



Testimony

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

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BLACK LUNG BENEFITS PROGRAM

Oversight Is Needed to Address Trust Fund Solvency Strained by Bankruptcies

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

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

Why GAO Did This Study

In May 2018, GAO reported that the Trust Fund, which pays disability benefits to certain coal miners, faced financial challenges. The Trust Fund has borrowed from the U.S. Treasury's general fund almost every year since 1979 to make needed expenditures. GAO's June 2019 testimony included preliminary observations that coal operator bankruptcies were further straining Trust Fund finances because, in some cases, benefit responsibility was transferred to the Trust Fund.

This testimony is based on GAO's report being released today, and describes (1) how coal mine operator bankruptcies have affected the Trust Fund, and (2) how DOL managed coal mine operator insurance to limit financial risk to the Trust Fund. In producing this report, GAO identified coal operators that filed for bankruptcy from 2014 through 2016. GAO analyzed information on commercially-insured and self-insured coal operators, and examined workers' compensation insurance practices in four of the nation's top five coal producing states. GAO also interviewed DOL officials, coal mine operators, and insurance company representatives, among others.

What GAO Recommends

GAO made three recommendations to DOL to establish procedures for self-insurance renewals and coal operator appeals, and to develop a process to monitor whether commercially-insured operators maintain adequate and continuous coverage. DOL agreed with these recommendations.

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

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What GAO Found

Coal mine operator bankruptcies have led to the transfer of about \$865 million in estimated benefit responsibility to the federal government's Black Lung Disability Trust Fund (Trust Fund), according to DOL estimates. The Trust Fund pays benefits when no responsible operator is identified, or when the liable operator does not pay. GAO previously testified in June 2019 that it had identified three bankrupt, self-insured operators for which benefit responsibility was transferred to the Trust Fund. Since that time, DOL's estimate of the transferred benefit responsibility has grown—from a prior range of \$313 million to \$325 million to the more recent \$865 million estimate provided to GAO in January 2020. According to DOL, this escalation was due, in part, to recent increases in black lung benefit award rates and higher medical treatment costs, and to an underestimate of one company's (Patriot Coal) future benefit claims.

Self-Insured Coal Mine Operator Bankruptcies Affecting the Black Lung Disability Trust Fund, Filed from 2014 through 2016

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

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

DOL's limited oversight of coal mine operator insurance has exposed the Trust Fund to financial risk, though recent changes, if implemented effectively, can help address these risks. In overseeing self-insurance in the past, DOL did not: estimate future benefit liability when setting the amount of collateral required to self-insure; regularly review operators to assess whether the required amount of collateral should change; or always take action to protect the Trust Fund by revoking an operators' ability to self-insure as appropriate. In July 2019, DOL began implementing a new self-insurance process that could help address past deficiencies in estimating collateral and regularly reviewing self-insured operators. However, DOL's new process still lacks procedures for its planned annual renewal of self-insured operators and for resolving coal operator appeals should operators dispute DOL collateral requirements. This could hinder DOL from revoking operators' ability to self-insure should they not comply with DOL requirements. Further, for those operators that do not self-insure, DOL does not monitor them to ensure they maintain adequate and continuous commercial coverage as appropriate. As a result, the Trust Fund may in some instances assume responsibility for paying benefits that otherwise would have been paid by insurers.

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

I am pleased to be here to discuss the report we are releasing today on the need for improved oversight of coal mine operator black lung insurance.¹ The federal government's Black Lung Disability Trust Fund (Trust Fund) finances medical and cash assistance to certain coal miners who have been totally disabled due to pneumoconiosis (also known as black lung disease).² Black lung benefits are generally to be paid by responsible coal mine operators. However, the Trust Fund pays benefits in certain circumstances, including in cases where no responsible mine operator can be identified or when the liable mine operator does not pay.

As we reported in May 2018, the Trust Fund faces financial challenges.³ Its expenditures have consistently exceeded revenue and the Trust Fund has essentially borrowed with interest from the Department of the Treasury's (Treasury) general fund almost every year since 1979, which was its first complete fiscal year.⁴ In fiscal year 2019, the Trust Fund borrowed about \$1.9 billion to cover its expenditures, according to Department of Labor (DOL) officials.

