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BLACK LUNG BENEFITS PROGRAM

Financing and Oversight Challenges Are Adversely Affecting the Trust Fund

Statement of Cindy Brown Barnes, Director,
Education, Workforce, and Income Security

GAO Highlights

Highlights of GAO-19-622T, a testimony before the Committee on Education and Labor, Subcommittee on Workforce Protections, House of Representatives

Why GAO Did This Study

Since 2009, GAO has produced a body of work on the Black Lung Benefits Program. In 2018, for instance, GAO reported that the Trust Fund, which pays benefits to certain coal miners, faced financial challenges due, in part, to the coal tax rate decrease that took effect in 2019 and declining coal production. Trust Fund finances could be further strained by coal mine operator bankruptcies, as they can lead to benefit liabilities being transferred to the Trust Fund.

This testimony describes Trust Fund finances through 2050 and provides preliminary observations from ongoing work for this committee regarding the Department of Labor's (DOL) oversight of coal mine operator insurance.

To describe Trust Fund finances, in its 2018 report GAO developed simulations through 2050 based on various assumptions related to future coal production and the number of future black lung beneficiaries. To develop preliminary observations from its ongoing work, GAO analyzed DOL documentation and data on black lung beneficiaries and coal mine operators. GAO also reviewed relevant federal laws, regulations, policies, and guidance and interviewed DOL officials, insurance carriers, and coal mine operators, among others.

What GAO Recommends

GAO will be considering recommendations, as appropriate, when ongoing work is finished.

View GAO-19-622T. For more information, contact Cindy Brown Barnes, at (202) 512-7215 or brownbarnesc@gao.gov.

June 20, 2019

BLACK LUNG BENEFITS PROGRAM

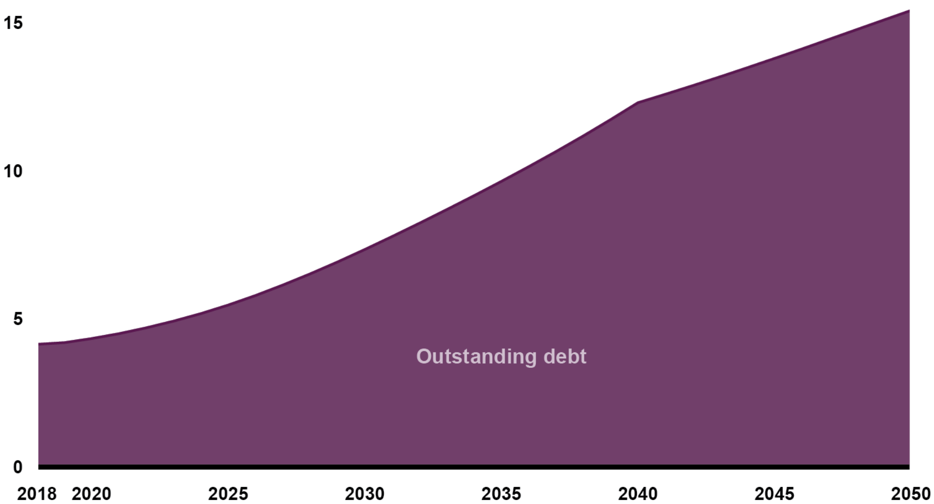
Financing and Oversight Challenges Are Adversely Affecting the Trust Fund

What GAO Found

GAO reported in 2018 that Black Lung Disability Trust Fund (Trust Fund) expenditures have consistently exceeded revenue. The Trust Fund borrowed from the Department of the Treasury's (Treasury) general fund and hence from the taxpayer almost every year since 1979, its first complete fiscal year, causing debt and interest to accumulate. Federal law does not limit the amount the Trust Fund may borrow as needed to cover its expenditures. Trust Fund revenue will be further limited by the coal tax rate decrease of about 55 percent that took effect in 2019, and declining coal production, according to GAO's simulation. Specifically, Trust Fund revenue may not be sufficient to cover beneficiary payments and administrative costs, from fiscal years 2020 through 2050. Therefore, the Trust Fund could need to continue borrowing to cover its expenditures—including the repayment of past debt and interest—and the Trust Fund's simulated outstanding debt could exceed $15 billion by 2050 (see figure). However, as GAO reported in 2018, various options, such as adjusting the coal tax and forgiving debt, could improve the Trust Fund's financial position.

