

**ASLEEP AT THE SWITCH:  
HOW THE DEPARTMENT OF LABOR  
FAILED TO OVERSEE THE BLACK  
LUNG DISABILITY TRUST FUND**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION  
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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# C O N T E N T S

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|   | Page |
|---|------|
| Hearing held on February 26, 2020 .....   | 1    |
| Statement of Members:   |      |
| Adams, Hon. Alma S., Chairwoman, Subcommittee on Workforce Protec-<br>tions .....   | 1    |
| Prepared statement of .....   | 4    |
| Wright, Hon. Ron, a Congressman from the State of Texas .....   | 5    |
| Prepared statement of .....   | 6    |
| Statement of Witnesses:   |      |
| Brown Barnes, Ms. Cindy, Director, Education, Workforce and Income<br>Security, U.S. Government Accountability Office ..... | 8    |
| Prepared statement of .....   | 11   |
| Hearthway, Ms. Julia, Director, Office of Workers' Compensation Pro-<br>grams, U.S. Department of Labor .....               | 27   |
| Prepared statement of .....   | 29   |
| Additional Submissions:   |      |
| Ms. Adams:  |      |
| Questions submitted for the record .....  | 53   |
| Ms. Brown Barnes response to question submitted for the record .....  | 55   |



**ASLEEP AT THE SWITCH:  
HOW THE DEPARTMENT OF LABOR  
FAILED TO OVERSEE THE BLACK  
LUNG DISABILITY TRUST FUND**

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**Wednesday, February 26, 2020  
House of Representatives,  
Subcommittee on Workforce Protections,  
Committee on Education and Labor,  
Washington, D.C.**

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The subcommittee met, pursuant to call, at 3:01 p.m., in Room 2175, Rayburn House Office Building, Hon. Alma S. Adams (Chairwoman of the subcommittee) presiding.

Present: Representatives Adams, DeSaulnier, Jayapal, Cline, and Wright.

Also Present: Representatives Scott, Foxx, Cartwright, Walberg, Meuser, Keller, and Griffith.

Staff Present: Jordan Barab, Senior Labor Policy Advisor; Ilana Brunner, General Counsel; Sharit Cardenas, Labor Policy Fellow; Eli Hovland, Staff Assistant; Stephanie Lalle, Deputy Communications Director; Jaria Martin, Clerk/Special Assistant to the Staff Director; Kevin McDermott, Senior Labor Policy Advisor; Max Moore, Staff Assistant; Ivorie Stanley, Health and Labor Policy Fellow; Banyon Vassar, Deputy Director of Information Technology; Gabriel Bisson, Minority Staff Assistant; Courtney Butcher, Minority Director of Member Services and Coalitions; Rob Green, Minority Director of Workforce Policy; Jeanne Kuehl, Minority Legislative Assistant; John Martin, Minority Workforce Policy Counsel; Hannah Matesic, Minority Director of Operations; Alexis Murray, Minority Professional Staff Member; Carlton Norwood, Minority Press Secretary; and Kelly Tyroler, Minority Professional Staff Member.

Chairwoman ADAMS. The Subcommittee on Workforce Protections will come to order.

Welcome, everyone. I note that a quorum is present. I note for the subcommittee that Mr. Tim Walberg of Michigan, Mr. Meuser of Pennsylvania, Mr. Fred Keller of Pennsylvania, Mr. Morgan Griffith of Virginia, and Mr. Matt Cartwright of Pennsylvania are permitted to participate in today's hearing with the understanding that their questions will come only after all the Members of the Subcommittee on Workforce Protections and the full committee, re-

spectively, on both sides of the aisle who are present have had an opportunity to question the witnesses.

The subcommittee is meeting today for a hearing to hear testimony on “Asleep at the Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund.” Pursuant to Committee Rule 7(c), opening statements are limited to the Chair and the Ranking Member. This allows us to hear from our witnesses sooner and provides all Members with adequate time to ask questions.

I recognize myself now for the purpose of making an opening statement.

Today we will hear the disturbing story of a major failure of government oversight, a failure apparently going back several decades, and an even more troubling account of how the coal operators and their creditors on Wall Street have left taxpayers to take the hit. Last June the subcommittee held a hearing about the growing red ink in the Black Lung Disability Trust Fund. A decline of coal production, a reduced level of funding due to the sunset of the Black Lung Excise Tax, and the resurgence of black lung disease is pushing the Trust Fund deeper and deeper into debt.

Today we will explore another important piece of this problem, The Department of Labor’s failure to ensure that coal operators are covering their fair share of the benefits owed to miners and their families. When miners are disabled from black lung disease they can file a claim for black lung benefits with the Department of Labor. If a claim is approved, the coal operator that most recently employed them is required to provide benefits and cover medical expenses for the miner and their family.

The law requires that operators have insurance to cover benefits for miners and their survivors, benefits that frequently outlast the life of the mining company. If a mine operator shuts down or files for bankruptcy, however, benefits are paid from the Black Lung Disability Trust Fund, which is financed by a small tax on each ton of mined coal.

In order to ensure that the obligations of the mine operators do not fall on the Trust Fund and taxpayers, operators are required by the DOL to either purchase commercial insurance sufficient to cover their current and future obligations or mine operators can self-insure, as long as they can prove that they have collateral sufficient to cover their obligations. DOL is supposed to oversee that self-insurance program. But the Department of Labor has failed to enforce the mandate that self-insured mine operators set aside sufficient collateral in the event of bankruptcy. As a result, the amount of collateral DOL has required from some of these operators is tens of millions of dollars less than their most recent estimated black lung benefit liability.

In 2016 Chairman Scott and then-Congressman Sander Levin asked that the Government Accountability Office to examine the potential exposure of the Trust Fund from self-insured mine operators who file for bankruptcy, evaluate the effectiveness of DOL’s oversight over the program, and make recommendations for improving oversight of the program.

The GAO is here today to detail their report. We will also hear from the Director of the Department of Labor’s Office of Workers’

Compensation Programs to describe the Department's efforts to correct this problem. We will hear some troubling findings today.

Last summer, we learned from GAO that of 22 self-insured coal operators, DOL had not reassessed black lung liabilities or collateral levels of almost half of them in the past 10 years. And one of these operators had not been examined for over 30 years.

Today, we will learn that over 6 months after the DOL required self-insured coal operators to update their information, DOL has still not publicly released updated estimates of liability and the appropriate levels of collateral.

Today we will also hear about the consequences of this inadequate oversight. GAO's report found that mine operators in three very large recent bankruptcies involving nearly one billion dollars in black lung liabilities were required to post only three percent of the needed collateral.

At last June's hearing, the GAO made a preliminary finding that the bankruptcies of those three companies, Alpha Natural Resources, James River Coal, and Patriot Coal, had resulted in \$310 million being added to the Trust Fund's obligations. Today we will learn that the true number is \$865 million, three times the original estimate. While taxpayers were saddled with debt, coal executives were walking around with millions of dollars in salaries and bonuses.

Following their bankruptcy declaration, one of the bankrupt operators, Alpha Resources, offered executive bonuses of up to \$11.9 million to its top executives. Alpha CEO Kevin Crutchfeld made almost \$8 million in 2014, the year Alpha declared bankruptcy, and then another \$1.8 million in 2016 when Alpha emerged from bankruptcy. At the same time, Alpha dumped \$494 million in liabilities into the Trust Fund, while providing only \$12 million in collateral.

As part of the \$12 million payment, DOL allowed Alpha's successor to continue to self-insure after the bankruptcy. This fleecing of the Trust Fund and taxpayers has occurred under DOL's nose despite the Department's power to prevent it. The Black Lung Benefits Act gives DOL the authority to hold coal executives personally liable for the cost that was shifted to the Trust Fund, but this power has rarely been used in the 40 years since this authority was given to DOL.

Finally, the Department had no functioning appeals process in those rare occasions when they remove an operator's permission to self-insure and the operator appealed.

The American people expect good government and deserve answers.

I am disappointed that the Department has refused to brief the committee prior to this hearing about its proposal to remedy the self-insurance program.

That said, we will be particularly interested in their plans to address this problem and we will want to ask GAO whether they think these efforts are adequate.

This is a failure on multiple fronts over multiple administrations. What we are seeing here is nothing less than a gaming of the system. The winners are the coal operators and their Wall Street creditors. The losers are the American taxpayers. In other words,

the costs of black lung disease have been socialized and the gains from DOL's failed oversight have been privatized.

Today we hope to learn what happened, how to fix it, and how to prevent it from happening again.

Finally, I want to recognize all of the coal miners who are attending this important hearing, thank you for traveling all this distance.

I look forward to hearing from our witnesses and thank them for their testimony.

I now recognize the distinguished ranking member, Mr. Wright, for the purpose of making an opening statement.

[The statement by Chairwoman Adams follows:]

**Prepared Statement of Hon. Alma S. Adams, Chairwoman, Subcommittee on Workforce Protections**

Today, we will hear the disturbing story of a major failure of government oversight – a failure apparently going back several decades – and an even more troubling account of how the coal operators and their creditors on Wall Street have left taxpayers to take the hit.

Last June, this subcommittee held a hearing about the growing red ink in the Black Lung Disability Trust Fund (Trust Fund). The decline of coal production, a reduced level of funding due to the sunset of the black lung excise tax, and a resurgence of black lung disease is pushing the Trust Fund deeper and deeper into debt.

Today, we will explore another important piece of this problem: The Department of Labor's (DOL) failure to ensure that coal operators are covering their fair share of the benefits owed to miners and their families.

When miners are disabled from black lung disease, they can file a claim for black lung benefits with the Department of Labor. If a claim is approved the coal operator that most recently employed them is required to provide benefits and cover medical expenses for the miner and their family. The law requires that operators have insurance to cover benefits for miners and their survivors, benefits that frequently outlast the life of the mining company. If a mine operator shuts down or files for bankruptcy however, benefits are paid from the Black Lung Disability Trust Fund, which is financed by a small tax on each ton of mined coal.

In order to ensure that the obligations of the mine operators do not fall on the Trust Fund and taxpayers, operators are required by the DOL to either:

1. Purchase commercial insurance sufficient to cover their current and future obligations, or
2. Mine operators can self-insure, as long as they can prove that they have collateral sufficient to cover their obligations. DOL is supposed to oversee that self-insurance program.

But the Department of Labor has failed to enforce the mandate that self-insured mine operators set aside sufficient collateral in the event of bankruptcy. As a result, the amount of collateral DOL has required from some of these operators is tens of millions of dollars less than their most recent estimated black lung benefit liability. In 2016, Chairman Scott and then-Congressman Sander Levin asked the Government Accountability Office (GAO) to:

1. Examine the potential exposure of the Trust Fund from self-insured mine operators who file for bankruptcy;
2. Evaluate the effectiveness of DOL's oversight over the program, and
3. Make recommendations for improving oversight of the program.

The GAO is here today to detail their report. We will also hear from the director of the Department of Labor's Office of Workers Compensation Programs to describe the Department's efforts to correct this problem. We will be hearing some troubling findings today.

Last summer, we learned from GAO that of 22 self-insured coal operators, DOL had not reassessed black lung liabilities or collateral levels of almost half of them in the past ten years. One of these operators had not been examined for over 30 years.

Today, we will learn that over six months after the DOL required self-insured coal operators to update their information, DOL has still not publicly released updated estimates of liability and the appropriate levels of collateral.

Today, we will also hear about the consequences of this inadequate oversight. GAO's report found that mine operators in three very large recent bankruptcies in-

volving nearly \$1 billion in black lung liabilities were required to post only 3 percent of the needed collateral.

At last June's hearing, the GAO made a preliminary finding that the bankruptcies of those three companies – Alpha Natural Resources, James River Coal, and Patriot Coal – had resulted in \$310 million being added to the Trust Fund's obligations. But today we will learn that true number is \$865 million – three times the original estimate.

While taxpayers were saddled with debt, coal executives were walking away with millions of dollars in salaries and bonuses.

Following their bankruptcy declaration, one of the bankrupt operators, Alpha Resources, offered executive bonuses of up to \$11.9 million to its top executives. Alpha CEO Kevin Crutchfeld made almost \$8 million in 2014, the year Alpha declared bankruptcy, and then another \$1.8 million in 2016 when Alpha emerged from bankruptcy.

At the same time, Alpha dumped \$494 million in liabilities into the Trust Fund while providing only \$12 million in collateral. As part of the \$12 million payment, DOL allowed Alpha's successor to continue to self-insure after the bankruptcy.

This fleecing of the Trust Fund and taxpayers has occurred under DOL's nose despite the Department's power to prevent it. The Black Lung Benefits Act gives DOL the authority to hold coal executives personally liable for the costs that were shifted to the Trust Fund. But this power has rarely been used in the 40 years since this authority was given to DOL.

