

# STRENGTHENING THE SAFETY NET FOR INJURED WORKERS

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## HEARING

BEFORE THE

## SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE

## COMMITTEE ON EDUCATION AND LABOR U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, DECEMBER 2, 2021

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## **STRENGTHENING THE SAFETY NET FOR INJURED WORKERS**

**Thursday, December 2, 2021**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS,  
COMMITTEE ON EDUCATION AND LABOR,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:13 p.m., via Zoom, Hon. Alma Adams (Chairwoman of the Subcommittee) presiding.

Present: Representatives Adams, Takano, Jayapal, Omar, Stevens, Scott, Keller, Stefanik, Miller-Meeks, Owens, Good, Cawthorn, Steel, and Foxx (*ex officio*).

Also present: Representatives Courtney and Mrvan.

Staff present: Ilana Brunner, General Counsel; Rasheedah Hasan, Chief Clerk; Sheila Havenner, Director of Information Technology; Eli Hovland, Policy Associate; Ariel Jona, Policy Associate; Kayla Pennebecker, Staff Assistant; Véronique Pluviose, Staff Director; Cyrus Artz, Minority Staff Director; Michael Davis, Minority Operations Assistant; Rob Green, Minority Director of Workforce Policy; Taylor Hittle, Minority Professional Staff Member; Georgie Littlefair, Minority Legislative Assistant; John Martin, Minority Deputy Director of Workforce Policy/Counsel; and Hannah Matesic, Minority Director of Member Services and Coalitions.

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

Welcome, everyone. I do note that a quorum is present.

I note for the Subcommittee that Mr. Courtney of Connecticut and Mr. Mrvan of Indiana are permitted to participate in the hearing today with the understanding that their questions will come only after all Members of the Subcommittee on both sides of the aisle who are present have had an opportunity to question the witnesses.

The Subcommittee is meeting today to hear testimony on strengthening the safety net for injured workers.

This is an entirely remote hearing, and as such, the Committee's hearing room is officially closed.

All microphones will be kept muted as a general rule to avoid unnecessary background noise. Members and witnesses will be responsible for unmuting themselves when they are recognized to speak or when they wish to seek recognition.

If a Member or a witness experiences technical difficulties during the hearing, please stay connected on the platform and make sure

that you are muted and use your phone to immediately call the Committee's IT director whose number was provided in advance.

Should the Chair experience technical difficulty or need to step away, another majority Member is hereby authorized to assume the gavel in the Chair's absence.

In order to ensure that the Committee's five-minute rule is adhered to, staff will be keeping track of time using the Committee's digital timer which appears on its own thumbnail picture. Members and witnesses are asked to wrap up promptly when their time has expired.

Pursuant to Committee Rule 8(c), opening statements are limited to the Chair and the Ranking Member. I recognize myself now for the purpose of making an opening statement.

Good afternoon again. Today's hearing is an opportunity to discuss how to strengthen workers' compensation programs which play an essential role in assisting workers disabled or fallen ill from their job.

When Americans are hurt on the job, workers' compensation programs, whether at the Federal or State level, provide a critical safety net. That is, if the system works as it is intended.

And as we will hear from Director Chris Godfrey, the Office of Workers' Compensation Programs, or the OWCP, is responsible for determining eligibility for Federal workers' compensation for four groups of workers: Federal workers, coal miners with black lung disease, longshore and harbor workers, and workers employed in the nuclear weapons complex.

OWCP's mission is to ensure that these workers receive the benefits they deserve if they are made ill or disabled from a covered workplace injury or illness.

Today, we will evaluate three major challenges facing various workers' compensation programs which are having significant consequences for workers, families, and taxpayers.

First, workers made ill from toxic substances face nearly insurmountable burdens of proof. For example, firefighters are routinely exposed to hazards such as toxic smoke inhalation. As a result, they are at an increased risk of being diagnosed with lung cancer and other diseases compared to the general population.

Laws in 48 States cover local and State firefighters for work-related diseases, but when Federal firefighters apply for Federal Employees Compensation Act, or FECA, benefits, they are faced with a steep burden of proof. FECA needs to better meet the needs of Federal firefighters.

This pandemic has shown us again and again that too many State workers' compensation programs fail to support frontline workers who clocked in through the worst of the pandemic and contracted COVID-19.

And while some States made workers' compensation automatic for essential workers such as nurses and law enforcement, many other groups—such as meatpacking workers—were left in a wide swath of States with an impossible battle to prove that they contracted COVID at work.

Thankfully, through the American Rescue Plan Act, Congress eased the burden of proof for frontline Federal workers by pro-

viding automatic eligibility for FECA benefits for those who contracted COVID and were in contact with patients or the public.

However, maritime and longshore workers covered under the Longshore and Harbor Workers Compensation Act still face a steep burden of proof to establish that their COVID-19 cases are work-related.

The second challenge is that States are slashing workers' compensation benefits. Instead of maintaining adequate benefit levels under State workers' compensation programs, many States are cutting benefits as part of a race to the bottom.

This vicious cycle of cuts in benefits increasingly pushes workers with disabilities out of State workers' compensation coverage and shifts the cost of workplace injury to Federal programs, including Medicare, Medicaid, and Social Security Disability Insurance.

A 2015 Department of Labor report warned that because many workers with disabilities do not have access to adequate benefits, too many working people are at great risk of falling into poverty due to disabling workplace injuries.

The third challenge is that coal operators have taken advantage of weak Federal oversight of a key part of the black lung program, which has resulted in a massive shift of their financial obligations for black lung benefits to taxpayers.

As the Government Accountability Office has documented, OWCP failed over many years to ensure that coal companies, which are permitted to self-insure for black lung compensation, are setting aside sufficient collateral to pay black lung benefits in the event of bankruptcy.

As a result, coal operators have shifted an estimated \$1 billion of their black lung liabilities onto taxpayers and drove the Black Lung Disability Trust Fund even deeper into the red.

As I previously noted in this Subcommittee's February 2020 hearing, "This fleecing of the trust fund and taxpayers has occurred under DOL's nose, despite the Department's power to prevent it . . . The winners are the coal operators and their Wall Street creditors. The losers are the American taxpayers."

I look forward to hearing about OWCP's work to address the deficiencies in the black lung program that it inherited. I also look forward to hearing about new initiatives that OWCP under the Biden administration, including plans to strengthen its oversight of State workers' compensation programs.

Finally, this hearing will allow us to begin a conversation about legislative solutions and how they can help modernize worker compensation programs.

First, the Federal Firefighters Fairness Act would provide that Federal firefighters who are diagnosed with certain long-term illnesses would receive a presumption that their illness is deemed work-related under FECA. We need to reform FECA so that it is better positioned to help some of our Nation's most heroic public servants.

Second, the Longshore and Harbor Workers' COVID-19 Compensation Act would establish a presumption that maritime workers who were diagnosed with COVID-19 received it at their place of work and ease eligibility for disability compensation and medical

benefits. The House has passed this three times in the past 2 years, but it has withered and died in the Senate each time.

Third, the Black Lung Benefits Improvement Act would help coal miners with disabilities access legal representation, improve access to evidence, adjust benefits for inflation, and reduce the backlog of claims.

And finally, the Improving Access to Workers' Compensation for Injured Federal Workers Act would expand the number of qualified providers who can provide medical services under FECA.

[The statement of Chairwoman Adams follows:]

STATEMENT OF HON. ALMA S. ADAMS, CHAIRWOMAN, SUBCOMMITTEE ON  
WORKFORCE PROTECTIONS

Good afternoon. Today's hearing is an opportunity to discuss how to strengthen workers' compensation programs which play an essential role in assisting workers disabled or fallen ill from their job. When Americans are hurt on the job, workers' compensation programs—whether at the Federal or State level—provide a critical safety net. That is, if the system works as it is intended.

As we will hear from Director Chris Godfrey, the Office of Workers' Compensation Programs, or the O-W-C-P, is responsible for determining eligibility for Federal workers' compensation for four groups of workers: Federal workers, coal miners with black lung disease, longshore and harbor workers, and workers employed in the nuclear weapons complex. OWCP's mission is to ensure that these workers receive the benefits they deserve if they are made ill or disabled from a covered workplace injury or illness.

Today, we will evaluate three major challenges facing various workers' compensation programs, which are having significant consequences for workers, families, and taxpayers.

First, workers made ill from toxic substances face nearly insurmountable burdens of proof.

For example, firefighters are routinely exposed to hazards such as toxic smoke inhalation. As a result, they are at an increased risk of being diagnosed with lung cancer and other diseases compared to the general population. Laws in 48 states cover local and State firefighters for work-related diseases, but when Federal firefighters apply for Federal Employees Compensation Act (or FECA) benefits, they are faced with a steep burden of proof. FECA needs to better meet the needs of Federal firefighters.

The pandemic has shown us again, and again that too many State workers' compensation programs failed to support frontline workers who clocked-in throughout the worst of the pandemic and contracted COVID-19. While some states made workers' compensation automatic for essential workers such as nurses and law enforcement, many other groups—such as meatpacking workers—were left in a wide swath of states with an impossible battle to prove that they contracted COVID at work. Thankfully, through the American Rescue Plan Act, Congress eased the burden of proof for frontline Federal workers, by providing automatic eligibility for FECA benefits for those who contracted COVID and were in contact with patients or the public. However, maritime and longshore workers covered under the Longshore and Harbor Workers Compensation Act still face a steep burden of proof to establish that their COVID-19 cases are work related.

The second challenge is that states are slashing workers' compensation benefits.

Instead of maintaining adequate benefit levels under State workers' compensation programs, many states are cutting benefits as part of a race-to-the-bottom. This vicious cycle of cuts in benefits increasingly pushes workers with disabilities out of State workers' compensation coverage and shifts the cost of workplace injury to Federal programs including Medicare, Medicaid, and Social Security Disability Insurance. A 2015 Department of Labor report warned that because many workers with disabilities do not have access to adequate benefits, too many working people are at great risk of falling into poverty due to disabling workplace injuries.

The third challenge is that coal operators have taken advantage of weak Federal oversight of a key part of the black lung program, which has resulted in a massive shift of their financial obligations for black lung benefits to taxpayers.

As the Government Accountability Office has documented, OWCP failed over many years to ensure that coal companies—which are permitted to self-insure for black lung compensation—are setting aside sufficient collateral to pay black lung benefits in the event of bankruptcy. As a result, coal operators have shifted an esti-

mated \$1 billion of their black lung liabilities onto taxpayers and drove the Black Lung Disability Trust Fund even deeper into the red.

As I previously noted in this Subcommittee's February 2020 hearing: "This fleecing of the Trust Fund and taxpayers has occurred under DOL's nose despite the Department's power to prevent it.. The winners are the coal operators and their Wall Street creditors. The losers are the American taxpayers."

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I also look forward to hearing about new initiatives that OWCP under the Biden administration, including plans to strengthen its oversight of State workers' compensation programs.

Finally, this hearing will allow us to begin a conversation about legislative solutions and how they can help modernize worker compensation programs:

1. First, the Federal Fighters Fairness Act would provide that Federal firefighters, who are diagnosed with certain long-term illnesses, would receive a presumption that their illness is deemed work-related under FECA. We need to reform FECA so that it is better positioned to help some of our Nation's most heroic public servants.
2. Second, the Longshore and Harbor Workers' COVID-19 Compensation Act would establish a presumption that maritime workers who were diagnosed with COVID-19 received it at their place of work and ease eligibility for disability compensation and medical benefits. The House has passed this three times in the past 2 years, but it has withered and died in the Senate each time.
3. Third, the Black Lung Benefits Improvement Act would help coal miners with disabilities access legal representation, improve access to evidence, adjust benefits for inflation, and reduce the backlog of claims.
4. And finally, the Improving Access to Workers' Compensation for Injured Federal Workers Act would expand the number of qualified providers who can provide medical services under FECA.

Thank you to our witnesses for joining us today.

I now yield to the distinguished Ranking Member of the Subcommittee, Mr. Keller.

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Chairwoman ADAMS. Thank you to our witnesses for joining us today.

Is the Ranking Member here yet?

I am sorry? Is the Ranking Member here? Is Mr. Keller here?

STAFF. Chair Adams, I can only confirm that the Ranking Member's ID profile is still connected to the platform, but I cannot confirm activity from the profile.

Chairwoman ADAMS. OK. Well, let me just move on then. Other Members, without objection, who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m. on December 16, 2021.

I think I will have to recognize the Ranking Member when he gets here so we can move on.

I am going to introduce the witness now for the first panel. Congressman Salud Carbajal has represented the 24th congressional District in California since 2017.

Representative Carbajal is testifying in support of his bill, H.R. 2499, the Federal Firefighters Fairness Act of 2021, which would improve the ability of Federal firefighters to secure workers' compensation benefits under the Federal Employees Compensation Act, or FECA, if they develop certain illnesses associated with their work.

We appreciate Congressman Carbajal for participating today.

Look forward to your testimony, sir. Your written statement will appear in full in the hearing record, and you are asked to limit your oral presentation to a five minute summary.

As the first panel is a Member panel, there will be no questions of the witnesses, and we will move immediately to the second panel at the conclusion of the testimony unless, of course, the Ranking Member gets in and we will allow him to give his opening statement.

The witness is aware of his responsibility to provide accurate information to this Subcommittee, and therefore we will proceed with the testimony.

Congressman Carbajal, you are recognized for five minutes.

**STATEMENT OF THE HON. SALUD O. CARBAJAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. CARBAJAL. Thank you, Chairwoman Adams, Ranking Member Keller, and Members of the Workforce Protection Subcommittee. Thank you for the opportunity today to testify in support of my bipartisan legislation, H.R. 2499, the Federal Firefighters Fairness Act, that I have introduced with Representatives Bacon, Takano, and Fitzpatrick.

This Congress marks the third time I have introduced this legislation since I was elected to represent the Central Coast of California in 2016.

In all these years, this is the first time this critical bill has received a hearing, and for that, I want to thank and acknowledge the leadership of Chairwoman Adams, who is bringing it before Members of the Workforce Protection Subcommittee for consideration.

The Federal Firefighters Fairness Act ensures Federal firefighters receive the same access to disability and retirement benefits as their peers who are State, county, and municipal firefighters, and who often fight the same exact fires.

Like most firefighters in the United States, it would create the same presumption that Federal firefighters who become disabled by serious diseases, like certain cancers, lung disease, heart disease, and infectious diseases, contracted the illness on the job.

Under the current Federal law, Federal firefighters are required to precisely identify an incident or exposure that caused the disease for it to be considered job-related. The burden of proving that one specific incident or exposure to a disease is extremely difficult for firefighters to meet because they work in so many environments and conditions.

Fighting fires is hard and dangerous work. In one study conducted by Harvard University, scientists measured air contaminant levels at more than 200 structural fires. Benzene, a chemical linked to many cancers, was found in 181 out of 197 samples from fire scenes.

Multiple studies have shown that there are over 100 chemicals that can be in smoke, showing just how difficult it can be for Federal firefighters to prove an illness they contracted was caused by one specific chemical or instance.



Most State, local, and municipal firefighters already benefit from something called a “presumptive illness” law. These laws link a particular occupation with certain diseases or conditions that have been connected to their work.

California was the first State to pass a firefighter presumptive illness law in 1982. Today, 49 out of 50 States have presumptive illness laws that cover State and local firefighters. Sadly, not one of these laws cover Federal firefighters.

This is the gap and inequity that I hope to fix with the bipartisan Federal Firefighters Fairness Act, which is overwhelmingly supported by my colleagues, with 95 cosponsors, and supported by the International Association of Federal Firefighters, IAFF, and the American Federation of Government Employees, AFGE.

Madam Chair, I request to enter into the record a letter of support for H.R. 2499 from the International Association of Firefighters.

Chairwoman ADAMS. So ordered.

Mr. CARBAJAL. Last month, over a thousand firefighters put their lives on the line to battle the Alisal Fire in my district on the Central Coast of California. I am so thankful for the Federal, State, and local firefighters, who worked together to put out the blaze and keep our community safe.

All of them performed the same job, but again a reminder, only Federal firefighters experience a disparity in their health benefits.

It is not fair that Federal firefighters are being denied access to benefits that their local counterparts receive, especially when they fight the same fires and expose themselves to the same risks.

California experienced unprecedented wildfire seasons in 2020 and 2021, and scientists are projecting that wildfires will continue to increase in frequency and severity.

Now more than ever, we need to do the right thing by our Federal firefighters and pass this vital legislation. Our Federal firefighters and their families cannot continue to sacrifice and put themselves in harm’s way to protect us all, only to be denied healthcare benefits simply because they cannot prove a work-related illness was linked to one chemical or incident.

Firefighters of all types are heroes and deserve the same respect and benefits for the hard and necessary job they perform. It is high time to pass a presumptive illness law for our Federal firefighters and not continue to treat them as second-class firefighters. We must push this measure across the finish line.

Thank you again for the opportunity to speak on my legislation, H.R. 2499, the Federal Firefighters Fairness Act. I yield back, Madam Chair.

[The prepared statement of Mr. Carbajal follows:]

## PREPARED STATEMENT OF THE HON. SALUD O. CARBAJAL

HE&amp;L Testimony for H.R. 2499 | Page 1 of 2

**The Honorable Salud Carbajal**  
**Representative for California's 24<sup>th</sup> Congressional District**  
**House Committee on Ed & Labor Hearing Testimony**

Chairman Scott, Ranking Member Foxx, and Members of the Committee:

Thank you for the opportunity today to testify in support of my bipartisan legislation, H.R. 2499 – the Federal Firefighter Fairness Act that I have introduced with Representatives Bacon, Takano and Fitzpatrick.

This Congress marks the third time I have introduced this piece of legislation since I was elected to represent the Central Coast of California in 2016. In all these years, this is the first time this critical bill has received a hearing, and for that, I want to thank and acknowledge the leadership of Chairman Scott who is bringing it before members of the Education and Labor committee for consideration.

The Federal Firefighter Fairness Act ensures federal firefighters receive the same access to disability and retirement benefits as their peers who are state, county, or municipal firefighters and who often fight the same exact fires. It would create the same presumption for federal firefighters who become disabled by serious diseases, like certain cancers, lung disease, heart disease and infectious diseases, contracted the illness on the job.

Under current federal law, federal firefighters are required to precisely identify an incident or exposure that caused a disease for it to be considered job-related. The burden of proving that one specific incident or exposure led to a disease is extremely difficult for firefighters to meet, because they work in so many environments and conditions.

Fighting fires is hard and dangerous work. In one study conducted by Harvard University, scientists measured air contaminant levels at more than 200 structural fires. Benzene, a chemical linked to many cancers, was found in 181 out of 197 samples from fire scenes. Multiple studies have shown that there are over 100 chemicals that can be found in smoke, showing just how difficult it can be for federal firefighters to prove an illness they contracted was caused by one specific chemical or incident.

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California was the first state to pass a firefighters presumptive illness law in 1982. Today, 49 out of 50 states have presumptive illness laws that cover state and local firefighters. Sadly, not one of these laws cover federal firefighters. This is the gap and inequity that I hope to fix with the Federal Firefighters Fairness Act, which is overwhelmingly supported by my colleagues with 95 cosponsors along with the International Association of Federal Firefighters (IAFF) and the American Federation of Government Employees (AFGE).

Last month, over a thousand firefighters put their lives on the line to battle the Alisal Fire in my district on the Central Coast of California. I am so thankful for the federal, state, and local firefighters who worked together to put out the blaze and keep our community safe. All of them performed the same job, but experience a disparity in health benefits.

It is not fair that federal firefighters are being denied access to benefits that their local counterparts receive, especially when they fight the same fires and expose themselves to the same risks.

California experienced unprecedented wildfire seasons in 2020 and 2021, and scientists are projecting that wildfires will continue to increase in frequency and severity. Now more than ever, we need to do right by our federal fighters and pass this vital legislation.

Our firefighters cannot continue to put themselves in harms way to protect us all, only to be denied health care benefits simply because they cannot prove a work-related illness was linked to one chemical or incident. Firefighters of all types are heroes and deserve the same respect and benefits for the hard and necessary job they perform. It is time to pass a presumptive illness law for our federal firefighters and not continue to treat them as second-class firefighters.

I will work with my colleagues and continue to fight to protect those who serve our country in any capacity. We must push this measure across the finish line. Thank you again for the opportunity to speak on my legislation, H.R. 2499 – the Federal Firefighter Fairness Act.

Chairwoman ADAMS. Thank you. Thank you, Congressman Carbajal, for your testimony on this important issue.

This concludes the first panel, and I am going to request that the witnesses on the second panel if you would prepare to turn your cameras on.

But before I do that, let me recognize the Ranking Member who is with us for his opening statement.

So, Ranking Member Keller, you are now recognized, sir.

Mr. KELLER. Thank you, Madam Chairwoman.

The hearing today takes a kitchen sink, spaghetti-on-the-wall approach to a wide variety of Federal workers' compensation programs, including legislation which purports to solve shortcomings in many of them.

Unfortunately, many of the proposals we will discuss today only add additional layers and expense to our already bloated and mis-managed Federal programs. For instance, the Black Lung Disability Trust Fund has been plagued by financial difficulties since it began over 40 years ago. It has been in debt since it was created.

Many of the trust fund's problems stem from the Department of Labor's decades-long failure to provide proper oversight or enforcement in addition to interest accumulation on its debt.

As a result, the trust fund's expenditures regularly exceed its revenue. Because of this funding shortfall, the trust fund borrows from the Department of Treasury's General Fund every year.

In 2021, the trust fund borrowed approximately \$2.3 billion to cover its costs. As of September 2021, total liabilities for the trust fund exceeded its assets by over \$6 billion. This is both shameful and unsustainable.

The Trump administration made great strides to correct the trust fund's flaws and to revamp the self-insurance process for coal mine operators. The Biden administration should restrain itself from dismissing President Trump's reforms out of hand and put the well-being of the program above politics.

GAO's testimony today states that Department of Labor officials could not describe any anticipated changes to coal operators' self-insurance going forward, and Mr. Godfrey's testimony confirms

that any reforms to the Black Lung program will be made public months in the future. This is unacceptable.

In the meantime, Democrats propose papering over inept oversight of Federal workers' compensation programs with big government solutions. Democrats continually turn a blind eye to the real problems plaguing these programs.

Instead of working on bipartisan legislation, like this Committee has historically done, Democrats are demanding more layers of bureaucratic red tape, wasteful spending, and increased control over job creators.

The FECA program is an example of potential bipartisan agreement. In the 112th Congress, the Committee took steps on a bipartisan basis to reform FECA by introducing legislation that would modernize the FECA program, improve its integrity, and enhance its efficiency.

We should revisit commonsense bipartisan reforms instead of pushing workers into broken and bloated programs.

Unfortunately, today many of my Democrat colleagues and the Department of Labor are advocating four legislative changes that will not improve the critical programs Federal injured workers rely upon.

Creating presumptions of eligibility under the Longshore program and FECA will only further strain Department resources, increase backlogs, and cause the Department to shift personnel and dollars from other critical programs, like programs to fight opioid misuse, an issue which has plagued communities in central and northeastern Pennsylvania, as well as across all of America.

I would like to urge the Office of Workers' Compensation Programs, or OWCP, to focus on reforming the programs they currently oversee by addressing recommendations made by the Government Accountability Office and the Office of Inspector General.

The Office of Inspector General's annual report outlines several significant concerns within OWCP. The Department should address these recommendations before moving forward with radical proposals to monitor State workers' compensation programs or haphazardly broaden benefit eligibility.

I hope that this Committee can return to bipartisan discussions to ensure these programs are efficient, effective, and making good use of taxpayers' dollars while protecting the people they are designed to protect.

I would like to thank our witnesses for being here today, and I look forward to hearing your testimony.

I yield back.

[The statement of Ranking Member Keller follows:]

STATEMENT OF HON. FRED KELLER, RANKING MEMBER, SUBCOMMITTEE ON  
WORKFORCE PROTECTIONS

The hearing today takes a kitchen-sink, spaghetti-on-the-wall approach to a wide variety of Federal workers compensation programs, including legislation which purports to solve shortcomings in many of them. Unfortunately, many of the proposals we will discuss today only add additional layers and expense to already bloated and mismanaged Federal programs.

For instance, the Black Lung Disability Trust Fund (BLDTF) has been plagued by financial difficulties since it began over 40 years ago. It has been in debt since it was created. Many of the Trust Fund's problems stem from the Department of

Labor's (DOL) decades-long failure to provide proper oversight or enforcement in addition to interest accumulation on its debt.

As a result, the Trust Fund's expenditures regularly exceed its revenue. Because of this funding shortfall, the Trust Fund borrows from the Department of the Treasury's general fund every year. In 2021, the Trust Fund borrowed approximately \$2.3 billion to cover its costs. As of September 2021, total liabilities of the Trust Fund exceeded its assets by over \$6 billion. This is both shameful and unsustainable.

The Trump administration made great strides to correct the Trust Fund's flaws and to revamp the self-insurance process for coal mine operators. The Biden administration should restrain itself from dismissing President Trump's reforms out of hand and put the well-being of the program above politics. Government Accountability Office's testimony today states that 'DOL officials could not describe any anticipated changes to coal operator self-insurance going forward' and Mr. Godfrey's testimony confirms that any reforms to the Black Lung Program will be made public months in the future. This is unacceptable.

In the meantime, Democrats propose papering over inept oversight of Federal workers' compensation programs with big government solutions. Democrats continuously turn a blind eye to the real problems plaguing these programs. Instead of working on bipartisan legislation, like this Committee has historically done, Democrats are demanding more layers of bureaucratic red tape, wasteful spending, and increased control over job creators.

The Federal Employees' Compensation Act (FECA) program is an example of potential bipartisan agreement. In the 112th Congress, the Committee took steps, on a bipartisan basis, to reform FECA by introducing legislation that would modernize the FECA program, improve its integrity, and enhance its efficiency. We should revisit commonsense bipartisan reforms instead of pushing workers into broken and bloated programs.

Unfortunately, today many of my Democrat colleagues and the DOL are advocating for legislative changes that will not improve the critical programs Federal injured workers rely upon. Creating presumptions of eligibility under the Longshore program and FECA will only further strain Department resources, increase backlogs, and cause the Department to shift personnel and dollars from other critical programs, like programs to fight opioid misuse, an issue which has plagued communities in central and northeastern Pennsylvania, among others.

I would like to urge the Office of Workers Compensation Programs (OWCP) to focus on reforming the programs they currently oversee by addressing recommendations made by the Government Accountability Office and the

Office of Inspector General. The Office of Inspector General's annual report outlined several significant concerns within OWCP. The Department should address these recommendations before moving forward with radical proposals to monitor State workers' compensation programs, or haphazardly broadening benefit eligibility.

I hope that this Committee can return to bipartisan discussions to ensure these programs are efficient and effective and are making good use of the taxpayers' dollars.

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Chairwoman ADAMS. Thank you. Thank you to the Ranking Member. Thank you very much for your statement.

We are going to move now to the second panel. I want to make a request that the witnesses on this panel please turn your cameras on at this time, mute your microphones unless you are speaking.

I will now introduce the witnesses for the second panel.

Our first witness is Christopher Godfrey, Director of the U.S. Department of Labor's Office of Workers' Compensation Programs.

Mr. Godfrey is responsible for overseeing the Department's work processing tens of thousands of claims from Federal employees, nuclear weapons complex workers, coal miners, maritime workers, and others, and the payment of billions of dollars in benefits.

He previously served as the Chief Judge and Chairman of the Employees' Compensation Appeals Board, and before that, he served 8 years as Iowa's Workers' Compensation Commissioner.

Our second witness is Thomas Costa, who serves as Director of Education, Workforce, and Income Security at the U.S. Government Accountability Office.

With degrees from George Washington University and the University of Connecticut, Mr. Costa has been with GAO since 2005, and his work has included labor-related issues as well as State Department management and diplomatic security.

To our witnesses, thank you so much for participating today. We look forward to your testimony. Your written statement will appear in full in the hearing record, and you are asked to limit your oral presentation to a five minute summary. After your presentation, we will move to Member questions.

The witnesses are aware of their responsibility to provide accurate information to the Subcommittee, and therefore we will proceed with your testimony.

I will first recognize Mr. Godfrey.

Mr. Godfrey, you are recognized for five minutes, sir.

**STATEMENT OF MR. CHRISTOPHER J. GODFREY, DIRECTOR,  
OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S.  
DEPARTMENT OF LABOR**

Mr. GODFREY. Thank you.

Chair Adams, Ranking Member Keller, and Members of the Workforce Protection Subcommittee, and Mr. Costa and other GAO participants, I am grateful for the opportunity to speak with you today about strengthening the safety net for injured workers.

Every day the Office of Workers' Compensation Programs touches the lives of thousands of workers and families, providing a safety net in their times of need.

The FECA, Longshore, Black Lung, and Energy programs have the unifying mission to protect the interest of workers who become injured or ill on the job, ensuring fair claim adjudication and prompt entitlement payments.

I am incredibly proud of what OWCP has accomplished during the first 10 months of this administration, and I want to share with you a few of our noteworthy accomplishments.

First, following the attack on the U.S. Capitol Building on January 6th, the FECA program established a special unit to ensure prompt and consistent handling of claims filed by Federal law enforcement officers and other first responders who suffered traumatic injuries on that date.

After President Biden signed the American Rescue Plan Act into law in March, OWCP implemented its provisions, making it easier for Federal workers to file COVID-related workers' compensation claims under FECA.

To date, OWCP has processed over 22,000 COVID claims from Federal workers, and less than 1 percent of those claims remain adjudicated.

Also, with ARPA funding, OWCP hired over 170 new claims examiners, strengthening our historically neglected FECA workforce.

OWCP has adapted to the pandemic by transitioning to a 100 percent telework posture.

Our Energy program has expanded telehealth options, digitized paper case files, and offered online outreach and educational events.

Our black lung program has moved to a fully digital claims environment and eliminated millions of pages of paper files.

OWCP is currently focused on initiatives to strengthen our service delivery for injured workers. In the FECA program, a pharmacy benefits management service, known as a PBM, will lead to lower prescription costs and create additional drug safety controls, including increased opioid safeguards which are so important.

We plan during this Fiscal Year to also move forward with a PBM in our black lung and energy programs.

We are also working to combine medical bill processing with physician network services to increase the number of physicians available to provide treatment to our claimants.

In line with President Biden's emphasis on diversity, equity, inclusion, and accessibility, OWCP has taken several steps, such as outreach to underserved communities, like the Navajo Nation, and updated our recruitment efforts to obtain a more diverse talent pool for job openings.

Other accomplishments that we have made are noted in my written testimony.

OWCP has also sought to improve the handling of claims for Federal firefighters by working with NIOSH to create an improved process to address the unique challenges of developing those delayed onset occupational illness claims.

Recently, in collaboration with the Departments of Defense, State, and the White House National Security Council, OWCP developed guidance on processing claims for anomalous health incidents.

Finally, OWCP has explored the possibility of recommencing publication of its annual report on workers' compensation systems, and those would be consistent with DOL reports from 1980 through 2004.

Turning now to GAO's 2020 report on black lung self-insurance programs, I want to address two key recommendations concerning OWCP's oversight responsibilities.

First, they recommended that OWCP should develop and implement procedures for self-insurance renewals, and second, that OWCP should develop an appeals process for self-insured coal mine operators to utilize when they disagree with determinations concerning authorization or the amount of collateralization required to be self-insured.

Based on these recommendations, over the past 10 months OWCP has performed a comprehensive review of the existing self-insurance structure and the impact of the changes made to self-insurance process by the previous administration.

That detailed review is complete, and the self-insurance has been included on the DOL regulatory agenda. And we plan to move forward with an NPRM in the coming months.

Seven coal mine operators have appealed self-insurance authorization decisions made by OWCP during the previous administration. We are currently in the process of reviewing those appeals.

Bottom line is this, OWCP is committed to doing everything that we can to protect the trust fund against further liabilities from under-secured self-insured operators, through a fair, transparent, and efficient process.

In the past 10 months, OWCP has handled emerging issues such as COVID-19 and the Capitol attack and made progress on initiatives including the PBM and equity efforts, while still charting a path toward resolution of longstanding concerns such as self-insurance in the Black Lung Disability Trust Fund.

I am honored to be able to lead OWCP as we tackle these challenges, and thank you again for the opportunity to testify today to discuss how OWCP is working to strengthen the safety net for injured and ill workers.

I look forward to your questions. Thank you.

[The prepared statement of Mr. Godfrey follows:]



PREPARED STATEMENT OF CHRISTOPHER J. GODFREY

TESTIMONY OF  
CHRISTOPHER J. GODFREY  
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS  
U.S. DEPARTMENT OF LABOR

BEFORE THE  
WORKFORCE PROTECTIONS SUBCOMMITTEE  
COMMITTEE ON EDUCATION AND LABOR  
UNITED STATES HOUSE OF REPRESENTATIVES

*"Strengthening the Safety Net for Injured Workers"*

DECEMBER 2, 2021

**Introduction**

Chair Adams, Ranking Member Keller, and Members of the Workforce Protections Subcommittee, I am grateful for the opportunity to testify about how the U.S. Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) is working to strengthen the safety net for injured workers.

Every day, OWCP employees touch the lives of thousands of injured or ill workers and their families by providing or overseeing the delivery of workers' compensation benefits. Regardless of which group of workers they serve, OWCP's four programs have a unifying mission – to protect the interest of workers who are injured or become ill on the job, their families, and their employers by making timely, appropriate, and accurate decisions on claims, providing prompt payment of benefits, and helping injured workers return to gainful work as early as is feasible.

Since I started as Director of OWCP in January 2021, I have worked to improve the ability of the Federal Employees' Compensation (FECA), Longshore & Harbor Workers' Compensation (Longshore), Coal Mine Workers' Compensation (Black Lung), and Energy Employees Occupational Illness Compensation (Energy) programs to provide for the medical and financial security of covered workers. I am incredibly proud of what OWCP has accomplished during the first ten months of this administration despite the challenges of responding to an ever-evolving pandemic environment. During fiscal year 2021, the FECA

program processed 102,257 total claims, paying out \$788,959,059.74 in medical benefits and \$2,190,236,702.82 in compensation to injured workers; the Black Lung program processed 6,183 total claims, paying out \$30,449,773.45 in medical benefits and \$169,461,832.87 in compensation; and the Energy program processed 30,784 total claims, paying out \$1,103,741,105.09 in medical benefits and \$621,824,860.88 in compensation. During this challenging year, OWCP successfully incorporated unique, emerging workloads into the processing of claims, including, for the FECA program, resolving 21,396 claims related to COVID, and 78 claims related to the January 6 U.S. Capitol attack.

As you will hear in my testimony, our response to the COVID-19 pandemic has in many ways allowed OWCP to provide greater workplace flexibilities for our own workforce, to become more fiscally responsible, and to adopt policies which make it easier for claimants to access the benefits provided by our programs. Under the leadership of President Biden and Secretary of Labor Walsh, OWCP will continue our response to COVID-19 while we work to empower and support workers in every type of career and at every stage of life – morning, noon, and night.

#### **OWCP Policies and Priorities**

During the first months of my tenure, OWCP was faced with the unprecedented challenge of handling claims for law enforcement officers and other first responders injured during the January 6, 2021 attack on the U. S. Capitol Building. In order to be responsive to the unique claims presented as a result of the public service of this group of claimants, in accordance with longstanding policy, the FECA program established a task force to handle all claims arising from this event to provide consistent and timely handling of the claims of these workers. These claims included not only the immediate physical and psychological injuries, but also the even more challenging adjudication of claims related to delayed psychological injury resulting from the traumatic stress of those events. To date, seventy-eight claims have been received and seventy have been resolved.

OWCP has also been responsive to the evolving challenges presented by the COVID-19 pandemic. Remaining responsive to the changing nature of the pandemic in order to safeguard

our own workforce, while developing policies that reflect the current status of medical knowledge about COVID-19, has been a top priority for this administration.

At the onset of the COVID-19 pandemic in March 2020, the FECA program created a COVID-19 special claims handling process to handle COVID-related FECA claims from federal workers.<sup>1</sup> These COVID-related occupational disease claims proved difficult to establish a work-relationship under the general provisions of the FECA program. However, on March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA).<sup>2</sup> This new law made it easier for federal workers diagnosed with COVID-19 to establish coverage under FECA. Less than two months following passage of ARPA, the FECA program announced these changes and provided more detail on claims processing through *FECA Bulletin NO. 21-09: Processing FECA Claims for COVID-19 under the American Rescue Plan Act of 2021* (April 28, 2021).<sup>3</sup> Since then, implementation of ARPA's FECA provisions for federal workers with COVID-19 has been a central focus of OWCP. The FECA program has conducted outreach to public sector unions and other groups, including the American Postal Workers Union (APWU), the American Federation of Government Employees (AFGE), the National Association of Letter Carriers (NALC), National Air Traffic Controllers Association (NATCA), and the Federal Law Enforcement Officers Association (FLEOA), to help ensure that federal workers are aware of the changes that make it easier to file a COVID-19 claim under FECA.

ARPA funding has allowed the FECA program to complete a hiring surge of over 170 new Claims Examiners (CEs) to handle the emerging COVID workload. However, under the steady leadership of President Biden, 90% of the federal workforce is now vaccinated against COVID-19, which has kept the number of federal workers who contract COVID to a minimum. OWCP is now in a strong position to support federal workers who contract COVID-19 in the workplace. Consistent with the President's emphasis on building back the federal workforce, claims examiners who are not required to handle ARPA workloads are being transitioned to the handling of FECA's base workloads which have been historically understaffed for its receipt base. This hiring surge also allows OWCP to be ready to quickly pivot its trained workforce to

<sup>1</sup> <https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECA2101>

<sup>2</sup> H.R. 1319 - 117th Congress (2021-2022): American Rescue Plan Act of 2021 | Congress.gov | Library of Congress

<sup>3</sup> <https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECA2109>

address possible further spikes in COVID claims. This strengthening of the FECA workforce is also helping to reduce the previously unmanageable workload in the FECA program, improve employee morale, increase program integrity and strengthen our ability to make decisions on claims, provide benefits and assist injured workers in the process of returning to work in a timely manner. Through all these programmatic changes, the FECA program has processed 21,396 COVID-19 related claims, accepted 18,483 of those claims, with only 175 unadjudicated claims as of November 18, 2021. For those accepted claims, OWCP has paid out \$9,653,073.01 in medical benefits and \$14,220,373.56 in compensation benefits for a total of \$23,873,446.57 in benefits to federal employees with work-related, accepted COVID-19 claims. This program has established itself as a model that other state jurisdictions could follow to see that occupational diseases such as COVID-19 can be accepted without significant impact on existing programs.

Moving forward, I will make sure that OWCP continues to process COVID-19 claims for federal workers in a timely manner and remains flexible and adaptive to developments in the pandemic. Already, we have started to collaborate with the Office of Disability Employment Policy (ODEP) at the U.S. Department of Labor to prepare for possible future implications of long COVID, or "Post-Acute Sequelae of SARS-CoV-2" (PASC) as it is otherwise known. The disabling effects of long COVID could have significant implications for both OWCP and workers' compensation systems across the country, and I will make certain that OWCP works to monitor, and prepare for, those potential challenges.

While COVID-19 caused OWCP to transition our workforce into a telework posture, and physical distancing created new challenges for our programs, upgrading and modernizing our systems and procedures was essential. For example, OWCP programs introduced expanded telehealth options for claimants. The Energy program issued temporary bulletins allowing claimants and providers to be paid for telemedicine appointments. The Energy program expects to make the allowance of telemedicine for routine care appointments permanent through the issuance of a Circular in fiscal year 2022. Another example is digitization of paper case files. Also in fiscal year 2021, the Energy Program completed a project to digitize all case files, making them available electronically to all claims staff. This eliminated paper case files, which assisted in the reduction of space, and allowed for greater flexibility for telework for claims staff. Similarly, the Black Lung program completed a multi-year initiative to transition to a fully digital claims environment and eliminate millions of pages of paper claim records in its eight

district offices in order to improve the efficiency and cost-effectiveness of program operations in fiscal year 2021. Additionally, OWCP will continue working to reduce wet signature requirements where possible. In fiscal year 2022, the Energy Program plans to develop a system whereby claimants will be able to submit initial claim forms and payment forms using a digital signature (which currently require wet signature). As we continue our response to COVID-19, I will make sure that OWCP continues to upgrade and modernize our service delivery systems.

Beyond our response to COVID-19, OWCP has also made progress on several key initiatives that will significantly strengthen service delivery and claimant experience, both important to the safety net for workers. The FECA program has now partially implemented new Pharmacy Benefits Management (PBM) services and is working to fully implement by the end of the calendar year. The benefits of this new PBM service are many. OWCP will benefit from the PBM's negotiated drug prices with pharmacies, leading to lower drug costs in FECA workers' compensation claims and correspondingly agencies' chargeback bills. The PBM will also provide a dedicated mail-order service that improves convenience for claimants and will implement additional drug safety checks and controls. These additional tools are important to safeguard against opioid misuse and potentially harmful drug interactions, an area in which OWCP has made strong progress. Additionally, the new PBM will provide a call center to handle inquiries from claimants, pharmacies, and prescribers. Claimants will have more access to discuss medication related problems with nurses and treatment options with specialized physicians. At this point, I am pleased to say that we have also solicited similar PBM services for the Energy and Black Lung programs, and OWCP is currently reviewing proposals related to that solicitation. We plan to award these contracts in fiscal year 2022 and implement in fiscal year 2023. Overall, this is an initiative that I am very excited about because I believe it will greatly improve our support to OWCP claimants and simultaneously reduce costs for taxpayers.

Similarly, OWCP is now completing market research on a solicitation to combine medical bill processing services with physician network services. This change will move OWCP programs further towards industry standard bill-processing and increase the number of physicians available to treat injured and ill workers served by OWCP.