Trust Fund Simulated Outstanding Debt, Fiscal Years 2018 through 2050

Black Lung Disability Trust Fund outstanding debt (in billions of dollars)



Source: GAO simulation based on data from the Departments of Labor and Treasury, the Energy Information Administration, and the Office of Management and Budget. | GAO-19-622T

GAO's preliminary observations indicate that Trust Fund finances will be further strained by coal operator bankruptcies. Since 2014, an estimated black lung benefit liability of over $310 million has been transferred to the Trust Fund from insolvent self-insured coal mine operators, according to DOL data. Federal law generally requires that operators secure their black lung benefit liability. To do so, operators can self-insure if they meet certain DOL conditions. As of June 2019, there are 22 operators that are self-insured and actively mining coal, according to DOL officials. GAO's preliminary analysis indicates that DOL did not regularly review these operators so that it could adjust collateral as needed to protect the Trust Fund. As a result, the amount of collateral DOL required from some of these operators is tens of millions less than their most recent estimated black lung benefit liability.

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

I am pleased to be here today to highlight GAO's prior and ongoing work on Black Lung Disability Trust Fund (Trust Fund) solvency, and the Department of Labor's (DOL) oversight of coal mine operator insurance given recent operator bankruptcies.[1]

The Black Lung Benefits Program provides medical and cash assistance to certain coal miners who have been totally disabled due to pneumoconiosis, also known as black lung disease.[2] Their surviving dependents may also receive assistance. Black lung benefits are generally to be paid by liable coal mine operators. However, the Trust Fund pays benefits in certain circumstances including in cases where no responsible mine operator could be identified or when the liable mine operator does not pay. The Trust Fund is financed primarily by a tax on coal produced and sold domestically, which we refer to in this statement as the coal tax.[3]

In 2018, we reported that the Trust Fund faced financial challenges and borrowed about $1.3 billion in fiscal year 2017 from the Department of the Treasury's (Treasury) general fund to cover its expenditures. Beginning in 2019, the rate of the coal tax—the Trust Fund's primary revenue source—decreased by about 55 percent. The Trust Fund may also be affected by declining future coal production, as we reported in 2018. With less revenue from the coal tax, increased federal funding will likely be needed. Under federal law the Trust Fund borrows from Treasury's general fund when necessary to cover its expenditures. Federal law does not limit the amount the Trust Fund may borrow from Treasury's general fund—and hence from the taxpayer—as needed to cover its relevant expenditures. However, various options, such as adjusting the coal tax and forgiving interest or debt, could reduce future borrowing and improve the Trust Fund's financial position (see GAO-18-351).

[1]GAO, *Black Lung Benefits Program: Options to Improve Trust Fund Finances*, GAO-18-351 (Washington D.C: May 30, 2018).

[2]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 Centers for Disease Control, National Institute of Occupational Safety and Health.

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

In my testimony today, I will (1) discuss the future solvency of the Trust Fund given the coal tax rate decrease and declining coal production, and (2) provide preliminary observations based on ongoing work for this committee regarding DOL's oversight of coal mine operator insurance given recent operator bankruptcies.

To address our first objective we drew directly from our 2018 report. In that report we simulated, among other things, how Trust Fund debt may change through 2050 given the coal tax rate decrease and declining coal production.[4] Our simulations were based on various assumptions and simulated Trust Fund revenues and expenditures from fiscal years 2016 through 2050. To develop these simulations, we used actual and projection data from (1) DOL for fiscal years 2015 through 2040; (2) Treasury's Office of Tax Analysis for fiscal years 2011 through 2015; (3) the Department of Energy's Energy Information Administration (EIA) for calendar years 2015 through 2050; and (4) the Office of Management and Budget (OMB) for fiscal year 2017. We ran each simulation multiple times using different sets of assumptions about the number of future black lung beneficiaries and future coal production. Doing so provided a range of estimates about the Trust Fund's future borrowing needs and provided insight on the sensitivity of its overall financial position relative to its revenues and expenditures. In this testimony, as we did in our report, we generally present the results of a moderate set of assumptions for each simulation.[5] We assessed the reliability of the data used to develop our simulations by interviewing knowledgeable agency officials and reviewing relevant supporting documentation describing the inputs and assumptions used, if applicable. We also reviewed DOL, Treasury, EIA, and OMB data for outliers, obvious errors, or missing data. We determined that the data were sufficiently reliable for the purposes of our report.

