

117TH CONGRESS } 2d Session }	HOUSE OF REPRESENTATIVES {	REPORT 117-
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## BLACK LUNG BENEFITS IMPROVEMENT ACT OF 2022

APRIL --, 2022.—Ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and  
Labor, submitted the following

### R E P O R T

together with

VIEWS

[To accompany H.R. 6102]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 6102) to ensure that claims for benefits under the Black Lung Benefits Act are processed in a fair and timely manner, to better protect miners from pneumoconiosis (commonly known as “black lung disease”), and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enactment clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Black Lung Benefits Improvement Act of 2022”.

#### SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.  
Sec. 2. Table of contents.

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## **TITLE I—BLACK LUNG BENEFITS**

### **PART A—IMPROVING THE PROCESS FOR FILING AND ADJUDICATING CLAIMS FOR BENEFITS**

#### **SEC. 101. PROVIDING ASSISTANCE WITH CLAIMS FOR MINERS AND THEIR DEPENDENT FAMILY MEMBERS.**

Section 427(a) of the Black Lung Benefits Act (30 U.S.C. 937(a)) is amended by striking “the analysis, examination, and treatment” and all that follows through “coal miners.” and inserting “the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners and for assistance on behalf of miners, spouses, dependents, and other family members with claims arising under this title.”.

#### **SEC. 102. CLARIFYING ELIGIBILITY FOR BLACK LUNG BENEFITS.**

Section 411(c) of the Black Lung Benefits Act (30 U.S.C. 921(c)) is amended by striking paragraph (3) and inserting the following:

“(3)(A) If x-ray, CT scan, biopsy, autopsy, or other medically accepted and relevant test or procedure establishes that a miner is suffering or has suffered from a chronic dust disease of the lung, diagnosed as complicated pneumoconiosis or progressive massive fibrosis (as determined in accordance with subparagraph (B)), then there shall be an irrebuttable presumption that such miner is totally disabled due to pneumoconiosis, that the miner's death was due to pneumoconiosis, or that at the time of death the miner was totally disabled by pneumoconiosis, as the case may be.

“(B) For purposes of subparagraph (A), complicated pneumoconiosis or progressive massive fibrosis can be established by any of the following:

“(i) A chest radiograph, which yields one or more large opacities whose greatest diameter exceeds 1 centimeter and would be classified in Category A, B, or C in the International Classification of Radiographs of Pneumoconiosis by the International Labor Organization, in the absence of more probative evidence sufficient to establish that the etiology of the large opacity is not pneumoconiosis.

“(ii) A chest CT scan, which yields one or more large opacities whose greatest diameter exceeds 1 centimeter, in the absence of more probative evidence sufficient to establish that the etiology of the large opacity is not pneumoconiosis.

“(iii) A lung biopsy or autopsy, which would yield a lesion at least 1 centimeter in its long axis diameter if measured at the time of gross dissection.

“(iv) A diagnosis by other means that would reasonably be expected to yield results described in clause (i), (ii), or (iii).”.

#### **SEC. 103. DEVELOPMENT OF MEDICAL EVIDENCE BY THE SECRETARY.**

Part C of the Black Lung Benefits Act (30 U.S.C. 931 et seq.) is amended by adding at the end the following:

##### **“SEC. 435. DEVELOPMENT OF MEDICAL EVIDENCE BY THE SECRETARY.**

“(a) COMPLETE PULMONARY EVALUATION.—Upon request by a claimant for benefits under this title, the Secretary shall provide the claimant an opportunity to substantiate the claim through a complete pulmonary evaluation of the miner that shall include—

- “(1) an initial report, conducted by a qualified physician on the list provided under subsection (e), and in accordance with subsection (d)(5) and sections 402(f)(1)(D) and 413(b); and
- “(2) if the conditions under subsection (b) are met, any supplemental medical evidence described in subsection (c).
- “(b) AUTHORIZING CHEST SCANS.—In diagnosing whether there is complicated pneumoconiosis as a part of a medical examination conducted under subsection (a), the Secretary shall authorize a high-quality, low-dose or standard computerized tomography scan where any or a combination of the following is found:
- “(1) Any certified B reader of a chest radiograph associated with an exam conducted under section 413(b) finds pneumoconiosis (ILO category 2/1 or greater).
- “(2) Any certified B reader of a chest radiograph associated with an exam conducted under section 413(b) finds a coalescence of small opacities.
- “(c) CONDITIONS FOR SUPPLEMENTAL MEDICAL EVIDENCE.—The Secretary shall develop supplemental medical evidence, in accordance with subsection (d)—
- “(1) for any claim in which the Secretary recommends an award of benefits based on the results of the initial report under subsection (a)(1) and a party opposing such award submits evidence that could be considered contrary to the findings of the Secretary; and
- “(2) for any compensation case under this title heard by an administrative law judge, in which—
- “(A) the Secretary has awarded benefits to the claimant;
- “(B) the party opposing such award has submitted evidence not previously reviewed that could be considered contrary to the award under subparagraph (A); and
- “(C) the claimant or, if the claimant is represented by an attorney, the claimant’s attorney consents to the Secretary developing supplemental medical evidence.
- “(d) PROCESS FOR SUPPLEMENTAL MEDICAL EVIDENCE.—
- “(1) IN GENERAL.—Except as provided under paragraph (2), to develop supplemental medical evidence under conditions described in subsection (c), the Secretary shall request the physician who conducted the initial report under subsection (a)(1) to—
- “(A) review any medical evidence submitted after such report or the most recent supplemental report, as appropriate; and
- “(B) update his or her opinion in a supplemental report.
- “(2) ALTERNATIVE PHYSICIAN.—If such physician is no longer available or is unwilling to provide supplemental medical evidence under paragraph (1), the Secretary shall select another qualified physician from the list provided pursuant to subsection (e) to provide such evidence.
- “(e) QUALIFIED PHYSICIANS FOR COMPLETE PULMONARY EVALUATION AND PROTECTIONS FOR SUITABILITY AND POTENTIAL CONFLICTS OF INTEREST.—
- “(1) QUALIFIED PHYSICIANS LIST.—The Secretary shall create and maintain a list of qualified physicians to be selected by a claimant to perform the complete pulmonary evaluation described in subsection (a).
- “(2) PUBLIC AVAILABILITY.—The Secretary shall make the list under this subsection available to the public.
- “(3) ANNUAL EVALUATION.—Each year, the Secretary shall update such list by reviewing the suitability of the listed qualified physicians and assessing any potential conflicts of interest.
- “(4) CRITERIA FOR SUITABILITY.—The Secretary shall include on the list only those physicians whom the Secretary determines are qualified, capable, and willing to provide credible opinions consistent with the premises underlying this Act. In determining whether a physician is suitable to be on the list under this subsection, the Secretary shall consult the National Practitioner Data Bank of the Department of Health and Human Services and assess reports of adverse licensure, certifications, hospital privilege, and professional society actions involving the physician. In no case shall such list include any physician—
- “(A) who is not licensed to practice medicine in any State or any territory, commonwealth, or possession of the United States;
- “(B) whose license is revoked by a medical licensing board of any State, territory, commonwealth, or possession of the United States; or
- “(C) whose license is suspended by a medical licensing board of any State, territory, commonwealth, or possession of the United States.
- “(5) CONFLICTS OF INTEREST.—The Secretary shall develop and implement policies and procedures to ensure that any actual or potential conflict of interest

of qualified physicians on the list under this subsection, including both individual and organizational conflicts of interest, are disclosed to the Department, and to provide such disclosure to claimants. Such policies and procedures shall provide that a physician with a conflict of interest shall not be used to perform a complete pulmonary medical evaluation under subsection (a) that is reimbursed pursuant to subsection (g) if—

“(A) such physician is employed by, under contract to, or otherwise providing services to a private party opposing the claim, a law firm or lawyer representing such opposing party, or an interested insurer or other interested third party; or

“(B) such physician has been retained by a private party opposing the claim, a law firm or lawyer representing such opposing party, or an interested insurer or other interested third party in the previous 24 months.

“(f) RECORD.—Upon receipt of any initial report or supplemental report under this section, the Secretary shall enter the report in the record and provide a copy of such report to all parties to the proceeding.

“(g) EXPENSES.—All expenses related to obtaining the medical evidence under this section shall be paid for by the fund. If a claimant receives a final award of benefits, the operator liable for payment of benefits, if any, shall reimburse the fund for such expenses, which shall include interest.”.

**SEC. 104. FALSE STATEMENTS OR MISREPRESENTATIONS, ATTORNEY DISQUALIFICATION, AND DISCOVERY SANCTIONS.**

Section 431 of the Black Lung Benefits Act (30 U.S.C. 941) is amended to read as follows:

**“SEC. 431. FALSE STATEMENTS OR MISREPRESENTATIONS, ATTORNEY DISQUALIFICATION, AND DISCOVERY SANCTIONS.**

“(a) IN GENERAL.—No person, including any claimant, physician, operator, duly authorized agent of such operator, or employee of an insurance carrier, shall—

“(1) knowingly and willfully make a false statement or misrepresentation for the purpose of obtaining, increasing, reducing, denying, or terminating benefits under this title; or

“(2) knowingly and willfully threaten, coerce, intimidate, deceive, or mislead a party, representative, witness, potential witness, judge, or anyone participating in a proceeding regarding any matter related to a proceeding under this title.

“(b) FINE; IMPRISONMENT.—Any person who engages in the conduct described in subsection (a) shall, upon conviction, be subject to a fine in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

“(c) PROMPT INVESTIGATION.—The United States Attorney for the district in which the conduct described in subsection (a) is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint of a violation of such subsection.

“(d) DISQUALIFICATION.—

“(1) IN GENERAL.—An attorney or expert witness who engages in the conduct described in subsection (a) shall, in addition to the fine or imprisonment provided under subsection (b), be permanently disqualified from representing any party, or appearing in any proceeding, under this title.

“(2) ATTORNEY DISQUALIFICATION.—In addition to the disqualification described in paragraph (1), the Secretary may disqualify an attorney from representing any party in any administrative proceeding under this title for either a limited term or permanently, if the attorney—

“(A) engages in any action or behavior that is prejudicial to the fair and orderly conduct of such proceeding; or

“(B) is suspended or disbarred by any court of the United States, any State, or any territory, commonwealth, or possession of the United States with jurisdiction over the proceeding.

“(e) DISCOVERY SANCTIONS.—An administrative law judge may sanction a party who fails to comply with an order to compel discovery or disclosure, or to supplement earlier responses, in a proceeding under this title. These sanctions may include, as appropriate—

“(1) drawing an adverse inference against the noncomplying party on the facts relevant to the discovery or disclosure order;

“(2) limiting the noncomplying party’s claims, defenses, or right to introduce evidence; and

“(3) rendering a default decision against the noncomplying party.

“(f) REGULATIONS.—The Secretary shall promulgate a proposed rule not later than 180 days after the date of enactment of this Act and a final rule not later than 18 months after such date of enactment that—

“(1) provides procedures for the disqualifications and sanctions under this section and is appropriate for all parties; and

“(2) distinguishes between parties that are represented by an attorney and parties that are not represented by an attorney.”.

**SEC. 105. READJUDICATING CASES INVOLVING CERTAIN CHEST RADIOGRAPHS.**

Part C of the Black Lung Benefits Act (30 U.S.C. 931 et seq.), as amended by section 103, is further amended by adding at the end the following:

**“SEC. 436. READJUDICATING CASES INVOLVING DISCREDITED EXPERT OPINIONS.**

“(a) DEFINITIONS.—In this section:

“(1) COVERED CHEST RADIOGRAPH.—The term ‘covered chest radiograph’ means a chest radiograph that was interpreted as negative for simple pneumoconiosis, complicated pneumoconiosis, or progressive massive fibrosis by a physician with respect to whom the Secretary has directed, in writing and after an evaluation by the Secretary, that such physician’s negative interpretations of chest radiographs not be credited, except where subsequently determined to be credible by the Secretary in evaluating a claim for benefits under this Act.

“(2) COVERED INDIVIDUAL.—The term ‘covered individual’ means an individual whose record for a claim for benefits under this Act includes a covered chest radiograph.

“(3) COVERED SURVIVOR.—The term ‘covered survivor’ means an individual who—

“(A) is a survivor of a covered individual whose claim under this Act was still pending at the time of the covered individual’s death; and

“(B) who continued to seek an award with respect to the covered individual’s claim after the covered individual’s death.

“(b) CLAIMS.—A covered individual or a covered survivor whose claim for benefits under this Act was denied may file a new claim for benefits under this Act.

“(c) ADJUDICATION ON THE MERITS.—

“(1) IN GENERAL.—Any new claim filed under subsection (b) shall be adjudicated on the merits and shall not include consideration of a covered chest radiograph.

“(2) COVERED SURVIVOR.—Any new claim filed under subsection (b) by a covered survivor shall be adjudicated as either a miner’s or a survivor’s claim depending upon the type of claim pending at the time of the covered individual’s death.

“(d) TIME OF PAYMENT.—

“(1) MINER’S CLAIM.—If a claim, filed under subsection (b) and adjudicated under subsection (c) as a miner’s claim, results in an award of benefits, benefits shall be payable beginning with the month of the filing of the denied claim that had included in its record a covered chest radiograph.

“(2) SURVIVOR’S CLAIM.—If a claim, filed under subsection (b) and adjudicated under subsection (c) as a survivor’s claim, results in an award of benefits, benefits shall be payable beginning with the month of the miner’s death.

“(e) CONTRIBUTING IMPACT.—The Secretary shall have the discretion to deny a new claim under subsection (b) in circumstances where the party opposing such claim establishes through clear and convincing evidence that a covered chest radiograph did not contribute to the decision to deny benefits in all prior claims filed by the covered individual or the covered survivor.

“(f) LIMITATION ON FILING OF NEW CLAIMS.—A new claim for benefits may be filed under subsection (b) only if the original claim was finally denied by a district director, an administrative law judge, or the Benefits Review Board established under section 21(b) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 921(b)).”.

**SEC. 106. ATTORNEYS’ FEES AND MEDICAL EXPENSES PAYMENT PROGRAM.**

Part A of the Black Lung Benefits Act (30 U.S.C. 901 et seq.) is amended by adding at the end the following:

**“SEC. 403. ATTORNEYS’ FEES AND MEDICAL EXPENSES PAYMENT PROGRAM.**

“(a) PROGRAM ESTABLISHED.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Black Lung Benefits Improvement Act of 2022, the Secretary shall establish a payment program to pay attorneys’ fees and other reasonable and unreimbursed

medical expenses incurred in establishing the claimant's case, using amounts from the fund, to the attorneys of claimants in qualifying claims.

"(2) QUALIFYING CLAIM.—A qualifying claim for purposes of this section is a contested claim for benefits under this title for which a final order has not been entered within two years of the filing of the claim.

"(3) USE OF PAYMENTS FROM THE FUND.—Notwithstanding any other provision of law, amounts in the fund shall be available for payments authorized by the Secretary under this section.

"(b) PAYMENTS AUTHORIZED.—

"(1) ATTORNEYS' FEES.—If a claimant for benefits under this title obtains a proposed decision and order from a district director with an award of benefits for a qualifying claim, or an award for a qualifying claim before an administrative law judge, the district director may approve attorneys' fees for work done before such director in an amount not to exceed \$1,500 and an administrative law judge may approve attorneys' fees for work done before such judge in an amount not to exceed \$3,000. The Secretary shall, through the program under this section, pay such amounts approved.

"(2) MEDICAL EXPENSES.—If a claimant for benefits under this title obtains a proposed decision and order from a district director with an award of benefits for a qualifying claim, or an award for a qualifying claim before an administrative law judge, such district director and administrative law judge may each approve an award to the claimant's attorney of reasonable and unreimbursed medical expenses incurred in establishing the claimant's case in an amount not to exceed \$1,500. The Secretary shall, through the program under this section, pay such amounts approved.

"(3) MAXIMUM.—The program established under this section shall not pay more than a total of \$4,500 in attorneys' fees nor more than \$3,000 in medical expenses for any single qualifying claim.

"(c) REIMBURSEMENT OF FUNDS.—In any case in which a qualifying claim results in a final order awarding compensation, the liable operator shall reimburse the fund for any fees or expenses paid under this section, subject to enforcement by the Secretary under section 424 and in the same manner as compensation orders are enforced under section 21(d) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921(d)).

"(d) ADDITIONAL PROGRAM RULES.—Nothing in this section shall limit or otherwise affect an operator's liability for any attorneys' fees, medical expenses, or other allowable and unreimbursed expenses awarded by the district director or an administrative law judge that were not paid by the program under this section. Nothing in this section shall limit or otherwise affect the Secretary's authority to use amounts in the fund to pay approved attorneys' fees and other allowable and unreimbursed expenses in claims for benefits under this title for which a final order awarding compensation has been entered and the operator is unable or refuses to pay.

"(e) NO RECOUPMENT.—Any payment for attorneys' fees or medical expenses made by the Secretary under this section shall not be recouped from the claimant or the claimant's attorney."

**SEC. 107. RESTORING ADEQUATE BENEFIT ADJUSTMENTS FOR MINERS SUFFERING FROM BLACK LUNG DISEASE AND FOR THEIR DEPENDENT FAMILY MEMBERS.**

Section 412(a) of the Black Lung Benefits Act (30 U.S.C. 922(a)) is amended by striking paragraph (1) and inserting the following:

"(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability—

"(A) for any calendar year preceding January 1, 2022, at a rate equal to 37½ percent of the monthly pay rate for Federal employees in grade GS-2, step 1;

"(B) for the calendar year beginning on January 1, 2022, at a rate of \$8,834.01 per year, payable in 12 equal monthly payments; and

"(C) for each calendar year thereafter, at a rate equal to the product of the rate in effect under this paragraph for the calendar year immediately preceding such calendar year multiplied by the ratio (not less than 1) of—

"(i) the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W, as published by the Bureau of Labor Statistics of the Department of Labor) for the calendar year immediately preceding such calendar year, to

"(ii) the CPI-W for the second calendar year preceding such calendar year."

**SEC. 108. DISCLOSURE OF EMPLOYMENT AND EARNINGS INFORMATION FOR BLACK LUNG BENEFITS CLAIMS.**

(a) **TAX RETURN INFORMATION.**—

(1) **IN GENERAL.**—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(23) **DISCLOSURE OF RETURN INFORMATION TO DEPARTMENT OF LABOR TO CARRY OUT BLACK LUNG BENEFITS ACT.**—

“(A) **IN GENERAL.**—The Commissioner of Social Security shall, on written request with respect to any individual, disclose to officers or employees of the Department of Labor return information from returns with respect to net earnings from self-employment (as defined in section 1402) and wages (as defined in section 3121(a) or 3401(a)) for employment for each employer of such individual.

“(B) **RESTRICTION ON DISCLOSURE.**—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and the extent necessary in, carrying out the proper administration of the Black Lung Benefits Act (30 U.S.C. 901 et seq.).”

(2) **CONFORMING AMENDMENTS.**—Section 6103(p)(4) of such Code is amended—

(A) in the matter preceding subparagraph (A), by striking “or (22)” and inserting “(22), or (23)”; and

(B) in subparagraph (F)(ii), by striking “or (22),” and inserting “(22), or (23)”.

(b) **SOCIAL SECURITY EARNINGS INFORMATION.**—Notwithstanding section 552a of title 5, United States Code, or any other provision of Federal or State law, the Commissioner of Social Security shall make available to the officers and employees of the Department of Labor, upon written request, the Social Security earnings information of living or deceased individuals who are the subject of a claim under the Black Lung Benefits Act (30 U.S.C. 901 et seq.), which the Secretary of Labor may require to carry out such Act. Such information shall be made available in electronic form.

**PART B—REPORTS TO IMPROVE THE ADMINISTRATION OF BENEFITS UNDER THE BLACK LUNG BENEFITS ACT**

**SEC. 121. STRATEGY TO REDUCE DELAYS IN ADJUDICATION.**

(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Education and Labor and the Committee on Appropriations of the House of Representatives a comprehensive strategy to reduce the backlog of cases pending on such date of enactment before the Office of Administrative Law Judges of the Department of Labor.

(b) **CONTENTS OF STRATEGY.**—The strategy under this section shall provide information relating to—

(1) the current and targeted pendency for each category of cases before the Office of Administrative Law Judges of the Department of Labor;

(2) the number of administrative law judges, attorney advisors supporting such judges, support staff, and other resources necessary to achieve and maintain the targeted pendency for each category of such cases;

(3) the necessary resources to improve efficiency and effectiveness, such as equipment for video conferences, training, use of reemployed annuitants, and administrative reforms; and

(4) with respect to claims filed under the Black Lung Benefits Act (30 U.S.C. 901 et seq.), the necessary resources needed to reduce the average pendency of cases to less than 12 months from the date of receipt of the case to the date of disposition of such case.

## **PART C—IMPROVEMENT IN THE FINANCIAL SECURITY OF THE BLACK LUNG BENEFITS DISABILITY TRUST FUND**

### **SEC. 131. POLICIES FOR SECURING THE PAYMENT OF BENEFITS.**

(a) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act, the Secretary shall publish an interim final rule setting forth the requirements for an operator of a coal mine to qualify as a self-insurer with respect any portion of the operator's liabilities under the Black Lung Benefits Act, as described in section 423(a)(1) of such Act (30 U.S.C. 933(a)(1)). Such rule shall—

(1) establish criteria, relating to the financial health of the operator (including creditworthiness, long-term enterprise viability, and other liabilities), on which the eligibility of the operator to seek and maintain qualification as a self-insurer shall be determined;

(2) establish procedures to determine on an annual basis (or more frequently, where deemed necessary by the Secretary) the minimum amount of security sufficient to insure current and projected liabilities; and

(3) establish procedures for review by the Secretary of operator appeals of determinations described in paragraphs (1) and (2).

The Secretary shall promulgate a final rule not later than 12 months after the date of enactment of this Act.

(b) **PENALTIES.**—

(1) **IN GENERAL.**—Section 423(d)(1) of the Black Lung Benefits Act (30 U.S.C. 933(d)(1)) is amended—

(A) by striking “\$1,000” and inserting “\$25,000”;

(B) by inserting “chief executive officer, chief operating officer,” after the word “president,” each place it appears;

(C) by striking “and treasurer” each place it appears and inserting “treasurer, and other responsible party”;

(D) by striking “for any benefit” and all that follows through “this section.” and inserting “for—

“(A) any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section; or

“(B) in the event of bankruptcy or other permanent abandonment of the obligation to secure the payment of benefits, the actuarial present value of the benefits to be paid by the fund under section 424(b)(1), projected as of the date of failure to secure such benefits, less any security recovered or surrendered, plus interest.”.

(2) **OTHER RESPONSIBLE PARTY DEFINED.**—Section 402 of the Black Lung Benefits Act (30 U.S.C. 902) is amended by inserting at the end the following:

“(j) The term ‘other responsible party’ means—

“(1) an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or other enterprise that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an operator or employer; or

“(2) any trade or business (whether or not incorporated) which is under common control with an operator or employer.”.

## **TITLE II—ESTABLISHING THE OFFICE OF WORKERS' COMPENSATION PROGRAMS**

### **SEC. 201. OFFICE OF WORKERS' COMPENSATION PROGRAMS.**

(a) **ESTABLISHMENT.**—There shall be established, in the Department of Labor, an Office of Workers' Compensation Programs (referred to in this section as the “Office”).

(b) **DIRECTOR.**—

(1) **IN GENERAL.**—The Office shall be directed by a Director for the Office of Workers' Compensation (referred to in this section as the “Director”) who shall be appointed by the President, by and with the advice and consent of the Senate.



(2) DUTIES.—The Director shall carry out all duties carried out by the Director for the Office of Workers' Compensation as of the day before the date of enactment of this Act.

(c) FUNCTIONS.—The functions of the Office on and after the date of enactment of this Act shall include the functions of the Office on the day before the date of enactment of this Act, including all of its personnel, assets, authorities, and liabilities.

(d) REFERENCES TO BUREAU OF EMPLOYEES' COMPENSATION.—Reference in any other Federal law, Executive order, reorganization plan, rule, regulation, or delegation of authority, or any document of or relating to the Bureau of Employees' Compensation with regard to functions carried out by the Office of Workers' Compensation Programs, shall be deemed to refer to the Office of Workers' Compensation Programs.

### TITLE III—ADDITIONAL PROVISIONS

#### SEC. 301. TECHNICAL AND CONFORMING AMENDMENTS.

The Black Lung Benefits Act (30 U.S.C. 901 et seq.) is amended—

(1) in section 401(a) (30 U.S.C. 901(a)), by inserting “or who were found to be totally disabled by such disease” after “such disease”;

(2) in section 402—

(A) in subsection (a), by striking paragraph (2) and inserting the following:

“(2) a spouse who is a member of the same household as the miner, or is receiving regular contributions from the miner for support, or whose spouse is a miner who has been ordered by a court to contribute to support, or who meets the requirements of paragraph (1) or (2) of section 216(b) of the Social Security Act or paragraph (1) or (2) of section 216(f) of such Act. An individual is the ‘spouse’ of a miner when such individual is legally married to the miner under the laws of the State where the marriage was celebrated. The term ‘spouse’ also includes a ‘divorced wife’ or ‘divorced husband’, as such terms are defined in paragraph (1) or (4) of section 216(d) of such Act, who is receiving at least one-half of his or her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to the spouse’s support from such miner.”;

(B) by striking subsection (e) and inserting the following:

“(e) The term ‘surviving spouse’ includes the spouse living with or dependent for support on the miner at the time of the miner’s death, or living apart for reasonable cause or because of the miner’s desertion, or who meets the requirements of subparagraph (A), (B), (C), (D), or (E) of section 216(c)(1) of the Social Security Act, subparagraph (A), (B), (C), (D), or (E) of section 216(g)(1) of such Act, or section 216(k) of such Act, who is not married. An individual is the ‘surviving spouse’ of a miner when legally married at the time of the miner’s death under the laws of the State where the marriage was celebrated. Such term also includes a ‘surviving divorced wife’ or ‘surviving divorced husband’, as such terms are defined in paragraph (2) or (5) of section 216(d) of such Act who for the month preceding the month in which the miner died, was receiving at least one-half of his or her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to the spouse’s support from the miner at the time of the miner’s death.”;

(C) in subsection (g)—

(i) in paragraph (2)(B)(ii), by striking “he ceased” and inserting “the individual ceased”; and

(ii) in the matter following paragraph (2)(C), by striking “widow” each place it appears and inserting “surviving spouse”;

(D) in subsection (h), by striking “Internal Revenue Code of 1954” and inserting “Internal Revenue Code of 1986”; and

(E) in subsection (i), by striking “Internal Revenue Code of 1954” and inserting “Internal Revenue Code of 1986”;

(3) in section 411 (30 U.S.C. 921)—

(A) by striking subsection (a) and inserting the following: (a) The Secretary shall, in accordance with the provisions of this title, and the regula-

- tions promulgated by the Secretary under this title, make payments of benefits in respect of—
- “(1) total disability of any miner due to pneumoconiosis;
  - “(2) the death of any miner whose death was due to pneumoconiosis;
  - “(3) total disability of any miner at the time of the miner’s death with respect to a claim filed under part C prior to January 1, 1982;
  - “(4) survivors’ benefits for any survivor’s claim filed after January 1, 2005, that is pending on or after March 23, 2010, where the miner is found entitled to receive benefits on a claim filed under part C; and
  - “(5) survivors’ benefits where the miner is found entitled to receive benefits on a claim filed under part C before January 1, 1982.”; and
- (B) in subsection (c)—
    - (i) in paragraph (1), by striking “his pneumoconiosis” and inserting “the miner’s pneumoconiosis”; and
    - (ii) in paragraph (2), by striking “his death” and inserting “the miner’s death”;
- (4) in section 412 (30 U.S.C. 922)—
    - (A) in subsection (a)—
      - (i) by striking paragraph (2) and inserting the following:
 

“(2) In the case of a surviving spouse—

        - “(A) of a miner whose death is due to pneumoconiosis;
        - “(B) in a claim filed after January 1, 2005, and that is pending on or after March 23, 2010, of a miner who is found entitled to receive benefits on a claim filed under part C;
        - “(C) of a miner who is found entitled to receive benefits on a claim filed under part C before January 1, 1982; or
        - “(D) in a claim filed under part C before January 1, 1982, of a miner who was totally disabled by pneumoconiosis at the time of the miner’s death, benefits shall be paid to the miner’s surviving spouse at the rate the deceased miner would receive such benefits if he were totally disabled.”;
      - (ii) in paragraph (3)—
        - (I) by striking “(3) In the case” and all that follows through “section 411(c)” and inserting the following: “(3)(A) In the case of the child or children of a miner described in subparagraph (B)”;
        - (II) by striking “he” each place it appears and inserting “the child”;
        - (III) by striking “widow” each place it appears and inserting “surviving spouse”; and
        - (IV) by adding at the end the following:
    - (B) Subparagraph (A) shall apply in the case of any child or children—
      - “(i) of a miner whose death is due to pneumoconiosis;
      - “(ii) in a claim filed after January 1, 2005, that is pending on or after March 23, 2010, of a miner who is found entitled to receive benefits on a claim filed under part C;
      - “(iii) of a miner who is found entitled to receive benefits on a claim filed under part C before January 1, 1982;
      - “(iv) in a claim filed under part C before January 1, 1982, of a miner who was totally disabled by pneumoconiosis at the time of the miner’s death;
      - “(v) of a surviving spouse who is found entitled to receive benefits under this part at the time of the surviving spouse’s death; or
      - “(vi) entitled to the payment of benefits under paragraph (5) of section 411(c).”;
    - (iii) in paragraph (5)—
      - (I) by striking the first sentence and inserting the following: “In the case of the dependent parent or parents of a miner who is not survived at the time of death by a surviving spouse or a child and
      - (i) whose death is due to pneumoconiosis, (ii) in a claim filed after January 1, 2005, that is pending on or after March 23, 2010, who is found entitled to receive benefits on a claim filed under part C,
      - (iii) who is found entitled to receive benefits on a claim filed under part C before January 1, 1982, or (iv) in a claim filed under part C before January 1, 1982, who was totally disabled by pneumoconiosis at the time of the miner’s death; in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of the miner’s death by a surviving spouse, child, or parent; in the case of the dependent parent or parents of a

- miner (who is not survived at the time of the miner's death by a surviving spouse or child) who are entitled to the payment of benefits under paragraph (5) of section 411(c); or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of the miner's death by a surviving spouse, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 411(c), benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner)."; and
- (II) in the fourth sentence—
- (aa) by striking "brother only if he" and inserting "brother or sister only if the brother or sister"; and
- (bb) by striking "before he ceased" and inserting "before the brother or sister ceased"; and
- (iv) in paragraph (6), by striking "prescribed by him" and inserting "prescribed by such Secretary";
- (B) in subsection (b)—
- (i) by striking "his" each place it appears and inserting "such miner's"; and
- (ii) by striking "widow" each place it appears and inserting "surviving spouse"; and
- (C) in subsection (c), by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";
- (5) in section 413 (30 U.S.C. 923)—
- (A) in subsection (b)—
- (i) in the second sentence, by striking "his wife's affidavits" and inserting "affidavits of the miner's spouse";
- (ii) in the ninth sentence, by striking "widow" and inserting "surviving spouse"; and
- (iii) by striking the last sentence; and
- (B) in subsection (c), by striking "his claim" and inserting "the claim";
- (6) in section 414 (30 U.S.C. 924)—
- (A) in subsection (a)—
- (i) in paragraph (1), by striking "widow, within six months after the death of her husband" and inserting "surviving spouse, within six months after the death of the miner"; and
- (ii) in paragraph (2)(C), by striking "his" and inserting "the child's"; and
- (B) in subsection (e)—
- (i) by striking "widow" and inserting "surviving spouse"; and
- (ii) by striking "his death" and inserting "the miner's death";
- (7) in section 415(a) (30 U.S.C. 925(a))—
- (A) in paragraph (1), by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986"; and
- (B) in paragraph (2)—
- (i) by striking "he" and inserting "such Secretary"; and
- (ii) by striking "him" and inserting "such Secretary";
- (8) in section 421 (30 U.S.C. 931)—
- (A) in subsection (a), by striking "widows" and inserting "spouses"; and
- (B) in subsection (b)(2)—
- (i) in the matter preceding subparagraph (A), by striking "he" and inserting "such Secretary"; and
- (ii) in subparagraph (F), by striking "promulgated by him" and inserting "promulgated by such Secretary";
- (9) in section 422 (30 U.S.C. 932)—
- (A) in subsection (a)—
- (i) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986"; and
- (ii) by striking "he" and inserting "such Secretary";
- (B) in subsection (i)(4), by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986"; and
- (C) in subsection (j), by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986";
- (10) in section 423(a) (30 U.S.C. 933(a)), by striking "he" and inserting "such operator";

- (11) in section 424(b) (30 U.S.C. 934(b))—
  - (A) in the matter following subparagraph (B) of paragraph (1), by striking “him” and inserting “such operator”;
  - (B) in paragraph (3), by striking “Internal Revenue Code of 1954” each place it appears and inserting “Internal Revenue Code of 1986”; and
  - (C) in paragraph (5), by striking “Internal Revenue Code of 1954” and inserting “Internal Revenue Code of 1986”;
- (12) in section 428 (30 U.S.C. 938)—
  - (A) in subsection (a), by striking “him” and inserting “such operator”; and
  - (B) in subsection (b)—
    - (i) in the first sentence, by striking “he” and inserting “the miner”;
    - (ii) in the third sentence, by striking “he” and inserting “the Secretary”;
    - (iii) in the ninth sentence—
      - (I) by striking “he” each place it appears and inserting “the Secretary”; and
      - (II) by striking “his” and inserting “the miner’s”; and
    - (iv) in the tenth sentence, by striking “he” each place it appears and inserting “the Secretary”; and
- (13) in section 430 (30 U.S.C. 940)—
  - (A) by striking “1977 and” and inserting “1977,”; and
  - (B) by striking “1981” and inserting “1981, and the Black Lung Benefits Improvement Act of 2022, and any amendments made after the date of enactment of such Act,”.