Lastly, OWCP continues to develop and implement the Employee Compensation Operations and Management Portal (ECOMP). In January 2020, the Office of Management and Budget (OMB) published a memorandum to the heads of executive departments and agencies

announcing the creation of the Protecting Employees, Enabling Reemployment (PEER) Initiative to improve federal workplace safety and health, which mandated ECOMP as the single portal for claims filed under FECA. Over the past several years, ECOMP has been significantly enhanced to provide additional functionality for stakeholders in all OWCP programs. Injured workers in the FECA, Energy, and Longshore programs have real time access to their claims, and claimant representatives in the FECA and Longshore programs, such as attorneys and union representatives, also have access to OWCP claim files, ensuring complete transparency for all parties. ECOMP also now provides near real-time communication between federal agency personnel, claimants, and FECA claims examiners, which has quickened the delivery of benefits to injured and ill federal workers and assists those workers returning to work. In the coming year, OWCP will make further modifications to ECOMP to track ARPA claims data for transparency. Additionally, OWCP hopes to make additional equity-focused enhancements to ECOMP including expanded gender-identity options for users and increased ability for users to voluntarily report demographic information. I believe that ECOMP is already an excellent tool for agencies and claimants, and I will make sure ECOMP continues to improve during this administration.

I have also been fully supportive of this administration's emphasis on diversity, equity, inclusion, and accessibility. In 2021, President Biden signed three Executive Orders related to diversity, equity, inclusion and accessibility: *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (January 20, 2021),<sup>4</sup> *Executive Order on Establishment of the White House Gender Policy Council* (March 8, 2021),<sup>5</sup> and *Executive Order on Diversity, Equity, Inclusion and Accessibility in the Federal Workforce* (June 15, 2021).<sup>6</sup> In response to these Executive Orders, I have pushed OWCP to take a closer look at equity in both our program services and our agency operations. Externally, OWCP will look to identify areas in which our programs can improve the outreach and support we provide to underserved communities. For example, both our Black Lung and Energy programs helped to formulate an Intergovernmental Navajo Outreach Task Force to better deliver benefits and services to this underserved community.

<sup>4</sup> [Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government | The White House](#)

<sup>5</sup> [Executive Order on Establishment of the White House Gender Policy Council | The White House](#)

<sup>6</sup> [Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce | The White House](#)

Alongside this focus on equity, I have also made building a diverse, model federal workforce a top priority at OWCP. Recently, OWCP has started a new process to share hiring announcements with affinity groups and other diversity and equity-focused groups to help the agency attract diverse applicant pools for open positions. Also, after completing 36 town halls with OWCP employees, we acted on the feedback received in those discussions by creating a new career mentorship program, expanding training options for OWCP employees, improving Front Office communications with agency staff, convening a working group to make OWCP a safe and welcoming workplace, launching a Director's Awards program to recognize employee excellence, and placing more robust emphasis on the Federal Employee Viewpoint Survey (FEVS). Thanks to OWCP's investments and robust performance management systems, employees in all our programs shifted seamlessly to a telework posture in response to COVID-19, while maintaining a high standard of service delivery to injured and ill workers. All these efforts to build a diverse, model federal workforce will improve OWCP's ability to provide the best service possible to the workers we serve in each of our programs.

Finally, I am very excited to highlight two very important initiatives that I think will make a big impact on the ability of OWCP to support injured and ill workers. For the past few months, OWCP has been looking at the unique challenges faced by federal firefighters in establishing causation during the workers' compensation claims development process for occupational disease claims. After several meetings with key stakeholders and after consulting with the National Institute for Occupational Safety and Health (NIOSH), OWCP hopes to put in place an improved process for handling the FECA claims of federal firefighters. After implementing any new process aimed to better support federal firefighters in OWCP programs, I would be committed to maintaining an open dialogue on how we can continue to improve and further refine the process. In addition, OWCP recently began implementing a similar special claims process for a subset of federal workers with unique occupational circumstances; in collaboration with the Department of Defense, the State Department, and the White House National Security Council (NSC), we developed, and will be issuing, guidance on processing claims for Anomalous Health Incidents (AHIs) under FECA. AHIs relate to federal civilian employees, predominantly overseas, who have reported a series of sudden and troubling sensory events such as sounds, pressure, or heat concurrently or immediately preceding the sudden onset of symptoms such as headaches, pain, nausea, or disequilibrium. OWCP recognizes the unique

occupational circumstances of our heroic federal firefighters and other federal occupations, and I hope OWCP can improve our ability to support these communities.

Also, over the past several months, OWCP has been exploring the possibility of recommencing publication of an annual report on state workers' compensation systems. From 1980 to 2004, OWCP published an annual report on changes in workers' compensation laws in the previous calendar year. These reports compared the workers' compensation systems in the states against the nineteen "essential recommendations" identified by the 1972 Report of the National Commission on Workmen's Compensation Laws.<sup>7</sup> This report included both a summary of legislative, regulatory, and other executive changes in the states, as well as tables summarizing the total number of essential recommendations met by each state. Most recently, the Department of Labor produced a special report entitled "Does the Workers' Compensation System Fulfill Its Obligation to Injured Workers?" (2016),<sup>8</sup> which recommended more robust oversight and analysis of state workers' compensation systems by the Department of Labor. It is my belief that the Office of Workers' Compensation Programs could play a key role in producing a publicly available report on the degree to which state workers' compensation systems across the country are meeting, exceeding, or falling short of the recommendations of the bipartisan 1972 Report of the National Commission.

#### **Black Lung Self-Insurance**

In addition to the policies and priorities I have outlined above, I would like to discuss an issue of primary concern to this committee and to me, as Director of OWCP. Since I started as Director of OWCP in January 2021, the future of the Black Lung self-insurance program has been a high priority of both OWCP and the Department of Labor.

In its 2020 report titled *GAO Report - Black Lung Benefits: Improved Oversight of Coal Mine Operator Insurance Is Needed (GAO-20-21)*,<sup>9</sup> GAO made two key recommendations concerning OWCP's oversight of the Black Lung Self-Insurance program—first, that OWCP should develop and implement procedures for self-insurance renewals and second, that OWCP should develop an appeals process for self-insured coal mine operators to utilize when they

<sup>7</sup> [Report of the National Commission on State Workmen's Compensation Laws \(ssa.gov\)](https://www.ssa.gov/policy/docs/compensation/laws.html)

<sup>8</sup> [Does The Workers' Compensation System Fulfill Its Obligations To Injured Workers? \(dol.gov\)](https://www.dol.gov/eis/whd/compensation/does-the-workers-compensation-system-fulfill-its-obligations-to-injured-workers/)

<sup>9</sup> [GAO-20-21, Black Lung Benefits Program Improved Oversight of Coal Mine Operator Insurance Is Needed](https://www.gao.gov/products/gao-20-21)



disagree with the determinations of the program concerning authorization or collateralization required in order to self-insure. Over the past ten months, OWCP has performed a comprehensive review of the existing self-insurance structure and the impact of changes made to the self-insurance process by the previous administration. That detailed review is now complete. Self-Insurance has been included on the DOL regulatory agenda and we will be moving forward with an NPRM in the coming months. Seven coal mine operators have appealed self-insurance authorization decisions made by OWCP during the previous administration. We are currently in the process of reviewing these appeals.

We remain committed to doing everything we can to protect the Trust Fund against further liabilities from under-secured self-insured operators, through a fair and efficient process.

#### Conclusion

In the past 10 months, OWCP has handled emerging issues such as COVID-19 and the Capitol attack, while still charting a path toward resolution of longstanding concerns, such as those surrounding self-insurance and the Black Lung Disability Trust Fund. We have also taken steps to improve the employment experience for our valuable workforce by increasing telework, adding programs to recognize exceptional performance and taking steps to expand, recognize, and value the diversity of our workforce and our stakeholders. I am honored to be able to lead OWCP as we tackle these challenges and thank you again for the opportunity to testify today and discuss how the Office of Workers' Compensation Programs is working to strengthen the safety net for injured and ill workers. I look forward to your questions.

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Chairwoman ADAMS. And thank you, Mr. Godfrey.  
We will now hear from Mr. Costa.  
Mr. Costa, you are recognized for five minutes.

#### **STATEMENT OF MR. THOMAS M. COSTA, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. COSTA. Thank you, Chairwoman Adams, Ranking Member Keller, Chairman Scott, Ranking Member Foxx, and Members of the Subcommittee.

I am pleased to be here today to discuss, one, the serious financial challenges facing the Black Lung Disability Trust Fund; two, GAO's prior recommendations concerning the Department of Labor's limited oversight of coal mine operator self-insurance; and three, updated actions DOL has taken to improve oversight of self-insurance and implement our recommendations.

My testimony is based primarily on prior GAO reports and updated information provided by DOL in November.

The Black Lung Benefits Program provides assistance to coal miners who are disabled due to black lung disease. Over 24,000 beneficiaries received benefits in Fiscal Year 2021.

Black lung benefits are generally paid by liable coal mine operators. Operators may purchase commercial insurance or self-insure to cover benefits.

The Federal Government's Black Lung Disability Trust Fund pays when no responsible mine operator can be identified or the liable mine operator doesn't pay, such as through a bankruptcy.

This brings me to my three discussion points.

First, the trust fund faces serious financial challenges with expenditures consistently exceeding revenue, especially its debt and interest payments. Consequently, the trust fund has borrowed from the Treasury almost every year since 1979.

In Fiscal Year 2021, the trust fund had to borrow \$2.3 billion to cover its expenses, and based on our previous projections, the trust fund's debt could exceed \$15 billion by 2050.

The fund's primary source of revenue is a coal tax that has changed little since 1986 and is set to decline next year.

Compounding these challenges, coal production has declined, reducing revenue, and additional coal operator bankruptcies have further strained the trust fund.

We previously reported that bankruptcies between 2014 and 2016 of self-insured operators led to the transfer of \$865 million in benefit responsibility to the trust fund. Since then, at least five more self-insured operators have filed for bankruptcy.

Making things worse, there has been a resurgence in the number of miners contracting the most severe form of black lung, likely leading to increased future liabilities.

On to my second point. In response to DOL's limited oversight of coal mine operator insurance, we recommended that DOL develop procedures for self-insurance renewal that clarify how long an operator is authorized to self-insure, as well as when self-insurance authority would not be renewed, and that they develop procedures for self-insured operator appeals.

And now for my third point. When we testified in February 2020, we noted DOL had begun implementing a new process for self-insurance that if implemented effectively might have helped address past deficiencies in our recommendations.

That didn't happen. Instead, DOL suspended and then rescinded its efforts. In February 2020, DOL sent letters to 14 self-insured operators authorizing most to self-insure for 1 year if they provided about \$251 million in total collateral.

Seven complied. Five others appealed and did not provide the collateral. As a result, DOL didn't secure about \$186 million in collateral from those operators.

DOL told the remaining two operators, both of whom appealed, that they no longer qualified to self-insure and must obtain commercial insurance.

In addition to the 14 operators DOL contacted, there are three additional self-insured operators. DOL didn't reassess the collateral secured by one, because DOL had done so in 2019. The other two, however, didn't provide actuarial estimates that DOL could use to assess the proper amount of collateral.

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

In December 2020, after a 5-year effort, DOL issued a preliminary bulletin with updated guidelines for coal operator self-insurance. However, in February, DOL rescinded that bulletin pending review.

As of November, DOL had not taken action on the pending appeals or reauthorized operators to continue self-insuring after their approvals to do so had expired.

However, as Director Godfrey just noted, DOL noted they recently completed their review of the guidelines and expect to go through a rulemaking process in the coming months. It is unclear how long this process might take.

In summary, the future financial situation facing the trust fund has worsened over the last 2 years, during which DOL did little to forestall this decline.

While DOL collected some additional collateral from several self-insured operators, half the operators haven't secured the support they will owe their disabled miners.

Given the dire situation facing the trust fund, we reiterate the need for DOL to take action and address our previous recommendations.

This completes my prepared statement. I look forward to your questions.

[The prepared statement of Mr. Costa follows:]

PREPARED STATEMENT OF THOMAS M. COSTA



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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 2:00, p.m. ET  
Thursday, December 2, 2021

## BLACK LUNG BENEFITS PROGRAM

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

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



## GAO@100 Highlights

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

### Why GAO Did This Study

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

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

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

### What GAO Recommends

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

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

December 2, 2021

## BLACK LUNG BENEFITS PROGRAM

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

#### What GAO Found

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

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

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

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

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

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

United States Government Accountability Office

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

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

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

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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. 21, 2020) and GAO, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, GAO-18-351 (Washington, D.C.: May 30, 2018).

<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.

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

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particularly among Appalachian coal miners, according to National Institute for Occupational Safety and Health (NIOSH) officials.<sup>4</sup>

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

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

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

<sup>5</sup>GAO-20-21 and GAO-18-351.

## The Black Lung Disability Trust Fund Faces Financial Challenges

In May 2018, we reported that the Trust Fund faces financial challenges.<sup>6</sup> The Trust Fund's expenditures have consistently exceeded revenue and it has essentially borrowed with interest from the Department of the Treasury's general fund almost every year since 1979, which was its first complete fiscal year.<sup>7</sup> In fiscal year 2021, the Trust Fund had to borrow about \$2.3 billion to cover its expenditures, which included debt and interest repayments, according to the Department of Labor.<sup>8</sup> In May 2018, we reported that Trust Fund debt could exceed \$15 billion by 2050.<sup>9</sup>

Trust Fund revenue is primarily obtained through a tax on coal produced and sold domestically, which we refer to in this statement as the coal tax.<sup>10</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 through 2021, the rate of the coal tax increased to pre-2019 levels. Beginning in 2022, the coal tax is scheduled to decrease again to 2019 levels. With less revenue from the coal tax, the Trust Fund will likely need to borrow more from Treasury's general fund.

To pay benefits to coal miners disabled by black lung, federal law generally requires coal mine operators to secure their black lung benefit liability. Operators may purchase coverage from commercial insurance companies, or may self-insure. A self-insured coal mine operator assumes the financial responsibility for providing black lung benefits to its eligible employees by paying claims as they are incurred. Operators are

<sup>6</sup>GAO-18-351.

<sup>7</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.

<sup>8</sup>According to DOL's fiscal year 2021 agency financial report, the net position of the Trust Fund continued to decline in fiscal year 2021.

<sup>9</sup>GAO-18-351.

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



permitted to self-insure if they meet certain DOL conditions. For instance, operators applying to self-insure must secure collateral in the form of an indemnity bond, deposit or trust, or letter of credit in an amount deemed necessary and sufficient by DOL to secure their liability.<sup>11</sup>

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

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

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

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

<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 the Department of Labor.

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

<sup>11</sup>A letter of credit may only be used in conjunction with another acceptable form of collateral.

<sup>12</sup>GAO-20-21.

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

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

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

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

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

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<sup>13</sup>GAO-20-21.

<sup>14</sup>GAO-20-21.

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

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

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

| Coal mine operator                                                  | Amount of collateral DOL requested in February 2020, if applicable                                   | Amount of collateral secured by operator as of November 2021 | Most recent actuarial estimate of black lung benefit liabilities |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------|
| <i>Coal mine operators that provided DOL's requested collateral</i> |                                                                                                      |                                                              |                                                                  |
| Coal mine operator #1                                               | \$16,754,500                                                                                         | \$17,197,698                                                 | \$23,935,000                                                     |
| Coal mine operator #2                                               | \$3,296,856                                                                                          | \$3,301,390                                                  | \$3,296,856                                                      |
| Coal mine operator #3                                               | \$1,364,354                                                                                          | \$1,364,354                                                  | \$1,364,354                                                      |
| Coal mine operator #4                                               | \$1,132,719                                                                                          | \$1,132,719                                                  | \$1,132,611                                                      |
| Coal mine operator #5                                               | \$1,045,502                                                                                          | \$1,045,502                                                  | \$1,230,002                                                      |
| Coal mine operator #6                                               | \$634,100                                                                                            | \$634,100                                                    | \$746,000                                                        |
| Coal mine operator #7                                               | \$1,610,511 (later corrected by DOL to \$557,793)                                                    | \$557,793                                                    | \$656,227                                                        |
| <i>Coal mine operators that appealed</i>                            |                                                                                                      |                                                              |                                                                  |
| Coal mine operator #8                                               | \$78,062,566                                                                                         | \$6,900,000                                                  | \$111,517,952                                                    |
| Coal mine operator #9                                               | \$65,678,185                                                                                         | \$2,500,000                                                  | \$93,825,978                                                     |
| Coal mine operator #10                                              | \$40,411,000                                                                                         | \$8,400,000                                                  | \$57,730,000                                                     |
| Coal mine operator #11                                              | \$39,761,129                                                                                         | \$21,000,000                                                 | \$58,801,613                                                     |
| Coal mine operator #12                                              | \$2,079,057                                                                                          | \$1,000,000                                                  | \$2,079,057                                                      |
| Coal mine operator #13                                              | Not applicable. No longer met DOL requirements to self-insure and told to obtain commercial coverage | \$24,797,512                                                 | \$21,969,863                                                     |

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

| Coal mine operator     | Amount of collateral DOL requested in February 2020, if applicable                                   | Amount of collateral secured by operator as of November 2021 | Most recent actuarial estimate of black lung benefit liabilities |
|------------------------|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------|
| Coal mine operator #14 | Not applicable. No longer met DOL requirements to self-insure and told to obtain commercial coverage | \$400,000                                                    | \$20,222                                                         |

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

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

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

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

In December 2020, DOL issued a preliminary bulletin and sought public comment on updated guidelines for coal operator self-insurance.<sup>17</sup> This bulletin was the culmination of DOL's approximately 5-year effort to reform the self-insurance program.<sup>18</sup> The guidelines included actions that would have addressed our recommendations. For instance, DOL specified that it would authorize operators to self-insure for a period of

<sup>16</sup>As of November 2021, a total of 17 coal operators are self-insured according to DOL officials.

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

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

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one year (after which an operator would be required to submit a self-insurance renewal application), and it set a goal to resolve coal operator appeals within 90 days after receiving supporting documents or meeting with the operator to discuss their concerns. Additionally, DOL stated that it would set collateral requirements based on an operator's actuarial estimated benefit liabilities and risk of insolvency, and reassess the collateral requirements quarterly based on review of an operator's financial statements.

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

As of November 2021, DOL officials said the administration's review is complete, but could not describe any anticipated changes to coal operator self-insurance going forward, other than that they anticipate seeking public comment on updated self-insurance guidelines in the coming months. It is unclear how long this process may take. Given that the Trust Fund had to borrow about \$2.3 billion from the Treasury in fiscal year 2021, and that the coal tax—the Trust Fund's primary revenue source—may decrease beginning in 2022, we reiterate the need for DOL to address our previous recommendations.

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

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

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



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Chairwoman ADAMS. Thank you, sir. Thank you very much. Thank you to both of our witnesses.

Under Rule 9(a), we will now question the witnesses of this panel under the five-minute rule. I am going to recognize myself as Chair for five minutes.

Nearly 2 years ago, the GAO testified before the Subcommittee that nearly \$1 billion in liabilities were transferred to the Black Lung Disability Trust Fund by bankrupt coal operators that had been allowed by DOL to self-insure with only a minuscule amount of collateral. It happened because DOL failed to hold these operators accountable.



Coinciding with the hearing in February 2020, DOL wrote more than a dozen operators advising that they must post nearly \$250 million in collateral in order to continue self-insuring.

Seven have appealed, but almost 2 years later your agency has not ruled on those appeals. These operators still have not posted that increased collateral, leaving taxpayers at risk.

So Mr. Godfrey, how long does the DOL expect the rulemaking process regarding self-insurance to take?

Mr. GODFREY. Thank you for that question.

Where we are at in terms of dealing with the self-insurance review is that we are at a place where we have studied this issue, we have worked through the GAO studies, not only from 2020 but also the 2018 GAO study that dealt with the concerns to the levels of debt within the Black Lung Disability Trust Fund.

And what we have done is found that there are ways that we can work on the minimum improvements that were made during the last administration, which did in some respects address those changes that were recommended through the GAO.

I think that we can do better, I think we can do it more efficiently, and we can do it through a regulation. A regulation will be one that will allow for public comment. And as we go forward, we will still be working on a dual track with the prior work of the prior administration.

Chairwoman ADAMS. OK. So do you have a timeframe? Do you have a schedule? That was really my question. So you didn't sound like you had one of those, that you don't have a timeframe of the things that you needed to do.

Let me move on.

Mr. Godfrey, what is the magnitude of cost shifted into Federal safety net programs because of insufficient State workers' compensation programs?

Mr. GODFREY. Sure. And if I could first clarify, the notice of proposed rulemaking is on our regulatory agenda, we have begun work on that process, and it is simply the time it takes to promulgate that rule, receive comments, and then go into final rule.

In terms of the second question that you have asked, it is difficult to quantify the amount of costs that have been shifted to various programs from reductions after reductions in State-level workers' compensation systems. That is difficult for us within OWCP to fully understand.

What we do see is there are areas, like the Black Lung program within OWCP, that can be impacted. We also see the VA, Medicare, Social Security as also being impacted.

I think one of the things that we can see is when we look at the 19 essential functions from the 1972 commission, if we can go back to doing an annual State report, as they did from 1980 to 2004, I think we can start to actualize what that transfer is.

Chairwoman ADAMS. OK. Let me get one more question in here.

So should the Federal Government set minimum standards so that the States will stop shifting costs onto the taxpayer?

Mr. GODFREY. The Department of Labor has not taken a position on whether or not there should be minimum standards.

Chairwoman ADAMS. OK.

Mr. GODFREY. I think what we can look at, though, is the 19 essential recommendations from the 1972 commission.

Chairwoman ADAMS. OK. Quickly, Mr. Costa, does this approach leave taxpayers at risk in the event of bankruptcy?

Mr. COSTA. Yes, Madam Chair, it does. As long as the Department is not securing the collateral that it has requested and it is not managing the appeals process, if another self-insured coal operator goes bankrupt, there is a good likelihood that some of that liability will be transferred to the Black Lung Disability Trust Fund.

Chairwoman ADAMS. OK. I have only got like 15 seconds.

So how many companies right now are still self-insuring without current authorization by DOL? Do you know?

Mr. COSTA. Sixteen.

Chairwoman ADAMS. OK. All right. Great.

Well, I am going to adhere to what we are asking everybody to do, and I am going to yield back my time. And I am going to now recognize the Ranking Member for five minutes for his questions.

Mr. KELLER. Thank you, Madam Chair.

Mr. Costa, in February 2020, Julia Hearthway, who was at that time the Director of the Office of Workers' Compensation Programs, testified before this Committee on the actions that OWCP was already taking to address shortcomings in the Black Lung Benefits Program identified by the GAO consistent with your February 2020 recommendations.

OWCP subsequently published a bulletin on December 7, 2020, outlining new self-insurance process guidelines.

In your opinion, did the Trump administration take meaningful action to implement GAO's recommendations? And were these steps consistent with those recommendations?

Mr. COSTA. Thank you, Ranking Member Keller.

Yes, it appeared as though the bulletin guidelines were going to be addressing our recommendations. It remained to be seen, if they had been implemented, whether or not they would have fully addressed those recommendations. And that is one step that needs to occur in order to help ensure the solvency of the trust fund.

Mr. KELLER. So you say if they would have been implemented. So they weren't implemented by the Trump administration, or was that because of actions on the Biden administration when they withdrew from the Trump administration's bulletin?

Mr. COSTA. So the guidelines were issued in December, at the very end of the Trump administration, and they were rescinded by the Biden administration in February of this year.

Mr. KELLER. Was there any rationale from the Biden administration why they rescinded those?

Mr. COSTA. I would have to defer to Director Godfrey for that, sir.

Mr. KELLER. Director Godfrey, are you aware of the rationale behind?

Mr. GODFREY. Yes, I am. The rationale was, in February 2020, when Director Hearthway testified before this Subcommittee, it was noted that it would be within 90 days that the appeals would be handled. That did not occur.

When the bulletin was issued in either December or January 2021, that had been over 11 months since it was said that it would

be 90 days to resolve that matter. It was in that last few weeks of the administration that it was finally published as a bulletin.

I felt that as I came in, and because of the changes in the executive order relating to the use of bulletins, that it would be best to take under consideration what the prior administration has done but not be bound by it in an ongoing manner, to see if we could find efficiencies and ways to do it better.

Obviously, if it took 11 months to perform those appeals under the last administration, we need to find efficiencies and ways to do it much, much quicker.

Mr. KELLER. I can understand the finding efficiencies and ways to do it much more quickly, but delaying these things that were recommended be done is certainly not helping the people that are going to benefit from making sure that their system is solvent. And I think it is, quite frankly, irresponsible to do that without a plan.

So I guess I would just look at the rest of the things. And, Mr. Costa, what actions, if any, has the Biden administration taken to implement GAO's recommendations and to increase solvency of the Black Lung Trust Fund?

Mr. COSTA. Sir, as I testified, the current administration has been studying what the previous administration recommended. But as far as I know, there have not been any concrete steps taken thus far.

Director Godfrey just testified that they finished their review and are going to be moving forward in the coming months with some new measures. But I am not sure how those measures will impact the trust fund at this point.

Mr. KELLER. Well, we had recommendations that the Trump administration had said would help —your recommendations that the Trump administration had implemented and would have made the fund more solvent, correct, under your estimation?

Mr. COSTA. Yes, sir. We believe that if recommendations had been implemented that it would have helped the trust fund. It is only one of the major things that needs to be done to address the trust fund's solvency issues, however.

Mr. KELLER. Yes. But understanding that would have been —that was done in February, which was almost 10 months ago.

Mr. COSTA. Yes, sir.

Mr. KELLER. Meaning that we lost all that time.

In your opinion, losing that time where we could have worked toward solvency, does that put the trust fund more at risk than it would have been?

Mr. COSTA. Yes.

Mr. KELLER. OK.

Mr. Godfrey, GAO testified today that the changes made by the Trump administration to reform the Black Lung program and overhaul DOL's oversight of self-insured coal mine operations were a positive step toward implementing the GAO's 2020 recommendations and improving the solvency of Black Lung —we just heard about that —and the Disability Trust Fund. Of course, I know we have talked about it. We withdrew from those.

Can you tell us what is going to happen? We have put these on hold for whatever reason and are not getting that, and we don't

really —just because it took that many months doesn't mean we shouldn't be getting the benefit from it.

But what do you think —or what reforms do you think are going to happen that are going to make up the difference of this? Are you going to do anything differently? Or what did you find?

Mr. GODFREY. Thank you for that question.

I would note that although there were letters that went out in February 2020, for the remainder of the administration there was no action taken.

Chairwoman ADAMS. The gentleman's time is up.

Mr. KELLER. I would just like to say, we can try and place blame wherever we want. The point was, there was action taken, and this administration, by not taking advantage of being able to make this fund more solvent, can try and make all the excuses they want, but they have been in charge now for nearly 10 months.

Chairwoman ADAMS. The gentleman's time is up.

Mr. KELLER. And they need to do something if they want to be responsible to fixing this for the people that rely on these benefits.

So I would suggest that this Committee hold oversight that we should hold and make sure that we protect the people.

Chairwoman ADAMS. Mr. Keller, your time is up, sir. We are way over time on this. So we have to move on. Thank you.

We are going to hear now from the gentleman from Virginia, the Chair of the Education and Labor Committee.

Mr. Scott, you are recognized for five minutes, sir.

Mr. SCOTT. Thank you. Thank you, Madam Chair. And I apologize for being in a phone booth. We are back and forth from votes, and I have a meeting coming up fairly soon.

Mr. Godfrey, in your written testimony you mention challenges with claims for firefighters. Does Mr. Carbajal's bill address those challenges?

Mr. GODFREY. Yes. Thank you for that question.

That piece of legislation is a positive piece of legislation that does address issues related to Federal firefighters, especially with those very difficult-to-prove long-term occupational disease claims due to exposures.

Prior to that legislation moving forward, I have already taken steps, however, to work directly with NIOSH to make sure that we can work to get those types of claims handled in a very expeditious and a very fair and consistent manner. We have reached out to the firefighter unions. We have done significant discussions with NIOSH.

And I believe that with the special claims handling unit that we are going to put in place, that we will have a system that will help those individuals that have Federal firefighter claims that are based on occupational exposures have a much better outcome in terms of those cases, because we are going to be assisting with the development of that medical evidence and the factual evidence, but also working with NIOSH to make sure that we are continuing to identify each and every type of illness that would fall within this type of definition.

Mr. SCOTT. Thank you.

And we had the presumption for Federal and postal workers. Out of fairness, should longshoremen be entitled to the same kind of presumption that we extended to those other workers?

Mr. GODFREY. I am unaware that the administration has taken a position on that. I do know that we did provide technical assistance during the Rescue Plan Act on that specific provision.

Mr. SCOTT. Well, if you could get back to us on extending this same presumption to longshore and harbor workers, we would appreciate it.

Are you familiar with the disgraceful fraud that was going on in the FECA program with compounded drugs?

Mr. GODFREY. Yes, sir.

Mr. SCOTT. There is massive fraud going on. Have you fixed that?

Mr. GODFREY. It is fixed. At this time, we do not have expenditures to any specific amount for compounded drugs, and with movement on to the PBM we will have even additional safeguards to make sure that compounded drugs are not compensated through the system.

Mr. SCOTT. Did anybody go to jail behind that?

Mr. GODFREY. I am unaware of that fact. We can certainly get back to you with facts regarding prosecutions.

Mr. SCOTT. OK. Thank you.

Do you support the long-term extension of the black lung excise tax of \$1.10 per ton underground and 55 cents per ton surface coal?

Mr. GODFREY. DOL does believe that it is critical for that to be maintained.

Mr. SCOTT. Thank you.

Are you aware of the cost of the extended presumption under the FECA program, what CBO had estimated, CBO scored that provision at about \$103 million? Do you know what it has cost so far?

Mr. GODFREY. May I ask, are you referring to the COVID-related claims under FECA?

Mr. SCOTT. Yes.

Mr. GODFREY. OK. The numbers for the FECA COVID claims at the current time are approximately \$24.3 million out of the 22,000 accepted claims.

Mr. SCOTT. And CBO estimated 103. Do you think you have clearly sufficient funds to pay those—continue paying those claims, including so-called long COVID claims that may extend many years?

Mr. GODFREY. At this time, I do believe we have sufficient funding. We are working very carefully on the issue of long COVID and working within the agency here at DOL to make sure that we are identifying long COVID where it exists and how we can address it together.

Mr. SCOTT. Thank you.

Madam Chair, thank you very much, and I yield back.

Chairwoman ADAMS. Thank you, Chairman Scott.

I want to recognize now the gentlelady from North Carolina, our Ranking Member of the Ed and Labor Committee.

Ms. Foxx, you are recognized.

Ms. FOXX. Thank you, Madam Chair.

I need to register my strong protest on how this hearing was begun. It is deeply inappropriate that this hearing started during votes while only two Members were present and no Members of the minority.

We had essentially no Members present for testimony all because most Members of the Committee were doing their jobs and voting on the floor.

We need to return to in-person Committee proceedings.

Mr. Godfrey, in your testimony you State that OWCP is exploring the possibility of publishing an annual report on State workers' compensation programs and increasing oversight of State workers' compensation programs.

The Department of Labor does not have the authority to monitor State workers' compensation programs, which were established more than a hundred years ago under State constitutions and legislation independent from Federal programs.

This unilateral move by OWCP would be a significant departure from longstanding policy. Under what authority do you plan to do this? What is the purpose of this Federal report? And does the Department believe it can better manage State programs which are currently managed by an array of regulatory agencies at the State level and that OWCP programs are currently themselves in need of reform and suffering from mismanagement?

And I need very quick, pertinent, cogent answers.

Mr. GODFREY. Thank you. And if I miss any of the responses, please followup to let me know which ones.

First of all, as a former State work comp commissioner, I understand the independence of State work comp systems. In terms of the work that is going to be done, those reports had been compiled from 1980 through 2004. We would use the same authorization.

The information within those reports—

Ms. FOXX. And we would like you to give us that authorization in writing after this hearing.

Mr. GODFREY. I will do that. Thank you.

In terms of the actual documentation within the reports, it would be limited to what was done previously, which is looking at the 19 essential recommendations from the bipartisan 1972 National Commission report, as well as looking at annual changes in State law.

I know that many of those pieces of documentation already exist from other areas but simply are under for-pay type of reports. So we would like to do that as we have done in the past.

Ms. FOXX. This administration is looking backward again.

Mr. Godfrey, please describe the primary source of funding for the Black Lung Disability Trust Fund, how much of an impact coal mine bankruptcies have had on the trust fund solvency compared to other challenges, such as interest on longstanding debt. And last, the impact of the Obama administration's failed energy policies and the Biden administration's similarly flawed approach on energy, on coal company bankruptcies, and on OWCP's resulting obligations.

Mr. GODFREY. Sure.

In terms of the issues relating to the trust fund debt, as was noted by Ranking Member Keller, many of those have been longstanding from the very beginning of the Disability Trust Fund.

At the current time, the payment on interest into the trust fund is significant and is problematic in terms of any ability to reduce the trust fund debt.

I believe in the last fiscal year, \$214 million was required to be borrowed simply to cover the debt, which added to the \$6 billion of current debt.

In terms of the ability to raise revenues that would be necessary, obviously the sole mechanism that we have at this time is—so that we can make sure that we can protect the interest of the miners—is either further borrowing from Treasury or the use of the excise tax.

Ms. FOXX. Mr. Godfrey, the 2021 National Academy of Social Insurance report on Workers' Compensation Benefits, Costs, and Coverage estimates that for State workers' compensation and longshore workers' compensation paid by private insurers, the total cost of benefits are made up about 50 percent disability benefits and 50 percent medical benefits.

Currently, the FECA program's cost of \$3 billion per year is made up of 67 percent disability benefits and 33 percent medical benefits.

Why are disability benefits a much larger percentage of benefits under FECA? As Congress continues to examine the FECA program, what can we learn from State and private insurance on strategies to reintegrate individuals into the workplace?

Mr. GODFREY. Thanks. That is a great question.

One of the major differences that I have seen from being in the State system in Iowa versus the Federal system here at OWCP is the ability to settle claims.

Because there is no settlement provision within the FECA program, claims are on the periodic rolls until we can establish that individual can go back to work or does have a different type of retained earning capacity. That is a big challenge for the FECA program.

Ms. FOXX. Thank you very much.

And thank you, Madam Chair, for yielding time.

Chairwoman ADAMS. Thank you. Thank you, Representative Foxx.

I want to recognize now Mr. Takano.

Mr. Takano, you are recognized for five minutes.

Mr. TAKANO. Thank you, Madam Chair.

Mr. Godfrey, your agency's appeal process for self-insurance appears to take so long that a company can largely escape your requirements.

For example, DOL asked Warrior Met Coal, which has an estimated \$85 million in black lung liabilities, to increase its collateral from close to \$20 million to \$39 million. But Warrior Met appealed, and now, almost 2 years later, it appears the company still doesn't have to comply.

My first question is, would you agree that a company that has posted collateral for less than 25 percent of its liabilities presents a risk to taxpayers if it is faced with a downturn in the market?

Mr. GODFREY. Yes. We agree that the trust fund and taxpayers need to be protected against the consequences of coal mine bankruptcies. That is where we are going to move forward with the ap-

peals, which are currently pending, including the Warrior Met appeal, as well as the other coal companies that were left by the last administration.

And then we are also going to be proposing our new regulation, which I think will make it a much more efficient, speedy, and accurate process, to make sure that we are getting the correct levels of security.

Mr. TAKANO. Well, thank you, Mr. Godfrey. I am very pleased to hear that.

Warrior Met appears to specialize in metallurgical coal that is largely mined and exported. If I understand it, that coal is not subject to the tax that funds the Black Lung Disability Trust Fund. Is that correct?

Mr. GODFREY. That is correct.

Mr. TAKANO. So if this company shifted liabilities onto the trust fund, for the most part, it would not have contributed to that trust fund?

Mr. GODFREY. At least not through the excise tax, that is correct.

Mr. TAKANO. Well, I would like to ask, Madam Chair, unanimous consent to enter into the record relevant excerpts of the 10K filings for 2017 through 2020 of Warrior Met Coal.

Chairwoman ADAMS. So ordered.

Mr. TAKANO. Now, based on these documents, Warrior Met Coal has paid out a whopping \$1.5 billion in dividends and stock buybacks since 2017 during a period of only \$1.4 billion in total book net income and only \$312 million in increased company value. It appears that the private equity funds controlling this company are stripping its assets.

When will this company actually be required to post the collateral your agency believes it should?

Mr. GODFREY. Sure. We are moving in the process of handling those appeals, and I would say that within a 90-day time period would be our aspiration. That was the aspiration of the prior administration when they testified. I do believe a 90-day timeframe is likely for holding them accountable.

Mr. TAKANO. Well, I certainly hope so. And I know that the Chairwoman and this Committee will be very interested in making sure that your assessment is correct.

What steps should be taken so that Wall Street firms are not able to game the system by socializing the costs of black lung benefits while privatizing their gains in the events of a bankruptcy?

Mr. GODFREY. Sure. I think the best thing that OWCP can do is to move forward with the GAO recommendations and expand upon them.

We are committed to strengthening the safety net for workers by making sure that those self-insured coal companies can meet their obligations under the Black Lung Benefits Act. And our role in that is to make sure that they have adequate liabilities. And we are taking the steps necessary by handling those current appeals which are pending and then moving forward with the regulations so that we can always meet those goals.

Mr. TAKANO. Well, I certainly appreciate your testimony, Mr. Godfrey. And I hope very much that we will see Wall Street firms being prevented from gaming the system. This is really atrocious.



We are talking about miners suffering from black lung, and I am just appalled at the gamesmanship that has been allowed to occur.

I yield back, Madam Chair.

Chairwoman ADAMS. Thank you. Thank you, Mr. Takano.

I am going to recognize now Representative Miller-MEEKS.

You are recognized for five minutes.

Mrs. MILLER-MEEKS. Thank you, Chairwoman and Ranking Members as well, and thank you to our panelists.

And, Mr. Godfrey, I thank you as a fellow Iowan. Thank you very much. I am not a Bulldog, I am a Hawkeye, but nonetheless we thank you for your service.

And before I begin my questions, I would just like to respond to some comments made by one of my colleagues that implied that the Office of Workers' Compensation should more closely monitor State workers' compensation systems. And I associate myself with comments made by Ranking Member Foxx.

I think it is important to point out that State workers' compensation systems are already effectively monitored through State oversight, insurance regulation, and research specific to each State. Adding another layer of monitoring is not necessary and could result in unintended consequences for insurance policyholders.

State systems are highly effective at addressing the localized concerns of employees and employers, and we should continue to ensure that States, not bureaucrats in Washington, can regulate their systems.

And with that, Mr. Godfrey, this November the United States reached a grim milestone by surpassing 100,000 drug overdose deaths in a 12-month period for the first time in our history. The pandemic has only exacerbated opioid and drug misuse. Meanwhile, the Department of Labor leadership recently reallocated resources from its opioid management to COVID-19 claims adjudication.

Do you believe it was an appropriate time to raid FECA's opioid management fund?

Mr. GODFREY. First of all, answering your first comments, I am a Bulldog, but I am a Hawkeye fan. So it is good to talk to you.

But in terms of the transition that was made there during the initial timeframe of COVID, I think the reason that that is allowable is because the FECA program and the prior administration as well had done a great job in terms of reducing the dependency on opioids. We had seen the levels of FECA claimants that had been taking opioids for greater than a year go from 9,000 down to 1,500.

And as we move on to the PBM, the pharmacy benefits manager, we have very strict guidelines that are going to be put in place which will make it even more difficult and more stringent to control opioids, leaving them to 7-day prescriptions, after which the physicians will be required to present significant evidence through pharmacy management and physicians and the FECA program to get further opioid prescriptions.

So I do think that the program has done a great job.

Mrs. MILLER-MEEKS. And I think that one of the costs of the pandemic and how we have responded to the pandemic —and I addressed this with Dr. Walensky and Dr. Fauci on the Subcommittee on the Coronavirus task force —is the number of excess deaths.

And we now know that the number of excess deaths from how we handled COVID-19, with lockdowns, isolation, banning social gatherings, that that has led to excess deaths, which are now in excess of what has happened from COVID-19 if, in fact, all deaths were COVID-19 and not somebody hospitalized with COVID-19.

And, in fact, the San Francisco Chronicle had published earlier this year, and then, in fact, has followed up with data that the deaths from overdose in the 18-to 45-year age group, in contrast to those deaths from COVID which are in the elderly age group, so these are 18-to 45-year-olds, are twice what they were from COVID.

So I think it is extremely important that we recognize that in trying to treat a pandemic, that we are also creating harm to other individuals and individuals in a younger age group.

One of the other concerns I had was that earlier this year in Ed and Labor we had a markup on COVID-19 funds with a presumption of COVID-19 in the workplace for longshoremen. I will readily admit that we do not have any ports in Iowa, and I am not exactly sure how longshoremen work. But in my mind, longshoremen are not in close contact with other individuals, such as they are in one of our other facilities, our manufacturing facilities.

And we recently addressed that individuals that are more isolated in their workplace, i.e., truck drivers, don't have the same degree of risk to other individuals.

So can you tell me, what is the average work hour of a longshoreman?

Mr. GODFREY. Congresswoman, I cannot do that.

What I cannot, though, is I do share your understanding that —my first job out of law school was representing IBP. I have driven through Ottumwa many, many times. I know the close proximity they work. I know the hot, steamy environment in which they work. I know that there are many occupations which, obviously, have considerable exposures that could occur.

Mrs. MILLER-MEEKS. So my concern is—

Mr. GODFREY. But I don't know the work hours.

Mrs. MILLER-MEEKS. I do apologize for interrupting you. I am so sorry.

But my point is that when we make a presumption of COVID-19, when contact tracing, as a former director of public health and talking to my local public health agencies who have done contact tracing, the majority of diseases coming from the community from outside the workplace where people spend 8 hours in a workplace, but where there have been mitigation strategies put in place, the vast majority of their time is outside and infections are community acquired.

Chairwoman ADAMS. The lady's time has expired.

Mrs. MILLER-MEEKS. So we are placing an undue burden on employers when, in fact, we are, as a former colleague said, we are socializing the responsibilities around COVID-19 to employers and taxpayers.

Chairwoman ADAMS. The lady's time has expired.

Mrs. MILLER-MEEKS. Thank you. I yield back my time.

Chairwoman ADAMS. Thank you very much.

I recognize now Representative Jayapal.

You are recognized for five minutes.

Ms. JAYAPAL. Thank you, Madam Chair.

And I am proud to represent thousands of workers that do keep one of the United States' largest ports running in Seattle. Our current supply chain challenges perfectly capture the critical role of longshore and harbor workers in delivering goods to American consumers, factories, and businesses.