Our preliminary observations regarding DOL's oversight of coal mine operator insurance given recent operator bankruptcies are based on ongoing work for this committee. In conducting this work, we obtained DOL documentation and data on black lung beneficiaries and coal mine operators. We also reviewed relevant federal laws, regulations, policies,

[4]Our simulations began in fiscal year 2016 because 2015 was the last complete fiscal year for which DOL data were available when we began our review. Our simulations extend through fiscal year 2050 as this is the last year of EIA coal production forecast estimates.

[5]For more information on our simulation methodology and the full range of results, see GAO-18-351.

and guidance and interviewed DOL officials, insurance carriers and associations, and coal mine operators, among others.[6]

We conducted the work on which this statement is based 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Black Lung Benefits

Black lung benefits include both cash assistance and medical benefits. Maximum cash assistance payments ranged from about $660 to $1,320 per month in 2018, depending on a beneficiary's number of dependents.[7] Miners receiving cash assistance are also eligible for medical benefits that cover the treatment of their black lung-related conditions, which may include hospital and nursing care, rehabilitation services, and drug and equipment charges, according to DOL documentation. DOL estimates that the average annual cost for medical treatment in fiscal year 2018 was approximately $9,667 per miner.

There were about 25,600 total beneficiaries (primary and dependents) receiving black lung benefits during fiscal year 2018 (see fig. 1).[8] The number of beneficiaries has decreased over time as a result of declining coal mining employment and an aging beneficiary population, according

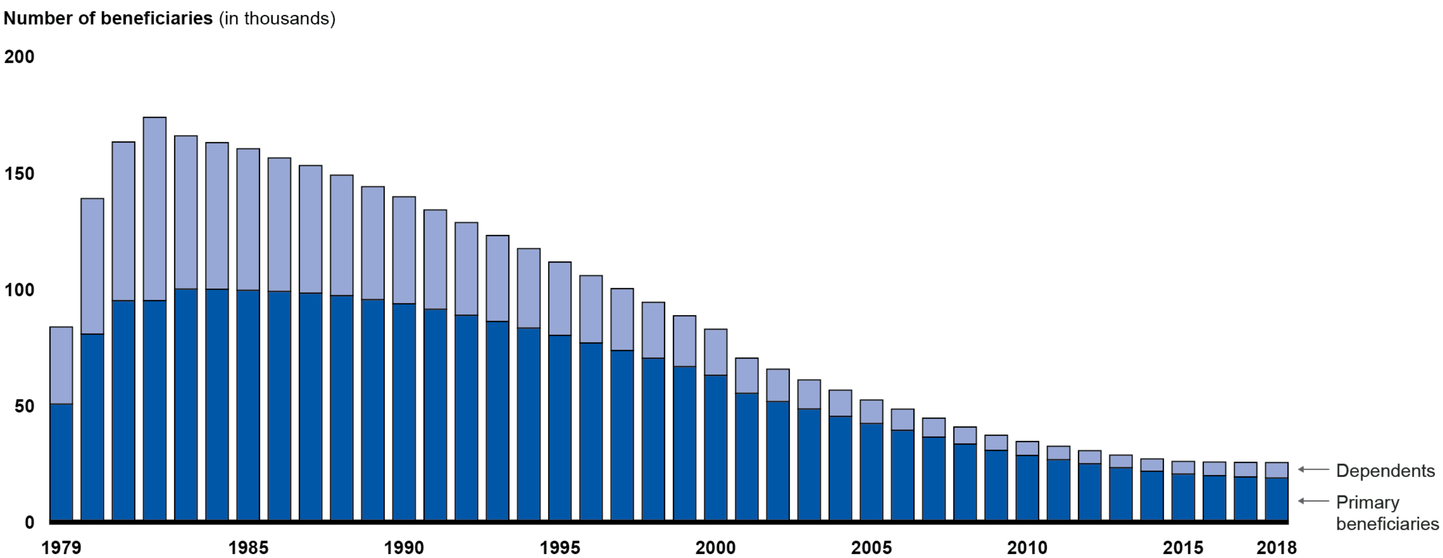
[6]We did not conduct a legal analysis of the relevant bankruptcy court dockets. Instead, we relied on documentation provided by DOL to describe these bankruptcies.

[7]Benefit 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.

