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United States General Accounting Office
Washington, DC 20548

B-301397

September 4, 2003

The Honorable Don Nickles
Chairman, Committee on the Budget
United States Senate

Dear Mr. Chairman:

This is in response to your request that the General Accounting Office prepare a comparison of the program that would be created by S. 1125, the “Fairness In Asbestos Injury Resolution Act of 2003 (FAIR Act),” recently reported in the Senate, and the existing National Vaccine Injury Compensation Program and Black Lung Benefits Program. You also asked that we comment on the borrowing authority in S. 1125. Enclosed is a chart comparing the two statutory programs and S. 1125. In response to your second request, we offer the following observations regarding the borrowing authority in S. 1125.

FAIR Act

Subsection 223(c) of the bill provides as follows:

“(c) BORROWING AUTHORITY—The Administrator [of the Office of Asbestos Injury Claims Resolution] is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the [Asbestos Injury Claims Resolution] Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.”

The Senate report on the bill explains that the FAIR Act provides the Administrator with “authority to borrow from *commercial* lending institutions amounts to offset short term losses in an amount that does not exceed anticipated contributions for the following year.” S. Rep. No. 108-118 at 29 (2003) (emphasis added). See also id. at 53.

Borrowing Authority Generally

“Borrowing authority” is a type of budget authority that permits a federal agency to incur obligations and to liquidate those obligations out of borrowed moneys. U.S. General Accounting Office, *A Glossary of Terms Used in the Federal Budget Process* 22 (GAO/AFMD-2.1.1) (Exposure Draft) (Washington D.C. Jan. 1993). See generally U.S. General Accounting Office, *Budget Issues: Inventory of Accounts With Spending Authority and Permanent Appropriations, 1996*, GAO/AIMD-96-79, App. III, Figure III.2, “Authority to Borrow by Agency, Bureau, and Account” (Washington, D.C. May 1996). Borrowing from the Treasury is the most common form of borrowing authority. Borrowing authority also may include authority to borrow directly from the public, authority to borrow from the Federal Financing Bank (FFB),¹ or some combination of authorities. For a general discussion, see U.S. General Accounting Office, *Principles of Federal Appropriations Law* at 2-6 (2nd ed. 1991).

Commercial and Federal Borrowing Authority

Subsection 223(c) of S. 1125 would permit the Administrator of the Office of Asbestos Injury Claims Resolution to “borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year.” The statutory language in the bill does not specify the source of the borrowing. The authority in subsection 223(c) appears to permit borrowing from commercial lending sources as well as borrowing from federal sources. See S. Rep. No. 108-118 29 (2003). Although commercial borrowing authority is less common than Treasury borrowing authority, it has been authorized by Congress for specific federal entities, either alone or in combination with Treasury borrowing authority. See, e.g., 12 U.S.C. § 1795f (National

¹ Congress established the Federal Financing Bank to (1) finance federal and federally assisted borrowings in ways that least disrupt private markets, (2) coordinate such borrowing programs with the government’s overall fiscal policy, and (3) reduce the costs of such borrowings from the public. See 12 U.S.C. §§ 2281 *et seq.* FFB provides financial assistance to or on behalf of federal agencies by (1) making direct loans to federal agencies to help them fund their programs, (2) purchasing loan assets from federal agencies, and (3) making direct loans to nonfederal borrowers (including foreign governments) that are secured by federal agency guarantees. FFB obtains funds by borrowing from the Department of the Treasury or the public. Each loan made by Treasury matches the terms and conditions, except for the interest rate, of the corresponding loans made by FFB. FFB charges its borrowers the interest it incurs on Treasury borrowing, plus a fee to cover administrative costs. See U.S. General Accounting Office, *Financial Audit: Federal Financing Bank’s 1993 and 1992 Financial Statements*, GAO/AIMD-95-4 (Washington D.C. 1994). See also “The Federal Financing Bank.” <http://www.treas.gov/ffb> (last visited Sept. 3, 2003).