Finally, the Department had no functioning appeals process in those rare occasions when they remove an operator's permission to self-insure and the operator appealed. The American people expect good government and deserve answers.

I am disappointed that the Department has refused to brief the Committee prior to this hearing about its proposal to remedy the self-insurance program. That said, we will be particularly interested in their plans to address this problem and whether those efforts are adequate. This is a failure on multiple fronts by current and previous administrations to protect American taxpayers, miners, and their families.

What we are seeing here is nothing less than a gaming of the system. The winners are the coal operators and their Wall Street creditors. The losers are the American taxpayers. In other words, the costs of black lung disease have been socialized and the gains from DOL's failed oversight have been privatized. Today, we hope to learn what happened, how to fix it, and how to prevent it from happening again.

Finally, I want to recognize the coal miners who are attending this important hearing. Thank you for travelling all this way. I look forward to hearing from our witnesses and thank them for their testimony. I yield to the Ranking Member, Mr. Wright, for his opening statement.

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Mr. WRIGHT. Thank you, Madam Chair.

Workers in the mining industry have been an extremely valuable part of the American economy for decades. Congress created the Black Lung Benefit program to provide benefits to mine workers who are disabled due to black lung disease. As the chair has mentioned, unfortunately the Black Lung Disability Trust Fund, which is funded primarily through a tax on coal and designed to provide benefits to these workers when responsible employers are not able to pay benefits, has not been managed effectively.

According to a study released this morning, which was also mentioned, by the GAO the Trust Fund has faced financial challenges since it was established more than 40 years ago. In fact, the Trust Fund has needed to borrow from the U.S. Treasury almost every year to cover its expenditures, which includes financing the debt that the program has generated since its inception.

It is our understanding that today's hearing is intended to focus on Department of Labor oversight of the Trust Fund specifically related to the coal miner operator insurance program. While there is bipartisan agreement that there have been serious oversight problems facing this program, it is disappointing that my Democrat colleagues have decided to schedule this hearing only hours after the GAO publicly released its report. This has left members and the

public very little time to thoroughly go through the findings and recommendations included in the report and limited their opportunity to question today's witnesses more effectively. Program integrity and proper DOL oversight should not be shortchanged and prematurely rushed by this committee.

I also take issue with the title of today's hearing. Committee Democrats have once again titled this hearing in a way to deceive the general public and place scrutiny solely on the Trump Administration. The GAO made it clear that the Trust Fund has faced financial challenges since it was established in 1978, not just under the Trump Administration, as the misleading title of this hearing might suggest.

Additionally, the DOL's oversight of the Trust Fund and operational failures have persisted for decades under both Democrat and Republican administrations. Let us not forget the Obama Administration's war on coal made it harder for coal companies to thrive, while at the same time the Trust Fund's financial problems continued to grow.

As we will hear from both of our witnesses today, the Office of Workers' Compensation programs under the Trump Administration is taking long overdue proactive steps to improve oversight and management of the Trust Fund by implementing new processes to reevaluate and reauthorize self-insurance for coal mine operators, requesting additional data on black lung claims and benefit liability and issuing preliminary guidance to field supervisors and claim examiners.

I believe we can all work together with this Administration to support common sense, workable, and innovative approaches to ensure DOL is conducting proper oversight and ensuring miner benefits are protected.

I am encouraged by Director Heathway's work in this area and the ongoing efforts to implement the GAO's recommended reforms to improve oversight of this important program.

I want to thank both of our witnesses for being here today and I look forward to your testimony.

Thank you, Madam Chair.

[The statement by Mr. Wright follows:]

**Prepared Statement of Hon. Ron Wright, a Congressman from the State of Texas**

Workers in the mining industry have been an extremely important part of the American economy for decades. Congress created the Black Lung Benefits Program to provide benefits to mine workers who are disabled due to black lung disease.

Unfortunately, the Black Lung Disability Trust Fund, which is funded primarily through a tax on coal and designed to provide benefits to these workers when responsible employers are not able to pay benefits, has not been managed effectively.

According to a study released this morning by the Government Accountability Office (GAO), the Trust Fund has faced financial challenges since it was established more than 40 years ago. In fact, the Trust Fund has needed to borrow from the U.S. Treasury almost every year to cover its expenditures, which includes financing the debt that the program has generated since its inception.

It is our understanding that today's hearing is intended to focus on Department of Labor (DOL) oversight of the Trust Fund specifically related to the coal mine operator insurance program. While there is bipartisan agreement that there have been serious oversight problems facing this program, it is disappointing that my Democratic colleagues have decided to schedule this hearing only hours after the GAO publicly released its report. This has left Members and the public very little time to review thoroughly the findings and recommendations included in the report and

limited their opportunity to question today's witnesses more effectively. Program integrity and proper DOL oversight should not be shortchanged and prematurely rushed by this Committee.

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Let's not forget, the Obama administration's 'war on coal' made it harder for coal companies to thrive, while at the same time the Trust Fund's financial problems continued to grow.

As we will hear from both of our witnesses today, the Office of Workers' Compensation Programs under the Trump administration is taking long overdue, proactive steps to improve oversight and management of the Trust Fund by implementing new processes to reevaluate and reauthorize self-insurance for coal mine operators; requesting additional data on black lung claims and benefit liability; and issuing preliminary guidance to field supervisors and claims examiners.

I believe we can all work together with the administration to support common-sense, workable, and innovative approaches to ensure DOL is conducting proper oversight and ensuring miner benefits are protected. I am encouraged by Director Hearthway's work in this area and the ongoing efforts to implement the GAO's recommended reforms to improve oversight of this important program. I'd like to thank our witnesses for being here today and I look forward to hearing your testimony.

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Chairwoman ADAMS. Thank you, Mr. Wright.

All of the Members who wish to insert written statements into the record may do by submitting them to the Committee Clerk electronically in Microsoft Word format by 5:00 p.m. on March 10.

I will now introduce our two witnesses. Our first witness will be Ms. Cindy Brown Barnes, who is the Director of Education, Workforce, and Income Security with the Government Accountability Office. Ms. Brown Barnes leads the Government Accountability Office team that audited the Department of Labor's management of the Black Lung Disability Trust Fund. She has more than 30 years of experience performing audits of Federal agencies, she holds a bachelor's degree in accounting from Howard University and a master's degree in business from Johns Hopkins University.

I am now pleased to recognize my colleague, Congressman Meuser to introduce the second witness appearing before us today. As I understand, they served together in the Pennsylvania legislature.

Mr. Meuser, you may introduce our witness.

Mr. MEUSER. Thank you, Madam Chair.

Yes, it is my honor and privilege to introduce to the committee Ms. Julia Hearthway. Julia spent from 1993 to 2011 as a prosecutor in the Pennsylvania Attorney General's Office. She then from 2011 to 2015 did in fact serve as the secretary of the Pennsylvania Department of Labor and Industry. Pennsylvania is the fifth largest state and Miss Hearthway oversaw the fifth largest state agency with over 5,000 employees, 150 offices, and an annual operating budget in excess of \$1.2 billion.

There she performed extraordinarily. She set up a website, known as Job Gateway, that had strong effect on the gaining of nearly 250,000 jobs, she established something called the Keystone Works, something she created, a workforce development initiative, which is still in effect, and she played a very important role in the

largest single investment ever made, private sector investment ever made within the business environment in Pennsylvania.

So in 2016, certainly worth mentioning Madam Chair, 2016 to 2017 Ms. Hearthway was appointed by a Democratic governor to the Commonwealth Court of Pennsylvania as an appellate judge. And from September 2017 until the present she now serves as the director of the Office of Workers' Compensation Programs at the Department of Labor.

I can tell you, from being a colleague and friend of Ms. Hearthway's for a number of years, she is incredibly dedicated, super smart, she is a great public servant. We are fortunate to have her with us today. And she knows coal.

So nice to see you, Miss Hearthway.

I yield back, Madam Chair.

Chairwoman ADAMS. Thank you, thank you very much.

We appreciate the witnesses for being here today and look forward to your testimony.

Let me remind the witnesses that we have read your written statements and they will appear in full hearing record. Pursuant to Committee Rule 7(d) and the committee practice, each of you is asked to limit your oral presentation to a 5 minute summary of your written statement.

Let me remind the witnesses that pursuant to Title 18 of the U.S. Code, Section 1001, it is illegal to knowingly and willfully falsify any statement, representation, writing, document, or material fact presented to Congress, or otherwise conceal or cover up a material fact.

So before you begin your testimony please remember to press the button on the microphone in front of you so that it will turn on and members can hear you. As you begin to speak the light in front of you will turn green. After 4 minutes the light will turn yellow to signal that you have 1 minute remaining. When the light turns red, your 5 minutes have expired and we ask that you please wrap up.

We will let both the witnesses make their presentations before we move to member questions. When answering a question, please remember to once again turn on your microphone.

I will now recognize Ms. Cindy Brown Barnes. You have 5 minutes, ma'am.

**TESTIMONY OF CINDY BROWN BARNES, DIRECTOR, EDUCATION, WORKFORCE AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Ms. BROWN BARNES. Chairwoman Adams, Ranking Member Wright, and distinguished members of the subcommittee, thank you for inviting me to discuss our concerns about oversight of coal miner operator black lung insurance.

Black lung benefits are generally to be paid by coal operators that are found responsible. However, the Trust Fund pays benefits in certain circumstances, such as when an operator goes bankrupt.

A domestic coal tax is the Trust's primary funding source. Today I will discuss how coal mine operator bankruptcies have affected the Trust Fund and how the Department of Labor, or DOL, man-

aged coal mine operator insurance to limit financial risk to the Trust Fund.

Federal law generally requires coal mine operators to secure their black lung benefit liability. 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 to self-insure, if they meet certain DOL conditions and they must provide collateral. Operators that do not self-insure must obtain commercial coverage.

We found that commercial coverage can help limit Trust Fund exposure from coal operator bankruptcies. However, for self-insurance we found that DOL failed to protect the Trust Fund by obtaining adequate collateral from coal operators.

On slide one we identified six coal mine operators that filed for bankruptcy between 2014 and 2016 that DOL had permitted to self-insure. Three of these bankruptcies resulted in the transfer of estimated benefit liability from the coal operator to the Trust Fund and three did not.

Slide two provides some additional details. The bankruptcies of Alpha Natural Resources, James River Coal, and Patriot Coal transferred responsibility for an estimated 3,300 beneficiaries to the Trust, which means the taxpayers will ultimately be responsible for their black lung disability payments.

We reported to this committee last June that these three bankruptcies would transfer around \$325 million, however, DOL recently increased this estimate to \$865 million as a result of significant changes to their actuary analysis. In the three bankruptcies DOL had secured just \$27 million of collateral. For example, the collateral DOL required from Alpha Natural Resources was about \$12 million and \$494 of estimated benefit liability was transferred to the Trust Fund. DOL has been challenged collecting collateral from coal operators. For example, in September 2001, DOL notified James River Coal that \$5 million in additional collateral was required, however, DOL never received this collateral and from 2001 until the James River bankruptcy in 2014 DOL took no action to obtain additional collateral or revoke their self-insurance. As a result, this bankruptcy transferred an estimated liability of \$141 million to the Trust Fund.

In 2015 DOL stopped monitoring self-insured coal operators as it began developing a new self-insurance process. While DOL was developing this process, several other self-insured operators also filed for bankruptcy, including Cambrian Coal, Cloud Peak Energy, Murray Energy, and Westmoreland Coal.

In 2015 DOL had also recommended revoking Murray Energy's self-insurance due to deteriorating financial conditions, however, Murray appealed this decision and DOL officials said the postponed responding to the appeal until their new self-insurance process was implemented. Murray filed for bankruptcy about 4 years later and DOL had not revoked the self-insurance or obtained a requested additional collateral.

In July 2019 DOL began implementing a new process for coal miner operators' self-insurance that may help to address some past deficiencies if implemented effectively. For example, when setting collateral, DOL will consider an operator's current and future ben-

efit liabilities and an operator's risk of insolvency. A low risk operator would be required to obtain collateral of 15 percent of its estimated benefit liability, a medium risk operator would be 45 percent, and a high risk operator would be 90 percent. However, in February, these percentages were revised to 70, 85, and 100 percent respectively. These percentages have not been incorporating formal agency guidance and we found that DOL's new process still lacks procedures for self-insurance removals and coal operator appeals.

In conclusion, coal operator bankruptcies have already caused substantial damage to the Trust Fund and we remain concerned about continued bankruptcies and the looming unsecured black lung benefit liabilities that still threaten the Trust Fund. While we commend DOL's efforts to address the deficiencies of its past self-insurance process, DOL still has not collected adequate collateral from self-insured coal operators and implemented key internal control improvements needed to protect the financial interests of the Trust Fund.