[8]We excluded certain black lung beneficiaries, which DOL refers to as Part B beneficiaries, whose awards are generally funded from Treasury's general fund, and not from the Trust Fund.

to DOL officials. Black lung beneficiaries could increase in the near term due to the increased occurrence of black lung disease and its most severe form, progressive massive fibrosis, particularly among Appalachian coal miners, according to National Institute for Occupational Safety and Health (NIOSH) officials.[9]

Figure 1: Black Lung Beneficiaries, Fiscal Years 1979 through 2018



Source: GAO analysis of Department of Labor data. | GAO-19-622T

Notes: We excluded certain black lung beneficiaries, which the Department of Labor refers to as Part B beneficiaries, whose awards are generally funded from Treasury's general fund, and not the Trust Fund.

Benefit Adjudication Process

Black lung claims are processed by the Division of Coal Mine Workers' Compensation in the Office of Workers' Compensation Programs (OWCP) within DOL. Contested claims are adjudicated by DOL's Office of Administrative Law Judges (OALJ), which issues decisions that can be

[9]Recent NIOSH studies have 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, 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, 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).

appealed to DOL's Benefits Review Board (BRB).[10] Claimants and mine operators may further appeal these agency decisions to the federal courts. If an award is contested, claimants can receive interim benefits, which are generally paid from the Trust Fund according to DOL officials. 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. In fiscal year 2018, black lung claims had an approval rate of about 34 percent, according to DOL data.

In 2009, we reported on the benefits adjudication process and made several recommendations for DOL that could improve miners' ability to pursue claims.[11] An April 2015 DOL Inspector General (IG) report followed up on DOL's progress on our recommendations and found continuing problems and raised new concerns about the black lung claims and appeals process.[12] For instance, the IG reported that OALJ needed to address staff shortages, improve communication between its headquarters and district offices, and upgrade the training provided to judges and law clerks.[13] To further expedite claim adjudication, the IG recommended, among other things, that OALJ begin hearing more cases remotely using video or telephone hearings to reduce judges' travel costs and time.[14] In fiscal year 2018, OWCP reported that it took about 335 days on average to issue a decision on a claim. This is an increase from

[10]For 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.: October 30, 2009).

[11]See GAO-10-7.

[12]Office of the Inspector General-Office of Audit, U.S. Department of Labor, Report to the Office of Workers' Compensation Program, Office of Administrative Law Judges, and Benefits Review Board, *Procedural Changes Could Reduce the Time Required to Adjudicate Federal Black Lung Benefits Claims*, 05-15-001-50-598 (Washington, D.C.: April 9, 2015).

[13]In September 2017, the DOL IG reported that OALJ could reduce its backlog of black lung cases by 21 percent or 28 percent by adding 3 or 6 judges. See Office of the Inspector General-Office of Audit, U.S. Department of Labor, Report to the Office of Administrative Law Judges, *Effect of OALJ Staffing Levels on the Black Lung Case Backlog*, 05-17-003-01-060 (Washington, D.C.: September 27, 2017).

[14]GAO made a related recommendation in 2009 that DOL consider shortening the time required to schedule hearings for black lung cases by examining the feasibility of using video teleconferencing technology to streamline the scheduling of hearings in remote areas, see GAO-10-7.

the average of 235 days that OWCP had reported to the DOL IG for fiscal year 2014.[15]

Trust Fund Revenue and Expenditures

Trust Fund revenue is primarily obtained from mine operators through the coal tax. The current coal tax rates, which took effect in 2019, are $0.50 per ton of underground-mined coal and $0.25 per ton of surface-mined coal, up to 2 percent of the sales price. Coal tax revenue is collected from mine operators by Treasury's Internal Revenue Service and then transferred to the Trust Fund where it is then used by DOL to pay black lung benefits and the costs of administering the program.

Trust Fund expenditures include, among other things, black lung benefit payments, certain administrative costs incurred by DOL and Treasury to administer the black lung benefits program, and debt repayments. When necessary for the Trust Fund to make relevant expenditures under federal law, the Trust Fund borrows from the Treasury's general fund. When this occurs, the federal government is essentially borrowing from itself—and hence from the taxpayer—to fund its benefit payments and other expenditures.

Trust Fund Borrowing Will Likely Continue to Increase through 2050

As we reported in 2018, Trust Fund expenditures have consistently exceeded revenue. The Trust Fund borrowed from Treasury's general fund almost every year since 1979, its first complete fiscal year.[16] We noted in our 2018 report that Trust Fund borrowing would continue to increase through 2050 due, in part, to the planned coal tax rate decrease of about 55 percent that took effect in 2019 and declining coal production.

We simulated the effects of the tax rate decrease on Trust Fund finances through 2050, and reported the results of a moderate case set of assumptions related to future coal production and prices and the number

[15]See Office of the Inspector General-Office of Audit, U.S. Department of Labor, 05-15-001-50-598.