Credit Union Administration Central Liquidity Facility); 39 U.S.C. §§ 2005-06 (Postal Service).

The Administrator also may borrow from FFB. The FFB's enabling legislation provides that any federal agency "which is authorized to issue, sell, or guarantee any obligation is authorized to issue or sell such obligations directly to the Bank." 12 U.S.C. § 2285(a). See, e.g., B-248647, April 24, 1995 (no need for Congress specifically to authorize a federal financing arrangement in the Federal Triangle Development Act since the FFB has separate statutory authority to provide financing). To provide certainty with regard to the sources from which the Administrator may borrow, Congress may wish to make those sources explicit in the bill.

Extent of the Borrowing Authority in Subsection 223(c)

GAO in the past has recommended that Congress grant borrowing authority selectively.² Here, the borrowing authority granted by S. 1125 is subject only to the limitation that it not exceed "anticipated contributions to the Fund in the following calendar year." There is no explicit provision in S. 1125 for retiring that debt. Conceptually at least, the Administrator could incur substantial cumulative debt, subject only to his or her fiduciary responsibilities (see §§ 222(a), (b)) and ability to secure borrowing at reasonable terms. Under section 405 of S. 1125, however, such borrowing would apparently not be supported by the U.S. government. Paragraph 405(b)(1) provides that generally, nothing in the Act may be construed to "create any obligation of funding from the United States Government."³ See S. Rep. No. 108-118, above, at 57. To ensure that the government incurs no liability for repayment of borrowing under the act, Congress may wish to explicitly state that repayment of borrowing is limited solely to amounts available in the Fund.

² As a general proposition, direct appropriations provide enhanced congressional control relative to borrowing authority. See, e.g., B-141869, July 26, 1961. See also U.S. General Accounting Office, *Budget Issues: Agency Authority to Borrow Should Be Granted More Selectively*, GAO/AFMD-89-4 (Washington, D.C. Sept. 1989).

³ Section 405(b) of S.1125, as reported in the Senate, provides in full as follows: "Nothing in this Act may be construed to –

- (1) create any obligation of funding from the United States Government, other than the funding for personnel and support as provided under subtitle A of title I; or
- (2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate."

In addition, Congress may wish to consider placing further restrictions on borrowing under subsection 223(c), such as a ceiling on the cumulative debt that may be incurred by the Administrator. For example, Congress has imposed a cumulative debt ceiling on borrowing by the Tennessee Valley Authority (TVA). 16 U.S.C. § 831n-4 (TVA borrowing authority limited to “an amount not exceeding \$30,000,000,000 outstanding at any one time”). Congress also may wish to consider requiring Treasury approval or oversight of borrowing by the Administrator.⁴ See, e.g., 15 U.S.C. § 713a-4 (Commodity Credit Corporation borrowing “with the approval of the Secretary of the Treasury”).

We trust this is responsive to your request. We are sending copies of this correspondence to the Ranking Minority Member of the Senate Budget Committee, to the Chair and Ranking Minority Member of the Senate Judiciary Committee, the House Budget Committee, and the House Judiciary Committee and to the sponsors of other asbestos-related bills now pending in the Congress. If we can be of further assistance in this matter, please contact Charles Roney at 202-512-8152 or Frank Maguire at 512-8226 of my staff.

Sincerely yours,
/signed/

Anthony H. Gamboa
General Counsel

Enclosure

⁴ Under section 2286 of Title 12, U.S.C., “the prior approval of the Secretary of the Treasury” is required with respect to methods, source, timing and financing of “obligations issued or sold by any Federal agency.” Whether this section would be applicable to borrowing by the Administrator is open to question due to an explicit exception in the statute for “obligations issued or sold pursuant to an Act of Congress which expressly prohibits any guarantee of such obligations by the United States.” 12 U.S.C. § 2286(a); see also, 12 U.S.C. § 2288(3) (definition of “guarantee” as “any guarantee, insurance or other pledge with respect to the payment of all or part of the principal or interest of any obligation . . .”). As indicated above, section 405 of the bill provides generally that, nothing in the Act may be construed to “create any obligation of funding from the United States Government.”

