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BEFORE THE

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COMMITTEE ON EDUCATION AND LABOR

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

Introduction

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

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

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

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

The Trust Fund suffered significant annual deficits in its early years, largely due to Congress's decisions to transfer responsibility for a substantial number of claims from the coal industry to the Trust Fund without providing the funding necessary to pay benefits. During the first six years of the Trust Fund's existence, 106,737 beneficiaries were added to and paid by the Trust Fund, and in the following 36 years a total of only 10,913 new beneficiaries were added to and paid by the Trust Fund. Over this same initial six-year time period, tax revenue totaled only $1.47 billion while benefits and administrative expenses totaled $3.50 billion. Beginning in 1990, 12 years after the Trust Fund's creation, annual revenue collected from the coal excise tax was sufficient to fully pay annual benefits and expenses. However, it was not sufficient to finance the debt generated during the program's early years. With over 90 percent of beneficiaries entering the Fund within the first six years of its existence, a financial structure that provided no initial funding, and an annual variable interest rate on all borrowing, the Trust Fund has continuously relied on annual advances from the Treasury. Although Congress attempted to restore solvency to the Trust Fund in 2008, these efforts were insufficient. At the end of fiscal year 2019, the Trust Fund was just under $6 billion in debt.

Developing and implementing a new self-insurance authorization process

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

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

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

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

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

Monitoring mines for commercial insurance

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

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

Impact of insurance liabilities on the Trust Fund

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

Conclusion

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