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

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

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

³GAO, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, [GAO-18-351](#) (Washington D.C.: May 30, 2018).

⁴Under 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.

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

Trust Fund revenue is primarily obtained through a tax on coal produced and sold domestically, which we refer to in this report as the coal tax.⁶ The coal tax rate has varied over the years. From 1986 through 2018, the coal tax rate was \$1.10 per ton of underground-mined coal and \$0.55 per ton of surface-mined coal, up to 4.4 percent of the sales price. In 2019, the rate of the coal tax decreased to \$0.50 cents and \$0.25 cents per ton of underground-mined and surface-mined coal, respectively, up to 2 percent of the sales price. In 2020, the rate of the coal tax increased to pre-2019 levels. However, it is scheduled to decrease again beginning in 2021. With less revenue from the coal tax, the Trust Fund will likely need to borrow more from Treasury's general fund.

My statement summarizes the findings from the report we are releasing today, which addresses: (1) how coal mine operator bankruptcies have affected the Trust Fund, and (2) how DOL managed coal mine operator insurance to limit financial risk to the Trust Fund. In summary, we found:

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

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

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

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

We made three recommendations, and DOL agreed with them:

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

For our report, we analyzed Bloomberg data and consulted DOL to identify coal operators that filed for bankruptcy from 2014 through 2016;⁷ analyzed National Council on Compensation Insurance (NCCI) data and DOL documentation on commercially-insured and self-insured coal mine operators; and examined workers' compensation insurance practices in four states—Kentucky, Pennsylvania, West Virginia, and Wyoming—to identify relevant practices that could inform DOL's administration of coal operator insurance at the federal level. We also interviewed DOL officials, coal mine operators, insurance company representatives, and officials from the National Mining Association, NCCI, National Council of Self-Insurers, and the American Academy of Actuaries, among others. A more detailed explanation of our methodology is available in our report.⁸

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

⁷Our search focused on the bankruptcies of parent operators rather than individual subsidiaries. Bankruptcy proceedings can vary in duration. We identified coal mine operator bankruptcies that were filed from 2014 through 2016, in part, because they were more likely to be resolved. Bankruptcies filed more recently may still be ongoing and their effects on the Trust Fund may not yet be known.

⁸[GAO-20-21](#).

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

Of the eight coal mine operator bankruptcies we identified, three resulted in a transfer of estimated benefit liability from the coal operator to the Trust Fund and five did not, according to DOL. Figure 1 shows how many operators were self-insured or commercially insured at the time of bankruptcy, and if responsibility for benefits was shifted from the bankrupt operator to the Trust Fund. Federal law generally requires coal mine operators to secure their black lung benefit liability.⁹ A self-insured coal mine operator assumes the financial responsibility for providing black lung benefits to its eligible employees by paying claims as they are incurred. Operators are allowed to self-insure if they meet certain DOL conditions. For instance, operators applying to self-insure must obtain collateral in the form of an indemnity bond, deposit or trust, or letter of credit in an amount deemed necessary and sufficient by DOL to secure their liability.¹⁰ Operators that do not self-insure are generally required to obtain coverage from commercial insurance companies, state workers' compensation insurance funds, or other entities authorized under state law to insure workers' compensation.¹¹