Enclosure

Comparison of Key Elements of the National Vaccine Injury Compensation Program, the Black Lung Benefits Program, and S. 1125, “The Fairness in Asbestos Injury Resolution Act of 2003”

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
SCOPE OF PROGRAM			
Type of Benefits Payable	For an injury: past and future unreimbursable medical, custodial care and rehabilitation costs, actual and projected pain and suffering and emotional distress (capped at \$250,000), lost earnings, and reasonable attorneys’ fees and costs. For a death: payment capped at \$250,000. 42 U.S.C. § 300aa-15. ¹	Monthly income maintenance payments (augmented based on beneficiary’s number of dependents) and medical benefits related to treatment for black lung disease. 30 U.S.C. § 922. ²	Cash award, payable over 3-4 years, derived from “benefit table” based on medical condition. §§ 131, 133. “Medical monitoring” costs for patients with “nonmalignant disease” and “minimum exposure criteria,” § 132. (Report ³ at 43-44.)

¹ See “National Vaccine Injury Compensation Program Fact Sheet,” Department of Health and Human Services, Health Resources and Services Administration, Office of Special Programs. www.hrsa.gov/osp/vicp/fact_sheet.htm (last visited Aug. 30, 2003). Note that, unless otherwise indicated, the discussion in this chart applies to injuries or deaths from vaccines administered after October 1, 1988. Claims for compensation for injuries or deaths from vaccines administered prior to that date are no longer accepted. See “Commonly Asked Questions About the National Vaccine Injury Compensation Program,” Department of Health and Human Services, Health Resources and Services Administration, updated Dec. 18, 2002. <http://www.hrsa.gov/osp/vicp/qanda.htm> (last visited Aug. 30, 2003) (hereafter referred to as “VICP Commonly Asked Questions”).

² See Department of Labor, Office of the Assistant Secretary for Policy, *Employment Law Guide*, “Black Lung Compensation,” <http://www.labor.gov/asp/programs/guide/blklung.htm> (last visited Aug. 30, 2003) (hereafter cited as “DOL Employment Law Guide”).

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
Benefit Eligibility	Petitioners who can prove that (1) an injury listed on the “Vaccine Injury Table” occurred within the applicable time period, (2) the vaccine significantly aggravated a preexisting condition, or (3) the covered vaccine caused the condition. 42 U.S.C. § 300aa-11(c). ⁴	Miners “totally disabled” due to pneumoconiosis (black lung disease) or related disease and their survivors. 30 U.S.C. § 902, 931-32. ⁵	Any individual who has suffered from an eligible disease or condition that is believed to meet the requirements. § 111. See “Medical Criteria Requirements,” § 121; “Essential Elements of Eligible Asbestos Claim,” § 113. (Report at 36-43.)
Source of Benefits Funding	The Vaccine Injury Compensation Trust Fund. ⁶ Claims may be paid only from the Fund. See 26 U.S.C. § 9510(d)(1).	Claims are funded by “responsible operators,” i.e., mining companies, or by the Black Lung Disability Trust Fund when the employment was before Jan. 1, 1970 or when no coal mine operator can be held liable. ⁷ 26 U.S.C. § 9501(d), 30 U.S.C. § 932. ⁸	The Asbestos Injury Claims Resolution Fund. § 133. All claims must be paid from the Fund. § 133(a)(1). (Report at 44.)

(...continued)

³ S. Rep. No. 108-118 (July 30, 2003).

⁴ See VICP Commonly Asked Questions.

⁵ Eligibility requirements vary depending on date of claim. See Department of Labor, Benefits Review Board, *Black Lung Deskbook*, Part I.A, “General History and Purpose.” <http://www.dol.gov/brb/bldesk.htm> (last visited Aug. 30, 2003) (hereafter referred to as “Black Lung Deskbook”).