And during the pandemic lockdown, these were some of the essential workers that put their lives on the line to keep essentials flowing into the country, displaying remarkable resilience and flexibility. And despite their invaluable contributions, longshore and harbor workers are not afforded the same protection as Federal workers and are not covered under State workers' compensation laws. That is an oversight that must be rectified.

There are at least 59 COVID-19 cases that have been confirmed at the Port of Seattle since March 2020, resulting in hundreds of dollars in lost wages and medical expenses for those workers and their families.

So, Mr. Godfrey, under the current requirements of the Longshore and Harbor Workers' Compensation Act, what kind of documentation is required to meet the standard to get a COVID-19-related claim approved? And what is the hardest requirement to meet?

Mr. GODFREY. Sure. Thank you for that question.

First, I would point out I have had the opportunity since becoming Director of OWCP to tour ports, and I have seen not only with the ports in terms of the supply chain, but I have also seen ship repair, shipbuilding, and I have seen the very close quarters and the hazardous exposures that they do have.

Obviously, as it relates to the Longshore program, the medical evidence is it is difficult to establish because of the unknown of where infections can occur.

And I do know that of the COVID claims that have been filed program-wide that we have been able to determine from our review, less than 10 percent of those claims have been accepted, whereas under the FECA program and others, the numbers are obviously significantly higher, over 81 percent within the FECA program.

Ms. JAYAPAL. Well, you are teeing it up perfectly for my next question because you had described how the American Rescue Plan improved access to workers covered by the Federal Employees' Compensation Act by shifting the presumption of COVID-19 claims.

But as you say, the OWCP has processed more than 19,000 coronavirus-related claims under FECA since February 2020 and has 200 pending claims, but, meanwhile, of about 1,300, just 7 percent of COVID-19 claims filed by longshore and harbor workers have been approved.

So based on your experience of implementing this policy, what would be some of the impacts of H.R. 3114 on case approval rates and program administration?

Mr. GODFREY. Sure. I think one of the first things to note, we have seen the 22,000 claims that have been filed and the 18,000 claims that have been accepted for COVID-related matters from

Federal civilian employees under FECA. The number that I understand is accurate is 2.1 million Federal civilian employees.

So the numbers that we are seeing are a very small number of Federal workers who actually had claims. And of those claims, many of them actually had no lost time or medical costs at all.

So it is difficult for me to make a jump to know exactly how that would correspond with the longshore program. But what I do see is that the number of workers, as a percentage, is small that file a COVID claim.

And I think the data that we have seen from NCCI, the National Council on Compensation Insurers, also supports that the average cost per claim where there is actually costs to that claim is approximately \$8,700.

Ms. JAYAPAL. Thank you.

And how do the recordkeeping and reporting provisions of the bill compare to the typical cost of administering workers' compensation?

Mr. GODFREY. I am not certain of what you are asking in that question. I apologize.

Ms. JAYAPAL. Just essentially wanting to clarify that the costs are modest and they are not more complicated than administering any other workers' compensation program. The primary reporting requirement is just asking for verification that the employer is compliant with the current COVID-19 safety guidelines, correct?

Mr. GODFREY. That is correct, yes.

Ms. JAYAPAL. Great.

Well, I think moving freight, operating equipment, building ships in America's ports and harbors have always been dangerous jobs, and the costs that are incurred by lost wages due to coronavirus illness and quarantine, not to mention the cost of medical care itself, can make or break a family's budget.

And so H.R. 3114 is a commonsense bill that extends the same protection that Federal employees enjoy to longshore and harbor workers, and I really believe that we must ensure that these essential workers have easy access to the benefits they have earned.

Thank you, Madam Chair. I yield back.

Chairwoman ADAMS. And thank you.

Is Representative Owens on?

Mr. OWENS. Thank you, Madam Chair.

Coal mining has been a vital part of the economy, the livelihoods, in the State of Utah for 150 years. Many in my State and districts are impacted by the black lung program.

Mr. Costa, how much do the western coal operators pay into this fund? And, second, how much in benefits are paid out of the fund to employees in the western operation versus contributions that pay out in the eastern operations?

And, Mr. Godfrey, if you wouldn't mind, if you have any other additional thoughts you would like to add to expand, please feel free to do so.

Mr. COSTA. Thank you, Congressman.

Unfortunately, I don't know how much each—the companies in each area have paid into the program. I do know how much has been paid out in the different areas of the country.

So in answer to the second part of your question, roughly \$145 million has been paid to beneficiaries in the eastern part of the country, east of the Mississippi, primarily in the Appalachia part of the country, and \$4 million has been paid in States west of the Mississippi.

So there is a very large difference in the amount of benefits going to both sides and the number of beneficiaries —where the beneficiaries are located. Most of the beneficiaries are located in the Appalachia region.

Mr. OWENS. OK. Thank you.

Mr. Godfrey, would you like to add anything to that?

Mr. GODFREY. I actually do not have data related to those numbers.

Mr. OWENS. OK.

Thank you. And I yield back the remainder of my time. Thank you so much.

Chairwoman ADAMS. Thank you.

Let's see, I am trying to see who is——

STAFF. That would be Mr. Good, Madam Chairwoman.

Chairwoman ADAMS. OK. Mr. Good, you are recognized for five minutes.

Mr. GOOD. Thank you, Madam Chair.

And I would like to echo the remarks of Ranking Member Foxx a few moments ago about coming into the Committee hearing in person. And I would like to just let everyone know that the Committee hearing room is Rayburn 2175.

I have not seen anyone from the majority party in the Committee hearing room since I got here a year ago. And it is comfortable, and it is accommodating. And it would be much more meaningful for us all to be in person here with our witnesses instead of hiding behind COVID and pretending that we are afraid to come into the hearing room because of that.

But instead of discussing that, I will move to my line of questioning—or further, I should say, to my line of questioning here.

I share the concern that has been expressed for our injured workers, but I am also concerned for all the injured small business owners and their employees who have been hurt over the last year by these disastrous economic and fiscal policies of the Biden administration.

Over the last 10 to 11 months we have seen historically high gas prices, grocery prices, and causing massive overall booming inflation from these policies, and that is hurting Americans all across the country.

But instead of discussing that, my colleagues in the majority would rather discuss anything else, and that is because Congress is doing what it does best, making the problem worse. We are spending money we don't have and implementing damaging and dangerous policies to advance the radical Biden-Pelosi socialist/communist agenda. And the Fed continues to accommodate by printing more money to pay for it.

But workers across the country continue to pay more for their essentials, and what is left of their hard-earned savings is being robbed of its value as the Federal Government continues to devalue the dollar.

This is not complicated, but our so-called experts in D.C. think they can lie their way out of this. However, Americans are not fooled because they can see and feel these rapidly rising prices. But the majority would rather talk about other things, but Americans need answers.

So, Mr. Godfrey, does the Biden administration consider inflation to be an issue that is negatively impacting workers' compensation?

Mr. GODFREY. Thank you for that question.

It is not my understanding that that is an issue that is before OWCP, no.

Mr. GOOD. Do you think that the administration understands that rapidly rising gas, grocery, utility, and other prices are hurting lower-income, middle-income, and fixed-income Americans and, frankly, disproportionately impacting the minority community?

Mr. GODFREY. I have no personal knowledge, but I would assume they do, yes.

Mr. GOOD. Yes. Well, I hope that they do, which makes it even worse if they do understand that but yet continue to double down on these policies.

Other than calling for more spending, which is obviously going to make the problem worse, what does the Biden administration plan to do to try to actually help the problem —help them fix the problem?

Mr. GODFREY. Well, one of the things that I know simply from OWCP is the work on the longshore supply chain issue. What we have seen is, since the introduction of the changes to the supply chain, especially at the Los Angeles-Long Beach Port, we have seen increased workloads. We have seen increased capacity. We have seen the shipping containers being moved following the recommendations of the administration. And what we have also seen is no increased workers' compensation claims because—

Mr. GOOD. If I may interject, please.

I am glad you brought up the supply chain issue, because this administration seems to think that these unconstitutional vaccine mandates that are currently, thankfully, being blocked by the courts are not only the answer to inflation, they actually think that if we fire more workers, if we fire more people because they want to protect their own healthcare, protect their own bodies, protect their own healthcare decisions, if we fire more people, so if we have fewer workers who will produce fewer goods, that will somehow make prices go down.

I need to lend them my high school economics textbook.

In your view, Mr. Godfrey, are the Americans who lose their jobs because they want to make their own healthcare decisions, should they be entitled to compensation?

Mr. GODFREY. Are you referring to workers' compensation or unemployment compensation?

Mr. GOOD. Just compensation generally. Should they qualify for that, if they are being fired by the Federal Government essentially for wanting to make their own healthcare decisions? Or said differently, do you think that firing millions of workers is going to help the inflation crisis?

Mr. GODFREY. That is outside my purview as Director of OWCP.

Mr. GOOD. Yes. Well, I want to move to another issue affecting workers' compensation and driving up the cost of fuel and utilities, not to mention threatening our national security and increasing our carbon —increasing overall carbon emissions because it is forcing us to purchase and ship energy from countries who hate us and don't have our emission control standards, and this is the impact of the President's war on energy.

We knew this was going to happen from the first day when the Biden administration put an end to the Keystone pipeline. These radical climate policies are decimating American energy, driving up the price of fuel and utilities, and destabilizing the global economy. And, unfortunately, I am out of time for you to answer my questions.

But thank you, Madam Chair.

Chairwoman ADAMS. And I thank the gentleman.

Let's see, next we have—

STAFF. That would be Mrs. Steel, Madam Chairwoman.

Chairwoman ADAMS. All right.

Mrs. Steel, the gentlewoman from California, you are recognized for five minutes.

Mrs. STEEL. Thank you, Madam Chair.

Recently, the United States reached a sad milestone by surpassing 100,000 drug overdose deaths in the last 12-month period for the first time.

The largest number of Federal employees outside of the capital region is in my home State of California. Any changes to Federal workers dropped over those programs with all other programs will be impacted the most in California. The pandemic has only exacerbated opioid and drug misuse.

So I want to ask Mr. Godfrey, Department of Labor leaders recently reallocated resources from its opioid management to the COVID-19 claims justification.

Do you believe it is appropriate to use the Federal Employees' Compensation Act opioid management funds when the opioid overdose epidemic is still an extreme threat?

Mr. GODFREY. Thank you for that question.

I do believe it is because we have seen significant drops in the number of opioid prescriptions that are used, the number of individuals who have been on opioids for more than 100 days. All of the statistics that we have seen related to opioid usage, because of the work of OWCP and the very people that you are speaking of, has significantly reduced those numbers far below, I think, what we see in the general population.

And I think where we were needing staff was to deal with the COVID epidemic, with the pandemic. And we have now moved in with the FECA program to a pharmacy benefits management service. And that, in and of itself, has even greater levels of protection than what were previously being provided.

So I am comfortable that going forward that it was the right decision to utilize those staff Members where they were most needed because we have seen no, zero impact on opioid usage amongst FECA employees. In fact, the numbers continue to reduce.

Mrs. STEEL. Really? Because what you are saying about opioid drug overdose is reduced. But you know what? That is not what we

really hear and that is not what we really see. Especially Orange County has been growing too, and not just Orange County but California and other States too. So I think kind of like what you are saying is contradicting about the opioids.

But let's move on. So what actions has the Office of Workers' Compensation Programs taken to combat opioid and drug misuse?

Mr. GODFREY. Sure. And I think just for purposes of clarification, the numbers that I am speaking about is that population of individuals who have Federal workers' compensation claims and who are beneficiaries with accepted claims. I am not speaking about the overall community outside of the Federal workforce or the Federal workforce that has had Federal work-related injury.

So I think that may be where we are sort of looking at different numbers.

Mrs. STEEL. So do you have any of those stats of those Federal employees? How many? In which States? And what kind of, like, percentages of employees are using through workers' compensation programs or other Federal workers' drug overdose programs?

Mr. GODFREY. I can certainly get the information to you by State. But what I can tell you is that there is less than 300 FECA claimants that have a diagnosed and accepted opioid use disorder-related condition at this time and approximately 9,000 Federal FECA claimants that had been taking opioids for over 1 year, with 1,500 of them at levels above 90 dose equivalents.

This is the largest reduction from January 2017 because the levels of 17—they were previously 17,000 taking them for longer than 1 year. So that is going from 17,000 down to 9,000. That has been a very, very significant drop.

And then in terms of those that take the highest levels of opioids have gone from 4,000 down to only 1,500.

Mrs. STEEL. Love to see those numbers. I mean, if Federal employees are getting much less numbers and it has been decreased, it is a very, very good sign. But love to look at those stats and love to have it. So thank you.

But is the Biden administration taking the opioid overdose epidemic seriously? Because the last administration made many reforms to the Federal Employees' Compensation Act program to combat opioid misuse. So what is currently being done to build on those successes?

Mr. GODFREY. I agree, during the past administration from 2017 on there were significant reductions in opioids, and that should be applauded. What we are doing now is building on what has been that accomplishment, trying to take it farther through the protocols of the PBM, the pharmacy benefit management.

Chairwoman ADAMS. The lady's time is up.

Mrs. STEEL. You know what, Madam Chair? I just want to get those stats from Mr. Godfrey. And you know what? Maybe I can get these answers in writing. It is going to be really great.

Thank you very much for your answers.

Chairwoman ADAMS. And thank you.

OK. Representative Cawthorn, if you are on, you have five minutes, sir.

Mr. CAWTHORN. Excellent. Well, Subcommittee Chairwoman Adams, thank you very much.



And, Congresswoman Steel, thank you for your questions to Mr. Godfrey. Those were great.

I will be directing most of my questions to Mr. Costa.

Like many Americans, I grew up idolizing Ronald Reagan, a President who believed in America and Americans. He was the Great Communicator. He could always turn a phrase in particular.

And some of those that are sticking with me is when he said: Government isn't the solution; government is the problem. And the nine most terrifying words in the English language are: I am from the government and I am here to help.

The history of American politics is believers in big government who believe that the government will come in and fix all our problems and then those freedom, liberty-minded citizens who send their own candidates to fight against that.

Today we are once again noting the actions of the government that are set against the people, particularly in the case of the war on coal.

Mr. Costa, the 2020 GAO report notes that from 2014 to 2016 U.S. coal production decreased from 1 billion tons, which is an incredible number, to only 728 million tons. What impact does this decreased production have on the Black Lung Disability Trust?

Mr. COSTA. Yes, Congressman.

So the decrease in coal production has definitely had a strong impact on the amount of revenue that the Black Lung Trust Fund has been collecting as a result. It is a huge impact on it.

In addition to the decrease in the amount of coal, we have also started to see a rise in the number of coal miners who are contracting black lung. So there is a good likelihood that we will see an increase in liability.

At the same time, with more bankruptcies going on, there will be less production, so there should be less revenue coming in as well.

Mr. CAWTHORN. I mean, that is absolutely correct. I think it was there to take care of all the shortfalls for the funding, and it is really a true problem.

And during the Obama administration, Democrats repeatedly asserted their regulations on coal-fired power plants would not jeopardize the industry. And all of us at the time realized that was asinine and not true, but we now know that to be untrue as a fact.

Democrats' war on coal has led to the bankruptcy of dozens of operators, jeopardizing the economies of the Rust Belt States and leading to increased liabilities for the Black Lung Disability Trust Fund.

Now, having said all that, I want to be clear on this. Does declining coal production contribute to the trust fund's financial challenges? And going even further, it seems likely that the effect of the government interference was twofold in the negative: both reducing the amount of coal available and decreasing the funds available for the trust fund.

Is that something that you would agree with, Mr. Costa?

Mr. COSTA. Yes, declining coal production has impacted the trust fund's revenue. In addition, though, there was a year where the coal tax dropped as well, and that also had a rather large impact.

We are estimating that if the coal tax drops again in January that the trust fund will go —will have about \$15 billion of debt by 2050, and that is accounting for additional potential bankruptcies, as well as drops in revenue.

Mr. CAWTHORN. Well, let me ask you one more question regarding the bankruptcies. I mean, how many of these operators have we lost since the 2014 time when they really declared this war on coal?

Mr. COSTA. We estimated that there—we believe there have been at least five additional bankruptcies since we reported on the bankruptcies from 2014 to 2016, both —of self-insured companies that is. And at least three of those companies have transferred liability that they had not properly set up collateral for to the trust fund.

Mr. CAWTHORN. Well, I mean, that is terrible. I can't imagine how many lives have just been completely disrupted, people's financial plans destroyed by these Democratic policies which are so anti-American, anti-human, anti-energy. And, really, just thanks to the failed energy policies of this administration, it seems that the Black Lung Disability Fund and the American people would be better served by more coal production.

Now, thankfully, thanks to an increase in demand, we are recognizing that there is an uptick in production. But can we really count on this uptick to continue going when we have a President who actually disdains the industry?

Mr. COSTA. I don't know that I am qualified to answer that question, sir. We looked at the trust fund's—

Mr. CAWTHORN. Well, on behalf of the American people, I think we all realize that this industry will be severely limited and attacked by this administration. It is very, very sad.

And I hope the Democrats can really come to their mind and we can all come together and try and fix this so we don't have more bankruptcies coming even since the five that we had since you did your last study.

It is really sad so many people lose their livelihood, so many people are just—they take pride in working with their hands and take pride in providing for this country. And it creates a spiritual poverty when people also are incapable of actually being able to serve this country by serving our energy needs.

So, Mr. Costa, thank you very much.

Chairwoman Adams, I will now yield back. Thank you very much from your fellow North Carolinian.

Chairwoman ADAMS. Thank you. Thank you, Mr. Cawthorn.

I think all Members, Committee Members, have spoken. I did want to respond before I provide time for Mr. Courtney and Mr. Mryan in terms of responding to the comment that was made earlier about the Committee.

We did as a courtesy wait about 15 minutes. But the Committee was announced that it would run, be held at 2 o'clock, regardless of whether there was votes or not.

But also, if you look at House Rule XI, clause 2, the Committee Rule maintains that a quorum for the purpose of taking testimony and receiving evidence is any two Members. We had a majority. I just wanted to clear that up for the record.

I want to recognize now Mr. Courtney.

You are recognized for five minutes, sir.

Mr. COURTNEY. Thank you, Madam Chairwoman, and thank you for your courtesy to allow me to join the Subcommittee today. And I just have a couple of quick questions.

Mr. Godfrey, recently I introduced legislation, bipartisan legislation, with my good friend Mr. Walberg, the Improving Access to Workers' Compensation for Injured Federal Workers Act, H.R. 6087, which will update the Federal Employees' Compensation Act program to allow injured workers to seek care from nurse practitioners and physician assistants in addition to physicians.

In 1974, when Congress amended the Federal Workers' Compensation Program, Congress specifically allowed workers to seek treatment from their personal physician in order to provide employees free choice of who provides their care. However, these changes only allowed for a physician to provide their treatment and sign off on claims.

In the interim, as I think we all know, physician assistants and nurse practitioners have become a major component of the healthcare system and supplement the physician workforce and serve as primary care providers and specialists across the country, especially in rural and underserved areas.

Our legislation would align the Federal law with the reality that nurse practitioners and physician assistants are the first-line providers for many Federal workers, and they should be incorporated into the program and would help address barriers to accessing the compensation workers are eligible for, in part because it can be difficult sometimes to find a physician participating in the program.

So, Mr. Godfrey, can you describe the challenges that workers currently face in having their claims approved as it relates to finding a physician? And why is it difficult for them to find a physician willing to participate in the program?

And, last, from your perspective, would allowing physician assistants and nurse practitioners to take some of these cases help improve access to compensation for eligible workers?

Mr. GODFREY. Thank you for that question. There are several things that I think are responsive to your question.

First, I think the issues related to a Federal system, with physicians located in one State, sometimes they have difficulty with the billing practices.

And what we are looking to do is move forward with a medical provider network which would allow us to have a greater ability to access and work with physicians to make sure that it is easier for them to work with us so that when they provide services they can be timely paid for the services that they do provide. So I think that will be one instance.

Obviously, you touched on the other issue. Rural America often-times, I know coming from Iowa, it is difficult to have a doctor in a specific town. It may be that a nurse practitioner or a physician assistant is the only individual who can provide the immediate treatment that you need or the ongoing care that is required following a workplace injury.

I would note that my prior position was as the Chief Judge of the Employees' Compensation Appeals Board. And it is accepted within the FECA program for nurse practitioners and physician as-

sistants to provide care. I think the distinction that we have seen is that, based upon existing case law or regulation, that a physician is given greater weight in terms of an opinion than a physician assistant or a nurse practitioner.

So I think that is where we need to be careful in terms of moving forward. But I agree with you, the more that we can do through telehealth, the more we can do to utilize nurse practitioners and physician assistants will make it much easier for the claimant population to get the care that they need.

Mr. COURTNEY. Great. Well, thank you.

And as I said, this is a bill which, in my opinion, is just sort of updating the law and modernizing the law, and it basically allows the law to be aligned with the reality that is out there. And I think all of us can personally attest to the fact that the role, that this level of practice is now well established in the U.S., and we just want to make sure, again, that the Federal employee compensation system reflects that with this update.

So thank you for your testimony.

And thank you, Madam Chairwoman, for letting me participate this afternoon.

Chairwoman ADAMS. And thank you, Representative Courtney.

I am going to recognize Representative Stevens, and then we will get to Mr. Mrvan.

Representative STEVENS.

Ms. STEVENS. Yes, I am here, Madam Chair, and thank you so much for having today's important hearing. This is one of the major reasons I have been just compelled to serve on this Committee and do the work of this Subcommittee, particularly, on workforce protections.

Today's topic regarding the safety net and the conversation that we have had around workers' comp and some of the threats, this is very visceral to us in Michigan. It has come up to me from constituents time and time again.

And as we hone in I would like to center us on opioid abuse again, because we have just seen an incredible toll of fatalities, of overdoses. We have injury claims being made each and every year. And recently, as of 2018, approximately 27,000 people in the Federal Workers' Compensation Program who are chronic opioid users.

So, Mr. Godfrey, the Department has taken reforms for prescribing opioids to treat pain, but it is certainly still excessively permissive policies in the past that have resulted in tens of thousands of injured workers becoming addicted. And I would be curious for you to just describe how DOL is managing this today and what we need to know about some corrective steps that you have put into place.

Mr. GODFREY. Yes. Thank you for that question.

I agree, and it has been a national tragedy. Outside of the workers' compensation system, again, we see lives disrupted unexpectedly by simply being prescribed an opioid and addiction following from that.

The Department of Labor has recognized, going back before even 2016, as this tragedy unfurled itself, and the actions that have been taken since that time, as I have talked about with the statis-

tics that I shared with Representative Steel and will provide in greater detail, show that there has been a significant decrease.

But it does require continued monitoring. And we have made sure that, first off, limiting the number of authorizations and the dosages of those authorizations going back to the fall of 2019 with a bulletin. But now, moving into the PBM, the pharmacy benefits management service, we do have, I believe, even greater protections in place.

Again, this impacts people within the workers' compensation area, and that is where we can make an impact. But, obviously, this is just a horrible tragedy that is affecting people both outside of the workers' compensation system and in it. And any way that we can learn from what we have done in DOL to be successful I think should be shared.

Ms. STEVENS. Yes, it should be shared, and certainly not bearing the full responsibility. We appreciate your answer and your work in general.

One other question for you, separate to what we were talking about on opioids, is how are you at all —and this is out of curiosity for the scope of work that you are undertaking as a Director of the office in the Department of Labor —but how are you working with States and States' programs? Because I can just imagine that getting really busy and really complicated, and I am wondering if I can help you.

Mr. GODFREY. Sure. I think the way that I could answer that best is to note that as a commissioner in the State of Iowa, I was involved in national and international organizations relating to State workers' compensation systems and jurisdictions. And I built relationships, mainly through the International Association of Industrial Accident Boards and Commissions, and that is an organization which all of the States and several jurisdictions from Canada, Australia, Germany take part in.

Although from OWCP working with States really does not exist to a large extent, working through organizations like that where we can build relationships, where we can share information, our best practices and our data can be shared with the States.

For instance, the opioid work that we have done. I know many States have made great progress through their work comp systems with opioids. But the things that we can share with them, that has been very, very helpful.

Ms. STEVENS. Thank you for that.

And Madam Chair, I yield back.

Chairwoman ADAMS. Thank you, Representative Stevens. Thank you very much.

I am going to recognize Mr. Mrvan now.

You have five minutes, sir.

Mr. MRVAN. Thank you, Chairwoman.

I just want to take a moment to thank Chair Adams and the Committee staff for holding this important hearing today to provide oversight of the OWCP and for including in this discussion legislation I have introduced, the Longshore and Harbor Workers' COVID-19 Compensation Act.

Throughout the pandemic, maritime workers have performed essential work. They have toiled to keep our ports operating, loading

and uploading ships, building and repairing vessels, and oftentimes working in close quarters as they do so.

And as has been discussed in this hearing today, workers deserve adequate recourse when they suffer workplace injury or illness.

However, hundreds of longshore and harbor workers have contracted COVID-19, a deadly illness, have lost out on wages due to mandatory quarantine requirements, and have incurred medical expenses due to illness.

But those workers have been unable to access workers' compensation afforded under the Longshore and Harbor Workers' Compensation Act unless they overcome a burdensome process to prove they were infected at work.

To remedy this issue, my bill will establish a conclusive presumption that longshore and harbor workers who have tested positive for COVID-19 contracted the virus at work, making them eligible for workers' comp under the LHWCA.

This measure would ensure that longshore and harbor workers enjoy the same presumption that essential workers in several States and frontline Federal workers now benefit from and serve to protect the health, safety, and livelihood of our maritime workers.

I thank the Chairwoman again for this time and her leadership on this legislation. And I, again, thank her for the opportunity to discuss this important legislation.

And I thank you, and I yield back.

Chairwoman ADAMS. Thank you very much, Mr. Mrvan.

Have all of the Members had an opportunity to speak? We have had some people come in and out.

OK. Great.

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, so by the close of business on December 16, preferably in Microsoft Word format.

Only a Member of the Subcommittee or an invited witness may submit materials for inclusion in the hearing record, and the materials must address the subject matter of the hearing. Please submit materials to the Committee Clerk electronically by emailing submissions to [edandlabor.hearing@mail.house.gov](mailto:edandlabor.hearing@mail.house.gov).

Again, I do want to thank the witnesses for their participation today, and I thank all of the Members of the Subcommittee for their attendance.

The Members may have some additional questions for the witnesses, and so we ask that you please respond to those questions in writing. The hearing record will be open for 14 days in order to receive those responses.

I do want to 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 want to recognize the distinguished Ranking Member for a closing statement.

Mr. KELLER.

Is the Ranking Member present?

Mr. KELLER. Yes, I am, Madam Chair.

Chairwoman ADAMS. OK.

Mr. KELLER. I would ask unanimous consent to enter into the record a letter from more than 90 national and State trade associations and businesses, including the National Federation of Independent Business, opposing the authorization of funding for DOL to monitor State workers' compensation programs.

Chairwoman ADAMS. Yes, sir, so recorded.

Mr. KELLER. Thank you.

And now may I do my closing?

Chairwoman ADAMS. Yes, sir, you may.

Mr. KELLER. Thank you.

I would like to thank the witnesses for their testimony.

Today we discussed a wide variety of Federal workers' compensation programs, in addition to legislation which purports to solve shortcomings in many of them. Unfortunately, many of these proposals discussed today only add additional layers of expense to already bloated and mismanaged Federal programs.

For instance, the Black Lung Disability Trust Fund, or the BLDTF, has been in debt since it was created over 40 years ago. Many of the trust fund's problems stem from the Department of Labor's decades-long failure to provide proper oversight or enforcement, in addition to its interest accumulation on its debt.

The Trump administration made great strides to correct flaws in the Black Lung Benefits Program and to revamp the self-insurance process for coal mine operators. But the Biden administration chose to weaken the Black Lung Trust Fund by withdrawing these commonsense reforms.

Additionally, Committee Democrats introduced a partisan bill just yesterday which allegedly addresses the failings of the Black Lung Benefits Program. It is just irresponsible and absurd to have a legislative hearing on a bill released only a day before with no stakeholders present to testify and provide feedback.

With regard to the FECA program, however, bipartisan agreement should be possible. In the 112th Congress, this Committee and the House of Representatives took steps to reform FECA by passing bipartisan legislation. I look forward to working with my Democrat colleagues with the hope that we can repeat this success in the 117th Congress.

Rather than implement radical proposals, such as improperly monitoring State workers' compensation programs, I urge the Office of Workers' Compensation Programs, OWCP, to focus on reforming the programs it currently oversees by immediately addressing recommendations made by the Government Accountability Office and the Office of Inspector General.

And rather than consider partisan and radical legislation, I hope this Committee can return to bipartisan cooperation to ensure these programs truly help injured workers, are efficient and effective, and make good use of taxpayer dollars.

Again, I thank the witnesses for participating today.

And I yield back.

Chairwoman ADAMS. Thank you, Mr. Keller. We appreciate your comments.

I want to now recognize myself for the purpose of making my closing statement. But before I do that, because we have heard at least three times today during this hearing about the meeting and how it was conducted and when, I just want to remind the Members that, pursuant to the rules and regulations of the House and the Speaker's extension of the covered period —and that has to do with COVID, and, hopefully, things won't get worse —the hearing was noticed. It was called to order. And it was noted as a completely remote hearing, which certainly is the prerogative of the Chair. And so we are going to continue to conduct the meeting in accordance with all of the rules that we have.

So I just want to remind the Members of that.

And let me just say to our panelists, thank you for your time. Thank you to the witnesses for your testimony. We learned a lot today about the new initiatives being advanced by the Department of Labor, including the reinstitution of the monitoring and reporting on State workers' compensation programs.

Greater awareness of these initiatives is needed because many State workers' compensation programs have been pared back as part of a race to the bottom as States compete with each other to reduce employer costs.

The implications for the Federal budget are clear, which is why there is a role for the Federal Government. When States have at the request of corporate interests cut back benefits for workers with disabilities, it is the injured workers and the taxpayers, instead of employers, who are forced to foot the bill for serious workplace injuries. Without income, workers with disabilities must then turn to Social Security Disability Insurance and Medicaid or Medicare for medical costs.

The Department of Labor is commended for addressing these issues, and we are hopeful that the 5 years of adding funding for this office included in the Build Back Better Act, when enacted, will ensure that this needed oversight of State programs can move forward on a long-term basis.

Today we also learned that the Office of Workers' Compensation Programs has not implemented the necessary changes to protect taxpayers from self-insured coal operators who fail to provide adequate collateral to cover the cost of black lung benefits if they file for bankruptcy.

In a hearing on this subject just 2 years ago, GAO flagged what needed to be done to fix the problem. We need a firm date by when OWCP will provide a solution, a firm date.

The system has been gamed for too long, and at least a billion dollars in black lung disabilities have been transferred from coal operators and Wall Street investors to the trust fund, driving it even further into debt. The red ink today is over \$6 billion.

DOL also needs to develop a long-term strategy to shore up the solvency of the trust fund so there will be no question that the resources are there for miners and their survivors to cover black lung claims.

The black lung excise tax rate will drop by 55 percent at the end of December unless Congress extends it. Fortunately, a short-term extension is in the Build Back Better Act covering through 2025, and we are awaiting Senate action.



That excise tax alone is not enough, however. A long-term strategy is needed because coal production has declined and will continue to do so.

We should not be in a situation where the Federal Government is left facing the consequences of the cost of a lethal occupational disease caused by operators who failed to adequately protect their miners.

And, finally, we learned that there are opportunities to improve the Federal workers' compensation programs, and I hope we can move forward to pass legislative solutions that modernize Federal workers' compensation programs.

Again, I want to thank you, Mr. Carbajal, Mr. Godfrey, Mr. Costa, for joining us today.

If there is no further business, without objection, the Subcommittee stands adjourned. Thank you.

[Additional submissions by Mr. Carbajal follow:]



# **INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®**

**EDWARD A. KELLY**  
General President

**FRANK V. LIMA**  
General Secretary-Treasurer

December 1, 2021

Dr. Alma S. Adams, Chairwoman  
Subcommittee on Workforce Protections  
U.S. House of Representatives  
Washington, D.C. 20515

Mr. Frederick B. Keller, Ranking Member  
Subcommittee on Workforce Protections  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairwoman Adams and Ranking Member Keller,

On behalf of the 325,000 professional fire fighters and emergency medical responders of the International Association of Fire Fighters, including 3,500 federal fire fighters, I write in full support of H.R. 2499, the Federal Firefighter Fairness Act, and thank you for holding a hearing on this important bill. H.R. 2499 extends a rebuttable presumption of occupational illness to federal fire fighters for a limited number of health conditions which studies have indicated are caused by the federal fire fighters' emergency response duties.

Federal fire fighters have some of the most hazardous and sensitive jobs in the country. While protecting our national interests on military installations, federal research laboratories, homeland security facilities and veterans' hospitals, federal fire fighters are routinely exposed to carcinogenic smoke, toxic substances, high heat and stress. The cumulative effect of repetitive exposures place fire fighters at an increased risk of developing occupational diseases such as cancers, heart and lung disease.

In recognition of this link, 49 states have enacted laws which provide presumptive benefits to fire fighters employed by state and local governments. However, no such law covers federal fire fighters, who routinely combat fires and mitigate hazardous materials incidents side by side with fire fighters from municipal and state fire departments covered by these presumptive laws.

Securing presumptive benefits is critical to obtaining coverage of occupational illness and disease from the Office of Workers' Compensation Programs. Absent a presumptive benefit, federal fire fighters experience delayed access to critically needed medical care, salary and health insurance benefits. Instead, fire fighters must engage in a prolonged administrative process in which they are required to demonstrate with specificity the precise exposure(s) which caused their occupational illness. Cases of cancer are particularly hard to prove – fire fighters must identify the carcinogen to which they were exposed, the duration of each exposure, and the location of the exposure. These requirements fail to recognize the chaotic environment in which fire fighters operate and the cumulative impact of multiple exposures to many different carcinogens over a fire fighter's career. The Federal Firefighters Fairness Act will reduce or eliminate many of the cumbersome requirements currently impeding federal fire fighters from expedited access to the benefits they need and deserve.

Thank you for your attention to this important issue. The IAFF urges the committee to swiftly advance the Federal Firefighters Fairness Act to help ensure all of our nation's domestic defenders are provided the care and benefits they need and deserve.

Sincerely,

A handwritten signature in black ink that reads "Edward A. Kelly".

Edward A. Kelly  
General President

[Additional submissions by Mr. Takano follow:]

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2017

or  
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_



Commission File Number: 001-38061

**Warrior Met Coal, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)  
**16243 Highway 216**  
**Brookwood, Alabama**  
(Address of principal executive offices)

**81-0706839**  
(U.S. Employer  
Identification No.)

**35444**  
(Zip Code)

**(205) 554-6150**  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange on which registered

Common Stock, par value \$0.01 per share

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐  
Emerging growth company ☐

Accelerated filer ☐

Non-accelerated filer ☒  
(Do not check if a  
smaller reporting company)

Smaller reporting company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

if an officer, director or a stockholder with a 10% or greater interest in the entity is affiliated with or is in a position to control another entity that has outstanding permit violations or has had a permit revoked. Significant delays in obtaining, or denial of, permits could have a material adverse effect on our business.

*Mine Safety and Health*

The MSHA, under the Federal Mine Safety and Health Act of 1977 (the “Mine Act”) and the Mine Improvement and New Emergency Response Act of 2006 (the “MINER Act”), as well as regulations adopted under these federal laws impose rigorous safety and health standards on mining operations. Such standards are comprehensive and affect numerous aspects of mining operations, including, but not limited to: training of mine personnel, mining procedures, ventilation, blasting, use of mining equipment, dust and noise control, communications and emergency response procedures. For instance, MSHA implemented a rule in August 2014 to reduce miners’ exposure to respirable coal dust, which reduced respirable dust standards for certain occupants and miners and required certain monitoring of shift dust levels. In August 2016, Phase III of MSHA’s respirable dust rule went into effect, further lowering the respirable dust standards. Separately, MSHA has implemented a rule imposing a requirement on certain continuous mining machines, requiring operators to provide proximity detection systems. MSHA monitors compliance with these laws and standards by regularly inspecting mining operations and taking enforcement actions where MSHA believes there to be non-compliance. These federal mine safety and health laws and regulations have a significant effect on our operating costs.

*Workers’ Compensation and Black Lung*

We are insured for workers’ compensation benefits for work related injuries that occur within our operations. Workers’ compensation liabilities, including those related to claims incurred but not reported, are recorded principally using annual valuations based on discounted future expected payments using historical data of the operating subsidiary or combined insurance industry data when historical data is limited. In addition, certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977 (together, the “Black Lung Benefits Act”), each as amended, and are insured beginning on April 1, 2016 for black lung claims of any of our employees. In addition, we assumed all of the black lung liabilities of Walter Energy and its U.S. subsidiaries and are self-insured against such black lung related claims. For additional information, please see “Part I, Item 1A. Risk Factors-Risks Related to Our Business-We are responsible for medical and disability benefits for black lung disease under federal law. We assumed certain historical self-insured black lung liabilities of Walter Energy and its subsidiaries incurred prior to April 1, 2016 in connection with the Asset Acquisition. We are self-insured for these black lung liabilities and have posted certain collateral with Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future.” Under the Black Lung Benefits Act, as amended, each coal mine operator must make payments to a trust fund for the payment of benefits and medical expenses to claimants who last worked in the coal industry prior to January 1, 1970. The trust fund is funded by an excise tax on production; however, this excise tax does not apply to coal shipped outside the United States. Based on our limited sales of coal in the United States, we do not expect to incur a material expense related to this excise tax. However, the excise tax may result in a material expense to us in the future if our coal sales in the United States significantly increase. The Patient Protection and Affordable Care Act includes significant changes to the federal black lung program, including an automatic survivor benefit paid upon the death of a miner with an awarded black lung claim and the establishment of a rebuttable presumption with regard to pneumoconiosis among miners with 15 or more years of coal mine employment that are totally disabled by a respiratory condition. These changes could have a material impact on our costs expended in association with the federal black lung program. In addition to possibly incurring liability under federal statutes we may also be liable under state laws for black lung claims.

*Surface Mining Control and Reclamation Act*

The Surface Mining Control and Reclamation Act of 1977 (“SMCRA”) requires that comprehensive environmental protection and reclamation standards be met during the course of and following completion of mining activities. Permits for all mining operations must be obtained from the Federal Office of Surface Mining Reclamation and Enforcement (“OSM”) or, where state regulatory agencies have adopted federally approved state programs under the SMCRA, the appropriate state regulatory authority. The Alabama Surface Mining Commission reviews and approves SMCRA permits in Alabama.

SMCRA permit provisions include requirements for coal prospecting, mine plan development, topsoil removal, storage and replacement, selective handling of overburden materials, mine pit backfilling and grading, subsidence control for underground mines, surface drainage control, mine drainage and mine discharge control, treatment and revegetation. These

We also may incur costs and liabilities resulting from claims for damages to property or injury to persons arising from our operations. We must compensate employees for work-related injuries. If we do not make adequate provision for our workers' compensation and black lung liabilities, or we are pursued for applicable sanctions, costs and liabilities, our operations and profitability could be adversely affected. Certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under federal law and are insured beginning April 1, 2016 for claims made by or on behalf of any of our employees. As a result of our limited operating history as a stand-alone company, the Department of Labor required us to provide insurance coverage rather than be self-insured for these obligations for a minimum of three years from March 31, 2016.

*We are responsible for medical and disability benefits for black lung disease under federal law. We assumed certain historical self-insured black lung liabilities of Walter Energy and its subsidiaries incurred prior to April 1, 2016 in connection with the Asset Acquisition. We are self-insured for these black lung liabilities and have posted certain collateral with Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future.*

We are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Act, each as amended, and are self-insured for black lung related claims asserted by or on behalf of former employees of Walter Energy and its subsidiaries as assumed in the Asset Acquisition for the period prior to April 1, 2016. We perform an annual actuarial evaluation of the overall black lung liabilities as of each December 31<sup>st</sup>. The calculation is performed using assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others. If the number of or severity of successful claims increases, or we are required to accrue or pay additional amounts because the successful claims prove to be more severe than our original assessment, our operating results and cash flows could be negatively impacted. Our self-insurance program for these legacy liabilities is unique to the industry and was specifically negotiated with the Department of Labor requiring us to post \$17.5 million in Treasury bills as collateral in addition to maintaining a black lung trust of \$4.0 million that was acquired in the Asset Acquisition. For additional information see "Part I, Item 1. Business-Environmental and Regulatory Matters-Workers' Compensation and Black Lung." Our estimated total black lung liabilities as of December 31, 2017 were \$31.9 million (net of the black lung trust). In future years, the Department of Labor could require us to increase the amount of the collateral which could negatively impact our cash flows.

*Defects in title of any real property or leasehold interests in our properties or associated met coal reserves could limit our ability to mine or develop these properties or result in significant unanticipated costs.*

All of our mining operations are conducted on properties owned or leased by us. Our right to mine our met coal reserves may be materially adversely affected by defects in title or boundaries or if our property interests are subject to superior property rights of third parties. We do not have title insurance for any of our real property or leasehold interests and, as part of the Asset Acquisition, we did not independently verify title to our leased properties or associated met coal reserves. Any challenge to our title or leasehold interests could delay the mining of the property, result in the loss of some or all of our interest in the property or met coal reserves and increase our costs. In order to conduct our mining operations on properties where these defects exist, we may incur unanticipated costs perfecting title. In addition, if we mine or conduct our operations on property that we do not own or lease, we could incur civil damages or liabilities for such mining operations and be subject to conversion, negligence, trespass, regulatory sanction and penalties. Some leases have minimum production requirements or require us to commence mining operations in a specified term to retain the lease. Failure to meet those requirements could result in losses of prepaid royalties and, in some rare cases, could result in a loss of the lease itself.