Thank you. This concludes my prepared statement. I would be happy to entertain any questions.

[The statement of Ms. Brown Barnes follows:]

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United States Government Accountability Office



Testimony  
Before the Committee on Education and  
Labor, Subcommittee on Workforce  
Protections, House of Representatives

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For Release on Delivery  
Expected at 2 p.m. ET  
Wednesday, February 26, 2020

## BLACK LUNG BENEFITS PROGRAM

### Oversight Is Needed to Address Trust Fund Solvency Strained by Bankruptcies

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

# GAO Highlights

Highlights of GAO-20-438T, a testimony before the Committee on Education and Labor, Subcommittee on Workforce Protections, House of Representatives

## Why GAO Did This Study

In May 2018, GAO reported that the Trust Fund, which pays disability 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 testimony is based on GAO's report being released today, and describes (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. In producing this report, GAO identified coal operators that filed for bankruptcy from 2014 through 2016. 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 made 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 these recommendations.

View GAO-20-438T. For more information, contact Cindy Brown Barnes (202) 512-7215, [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov), or Alicia Puente Cackley (202) 512-8678, [cackleya@gao.gov](mailto:cackleya@gao.gov).

February 26, 2020

## BLACK LUNG BENEFITS PROGRAM

### Oversight Is Needed to Address Trust Fund Solvency Strained by Bankruptcies

#### 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 one company's (Patriot Coal) 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   |
| <b>Total</b>            | <b>\$27.4 million</b>                      | <b>\$865 million</b>   | <b>3,322</b>  |

Source: Department of Labor (DOL). | GAO-20-438T

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 operators' 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 operators' 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 insurers.

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

I am pleased to be here to discuss the report we are releasing today on the need for improved oversight of coal mine operator black lung insurance.<sup>1</sup> 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).<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> In fiscal year 2019, the Trust Fund borrowed about \$1.9 billion to cover its expenditures, according to Department of Labor (DOL) officials.

In June 2019, we reported preliminary observations to this committee that coal operator bankruptcies were further straining Trust Fund finances because, in some cases, responsibility for benefit payments was

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<sup>1</sup>GAO, *Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance Is Needed*, GAO-20-21 (Washington D.C.: Feb. 26, 2020).

<sup>2</sup>A miner's surviving dependents can also receive compensation. Black lung is caused by breathing coal mine dust, and the severity of the disease can range from mild—with no noticeable effects on breathing—to advanced disease, which could lead to respiratory failure and death according to the Department of Health and Human Service's Centers for Disease Control, National Institute for Occupational Safety and Health. See <https://www.cdc.gov/niosh/docs/2019-130/default.html>.

<sup>3</sup>GAO, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, GAO-18-351 (Washington D.C.: May 30, 2018).

<sup>4</sup>Under federal law, when necessary for the Trust Fund to make relevant expenditures, funds are appropriated to the Trust Fund as "repayable advances," and then those advances must be repaid with interest to the general fund of the U.S. Treasury, 26 U.S.C. § 9501(c). For reporting purposes, we refer to this process as "borrowing" from Treasury's general fund, which is distinct from the borrowing authority provided by law to some agencies. According to the Treasury, the general fund includes assets and liabilities used to finance the daily and long-term operations of the U.S. government as a whole.

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transferred from the bankrupt operator to the Trust Fund.<sup>5</sup> This may occur, for instance, when the amount of collateral the Department of Labor (DOL) requires from a self-insured coal operator does not fully cover the operator's benefit responsibility should the operator become insolvent.

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.<sup>6</sup> 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.

My statement summarizes the findings from the report we are releasing today, which addresses: (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. In summary, we found:

- Three self-insured coal mine operator bankruptcies from 2014 through 2016 transferred about \$865 million in benefit responsibility to the Trust Fund, according to DOL estimates.
  - Several other self-insured operator bankruptcies have occurred since 2016 that may also affect the Trust Fund.
  - Commercial black lung insurance helps limit Trust Fund exposure to coal operator bankruptcies.
- DOL's limited oversight of coal mine operator insurance has exposed the Trust Fund to considerable financial risk.
  - DOL began implementing a new self-insurance process in July 2019, but it lacks key enforcement procedures that could help to prevent the reoccurrence of past oversight deficiencies.

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

<sup>6</sup>The coal tax is imposed on the sale of all domestically produced coal with two exceptions: (1) lignite coal and (2) exported coal.

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- DOL does not monitor the commercial-insurance policies purchased by coal mine operators to secure their benefit liabilities.

We made three recommendations, and DOL agreed with them:

- To establish procedures for self-insurance renewals;
- To establish procedures for coal operator appeals; and
- To develop a process to monitor whether commercially-insured operators maintain adequate and continuous coverage.

For our report, we analyzed Bloomberg data and consulted DOL to identify coal operators that filed for bankruptcy from 2014 through 2016;<sup>7</sup> analyzed National Council on Compensation Insurance (NCCI) data and DOL documentation on commercially-insured and self-insured coal mine operators; and 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. We also interviewed DOL officials, coal mine operators, insurance company representatives, and officials from the National Mining Association, NCCI, National Council of Self-Insurers, and the American Academy of Actuaries, among others. A more detailed explanation of our methodology is available in our report.<sup>8</sup>

The work upon which this statement is based was conducted in accordance with generally accepted government auditing standards.

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<sup>7</sup>Our 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.

<sup>8</sup>GAO-20-21.

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**Some Self-Insured  
Operator  
Bankruptcies Shifted  
\$865 million in  
Estimated Liability to  
the Trust Fund, but  
Commercial  
Insurance Coverage  
Can Help Limit Trust  
Fund Exposure**

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. Figure 1 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. Federal law generally requires coal mine operators to secure their black lung benefit liability.<sup>9</sup> 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 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.<sup>10</sup> Operators that do not self-insure are generally required to obtain coverage from commercial insurance companies, state workers' compensation insurance funds, or other entities authorized under state law to insure workers' compensation.<sup>11</sup>

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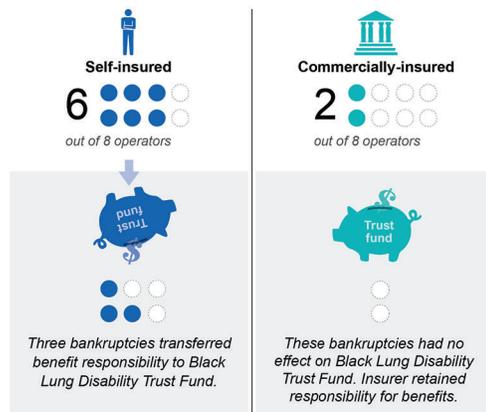
<sup>9</sup>30 U.S.C. § 933(a). Employers that are not coal mine operators are not required to secure their liability with respect to employees engaged in the transportation of coal or in coal mine construction. 30 U.S.C. § 932(b).

<sup>10</sup>A letter of credit may only be used in conjunction with another acceptable form of collateral.

<sup>11</sup>According 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.

Figure 1: 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-20-438T

From 2014 through 2016, three self-insured coal mine operator bankruptcies resulted in a transfer of \$865 million of benefit liabilities from the coal operators to the Trust Fund, according to DOL estimates (see table 1).<sup>12</sup> DOL estimates for how these bankruptcies will affect the Trust Fund have considerably increased from what DOL had previously reported.<sup>13</sup> 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.<sup>14</sup> In January 2020, however, DOL

<sup>12</sup>DOL officials said benefit liabilities transfers to the Trust Fund over time as claims accrue and are paid over future decades.

<sup>13</sup>Fiscal Year 2020 Congressional Budget Justification, Black Lung Disability Trust Fund.

<sup>14</sup>GAO-19-622T.

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, among other reasons, to account for higher black lung benefit award rates that occurred from fiscal years 2016 through 2019, and higher medical treatment cost inflation in recent years. Additionally, DOL's prior estimate for the Patriot Coal (Patriot) bankruptcy did not account for future claims and their effect on the Trust Fund. The amount of collateral DOL required from these operators to self-insure did not fully cover their estimated benefit liabilities. When this occurs, benefit liabilities in excess of the collateral can be transferred to the Trust Fund. For example, the collateral DOL required from Alpha Natural Resources (Alpha) was about \$12 million and approximately \$494 million of estimated benefit liability transferred to the Trust Fund, according to DOL.

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

| Coal operator           | Amount of collateral at time of bankruptcy | Estimated benefit liability transferred to the Trust Fund | Estimated number of beneficiaries for whom liability has been transferred to the Trust Fund <sup>a</sup> |
|-------------------------|--|---|--|
| 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  |
| <b>Total</b>            | <b>\$27.4 million</b>                      | <b>\$865 million</b>                                      | <b>3,322</b>   |

Source: Department of Labor (DOL) | GAO-20-438T

<sup>a</sup>These totals include claims in active pay status as of September 2019, and estimates of newly awarded claims in fiscal year 2020 and into the future, according to DOL.

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.

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.<sup>15</sup> Additionally, state insurance regulation, insurer underwriting,

<sup>15</sup>30 U.S.C. § 933(b)(2).

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risk management practices, and state guaranty funds help to protect the Trust Fund from having to assume responsibility for paying black lung benefits on behalf of bankrupt coal operators.<sup>16</sup> Thus, by being commercially insured, the two operators we identified that filed for bankruptcy between 2014 and 2016—Energy Future Holdings and Xinergy Ltd—did not affect the Trust Fund, according to DOL (see fig. 1).

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 about \$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 these other bankruptcies may affect the Trust Fund.

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### 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 or regularly review operators to monitor their changing financial conditions. DOL regulations require that collateral be obtained from operators in an amount deemed necessary and sufficient to secure the payment of the operators' liability.<sup>17</sup> To determine collateral amounts under the former process, agency procedures stated that an operator's net worth be assessed by reviewing, among other factors, the operator's audited financial statements and black lung claims information. The amount of collateral was to be equal to 3, 5, or 10 years of the operator's annual black lung benefit payments made at the time of a coal operator's self-insurance application depending on its net worth. Specifically, if net worth was \$1 billion or greater, agency procedures set collateral equal to 3 years of benefit payments. If net worth ranged from \$500 million to \$1 billion, collateral was 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.

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<sup>16</sup>Property 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.

<sup>17</sup>20 C.F.R. § 726.105.

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DOL's former process for determining collateral did not routinely consider potential future claims for which an operator could be responsible. The agency 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 collateral.

Regulations state that DOL may adjust the amount of collateral required from self-insured operators when experience or changed conditions so warrant,<sup>18</sup> but regular monitoring of self-insured operators was not conducted. In reviewing the most recent reauthorization memos for each of the self-insured operators, we found that while some of these operators had been reauthorized more recently, others had not been in decades. One operator in particular had not been reauthorized since 1988. There were no written procedures that specified how often reauthorizations should occur after an operator's initial 18-month reauthorization.

DOL has other tools available to mitigate financial losses to the Trust Fund. These include revoking an operator's ability to self-insure; fining mine operators for operating without insurance; and placing liens on operator assets.<sup>19</sup> Based on our review of agency documentation, however, we found instances when officials did not use these tools to protect the Trust Fund, or were hindered from doing so because of an operator's ongoing appeal or bankruptcy.

- **James River.** In September 2001, DOL required \$5 million in additional collateral from James River Coal (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

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<sup>18</sup>20 C.F.R. § 726.105.

<sup>19</sup>DOL 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.

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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 James River's ability to self-insure had been revoked, DOL 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, the agency could have potentially fined the operator for each day it operated without insurance. Instead, no action was taken 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.

- **Patriot.** In August 2014, DOL required an additional \$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 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 liability, but DOL officials said 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.<sup>20</sup> 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.<sup>21</sup> 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 liability. Under bankruptcy law, DOL officials said that they have no special status over other creditors with outstanding financial claims. DOL

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<sup>20</sup>30 U.S.C. § 934(b)(2).

<sup>21</sup>30 U.S.C. § 934(b).

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officials said that obtaining sufficient collateral is a better way to protect the Trust Fund.

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**DOL's New Self-Insurance Process May Help Address Problems, but Key Enforcement Procedures Are Needed**

In July 2019, DOL began implementing a new process for coal mine operator self-insurance that may help to address some past deficiencies, if implemented effectively. Among other things, DOL will require operators to periodically submit financial and claims information, including an actuarial estimate of the operator's current and future benefit liability. DOL plans to use this information to assess the insolvency risk of each operator. 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.

Coal mine operators that are already authorized to self-insure will be required to submit, among other things, an annual renewal application. DOL plans to use this information 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.

