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November 24, 2025

The Honorable Lori Chavez-DeRemer
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Chavez-DeRemer:

We write to inquire about stakeholder reports that the Office of Workers' Compensation Programs (OWCP) of the U.S. Department of Labor (DOL) is failing to enforce OWCP's recently completed rule updating requirements for coal operators that elect to self-insure their black lung liabilities (Black Lung Self-Insurance Rule).¹

The Black Lung Self-Insurance Rule protects taxpayers. Under the *Black Lung Benefits Act* (BLBA), coal operators are responsible for covering the benefits owed to miners and their families suffering from black lung disease, and operators must secure that obligation by either purchasing commercial insurance or committing to self-insurance secured by appropriate collateral.² The Black Lung Disability Trust Fund (Trust Fund), financed primarily by an excise tax on coal produced and sold domestically,³ covers the cost of benefits where no responsible operator can be identified or the responsible operator has become insolvent; but this is only a backstop in a larger legislative scheme in which Congress intended "to ensure that individual coal operators rather than the Trust Fund bear the liability for [black lung] claims arising out of such operators' mines to the maximum extent feasible."⁴ Moreover, when the benefit burden on the Trust Fund exceeds excise tax revenue, the Trust Fund must borrow from the Treasury⁵—meaning, in other words, that everyday taxpayers foot the bill.

¹ Black Lung Benefits Act: Authorization of Self-Insurers, 89 Fed. Reg. 100,304 (Dec. 12, 2024) [hereinafter Black Lung Self-Insurance Rule].

² Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, Title IV.

³ 26 U.S.C. § 4121.

⁴ *Old Ben Coal Co. v. Luker*, 826 F.2d 688, 693 (7th Cir. 1987) (quoting S. Rep. No. 209, 95th Cong. (1977), at 9).

⁵ Siddhi Doshi & Adele Morris, *Putting the Trust Back in the Black Lung Disability Trust Fund*, BROOKINGS INST., at 5 (Sept. 24, 2021), <https://www.brookings.edu/wp-content/uploads/2021/10/Black-Lung-Disability-Trust-Fund-2021.pdf>.

The record shows that taxpayers need the Black Lung Self-Insurance Rule. We have monitored DOL's oversight of self-insured operators for years, during which we held three congressional hearings,⁶ requested analyses by the Government Accountability Office (GAO),⁷ and considered relevant legislation.⁸ Our oversight activities revealed that weaknesses in the existing program for oversight of self-insured coal operators shifted millions of dollars in costs to the public that should instead be borne by operators themselves. For example, GAO revealed in February 2020 that three bankruptcies between 2014 and 2016 shifted \$865 million in black lung benefit liabilities into the Trust Fund from self-insured operators that had reserved a total of only \$27.4 million in collateral, meaning that nearly 97 percent of their liabilities were unsecured.⁹ The largest of these three, Alpha Natural Resources, shifted \$494 million in liabilities into the Trust Fund, while providing only \$12 million (approximately 3 percent) in collateral.¹⁰ Patriot Coal secured \$15 million out of \$230 million in liabilities (approximately 6 percent), and James River Coal reserved a mere \$0.4 million to cover \$141 million in liabilities (approximately 0.2 percent).¹¹

GAO testified that DOL's limited oversight of coal mine operator insurance exposed the Trust Fund to financial risk.¹² When setting the amount of collateral required to self-insure, DOL estimated current benefit liabilities but did not incorporate estimates of *future* liabilities.¹³ DOL did not regularly review operators to assess whether the required amount of collateral should change in light of circumstances such as increased projected liabilities or signs of potential instability in the business.¹⁴ Moreover, DOL did not always take action to protect the Trust Fund by revoking an operator's ability to self-insure as appropriate.¹⁵

DOL's attempts to respond within the terms of the existing rules proved insufficient. DOL testified before the Subcommittee on Workforce Protections in February 2020 that it implemented some changes to the self-insurance program, such as updating collateral

⁶ *Strengthening the Safety Net for Injured Workers: Hearing on H.R. 2499, H.R. 3114, H.R. 6102, and H.R. 6087 Before the Subcomm. on Wrkf. Prots. of the H. Comm. on Educ. & Lab.*, 117th Cong. (2021) [hereinafter *Strengthening the Safety Net*]; *Asleep at the Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund: Hearing Before the Subcomm. on Wrkf. Prots. of the H. Comm. on Educ. & Lab.*, 116th Cong. (2020) [hereinafter *Asleep at the Switch*]; *Breathless and Betrayed: What Is MSHA Doing to Protect Miners from a Resurgence of Black Lung Disease?: Hearing Before the Subcomm. on Wrkf. Prots. of the H. Comm. on Educ. & Lab.*, 116th Cong. (2019).