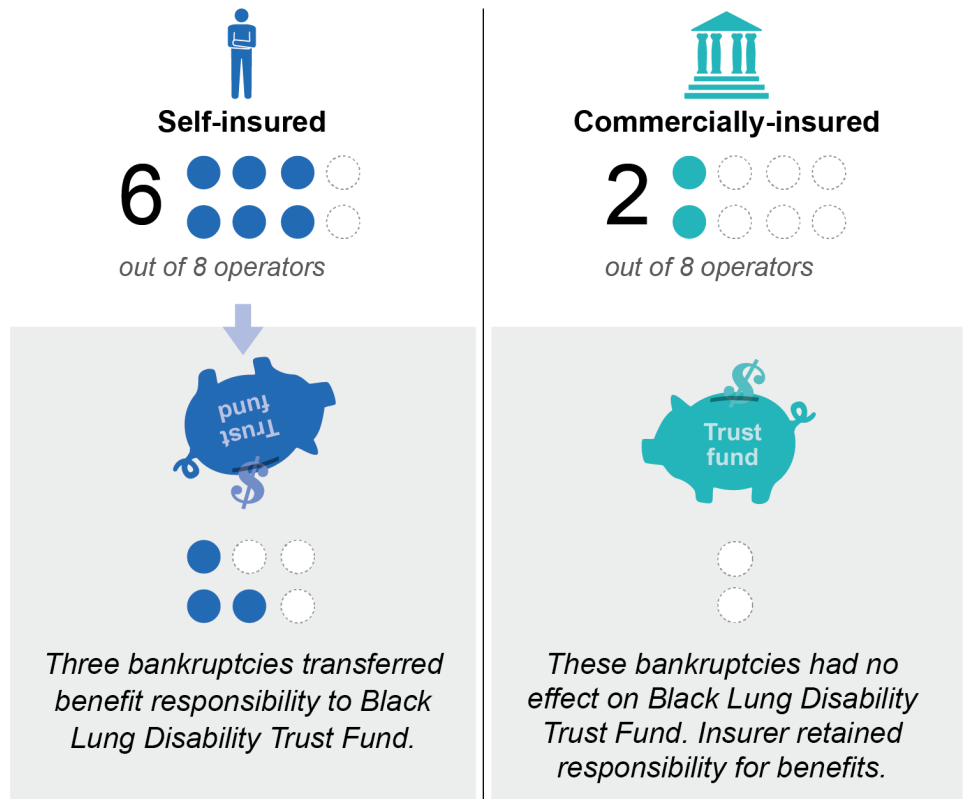
⁹30 U.S.C. § 933(a). Employers that are not coal mine operators are not required to secure their liability with respect to employees engaged in the transportation of coal or in coal mine construction. 30 U.S.C. § 932(b).

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

¹¹According to DOL regulations, an endorsement affording coverage under the Federal Coal Mine Health and Safety Act of 1969, as amended, shall be attached and applicable to the standard workers' compensation and employer's liability policy prepared by NCCI. See 20 C.F.R. § 726.203(a). An endorsement, sometimes called a rider, amends a policy's coverages, terms, or conditions.

Figure 1: Coal Mine Operator Bankruptcies Filed from 2014 through 2016

Number of bankrupt coal mine operators that were:



Source: Bloomberg data and Department of Labor officials. | GAO-20-438T

From 2014 through 2016, three self-insured coal mine operator bankruptcies resulted in a transfer of \$865 million of benefit liabilities from the coal operators to the Trust Fund, according to DOL estimates (see table 1).¹² DOL estimates for how these bankruptcies will affect the Trust Fund have considerably increased from what DOL had previously reported.¹³ In June 2019, we reported that DOL estimated that between \$313 million to \$325 million in benefit liabilities would transfer to the Trust Fund as a result of these bankruptcies.¹⁴ In January 2020, however, DOL

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

¹³Fiscal Year 2020 Congressional Budget Justification, Black Lung Disability Trust Fund.

¹⁴[GAO-19-622T](#).

provided updated estimates stating that \$865 million in benefit liabilities would transfer to the Trust Fund as a result of these bankruptcies. According to DOL, their estimates increased, among other reasons, to account for higher black lung benefit award rates that occurred from fiscal years 2016 through 2019, and higher medical treatment cost inflation in recent years. Additionally, DOL's prior estimate for the Patriot Coal (Patriot) bankruptcy did not account for future claims and their effect on the Trust Fund. The amount of collateral DOL required from these operators to self-insure did not fully cover their estimated benefit liabilities. When this occurs, benefit liabilities in excess of the collateral can be transferred to the Trust Fund. For example, the collateral DOL required from Alpha Natural Resources (Alpha) was about \$12 million and approximately \$494 million of estimated benefit liability transferred to the Trust Fund, according to DOL.

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

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

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

^aThese totals include claims in active pay status as of September 2019, and estimates of newly awarded claims in fiscal year 2020 and into the future, according to DOL.