[16]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. We refer to this process as annual borrowing from Treasury's general fund because, for reporting purposes, we often refer to the total amount of the repayable advances made in a particular fiscal year. According to the Department of 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.

of new black lung beneficiaries.[17] These simulations were not predictions of what will happen, but rather models of what could happen given certain assumptions.

Our moderate case simulation suggested that Trust Fund revenue may decrease from about $485 million in fiscal year 2018 to about $298 million in fiscal year 2019, due, in part, to the approximate 55 percent decrease in the coal tax rate.[18] Our simulation, which incorporated EIA data on future expected coal production, also showed that annual Trust Fund revenue would likely continue to decrease beyond fiscal year 2019 due, in part, to declining coal production. Domestic coal production declined from about 1.2 billion tons in 2008 to about 775 million tons in 2017, according to EIA.[19] Based on these projections, our moderate simulation showed that Trust Fund annual revenue may continue to decrease from about $298 million in fiscal year 2019 to about $197 million in fiscal year 2050.[20]

Future simulated Trust Fund revenue would likely be insufficient to cover combined black lung benefit payments and administrative costs, according to our moderate case simulation. Specifically, revenue may not be sufficient to cover beneficiary payments and administrative costs from fiscal years 2020 through 2050 (see fig. 2). For instance, in fiscal year 2029, simulated benefit payments and administrative costs would likely exceed simulated revenue by about $99 million.[21] These annual deficits could decrease over time to about $4 million by fiscal year 2050 due, in part, to the assumed continued net decline in total black lung beneficiaries.[22]

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[17]Our simulations began in fiscal year 2016 because fiscal year 2015 was the last complete fiscal year for which DOL data were available when we began our review. Our simulations extend through fiscal year 2050 because that is as far as the EIA produces coal production forecasts which we relied on in developing our simulations relative to future coal tax revenue. For more information on our simulation methodology, see GAO-18-351.

[18]The simulated values for Trust Fund revenue and expenditures through 2050 are presented in nominal dollars, meaning they are not adjusted for inflation

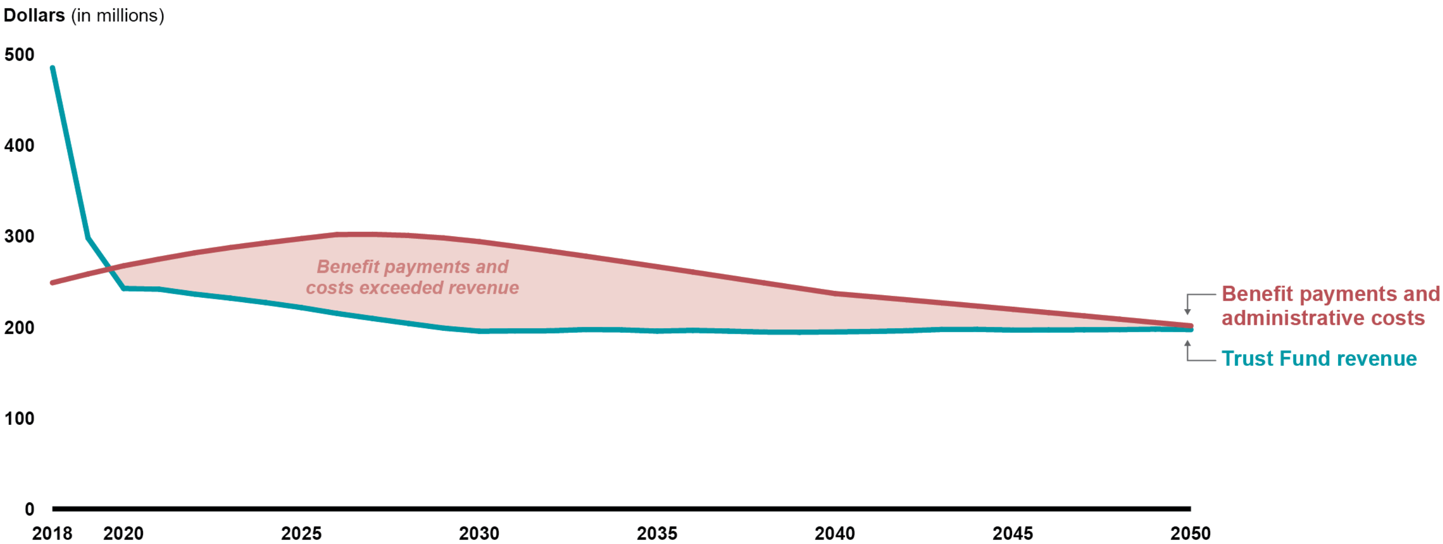
[19]U.S. Department of Energy, Energy Information Administration: *Annual Coal Report 2017* (Washington, D.C.: November 2018).