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 more frequent review of self-insured operators are key components of internal controls, which call for agency management to implement control activities through policy.<sup>22</sup> However, DOL's new self-insurance 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

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<sup>22</sup>GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington D.C.: September 2014).

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conditions under which an operator's self-insurance authority would not be renewed. Our report recommends that DOL 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. DOL agreed with this recommendation and stated that it will 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.

DOL staff are 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 liability. 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. 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.

Our report recommends that DOL 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. DOL agreed with this recommendation and stated that they will 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.

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**Commercial Insurance  
Oversight Improvements  
Are Needed**

We found that 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. In the absence of effective DOL monitoring, we evaluated the potential risk that uninsured operators could pose to the

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Trust Fund. Specifically, in examining the 13 largest coal mine operators that do not self-insure, we found that some insurers erred in reporting black lung policies 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.<sup>23</sup>
- 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 liability.<sup>24</sup>

Designing processes to achieve agency objectives and respond to risks is a principle of effective internal controls.<sup>25</sup> 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.<sup>26</sup>

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<sup>23</sup>We 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.

<sup>24</sup>When 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.

<sup>25</sup>GAO-14-704G.

<sup>26</sup>Another 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.

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Our report recommends that DOL should develop and implement a process to monitor operator compliance with commercial insurance requirements and periodically evaluate the effectiveness of this process. DOL agreed with this recommendation and stated that it will 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.

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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 staffs have any questions concerning this testimony, please contact Cindy Brown Barnes at (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Alicia Puente Cackley, (Director), Blake Ainsworth (Assistant Director), Patrick Ward (Assistant Director), Justin Dunleavy (Analyst-in-Charge), Alex Galuten, Rosemary Torres Lerma, Olivia Lopez, Scott McNulty, and Almata Spencer.

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Chairwoman ADAMS. Thank you very much.

I will now recognize Ms. Julia Hearthway. You are recognized for 5 minutes, ma'am.

**TESTIMONY OF JULIA HEARTHWAY, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR**

Ms. HEARTHWAY. Chairwoman Adams, Representative Wright, Representative Meuser—thank you so much for the kind introduction—and distinguished members of the subcommittee, thank you for inviting me here today to testify about the Office of Workers'

Compensation Program, OWCPs, administration of the Black Lung Act's insurance provisions.

In reference to the title of this hearing, I am pleased to report to this committee that OWCP is wide awake. The self-insurance approval process for coal mine operators has been completely revamped. The process today is robust, it is financially sound, and it is designed to protect the Trust Fund.

I also want to stress at the outset that no miner is at risk for not receiving the benefits they deserve, nor have they ever been at risk. All black lung recipients, miners and their families, will receive their benefits. Congress made certain that benefit payments would never be in jeopardy. U.S. Treasury is required to make advances to the Trust Fund whenever necessary to meet its obligations. America has always met this obligation.

The GAO report highlights the failings of the prior self-insurance approval process and the unfortunate impact on the Trust Fund. It was a broken process that had been in place for at least 20 years. And I agree, the process was woefully inadequate.

One of my first acts when I joined this Administration in September of 2017 as director of OWCP was to approve updates to the self-insurance process. The new process was carefully developed in consultation with economists, financial experts, and actuaries. All coal mine operators that had previously been approved to self-insure had to reapply for self-insurance authority. Under the new approval process coal mine operators are required to provide audited financial statements for the past 3 years, all current black lung claims information, and an actuarial estimate of current and future liabilities. Operators must calculate those actuarial estimates on assumptions drawn from historical data of the Black Lung Trust Fund.

OWCP has now performed financial health assessments of each operator, analyzed the actuarial reports, and calculated appropriate security. Last week OWCP notified most of the coal mine operators of the new security requirements. These new security requirements thus far will add an estimated \$164 million of total security to the Trust Fund. To my knowledge, this is the most thorough process in the history of the Black Lung Benefits Act. GAO has recognized our efforts, and on behalf of OWCP I thank them for the acknowledgement of our work.

GAO made three recommendations regarding our new process and we have already implemented those recommendations. But let me add, while all these steps are necessary to protect the Trust Fund, this is not the major driver of the Trust Fund debt. The current debt, which is just under \$6 billion, is projected to exceed \$12.6 billion in today's dollars by 2044. Approximately \$1 billion of that over the next 25 years is attributed to bankruptcy of the self-insured operators. \$11.4 billion is due to accrued interest on advances made from the Treasury.

The Trust Fund has been in debt since it was created. Over 90 percent of the beneficiaries entering the Fund did so during the first 6 years of its existence. Only 10 percent of the beneficiaries entered in the following 36 years. Twelve years after the Trust Fund creation annual revenue collected from coal excise tax was sufficient to fully pay annual benefits and expenses, however, it

was not sufficient to finance the debt generated during the program's early years.

With the overwhelming majority of beneficiaries entering the Trust Fund in the early years, a financial structure that provided no initial funding and an annual variable interest rate on all borrowing, the Trust Fund has continuously borrowed money to pay interest charges. But, again, despite the consistent rising interest cost, no miner is ever at risk of not receiving the benefits they deserve.

Thank you, and I will be happy to answer any questions you may have.

[The statement of Ms. Hearthway follows:]

TESTIMONY OF JULIA K. HEARTHWAY  
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS  
U.S. DEPARTMENT OF LABOR

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS  
COMMITTEE ON EDUCATION AND LABOR

UNITED STATES HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2020

Chairwoman Adams, Ranking Member Wright, and Distinguished Members of the Subcommittee, thank you for inviting me to testify about the Office of Workers' Compensation Programs' (OWCP) administration of the Black Lung Benefits Act's insurance provisions. We appreciate your interest in the Black Lung program and welcome the opportunity to discuss these issues today.

**Introduction**

The Black Lung Benefits Act provides compensation and medical benefits to thousands of coal miners who are totally disabled due to pneumoconiosis, commonly called black lung disease, as well as compensation to certain of their survivors. The Act places primary financial responsibility for benefit payments on the coal mining industry. Liability generally rests on the last coal mine operator that employed the miner for a cumulative total of at least one year. Where the responsible mine operator cannot or does not assume liability or where no responsible mine operator can be identified, the Black Lung Disability Trust Fund pays any benefits due.

The Act requires that mine operators secure their benefit-payment obligations. They must either purchase commercial insurance or obtain authorization from OWCP to self-insure. For self-insurance applicants, OWCP sets a security amount the operator must post as collateral for benefits payments. OWCP uses the security to pay benefits owed by insolvent operators before placing liability on the Trust Fund.

Bankruptcies of self-insured operators have impacted the Trust Fund in recent years, resulting in large liabilities being transferred to the Trust Fund. From 2014 to 2016, a number of large companies filed for bankruptcy. Unfortunately, the security amounts OWCP had required proved insufficient to cover the bankrupt operators' obligations under the Act. OWCP recently projected that bankruptcies by three large companies—Alpha Natural Resources, James River Coal Company, and Patriot Coal—could result in \$865 million in benefit obligations being transferred to the Trust Fund over the next twenty-five years because those companies did not have adequate security.

But the bankruptcies are only part of the story. Even apart from liabilities incurred from bankruptcies, the Trust Fund has been in debt since Congress created it in 1978. The Trust Fund's primary income source is an excise tax on coal mined and used domestically. When those receipts fall short, the Trust Fund's obligations are covered by repayable advances from the U.S. Treasury. Because of these advances, benefit payments to miners and survivors are never in jeopardy.

The Trust Fund suffered significant annual deficits in its early years, largely due to Congress's decisions to transfer responsibility for a substantial number of claims from the coal industry to the Trust Fund without providing the funding necessary to pay benefits. During the first six years of the Trust Fund's existence, 106,737 beneficiaries were added to and paid by the Trust Fund, and in the following 36 years a total of only 10,913 new beneficiaries were added to and paid by the Trust Fund. Over this same initial six-year time period, tax revenue totaled only \$1.47 billion while benefits and administrative expenses totaled \$3.50 billion. Beginning in 1990, 12 years after the Trust Fund's creation, annual revenue collected from the coal excise tax was sufficient to fully pay annual benefits and expenses. However, it was not sufficient to finance the debt generated during the program's early years. With over 90 percent of beneficiaries entering the Fund within the first six years of its existence, a financial structure that provided no initial funding, and an annual variable interest rate on all borrowing, the Trust Fund has continuously relied on annual advances from the Treasury. Although Congress attempted to restore solvency to the Trust Fund in 2008, these efforts were

insufficient. At the end of fiscal year 2019, the Trust Fund was just under \$6 billion in debt.

**Developing and implementing a new self-insurance authorization process**

Requiring adequate security from self-insured operators is an important part of OWCP's fiduciary responsibility as administrator of the Trust Fund. The bankruptcies of the large self-insured operators that began in 2014 and their impact on the Trust Fund caused OWCP to undertake a complete review of its self-insurance procedures. OWCP recognized the need to reevaluate its self-insurance methods so that security amounts were set at levels sufficient to protect the Trust Fund from further liabilities. OWCP contracted with actuarial firms to evaluate projected liabilities in pending bankruptcies and to help formulate actuarial assumptions for use in a revamped self-insurance process. OWCP contracted with auditors and economists to develop a tool to assess the financial health of prospective self-insurers. OWCP has also hired its own full-time actuary. OWCP now has a rigorous process that considers the operator's overall financial health and its actuarially projected liabilities under the Act in setting an appropriate security amount.

Sound actuarial estimates of operator liability form the cornerstone of the new evaluation, and these estimates account for both existing claims against the operator and potential future claims. OWCP then assesses security amounts as a percentage of these estimates relative to the individual operator's financial health and commensurate risk of defaulting on its liabilities—the greater the risk of default, the higher the amount of security required. Thus, to obtain initial or continued authorization to self-insure, an operator must submit to OWCP audited financial statements as well as an actuarial report based on OWCP-established assumptions designed to accurately project both current and future claim liabilities. The operator must also submit updated financial information every quarter so that OWCP can detect emerging problems and make adjustments to the required security amount when warranted.

I believe this robust evaluation will help ensure that OWCP requires security in amounts that are sufficient to cover the liabilities of self-insured coal mine operators in the event of future bankruptcies. OWCP fully implemented the new process in July 2019 when it required currently authorized self-insured operators that continued to actively mine coal to apply for reauthorization. We have worked closely with sixteen operators to help them develop and submit the required information. Each application has been reviewed by outside actuaries, OWCP's own actuary, and OWCP's comptroller.

We have already issued decision letters to fourteen operators, and OWCP expects to reach final decisions on the two remaining applications in the near future. Each decision letter reauthorizing an operator to self-insure informed the operator that the authorization expires one year from the date of the letter and that the operator must apply for reauthorization three months prior to the expiration date if it wishes to continue to self-insure. This process of periodic re-evaluation will help insure that OWCP can take action to protect the Trust Fund well before an operator files for bankruptcy. Moreover, decision letters denying reauthorization to self-insure instructed operators to obtain commercial insurance. In both instances, the letter also advised the operator that it has thirty days to appeal the decision—either the security amount determination or the denial of self-insurance authority—to my office, with the possibility of one thirty-day extension, and submit any additional documentation it wishes to have considered. I am committed to deciding all appeals to my office within ninety days of the initial decision letter. OWCP intends to follow these review procedures going forward.

OWCP will continue to evaluate the new self-insurance process's effectiveness and make adjustments as necessary. OWCP has engaged outside experts, including actuaries and economists, in this ongoing evaluation. We are committed to doing everything we can to protect the Trust Fund against further liabilities from under-secured self-insured operators.

**Monitoring mines for commercial insurance**

In addition to the self-insured operators, many operators purchase commercial insurance to cover their Black Lung liabilities. To exercise complete oversight of the Black Lung Benefits Act insurance program, OWCP is also improving its review of these commercially insured operators. When an insurance carrier writes a policy for coverage under the Act, it must report that coverage—and any cancellation—to OWCP. Most insurers make this report through the National Council on Compensation Insurance (NCCI), which provides updated data to OWCP on a daily basis. Insurance carriers are independent parties to claims under the Act and remain liable even if the mine operators they insure become insolvent. For these operators, liability transfers to the Trust Fund only when the insurance carrier itself becomes insolvent.

We recognize that we need to do a better job of checking and ensuring that every actively mining operator has uninterrupted insurance coverage for all of its mining operations. OWCP will modify existing computer systems to support close monitoring of coverage so that we can quickly identify coverage lapses and cancellations. OWCP will also require operators identified as having lapsed or cancelled coverage to obtain or provide proof of coverage within thirty days.

