in today's dollars) by 2044. Coal mine operator bankruptcies are not the major driver of Trust Fund debt: only \$1.0 billion of the projected 2044 debt of \$12.6 billion is due to recent bankruptcies; almost all of the remainder (\$11.4 billion) is due to accrued interest on the advances from the U.S. Treasury to ensure benefits payments. Nevertheless, effective oversight of coal mine operator insurance is essential for ensuring that bankruptcies do not add further to the Trust Fund's already sizeable debt.

Thank you again for the opportunity to review and comment on the draft report. GAO's engagement has been helpful and productive. OWCP has appreciated the opportunity to continue its critical review and improvement of oversight practices.

Sincerely,

Julia K. Hearthway
Director

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Cindy Brown Barnes, (202) 512-7215, brownbarnesc@gao.gov

Alicia Puente Cackley, (202) 512-8678, cackleya@gao.gov

Staff Acknowledgments

In addition to the contacts named above, Blake Ainsworth (Assistant Director), Patrick Ward (Assistant Director), Justin Dunleavy (Analyst-in-Charge), Monika Gomez, Courtney LaFountain, Rosemary Torres Lerma, and Scott McNulty made key contributions to this report. Also contributing to this report were James Bennett, Nancy Cosentino, Caitlin Cusati, John Forrester, Alex Galuten, Ellie Klein, Emei Li, Corinna Nicolaou, Almeta Spencer, Curtia Taylor, and Shana Wallace.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through our website. Each weekday afternoon, GAO posts on its [website](#) newly released reports, testimony, and correspondence. You can also [subscribe](#) to GAO's email updates to receive notification of newly posted products.

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <https://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#).
Subscribe to our [RSS Feeds](#) or [Email Updates](#). Listen to our [Podcasts](#).
Visit GAO on the web at <https://www.gao.gov>.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: <https://www.gao.gov/fraudnet/fraudnet.htm>

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707 U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548

