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September 23, 2016

The Honorable Gene L. Dodaro  
Comptroller General  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Dodaro:

In view of the impending reduction in the black lung excise tax rate on December 31, 2018, we are writing to request an evaluation of the Black Lung Disability Trust Fund finances and an assessment of the consequences for the solvency of this Trust Fund if Congress fails to extend the tax.

The Black Lung Benefits Revenue Act of 1977 (P. L. 95- 227) created a Trust Fund to provide benefits to certain coal miners disabled by black lung disease when no coal mine operator can be identified as responsible for paying benefits or when the identified coal mine operator is no longer financially capable of securing benefit payments. The Black Lung Disability Trust Fund is supported by a black lung excise tax, which is paid by coal mine operators to support the payment of benefits to claimants and to cover the cost of administering the program. Each coal mine operator is required to secure the payment of its benefits liability by either qualifying as a self-insurer or by purchasing and maintaining a commercial insurance contract. Under Department of Labor (DOL) rules, operators are only permitted to self-insure if they have been in the business of coal mining for at least three years, have met minimum asset requirements, and have obtained an indemnity bond or other forms of surety to secure payment of benefits.

On December 31, 2018, the current excise tax of \$1.10 per ton for underground mined coal and \$0.55 per ton for surface mined coal is scheduled to be reduced by 55% pursuant to a temporary increase authorized under the Emergency Economic Stabilization Act of 2008 (P.L. 110-343, title I, subtitle B, section 113). At that time, the excise tax will revert to the 1977 level of \$0.50 per ton for underground-mined coal and \$0.25 per ton of surface-mined coal. According to the U.S. Treasury Department, excise tax revenues are projected to drop by \$312 million by fiscal year 2020 (from \$530 million in 2018 to \$227 million in 2020).

Numerous bankruptcies by self-insured coal operators are adding further uncertainty to Trust Fund finances. As of January 2016, 100 of the 253 self-insured operators are debtors in bankruptcy cases. If the bankrupt firms are liquidated, the responsible mine operators will cease

paying benefits, and in those cases where there is insufficient surety, the additional costs are shifted to the Trust Fund.

For example, following a bankruptcy and subsequent liquidation, Patriot Coal shifted an estimated \$62 million in liabilities to the Trust Fund, according to the Department of Labor, because there was insufficient surety or other assets pledged to cover the self-insured claims.

Perfected liens by the Black Lung Disability Trust Fund have the same priority as federal tax liens under law. But that lien does not arise until the liable employer defaults on a payment of benefits owed to a claimant. During the bankruptcy proceeding, some coal operators continue to pay benefits owed on final black lung awards. Since they are not technically in "default" during the bankruptcy proceedings, DOL has no lien to file. Such companies often do not stop paying benefits until *after* the bankruptcy court confirms a liquidation plan and the coal operator's assets are sold to other companies, free-and-clear of black lung liabilities. At that point, there are no remaining assets upon which to place a lien. By following this sequence, the creditors who control bankrupt coal operators are able to capture assets and effectively shift benefit costs to the Trust Fund.

In 2016, Trust Fund revenues will exceed outlays for claimant benefits and administrative costs by approximately \$200 million; however, this surplus is still insufficient to meet the scheduled debt repayment obligations of \$396 million per year. While the Trust Fund can borrow from the Treasury to make benefit payments during a shortfall, the consequence of failing to ensure structural solvency will shift costs from the coal industry to the U.S. taxpayers.

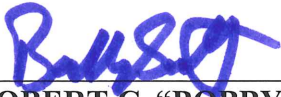
In view of these developments, we are seeking a U.S. Government Accountability Office (GAO) review of the Black Lung Disability Trust Fund. Specifically, we would like GAO to examine:

- 1) If the excise tax is not extended at the current rate past December 31, 2018, what are the consequences to the solvency and finances of the Black Lung Disability Trust Fund over the next 10 years and 20 years? Will there be a cost shift from the coal mining industry to the taxpayers?
- 2) Assuming eligibility for benefits and benefit levels are not reduced, what are the options to assure solvency of the trust fund?
- 3) What is the potential financial exposure to the Trust Fund from self-insured mine operators who have filed for bankruptcy (or are anticipated to do so) when there is insufficient surety to cover the operator's black lung benefits liability?
- 4) Is DOL's criteria for permitting operators to self-insure in lieu of purchasing commercial insurance sufficiently stringent to prevent unfunded liabilities from being transferred to the Trust Fund when there is a bankruptcy? If not, what actions should be taken?
- 5) What actions has the DOL taken to protect the Trust Fund in previous bankruptcy proceedings? Is legislation necessary to assure that timely liens can be placed on assets in those instances where it is clearly foreseeable that mine operators will default on their obligation, but only do so after the operator's assets are exhausted?

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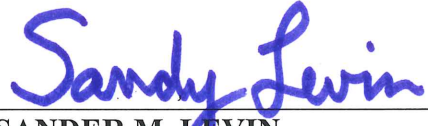
Please contact Richard Miller of the Committee on Education and the Workforce Democratic Staff at (202) 225-3725 with questions, or Drew Crouch of the Committee on Ways and Means Democratic Staff at (202) 225-4021.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Ranking Member  
Committee on Education and the Workforce



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**SANDER M. LEVIN**  
Ranking Member  
Committee on Ways and Means