**Impact of insurance liabilities on the Trust Fund**

Defaults by under-secured self-insurers have had an impact on the Trust Fund's financial status. These defaults, while significant, are not the major driver of Trust Fund debt. The current debt, which is just under \$6 billion, is projected to exceed \$12.6 billion, in today's dollars, by 2044. Approximately \$1 billion of the projected \$12.6 billion results from liabilities transferred to the Trust Fund from bankrupt self-insured operators; \$11.4 billion of the remainder is due to accrued interest on advances made by the Treasury.

Conclusion

Thank you again for the opportunity to discuss the Black Lung program's insurance oversight processes with you today. The new self-insurance process and increased monitoring of commercial insurance coverage will help protect the Trust Fund from future bankruptcies and from operators who fail to insure. This will fulfill the Department's duty to protect the Trust Fund's assets and somewhat lessen the need for future borrowings from the Treasury. I am happy to answer any questions you may have.

Chairwoman ADAMS. Thank you very much.

Under Committee Rule 8(a) we will now question witnesses under the 5 minute rule.

I will recognize myself now for 5 minutes.

Ms. Brown Barnes, do you think that DOL's revised criteria for self-insurance, which was newly summarized in your report today, is sufficient to prevent unfunded liabilities from being transferred to the Trust Fund or does it need to be strengthened?

Ms. BROWN BARNES. We commend DOL's new collateral requirements, but they still have to obtain the collateral and, more importantly, they have to provide the oversight and management of the program to prevent the mistakes from the past.

Chairwoman ADAMS. So you believe that it needs to be strengthened then?

Ms. BROWN BARNES. Yes, it—and also continue to actually anchor these policies or these procedures in formal agency guidance would also be helpful.

Chairwoman ADAMS. Okay. Ms. Hearthway, according to GAO you had originally reported that you 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. Then this month DOL suddenly changed that, telling GAO that you now plan to revise these percentages to 100 percent, 85 percent, and 70 percent for high risk, medium risk, and low risk operators respectively.

Now, yes or no, did you adopt the higher levels of required collateral? Yes or no?

Ms. HEARTHWAY. We did adopt it.

Chairwoman ADAMS. You did?

Ms. HEARTHWAY. Yes.

Chairwoman ADAMS. You did? Did you decide to adopt those higher levels—or when did you decide to adopt them?

Ms. HEARTHWAY. So the initial levels that you read, the 15, 45, 90, they were sort of initial placeholders. This has been an ongoing process, but it was relatively recent, in the last couple of months. We had been discussing as we neared the end of the completion of evaluating all of the self-insured coal mine operators what would be the appropriate amounts. And in numerous discussions, with lots of help from our actuary, we developed that we thought it should be higher. So a low risk would now be at 70, a medium risk would be at 85, and a high risk would be at 100. And when we sent out the letters for the collateral amounts, that is what we have indicated to each of those companies.

Chairwoman ADAMS. Okay. You state in your testimony that you have issued 14 decision letters. What was the range of collateral required of the coal operators in those decision letters that you issued?

Ms. HEARTHWAY. So out of the 14, 2 of the coal operators were not accepted to continue to self-insure, 6 of those operators showed low, so we are asking for 70 percent of the collateral, 4 were medium, and 2 were high with 100 percent being requested from them.

Chairwoman ADAMS. Okay, so that was going to be my—you said two were high?

Ms. HEARTHWAY. Two were at the high level, yes.

Chairwoman ADAMS. Okay. And how many medium and how many low did you say?

Ms. HEARTHWAY. Four were at the medium level, six at the low level, and then there was two that were not agreeing to self-insure.

Chairwoman ADAMS. Okay. All right. Can you provide the committee with copies of those 14 letters?

Ms. HEARTHWAY. I believe so. We will check with counsel, but I don't think it is a problem.

Chairwoman ADAMS. Okay. Ms. Hearthway, I described how the corporate directors of the three coal operators who saddled the Fund with an additional \$865 million in under collateralized liabil-

ities personally profited from their bankruptcies to the tune of tens of millions of dollars. So do you think that was right?

Ms. HEARTHWAY. Well, these are—clearly had the appropriate collateral been secured before the bankruptcy, this would not have been a problem. And as I have indicated, this was a broken system and has been for two plus decades. Had the current collateral been collected, then it wouldn't have been an issue. But, unfortunately, it was not.

Chairwoman ADAMS. What actions has DOL taken to protect the Trust Fund in bankruptcy proceedings and keep coal executives from profiting at the expense of taxpayers?

Ms. HEARTHWAY. So, this I think is a huge step. This is a step where to prevent—well, regardless of what occurs with a coal mine operator, you have these sufficient collateral up front protecting any future claims with respect to their employees that may develop black lung and fall into need of benefits and have a claim. That I think is the most critical step.

The other tool available is to fine a coal mine operator if they don't properly secure. And we can do that on a daily basis. That had not been done in the past. We do intend to do it in the future if they do not properly attain the correct collateral or go to commercial insurance.

Chairwoman ADAMS. Thank you, ma'am. I am out of time now.

So I am now going to recognize Ranking Member Wright for the purpose of questioning the witnesses.

You are recognized, Mr. Wright.

Mr. WRIGHT. Thank you, Madam Chair.

Ms. Hearthway, the jump to \$865 million, was that due solely to the fact that collateral was not collected?

Ms. HEARTHWAY. The 800?

Mr. WRIGHT. The increased \$865 million was a huge jump.

Ms. HEARTHWAY. Yes. So the initial estimate that was done, they were done—three different companies over the course of a couple of years from about 2015 to 2017. We started to see a trend where claims were increasing, both the submission of claims and the acceptance of claims. And sometimes that occurs after a bankruptcy, but this particular trend was sustained. So we went back and recalculated the collateral, or the potential liability of those three companies. That trend line changed the dynamics. That, in addition to now we were 2 years later, there was a different discount factor to apply to it, and there was 1 coal mine operator, when the original projections were made, did not calculate in future claims. Those primary three factors increased the amount. But we wanted to be completely transparent and up front with what the actual liabilities were, so we redid the calculations to say going forward, this is what we think the impact to the Trust Fund will be.

Mr. WRIGHT. And I commend you for that and also for the steps you have taken. But speaking of trend lines, what is it now?

Ms. HEARTHWAY. The claims are still going up, both the submission of claims and acceptance of claims. Our last calculations have all been done as September 30 of 2019.

Mr. WRIGHT. Okay. Ms. Barnes, the report released today notes that between 2014 and 2016 coal production decreased by a billion tons, down to 728 million tons. Now, what impact does this de-

creased production have on the Black Lung Disability Fund? Doesn't declining production contribute to this mess?

Ms. BROWN BARNES. It does contribute to it and the declining production decreases the revenue.

Mr. WRIGHT. Realizing—and I am going back to you, Ms. Hearthway—realizing that connection exist, isn't it at least incongruous to be, you know, passing blame on the coal companies when you had a President of the United States that for 8 years launched a war on coal and made it as difficult as possible for them to thrive, wanted them to die, wanted them to fail, and now we have got this huge increase in liability? During that period, wasn't it more difficult for the coal companies to operate?

Ms. HEARTHWAY. There is no question that between 2014 and 2016 eight coal companies declared bankruptcy. The three that were being talked about today that are in the GAO report happened during that time period, and the liabilities for those—let me get the full picture. There have been four bankruptcies since 2017 as well. That is a total of 12 bankruptcies, but currently 6 have entered—of those liabilities have fallen on the Trust Fund. Three bankruptcies have emerged from bankruptcy and those bankruptcies will not impact the Trust Fund. There are three other bankruptcies where we don't know yet.

So clearly the economy and the impact of these 12 bankruptcies have had an influence. But as I indicated in my opening, main driver of the debt is still the interest charges—

Mr. WRIGHT. Right.

Ms. HEARTHWAY.—on the outstanding debt.

Mr. WRIGHT. Last thing, and I am about out of time, you indicated earlier that you were in agreement with the recommendations from GAO. Is there anything you disagree with in their report?

Ms. HEARTHWAY. No. The recommendations were well received, they were of activities that we were planning on in many respects. Everything should be very transparent. Of the letters that we sent out we told all the coal mine operators that if they want to appeal this it must be done within 30 days. My intent is to have any response back on those appeals within a total of 90 days. Every coal mine operator has also been told that they will have to reapply for self-insurance status in a year and that they need to get us all documents 3 months prior to the end of that expiration period. All of those things were recommendations that the GAO also made and we have already implemented.

Mr. WRIGHT. Great. Thank you.

Thank you, Madam Chair.

Chairwoman ADAMS. Thank you.

The gentlelady from Washington, Ms. Jayapal, you are recognized for 5 minutes.

Ms. JAYAPAL. Thank you, Madam Chair, and thank you both for being here.

I think we all understand the backbreaking work that miners do. My husband is from Pennsylvania and his grandfather and his grandfather's brother were both coal miners and I have heard a lot of stories about that work and what it meant to come home after a long day and all of the health effects that went along with that.

So I am grateful that Congress passed the Federal Coal Mine Health and Safety Act and the Black Lung Benefits Act to make sure that former miners who cannot work due to black lung disease are cared for.

It is only logical that mine operators are responsible for paying for these costs since their mines caused the miner's lung disease and their companies profited from the miner's labor. But too often, as we are seeing, these mining companies are forcing taxpayers to foot the bill for their failures.

Ms. Brown Barnes, you are the director of Education, Workforce, and Income Security at GAO. You have testified today that the Department of Labor's Office of Workers' Compensation Programs has permitted mine operators to avoid paying for workers' compensation and instead many mine operators cut costs by a process known as self-insuring. Is the DOL adequately screening companies that apply for self-insurance?

Ms. BROWN BARNES. Under the former process, they didn't. But they have taken some steps to put this new process in place, but it still remains to be seen in terms of the oversight and the management of it.

Ms. JAYAPAL. Mm-hmm. And as you know, Alpha Natural Resources' executives only posted \$12 million of the company's reserves to cover \$495 million in liabilities, and yet Alpha's executives managed to pay themselves tens of millions of dollars prior to and during bankruptcy proceedings. If the DOL were to use its current legal authorities to sue mining executive to recover losses due to underfunded self-insurance, do you expect that those executives would do a better job of collateralizing their obligations?

Ms. BROWN BARNES. Yes. And that would have to happen before bankruptcy, because after bankruptcy DOL has to get in line with the other unsecured creditors.

Ms. JAYAPAL. Exactly. It is too late by then.

Ms. BROWN BARNES. Yes.

Ms. JAYAPAL. And the DOL has used this tool before and it recovered money for the taxpayer.

In light of the declining financial health of the industry overall and the egregious abuses by mine company CEOs, who manage to escape their liability toward workers while getting millions of dollars in payouts, it seems like it is time to end self-insurance and simply require operators to rely on commercial black lung claims insurance.

And so, Ms. Hearthway, you direct the Office of Workers' Compensation Programs, can you give us any good argument for why, given what the GAO has revealed, there should continue to be a self-insurance program? Why shouldn't all operators be required to just purchase commercial insurance?

Ms. HEARTHWAY. So the statute itself allows for self-insurance, so we are following the law by administering it. But I do understand your concerns and you are absolutely correct. Had the appropriate collateral been secured, then it doesn't matter that they are self-insured because the appropriate amount of collateral has already been secured. That is why these reforms are so important and that is why we have done them now, to ensure that regardless

of whether it is commercial or self-insurance, the appropriate amount of money is there to pay future claims.

Ms. JAYAPAL. Right. That is right. I mean I agree with that you that it is necessary to have the collateral, but why not just ask—I guess I didn't hear an answer as to why not just ask for commercial insurance instead of—are you saying it is because it is in the law that it is allowed, and so you are just following the law as it is?

Ms. HEARTHWAY. Correct. Correct.

Ms. JAYAPAL. Okay. And so the DOL may, under the Black Lung Benefits Act, impose personal liability on CEOs and high level officers of the mining company when the company has not complied with its obligation to provide sufficient insurance to cover its liabilities to the program. Prior secretaries of the DOL have successfully pursued those actions, including Secretaries Brock and Donovan, who served under President Reagan. But under this current leadership, the DOL doesn't seem to have done that. Is that correct? Has the DOL enforced this provision and required mining company executives to pay their fair share instead of putting it on the taxpayers?

Ms. HEARTHWAY. So I noticed you went back to the Reagan Administration. I could not find an instance where daily fines were administered against a coal operator for not securing the appropriate insurance in the past 20 years.

Ms. JAYAPAL. But is there a reason you wouldn't do it? It is allowed by the law, so—

Ms. HEARTHWAY. No, I think it is—I think it is a valuable tool if they do not secure the appropriate insurance or put up the required collateral.

Ms. JAYAPAL. Because you could do that right now from the executives of Alpha, Patriot, or James River. Those are all three self-insured companies that recently went bankrupt. That would be a great way to ensure that those companies actually pay into the Fund that they knew from the very beginning that they were supposed to pay into.