**SEC. 302. SEVERABILITY.**

If any provision of this Act or any amendment made by this Act, or the application of a provision of this Act or an amendment made by this Act to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the provisions to any person or circumstance, shall not be affected by the holding.

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## PURPOSE AND SUMMARY

The purpose of H.R. 6102, the *Black Lung Benefits Improvement Act*, is to improve the ability of miners and their families to obtain meaningful supports in cases of disabling and fatal black lung disease and to increase accountability for the financial integrity and effectiveness of the black lung benefits program. It does so through a set of reforms to put miners and their survivors on a more equal footing with coal operators by expanding the availability of legal assistance and medical expertise, deterring willful misrepresentations by coal operators, expanding assistance to miners through the Black Lung Clinics program, allowing miners or their survivors to reopen cases previously denied because of medical interpretations that since have been discredited by the U.S. Department of Labor (DOL), making adjustments to monthly cash benefit levels to account for the erosion in value due to inflation, and indexing cash benefits on a going-forward basis. This legislation also includes provisions to hold self-insured operators accountable for their obligations to secure payment of benefits so that coal operators, not the taxpayer, cover the cost of black lung benefits. Additionally, this legislation improves accountability for administration of the *Black Lung Benefits Act*<sup>1</sup> (BLBA) and other federal workers' compensation laws by codifying DOL's Office of Workers' Compensation Programs (OWCP) and providing that its leadership, currently appointed by the U.S. Secretary of Labor (Secretary), is instead nominated by the President and subject to Senate confirmation.

H.R. 6102 has been endorsed by the Appalachian Citizens Law Center; Appalachian Voices; Black Lung Association of Southwest Virginia, Chapter 1; Black Lung Association of Southwest Virginia, Chapter 2; Boone County Black Lung Association; Fayette County Black Lung Association; Kanawha County Black Lung Association; Mercer County WV Black Lung Association; National Black Lung Association; Nicholas County Black Lung Association; United Mine Workers of America; and Wyoming County WV Black Lung Association.

## COMMITTEE CONSIDERATION

### 113<sup>th</sup> Congress

On July 22, 2014, the Subcommittee on Employment and Workplace Safety of the Senate Committee on Health, Education, Labor, and Pensions (HELP Committee) held a hearing entitled "Coal Miners' Struggle for Justice: How Unethical Legal and Medical Practices Stack the Deck Against Black Lung Claimants." The Subcommittee heard testimony on the significant number of erroneous denials of black lung benefits due to medical evidence hidden by the lawyers of mine operators and false-negative diagnoses by doctors paid by mine operators. The Subcommittee also heard testimony on the financial and procedural barriers claimants face when seeking legal counsel, which included appeal delays; in the decade between 2004 and 2014, the time to assign an Administrative Law Judge (ALJ) to an appeal of an initial decision increased from just over three months to more than 14 months. The witnesses for the hearing were: Mr. Chris Lu, Deputy Secretary of Labor, U.S. Department of Labor, Washington, DC; Ms. Patricia Smith, Solicitor of Labor, U.S. Department of Labor, Washington, DC; Dr. John Howard, Director of the National Institute for Occupational Safety and Health (NIOSH), Washington, DC; Mr. John Cline, attorney for black lung claimants, Piney View, WV; Dr. Jack Parker, Pulmonary

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<sup>1</sup> Pub. L. No. 91-173, Title IV (30 U.S.C. § 902 *et seq.*).

Section Chief of the West Virginia University Department of Medicine, Morgantown, WV; Mr. Robert Bailey, former coal mine worker, Princeton, WV; and Mr. Robert Briscoe, Principal and Senior Consultant for Milliman, Inc., New York, NY.

On November 20, 2014, Rep. Matt Cartwright (D-PA-17) introduced H.R. 5751, the *Black Lung Benefits Improvement Act of 2014*. The bill was referred to the House Committee on Education and the Workforce. Among other things, the bill would have amended the BLBA to: establish an attorneys' fee program for prevailing parties; establish an irrebuttable presumption of total disability for black lung disease confirmed by a radiograph, biopsy, autopsy, or other medically accepted test or procedure; update the elements of proof to establish a rebuttable presumption of disability due to black lung disease; prohibit any claimant, physician, operator, or duly authorized agent of the operator from knowingly and willfully making a false statement, with civil and monetary penalties for violations; update the rate of pay for monthly cash benefits to include cost-of-living adjustments for years in which there was a federal wage freeze and tie future increases to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W); and provide claimants one year from the date of enactment to allow *de novo* re-adjudication of previously denied claims. No further action was taken on the legislation.

On November 20, 2014, Senator Robert Casey (D-PA) introduced S. 2959, a companion bill to H.R. 5751. The bill was referred to the HELP Committee. No further action was taken on the legislation.

### **114<sup>th</sup> Congress**

On September 28, 2015, Rep. Cartwright introduced H.R. 3625, the *Black Lung Benefits Improvement Act of 2015*. The bill was referred to the Committees on Education and the Workforce and Ways and Means. The bill would have amended the BLBA to: establish an attorneys' fee program for prevailing parties; establish an irrebuttable presumption of total disability for black lung disease confirmed by a radiograph, biopsy, autopsy, or other medically accepted test or procedure; update the elements of proof to establish a rebuttable presumption of disability due to black lung disease; prohibit any claimant, physician, operator, or duly authorized agent of the operator from knowingly and willfully making a false statement, with civil and monetary penalties for violations; direct adjudicators to resolve issues of evidence in equipoise in the claimants' favor; update the rate of pay to include cost-of-living adjustments for years in which there was a federal wage freeze and tie future increases to the CPI-W; and provide claimants one year from the date of enactment to allow *de novo* re-adjudication of previously denied claims. No further action was taken on the legislation.

On September 29, 2015, Senator Casey introduced S. 2096, a companion bill to H.R. 3625. The bill was referred to the HELP Committee. No further action was taken on the legislation.

On October 21, 2015, the Subcommittee on Workforce Protections of the House Committee on Education and the Workforce held a hearing entitled "Protecting America's Workers: Reviewing Mine Safety Policies with Stakeholders." The Subcommittee heard testimony on the issue of mine safety, the dangers and rising incidence of black lung disease, and the need for changes to the black lung benefits program. The witnesses for the hearing were: Mr. Steve Sanders, Esq.,

Director of the Appalachian Citizens' Law Center, Whitesburg, KY; Mr. Mike Wright, Director of Health, Safety, and Environment for the United Steelworkers, Pittsburgh, PA; Mr. Ed Elliott, Director of Safety and Health of Rogers Group, Inc., Vincennes, IL; Dr. Jeffrey L. Kohler, Professor and Chair of Mining Engineering at the Pennsylvania State University, University Park, PA; and Mr. Bruce Watzman, Senior Vice President of Regulatory Affairs of the National Mining Association, Washington, DC.

### **115<sup>th</sup> Congress**

On April 5, 2017, Rep. Cartwright introduced H.R. 1912, the *Black Lung Benefits Improvement Act of 2017*. The bill was referred to the Committees on Education and the Workforce and Ways and Means. The bill would have amended the BLBA to: establish an attorneys' fee program for prevailing parties; establish an irrebuttable presumption of total disability for black lung disease confirmed by a radiograph, biopsy, autopsy, or other medically accepted test or procedure; update the elements of proof to establish a rebuttable presumption of disability due to black lung disease; prohibit any claimant, physician, operator, or duly authorized agent of the operator from knowingly and willfully making a false statement, with civil and monetary penalties for violations; direct adjudicators to resolve issues of evidence in equipoise in the claimants' favor; update the rate of pay to include cost of living adjustments for years in which there was a federal wage freeze and tie future increases to the CPI-W; and provide claimants one year from the date of enactment to allow *de novo* re-adjudication of previously denied claims. No further action was taken on the legislation.

On April 5, 2017, Senator Casey introduced S. 855, a companion bill to H.R. 1912. The bill was referred to the HELP Committee. No further action was taken on the legislation.

On February 6, 2017, the Subcommittee on Workforce Protections of the House Committee on Education and Workforce held a hearing entitled "Reviewing the Policies and Priorities of the Mine Safety and Health Administration." The Subcommittee heard testimony on mine safety and the increasing cases of black lung disease, the need for changes to the black lung benefits program, and the need for the Mine Safety and Health Administration to update its silica exposure regulations. The witness for the hearing was Mr. David G. Zatezalo, Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, Washington, DC.

### **116<sup>th</sup> Congress**

On June 20, 2019, the Subcommittee on Workforce Protections of the House Committee on Education and Labor held a hearing entitled "Breathless and Betrayed: What is MSHA Doing to Protect Miners from the Resurgence of Black Lung Disease?" The Subcommittee heard testimony on the increasing cases of the most severe form of black lung disease, the high prevalence of black lung disease in miners in their 30s and 40s, and the need for increased oversight and funding for the black lung workers' compensation program. The witnesses were: Dr. Robert Cohen, MD, FCCP, Clinical Professor of Environmental and Occupational Health Sciences at the University of Illinois School of Public Health, Chicago, IL; Mr. Gary Hairston, Vice President of the Fayette County Black Lung Association, Beckley, WV; Mr. Cecil Roberts, President of the United Mine Workers of America, Triangle, VA; Dr. John Howard, MD,



Director of NIOSH, Washington, DC; Mr. David G. Zatezalo, Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, Washington, DC; Ms. Cindy Brown Barnes, Director of Education, Workforce, and Income Security for the Government Accountability Office, Washington, DC; and Mr. Bruce Watzman, former Senior Vice President of Regulatory Affairs of the National Mining Association, Sarasota, FL.

On July 23, 2019, Senator Casey introduced S. 2205, the *Black Lung Benefits Improvement Act of 2019*. The bill would have amended the BLBA to: establish an attorneys' fee program for prevailing parties; establish an irrebuttable presumption of total disability for black lung disease confirmed by a radiograph, biopsy, autopsy, or other medically accepted test or procedure; update the elements of proof to establish a rebuttable presumption of disability due to black lung disease; prohibit any claimant, physician, operator, or duly authorized agent of the operator from knowingly and willfully making a false statement, with civil and monetary penalties for violations; direct adjudicators to resolve issues of evidence in equipoise in the claimants' favor; update the rate of pay to include cost-of-living adjustments for years where there was a federal wage freeze and tie future increases to the CPI-W; and provide claimants one year from the date of enactment to allow *de novo* re-adjudication of previously denied claims. The bill was referred to the HELP Committee. No further action was taken on the legislation.

On February 26, 2020, the Subcommittee on Workforce Protections of the House Committee on Education and Labor held a hearing entitled "Asleep at the Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund." The Subcommittee heard testimony on the failings of DOL to secure sufficient collateral from self-insuring coal mining companies, regularly reassess the sufficiency of collateral from self-insuring coal mining companies, and protect the Black Lung Disability Trust Fund (Trust Fund) from benefit liabilities being shifted onto it from insolvent coal mines. The witnesses were: Ms. Cindy Brown Barnes, Director of Education, Workforce, and Income Security, the Government Accountability Office, Washington, DC; and Ms. Julia Hearthway, Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC.

### 117<sup>th</sup> Congress

On December 1, 2021, Rep. Cartwright introduced H.R. 6102, the *Black Lung Benefits Improvement Act of 2021*. The bill was referred to the Committees on Education and Labor and Ways and Means. The bill would amend the BLBA to: establish an attorneys' fee program for prevailing parties; establish an irrebuttable presumption of total disability for black lung disease confirmed by a radiograph, biopsy, autopsy, or other medically accepted test or procedure; update the elements of proof to establish a rebuttable presumption of disability due to black lung disease; prohibit any claimant, physician, operator, or duly authorized agent of the operator from knowingly and willfully making a false statement, with civil and monetary penalties for violations; direct adjudicators to resolve issues of evidence in equipoise in the claimants' favor; update the rate of pay to include cost of living adjustments for years in which there was a federal wage freeze and tie future increases to the CPI-W; require the Secretary to promulgate regulations for self-insured operators to maintain sufficient security for black lung liabilities; and provide claimants one year from the date of enactment to allow *de novo* re-adjudication of previously denied claims.

On December 2, 2021, the Subcommittee on Workforce Protections of the House Committee on Education and Labor held a hearing entitled “Strengthening the Safety Net for Injured Workers” (December 2<sup>nd</sup> Hearing). The Subcommittee heard testimony on the need for increased oversight of self-insured mine companies and the need for additional Trust Fund revenue through a return to a higher tax on domestically produced and consumed coal. The witnesses were: Mr. Christopher J. Godfrey, Director, Office of Workers’ Compensation Programs, U.S. Department of Labor, Washington, DC; and Mr. Thomas M. Costa, Director of Education, Workforce, and Income Security, Government Accountability Office, Washington, DC.

On March 16, 2022, the Committee on Education and Labor marked up H.R. 6102. An Amendment in the Nature of a Substitute (ANS) was offered by Rep. Alma Adams (D-NC-12). The ANS incorporated H.R. 6102 with the following modifications:

- Adding the year “2022” to the title of the bill;
- Adjusting benefit levels for miners and survivors beginning in calendar year 2022 to account for four years of frozen or minimal cost-of-living adjustments and indexing levels to the CPI-W starting in 2023;
- Clarifying the content of regulations for self-insured coal operators and the criteria for authorizing CT lung scans; and
- Removing provisions involving medical information, the 15-year presumption, evidence in equipoise, and a training program.

Three amendments to the ANS were offered:

- Rep. Fred Keller (R-PA-12) offered an amendment to strike the provision allowing progress payments on attorney fees and replace it with a provision to permit settlement of claims in lieu of full disability benefits. The amendment was defeated by a vote of 22 Yeas and 27 Nays.
- Rep. Mondaire Jones (D-NY-17) offered an amendment to amend the BLBA to prohibit the ability of coal operators to self-insure for black lung benefit liabilities. The amendment was withdrawn.
- Rep. Virginia Foxx (R-VA-5) offered an amendment to prohibit OWCP from monitoring any state workers’ compensation program. The amendment was defeated by a vote of 22 Yeas and 27 Nays.

The ANS was adopted by voice vote. The Committee on Education and Labor ordered H.R. 6102 to be reported favorably, as amended, to the House of Representatives by a vote of 28 Yeas and 22 Nays.

## COMMITTEE VIEWS

Coal miners, whose work has powered the American economy, are continuing to develop disabling and deadly lung diseases collectively known as “black lung.” Although mine safety and health standards decreased this risk for decades following the passage of the *Federal Coal Mine Health and Safety Act*<sup>2</sup> (Coal Act) in 1969, rates started to climb again in the 2000s. More than three times as many coal miners were identified as having black lung disease from 2010 to 2014 compared to 1995 to 1999.<sup>3</sup>

The BLBA provides income support and medical care benefits to miners who are totally disabled by pneumoconiosis arising out of coal mine employment and compensation to survivors of coal miners whose deaths are attributable to the disease. The claims process for those benefits, however, is both adversarial and daunting. Coal operators have leveraged their formidable legal resources and medical experts to overwhelm the capacity of disabled miners and their families to secure benefits to which they are otherwise entitled. A Pulitzer Prize-winning series of investigative reports in 2013 by the Center for Public Integrity (the Center), coupled with reporting by NPR, ABC News, the *Charleston Gazette*, and others, uncovered patterns of deception, suppression of evidence, and willful distortion of diagnostic tests by coal operators’ counsel and medical experts aimed at preventing miners and their survivors from obtaining the benefits to which they were rightfully entitled. Some of these tactics force cases to stretch out for decades.

Meanwhile, some coal operators have evaded most of their black lung benefit obligations. Some self-insured operators have initiated bankruptcy proceedings and then shifted undercollateralized black lung benefit liabilities onto the Trust Fund. As discussed later, the Trust Fund was created to cover the cost of benefits to miners whose employment ended before 1970 and serve as a backstop for benefits in cases of miners whose employment ended after 1969 and for whom no responsible operator can be found. The primary source of revenue for the Trust Fund is an excise tax on coal, the rate of which has fluctuated. The approximately \$1 billion in liabilities shifted onto the Trust Fund since 2014 by under-collateralized self-insured operators has compounded the billions of debt accrued in the Trust Fund because of a number of other factors, including insufficient tax revenue, leaving taxpayers on the hook instead of operators in many cases.

To address these challenges, the Committee on Education and Labor (Committee) has reported H.R. 6102, the *Black Lung Benefits Improvement Act* (the Act).

### **Black Lung is a Progressive Disease That Disables and Kills Coal Miners**

#### Types of Black Lung

Black lung is an umbrella term for a group of chronic lung disorders afflicting coal miners.

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<sup>2</sup> Pub. L. No. 91-173, 83 Stat. 742 (1969).

<sup>3</sup> OFF. OF INSPECTOR GEN., U.S. DEP’T OF LAB., REP. NO. 05-21-001-06-001, MSHA NEEDS TO IMPROVE EFFORTS TO PROTECT COAL MINERS FROM RESPIRABLE CRYSTALLINE SILICA 1 (Nov. 12, 2020), <https://www.oig.dol.gov/public/reports/oa/2021/05-21-001-06-001.pdf>.

Medical providers use the term Coal Workers' Pneumoconiosis (CWP) to diagnose what is more commonly called "black lung." CWP is caused by repeated inhalation of dust from coal mines. The risk of developing CWP is positively related to the cumulative amount of respirable coal mine dust inhaled by a miner over time.<sup>4</sup> Because the disease results from cumulative exposure, CWP does not typically develop until several decades after initial mine dust inhalation.<sup>5</sup>

Dust inhalation damages the lungs and leads to difficulty breathing for miners diagnosed with CWP. Inhaling dust results in fibrosis, or scarring, of the lung tissue, leading to the appearance of masses, or "opacities," on a chest X-ray. This tissue damage reduces the lungs' ability to remove carbon dioxide and transmit oxygen to the rest of the body.<sup>6</sup> The lung damage from CWP makes it hard to take a deep, full breath. Miners suffering from CWP liken the feeling to inhaling with a plastic bag over your head or drowning underwater.<sup>7</sup>

Additional diseases under the "black lung" umbrella fall into the categories of medical, or "clinical," pneumoconiosis and statutory, or "legal," pneumoconiosis:

- "Clinical pneumoconiosis" includes "conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment."<sup>8</sup> The clinical definition includes many types of pneumoconioses, such as CWP, anthracosilicosis, silicosis, and silicotuberculosis.<sup>9</sup>
- The term "legal pneumoconiosis" does not constitute a medical diagnosis; instead, it reflects the BLBA's definition of the disease as "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."<sup>10</sup> Legal pneumoconiosis is broader than the definition used in the medical community. For example, legal pneumoconiosis includes chronic obstructive pulmonary disease (COPD) arising from coal mine employment,<sup>11</sup> while COPD from coal dust exposure would not be considered pneumoconiosis under the clinical definition. Legal

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<sup>4</sup> NAT'L INST. FOR OCC. SAFETY & HEALTH, DHHS (NIOSH) PUB. NO. 2011-172, CURR. INTEL. BULL. 64, COAL MINE DUST EXPOSURES AND ASSOCIATED HEALTH OUTCOMES: A REVIEW OF INFORMATION PUBLISHED SINCE 1995, at 5 (2011), <https://www.cdc.gov/niosh/docs/2011-172/default.html>.

<sup>5</sup> *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. 91 (2019) [hereinafter *Breathless and Betrayed*] (statement of Dr. John Howard, Dir., Nat'l Inst. for Occ. Safety & Health).

<sup>6</sup> SCOTT D. SZYMENDERA & MOLLY F. SHERLOCK, CONG. RES. SERV., R45261, THE BLACK LUNG PROGRAM, THE BLACK LUNG DISABILITY TRUST FUND, AND THE EXCISE TAX ON COAL: BACKGROUND AND POLICY OPTIONS 1 (Jan. 18, 2019), <https://crsreports.congress.gov/product/pdf/R/R45261>.

<sup>7</sup> Cat Schuknecht, "I Figured It Was Going to Be a Horrible Death, And It Probably Will Be", NPR (Jan. 23, 2019), <https://www.npr.org/2019/01/23/686000458/i-figured-it-was-going-to-be-a-horrible-death-and-it-probably-will-be>.

<sup>8</sup> OWCP Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis, 20 C.F.R. § 718.201(a)(1).

<sup>9</sup> *Id.*

<sup>10</sup> BLBA § 402(b) (30 U.S.C. § 902(b)). See also Jeffrey R. Lindequist, *The Black Lung Benefits Act—Sixteen Tons, What Do You Get?: How Do You Determine a Miner Has Had a Material Change in Condition to Allow a Subsequent Claim for Benefits?*, 29 W. NEW ENG. L. REV. 497, 502 (2007).

<sup>11</sup> *Warth v. S. Ohio Coal Co.*, 60 F.3d 173, 174-75 (4th Cir. 1995).

pneumoconiosis includes all conditions within the definition of clinical pneumoconiosis and additional lung diseases caused by employment in a coal mine.

### Progressive and Deadly

A coal miner initially diagnosed with CWP may not notice any symptoms. However, because CWP is a progressive disease, initial lung damage worsens over time. As the disease progresses, a cough and shortness of breath develop. These effects may progress even after miners are no longer exposed to respirable coal mine dust. Other complications such as pulmonary and cardiac failure may follow, potentially resulting in total disability and premature death.<sup>12</sup>

Continued dust exposure can lead to progression from the early stages of CWP, referred to as “simple CWP,” to more advanced stages of scarring referred to as “complicated CWP” or progressive massive fibrosis (PMF).<sup>13</sup> Some miners may be initially diagnosed with PMF if their lung imaging shows substantial scarring meeting the diagnostic criteria discussed below.

There is no cure for CWP or PMF.<sup>14</sup> However, certain treatments can slow disease progression and relieve symptoms. Pulmonary rehabilitation is typically recommended to help improve quality of life.<sup>15</sup> Supplemental oxygen and medication can be prescribed to increase airflow to the lungs.<sup>16</sup> In rare cases, medical providers may attempt a lung transplant to extend a patient’s life.<sup>17</sup> Absent a transplant, CWP leaves miners’ lungs scarred, shriveled, and black. As the disease progresses, miners struggle to do routine daily tasks such as eating and breathing.<sup>18</sup> Dr. Edward Petsonk, a physician who treats patients with black lung, describes suffering from the disease as “a screw being slowly tightened across your throat. Day and night towards the end, the miner struggles to get enough oxygen. It is really almost a diabolical torture.”<sup>19</sup>

### The Resurgence of Black Lung

Too many miners in the United States have suffered this “diabolical torture.” Black lung has caused or contributed to hundreds of thousands of deaths in the 20th and 21st centuries. At least 365,000 miners died from pneumoconiosis prior to the passage of the Coal Act.<sup>20</sup> From 1968 through 2007, black lung caused or contributed to roughly 75,000 deaths in the United States, according to federal government data.<sup>21</sup>

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<sup>12</sup> See Lowering Miners’ Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors, 79 Fed. Reg. 24,813, 24,819 (May 1, 2014).

<sup>13</sup> SZYMENDERA & SHERLOCK, *supra* note 6, at 1.

<sup>14</sup> *Breathless and Betrayed*, *supra* note 5, at 91 (statement of Dr. John Howard).

<sup>15</sup> *Treating and Managing Coal Worker’s Pneumoconiosis*, AM. LUNG ASS’N, <https://www.lung.org/lung-health-diseases/lung-disease-lookup/black-lung/treating-and-managing> (last visited Apr. 7, 2022).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Chris Hamby, *Black Lung Surges Back in Coal Country*, CTR. FOR PUB. INTEGRITY (July 8, 2012), <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/black-lung-surges-back-in-coal-country/>.

<sup>19</sup> *Id.*

<sup>20</sup> CHRISTOPHER W. SHAW, CTR. FOR STUDY OF RESP. LAW, UNDERMINING SAFETY: A REPORT ON COAL MINE SAFETY 7 (2008), <https://csrl.org/wp-content/uploads/2018/05/UnderminingSafety.pdf>.

<sup>21</sup> Hamby, *supra* note 18.

Rates of black lung disease decreased from the 1970s to the 1990s. Following the 1969 enactment of the Coal Act, which established enforceable limits on miners' coal dust exposure for the first time, rates of black lung disease dropped from more than 30 percent in miners in the 1970s to only 5 percent by the late 1990s while rates of its most severe form, PMF, declined from 3.5 percent to 0.5 percent.<sup>22</sup> By the late 1990s, the goal of eradicating black lung disease seemed within reach.

Although considered to be a disease of the past, black lung disease among working and former coal miners is returning with a vengeance. Researchers can see this resurgence in chest X-ray surveillance data, black lung benefits claim data, and mortality data.<sup>23</sup> X-ray surveillance data indicates that 10 percent of miners had imaging consistent with a CWP diagnosis by 2017, up from 5 percent two decades prior.<sup>24</sup> This resurgence is most severe in the central Appalachian states of Kentucky, West Virginia, and Virginia, where 20.6 percent of coal miners with tenures of 25 years or more now have black lung disease.<sup>25</sup>

The most severe form of black lung, PMF, is also on the rise among miners in the United States. PMF prevalence tripled between the 1980s and the 2000s<sup>26</sup> and now exceeds rates reported in the 1970s.<sup>27</sup> In 2014, 8.3 percent of black lung benefits claims were due to PMF, an increase from less than 2 percent of claims between 1970 and 1996.<sup>28</sup> As with simple CWP, the PMF resurgence appears to be most severe in central Appalachia.<sup>29</sup>

One explanation for the increase in both simple CWP and PMF since the late 1990s is that miners are now breathing a more potent mix of mine dust. As larger coal seams are mined out, coal companies have turned to mining thinner seams surrounded by more rock.<sup>30</sup> The rock which surrounds coal seams contains silica. When this rock is cut, the resulting silica dust is approximately 20 times more toxic than coal dust and causes faster lung disease progression.<sup>31</sup> A new research study released in April 2022 analyzing pathology specimens now backs this

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<sup>22</sup> David J. Blackley *et al.*, *Continued Increase in Prevalence of Coal Workers' Pneumoconiosis in the United States, 1970–2017*, 108 AM. J. PUB. HEALTH 1220 (2018) [hereinafter *Continued Increase*]; David J. Blackley *et al.*, *Resurgence of Progressive Massive Fibrosis in Coal Miners—Eastern Kentucky, 2016*, 65 MORB. & MORT. WKLY. REP. 1385 (2016).

<sup>23</sup> *Breathless and Betrayed*, *supra* note 5, at 13 (statement of Dr. Robert Cohen).

<sup>24</sup> Blackley *et al.*, *Continued Increase*, *supra* note 22, at 1221.

<sup>25</sup> *Id.*

<sup>26</sup> Hamby, *supra* note 18.

<sup>27</sup> Chris Hamby, *Black Lung Surges to Highs Not Seen Since the 70s, Research Shows*, CTR. FOR PUB. INTEGRITY (Sept. 15, 2014), <http://www.publicintegrity.org/2014/09/15/15538/black-lung-disease-surges-highs-not-seen-70s-research-shows>.

<sup>28</sup> *Breathless and Betrayed*, *supra* note 5, at 12.

<sup>29</sup> Hamby, *supra* note 18.

<sup>30</sup> *Id.*

<sup>31</sup> Howard Berkes *et al.*, *An Epidemic Is Killing Thousands of Coal Miners. Regulators Could Have Stopped It*, NPR (Dec. 18, 2018), <https://www.npr.org/2018/12/18/675253856/an-epidemic-is-killing-thousands-of-coal-miners-regulators-could-have-stopped-it>.

theory<sup>32</sup> and, in the words of the lead author, is “the smoking gun” establishing the causal role of silica.<sup>33</sup>

It is likely that the current black lung resurgence is even more severe than the data show. Many miners avoid medical screening, as a black lung diagnosis would mean having to leave their mining careers—oftentimes the only way miners know how to provide for their families.<sup>34</sup> A. Scott Laney, epidemiologist with the National Institute for Occupational Safety and Health (NIOSH), calls this resurgence of black lung “one of the largest industrial medicine disasters that the United States has ever seen.”<sup>35</sup>

### **The BLBA Establishes a Benefit Program for Disability and Death Due to Work-Related Pneumoconiosis**

To address the economic and medical consequences of black lung for miners and their families, Congress established through the BLBA a national compensation program.

#### Eligibility Criteria

A miner is eligible for benefits with proof, by a preponderance of the evidence, of the following:

- 1) the miner has pneumoconiosis;
- 2) the pneumoconiosis arose out of coal employment;
- 3) the miner is totally disabled; and
- 4) the pneumoconiosis contributes to the miner’s total disability.<sup>36</sup>

A dependent survivor, meanwhile, must establish (again by a preponderance of the evidence) that the miner died due to pneumoconiosis that arose out of coal employment.<sup>37</sup> As discussed further below, the BLBA and its accompanying regulations create standards for claimants to prove their eligibility, in particular through statutory presumptions and diagnostic evidence.

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<sup>32</sup> Robert A. Cohen *et al.*, *Pathology and Mineralogy Demonstrate Respirable Crystalline Silica is a Major Cause of Severe Pneumoconiosis in US Coal Miners*, ANNALS AMER. THORACIC SOC’Y (forthcoming 2022), <https://www.atsjournals.org/doi/pdf/10.1513/AnnalsATS.202109-1064OC>.

<sup>33</sup> Robert Benincasa, *Researchers Say They’ve Linked Silica Dust Directly to Severe Black Lung Disease*, NPR (Apr. 13, 2022), <https://www.npr.org/2022/04/13/1092690291/researchers-say-theyve-linked-silica-dust-directly-to-severe-black-lung-disease>.

<sup>34</sup> Hamby, *supra* note 18.

<sup>35</sup> Howard Berkes, *NPR Continues to Find Hundreds of Cases of Advanced Black Lung*, NPR (July 1, 2017), <https://www.npr.org/sections/thetwo-way/2017/07/01/535082619/npr-continues-to-find-hundreds-of-cases-of-advanced-black-lung>.

<sup>36</sup> These elements, distilled at 20 C.F.R. § 725.202(d)(2)(i)-(iv), derive from section 411 of the BLBA (30 U.S.C. § 921).

<sup>37</sup> See 20 C.F.R. §§ 725.212 (surviving spouses or divorced spouses), 725.218 (dependent children), 725.222 (parents or siblings).

## Statutory Presumptions

The BLBA has been amended multiple times to adjust the availability of presumptions.<sup>38</sup> Currently, for contemporary claimants, the following presumptions can apply:

- **Mining career presumptions:** Two presumptions are available to claimants whose cases relate to miners with significant tenures in coal employment.
  - 10-year presumption: In claims related to miners with pneumoconiosis who worked 10 or more years in coal mines, claimants can benefit from a rebuttable presumption that the pneumoconiosis arose out of employment.<sup>39</sup>
  - 15-year presumption: In claims related to miners with a totally disabling respiratory or pulmonary impairment who worked 15 or more years in underground coal mines or substantially similar above-ground coal employment, claimants can benefit from a rebuttable presumption that the miner is totally disabled due to pneumoconiosis, was totally disabled by pneumoconiosis at the time of death, or died due to pneumoconiosis, as the case may be. This presumption can be rebutted only by proof either (1) that the miner does not or did not have pneumoconiosis or (2) that no part of the miner's disabling respiratory or pulmonary impairment was related to coal employment.<sup>40</sup>
- **PMF diagnosis presumption:** In the case of miners diagnosed with the most severe form of black lung, PMF, claimants benefit from an irrebuttable presumption that the miner is totally disabled by or died due to pneumoconiosis.<sup>41</sup> The means of diagnosis are discussed further in the next section.