⁶ For vaccines administered prior to October 1, 1988, claims are paid from general fund appropriations rather than the Trust Fund. See U.S. General Accounting Office, *Vaccine Injury Trust Fund: Revenue Exceeds Current Need for Paying Claims*, GAO/HEHS-00-67 at 7 (Washington D.C. March 2000). See also *Budget of the United States Government, Fiscal Year 2004*, App. at 405 (hereafter referred to as “FY 04 Budget”).

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108 th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
TRUST FUND			
“Trust Fund” Established	“There is established in the Treasury of the United States a trust fund to be known as the ‘Vaccine Injury Compensation Trust Fund’” 26 U.S.C. § 9510(a).	“There is established in the Treasury of the United States a trust fund to be known as the ‘Black Lung Disability Trust Fund’” 26 U.S.C. § 9501.	“There is established in the Office of Asbestos Injury Claims Resolution, the Asbestos Injury Claims Resolution Fund” § 223(a). ⁹ (Report at 53.) ⁹

(...continued)

⁷ The Black Lung Program includes a “Part B” program covering existing cases caused by prior years of coal dust exposure funded with general revenues and administered by the Social Security Administration. A “Part C” program, covering claims filed since 1973, was administered by DOL and funded by a tax on coal and by “responsible operators.” The Trust Fund was established in 1977. The older, “Part B” benefits continue to be funded from the general fund, although it is now also administered by DOL. See Congressional Research Service, “The Black Lung Benefits Program,” Edward Rappaport, June 12, 2002 (hereafter referred to as “Rappaport”); U.S. General Accounting Office, *Black Lung Program: Further Improvements Can Be Made in Claims Adjudication* GAO-HRD-90-75 (Washington D.C. March 1990); FY 04 Budget at 664. The discussion in this chart refers to the “Part C” program, unless otherwise indicated.

⁸ Under the Act (30 U.S.C. §§ 931, 932), Part C claims are to be processed under an applicable state workers’ compensation law approved by the Secretary of Labor under the Act. To date, no state workers’ compensation program has been approved by the Secretary. 20 C.F.R. § 722.4 (2003). See Black Lung Deskbook, Part I.B.; Rappaport at 4. Accordingly, under current practice, claims are filed with and adjudicated by DOL and benefits paid by the mine operators or from the Fund, as described above.

⁹ Although the Fund that would be created by S. 1125 shares many characteristics of a federal trust fund, it is not designated as a “trust fund” in the bill and therefore is more properly designated for budgetary purposes as a “special fund account.” See U.S. General Accounting Office, *Federal Trust and Other Earmarked Funds: Answers to Frequently Asked Questions*, GAO-01-199SP (Washington D.C. Jan. 2001). For a general discussion, see U.S. General Accounting Office, *Principles of Federal Appropriations Law*, 2d Ed., Vol. IV, Chap. 17, Part D, “Trust Funds.” A special fund account is defined simply as a “federal fund account earmarked by law for a specific purpose.” U.S. General Accounting Office, *A Glossary of Terms Used in The Federal Budget Process: Exposure Draft*, GAO/AFMD-2.1.1 at 5 (Rev. Jan. 1993). See also Office of Management and Budget Circular No. A-11, §§ 20.3, 20.11.

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
Sources of Fund Income	An excise tax of 75 cents is collected on every dose of covered vaccine purchased. 26 U.S.C. § 4131. Upon payment of compensation to a petitioner, the Fund is subrogated to all rights of the petitioner. Collections under this provision are deposited in the Fund. 42 U.S.C. § 300aa-17. Interest income. 26 U.S.C. § 602(b)(3).	Excise tax on coal mining companies based on each ton of coal mined, amounts recovered from “responsible operators,” and certain penalties assessed under the Act. 26 U.S.C. § 4121. Interest income. 26 U.S.C. § 9602(b)(3).	Assessments of “contributions” from “defendant participants” (§ 202(a)(1)) and from “insurance participants.” (§ 212(a)). Additional contributions from asbestos-related civil trusts. (§ 402) (Report at 29, 56.) ¹⁰