Ms. HEARTHWAY. I could not impose a fine on them now, post bankruptcy.

Ms. JAYAPAL. But you could have?

Ms. HEARTHWAY. The past Administration could have.

Ms. JAYAPAL. Anyway, my time—yes, my time has expired, but thank you so much.

Chairwoman ADAMS. Thank you very much.

I will now recognize the gentlelady from North Carolina, ranking member of Education and Labor, Dr. Foxx.

Dr. FOXX. Thank you, Madam Chairman.

Ms. Hearthway, I think what you were trying to say that didn't get heard because you were interrupted is the previous Administration could have issued those fines. Is that what you said?

Ms. HEARTHWAY. Yes.

Dr. FOXX. Good. I think it is really important that we determine that most of these problems occurred in the previous Administration, the Obama Administration. But they do go back for over 20 years, as you have said. So both Democrats and Republicans are culpable.

It is really unfortunate that this has not been looked at in the past. But much of what happened in the Obama Administration in trying to put coal companies out of business exacerbated the problem.

Ms. Hearthway, in your comments, included in the GAO report released today, you mentioned that the Office of Workers' Compensation Programs, OWCP, began efforts to address concerns about coal miner operator insurance oversight in 2015. Could you provide additional details about the timing and implementation of improved processes and changes that have been implemented since you were appointed as OWCP director?

And, by the way, if you have any ideas about why our predecessor didn't do any of these, I would love to hear those.

Ms. HEARTHWAY. So to give you an understanding of when the bankruptcies started to occur in 2014, 2015, and 2016—

Dr. FOXX. Under the Obama Administration?

Ms. HEARTHWAY. Yes, yes. The career individuals in our office recognized a problem and they started looking at it. When I came on board in September of 2017 under the Trump Administration one of the first things I did was support them from a leadership point of view to implement this actual process. To give it—

Dr. FOXX. So the leadership in the Department of Labor did not support the career people in implementing the proper policies?

Ms. HEARTHWAY. I can only speak that I did that at the time I came in. It was not done—it had not been implemented before. When I came in I signed a directive to move forward in putting a new process in place. Myself and the team have worked very hard to get this in place. It is a long time coming, but I think it is good news that it is now there.

Dr. FOXX. Thank you. Ms. Hearthway, what is the primary source of Black Lung Disability Trust Fund funding? I think you have alluded to this before. How much of an impact did coal mine company bankruptcies have on Trust Fund solvency compared to other challenges, such as the interest? Again, you have alluded to this. Are miners' and survivors' benefits ever at risk? You have told us, I believe, that they are not even when the Trust Fund faces financial administrative challenges.

Ms. HEARTHWAY. Yes. The bankruptcies have had an impact, but if you look at it in the totality of what is happening, it is less than 10 percent. More than 90 percent of the impact to the Trust Fund has been this accruing interest. It is really government borrowing with government and charging interest on it. The coal excise tax has been able to pay since 1990 the benefits and administrative cost for the black lung program, but they have not been able to make up the interest charges that accrue annually.

Dr. FOXX. Thank you.

Ms. Brown Barnes, when GAO provided the draft report to the Department of Labor for review and comment, what was the Department's reaction to the recommendation you outlined, was the Department aware of the concerns that the report detailed, the report detail regarding oversight of Black Lung Disability Trust Fund, and did the Department note that were ongoing inference to correct these processes?

Ms. BROWN BARNES. Yes. As far as the recommendations, they agreed with all of the recommendations and they note that they had already started taking some steps to address them.

Dr. FOXX. Thank you very much.

Ms. Hearthway, OWCP is in the process of overhauling how it determines collateral amounts required for self-insured coal mine operators. Can you compare the new criteria with the criteria previously used, and discuss why using actuarial analyses to assess the insolvency risk of operators in future black lung benefits liabilities is important.

Dr. HEARTHWAY. Yes, thank you for that question.

This is a key game changer with respect to protecting the Trust Fund. Actuarial reports were not asked for in the past. There is no way without an actuarial report to have any indication as to what future liabilities will be, both for current and future employees that may come down with black lung disease.

But also, we are not allowing the coal operators to provide their own actuarial reports based on their own factors. They have to accept the factors we have given them. For example, if it falls into the Trust Fund, it is what the Trust Fund has experiencing in terms of medical cost. So we gave them the factor in calculating the actuarial amount. They must use our medical cost, they must use our claims information, so that, one, every operator is using the same factors when calculating their actuarial amount—

Chairwoman ADAMS. The gentlelady is out of time.

Ms. HEARTHWAY.—and they are not using their own. That is one of the key factors.

In addition to that, though, we have 3 years of financial records, we have the claims information, we—

Chairwoman ADAMS. We are out of time, ma'am. The gentlelady is out of time.

Thank you.

Dr. FOXX. Thank you, Madam Chairman.

Chairwoman ADAMS. I want to recognize now the gentleman from Virginia, Chair of Education and Labor, Mr. Scott. You are recognized for 5 minutes.

Mr. SCOTT. Thank you, Madam Chair.

I think there is one thing we can agree on with the ranking member, and that is that both parties helped to get into this mess, so if we could just look forward to see how we can get out. We don't have to go through the blame game and all that.

The ranking member, the gentleman from Texas, mentioned that this hearing is being held right after the report was issued. I would like the record to reflect that my staff has advised me that an embargoed draft of the report was available to the Republican staff 2 weeks ago and the final draft was made available to the Republican staff on Friday. If there is a miscommunication then we can deal with that.

Ms. Hearthway, looking forward, what mechanisms are now being used to enforce the collateral requirements?

Ms. HEARTHWAY. So we just sent out the letters with the new collateral amounts for each of the operators. They have 30 days to respond to that. We will not grant them self-insurance status until we have the appropriate proof that collateral has been secured.

Mr. SCOTT. And what happens if they don't respond?

Ms. HEARTHWAY. Then they will have to either get self-insurance or they can be fined.

Mr. SCOTT. Okay. And is anything—

Ms. HEARTHWAY. I am sorry, I said self-insurance. They would have to get commercial insurance or be fined. I misspoke.

Mr. SCOTT. Okay. Is anything being done to go after officials? It is my understanding that the officials of companies jointly and severally and personally are liable if they did not put up appropriate collateral. Is anything being done now to go after the officials?

Ms. HEARTHWAY. So once an operator falls into the bankruptcy courts, our office is active in trying to negotiate as well as put forward the—as any other creditor—of what is to be paid. But that is all we can do at that point.

Mr. SCOTT. Well, that is—if the company is in bankruptcy, are the officials in bankruptcy too?

Ms. HEARTHWAY. No.

Mr. SCOTT. They are jointly, severally, and personally liable. Is that right?

Ms. HEARTHWAY. Yes, I believe so, but it is my understanding through the bankruptcy court it would be still very difficult had we not done fines ahead of time to collect that amount.

Mr. SCOTT. Okay. Is any consideration being given to go after the officials at this point?

Ms. HEARTHWAY. In that sense no, sir, because the bankruptcy courts, there are proceedings which our attorneys are involved with respect to that. But our focus is to get the correct amount of collateral now so that issue isn't in front of us.

Mr. SCOTT. Okay. You indicated that the taxes were paying the benefits but not the interest that is being accrued. Is that the old interest rate that was paid 2 years ago or the lower interest rate that is being collected now?

Ms. HEARTHWAY. So every year the interest rate changes.

Mr. SCOTT. Yes, but the tax. The tax was not extended—

Ms. HEARTHWAY. So we don't know the end of the borrowing from this year yet, but we were not—we did not have to borrow additional funds last year when the tax was reduced, to pay benefits and administration expenses. To pay the ongoing interest, a great deal had to be borrowed.

Mr. SCOTT. Okay. Does the Department of Labor support a long-term extension of the tax rate?

Ms. HEARTHWAY. No, that is not a position here. Tax is a factor to be considered, but it is not the only factor to be considered in the solution of the debt of the Fund.

Mr. SCOTT. Well, one of the problems with the tax not being sufficient to pay the bills is that you have two—actually three possibilities, either we continue to run up debt, and as you indicated it is headed toward, what, \$20 billion if we don't do something, or we can just let the taxpayer continue to subsidize. The third unfortunate possibility is we cut benefits. Were benefits cut in 1981?

Ms. HEARTHWAY. I am not certain, sir, but I don't think there is any discussion of cutting benefits. And the real issue on the debt is government borrowing from government. It is the interest charges from the Treasury, which are charged each year. The

amounts are calculated, but that amount isn't technically paid, it just shows up on the spreadsheet.

Mr. SCOTT. Let me ask one quick question, is there any affect on the Trust Fund caused by the increase in the progressive massive fibrosis, the more severe black lung? Does that have an effect on the Trust Fund?

Ms. HEARTHWAY. We have not been able to see a statistical effect yet on that. We are certainly aware of the reports with respect to that, but it hasn't shown up in our data in terms of the number of claims, the length of claims. We are seeing an increase in claims, as I indicated before, but I don't have more data that I could pinpoint a reason for that.

Mr. SCOTT. Thank you, Madam Chair.

Chairwoman ADAMS. I now would like to recognize the gentleman from Pennsylvania, Mr. Keller. Five minutes please.

Mr. KELLER. Thank you, Madam Chair, and thank you to the panel for being here today.

I do have a couple of questions regarding some things based upon the report. But first, Miss Hearthway, under the Office of Workers' Compensation Programs, new process for authorizing coal mine operator self-insurance, what types of documentation are coal mine operators required to provide as part of an application.

Ms. HEARTHWAY. So we ask a lot of more detailed questions in our application. We ask for 3 years of audited financial statements, we ask for the actuarial report. If they want to send their own actuarial report, they are welcome to do that. We ask for all current claims benefit information that have been paid out over the past 3 years, and we have a tool in which we are analyzing based on all that financial information the low, medium, and high risk categories that we have placed coal operators in.

Mr. KELLER. Okay. Another just to follow up on that You say that you require this now, were these always the requirements or were there new additions based on the GAO or other recommendations to strengthen the program oversight?

Ms. HEARTHWAY. So these are strengthened. There has always been a request for financial documents. And the big problem here is that so much time went by without there being a review of this. So if the earlier questions and testimony is accurate, years would go by and no one had reviewed the self-insurance process. So even if you asked for financial information, it may have been 10 or 15 years old.

One of the key aspects of this new process is this will be done annually and—and we are going to get quarterly financial reports from all the operators going forward.

Mr. KELLER. The operators. And you talk about having the information available. Of course, many companies are organized in different ways, are these companies privately held companies or are they publicly traded companies or are they some of both?

Ms. HEARTHWAY. I believe they are a mixture, sir.

Mr. KELLER. They are a mixture. So actually a publicly traded company then would have information more readily available?

Ms. HEARTHWAY. Correct.

Mr. KELLER. Okay. Just sort of trying to understand that, because I know we all talk about how we hold people accountable and

who owns these companies and makes the money from them. And a lot of times it may not just be an individual, but it might be something that is publicly traded on the stock market.

Ms. HEARTHWAY. Correct.

Mr. KELLER. Therefore owners could be pension funds and all the other kind of things of some of these bankrupt companies?

Ms. HEARTHWAY. That is correct.

Mr. KELLER. Okay. Thank you.

Ms. Brown Barnes, you report mentions that the Black Lung Disability Trust Fund has faced financial challenges since it was first established over 40 years ago. If there are not sufficient funds in the Trust Fund to pay benefits, how does the Fund pay for these benefits?

Ms. BROWN BARNES. The benefits are not in jeopardy, they are paid for. That is under the Act, that they will be paid for.

Mr. KELLER. But where do we generate the—if the Fund—let me ask this question, how often has the Fund had to borrow from the Department of Treasury's general fund to be solvent, or have they had to do that?

Ms. BROWN BARNES. No, they have had to do that. They have had to do that almost since the beginning.

Mr. KELLER. Since the beginning of the Act.

Ms. BROWN BARNES. Yes. Of the Trust Fund.

Mr. KELLER. Of the Trust Fund? Okay.

The other question I guess, Ms. Brown Barnes, the GAO examined eight coal miner operator bankruptcies in the report. How many of the bankruptcies resulted in benefit liabilities being transferred to the Black Lung Disability Trust Fund? Do we know that?

Ms. BROWN BARNES. We know about the three that we talked about, James River Coal as well as Arch and Patriot. So we do know about those three, but then there are four other ones that we do not have complete estimates of. We have some information about Westmoreland Coal. We have heard recently that was \$17 million. And then there are others that did not—three others that did not result in benefits being transferred to the Trust Fund.

Mr. KELLER. Okay. How many of the coal miner operators were self-insured compared to the commercially insured? Do we know that?