Finally, survivors are automatically entitled to survivor benefits if the coal miner had already established the miner's own eligibility and died while receiving federal black lung benefits.<sup>42</sup> Both this automatic entitlement policy and the 15-year presumption were features of the BLBA that had been eliminated by subsequent amendments but were restored in 2010 by provisions of the *Patient Protection and Affordable Care Act* known popularly as the "Byrd Amendments."<sup>43</sup> Prior to the Byrd Amendments, survivors were required to prove anew that the miner had actually died from black lung. "And because most infirm people suffer from multiple health problems before dying," explains claimant attorney Evan Smith, "litigation over the cause of the miner's death was often difficult, protracted, and out of proportion to the [low] benefits."<sup>44</sup>

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<sup>38</sup> See generally Lindequist, *supra* note 10; Donald T. DeCarlo, *The Federal Black Lung Experience*, 26 HOW. L.J. 1335 (1983).

<sup>39</sup> BLBA § 411(c)(1) (30 U.S.C. § 921(c)(1)).

<sup>40</sup> *Id.* § 411(b)(4) (30 U.S.C. § 921(b)(4)).

<sup>41</sup> OWCP Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis, 20 C.F.R. § 718.304.

<sup>42</sup> BLBA § 422(l) (30 U.S.C. § 932(l)).

<sup>43</sup> Evan Barret Smith, *Black Lung in the 21st Century: Disease, Law, and Policy*, 120 W. VA. L. REV. 797, 806-808 (2016).

<sup>44</sup> *Id.* at 807.



The Byrd Amendments were incomplete. Although the automatic entitlement provision was clearly restored, several other sections of the BLBA cross-referencing benefits for these miners and surviving spouses were left un-amended.<sup>45</sup> As a result, there is a split among the federal appeals courts over how thoroughly the Byrd Amendments are meant to apply.<sup>46</sup>

Accordingly, the Act amends the BLBA to complete the unfinished work of the Byrd Amendments. Section 301 makes a number of technical and conforming amendments. In addition to amendments that update the BLBA to substitute gender-neutral terms (such as “surviving spouse” in place of “widow”) and clarify that marital status is determined by the courts of the state in which the marriage was celebrated rather than the state of domicile, section 301 makes technical corrections that, consistent with the clear language and intent of the Byrd Amendments and several circuit court decisions,<sup>47</sup> ensure that the Byrd Amendments are applied consistently throughout the BLBA.

### Diagnostic Tests

Most cases of CWP are not diagnosed via a single, definitive test. Instead, CWP is typically diagnosed using a physician’s sound medical judgement based on various sources of medical evidence. Under current law, a finding of CWP can be made by satisfying one of three criteria:

- 1) a chest X-ray meeting international standards,
- 2) an autopsy or biopsy confirming pneumoconiosis, or
- 3) a physician’s determination based on other objective medical evidence.<sup>48</sup>

CWP is typically detected through radiological imaging such as chest X-rays and CT scans.<sup>49</sup> (CT scans are used less frequently than chest X-rays because, although they are more sensitive than X-rays, they come with a higher cost and increased radiation exposure to the patient.<sup>50</sup>) Chest X-rays and CT scans can show shadows in the lungs called opacities, which appear as light spots on a film image. CWP diagnosis is based on the reader’s classification of the size, shape, profusion, and location of these opacities.<sup>51</sup> Chest images of miners are classified according to the International Labour Organization (ILO) *International Classification of Radiographs of*

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<sup>45</sup> Maureen Hughes, *Blue Skies for Black Lung Benefits Act Survivors?: Courts’ Interpretations of § 932(l) Following the Enactment of the Patient Protection and Affordable Care Act*, 64 CATH. U.L. REV. 183 (2014).

<sup>46</sup> Leanne Kasburg, *Traveling Through the Dark Side of Statutory Interpretation: Shaping Black Lung Benefits Awards for Surviving Spouses*, 48 AKRON L. REV. 1009 (2015).

<sup>47</sup> Hughes, *supra* note 45, at 198-201.

<sup>48</sup> OWCP Standards for Determining Coal Miners’ Total Disability or Death Due to Pneumoconiosis, 20 C.F.R. § 718.202(a).

<sup>49</sup> *Pneumoconioses*, NAT’L INST. FOR OCC. SAFETY & HEALTH, <https://www.cdc.gov/niosh/topics/pneumoconioses/> (last visited Apr. 7, 2022).

<sup>50</sup> Edward L. Petsonk *et al.*, *Coal Mine Dust Lung Disease: New Lessons from an Old Exposure*, 187 AM. J. RESP. & CRIT. CARE MED. 1178, 1182 (2013).

<sup>51</sup> NAT’L INST. FOR OCC. SAFETY & HEALTH, *supra* note 4, at xii.

*Pneumoconioses*,<sup>52</sup> the most widely used standardized guidance to evaluate lung abnormalities.<sup>53</sup> These guidelines help medical providers describe their readings of lung images and standardize which opacity features are considered to be pneumoconiosis.

CWP can also be diagnosed by a biopsy or autopsy analyzing tissue evidence from the miner's lungs. Federal regulation stipulates that "[a] negative biopsy is not conclusive evidence that the miner does not have pneumoconiosis. However, where positive findings are obtained on biopsy, the results will constitute evidence of the presence of pneumoconiosis."<sup>54</sup> Biopsies are not frequently used to diagnose CWP as they can put the patient at medical risk,<sup>55</sup> and leading experts—the American Lung Association, NIOSH, DOL, and an array of prominent researchers and doctors—agree that biopsies are rarely necessary to diagnose CWP.<sup>56</sup>

In the absence of radiological imaging or tissue analysis, physicians can determine the existence of pneumoconiosis using their professional judgement. According to federal regulations, this determination must be "based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories."<sup>57</sup>

### Evolving Diagnostic Criteria

As science has advanced over time, the criteria used to diagnose CWP have evolved. As described above, CWP diagnosis is based on the size, shape, profusion, and location of lung opacities. Initially, CWP was thought to cause only round scars located in the upper lungs.<sup>58</sup> Doctors and scientists now recognize that CWP can manifest as opacities of other shapes and in other locations. In a paper published in the *American Thoracic Journal*, a group of doctors explains that "[t]he spectrum of lung disease associated with coal mine dust exposure is broader than generally recognized."<sup>59</sup> Accordingly, since initial passage of the BLBA, the medical community has expanded its understanding of how black lung is expressed on chest X-rays.

First, not all of the signs of black lung will show up on an X-ray in the upper section of the lungs. A 2012 study using data from over 2,000 underground coal miners in the United States

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<sup>52</sup> INT'L LAB. ORG., GUIDELINES FOR THE USE OF THE ILO INTERNATIONAL CLASSIFICATION OF RADIOGRAPHS OF PNEUMOCONIOSES 5 (rev. ed. 2011), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---safework/documents/publication/wcms\\_168260.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_168260.pdf) [hereinafter ILO Guidelines].

<sup>53</sup> *Chest Radiography*, NAT'L INST. FOR OCC. SAFETY & HEALTH, <https://www.cdc.gov/niosh/topics/chestradiography/default.html> (last visited Apr. 7, 2022).

<sup>54</sup> OWCP Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis, 20 C.F.R. § 718.106.

<sup>55</sup> Chris Hamby *et al.*, *Johns Hopkins Medical Unit Rarely Finds Black Lung, Helping Coal Industry Defeat Miners' Claims*, in CTR. FOR PUB. INTEGRITY, BREATHLESS AND BURDENED 40, 55 (2013), <https://s3.amazonaws.com/iw-files/documents/pdfs/CPI+Breathless+and+Burdened.pdf> [hereinafter BREATHLESS AND BURDENED].

<sup>56</sup> *Id.* at 46.

<sup>57</sup> OWCP Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis, 20 C.F.R. § 718.202.

<sup>58</sup> Chris Hamby, *As Experts Recognize New Form of Black Lung, Coal Industry Follows Familiar Pattern of Denial*, in BREATHLESS AND BURDENED, *supra* note 55, at 72, 80.

<sup>59</sup> *Id.* at 86.

found that small opacities were approximately equally distributed throughout the lung zones.<sup>60</sup> Based on this evidence, researchers concluded that, “[a]lthough conventional teaching has been that the radiographic finding of upper lung zone—predominant small rounded opacities is the *sine qua non* of CWP, there is surprisingly little published evidence to support this assertion.”<sup>61</sup> Rather, it is possible that coal miners suffering from CWP will have X-rays showing opacities in any section of the lung.<sup>62</sup>

Second, not all CWP opacities are perfectly rounded. With regard to the previously held belief that round opacities were necessary to diagnose CWP, NIOSH epidemiologist Scott Laney observes that “the scientific foundation for this expectation is unclear.”<sup>63</sup> Evidence now suggests that opacities from CWP can be rounded or irregular in shape. A 2012 study found that small opacities were classified as mostly irregular in 37.9 percent of miners with CWP.<sup>64</sup> This evidence indicates that reserving a CWP diagnosis only for perfectly rounded opacities is too restrictive and not aligned with the scientific evidence.

For claimants whose radiological evidence is consistent with this developing body of science but not within the definition tying presumptions to the outdated scientific views, benefits are not foreclosed. Absent the ability to cite the presumptions, however, these claimants must still prove that mining employment caused the impairment and overcome the rebuttals of operators and their experts. The Center for Public Integrity reviewed such challenges involving non-traditional presentation of lung scarring and found a familiar pattern of industry opposition:

In the early 20th century, coal companies and sympathetic doctors argued that coal dust was harmless and actually protected miners’ lungs from tuberculosis.

Since then, scientific advances have shown that breathing coal dust can harm different people in different ways.

One miner might develop the black nodules characteristic of coal workers’ pneumoconiosis, the classic form of black lung. Another might find the air sacs in his lungs destroyed—emphysema—or the lining of his airways irritated and blocked—chronic bronchitis.

As the effects of coal dust have gained broader recognition, the industry in each instance eventually has had to accept the evidence. But, while these fights about classification have played out, sick miners have found it difficult, if not impossible, to win benefits.

Today, miners again are facing this strategy of denial and containment, this time over the [non-traditional] pattern of scarring . . . . In virtually all of the more than

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<sup>60</sup> A. Scott Laney & Edward L. Petsonk, *Small Pneumoconiotic Opacities on U.S. Coal Worker Surveillance Chest Radiographs Are Not Predominantly in the Upper Lung Zones*, 55 AM. J. INDUS. MED. 793 (2012).

<sup>61</sup> Petsonk *et al.*, *supra* note 50, at 3.

<sup>62</sup> *Id.*

<sup>63</sup> Laney & Petsonk, *supra* note 60.

<sup>64</sup> *Id.*

380 cases identified by the Center [from 2000 to 2013], a doctor testifying for the coal company—or, in many cases, multiple doctors—blamed some variant of the disease idiopathic pulmonary fibrosis, known as IPF, or a similar illness. . . .

Miners lost more than 60 percent of these cases. Even when judges awarded benefits, the decision often hinged on an issue other than recognition of the abnormal disease appearance as black lung. . . .

In many cases, judges credited coal company experts and reached medical conclusions that flatly contradict the views of NIOSH and [the National Institute of Health]. Judges must rely on whatever evidence a miner can produce, and finding doctors who can rebut the vehement assertions of the company’s experts can be a challenge.<sup>65</sup>

To address this issue and ensure federal benefits remain aligned with the best scientific evidence, the Act updates the BLBA as follows:

- Section 102 of the Act amends the criteria for PMF diagnosis from an opacity “greater than one centimeter *in diameter*” to “greater than 1 centimeter *in any direction*.” This change would reduce ambiguity in the law, as masses in the lungs are not always formed in the kind of perfectly round circles that the term “diameter” demands. The new language would also ensure the law conforms with ILO classification standards, which recognize that opacities can be “rounded” or “irregular”<sup>66</sup> and are measured by their “longest dimension.”<sup>67</sup>
- Section 102 also addresses a split in the federal appeals courts on what a claimant must prove when relying on biopsy or autopsy evidence to invoke the presumption. In the Fourth Circuit, the claimant must satisfy an “equivalency” requirement, showing that any pathology evidence of massive lesions would have appeared on X-ray as large opacities sufficient to prove complicated pneumoconiosis.<sup>68</sup> The Tenth and Eleventh Circuits have rejected this equivalency requirement and held that pathology evidence of massive lesions, standing alone, is sufficient to invoke the presumption.<sup>69</sup> This section clarifies that pathology evidence can be interpreted directly, without regard to how it may have appeared in a radiographic image.
- Section 102 also updates the relevant terminology by introducing the terms “complicated pneumoconiosis” and “progressive massive fibrosis” to more clearly define the disease that will invoke the presumption and strikes the outmoded term “roentogram.”

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<sup>65</sup> Hamby, *supra* note 58, at 76-77.

<sup>66</sup> ILO Guidelines, *supra* note 52, at 5.

<sup>67</sup> *Id.* at 6.

<sup>68</sup> Eastern Associated Coal Corp. v. Dir., Off. of Workers’ Comp. Progs., 220 F.3d 250 (2000).

<sup>69</sup> Bridger Coal Co. v. Dir., Off. of Workers’ Comp. Progs., 669 F.3d 1183, 1192-94 (10th Cir. 2012); Pittsburg & Midway Coal Mining Co. v. Dir., Off. of Workers’ Comp. Progs., 508 F.3d 975, 987 n.7 (11th Cir. 2007).

## Federal Black Lung Benefits Are a Lifeline for Miners and Their Families

The black lung benefits program was created in 1969 as a workers' compensation program originally administered by the Social Security Administration to benefit miners totally disabled by black lung disease.<sup>70</sup> Three years later, the *Black Lung Benefits Act of 1972*<sup>71</sup> extended these benefits to surviving dependent family members and established a compensation program administered by DOL. The miner's last employer is generally liable for the claim, but in such cases when a miner's employer is insolvent, that miner is compensated from the Trust Fund.

In addition to coverage of qualified medical expenses, the BLBA provides for monthly cash payments set at 37.5 percent of the base salary of a federal employee at level GS-2, Step 1.<sup>72</sup> The level increases for beneficiaries with dependents.

Although modest, these benefits are a vital lifeline for miners and their family members. The benefits are available only to miners with *total disability* from black lung disease arising from their employment in or around the nation's coal mines,<sup>73</sup> and so miners are generally prohibited from receiving black lung benefits while employed in coal mining.<sup>74</sup> Miners therefore rely on these payments to permanently leave the mines,<sup>75</sup> cover their medical expenses,<sup>76</sup> and modestly support themselves and their families.

### Miners and Their Families Face Challenges in Attempting to Access Black Lung Benefits

Actually receiving these benefits is typically not an easy task. Governmental and journalistic investigations have identified numerous impediments to miners' and their survivors' ability to obtain black lung benefits, including the following:

- challenges in obtaining legal representation and developing medical evidence to support a miner's claim;
- obstacles to fair adjudication of claims because of dubious strategies employed by coal operators' lawyers and experts; and
- bureaucratic delays in the processing of claims applications.

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<sup>70</sup> Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, Title IV.

<sup>71</sup> Black Lung Benefits Act of 1972, Pub. L. No. 92-303.

<sup>72</sup> BLBA § 412(a) (30 U.S.C. § 922(a)).

<sup>73</sup> *Id.* §§ 411(a) (30 U.S.C. § 921(a)), 412(a)(1) (30 U.S.C. § 922(a)(1)).

<sup>74</sup> *Id.* § 413(d) (30 U.S.C. § 923(d)).

<sup>75</sup> See, e.g., *Coal Miners' Struggle for Justice: How Unethical Legal and Medical Practices Stack the Deck Against Black Lung Claimants: Hearing Before the Subcomm. on Emp. & Workplace Safety of the S. Comm. on Health, Educ., Lab. & Pensions*, 113th Cong. 27-28 (2014) [hereinafter *Struggle for Justice*] (testimony of claimant attorney John Cline) (discussing the example of client Gary Fox who continued working in the mines and breathing dust for several years even after a serious medical issue because the responsible operator's attorneys suppressed claim-supporting evidence and blocked access to the benefits that could have supported him and his family).

<sup>76</sup> GOV'T ACCOUNTABILITY OFF., GAO-18-351, BLACK LUNG BENEFITS PROGRAM: OPTIONS FOR IMPROVING TRUST FUND FINANCES 4 (May 30, 2018), <https://www.gao.gov/assets/gao-18-351.pdf> ("DOL estimates that the average annual cost for medical treatment in fiscal year 2018 was approximately \$9,667 per miner.").

## Access to Counsel

The black lung benefits adjudication process is an adversarial system. An adversarial system only works to deliver justice, however, when both parties to the dispute have an equal opportunity to participate.<sup>77</sup>

A 2009 GAO report about the black lung program found that securing representation is a significant challenge for many black lung claimants and that “claimants’ lack of representation, particularly in the early stages of a claim,” is “a significant barrier to successful claims.”<sup>78</sup> DOL’s Office of Administrative Law Judges (OALJ) confirmed “that few attorneys will represent black lung claimants and that lack of legal representation limits OALJ’s ability to process cases quickly.”<sup>79</sup>

DOL data bear this out. In the last 10 years, most claimants have lacked attorney representation at the District Director level. The rate of attorney representation has fluctuated from a low of 25 percent in 2013 to a high of 47 percent in 2019.<sup>80</sup> Although lay representation has increased at the District Director level in recent years following an increase in funding for black lung clinics,<sup>81</sup> the adversarial nature of the proceedings before an ALJ or the Benefits Review Board—DOL’s administrative board hearing appeals from ALJ decisions—usually merits attorney representation.

An attorney with the Appalachian Citizens Law Center (ACLC), which represents coal miners and their families on issues of black lung and mine safety, testified in a 2015 hearing before the Subcommittee on Workforce Protections about his observations of this problem in the field. “Too often miners do not have legal representation and, being disabled and not working, do not have the financial ability to pay for sophisticated medical testing to support their claim that they have been disabled due to black lung,” said the ACLC’s Stephen Sanders.<sup>82</sup> During the hearing, he was questioned about this issue:

MR. SCOTT. Mr. Sanders, the black lung benefits program is an adversarial system. In your testimony you talk about the fact that workers are not well represented. What specific proposals would you have to level the playing field so that workers could be better represented in this adversarial proceeding?

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<sup>77</sup> *Protecting America’s Workers: Reviewing Mine Safety Policies with Stakeholders: Hearing Before the H. Comm. on Educ. & the Workforce*, 114th Cong. 34 (2015) [hereinafter *Protecting America’s Workers*] (statement of Stephen A. Sanders, Appalachian Citizens Law Center).

<sup>78</sup> GOV’T ACCOUNTABILITY OFF., GAO-10-7, BLACK LUNG BENEFITS PROGRAM: ADMINISTRATIVE AND STRUCTURAL CHANGES COULD IMPROVE MINERS’ ABILITY TO PURSUE CLAIMS 26 (2009).

<sup>79</sup> *Id.*

<sup>80</sup> *Black Lung Program Statistics: Claims With Attorney or Lay Representation at the District Director Level*, OFF. OF WORKERS’ COMP. PROGRAMS, <https://www.dol.gov/agencies/owcp/dcmwc/statistics/AttorneyAndLayRepresentationOfClaimants> (last visited June 23, 2022).

<sup>81</sup> *Id.* See also *A Reward for Representation: Washington Woman Honored for Her Work Helping Black Lung Disease Claimants*, OBSERVER-REPORTER (Washington, PA Dec. 7, 2016), [https://observer-reporter.com/business/a-reward-for-representation/article\\_04762196-24ac-5d78-ad5c-2137b2d788f4.html](https://observer-reporter.com/business/a-reward-for-representation/article_04762196-24ac-5d78-ad5c-2137b2d788f4.html).

<sup>82</sup> *Protecting America’s Workers*, *supra* note 77, at 34.

MR. SANDERS. What I think are the problems are partly that attorneys are deterred by the complexity, the need to develop sophisticated medical evidence with a client who has no resources to pay for that, and the attorney cannot be paid for his services by his client. Under the federal black lung program, the attorney that represents the claimant gets a fee if the claimant is awarded benefits and if the award is upheld through appeals so the award is final.

In many of these cases, I would say the average is at least four years before you get to that point, and in many of the cases, they go on longer.

There was an article recently in the *Charleston Gazette* about a case that went on for 21 years. The attorney representing the miner in that claim gets no compensation unless the miner wins and the award is upheld.

*The Black Lung Benefits Improvement Act* create[s] a way that an attorney could get a partial fee through the Trust Fund if they are successful at various stages in the proceedings, and then that payment from the Black Lung Disability Trust Fund would eventually be paid back by the operator if the award is upheld. It also provides for a payment for medical expenses incurred by the claimant to develop the kind of sophisticated evidence they need to prove their case.<sup>83</sup>

The reasons for lack of representation were also explained in GAO's 2009 report:

[A]ttorneys are not inclined to take claimants' cases due to a low probability of success.... Other disincentives DOL officials and claimant attorneys cited are that the process can be lengthy and costly. For example, one attorney told us that it has taken as long as 15 years from the start of a black lung case to receive compensation for working on it. Among the significant legal costs that claimant attorneys said they incur with black lung cases is the time spent preparing legal briefs and expenses associated with evidence development, such as preparing medical experts' reports. Because claimants lack financial resources for evidence development and DOL's payment of claimant attorneys' fees is contingent on the success of cases, claimant attorneys bear much of the legal costs during the litigation of claimants' cases. In BLBA cases, a claimant may not be charged a fee by an attorney unless black lung benefits are awarded.<sup>84</sup>

Accordingly, section 106 of the Act authorizes an *Attorneys' Fees and Medical Expenses Payment Program*. Under this section, DOL is directed to establish a program which advances a portion of miners' attorneys' legal fees up to \$1,500 at the District Director level and up to \$3,000 at the ALJ level for a total of up to \$4,500, provided that the claimant prevails at each level. In addition, attorneys may seek reimbursement of up to \$1,500 for medical costs at each level, for a total of no more than \$3,000, provided that the claimant prevails at each level. This provision applies only where there is a contested claim for benefits for which a final order has not been entered within two years of the filing of the claim.

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<sup>83</sup> *Id.* at 72.

<sup>84</sup> GOV'T ACCOUNTABILITY OFF., *supra* note 78, at 26.

The legal fees and medical costs under this section would initially be paid from the Trust Fund; however, if the claimant ultimately prevails, the responsible coal operator would be required to reimburse the Trust Fund for the legal fees and costs that were paid under this section and, consistent with existing law, would be required to pay any additional attorneys' fees and allowable costs that exceed the amount that was already paid from the Trust Fund. Any payment for attorneys' fees or medical expenses made by DOL under this section cannot be recouped from the claimant or the claimant's attorney in the event that a claim approved at a lower level is subsequently reversed.

The *Attorneys' Fees and Medical Expenses Payment Program* helps to level the playing field by countering some of the financial disincentives GAO identified for attorneys accepting coal miners' black lung claims, and it will be impactful in many of the contested cases that require far more than two years between the filing of the claim and a final order for benefits.

The net cost of this provision to the Trust Fund is likely to be very low. The incentive provided by this provision should increase the number of claimants obtaining representation at the District Director level. Additionally, the medical evidence provision discussed below is likely to decrease the number of cases appealed every year to OALJ<sup>85</sup> and, therefore, increase the likelihood that the responsible operator will reimburse the Trust Fund for these fees. DOL, in fact, estimates that the net cost to the Trust Fund will be less than \$1 million annually.<sup>86</sup> Accordingly, when Rep. Keller offered an amendment in the markup to strike this provision, arguing on the basis of the annual total outlay (before these other factors reduce the likely actual net cost), the Committee rejected the amendment by a vote of 22 Yeas and 27 Nays.

### Access to Medical Evidence

Miners' challenges in obtaining counsel are intertwined with their difficulty in developing the medical evidence needed to support a claim. This issue is particularly acute at the earliest stages of the claims process. Both GAO and the DOL Inspector General (DOL-IG) have urged DOL to assist claimants in securing better quality medical evidence, because this speeds cases, reduces appeals, and improves fairness.<sup>87</sup>

Section 413(b) of the BLBA currently requires DOL to give each miner the opportunity to substantiate a claim for benefits with a complete pulmonary evaluation.<sup>88</sup> DOL's District Director administers this requirement by scheduling a medical examination with a physician the miner chooses from a DOL-maintained list (413(b) Provider). Based on the 413(b) exam results, the District Director renders an initial claim determination, which can be challenged. At that point, the responsible operator (or the operator's insurer) and the claimant may then submit their

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<sup>85</sup> See text accompanying notes 90-92 *infra*.

<sup>86</sup> Email from Constance M. Christakos, Off. of Cong. & Intergov't Affs., U.S. Dep't of Lab. (May 17, 2022).

<sup>87</sup> See OFF. OF INSPECTOR GEN., U.S. DEP'T OF LAB., 05-15-001-50-598, PROCEDURAL CHANGES COULD REDUCE THE TIME REQUIRED TO ADJUDICATE FEDERAL BLACK LUNG BENEFIT CLAIMS 29 (2015). See also generally GOV'T ACCT. OFF., *supra* note 78.

<sup>88</sup> 30 U.S.C. § 923(b).



own medical evidence, which the District Director considers along with the 413(b) exam results before entering a proposed decision and order (PDO) regarding entitlement to benefits.

If the District Director denies the claim, the miner may request a hearing before an ALJ. If, instead, the District Director awards benefits and the liable coal mine operator requests a hearing, the miner receives interim benefit payments from the Trust Fund until the ALJ resolves the case. Those interim payments are deemed overpayments if the claim is overturned before the ALJ or in later proceedings. Thus, it is important that the District Director's decision be accurate and defensible.

In 2014, DOL initiated the Black Lung 413(b) Pilot Project (Pilot Project) to strengthen the quality of benefit decisions in a subset of claims involving those miners who met the criteria for the 15-year presumption under the BLBA.<sup>89</sup> The Pilot Project called for DOL to secure a supplemental medical opinion from the 413(b) Provider after evidence contrary to a preliminary finding supporting benefits entitlement was submitted for consideration by the responsible operator. Prior to this Pilot Project, DOL provided only one medical opinion to miners, the complete pulmonary evaluation the statute guarantees to each miner who applies for benefits.

Expert evaluators from the University of Illinois at Chicago's School of Public Health (UIC Evaluators) reviewed the Pilot Project and concluded in a May 2016 report that the Pilot Project improved the quality of medical evidence. The UIC Evaluators found that the Pilot Project also reduced the percentage of decisions which led to requests for hearings on appeal from 81 percent to 73 percent.<sup>90</sup>

Among other things, the UIC Evaluators concluded that the supplemental medical examination corrected an "asymmetry of information," in which the responsible operators had access to both the medical evidence produced by the 413(b) Provider and their own evidence, whereas the 413(b) Providers did not have access to both sets of information at the time of their examinations. In addition, the 413(b) Provider opinion was systematically discounted because it was never as recent as the medical evidence prepared by the responsible operator. The UIC Evaluators concluded, "It is likely that the rebuttal of [responsible operator] evidence by the 413(b) [P]rovider balanced the weight of the opinions provided by the physicians in the claim, primarily by removing the bias that a more recent [operator] provider's opinion should carry more weight."<sup>91</sup>

The Pilot Project resulted in some findings of entitlement that would otherwise have been denied, as well as some cases for which an initial approval was subsequently overturned. Overall, however, the UIC Evaluators found that "[c]ases evaluated ... had a higher rate of benefits entitlement than similar cases without a supplemental medical review."<sup>92</sup>

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<sup>89</sup> Off. of Workers' Comp. Programs, U.S. Dep't of Lab., *BLBA Bull. No. 14-5, Creating Stronger PDOs in Living Miner Cases Where the 15-Year Presumption May Apply* (Feb. 24, 2014) [hereinafter OWCP Pilot Project Bulletin].

<sup>90</sup> ROBERT COHEN, LEONARD GO & SITHEMBILE MABILA-ABDUBA, U. ILL.-CHI. SCH. OF PUB. HEALTH, BLACK LUNG PILOT EVALUATION STUDY FINAL REPORT (May 4, 2016) (commissioned by Chief Eval. Off., U.S. Dep't of Lab.).

<sup>91</sup> *Id.* at 3.

<sup>92</sup> *Id.* at 18.

DOL concluded, “based on an examination of data accumulated over five years about the success of this pilot program, ... that the supplemental reports are effective at strengthening and improving the PDO,” and the initiative was made permanent.<sup>93</sup> DOL’s current practice is to make these supplemental reviews standard procedure for cases in which (1) the miner had 15 years of qualifying coal mine employment, (2) the initial 413(b) examination indicated the miner was entitled to benefits, (3) the parties received a preliminary finding of entitlement to benefits in the Schedule for Submission of Additional Evidence (SSAE), and (4) the party opposing entitlement has submitted evidence that appears contrary to the claims examiner’s proposed entitlement finding.<sup>94</sup>

In light of the track record of this program and the larger problem of claimant access to expert medical evidence, the Act makes several important reforms:

- Section 103 of the Act codifies the supplemental evidence program and expands it by covering not only those who may meet the qualification for a 15-year presumption but also other living miners regardless of the number of years of coal mine experience.
- Section 103 of the Act also authorizes the U.S. Secretary of Labor (Secretary) to cover the cost of a CT scan in certain cases, where needed to diagnose larger lesions that could indicate the presence of complicated pneumoconiosis or PMF. These lesions may be missed by conventional chest radiography due to obscuring shadows from the ribs, clavicle, or large vessels or a high profusion of simple pneumoconiosis (ILO category 2/1<sup>95</sup> or greater). Therefore, in order to determine if a miner has complicated pneumoconiosis but a conventional lung X-ray fails to provide a definitive image, the Secretary is authorized under section 103 to provide a high-quality, low-dose or standard CT scan if a chest radiograph reveals advanced pneumoconiosis (ILO category 2/1 or greater) or a coalescence of small opacities. Studies that have compared conventional chest radiography to CT scans indicate that, when diagnosing complicated pneumoconiosis, the CT scan is significantly more sensitive than a chest radiograph.<sup>96</sup>

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<sup>93</sup> OFF. OF WORKERS’ COMP. PROGRAMS, U.S. DEP’T OF LAB., ANNUAL REPORT TO CONGRESS 26 (2020), <https://www.dol.gov/sites/dolgov/files/OWCP/FY2020OWCPAnnualReporttoCongress.pdf>.

<sup>94</sup> OWCP Pilot Project Bulletin, *supra* note 89.

<sup>95</sup> The ILO classification of radiographs is rendered in *category/subcategory* format. The categories are numbered from 0 to 3 in order of increasing presence and profusion of opacities, and for each category there are three possible subcategories. The classifications refer back to standard radiographic images that are exemplary of each category and are labeled 0/0, 1/1, 2/2, and 3/3. Any subcategory designation with a number or symbol different from the category number indicates a degree of variation from the standard image for the category. The 2/1 assessment “refers to a radiograph with profusion of small opacities judged to be similar in appearance to that depicted on a subcategory 2/2 standard radiograph, but category 1 was seriously considered as an alternative before deciding to classify it as category 2.” ILO Guidelines, *supra* note 52, at 3-4.

<sup>96</sup> Ahmet Savranlar *et al.*, *Comparison of Chest Radiography and High-Resolution Computed Tomography Findings in Early and Low-Grade Coal Worker’s Pneumoconiosis*, 51 EUR. J. RADIOL. 175 (2004); Kun-Il Kim *et al.*, *Imaging of Occupational Lung Disease*, 21 RADIOGRAPHICS 1371 (2001); C. Martínez González *et al.*, *Valor de la Tomografía Computarizada en el Diagnóstico de Neumoconiosis Complicada de Mineros del Carbón [Value of Computerized Tomography in the Diagnosis of Complicated Pneumoconiosis in Coal Miners]*, 33 ARCH. BRONCHONEUMOL. 12 (1997); Martine Remy-Jardine *et al.*, *Computed Tomographic Evaluation of Silicosis and Coal Workers’ Pneumoconiosis*, 30 RADIOL. CLINICS NO. AM. 1155 (1992).