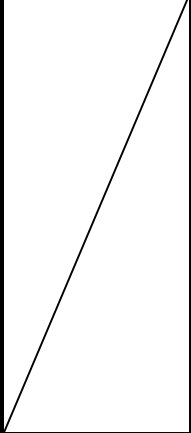
¹⁰ Although the Administrator is authorized to invest amounts in the Fund, there is no explicit authority in the Act for investment income to be credited to the Fund. See 62 Comp. Gen. 70 (1982). It is clear that it is the intent of the drafters that investment income be credited to the Fund. See especially § 222(b)(4). Congress may wish to consider, however, making this authority explicit. See, e.g., 26 U.S.C. § 9602(b)(3).

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
Investment of Funds permitted or required?	Yes. Treasury is required to invest funds not required to meet current withdrawals “only in interest-bearing obligations of the United States.” 26 U.S.C. § 9602(b).	Yes. Treasury is required to invest funds not required to meet current withdrawals “only in interest-bearing obligations of the United States.” 26 U.S.C. § 9602(b).	Yes. The Administrator is required by section 222 to invest the assets of the Fund consistent with a “prudent person” standard. § 222(a), (b). (Report at 53.)
Specific limitation of government liability for claims? ¹¹	Yes. Claims may be paid only out of the Fund. 26 U.S.C. § 9510(d)(1).	Yes. The Fund is specifically designated as the source of benefit payments, making other sources unavailable. 26 U.S.C. § 9501; 30 U.S.C. § 932(a).	Yes. The bill specifically provides that nothing in it “may be construed as creating a cause of action against the United States” or “construed to create any obligation of funding from the United States Government.” § 405. (Report at 29, 60.)

¹¹ A future Congress would be free, in the exercise of its legislative power, to provide additional funds to implement any of this legislation. See, e.g., 36 Comp. Gen. 240, 242 (1956) (“It is fundamental ... that one Congress cannot bind a future Congress and that the Congress has full power to make an appropriation in excess of a cost limitation contained in the original authorization act. This authority is exercised as an incident to the power of the Congress to appropriate and regulate expenditures of the public money.”). For example, see “Status of Fund,” below.

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
Other costs payable from Fund?	Expenses incurred by the federal government in administering the program, capped at no more than \$9,500,000 for any fiscal year. 26 U.S.C. § 9510(c)(1) (B).	Administrative costs incurred by agencies that administer benefits and operate the trust fund. 26 U.S.C. § 9501(d)(5).	Principal and interest on borrowings and administrative expenses necessary to carry out activities of the Office of Asbestos Injury Claims Resolution and the Asbestos Insurers Commission. §§ 217, 223(a). (Report at 53.)
Explicit ¹² fiduciary responsibility?	No. But see 26 U.S.C. § 9602, “Management of Trust Funds.”	No. But see 26 U.S.C. § 9602, “Management of Trust Funds.”	Yes. Fund is to be administered “in a fiduciary capacity” with “care, skill, prudence, and diligence,” to a “prudent person” standard. §§ 222(a), (b). (Report at 53.)

¹² The fact that Congress has designated a fund as a “trust fund” does not mean that the administering agency has a full range of fiduciary obligations. The scope of the trustee’s duties with respect to a trust fund will necessarily depend on the substantive law creating those duties. *United States v. Mitchell*, 463 U.S. 206, 224 (1983).

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 <u>et seq.</u>)	Black Lung Benefits Program (30 U.S.C. §§ 901 <u>et seq.</u>)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
	Borrowing Authority	None. ¹³	If tax revenues are insufficient to cover expenditures, Congress may appropriate “repayable advances” to the Fund. Such advances are repayable with interest. 26 U.S.C. § 9501(c).
The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund. § 223(c). ¹⁴ (Report at 29, 53.)			