Ms. BROWN BARNES. We know that out of the eight, two were commercially insured. Those benefits were not transferred to the Trust Fund. Then there were the six that I had in my chart, and out of that six three of the self-insured were transferred to the Trust Fund. The other three self-insured were reorganized and their benefit liabilities did not end up on the Trust Fund.

Mr. KELLER. Okay. And another one part, were these privately held companies or publicly traded companies, or privately held? Or don't we have that information on these ones that were bankruptcies?

Ms. BROWN BARNES. Yes, I can get you some of the details of that to give you a fuller picture.

Mr. KELLER. I appreciate that. Thank you.

Ms. BROWN BARNES. Yes, sure. Mm-hmm.

Mr. KELLER. Thank you.

Chairwoman ADAMS. Thank you, sir.

I move to recognize the gentleman from Virginia, Mr. Cline. You are recognized for 5 minutes.

Mr. CLINE. Thank you, Madam Chair.

This subcommittee had a hearing back in June on advances in protections for miners, and I am glad we are following up with that with today's hearing.

As I mentioned then, Washington and Lee School of Law, which is located in my district and has such esteemed alumni as the gentleman from Virginia, Mr. Griffith, who is here, has an advanced administrative litigation clinic for black lung. His clinic assists coal miners and survivors who are pursuing Federal black lung benefits. They have represented roughly 200 clients since being established in 1996 and has a success rate of 5 times the national average.

Additionally, other Virginia schools are working on research for ways to better health and safety practices. I am proud that my home State of Virginia is active on these issues and is a great contributor to raising the standard of care. And I also want to thank the chairman of the full committee for his remarks and like his tie today as well.

The issues that the Black Lung Trust Fund are serious. Proper oversight over the distribution of the funds is needed. Workers who need services should be taken care of any misallocation should not be tolerated. With healthcare and safety measures improving we are not in the same circumstances we were when it was set up, so we should continue to evaluate and adjust oversight over these funds to ensure miners are being taken care of.

So with that I will ask Ms. Hearthway, can you tell us what enforcement actions are OWCP prepared to take against coal mine operators that do not comply with the new self-insurance authorization protocol?

Ms. HEARTHWAY. So I think the most critical thing is we will not give them self-insurance status until they show us appropriate proof of the collateral that we told them they have to secure. So that is first and foremost. They won't have the approval. If they continue—if they don't either get the sufficient collateral or get commercial insurance, there are fines that we can assess against them.

Mr. CLINE. That was my next question, what enforcement action can be taken against the operators that don't maintain sufficient coverage, continuous coverage, and your answer is certain levels of fines that are available.

What role does data from the NCCI play, the National Council on Compensation Insurance, play in OWCP's oversight enforcement of coal mine operator commercial insurance policies?

Ms. HEARTHWAY. So thank you for that question.

The other aspect of this is the commercial insurance. And we are to have oversight of that as well. NCCI provides us with a data feed. So we get notifications of when a policy has been cancelled, revoked, not renewed. There are currently I believe it is 455 coal mine operations. We have gone through to start checking all of their current insurance. We are about halfway, a little more than halfway through of checking current commercial insurance for each of those. We are looking at the data feed from NCCI and we are

developing in our computer system a way to have more checks and balances so that we can be very proactive as soon as something happens.

I believe in the report there were two commercial insurers that initially the GAO found that appeared their commercial insurance had lapsed. When we looked into it, it actually had not lapsed. They had always had commercial insurance. But I agree, this is an oversight responsibility OWCP has and we are putting steps in place to make sure that we also monitor that.

Mr. CLINE. Are there limitations to the data and what plans, if any, does OWCP have to address the limitations to ensure that the operators are maintaining continuous coverage?

Ms. HEARTHWAY. I think there are some technical limitations in working a robust system, a computer system that will give us these quick alerts, but I think we have the ability because we are working through each of the 455 coal miners to monitor this with our current staff at the time. So I wouldn't say it is not without challenges, but I think the staff is more than up for those challenges.

Mr. CLINE. Thank you.

Thank you, Madam Chair. I yield back.

Chairwoman ADAMS. Thank you very much.

The gentleman from Michigan, Mr. Walberg. You are recognized for 5 minutes.

Mr. WALBERG. Thank you, Madam Chairwoman.

This brings back memories of when I chaired this subcommittee for 6 years. And while there is certainly, as I recollect, blame to go around on both sides, because my chairmanship was during the time of the past Administration, with what we often called the war on coal that went on, making it more difficult for the resources in the Trust Fund to be managed appropriately and to meet the needs that we had. Yet I am thankful that it appears that there is some recognition that is not acceptable and much has to be done to make sure the financial resources grow and meet the needs of miners. And we want to see that take place. So I appreciate the hearing today and appreciate the witnesses being here.

Ms. Brown Barnes, approximately how many beneficiaries are currently receiving black lung benefits?

Ms. BROWN BARNES. There is over 25,000 I believe.

Mr. WALBERG. Twenty five thousand?

Ms. BROWN BARNES. Yes.

Mr. WALBERG. Receiving the benefits right now?

Ms. BROWN BARNES. Yes.

Mr. WALBERG. Of these beneficiaries what percent of their claims are paid for from the Black Lung Disability Trust Fund and what percent are paid for by responsible coal mine operators? Do you have a figure on that?

Ms. BROWN BARNES. I can get you the figure on—it is more than half that are paid by the Trust Fund.

Mr. WALBERG. More than half?

Ms. BROWN BARNES. Yes. But I can get you some exact numbers.

Mr. WALBERG. The rest would be by coal mine operators that are approving some responsibility?

Ms. BROWN BARNES. Some by coal mine operators and then there is a portion where there are some interim benefits. And that is also paid by the Trust Fund.

Mr. WALBERG. By the Trust Fund?

Ms. BROWN BARNES. Yes.

Mr. WALBERG. In what cases does the Black Lung Disability Trust Fund assume responsibility for benefit liability?

Ms. BROWN BARNES. When there is no responsible coal mine operator available or a responsible coal mine operator does not pay because of bankruptcy.

Mr. WALBERG. Okay. In addition to the coal mine operator self-insurance program, GAO examined OWCP's oversight of the coal mine operator commercial insurance program as well. Was GAO able to determine what risk coal mine operators who had a lapse in commercial coverage posed to the Trust Fund?

Ms. BROWN BARNES. We didn't find any in terms of any benefit liabilities being transferred to the Trust Fund from commercial insurers.

Mr. WALBERG. None at all?

Ms. BROWN BARNES. No. We found some problems with—in the data. We saw where there was at least one of the operators that didn't have adequate coverage or it was not at least indicated in the data that we could get from the Department of Labor. And they did have to go back out to that operator to make sure that they extended their coverage.

Mr. WALBERG. Okay. When implemented by the OWCP, will GAO's recommendation to improve data collection and monitor compliance allow this risk to be evaluated more fully?

Ms. BROWN BARNES. It will if the oversight is there and the quality checks that they are going to do to their systems are actually implemented.

Mr. WALBERG. Okay.

Ms. HEARTHWAY, do you have any addition to that?

Ms. HEARTHWAY. I just want to let you know that we are implementing, have implemented a number of these reforms and we are monitoring this. I think that is good news for the first time in a couple of decades to have this kind of oversight at the—both commercially and self-insured.

To answer your previous question, I do have the number. What we call chief beneficiaries in the Trust Fund, there are currently 13,040 chief beneficiaries in the Trust Fund.

Mr. WALBERG. Thirteen thousand—

Ms. HEARTHWAY. Forty.

Mr. WALBERG.—forty. Thank you.

I yield back.

Chairwoman ADAMS. Thank you very much. I want to recognize the gentleman from Pennsylvania, Mr. Cartwright. You are recognized for 5 minutes, sir.

Mr. CARTWRIGHT. Thank you, Madam Chair, and thank you particularly, Chairwoman Adams, for inviting me to join this subcommittee today and considering some of the most urgent issues facing America's miners and facing their benefits.

As this subcommittee has uncovered with the help of GAO—thank you for being here Ms. Brown Barnes—the coal industry's

risky self-insurance practices have endangered those benefits, and the mismanagement of funds and the lack of oversight by the Department of Labor have made a bad situation worse. And we will talk about that.

I also want to highlight another barrier standing between disabled miners and their health benefits, the deceptive practices coal companies often use to prevent miners and their families from receiving the benefits they need and deserve, the doctors paid by the coal companies systematically misdiagnosing miners with diseases other than black lung, and the company lawyers withholding medical evidence that miners could use to defend their claims by proving that they have black lung.

As such, I will be introducing the Black Lung Benefit Improvement Act to ensure that miners have access to unbiased medical evidence, ample representation, and up to date benefit payments. Senator Bob Casey of Pennsylvania has already introduced this bill in the Senate and I do look forward to working with this committee to advance this in the House very soon. My hope is that we can ultimately bring a package of bills to the floor addressing the various challenges facing coal country.

Now, we have been talking about self-insurance here this afternoon, and with my remaining time I would like to ask the witnesses a couple of questions about that.

Murray Energy has been mentioned. It filed for bankruptcy in October of 2019. That made it the eighth coal company in a year to file for bankruptcy—eight within a year. That means between 2018 and 2019. And we have twice heard in the space of time I have been sitting here in the subcommittee, intoned the expression “war on coal”. I think we can all agree there hasn’t been a war on coal going on in 2018 and 2019. Nevertheless, eight coal company bankruptcies. Obviously, and it is as plain as the nose on everybody’s face, it has to do with the low price of competing natural gas.

So casting blame on whose administration is at fault, it doesn’t make any sense.

Ms. Brown Barnes, I understand the Department of Labor ordered Murray Energy to end self-insurance in 2015. Nevertheless, Murray Energy continued to self-insure until filing for bankruptcy in 2019. Can you explain what went wrong there?

Ms. BROWN BARNES. Murray, they appealed the decision and the Department of Labor, they had postponed responding to the appeal because at that point it started looking into their new self-insurance process and they wanted to wait until that was implemented, but then in the interim Murray filed for bankruptcy last October.

Mr. CARTWRIGHT. Right. Why was that appeal never adjudicated in the intervening years until it went into bankruptcy?

Ms. BROWN BARNES. That—the Department of Labor would have to answer.

Mr. CARTWRIGHT. Well, what are the consequences of that Murray bankruptcy for the Black Lung Disability Trust Fund, Ms. Brown Barnes?

Ms. BROWN BARNES. The consequences are that those liabilities will be transferred to the Trust Fund and not be on the American public.

Mr. CARTWRIGHT. Well, Ms. Hearthway, can you speak to the consequences of the Murray bankruptcy for the Trust Fund?

Ms. HEARTHWAY. Currently—

Mr. CARTWRIGHT. You talked about 10 percent.

Ms. HEARTHWAY. Currently none of their liabilities have fallen into the Trust Fund. Currently, Murray is continuing to pay benefits on their black lung claims. So nothing has impacted with respect to Murray on the Trust Fund yet.

It perhaps may in the future, but we don't know that yet.

Mr. CARTWRIGHT. What is your answer about why that appeal was never adjudicated between 2015 and when they filed for bankruptcy in 2019?

Ms. HEARTHWAY. So, as I indicated before, Murray's collateral was determined back in 1996 and had never been reviewed until 2015 when their self-insurance status was revoke. At that time, they asked for reconsideration. There was no enforcement action, and I can't explain to you why.

And then early 2017 it is discovered that they only commercially insured some of their operators and not others.

We are now a couple of years down the road. We have started to develop this new process that was supposed to be—and is—much more robust. So we put all of the self-insured operators into that process, including Murray, but the subsequently filed bankruptcy.

Mr. CARTWRIGHT. So the miners continue to get the benefits, but the American taxpayers take it in the neck?

Thank you, Madam Chair. I yield back.

Chairwoman ADAMS. I want to recognize now the gentleman from Virginia, Mr. Griffith. You are recognized for 5 minutes.

Mr. GRIFFITH. Thank you, Madam Chair, and thank you so much for holding this important hearing.

Several people have said it, but it would be good to repeat. Ms. Hearthway, all the folks who are receiving benefits, they are in no danger of losing those benefits, is that correct?

Ms. HEARTHWAY. They are in no danger of losing their benefits. None.

Mr. GRIFFITH. All right. Now, I have a question, and I think I know the answer, but I will ask Ms. Barnes. In your chart in your testimony it talks about Alpha Natural Resources, which was headquartered in my district, so I want to make everybody aware that was in my district, it says amount of collateral time of bankruptcy \$12 million, estimated transfer of benefit responsibility to the Trust Fund \$495 million. Now, the \$12 million did not represent Alpha's net assets. That, if I am reading it correctly—and you correct me if I am wrong—that \$12 million was how much they had set aside to pay for black lung claims, is that correct?