[20]These are equivalent to about $290 million and $100 million in 2018 after adjusting for inflation.

[21]This is equivalent to about $78 million in 2018 after adjusting for inflation.

[22]This is equivalent to about $2 million in 2018 after adjusting for inflation.

Figure 2: Black Lung Disability Trust Fund Simulated Revenue and Black Lung Benefit Payments and Administrative Costs Based on Moderate Case Assumptions, Fiscal Years 2018 through 2050

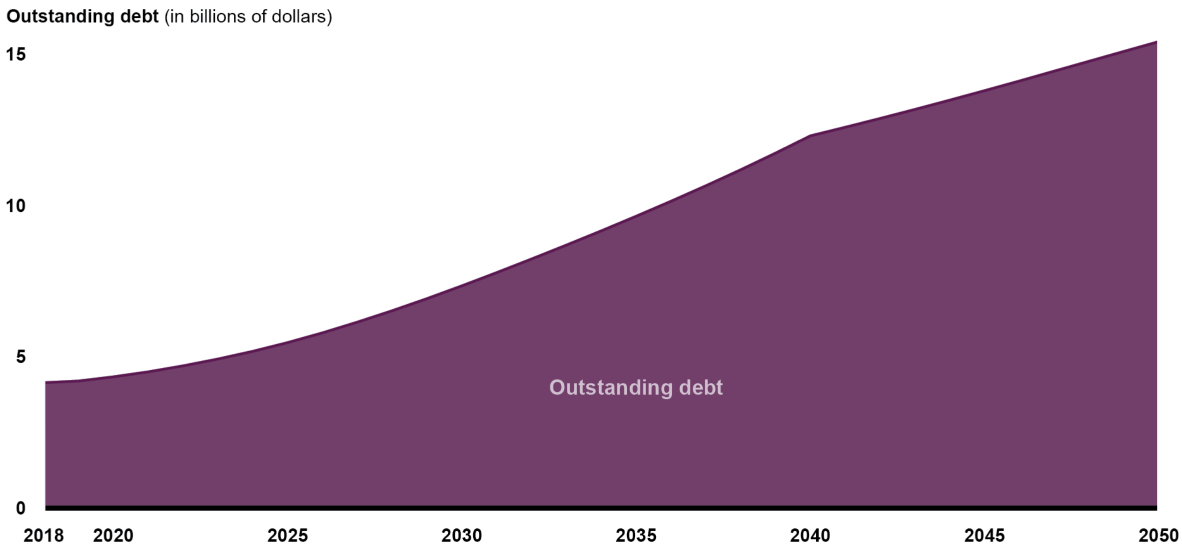


Source: GAO simulation based on data from the Departments of Labor and Treasury, the Energy Information Administration, and the Office of Management and Budget. | GAO-19-622T

Notes: Trust Fund revenue and black lung benefit payments and administrative costs are simulated from fiscal years 2018 through 2050 and presented in nominal dollars. Moderate case simulations assumed that future coal production is consistent with the Energy Information Administration's reference case, which generally assumes trend improvement in known technologies, a view of economic and demographic trends that reflects the current central views of economic forecasters and demographers, and that current laws and regulations affecting the energy sector are unchanged through 2050. Moderate case simulations also assumed that future numbers of new black lung beneficiaries evolve over time based on the average growth rate for the period from fiscal years 2003 to 2015. Given the complexities of estimating future coal production and prices and new black lung beneficiaries, our simulations are subject to considerable uncertainty, and simulated Trust Fund revenues and expenditures are unlikely to be precise. For more information on our simulation methodology and the full range of results, see GAO-18-351.