- Section 103 also codifies the Secretary’s practice of creating and maintaining a list of qualified physicians to perform pulmonary examinations of coal miners and mandates quality assurance for the list by requiring that the Secretary pre-screen physicians for adverse professional actions involving medical licensure, certifications, hospital privileges, or professional societies. This section precludes the use of physicians from the list who have a potential or actual conflict of interest through current or recent employment or contractual arrangements with a private party opposing an individual’s claim unless the claimant knowingly waives such conflict. The Secretary is directed to update the list annually by reviewing the suitability of qualified physicians to remain or be added to the list and assessing any potential conflicts of interest.
- Section 106 establishes the *Attorneys’ Fees and Medical Expenses Payment Program* discussed above, which, among other things, allows miners’ attorneys to seek reimbursement of up to \$1,500 for medical costs at the District Director and ALJ level of claim review, for a total of no more than \$3,000, provided that the claimant prevails at each level. This provision applies only where there is a claim for benefits that is contested and for which a final order has not been entered within two years of the filing of the claim.

### Obstacles to Fair Adjudication

While miners and their families struggle to retain lawyers and medical experts, coal operators challenging benefit applications maintain their own cadre of specialists, who have at times added to the challenges of obtaining benefits.

For example, Pulitzer Prize-winning reporting by the Center for Public Integrity revealed that the Johns Hopkins Medical Institutions had for decades operated a radiology unit staffed by “perhaps the most sought-after and prolific readers of chest films on behalf of coal companies seeking to defeat miners’ claims.”<sup>97</sup> Various radiologists worked in this unit over the years producing reports “almost unwaveringly negative for black lung,” but one expert in particular, Dr. Paul Wheeler, was “the leader and most productive reader for decades.”<sup>98</sup> The Center found that, in more than 3,400 X-ray readings involving more than 1,500 cases, Dr. Wheeler had never once interpreted an X-ray as positive for complicated pneumoconiosis, preferring instead to apply his own idiosyncratic criteria which were “at odds with positions taken by government research agencies, textbooks, peer-reviewed scientific literature, and the opinions of many doctors who specialize in detecting the disease, including the chair of the American College of Radiology’s task force on black lung.”<sup>99</sup>

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<sup>97</sup> Chris Hamby *et al.*, *Johns Hopkins Medical Unit Rarely Finds Black Lung, Helping Coal Industry Defeat Miners’ Claims*, CTR. FOR PUB. INTEGRITY (Oct. 30, 2013), <https://publicintegrity.org/environment/johns-hopkins-medical-unit-rarely-finds-black-lung-helping-coal-industry-defeat-miners-claims/>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

Although Johns Hopkins shut down this program two days after the Center and ABC News exposed Dr. Wheeler's record<sup>100</sup> and DOL issued a bulletin instructing staff not to credit any negative reading by Dr. Wheeler,<sup>101</sup> the damage had been done. In the span of 13 years alone, miners lost more than 800 cases in which doctors found severe black lung while Dr. Wheeler offered a contrary opinion.<sup>102</sup> Ultimately, DOL notified approximately 1,100 miners that their claims may have been wrongfully denied because of Dr. Wheeler's involvement.<sup>103</sup>

DOL permitted *miners* whose claims had been denied to submit new claims, but any *survivors* in the same situation whose claims had been denied more than a year before the Center's reporting were barred under DOL regulations from filing a new claim.<sup>104</sup> Solicitor of Labor Patricia Smith explained in a 2014 Senate hearing that this injustice was effectively required by the BLBA:

SEN. CASEY. Can you describe how the process for resubmitting a previously denied claim differs based on whether or not it falls within the 1-year time limit?

MS. SMITH. .... There are two possibilities. If a miner has been denied a claim within a year, he may move to reopen that claim on the basis of there's a mistake or his condition has changed.... If an award is granted or denied, it is on the basis of the current claim.

On the other hand, after 1 year, a miner may file a claim for new benefits. It is a new claim. It is a new time period. That's because ... black lung disease can be progressive and latent even after there's been a cessation of exposure to coal mine dust.

What a miner must prove in that situation as a threshold matter is that there has been a change in some condition of eligibility since the last claim. If they can't prove that as a threshold matter, the claim is denied. If then they can prove that the change in condition has made it clear that they have black lung disease and it's totally disabling, they would be able to get an award of benefits.

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<sup>100</sup> Matthew Mosk & Randy Kreider, *Amid Controversy, Johns Hopkins Quietly Drops Black Lung Program*, ABC NEWS, Sept. 30, 2015, <https://abcnews.go.com/US/amid-controversy-johns-hopkins-quietly-drops-black-lung/story?id=34161753>; Howard Berkes, *Johns Hopkins Halts, Reviews Black Lung Program*, NPR, Nov. 4, 2013, <https://www.npr.org/sections/thetwo-way/2013/11/04/243029509/johns-hopkins-halts-reviews-black-lung-program>; Chris Hamby *et al.*, *Johns Hopkins Suspends Black Lung Program After Center-ABC Investigation*, CTR. FOR PUB. INTEGRITY (Nov. 1, 2013), <https://publicintegrity.org/environment/johns-hopkins-suspends-black-lung-program-after-center-abc-investigation/>.

<sup>101</sup> Michael A. Chance, Off. of Workers' Comp. Programs, U.S. Dep't of Lab., *BLBA Bull. No. 14-09, Weighing Chest X-ray Evidence that Includes a Negative Reading by Dr. Paul Wheeler* (June 2, 2014), <https://www.dol.gov/sites/dolgov/files/owcp/dcmwc/blba/indexes/BL14.09OCR.pdf>.

<sup>102</sup> Hamby *et al.*, *supra* note 97.

<sup>103</sup> Chris Hamby, *Black Lung Claims by 1,100 Coal Miners May Have Been Wrongly Denied*, CTR. FOR PUB. INTEGRITY, July 22, 2014, <https://publicintegrity.org/environment/black-lung-claims-by-1100-coal-miners-may-have-been-wrongly-denied/>.

<sup>104</sup> *Q&As - Impact of OWCP Bulletin 14-09 (Addressing Dr. Wheeler X-ray Readings) on Previously Denied Claims*, OFF. OF WORKERS' COMP. PROGRAMS, <https://www.dol.gov/agencies/owcp/negativechestxrays> (last visited Apr. 5, 2022).

But that award of benefits does not go back to the previous time. It only goes back from when that new claim has been made. Again, this is because the black lung can be progressive and latent. So, if there are changes in conditions and now the miner is eligible when they may not have been eligible before, we don't want to bar them forever when they have become eligible.

SEN. CASEY. You're talking about the situations where you have a new claim.

MS. SMITH. Right. That's a new claim. It's not a reopening of an old claim. It does not go back to the time period of the old claim. Once the old claim has been denied for over a year, it's barred by *res judicata*. You cannot reopen that claim. But if you can prove that you have a change in your condition and you are now eligible, you can file a new claim for a new time period.<sup>105</sup>

In other words, although miners who had lived long enough to see Dr. Wheeler discredited and could show that their disease had progressed further were able to file new claims from that point forward, they were not allowed to seek retroactive benefits covering the period they had lost thanks to Dr. Wheeler. Widows and other surviving family members lacked even that option.

It is likely that there are other Dr. Wheelers. The UIC Evaluators reviewing DOL's medical evidence Pilot Project uncovered a troubling bias in some of the medical documentation submitted by operators. In a sample of cases prior to the Pilot Project, the UIC Evaluators found that there were "[i]nstances of atypical and non-standard interpretations of medical evidence by Responsible Operators, questions of technical quality and other inconsistencies that represent potential instances in which a supplemental opinion from the Pilot Project could have affected the outcome of the claim."<sup>106</sup>

Moreover, a new study of black lung claims filed from 2000 to 2013 found that doctors hired by coal companies are much less likely to diagnose black lung disease in miners' X-rays compared to doctors hired by miners and independent doctors. Most B-readers are hired at some point by the government and by either miners or operators, but the researchers found that any B-readers ever hired by coal operators read chest X-rays as negative for pneumoconiosis 85 percent of the time, much more often than any B-readers ever hired by a miner (51.3 percent) or those exclusively hired by DOL (63.2 percent).<sup>107</sup> The researchers identified 55 operator-hired B-readers who provided negative readings in more than 99 percent of their assignments.<sup>108</sup> "Although the radiograph data ended in 2013," the researchers point out, "nearly all the physicians are still classifying radiographs today, and many of these cases are still pending."<sup>109</sup>

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<sup>105</sup> *Struggle for Justice*, *supra* note 75, at 19-20.

<sup>106</sup> COHEN *et al.*, *supra* note 90, at 3.

<sup>107</sup> Lee S. Friedman *et al.*, *Association Between Financial Conflicts of Interest and International Labor Office Classifications for Black Lung Disease*, 18 ANNALS OF AM. THORACIC SOC'Y 1633 (2021).

<sup>108</sup> *Id.* at 1638.

<sup>109</sup> *Id.* at 1639.

In addition to these experts, mine operators are also armed with attorneys who have withheld evidence or presented incomplete evidence to courts in miner compensation cases.<sup>110</sup> The Center reviewed 15 cases by one such firm, Jackson Kelly PLLC, over a period of decades and found that the firm withheld reports in 11 cases in which its medical experts concluded the miner had black lung.<sup>111</sup> For example, the firm suppressed reports by a leading medical expert that supported a finding of black lung in the case of a miner who had been fighting the firm for 28 years. When DOL's Benefits Review Board ordered the firm to release the reports, the operator represented by Jackson Kelly abandoned its appeals and the miner finally received black lung benefits, only to die two years later.<sup>112</sup>

Accordingly, the Act includes several provisions addressing these challenges to fair adjudication:

- Section 103 requires the Secretary to screen physicians for conflicts of interest and professionalism issues as DOL periodically reviews a list it maintains of physicians qualified to conduct pulmonary examinations of miners.
- Section 104 strengthens criminal penalties for anyone knowingly and willfully making false statements or misrepresentations, provides guidelines for making determinations as to whether attorney behavior warrants disqualification, and grants ALJs the authority to issue sanctions when a party fails to comply with a discovery order. Any attorney found guilty of this conduct is also permanently disqualified from representing any party or appearing in any further black lung benefits proceedings. Although current law imposes a misdemeanor penalty on persons willfully making a false statement for the purpose of *obtaining* a benefit or payment, it is silent with regard to persons willfully making a false statement with the purpose of *preventing* a claimant from receiving a benefit for which the claimant would otherwise be eligible.
- Section 105 allows claimants both miners *and* their survivors to file a new claim for benefits if such claim has been denied and such decision involved a chest radiograph that had been negatively interpreted by a physician with respect to whom the Secretary has directed that such physician's medical opinions be given no weight in evaluating a claim of benefits.

### Delays in Claim Processing

Another obstacle to swift obtainment of black lung benefits is that the system itself is riddled with delays.

In a 2014 Senate hearing, longtime claimant attorney John Cline testified about delays in simply getting an appeal heard:

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<sup>110</sup> Chris Hamby, *Coal Industry's Go-To Law Firm Withheld Evidence of Black Lung, at Expense of Sick Miners*, CTR. FOR PUB. INTEGRITY (Aug. 6, 2014), <https://publicintegrity.org/environment/coal-industrys-go-to-law-firm-withheld-evidence-of-black-lung-at-expense-of-sick-miners/>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

Finally, I would like to emphasize that massive delays in the processing of claims, particularly at the ALJ level, are creating huge problems for claimants. We have been advised that the caseload at the ALJ level has nearly doubled since 2004 and the number of ALJs for both Longshore and Black Lung cases has dropped from 45 to 36. As a result, the number of days it takes for an appealed case to be assigned to a judge has increased from 160 to 429. Put differently, the delay has gone from a little over 3 months to more than 14 months. And then, it still takes a number of months for a hearing date to be set and usually a year or more for the judge to issue a decision. In other words, there is a virtual log jam at the ALJ level, and because of the long delay, *it is not unusual for the claim to outlive the miner or the widow.*

I cannot emphasize enough that these long delays are causing huge problems for claimants. If a miner or widow is denied benefits at the District Director level but has a valid claim, it will take years for the miner or widow to prevail with no benefits during the interim. Or, if a claimant is awarded benefits by the District Director, the miner or widow has to live with the uncertainty that those benefits could be overturned on appeal, which means that the miner or widow may have to repay all the benefits he or she received while the award was tied up in litigation.<sup>113</sup>

A funding increase for OALJ starting in Fiscal Year 2015 enabled DOL to slowly decrease this delay, so that a 46-month backlog in Fiscal Year 2014 reduced to a 22-month backlog in Fiscal Year 2018.<sup>114</sup> DOL most recently projected that the backlog will have inched down to 21 months in Fiscal Year 2022.<sup>115</sup> Of course, 21 months is still a significant delay for benefits that are so important to miners and their families.

Another source of preventable delays is the process for verification of employment. According to the DOL-IG, DOL still uses a manual, paper-based system to request the employment records from the Social Security Administration (SSA) “because it does not have the statutory authority to directly access SSA’s database.”<sup>116</sup> That outdated mode of communication adds time to the black lung claims process, according to the DOL-IG:

[I]n FY 2014 it took an average of 58 days to obtain miners’ earnings records from SSA. OWCP relied on two sources to identify operators who would eventually be responsible for miners’ black lung benefits: 1) miners, who named the last operator who employed them for at least a year, and 2) the [SSA], which provided OWCP with miners’ earnings records.

The accuracy of each miner’s employment history is of utmost importance in making accurate liability and entitlement findings.... In addition, the earnings record is necessary to determine the length of a miner’s Coal Mine Employment

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<sup>113</sup> *Struggle for Justice*, *supra* note 75, at 31-32 (emphasis added).

<sup>114</sup> U.S. Dep’t of Lab., *FY 2023 Congressional Budget Justification: Departmental Management* 70 (2022).

<sup>115</sup> *Id.* at 71.

<sup>116</sup> OFF. OF INSPECTOR GEN, U.S. DEP’T OF LAB., 05-15-001-50-598, PROCEDURAL CHANGES COULD REDUCE THE TIME REQUIRED TO ADJUDICATE FEDERAL BLACK LUNG BENEFIT CLAIMS 11 (Apr. 9, 2015), <https://www.oig.dol.gov/public/reports/oa/2015/05-15-001-50-598.pdf>.

(CME) and therefore, whether he or she may take advantage of certain rebuttable presumptions that assist in establishing entitlement to benefits....

Because paper forms have to be mailed back and forth between DOL and SSA, each iteration of this process introduces delays and adds additional time when SSA rejects and returns forms for minor clerical errors.<sup>117</sup>

The DOL-IG concluded that “[o]nline access to SSA earnings records would simplify and speed up the process of verifying claimants’ employment histories.”<sup>118</sup>

As John Cline testified, these delays not only prevent miners and their families from obtaining benefits when they need them most but also compound their challenges in obtaining counsel:

These long delays also make it much more difficult for claimants to obtain representation. It is completely unrealistic to expect that lawyers who only get paid if the claimant prevails will want to represent miners or widows if they also have to wait years to be paid an hourly rate for their time and will not be paid at all if the claimant does not prevail.<sup>119</sup>

Accordingly, the Act addresses these sources of delay:

- Section 108 of the Act requires the SSA to provide DOL with access to miners’ employment information in electronic form.
- Section 121 requires the Secretary, within 90 days, to submit to Congress a comprehensive strategy to reduce the backlog of cases pending before OALJ. The strategy must identify, among other things, the resources necessary to ensure that claims brought under the BLBA are decided within 12 months from the date they are received by the OALJ.

### **Premature Settlement Would Trade Swift Resolution for Inadequate Benefits**

These delays and barriers are significant obstacles to miners and their survivors, but authorizing settlements in the BLBA would not ultimately be helpful.

So many states have amended their workers’ compensation laws in the last couple of decades to allow for “compromise-and-release” settlements that the practice is now “ubiquitous.”<sup>120</sup> Such settlements cut off future benefits, including, often, future medical costs.<sup>121</sup> Settlements are associated with problems ranging from “increasingly careless attorney practices” to “the

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Struggle for Justice*, *supra* note 75, at 32.

<sup>120</sup> Emily A. Spieler, *(Re)Assessing the Grand Bargain: Compensation for Work Injuries in the United States, 1900-2017*, 69 RUTGERS U.L. REV. 891, 946 (2017). For more background, see David B. Torrey, *Compromise Settlements Under State Workers’ Compensation Acts: Law, Policy, Practice, and Ten Years of the Pennsylvania Experience*, 16 WIDENER L.J. 199 (2007).

<sup>121</sup> Spieler, *supra* note 120, at 946.



alarming practice of seriously injured, medically unstable workers releasing their employers of responsibility for medical treatment.”<sup>122</sup> Because of the risk that low-ball settlements can result in a shifting of costs onto Medicare,<sup>123</sup> the Center for Medicare and Medicaid Services conducts regular oversight of workers’ compensation settlements pursuant to the *Medicare Secondary Payor Act*<sup>124</sup> “to assure that Medicare remains the secondary payor to the workers’ compensation carrier and is not paying Medicare-covered medical expenses that should have been paid by the workers’ compensation carrier or out of the settlement proceeds allocated for medical care.”<sup>125</sup>

The experience of workers’ compensation settlements in the states counsels against authorizing settlement under the BLBA. As discussed earlier, black lung is a *progressive* disease, requiring increasing medical care and, inevitably, increasing medical *costs* over time. Settlement in federal black lung claims would certainly shorten the litigation and make costs more predictable for employers, but it would put miners in the untenable position of trying to guess how long they will survive and how much their medical care will cost as the disease progresses at a time when they are often financially vulnerable to the offer of a quick fix. Likewise, doctors, lawyers, and courts could do little more than guesstimate the rate of progression and life expectancy of an individual miner and whether a settlement offer would prove to be sufficient over time.

Moreover, it is not necessarily the case that settlement would result in swifter delivery of compensation to miners and their families. The black lung benefits program already provides that qualifying miners receive interim benefits from the Trust Fund during the pendency of litigation.<sup>126</sup> Settlement offers of a seemingly large lump sum or heightened income payments in exchange for low fixed medical costs may be tempting for miners and their families at the early stage of the lengthy claims process, but settlement would likely redound almost exclusively to the benefit of coal operators and potentially shift costs onto federal programs such as Medicare and Medicaid.

Accordingly, when the Committee marked up the Act and considered an amendment offered by Rep. Keller that would have replaced the *Attorneys’ Fees and Medical Expenses Payment Program* in section 106 of the Act with a provision to permit settlement of claims in lieu of full disability benefits, the Committee voted to defeat the amendment by a vote of 22 ayes and 27 nays.

### **Benefits Are Vulnerable to Political Choices**

Because the monthly cash benefits are, as discussed earlier, pegged to the federal employees’ pay scale,<sup>127</sup> any federal pay freeze likewise means that miners and their surviving dependents do not receive a cost-of-living adjustment.

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<sup>122</sup> David B. Torrey, *Lump Sum Settlements of Workers’ Compensation Cases: Background and Unanswered Questions Under Section 449 of the Pennsylvania Act*, 72 PENN. BAR. ASS’N Q. 23, 24 (2001).

<sup>123</sup> See also text accompanying notes 152-177 *infra*.

<sup>124</sup> 42 U.S.C. § 1395x *et al.*

<sup>125</sup> Ann Sandstrom & Michael Kaplan, *The Big Picture Approach to Full and Final Medical Settlements in Workers’ Compensation Claims: Why Relying on a Medicare Set-Aside Is Not Enough*, 58 ARIZ. ATT’Y 68 (2022).

<sup>126</sup> See, e.g., OWCP Rules for Adjudication of Claims by the District Director, 20 C.F.R. § 725.420.

<sup>127</sup> See text accompanying note 72 *supra*.

In response to budget deficit and political pressures, the Obama Administration implemented a federal pay freeze in fiscal years 2011 through 2013 and implemented a pay increase in fiscal years 2014 and 2015 that was below the statutorily prescribed general pay increases based on the Employment Cost Index (ECI).<sup>128</sup> In 2016, the government reinstated full increases.<sup>129</sup> As a result, in 2021, a miner or surviving dependent received \$8,323.20 annually in cash benefits; however, if the benefit rate been adjusted in accordance with the Employment Cost Index from 2011 to 2015, the benefit rate would have been \$8,643.85, and the rate for 2022 would be set at \$8,834.01. The chart below demonstrates the difference between current cash benefit levels and the levels that beneficiaries would be receiving if the ECI-based pay increases had been adopted from 2011 to 2015:

<u>Year</u>	<u>Federal Pay Adjustment</u>	<u>Resulting Black Lung Annual Benefit</u>	<u>ECI</u>	<u>Benefit if ECI Applied</u>
2011	0.00%	\$7,507.20	0.90%	\$7,574.76
2012	0.00%	\$7,507.20	1.10%	\$7,658.09
2013	0.00%	\$7,507.20	1.20%	\$7,749.98
2014	0.30%	\$7,581.60	1.30%	\$7,850.73
2015	1.00%	\$7,657.20	1.30%	\$7,952.79
2016	1.00%	\$7,734.00	1.00%	\$8,032.32
2017	1.00%	\$7,812.00	1.00%	\$8,112.64
2018	1.40%	\$7,921.20	1.40%	\$8,226.22
2019	1.40%	\$8,031.60	1.40%	\$8,341.39
2020	2.60%	\$8,240.40	2.60%	\$8,558.26
2021	1.00%	\$8,323.20	1.00%	\$8,643.85
2022	2.20%	\$8,506.80	2.20%	\$8,834.01

The Social Security Administration and the Office of Personnel Management both currently use the CPI-W for retiree benefits cost-of-living adjustments to ensure that the benefits are not eroded by inflation.<sup>130</sup> Pinning future black lung benefit levels to the CPI-W rather than the GS pay increases will ensure that compensation benefits for miners and their dependent survivors are not further eroded by inflation or vulnerable to future political controversies over federal employees' pay.<sup>131</sup>

To address this issue, section 107 of the Act resets the benefit level for 2022 to \$8,834.01 and increases the level annually thereafter according to the CPI-W.

<sup>128</sup> BARBARA L. SCHWEMLE, CONG. RES. SERV., R47033, FEDERAL PAY: GENERAL SCHEDULE (GS) ADJUSTMENT PROCESS, AND AMOUNTS PROVIDED SINCE 2010, AND ISSUES FOR CONGRESS 10, 17-18 (Feb. 17, 2022).

<sup>129</sup> *Id.*

<sup>130</sup> *Cost-of-Living Adjustment (COLA) Information for 2022*, SOC. SEC. ADMIN., <https://www.ssa.gov/cola/> (last visited Apr. 23, 2022).

<sup>131</sup> SSA's 2022 COLA adjustment was 5.9 percent, *see id.*, and the GS pay scale increased pay by 2.2 percent. Exec. Order No. 14,061, 86 Fed. Reg. 73601 (Dec. 28, 2021). Meanwhile, from December 2020 to December 2021, consumer prices for all items rose 7.0 percent. *See Consumer Price Index: 2021 in Review*, U.S. BUREAU OF LAB. STAT. (Jan. 14, 2022), <https://www.bls.gov/opub/ted/2022/consumer-price-index-2021-in-review.htm#:~:text=From%20December%202020%20to%20December,of%203.9%20percent%20in%202020.>

## **Insufficient Oversight of Self-Insured Mine Operators Threatens the Solvency of the Black Lung Disability Trust Fund**

As discussed above, the Black Lung Disability Trust Fund is integral to the black lung disability benefits program. The Trust Fund was created to cover the cost of benefits provided to eligible miners who ended their employment before January 1, 1970, and to serve as a backstop for claims related to miners whose employment ended after December 31, 1969. In the latter case, the Trust Fund covers the cost of benefits where no responsible operator can be identified.

### **Black Lung Disability Trust Fund Financing**

The Trust Fund is financed primarily by a tax on coal produced and sold domestically.<sup>132</sup> The tax was first established in 1978 at \$0.50 per ton on underground coal and \$0.25 per ton on surface coal, both up to 2 percent of sales price. In 1982, the tax was raised to \$1 per ton for underground coal and \$0.50 per ton for surface coal, in each case up to 4 percent of sale price.<sup>133</sup> The last increase came in 1986, when the rates were raised to \$1.10 per ton on underground coal and \$0.55 per ton of surface coal.<sup>134</sup> The 1986 rate is subject to reauthorization, and the last reauthorization occurred in December 2020 for the calendar year 2021.<sup>135</sup> That reauthorization lapsed without further action on December 31, 2021, and the tax rate reverted to the 1978 levels. Congress has since permanently extended the 1986 level.<sup>136</sup>

The Trust Fund has operated on a deficit in almost every year since its first fiscal year in operation. The Trust Fund began paying out benefits prior to collecting the excise tax that was intended to be the Trust Fund's primary financial source, so the Trust Fund began operation at a loss. In its first three fiscal years, the Trust Fund's revenue provided less than 40 percent of the administrative and benefit costs.<sup>137</sup>

When the Trust Fund runs a deficit, the Treasury issues it loans as "repayable advances."<sup>138</sup> The Trust Fund must repay these advances back to the General Fund with interest. In the first ten years of operation, the Trust Fund borrowed from the General Fund at interest rates between 6.5 and 13.9 percent on 30-year terms.<sup>139</sup> In 1985, the Trust Fund paid out roughly \$275 million, or about half of the Fund's revenue for that year, in interest payments.<sup>140</sup> While the Trust Fund's revenue has generally exceeded expenses since 1990, the earlier borrowing saddled the Trust Fund with debt.<sup>141</sup>

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<sup>132</sup> 26 U.S.C. § 4121.

<sup>133</sup> GOV'T ACCOUNTABILITY OFF., *supra* note 76, at 7.

<sup>134</sup> *Id.* at 9.

<sup>135</sup> Further Consolidated Appropriations Act of 2020, Pub. L. No. 116-94, Div. EE, Title I, § 149.

<sup>136</sup> Pub. L. No. 117-169, § 13901.

<sup>137</sup> GOV'T ACCOUNTABILITY OFF., *supra* note 76, at 12.

<sup>138</sup> 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>.

<sup>139</sup> GOV'T ACCOUNTABILITY OFF., *supra* note 76, at 9.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

By 2008, the Trust Fund's debt exceeded \$10 billion.<sup>142</sup> Congress authorized an appropriation in the *Energy Improvement and Extension Act of 2008* that forgave \$6.5 billion of the Trust Fund's debt.<sup>143</sup> However, in the wake of the 2008 recession, revenue from the coal excise tax was less than expected, and increased competition with other, cheaper forms of energy has meant that coal use has decreased. As a result, the Trust Fund began again borrowing from the Treasury in 2010,<sup>144</sup> and the Trust Fund's current debt is just over \$6 billion.<sup>145</sup> Since federal law does not place a cap on the amount that the Trust Fund can borrow from the Treasury's General Fund, the Trust Fund could borrow in perpetuity while significantly increasing insolvency. GAO projects that permanent reduction in the excise tax rate, coupled with a decline in coal production, will expand the Trust Fund's debt to \$15.4 billion by 2050.<sup>146</sup>

While coal produced and sold domestically is subject to the excise tax to finance the Trust Fund, coal that is exported is not included in the excise tax scheme.<sup>147</sup> The resulting impact on the Trust Fund is significant. In 2020, U.S. coal mines produced 540.1 million short tons (MMst) of coal, 12.8 percent of which was exported and thus excluded from the excise tax.<sup>148</sup> Metallurgical coal in particular is largely shielded from the excise tax: of the 55.5 MMst of metallurgical coal produced in 2020, 42.0 MMst—or more than 75 percent—was exported.<sup>149</sup>

During the December 2nd Hearing, Rep. Mark Takano (D-CA-41) questioned OWCP Director Chris Godfrey on the export exemption from the excise tax and the consequence that the exemption has for the liability of metallurgical coal producers:

MR. TAKANO. Warrior Met appears to specialize in metallurgical coal that is largely mined and exported. If I understand it, that coal is not subject to the tax that funds the Black Lung Disability Trust Fund. Is that correct?

MR. GODFREY. That is correct.

MR. TAKANO. So, if this company shifted liabilities onto the Trust Fund, for the most part, it would not have contributed to that Trust Fund?

MR. GODFREY. At least not through the excise tax, that is correct.<sup>150</sup>

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<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 9-10 (characterizing effect of Pub. L. No. 110-343, Div. B, § 113 (2008) (26 U.S.C. § 9501 note)).

<sup>144</sup> *Id.* at 10.

<sup>145</sup> U.S. DEP'T OF LAB., 2021 AGENCY FINANCIAL REPORT 96, <https://www.dol.gov/sites/dolgov/files/OPA/reports/2021annualreport.pdf>.

<sup>146</sup> GOV'T ACCOUNTABILITY OFF., *supra* note 76, at 37.

<sup>147</sup> ERIKA K. LUNDER, CONG. RES. SERV., R42780, EXPORT CLAUSE: LIMITATION ON CONGRESS'S TAXING POWER, (Oct. 18, 2012).

<sup>148</sup> U.S. ENERGY INFO. ADMIN., ANN. COAL REP. 2020, at ix (Oct. 2021), <https://www.eia.gov/coal/annual/pdf/acr.pdf>.

<sup>149</sup> *Id.*

<sup>150</sup> *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*] (<https://edlabor.house.gov/hearings/strengthening-the-safety-net-for-injured-workers>, 1:21:07-1:21:37).

## Insufficient Collateral from Self-Insured Operators

The Trust Fund's debt has been exacerbated by insufficient oversight of self-insured coal operators.

The BLBA requires operators to secure their liabilities through either self-insurance or a commercial or state insurance program.<sup>151</sup> OWCP is charged with the enforcement of this requirement. GAO has repeatedly identified deficiencies in DOL's oversight of operators allowed to self-insure, including failure to estimate future benefit liability when assessing the amount of collateral required to self-insure and a lack of clear processes for periodic review of continued eligibility for self-insurance.<sup>152</sup>

OWCP's failure to assess sufficient collateral for self-insured operators strains the Trust Fund whenever such operators enter bankruptcy proceedings. From 2014 through 2016, three coal mine operators filed for bankruptcy and, as a result, \$865 million in black lung benefit liabilities were transferred to the Trust Fund.<sup>153</sup> These companies were secured by a total of \$27.4 million in collateral, meaning that nearly 97 percent of their liabilities were unsecured.<sup>154</sup> Five more mine operators became insolvent since 2016, at least two of which are expected to transfer an additional \$61 million in under-collateralized liability to the Trust Fund.<sup>155</sup>

OWCP's response has been incomplete. In 2019, OWCP began an overhaul of its oversight of mine operators' insurance plans and collateral, but the new processes did not include procedures for its planned annual renewal of self-insured operators or for resolving coal operator appeals if an operator disputed OWCP's collateral requirements. In February 2020, OWCP sent letters to 14 self-insured mine operators requesting increased collateral. Seven of the operators appealed; in the absence of appeal procedures, OWCP collected only \$65 million of the \$251 million requested. As a result, OWCP has yet to resolve the issue of insufficient collateral from these self-insured operators.<sup>156</sup>

GAO discovered that OWCP had even reversed course on improving the review and appeals process, without an apparent plan to address the problem:

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.

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<sup>151</sup> BLBA § 923 (30 U.S.C. § 933).

<sup>152</sup> 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), <https://www.gao.gov/assets/gao-20-438t.pdf>.

<sup>153</sup> BROWN BARNES, *supra* note 152.

<sup>154</sup> *Id.*

<sup>155</sup> COSTA, *supra* note 152.

<sup>156</sup> *Id.*

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.

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.<sup>157</sup>

Accordingly, section 131 of the Act offers reforms to improve the financial integrity of the Trust Fund as follows:

- Subsection (a) requires the Secretary to promulgate, within 60 days of the date of enactment, an interim final rule on self-insurance that establishes: (1) criteria for operators' eligibility to seek and maintain approval for self-insurance; (2) procedures for periodic determination of the minimum amount of security required for each self-insured operator; and (3) procedures for OWCP review of operator appeals of self-insurance eligibility and security amount decisions. This provision also requires a final rule to be published within 12 months of the date of enactment. Although OWCP has on its regulatory agenda an objective to publish a proposed rule this summer on these topics, the threat of additional self-insured operators abandoning their benefit liabilities through bankruptcy onto the Trust Fund justifies swifter action.
- Subsection (b) disincentivizes violations of the requirement to maintain commercial insurance or appropriate self-insurance security by increasing civil monetary penalties from \$1,000 to \$25,000. It also provides that civil damages for unsecured benefits in the event of bankruptcy or permanent abandonment of the obligation to secure payment shall include the actuarial present value of benefit liabilities shifted onto the Trust Fund, projected as of the date of failure to secure benefits, less any collateral recovered, plus interest.