*We face uncertainties in estimating our proven and probable met coal reserves, and inaccuracies in our estimates of our met coal reserves could result in decreased profitability from lower than expected revenues or higher than expected costs.*

Our future performance depends on, among other things, the accuracy of our estimates of our proven and probable met coal reserves. Reserve estimates are based on a number of sources of information, including engineering, geological, mining and property control maps and data, our operational experience of historical production from similar areas with similar conditions and assumptions governing future pricing and operational costs. We update our estimates of the quantity and quality of proven and probable met coal reserves at least annually to reflect the production of met coal from the reserves, updated geological models and mining recovery data, the tonnage contained in new lease areas acquired and estimated costs of production and sales prices. There are numerous factors and assumptions inherent in estimating met coal quantities, qualities and costs to mine, including many factors beyond our control, such as the following:

- geological and mining conditions, including faults in the met coal seam;
- historical production from the area compared with production from other producing areas;

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

The Statements of Operations include expense associated with the Predecessor's self-insured workers' compensation arrangements of zero for the three months ended March 31, 2016 (Predecessor) and \$6.4 million for the year ended December 31, 2015 (Predecessor). The Predecessor's workers' compensation obligations are included in cost of sales and selling, general and administrative expense on the Statements of Operations and represent the expected losses for claims incurred over each respective period.

In connection with the Chapter 11 Cases, the State of Alabama Department of Labor required the Predecessor to contribute \$15.0 million as a security deposit to the State in order for the Predecessor to remain self-insured for its workers' compensation liabilities. As a result of the Chapter 11 Cases and due to the insolvency of the Parent, the Alabama Worker's Compensation Self-Insurers Guaranty Association assumed all of the Predecessor workers' compensation liabilities and retained the \$15.0 million security deposit, which resulted in the recognition of a \$22.2 million gain in reorganization items, net in the Statement of Operations for the year ended December 31, 2015 (see Note 11).

*Black Lung Obligations*

The Company is responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, as amended. Beginning on April 1, 2016, the Company is insured, through a third-party insurance carrier, for black lung claims raised by any employee. In addition, in connection with the Asset Acquisition, the Company assumed all black lung liabilities of Walter Energy and its U.S. subsidiaries incurred prior to March 31, 2016. The Company is self-insured for the black lung claims assumed in the Asset Acquisition. Due to a limited operating history as a stand-alone company and as a result of being self-insured for these historical black lung claims, the Department of Labor required the Company to post \$ 17.5 million in Treasury bills as collateral, in addition to maintaining a black lung trust acquired in the Asset Acquisition. The \$ 17.5 million of collateral is recognized as short-term investments and the \$ 4.0 million black lung trust is offset against the long-term portion of the black lung obligations within the Balance Sheet as of December 31, 2017 (Successor) and December 31, 2016 (Successor). Under the terms of the agreement with the U.S. Department of Labor, the Company may elect to replace the \$ 17.5 million collateral deposit with a surety bond or other form of assurance every six months. The estimated total black lung liabilities (net of black lung trust assets) were \$ 31.9 million as of December 31, 2017 (Successor), of which \$ 1.7 million is classified in other current liabilities and the remainder of \$ 30.2 million is shown as a long-term liability as a separate line item in the Balance Sheet. For the year ended December 31, 2016 (Successor), the estimated black lung liabilities were \$ 28.7 million, of which \$ 1.5 million is classified in other current liabilities and \$ 27.2 million is displayed as a long-term liability as a separate line item in the Balance Sheet. The Company performs an annual evaluation of its black lung liabilities at each balance sheet date. The calculation uses assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others.

**Note 14—Pension and Other Postretirement Benefits**

**Successor Benefit Plans**

In connection with the Asset Acquisition, the Company did not assume any of the Parent's obligations under the plans discussed in further detail below. The Company established new employee benefit plans for its employees subsequent to closing the Asset Acquisition. The plans are defined contribution plans. Contributions to these defined contribution plans amounted to 1.4 million for the year ended December 31, 2017 (Successor) and \$1.1 million for the nine months ended December 31, 2016 (Successor).

*New Initial CBA*

In connection with the Asset Acquisition, the Company negotiated a new initial collective bargaining agreement ("CBA") with the United Mine Workers of America ("UMWA") (the "UMWA CBA"), which was ratified by UMWA's members on February 16, 2016 and expires on March 31, 2021. Pursuant to the UMWA CBA, the Company agreed to contribute \$25.0 million to a Voluntary Employee Beneficiary Association ("VEBA") trust formed and administered by the UMWA. Approximately 69% and 68% of the Company's employees were represented by the UMWA as of December 31, 2017 and December 31, 2016, respectively.

expect will be completed in 2018 and which was also within our guidance. The cash capital expenditures exclude non-cash capital accruals and leases of approximately \$15.0 million.

We evaluate our spending on an ongoing basis in connection with our mining plans and the prices of met coal taking into consideration the funding available to maintain our operations at optimal production levels.

We expect to continue making significant capital expenditures in 2018 above our normal sustaining capital expenditures that we believe will further improve efficiency, reliability and production levels in 2018 and the future. Total capital spending will depend upon a number of factors, including business and economic conditions, the met coal pricing environment and our expected financial performance and our capital expenditures can be reduced if those conditions were to deteriorate in 2018 or beyond. Our capital spending is expected to range from \$100.0 to \$120.0 million for the full year 2018, consisting of sustaining capital expenditures of approximately \$70.0 to \$83.0 million and discretionary capital expenditures of approximately \$30.0 to \$36.0 million. Our sustaining capital expenditures include expenditures related to longwall operations, safety upgrades and gas businesses. Our discretionary capital expenditures include the completion of a new portal for Mine No. 7 and other various operational improvements, which will increase efficiency, increase production and lower costs over time. Because of the long lead times on the discretionary capital spending, we expect to realize the benefits of those projects primarily in 2019 and beyond. These amounts set forth above do not include any potential spending associated with our Blue Creek Energy Mine should we decide to develop it for production in the future.

#### Contractual Obligations

The following is a summary of our significant contractual obligations at December 31, 2017.

|                                                              | Payments due by Year |                     |             |             |                      |
|--------------------------------------------------------------|----------------------|---------------------|-------------|-------------|----------------------|
|                                                              | Total                | Less than<br>1 year | 1 - 3 years | 3 - 5 years | More than<br>5 years |
|                                                              | (in thousands)       |                     |             |             |                      |
| Promissory note (principal and interest) <sup>(1)</sup>      | \$ 3,824             | \$ 3,060            | \$ 764      | \$ —        | \$ —                 |
| Senior Secured Notes (principal and interest) <sup>(2)</sup> | 546,000              | 28,000              | 58,333      | 56,000      | 403,667              |
| Minimum throughput obligations <sup>(3)</sup>                | 344,403              | 43,500              | 87,769      | 88,820      | 124,314              |
| Royalty obligations <sup>(4)</sup>                           | 86,106               | 5,486               | 10,348      | 10,324      | 59,948               |
| Black lung obligations <sup>(5)</sup>                        | 92,295               | 1,685               | 4,356       | 4,094       | 82,160               |
| Asset retirement obligations <sup>(5)</sup>                  | 112,407              | 3,586               | 11,896      | 9,843       | 87,082               |
| Capital lease obligations <sup>(6)</sup>                     | 5,784                | 5,313               | 471         | —           | —                    |
| Total contractual obligations                                | \$ 1,190,819         | \$ 90,630           | \$ 173,937  | \$ 169,081  | \$ 757,171           |

(1) Represents a security agreement and promissory note assumed in the Asset Acquisition. The agreement was entered into for the purchase of underground mining equipment. The promissory note matures on March 31, 2019, has a fixed interest rate of 4.00% per annum and is secured by the underground mining equipment it was used to purchase.

(2) Represents principal and interest payments on our Notes. See Note 16 to our consolidated financial statements.

(3) Represents minimum throughput obligations with our rail and port providers.

(4) We have obligations on various coal and land leases to prepay certain amounts, which are recoupable in future years when mining occurs.

(5) Represents estimated costs for black lung and asset retirement obligations, which have been presented on an undiscounted basis.

(6) Represents a capital lease obligations for the purchase of underground mining equipment.

#### Off-Balance Sheet Arrangements

In the ordinary course of our business, we are required to provide surety bonds and letters of credit to provide financial assurance for certain transactions and business activities. Federal and state laws require us to obtain surety bonds or other acceptable security to secure payment of certain long-term obligations including mine closure or reclamation costs and other miscellaneous obligations. As of December 31, 2017 (Successor), we had outstanding surety bonds and letters of credit with parties for post-mining reclamation at all of our mining operations totaling \$ 38.1 million , and \$ 2.1 million for miscellaneous purposes.

**WARRIOR MET COAL, INC.**  
**BALANCE SHEETS**  
(in thousands)

|                                                                                                                                             | Successor         |                   |
|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|
|                                                                                                                                             | December 31, 2017 | December 31, 2016 |
| <b>ASSETS</b>                                                                                                                               |                   |                   |
| Current assets:                                                                                                                             |                   |                   |
| Cash and cash equivalents                                                                                                                   | \$ 35,470         | \$ 150,045        |
| Short-term investments                                                                                                                      | 17,501            | 17,501            |
| Trade accounts receivable                                                                                                                   | 117,746           | 65,896            |
| Other receivables                                                                                                                           | 14,482            | 5,901             |
| Inventories, net                                                                                                                            | 54,294            | 39,420            |
| Prepaid expenses and other                                                                                                                  | 29,376            | 12,010            |
| Total current assets                                                                                                                        | 268,869           | 290,773           |
| Mineral interests, net                                                                                                                      | 130,004           | 143,231           |
| Property, plant and equipment, net                                                                                                          | 536,745           | 496,959           |
| Income tax receivable                                                                                                                       | 39,255            | —                 |
| Other long-term assets                                                                                                                      | 18,442            | 16,668            |
| Total assets                                                                                                                                | \$ 993,315        | \$ 947,631        |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                                                                 |                   |                   |
| Current liabilities:                                                                                                                        |                   |                   |
| Accounts payable                                                                                                                            | \$ 28,076         | \$ 6,043          |
| Accrued expenses                                                                                                                            | 66,704            | 47,339            |
| Asset retirement obligations                                                                                                                | 3,572             | 3,098             |
| Other current liabilities                                                                                                                   | 6,903             | 5,307             |
| Current portion of long-term debt                                                                                                           | 2,965             | 2,849             |
| Total current liabilities                                                                                                                   | 108,220           | 64,636            |
| Long-term debt                                                                                                                              | 342,948           | 3,725             |
| Deferred income taxes                                                                                                                       | 258               | 1,944             |
| Asset retirement obligations                                                                                                                | 96,096            | 96,050            |
| Black lung obligations                                                                                                                      | 30,208            | 27,156            |
| Other long-term liabilities                                                                                                                 | 2,562             | 1,153             |
| Total liabilities                                                                                                                           | 580,292           | 194,664           |
| Commitments and contingencies (Note 18)                                                                                                     |                   |                   |
| Stockholders' Equity:                                                                                                                       |                   |                   |
| Common stock, \$0.01 par value per share (Authorized -140,000,000 shares, issued and outstanding - 53,284,470 and 53,442,532, respectively) | 534               | 533               |
| Preferred stock, \$0.01 par value per share (10,000,000 shares authorized, no shares issued and outstanding)                                | —                 | —                 |
| Additional paid in capital                                                                                                                  | 329,993           | 802,107           |
| Retained earnings (accumulated deficit)                                                                                                     | 82,496            | (49,673)          |
| Total stockholders' equity                                                                                                                  | 413,023           | 752,967           |
| Total liabilities and stockholders' equity                                                                                                  | \$ 993,315        | \$ 947,631        |

The accompanying notes are an integral part of these consolidated financial statements.



|                                                                    | Successor                          |                                              | Predecessor                                |                                    |
|--------------------------------------------------------------------|------------------------------------|----------------------------------------------|--------------------------------------------|------------------------------------|
|                                                                    | For the year ended<br>December 31, | For the nine<br>months ended<br>December 31, | For the three<br>months ended<br>March 31, | For the year ended<br>December 31, |
|                                                                    | 2017                               | 2016                                         | 2016                                       | 2015                               |
| (in thousands except per share data)                               |                                    |                                              |                                            |                                    |
| <b>Statements of Operations Data :</b>                             |                                    |                                              |                                            |                                    |
| <b>Revenues:</b>                                                   |                                    |                                              |                                            |                                    |
| Sales                                                              | \$ 1,124,645                       | \$ 276,560                                   | \$ 65,154                                  | \$ 514,334                         |
| Other revenues                                                     | 44,447                             | 21,074                                       | 6,229                                      | 30,399                             |
| Total revenues                                                     | 1,169,092                          | 297,634                                      | 71,383                                     | 544,733                            |
| <b>Costs and expenses:</b>                                         |                                    |                                              |                                            |                                    |
| Cost of sales (exclusive of items shown separately below)          | 592,530                            | 244,723                                      | 72,297                                     | 601,545                            |
| Cost of other revenues (exclusive of items shown separately below) | 28,422                             | 19,367                                       | 4,698                                      | 27,442                             |
| Depreciation and depletion                                         | 75,413                             | 47,413                                       | 28,958                                     | 123,633                            |
| Selling, general and administrative                                | 36,453                             | 20,507                                       | 9,008                                      | 38,922                             |
| Other postretirement benefits                                      | —                                  | —                                            | 6,160                                      | 30,899                             |
| Restructuring costs                                                | —                                  | —                                            | 3,418                                      | 13,832                             |
| Asset impairment charges                                           | —                                  | —                                            | —                                          | 27,986                             |
| Transaction and other costs                                        | 12,873                             | 13,568                                       | —                                          | —                                  |
| Total costs and expenses                                           | 745,691                            | 345,578                                      | 124,539                                    | 864,259                            |
| <b>Operating income (loss)</b>                                     | <b>423,401</b>                     | <b>(47,944)</b>                              | <b>(53,156)</b>                            | <b>(319,526)</b>                   |
| Interest (expense), net                                            | (6,947)                            | (1,711)                                      | (16,562)                                   | (51,077)                           |
| Gain on extinguishment of debt                                     | —                                  | —                                            | —                                          | 26,968                             |
| Reorganization items, net                                          | —                                  | —                                            | 7,920                                      | (7,735)                            |
| <b>Income (loss) before income taxes</b>                           | <b>416,454</b>                     | <b>(49,655)</b>                              | <b>(61,798)</b>                            | <b>(351,370)</b>                   |
| Income tax (benefit) expense <sup>(1)</sup>                        | (38,592)                           | 18                                           | 18                                         | (40,789)                           |
| <b>Net income (loss)</b>                                           | <b>\$ 455,046</b>                  | <b>\$ (49,673)</b>                           | <b>\$ (61,816)</b>                         | <b>\$ (310,581)</b>                |
| Basic and diluted net income (loss) per share:                     |                                    |                                              |                                            |                                    |
| Net income (loss) per share—basic and diluted                      | \$ 8.62                            | \$ (0.94)                                    |                                            |                                    |
| Weighted average number of shares outstanding—basic                | 52,800                             | 52,640                                       |                                            |                                    |
| Weighted average number of shares outstanding— diluted             | 52,806                             | 52,640                                       |                                            |                                    |
| Dividends per share:                                               | \$ 14.92                           | \$ —                                         |                                            |                                    |
| <b>Statements of Cash Flow Data:</b>                               |                                    |                                              |                                            |                                    |
| Cash provided by (used in):                                        |                                    |                                              |                                            |                                    |
| Operating activities                                               | \$ 434,512                         | \$ (9,187)                                   | \$ (40,698)                                | \$ (131,818)                       |
| Investing activities                                               | \$ (92,625)                        | \$ (30,884)                                  | \$ (5,422)                                 | \$ (64,249)                        |
| Financing activities                                               | \$ (458,279)                       | \$ 192,727                                   | \$ (6,240)                                 | \$ (147,145)                       |

(1) The year ended December 31, 2017 includes the impact of the enactment of the Tax Cuts and Jobs Act discussed further in Note 8 to our consolidated financial statements.

**WARRIOR MET COAL, INC.**  
**STATEMENTS OF CASH FLOWS**  
(in thousands)

|                                                                                                    | Successor                          |                                              | Predecessor                                |                                    |
|----------------------------------------------------------------------------------------------------|------------------------------------|----------------------------------------------|--------------------------------------------|------------------------------------|
|                                                                                                    | For the year ended<br>December 31, | For the nine<br>months ended<br>December 31, | For the three<br>months ended<br>March 31, | For the year ended<br>December 31, |
|                                                                                                    | 2017                               | 2016                                         | 2016                                       | 2015                               |
| <b>OPERATING ACTIVITIES</b>                                                                        |                                    |                                              |                                            |                                    |
| Net income (loss)                                                                                  | \$ 455,046                         | \$ (49,673)                                  | \$ (61,816)                                | \$ (310,581)                       |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: |                                    |                                              |                                            |                                    |
| Depreciation and depletion                                                                         | 75,413                             | 47,413                                       | 28,958                                     | 123,633                            |
| Deferred income tax (benefit) expense                                                              | (1,686)                            | 544                                          | 18                                         | (40,789)                           |
| Stock-based compensation expense                                                                   | 4,181                              | 509                                          | 390                                        | 4,034                              |
| Non-cash reorganization items                                                                      | —                                  | —                                            | (18,882)                                   | (11,558)                           |
| Amortization of debt issuance costs and debt discount, net                                         | 1,889                              | 1,244                                        | 10,164                                     | 6,760                              |
| Gain on extinguishment of debt                                                                     | —                                  | —                                            | —                                          | (26,968)                           |
| Asset impairment charges                                                                           | —                                  | —                                            | —                                          | 27,986                             |
| Accretion of asset retirement obligations                                                          | 1,834                              | 2,817                                        | 1,169                                      | 4,276                              |
| Changes in operating assets and liabilities:                                                       |                                    |                                              |                                            |                                    |
| Trade accounts receivable                                                                          | (51,850)                           | (54,911)                                     | 15,097                                     | 46,858                             |
| Other receivables                                                                                  | (8,121)                            | (2,530)                                      | 1,070                                      | (12,474)                           |
| Inventories                                                                                        | (13,732)                           | 9,524                                        | 677                                        | 20,604                             |
| Prepaid expenses and other current assets                                                          | (17,366)                           | (11,001)                                     | 13,020                                     | 8,378                              |
| Accounts payable                                                                                   | 14,388                             | (4,144)                                      | (15,338)                                   | 16,675                             |
| Accrued expenses and other current liabilities                                                     | 15,642                             | 45,408                                       | (16,083)                                   | 22,303                             |
| Income tax receivable                                                                              | (39,255)                           | —                                            | —                                          | —                                  |
| Other                                                                                              | (1,871)                            | 5,613                                        | 858                                        | (10,955)                           |
| Net cash provided by (used in) operating activities                                                | 434,512                            | (9,187)                                      | (40,698)                                   | (131,818)                          |
| <b>INVESTING ACTIVITIES</b>                                                                        |                                    |                                              |                                            |                                    |
| Purchase of property, plant and equipment                                                          | (92,625)                           | (11,531)                                     | (5,422)                                    | (64,971)                           |
| Proceeds from sale of property, plant and equipment                                                | —                                  | 34                                           | —                                          | 722                                |
| Cash paid for acquisition, net of cash acquired                                                    | —                                  | (24,107)                                     | —                                          | —                                  |
| Cash receipt from escrow agreement                                                                 | —                                  | 9,364                                        | —                                          | —                                  |
| Proceeds from termination of life insurance policy                                                 | —                                  | 12,857                                       | —                                          | —                                  |
| Purchases of short-term investments                                                                | —                                  | (17,501)                                     | —                                          | —                                  |
| Net cash used in investing activities                                                              | (92,625)                           | (30,884)                                     | (5,422)                                    | (64,249)                           |
| <b>FINANCING ACTIVITIES</b>                                                                        |                                    |                                              |                                            |                                    |
| Dividends paid                                                                                     | (796,902)                          | —                                            | —                                          | —                                  |
| Proceeds from issuance of debt                                                                     | 344,750                            | —                                            | 15,723                                     | —                                  |
| Proceeds from rights offering                                                                      | —                                  | 200,000                                      | —                                          | —                                  |
| Retirements of debt                                                                                | (3,060)                            | (2,295)                                      | (285)                                      | (4,610)                            |
| Principal repayments of capital lease obligations                                                  | (505)                              | —                                            | —                                          | —                                  |
| Net cash transfers to Parent                                                                       | —                                  | —                                            | (13,290)                                   | (142,535)                          |
| Debt issuance costs paid                                                                           | (2,562)                            | (4,978)                                      | (8,388)                                    | —                                  |
| Net cash provided by (used in) financing activities                                                | (458,279)                          | 192,727                                      | (6,240)                                    | (147,145)                          |
| Net increase (decrease) in cash and cash equivalents and restricted cash                           | (116,392)                          | 152,656                                      | (52,360)                                   | (343,212)                          |
| Cash and cash equivalents and restricted cash at beginning of period                               | 152,656                            | —                                            | 84,462                                     | 427,674                            |
| Cash and cash equivalents and restricted cash at end of period                                     | \$ 36,264                          | \$ 152,656                                   | \$ 32,102                                  | \$ 84,462                          |

The accompanying notes are an integral part of these consolidated financial statements.

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-K**

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2018

or  
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT  
OF 1934

For the transition period from to



Commission File Number: 001-38061

**Warrior Met Coal, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)  
**16243 Highway 216**  
**Brookwood, Alabama**  
(Address of principal executive offices)

**81-0706839**  
(I.R.S. Employer  
Identification No.)

**35444**  
(Zip Code)

**(205) 554-6150**  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange on which registered

Common Stock, par value \$0.01 per share

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ (Do not check if a smaller reporting company)  
Emerging growth company ☐ Smaller reporting company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

another entity that has outstanding permit violations or has had a permit revoked. Significant delays in obtaining, or denial of, permits could have a material adverse effect on our business.

*Mine Safety and Health*

The MSHA, under the Federal Mine Safety and Health Act of 1977 (the “Mine Act”) and the Mine Improvement and New Emergency Response Act of 2006 (the “MINER Act”), as well as regulations adopted under these federal laws impose rigorous safety and health standards on mining operations. Such standards are comprehensive and affect numerous aspects of mining operations, including, but not limited to: training of mine personnel, mining procedures, ventilation, blasting, use of mining equipment, dust and noise control, communications and emergency response procedures. For instance, MSHA implemented a rule in August 2014 to reduce miners’ exposure to respirable coal dust, which reduced respirable dust standards for certain occupants and miners and required certain monitoring of shift dust levels. In August 2016, Phase III of MSHA’s respirable dust rule went into effect, further lowering the respirable dust standards. Separately, MSHA has implemented a rule imposing a requirement on certain continuous mining machines, requiring operators to provide proximity detection systems. MSHA monitors compliance with these laws and standards by regularly inspecting mining operations and taking enforcement actions where MSHA believes there to be non-compliance. These federal mine safety and health laws and regulations have a significant effect on our operating costs.

*Workers’ Compensation and Black Lung*

We are insured for workers’ compensation benefits for work related injuries that occur within our operations. Workers’ compensation liabilities, including those related to claims incurred but not reported, are recorded principally using annual valuations based on discounted future expected payments using historical data of the operating subsidiary or combined insurance industry data when historical data is limited. Beginning on June 1, 2018, the Company has a deductible policy where the Company is responsible for the first \$0.5 million for each workers compensation related claim from any of our employees.

In addition, certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977 (together, the “Black Lung Benefits Act”), each as amended, and are insured under a guaranteed cost insurance policy beginning on April 1, 2016 through May 31, 2018 for black lung claims of any of our employees. Beginning on June 1, 2018, the Company has a deductible policy where the Company is responsible for the first \$0.5 million for each black lung claim from any of our employees.

We also assumed all of the black lung liabilities of Walter Energy and its U.S. subsidiaries. We are self-insured for these black lung liabilities and have posted certain collateral with Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future.” Under the Black Lung Benefits Act, as amended, each coal mine operator must make payments to a trust fund for the payment of benefits and medical expenses to claimants who last worked in the coal industry prior to January 1, 1970. The trust fund is funded by an excise tax on production; however, this excise tax does not apply to coal shipped outside the United States. Based on our limited sales of coal in the United States, we do not expect to incur a material expense related to this excise tax. However, the excise tax may result in a material expense to us in the future if our coal sales in the United States significantly increase. The Patient Protection and Affordable Care Act includes significant changes to the federal black lung program, including an automatic survivor benefit paid upon the death of a miner with an awarded black lung claim and the establishment of a rebuttable presumption with regard to pneumoconiosis among miners with 15 or more years of coal mine employment that are totally disabled by a respiratory condition. These changes could have a material impact on our costs expended in association with the federal black lung program. In addition to possibly incurring liability under federal statutes we may also be liable under state laws for black lung claims. For additional information, please see “Part I, Item 1A. Risk Factors-Risks Related to Our Business-We are responsible for medical and disability benefits for black lung disease under federal law.

*Surface Mining Control and Reclamation Act*

The Surface Mining Control and Reclamation Act of 1977 (“SMCRA”) requires that comprehensive environmental protection and reclamation standards be met during the course of and following completion of mining activities. Permits for all mining operations must be obtained from the Federal Office of Surface Mining Reclamation and Enforcement (“OSM”) or, where state regulatory agencies have adopted federally approved state programs under the SMCRA, the appropriate state regulatory authority. The Alabama Surface Mining Commission reviews and approves SMCRA permits in Alabama.

*If we fail to implement our business strategies successfully, our financial performance could be harmed.*

Our future financial performance and success are dependent in large part upon our ability to successfully implement our business strategies. We may not be able to implement our business strategies successfully or achieve the anticipated benefits. If we are unable to do so, our long-term growth, profitability and ability to service any debt we incur in the future may be materially adversely affected. Even if we are able to implement some or all of the key elements of our business plan successfully, our operating results may not improve to the extent we anticipate, or at all. Implementation of our business strategies, including any decision to develop our Blue Creek Energy Mine, could also be affected by a number of factors beyond our control, such as global economic conditions, met coal prices, domestic and foreign steel demand, and environmental, health and safety laws and regulations.

A key element of our business strategy involves increasing production at our existing mines and the potential expansion into our Blue Creek Energy Mine recoverable reserves in a cost efficient manner should market conditions warrant such expansion. As we expand our business activities, there will be additional demands on our financial, technical, operational and management resources. These aspects of our strategy are subject to numerous risks and uncertainties, including:

- an inability to retain or hire experienced crews and other personnel and other labor relations matters;
- a lack of customer demand for our mined met coal;
- an inability to secure necessary equipment, raw materials or engineering in a timely manner to successfully execute our expansion plans;
- unanticipated delays that could limit or defer the production or expansion of our mining activities and jeopardize our long term relationships with our existing customers and adversely affect our ability to obtain new customers for our mined met coal; and
- a lack of available cash or access to sufficient debt or equity financing for investment in our expansion.

*Our business is subject to inherent risks, some for which we maintain third party insurance. We may incur losses and be subject to liability claims that could have a material adverse effect on our financial condition, results of operations or cash flows.*

We maintain insurance policies that provide limited coverage for some, but not all, potential risks and liabilities associated with our business. The insurance that we maintain may contain certain deductible amounts and cover risks and liabilities typical for a coal mining business including, but not limited to, property, general liability and business interruption. Although we maintain insurance for a number of risks and hazards, we may not be insured or fully insured against the losses or liabilities that could arise from a significant accident in our coal operations. We may elect not to obtain insurance for any or all of these risks if we believe that the cost of available insurance is excessive relative to the risks presented. Moreover, a significant mine accident could potentially cause a mine shutdown. The occurrence of an event that is not fully covered by insurance could have a material adverse effect on our business, financial condition, results of operations and cash flows.

As a result of market conditions, premiums and deductibles for certain insurance policies can increase substantially, and in some instances, certain insurance may become unavailable or available only for reduced amounts of coverage. As a result, we may not be able to renew our existing insurance policies or procure other desirable insurance on commercially reasonable terms, if at all. In addition, certain environmental, contamination and pollution risks generally are not fully insurable. Even where insurance coverage applies, insurers may contest their obligations to make payments. Our financial condition, results of operations and cash flows could be materially and adversely affected by losses and liabilities from uninsured or under-insured events, as well as by delays in the payment of insurance proceeds, or the failure by insurers to make payments.

We also may incur costs and liabilities resulting from claims for damages to property or injury to persons arising from our operations. We must compensate employees for work-related injuries. If we do not make adequate provision for our workers' compensation and black lung liabilities, or we are pursued for applicable sanctions, costs and liabilities, our operations and profitability could be adversely affected. Certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under federal law and are insured beginning April 1, 2016 for claims made by or on behalf of any of our employees. As a result of our limited operating history as a stand-alone company, the Department of Labor required us to provide insurance coverage rather than be self-insured for these obligations for a minimum of three years from March 31, 2016.

*We are responsible for medical and disability benefits for black lung disease under federal law. We assumed certain historical self-insured black lung liabilities of Walter Energy and its subsidiaries incurred prior to April 1, 2016 in connection with the Asset Acquisition. We are self-insured for these black lung liabilities and have posted certain collateral with Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future.*

We are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Act, each as amended, and are self-insured for black lung related claims asserted by or on behalf of former employees of Walter Energy and its subsidiaries as assumed in the Asset Acquisition for the period prior to April 1, 2016. We perform an annual actuarial evaluation of the overall black lung liabilities as of each December 31<sup>st</sup>. The calculation is performed using assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others. If the number of or severity of successful claims increases, or we are required to accrue or pay additional amounts because the successful claims prove to be more severe than our original assessment, our operating results and cash flows could be negatively impacted. Our self-insurance program for these legacy liabilities is unique to the industry and was specifically negotiated with the Department of Labor requiring us to post \$17.5 million in Treasury bills as collateral in addition to maintaining a black lung trust of \$3.6 million that was acquired in the Asset Acquisition. For additional information see "Part I, Item 1. Business-Environmental and Regulatory Matters-Workers' Compensation and Black Lung." Our estimated total black lung liabilities as of December 31, 2018 were \$26.8 million (net of the black lung trust). In future years, the Department of Labor could require us to increase the amount of the collateral which could negatively impact our cash flows.

*Defects in title of any real property or leasehold interests in our properties or associated met coal reserves could limit our ability to mine or develop these properties or result in significant unanticipated costs.*

All of our mining operations are conducted on properties owned or leased by us. Our right to mine our met coal reserves may be materially adversely affected by defects in title or boundaries or if our property interests are subject to superior property rights of third parties. We do not have title insurance for any of our real property or leasehold interests and, as part of the Asset Acquisition, we did not independently verify title to our leased properties or associated met coal reserves. Any challenge to our title or leasehold interests could delay the mining of the property, result in the loss of some or all of our interest in the property or met coal reserves and increase our costs. In order to conduct our mining operations on properties where these defects exist, we may incur unanticipated costs perfecting title. In addition, if we mine or conduct our operations on property that we do not own or lease, we could incur civil damages or liabilities for such mining operations and be subject to conversion, negligence, trespass, regulatory sanction and penalties. Some leases have minimum production requirements or require us to commence mining operations in a specified term to retain the lease. Failure to meet those requirements could result in losses of prepaid royalties and, in some rare cases, could result in a loss of the lease itself.

*We face uncertainties in estimating our proven and probable met coal reserves, and inaccuracies in our estimates of our met coal reserves could result in decreased profitability from lower than expected revenues or higher than expected costs.*

Our future performance depends on, among other things, the accuracy of our estimates of our proven and probable met coal reserves. Reserve estimates are based on a number of sources of information, including engineering, geological, mining and property control maps and data, our operational experience of historical production from similar areas with similar conditions and assumptions governing future pricing and operational costs. We update our estimates of the quantity and quality of proven and probable met coal reserves at least annually to reflect the production of met coal from the reserves, updated geological models and mining recovery data, the tonnage contained in new lease areas acquired and estimated costs of production and sales prices. There are numerous factors and assumptions inherent in estimating met coal quantities, qualities and costs to mine, including many factors beyond our control, such as the following:

- geological and mining conditions, including faults in the met coal seam;
- historical production from the area compared with production from other producing areas;
- the percentage of met coal ultimately recoverable;
- the assumed effects of regulations and taxes and other payments to governmental agencies;
- our ability to obtain, maintain and renew all required permits;
- future improvements in mining technology;

|                                    | Successor         |           |                   |         |    |         |
|------------------------------------|-------------------|-----------|-------------------|---------|----|---------|
|                                    | December 31, 2017 |           | December 31, 2016 |         |    |         |
|                                    | (in thousands)    |           |                   |         |    |         |
| <b>Balance Sheet Data:</b>         |                   |           |                   |         |    |         |
| Cash and cash equivalents          | \$                | 205,577   | \$                | 35,470  | \$ | 150,045 |
| Working capital <sup>(2)</sup>     | \$                | 345,497   | \$                | 163,614 | \$ | 228,986 |
| Mineral interests, net             | \$                | 120,427   | \$                | 130,004 | \$ | 143,231 |
| Property, plant and equipment, net | \$                | 540,315   | \$                | 536,745 | \$ | 496,959 |
| Total assets                       | \$                | 1,395,040 | \$                | 993,315 | \$ | 947,631 |
| Long-term debt                     | \$                | 468,231   | \$                | 342,948 | \$ | 3,725   |
| Total liabilities                  | \$                | 682,428   | \$                | 580,292 | \$ | 194,664 |
| Total stockholders' equity         | \$                | 712,612   | \$                | 413,023 | \$ | 752,967 |

(2) Working capital consists of current assets less current liabilities, excluding current portion of long-term debt.

**November 2017 Special Dividend**

On November 2, 2017, our board of directors declared the November Special Dividend of approximately \$600.0 million, which was funded with the net proceeds from the Notes Offering, together with cash on hand of approximately \$260.0 million and was paid on November 22, 2017 to stockholders of record as of the close of business on November 13, 2017.

**April 2018 Special Dividend**

On April 3, 2018, our board of directors declared the April Special Dividend of approximately \$350.0 million, which was funded with the net proceeds from the offering of the New Notes due 2024, together with cash on hand of approximately \$225.0 million, and was paid on April 20, 2018 to stockholders of record as of the close of business on April 13, 2018.

**Stock Repurchase**

We repurchased 1.1 million shares, totaling approximately \$25.9 million, of our common stock in the fourth quarter of 2018. For the full year 2018, we repurchased 1.6 million shares, or 3% of outstanding shares, totaling approximately \$38.0 million, under the Company's Stock Repurchase Program which authorized the Company to repurchase up to an aggregate of \$40.0 million of the Company's outstanding common stock.

During 2018, we returned approximately \$400 million of capital to stockholders and have returned \$1.2 billion since our IPO. We remain committed to returning cash to stockholders through dividends and stock repurchases.

**ABL Facility**

On April 1, 2016, we entered into the ABL Facility with certain lenders and Citibank, N.A. (together with its affiliates, "Citibank"), as administrative agent and collateral agent, with an aggregate lender commitment of up to \$50.0 million, at any time outstanding, subject to borrowing base availability. On October 15, 2018, we entered into an Amended and Restated Asset-Based Revolving Credit Agreement, by and among us and certain of our subsidiaries, as borrowers, the guarantors party thereto, the lenders from time to time party thereto and Citibank, N.A. as administrative agent (in such capacity, the "Agent"), which amended and restated in its entirety the existing ABL Facility and, among other things (i) increased the aggregate commitments available to be borrowed under the ABL Facility to \$125.0 million, (ii) extended the maturity date of the ABL Facility to October 15, 2023; (iii) decreased the applicable interest rate margins with respect to the loans and the applicable fees in connection with the issuance of letters of credit; and (iv) amended certain covenants and other terms and provisions.

Under the ABL Facility, up to \$10.0 million of the commitments may be used to incur swingline loans from Citibank and up to \$50.0 million of the commitments may be used to issue letters of credit. The ABL Facility will mature on October 15, 2023. As of December 31, 2018, no loans were outstanding under the ABL Facility and there were \$4.6 million of letters of credit issued and outstanding under the ABL Facility. At December 31, 2018, we had \$120.4 million of availability under the ABL Facility (calculated net of \$4.6 million of letters of credit outstanding at such time).

Revolving loan (and letter of credit) availability under the ABL Facility is subject to a borrowing base, which at any time is equal to the sum of certain eligible billed and unbilled accounts, certain eligible inventory, certain eligible supplies inventory and qualified cash, in each case, subject to specified advance rates. The borrowing base availability is subject to certain reserves, which may be established by the agent in its reasonable credit discretion. The reserves may include rent reserves, lower of cost or market reserve, port charges reserves and any other reserves that the agent determines in its reasonable credit judgment to the extent such reserves relate to conditions that could reasonably be expected to have an adverse effect on the value of the collateral included in the borrowing base.

Subject to permitted exceptions, the obligations of the borrowers under the ABL Facility are guaranteed by each of our domestic subsidiaries and secured by (i) first-priority security interests in the ABL Priority Collateral (as defined in the indenture governing the Notes), which includes, among other things, certain accounts receivables, inventory and cash of ours and the guarantors, and (ii) second-priority security interests in the Notes Priority Collateral (as defined in the indenture governing the Notes), which includes, among other things, material mining properties, shares of capital stock of the guarantors, intellectual property, as extracted collateral (to the extent not constituting inventory), and certain fixed assets of ours and the guarantors.

Borrowings under the ABL Facility bear interest at a rate equal to LIBOR plus an applicable margin, which is determined based on the average availability of the commitments under the ABL Facility, ranging currently from 150 bps to 200 bps. In addition to paying interest on the outstanding borrowings under the ABL Facility, we are required to pay a fee in



revenues and expenditures with respect to reserves will likely vary from estimates and these variances may be material. Variances could affect our projected future revenues and expenditures, as well as the valuation of coal reserves and depletion rates. As of December 31, 2018, we had 222.1 million metric tons of proven and probable coal reserves.

#### *Asset Retirement Obligations*

Our asset retirement obligations primarily consist of spending estimates to reclaim surface lands and supporting infrastructure at both surface and underground mines in accordance with applicable reclamation laws in the United States as defined by each mining permit. Significant reclamation activities include reclaiming refuse piles and slurry ponds, reclaiming the pit and support acreage at surface mines, and sealing portals at underground mines. Asset retirement obligations are determined for each mine using various estimates and assumptions, including estimates of disturbed acreage as determined from engineering data, estimates of future costs to reclaim the disturbed acreage and the timing of related cash flows, discounted using a credit-adjusted, risk-free rate. Our asset retirement obligations also include estimates to reclaim gas wells in accordance with the Oil and Gas Board of Alabama. On at least an annual basis, we review our entire asset retirement obligation liability and make necessary adjustments for permit changes, the anticipated timing of mine closures, and revisions to cost estimates and productivity assumptions to reflect current experience. As changes in estimates occur, the carrying amount of the obligation and asset are revised to reflect the new estimate after applying the appropriate credit-adjusted, risk-free discount rate. For sites where there is no asset, expense or income is recognized for changes in estimates. If our assumptions differ from actual experience, or if changes in the regulatory environment occur, our actual cash expenditures and costs that we incur could be materially different than currently estimated. At December 31, 2018, we had recorded asset retirement obligation liabilities of \$61.8 million, including \$2.8 million reported as current.

#### *Black Lung*

We also have significant liabilities for uninsured miners' black lung benefit liabilities that were assumed in connection with the Asset Acquisition. The recorded amounts of these liabilities are based on estimates of loss from individual claims and on estimates of incurred but not reported claims determined on an actuarial basis from historical experience using assumptions regarding rates of successful claims, benefit increases and mortality rates.

Black lung benefit liabilities are also affected by discount rates used. A discount rate of 4.18% and 3.56% was used to calculate the present value of the obligation as of December 31, 2018 and December 31, 2017, respectively. Changes in the frequency or severity of losses from historical experience and changes in discount rates or actual losses on individual claims that differ materially from estimated amounts could affect the recorded amount of these liabilities. As of December 31, 2018, we had recorded black lung liabilities of \$ 26.8 million, of which \$ 1.6 million is classified in other current liabilities and the remainder of \$ 25.2 million is shown as a long-term liability as a separate line item in the Balance Sheet. At December 31, 2018, a one-percentage-point increase in the discount rate would decrease the liability by \$3.5 million, while a one-percentage-point decrease in the discount rate would increase the liability by \$4.4 million.

#### *Income Taxes*

As a result of the Asset Acquisition, we have significant federal and state NOLs of approximately \$1.1 billion and \$1.2 billion, respectively as of December 31, 2018.

We believe the utilization of these NOLs, subject to certain limitations, will significantly reduce the amount of federal and state income taxes payable by us for the foreseeable future as compared to what we would have had to pay at the statutory rates without these NOL benefits. Under Section 382 of the Code, these NOLs could be subject to annual limitations, further limitations, or elimination, as described below, if we were to undergo a subsequent ownership change in the future. To the extent we have taxable income in the future and can utilize these NOL carryforwards, subject to certain limitations, to reduce taxable income, our cash taxes will be significantly reduced in those future years. Notwithstanding the above, even if all of our regular U.S. federal income tax liability for a given year is reduced to zero by virtue of utilizing our NOLs, we may still be subject to state, local or other non-federal income taxes. See "Part I, Item 1A. Risk Factors-Risks Related to Our Business-We may be unable to generate sufficient taxable income from future operations, or other circumstances could arise, which may limit or eliminate our ability to utilize our significant tax NOLs or maintain our deferred tax assets."

On September 18, 2017, the IRS issued to us a private letter ruling, which favorably resolved certain questions about our ability to qualify for an exception to the annual limitations under Section 382 of the Code on the utilization of NOLs to reduce taxable income. Based on such private letter ruling, we believe that there is no limitation on the utilization of our NOLs to shield our income from federal taxation. The private letter ruling was issued based on, among other things, certain facts and assumptions, as well as certain representations, statements and undertakings provided to the IRS by us. If any of these facts,

may be limited by our financial condition at the time of any such financing or offering and the covenants in our current or future debt agreements, as well as by general economic conditions, contingencies and uncertainties that are beyond our control.

Our cash capital expenditures were \$101.6 million for the year ended December 31, 2018, primarily as a result of the continuation of the capital investment program that we implemented in 2017 to upgrade all key production equipment to further improve efficiency and reliability of our mining operations. We spent approximately \$69.0 million in sustaining capital which was in line with our guidance of \$70.0 to \$83.0 million, and an additional \$33.0 million in other discretionary capital, which included the construction of a new portal at Mine No. 7 and which was within our guidance. The cash capital expenditures exclude non-cash capital accruals and leases of approximately \$6.3 million.