¹³ See 26 U.S.C. § 9510(d)(3) (If the Fund “has insufficient funds to pay all claims,” claims shall “be paid in full in the order in which they are finally determined.”).

¹⁴ See Report at 59 (the Administrator “holds authority to borrow from commercial lending institutions amounts to offset short term losses in an amount that does not exceed anticipated contributions for the following year”).

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
CLAIMS PROCEDURES			
Filing and Processing Procedures	Individual files a “petition for compensation” with the U.S. Court of Federal Claims. A Health and Human Services physician conducts a medical review of the petition and makes a recommendation. A Justice attorney reviews the petition to determine whether it meets the legal requirements for compensation. These reviews are provided to the Court. The HHS position is represented by a Justice attorney in hearings before a “special master,” appointed by the Court. 42 U.S.C. § 300aa-12. ¹⁵	Miners and their survivors apply to the DOL for benefits. DOL obtains a medical and employment history and identifies “operators” who may be liable for the claim and makes an initial determination. Parties, including claimants or operators, may appeal and submit additional evidence. Informal conferences may be held to try to resolve differences. DOL then prepares a proposed “Decision and Order” which is subject to appeal as set forth below. ¹⁶	Claims system will be administered by the Court of Federal Claims, which will establish an Office of Special Asbestos Masters to process and make initial decisions on claims. Claims filed under the bill will be referred to claims examiners for an initial review. Once a claim is complete, a special asbestos master has 60 days to determine the amount of any award. §§ 111-115. (Report at 30, 36-7.)

¹⁵ See U.S. General Accounting Office, *Vaccine Injury Compensation: Program Challenged to Settle Claims Quickly and Easily*, GAO/HEHS-00-8 (Washington D.C. Dec. 1999) App. II.

¹⁶ See Department of Labor, Employment Standards Administration, “Compliance Guide to the Black Lung Benefits Act,” August 22, 2002 www.dol.gov/eas/regs/compliance/owcp/blbenact.html (last visited Aug. 30, 2003) (hereafter referred to as “DOL Compliance Guide”). See also GAO-HRD-90-75, above.

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)	Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)	S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
“No Fault” claims process?	Yes. The petitioner is not required to show that a particular vaccine manufacturer or administrator was negligent. 42 U.S.C. § 300aa-11. ¹⁷	Yes, although the Act contemplates that “responsible operators” will be the primary funding source. 30 U.S.C. § 932. Claimants or mine operators dissatisfied with the initial DOL decision can appeal. The appeals process is adversarial. ¹⁸	Yes. Claimants “shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.” § 112. (Report at 36.)
Appeal of Decisions	The decision on entitlement or compensation by the “special master” may be appealed to the Court of Federal Claims and subsequently to the U.S. Court of Appeals for the Federal Circuit and the Supreme Court. § 300aa-12(e), (f).	Decisions can be appealed to the Office of Administrative Law Judges at DOL, to the independent Benefits Review Board at DOL, to the U.S. Circuit Court of Appeals with jurisdiction where the miner was exposed to coal mine dust, and finally to the Supreme Court. See DOL Employment Law Guide. ¹⁹	Decisions of the “special master” on claims may be appealed to a U.S. Court of Asbestos Claims, which would be a three judge court established by the Court of Federal Claims. § 141(a), (b). Decisions of the Asbestos Court could be appealed to the Federal Circuit and the Supreme Court. § 301. (Report at 44, 55.)

¹⁷ See GAO/HEHS-00-8, above, at 5.

¹⁸ See GAO-HRD-90-75, above, at 13; DOL Compliance Guide.

¹⁹ See also GAO-HRD-90-75, above, at 13.