⁷ See THOMAS COSTA, GOV'T ACCOUNTABILITY OFF., GAO-22-105546, BLACK LUNG BENEFITS PROGRAM: CONTINUED INACTION ON COAL OPERATOR SELF-INSURANCE INCREASES FINANCIAL RISK TO TRUST FUND (Dec. 2021); CINDY BROWN BARNES, GOV'T ACCOUNTABILITY OFF., GAO-20-438-T, BLACK LUNG BENEFITS PROGRAM: OVERSIGHT IS NEEDED TO ADDRESS TRUST FUND SOLVENCY STRAINED BY BANKRUPTCIES (Feb. 2020); GOV'T ACCOUNTABILITY OFF., GAO-20-21, BLACK LUNG BENEFITS PROGRAM: IMPROVED OVERSIGHT OF COAL MINE OPERATOR INSURANCE IS NEEDED (Feb. 2020) [hereinafter IMPROVED OVERSIGHT NEEDED].

⁸ See H.R. Rep. No. 117-589, at 15-17 (2022) (describing legislation considered in the 116th and 117th Congresses to address, *inter alia*, deficiencies in oversight of self-insured operators).

⁹ BROWN BARNES, *supra* note 7.

¹⁰ *Id.* at 13.

¹¹ *Id.*

¹² See generally *id.*

¹³ IMPROVED OVERSIGHT NEEDED, *supra* note 7, at 18-19.

¹⁴ *Id.* at 20.

¹⁵ *Id.* at 21-22.

requirements to reflect future liabilities.¹⁶ That same week DOL issued letters to 14 self-insured operators requesting an increase in their collateral and to two other operators withdrawing authorization to self-insure.¹⁷ Some operators complied with the request, but seven operators appealed.¹⁸ In the absence of appeal procedures, OWCP collected only \$65 million of the requested \$251 million in additional collateral.¹⁹

DOL followed up that December with a bulletin, which was not announced in the *Federal Register* until the following month²⁰ (less than two weeks before the end of the first Trump Administration), setting out risk-adjusted levels of collateral for self-insurance: operators with low financial risk were allowed to post 70 percent of the actuarial estimate; those with moderate financial risk must post 85 percent; and those in the highest risk category must post 100 percent.²¹ Some in the industry objected on procedural grounds that the guidelines should have been promulgated through rulemaking under the *Administrative Procedure Act* (APA), while others argued that the guidelines did not consider individual operator claims experience.²²

GAO discovered that DOL subsequently reversed course on the bulletin, but its new policies to address the larger problem were not rolled out quickly enough to prevent further liability shifts from undercapitalized self-insured operators:

In December 2020, DOL issued a preliminary bulletin for coal operator self-insurance that described significant changes and included actions that would have addressed GAO's recommendations. For instance, DOL set a goal to resolve coal operator appeals within 90 days after receiving supporting documents or meeting with the operator to discuss their concerns.

However, in February 2021, DOL rescinded the preliminary bulletin due to a program review by the current administration, according to DOL officials. DOL officials said they have taken no further actions to resolve appeals or to collect any additional collateral or other information from self-insured operators. As a result, DOL has not obtained about \$186 million in requested collateral from self-insured operators that appealed DOL's requested collateral. In addition, one of these operators, Lighthouse Resources, filed for bankruptcy in December 2020; this could result in a transfer of about \$2.4 million in estimated benefit responsibility to the Trust Fund, according to DOL. In addition, two operators DOL said no longer met their requirements to self-insure almost two years ago remain self-insured.

¹⁶ *Asleep at the Switch*, *supra* note 6, at 21 (testimony of Julia Hearthway, Director of OWCP).

¹⁷ *Strengthening the Safety Net*, *supra* note 6, at 24.