We evaluate our spending on an ongoing basis in connection with our mining plans and the prices of met coal taking into consideration the funding available to maintain our operations at optimal production levels.

We expect to continue making significant capital expenditures in 2019 above our normal sustaining capital expenditures that we believe will further improve efficiency, reliability and production levels in 2019 and the future. Total capital spending will depend upon a number of factors, including business and economic conditions, the met coal pricing environment and our expected financial performance and our capital expenditures can be reduced if those conditions were to deteriorate in 2019 or beyond. Our capital spending is expected to range from \$100.0 to \$120.0 million for the full year 2019, consisting of sustaining capital expenditures of approximately \$70.0 to \$87.0 million and discretionary capital expenditures of approximately \$30.0 to \$33.0 million. Our sustaining capital expenditures include expenditures related to longwall operations, new ventilation, and bleeder shafts. Our discretionary capital expenditures include Mine 4 development, an additional set of new longwall shields, and other various operational improvements, which will increase efficiency, increase production and lower costs over time. Because of the long lead times on the discretionary capital spending, we expect to realize the benefits of those projects primarily in 2020 and beyond. These amounts set forth above do not include any potential spending associated with our Blue Creek Energy Mine should we decide to develop it for production in the future.

#### Contractual Obligations

The following is a summary of our significant contractual obligations at December 31, 2018.

|                                                              | Payments due by Year |                  |             |             |                   |
|--------------------------------------------------------------|----------------------|------------------|-------------|-------------|-------------------|
|                                                              | Total                | Less than 1 year | 1 - 3 years | 3 - 5 years | More than 5 years |
|                                                              | (in thousands)       |                  |             |             |                   |
| Promissory note (principal and interest) <sup>(1)</sup>      | \$ 764               | \$ 764           |             | \$ —        | \$ —              |
| Senior Secured Notes (principal and interest) <sup>(2)</sup> | \$ 699,833           | 38,000           | 76,000      | 76,000      | 509,833           |
| Minimum throughput obligations <sup>(3)</sup>                | \$ 548,335           | 72,350           | 146,735     | 149,517     | 179,733           |
| Royalty obligations <sup>(4)</sup>                           | \$ 93,188            | 5,872            | 11,884      | 11,884      | 63,548            |
| Black lung obligations <sup>(5)</sup>                        | \$ 88,214            | 1,554            | 3,908       | 3,731       | 79,021            |
| Asset retirement obligations <sup>(5)</sup>                  | \$ 88,655            | 2,796            | 6,658       | 4,192       | 75,009            |
| Capital lease obligations <sup>(6)</sup>                     | \$ 4,482             | 4,310            | 172         | —           | —                 |
| Total contractual obligations                                | \$ 1,523,471         | \$ 125,646       | \$ 245,357  | \$ 245,324  | \$ 907,144        |

(1) Represents a security agreement and promissory note assumed in the Asset Acquisition. The agreement was entered into for the purchase of underground mining equipment. The promissory note matures on March 31, 2019, has a fixed interest rate of 4.00% per annum and is secured by the underground mining equipment it was used to purchase.

(2) Represents principal and interest payments on our Notes. See Note 16 to our consolidated financial statements.

(3) Represents minimum throughput obligations with our rail and port providers.

(4) We have obligations on various coal and land leases to prepay certain amounts, which are recoupable in future years when mining occurs.

(5) Represents estimated costs for black lung and asset retirement obligations, which have been presented on an undiscounted basis.

(6) Represents a capital lease obligation for the purchase of underground mining equipment.

**WARRIOR MET COAL, INC.**  
**BALANCE SHEETS**  
(in thousands)

|                                                                                                                                                                                                               | Successor         |                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|
|                                                                                                                                                                                                               | December 31, 2018 | December 31, 2017 |
| <b>ASSETS</b>                                                                                                                                                                                                 |                   |                   |
| Current assets:                                                                                                                                                                                               |                   |                   |
| Cash and cash equivalents                                                                                                                                                                                     | \$ 205,577        | \$ 35,470         |
| Short-term investments                                                                                                                                                                                        | 17,501            | 17,501            |
| Trade accounts receivable                                                                                                                                                                                     | 138,399           | 117,746           |
| Other receivables                                                                                                                                                                                             | 1,434             | 5,306             |
| Income tax receivable                                                                                                                                                                                         | 21,607            | 9,176             |
| Inventories, net                                                                                                                                                                                              | 56,719            | 54,294            |
| Prepaid expenses and other                                                                                                                                                                                    | 27,932            | 29,376            |
| Total current assets                                                                                                                                                                                          | 469,169           | 268,869           |
| Mineral interests, net                                                                                                                                                                                        | 120,427           | 130,004           |
| Property, plant and equipment, net                                                                                                                                                                            | 540,315           | 536,745           |
| Non-current income tax receivable                                                                                                                                                                             | 21,310            | 39,255            |
| Deferred income taxes                                                                                                                                                                                         | 222,780           | —                 |
| Other long-term assets                                                                                                                                                                                        | 21,039            | 18,442            |
| Total assets                                                                                                                                                                                                  | \$ 1,395,040      | \$ 993,315        |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                                                                                                                                   |                   |                   |
| Current liabilities:                                                                                                                                                                                          |                   |                   |
| Accounts payable                                                                                                                                                                                              | \$ 33,588         | \$ 28,076         |
| Accrued expenses                                                                                                                                                                                              | 82,342            | 66,704            |
| Asset retirement obligations                                                                                                                                                                                  | 2,775             | 3,572             |
| Other current liabilities                                                                                                                                                                                     | 4,967             | 6,903             |
| Current portion of long-term debt                                                                                                                                                                             | 760               | 2,965             |
| Total current liabilities                                                                                                                                                                                     | 124,432           | 108,220           |
| Long-term debt                                                                                                                                                                                                | 468,231           | 342,948           |
| Deferred income taxes                                                                                                                                                                                         | —                 | 258               |
| Asset retirement obligations                                                                                                                                                                                  | 59,049            | 96,096            |
| Black lung obligations                                                                                                                                                                                        | 25,206            | 30,208            |
| Other long-term liabilities                                                                                                                                                                                   | 5,510             | 2,562             |
| Total liabilities                                                                                                                                                                                             | 682,428           | 580,292           |
| Commitments and contingencies (Note 18)                                                                                                                                                                       |                   |                   |
| Stockholders' Equity:                                                                                                                                                                                         |                   |                   |
| Common stock, \$0.01 par value per share (Authorized -140,000,000 shares, 53,256,098 issued and 51,622,898 outstanding as of December 31, 2018 and 53,284,470 issued and outstanding as of December 31, 2017) | 533               | 534               |
| Preferred stock, \$0.01 par value per share (10,000,000 shares authorized, no shares issued and outstanding)                                                                                                  | —                 | —                 |
| Treasury Stock, at cost (1,633,200 shares)                                                                                                                                                                    | (38,030)          | —                 |
| Additional paid in capital                                                                                                                                                                                    | 239,827           | 329,993           |
| Retained earnings                                                                                                                                                                                             | 510,282           | 82,496            |
| Total stockholders' equity                                                                                                                                                                                    | 712,612           | 413,023           |
| Total liabilities and stockholders' equity                                                                                                                                                                    | \$ 1,395,040      | \$ 993,315        |

The accompanying notes are an integral part of these consolidated financial statements.

**WARRIOR MET COAL, INC.**  
**STATEMENTS OF CASH FLOWS**  
(in thousands)

|                                                                                                    | Successor                                  |                                               |                                                      | Predecessor                                        |
|----------------------------------------------------------------------------------------------------|--------------------------------------------|-----------------------------------------------|------------------------------------------------------|----------------------------------------------------|
|                                                                                                    | For the year ended<br>December 31,<br>2018 | For the year<br>ended December<br>31,<br>2017 | For the nine<br>months ended<br>December 31,<br>2016 | For the three<br>months ended<br>March 31,<br>2016 |
| <b>OPERATING ACTIVITIES</b>                                                                        |                                            |                                               |                                                      |                                                    |
| Net income (loss)                                                                                  | \$ 696,787                                 | \$ 455,046                                    | \$ (49,673)                                          | \$ (61,816)                                        |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: |                                            |                                               |                                                      |                                                    |
| Depreciation and depletion                                                                         | 97,209                                     | 75,413                                        | 47,413                                               | 28,958                                             |
| Deferred income tax (benefit) expense                                                              | (223,038)                                  | (1,686)                                       | 544                                                  | 18                                                 |
| Stock-based compensation expense                                                                   | 6,405                                      | 4,181                                         | 509                                                  | 390                                                |
| Non-cash reorganization items                                                                      | —                                          | —                                             | —                                                    | (18,882)                                           |
| Amortization of debt issuance costs and debt discount, net                                         | 2,486                                      | 1,889                                         | 1,244                                                | 10,164                                             |
| Accretion and valuation adjustment of ARO                                                          | (19,942)                                   | 1,834                                         | 2,817                                                | 1,169                                              |
| Changes in operating assets and liabilities:                                                       |                                            |                                               |                                                      |                                                    |
| Trade accounts receivable                                                                          | (20,653)                                   | (51,850)                                      | (54,911)                                             | 15,097                                             |
| Other receivables                                                                                  | 3,872                                      | (8,121)                                       | (2,530)                                              | 1,070                                              |
| Income tax receivable                                                                              | (12,431)                                   | —                                             | —                                                    | —                                                  |
| Inventories                                                                                        | (1,812)                                    | (13,732)                                      | 9,524                                                | 677                                                |
| Prepaid expenses and other current assets                                                          | 1,444                                      | (17,366)                                      | (11,001)                                             | 13,020                                             |
| Accounts payable                                                                                   | 5,060                                      | 14,388                                        | (4,144)                                              | (15,338)                                           |
| Accrued expenses and other current liabilities                                                     | 13,835                                     | 15,642                                        | 45,408                                               | (16,083)                                           |
| Non-current income tax receivable                                                                  | 17,945                                     | (39,255)                                      | —                                                    | —                                                  |
| Other                                                                                              | (7,771)                                    | (1,871)                                       | 5,613                                                | 858                                                |
| Net cash provided by (used in) operating activities                                                | 559,396                                    | 434,512                                       | (9,187)                                              | (40,698)                                           |
| <b>INVESTING ACTIVITIES</b>                                                                        |                                            |                                               |                                                      |                                                    |
| Purchase of property, plant and equipment                                                          | (101,620)                                  | (92,625)                                      | (11,531)                                             | (5,422)                                            |
| Deferred mine development costs                                                                    | (8,937)                                    | —                                             | —                                                    | —                                                  |
| Proceeds from sale of property, plant and equipment                                                | 2,928                                      | —                                             | 34                                                   | —                                                  |
| Cash paid for acquisition, net of cash acquired                                                    | —                                          | —                                             | (24,107)                                             | —                                                  |
| Cash receipt from escrow agreement                                                                 | —                                          | —                                             | 9,364                                                | —                                                  |
| Proceeds from termination of life insurance policy                                                 | —                                          | —                                             | 12,857                                               | —                                                  |
| Purchases of short-term investments                                                                | —                                          | —                                             | (17,501)                                             | —                                                  |
| Net cash used in investing activities                                                              | (107,629)                                  | (92,625)                                      | (30,884)                                             | (5,422)                                            |
| <b>FINANCING ACTIVITIES</b>                                                                        |                                            |                                               |                                                      |                                                    |
| Dividends paid                                                                                     | (360,635)                                  | (796,902)                                     | —                                                    | —                                                  |
| Proceeds from issuance of debt                                                                     | 128,750                                    | 344,750                                       | —                                                    | 15,723                                             |
| Proceeds from rights offering                                                                      | —                                          | —                                             | 200,000                                              | —                                                  |
| Retirements of debt                                                                                | (3,060)                                    | (3,060)                                       | (2,295)                                              | (285)                                              |
| Principal repayments of capital lease obligations                                                  | —                                          | (505)                                         | —                                                    | —                                                  |
| Net cash transfers to Parent                                                                       | —                                          | —                                             | —                                                    | (13,290)                                           |
| Debt issuance costs paid                                                                           | (3,713)                                    | (2,562)                                       | (4,978)                                              | (8,388)                                            |
| Common shares repurchased                                                                          | (38,030)                                   | —                                             | —                                                    | —                                                  |
| Other                                                                                              | (4,938)                                    | —                                             | —                                                    | —                                                  |
| Net cash provided by (used in) financing activities                                                | (281,626)                                  | (458,279)                                     | 192,727                                              | (6,240)                                            |
| Net increase (decrease) in cash and cash equivalents and restricted cash                           | 170,141                                    | (116,392)                                     | 152,656                                              | (52,360)                                           |
| Cash and cash equivalents and restricted cash at beginning of period                               | 36,264                                     | 152,656                                       | —                                                    | 84,462                                             |
| Cash and cash equivalents and restricted cash at end of period                                     | \$ 206,405                                 | \$ 36,264                                     | \$ 152,656                                           | \$ 32,102                                          |

The accompanying notes are an integral part of these consolidated financial statements.

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

Net cash paid for reorganization items for the three months ended March 31, 2016 (Predecessor) totaled approximately \$ 12.3 million .

**Note 12—Restructuring Costs**

For the three months ended March 31, 2016 (Predecessor), the Predecessor recognized restructuring charges of approximately \$ 3.4 million , due to workforce reductions at the Alabama No. 7 underground mine, the Alabama No. 4 underground mine and corporate headquarters in conjunction with cost containment initiatives implemented in response to the deterioration in the metallurgical coal market. The restructuring charges consist primarily of severance and related benefits costs. The Company does not expect to incur any additional restructuring charges in the Successor periods in connection with the Predecessor restructuring actions.

**Note 13—Pneumoconiosis ("Black Lung") Obligations**

The Company is responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, as amended. Beginning on April 1, 2016 through May 31, 2018, the Company was insured under a guaranteed cost insurance policy, through a third-party insurance carrier, for black lung claims raised by any employee subsequent to the Asset Acquisition. Beginning June 1, 2018, the Company has a deductible policy where the Company is responsible for the first \$0.5 million for each black lung claim.

In addition, in connection with the Asset Acquisition, the Company assumed all black lung liabilities of Walter Energy and its U.S. subsidiaries incurred prior to March 31, 2016. The Company is self-insured for the black lung claims assumed in the Asset Acquisition. Due to a limited operating history as a stand-alone company and as a result of being self-insured for these historical black lung claims, the Department of Labor required the Company to post \$ 17.5 million in Treasury bills as collateral, in addition to maintaining a black lung trust acquired in the Asset Acquisition. The \$ 17.5 million of collateral is recognized as short-term investments and the \$ 3.6 million and \$ 4.0 million black lung trust is offset against the long-term portion of the black lung obligations within the Balance Sheet as of December 31, 2018 and December 31, 2017, respectively. Under the terms of the agreement with the U.S. Department of Labor, the Company may elect to replace the \$ 17.5 million collateral deposit with a surety bond or other form of assurance every six months. The estimated total black lung liabilities (net of black lung trust assets) were \$ 26.8 million as of December 31, 2018 , of which \$ 1.6 million is classified in other current liabilities and the remainder of \$ 25.2 million is shown as a long-term liability in a separate line item in the Consolidated Balance Sheet. For the year ended December 31, 2017 , the estimated black lung liabilities were \$ 31.9 million , of which \$ 1.7 million is classified in other current liabilities and \$ 30.2 million is displayed as a long-term liability in a separate line item in the Balance Sheet. The Company performs an annual evaluation of its black lung liabilities at each balance sheet date. The calculation uses assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others.

**Note 14—Pension and Other Postretirement Benefits**

**Successor Benefit Plans**

In connection with the Asset Acquisition, the Company did not assume any of the Parent's obligations under the plans discussed in further detail below. The Company established new employee benefit plans for its employees subsequent to closing the Asset Acquisition. The plans are defined contribution plans. Contributions to these defined contribution plans amounted to \$ 3.1 million for the year ended December 31, 2018 , \$ 1.4 million for the year ended December 31, 2017 and \$1.1 million for the nine months ended December 31, 2016.

*New Initial CBA*

In connection with the Asset Acquisition, the Company negotiated a new initial collective bargaining agreement ("CBA") with the United Mine Workers of America ("UMWA") (the "UMWA CBA"), which was ratified by UMWA's members on February 16, 2016 and expires on March 31, 2021. Pursuant to the UMWA CBA, the Company agreed to contribute \$25.0 million to a Voluntary Employee Beneficiary Association ("VEBA") trust formed and administered by the UMWA. Approximately 69% of the Company's employees were represented by the UMWA as of December 31, 2018 and December 31, 2017 .

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

Significant components of the Company's deferred income tax assets and liabilities were (in thousands):

|                                                          | Successor         |                   |
|----------------------------------------------------------|-------------------|-------------------|
|                                                          | December 31, 2018 | December 31, 2017 |
| <b>Deferred income tax assets:</b>                       |                   |                   |
| Net operating loss and credit carryforwards              | \$ 298,180        | \$ 395,526        |
| Inventory                                                | 119               | 1,083             |
| Asset retirement obligations                             | 15,526            | 23,765            |
| Black lung obligations                                   | 6,720             | 7,991             |
| Accrued expenses                                         | 3,611             | 561               |
| Other                                                    | 2,767             | 197               |
| Total                                                    | 326,923           | 429,123           |
| Less: valuation allowance for deferred income tax assets | —                 | (312,493)         |
| Net deferred income tax assets                           | 326,923           | 116,630           |
| <b>Deferred income tax liabilities:</b>                  |                   |                   |
| Prepaid expenses                                         | (9,894)           | (9,416)           |
| Property, plant and equipment                            | (92,361)          | (105,715)         |
| Other                                                    | (1,888)           | (1,757)           |
| Total deferred income tax liabilities                    | (104,143)         | (116,888)         |
| Net deferred income tax asset (liability)                | \$ 222,780        | \$ (258)          |

On March 31, 2016, the Company experienced an ownership change for purposes of Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"). As a result of such ownership change, absent an applicable exception to such rules, an annual limitation under Section 382 would apply for federal and certain state income tax purposes with respect to the utilization of net operating loss carryforwards ("NOLs"). In 2017, the Company requested a private letter ruling ("PLR") from the Internal Revenue Service ("IRS") to clarify certain matters, that if ruled favorably on by the IRS, would allow the Company to qualify for an exception to the aforementioned rules limiting its utilization of its NOLs. On September 18, 2017, the IRS issued to the Company a favorable PLR. Prior to the issuance of the PLR, the Company operated and prepared its financial statements based on an assumption that an annual limitation on the utilization of the NOLs existed. As a result of qualifying for such exception, the Company's gross federal and state NOLs were revised downward to approximately \$1.9 billion and \$2.0 billion, respectively, as of December 31, 2016 and \$1.6 billion for both federal and state NOLs as of December 31, 2017. This revision reflected a decrease to the NOL deferred tax asset and a corresponding adjustment to the valuation allowance recorded against those NOLs. If the Company were to undergo a subsequent ownership change our ability to utilize our NOLs and other tax attributes could be subject to severe limitations.

The Company has federal net operating loss carryforwards of approximately \$1.1 billion as of December 31, 2018, which expire predominantly in December 31, 2034 through December 31, 2036. The Company has state net operating loss carryforwards of approximately \$1.2 billion, which expire predominantly in December 31, 2029 through December 31, 2031. In addition, the Company has approximately \$11.5 million of general business credits which begin to expire in December 31, 2027 and fully expire in December 31, 2034.

**Valuation Allowance**

The Company periodically assesses whether it is more likely than not that it will generate sufficient taxable income to realize its deferred income tax assets. The Company establishes valuation allowances if it is not likely it will realize its deferred income tax assets. In making this determination, the Company considers all available positive and negative evidence and makes certain assumptions. The Company considers, among other things, all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, the overall business environment, its historical financial results, the industry's historically cyclical financial results, its cumulative three-year income or loss position and potential current and future tax planning strategies.

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended December 31, 2019  
or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from to



Commission File Number: 001-38061

**Warrior Met Coal, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware** **81-0706839**  
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

**16243 Highway 216**  
**Brookwood Alabama**  
(Address of Principal Executive Offices) **35444**  
(Zip Code)

(205) 554-6150  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class                                                                          | Trading Symbol(s) | Name of each exchange on which registered |
|----------------------------------------------------------------------------------------------|-------------------|-------------------------------------------|
| Common Stock, par value \$0.01 per share                                                     | HCC               | New York Stock Exchange                   |
| Rights to Purchase Series A Junior Participating Preferred Stock, par value \$0.01 per share | --                | New York Stock Exchange                   |

Securities registered pursuant to Section 12(g) of the Act: None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐  
Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

implementing regulations for these environmental laws have not yet been promulgated and in certain instances are undergoing revision or judicial review. These laws and regulations, particularly new legislative or administrative proposals (or judicial interpretations of existing laws and regulations) related to the protection of the environment, could result in substantially increased capital, operating and compliance costs and could have a material adverse effect on our operations and/or, along with analogous foreign laws and regulations, our customers' ability to use our products.

Due in part to the extensive and comprehensive regulatory requirements, along with changing interpretations of these requirements, violations occur from time to time in our industry and at our operations. Expenditures relating to environmental compliance are a major cost consideration for our operations and environmental compliance is a significant factor in mine design, both to meet regulatory requirements and to minimize long-term environmental liabilities. To the extent that these expenditures, as with all costs, are not ultimately reflected in the prices of our products and services, operating results will be reduced. We believe that our major North American competitors are confronted by substantially similar conditions and thus do not believe that our relative position with regard to such competitors is materially affected by the impact of environmental laws and regulations. However, the costs and operating restrictions necessary for compliance with environmental laws and regulations may have an adverse effect on our competitive position with regard to foreign producers and operators who may not be required to undertake equivalent costs in their operations. In addition, the specific impact on each competitor may vary depending on a number of factors, including the age and location of its operating facilities, applicable legislation and its production methods.

#### *Permitting and Approvals*

Numerous governmental permits and approvals are required for mining and natural gas operations. We are required to prepare and present to federal, state and local authorities data pertaining to the effect or impact that any proposed exploration project for production of coal or gas may have on the environment, the public and our employees. In addition, we must also submit a comprehensive plan for mining and reclamation upon the completion of mining operations. The requirements are costly and time-consuming and may delay commencement or continuation of exploration, production or expansion at our operations. Typically, we submit necessary mining permit applications several months, or even years, before we anticipate mining a new area.

Applications for permits and permit renewals at our mining and gas operations are subject to public comment and may be subject to litigation from third parties seeking to deny issuance of a permit or to overturn the applicable agency's grant of the permit application, which may also delay commencement, continuation or expansion of our mining and gas operations. Further, regulations provide that applications for certain permits or permit modifications in the U.S. can be delayed, refused or revoked if an officer, director or a stockholder with a 10% or greater interest in the entity is affiliated with or is in a position to control another entity that has outstanding permit violations or has had a permit revoked. Significant delays in obtaining, or denial of, permits could have a material adverse effect on our business.

#### *Mine Safety and Health*

The MSHA, under the Federal Mine Safety and Health Act of 1977 (the "Mine Act") and the Mine Improvement and New Emergency Response Act of 2006 (the "MINER Act"), as well as regulations adopted under these federal laws impose rigorous safety and health standards on mining operations. Such standards are comprehensive and affect numerous aspects of mining operations, including, but not limited to: training of mine personnel, mining procedures, ventilation, blasting, use of mining equipment, dust and noise control, communications and emergency response procedures. For instance, MSHA implemented a rule in August 2014 to reduce miners' exposure to respirable coal dust, which reduced respirable dust standards for certain occupants and miners and required certain monitoring of shift dust levels. In August 2016, Phase III of MSHA's respirable dust rule went into effect, further lowering the respirable dust standards. Separately, MSHA has implemented a rule imposing a requirement on certain continuous mining machines, requiring operators to provide proximity detection systems. MSHA monitors compliance with these laws and standards by regularly inspecting mining operations and taking enforcement actions where MSHA believes there to be non-compliance. These federal mine safety and health laws and regulations have a significant effect on our operating costs.

#### *Workers' Compensation and Black Lung*

We are insured for workers' compensation benefits for work related injuries that occur within our operations. Workers' compensation liabilities, including those related to claims incurred but not reported, are recorded principally using annual valuations based on discounted future expected payments using historical data of the operating subsidiary or combined insurance industry data when historical data is limited. Beginning on June 1, 2018, the Company has a deductible policy where the Company is responsible for the first \$0.5 million for each workers compensation related claim from any of our employees.



In addition, certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977 (together, the “Black Lung Benefits Act”), each as amended, and are insured under a guaranteed cost insurance policy beginning on April 1, 2016 through May 31, 2018 for black lung claims of any of our employees. Since June 1, 2018, the Company has had a deductible policy where the Company is responsible for the first \$0.5 million for each black lung claim from any of our employees.

We also assumed all of the black lung liabilities of Walter Energy and its U.S. subsidiaries. We are self-insured for these black lung liabilities and have posted certain collateral with Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future.” Under the Black Lung Benefits Act, as amended, each coal mine operator must make payments to a trust fund for the payment of benefits and medical expenses to claimants who last worked in the coal industry prior to January 1, 1970. The trust fund is funded by an excise tax on production; however, this excise tax does not apply to coal shipped outside the United States. Based on our limited sales of coal in the United States, we do not expect to incur a material expense related to this excise tax. However, the excise tax may result in a material expense to us in the future if our coal sales in the United States significantly increase. The Patient Protection and Affordable Care Act includes significant changes to the federal black lung program, including an automatic survivor benefit paid upon the death of a miner with an awarded black lung claim and the establishment of a rebuttable presumption with regard to pneumoconiosis among miners with 15 or more years of coal mine employment that are totally disabled by a respiratory condition. These changes could have a material impact on our costs expended in association with the federal black lung program. In addition to possibly incurring liability under federal statutes we may also be liable under state laws for black lung claims. For additional information, please see “Part I, Item 1A. Risk Factors—Risks Related to Our Business—We are responsible for medical and disability benefits for black lung disease under federal law.”

#### *Surface Mining Control and Reclamation Act*

The Surface Mining Control and Reclamation Act of 1977 (“SMCRA”) requires that comprehensive environmental protection and reclamation standards be met during the course of and following completion of mining activities. Permits for all mining operations must be obtained from the Federal Office of Surface Mining Reclamation and Enforcement (“OSM”) or, where state regulatory agencies have adopted federally approved state programs under the SMCRA, the appropriate state regulatory authority. The Alabama Surface Mining Commission reviews and approves SMCRA permits in Alabama.

SMCRA permit provisions include requirements for coal prospecting, mine plan development, topsoil removal, storage and replacement, selective handling of overburden materials, mine pit backfilling and grading, subsidence control for underground mines, surface drainage control, mine drainage and mine discharge control, treatment and revegetation. These requirements seek to limit the adverse impacts of coal mining and more restrictive requirements may be adopted from time to time.

Before a SMCRA permit is issued, a mine operator must submit a bond or otherwise secure the performance of reclamation obligations. The Abandoned Mine Land Fund, which is part of SMCRA, imposes a general funding fee on all coal produced. The proceeds are used to reclaim mine lands closed or abandoned prior to 1977. On December 7, 2006, the Abandoned Mine Land Program was extended for another 15 years.

We maintain extensive coal refuse areas and slurry impoundments at our mining complexes. Such areas and impoundments are subject to comprehensive regulation. Structural failure of an impoundment can result in damage to the environment and natural resources, such as bodies of water that the coal slurry reaches, as well as create liability for related personal injuries, property damages and injuries to wildlife. Some of our impoundments overlie mined out areas, which can pose a heightened risk of failure and the assessment of damages arising out of such failure. If one of our impoundments were to fail, we could be subject to substantial claims for the resulting environmental contamination and associated liability, as well as for related fines and penalties.

On December 12, 2008, the OSM finalized rulemaking regarding the interpretation of the stream buffer zone provisions of SMCRA, which confirmed that excess spoil from mining and refuse from coal preparation could be placed in permitted areas of a mine site that constitute waters of the U.S. The rule was subsequently vacated based, in part, upon the fact that the U.S. Fish & Wildlife Service was not consulted with respect to possible effects on endangered species under terms of the Endangered Species Act. At present, an earlier 1983 rule is in place, which requires coal companies to keep operations 100 feet from streams or otherwise minimize any damage. On December 20, 2016, the OSM published a new, finalized “Stream Protection Rule,” setting standards for “material damage to the hydrologic balance outside the permit area” that are applicable to surface and underground mining operations. However, on February 16, 2017, President Trump signed a joint congressional

- local infrastructure conditions and other logistical challenges;
- the possibility that we may have insufficient expertise to engage in such development activity profitably or without incurring inappropriate amounts of risks;
- the fact that the coal reserves at Blue Creek may not be as economically recoverable as planned;
- difficulties in integrating Blue Creek with our existing mining operations and failure to achieve any estimated economies of scale; and
- our ability to hire qualified construction and other personnel.

We cannot assure you that we will be able to overcome these risks or successfully develop Blue Creek. If we are unable to complete, or are substantially delayed in completing, the development of Blue Creek, our business, financial condition, results of operations, cash flows and ability to pay dividends to our stockholders could be adversely affected. Furthermore, even if Blue Creek is successfully developed, constructed, and placed into operation, we cannot assure you that it will operate at a profit sufficient to recover our total investment. In addition, if its development is successful, the operation of Blue Creek would exacerbate our existing mining and operation risks discussed elsewhere in this Report, including, but not limited to, risks related to increasing the concentration of our mining operations in Alabama, hazards and operating risks, transportation risks, liability risks and regulatory risks. See “-Risks Related to Our Business-All of our mining operations are located in Alabama, making us vulnerable to risks associated with having our production concentrated in one geographic area”, “-Met coal mining involves many hazards and operating risks, and is dependent upon many factors and conditions beyond our control, which may cause our profitability and financial position to decline”, “-If transportation for our met coal is disrupted, unavailable or more expensive for our customers, our ability to sell met coal could suffer”, “-Our business is subject to inherent risks, some for which we maintain third party insurance. We may incur losses and be subject to liability claims that could have a material adverse effect on our financial condition, results of operations or cash flows” and “-Our mines are subject to stringent federal and state safety regulations that increase our cost of doing business at active operations and may place restrictions on our methods of operation. In addition, federal, state or local regulatory agencies have the authority to order certain of our mines to be temporarily or permanently closed under certain circumstances, which could materially and adversely affect our ability to meet our customers’ demands.”

*Our business is subject to inherent risks, some for which we maintain third party insurance. We may incur losses and be subject to liability claims that could have a material adverse effect on our financial condition, results of operations or cash flows.*

We maintain insurance policies that provide limited coverage for some, but not all, potential risks and liabilities associated with our business. The insurance that we maintain may contain certain deductible amounts and cover risks and liabilities typical for a coal mining business including, but not limited to, property, general liability and business interruption. Although we maintain insurance for a number of risks and hazards, we may not be insured or fully insured against the losses or liabilities that could arise from a significant accident in our coal operations. We may elect not to obtain insurance for any or all of these risks if we believe that the cost of available insurance is excessive relative to the risks presented. Moreover, a significant mine accident could potentially cause a mine shutdown. The occurrence of an event that is not fully covered by insurance could have a material adverse effect on our business, financial condition, results of operations and cash flows.

As a result of market conditions, premiums and deductibles for certain insurance policies can increase substantially, and in some instances, certain insurance may become unavailable or available only for reduced amounts of coverage. As a result, we may not be able to renew our existing insurance policies or procure other desirable insurance on commercially reasonable terms, if at all. In addition, certain environmental, contamination and pollution risks generally are not fully insurable. Even where insurance coverage applies, insurers may contest their obligations to make payments. Our financial condition, results of operations and cash flows could be materially and adversely affected by losses and liabilities from uninsured or under-insured events, as well as by delays in the payment of insurance proceeds, or the failure by insurers to make payments.

We also may incur costs and liabilities resulting from claims for damages to property or injury to persons arising from our operations. We must compensate employees for work-related injuries. If we do not make adequate provision for our workers’ compensation and black lung liabilities, or we are pursued for applicable sanctions, costs and liabilities, our operations and profitability could be adversely affected. Certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under federal law and are insured beginning April 1, 2016 for claims made by or on behalf of any of our employees. As a result of our limited operating history as a stand-alone company, the Department of Labor required us to provide insurance coverage rather than be self-insured for these obligations.

*We are responsible for medical and disability benefits for black lung disease under federal law. We assumed certain historical self-insured black lung liabilities of Walter Energy and its subsidiaries incurred prior to April 1, 2016 in connection with the Asset Acquisition. We are self-insured for these black lung liabilities and have posted certain collateral with Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future.*

We are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Act, each as amended, and are self-insured for black lung related claims asserted by or on behalf of former employees of Walter Energy and its subsidiaries as assumed in the Asset Acquisition for the period prior to April 1, 2016. We perform an annual actuarial evaluation of the overall black lung liabilities as of each December 31<sup>st</sup>. The calculation is performed using assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others. If the number of or severity of successful claims increases, or we are required to accrue or pay additional amounts because the successful claims prove to be more severe than our original assessment, our operating results and cash flows could be negatively impacted. Our self-insurance program for these legacy liabilities is unique to the industry and was specifically negotiated with the Department of Labor requiring us to post \$17.0 million in surety bonds or Treasury bills as collateral in addition to maintaining a black lung trust of \$3.3 million that was acquired in the Asset Acquisition. For additional information see "Part I, Item 1. Business-Environmental and Regulatory Matters-Workers' Compensation and Black Lung." Our estimated total black lung liabilities as of December 31, 2019 were \$32.5 million (net of the black lung trust). In future years, the Department of Labor could require us to increase the amount of the collateral which could negatively impact our cash flows.

*Defects in title of any real property or leasehold interests in our properties or associated met coal reserves could limit our ability to mine or develop these properties or result in significant unanticipated costs.*

All of our mining operations are conducted on properties owned or leased by us. Our right to mine our met coal reserves may be materially adversely affected by defects in title or boundaries or if our property interests are subject to superior property rights of third parties. We do not have title insurance for any of our real property or leasehold interests and, title to most of our owned or leased properties and mineral rights is not usually verified until we make a commitment to mine a property, which may not occur until after we have obtained necessary permits and completed exploration of the property. Any challenge to our title or leasehold interests could delay the mining of the property, result in the loss of some or all of our interest in the property or met coal reserves and increase our costs. In order to conduct our mining operations on properties where these defects exist, we may incur unanticipated costs perfecting title. In addition, if we mine or conduct our operations on property that we do not own or lease, we could incur civil damages or liabilities for such mining operations and be subject to conversion, negligence, trespass, regulatory sanction and penalties. Some leases have minimum production requirements or require us to commence mining operations in a specified term to retain the lease. Failure to meet those requirements could result in losses of prepaid royalties and, in some rare cases, could result in a loss of the lease itself.

*We face uncertainties in estimating our proven and probable met coal reserves, and inaccuracies in our estimates of our met coal reserves could result in decreased profitability from lower than expected revenues or higher than expected costs.*

Our future performance depends on, among other things, the accuracy of our estimates of our proven and probable met coal reserves. Reserve estimates are based on a number of sources of information, including engineering, geological, mining and property control maps and data, our operational experience of historical production from similar areas with similar conditions and assumptions governing future pricing and operational costs. We update our estimates of the quantity and quality of proven and probable met coal reserves at least annually to reflect the production of met coal from the reserves, updated geological models and mining recovery data, the tonnage contained in new lease areas acquired and estimated costs of production and sales prices. There are numerous factors and assumptions inherent in estimating met coal quantities, qualities and costs to mine, including many factors beyond our control, such as the following:

- geological and mining conditions, including faults in the met coal seam;
- historical production from the area compared with production from other producing areas;
- the percentage of met coal ultimately recoverable;
- the assumed effects of regulations and taxes and other payments to governmental agencies;
- our ability to obtain, maintain and renew all required permits;

and initiatives aimed at limiting climate change and reducing air pollution could interfere with our business activities, operations and ability to access capital.

In addition, claims have been made against certain companies alleging that GHG emissions constitute a public nuisance under federal and/or state common law. Private individuals or public entities may seek to enforce environmental laws and regulations against us and could allege personal injury, property damages or other liabilities. While we are not a party to any such litigation, we could be named in actions making similar allegations. An unfavorable ruling in any such case could significantly impact our operations and could have an adverse impact on our financial condition.

Further, climate change may cause more extreme weather conditions such as more intense hurricanes, thunderstorms, tornadoes and snow or ice storms, as well as rising sea levels and increased volatility in seasonal temperatures. Extreme weather conditions can interfere with our services and increase our costs, and damage resulting from extreme weather may not be fully insured. However, at this time, we are unable to determine the extent to which climate change may lead to increased storm or weather hazards affecting our operations.

*Our operations may impact the environment or cause exposure to hazardous substances and our properties may have environmental contamination, which could result in material liabilities to us.*

Our operations currently use hazardous materials from time to time. We could become subject to claims for toxic torts, natural resource damages and other damages as well as for the investigation and cleanup of soil, surface water, groundwater and other media. Such claims may arise, for example, out of conditions at sites that we currently own or operate, as well as at sites that we previously owned or operated, or may acquire. Our liability for such claims may be joint and several, so that we may be held responsible for more than our share of the contamination or other damages, or even for the entire amount of damages assessed.

We maintain extensive met coal refuse areas and slurry impoundments at our mining complexes. Such areas and impoundments are subject to comprehensive regulation. Slurry impoundments have been known to fail, releasing large volumes of met coal slurry into the surrounding environment. Structural failure of an impoundment can result in extensive damage to the environment and natural resources, such as bodies of water that the met coal slurry reaches, as well as create liability for related personal injuries, property damages and injuries to wildlife. Some of our impoundments overlie mined out areas, which can pose a heightened risk of failure and the assessment of damages arising out of such failure. If one of our impoundments were to fail, we could be subject to substantial claims for the resulting environmental contamination and associated liability, as well as for related fines and penalties.

Drainage flowing from or caused by mining activities can be acidic with elevated levels of dissolved metals, a condition referred to as AMD. Treatment of AMD can be costly. Although we do not currently face material costs associated with AMD, it is possible that we could incur significant costs in the future.

These and other similar unforeseen impacts that our operations may have on the environment, as well as exposures to hazardous substances or wastes associated with our operations, could result in costs and liabilities that could materially and adversely affect us. See also "Part I, Item 1. Business—Environmental and Regulatory Matters."

*Failure to obtain or renew surety bonds on acceptable terms could affect our ability to secure reclamation and coal lease obligations and, therefore, our ability to mine or lease met coal.*

Federal and state laws require us to obtain surety bonds or post other financial security to secure performance or payment of certain long-term obligations, such as mine closure or reclamation costs, federal and state workers' compensation and black lung benefits costs, coal leases and other obligations. The amount of security required to be obtained can change as the result of new federal or state laws, as well as changes to the factors used to calculate the bonding or security amounts. We may have difficulty procuring or maintaining our surety bonds. Our bond issuers may demand higher fees or additional collateral, including letters of credit or other terms less favorable to us upon those renewals. Because we are required by state and federal law to have these bonds or other acceptable security in place before mining can commence or continue, our failure to maintain surety bonds, letters of credit or other guarantees or security arrangements would materially and adversely affect our ability to mine or lease met coal. That failure could result from a variety of factors, including lack of availability, higher expense or unfavorable market terms, the exercise by third-party surety bond issuers of their right to refuse to renew the surety and restrictions on availability of collateral for current and future third-party surety bond issuers under the terms of our financing arrangements.

|                                                                    | Successor                        |                   |                   |                    | Predecessor                          |
|--------------------------------------------------------------------|----------------------------------|-------------------|-------------------|--------------------|--------------------------------------|
|                                                                    | For the years ended December 31, |                   |                   |                    | For the three months ended March 31, |
|                                                                    | 2019                             | 2018              | 2017              | 2016               | 2016                                 |
| (in thousands except per share data)                               |                                  |                   |                   |                    |                                      |
| <b>Statements of Operations Data :</b>                             |                                  |                   |                   |                    |                                      |
| <b>Revenues:</b>                                                   |                                  |                   |                   |                    |                                      |
| Sales                                                              | \$ 1,235,998                     | \$ 1,342,683      | \$ 1,124,645      | \$ 276,560         | \$ 65,154                            |
| Other revenues                                                     | 32,311                           | 35,324            | 44,447            | 21,074             | 6,229                                |
| Total revenues                                                     | 1,268,309                        | 1,378,007         | 1,169,092         | 297,634            | 71,383                               |
| <b>Costs and expenses:</b>                                         |                                  |                   |                   |                    |                                      |
| Cost of sales (exclusive of items shown separately below)          | 720,745                          | 716,645           | 592,530           | 244,723            | 72,297                               |
| Cost of other revenues (exclusive of items shown separately below) | 29,828                           | 10,172            | 28,422            | 19,367             | 4,698                                |
| Depreciation and depletion                                         | 97,330                           | 97,209            | 75,413            | 47,413             | 28,958                               |
| Selling, general and administrative                                | 37,014                           | 36,626            | 36,453            | 20,507             | 9,008                                |
| Other postretirement benefits                                      | —                                | —                 | —                 | —                  | 6,160                                |
| Restructuring costs                                                | —                                | —                 | —                 | —                  | 3,418                                |
| Transaction and other costs                                        | —                                | 9,068             | 12,873            | 13,568             | —                                    |
| Total costs and expenses                                           | 884,917                          | 869,720           | 745,691           | 345,578            | 124,539                              |
| <b>Operating income (loss)</b>                                     | <b>383,392</b>                   | <b>508,287</b>    | <b>423,401</b>    | <b>(47,944)</b>    | <b>(53,156)</b>                      |
| Interest expense, net                                              | (29,335)                         | (37,314)          | (6,947)           | (1,711)            | (16,562)                             |
| Loss on early extinguishment of debt                               | (9,756)                          | —                 | —                 | —                  | 7,920                                |
| Other income                                                       | 22,815                           | —                 | —                 | —                  | —                                    |
| <b>Income (loss) before income taxes</b>                           | <b>367,116</b>                   | <b>470,973</b>    | <b>416,454</b>    | <b>(49,655)</b>    | <b>(61,798)</b>                      |
| Income tax expense (benefit) <sup>(1)</sup>                        | 65,417                           | (225,814)         | (38,592)          | 18                 | 18                                   |
| <b>Net income (loss)</b>                                           | <b>\$ 301,699</b>                | <b>\$ 696,787</b> | <b>\$ 455,046</b> | <b>\$ (49,637)</b> | <b>\$ (61,816)</b>                   |
| Basic and diluted net income per share:                            |                                  |                   |                   |                    |                                      |
| Net income per share—basic                                         | \$ 5.87                          | \$ 13.19          | \$ 8.62           |                    |                                      |
| Net income per share—diluted                                       | \$ 5.86                          | \$ 13.17          | \$ 8.62           |                    |                                      |
| Weighted average number of shares outstanding—basic                | 51,363                           | 52,812            | 52,800            |                    |                                      |
| Weighted average number of shares outstanding—diluted              | 51,493                           | 52,918            | 52,806            |                    |                                      |
| Dividends per share:                                               | \$ 4.61                          | \$ 6.73           | \$ 14.92          |                    |                                      |
| <b>Statements of Cash Flow Data:</b>                               |                                  |                   |                   |                    |                                      |
| Cash provided by (used in):                                        |                                  |                   |                   |                    |                                      |
| Operating activities                                               | \$ 532,814                       | \$ 559,396        | \$ 434,512        | \$ (9,187)         | \$ (40,698)                          |
| Investing activities                                               | \$ (134,213)                     | \$ (107,629)      | \$ (92,625)       | \$ (30,884)        | \$ (5,422)                           |
| Financing activities                                               | \$ (411,623)                     | \$ (281,626)      | \$ (458,279)      | \$ 192,727         | \$ (6,240)                           |

(1) The income tax benefit recorded for the year ended December 31, 2018 is primarily due to the NOL valuation allowance release (see Note 7 to our consolidated financial statements included elsewhere in this Annual Report).

|                                    | Successor         |                   |                   | Predecessor       |
|------------------------------------|-------------------|-------------------|-------------------|-------------------|
|                                    | December 31, 2019 | December 31, 2018 | December 31, 2017 | December 31, 2016 |
|                                    | (in thousands)    |                   |                   |                   |
| <b>Balance Sheet Data:</b>         |                   |                   |                   |                   |
| Cash and cash equivalents          | \$ 193,383        | \$ 205,577        | \$ 35,470         | \$ 150,045        |
| Working capital <sup>(1)</sup>     | \$ 315,094        | \$ 345,497        | \$ 163,614        | \$ 228,986        |
| Mineral interests, net             | \$ 110,130        | \$ 120,427        | \$ 130,004        | \$ 143,231        |
| Property, plant and equipment, net | \$ 606,200        | \$ 540,315        | \$ 536,745        | \$ 496,959        |
| Total assets                       | \$ 1,344,264      | \$ 1,395,040      | \$ 993,315        | \$ 947,631        |
| Long-term debt                     | \$ 339,189        | \$ 468,231        | \$ 342,948        | \$ 3,725          |
| Total liabilities                  | \$ 578,682        | \$ 682,428        | \$ 580,292        | \$ 194,664        |
| Total stockholders' equity         | \$ 765,582        | \$ 712,612        | \$ 413,023        | \$ 752,967        |

(1) Working capital consists of current assets less current liabilities, excluding current portion of long-term debt.