Ms. BROWN BARNES. Yes.

Mr. GRIFFITH. Okay. That is what I thought, because they came out of bankruptcy and they obviously had more assets than \$12 million.

So here is my question to either or both of you, one, did the Department of Labor go into the bankruptcy court with these numbers and ask for some of that money that was out there to be put into the Trust Fund since there was a \$494 million shortfall? And

is there a process for the Department of Labor to go into the bankruptcy hearings?

And the reason I raise this question is a former CEO of Alpha Natural Resources actually went into the bankruptcy court because originally they were going to zero out, as I recall it, the pension benefits as well and he filed in the bankruptcy court a petition that they at least get some of their—the pensioners get some of their money. And he was successful in getting them some of their money.

So the question then becomes, because part of it ended up with the equity firms, and I don't know all of the transactions, but they came back out of bankruptcy as two different entities. So there was money left over. Did DOL ask for that money and is there a process for them to do that?

Ms. BROWN BARNES. The Department would have to answer that.

Ms. HEARTHWAY. So in a bankruptcy proceeding, yes, we are one of the creditors, DOL, OWCP, and on behalf of the Trust Fund, one of the creditors that puts forth the liabilities, or what is due and owing. It is on current not the future. This is why setting the collateral is so critical. But we are part of that process along with all the other creditors—

Mr. GRIFFITH. Right.

Ms. HEARTHWAY.—to try and get and recoup as much as possible for benefits.

Mr. GRIFFITH. Do you know if you all made an attempt to get more than the \$12 million out of Alpha Natural Resources? And you may not know that answer today.

Ms. HEARTHWAY. And I will have to get back to you on that. I know as part of the settlement agreement that we were in and came out of the bankruptcy, but that they had to maintain some of their current benefits and pay for them. But I would have to get the specifics for you. I don't have that on hand.

Mr. GRIFFITH. If you could get the specifics for Alpha, James River, and Patriot, I would greatly appreciate that so that I, you know, can have the information. And then if there is something that your team thinks that we need to do legislatively to make it possible to—and I don't want to get in front of, you know, a lot of other people, but this is important benefit to the miners who have black lung—is there something that we need to pass legislatively to make sure that we are getting some sort of a priority in the bankruptcy system for these monies?

Can you do that?

Ms. HEARTHWAY. Yes, sir. Yes, sir.

Mr. GRIFFITH. I appreciate that. I do appreciate that you all testified today. There are a lot of things that can be done, and I am going to be taking a look at Mr. Cartwright's bill. I do think we have to change some of the rules to make sure that the miners are getting a fair shake in the process. It takes way too long for the miners to get an answer in these cases and we have got to figure out a better way to do that.

But I also want to make sure we get this information on the bankruptcies to try to make sure that the taxpayers don't—as Mr. Cartwright said—don't take it in the neck quite as bad as they currently are.

At the same time, I am glad that the miners are going to get all of the benefits they deserve.

Thank you and I yield back.

Chairwoman ADAMS. Thank you very much.

I want to remind my colleagues that pursuant to committee practice, materials for submission for the hearing record must be submitted to the committee clerk within 14 days following the last day of the hearing, preferably in Microsoft Word format. The materials submitted must address the subject matter of the hearing. Only a member of the subcommittee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record by way of an internet link that you must provide to the committee clerk within the required timeframe. But please recognize that years from now that link may no longer work.

Again, I want to thank the witnesses for their participation today. What we have heard is very valuable and members of the subcommittee may have some additional questions for you and we ask the witnesses to please respond to those questions in writing. The hearing record will be held open for 14 days in order to receive those responses.

I remind my colleagues that pursuant to committee practice, witness questions for the hearing record must be submitted to the majority committee staff or committee clerk within 7 days. The questions submitted must address the subject matter of the hearing.

I will now recognize the ranking member for his closing statement.

Mr. WRIGHT. Thank you, Madam Chair.

As we have heard today, there is bipartisan agreement that Department of Labor oversight of the Black Lung Disability Trust Fund has fallen short for decades during both Democrat and Republican administrations.

I would like to thank our two witnesses for their testimony.

Ms. Brown Barnes summarized the GAO report that was released this morning, documenting past challenges and outlining recommendations to improve oversight of the coal mine operator insurance program and to ensure the Trust Fund is managed effectively.

Director Hearthway in the Office of Workers' Compensation Programs should be commended for initiating significant improvements to Trust Fund oversight and coal mine operator insurance authorization and compliance.

While there is more work to do, I am confident that the Department is on the right track. We look forward to receiving updates on the progress OWCP is making to implement the GAO's recommendations.

As I mentioned in my opening statement, I hope we can continue to work together with the Administration to support common sense, workable, and innovative approaches to ensure that the Trust Fund is properly administered.

Thank you, Madam Chair. And I yield back.

Chairwoman ADAMS. Thank you very much.

I now recognize myself for the purpose of making my closing statement.

Again, I want to thank Director Brown Barnes and Director Hearthway for joining us for this important discussion.

When the Black Lung Disability Trust Fund was established more than 40 years ago it was meant to guarantee miners with black lung disease access to the benefits and treatment they need. Yet as the committee learned today, the combination of declining coal production, resurgence in cases of black lung, the inadequacy of the coal excise tax, and the Department's failure to ensure coal operators carried enough insurance to cover their liabilities, has already plunged the Trust Fund into billions of dollars in debt, and it promises to get worse.

As a result, taxpayers are on the hook for a growing share of miner's benefits and miner's and their families are hopeful that the red ink will not be steamed by the prospect of painful benefit cuts. That is what happened in 1981 and we do not want a repeat 40 years later.

The Department of Labor's decades-long failure to hold coal operators accountable for their full share of black lung benefits is unacceptable. It is particularly offensive in light of the exorbitant bonuses coal companies pay to their executives while simultaneously dumping their Trust Fund liabilities onto the taxpayers. We cannot continue to allow coal companies to privatize their gains and socialize their losses.

I remain concerned that the Department of Labor's new approach will not adequately protect taxpayers or miners and their families. And I hope that it will implement the recommendations included in the GAO's analysis.

I look forward to working with the Department and with my colleagues in Congress to ensure the long-term sustainability of the Black Lung Disability Fund.

If there is no further business, without objection, the committee stands adjourned.

[Questions submitted for the record and their responses follow:]

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COMMITTEE ON  
 EDUCATION AND LABOR  
 U.S. HOUSE OF REPRESENTATIVES  
 2176 RAYBURN HOUSE OFFICE BUILDING  
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June 4, 2020

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Ms. Cindy Brown Barnes  
 Director, Education, Workforce and Income Security  
 Government Accountability Office  
 441 G Street, NW  
 Washington, D.C. 20548

Dear Ms. Brown Barnes:

I would like to thank you for testifying at the February 26<sup>th</sup> Workforce Protections Subcommittee hearing entitled "*Asleep at The Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund.*"

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Thursday, June 18, 2020 for inclusion in the official hearing record. Your responses should be sent to Jordan Barab of the Committee staff. He can be contacted at 202-821-9020 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT  
 Chairman

Enclosure

Workforce Protections Subcommittee Hearing  
*“Asleep at The Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund.”*  
Thursday, February 26, 2020 10:15 a.m.

**Representative Alma Adams (D-NC)**

- Ms. Hearthway stated that she believed that after company officials had declared bankruptcy, the bankruptcy courts would only allow them to be held jointly, several and personally liable if fines are collected ahead of time.
  - Is that your understanding of the law?
  - At what points in the bankruptcy process can company officials be held jointly, severally and personally liable?
- Are you confident that DOL has adequately addressed your concerns with their new Oversight Procedures?
- Has DOL provided you with sufficient information about their new program to assure you that the problem is under control?
- Do you think that DOL's new plan to oversee operators' compliance with variable amounts of collateral based on the firm's creditworthiness will be effective?
- At what point would you consider DOL's new process to be complete?
- Does DOL have sufficient tools to enforce the requirements of the self-insurance program or to protect the Trust Fund when a self-insured coal operator files for bankruptcy?
- When a company's credit worthiness declines, DOL's new policy indicates that it will increase the collateral required for black lung liabilities. Do you believe that DOL would be able to resist pressure to hold off on demanding added collateral if a company threatened layoffs or bankruptcy as a result of the new collateral requirements?
- Is legislation necessary to ensure that timely liens can be placed on assets in those cases where it is clearly foreseeable that mine operators will default on their obligations after the operator's assets are distributed in the bankruptcy proceeding and available assets are exhausted?

Questions for the Record: Workforce Protections Subcommittee Hearing  
"Asleep at The Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund"  
Thursday, February 26, 2020 10:15 a.m.

**Ms. Hearthway stated that she believed that after company officials had declared bankruptcy, the bankruptcy courts would only allow them to be held jointly, severally and personally liable if fines are collected ahead of time. Is that your understanding of the law?**

The conditions under which company officials can be held liable are established in the Black Lung Benefits Act and not specific to an operator's bankruptcy. The Black Lung Benefits Act states that the Department of Labor (DOL) can fine coal mine operators up to \$1,000 a day for operating without insurance.<sup>1</sup> 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.

**At what points in the bankruptcy process can company officials be held jointly, severally and personally liable?**

DOL's ability to hold company officials liable is not specific to the bankruptcy process. Once an operator files for bankruptcy, operator liability and how it is to be paid to creditors, of which DOL may be one of many, would depend on the specific circumstances of the case and be decided by the court.

**Are you confident that DOL has adequately addressed your concerns with their new Oversight Procedures?**

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 Black Lung Disability Trust Fund (Trust Fund).<sup>2</sup> In its comments on our report, DOL agreed with our three recommendations and said they would take actions to implement them. DOL is due to provide an update on the status of our recommendations and the actions they have taken to address them in August 2020.

**Has DOL provided you with sufficient information about their new program to assure you that the problem is under control?**

Our work concluded in February 2020 when DOL was still implementing its new self-insurance process and we do not know to what extent they have implemented our recommendations. DOL is due to provide an update on the status of our recommendations and the actions they have taken to address them in August 2020.

**Do you think that DOL's new plan to oversee operators' compliance with variable amounts of collateral based on the firm's creditworthiness will be effective?**

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<sup>1</sup>DOL officials said that, per the Inflation Adjustment Act, they can actually charge operators up to \$2,924 for operating without insurance.

<sup>2</sup>GAO, *Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance Is Needed*, GAO-20-21 (Washington D.C.: Feb. 21, 2020).

If implemented effectively, DOL's new plan could help address past deficiencies in estimating and obtaining collateral and regularly reviewing self-insured operators.

**At what point would you consider DOL's new process to be complete?**

The new process will be in a position to better mitigate financial risk to the Trust Fund once it ensures the collection of sufficient collateral from all self-insured operators. However, the new process also requires ongoing DOL attention and action by conducting continuous quarterly and annual reviews of all self-insured operators to evaluate whether their risk of insolvency has changed and if additional collateral is needed for them to remain self-insured.

**Does DOL have sufficient tools to enforce the requirements of the self-insurance program or to protect the Trust Fund when a self-insured coal operator files for bankruptcy?**

Once an operator files for bankruptcy, operator liability and how it is to be paid to creditors, of which DOL may be one of many, would depend on the specific circumstances of the case and be decided by the court. DOL's ability to effectively use enforcement tools at that point is limited. However, we recommended, among other things, that DOL establish procedures for self-insurance renewals and coal operator appeals that could help to ensure that DOL staff will take enforcement actions prior to an operator's bankruptcy to protect the Trust Fund.

**When a company's credit worthiness declines, DOL's new policy indicates that it will increase the collateral required for black lung liabilities. Do you believe that DOL would be able to resist pressure to hold off on demanding added collateral if a company threatened layoffs or bankruptcy as a result of the new collateral requirements?**

It is too early to say because DOL was still implementing its new process when we concluded our work in February 2020. At that time, DOL had requested but not yet obtained additional collateral from self-insured operators. However, in DOL's past oversight of self-insured operators, we found instances in which DOL did not revoke an operator's ability to self-insure when the operator did not provide the required collateral.

**Is legislation necessary to ensure that timely liens can be placed on assets in those cases where it is clearly foreseeable that mine operators will default on their obligations after the operator's assets are distributed in the bankruptcy proceeding and available assets are exhausted?**

DOL's new self-insurance process requires agency officials to regularly assess the likelihood that an operator will become insolvent and potentially default on its black lung benefit liability. Therefore, the new process should enable DOL to better monitor an operator's changing financial conditions and take steps to protect the Trust Fund before a bankruptcy occurs. With effective implementation, it may be unnecessary to place liens on an operator's assets if DOL obtains sufficient collateral as a condition of self-insuring.

[Whereupon, at 4:28 p.m., the subcommittee was adjourned.]