If Trust Fund spending on benefit payments and administrative costs continues to exceed revenues each year, then the Trust Fund would need to continue borrowing from Treasury's general fund to cover those costs, as well as borrowing to cover debt repayment. Our moderate simulation suggested that the Trust Fund's outstanding debt could increase from about $4.2 billion in fiscal year 2019 to about $15.4 billion in fiscal year 2050 (see fig. 3). While our moderate case simulated a $15.4 billion Trust Fund debt in 2050, the amount could vary from about $6 billion to about $27 billion depending, in part, on future coal production and the number of new beneficiaries. Even if the Congress were to completely eliminate black lung benefits as of fiscal year 2019, the Trust Fund's outstanding debt in fiscal year 2050 could still exceed $6.4 billion, according to our simulation.[23] Eliminating black lung benefits, however, would generally mean that coal tax revenue would be collected solely to fund the repayment of Trust Fund debt. As we reported in 2018, other options such as adjusting the coal tax and forgiving interest or debt, could also reduce future borrowing and improve the Trust Fund's financial position (see GAO-18-351).

Figure 3: Black Lung Disability Trust Fund Simulated Principal Amount of Outstanding Debt to Treasury's General Fund Based on Moderate Case Assumptions, Fiscal Years 2018 through 2050



Source: GAO simulation based on data from the Departments of Labor and Treasury, the Energy Information Administration, and the Office of Management and Budget. | GAO-19-622T

Notes: The principal amount of the Trust Fund's outstanding debt includes the principal amount of the Trust Fund's legacy debt—which was refinanced following the Energy Improvement and Extension Act of 2008 with repayment to be complete by fiscal year 2040—and the Trust Fund's annual borrowing from Treasury's general fund through 2050, which is simulated from fiscal years 2018 through 2050 and presented in nominal dollars. Moderate case simulations assumed that future coal production is consistent with the Energy Information Administration's reference case, which generally assumes trend improvement in known technologies, a view of economic and demographic trends that reflects the current central views of economic forecasters and demographers, and that current laws and regulations affecting the energy sector are unchanged through 2050. Moderate case simulations also assumed that future numbers of new black lung beneficiaries evolve over time based on the average growth rate for the period from fiscal years 2003 to 2015. Given the complexities of estimating future coal production and prices and new black lung beneficiaries, our simulations are subject to considerable uncertainty and simulated annual borrowing is unlikely to be precise. For more information on our simulations methodology and the full range of results, see GAO-18-351.

[23]This includes eliminating all cash assistance and medical benefits.

Preliminary Observations Raise Concerns About DOL's Oversight of Coal Mine Operator Insurance

Federal law generally requires that coal operators secure their black lung benefit liability. Operators can purchase commercial insurance for this purpose or may self-insure if they meet certain DOL conditions. For example, self-insurers 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.[24]

DOL officials said that the collateral they required from the five self-insured operators that filed for bankruptcy between 2014 and 2016 was inadequate to cover their benefit liabilities. For example, the collateral DOL required from Alpha Natural Resources was about 6 percent of its estimated benefit liability. As a result, approximately $185 million of estimated benefit liability was transferred to the Trust Fund, according to DOL data. We reviewed DOL documentation related to the five operator bankruptcies.[25] Table 1 shows the bankrupt operators; the amount of collateral each operator had at the time of bankruptcy; estimated benefit liability at the time of bankruptcy; and estimated benefit liability and number of beneficiaries that transferred to the Trust Fund, if applicable. Overall, three of these bankruptcies affected the Trust Fund, and two did not according to DOL. DOL officials told us that the bankruptcies of Arch Coal and Peabody Energy did not affect the Trust Fund because their benefit liabilities were assumed by the reorganized companies after emerging from bankruptcy.

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

[25]We did not conduct a legal analysis of the relevant bankruptcy court dockets. Instead, we relied on documentation provided by DOL to describe these bankruptcies. DOL officials said that these were the self-insured operator bankruptcies that occurred from 2014 through 2016 that had the potential to affect the Trust Fund most in terms of total benefit liabilities that could be transferred to the Trust Fund, depending on the outcome of bankruptcy proceedings. DOL officials also included Walter Energy, but we excluded this company from our review because at the time of our review its bankruptcy proceeding had not progressed enough for us to assess the potential effect on the Trust Fund.

Table 1: Self-Insured Coal Operator Bankruptcies Reviewed, Filed from 2014 through 2016

Coal operator	Collateral at time of bankruptcy	Black lung benefit liability at time of bankruptcy	Estimated transfer of liability to Trust Fund	Estimated number of beneficiaries transferred to the Trust Fund
Alpha Natural Resources	$12 million	$206.6 million	$184.7 million	685
Arch Coal	$6.9 million	$90 million	$0	0
James River Coal Company	$0.4 million	$63.7 million to $75.9 million[a]	$62.8.million to $75 million	212
Patriot Coal	$15 million	$80 million	$65.1 million	687
Peabody Energy	$20 million	$68.4 million	$0	0

Source: DOL data, as confirmed by DOL officials. | GAO-19-622T

Notes: In addition to collateral, DOL also in some cases received other funds, such as through a settlement agreement. Therefore, DOL's estimated loss to the Trust Fund may not equal estimated black lung benefit liability minus collateral. Estimates of operator liability and Trust Fund losses are based on projected payments over ensuing decades on existing and future claims, according to DOL officials.