¹⁸ *Id.*

¹⁹ *Id.* at 27.

²⁰ Guidance on Black Lung Benefits Act Self-Insurance, 86 Fed. Reg. 1529 (Jan. 8, 2021).

²¹ Off. of Workers' Comp. Progs., U.S. Dep't of Lab., *BLBA Bull. No. 21-01, DCMWC Self-Insurance Process Guidelines* (Dec. 7, 2020).

²² See generally *Guidance on Black Lung Benefits Act Self-Insurance*, Docket ID WCPO-2020-0002, REGULATIONS.GOV, <https://www.regulations.gov/docket/WCPO-2020-0002> [hereinafter *Guidance Docket*].

In November 2021, DOL officials said the current administration's program review is complete, but could not describe any anticipated changes to coal operator self-insurance going forward.²³

GAO added that five mine operators became insolvent since that initial cohort, at least two of which were expected to transfer an additional \$61.1 million in under-collateralized liability to the Trust Fund.²⁴

DOL finally addressed these problems systematically in December 2024 by publishing the Black Lung Self-Insurance Rule. Among other things, the Black Lung Self-Insurance Rule requires self-insured operators to secure 100 percent of their projected black lung liabilities.²⁵ Notably, the rule does not require operators to actually bank the full 100 percent; instead, as DOL points out, an operator could purchase an instrument that would pay out up to 100 percent of the liability, such as a surety bond for which premiums would likely cost in the range of 2-12 percent of the security amount.²⁶ For added flexibility, the rule also generously allows for operators whose security requirement increases under the new rule to post the difference in quarterly installments.²⁷

The Black Lung Self-Insurance Rule is an elegant solution to a billion-dollar problem, but it can work only if it is actually implemented. The Committee's Democratic staff has heard reports from multiple stakeholders that DOL has informed operators it will not enforce the rule. Consistent with these reports, OWCP's forms for self-insured operators appear to be aligned with the old, superseded rules, which adjusted collateral requirements based on a complex assessment of three years of financial data, and not the current 100 percent security requirement.²⁸

The possibility that DOL might now be failing to implement the Black Lung Self-Insurance Rule is mindboggling. The risks to taxpayers and the integrity of the Trust Fund (which you, as a trustee,²⁹ are obliged to protect) are too significant for these matters to remain in the shadows.

Accordingly, we request that you provide the following information and documents by December 8, 2025:

1. Has DOL informed operators that it will not enforce the Black Lung Self-Insurance Rule? (yes/no)
2. Please provide all documents, correspondence, meeting notes, calendars of any meetings with persons outside of DOL, and lists of persons inside and outside of DOL who

²³ COSTA, *supra* note 7, at 8-9.

²⁴ *Id.* at 4.

²⁵ Black Lung Self-Insurance Rule, *supra* note 1, at 100,309.

²⁶ *Id.* at 100,309-310.

²⁷ *Id.* at 100,309.

²⁸ Off. of Workers' Comp. Progs., *DCMWC Forms*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/owcp/dcmwc/regs/compliance/blforms#dcmwc> (last visited Oct. 17, 2025) (hosting Forms CM-2017, CM-2017a & CM-2017b).

²⁹ 26 U.S.C. § 9501(a)(2).

participated in such meetings on the Black Lung Self-Insurance Rule, since January 20, 2025.

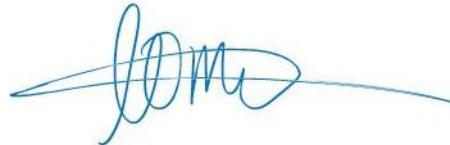
3. With respect to whatever policy DOL is implementing regarding self-insurance in the black lung program, please provide the following:
 - a. A description of the policies for approving operators to self-insure, reauthorizing operators to self-insure, and identifying the amount of security required for any self-insured operators;
 - b. An explanation of the legal justification for any policy described in (a), if it is not the Black Lung Self-Insurance Rule; and
 - c. Any documents about such policy, including the text of such policy.

Send all official correspondence and information related to these requests to the Committee's Democratic staff at EWDOversight@mail.house.gov.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member



ILHAN OMAR
Ranking Member
Subcommittee on Workforce Protections