	<p>National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 et seq.)</p>	<p>Black Lung Benefits Program (30 U.S.C. §§ 901 et seq.)</p>	<p>S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”</p>
<p>Alternate avenues of redress available?</p>	<p>Yes, although under the Act an individual alleging a vaccine-related injury or death must first file a claim before pursuing a tort claim. After pursuing a petition under the Program, a petitioner can elect to bring a suit in civil court by 1) withdrawing the petition under certain conditions or 2) electing to reject the decision and judgment of the Court. 42 U.S.C. § 300aa-21. If the petitioner does elect to bring suit, the Act limits the claims the petitioner can make against the manufacturer. 42 U.S.C. §§ 300aa-22, 23.</p>	<p>Yes. There is no explicit provision in the Black Lung legislation prohibiting tort lawsuits by miners afflicted by Black Lung disease.²⁰</p>	<p>No. Section 403(c) provides that Act is the “exclusive remedy” for “personal injury” asbestos claims. “No asbestos claim may be pursued in any Federal or State court, except for enforcement of claims for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review §§ 2(3); 403(c)(1). (Report at 56-57.)</p>

²⁰ In informal discussions with our office, DOL indicated that, because the federal Black Lung program is coordinated closely with state workers’ compensation programs and because those state programs generally preclude lawsuits for injuries covered under those programs, tort lawsuits related to Black Lung disease would be problematical.

	National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 <u>et seq.</u>)	Black Lung Benefits Program (30 U.S.C. §§ 901 <u>et seq.</u>)	S. 1125, 108 th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”
OTHER PROVISIONS			
Provision for early termination?	No. ²¹	No. ²²	Under section 404, Administrator must certify annually that 95 % of eligible claimants who filed claims during the prior calendar year have received compensation to which they were entitled and 95% of the obligations of the Fund owed to eligible claimants in the prior calendar year have been paid. If Administrator cannot so certify, he or she has a 90 day period to remedy this situation. Otherwise, program sunsets and claimants may litigate claims. (Report at 57, 61.)

²¹ The Act provided for a maximum permitted number of awards in its early years of implementation. Under the Act, the Secretary must review, on a quarterly basis, the number of awards of compensation made under the Act. For the first 48 months of program implementation, if the number of such awards had exceeded a number specified in the statute, the Secretary was to notify Congress. Beginning 180 days after such notification, no further petitions under the Act would have been permitted and limitations on civil actions under the Act would have ceased to apply. 42 U.S.C. § 300aa-34. See H.R. Rep. No. 100-391(D) (1987) at 690-91.

²² The evident expectation upon enactment of “Part C” authority was that that program would be temporary and that eventually state workers’ compensation programs would process black lung claims. *Elliot Coal Mining, Inc. v. Director, Office of Workers’ Compensation Programs*, 17 F.3d 616, 627 (3d Cir. 1994). See also Rappaport at 4. The Act at one point provided that no payment of benefits could be made under Part C after 1981. See H.R. Rep. No. 95-151 (1977). This provision was repealed by the 1978 amendments to the Act. Pub. L. No. 95-239, § 7(d), 92 Stat. 97, 99, March 1, 1978.

	<p>National Vaccine Injury Compensation Program. (42 U.S.C. §§ 300aa-10 <u>et seq.</u>)</p>	<p>Black Lung Benefits Program (30 U.S.C. §§ 901 <u>et seq.</u>)</p>	<p>S. 1125, 108th Cong. (as reported July 30, 2003), “Fairness in Asbestos Injury Resolution Act of 2003.”</p>
<p>Current Status of the Fund</p>	<p>The Fiscal Year 2004 Budget indicated that the estimated balance of the Fund at the end of Fiscal year 2003 was \$1.907 billion. <u>See</u> FY 04 Budget at 409.²³</p>	<p>Coal taxes have been chronically inadequate to cover expenditures and the Fund has borrowed extensively from the General Fund.²⁴ The outstanding debt at the end of FY 2003 was estimated to be over \$8 billion. <u>See</u> FY 04 Budget at 653, 665-667.</p>	

²³ See GAO/HEHS-00-67, above.

²⁴ See GAO HRD-90-75, above.