#### Accountability for Corporate Officers and Related Corporate Entities

While DOL has worked to overhaul its oversight, it has failed to use every tool available. The BLBA provides for the personal liability of certain officers where a corporate mine operator fails to insure or collateralize benefit liabilities:

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<sup>157</sup> *Id.* at 1.

[T]he president, secretary, and treasurer [of such corporation] shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this subchapter in respect of any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.<sup>158</sup>

DOL has not used this tool in decades, as Rep. Pramila Jayapal (D-WA-7) pointed out in a colloquy with Julia Hearthway, then the Director of OWCP, during a February 2020 hearing before the Committee's Workforce Protections Subcommittee:

MS. JAYAPAL. Alpha Natural Resources' executives only posted \$12 million of the company's reserves to cover \$495 million in liabilities, and yet Alpha's executives managed to pay themselves tens of millions of dollars prior to and during bankruptcy proceedings. If the DOL were to use its current legal authorities to sue mining executive to recover losses due to underfunded self-insurance, do you expect that those executives would do a better job of collateralizing their obligations?

MS. BROWN BARNES. Yes. And that would have to happen before bankruptcy, because after bankruptcy DOL has to get in line with the other unsecured creditors.

MS. JAYAPAL. Exactly. It is too late by then.

MS. BROWN BARNES. Yes.

MS. JAYAPAL. And the DOL has used this tool before, and it recovered money for the taxpayer.... And so, the DOL may, under the *Black Lung Benefits Act*, impose personal liability on CEOs and high-level officers of the mining company when the company has not complied with its obligation to provide sufficient insurance to cover its liabilities to the program. Prior secretaries of the DOL have successfully pursued those actions, including Secretaries Brock and Donovan, who served under President Reagan. But under this current leadership, the DOL doesn't seem to have done that. Is that correct? Has the DOL enforced this provision and required mining company executives to pay their fair share instead of putting it on the taxpayers?

MS. HEARTHWAY. So I noticed you went back to the Reagan Administration. I could not find an instance where daily fines were administered against a coal operator for not securing the appropriate insurance in the past 20 years.

MS. JAYAPAL. But is there a reason you wouldn't do it? It is allowed by the law, so—

MS. HEARTHWAY. No, I think it is—I think it is a valuable tool if they do not secure the appropriate insurance or put up the required collateral.

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<sup>158</sup> 30 U.S.C. § 933.

MS. JAYAPAL. Because you could do that right now from the executives of Alpha, Patriot, or James River. Those are all three self-insured companies that recently went bankrupt. That would be a great way to ensure that those companies actually pay into the Fund that they knew from the very beginning that they were supposed to pay into.<sup>159</sup>

Increasingly, however, individual corporate officers are not the only relevant decisionmakers. Private equity firms—or, in the words of United Mine Workers spokesperson Phil Smith, “vulture capital”<sup>160</sup>—are taking over coal firms in the U.S. and around the world.<sup>161</sup> In the December 2nd Hearing, Rep. Takano explored the potential consequences of private equity interventions in coal mining through the case example of Alabama-based operator Warrior Met Coal, one of the companies from which OWCP had requested but not yet collected increased collateral. After entering into the record excerpts from the company’s filings with the Securities Exchange Commission, Rep. Takano observed that the company “has paid out a whopping \$1.5 billion in dividends and stock buybacks since 2017 during a period of only \$1.4 billion in total book net income and only \$312 million in increased company value.”<sup>162</sup> He added, “It appears that the private equity funds controlling this company are stripping its assets,” increasing the risk that the company could be driven into bankruptcy and shift its black lung benefit liabilities onto the Trust Fund.<sup>163</sup> These private equity enterprises sometimes take the form of multiple funds with “layers of fund-related entities.”<sup>164</sup>

In light of these challenges to the solvency of the Trust Fund, the Act makes several critical reforms:

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<sup>159</sup> *Asleep at the Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund Workers: Hearing Before the Subcomm. on Wrkf. Prots. of the H. Comm. on Educ. & Lab.*, 116th Cong. 38-39 (2020).

<sup>160</sup> Sarah Jones, *Miners vs. Vultures*, NEW YORK (Jan. 20, 2022), <https://nymag.com/intelligencer/2022/01/striking-warrior-met-coal-miners-challenge-private-equity.html>.

<sup>161</sup> ALYSSA GIACHINO, PRIV. EQ. STAKEHOLDER PROJ., AS CLIMATE CHANGE REQUIRES CUTS TO COAL, PRIVATE EQUITY BUYS MORE (June 2020), <https://pestakeholder.org/wp-content/uploads/2020/07/PESP-As-Coal-Declines-PE-Buys-More.pdf>; James Attwood, *Private Equity Lines Up for Coal ‘Bonanza’ Left by Public Miners*, BLOOMBERG (Jan. 3, 2022), <https://www.bloomberg.com/news/articles/2022-01-03/private-equity-lines-up-for-coal-bonanza-left-by-public-miners>; Anthony Barich, *Thermal Coal Miners to Seek Private Route for Financing Amid Rising ESG Tide*, S&P GLOB. MKT. INTEL., Nov. 26, 2020, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/thermal-coal-miners-to-seek-private-route-for-financing-amid-rising-esg-tide-61466495>; *As Climate Change Requires Cuts to Coal, Private Equity Buys More*, PRIV. EQ. STAKEHOLDER PROJ. (June 12, 2020), <https://pestakeholder.org/as-climate-change-requires-cuts-to-coal-private-equity-buys-more/>; Virginia Heffernan, *The Rise of Private Equity Investment in Mining & Resources*, TOUCHPOINT BY FIRMEX, <https://www.firmex.com/resources/uncategorized/the-rise-of-private-equity-investment-in-mining-resources/> (last visited Aug. 3, 2022); Virginia Heffernan, *Private Equity Investment in Mining: Not Just a Rumour*, TOUCHPOINT BY FIRMEX, <https://www.firmex.com/resources/uncategorized/private-equity-investment-in-mining-not-just-a-rumour/> (last visited Aug. 3, 2022).

<sup>162</sup> *Strengthening the Safety Net*, *supra* note 150 (video of colloquy between Rep. Takano and OWCP Director Christopher Godfrey, <https://edlabor.house.gov/hearings/strengthening-the-safety-net-for-injured-workers> 1:21:39-1:22:23).

<sup>163</sup> *Id.*

<sup>164</sup> *Sun Cap. Partners III v. New Eng. Teamsters & Trucking Indus. Pens. Fund*, 724 F.3d 129, 133 (1st Cir. 2013).



- Section 131(b)(1) amends the BLBA to add an operator’s chief executive officer and chief operating officer to the list of corporate officers that can be held severally liable with the corporation for civil monetary penalties, jointly and severally liable for unsecured benefit payments, severally liable for imprisonment, and jointly liable for criminal fines.
- Section 131(b)(1) also adds “other responsible parties” to the list of corporate officers that can be held liable with the corporate operator for civil remedies and criminal punishment, and section 131(b)(2) defines such parties as any individual or business entity with direct or indirect power over the management and policies of the operator or any business under an operator’s common control. The definition parallels terms found in the *Employee Retirement Income Security Act of 1974*,<sup>165</sup> which have at times been held to extend liability to private equity and other interconnected enterprises with active roles in leading the affairs of an employer beyond merely passive investing.<sup>166</sup>

### **Legally Establishing the Office of Workers’ Compensation Programs Would Improve Oversight and Accountability**

Section 201 of the Act codifies DOL’s Office of Workers’ Compensation Programs (OWCP) and designates that its director be subject to appointment by the President and confirmed by the U.S. Senate. It also replaces the term “Bureau of Employees’ Compensation,” which is an obsolete designation in law. OWCP administers the black lung benefits program.

OWCP originated in an organization established in 1916 to administer claims under the *Federal Employees’ Compensation Act*<sup>167</sup> (FECA).<sup>168</sup> Today, FECA covers more than three million civilian federal employees, Members of Congress, the Peace Corps, and AmeriCorps/VISTA volunteers.

In addition to the black lung benefits and the FECA programs, OWCP also administers the following:

- The *Longshore and Harbor Workers’ Compensation Act of 1927*,<sup>169</sup> which covers all maritime workers injured or killed working over the navigable waters of the U.S., as well as employees working on adjoining piers, docks, and terminals, plus a number of other groups. Compensation under this Act is paid by employers who are self-insured or through insurance policies provided by private insurers to employers.

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<sup>165</sup> See 29 U.S.C. §§ 1002(9) (defining “person”), 1301(14) (defining “controlled group” and “common control”), 1301(20) (adopting definition in § 1002(9)).

<sup>166</sup> See, e.g., *Sun Cap. Partners III*, 724 F.3d at 141-143, 146-47; *Central States, S.E. & S.W. Areas Pens. Fund v. Fulkerson*, 238 F.3d 891, 897 (2001) (distinguishing between “the passive holding of property” and active conduct of a trade or business).

<sup>167</sup> 5 U.S.C. § 8101 *et seq.*

<sup>168</sup> *History of OWCP*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/owcp/owcphist> (last visited July 5, 2022).

<sup>169</sup> 33 U.S.C. § 901 *et seq.*

- The *Energy Employees Occupational Illness Compensation Program Act*<sup>170</sup> (EEOICPA), which delivers benefits and medical care for work-related illnesses to eligible employees and former employees of the Department of Energy, its contractors and subcontractors, atomic weapons employers, and beryllium vendors. The program also delivers benefits to certain beneficiaries of section 5 of the *Radiation Exposure Compensation Act*.<sup>171</sup>

As part of its responsibilities with these four major statutes, OWCP is responsible for administering compensation benefits in excess of \$6.1 billion per year. When measured by funds adjudicated and disbursed, OWCP is the second largest subagency in the DOL (behind the Employment and Training Administration). Given the size of its responsibilities and the need for accountability to Congress in ensuring fairness, efficiency, and program integrity, it is appropriate to have a Senate-confirmed individual leading this agency.

Although this office does not regulate state workers' compensation programs, it has had a monitoring role. Congress created the National Commission on State Workmen's Compensation Laws in the *Occupational Safety and Health Act of 1970* to undertake "a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation."<sup>172</sup> In 1972, the National Commission concluded that "the protection furnished by workmen's compensation to American workers presently is, in general, inadequate and inequitable"<sup>173</sup> and made 19 recommendations that it regarded as "essential."<sup>174</sup> OWCP has overseen the publication of reports on the implementation of these 19 key recommendations, which continued until the Bush administration ceased producing the report in 2004.

In 2015, DOL identified the need to resume monitoring, because the failure of state workers' compensation systems to provide adequate benefits puts injured workers at great risk of falling into poverty.<sup>175</sup> In fact, workers' compensation absorbs less than 25 percent of the estimated \$250 billion annual cost of workplace illness and injury,<sup>176</sup> and much of that cost is instead shifted to Medicare, Medicaid, and Social Security Disability Insurance.<sup>177</sup> Following congressional direction from the *Consolidated Appropriations Act, FY 2022*,<sup>178</sup> the Biden Administration is moving forward to resume this oversight in FY 2023.<sup>179</sup>

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<sup>170</sup> 42 U.S.C. § 7384 *et seq.*

<sup>171</sup> 42 U.S.C. § 2210 *et seq.*

<sup>172</sup> Occupational Safety and Health Act of 1970, Pub. L. No. 91-596 (Dec. 29, 1970), § 27(d)(1).

<sup>173</sup> NAT'L COMM'N ON STATE WORKMEN'S COMP. L., THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS 3, 19 (July 1972), <https://workerscompresources.com/national-commission-report/>.

<sup>174</sup> *Id.* at 26.

<sup>175</sup> U.S. DEP'T OF LAB., DOES THE WORKERS' COMPENSATION SYSTEM FULFILL ITS OBLIGATIONS TO INJURED WORKERS? (2015), <https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSystemReport.pdf>.

<sup>176</sup> J. Paul Leigh, *Economic Burden of Occupational Injury and Illness in the United States*, 89 MILBANK Q. 728 (2011).

<sup>177</sup> Alison Morantz *et al.*, *Economic Incentives in Workers' Compensation: A Holistic, International Perspective*, 69 RUTGERS L. REV. 1015, 1065-66 (2017).

<sup>178</sup> H.R. Rep. No. 117-96, Title I, 30 (2021) (Comm. Rpt.).

<sup>179</sup> OFF. OF WORKERS' COMP. PROGRAMS, FY 2023 CONGRESSIONAL BUDGET JUSTIFICATION: OFFICE OF WORKERS' COMPENSATION PROGRAMS, OVERVIEW 4 (2022), <https://www.dol.gov/sites/dolgov/files/general/budget/2023/CBJ-2023-V2-03.pdf>.

Codification of the agency and Senate confirmation of its leadership would enable greater oversight of an agency with a large portfolio that has the power to make decisions affecting tens of thousands of people every year as well as a responsibility to safeguard the public. Absent the spotlight of congressional oversight, past OWCP leadership neglected to take affirmative steps to end medical provider fraud<sup>180</sup> and address inadequate black lung self-insurance collateral.<sup>181</sup> Moreover, previous OWCP leadership and other agencies actively sought to undermine the implementation of the EEOICPA, which only became public knowledge following multiple congressional hearings.<sup>182</sup> The programs clustered under the banner of OWCP are important and merit meaningful accountability to Congress.

## Conclusion

Without the reforms of the *Black Lung Benefits Improvement Act*, miners whose work gives this country the power it needs to thrive will die destitute and in agony from black lung disease. This bill will facilitate miners' and their families' access to the benefits to which they are entitled, ensure that coal operators play by the rules and pay what they owe, and improve public accountability for DOL's role in accomplishing those objectives.

## SECTION-BY-SECTION ANALYSIS

### Sec. 1. Short title

This section specifies that the bill may be cited as the *Black Lung Benefits Improvement Act of 2022*.

### Sec. 2. Table of contents

This section provides a Table of Contents for the bill.

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<sup>180</sup> See OFF. OF INSPECTOR GEN., U.S. DEP'T OF LAB., 03-17-001-04-431, INTERIM REPORT ON AUDIT OF PHARMACEUTICAL MANAGEMENT IN DOL BENEFIT PROGRAMS: OWCP NEEDS BETTER CONTROLS OVER COMPOUNDED PRESCRIPTION DRUGS (May 23, 2017), <https://www.oig.dol.gov/public/reports/oa/2017/03-17-001-04-431.pdf>; OFF. OF INSPECTOR GEN., U.S. POSTAL SERV., HR-MA-16-003, WORKERS' COMPENSATION COMPOUND DRUG COSTS (Mar. 14, 2016), <https://www.uspsoig.gov/sites/default/files/document-library-files/2016/HR-MA-16-003.pdf>.

<sup>181</sup> See text accompanying notes 151-157 *supra*.

<sup>182</sup> See, e.g., *Energy Employees Occupational Illness Compensation Program: Are We Fulfilling the Promise We Made to These Cold War Veterans When We Created This Program? (Part III): Hearing Before the Subcomm. on Immigr., Border Sec. & Claims of the H. Comm. on the Judiciary*, 109th Cong. (2006); *Energy Employees Occupational Illness Compensation Program: Are We Fulfilling the Promise We Made to These Cold War Veterans When We Created This Program? (Part II): Hearing Before the Subcomm. on Immigr., Border Sec. & Claims of the H. Comm. on the Judiciary*, 109th Cong. (2006); *Energy Employees Occupational Illness Compensation Program: Are We Fulfilling the Promise We Made to These Cold War Veterans When We Created This Program? (Part I): Hearing Before the Subcomm. on Immigr., Border Sec. & Claims of the H. Comm. on the Judiciary*, 109th Cong. (2006); *Energy Employees Occupational Illness Compensation Program: Hearing Before the S. Comm. on Energy & Nat. Res.*, 108th Cong. (2003); *Oversight of the Management Practices at the Office of Workers' Compensation Programs: Hearing Before the Subcomm. on Gov't Mngmt., Info. & Tech. of the H. Comm. on Gov't Ref.*, 105th Cong. (1998). See also H. COMM. ON GOV'T REF., MANAGEMENT PRACTICES AT THE OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR, H.R. REP. NO. 106-1024 (2000).

## **TITLE I – BLACK LUNG BENEFITS**

### **Part A – Improvement in the Process of Filing and Adjudicating Claims for Benefits**

#### **Sec. 101. Providing assistance with claims for miners and their dependent family members**

This section amends section 427(a) of the *Black Lung Benefits Act* (BLBA) (30 U.S.C. 937(a)) to authorize black lung clinics to assist miners, surviving spouses, and dependents as they pursue claims for benefits in addition to the clinics' existing role of treating respiratory and pulmonary impairments in active and former coal miners.

#### **Sec. 102. Clarifying eligibility for black lung benefits**

This section amends section 411(c) of the BLBA (30 U.S.C. 921(c)), which currently provides that a miner is entitled to an irrebuttable presumption that the miner is totally disabled by pneumoconiosis, died because of pneumoconiosis, or was totally disabled by pneumoconiosis at the time of death, as the case may be, in cases where the miner has been diagnosed with progressive massive fibrosis or complicated pneumoconiosis. This section substitutes the term “radiograph” for the outmoded term “roentgenogram;” clarifies the benchmark for the relevant diagnosis as an opacity, mass, or lesion for which the “greatest diameter” exceeds one centimeter; and allows for potential shrinkage of any masses or lesions measured after biopsy or autopsy.

#### **Sec. 103. Development of medical evidence by the Secretary**

This section amends Part C of the BLBA (30 U.S.C. 931 *et seq.*) by adding the new section 435, as follows:

- Section 435(a) requires the Secretary of Labor (Secretary) to provide a claimant, upon request, an opportunity to substantiate the claimant's claim with a complete pulmonary exam that includes a preliminary report by a physician on the Secretary's list of qualified physicians and supplemental evidence, provided for free to the miner if certain conditions exist.
- Section 435(b) authorizes the Secretary, when a conventional lung X-ray fails to provide a definitive image for diagnosing complicated pneumoconiosis, to provide a high-quality, low-dose or standard CT scan if a chest radiograph reveals advanced pneumoconiosis (ILO category 2/1 or greater) or a coalescence of small opacities.
- Section 435(c) spells out the trigger for requiring the Secretary to develop supplemental evidence in cases in which a party opposing the claim provides evidence that could be considered contrary to the initial report of the pulmonary examination, or such party's evidence has been submitted to an Administrative Law Judge (ALJ) that had not been previously considered by the Secretary in making an award.

- Section 435(d) delineates the process for developing supplemental evidence. To develop the supplemental evidence, the Secretary shall request the physician who developed the initial medical report for the claimant to review any medical evidence submitted after the initial report and to update the opinion of such physician in a supplemental report, if warranted. If the original physician who examined the miner is no longer available, the Secretary shall select another qualified physician.
- Section 435(e) codifies the Secretary's practice of creating and maintaining a list of qualified physicians to perform pulmonary examinations of coal miners but enhances quality assurance by requiring that the Secretary pre-screen physicians for adverse professional actions involving medical licensure, certifications, hospital privileges, or professional societies. This section precludes the use of physicians from the list maintained by the Secretary who have a potential or actual conflict of interest through current or recent employment or contractual arrangements with a private party opposing an individual's claim unless the claimant knowingly waives such conflict. The Secretary shall update such list annually by reviewing the suitability of the qualified physicians to remain or be added to the list and assessing any potential conflicts of interest.
- Section 435(f) requires reports produced pursuant to this section to be entered into the claim record and shared with the parties.
- Section 435(g) provides that expenses incurred during the development of the evidence should be paid by the Black Lung Disability Trust Fund, which shall be reimbursed with interest by the responsible operator if the claim results in a final award for benefits.

#### **Sec. 104. False statements or misrepresentations, attorney disqualification, and discovery sanctions**

This section rewrites section 431 of the BLBA to read as follows:

- Sections 431(a)-(b) make it a felony, punishable by no more than 5 years in prison, for any person, including a claimant, operator or any authorized agent of an operator, physician, or insurer, to knowingly and willfully (1) make a false statement or misrepresentation for purposes of obtaining, denying, or otherwise affecting any black lung benefits or (2) threaten, coerce, intimidate, deceive, or mislead a party, representative, witness, potential witness, judge, or anyone participating in a proceeding.
- Section 431(e) requires the United States Attorney for a district in which a violation of section 431(a) takes place to make every reasonable effort to investigate a complaint promptly.
- Section 431(d) establishes that any attorney found guilty of conduct under Section 431(a)-(b) is also permanently disqualified from representing any party or appearing in any further proceedings under the Act.

- Section 431(e) provides guidelines for making determinations as to whether attorney behavior warrants disqualification and grants ALJs the authority to issue sanctions when a party fails to comply with a discovery order.
- Section 431(f) requires the Secretary to promulgate regulations to provide procedures for disqualifications and discovery sanctions.

#### **Sec. 105. Readjudicating cases involving certain chest radiographs**

This section allows claimants, including coal miners and their survivors, to file a new claim for benefits if such claim has been denied and such decision involved a chest radiograph that had been interpreted as negative for simple pneumoconiosis, complicated pneumoconiosis, or progressive massive fibrosis by a physician with respect to whom the Secretary has directed that such physician's medical opinions be given no weight in evaluating a claim of benefits. Any benefit award is retroactive: for miners, such award dates back to the month that the erroneously denied claim was originally filed; for survivors, such award dates back to the month of the miner's death.

#### **Sec. 106. Attorneys' fees and medical expenses payment program**

This section authorizes program payments to provide miners' attorneys with legal fees of up to \$1,500 at the District Director level and up to \$3,000 at the ALJ level for a total of up to \$4,500, provided that the claimant prevails at each level. In addition, claimants may seek reimbursement of up to \$1,500 for medical costs at each level, for a total of no more than \$3000. The legal fees and medical costs under this section would initially be paid from the Black Lung Disability Trust Fund; however, if the miner ultimately prevails in a claim for benefits, the responsible coal operator would be required to reimburse the Trust Fund for the legal fees and costs that were paid under this section and, consistent with existing law, would be required to pay any additional attorney's fees and allowable costs that exceed the amount that was already paid from the Trust Fund.

#### **Sec. 107. Restoring adequate benefit adjustments for miners suffering from black lung disease and for their dependent family members**

This section sets the annual rate of benefit payments for Black Lung claimants at \$8,834.01, or \$736.17 per month, beginning in 2022. After 2022, this section ties yearly increases in benefit payments to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

#### **Sec. 108. Disclosure of employment and earnings information for black lung benefits claims**

This section requires the Social Security Administration (SSA) to provide the Department of Labor (DOL) with access to miners' employment information in electronic form.

## **Part B – Reports to Improve the Administration of Benefits Under the Black Lung Benefits Act**

### **Section 121. Strategy to reduce delays in adjudication**

This section requires the Secretary, within 90 days, to submit to Congress a comprehensive strategy to reduce the backlog of cases pending before the Office of Administrative Law Judges (OALJ). The strategy must identify, among other things, the resources necessary to ensure that claims brought under the BLBA are decided within 12 months from the date they are received by the OALJ.

## **Part C—Improvement in the Financial Security of the Black Lung Benefits Disability Trust Fund**

### **Sec. 131. Policies for securing the payment of benefits**

This section requires the Secretary to issue an interim final rule within 60 days of enactment of this Act that will establish clear processes for determining an operator's eligibility to self-insure, assessing appropriate levels of collateral to secure the operator's estimated black lung liabilities and reviewing an operator's appeals of decisions about self-insurance eligibility or required security amounts.

This section also increases civil monetary penalties for failure to maintain required security or insurance from \$1,000 to \$25,000. Current law provides that certain corporate officers of the operator can be held jointly or severally liable for such failure, and this section expands that list by naming additional corporate officers who, and related business entities that, can be held jointly or severally liable.

## **TITLE II – ESTABLISHING THE OFFICE OF WORKERS' COMPENSATION PROGRAMS**

### **Sec. 201. Office of Workers' Compensation Programs**

This section codifies the Office of Workers' Compensation Programs in DOL, which shall be directed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

## **TITLE III – ADDITIONAL PROVISIONS**

### **Sec. 301. Technical and conforming amendments**

Amendments to the BLBA in 2010 popularly known as the "Byrd amendments" restored a presumption of total disability or death caused by pneumoconiosis for coal miners who worked for at least 15 years in underground mining and who suffer or suffered from a totally disabling respiratory impairment. The amendments also restored surviving spouses' and dependents' automatic entitlement to survivor benefits if the coal miner died while receiving federal Black

Lung benefits.<sup>183</sup> Several other sections of the BLBA referencing benefits for these miners and surviving spouses were left un-amended. This section makes technical corrections to ensure that the Byrd amendments are applied consistently throughout the BLBA..

This section also makes a series of technical amendments to render the BLBA gender neutral. For example, it replaces the terms “wife” and “widow” with the terms “spouse” or “surviving spouse,” as appropriate. It also modifies current law regarding eligibility for survivor benefits to provide that marital status is determined by the courts of the state in which the marriage was celebrated rather than determining the validity of the marriage based on state of domicile.

### **Sec. 302. Severability**

This section ensures that, if one section of this Act is found to be unconstitutional or otherwise legally unenforceable, the other sections of the law are severed and continue to stand as good law.

## **EXPLANATION OF AMENDMENTS**

The amendments, including the Amendment in the Nature of a Substitute, are explained in the descriptive portions of this report.

## **APPLICATION OF LAW TO THE LEGISLATIVE BRANCH**

Pursuant to section 102(b)(3) of the *Congressional Accountability Act of 1995*, Pub. L. No. 104–1, H.R. 6102, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

## **UNFUNDED MANDATE STATEMENT**

Pursuant to section 423 of the *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93-344 (as amended by section 101(a)(2) of the *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 6102, as amended, prepared by the Director of the Congressional Budget Office.

## **EARMARK STATEMENT**

In accordance with clause 9 of Rule XXI of the Rules of the House of Representatives, H.R. 6102 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of Rule XXI.

## **ROLL CALL VOTES**

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H.R. 6102:

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<sup>183</sup> See text accompanying notes 43-47 *supra*.



**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call:1

Bill: 6102

Amendment Number:2

Disposition: Defeated by a Roll Call Vote of 22 - 27

Sponsor/Amendment: Keller / BL\_SETTLEMENT\_02

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)			X	Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)	X		
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Ms. MILLER-MEEKS (IA)	X		
Ms. WILD (PA)		X		Mr. OWENS (UT)	X		
Mrs. MCBATH (GA)		X		Mr. GOOD (VA)	X		
Mrs. HAYES (CT)		X		Mrs. MCCLAIN (MI)	X		
Mr. LEVIN (MI)		X		Mrs. HARSHBARGER (TN)	X		
Ms. OMAR (MN)		X		Mrs. MILLER (IL)	X		
Ms. STEVENS (MI)		X		Mrs. SPARTZ (IN)			X
Ms. LEGER FERNÁNDEZ (NM)		X		Mr. FITZGERALD (WI)	X		
Mr. JONES (NY)		X		Mr. CAWTHORN (NC)	X		
Ms. MANNING (NC)		X		Mrs. STEEL (CA)	X		
Mr. MRVAN (IN)		X		Ms. LETLOW (LA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. CHERFILUS-MCCORMICK (FL)		X		<i>Vacancy</i>			
Mr. POCAN (WI)		X					
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 22

Nos:27

Not Voting: 3

Total: 53/ Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call:2

Bill: 6102

Amendment Number: 4

Disposition: Defeated by a Roll Call Vote of 22 - 27

Sponsor/Amendment: Foxx / H6102\_AMD\_03

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)		X		Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)			X	Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)	X		
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Ms. MILLER-MEEKS (IA)	X		
Ms. WILD (PA)		X		Mr. OWENS (UT)	X		
Mrs. MCBATH (GA)		X		Mr. GOOD (VA)	X		
Mrs. HAYES (CT)		X		Mrs. MCCLAIN (MI)	X		
Mr. LEVIN (MI)		X		Mrs. HARSHBARGER (TN)	X		
Ms. OMAR (MN)		X		Mrs. MILLER (IL)	X		
Ms. STEVENS (MI)		X		Mrs. SPARTZ (IN)			X
Ms. LEGER FERNÁNDEZ (NM)		X		Mr. FITZGERALD (WI)	X		
Mr. JONES (NY)			X	Mr. CAWTHORN (NC)	X		
Ms. MANNING (NC)		X		Mrs. STEEL (CA)	X		
Mr. MRVAN (IN)		X		Ms. LETLOW (LA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. CHERFILUS-MCCORMICK (FL)		X		<i>Vacancy</i>			
Mr. POCAN (WI)		X					
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 22

Nos:27

Not Voting: 3

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 3

Bill: 6102

Amendment Number: Motion

Disposition: Adopted by a Full Committee Roll Call Vote 28-22

Sponsor/Amendment: Adams motion to report H.R. 6102 to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)		X	
Mr. COURTNEY (CT)	X			Mr. THOMPSON (PA)		X	
Mr. SABLON (MP)			X	Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)		X	
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)		X	
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)		X	
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Mr. MORELLE (NY)	X			Ms. MILLER-MEEKS (IA)		X	
Ms. WILD (PA)	X			Mr. OWENS (UT)		X	
Mrs. MCBATH (GA)	X			Mr. GOOD (VA)		X	
Mrs. HAYES (CT)	X			Mrs. MCCLAIN (MI)		X	
Mr. LEVIN (MI)	X			Mrs. HARSHBARGER (TN)		X	
Ms. OMAR (MN)	X			Mrs. MILLER (IL)		X	
Ms. STEVENS (MI)	X			Mrs. SPARTZ (IN)			X
Ms. LEGER FERNÁNDEZ (NM)	X			Mr. FITZGERALD (WI)		X	
Mr. JONES (NY)	X			Mr. CAWTHORN (NC)		X	
Ms. MANNING (NC)	X			Mrs. STEEL (CA)		X	
Mr. MRVAN (IN)	X			Ms. LETLOW (LA)		X	
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)		X	
Mrs. CHERFILUS-MCCORMICK (FL)	X			<i>Vacancy</i>			
Mr. POCAN (WI)	X						
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 28

Nos: 22

Not Voting: 2

Total: 53 / Quorum: / Report:

(29 D - 24 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

## **STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES**

Pursuant to clause (3)(c) of Rule XIII of the Rules of the House of Representatives, the goal of H.R. 6102 is to improve the fairness in the administration of the *Black Lung Benefits Act* for miners suffering from black lung and their survivors.

## **DUPLICATION OF FEDERAL PROGRAMS**

Pursuant to clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 6102 is known to be duplicative of another federal program, including any program that was included in a report to Congress pursuant to section 21 of Pub. L. No. 111-139 or the most recent Catalog of Federal Domestic Assistance.

## **HEARINGS**

Pursuant to clause 3(c)(6) of Rule XIII of the Rules of the House of Representatives, the Committee's Subcommittee on Workforce Protections held a hearing on December 2, 2021, entitled "Strengthening the Safety Net for Injured Workers," which was used to develop H.R. 6102. The witnesses were: Mr. Christopher J. Godfrey, Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC; and Mr. Thomas M. Costa, Director of Education, Workforce, and Income Security for the Government Accountability Office, Washington, DC. Relevant to developing H.R. 6102, the Committee heard testimony about the status of reforms for the black lung program.

## **STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE**

In compliance with clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

## **NEW BUDGET AUTHORITY AND CBO COST ESTIMATE**

Pursuant to clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget and Impoundment Control Act of 1974*, and pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget and Impoundment Control Act of 1974*, the Committee has received the following estimate for H.R. 6102 from the Director of the Congressional Budget Office:



CONGRESSIONAL BUDGET OFFICE  
U.S. Congress  
Washington, DC 20515

*Phillip L. Swagel, Director*

September 26, 2022

Honorable Robert C. (Bobby) Scott  
Chairman  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6102, the Black Lung Benefits Improvement Act of 2022.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Meredith Decker.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip L. Swagel".

