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October 13, 2020

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

Dear Mr. Dodaro:

Nearly \$1 billion in estimated black lung benefit liabilities have been transferred to the federal government's Black Lung Disability Trust Fund from 2014 through 2016 due to the bankruptcies of several coal mine operators. As a result, the Department of Labor (DOL) implemented key reforms to its oversight and monitoring of coal mine operator insurance beginning in July 2019. We are writing to request an evaluation of DOL's implementation of its revised self-insurance process.

The Black Lung Benefits Revenue Act of 1977 (Pub. L. No. 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 (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 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 collateral—such as an indemnity bond or other forms of surety—to secure payment of benefits.

In February 2020, GAO reported that DOL's limited oversight of coal mine operator insurance had exposed the Trust Fund to considerable financial risk. Specifically, in overseeing self-insurance in the past, DOL did not estimate future benefit liability when setting the amount of collateral required to self-insure. DOL also failed to regularly review operators to assess whether the required amount of collateral should change or to consistently take action to protect the Trust Fund by revoking an operator's ability to self-insure as appropriate.

GAO's testimony before the Workforce Protections Subcommittee hearing in February 2020 also highlighted how DOL permitted operators that had filed for bankruptcy since 2016 to self-insure despite posting collateral for a trivial percentage of their black lung liability. For example, in October 2015, DOL notified Murray Energy that it would no longer be allowed to self-insure due to its precarious financial condition and directed the operator to secure commercial black lung insurance. Murray appealed, and nothing was done over the ensuing 5 years to assure the interests of the Trust Fund were protected.¹ Unsurprisingly, the DOL recovered only \$4 million out of \$87 million in estimated black lung liabilities when the Court approved Murray's reorganization plan in September 2020.²

As part of its February 2020 report, GAO stated that DOL's new self-insurance process, if implemented effectively, could help address past deficiencies in estimating collateral and regularly reviewing self-insured operators. However, the February 2020 report also stated that DOL's new process still lacked procedures for annually renewing self-insured operators and resolving coal operator appeals should operators dispute DOL collateral requirements. GAO recommended, among other things, that DOL establish procedures for self-insurance renewals and resolution of coal operator appeals. DOL agreed with these recommendations and said it would take steps to implement them, such as by establishing a goal of resolving all appeals within 90 days of a denial letter.

In February 2020, DOL made determinations on applications for self-insurance and notified the self-insured coal operators of the need to post additional collateral; in two cases, DOL denied the application for self-insurance and directed that the operators secure commercial insurance. DOL reported to this Committee in September 2020, however, that most of these coal mine operators have not complied with the requirement to post additional collateral, and they have appealed their collateral requirements.³

In view of continued delays in obtaining required collateral, we are seeking a GAO review of DOL's implementation of its revised self-insurance process. Specifically, we would like GAO to examine:

¹ Testimony of Cindy Brown Barnes, U.S. Government Accountability Office, "Asleep at the Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund." Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. and Labor, 116th Cong. (2020)

² Source: Prime Clerk. <https://cases.primeclerk.com/MurrayEnergy/Home-ClaimInfo>. See: Claims 3054 and 3055 regarding the Department of Labor's unsecured claims for black lung benefits liability. (Accessed October 9, 2020)

³ September 16, 2020 e-mail communications from the U.S. Department of Labor to the House Committee on Education and Labor Committee (on file).

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1. How, if at all, have the bankruptcies of self-insured coal mine operators filed since 2016 affected the Black Lung Disability Trust Fund (Trust Fund) finances?
2. To what extent has DOL's reformed self-insurance process mitigated financial risk to the Trust Fund by obtaining sufficient collateral relative to a coal mine operator's actuarially assessed black lung benefit liabilities?
3. To what extent has DOL addressed the recommendations made in GAO's February 2020 report?
4. How has DOL resolved coal mine operator appeals to its self-insurance collateral requirements, and has this been achieved in the 90-day window?
5. In view of the precipitous downturn in coal production associated with COVID-19 coupled with the retirement of coal burning power plants, has DOL updated its financial risk estimates to determine if currently self-insured operators have posted sufficient collateral?

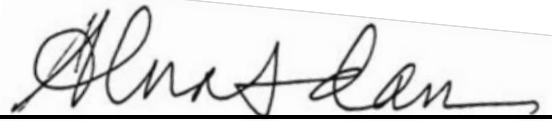
Please contact Jordan Barab (jordan.barab@mail.house.gov) or Richard Miller (richard.miller@mail.house.gov) of the Committee on Education and Labor Democratic Staff with questions. Thank you for your work on this matter.

Sincerely,



ROBERT C. "BOBBY" SCOTT

Chairman



ALMA S. ADAMS, PH.D.

Chair

Subcommittee on Workforce Protections

cc: Hon. Virginia Foxx, Ranking Member