The three other self-insured coal mine operator bankruptcies we identified did not affect the Trust Fund. Specifically, Arch Coal, Peabody Energy, and Walter Energy were also self-insured operators, but DOL officials said that their federal black lung benefit liabilities were assumed by a reorganized company or by a purchaser, and therefore did not transfer to the Trust Fund.

Insurance contracts or policies to secure operators' benefit liabilities are required by law to include a provision that insolvency or bankruptcy of an operator does not release the insurer from the obligation to make benefit payments.¹⁵ Additionally, state insurance regulation, insurer underwriting,

¹⁵30 U.S.C. § 933(b)(2).

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

Since 2016, several other self-insured operators have also filed for bankruptcy, according to DOL officials, including Cambrian Coal, Cloud Peak Energy, Murray Energy, and Westmoreland Coal. DOL officials said that about \$17.4 million in estimated black lung benefit liability will transfer to the Trust Fund as a result of Westmoreland Coal's bankruptcy. Given the uncertainty of the bankruptcy process in terms of whether liabilities will or will not transfer to the Trust Fund, however, DOL officials said that they could not speculate on how these other bankruptcies may affect the Trust Fund.

DOL's Limited Oversight Has Exposed the Trust Fund to Financial Risk, and Its New Self-Insurance Process Lacks Enforcement Procedures

In overseeing coal mine operator self-insurance in the past, DOL did not estimate future benefit liability when setting collateral or regularly review operators to monitor their changing financial conditions. DOL regulations require that collateral be obtained from operators in an amount deemed necessary and sufficient to secure the payment of the operators' liability.¹⁷ To determine collateral amounts under the former process, agency procedures stated that an operator's net worth be assessed by reviewing, among other factors, the operator's audited financial statements and black lung claims information. The amount of collateral was to be equal to 3, 5, or 10 years of the operator's annual black lung benefit payments made at the time of a coal operator's self-insurance application depending on its net worth. Specifically, if net worth was \$1 billion or greater, agency procedures set collateral equal to 3 years of benefit payments. If net worth ranged from \$500 million to \$1 billion, collateral was equal to 5 years of benefit payments. If net worth ranged from \$10 million to \$500 million, DOL set collateral equal to 10 years of benefit payments. Agency procedures did not permit operators with net worth less than \$10 million to self-insure.

¹⁶Property and casualty insurers, which provide black lung coverage, generally pay assessments to state guaranty funds based on the amount of premium written to finance the cost of resolving insolvent insurers.

¹⁷20 C.F.R. § 726.105.

DOL's former process for determining collateral did not routinely consider potential future claims for which an operator could be responsible. The agency periodically reauthorized coal operators to self-insure by reviewing an operator's most recent audited financial statement and claims information, among other things. DOL prepared memos documenting these reviews, and communicated with coal operators about whether their financial circumstances warranted increasing or decreasing their collateral.

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

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

- **James River.** In September 2001, DOL required \$5 million in additional collateral from James River Coal (James River), which would have increased its collateral from \$0.4 million to \$5.4 million. Although DOL did not receive the additional collateral, it did not

¹⁸20 C.F.R. § 726.105.

¹⁹DOL regulations state that the agency, with good cause shown, may revoke the authority of any coal operator to self-insure. 20 C.F.R. § 726.115. Additionally, the Black Lung Benefits Act states that DOL can fine mine operators up to \$1,000 a day for operating without insurance. 30 U.S.C. § 933(d)(1). However, DOL officials said that, per the Inflation Adjustment Act, they can actually charge operators up to \$2,924. DOL officials said the last time they fined a coal operator for operating without insurance was in 2007, and that they do not have records of whether fines were used prior to 2007. If an operator is uninsured and is a corporation, the president, secretary, and treasurer of the operator can be liable for the assessed penalties and for benefit claims for the period in which the operator was uninsured. However, DOL officials said that they do not maintain records of those instances when DOL sought to hold company officials liable.

revoke the operator's authority to self-insure, which is a potential option under agency regulations. Further, DOL had not reauthorized James River at any point from August 2001 until it filed for bankruptcy in April 2014. If James River's ability to self-insure had been revoked, DOL could have potentially prevented the Trust Fund from being responsible for claims based on a miner's employment from 2001 through 2016, when James River liquidated. Additionally, if the operator had been unable to obtain commercial insurance, the agency could have potentially fined the operator for each day it operated without insurance. Instead, no action was taken during these years and estimated benefit liability of \$141 million was shifted to the Trust Fund, according to DOL. DOL officials stated that they do not have records explaining why James River did not provide the additional collateral or why they did not revoke its authority to self-insure.