Phillip L. Swagel

Enclosure

cc: Honorable Virginia Foxx  
Ranking Member

## At a Glance

### H.R. 6102 , Black Lung Benefits Improvement Act of 2022

As ordered reported by the House Committee on Education and Labor on March 16, 2022

By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
<b>Direct Spending (Outlays)</b>	<b>0</b>	<b>36</b>	<b>74</b>
<b>Revenues</b>	<b>*</b>	<b>*</b>	<b>*</b>
<b>Increase or Decrease (-) in the Deficit</b>	<b>*</b>	<b>36</b>	<b>74</b>
<b>Spending Subject to Appropriation (Outlays)</b>	<b>0</b>	<b>*</b>	<b>not estimated</b>
Statutory pay-as-you-go procedures apply?	<b>Yes</b>	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	<b>&lt; \$5 billion</b>	Contains intergovernmental mandate?	<b>No</b>
		Contains private-sector mandate?	<b>Yes, Under Threshold</b>

\* = between -\$500,000 and \$500,000.

#### The bill would

- Increase black lung benefits paid to miners and their survivors
- Make it easier for miners to substantiate their claims using computerized tomography (or CT) scans
- Increase the maximum penalty for coal operators who violate self-insurance rules
- Codify existing regulations and practices for paying black lung benefits

#### Estimated budgetary effects would mainly stem from

- Increasing benefits for miners and survivors
- Increasing the number of people who receive black lung benefits
- Reimbursing some attorneys' fees associated with black lung claims

#### Areas of significant uncertainty include

- The number of additional claims that would be paid because of changes to rules for medical evidence

**Detailed estimate begins on the next page.**

## Bill Summary

H.R. 6102 would increase benefits for miners, and their survivors, who are affected by coal workers’ pneumoconiosis (commonly referred to as black lung disease) or other lung diseases and would allow certain attorneys’ fees to be paid by the federal government. In addition, the bill would expand use of computerized tomography (CT) scans as medical evidence to substantiate miners’ black lung claims, resulting in more people receiving benefits. Some of those costs would be paid by responsible coal operators.

## Estimated Federal Cost

The estimated budgetary effect of H.R. 6102 is shown in Table 1. The costs of the legislation fall within budget function 600 (income security).

**Table 1.**  
**Estimated Budgetary Effects of H.R. 6102**

	By Fiscal Year, Millions of Dollars											2022- 2027	2022- 2032
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032		
	Increases in Direct Spending												
Estimated Budget Authority	0	9	6	7	7	7	7	7	8	8	8	36	74
Estimated Outlays	0	9	6	7	7	7	7	7	8	8	8	36	74

Enacting H.R. 6102 would increase revenue by an insignificant amount over the 2023-2032 period. The bill also would increase spending subject to appropriation by an insignificant amount over the 2023-2027 period.

## Basis of Estimate

For this estimate, CBO assumes that H.R. 6102 will be enacted by the end of calendar year 2022. Estimated outlays are based on historical spending patterns for the affected programs.

### Direct Spending

Under current law, miners, and their survivors, affected by black lung and related diseases can receive benefits if their disease is connected to coal mining. If the responsible mine operator cannot pay benefits, the federal government pays benefits out of the Black Lung Disability Trust Fund (BLDTF). H.R. 6102 would increase direct spending chiefly by increasing benefits for people who are disabled and their survivors, increasing the number of miners who could claim those benefits, and reimbursing attorneys for certain legal fees. Over the 2023-2032 period, CBO estimates the bill would cost \$74 million.

**Benefit Rates.** H.R. 6102 would increase the payment for disability and survivors’ benefits, retroactively starting on January 1, 2022, by about 4 percent, and would increase those benefits each year based on the change in the Consumer Price Index. CBO estimates that the



number of people receiving black lung benefits is roughly 25,000 annually; benefits for about two-thirds of those people will be paid out of the BLDTF. On that basis, and using the inflation rates that underlie CBO's baseline, we estimate that enacting this provision would increase direct spending by \$53 million over the 2023-2032 period.

**Attorneys' Fees.** Under the bill, attorneys for people applying for black lung benefits would be reimbursed up to \$1,500 for legal fees if the claimant is awarded benefits by a district director and up to \$3,000 if benefits are awarded by an administrative law judge. Initially, those amounts would be paid by the federal government, but mine operators would be required to reimburse the Department of Labor (DOL) if the operators are also responsible for the claimants' black lung benefits. Using information from the department, CBO estimates that, on net, the bill would increase direct spending from the BLDTF by \$15 million over the 2023-2032 period for attorneys' fees.

**Medical Evidence.** More weight is placed on some types of evidence when evaluating claims for black lung benefits during the adjudication process. Under H.R. 6102, pneumoconiosis or related diseases diagnosed by a CT scan would be weighted equally as other forms of medical evidence in certain cases. Additionally, DOL would be obligated to authorize those scans in certain cases; the cost of authorized medical examination and tests would ultimately be paid for by the BLDTF or responsible coal operator. Because the early stages of pneumoconiosis and related diseases are more likely to be identified through CT scans than other methods, CBO expects that 60 additional people would be awarded black lung benefits over the 2023-2032 period. The federal government would pay the benefits for about 40 of those people through the BLDTF. CBO estimates that the cost of additional scans and benefits would be \$6 million over the 2023-2032 period.

**Criminal Penalties.** CBO estimates that H.R. 6102 would increase collections of criminal penalties, which are recorded as revenues, as discussed below under the heading "Revenues." Criminal penalties are deposited in the Crime Victims Fund and later spent without further appropriation action. CBO estimates those additional penalties would increase direct spending by an insignificant amount over the 2023-2032 period.

**Other Provisions.** H.R. 6102 would amend the descriptions of eligibility for black lung benefits and the Office of Workers' Compensation Programs. Because these provisions would codify existing practices and procedures, they would not affect federal spending.

## Revenues

Under current law, people who make false statements or submit false claims to obtain black lung benefits can face criminal fines and imprisonment. H.R. 6102 would encourage additional investigations of violators, explicitly define the types of violations that may result in fines, and increase the maximum prison sentence for making a false statement. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without





further appropriation action. CBO estimates that those increased penalties would not be significant.

In addition, H.R. 6102 would increase the maximum daily civil penalty from \$3,011 to \$25,000 if coal mine operators fail to maintain required security or insurance. Finally, the bill would expand the list of corporate executives and entities that can be held jointly or severally liable in the event of a failure to pay black lung benefits; the liability would extend beyond bankruptcy filings or other permanent abandonment. Those fines also are recorded as revenues. Given that DOL has not assessed such penalties in recent years, CBO expects those changes would not increase revenues by a significant amount.

### **Spending Subject to Appropriation**

The bill would require DOL to issue new regulations concerning self-insurance, procedures for disqualification of attorneys, and discovery sanctions. The bill also would require the Social Security Administration to make earnings information for living or deceased miners available to DOL in electronic form rather than on paper. CBO estimates that the cost of those provisions would be insignificant over the 2023-2032 period.

### **Uncertainty**

CBO's estimates of the budgetary effects of H.R. 6102 are subject to uncertainty. In particular, the number of claims that would be accepted as a result of new rules concerning medical evidence could differ from CBO's projections. Therefore, the cost of benefits could be higher or lower than CBO estimated.

### **Pay-As-You-Go Considerations**

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 1.

### **Increase in Long-Term Deficits**

CBO estimates that enacting H.R. 6102 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2033.

### **Mandates**

H.R. 6102 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by increasing the amount and availability of benefits paid under the Black Lung Benefits Act. Benefits currently are paid in part by the employers of claimants; therefore, the changes in the bill would increase the cost of an existing mandate. Because of the small number of additional new beneficiaries, CBO estimates that the cost of the mandate



would not exceed the private-sector threshold established in UMRA (\$184 million in 2022, adjusted annually for inflation).

The bill contains no intergovernmental mandates as defined in UMRA.

### **Estimate Prepared By**

Federal Costs: Meredith Decker

Revenues: Omar Morales

Mandates: Andrew Laughlin

### **Estimate Reviewed By**

Elizabeth Cove Delisle  
Chief, Income Security Cost Estimates Unit

Joshua Shakin  
Chief, Revenue Estimating Unit

H. Samuel Papenfuss  
Deputy Director of Budget Analysis

Theresa Gullo  
Director of Budget Analysis

## **COMMITTEE COST ESTIMATE**

Clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 6102. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget and Impoundment Control Act of 1974*.

## **CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 6102, as reported, are shown as follows:

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**BLACK LUNG BENEFITS ACT**

\* \* \* \* \*

**TITLE IV—BLACK LUNG BENEFITS****PART A—GENERAL**

SEC. 401. (a) Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease *or who were found to be totally disabled by such disease*; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

(b) This title may be cited as the “Black Lung Benefits Act”.

SEC. 402. For purposes of this title—

(a) The term “dependent” means—

(1) a child as defined in subsection (g) without regard to subparagraph (2) (B) (ii) thereof; or

[(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 216(b) (1) or (2) of the Social Security Act. The determination of an individual's status as the “wife” of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the “insured individual” referred to therein. The term “wife” also includes a “divorced wife” as defined in section 216(d)(1) of the Social Security Act who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or

there is in effect a court order for substantial contributions to her support from such miner.】

*(2) a spouse who is a member of the same household as the miner, or is receiving regular contributions from the miner for support, or whose spouse is a miner who has been ordered by a court to contribute to support, or who meets the requirements of paragraph (1) or (2) of section 216(b) of the Social Security Act or paragraph (1) or (2) of section 216(f) of such Act. An individual is the “spouse” of a miner when such individual is legally married to the miner under the laws of the State where the marriage was celebrated. The term “spouse” also includes a “divorced wife” or “divorced husband”, as such terms are defined in paragraph (1) or (4) of section 216(d) of such Act, who is receiving at least one-half of his or her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to the spouse’s support from such miner.*

(b) The term “pneumoconiosis” means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

(c) The term “Secretary”, except where expressly otherwise provided, means the Secretary of Labor.

(d) The term “miner” means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes and individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

【(e) The term “widow” includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216(c) (1), (2), (3), (4), or (5), section 216(k) of the Social Security Act, who is not married. The determination of an individual’s status as the “widow” of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the “insured individual” referred to therein. Such term also includes a “surviving divorced wife” as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.】

*(e) The term “surviving spouse” includes the spouse living with or dependent for support on the miner at the time of the miner’s death, or living apart for reasonable cause or because of the miner’s desertion, or who meets the requirements of subparagraph (A), (B), (C), (D), or (E) of section 216(c)(1) of the Social Security Act, subparagraph (A), (B), (C), (D), or (E) of section 216(g)(1) of such Act,*

*or section 216(k) of such Act, who is not married. An individual is the “surviving spouse” of a miner when legally married at the time of the miner’s death under the laws of the State where the marriage was celebrated. Such term also includes a “surviving divorced wife” or “surviving divorced husband”, as such terms are defined in paragraph (2) or (5) of section 216(d) of such Act who for the month preceding the month in which the miner died, was receiving at least one-half of his or her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to the spouse’s support from the miner at the time of the miner’s death.*

(f)(1) The term “total disability” has the meaning given it by regulations of the Secretary of Health, Education, and Welfare, which were in effect on the date of enactment of the Black Lung Consolidation of Administrative Responsibilities Act, for claims under part B of this title, and by regulations of the Secretary of Labor for claims under part C of this title, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

(B) such regulations shall provide that (i) a deceased miner’s employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner’s employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

(C) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act; and

(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

(2) Criteria applied by the Secretary of Labor in the case of—

(A) any claim arising under part B or subject to a determination by the Secretary of Labor under section 435(a);

(B) any claim which is subject to review by the Secretary of Labor under section 435(b); and

(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any

such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.

(g) The term “child” means a child or a step-child who is—

- (1) unmarried; and
- (2)(A) under eighteen years of age, or
- (B)(i) under a disability as defined in section 223(d) of the Social Security Act,
- (ii) which began before the age specified in section 202(d)(1)(B)(ii) of the Social Security Act, or, in the case of a student, before [he ceased] *the individual ceased* to be a student; or

(C) a student.

The term “student” means a “full-time student” as defined in section 202(d)(7) of the Social Security Act, or a “student” as defined in section 8101(17) of title 5, United States Code. The determination of an individual’s status as the “child” of the miner or [widow] *surviving spouse*, as the case may be, shall be made in accordance with section 216(h) (2) or (3) of the Social Security Act as if such miner, or [widow] *surviving spouse* were the “insured individual” referred to therein.

(h) The term “fund” means the Black Lung Disability Trust Fund established by section 9501 of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986*.

(i) For the purposes of subsections (c) and (j) of section 422, and for the purposes of paragraph (7) of subsection (d) of section 9501 of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986*, the term “claim denied” means a claim—

(1) for benefits under part B that was denied by the official responsible for administration of such part; or

(2) in which (A) the claimant was notified by the Department of Labor of an administrative or informal denial more than 1 year prior to the date of enactment of the Black Lung Benefits Reform Act of 1977 and did not, within 1 year from the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence, or (B) the claim was denied under the law in effect prior to the date of enactment of the Black Lung Benefits Reform Act of 1977 following a formal hearing or administrative or judicial review proceeding.

(j) The term “other responsible party” means—

(1) *an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or other enterprise that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an operator or employer; or*

(2) *any trade or business (whether or not incorporated) which is under common control with an operator or employer.*

**SEC. 403. ATTORNEYS’ FEES AND MEDICAL EXPENSES PAYMENT PROGRAM.**

(a) *PROGRAM ESTABLISHED.—*

(1) *IN GENERAL.*—Not later than 180 days after the date of enactment of the Black Lung Benefits Improvement Act of 2022, the Secretary shall establish a payment program to pay attorneys' fees and other reasonable and unreimbursed medical expenses incurred in establishing the claimant's case, using amounts from the fund, to the attorneys of claimants in qualifying claims.

(2) *QUALIFYING CLAIM.*—A qualifying claim for purposes of this section is a contested claim for benefits under this title for which a final order has not been entered within two years of the filing of the claim.

(3) *USE OF PAYMENTS FROM THE FUND.*—Notwithstanding any other provision of law, amounts in the fund shall be available for payments authorized by the Secretary under this section.

(b) *PAYMENTS AUTHORIZED.*—

(1) *ATTORNEYS' FEES.*—If a claimant for benefits under this title obtains a proposed decision and order from a district director with an award of benefits for a qualifying claim, or an award for a qualifying claim before an administrative law judge, the district director may approve attorneys' fees for work done before such director in an amount not to exceed \$1,500 and an administrative law judge may approve attorneys' fees for work done before such judge in an amount not to exceed \$3,000. The Secretary shall, through the program under this section, pay such amounts approved.

(2) *MEDICAL EXPENSES.*—If a claimant for benefits under this title obtains a proposed decision and order from a district director with an award of benefits for a qualifying claim, or an award for a qualifying claim before an administrative law judge, such district director and administrative law judge may each approve an award to the claimant's attorney of reasonable and unreimbursed medical expenses incurred in establishing the claimant's case in an amount not to exceed \$1,500. The Secretary shall, through the program under this section, pay such amounts approved.

(3) *MAXIMUM.*—The program established under this section shall not pay more than a total of \$4,500 in attorneys' fees nor more than \$3,000 in medical expenses for any single qualifying claim.

(c) *REIMBURSEMENT OF FUNDS.*—In any case in which a qualifying claim results in a final order awarding compensation, the liable operator shall reimburse the fund for any fees or expenses paid under this section, subject to enforcement by the Secretary under section 424 and in the same manner as compensation orders are enforced under section 21(d) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921(d)).

(d) *ADDITIONAL PROGRAM RULES.*—Nothing in this section shall limit or otherwise affect an operator's liability for any attorneys' fees, medical expenses, or other allowable and unreimbursed expenses awarded by the district director or an administrative law judge that were not paid by the program under this section. Nothing in this section shall limit or otherwise affect the Secretary's author-



*ity to use amounts in the fund to pay approved attorneys' fees and other allowable and unreimbursed expenses in claims for benefits under this title for which a final order awarding compensation has been entered and the operator is unable or refuses to pay.*

*(e) NO RECOUPMENT.—Any payment for attorneys' fees or medical expenses made by the Secretary under this section shall not be recouped from the claimant or the claimant's attorney.*

PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, 1973

SEC. 411. [(a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981, who at the time of his death was totally disabled by pneumoconiosis.] *(a) The Secretary shall, in accordance with the provisions of this title, and the regulations promulgated by the Secretary under this title, make payments of benefits in respect of—*

- (1) total disability of any miner due to pneumoconiosis;*
- (2) the death of any miner whose death was due to pneumoconiosis;*
- (3) total disability of any miner at the time of the miner's death with respect to a claim filed under part C prior to January 1, 1982;*
- (4) survivors' benefits for any survivor's claim filed after January 1, 2005, that is pending on or after March 23, 2010, where the miner is found entitled to receive benefits on a claim filed under part C; and*
- (5) survivors' benefits where the miner is found entitled to receive benefits on a claim filed under part C before January 1, 1982.*

*(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted. Final regulations required for implementation of any amendments to this title shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.*

*(c) For purposes of this section—*

- (1) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more*

coal mines there shall be a rebuttable presumption that [his pneumoconiosis] *the miner's pneumoconiosis* arose out of such employment.

(2) If a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease there shall be rebuttable presumption that [his death] *the miner's death* was due to pneumoconiosis. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

[(3) If a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is a totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. as the case may be.]

(3)(A) *If x-ray, CT scan, biopsy, autopsy, or other medically accepted and relevant test or procedure establishes that a miner is suffering or has suffered from a chronic dust disease of the lung, diagnosed as complicated pneumoconiosis or progressive massive fibrosis (as determined in accordance with subparagraph (B)), then there shall be an irrebuttable presumption that such miner is totally disabled due to pneumoconiosis, that the miner's death was due to pneumoconiosis, or that at the time of death the miner was totally disabled by pneumoconiosis, as the case may be.*

(B) *For purposes of subparagraph (A), complicated pneumoconiosis or progressive massive fibrosis can be established by any of the following:*

(i) *A chest radiograph, which yields one or more large opacities whose greatest diameter exceeds 1 centimeter and would be classified in Category A, B, or C in the International Classification of Radiographs of Pneumoconiosis by the International Labor Organization, in the absence of more probative evidence sufficient to establish that the etiology of the large opacity is not pneumoconiosis.*

(ii) *A chest CT scan, which yields one or more large opacities whose greatest diameter exceeds 1 centimeter, in the absence of more probative evidence sufficient to establish that the etiology of the large opacity is not pneumoconiosis.*

(iii) *A lung biopsy or autopsy, which would yield a lesion at least 1 centimeter in its long axis diameter if measured at the time of gross dissection.*

*(iv) A diagnosis by other means that would reasonably be expected to yield results described in clause (i), (ii), or (iii).*

(4) if a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that this death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner worked in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(5) In the case of a miner who dies on or before the date of the enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section 412(a)(2), unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his or her death. The provisions of this paragraph shall not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

[(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 37½ per centum of the monthly pay rate for Federal employees in grade GS-2, step 1.

[(2) In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments

of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.】

*(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability—*

*(A) for any calendar year preceding January 1, 2022, at a rate equal to 37½ percent of the monthly pay rate for Federal employees in grade GS-2, step 1;*

*(B) for the calendar year beginning on January 1, 2022, at a rate of \$8,834.01 per year, payable in 12 equal monthly payments; and*

*(C) for each calendar year thereafter, at a rate equal to the product of the rate in effect under this paragraph for the calendar year immediately preceding such calendar year multiplied by the ratio (not less than 1) of—*

*(i) the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W, as published by the Bureau of Labor Statistics of the Department of Labor) for the calendar year immediately preceding such calendar year, to*

*(ii) the CPI-W for the second calendar year preceding such calendar year.*

*(2) In the case of a surviving spouse—*

*(A) of a miner whose death is due to pneumoconiosis;*

*(B) in a claim filed after January 1, 2005, and that is pending on or after March 23, 2010, of a miner who is found entitled to receive benefits on a claim filed under part C;*

*(C) of a miner who is found entitled to receive benefits on a claim filed under part C before January 1, 1982; or*

*(D) in a claim filed under part C before January 1, 1982, of a miner who was totally disabled by pneumoconiosis at the time of the miner's death,*

*benefits shall be paid to the miner's surviving spouse at the rate the deceased miner would receive such benefits if he were totally disabled.*

**(3)(A) 【**In the case of the child or children of a miner whose death is due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of his death, in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 411(c)】 *In the case of the child or children of a miner described in subparagraph (B), benefits shall be paid to such child or children as follows: If there is one such child, [he] the child shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of*

such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as [he] *the child* meets the criteria for the term “child” contained in section 402(g): *And provided further*, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a [widow] *surviving spouse* is established under paragraph (2).

*(B) Subparagraph (A) shall apply in the case of any child or children—*

- (i) of a miner whose death is due to pneumoconiosis;*
- (ii) in a claim filed after January 1, 2005, that is pending on or after March 23, 2010, of a miner who is found entitled to receive benefits on a claim filed under part C;*
- (iii) of a miner who is found entitled to receive benefits on a claim filed under part C before January 1, 1982;*
- (iv) in a claim filed under part C before January 1, 1982, of a miner who was totally disabled by pneumoconiosis at the time of the miner's death;*
- (v) of a surviving spouse who is found entitled to receive benefits under this part at the time of the surviving spouse's death; or*
- (vi) entitled to the payment of benefits under paragraph (5) of section 411(c).*

(4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) [In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 411(c), or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 411(c), benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner).] *In the case of the dependent parent or parents of a miner who is not survived at the time of death by a surviving spouse or a child and (i) whose death is due to pneumoconiosis, (ii) in a claim filed after January 1, 2005, that is pending on or after March 23, 2010, who is found entitled to receive benefits*

on a claim filed under part C, (iii) who is found entitled to receive benefits on a claim filed under part C before January 1, 1982, or (iv) in a claim filed under part C before January 1, 1982, who was totally disabled by pneumoconiosis at the time of the miner's death; in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of the miner's death by a surviving spouse, child, or parent; in the case of the dependent parent or parents of a miner (who is not survived at the time of the miner's death by a surviving spouse or child) who are entitled to the payment of benefits under paragraph (5) of section 411(c); or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of the miner's death by a surviving spouse, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 411(c), benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a [brother only if he] brother or sister only if the brother or sister is—

(1)(A) under eighteen years of age, or  
(B) under a disability as defined in section 223(d) of the Social Security Act which began before the age specified in section 202(d)(1)(B)(ii) of such Act, or in the case of a student, [before he ceased] before the brother or sister ceased to be a student, or

(C) a student as defined in section 402(g); or  
(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act, during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, "dependent" means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes "living in the miner's household", "totally

dependent upon the miner for support,” and “good cause,” shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)–(1) of the Social Security Act, as if the benefit under this paragraph were a benefit under section 202 of such Act.

(6) If an individual’s benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations ~~prescribed by him~~ *prescribed by such Secretary*, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or ~~his~~ *such miner’s* ~~widow~~ *surviving spouse*, child, parent, brother, or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or ~~his~~ *such miner’s* ~~widow~~ *surviving spouse*, child, parent, brother, or sister under the workmen’s compensation, unemployment compensation, or disability insurance laws of ~~his~~ *such miner’s* State on account of the disability of such miner due to pneumoconiosis, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203 (b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act. This part shall not be considered a workmen’s compensation law or plan for purposes of section 224 of such Act.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the ~~Internal Revenue Code of 1954~~ *Internal Revenue Code of 1986*.

SEC. 413. (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1973, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) No claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant’s physician, or ~~his wife’s affidavits~~ *affidavits of the miner’s spouse*, and in the case of a deceased miner, other appropriate affidavits of persons

with knowledge of the miner's physical condition, and other supportive materials. Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits, from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis. In any case, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981, in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary shall accept a board certified or board eligible radiologist's, interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable. The provisions of sections 204, 205 (a), (b), (d), (e), (g), (h), (j), (k), (l), and (n), 206, 207, and 208 of the Social Security Act shall be applicable under this part with respect to a miner, [widow] *surviving spouse*, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act. [Each miner who files a claim for benefits under this title shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.]

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time [his claim] *the claim* was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any benefits



under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.

SEC. 414. (a)(1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1973, or, in the case of a claimant who is a [widow, within six months after the death of her husband] *surviving spouse, within six months after the death of the miner* or by December 31, 1973, whichever is the later.

(2) In the case of a claim by a child this paragraph shall apply, notwithstanding any other provision of this part.

(A) If such claim is filed within six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlements shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of [his] *the child's* father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.

(b) No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a [widow] *surviving spouse*, child, parent, brother, or sister under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to [his death] *the miner's death*, (2) the death of such miner occurred prior to January 1, 1974, or (3) any such individual is entitled to benefits under paragraph (5) of section 411(c).

SEC. 415. (a) Notwithstanding any other provision in this title, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from July 1, 1973 to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

(1) Such claim shall be determined and, where appropriate under this part or section 9501(d) of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986*, benefits shall be paid with respect to such claim by the Secretary of Labor.

(2) The Secretary of Labor shall promptly notify any operator who [he] *such Secretary* believes, on the basis of information contained in the claims, or any other information available to [him] *such Secretary*, may be liable to pay benefits to the claimant under part C of this title for any month after December 31, 1973.

(3) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in sections 19 (b), (c), and (d) of Public law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended.

(4) Any operator who has been notified of the pendency of a claim under paragraph (2) of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this title and section 422 thereof had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

(b) The Secretary of Labor may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

#### PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

SEC. 421. (a) On and after January 1, 1974, any claim for benefits for death or total disability due to pneumoconiosis shall be filed

pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving [widows] spouses, children, parents, brothers, or sisters, as the case may be, are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis, and in any case in which benefits based upon eligibility under paragraph (5) of section 411(c) are involved, they shall be entitled to claim benefits under this part.

(b)(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if [he] such Secretary finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis, except that (i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and (ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 423 with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to section 402(f) of this title and to those standards established under this part, and by the regulations of the Secretary promulgated under this part;

(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 433(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, with are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations [promulgated

by him] *promulgated by such Secretary*, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

(c) Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.

SEC. 422. (a) Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, and as it may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4,, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof), shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986*), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 411(c). In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as [he] *such Secretary* deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part. An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction. Upon determination by the Secretary of the eligibility of the employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary applicable under this section: *Provided, That,*

except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis (1) which did not arise, at least in part, out of employment in a mine during a period after December 31, 1969, when it was operated by such operator; of (2) which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 435.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title. If payment is not made within the time required, interest shall accrue to such amounts at the rates set forth in section 424(b)(5) of this title for interest owed to the fund. With respect to payment withheld pending final adjudication of liability, in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, such interest shall commence to accumulate 30 days after the date of the determination that such an award should be made.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe; or

(2) for any period prior to January 1, 1974.

(f) Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later—

(1) a medical determination of total disability due to pneumoconiosis; or

(2) the date of the enactment of the Black Lung Benefits Reform Act of 1977.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis. In addition, the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981 shall be reduced, on a monthly or other appropriate basis, by the amount by which such benefits would be reduced on account of excess earnings of such miner under section 203 (b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(h) The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i)(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a "prior operator")

who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 423, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

(3)(A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

(4) In any case in which there is a determination under section 9501(d) of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986* that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.

(j) Notwithstanding the provisions of this section, section 9501 of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986* shall govern the payment of benefits in cases—

(1) described in section 9501(d)(1) of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986*;

(2) in which the miner's last coal mine employment was before January 1, 1970; or

(3) in which there was a claim denied before March 1, 1978, and such claim is or has been approved in accordance with the provisions of section 435.

(k) The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

(l) In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner,.

SEC. 423. (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of a coal mine in such State shall secure the payment of benefits for which [he] *such op-*

erator is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

(d)(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than ~~[\$1,000]~~ \$25,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, *chief executive officer, chief operating officer*, secretary, ~~[and treasurer]~~ *treasurer, and other responsible party* thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, *chief executive officer, chief operating officer*, secretary, ~~[and treasurer]~~ *treasurer, and other responsible party* shall be severally personally liable, jointly with such corporation, ~~[for any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.]~~ *for—*

(A) *any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section; or*

(B) *in the event of bankruptcy or other permanent abandonment of the obligation to secure the payment of benefits, the actuarial present value of the benefits to be paid by the fund under section 424(b)(1), projected as of the date of failure to secure such benefits, less any security recovered or surrendered, plus interest.*

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets,

or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this title, and with intent to avoid the payment of benefits under this title to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This subsection shall not affect any other liability of the employer under this part.

SEC. 424. (a) For purposes of this section, the term “fund” has the meaning set forth in section 402(h).

(b)(1) If—

(A) an amount is paid out of the fund to an individual entitled to benefits under section 422, and

(B) the Secretary determines, under the provision of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits,

then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to [him] *such operator* plus interest thereon. No operator or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423. In a case where no operator responsibility is assigned pursuant to section 422 and 423, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If an operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986*. That section shall be applied for such purposes—

(i) by substituting “lien imposed by section 424(b)(2) of the Federal Coal Mine Health and Safety Act of 1969” for “lien imposed by section 6321”; “operator liability lien” for “tax lien”; “operator” for “taxpayer”; “lien arising under section 424(b) (2) of the Federal Coal Mine Health and Safety Act of 1969” for “assessment of the tax”; “payment of the liability is made to the Black Lung Disability Trust Fund” for “satisfaction of a levy pursuant to section 6332(b)”; and “satisfaction of operator



liability” for “collection of any tax under this title” each place such terms appear; and

(ii) by treating all references to the “Secretary” as references to the Secretary of Labor.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(C) For purposes of applying section 6323(a) of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986* to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986*.

(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

(5) The rate of interest under this subsection—

(A) for any period during calendar year 1982, shall be 15 percent, and

(B) for any period after calendar year 1982, shall be the rate established by section 6621 of the [Internal Revenue Code of 1954] *Internal Revenue Code of 1986* which is in effect for such period.

\* \* \* \* \*

SEC. 427. (a) The Secretary of Health, Education, and Welfare is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for [the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners.] *the analysis, examination, and treatment of respiratory*

*and pulmonary impairments in active and inactive coal miners and for assistance on behalf of miners, spouses, dependents, and other family members with claims arising under this title.* The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

(b) The Secretary of Health, Education, and Welfare shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health, Education, and Welfare may deem necessary in the public interest.

(c) There is hereby authorized to be appropriated for the purpose of subsection (a) of this section \$10,000,000 for each fiscal year. There are hereby authorized to be appropriated for the purpose of subsection (b) of this section such sums as are necessary.

SEC. 428. (a) No operator shall discharge or in any other way discriminate against any miner employed by [him] *such operator* by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term "miner" shall not include any person who has been found to be totally disabled.

(b) Any miner who believes that [he] *the miner* has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as [he] *the Secretary* deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Each administrative law judge presiding under this section and under the provisions of titles I, II and III of this Act shall receive compensation at a rate determined under section 5372 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If [he] *the Secretary* finds that such violation did occur, [he] *the Secretary* shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to [his] *the miner's* former position with back pay. If [he] *the Secretary* finds

that there was no such violation, [he] *the Secretary* shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

(c) Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

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SEC. 430. The amendments made by the Black Lung Benefits Act of 1972, the Black Lung Benefits Reform Act of [1977 and] 1977, the Black Lung Benefits Amendments of [1981] 1981, and the Black Lung Benefits Improvement Act of 2022, and any amendments made after the date of enactment of such Act, to part B of this title shall, to the extent appropriate, also apply to part C of this title.

[SEC. 431. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this title shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.]

**SEC. 431. FALSE STATEMENTS OR MISREPRESENTATIONS, ATTORNEY DISQUALIFICATION, AND DISCOVERY SANCTIONS.**

(a) *IN GENERAL.*—No person, including any claimant, physician, operator, duly authorized agent of such operator, or employee of an insurance carrier, shall—

(1) knowingly and willfully make a false statement or misrepresentation for the purpose of obtaining, increasing, reducing, denying, or terminating benefits under this title; or

(2) knowingly and willfully threaten, coerce, intimidate, deceive, or mislead a party, representative, witness, potential witness, judge, or anyone participating in a proceeding regarding any matter related to a proceeding under this title.

(b) *FINE; IMPRISONMENT.*—Any person who engages in the conduct described in subsection (a) shall, upon conviction, be subject to a fine in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) *PROMPT INVESTIGATION.*—The United States Attorney for the district in which the conduct described in subsection (a) is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint of a violation of such subsection.

(d) *DISQUALIFICATION.*—

(1) *IN GENERAL.*—An attorney or expert witness who engages in the conduct described in subsection (a) shall, in addition to the fine or imprisonment provided under subsection (b), be permanently disqualified from representing any party, or appearing in any proceeding, under this title.