The year ended December 31, 2019 was an outstanding year, as reflected in our record high operational performance and strong financial performance. For the full year of 2019, we produced 7.7 million metric tons of coal and sold 7.2 million metric tons, both of which were record highs for us. We are pleased with our performance in 2019, even in the face of challenging market conditions in the second half of the year. Even with a slowdown in steel production in the latter half of 2019, as well as additional macroeconomic issues in the global economy which significantly impacted pricing, we were still able to execute another year of strong sales volume along with a significant increase in production volume.

The following list highlights our key accomplishments for the year ended December 31, 2019:

- through strong operational and financial performance, we were able to increase our guidance targets for 2019 and produced and sold record high volumes;
- we achieved a record annual sales volume of 7.2 million metric tons and lowest annual cash cost of sales per metric ton of \$99.15;
- we recorded our best ever annual production volume of 7.7 million metric tons, while achieving a record low safety incident rate at the mines of 2.30;
- we successfully retired \$131.6 million aggregate principal amount of our Notes through the Restricted Payment Offer (as defined below) and Tender Offer (as defined below) to permit up to \$299.0 million in stockholder returns;
- we demonstrated an ongoing commitment to returning capital to our stockholders, including \$240.4 million of special dividends and our regular \$0.05 per share quarterly dividends;
- we implemented the New Stock Repurchase Program (as defined below) of \$70.0 million after fully exhausting the First Stock Repurchase Program (as defined below) of \$40.0 million and repurchased 0.6 million shares of the Company's common stock, totaling \$12.5 million;
- we amended our ABL Facility to generally conform certain definitions with the corresponding definitions of these terms in our indenture governing the Notes; and
- we successfully completed five longwall operation moves during 2019.

Sales were \$1.2 billion for the year ended December 31, 2019, compared to \$1.3 billion for the year ended December 31, 2018. The \$106.7 million decrease in revenues was primarily driven by a \$166.5 million decrease in revenue related to a \$23.00 decrease in the average selling price per metric ton of met coal offset partially by a \$59.9 million increase in revenue due to a 0.3 million metric ton increase in met coal sales volume.

Other revenues for the year ended December 31, 2019 were \$32.3 million compared to \$35.3 million for the year ended December 31, 2018. Other revenues are comprised of revenue derived from our natural gas operations, as well as earned royalty revenue. The \$3.0 million decrease in other revenues is primarily due to an 18% decrease in gas sales driven by a decrease in natural gas prices and production during 2019.

Cost of sales (exclusive of items shown separately below) was \$720.7 million, or 56.8% of total revenues for the year ended December 31, 2019, compared to \$716.6 million, or 52.0% of total revenues for the year ended December 31, 2018. The \$4.1 million increase in cost of sales was primarily driven by a \$31.9 million increase due to a 0.3 million metric ton increase in met coal sales volumes offset partially by a \$30.4 million decrease due to a \$4.20 per metric ton decrease in the average cash cost of sales per metric ton. The decrease in average cash cost of sales per metric ton is primarily due to our variable cost structure in our labor, royalties and logistics contracts that vary in response to changes in met coal prices.

Cost of other revenues was \$29.8 million for the year ended December 31, 2019, compared to \$10.2 million for the year ended December 31, 2018. The \$19.7 million increase is primarily due to the change in our asset retirement obligation adjustment attributable to the net impact of changes in current estimates of the costs and scope of remaining reclamation work, changes in discount rates and fluctuations in projected mine life estimates. This increase is partially offset by an 18% decrease in gas sales driven by natural gas prices and production during 2019.

Depreciation and depletion was \$97.3 million, or 7.7% of total revenues, for the year ended December 31, 2019, compared to \$97.2 million, or 7.1% of total revenues for the year ended December 31, 2018. The year ended December 31, 2018, included \$4.0 million of accelerated depreciation on equipment beyond its economic repair. This was offset by an

The Company has paid a regular quarterly cash dividend of \$0.05 per share every quarter since the Board adopted the Dividend Policy. As of December 31, 2019, the Company has paid \$29.3 million of regular quarterly cash dividends under the Dividend Policy.

#### **March 2017 Special Distribution**

On March 31, 2017, our board of managers declared a cash distribution payable to holders of our Class A Units, Class B Units and Class C Units as of March 27, 2017, resulting in distributions to such holders in the aggregate amount of \$190.0 million. The March Special Distribution was funded with available cash on hand and was paid to Computershare Trust Company, N.A., as disbursing agent, on March 31, 2017.

#### **November 2017 Special Dividend**

On November 2, 2017, the Board declared the November Special Dividend of approximately \$600.0 million, which was funded with the net proceeds from the Notes Offering, together with cash on hand of approximately \$260.0 million and was paid on November 22, 2017 to stockholders of record as of the close of business on November 13, 2017.

#### **April 2018 Special Dividend**

On April 3, 2018, the Board declared the April Special Dividend of approximately \$350.0 million, which was funded with the net proceeds from the offering of the New Notes due 2024, together with cash on hand of approximately \$225.0 million, and was paid on April 20, 2018 to stockholders of record as of the close of business on April 13, 2018.

#### **April 2019 Special Dividend**

On April 23, 2019, the Board declared a special cash dividend of approximately \$230.0 million which was paid with cash on hand and was paid on May 14, 2019 to stockholders of record as of the close of business on May 6, 2019.

#### **Stock Repurchase Program**

On March 26, 2019, the Board approved our second stock repurchase program (the “New Stock Repurchase Program”) that authorizes repurchases of up to an aggregate of \$70.0 million of our outstanding common stock. We fully exhausted our previous stock repurchase program (the “First Stock Repurchase Program”) of \$40.0 million of our outstanding common stock. The New Stock Repurchase Program does not require us to repurchase a specific number of shares or have an expiration date. The New Stock Repurchase Program may be suspended or discontinued by the Board at any time without prior notice.

Under the New Stock Repurchase Program, we may repurchase shares of our common stock from time to time, in amounts, at prices and at such times as we deem appropriate, subject to market and industry conditions, share price, regulatory requirements and other considerations as determined from time to time by us. Our repurchases may be executed using open market purchases or privately negotiated transactions in accordance with applicable securities laws and regulations, including Rule 10b-18 of the Exchange Act and repurchases may be executed pursuant to Rule 10b5-1 under the Exchange Act. Repurchases will be subject to limitations in the ABL Facility and the Indenture. We intend to fund repurchases under the New Stock Repurchase Program from cash on hand and/or other sources of liquidity.

As of December 31, 2019, we have repurchased 500,000 shares for approximately \$10.6 million, leaving approximately \$58.8 million of share repurchases authorized under the New Stock Repurchase Program.

During 2019, we returned approximately \$252.9 million of capital to stockholders and have returned \$1.3 billion since our IPO. We remain committed to providing returns to stockholders through dividends and stock repurchases.

#### **ABL Facility**

On April 1, 2016, we entered into the ABL Facility with certain lenders and Citibank, N.A. (together with its affiliates, “Citibank”), as administrative agent and collateral agent, with an aggregate lender commitment of up to \$50.0 million, at any time outstanding, subject to borrowing base availability.

On October 15, 2018, we entered into an Amended and Restated Asset-Based Revolving Credit Agreement, by and among us and certain of our subsidiaries, as borrowers, the guarantors party thereto, the lenders from time to time party thereto



**Contractual Obligations**

The following is a summary of our significant contractual obligations at December 31, 2019.

|                                                              | Payments due by Year |                     |             |             |                      |
|--------------------------------------------------------------|----------------------|---------------------|-------------|-------------|----------------------|
|                                                              | Total                | Less than<br>1 year | 1 - 3 years | 3 - 5 years | More than<br>5 years |
|                                                              | (in thousands)       |                     |             |             |                      |
| Senior Secured Notes (principal and interest) <sup>(1)</sup> | \$ 478,520           | 27,475              | 54,950      | 396,095     | —                    |
| Minimum throughput obligations <sup>(2)</sup>                | \$ 501,448           | 96,238              | 148,866     | 151,689     | 104,655              |
| Royalty obligations <sup>(3)</sup>                           | \$ 87,269            | 5,939               | 11,879      | 11,879      | 57,572               |
| Black lung obligations <sup>(4)</sup>                        | \$ 79,809            | 2,293               | 5,411       | 4,930       | 67,175               |
| Asset retirement obligations <sup>(5)</sup>                  | \$ 77,119            | 2,164               | 4,696       | 3,639       | 66,620               |
| Capital lease obligations <sup>(5)</sup>                     | \$ 40,845            | 12,132              | 19,313      | 9,400       | —                    |
| Total contractual obligations                                | \$ 1,265,010         | \$ 146,241          | \$ 245,115  | \$ 577,632  | \$ 296,022           |

- (1) Represents principal and interest payments on our Notes. See Note 13 to our consolidated financial statements.  
(2) Represents minimum throughput obligations with our rail and port providers.  
(3) We have obligations on various coal and land leases to prepay certain amounts, which are recoupable in future years when mining occurs.  
(4) Represents estimated costs for black lung and asset retirement obligations, which have been presented on an undiscounted basis.  
(5) Represents a capital lease obligation for the purchase of underground mining equipment. See Note 14 to our consolidated financial statements.

**Off-Balance Sheet Arrangements**

In the ordinary course of our business, we are required to provide surety bonds and letters of credit to provide financial assurance for certain transactions and business activities. Federal and state laws require us to obtain surety bonds or other acceptable security to secure payment of certain long-term obligations including mine closure or reclamation costs and other miscellaneous obligations. As of December 31, 2019, we had outstanding surety bonds and letters of credit with parties for post-mining reclamation at all of our mining operations totaling \$40.6 million, and \$2.2 million for miscellaneous purposes.

**Critical Accounting Policies and Estimates**

The financial statements are prepared in conformity with GAAP, which require the use of estimates, judgments and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses in the period presented. Management evaluates these estimates and assumptions on an ongoing basis, using historical experience, consultation with experts and other methods considered reasonable in the particular circumstances. Nevertheless, actual results may differ significantly from management's estimates.

We believe the following discussion addresses our most critical accounting estimates, which are those that are most important to the presentation of our financial condition and results of operations and require management's most difficult, subjective and complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. These estimates are based upon management's historical experience and on various other assumptions that we believe reasonable under the circumstances. Changes in estimates used in these and other items could have a material impact on our financial statements. Our significant accounting policies are described in Note 2 to our financial statements included elsewhere in this Annual Report.

**Coal Reserves**

There are numerous uncertainties inherent in estimating quantities and values of economically recoverable coal reserves, including many factors that are beyond our control. As a result, estimates of economically recoverable coal reserves are by their nature uncertain. Information about our reserves consists of estimates based on engineering, economic and

**WARRIOR MET COAL, INC.**  
**BALANCE SHEETS**  
(in thousands)

|                                                                                                                                                                                                                          | December 31, 2019 | December 31, 2018 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|
| <b>ASSETS</b>                                                                                                                                                                                                            |                   |                   |
| Current assets:                                                                                                                                                                                                          |                   |                   |
| Cash and cash equivalents                                                                                                                                                                                                | \$ 193,383        | \$ 205,577        |
| Short-term investments                                                                                                                                                                                                   | 14,675            | 17,501            |
| Trade accounts receivable                                                                                                                                                                                                | 99,471            | 138,399           |
| Other receivables                                                                                                                                                                                                        | 1,847             | 1,434             |
| Income tax receivable                                                                                                                                                                                                    | 12,925            | 21,607            |
| Inventories, net                                                                                                                                                                                                         | 97,901            | 56,719            |
| Prepaid expenses and other                                                                                                                                                                                               | 23,844            | 27,932            |
| Total current assets                                                                                                                                                                                                     | 444,046           | 469,169           |
| Mineral interests, net                                                                                                                                                                                                   | 110,130           | 120,427           |
| Property, plant and equipment, net                                                                                                                                                                                       | 606,200           | 540,315           |
| Non-current income tax receivable                                                                                                                                                                                        | 11,349            | 21,310            |
| Deferred income taxes                                                                                                                                                                                                    | 154,297           | 222,780           |
| Other long-term assets                                                                                                                                                                                                   | 18,242            | 21,039            |
| Total assets                                                                                                                                                                                                             | \$ 1,344,264      | \$ 1,395,040      |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                                                                                                                                              |                   |                   |
| Current liabilities:                                                                                                                                                                                                     |                   |                   |
| Accounts payable                                                                                                                                                                                                         | \$ 46,436         | \$ 33,588         |
| Accrued expenses                                                                                                                                                                                                         | 65,755            | 82,342            |
| Asset retirement obligations                                                                                                                                                                                             | 2,623             | 2,775             |
| Short-term financing lease obligations                                                                                                                                                                                   | 10,146            | —                 |
| Other current liabilities                                                                                                                                                                                                | 3,992             | 4,967             |
| Current portion of long-term debt                                                                                                                                                                                        | —                 | 760               |
| Total current liabilities                                                                                                                                                                                                | 128,952           | 124,432           |
| Long-term debt                                                                                                                                                                                                           | 339,189           | 468,231           |
| Asset retirement obligations                                                                                                                                                                                             | 53,583            | 59,049            |
| Black lung obligations                                                                                                                                                                                                   | 30,233            | 25,206            |
| Financing lease obligations                                                                                                                                                                                              | 25,528            | —                 |
| Other long-term liabilities                                                                                                                                                                                              | 1,197             | 5,510             |
| Total liabilities                                                                                                                                                                                                        | 578,682           | 682,428           |
| Stockholders' Equity:                                                                                                                                                                                                    |                   |                   |
| Common stock, \$0.01 par value per share (Authorized -140,000,000 shares, 53,293,449 issued and 51,071,608 outstanding as of December 31, 2019 and 53,256,098 issued and 51,622,898 outstanding as of December 31, 2018) | 533               | 533               |
| Preferred stock, \$0.01 par value per share (10,000,000 shares authorized, no shares issued and outstanding)                                                                                                             | —                 | —                 |
| Treasury stock, at cost (2,221,841 and 1,633,200 shares as of December 31, 2019 and December 31, 2018)                                                                                                                   | (50,576)          | (38,030)          |
| Additional paid in capital                                                                                                                                                                                               | 243,932           | 239,827           |
| Retained earnings                                                                                                                                                                                                        | 571,693           | 510,282           |
| Total stockholders' equity                                                                                                                                                                                               | 765,582           | 712,612           |
| Total liabilities and stockholders' equity                                                                                                                                                                               | \$ 1,344,264      | \$ 1,395,040      |

The accompanying notes are an integral part of these consolidated financial statements.

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

|                                                                                              | December 31, 2019 | December 31, 2018 |
|----------------------------------------------------------------------------------------------|-------------------|-------------------|
| Cash and cash equivalents                                                                    | \$ 193,383        | \$ 205,577        |
| Restricted cash included in other long-term assets                                           | —                 | 828               |
| Total cash and cash equivalents and restricted cash included in the Statements of Cash Flows | \$ 193,383        | \$ 206,405        |

Cash and cash equivalents include short-term deposits and highly liquid investments that have original maturities of three months or less when purchased and are stated at cost, which approximates fair value. As of December 31, 2018, restricted cash included in other long-term assets in the Balance Sheet represented amounts invested in certificates of deposits as financial assurance for post mining reclamation obligations.

**Short-Term Investments**

Instruments with maturities greater than three months, but less than twelve months, are included in short-term investments. The Company purchases United States Treasury bills with maturities ranging from six to twelve months which are classified as held to maturity and are carried at amortized cost, which approximates fair value. The Company also purchases fixed income securities and certificates of deposits with varying maturities that are classified as available for sale and are carried at fair value. Securities classified as held to maturity securities are those securities that management has the intent and ability to hold to maturity.

As of December 31, 2019, the Company's short-term investments consisted of \$14.7 million of cash and fixed income securities. As of December 31, 2018, the Company's short-term investments consisted of \$17.5 million in Treasury bills with a maturity of six months. These investments were posted as collateral for the self-insured black lung related claims asserted by or on behalf of former employees of Walter Energy and its subsidiaries, which were assumed in the Asset Acquisition and relate to periods prior to March 31, 2016.

**Inventories**

Inventories are valued at the lower of cost or net realizable value. Coal inventory costs include labor, supplies, equipment costs, operating overhead, freight, royalties, depreciation and depletion and other related costs. Coal inventories are valued using the first-in, first-out ("FIFO") inventory valuation method. The valuation of coal inventories is subject to estimates due to possible gains and losses resulting from inventory movements from the mine site to storage facilities, inherent inaccuracies in belt scales and aerial surveys used to measure quantities and fluctuations in moisture content. Periodic adjustments to coal tonnages on hand are made for an estimate of coal shortages and overages due to these inherent gains and losses, primarily based on historical results from aerial surveys and periodic coal pile clean-ups. Supplies inventories are valued using the average cost method of accounting. Management evaluates its supplies inventory in terms of excess and obsolete exposures which includes such factors as anticipated usage, inventory turnover, inventory levels and ultimate market value. A reserve for excess and obsolete supplies inventory is established and charged to cost of sales in the Statements of Operations.

**Deferred Longwall Move Expenses**

Direct costs, including labor and supplies, associated with moving longwall equipment and the related equipment refurbishment costs are deferred and included in prepaid expenses. These deferred costs are amortized on a units-of-production basis into cost of sales over the life of the subsequent panel of coal mined by the longwall equipment. See Note 4 for further disclosures related to deferred longwall move expenses.

**Advanced Mining Royalties**

Lease rights to coal reserves are often acquired in exchange for royalty payments. Advance mining royalties are advance payments made to lessors under terms of mineral lease agreements that are recoupable against future production royalties. These advance payments are deferred and charged to operations as the coal reserves are mined. Advance mining royalties are included in other long-term assets.

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

|                                                   | For the years ended December 31, |              |             |
|---------------------------------------------------|----------------------------------|--------------|-------------|
|                                                   | 2019                             | 2018         | 2017        |
| Income before income tax expense (benefit)        | \$ 367,116                       | \$ 470,973   | \$ 416,454  |
| Tax expense (benefit) at statutory tax rate       | 77,094                           | 98,904       | 145,759     |
| Effect of:                                        |                                  |              |             |
| Depletion                                         | (16,198)                         | (18,227)     | (25,212)    |
| Tax Cuts and Jobs Act impact                      | —                                | (2,775)      | (38,592)    |
| State and local income tax, net of federal effect | 11,747                           | 14,897       | 9,620       |
| Valuation allowance on deferred tax assets        | —                                | (312,493)    | (129,245)   |
| Non-deductible transaction costs                  | —                                | 566          | 4,506       |
| Impact of Walter Energy IRS Settlement            | (6,615)                          | —            | —           |
| Other                                             | (611)                            | (6,686)      | (5,428)     |
| Tax expense (benefit) recognized                  | \$ 65,417                        | \$ (225,814) | \$ (38,592) |

In the fourth quarter of 2019, an adjustment of \$6.7 million was recorded to recognize additional alternative minimum tax credits, general business credits and net operating losses available to the Company in connection with a settlement agreement between Walter Energy and the Internal Revenue Service.

**Deferred Taxes**

Deferred income tax assets and liabilities reflect the effects of tax losses, credits, and the future income tax effects of temporary differences between the financial statement carrying amounts of assets and liabilities and their respective tax bases. Deferred income tax assets and liabilities are measured using enacted tax rates that apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

Significant components of the Company's deferred income tax assets and liabilities were (in thousands):

|                                             | December 31, 2019 | December 31, 2018 |
|---------------------------------------------|-------------------|-------------------|
| Deferred income tax assets:                 |                   |                   |
| Net operating loss and credit carryforwards | \$ 215,805        | \$ 298,180        |
| Inventory                                   | 457               | 119               |
| Asset retirement obligations                | 14,115            | 15,526            |
| Black lung obligations                      | 8,168             | 6,720             |
| Accrued expenses                            | 5,597             | 3,611             |
| Other                                       | 3,649             | 2,767             |
| Total deferred income tax assets            | 247,791           | 326,923           |
| Deferred income tax liabilities:            |                   |                   |
| Prepaid expenses                            | (8,514)           | (9,894)           |
| Property, plant and equipment               | (82,539)          | (92,361)          |
| Other                                       | (2,441)           | (1,888)           |
| Total deferred income tax liabilities       | (93,494)          | (104,143)         |
| Net deferred income tax asset               | \$ 154,297        | \$ 222,780        |

The Company has federal net operating loss carryforwards of approximately \$785.6 million as of December 31, 2019, which expire predominantly in December 31, 2034 through December 31, 2036. The Company has state net operating loss carryforwards of approximately \$860.3 million, which expire predominantly in December 31, 2029 through December 31, 2031. In addition, the Company has approximately \$14.6 million of general business credits which begin to expire in December 31, 2027 and fully expire in December 31, 2034.

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

In addition, in connection with the Asset Acquisition, the Company assumed all black lung liabilities of Walter Energy and its U.S. subsidiaries incurred prior to March 31, 2016. The Company is self-insured for the black lung claims assumed in the Asset Acquisition. Due to a limited operating history as a stand-alone company and as a result of being self-insured for these historical black lung claims, the Department of Labor required the Company to post \$17.0 million in the form of Treasury bills or surety bonds as collateral, in addition to maintaining a black lung trust acquired in the Asset Acquisition. As of December 31, 2019, the Company had \$17.0 million of surety bonds with \$14.5 million of collateral recognized as short term investments. As of December 31, 2018, the Company had \$17.5 million in Treasury Bills posted as collateral recognized as short-term investments. There were also \$3.3 million and \$3.6 million of assets held in a black lung trust, which is offset against the long-term portion of the black lung obligations within the Balance Sheet as of December 31, 2019 and December 31, 2018, respectively. The estimated total black lung liabilities (net of black lung trust assets) were \$32.5 million as of December 31, 2019, of which \$2.3 million is classified in other current liabilities and the remainder of \$30.2 million is shown as a long-term liability in a separate line item in the Consolidated Balance Sheet. For the year ended December 31, 2018, the estimated black lung liabilities (net of the black lung trust assets) were \$26.8 million, of which \$1.6 million is classified in other current liabilities and \$25.2 million is displayed as a long-term liability in a separate line item in the Balance Sheet. Accretion of the black lung liabilities is included in cost of other revenues on the Statements of Operations. The Company performs an annual evaluation of its black lung liabilities at each balance sheet date. The calculation uses assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others.

**Note 11—Employee Benefit Plans**

**Defined Contribution Plans**

The Company sponsors a defined contribution plan to assist its eligible employees in providing for retirements. Generally, under the terms of the plan, employees make voluntary contributions through payroll deductions and the Company makes matching contributions, as defined by the plan. Contributions to these defined contribution plans amounted to \$2.9 million for the year ended December 31, 2019, \$3.1 million for the year ended December 31, 2018 and \$1.4 million for the year ended December 31, 2017 accounted for in cost of sales and selling, general and administrative costs.

**Collective Bargaining Agreement**

In connection with the Asset Acquisition, the Company negotiated a new initial collective bargaining agreement (“CBA”) with the United Mine Workers of America (“UMWA”) (the “UMWA CBA”), which was ratified by UMWA’s members on February 16, 2016 and expires on March 31, 2021. Pursuant to the UMWA CBA, the Company agreed to contribute \$25.0 million to a Voluntary Employee Beneficiary Association (“VEBA”) trust formed and administered by the UMWA in installments throughout 2016 and 2017. Approximately 68.2% and 69% of the Company’s employees were represented by the UMWA as of December 31, 2019 and December 31, 2018, respectively.

**Note 12—Equity Award Plans**

**Warrior Met Coal, LLC 2016 Equity Incentive Plan**

The Company adopted the Warrior Met Coal, LLC 2016 Equity Incentive Plan (the “2016 Equity Plan”). Under the 2016 Equity Plan, employees, directors and officers of the Company were granted equity interests in Warrior Met Coal, LLC in the form of restricted units and phantom units. In connection with the corporate conversion on April 12, 2017, the awards of restricted units were converted into restricted shares of common stock of the Company (the “Restricted Shares”).

The Restricted Shares have certain service-based, performance-based and market-based vesting conditions, including the occurrence of an initial public offering or a change in control as set forth in the 2016 Equity Plan and the applicable award agreements. As of December 31, 2019, 805,083 Restricted Shares were issued, of which, approximately 30,217 had been forfeited, 676,668 had vested and 98,216 remain unvested. Upon effectiveness of the 2017 Equity Plan (defined below), no further awards were granted under the 2016 Equity Plan.

Restricted Shares were issued proportionally as Tranche A, Tranche B, and Tranche C shares.

The Tranche A shares have service and performance based vesting conditions and the awards vest in equal installments on each of the first five anniversaries of the grant date that occurs prior to an IPO and thereafter, subject to the employee’s

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-K**

- ☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2020  
or  
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from to



Commission File Number: 001-38061

**Warrior Met Coal, Inc.**  
(Exact name of registrant as specified in its charter)

|                                                                                                                                                                                                                                                                    |                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"><b>Delaware</b><br/>(State or other jurisdiction of incorporation or organization)</p> <p style="text-align: center;"><b>16243 Highway 216</b><br/><b>Brookwood</b> <b>Alabama</b><br/>(Address of Principal Executive Offices)</p> | <p style="text-align: center;"><b>81-0706839</b><br/>(I.R.S. Employer Identification No.)</p> <p style="text-align: center;"><b>35444</b><br/>(Zip Code)</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|

(205) 554-6150  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class                                                                          | Trading Symbol(s) | Name of each exchange on which registered |
|----------------------------------------------------------------------------------------------|-------------------|-------------------------------------------|
| Common Stock, par value \$0.01 per share                                                     | HCC               | New York Stock Exchange                   |
| Rights to Purchase Series A Junior Participating Preferred Stock, par value \$0.01 per share | --                | New York Stock Exchange                   |

Securities registered pursuant to Section 12(g) of the Act: None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

|                         |                                     |                   |                          |                       |                          |                           |                          |
|-------------------------|-------------------------------------|-------------------|--------------------------|-----------------------|--------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input checked="" type="checkbox"/> | Accelerated filer | <input type="checkbox"/> | Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| Emerging growth company | <input type="checkbox"/>            |                   |                          |                       |                          |                           |                          |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒  
The aggregate market value of voting stock held by non-affiliates of the registrant, based on the closing price of the common stock on June 30, 2020, the registrant's most recently completed

Applications for permits and permit renewals at our mining and gas operations are subject to public comment and may be subject to litigation from third parties seeking to deny issuance of a permit or to overturn the applicable agency's grant of the permit application, which may also delay commencement, continuation or expansion of our mining and gas operations. Further, regulations provide that applications for certain permits or permit modifications in the U.S. can be delayed, refused or revoked if an officer, director or a stockholder with a 10% or greater interest in the entity is affiliated with or is in a position to control another entity that has outstanding permit violations or has had a permit revoked. Significant delays in obtaining, or denial of, permits could have a material adverse effect on our business.

#### *Mine Safety and Health*

The MSHA, under the Federal Mine Safety and Health Act of 1977 (the "Mine Act") and the Mine Improvement and New Emergency Response Act of 2006 (the "MINER Act"), as well as regulations adopted under these federal laws impose rigorous safety and health standards on mining operations. Such standards are comprehensive and affect numerous aspects of mining operations, including, but not limited to: training of mine personnel, mining procedures, ventilation, blasting, use of mining equipment, dust and noise control, communications and emergency response procedures. For instance, MSHA implemented a rule in August 2014 to reduce miners' exposure to respirable coal dust, which reduced respirable dust standards for certain occupants and miners and required certain monitoring of shift dust levels. In August 2016, Phase III of MSHA's respirable dust rule went into effect, further lowering the respirable dust standards. Separately, MSHA has implemented a rule imposing a requirement on certain continuous mining machines, requiring operators to provide proximity detection systems. MSHA monitors compliance with these laws and standards by regularly inspecting mining operations and taking enforcement actions where MSHA believes there to be non-compliance. These federal mine safety and health laws and regulations have a significant effect on our operating costs.

#### *Workers' Compensation and Black Lung*

We are insured for workers' compensation benefits for work related injuries that occur within our operations. Workers' compensation liabilities, including those related to claims incurred but not reported, are recorded principally using annual valuations based on discounted future expected payments using historical data of the operating subsidiary or combined insurance industry data when historical data is limited. Beginning on June 1, 2020, the Company has a deductible policy where the Company is responsible for the first \$1.0 million for each workers' compensation related claim from any of our employees.

In addition, certain of our subsidiaries are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Revenue Act of 1977 and the Black Lung Benefits Reform Act of 1977 (together, the "Black Lung Benefits Act"), each as amended, and are insured under a guaranteed cost insurance policy beginning on April 1, 2016 through May 31, 2018 for black lung claims of any of our employees. From June 1, 2018 to May 31, 2020, the Company had a deductible policy where the Company is responsible for the first \$0.5 million for each black lung claim from any of our employees.

We also assumed all of the black lung liabilities of Walter Energy and its U.S. subsidiaries. We are self-insured for these black lung liabilities and have posted \$17.0 million in surety bonds and \$8.5 million of collateral recognized as short term investment in addition to maintaining a black lung trust of \$3.0 million that was acquired from Walter Energy. We received a letter from the Department of Labor on February 21, 2020 under its new process for self-insurance renewals that would require us to increase the amount of collateral posted to \$39.8 million, but we have appealed such increase. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future. Under the Black Lung Benefits Act, as amended, each coal mine operator must make payments to a trust fund for the payment of benefits and medical expenses to claimants who last worked in the coal industry prior to January 1, 1970. The trust fund is funded by an excise tax on production; however, this excise tax does not apply to coal shipped outside the United States. Based on our limited sales of coal in the United States, we do not expect to incur a material expense related to this excise tax. However, the excise tax may result in a material expense to us in the future if our coal sales in the United States significantly increase. The Patient Protection and Affordable Care Act includes significant changes to the federal black lung program, including an automatic survivor benefit paid upon the death of a miner with an awarded black lung claim and the establishment of a rebuttable presumption with regard to pneumoconiosis among miners with 15 or more years of coal mine employment that are totally disabled by a respiratory condition. These changes could have a material impact on our costs expended in association with the federal black lung program. In addition to possibly incurring liability under federal statutes we may also be liable under state laws for black lung claims. For additional information, please see "Part I, Item 1A. Risk Factors—Risks Related to Our Business—We are responsible for medical and disability benefits for black lung disease under federal law."



*Our inability to develop met coal reserves in an economically feasible manner or our inability to acquire additional met coal reserves that are economically recoverable may adversely affect our business.*

Our long-term profitability depends in part on our ability to cost-effectively mine and process met coal reserves that possess the quality characteristics desired by our customers. As we mine, our met coal reserves decline. As a result, our future success depends upon our ability to develop or acquire additional met coal reserves that are economically recoverable to replace the reserves that we produce. Coal is economically recoverable when the price at which our met coal can be sold exceeds the costs and expenses of mining and selling such met coal. We may not be able to obtain adequate economically recoverable replacement reserves when we require them and, even if available, such reserves may not be at favorable prices or we may not be capable of mining those reserves at costs that are comparable to our existing met coal reserves. Our ability to develop or acquire met coal reserves in the future may also be limited by the availability of cash from our operations or financing under our existing or future financing arrangements, as well as certain restrictions under such arrangements. If we are unable to develop or acquire replacement reserves, our future production may decrease significantly as existing reserves are depleted and this may have a material adverse impact on our cash flows, financial position and results of operations.

*Any significant downtime of our major pieces of mining equipment could impair our ability to supply met coal to our customers and materially and adversely affect our results of operations and cash flows.*

We depend on several major pieces of mining equipment to produce and transport our met coal, including, but not limited to, longwall mining systems, continuous mining units, our preparation plant and blending facilities, and conveyors. Obtaining or repairing these major pieces of mining equipment often involves long lead times. If any of these pieces of equipment or facilities suffer major damage or are destroyed by fire, abnormal wear, flooding, incorrect operation or otherwise, we may be unable to replace or repair them in a timely manner or at a reasonable cost, which would impact our ability to produce and transport met coal and materially and adversely affect our business, results of operations, financial condition and cash flows. Moreover, MSHA and other regulatory agencies sometimes make changes with regards to requirements for pieces of equipment. For example, in 2015, MSHA promulgated a new regulation requiring the implementation of proximity detection devices on all continuous mining machines. Such changes could cause delays if manufacturers and suppliers are unable to make the required changes in compliance with mandated deadlines.

If either our preparation plant or river barge load-out facilities, or those of a third party processing or loading our met coal, suffer extended downtime, including major damage, or are destroyed, our ability to process and deliver met coal to prospective customers would be materially impacted, which would materially adversely affect our business, results of operations, financial condition and cash flows.

*We may not recover our investments in our mining, exploration and other assets, which may require us to recognize impairment charges related to those assets.*

The value of our assets may be adversely affected by numerous uncertain factors, some of which are beyond our control, including unfavorable changes in the economic environments in which we operate, lower-than-expected coal pricing, technical and geological operating difficulties, an inability to economically extract our coal reserves and unanticipated increases in operating costs. These may cause us to fail to recover all or a portion of our investments in those assets and may trigger the recognition of impairment charges in the future, which could have a substantial impact on our results of operations.

Because of the volatile and cyclical nature of the U.S. and international coal markets, it is reasonably possible that our current estimates of projected future cash flows from our mining assets may change in the near term, which may result in the need for adjustments to the carrying value of our assets.

#### **Risks Related to Regulatory Compliance**

*We are responsible for medical and disability benefits for black lung disease under federal law. We assumed certain historical self-insured black lung liabilities of Walter Energy and its subsidiaries incurred prior to April 1, 2016 in connection with the acquisition of certain assets of Walter Energy. We are self-insured for these black lung liabilities and have posted certain collateral with Department of Labor as described below. Changes in the estimated claims to be paid or changes in the amount of collateral required by the Department of Labor may have a greater impact on our profitability and cash flows in the future.*

*We are responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, the Mine Act and the Black Lung Benefits Act, each as amended, and are self-insured for black lung related claims asserted by or on behalf of former employees of Walter Energy and its subsidiaries as assumed in the acquisition of*



certain assets of Walter Energy for the period prior to April 1, 2016. We perform an annual actuarial evaluation of the overall black lung liabilities as of each December 31. The calculation is performed using assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others. If the number of or severity of successful claims increases, or we are required to accrue or pay additional amounts because the successful claims prove to be more severe than our original assessment, our operating results and cash flows could be negatively impacted. Our self-insurance program for these legacy liabilities is unique to the industry and was specifically negotiated with the Department of Labor requiring us to post \$17.0 million in surety bonds or Treasury bills as collateral in addition to maintaining a black lung trust of \$3.0 million that was acquired in the acquisition of certain assets of Walter Energy. We received a letter from the Department of Labor on February 21, 2020 under its new process for self-insurance renewals that would require us to increase the amount of collateral posted to \$39.8 million, but we have appealed such increase. In the event that we are not successful with respect to such appeal, we will be required to post additional collateral. For additional information see "Part 1, Item 1. Business, Environmental and Regulatory Matters-Workers' Compensation and Black Lung." Our estimated total black lung liabilities as of December 31, 2020 were \$36.9 million (net of the black lung trust). In future years, the Department of Labor could require us to increase the amount of the collateral which could negatively impact our cash flows.

*Our failure to obtain and renew permits necessary for our mining operations could negatively affect our business.*

Mining companies must obtain numerous permits that impose strict regulations on various environmental and operational matters in connection with metal coal mining. These include permits issued by various federal, state and local agencies and regulatory bodies. The permitting rules, and the interpretations of these rules, are complex, change frequently and are often subject to discretionary interpretations by the regulators, all of which may make compliance more difficult or impractical, and may possibly preclude the continuance of ongoing operations or the development of future mining operations. The public, including non-governmental organizations, anti-mining groups and individuals, have certain statutory rights to comment upon and submit objections to requested permits and environmental impact statements prepared in connection with applicable regulatory processes, and otherwise engage in the permitting process, including bringing citizens' lawsuits to challenge the issuance of permits, the validity of environmental impact statements or performance of mining activities. In addition, due to the COVID-19 pandemic, there may be delays in obtaining permits from governmental agencies and regulatory bodies. Accordingly, required permits may not be issued or renewed in a timely fashion or at all, or permits issued or renewed may be conditioned in a manner that may restrict our ability to efficiently and economically conduct our mining activities, any of which would materially reduce our production, cash flow and profitability.

*Extensive environmental, health and safety laws and regulations impose significant costs on our operations and future regulations could increase those costs, limit our ability to produce or adversely affect the demand for our products.*

Our businesses are subject to numerous federal, state and local laws and regulations with respect to matters such as:

- permitting and licensing requirements;
- employee health and safety, including occupational and mine health and safety;
- workers' compensation;
- black lung disease;
- reclamation and restoration of property; and
- environmental laws and regulations, including those related to greenhouse gases and climate change, air quality, water quality, stream and surface water quality and protection, management of materials generated by mining operations, the storage, treatment and disposal of wastes, protection of plant and wildlife such as endangered species, protection of wetlands and remediation of contaminated soil and groundwater.