- **Patriot.** In August 2014, DOL required an additional \$65 million in collateral from Patriot, increasing its collateral from \$15 million to \$80 million. Patriot appealed this decision and, in the 8 months that followed before Patriot filed for bankruptcy in May 2015, DOL did not obtain additional collateral, or revoke Patriot's ability to self-insure because the appeal was still pending. DOL officials said they would not typically revoke an operator's authority to self-insure during an ongoing appeal. As a result, DOL was hindered from using this enforcement tool.

Liens on operator assets can be an effective tool to protect the Trust Fund if an operator defaults on its benefit liability, but DOL officials said they are hindered from using this tool if an operator files for bankruptcy. DOL can place a lien on a coal operator's assets under federal law if they refuse the demand to pay the black lung benefit payments for which they are liable.²⁰ In the event of bankruptcy or insolvency, federal law states that the lien imposed shall be treated in the same manner as a lien for taxes due and owing to the United States under certain laws.²¹ However, DOL officials said that operators rarely stop paying benefits until after they file for bankruptcy. Once a bankruptcy occurs, DOL officials said that they are generally prevented by the court from placing a lien and taking an operator's assets in lieu of payment of current and future benefit liability. Under bankruptcy law, DOL officials said that they have no special status over other creditors with outstanding financial claims. DOL

²⁰30 U.S.C. § 934(b)(2).

²¹30 U.S.C. § 934(b).

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

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

In July 2019, DOL began implementing a new process for coal mine operator self-insurance that may help to address some past deficiencies, if implemented effectively. Among other things, DOL will require operators to periodically submit financial and claims information, including an actuarial estimate of the operator's current and future benefit liability. DOL plans to use this information to assess the insolvency risk of each operator. Depending on the results of their analysis, DOL plans to categorize the risk-level of each applicant as low, medium, or high. DOL will then set the amount of collateral required to self-insure by linking the operator's risk category to a corresponding percentage of the operator's actuarial estimated benefit liability. DOL policies state that they would require a high-risk operator to secure with collateral 90 percent of estimated benefit liability, a medium-risk operator to secure 45 percent, and a low-risk operator to secure 15 percent. However, in February 2020, DOL officials said they plan to revise these percentages to 100 percent, 85 percent, and 70 percent for high-risk, medium-risk, and low-risk operators, respectively.

Coal mine operators that are already authorized to self-insure will be required to submit, among other things, an annual renewal application. DOL plans to use this information to update their insolvency risk analysis. If an operator's risk category changes (e.g., from low-to medium-risk), DOL plans to send a form to the operator requiring an additional amount or type of collateral. Upon receiving the completed form, and proof that the collateral has been obtained, DOL stated that they will notify the operator that its authority to self-insure has been reauthorized.

DOL's new self-insurance process made important changes, but overlooked other key internal control improvements that are needed to protect the financial interests of the Trust Fund. DOL's new requirements for setting collateral and for the more frequent review of self-insured operators are key components of internal controls, which call for agency management to implement control activities through policy.²² However, DOL's new self-insurance procedures do not specify (1) the duration of an operator's self-insurance authority, (2) the time frames for submitting renewal applications and supporting documentation, and (3) the

²²GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington D.C.: September 2014).

conditions under which an operator's self-insurance authority would not be renewed. Our report recommends that DOL implement procedures for coal mine operator self-insurance renewal that clarifies how long an operator is authorized to self-insure; when an operator must submit its renewal application and supporting documentation; and the conditions under which an operator's self-insurance authority would not be renewed. DOL agreed with this recommendation and stated that it will ensure letters granting or renewing self-insurance authority will inform operators that their authorization expires in one year and that they must submit renewal information three months in advance of the expiration date.