(2) *ATTORNEY DISQUALIFICATION.*—In addition to the disqualification described in paragraph (1), the Secretary may dis-

*qualify an attorney from representing any party in any administrative proceeding under this title for either a limited term or permanently, if the attorney—*

*(A) engages in any action or behavior that is prejudicial to the fair and orderly conduct of such proceeding; or*

*(B) is suspended or disbarred by any court of the United States, any State, or any territory, commonwealth, or possession of the United States with jurisdiction over the proceeding.*

*(e) DISCOVERY SANCTIONS.—An administrative law judge may sanction a party who fails to comply with an order to compel discovery or disclosure, or to supplement earlier responses, in a proceeding under this title. These sanctions may include, as appropriate—*

*(1) drawing an adverse inference against the noncomplying party on the facts relevant to the discovery or disclosure order;*

*(2) limiting the noncomplying party's claims, defenses, or right to introduce evidence; and*

*(3) rendering a default decision against the noncomplying party.*

*(f) REGULATIONS.—The Secretary shall promulgate a proposed rule not later than 180 days after the date of enactment of this Act and a final rule not later than 18 months after such date of enactment that—*

*(1) provides procedures for the disqualifications and sanctions under this section and is appropriate for all parties; and*

*(2) distinguishes between parties that are represented by an attorney and parties that are not represented by an attorney.*

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**SEC. 435. DEVELOPMENT OF MEDICAL EVIDENCE BY THE SECRETARY.**

*(a) COMPLETE PULMONARY EVALUATION.—Upon request by a claimant for benefits under this title, the Secretary shall provide the claimant an opportunity to substantiate the claim through a complete pulmonary evaluation of the miner that shall include—*

*(1) an initial report, conducted by a qualified physician on the list provided under subsection (e), and in accordance with subsection (d)(5) and sections 402(f)(1)(D) and 413(b); and*

*(2) if the conditions under subsection (b) are met, any supplemental medical evidence described in subsection (c).*

*(b) AUTHORIZING CHEST SCANS.—In diagnosing whether there is complicated pneumoconiosis as a part of a medical examination conducted under subsection (a), the Secretary shall authorize a high-quality, low-dose or standard computerized tomography scan where any or a combination of the following is found:*

*(1) Any certified B reader of a chest radiograph associated with an exam conducted under section 413(b) finds pneumoconiosis (ILO category 2/1 or greater).*

*(2) Any certified B reader of a chest radiograph associated with an exam conducted under section 413(b) finds a coalescence of small opacities.*

(c) *CONDITIONS FOR SUPPLEMENTAL MEDICAL EVIDENCE.*—*The Secretary shall develop supplemental medical evidence, in accordance with subsection (d)—*

(1) *for any claim in which the Secretary recommends an award of benefits based on the results of the initial report under subsection (a)(1) and a party opposing such award submits evidence that could be considered contrary to the findings of the Secretary; and*

(2) *for any compensation case under this title heard by an administrative law judge, in which—*

(A) *the Secretary has awarded benefits to the claimant;*

(B) *the party opposing such award has submitted evidence not previously reviewed that could be considered contrary to the award under subparagraph (A); and*

(C) *the claimant or, if the claimant is represented by an attorney, the claimant's attorney consents to the Secretary developing supplemental medical evidence.*

(d) *PROCESS FOR SUPPLEMENTAL MEDICAL EVIDENCE.*—

(1) *IN GENERAL.*—*Except as provided under paragraph (2), to develop supplemental medical evidence under conditions described in subsection (c), the Secretary shall request the physician who conducted the initial report under subsection (a)(1) to—*

(A) *review any medical evidence submitted after such report or the most recent supplemental report, as appropriate; and*

(B) *update his or her opinion in a supplemental report.*

(2) *ALTERNATIVE PHYSICIAN.*—*If such physician is no longer available or is unwilling to provide supplemental medical evidence under paragraph (1), the Secretary shall select another qualified physician from the list provided pursuant to subsection (e) to provide such evidence.*

(e) *QUALIFIED PHYSICIANS FOR COMPLETE PULMONARY EVALUATION AND PROTECTIONS FOR SUITABILITY AND POTENTIAL CONFLICTS OF INTEREST.*—

(1) *QUALIFIED PHYSICIANS LIST.*—*The Secretary shall create and maintain a list of qualified physicians to be selected by a claimant to perform the complete pulmonary evaluation described in subsection (a).*

(2) *PUBLIC AVAILABILITY.*—*The Secretary shall make the list under this subsection available to the public.*

(3) *ANNUAL EVALUATION.*—*Each year, the Secretary shall update such list by reviewing the suitability of the listed qualified physicians and assessing any potential conflicts of interest.*

(4) *CRITERIA FOR SUITABILITY.*—*The Secretary shall include on the list only those physicians whom the Secretary determines are qualified, capable, and willing to provide credible opinions consistent with the premises underlying this Act. In determining whether a physician is suitable to be on the list under this subsection, the Secretary shall consult the National Practitioner Data Bank of the Department of Health and Human Services and assess reports of adverse licensure, certifications,*

*hospital privilege, and professional society actions involving the physician. In no case shall such list include any physician—*

*(A) who is not licensed to practice medicine in any State or any territory, commonwealth, or possession of the United States;*

*(B) whose license is revoked by a medical licensing board of any State, territory, commonwealth, or possession of the United States; or*

*(C) whose license is suspended by a medical licensing board of any State, territory, commonwealth, or possession of the United States.*

*(5) CONFLICTS OF INTEREST.—The Secretary shall develop and implement policies and procedures to ensure that any actual or potential conflict of interest of qualified physicians on the list under this subsection, including both individual and organizational conflicts of interest, are disclosed to the Department, and to provide such disclosure to claimants. Such policies and procedures shall provide that a physician with a conflict of interest shall not be used to perform a complete pulmonary medical evaluation under subsection (a) that is reimbursed pursuant to subsection (g) if—*

*(A) such physician is employed by, under contract to, or otherwise providing services to a private party opposing the claim, a law firm or lawyer representing such opposing party, or an interested insurer or other interested third party; or*

*(B) such physician has been retained by a private party opposing the claim, a law firm or lawyer representing such opposing party, or an interested insurer or other interested third party in the previous 24 months.*

*(f) RECORD.—Upon receipt of any initial report or supplemental report under this section, the Secretary shall enter the report in the record and provide a copy of such report to all parties to the proceeding.*

*(g) EXPENSES.—All expenses related to obtaining the medical evidence under this section shall be paid for by the fund. If a claimant receives a final award of benefits, the operator liable for payment of benefits, if any, shall reimburse the fund for such expenses, which shall include interest.*

**SEC. 436. READJUDICATING CASES INVOLVING DISCREDITED EXPERT OPINIONS.**

*(a) DEFINITIONS.—In this section:*

*(1) COVERED CHEST RADIOGRAPH.—The term “covered chest radiograph” means a chest radiograph that was interpreted as negative for simple pneumoconiosis, complicated pneumoconiosis, or progressive massive fibrosis by a physician with respect to whom the Secretary has directed, in writing and after an evaluation by the Secretary, that such physician’s negative interpretations of chest radiographs not be credited, except where subsequently determined to be credible by the Secretary in evaluating a claim for benefits under this Act.*

(2) *COVERED INDIVIDUAL.*—The term “covered individual” means an individual whose record for a claim for benefits under this Act includes a covered chest radiograph.

(3) *COVERED SURVIVOR.*—The term “covered survivor” means an individual who—

(A) is a survivor of a covered individual whose claim under this Act was still pending at the time of the covered individual’s death; and

(B) who continued to seek an award with respect to the covered individual’s claim after the covered individual’s death.

(b) *CLAIMS.*—A covered individual or a covered survivor whose claim for benefits under this Act was denied may file a new claim for benefits under this Act.

(c) *ADJUDICATION ON THE MERITS.*—

(1) *IN GENERAL.*—Any new claim filed under subsection (b) shall be adjudicated on the merits and shall not include consideration of a covered chest radiograph.

(2) *COVERED SURVIVOR.*—Any new claim filed under subsection (b) by a covered survivor shall be adjudicated as either a miner’s or a survivor’s claim depending upon the type of claim pending at the time of the covered individual’s death.

(d) *TIME OF PAYMENT.*—

(1) *MINER’S CLAIM.*—If a claim, filed under subsection (b) and adjudicated under subsection (c) as a miner’s claim, results in an award of benefits, benefits shall be payable beginning with the month of the filing of the denied claim that had included in its record a covered chest radiograph.

(2) *SURVIVOR’S CLAIM.*—If a claim, filed under subsection (b) and adjudicated under subsection (c) as a survivor’s claim, results in an award of benefits, benefits shall be payable beginning with the month of the miner’s death.

(e) *CONTRIBUTING IMPACT.*—The Secretary shall have the discretion to deny a new claim under subsection (b) in circumstances where the party opposing such claim establishes through clear and convincing evidence that a covered chest radiograph did not contribute to the decision to deny benefits in all prior claims filed by the covered individual or the covered survivor.

(f) *LIMITATION ON FILING OF NEW CLAIMS.*—A new claim for benefits may be filed under subsection (b) only if the original claim was finally denied by a district director, an administrative law judge, or the Benefits Review Board established under section 21(b) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 921(b)).

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## INTERNAL REVENUE CODE OF 1986

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## Subtitle F—Procedure and Administration

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### CHAPTER 61—INFORMATION AND RETURNS

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#### Subchapter B—MISCELLANEOUS PROVISIONS

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##### SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) GENERAL RULE.—Returns and return information shall be confidential, and except as authorized by this title—

- (1) no officer or employee of the United States,
- (2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(1)(C) or (7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c), and
- (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (c), subsection (e)(1)(D)(iii), paragraph (10), (13), (14), or (15) of subsection (k), paragraph (6), (10), (12), (13) (other than subparagraphs (D)(v) and (D)(vi) thereof), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee.

(b) DEFINITIONS.—For purposes of this section—

(1) RETURN.—The term “return” means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) RETURN INFORMATION.—The term “return information” means—

- (A) a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with



respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

(C) any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and

(D) any agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement, but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) TAXPAYER RETURN INFORMATION.—The term “taxpayer return information” means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

(4) TAX ADMINISTRATION.—The term “tax administration”—  
(A) means—

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

(5) STATE.—

(A) IN GENERAL.—The term “State” means—

(i) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands,

(ii) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p), any municipality—

(I) with a population in excess of 250,000 (as determined under the most recent decennial United States census data available),

(II) which imposes a tax on income or wages, and

(III) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure, and

(iii) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p), any governmental entity—

(I) which is formed and operated by a qualified group of municipalities, and

(II) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.

(B) REGIONAL INCOME TAX AGENCIES.—For purposes of subparagraph (A)(iii)—

(i) QUALIFIED GROUP OF MUNICIPALITIES.—The term “qualified group of municipalities” means, with respect to any governmental entity, 2 or more municipalities—

(I) each of which imposes a tax on income or wages,

(II) each of which, under the authority of a State statute, administers the laws relating to the imposition of such taxes through such entity, and

(III) which collectively have a population in excess of 250,000 (as determined under the most recent decennial United States census data available).

(ii) REFERENCES TO STATE LAW, ETC.—For purposes of applying subparagraph (A)(iii) to the subsections referred to in such subparagraph, any reference in such subsections to State law, proceedings, or tax returns shall be treated as references to the law, proceedings, or tax returns, as the case may be, of the municipalities which form and operate the governmental entity referred to in such subparagraph.

(iii) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a governmental entity referred to in subparagraph (A)(iii) unless such entity, to the satisfaction of the Secretary—

(I) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of subsection (p)(4)) to protect the confidentiality of such returns or return information,

(II) agrees to conduct an on-site review every 3 years (or a mid-point review in the case of contracts or agreements of less than 3 years in dura-

tion) of each contractor or other agent to determine compliance with such requirements,

(III) submits the findings of the most recent review conducted under subclause (II) to the Secretary as part of the report required by subsection (p)(4)(E), and

(IV) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subclause (IV) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this clause shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration and a rule similar to the rule of subsection (p)(8)(B) shall apply for purposes of this clause.

(6) **TAXPAYER IDENTITY.**—The term “taxpayer identity” means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

(7) **INSPECTION.**—The terms “inspected” and “inspection” mean any examination of a return or return information.

(8) **DISCLOSURE.**—The term “disclosure” means the making known to any person in any manner whatever a return or return information.

(9) **FEDERAL AGENCY.**—The term “Federal agency” means an agency within the meaning of section 551(1) of title 5, United States Code.

(10) **CHIEF EXECUTIVE OFFICER.**—The term “chief executive officer” means, with respect to any municipality, any elected official and the chief official (even if not elected) of such municipality.

(11) **TERRORIST INCIDENT, THREAT, OR ACTIVITY.**—The term “terrorist incident, threat, or activity” means an incident, threat, or activity involving an act of domestic terrorism (as defined in section 2331(5) of title 18, United States Code) or international terrorism (as defined in section 2331(1) of such title).

(c) **DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.**—The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer’s request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration. Persons designated by the taxpayer under this subsection to receive return information shall not use the information for any pur-

pose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.

(d) DISCLOSURE TO STATE TAX OFFICIALS AND STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—

(1) IN GENERAL.—Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, and 52 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(2) DISCLOSURE TO STATE AUDIT AGENCIES.—

(A) IN GENERAL.—Any returns or return information obtained under paragraph (1) by any State agency, body, or commission may be open to inspection by, or disclosure to, officers and employees of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency, body, or commission referred to in paragraph (1).

(B) STATE AUDIT AGENCY.—For purposes of subparagraph (A), the term “State audit agency” means any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

(3) EXCEPTION FOR REIMBURSEMENT UNDER SECTION 7624.—Nothing in this section shall be construed to prevent the Secretary from disclosing to any State or local law enforcement agency which may receive a payment under section 7624 the amount of the recovered taxes with respect to which such a payment may be made.

(4) AVAILABILITY AND USE OF DEATH INFORMATION.—

(A) IN GENERAL.—No returns or return information may be disclosed under paragraph (1) to any agency, body, or commission of any State (or any legal representative thereof) during any period during which a contract meeting the requirements of subparagraph (B) is not in effect

between such State and the Secretary of Health and Human Services.

(B) CONTRACTUAL REQUIREMENTS.—A contract meets the requirements of this subparagraph if—

(i) such contract requires the State to furnish the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it, and

(ii) such contract does not include any restriction on the use of information obtained by such Secretary pursuant to such contract, except that such contract may provide that such information is only to be used by the Secretary (or any other Federal agency) for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals.

Any information obtained by the Secretary of Health and Human Services under such a contract shall be exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title 5.

(C) SPECIAL EXCEPTION.—The provisions of subparagraph (A) shall not apply to any State which on July 1, 1993, was not, pursuant to a contract, furnishing the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it.

(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—

(A) IN GENERAL.—The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.

(B) TERMINATION.—The Secretary may not make any disclosure under this paragraph after December 31, 2007.

(6) LIMITATION ON DISCLOSURE REGARDING REGIONAL INCOME TAX AGENCIES TREATED AS STATES.—For purposes of paragraph (1), inspection by or disclosure to an entity described in subsection (b)(5)(A)(iii) shall be for the purpose of, and only to the extent necessary in, the administration of the laws of the member municipalities in such entity relating to the imposition of a tax on income or wages. Such entity may not redisclose any return or return information received pursuant to paragraph (1) to any such member municipality.

(e) DISCLOSURE TO PERSONS HAVING MATERIAL INTEREST.—

(1) IN GENERAL.—The return of a person shall, upon written request, be open to inspection by or disclosure to—

(A) in the case of the return of an individual—

(i) that individual,

(ii) the spouse of that individual if the individual and such spouse have signified their consent to consider a gift reported on such return as made one-half by him and one-half by the spouse pursuant to the provisions of section 2513; or

(iii) the child of that individual (or such child's legal representative) to the extent necessary to comply with the provisions of section 1(g);

(B) in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;

(C) in the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return;

(D) in the case of the return of a corporation or a subsidiary thereof—

(i) any person designated by resolution of its board of directors or other similar governing body,

(ii) any officer or employee of such corporation upon written request signed by any principal officer and attested to by the secretary or other officer,

(iii) any bona fide shareholder of record owning 1 percent or more of the outstanding stock of such corporation,

(iv) if the corporation was an S corporation, any person who was a shareholder during any part of the period covered by such return during which an election under section 1362(a) was in effect, or

(v) if the corporation has been dissolved, any person authorized by applicable State law to act for the corporation or any person who the Secretary finds to have a material interest which will be affected by information contained therein;

(E) in the case of the return of an estate—

(i) the administrator, executor, or trustee of such estate, and

(ii) any heir at law, next of kin, or beneficiary under the will, of the decedent, but only if the Secretary finds that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained therein; and

(F) in the case of the return of a trust—

(i) the trustee or trustees, jointly or separately, and

(ii) any beneficiary of such trust, but only if the Secretary finds that such beneficiary has a material interest which will be affected by information contained therein.

(2) INCOMPETENCY.—If an individual described in paragraph (1) is legally incompetent, the applicable return shall, upon written request, be open to inspection by or disclosure to the committee, trustee, or guardian of his estate.

(3) DECEASED INDIVIDUALS.—The return of a decedent shall, upon written request, be open to inspection by or disclosure to—

(A) the administrator, executor, or trustee of his estate, and

(B) any heir at law, next of kin, or beneficiary under the will, of such decedent, or a donee of property, but only if the Secretary finds that such heir at law, next of kin, beneficiary, or donee has a material interest which will be affected by information contained therein.

(4) TITLE 11 CASES AND RECEIVERSHIP PROCEEDINGS.—If—

(A) there is a trustee in a title 11 case in which the debtor is the person with respect to whom the return is filed, or

(B) substantially all of the property of the person with respect to whom the return is filed is in the hands of a receiver,

such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the Secretary finds that such trustee or receiver, in his fiduciary capacity, has a material interest which will be affected by information contained therein.

(5) INDIVIDUAL'S TITLE 11 CASE.—

(A) IN GENERAL.—In any case to which section 1398 applies (determined without regard to section 1398(b)(1)), any return of the debtor for the taxable year in which the case commenced or any preceding taxable year shall, upon written request, be open to inspection by or disclosure to the trustee in such case.

(B) RETURN OF ESTATE AVAILABLE TO DEBTOR.—Any return of an estate in a case to which section 1398 applies shall, upon written request, be open to inspection by or disclosure to the debtor in such case.

(C) SPECIAL RULE FOR INVOLUNTARY CASES.—In an involuntary case, no disclosure shall be made under subparagraph (A) until the order for relief has been entered by the court having jurisdiction of such case unless such court finds that such disclosure is appropriate for purposes of determining whether an order for relief should be entered.

(6) ATTORNEY IN FACT.—Any return to which this subsection applies shall, upon written request, also be open to inspection by or disclosure to the attorney in fact duly authorized in writing by any of the persons described in paragraph (1), (2), (3), (4), (5), (8), or (9) to inspect the return or receive the information on his behalf, subject to the conditions provided in such paragraphs.

(7) RETURN INFORMATION.—Return information with respect to any taxpayer may be open to inspection by or disclo-

sure to any person authorized by this subsection to inspect any return of such taxpayer if the Secretary determines that such disclosure would not seriously impair Federal tax administration.

(8) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502.

(9) DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

(10) LIMITATION ON CERTAIN DISCLOSURES UNDER THIS SUBSECTION.—In the case of an inspection or disclosure under this subsection relating to the return of a partnership, S corporation, trust, or an estate, the information inspected or disclosed shall not include any supporting schedule, attachment, or list which includes the taxpayer identity information of a person other than the entity making the return or the person conducting the inspection or to whom the disclosure is made.

(11) DISCLOSURE OF INFORMATION REGARDING STATUS OF INVESTIGATION OF VIOLATION OF THIS SECTION.—In the case of a person who provides to the Secretary information indicating a violation of section 7213, 7213A, or 7214 with respect to any return or return information of such person, the Secretary may disclose to such person (or such person's designee)—

(A) whether an investigation based on the person's provision of such information has been initiated and whether it is open or closed,

(B) whether any such investigation substantiated such a violation by any individual, and

(C) whether any action has been taken with respect to such individual (including whether a referral has been made for prosecution of such individual).

(f) DISCLOSURE TO COMMITTEES OF CONGRESS.—

(1) COMMITTEE ON WAYS AND MEANS, COMMITTEE ON FINANCE, AND JOINT COMMITTEE ON TAXATION.—Upon written request from the chairman of the Committee on Ways and



Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(2) CHIEF OF STAFF OF JOINT COMMITTEE ON TAXATION.—Upon written request by the Chief of Staff of the Joint Committee on Taxation, the Secretary shall furnish him with any return or return information specified in such request. Such Chief of Staff may submit such return or return information to any committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(3) OTHER COMMITTEES.—Pursuant to an action by, and upon written request by the chairman of, a committee of the Senate or the House of Representatives (other than a committee specified in paragraph (1)) specially authorized to inspect any return or return information by a resolution of the Senate or the House of Representatives or, in the case of a joint committee (other than the joint committee specified in paragraph (1)) by concurrent resolution, the Secretary shall furnish such committee, or a duly authorized and designated subcommittee thereof, sitting in closed executive session, with any return or return information which such resolution authorizes the committee or subcommittee to inspect. Any resolution described in this paragraph shall specify the purpose for which the return or return information is to be furnished and that such information cannot reasonably be obtained from any other source.

(4) AGENTS OF COMMITTEES AND SUBMISSION OF INFORMATION TO SENATE OR HOUSE OF REPRESENTATIVES.—

(A) COMMITTEES DESCRIBED IN PARAGRAPH (1).—Any committee described in paragraph (1) or the Chief of Staff of the Joint Committee on Taxation shall have the authority, acting directly, or by or through such examiners or agents as the chairman of such committee or such chief of staff may designate or appoint, to inspect returns and return information at such time and in such manner as may be determined by such chairman or chief of staff. Any return or return information obtained by or on behalf of such committee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both. The Joint Committee on Taxation may also submit such return or return information to any other committee described in paragraph (1), except that any return or return information which can be

associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(B) OTHER COMMITTEES.—Any committee or subcommittee described in paragraph (3) shall have the right, acting directly, or by or through no more than four examiners or agents, designated or appointed in writing in equal numbers by the chairman and ranking minority member of such committee or subcommittee, to inspect returns and return information at such time and in such manner as may be determined by such chairman and ranking minority member. Any return or return information obtained by or on behalf of such committee or subcommittee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, shall be furnished to the Senate or the House of Representatives only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(5) DISCLOSURE BY WHISTLEBLOWER.—Any person who otherwise has or had access to any return or return information under this section may disclose such return or return information to a committee referred to in paragraph (1) or any individual authorized to receive or inspect information under paragraph (4)(A) if such person believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

(g) DISCLOSURE TO PRESIDENT AND CERTAIN OTHER PERSONS.—

(1) IN GENERAL.—Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request. Any such request shall state—

(A) the name and address of the taxpayer whose return or return information is to be disclosed,

(B) the kind of return or return information which is to be disclosed,

(C) the taxable period or periods covered by such return or return information, and

(D) the specific reason why the inspection or disclosure is requested.

(2) DISCLOSURE OF RETURN INFORMATION AS TO PRESIDENTIAL APPOINTEES AND CERTAIN OTHER FEDERAL GOVERNMENT APPOINTEES.—The Secretary may disclose to a duly authorized representative of the Executive Office of the President or to the head of any Federal agency, upon written request by

the President or head of such agency, or to the Federal Bureau of Investigation on behalf of and upon written request by the President or such head, return information with respect to an individual who is designated as being under consideration for appointment to a position in the executive or judicial branch of the Federal Government. Such return information shall be limited to whether such individual—

(A) has filed returns with respect to the taxes imposed under chapter 1 for not more than the immediately preceding 3 years;

(B) has failed to pay any tax within 10 days after notice and demand, or has been assessed any penalty under this title for negligence, in the current year or immediately preceding 3 years;

(C) has been or is under investigation for possible criminal offenses under the internal revenue laws and the results of any such investigation; or

(D) has been assessed any civil penalty under this title for fraud.

Within 3 days of the receipt of any request for any return information with respect to any individual under this paragraph, the Secretary shall notify such individual in writing that such information has been requested under the provisions of this paragraph.

(3) RESTRICTION ON DISCLOSURE.—The employees to whom returns and return information are disclosed under this subsection shall not disclose such returns and return information to any other person except the President or the head of such agency without the personal written direction of the President or the head of such agency.

(4) RESTRICTION ON DISCLOSURE TO CERTAIN EMPLOYEES.—Disclosure of returns and return information under this subsection shall not be made to any employee whose annual rate of basic pay is less than the annual rate of basic pay specified for positions subject to section 5316 of title 5, United States Code.

(5) REPORTING REQUIREMENTS.—Within 30 days after the close of each calendar quarter, the President and the head of any agency requesting returns and return information under this subsection shall each file a report with the Joint Committee on Taxation setting forth the taxpayers with respect to whom such requests were made during such quarter under this subsection, the returns or return information involved, and the reasons for such requests. The President shall not be required to report on any request for returns and return information pertaining to an individual who was an officer or employee of the executive branch of the Federal Government at the time such request was made. Reports filed pursuant to this paragraph shall not be disclosed unless the Joint Committee on Taxation determines that disclosure thereof (including identifying details) would be in the national interest. Such reports shall be maintained by the Joint Committee on Taxation for a period not exceeding 2 years unless, within such period, the

Joint Committee on Taxation determines that a disclosure to the Congress is necessary.

(h) DISCLOSURE TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES FOR PURPOSES OF TAX ADMINISTRATION, ETC..—

(1) DEPARTMENT OF THE TREASURY.—Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

(2) DEPARTMENT OF JUSTICE.—In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, but only if—

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title;

(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

(3) FORM OF REQUEST.—In any case in which the Secretary is authorized to disclose a return or return information to the Department of Justice pursuant to the provisions of this subsection—

(A) if the Secretary has referred the case to the Department of Justice, or if the proceeding is authorized by subchapter B of chapter 76, the Secretary may make such disclosure on his own motion, or

(B) if the Secretary receives a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General for a return of, or return information relating to, a person named in such request and setting forth the need for the disclosure, the Secretary shall disclose return or return the information so requested.

(4) DISCLOSURE IN JUDICIAL AND ADMINISTRATIVE TAX PROCEEDINGS.—A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

(A) if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of

such civil liability, in respect of any tax imposed under this title;

(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(5) WITHHOLDING OF TAX FROM SOCIAL SECURITY BENEFITS.—Upon written request of the payor agency, the Secretary may disclose available return information from the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).

(6) INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

(B) EXCEPTION FOR REPORTS TO THE BOARD.—If—

(i) the Commissioner or the Treasury Inspector General for Tax Administration prepares any report or other matter for the Oversight Board in order to assist the Board in carrying out its duties; and

(ii) the Commissioner or such Inspector General determines it is necessary to include any return or re-

turn information in such report or other matter to enable the Board to carry out such duties, such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out such duties.

(i) DISCLOSURE TO FEDERAL OFFICERS OR EMPLOYEES FOR ADMINISTRATION OF FEDERAL LAWS NOT RELATING TO TAX ADMINISTRATION.—

(1) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN CRIMINAL INVESTIGATIONS.—

(A) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in—

(i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party, or pertaining to the case of a missing or exploited child,

(ii) any investigation which may result in such a proceeding, or

(iii) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party, or to such a case of a missing or exploited child, solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, may authorize an application to a Federal district court judge or magistrate judge for the order referred to in subparagraph (A). Upon such application, such judge or magistrate judge may grant such order if he determines on the basis of the facts submitted by the applicant that—

(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

(ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and

(iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act (or any criminal investigation or proceeding, in the case of a matter relating to a missing or exploited child), and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(C) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES IN THE CASE OF MATTERS PERTAINING TO A MISSING OR EXPLOITED CHILD.—

(i) IN GENERAL.—In the case of an investigation pertaining to a missing or exploited child, the head of any Federal agency, or his designee, may disclose any return or return information obtained under subparagraph (A) to officers and employees of any State or local law enforcement agency, but only if—

(I) such State or local law enforcement agency is part of a team with the Federal agency in such investigation, and

(II) such information is disclosed only to such officers and employees who are personally and directly engaged in such investigation.

(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of such officers and employees in locating the missing child, in a grand jury proceeding, or in any preparation for, or investigation which may result in, a judicial or administrative proceeding.

(iii) MISSING CHILD.—For purposes of this subparagraph, the term “missing child” shall have the meaning given such term by section 403 of the Missing Children’s Assistance Act (42 U.S.C. 5772).

(iv) EXPLOITED CHILD.—For purposes of this subparagraph, the term “exploited child” means a minor with respect to whom there is reason to believe that a specified offense against a minor (as defined by section 111(7) of the Sex Offender Registration and Notification Act (42 U.S.C. 16911(7)))<sup>1</sup> has or is occurring.

(2) DISCLOSURE OF RETURN INFORMATION OTHER THAN TAXPAYER RETURN INFORMATION FOR USE IN CRIMINAL INVESTIGATIONS.—

(A) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a request which meets the requirements of subparagraph (B) from the head of any Federal agency or the Inspector General thereof, or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force estab-

lished pursuant to section 510 of title 28, United States Code, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency who are personally and directly engaged in—

(i) preparation for any judicial or administrative proceeding described in paragraph (1)(A)(i),

(ii) any investigation which may result in such a proceeding, or

(iii) any grand jury proceeding described in paragraph (1)(A)(iii),

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request is in writing and sets forth—

(i) the name and address of the taxpayer with respect to whom the requested return information relates;

(ii) the taxable period or periods to which such return information relates;

(iii) the statutory authority under which the proceeding or investigation described in subparagraph (A) is being conducted; and

(iv) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

(C) TAXPAYER IDENTITY.—For purposes of this paragraph, a taxpayer's identity shall not be treated as taxpayer return information.

(3) DISCLOSURE OF RETURN INFORMATION TO APPRISE APPROPRIATE OFFICIALS OF CRIMINAL OR TERRORIST ACTIVITIES OR EMERGENCY CIRCUMSTANCES.—

(A) POSSIBLE VIOLATIONS OF FEDERAL CRIMINAL LAW.—

(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing such law. The head of such agency may disclose such return information to officers and employees of such agency to the extent necessary to enforce such law.

(ii) TAXPAYER IDENTITY.—If there is return information (other than taxpayer return information) which may constitute evidence of a violation by any taxpayer of any Federal criminal law (not involving tax administration), such taxpayer's identity may also be disclosed under clause (i).

(B) EMERGENCY CIRCUMSTANCES.—



(i) DANGER OF DEATH OR PHYSICAL INJURY.—Under circumstances involving an imminent danger of death or physical injury to any individual, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or State law enforcement agency of such circumstances.

(ii) FLIGHT FROM FEDERAL PROSECUTION.—Under circumstances involving the imminent flight of any individual from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

(C) TERRORIST ACTIVITIES, ETC.—

(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(4) USE OF CERTAIN DISCLOSED RETURNS AND RETURN INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.—

(A) RETURNS AND TAXPAYER RETURN INFORMATION.—Except as provided in subparagraph (C), any return or taxpayer return information obtained under paragraph (1) or (7)(C) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party—

(i) if the court finds that such return or taxpayer return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party, or

(ii) to the extent required by order of the court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure.

(B) RETURN INFORMATION (OTHER THAN TAXPAYER RETURN INFORMATION).—Except as provided in subparagraph (C), any return information (other than taxpayer return information) obtained under paragraph (1), (2), (3)(A) or (C), or (7) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party.

(C) CONFIDENTIAL INFORMANT; IMPAIRMENT OF INVESTIGATIONS.—No return or return information shall be admitted into evidence under subparagraph (A)(i) or (B) if the Secretary determines and notifies the Attorney General or his delegate or the head of the Federal agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(D) CONSIDERATION OF CONFIDENTIALITY POLICY.—In ruling upon the admissibility of returns or return information, and in the issuance of an order under subparagraph (A)(ii), the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

(E) REVERSIBLE ERROR.—The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in the proceeding.

(5) DISCLOSURE TO LOCATE FUGITIVES FROM JUSTICE.—

(A) IN GENERAL.—Except as provided in paragraph (6), the return of an individual or return information with respect to such individual shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency exclusively for use in locating such individual.