In addition, the coal industry in the U.S. is affected by significant legislation mandating certain benefits for current and retired coal miners. Compliance with these requirements imposes significant costs on us and can result in reduced productivity. Moreover, the possibility exists that new health and safety legislation and/or regulations may be adopted and/or orders may be entered that may materially and adversely affect our mining operations. We must compensate employees for work-related injuries. If we do not make adequate provisions for our workers' compensation liabilities, it could harm our future operating results. In addition, the erosion through tort liability of the protections we are currently provided by workers' compensation laws could increase our liability for work-related injuries and materially and adversely affect our operating results.

|                                                                    | Successor                        |                   |                   |                   | Predecessor                            |                                      |
|--------------------------------------------------------------------|----------------------------------|-------------------|-------------------|-------------------|----------------------------------------|--------------------------------------|
|                                                                    | For the years ended December 31, |                   |                   |                   | For the nine months ended December 31, | For the three months ended March 31, |
|                                                                    | 2020                             | 2019              | 2018              | 2017              | 2016                                   | 2016                                 |
| (in thousands except per share data)                               |                                  |                   |                   |                   |                                        |                                      |
| <b>Statements of Operations Data :</b>                             |                                  |                   |                   |                   |                                        |                                      |
| <b>Revenues:</b>                                                   |                                  |                   |                   |                   |                                        |                                      |
| Sales                                                              | \$ 761,871                       | \$ 1,235,998      | \$ 1,342,683      | \$ 1,124,645      | \$ 276,560                             | \$ 65,154                            |
| Other revenues                                                     | 20,867                           | 32,311            | 35,324            | 44,447            | 21,074                                 | 6,229                                |
| Total revenues                                                     | 782,738                          | 1,268,309         | 1,378,007         | 1,169,092         | 297,634                                | 71,383                               |
| <b>Costs and expenses:</b>                                         |                                  |                   |                   |                   |                                        |                                      |
| Cost of sales (exclusive of items shown separately below)          | 625,170                          | 720,745           | 716,645           | 592,530           | 244,723                                | 72,297                               |
| Cost of other revenues (exclusive of items shown separately below) | 33,736                           | 29,828            | 10,172            | 28,422            | 19,367                                 | 4,698                                |
| Depreciation and depletion                                         | 118,092                          | 97,330            | 97,209            | 75,413            | 47,413                                 | 28,958                               |
| Selling, general and administrative                                | 32,879                           | 37,014            | 36,626            | 36,453            | 20,507                                 | 9,008                                |
| Other postretirement benefits                                      | —                                | —                 | —                 | —                 | —                                      | 6,160                                |
| Restructuring costs                                                | —                                | —                 | —                 | —                 | —                                      | 3,418                                |
| Transaction and other costs                                        | —                                | —                 | 9,068             | 12,873            | 13,568                                 | —                                    |
| Total costs and expenses                                           | 809,877                          | 884,917           | 869,720           | 745,691           | 345,578                                | 124,539                              |
| <b>Operating (loss) income</b>                                     | <b>(27,139)</b>                  | <b>383,392</b>    | <b>508,287</b>    | <b>423,401</b>    | <b>(47,944)</b>                        | <b>(53,156)</b>                      |
| Interest expense, net                                              | (32,310)                         | (29,335)          | (37,314)          | (6,947)           | (1,711)                                | (16,562)                             |
| Loss on early extinguishment of debt                               | —                                | (9,756)           | —                 | —                 | —                                      | 7,920                                |
| Other income                                                       | 3,544                            | 22,815            | —                 | —                 | —                                      | —                                    |
| <b>(Loss) income before income taxes</b>                           | <b>(55,905)</b>                  | <b>367,116</b>    | <b>470,973</b>    | <b>416,454</b>    | <b>(49,655)</b>                        | <b>(61,798)</b>                      |
| Income tax (benefit) expense <sup>(1)</sup>                        | (20,144)                         | 65,417            | (225,814)         | (38,592)          | 18                                     | 18                                   |
| <b>Net (loss) income</b>                                           | <b>\$ (35,761)</b>               | <b>\$ 301,699</b> | <b>\$ 696,787</b> | <b>\$ 455,046</b> | <b>\$ (49,637)</b>                     | <b>\$ (61,816)</b>                   |
| <b>Basic and diluted net (loss) income per share:</b>              |                                  |                   |                   |                   |                                        |                                      |
| Net (loss) income per share—basic                                  | \$ (0.70)                        | \$ 5.87           | \$ 13.19          | \$ 8.62           |                                        |                                      |
| Net (loss) income per share—diluted                                | \$ (0.70)                        | \$ 5.86           | \$ 13.17          | \$ 8.62           |                                        |                                      |
| Weighted average number of shares outstanding—basic                | 51,168                           | 51,363            | 52,812            | 52.8              |                                        |                                      |
| Weighted average number of shares outstanding— diluted             | 51,168                           | 51,493            | 52,918            | 52.806            |                                        |                                      |
| Dividends per share <sup>(2)</sup>                                 | \$ 0.20                          | \$ 4.61           | \$ 6.73           | \$ 14.92          |                                        |                                      |
| <b>Statements of Cash Flow Data:</b>                               |                                  |                   |                   |                   |                                        |                                      |
| <b>Cash provided by (used in):</b>                                 |                                  |                   |                   |                   |                                        |                                      |
| Operating activities                                               | \$ 112,626                       | \$ 532,814        | \$ 559,396        | \$ 434,512        | \$ (9,187)                             | \$ (40,698)                          |
| Investing activities                                               | \$ (108,189)                     | \$ (134,213)      | \$ (107,629)      | \$ (92,625)       | \$ (30,884)                            | \$ (5,422)                           |
| Financing activities                                               | \$ 14,096                        | \$ (411,623)      | \$ (281,626)      | \$ (458,279)      | \$ 192,727                             | \$ (6,240)                           |

(1) The income tax benefit recorded for the year ended December 31, 2018 is primarily due to the NOL valuation allowance release (see Note 7 to our consolidated financial statements included elsewhere in this Annual Report).

(2) The dividends per share paid for the year ended December 31, 2017 reflect two special cash dividends that were paid in the aggregate amount of \$790.0 million.

|                                    | Successor            |                      |                      |                      | Predecessor          |
|------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|                                    | December 31,<br>2020 | December 31,<br>2019 | December 31,<br>2018 | December 31,<br>2017 | December 31,<br>2016 |
|                                    | (in thousands)       |                      |                      |                      |                      |
| <b>Balance Sheet Data:</b>         |                      |                      |                      |                      |                      |
| Cash and cash equivalents          | \$ 211,916           | \$ 193,383           | \$ 205,577           | \$ 35,470            | \$ 150,045           |
| Working capital <sup>(1)</sup>     | \$ 297,165           | \$ 315,094           | \$ 345,497           | \$ 163,614           | \$ 228,986           |
| Mineral interests, net             | \$ 100,855           | \$ 110,130           | \$ 120,427           | \$ 130,004           | \$ 143,231           |
| Property, plant and equipment, net | \$ 637,108           | \$ 606,200           | \$ 540,315           | \$ 536,745           | \$ 496,959           |
| Total assets                       | \$ 1,393,936         | \$ 1,344,264         | \$ 1,395,040         | \$ 993,315           | \$ 947,631           |
| Long-term debt                     | \$ 379,908           | \$ 339,189           | \$ 468,231           | \$ 342,948           | \$ 3,725             |
| Total liabilities                  | \$ 668,695           | \$ 578,682           | \$ 682,428           | \$ 580,292           | \$ 194,664           |
| Total stockholders' equity         | \$ 725,241           | \$ 765,582           | \$ 712,612           | \$ 413,023           | \$ 752,967           |

(1) Working capital consists of current assets less current liabilities, excluding current portion of long-term debt.

per annum of premium High Vol A met coal over the first ten years of production, thereby increasing our annual production capacity by 54%. This, in turn, would expand our product portfolio to our global customers by allowing us to offer three premium hard coking coals from a single port location. Given these factors, and assuming we achieve expected price realizations, we believe that we will achieve some of the highest premium met coal margins in the United States.

The COVID-19 pandemic has substantially affected national and international financial markets, which could affect our ability to obtain financing for Blue Creek. The extent to which COVID-19 will impact our business and our financial results will depend on future developments, which are highly uncertain and cannot be predicted. Such developments may include the geographic spread of the virus, the severity of the disease, the duration of the outbreak, the actions that may be taken by various governmental authorities in response to the outbreak and the impact on the U.S. or global economy. As a result of this uncertainty, the Company initially delayed spending the \$25.0 million that we budgeted for the development of the Blue Creek project until at least July 1, 2020 and has now further delayed the development of that project until at least summer 2021.

#### Outlook

As a result of the COVID-19 pandemic and the unprecedented period of uncertainty, including the unknown duration and overall impact on our operations and the global economy, we withdrew our full-year 2020 guidance issued on February 19, 2020. Due to the ongoing uncertainty related to the COVID-19 pandemic, we will not provide full year 2021 guidance at this time. Although we are aggressively managing our response to the recent COVID-19 pandemic, its impact on our full-year fiscal 2021 results and beyond is uncertain. The Company is taking a more conservative approach to managing its cash flow given this uncertainty, and is carefully managing operating expenses, working capital, and capital expenditures during this period, as well as suspending our New Stock Repurchase Program. We have also implemented extensive preventative measures across all operations in order to safeguard the health of our employees. This includes among other things: eliminating business travel, staggering manbuses, cage and shift start times to allow for social distancing, enhanced disinfectant cleaning at all locations, maintaining antibacterial supplies at all locations, providing employees with mask, gloves and other gear, eliminating visitors or vendors on property without strict screening process and testing temperatures of all employees. We believe that the most significant elements of uncertainty are the intensity and duration of the impact on the global steel industry, primarily due to restrictions to contain the virus. However, we believe the execution of our strategy will continue to provide attractive opportunities for profitable growth in the long term following the recovery of the global economy from the effects of the COVID-19 pandemic.

#### Contractual Obligations

The following is a summary of our significant contractual obligations at December 31, 2020.

|                                                              | Payments due by Year |                  |             |             |                   |
|--------------------------------------------------------------|----------------------|------------------|-------------|-------------|-------------------|
|                                                              | Total                | Less than 1 year | 1 - 3 years | 3 - 5 years | More than 5 years |
|                                                              | (in thousands)       |                  |             |             |                   |
| Senior Secured Notes (principal and interest) <sup>(1)</sup> | \$ 451,045           | 27,475           | 54,950      | 368,620     | —                 |
| Minimum throughput obligations <sup>(2)</sup>                | \$ 426,999           | 95,874           | 150,267     | 153,133     | 27,725            |
| Royalty obligations <sup>(3)</sup>                           | \$ 81,389            | 5,999            | 11,879      | 11,879      | 51,632            |
| Black lung obligations <sup>(4)</sup>                        | \$ 82,143            | 2,367            | 5,123       | 4,845       | 69,808            |
| Asset retirement obligations <sup>(5)</sup>                  | \$ 78,752            | 4,375            | 4,247       | 6,432       | 63,698            |
| Financing lease obligations <sup>(5)</sup>                   | \$ 42,894            | 16,276           | 23,330      | 3,288       | —                 |
| Total contractual obligations                                | \$ 1,163,222         | \$ 152,366       | \$ 249,796  | \$ 548,197  | \$ 212,863        |

(1) Represents principal and interest payments on our Notes. See Note 13 to our consolidated financial statements.

(2) Represents minimum throughput obligations with our rail and port providers.

(3) We have obligations on various coal and land leases to prepay certain amounts, which are recoupable in future years when mining occurs.

(4) Represents estimated costs for black lung and asset retirement obligations, which have been presented on an undiscounted basis.

(5) Represents a financing lease obligation for the purchase of underground mining equipment. See Note 14 to our consolidated financial statements.

**WARRIOR MET COAL, INC.**  
**BALANCE SHEETS**  
(in thousands)

|                                                                                                                                                                                                                          | December 31, 2020 | December 31, 2019 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|
| <b>ASSETS</b>                                                                                                                                                                                                            |                   |                   |
| Current assets:                                                                                                                                                                                                          |                   |                   |
| Cash and cash equivalents                                                                                                                                                                                                | \$ 211,916        | \$ 193,383        |
| Short-term investments                                                                                                                                                                                                   | 8,504             | 14,675            |
| Trade accounts receivable                                                                                                                                                                                                | 83,298            | 99,471            |
| Other receivables                                                                                                                                                                                                        | 5,142             | 1,847             |
| Income tax receivable                                                                                                                                                                                                    | —                 | 12,925            |
| Inventories, net                                                                                                                                                                                                         | 118,713           | 97,901            |
| Prepaid expenses and other                                                                                                                                                                                               | 39,910            | 23,844            |
| Total current assets                                                                                                                                                                                                     | 467,483           | 444,046           |
| Mineral interests, net                                                                                                                                                                                                   | 100,855           | 110,130           |
| Property, plant and equipment, net                                                                                                                                                                                       | 637,108           | 606,200           |
| Non-current income tax receivable                                                                                                                                                                                        | —                 | 11,349            |
| Deferred income taxes                                                                                                                                                                                                    | 174,372           | 154,297           |
| Other long-term assets                                                                                                                                                                                                   | 14,118            | 18,242            |
| Total assets                                                                                                                                                                                                             | \$ 1,393,936      | \$ 1,344,264      |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                                                                                                                                              |                   |                   |
| Current liabilities:                                                                                                                                                                                                     |                   |                   |
| Accounts payable                                                                                                                                                                                                         | \$ 59,110         | \$ 46,436         |
| Accrued expenses                                                                                                                                                                                                         | 86,108            | 65,755            |
| Asset retirement obligations                                                                                                                                                                                             | 4,354             | 2,623             |
| Short-term financing lease obligations                                                                                                                                                                                   | 14,385            | 10,146            |
| Other current liabilities                                                                                                                                                                                                | 6,361             | 3,992             |
| Total current liabilities                                                                                                                                                                                                | 170,318           | 128,952           |
| Long-term debt                                                                                                                                                                                                           | 379,908           | 339,189           |
| Asset retirement obligations                                                                                                                                                                                             | 57,553            | 53,583            |
| Black lung obligations                                                                                                                                                                                                   | 34,367            | 30,233            |
| Financing lease obligations                                                                                                                                                                                              | 24,091            | 25,528            |
| Other long-term liabilities                                                                                                                                                                                              | 2,258             | 1,197             |
| Total liabilities                                                                                                                                                                                                        | 668,695           | 578,682           |
| Stockholders' Equity:                                                                                                                                                                                                    |                   |                   |
| Common stock, \$0.01 par value per share (Authorized -140,000,000 shares, 53,408,040 issued and 51,186,199 outstanding as of December 31, 2020 and 53,293,449 issued and 51,071,608 outstanding as of December 31, 2019) | 534               | 533               |
| Preferred stock, \$0.01 par value per share (10,000,000 shares authorized, no shares issued and outstanding)                                                                                                             | —                 | —                 |
| Treasury stock, at cost (2,221,841 shares as of December 31, 2020 and December 31, 2019)                                                                                                                                 | (50,576)          | (50,576)          |
| Additional paid in capital                                                                                                                                                                                               | 249,746           | 243,932           |
| Retained earnings                                                                                                                                                                                                        | 525,537           | 571,693           |
| Total stockholders' equity                                                                                                                                                                                               | 725,241           | 765,582           |
| Total liabilities and stockholders' equity                                                                                                                                                                               | \$ 1,393,936      | \$ 1,344,264      |

The accompanying notes are an integral part of these consolidated financial statements.

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

|                                | December 31, 2020 | December 31, 2019 |
|--------------------------------|-------------------|-------------------|
| Balance at Beginning of Period | \$ 56,206         | \$ 61,824         |
| Accretion expense              | 3,004             | 3,169             |
| Revisions to estimates         | 2,973             | (7,825)           |
| Obligations settled            | (276)             | (962)             |
| Balance at End of Period       | <u>\$ 61,907</u>  | <u>\$ 56,206</u>  |

The portion of costs expected to be paid within a year as of December 31, 2020 is \$4.4 million. The portion of costs expected to be incurred beyond one year as of December 31, 2020 is \$57.6 million. There were no assets that were legally restricted for purposes of settling asset retirement obligations at December 31, 2020. Alabama's regulatory framework technically allows for self-bonding. However, as a practical matter, due to the onerous regulatory requirements for self-bonding, mining companies in Alabama utilize surety bonds, collateral bonds, or letters of credit to meet their financial assurance requirements. At December 31, 2020, the Company had outstanding surety bonds and letters of credit with parties for post-mining reclamation at all of its mining operations totaling \$40.8 million, and \$3.6 million for miscellaneous purposes.

For the year ended December 31, 2020 and December 31, 2019, the change to the liability was primarily attributable to the net impact of changes in discount rates and current estimates of the costs and scope of remaining reclamation work. For the years ended December 31, 2020 and December 31, 2019, \$0.4 million or \$0.01 per share and \$11.1 million or \$0.22 per share, respectively, of the adjustment to the liability was reflected as income in the period because there was no asset recorded to offset the adjustment to the respective liability. This portion of the liability relates to operations that were idle at the time of purchase accounting for the acquisition of certain assets of Walter Energy and no value was attributed to any asset as an offset for the asset retirement obligation.

**Note 9—Accrued Expenses**

Accrued expenses consisted of the following (in thousands):

|                                     | December 31, 2020 | December 31, 2019 |
|-------------------------------------|-------------------|-------------------|
| Accrued wages and employee benefits | \$ 25,539         | \$ 38,680         |
| Accrued operating expenses          | 46,285            | 14,014            |
| Accrued royalties                   | 3,484             | 3,304             |
| Accrued freight                     | 2,724             | 1,971             |
| Accrued interest                    | 4,981             | 4,635             |
| Accrued non-income taxes            | 3,095             | 3,151             |
| Total accrued expenses              | <u>\$ 86,108</u>  | <u>\$ 65,755</u>  |

**Note 10—Pneumoconiosis ("Black Lung") Obligations**

The Company is responsible for medical and disability benefits for black lung disease under the Federal Coal Mine Health and Safety Act of 1969, as amended. Beginning on April 1, 2016 through May 31, 2018, the Company was insured under a guaranteed cost insurance policy, through a third-party insurance carrier, for black lung claims raised by any employee subsequent to the acquisition of certain assets of Walter Energy. Beginning on June 1, 2018 through May 31, 2020, the Company had a deductible policy where the Company is responsible for the first \$0.5 million for each black lung claim. Since June 1, 2020, the Company has a deductible policy where the Company is responsible for the first \$1.0 million for each black lung claim.

In addition, in connection with the acquisition of certain assets of Walter Energy, the Company assumed all black lung liabilities of Walter Energy and its U.S. subsidiaries incurred prior to March 31, 2016, for which the Company is self-insured. Due to a limited operating history as a stand-alone company and as a result of being self-insured for these historical black lung claims, the Department of Labor required the Company to post \$17.0 million in the form of Treasury bills or surety bonds as collateral, in addition to maintaining a black lung trust acquired in the Walter Energy acquisition. We received a letter from the Department of Labor on February 21, 2020 under its new process for self-insurance renewals that would require us to increase

**WARRIOR MET COAL, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

the amount of collateral posted to \$39.8 million, but we have appealed such increase. As of December 31, 2020, the Company had \$17.0 million of surety bonds and \$8.5 million of collateral recognized as short term investments. As of December 31, 2019, the Company had \$17.0 million of surety bonds and \$14.5 million of collateral recognized as short term investments. There were also \$3.0 million and \$3.3 million of assets held in a black lung trust, which is offset against the long-term portion of the black lung obligations within the Balance Sheet as of December 31, 2020 and December 31, 2019, respectively. The estimated total black lung liabilities (net of black lung trust assets) were \$36.9 million as of December 31, 2020, of which \$2.4 million is classified in other current liabilities and the remainder of \$34.6 million is shown as a long-term liability in a separate line item in the Consolidated Balance Sheet. For the year ended December 31, 2019, the estimated black lung liabilities (net of the black lung trust assets) were \$32.5 million, of which \$2.3 million is classified in other current liabilities and \$30.2 million is displayed as a long-term liability in a separate line item in the Balance Sheet. Accretion of the black lung liabilities is included in cost of other revenues on the Statements of Operations. The Company performs an annual evaluation of its black lung liabilities at each balance sheet date. The calculation uses assumptions regarding rates of successful claims, discount factors, benefit increases and mortality rates, among others.

**Note 11—Employee Benefit Plans**

**Defined Contribution Plans**

The Company sponsors a defined contribution plan to assist its eligible employees in providing for retirements. Generally, under the terms of the plan, employees make voluntary contributions through payroll deductions and the Company makes matching contributions, as defined by the plan. Contributions to these defined contribution plans amounted to \$3.0 million for the year ended December 31, 2020, \$2.9 million for the year ended December 31, 2019 and \$3.1 million for the year ended December 31, 2018 accounted for in cost of sales and selling, general and administrative costs.

**Collective Bargaining Agreement**

In connection with the acquisition of certain assets of Walter Energy, the Company negotiated a new initial collective bargaining agreement ("CBA") with the United Mine Workers of America ("UMWA") (the "UMWA CBA"), which was ratified by UMWA's members on February 16, 2016 and expires on March 31, 2021. Approximately 67.2% and 68.2% of the Company's employees were represented by the UMWA as of December 31, 2020 and December 31, 2019, respectively.

**Note 12—Equity Award Plans**

**Warrior Met Coal, LLC 2016 Equity Incentive Plan**

The Company adopted the Warrior Met Coal, LLC 2016 Equity Incentive Plan (the "2016 Equity Plan"). Under the 2016 Equity Plan, employees, directors and officers of the Company were granted equity interests in Warrior Met Coal, LLC in the form of restricted shares and phantom shares.

The restricted shares have certain service-based, performance-based and market-based vesting conditions, including the occurrence of an initial public offering or a change in control as set forth in the 2016 Equity Plan and the applicable award agreements. As of December 31, 2020, 805,083 shares were issued, of which, approximately 30,199 have been forfeited, 722,663 have vested and 52,221 remain unvested. Upon effectiveness of the 2017 Equity Plan (defined below), no further awards were granted under the 2016 Equity Plan.

Restricted shares were issued proportionally as Tranche A, Tranche B and Tranche C shares. Tranche B and C shares fully vested in 2017.

As of December 31, 2020, 268,352 Tranche A shares were issued, of which, approximately 25,551 have been forfeited, 190,580 have vested and 52,221 remain unvested. The Tranche A shares have service and performance based vesting conditions and the awards vest in equal installments on each of the first five anniversaries of the grant date that occurs prior to an IPO and thereafter, subject to the employee's continued employment or the director's continued service with the Company. Vesting is conditioned and contingent upon at least 50% of the shares originally acquired in the acquisition of certain assets of Walter Energy having been disposed of to an independent third party, whether before or after an IPO. In the event of a change in control, any Tranche A shares that have not previously vested shall become fully vested at the time of such change in control, subject to the employee's continued employment or the director's continued service with the Company through the change in

[Additional submission by Mr. Keller follows:]

October 19, 2021

The Honorable Bobby Scott  
Chairman  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Patty Murray  
Chair, Senate Committee on Health,  
Education, Labor, and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Burr  
Ranking Member, Senate Committee  
on Health, Education, Labor, and  
Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chair Murray, Ranking Member Burr, Chairman Scott, and Ranking Member Foxx:

We are writing to express opposition to the inclusion of state workers' compensation monitoring in the concurrent resolution on the budget for fiscal year 2022, S. Con Res 14. This provision was included in the language reported by the House Committee on Education and Labor to authorize funding for the Office of Workers' Compensation Programs for monitoring of State workers' compensation programs. The Office of Workers' Compensation is responsible for oversight of federal workers' compensation programs but is not responsible for monitoring state workers' compensation programs.

State workers' compensation programs were established beginning more than 100 years ago under state constitutions and legislation independent from federal programs.

State programs are continually monitored by an array of regulatory agencies at the state level and reviewed by many research and ratings bureaus, including the National Association of Insurance Commissioners (NAIC), the International Association of Industrial Accident Boards and Commissions (IAIABC), the National Council on Compensation Insurance (NCCI), the National Academy of Social Insurance (NASI), the Workers Compensation Research Institute (WCRI), the National Foundation for Unemployment Compensation and Workers' Compensation, the California Workers' Compensation Institute (CWCI), and many state insurance agencies, ratings bureaus and state workers' compensation agencies.



**Points for review by the parliamentarian in applying the Byrd Rule include:**

- This provision is a significant policy change for the federal Office of Workers' Compensation Programs.
- There is a small federal budget effect, but the effect is incidental to the policy change.
- The cost incurred by employers and workers' compensation plans as a result of the policy change has not been projected by CBO.
- The amount of funding for new monitoring responsibilities is not specified and the new monitoring responsibility would increase the federal deficit in years after the ten-year budget period.

For the reasons set forth above, we oppose the enactment of language that would add a responsibility to the federal Office of Workers' Compensation Programs to monitor state workers' compensation programs.

Sincerely,

Alabama Associated General Contractors  
Alabama Associated General Contractors Self-Insurance Fund  
Business Council of Alabama  
Alabama Retail Association  
Alabama Self-Insured Workers' Compensation Fund  
Automobile Dealers Association of Alabama Workers' Compensation Self-Insurance Fund.  
Home Builders Association of Alabama  
Arkansas State Chamber of Commerce  
The Associated Industries of Arkansas, Inc.  
Associated General Contractors  
Associated Industries of Florida  
Builders Association of Western Nevada Self Insured Group  
California Retailers Association  
California Self-Insurers Association (CSIA)  
Cast and Crew  
Colorado Chamber of Commerce  
Electric Insurance Company  
The Florida Association of Professional Employer Organizations  
Georgia Association of Manufacturers  
Illinois Chamber of Commerce  
Illinois Manufacturers' Association  
Illinois Retail Merchants Association

Indiana Chamber of Commerce  
 Indiana Manufacturers Association  
 Iowa Association of Business and Industry  
 The Kansas Chamber  
 Kelly Services  
 Kentucky Chamber of Commerce  
 Kentucky Retail Federation  
 Louisiana Association of Business and Industry  
 Louisiana Association of Self Insured Employers  
 Louisiana Retailers Association  
 Retail Association of Maine  
 Maryland Retailers Association  
 Associated Industries of Massachusetts  
 Retailers Association of Massachusetts  
 Massachusetts Retail Merchants Workers Compensation Group  
 The Matrix Companies  
 Michigan Chamber of Commerce  
 Michigan Retailers Association  
 Michigan Self Insurers Association  
 Associated Industries of Missouri  
 National Association of Professional Employer Organizations  
 National Association of Professional Insurance Agents  
 National Association of Waterfront Employers  
 National Council of Agricultural Employers  
 National Council of Self Insurers  
 National Federation of Independent Business (NFIB)  
 The National Payroll Reporting Consortium (NPRC)  
 Nebraska Retail Federation  
 Nebraskan's for Workers' Compensation Equity and Fairness  
 Retail Association of Nevada  
 Nevada Agricultural Self Insured Group  
 Nevada Auto Network Self Insured Group  
 Nevada Builders Alliance  
 Nevada Farm Bureau  
 Nevada Franchised Auto Dealers Association  
 Nevada Retail Network Self Insured Group  
 Nevada Self Insured Association  
 Nevada Transportation Network Self Insured Group  
 Nevada Trucking Association  
 New Hampshire Grocers Association  
 New Hampshire Retail Association  
 New Jersey Chamber of Commerce

New Mexico Retail Association  
North Carolina Home Builders Association  
North Carolina Retail Merchants Association  
Employers Coalition of North Carolina  
Catapult Employers Association (NC)  
Business Council of New York State  
Retail Council of New York State  
Greater North Dakota Chamber  
Ohio Chamber of Commerce  
Ohio Manufacturers' Association  
Ohio Council of Retail Merchants  
Ohio Self Insured Association  
State Chamber of Oklahoma  
Oregon Business & Industry  
Pennsylvania Chamber of Business and Industry  
Safelite Group, Inc.  
Self-Insurance Institute of America (SIIA)  
South Carolina Retail Association  
Southwestern Ohio Self Insurers Association  
Staffmark Group LLC  
United Dairy Farmers  
UWC – Strategic Services on Unemployment  
& Workers' Compensation  
Vermont Retail & Grocers Association  
Virginia Chamber of Commerce  
Washington Retail Association  
Washington Food Industry Association  
Washington Self Insurers Association  
West Virginia Chamber of Commerce  
Wisconsin Manufacturers and Commerce

[Questions submitted for the record and the response by Mr. Godfrey follow:]

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Chairman

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VAGARCY

December 13, 2021

Christopher J. Godfrey, J.D.  
Director, Office of Workers' Compensation Programs  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20210

Dear Mr. Godfrey:

I would like to thank you for testifying before the Committee on Education and Labor, Subcommittee on Workforce Protections at the hearing entitled "*Strengthening the Safety Net for Injured Workers*," which was held on Thursday, December 2, 2021.

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later than Thursday, January 6, 2021, for inclusion in the official hearing record. Your responses should be sent to Rasheedah Hasan ([Rasheedah.Hasan@mail.house.gov](mailto:Rasheedah.Hasan@mail.house.gov)), and Robert Shull ([Robert.Shull@mail.house.gov](mailto:Robert.Shull@mail.house.gov)) of the Committee staff. They can be contacted at 202-225-3725 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

Committee on Education and Labor  
 Subcommittee on Workforce Protections Hearing  
*“Strengthening the Safety Net for Injured Workers”*  
 Thursday, December 2, 2021  
 10:15 a.m. (Eastern Time)

**Chairman Robert C. “Bobby” Scott (D – VA)**

- 1) Please answer the following questions and provide responses in table or spreadsheet form:
  - a. Since 2016, GAO reports that the following self-insured coal operators filed for bankruptcy: Cambrian Coal, Cloud Peak Energy, Murray Energy, Lighthouse Resources, and Westmoreland Coal. Is this a complete list for since 2016? If not, please identify the additional self-insured operators who filed for bankruptcy since 2016.
  - b. What is the estimated number of black lung beneficiaries for whom liability was transferred to the Black Lung Benefits Disability Trust Fund from each operator?
  - c. What was the estimated benefit liability which was transferred to the Trust Fund from each of these bankruptcies?
  - d. How much collateral was transferred to the Trust Fund that was held at the time of the bankruptcy?
- 2) Have any of the participants in the recently exposed compounding pharmacy fraud in the FECA program been imprisoned as a result?
- 3) As a matter of fairness, should maritime workers who contracted COVID-19 receive the same legislated presumption that federal employees now receive under the American Rescue Plan?

**Chairwoman Alma S. Adams (D – NC)**

- 1) Mr. Godfrey, during the hearing, I asked, in part, “How long does the Department of Labor expect the rulemaking process regarding self-insurance to take?” Your response was that “it is simply the time it takes to promulgate that rule, receive comments, and then go into final rule.” By what specific date will the Department plan to publish a final rule addressing operator eligibility for black lung self-insurance, collateral requirements, and appeals processes?

**Representative Ilhan Omar (D – MN)**

- 1) With the rise of other harmful variants and the prevalence of low vaccination rates, frontline workers will continue to be at high risk of illness for the foreseeable future. It’s crucial that the federal government and state and local governments work together to protect our most vulnerable workers by providing sufficient workers’ compensation programming.
  - a. Mr. Godfrey, how extensive is presumption legislation in the states for essential workers?
  - b. If essential workers covered by state workers’ systems, such as meat and poultry workers and other warehouse/factory workers, contracts COVID-19 but were denied benefits because those states failed to implement legislation with presumptions, who bears those costs?

- c. What is your office doing to protect these essential workers, and how can Congress better support your work?
- 2) Stark racial disparities in workplace deaths, injuries, and illnesses have only worsened during this COVID-19 pandemic. To help remedy these troubling systemic and socioeconomic inequities, it is very important that the federal government constantly examine the efficacy and inclusivity of our workers' compensation system for minority workers, and, more specifically, the role of racial discrimination potentially hurting or complicating the compensation outcomes for injured workers of color.
- a. Mr. Godfrey, what is DOL currently doing to make sure that workers of color, eligible under the existing federal worker compensation programs, are being fully supported?
  - b. What is your office doing to expand support and outreach to federal workers of color, including immigrant workers, in order to make sure they are able to access these workers' compensation services?
  - c. How could DOL and Congress work together to prevent any harm and exploitation of Black and Latino frontline workers, especially if they are not covered by federal or state workers' compensation programs?

**Ranking Member Virginia Foxx (R – NC)**

- 1) Mr. Godfrey, in your testimony, you state that the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) is exploring the possibility of publishing an annual report on state workers' compensation programs and increasing oversight of state workers' compensation programs. DOL does not currently have the authority to monitor state workers' compensation programs, which were established more than 100 years ago under state constitutions and legislation independent from federal programs. This unilateral move by OWCP would be a significant departure from longstanding policy.
- a. What is the purpose of this federal report?
  - b. Does the Department believe that it can better manage state programs which are currently managed by an array of regulatory agencies at the state level, and that OWCP programs are currently in need of reform and suffering from mismanagement? Please provide the Committee with the statute that gives DOL the authority to monitor state workers' compensation programs and issue this report.
- 2) Mr. Godfrey, the 2021 National Academy of Social Insurance report on workers' compensation benefits, costs, and coverage estimates that for state workers' compensation and longshore workers' compensation paid by private insurers, the total costs of benefits are made up of about 50 percent disability benefits and 50 percent medical benefits. Currently, the *Federal Employees' Compensation Act* (FECA) program's cost of 3 billion dollars per year is made up of 67 percent disability benefits and 33 percent medical benefits.
- a. Why are disability benefits a much larger percentage of benefits under FECA?
  - b. As Congress continues to examine the FECA program, what can we learn from states and private insurance on strategies to re-integrate individuals into the workplace?

- 3) Mr. Godfrey, the Committee has heard many allegations of fraud and abuse in the FECA program. I would welcome working with the Department on ways to improve oversight of the program.
  - a. In your opinion, does the chargeback process reduce the incentive for appropriated agencies to ensure their employees are not filing fraudulent claims?
  - b. How do you recommend increasing OWCP oversight?
- 4) Mr. Godfrey, in your testimony, you state that OWCP received claims for law enforcement officers and other first responders injured while protecting the U.S. Capitol Building on January 6, 2021. Your testimony states that the claims included psychological injuries due to traumatic stress.
  - a. How does OWCP define psychological injury and assess whether a federal worker is impaired by such an injury when determining FECA eligibility?
- 5) Mr. Godfrey, please provide the number of approved FECA claims related to psychological injuries for 2019, 2020, and 2021.

**Ranking Member Fred Keller (R – PA)**

- 1) Mr. Godfrey, how does OWCP assess injury, illness, and fatality rates among federal agencies and Departments under the FECA program? What are the most common cases reported by each agency? Please provide a list detailing the three most common types of injury and illness claims per agency.
- 2) What specific actions has DOL taken to ensure the health and safety of federal workers and reduce the most common cases of injuries or illnesses within each agency?
- 3) All cases of COVID-19 contracted by federal employees are presumed to be work-related due to the passage of the *American Rescue Plan Act*. Are these COVID-19 cases included in DOL's quarterly Federal Agency Injury and Illness Statistics?
- 4) Mr. Godfrey, does OWCP provide assistance to agencies that experience higher-than-average injury and illness rates or large increases in year-over-year rates? Why or why not?
- 5) Mr. Godfrey, does OWCP collect or utilize any metrics or benchmarks to measure or monitor agencies' injury and illness rates? If so, please describe in detail the metrics or benchmarks used.
- 6) Mr. Godfrey, the Government Accountability Office's (GAO) third recommendation in its 2020 report regarding the Black Lung Benefits Program was to improve the technology DOL uses to monitor private insurance and collect accurate data. What is OWCP doing to implement this recommendation?
- 7) Mr. Godfrey, your testimony states that DOL plans to move forward with a notice of proposed rulemaking to reform the Black Lung Program in the coming months. How does DOL expect to change the self-insurance process for coal mine operators through its rulemaking? How long

does DOL expect the rulemaking process to take?

- 8) Mr. Godfrey, you testified that DOL rulemaking on reforms to the Black Lung Program will take months. What will happen in the interim to those self-insured companies that have not provided actuarial data? What will happen to those that have been told they could no longer self-insure and have appealed? What will happen to those whose authorization to self-insure has expired? What are DOL's timeframes, if any, for taking actions regarding these companies' self-insurance?
- 9) Mr. Godfrey, since the self-insurance actuarial estimates provided by operators in the Black Lung Program are almost two years old, has OWCP reviewed new data for the 17 self-insured coal mine operators? If so, what additional actions does OWCP plan to take and are any additional operators at increased risk of going bankrupt?
- 10) Mr. Godfrey, when reaching retirement age, a FECA beneficiary can choose to remain on FECA benefits or leave the FECA program and receive federal retirement benefits. Would a FECA beneficiary be eligible for other benefits such as Federal Employees Retirement System disability retirement or Social Security Disability Insurance? How should FECA benefits be coordinated with other benefits?
- 11) Mr. Godfrey, as you know, there is no maximum duration of benefits and no maximum age at which FECA benefits must be terminated. Once a federal employee goes on the FECA program, they can be on the program indefinitely, sometimes with higher pay than their previous salary. In what ways does OWCP help FECA beneficiaries return to work?
- 12) Mr. Godfrey, the *American Rescue Plan Act* (ARPA), which was signed into law on March 11, 2021, included a presumption of eligibility for FECA benefits for federal employees who contract COVID-19. What percentage of workers who are eligible for COVID-19 benefits because of ARPA held low-risk jobs for contracting COVID-19? What is the occupational breakdown of all approved COVID-19 FECA claims? What percentage of occupations is considered high-risk versus low-risk for contracting COVID-19? Are there certain professions that have a higher rate of COVID-19 claims than others?
- 13) Mr. Godfrey, DOL's Office of Inspector General has raised concerns about the ability of OWCP to manage rising home health care costs in the Energy Workers Program. The Inspector General found that OWCP does not have the proper tracking mechanisms to identify improper payments. What is OWCP doing to address these concerns?
- 14) Mr. Godfrey, one of the benefits of the Energy Workers Program is that workers can choose their own provider. However, the Committee has heard concerns that this program lacks a meaningful network of providers, despite reimbursing at higher rates than Medicare. What education and outreach efforts does DOL have in place to attract providers to be a part of the provider network for energy workers?
- 15) Mr. Godfrey, I am pleased to see that DOL plans on extending telemedicine flexibilities within the Energy Workers Program permanently in Fiscal Year 2022. How has increased access to



telemedicine helped individuals participating in the Energy Workers Program? Is this a change that should be codified?

- 16) Mr. Godfrey, it is my understanding that maritime employees are currently eligible for compensation under the *Longshore Act* if they contract COVID-19 at work? How many COVID-19 claims has DOL approved under the Longshore program? How many claims have been denied? Why were those claims denied?
- 17) Mr. Godfrey, I want to examine further the statistic you cited in your testimony that 90 percent of the federal workforce is vaccinated. Does this mean that 90 percent of the federal workforce has met the Centers for Disease Control and Prevention definition of fully vaccinated, meaning two weeks or longer after receipt of the second dose in a two-dose series or more than two weeks after receipt of a single-dose vaccine? If not, what is that rate?

**Committee on Education and Labor  
Subcommittee on Workforce Protections Hearing  
“Strengthening the Safety Net for Injured Workers”  
Thursday, December 2, 2021  
10:15 a.m. (Eastern Time)**

**Chairman Robert C. “Bobby” Scott (D – VA)**

QFR

*Please answer the following questions and provide responses in table or spreadsheet form:*

1. *Since 2016, GAO reports that the following self-insured coal operators filed for bankruptcy: Cambrian Coal, Cloud Peak Energy, Murray Energy, Lighthouse Resources, and Westmoreland Coal. Is this a complete list for since 2016? If not, please identify the additional self-insured operators who filed for bankruptcy since 2016.*
2. *What is the estimated number of black lung beneficiaries for whom liability was transferred to the Black Lung Benefits Disability Trust Fund from each operator?*
3. *What was the estimated benefit liability which was transferred to the Trust Fund from each of these bankruptcies?*
4. *How much collateral was transferred to the Trust Fund that was held at the time of the bankruptcy?*

Response

| <u>OPERATOR</u>          | <u>YEAR</u> | <u>ESTIMATED<br/>BENEFICIARIES<br/>AS OF 09/30/21</u> | <u>ESTIMATED<br/>LIABILITIES<br/>AS OF<br/>09/30/21</u> | <u>SECURITY AT<br/>THE TIME OF<br/>BANKRUPTCY</u> | <u>COLLATERAL<br/>TRANSFERRED<br/>TO TF</u> |
|--------------------------|-------------|-------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|---------------------------------------------|
| Westmoreland Coal Co     | 2018        | 173                                                   | \$44.2 million                                          | \$2 million                                       | \$2 million                                 |
| Cambrian Coal Corp       | 2019        | 74                                                    | \$36.9 million                                          | \$14.5 million                                    | \$14.5 million                              |
| Cloud Peak Energy        | 2019        | 0                                                     | \$0.00                                                  | \$1 million                                       | \$0.00                                      |
| Murray Energy Corp       | 2019        | 37                                                    | \$16.9 million                                          | Unknown                                           | \$0.00 <sup>[1]</sup>                       |
| Lighthouse Resources Inc | 2020        | 0                                                     | \$0.00                                                  | \$1 million                                       | \$0.00                                      |

<sup>[1]</sup> Murray Energy’s security was in the form of a 501(c)(21) trust. American Consolidated Natural Resources (ACNR), which purchased most of Murray Energy’s subsidiaries and has continued to pay for associated claims, maintains use of that trust. The estimated liabilities identified here, \$16.9 million, will be transferred to the Black Lung Disability Trust Fund and are based on anticipated claims against the subsidiaries that ACNR did not acquire.

QFR

*Have any of the participants in the recently exposed compounding pharmacy fraud in the FECA program been imprisoned as a result?*

Response

The FECA program is aware of the historical fraud associated with compounded drugs. The FECA program increased its focus on medical provider fraud beginning in 2016 and initial controls implemented in 2016 and 2017, along with closing billing loopholes in 2018, have resulted in a de minimis current cost of compounded drugs. The DOL OIG would be better suited to provide information on compound-related prosecutions; we have contacted them, and they suggested we refer the committee to send the DOL OIG a request for this data.

QFR

*As a matter of fairness, should maritime workers who contracted COVID-19 receive the same legislated presumption that federal employees now receive under the American Rescue Plan?*

Response

The Administration has not taken a position on this issue.

**Chairwoman Alma S. Adams (D-NC)**

QFR

*Mr. Godfrey, during the hearing, I asked, in part, "How long does the Department of Labor expect the rulemaking process regarding self-insurance to take?" Your response was that "it is simply the time it takes to promulgate that rule, receive comments, and then go into final rule." By what specific date will the Department plan to publish a final rule addressing operator eligibility for black lung self-insurance, collateral requirements, and appeals processes?*

Response

OWCP is currently developing an NPRM related to Black Lung Benefits Act Self-Insurance Requirements. As indicated in the Department of Labor's Fall 2021 regulatory agenda, the target publication date for this NPRM is July 2022.

**Representative Ilhan Omar (D – MN)**

QFR

*With the rise of other harmful variants and the prevalence of low vaccination rates, frontline workers will continue to be at high risk of illness for the foreseeable future. It's crucial that the federal government and state and local governments work together to protect our most vulnerable workers by providing sufficient workers' compensation programming.*

1. *Mr. Godfrey, how extensive is presumption legislation in the states for essential workers?*

2. *If essential workers covered by state workers' systems, such as meat and poultry workers and other warehouse/factory workers, contracts COVID-19 but were denied benefits because those states failed to implement legislation with presumptions, who bears those costs?*
3. *What is your office doing to protect these essential workers, and how can Congress better support your work?*

Response

OWCP does not monitor state workers' compensation systems and does not compile information on which states have passed presumption legislation, or the types of presumptions that were passed. We are aware that some states have eased causation requirements for at least some workers afflicted with COVID-19, but we do not compile a comprehensive list of such changes.

The effect of state legislation limiting entitlement to state workers' compensation benefits includes but is not limited to the shifting of expenses related to COVID-19 to federal programs, and we believe these potential impacts are worth evaluating.

OWCP's statutory authority extends only to workers covered by the FECA, Energy, Black Lung and Longshore programs. OWCP has successfully implemented the provisions of the American Rescue Plan Act relating to FECA which deems COVID-19 infections as proximately caused for federal workers whose employment duties bring them into contact with coworkers or members of the public. Over 22,000 COVID-related claims for federal workers have been accepted. Remedies for workers who fall outside of the authority of OWCP are provided through state-level workers' compensation systems, which vary by jurisdiction.