DOL staff are hindered from taking enforcement action during an operator's ongoing appeal, as previously mentioned. DOL policies state that an operator may request reconsideration if its self-insurance application has been denied or if it believes the collateral required by DOL is too high to secure its benefit liability. However, DOL lacks procedures that specify, among other things, the length of time that operators have to submit supporting information. Further, DOL does not specify a goal for how much time DOL appeals decisions should take. For example, in October 2015, DOL recommended revoking Murray Energy's (Murray) authority to self-insure due to deteriorating financial conditions. Murray appealed this decision, and DOL officials said they postponed responding to the appeal until their new self-insurance process was implemented. However, Murray filed for bankruptcy in October 2019 and DOL had not revoked its authority to self-insure or requested additional collateral because Murray's appeal was still pending and DOL was still evaluating how much collateral it would require from the operator under its new self-insurance process.

Our report recommends that DOL develop and implement procedures for self-insured coal mine operator appeals that identify time lines for self-insured operators to submit documentation supporting their appeals and that identify a goal for how much time DOL should take to make appeals decisions. DOL agreed with this recommendation and stated that they will ensure letters denying self-insurance will inform operators that they have a 30-day appeal period (limited to one extension), and that DOL has set a goal of resolving all appeals within 90 days of the denial letter.

Commercial Insurance Oversight Improvements Are Needed

We found that DOL does not monitor coal mine operators that do not self-insure and, thus, must commercially insure their federal black lung liabilities to make certain they maintain adequate and continuous coverage as required by law. In the absence of effective DOL monitoring, we evaluated the potential risk that uninsured operators could pose to the

Trust Fund. Specifically, in examining the 13 largest coal mine operators that do not self-insure, we found that some insurers erred in reporting black lung policies and in one instance an operator did not have adequate coverage.

- We found six operators (parent or subsidiary) that were not insured for the entire 3-year period from 2016 through 2018, according to our review of DOL data. When we discussed our findings with DOL, agency officials had to research each operator individually and in some cases contact the operator or their insurer to find out whether or not they had been covered. DOL concluded that these entities were insured. However, the insurers had not properly reported the federal black lung endorsement on new policies or subsequent renewals, in addition to other reporting issues.²³
- One of these six operators also had, inadvertently, not maintained adequate commercial coverage for its mining operations in Texas, and had not self-insured those operations. In this instance, the operator obtained an excess loss policy that only pays claims once they exceed a high threshold and, therefore, is not sufficient by itself to secure the payment of the operator's benefit liability.²⁴

Designing processes to achieve agency objectives and respond to risks is a principle of effective internal controls.²⁵ Without a process to monitor operator compliance with program insurance requirements, DOL risks not identifying a lapse or cancellation of operator coverage. This could result in the Trust Fund having to assume responsibility for paying benefits that would otherwise have been paid by an insurer.²⁶

²³We found similar reporting issues with two self-insured coal operators that had subsidiaries that were commercially insured or insured by a state workers' compensation insurance fund.

²⁴When we raised the issue with the operator's insurer, they said they had inadvertently omitted Texas from the list of states covered by the federal black lung endorsement on the operator's standard workers' compensation policy. According to the insurer, they have corrected the error and made the changes retroactive to the endorsement's original effective date to ensure the operator's Texas operations will be covered.

²⁵[GAO-14-704G](#).

²⁶Another potential consequence of DOL's failure to monitor operator compliance with program insurance requirements is that responsibility for the payment of benefits can shift from operators that most recently employed a miner and are uninsured to other operators that previously employed the miner and are insured.

Our report recommends that DOL should develop and implement a process to monitor operator compliance with commercial insurance requirements and periodically evaluate the effectiveness of this process. DOL agreed with this recommendation and stated that it will modify existing computer systems to identify lapses or cancellations of commercial insurance coverage, and require operators identified as having lapsed or cancelled coverage to obtain or provide proof of coverage within 30 days.

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

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

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