[a]DOL and operator actuaries disputed James River Coal Company's estimated benefit liabilities and therefore DOL developed an estimated range of liability instead of an exact estimate.

As of June 2019, there are 22 operators that are self-insured and actively mining coal, according to DOL officials.[26] To ensure that the collateral they required from these operators was adequate to protect the Trust Fund, DOL officials said that they periodically reauthorized them which entailed, among other things, reviewing their most recent audited financial statements and claims information. DOL officials said that they prepared memos documenting these reviews and communicated with coal operators about whether their financial circumstances warranted increasing or decreasing their collateral. Table 2 provides information on the 22 self-insured operators including the date of each operator's most recent DOL reauthorization; the amount of DOL required collateral; and the operator's most recent estimated black lung benefit liability. Should any of these operators file for bankruptcy, they could also affect the Trust Fund because the amount of an operators' benefit liability that is not covered by collateral could also become the responsibility of the Trust Fund.

[26]These include parent operators only. Subsidiaries of these operators may also be covered.

Table 2: Self-Insured Operator Reauthorization Date, Collateral, and Estimated Benefit Liability

Self-insured coal operator (from most recently reviewed by the Department of Labor (DOL), to least recently reviewed)	Date of most recent reauthorization	Collateral required by DOL to self-insure, as of September 2018	Most recent 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
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: DOL data. | GAO-19-622T

[a]According to DOL officials, this operator was acquired by another self-insured operator who assumed their benefit liability.

Preliminary analysis from our ongoing work indicates that DOL did not regularly monitor self-insured operators. Agency regulations state that DOL may adjust the amount of collateral required from self-insured operators when experience or changed conditions warrant. We reviewed DOL's most recent reauthorization memos for each of the 22 operators. While some of these operators had been reauthorized more recently, we found that others had not been reauthorized by DOL in decades. One operator in particular had not been reauthorized by DOL since 1988. Additionally, for most of these operators, DOL either did not have estimates of their benefit liabilities, or the estimates were out of date (see table 2).

Beginning in summer 2015, DOL officials said that 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. At the same time, DOL generally stopped reauthorizing the 22 self-insured operators.[27] Earlier this year, two of these operators have filed for bankruptcy—Westmoreland Coal Company and Cloud Peak Energy—according to DOL officials. Additionally, due to deteriorating financial conditions, DOL recommended revoking another operator's self-insurance authority (Murray Energy).[28] However, Murray appealed this decision and DOL postponed responding to the appeal until their new self-insurance procedures are implemented, according to DOL officials.

DOL's new self-insurance procedures are currently being reviewed by OMB, and DOL officials said they did not know when they would likely be implemented. Until such procedures are implemented, DOL cannot ensure that the collateral it has required from self-insured operators is adequate to protect the Trust Fund should these operators become insolvent.

Chairwoman Adams, Ranking Member Byrne, 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 staff has any questions concerning this testimony, please contact me at (202) 512-7215. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the contact named above, Blake Ainsworth (Assistant Director), Justin Dunleavy (Analyst in Charge), Angeline Bickner, Alex Galuten, Courtney LaFountain, Rosemary Torres Lerma, Kate van Gelder, Catherine Roark, and Almeta Spencer made key

[27]DOL officials said that they reauthorized one of the 22 self-insured operators in 2018 to allow it to self-insure the legacy benefit liabilities of another operator that it had purchased.

[28]DOL regulations state that the agency, with good cause shown, may revoke the authorization of any self-insurer.

contributions to the testimony. Other staff who made key contributions to the reports cited in the testimony are identified in the source products.

Related GAO Products

Black Lung Benefits Program: Options to Improve Trust Fund Finances, GAO-18-351 (Washington D.C: May 30, 2018).

Mine Safety: Basis for Proposed Exposure Limit on Respirable Coal Mine Dust and Possible Approaches for Lowering Dust Levels, GAO-14-345 (Washington, D.C.: April 9, 2014).

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