QFR

*Stark racial disparities in workplace deaths, injuries, and illnesses have only worsened during this COVID-19 pandemic. To help remedy these troubling systemic and socioeconomic inequities, it is very important that the federal government constantly examine the efficacy and inclusivity of our workers' compensation system for minority workers, and, more specifically, the role of racial discrimination potentially hurting or complicating the compensation outcomes for injured workers of color.*

1. *Mr. Godfrey, what is DOL currently doing to make sure that workers of color, eligible under the existing federal worker compensation programs, are being fully supported?*
2. *What is your office doing to expand support and outreach to federal workers of color, including immigrant workers, in order to make sure they are able to access these workers' compensation services?*
3. *How could DOL and Congress work together to prevent any harm and exploitation of Black and Latino frontline workers, especially if they are not covered by federal or state workers' compensation programs?*

Response

OWCP is a designated High Impact Service Provider per [OMB Circular A-11 Section 280](#); in addition, per [Executive Order 14058](#), OWCP has committed to further improving customer experience and service delivery by reducing administrative burdens that may place undue burdens on underserved communities ("underserved communities" include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality). Through this

designation, OWCP will continually define its services (e.g., enrolling in a work compensation program, filing a claim), assess the performance of those services, collect customer feedback, assess capacity as a service delivery organization in line with leading practices for customer experience management, and apply insights from these activities to improve OWCP service delivery.

As a part of this, in the near term, OWCP will:

- Update existing rules and policies, consistent with applicable law and to the extent practicable, to allow individuals entitled to medical treatment under their workers' compensation plans to conduct their routine medical treatment appointments using telehealth platforms, which can increase accessibility and convenience for underserved communities.
- Update rules, policies, and procedures to eliminate, consistent with applicable law and to the extent practicable, requirements for workers' compensation claimants to submit physical documents, but to retain the option for physical submission for claimants who cannot otherwise submit them.
- Increase the collection of demographic data that the Agency can use to better understand how underserved communities access and navigate our services to drive changes.
- The FECA and Longshore programs will distribute customer experience feedback surveys, in line with government-wide guidance on leading practices for administration, to gather feedback that can further inform strategies for advancing equity and better engaging underserved communities.
- The FECA program will work to enhance the Employees' Compensation Operations and Management Portal (ECOMP) to offer non-binary gender options for forms filing and to collect additional voluntary demographic information.
- The Energy program will embed customer feedback opportunities through the navigation of its services that will inform delivery strategies for advancing equity and better engaging underserved communities.
- The Longshore program provides its stakeholders with information regarding compensation benefits, rights under the Act, contact information, and other informational sources. These materials are available on our website in Spanish and Arabic translations to assist our non-English speaking claimants. The Longshore program also maintains a diverse, bilingual staff that can communicate with our Spanish speaking claimants.

#### **Ranking Member Virginia Foxx (R-NC)**

##### **QFR**

*Mr. Godfrey, in your testimony, you state that the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) is exploring the possibility of publishing an annual report on state workers' compensation programs and increasing oversight of state workers' compensation programs. DOL does not currently have the authority to monitor state workers' compensation programs, which were established more than 100 years ago under state constitutions and legislation independent from federal programs. This unilateral move by OWCP would be a significant departure from longstanding policy.*

1. *What is the purpose of this federal report?*

##### **Response**

OWCP issued reports from 1980 until 2004 which summarized changes in state workers' compensation systems in the previous calendar year. The purpose of the report would be to once again summarize such changes.

2. Does the Department believe that it can better manage state programs which are currently managed by an array of regulatory agencies at the state level, and that OWCP programs are currently in need of reform and suffering from mismanagement? Please provide the Committee with the statute that gives DOL the authority to monitor state workers' compensation programs and issue this report.

Response

The reports that OWCP issued from 1980 to 2004 summarizing changes in state workers' compensation system arose from the 1974 amendments to the Federal Employees' Compensation Act (FECA). In those amendments, Congress authorized the Secretary of Labor to "conduct a study of the provisions of the Act and the programs thereunder, which shall include, but is not necessarily limited to – (1) such hearings research, and other activities as the Secretary of Labor deems necessary in order to enable him to formulate appropriate recommendations" to prepare a report for Congress. Public Law 93-416, Section 27. At that time, it was decided it was necessary to see what benefits were provided under all state and federal workers' compensation systems to help develop appropriate recommendations for future improvements to FECA.

QFR

Mr. Godfrey, the 2021 National Academy of Social Insurance report on workers' compensation benefits, costs, and coverage estimates that for state workers' compensation and longshore workers' compensation paid by private insurers, the total costs of benefits are made up of about 50 percent disability benefits and 50 percent medical benefits. Currently, the Federal Employees' Compensation Act (FECA) program's cost of 3 billion dollars per year is made up of 67 percent disability benefits and 33 percent medical benefits.

1. Why are disability benefits a much larger percentage of benefits under FECA?
2. As Congress continues to examine the FECA program, what can we learn from states and private insurance on strategies to re-integrate individuals into the workplace?

Response

The main cause of the difference between benefit payout components is that the FECA program does not enter into settlements with its beneficiaries. In addition, the FECA has no age limit at which compensation automatically terminates. The Protecting Employees, Enabling Reemployment (PEER) Initiative is emphasizing workplace safety, timely filing, and return-to-work efforts government-wide. Included in PEER was a mandate for utilization of the FECA program's electronic filing system, the Employees' Compensation Operations and Management Portal (ECOMP), because faster action and intervention on claims has been proven to increase the likelihood of return-to-work.

QFR

Mr. Godfrey, the Committee has heard many allegations of fraud and abuse in the FECA program. I would welcome working with the Department on ways to improve oversight of the program.

1. In your opinion, does the chargeback process reduce the incentive for appropriated agencies to ensure their employees are not filing fraudulent claims?
2. How do you recommend increasing OWCP oversight?

Response

The chargeback process generally incentivizes agencies to manage their workers' compensation costs as those costs are charged back to the agency. The FECA program has many tools to increase agency oversight and engagement of their workers' compensation cases, with the primary tool being the Employees' Compensation Operations and Management Portal (ECOMP). ECOMP provides agencies with access to real-time dashboards that allow agencies to see activity as it occurs in each claim, from forms-filing to exchanges in correspondence, providing for more expedient case actions. ECOMP further allows agency workers' compensation program managers to view the individual case documents along with medical and prescription billing information on all their cases.

The FECA program processes roughly \$3 billion in payments annually; reducing fraud and improper payments is a high priority. The FECA program utilizes a robust analytics platform to detect problematic trends and anomalous billing patterns from medical providers. The program works with Inspectors General government-wide to support prosecution efforts, and simultaneously implementing controls on newly detected fraud schemes in order to keep pace with any nefarious providers.

QFR

*Mr. Godfrey, in your testimony, you state that OWCP received claims for law enforcement officers and other first responders injured while protecting the U.S. Capitol Building on January 6, 2021. Your testimony states that the claims included psychological injuries due to traumatic stress.*

1. *How does OWCP define psychological injury and assess whether a federal worker is impaired by such an injury when determining FECA eligibility?*

Response

Under the FECA, the essential elements for all claims made for benefits are the same regardless of whether a physical or emotional condition is claimed. The evidence must establish that the injured worker is/was a federal employee whose claimed injury occurred within three years of the claimed incident or the date of last exposure to the injurious causing work factors, that the injury arose out of and in the course of such employment, and that the medical evidence supports a diagnosed condition was caused by the claimed work incident or work factors. A claimed condition may be a direct result of the work incident or may be a pre-existing condition that worsened as a result of the work injury.

For all claims, the injured worker must identify the specific work factor(s) that occurred and provide medical evidence to substantiate such work factor(s) caused, aggravated, precipitated, or accelerated the claimed condition. Generally, a compensable work factor is a specific task or work duty that arises out of and in the course of federal employment.

It is also possible for an injured worker to subsequently claim a psychological condition as a consequence of a previously accepted work injury. To establish compensability, the medical evidence must support that the consequential condition is medically connected to the conditions previously determined to be work-related.

OWCP does not have a specific definition of a psychological injury but believes that the ICD-10 diagnoses codes could be used to identify psychological injuries.

*QFR*

*Mr. Godfrey, please provide the number of approved FECA claims related to psychological injuries for 2019, 2020, and 2021.*

Response

OWCP does not have a specific definition of a psychological injury but believes that the ICD-10 diagnoses codes could be used to identify psychological injuries.

Please see the table below for the number FECA claims related to psychological injuries approved in fiscal years 2019, 2020, and 2021:

| FY   | Claims Accepted for Psychological Injuries |
|------|--------------------------------------------|
| 2019 | 651                                        |
| 2020 | 410                                        |
| 2021 | 238                                        |

**Ranking Member Fred Keller (R – PA)**

*QFR*

*Mr. Godfrey, how does OWCP assess injury, illness, and fatality rates among federal agencies and Departments under the FECA program? What are the most common cases reported by each agency? Please provide a list detailing the three most common types of injury and illness claims per agency.*

Response

DOL's Occupational and Safety Health Administration (OSHA) calculates injury and illness rates using OWCP data and population data – either from OPM's FedScope website or from individual agencies. OSHA does not calculate separate fatality rates (they are included in the injury & illness rate).

We are, however, able to provide data for cases where a workers' compensation claim is filed for benefits. Please see the table below, providing the most frequent self-reported Nature of Injury and Cause of Injury since January 2015. Note that the cause of injury and nature of injury have limited selections and are identified by the employee when filing the claim. As electronic filing increased over the last 11 years and is now mandatory as of January 2020, this information is more reliable than in prior years, but prior to January 2020, when manual paper-entered claims were more frequent these fields often were missing or had to be interpreted when entered into our database.

| Agency            | Cause of Injury Description | Frequency Rank within Agency | Agency            | Nature of Injury Description                        | Frequency Rank within Agency |
|-------------------|-----------------------------|------------------------------|-------------------|-----------------------------------------------------|------------------------------|
| US POSTAL SERVICE | CAUSE UNKNOWN               | 1                            | US POSTAL SERVICE | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK | 1                            |



|                   |                                  |   |
|-------------------|----------------------------------|---|
| US POSTAL SERVICE | FALL                             | 2 |
| US POSTAL SERVICE | HANDLING MANUAL EQUIPMENT        | 3 |
| HOMELAND SECURITY | CAUSE UNKNOWN                    | 1 |
| HOMELAND SECURITY | SLIP/TWIST/TRIP - NOT FALLING    | 2 |
| HOMELAND SECURITY | STRIKING AGAINST MATERIAL EQUIP  | 3 |
| VETERANS AFFAIRS  | CAUSE UNKNOWN                    | 1 |
| VETERANS AFFAIRS  | HANDLING MANUAL EQUIPMENT        | 2 |
| VETERANS AFFAIRS  | FALL ON FLOOR/WORK SURFACE/AISLE | 3 |
| JUSTICE           | CAUSE UNKNOWN                    | 1 |
| JUSTICE           | PHYSICAL TRAINING, EXERCISING    | 2 |
| JUSTICE           | VIOLENCE                         | 3 |
| ARMY              | CAUSE UNKNOWN                    | 1 |
| ARMY              | WORKING ON/AROUND VEHICLES       | 2 |
| ARMY              | HANDLING TOOLS OR INSTRUMENTS    | 3 |

|                   |                                                           |   |
|-------------------|-----------------------------------------------------------|---|
| US POSTAL SERVICE | TRAUMATIC INJURY - UNCLASS. (EXCEPT DISEASE, ILLNESS)     | 2 |
| US POSTAL SERVICE | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 3 |
| HOMELAND SECURITY | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| HOMELAND SECURITY | PAIN/SWELLING/STIFFNESS/REDNESS IN JOINT                  | 2 |
| HOMELAND SECURITY | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 3 |
| VETERANS AFFAIRS  | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| VETERANS AFFAIRS  | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 2 |
| VETERANS AFFAIRS  | PAIN/SWELLING/STIFFNESS/REDNESS IN JOINT                  | 3 |
| JUSTICE           | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| JUSTICE           | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 2 |
| JUSTICE           | TRAUMATIC INJURY - UNCLASS. (EXCEPT DISEASE, ILLNESS)     | 3 |
| ARMY              | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| ARMY              | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 2 |
| ARMY              | PAIN/SWELLING/STIFFNESS/REDNESS IN JOINT                  | 3 |

|                          |                                               |   |
|--------------------------|-----------------------------------------------|---|
| NAVY<br>(EXCLUDING USMC) | CAUSE UNKNOWN                                 | 1 |
| NAVY<br>(EXCLUDING USMC) | HANDLING TOOLS OR INSTRUMENTS                 | 2 |
| NAVY<br>(EXCLUDING USMC) | SLIP/TWIST/TRIP - NOT FALLING                 | 3 |
| AIR FORCE                | CAUSE UNKNOWN                                 | 1 |
| AIR FORCE                | HANDLING TOOLS OR INSTRUMENTS                 | 2 |
| AIR FORCE                | AIRCRAFT                                      | 3 |
| AGRICULTURE              | CAUSE UNKNOWN                                 | 1 |
| AGRICULTURE              | FALL                                          | 2 |
| AGRICULTURE              | ANIMALS/INSECTS                               | 3 |
| INTERIOR                 | CAUSE UNKNOWN                                 | 1 |
| INTERIOR                 | ANIMALS/INSECTS                               | 2 |
| INTERIOR                 | HANDLING MANUAL EQUIPMENT                     | 3 |
| DEFENSE AGENCIES         | CAUSE UNKNOWN                                 | 1 |
| DEFENSE AGENCIES         | HANDLING PACKAGED MATERIAL, WEIGHT NOT STATED | 2 |
| DEFENSE AGENCIES         | FALL ON FLOOR/WORK SURFACE/AISLE              | 3 |

|                          |                                                           |   |
|--------------------------|-----------------------------------------------------------|---|
| NAVY<br>(EXCLUDING USMC) | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| NAVY<br>(EXCLUDING USMC) | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 2 |
| NAVY<br>(EXCLUDING USMC) | LACERATION                                                | 3 |
| AIR FORCE                | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| AIR FORCE                | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 2 |
| AIR FORCE                | LACERATION                                                | 3 |
| AGRICULTURE              | PAIN, SWELLING, REDNESS, STIFFNESS, NOT IN JOINT          | 1 |
| AGRICULTURE              | PAIN/SWELLING/STIFFNESS/REDNESS IN JOINT                  | 2 |
| AGRICULTURE              | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 3 |
| INTERIOR                 | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| INTERIOR                 | CONTUSION                                                 | 2 |
| INTERIOR                 | LACERATION                                                | 3 |
| DEFENSE AGENCIES         | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK       | 1 |
| DEFENSE AGENCIES         | BACK SPRAIN/STRAIN, BACK PAIN, SUBLUXATION, IVD DISORDERS | 2 |
| DEFENSE AGENCIES         | PAIN, SWELLING, REDNESS, STIFFNESS, NOT IN JOINT          | 3 |

|           |                                  |   |
|-----------|----------------------------------|---|
| TREASURY  | CAUSE UNKNOWN                    | 1 |
| TREASURY  | FALL ON FLOOR/WORK SURFACE/AISLE | 2 |
| TREASURY  | FALL ON WALKWAYS/CURBS/PORCHES   | 3 |
| All Other | CAUSE UNKNOWN                    | 1 |
| All Other | VIOLENCE                         | 2 |
| All Other | PHYSICAL TRAINING, EXERCISING    | 3 |

|           |                                                       |   |
|-----------|-------------------------------------------------------|---|
| TREASURY  | NO INJURY STATED                                      | 1 |
| TREASURY  | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK   | 2 |
| TREASURY  | PAIN/SWELLING/STIFFNESS/REDNESS IN JOINT              | 3 |
| All Other | SPRAIN/STRAIN OF LIGAMENT, MUSCLE, TENDON, NOT BACK   | 1 |
| All Other | TRAUMATIC INJURY - UNCLASS. (EXCEPT DISEASE, ILLNESS) | 2 |
| All Other | MENTAL, EMOTIONAL, NERVOUS CONDITIONS                 | 3 |

QFR

*What specific actions has DOL taken to ensure the health and safety of federal workers and reduce the most common cases of injuries or illnesses within each agency?*

Response

DOL's government-wide Protecting Employees, Enabling Reemployment (PEER) Initiative serves as an opportunity for heads of federal departments and agencies to recommit to a safe and healthy federal workforce by reducing injuries and illnesses, and to help ensure that their workforce can receive timely benefits when needed through a modern and efficient workers' compensation system. Under this important Initiative, individual agencies are encouraged to consult with OSHA as they develop their safety and health management systems to mitigate hazards and reduce risk to workers of injury and illness and as a result reduce their agency's total injury and lost time case rates. OWCP is responsible for increasing the timely filing of workers' compensation and wage loss claims as well as increasing the rate of return-to-work.

QFR

*All cases of COVID-19 contracted by federal employees are presumed to be work-related due to the passage of the American Rescue Plan Act. Are these COVID-19 cases included in DOL's quarterly Federal Agency Injury and Illness Statistics?*

Response

To clarify, the American Rescue Plan Act provides that a federal employee who is diagnosed with COVID-19 and carried out duties that required contact with patients, members of the public, or co-workers, or included a risk of exposure to the novel coronavirus during a covered period of exposure

(within 21 days of the COVID-19 diagnosis) is deemed to have an injury that is proximately caused by their federal employment. DOL's Occupational and Safety Health Administration (OSHA) calculates injury and illness rates using OWCP data and population data – either from OPM's FedScope website or from individual agencies. COVID-19 cases would be included within the rate but are not separately sorted out.

*QFR*

*Mr. Godfrey, does OWCP provide assistance to agencies that experience higher-than-average injury and illness rates or large increases in year-over-year rates? Why or why not?*

Response

DOL's government-wide Protecting Employees, Enabling Reemployment (PEER) Initiative serves as an opportunity for heads of federal departments and agencies to recommit to a safe and healthy federal workforce by reducing injuries and illnesses, and to help ensure that their workforce can receive timely benefits when needed through a modern and efficient workers' compensation system. Under this important Initiative, individual agencies are responsible for meeting the goals that DOL sets, and DOL assists them in meeting their goals. Agencies are encouraged to consult with OSHA as they develop their safety and health management systems to mitigate hazards and reduce risk to workers of injury and illness and as a result reduce their agency's total injury and lost time case rates. OWCP is responsible for increasing the timely filing of workers' compensation and wage loss claims as well as increasing the rate of return-to-work.

*QFR*

*Mr. Godfrey, does OWCP collect or utilize any metrics or benchmarks to measure or monitor agencies' injury and illness rates? If so, please describe in detail the metrics or benchmarks used.*

Response

DOL's government-wide Protecting Employees, Enabling Reemployment (PEER) Initiative serves as an opportunity for heads of federal departments and agencies to recommit to a safe and healthy federal workforce by reducing injuries and illnesses, and to help ensure that their workforce can receive timely benefits when needed through a modern and efficient workers' compensation system. Under this important Initiative, individual agencies are responsible for meeting the goals that DOL sets, and DOL assists them in meeting their goals. The goals include:

1. reducing total injury and illness case rates;
2. reducing lost-time injury and illness case rates;
3. increasing the timely filing rate for workers' compensation claims;
4. increasing the timely filing rate for wage-loss claims;
5. increasing the rate of return-to-work outcomes during the initial 45 day post-injury period for traumatic injury cases;
6. improving the rate at which employees return to work in cases of moderate to severe injury or illness;
7. implementing and fully using the Department of Labor's electronic filing system.

Agencies are encouraged to consult with OSHA as they develop their safety and health management systems to mitigate hazards and reduce risk to workers of injury and illness and as a result reduce their agency's total injury and lost time case rates. OWCP is responsible for increasing the timely filing of workers' compensation and wage loss claims as well as increasing the rate of return-to-work.

QFR

*Mr. Godfrey, the Government Accountability Office's (GAO) third recommendation in its 2020 report regarding the Black Lung Benefits Program was to improve the technology DOL uses to monitor private insurance and collect accurate data. What is OWCP doing to implement this recommendation?*

Response

OWCP receives commercial insurance data through a nightly data feed from The National Council on Compensation Insurance (NCCI). These data feeds, containing the most recent commercial policy information, are housed within the Black Lung Program's database. This database has been enhanced to allow analysts to create reports for monitoring changes to these policies, including cancellations, reinstatements, and new policy coverage.

QFR

*Mr. Godfrey, your testimony states that DOL plans to move forward with a notice of proposed rulemaking to reform the Black Lung Program in the coming months. How does DOL expect to change the self-insurance process for coal mine operators through its rulemaking? How long does DOL expect the rulemaking process to take?*

Response

OWCP has reviewed the current self-insurance process and plans to propose regulations to ensure coal-mine operators properly secure past, current, and future liabilities. Although OWCP cannot comment on the exact changes at this time, each operator's actuarial analysis will play a key role in determining the amount of those liabilities and required securities. The timetable in the Department of Labor's Fall 2021 regulatory agenda lists July 2022 for publication of a proposed rule. OWCP hopes to meet or exceed that date.

QFR

*Mr. Godfrey, you testified that DOL rulemaking on reforms to the Black Lung Program will take months. What will happen in the interim to those self-insured companies that have not provided actuarial data? What will happen to those that have been told they could no longer self-insure and have appealed? What will happen to those whose authorization to self-insure has expired? What are DOL's timeframes, if any, for taking actions regarding these companies' self-insurance?*

Response

OWCP is going forward with the self-insurance reviews under the current process pending rulemaking. We are asking any self-insured operator with an inadequate actuarial report to update and modify their report in compliance with OWCP requirements. We have also sent letters to all operators that appealed OWCP's initial determinations, including two operators that were informed they could no longer self-insure, to advise them that we would be scheduling a conference in February 2022 to consider their appeals. After the conferences, the Director of OWCP's Division of Coal Mine Workers' Compensation Programs will issue decisions on the appeals. Should an operator continue to disagree with the decision, then the OWCP Director will review and make the final agency decision. Operators will be allowed to continue to self-insure while their appeals are pending.

QFR

*Mr. Godfrey, since the self-insurance actuarial estimates provided by operators in the Black Lung Program are almost two years old, has OWCP reviewed new data for the 17 self-insured coal mine operators? If so, what additional actions does OWCP plan to take and are any additional operators at increased risk of going bankrupt?*

Response

OWCP has not reviewed new data for self-insured coal mine operators. OWCP continues to monitor operators' financial health using Standard & Poor's Capital IQ and Dun & Bradstreet financial databases. Although there is no certainty in predicting any bankruptcy, OWCP has not received information to indicate any of the current self-insured operators are at risk of going bankrupt at this time.

QFR

*Mr. Godfrey, when reaching retirement age, a FECA beneficiary can choose to remain on FECA benefits or leave the FECA program and receive federal retirement benefits. Would a FECA beneficiary be eligible for other benefits such as Federal Employees Retirement System disability retirement or Social Security Disability Insurance? How should FECA benefits be coordinated with other benefits?*

Response

Section 8116 of the Federal Employees Compensation Act (FECA) does not permit an individual to receive both FECA compensation and OPM Federal retirement benefits at the same time. This pertains to disability retirement benefits as well as age-related retirement benefits. Since it is considered a prohibited dual benefit, all claimants are required to make an election between FECA disability compensation and a federal retirement benefit. The FECA program does not consider the election to be irrevocable. Furthermore, if an injured worker elects retirement benefits, they are still entitled to payment of medical expenses for treatment of their injury-related conditions.

An individual may receive Social Security Disability Insurance (DI) benefits concurrently with FECA compensation. They do not have to make an election between the benefits, but the Social Security Administration may reduce their DI benefits.<sup>1</sup> Claimants may also receive Social Security retirement or survivors' benefits and FECA compensation concurrently. However, their FECA disability compensation will be reduced by the amount of any Social Security retirement or survivors' benefits that are attributable to Federal service.

QFR

*Mr. Godfrey, as you know, there is no maximum duration of benefits and no maximum age at which FECA benefits must be terminated. Once a federal employee goes on the FECA program, they can be on the program indefinitely, sometimes with higher pay than their previous salary. In what ways does OWCP help FECA beneficiaries return to work?*

---

<sup>1</sup> When a person receives FECA, Social Security may reduce his or her DI benefits as well as the benefits his or her spouse and children receive because the person is entitled to DI benefits.

Response

The FECA Program is responsible for seeing that medical and compensation benefits are promptly provided, and assisting injured federal employees in returning to work as soon as medically possible. Management of disability claims begins as soon as a new claim is received indicating that the claimant has lost time from work as a result of the injury or is disabled from performing the date of injury position.

OWCP initiates the Nurse Intervention Program (NIP) immediately following case acceptance if the injured worker has not returned to work. An assigned Field Nurse works as a liaison between the injured worker, employer, and physician to manage medical treatment/recovery and return to work expectations. The Field Nurse will monitor the injured worker's medical appointments to assist in coordinating appropriate medical services (which can expedite recovery). The Field Nurse will advise the physician of the availability of light duty work and assist in facilitating a return to work with temporary restrictions during the medical recovery process.

OWCP initiates the Vocational Rehabilitation (VR) Program if the injured worker has been medically released to limited duty work but reemployment with the original employer is not successful. Vocational rehabilitation counselors develop a comprehensive rehabilitation plan for each worker. Services offered may include vocational evaluations, vocational testing, and/or transferrable skills analysis. The injured worker may also be provided with training if it is determined that they are unemployable in the local labor market without such training, or if training can be utilized to obtain employment at a higher wage. Following the development of a plan and any necessary training, each injured worker will be provided with placement assistance for a period of at least 90 days.

FECA Claims Examiners use the NIP and VR programs alongside additional tools such as direct physician engagement and independent medical evaluations to maximize recovery and return claimants to work as quickly and as safely as possible.

QFR

*Mr. Godfrey, the American Rescue Plan Act (ARPA), which was signed into law on March 11, 2021, included a presumption of eligibility for FECA benefits for federal employees who contract COVID-19. What percentage of workers who are eligible for COVID-19 benefits because of ARPA held low-risk jobs for contracting COVID-19? What is the occupational breakdown of all approved COVID-19 FECA claims? What percentage of occupations is considered high-risk versus low-risk for contracting COVID-19? Are there certain professions that have a higher rate of COVID-19 claims than others?*

Response

The American Rescue Plan Act provides that a federal employee who is diagnosed with COVID-19 and carried out duties that required contact with patients, members of the public, or co-workers, or included a risk of exposure to the novel coronavirus during a covered period of exposure (within 21 days of the COVID-19 diagnosis) is deemed to have an injury that is proximately caused by their federal employment.

The table below provides the breakdown of accepted COVID-19 claims by occupational code as of 12/10/2021. The American Rescue Plan Act (ARPA) negated the need for the prior procedures utilized to designate 'high risk employment determinations'; prior to the passage of ARPA the FECA program did not complete a full review of all possible occupations for high-risk determinations but rather solicited

feedback from agencies and focused on those agencies/occupations receiving high numbers of claims. It is also worth noting that, even prior to ARPA, occupations that had not received a high risk employment determination could be and were accepted based on the case specific facts.

| OSHA Job Description                              | Count of Case Number |
|---------------------------------------------------|----------------------|
| BORDER PATROL AGENT                               | 2,967                |
| CUSTOMS AND BORDER PROTECTION                     | 2,163                |
| NURSE                                             | 1,818                |
| CORRECTIONAL OFFICER                              | 1,806                |
| POSTAL COLLECT & DELIVERY                         | 1,728                |
| CRIMINAL INVESTIGATING                            | 532                  |
| NURSING ASSISTANT                                 | 526                  |
| GENERAL INSPECTION, INVESTIGATION, AND COMPLIANCE | 468                  |
| MEDICAL CLERK                                     | 432                  |
| AIR TRAFFIC CONTROL                               | 429                  |
| CUSTOMS WAREHOUSE OFFICER                         | 427                  |
| FIRE PROTECTION AND PREVENTION                    | 333                  |
| PRACTICAL NURSE                                   | 311                  |
| POSTAL DISTRIB                                    | 274                  |
| POLICE                                            | 264                  |
| COMPLIANCE INSPECTION AND SUPPORT                 | 235                  |
| POSTAL WINDOW SERVICES                            | 176                  |
| HEALTH AID AND TECHNICIAN                         | 171                  |
| POSTAL RURAL CARRIERS SERVICE                     | 158                  |
| MISCELLANEOUS ADMINISTRATION AND PROGRAM          | 136                  |
| MISCELLANEOUS CLERK                               | 121                  |
| MEDICAL OFFICER                                   | 118                  |
| GENERAL BIOLOGICAL SCIENCE                        | 118                  |
| SOCIAL WORK                                       | 109                  |
| MATERIALS HANDLER                                 | 103                  |
| MAINTENANCE MECHANIC                              | 102                  |
| CUSTODIAL WORKING                                 | 102                  |
| FOOD SERVICE WORKING                              | 101                  |
| CONSUMER SAFETY INSPECTION                        | 92                   |
| SOCIAL SCIENCE                                    | 91                   |
| FORESTRY TECHNICIAN                               | 88                   |
| (blank)                                           | 83                   |
| COOKING                                           | 81                   |
| SECRETARY                                         | 75                   |
| DIAGNOSTIC RADIOLOGY TECHNICIAN                   | 70                   |
| CORRECTIONAL INSTITUTION ADMINISTRATION           | 67                   |



|                                            |    |
|--------------------------------------------|----|
| MOTOR VEHICLE OPERATING                    | 61 |
| PERSONNEL MANAGEMENT                       | 60 |
| UNKNOWN/MISSING OCCUPATION-CODE            | 58 |
| INFORMATION TECHNOLOGY MANAGEMENT          | 58 |
| PHARMACY TECHNICIAN                        | 53 |
| FOOD INSPECTION                            | 52 |
| PSYCHOLOGY                                 | 51 |
| EDUCATION AND VOCATIONAL TRAINING          | 51 |
| PHARMACIST                                 | 49 |
| RECREATION SPECIALIST                      | 48 |
| PHYSICAL THERAPIST                         | 45 |
| RESPIRATORY THERAPIST                      | 44 |
| MEDICAL INSTRUMENT TECHNICIAN              | 44 |
| CUSTOMS AND BORDER PROTECTION INTERDICTION | 44 |
| SAFETY AND OCCUPATIONAL HEALTH MANAGEMENT  | 42 |
| LABORING                                   | 42 |
| POSTAL ADMINISTRATION                      | 40 |
| SECURITY GUARD                             | 39 |
| POSTAL SUPPORT EMPLOYEE                    | 39 |
| AUTOMOTIVE MECHANIC                        | 36 |
| AIR CONDITIONING EQUIPMENT                 | 36 |
| GENERAL BIOLOGICAL SCNCE                   | 35 |
| MEDICAL RECORDS TECHNICIAN                 | 35 |
| ELECTRICIAN                                | 35 |
| MEDICAL TECHNICIAN                         | 34 |
| DENTAL ASSISTANT                           | 33 |
| PHYSICIAN'S ASSISTANT                      | 33 |
| SUPPLY CLERICAL AND TECHNICIAN             | 31 |
| APPRENTICESHIP AND TRAINING                | 30 |
| MEDICAL TECHNOLOGIST                       | 30 |
| ADMINISTRATIVE OFFICER                     | 30 |
| HOSPITAL HOUSEKEEPING MANAGEMENT           | 29 |
| MANAGEMENT AND PROGRAM ANALYSIS            | 27 |
| VETERINARY MEDICAL SCIENCE                 | 27 |
| ELECTRONICS TECHNICIAN                     | 26 |
| GENERAL BUSINESS AND INDUSTRY              | 25 |
| POSTAL INSPECTION                          | 24 |
| QUALITY ASSURANCE                          | 24 |
| ENGINEERING TECHNICIAN                     | 23 |
| EDUCATION AND TRAINING TECHNICIAN          | 23 |
| FACILITY MANAGEMENT                        | 23 |

|                                                 |    |
|-------------------------------------------------|----|
| HEALTH SYSTEM ADMINISTRATION                    | 23 |
| MEDICAL SUPPLY AID AND TECHNICIAN               | 23 |
| GENERAL HEALTH SCIENCE                          | 23 |
| PARK RANGER                                     | 23 |
| HEALTH SYSTEM SPECIALIST                        | 22 |
| FINANCIAL ADMINISTRATION AND PROGRAM            | 22 |
| PAINTING                                        | 22 |
| CONTRACTING                                     | 20 |
| OCCUPATIONAL THERAPIST                          | 18 |
| MISC POSTAL                                     | 18 |
| UTILITY SYSTEMS REPAIRING OPERATING             | 18 |
| PRODUCTION MACHINERY MECHANIC                   | 18 |
| PLUMBING                                        | 16 |
| SPORTS SPECIALIST                               | 16 |
| LOGISTICS MANAGEMENT                            | 15 |
| SECURITY ADMINISTRATION                         | 15 |
| GENERAL ENGINEERING                             | 15 |
| MINE SAFETY AND HEALTH                          | 15 |
| CARPENTRY                                       | 15 |
| INVENTORY MANAGEMENT                            | 14 |
| PERSONNEL CLERK AND ASSISTANT                   | 14 |
| DIETITIAN AND NUTRITIONIST                      | 14 |
| REC/CREATIVE ARTS THERAPIST                     | 14 |
| GENERAL FACILITIES AND EQUIPMENT                | 13 |
| TRAINING INSTRUCTION                            | 13 |
| PIPEFITTING                                     | 13 |
| PSYCHOLOGY AID AND TECHNICIAN                   | 13 |
| UNITED STATES MARSHAL                           | 13 |
| DENTAL HYGIENE                                  | 13 |
| FORK LIFT OPERATING                             | 13 |
| FIREMAN                                         | 12 |
| NURSE ANESTHETIST                               | 12 |
| EQUIPMENT, FACILITIES, AND SERVICES AS SISTANCE | 11 |
| PURCHASING                                      | 11 |
| INTELLIGENCE                                    | 11 |
| SECURITY CLERICAL AND ASSISTANT                 | 11 |
| NUCLEAR MATERIAL COURIER                        | 11 |
| ABLE SEAMAN                                     | 11 |
| INDUSTRIAL EQUIPMENT MECHANIC                   | 10 |
| IMPORT SPECIALIST                               | 10 |
| GENERAL EDUCATION AND TRAINING                  | 10 |

|                                    |                                 |
|------------------------------------|---------------------------------|
| PRODUCTION CONTROL                 | 10                              |
| AIRCRAFT MECHANIC                  | 9                               |
| DISPATCHING                        | 9                               |
| AIRCRAFT OPERATION                 | 9                               |
| HEAVY MOBILE EQUIPMENT MECHANIC    | 9                               |
| BUDGET ANALYSIS                    | 9                               |
| PROGRAM MANAGEMENT                 | 9                               |
| TRANSPORTATION CLERK AND ASSISTANT | 8                               |
| DEPORTATION & EXCLSN EXM           | 8                               |
| AIRCRAFT ENGINE MECHANIC           | 8                               |
| MAIL AND FILE CLERK                | 8                               |
| POSTAL FACILITY/EQUIPMENT MAINT    | 8                               |
| MECHANICAL ENGINEERING             | 8                               |
| SUPPORT SERVICES ADMINISTRATION    | 8                               |
| REHABILITATION THERAPY ASSISTANT   | 8                               |
| DENTAL OFFICER                     | 8                               |
| CMPLNC INSPCTN & SPRT              | 8                               |
| ALL OTHER OCCUPATIONS              | 7 or less claims per occupation |

QFR

*Mr. Godfrey, DOL's Office of Inspector General has raised concerns about the ability of OWCP to manage rising home health care costs in the Energy Workers Program. The Inspector General found that OWCP does not have the proper tracking mechanisms to identify improper payments. What is OWCP doing to address these concerns?*

Response

OWCP has developed and implemented a data tracking system via SharePoint that is used to assist the Energy Worker Program's Program Integrity Unit (PIU) with analyzing and identifying trends and causes of improper payments. The tool is also used for tracking and reporting of results and responses to potential improper payment audits, analyses and investigative actions.

QFR

*Mr. Godfrey, one of the benefits of the Energy Workers Program is that workers can choose their own provider. However, the Committee has heard concerns that this program lacks a meaningful network of providers, despite reimbursing at higher rates than Medicare. What education and outreach efforts does DOL have in place to attract providers to be a part of the provider network for energy workers?*

Response

The Energy Workers Program is considering re-implementation of provider outreach activities through the Resource Centers, which would provide targeted and specific training and support to medical providers about benefits, billing and payment activities available to providers who register with the

OWCP central bill processor. OWCP is also looking into the possibility of obtaining a contract for a medical provider network.

QFR

*Mr. Godfrey, I am pleased to see that DOL plans on extending telemedicine flexibilities within the Energy Workers Program permanently in Fiscal Year 2022. How has increased access to telemedicine helped individuals participating in the Energy Workers Program? Is this a change that should be codified?*

Response

The Energy Workers Program has heard anecdotally from claimants and medical providers that the payment of routine telemedicine has been helpful, and it is for this reason that the program is making this allowance permanent. Payments for allowable routine telemedicine care are billing activities currently within the scope of the Energy Workers Program's statutory and regulatory authority, and therefore the program will be making the flexibilities permanent through publication of a Circular and further codification doesn't appear to be necessary.

QFR

*Mr. Godfrey, it is my understanding that maritime employees are currently eligible for compensation under the Longshore Act if they contract COVID-19 at work? How many COVID-19 claims has DOL approved under the Longshore program? How many claims have been denied? Why were those claims denied?*

Response

Under the Longshore Act—where benefits are generally paid by employers and insurance carriers—OWCP neither approves nor denies claims. When an employee and an employer or carrier cannot resolve a claim, it goes to an administrative law judge for resolution. With respect to COVID-19, a longshore employee who contracts COVID-19 at work can receive compensation benefits paid by their employer or its carrier. Approximately 1,093 Longshore COVID claims were reported to OWCP between April 2020 and October 2021. Of those claims, 73 were paid or settled by the employers or carriers, which constitutes approximately 7% of the filed claims. Employers and carriers disputed the majority of claims on the ground that the disease was not work related.

QFR

*Mr. Godfrey, I want to examine further the statistic you cited in your testimony that 90 percent of the federal workforce is vaccinated. Does this mean that 90 percent of the federal workforce has met the Centers for Disease Control and Prevention definition of fully vaccinated, meaning two weeks or longer after receipt of the second dose in a two-dose series or more than two weeks after receipt of a single-dose vaccine? If not, what is that rate?*

Response

The compliance rate cited refers to Federal employees covered by a vaccination requirement that have received at least one COVID-19 vaccination dose. As of December 8, 2021, 92.5% of covered Federal

19

employees had received at least one COVID-19 vaccination dose, with the vast majority of those employees being fully vaccinated according to the CDC definition.

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**Representative Burgess Owens (R-UT)****Question posed during hearing only**

*How much do the western coal operators pay into this fund (BLDTF)? How much in benefits are paid out of the fund to employees in western operations versus compensation paid out to employees in eastern operations?"*

**Response**

- The U.S. Treasury submits coal excise tax data to OWCP. This data does not delineate between coal tax receipts from western coal operators versus eastern coal operators, only by coal taxed from underground operations and surface operations since those tax rates differ. Treasury may be able to provide the detail requested.
- OWCP maintains geographic data on beneficiaries, as related to current state of residence and total benefits (both indemnity and medical) paid during the fiscal year. The state of residence may not be the state in which coal mine employment occurred. These figures are available on the OWCP website at <https://www.dol.gov/agencies/owcp/dcmwc/statistics/bls2021/DistributionOfClaimsByState2021>

**Representative Michelle Steel (R-CA)****Question posed during hearing only**

*Toplines statistics on opioid usage by federal employees in the FECA program as well as the state-by-state breakdown if possible.*

**Response**

- The Congresswoman may have been speaking to the overall rise in opioid drug/opioid overdose deaths affecting the general population of the United States.
- In comparison, please see <http://www.dol.gov/owcp/opioids> for statistics on the reductions in opioid usage by federal employees in the FECA program, as well as other information on our efforts. As of the start of November 2021:
  - 55% decline in overall opioid use.
  - 39% decline in new opioid prescriptions.
  - 71% decline in new opioid prescriptions lasting more than 30 days.
  - 86% drop in claimants with a morphine equivalent dose (MED) of 500 or more.
  - 65% drop in users with an MED of 90 or more.
- Below is a table of the locations of the remaining approximately 1,500 claimants taking opioids at levels above 90 MED as of the start of November 2021.
  - The Centers for Disease Control and Prevention cautions prescribing opioids at any dose, but specifically states that a provider should avoid or carefully justify increasing dosage to  $\geq 90$  morphine milligram equivalents (MME)/day. MME is a value assigned to a specific opioid to represent its relative potency. MED is the sum of the MME of all the opioids a patient is taking daily.

| CLAIMANTS   | LOCATION |
|-------------|----------|
| Less than 7 | AK       |
| 34          | AL       |
| 8           | AR       |
| 40          | AZ       |
| 132         | CA       |
| 53          | CO       |

|                |
|----------------|
| 18 CT          |
| Less than 7 DC |
| Less than 7 DE |
| 124 FL         |
| 63 GA          |
| Less than 7 GU |
| 9 HI           |
| 10 IA          |
| 8 ID           |
| 34 IL          |
| 19 IN          |
| 9 KS           |
| 15 KY          |
| 36 LA          |
| 38 MA          |
| 74 MD          |
| 8 ME           |
| 31 MI          |
| 11 MN          |
| 15 MO          |
| 13 MS          |
| 13 MT          |
| 53 NC          |
| Less than 7 ND |
| Less than 7 NE |
| 9 NH           |
| 51 NJ          |
| 17 NM          |
| 19 NV          |
| 74 NY          |
| 29 OH          |
| 75 OK          |
| 19 OR          |
| 68 PA          |
| Less than 7 PR |
| Less than 7 RI |
| 23 SC          |
| Less than 7 SD |
| 39 TN          |
| 117 TX         |

|                |
|----------------|
| 36 UT          |
| 64 VA          |
| Less than 7 VT |
| 25 WA          |
| 15 WI          |
| 7 WV           |
| Less than 7 WY |

[Whereupon, at 4:08 p.m., the Subcommittee was adjourned.]