(B) APPLICATION FOR ORDER.—Any person described in paragraph (1)(B) may authorize an application to a Federal district court judge or magistrate judge for an order referred to in subparagraph (A). Upon such application, such judge or magistrate judge may grant such order if he determines on the basis of the facts submitted by the applicant that—

(i) a Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice,

(ii) the return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual, and

(iii) there is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

(6) CONFIDENTIAL INFORMANTS; IMPAIRMENT OF INVESTIGATIONS.—The Secretary shall not disclose any return or return information under paragraph (1), (2), (3)(A) or (C), (5), (7), or (8) if the Secretary determines (and, in the case of a request for disclosure pursuant to a court order described in paragraph (1)(B) or (5)(B), certifies to the court) that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—

(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of any terrorist incident, threat, or activity.

(ii) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

(iii) REQUIREMENTS.—A request meets the requirements of this clause if—

(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of any terrorist incident, threat, or activity, and

(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department

of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—

(I) is made by an individual described in clause (iii), and

(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—

(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(C) DISCLOSURE UNDER EX PARTE ORDERS.—

(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. Return or return information opened to inspection or disclosure pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or

any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—

(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subparagraph (C)(ii)(I) are met.

(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under clause (i)—

(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(8) COMPTROLLER GENERAL.—

(A) RETURNS AVAILABLE FOR INSPECTION.—Except as provided in subparagraph (C), upon written request by the Comptroller General of the United States, returns and return information shall be open to inspection by, or disclosure to, officers and employees of the Government Accountability Office for the purpose of, and to the extent necessary in, making—

(i) an audit of the Internal Revenue Service, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury, which may be required by section 713 of title 31, United States Code, or

(ii) any audit authorized by subsection (p)(6),

except that no such officer or employee shall, except to the extent authorized by subsection (f) or (p)(6), disclose to any person, other than another officer or employee of such office whose official duties require such disclosure, any return or return information described in section 4424(a) in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, nor shall such officer or employee disclose any other return or return information, except as otherwise expressly provided by law, to any person other than such other officer or employee of such office in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(B) AUDITS OF OTHER AGENCIES.—

(i) IN GENERAL.—Nothing in this section shall prohibit any return or return information obtained under this title by any Federal agency (other than an agency referred to in subparagraph (A)) or by a Trustee as defined in the District of Columbia Retirement Protection Act of 1997, for use in any program or activity from being open to inspection by, or disclosure to, officers and employees of the Government Accountability Office if such inspection or disclosure is—

(I) for purposes of, and to the extent necessary in, making an audit authorized by law of such program or activity, and

(II) pursuant to a written request by the Comptroller General of the United States to the head of such Federal agency.

(ii) INFORMATION FROM SECRETARY.—If the Comptroller General of the United States determines that the returns or return information available under clause (i) are not sufficient for purposes of making an audit of any program or activity of a Federal agency (other than an agency referred to in subparagraph (A)), upon written request by the Comptroller General to the Secretary, returns and return information (of the type authorized by subsection (l) or (m) to be made available to the Federal agency for use in such program or activity) shall be open to inspection by, or disclosure to, officers and employees of the Government Accountability Office for the purpose of, and to the extent necessary in, making such audit.

(iii) REQUIREMENT OF NOTIFICATION UPON COMPLETION OF AUDIT.—Within 90 days after the completion of an audit with respect to which returns or return information were opened to inspection or disclosed under clause (i) or (ii), the Comptroller General of the United States shall notify in writing the Joint Committee on Taxation of such completion. Such notice shall include—

(I) a description of the use of the returns and return information by the Federal agency involved,

(II) such recommendations with respect to the use of returns and return information by such Federal agency as the Comptroller General deems appropriate, and

(III) a statement on the impact of any such recommendations on confidentiality of returns and return information and the administration of this title.

(iv) CERTAIN RESTRICTIONS MADE APPLICABLE.—

The restrictions contained in subparagraph (A) on the disclosure of any returns or return information open to inspection or disclosed under such subparagraph shall also apply to returns and return information open to inspection or disclosed under this subparagraph.

(C) DISAPPROVAL BY JOINT COMMITTEE ON TAXATION.—Returns and return information shall not be open to inspection or disclosed under subparagraph (A) or (B) with respect to an audit—

(i) unless the Comptroller General of the United States notifies in writing the Joint Committee on Taxation of such audit, and

(ii) if the Joint Committee on Taxation disapproves such audit by a vote of at least two-thirds of its members within the 30-day period beginning on the day the Joint Committee on Taxation receives such notice.

(j) STATISTICAL USE.—

(1) DEPARTMENT OF COMMERCE.—Upon request in writing by the Secretary of Commerce, the Secretary shall furnish—

(A) such returns, or return information reflected thereon, to officers and employees of the Bureau of the Census, and

(B) such return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis,

as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

(2) FEDERAL TRADE COMMISSION.—Upon request in writing by the Chairman of the Federal Trade Commission, the Secretary shall furnish such return information reflected on any return of a corporation with respect to the tax imposed by chapter 1 to officers and employees of the Division of Financial Statistics of the Bureau of Economics of such commission as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, administration by such division of legally authorized economic surveys of corporations.

(3) DEPARTMENT OF TREASURY.—Returns and return information shall be open to inspection by or disclosure to officers

and employees of the Department of the Treasury whose official duties require such inspection or disclosure for the purpose of, but only to the extent necessary in, preparing economic or financial forecasts, projections, analyses, and statistical studies and conducting related activities. Such inspection or disclosure shall be permitted only upon written request which sets forth the specific reason or reasons why such inspection or disclosure is necessary and which is signed by the head of the bureau or office of the Department of the Treasury requesting the inspection or disclosure.

(4) ANONYMOUS FORM.—No person who receives a return or return information under this subsection shall disclose such return or return information to any person other than the taxpayer to whom it relates except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(5) DEPARTMENT OF AGRICULTURE.—Upon request in writing by the Secretary of Agriculture, the Secretary shall furnish such returns, or return information reflected thereon, as the Secretary may prescribe by regulation to officers and employees of the Department of Agriculture whose official duties require access to such returns or information for the purpose of, but only to the extent necessary in, structuring, preparing, and conducting the census of agriculture pursuant to the Census of Agriculture Act of 1997 (Public Law 105–113).

(6) CONGRESSIONAL BUDGET OFFICE.—Upon written request by the Director of the Congressional Budget Office, the Secretary shall furnish to officers and employees of the Congressional Budget Office return information for the purpose of, but only to the extent necessary for, long-term models of the social security and medicare programs.

(k) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION FOR TAX ADMINISTRATION PURPOSES.—

(1) DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.—Return information shall be disclosed to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under section 7122 relating to the liability for a tax imposed by this title.

(2) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed pursuant to section 6323(f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property.

(3) DISCLOSURE OF RETURN INFORMATION TO CORRECT MISSTATEMENTS OF FACT.—The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to such taxpayer's return or any transaction of the taxpayer with the Internal Revenue Service.



(4) DISCLOSURE TO COMPETENT AUTHORITY UNDER TAX CONVENTION.—A return or return information may be disclosed to a competent authority of a foreign government which has an income tax or gift and estate tax convention, or other convention or bilateral agreement relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention or bilateral agreement.

(5) STATE AGENCIES REGULATING TAX RETURN PREPARERS.—Taxpayer identity information with respect to any tax return preparer, and information as to whether or not any penalty has been assessed against such tax return preparer under section 6694, 6695, or 7216, may be furnished to any agency, body, or commission lawfully charged under any State or local law with the licensing, registration, or regulation of tax return preparers. Such information may be furnished only upon written request by the head of such agency, body, or commission designating the officers or employees to whom such information is to be furnished. Information may be furnished and used under this paragraph only for purposes of the licensing, registration, or regulation of tax return preparers.

(6) DISCLOSURE BY CERTAIN OFFICERS AND EMPLOYEES FOR INVESTIGATIVE PURPOSES.—An internal revenue officer or employee and an officer or employee of the Office of Treasury Inspector General for Tax Administration may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation. This paragraph shall not apply to any disclosure to an individual providing information relating to any purpose described in paragraph (1) or (2) of section 7623(a) which is made under paragraph (13)(A).

(7) DISCLOSURE OF EXCISE TAX REGISTRATION INFORMATION.—To the extent the Secretary determines that disclosure is necessary to permit the effective administration of subtitle D, the Secretary may disclose—

(A) the name, address, and registration number of each person who is registered under any provision of subtitle D (and, in the case of a registered terminal operator, the address of each terminal operated by such operator), and

(B) the registration status of any person.

(8) LEVIES ON CERTAIN GOVERNMENT PAYMENTS.—

(A) DISCLOSURE OF RETURN INFORMATION IN LEVIES ON FINANCIAL MANAGEMENT SERVICE.—In serving a notice of levy, or release of such levy, with respect to any applicable government payment, the Secretary may disclose to offi-

cers and employees of the Financial Management Service—

(i) return information, including taxpayer identity information,

(ii) the amount of any unpaid liability under this title (including penalties and interest), and

(iii) the type of tax and tax period to which such unpaid liability relates.

(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Financial Management Service only for the purpose of, and to the extent necessary in, transferring levied funds in satisfaction of the levy, maintaining appropriate agency records in regard to such levy or the release thereof, notifying the taxpayer and the agency certifying such payment that the levy has been honored, or in the defense of any litigation ensuing from the honor of such levy.

(C) APPLICABLE GOVERNMENT PAYMENT.—For purposes of this paragraph, the term “applicable government payment” means—

(i) any Federal payment (other than a payment for which eligibility is based on the income or assets (or both) of a payee) certified to the Financial Management Service for disbursement, and

(ii) any other payment which is certified to the Financial Management Service for disbursement and which the Secretary designates by published notice.

(9) DISCLOSURE OF INFORMATION TO ADMINISTER SECTION 6311.—The Secretary may disclose returns or return information to financial institutions and others to the extent the Secretary deems necessary for the administration of section 6311. Disclosures of information for purposes other than to accept payments by checks or money orders shall be made only to the extent authorized by written procedures promulgated by the Secretary.

(10) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION TO CERTAIN PRISON OFFICIALS.—

(A) IN GENERAL.—Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

(B) DISCLOSURE TO CONTRACTOR-RUN PRISONS.—Under such procedures as the Secretary may prescribe, the disclosures authorized by subparagraph (A) may be made to con-

tractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

(C) RESTRICTIONS ON USE OF DISCLOSED INFORMATION.—Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

(D) RESTRICTIONS ON REDISCLOSURE AND DISCLOSURE TO LEGAL REPRESENTATIVES.—Notwithstanding subsection (h)—

(i) RESTRICTIONS ON REDISCLOSURE.—Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

(ii) DISCLOSURE TO LEGAL REPRESENTATIVES.—The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding.

(11) DISCLOSURE OF RETURN INFORMATION TO DEPARTMENT OF STATE FOR PURPOSES OF PASSPORT REVOCATION UNDER SECTION 7345.—

(A) IN GENERAL.—The Secretary shall, upon receiving a certification described in section 7345, disclose to the Secretary of State return information with respect to a taxpayer who has a seriously delinquent tax debt described in such section. Such return information shall be limited to—

(i) the taxpayer identity information with respect to such taxpayer, and

(ii) the amount of such seriously delinquent tax debt.

(B) RESTRICTION ON DISCLOSURE.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of State for the purposes of, and to the extent necessary in, carrying out the requirements of section 32101 of the FAST Act.

(12) QUALIFIED TAX COLLECTION CONTRACTORS.—Persons providing services pursuant to a qualified tax collection contract under section 6306 may, if speaking to a person who has identified himself or herself as having the name of the taxpayer to which a tax receivable (within the meaning of such section) relates, identify themselves as contractors of the Internal Revenue Service and disclose the business name of the contractor, and the nature, subject, and reason for the contact. Disclosures under this paragraph shall be made only in such situations and under such conditions as have been approved by the Secretary.

(13) DISCLOSURE TO WHISTLEBLOWERS.—

(A) IN GENERAL.—The Secretary may disclose, to any individual providing information relating to any purpose described in paragraph (1) or (2) of section 7623(a), return information related to the investigation of any taxpayer with respect to whom the individual has provided such information, but only to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax liability for tax, or the amount to be collected with respect to the enforcement of any other provision of this title.

(B) UPDATES ON WHISTLEBLOWER INVESTIGATIONS.—The Secretary shall disclose to an individual providing information relating to any purpose described in paragraph (1) or (2) of section 7623(a) the following:

(i) Not later than 60 days after a case for which the individual has provided information has been referred for an audit or examination, a notice with respect to such referral.

(ii) Not later than 60 days after a taxpayer with respect to whom the individual has provided information has made a payment of tax with respect to tax liability to which such information relates, a notice with respect to such payment.

(iii) Subject to such requirements and conditions as are prescribed by the Secretary, upon a written request by such individual—

(I) information on the status and stage of any investigation or action related to such information, and

(II) in the case of a determination of the amount of any award under section 7623(b), the reasons for such determination.

Clause (iii) shall not apply to any information if the Secretary determines that disclosure of such information would seriously impair Federal tax administration. Information described in clauses (i), (ii), and (iii) may be disclosed to a designee of the individual providing such information in accordance with guidance provided by the Secretary.

(14) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF CYBERSECURITY AND THE PREVENTION OF IDENTITY THEFT TAX REFUND FRAUD.—

(A) IN GENERAL.—Under such procedures and subject to such conditions as the Secretary may prescribe, the Secretary may disclose specified return information to specified ISAC participants to the extent that the Secretary determines such disclosure is in furtherance of effective Federal tax administration relating to the detection or prevention of identity theft tax refund fraud, validation of taxpayer identity, authentication of taxpayer returns, or detection or prevention of cybersecurity threats.

(B) SPECIFIED ISAC PARTICIPANTS.—For purposes of this paragraph—

(i) IN GENERAL.—The term “specified ISAC participant” means—

(I) any person designated by the Secretary as having primary responsibility for a function performed with respect to the information sharing and analysis center described in section 2003(a) of the Taxpayer First Act, and

(II) any person subject to the requirements of section 7216 and which is a participant in such information sharing and analysis center.

(ii) INFORMATION SHARING AGREEMENT.—Such term shall not include any person unless such person has entered into a written agreement with the Secretary setting forth the terms and conditions for the disclosure of information to such person under this paragraph, including requirements regarding the protection and safeguarding of such information by such person.

(C) SPECIFIED RETURN INFORMATION.—For purposes of this paragraph, the term “specified return information” means—

(i) in the case of a return which is in connection with a case of potential identity theft refund fraud—

(I) in the case of such return filed electronically, the internet protocol address, device identification, email domain name, speed of completion, method of authentication, refund method, and such other return information related to the electronic filing characteristics of such return as the Secretary may identify for purposes of this subclause, and

(II) in the case of such return prepared by a tax return preparer, identifying information with respect to such tax return preparer, including the preparer taxpayer identification number and electronic filer identification number of such preparer,

(ii) in the case of a return which is in connection with a case of a identity theft refund fraud which has been confirmed by the Secretary (pursuant to such

procedures as the Secretary may provide), the information referred to in subclauses (I) and (II) of clause (i), the name and taxpayer identification number of the taxpayer as it appears on the return, and any bank account and routing information provided for making a refund in connection with such return, and

(iii) in the case of any cybersecurity threat to the Internal Revenue Service, information similar to the information described in subclauses (I) and (II) of clause (i) with respect to such threat.

(D) RESTRICTION ON USE OF DISCLOSED INFORMATION.—

(i) DESIGNATED THIRD PARTIES.—Any return information received by a person described in subparagraph (B)(i)(I) shall be used only for the purposes of and to the extent necessary in—

(I) performing the function such person is designated to perform under such subparagraph,

(II) facilitating disclosures authorized under subparagraph (A) to persons described in subparagraph (B)(i)(II), and

(III) facilitating disclosures authorized under subsection (d) to participants in such information sharing and analysis center.

(ii) RETURN PREPARERS.—Any return information received by a person described in subparagraph (B)(i)(II) shall be treated for purposes of section 7216 as information furnished to such person for, or in connection with, the preparation of a return of the tax imposed under chapter 1.

(E) DATA PROTECTION AND SAFEGUARDS.—Return information disclosed under this paragraph shall be subject to such protections and safeguards as the Secretary may require in regulations or other guidance or in the written agreement referred to in subparagraph (B)(ii). Such written agreement shall include a requirement that any unauthorized access to information disclosed under this paragraph, and any breach of any system in which such information is held, be reported to the Treasury Inspector General for Tax Administration.

(15) DISCLOSURES TO SOCIAL SECURITY ADMINISTRATION TO IDENTIFY TAX RECEIVABLES NOT ELIGIBLE FOR COLLECTION PURSUANT TO QUALIFIED TAX COLLECTION CONTRACTS.—In the case of any individual involved with a tax receivable which the Secretary has identified for possible collection pursuant to a qualified tax collection contract (as defined in section 6306(b)), the Secretary may disclose the taxpayer identity and date of birth of such individual to officers, employees, and contractors of the Social Security Administration to determine if such tax receivable is not eligible for collection pursuant to such a qualified tax collection contract by reason of section 6306(d)(3)(E).

(1) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION TO SOCIAL SECURITY ADMINISTRATION AND RAILROAD RETIREMENT BOARD.—The Secretary may, upon written request, disclose returns and return information with respect to—

(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

(B) a plan to which part I of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return information described in section 6057(d); and

(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

(2) DISCLOSURE OF RETURNS AND RETURN INFORMATION TO THE DEPARTMENT OF LABOR AND PENSION BENEFIT GUARANTY CORPORATION.—The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

(3) DISCLOSURE THAT APPLICANT FOR FEDERAL LOAN HAS TAX DELINQUENT ACCOUNT.—

(A) IN GENERAL.—Upon written request, the Secretary may disclose to the head of the Federal agency administering any included Federal loan program whether or not an applicant for a loan under such program has a tax delinquent account.

(B) RESTRICTION ON DISCLOSURE.—Any disclosure under subparagraph (A) shall be made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question.

(C) INCLUDED FEDERAL LOAN PROGRAM DEFINED.—For purposes of this paragraph, the term “included Federal loan program” means any program under which the United States or a Federal agency makes, guarantees, or insures loans.

(4) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN PERSONNEL OR CLAIMANT REPRESENTATIVE MATTERS.—The Secretary may disclose returns and return information—

(A) upon written request—

(i) to an employee or former employee of the Department of the Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may

be affected by an administrative action or proceeding under section 330 of title 31, United States Code, solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return information is or may be relevant and material to the action or proceeding; or

(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

(5) SOCIAL SECURITY ADMINISTRATION.—Upon written request by the Commissioner of Social Security, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of—

(A) carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program; or

(B) providing information regarding the mortality status of individuals for epidemiological and similar research in accordance with section 1106(d) of the Social Security Act.

(6) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES.—

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency—

(i) available return information from the master files of the Internal Revenue Service relating to the social security account number (or numbers, if the individual involved has more than one such number), address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only if such return information is not reasonably available from any other source.

(B) DISCLOSURE TO CERTAIN AGENTS.—The following information disclosed to any child support enforcement agency under subparagraph (A) with respect to any individual with respect to whom child support obligations are



sought to be established or enforced may be disclosed by such agency to any agent of such agency which is under contract with such agency to carry out the purposes described in subparagraph (C):

(i) The address and social security account number (or numbers) of such individual.

(ii) The amount of any reduction under section 6402(c) (relating to offset of past-due support against overpayments) in any overpayment otherwise payable to such individual.

(C) RESTRICTION ON DISCLOSURE.—Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(7) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL AGENCIES ADMINISTERING CERTAIN PROGRAMS UNDER THE SOCIAL SECURITY ACT, THE FOOD AND NUTRITION ACT OF 2008, OR TITLE 38, UNITED STATES CODE, OR CERTAIN HOUSING ASSISTANCE PROGRAMS.—

(A) RETURN INFORMATION FROM SOCIAL SECURITY ADMINISTRATION.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) PROGRAMS TO WHICH RULE APPLIES.—The programs to which this paragraph applies are:

(i) a State program funded under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act or subsidies provided under section 1860D–14 of such Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the

type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food and Nutrition Act of 2008;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(II) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(III) health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title; and

(IV) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule; and

(ix) any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs.

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV).

**(8) DISCLOSURE OF CERTAIN RETURN INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO FEDERAL, STATE, AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES.—**

**(A) IN GENERAL.**—Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a Federal or State or local child support enforcement agency return information from returns with respect to social security account numbers, net earnings from self-employment (as defined in section 1402), wages

(as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term “child support obligations” only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

(C) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—For purposes of this paragraph, the term “State or local child support enforcement agency” means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

(9) DISCLOSURE OF ALCOHOL FUEL PRODUCERS TO ADMINISTRATORS OF STATE ALCOHOL LAWS.—Notwithstanding any other provision of this section, the Secretary may disclose—

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.

(10) DISCLOSURE OF CERTAIN INFORMATION TO AGENCIES REQUESTING A REDUCTION UNDER SUBSECTION (C), (D), (E), OR (F) OF SECTION 6402.—

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon receiving a written request, disclose to officers and employees of any agency seeking a reduction under subsection (c), (d), (e), or (f) of section 6402, to officers and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a notice submitted under subsection (f)(5)(C) of section 6402, and to officers and employees of the Department of the Treasury in connection with such reduction—

(i) taxpayer identity information with respect to the taxpayer against whom such a reduction was made or not made and with respect to any other person filing a joint return with such taxpayer,

(ii) the fact that a reduction has been made or has not been made under such subsection with respect to such taxpayer,

(iii) the amount of such reduction,

(iv) whether such taxpayer filed a joint return, and

(v) the fact that a payment was made (and the amount of the payment) to the spouse of the taxpayer on the basis of a joint return.

(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—(i) Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records, locating any person with respect to whom a reduction under subsection (c), (d), (e), or (f) of section 6402 is sought for purposes of collecting the debt with respect to which the reduction is sought, or in the defense of any litigation or administrative procedure ensuing from a reduction made under subsection (c), (d), (e), or (f) of section 6402.

(ii) Notwithstanding clause (i), return information disclosed to officers and employees of the Department of Labor may be accessed by agents who maintain and provide technological support to the Department of Labor's Interstate Connection Network (ICON) solely for the purpose of providing such maintenance and support.

(11) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—

(A) IN GENERAL.—The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code.

(12) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION FOR VERIFICATION OF EMPLOYMENT STATUS OF MEDICARE BENEFICIARY AND SPOUSE OF MEDICARE BENEFICIARY.—

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon written request from the Commissioner of Social Security, disclose to the Commissioner available filing status and taxpayer identity information from the individual master files of the Internal Revenue Service relating to whether any medicare beneficiary identified by the Commissioner was a married individual (as defined in section 7703) for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's TIN.

(B) RETURN INFORMATION FROM SOCIAL SECURITY ADMINISTRATION.—The Commissioner of Social Security shall, upon written request from the Administrator of the Cen-

ters for Medicare & Medicaid Services, disclose to the Administrator the following information:

(i) The name and TIN of each medicare beneficiary who is identified as having received wages (as defined in section 3401(a)), above an amount (if any) specified by the Secretary of Health and Human Services, from a qualified employer in a previous year.

(ii) For each medicare beneficiary who was identified as married under subparagraph (A) and whose spouse is identified as having received wages, above an amount (if any) specified by the Secretary of Health and Human Services, from a qualified employer in a previous year—

(I) the name and TIN of the medicare beneficiary, and

(II) the name and TIN of the spouse.

(iii) With respect to each such qualified employer, the name, address, and TIN of the employer and the number of individuals with respect to whom written statements were furnished under section 6051 by the employer with respect to such previous year.

(C) DISCLOSURE BY CENTERS FOR MEDICARE & MEDICAID SERVICES.—With respect to the information disclosed under subparagraph (B), the Administrator of the Centers for Medicare & Medicaid Services may disclose—

(i) to the qualified employer referred to in such subparagraph the name and TIN of each individual identified under such subparagraph as having received wages from the employer (hereinafter in this subparagraph referred to as the “employee”) for purposes of determining during what period such employee or the employee’s spouse may be (or have been) covered under a group health plan of the employer and what benefits are or were covered under the plan (including the name, address, and identifying number of the plan),

(ii) to any group health plan which provides or provided coverage to such an employee or spouse, the name of such employee and the employee’s spouse (if the spouse is a medicare beneficiary) and the name and address of the employer, and, for the purpose of presenting a claim to the plan—

(I) the TIN of such employee if benefits were paid under title XVIII of the Social Security Act with respect to the employee during a period in which the plan was a primary plan (as defined in section 1862(b)(2)(A) of the Social Security Act), and

(II) the TIN of such spouse if benefits were paid under such title with respect to the spouse during such period, and

(iii) to any agent of such Administrator the information referred to in subparagraph (B) for purposes of

carrying out clauses (i) and (ii) on behalf of such Administrator.

(D) SPECIAL RULES.—

(i) RESTRICTIONS ON DISCLOSURE.—Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan.

(ii) TIMELY RESPONSE TO REQUESTS.—Any request made under subparagraph (A) or (B) shall be complied with as soon as possible but in no event later than 120 days after the date the request was made.

(E) DEFINITIONS.—For purposes of this paragraph—

(i) MEDICARE BENEFICIARY.—The term “medicare beneficiary” means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII of the Social Security Act, but does not include such an individual enrolled in part A under section 1818.

(ii) GROUP HEALTH PLAN.—The term “group health plan” means any group health plan (as defined in section 5000(b)(1)).

(iii) QUALIFIED EMPLOYER.—The term “qualified employer” means, for a calendar year, an employer which has furnished written statements under section 6051 with respect to at least 20 individuals for wages paid in the year.

(13) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT THE HIGHER EDUCATION ACT OF 1965.—

(A) APPLICATIONS AND RECERTIFICATIONS FOR INCOME-CONTINGENT OR INCOME-BASED REPAYMENT.—The Secretary shall, upon written request from the Secretary of Education, disclose to any authorized person, only for the purpose of (and to the extent necessary in) determining eligibility for, or repayment obligations under, income-contingent or income-based repayment plans under title IV of the Higher Education Act of 1965 with respect to loans under part D of such title, the following return information from returns (for any taxable year specified by the Secretary of Education as relevant to such purpose) of an individual certified by the Secretary of Education as having provided approval under section 494(a)(2) of such Act (as in effect on the date of enactment of this paragraph) for such disclosure:

(i) Taxpayer identity information.

(ii) Filing status.

(iii) Adjusted gross income.

(iv) Total number of exemptions claimed, if applicable.

(v) Number of dependents taken into account in determining the credit allowed under section 24.

(vi) If applicable, the fact that there was no return filed.

(B) DISCHARGE OF LOAN BASED ON TOTAL AND PERMANENT DISABILITY.—The Secretary shall, upon written request from the Secretary of Education, disclose to any authorized person, only for the purpose of (and to the extent necessary in) monitoring and reinstating loans under title IV of the Higher Education Act of 1965 that were discharged based on a total and permanent disability (within the meaning of section 437(a) of such Act), the following return information from returns (for any taxable year specified by the Secretary of Education as relevant to such purpose) of an individual certified by the Secretary of Education as having provided approval under section 494(a)(3) of such Act (as in effect on the date of enactment of this paragraph) for such disclosure:

(i) The return information described in clauses (i), (ii), and (vi) of subparagraph (A).

(ii) The return information described in subparagraph (C)(ii).

(C) FEDERAL STUDENT FINANCIAL AID.—The Secretary shall, upon written request from the Secretary of Education, disclose to any authorized person, only for the purpose of (and to the extent necessary in) determining eligibility for, and amount of, Federal student financial aid under a program authorized under subpart 1 of part A, part C, or part D of title IV of the Higher Education Act of 1965 the following return information from returns (for the taxable year used for purposes of section 480(a) of such Act) of an individual certified by the Secretary of Education as having provided approval under section 494(a)(1) of such Act (as in effect on the date of enactment of this paragraph) for such disclosure:

(i) Return information described in clauses (i) through (vi) of subparagraph (A).

(ii) The amount of any net earnings from self-employment (as defined in section 1402(a)), wages (as defined in section 3121(a) or 3401(a)), and taxable income from a farming business (as defined in section 263A(e)(4)).

(iii) Amount of total income tax.

(iv) Amount of any credit allowed under section 25A.

(v) Amount of individual retirement account distributions not included in adjusted gross income.

(vi) Amount of individual retirement account contributions and payments to self-employed SEP, Keogh, and other qualified plans which were deducted from income.

(vii) Amount of tax-exempt interest received.

(viii) Amounts from retirement pensions and annuities not included in adjusted gross income.

(ix) If applicable, the fact that any of the following schedules (or equivalent successor schedules) were filed with the return:

- (I) Schedule A.
- (II) Schedule B.
- (III) Schedule D.
- (IV) Schedule E.
- (V) Schedule F.
- (VI) Schedule H.

(x) If applicable, the amount reported on Schedule C (or an equivalent successor schedule) as net profit or loss.

(D) ADDITIONAL USES OF DISCLOSED INFORMATION.—

(i) IN GENERAL.—In addition to the purposes for which information is disclosed under subparagraphs (A), (B), and (C), return information so disclosed may be used by an authorized person, with respect to income-contingent or income-based repayment plans, awards of Federal student financial aid under a program authorized under subpart 1 of part A, part C, or part D of title IV of the Higher Education Act of 1965, and discharges of loans based on a total and permanent disability (within the meaning of section 437(a) of such Act), for purposes of—

(I) reducing the net cost of improper payments under such plans, relating to such awards, or relating to such discharges,

(II) oversight activities by the Office of Inspector General of the Department of Education as authorized by the Inspector General Act of 1978, and

(III) conducting analyses and forecasts for estimating costs related to such plans, awards, or discharges.

(ii) LIMITATION.—The purposes described in clause (i) shall not include the conduct of criminal investigations or prosecutions.

(iii) REDISCLOSURE TO INSTITUTIONS OF HIGHER EDUCATION, STATE HIGHER EDUCATION AGENCIES, AND DESIGNATED SCHOLARSHIP ORGANIZATIONS.—Authorized persons may redisclose return information received under subparagraph (C), solely for the use in the application, award, and administration of financial aid awarded by the Federal government or awarded by a person described in subclause (I), (II), or (III), to the following persons:

(I) An institution of higher education participating in a program under subpart 1 of part A, part C, or part D of title IV of the Higher Education Act of 1965.

(II) A State higher education agency.

(III) A scholarship organization which is an entity designated (prior to the date of the enactment of this clause) by the Secretary of Education under section 483(a)(3)(E) of such Act.

This clause shall only apply to the extent that the taxpayer with respect to whom the return information relates



provides written consent for such redisclosure to the Secretary of Education. Under such terms and conditions as may be prescribed by the Secretary, after consultation with the Department of Education, an institution of higher education described in subclause (I) or a State higher education agency described in subclause (II) may designate a contractor of such institution or state agency to receive return information on behalf of such institution or state agency to administer aspects of the institution's or state agency's activities for the application, award, and administration of such financial aid.

(iv) REDISCLOSURE TO OFFICE OF INSPECTOR GENERAL, INDEPENDENT AUDITORS, AND CONTRACTORS.—Any return information which is redisclosed under clause (iii)—

(I) may be further disclosed by persons described in subclauses (I), (II), or (III) of clause (iii) or persons designated in the last sentence of clause (iii) to the Office of Inspector General of the Department of Education and independent auditors conducting audits of such person's administration of the programs for which the return information was received, and

(II) may be further disclosed by persons described in subclauses (I), (II), or (III) of clause (iii) to contractors of such entities,

but only to the extent necessary in carrying out the purposes described in such clause (iii).

(v) REDISCLOSURE TO FAMILY MEMBERS.—In addition to the purposes for which information is disclosed and used under subparagraphs (A) and (C), or redisclosed under clause (iii), any return information so disclosed or redisclosed may be further disclosed to any individual certified by the Secretary of Education as having provided approval under paragraph (1) or (2) of section 494(a) of the Higher Education Act of 1965, as the case may be, for disclosure related to the income-contingent or income-based repayment plan under subparagraph (A) or the eligibility for, and amount of, Federal student financial aid described in subparagraph (C).

(vi) REDISCLOSURE OF FAFSA INFORMATION.—Return information received under subparagraph (C) may be redisclosed in accordance with subsection (c) of section 494 of the Higher Education Act of 1965 (as in effect on the date of enactment of the COVID-related Tax Relief Act of 2020) to carry out the purposes specified in such subsection.

(E) AUTHORIZED PERSON.—For purposes of this paragraph, the term “authorized person” means, with respect to information disclosed under subparagraph (A), (B), or (C), any person who—

(i) is an officer, employee, or contractor, of the Department of Education, and

(ii) is specifically authorized and designated by the Secretary of Education for purposes of such subparagraph (applied separately with respect to each such subparagraph).

(F) JOINT RETURNS.—In the case of a joint return, any disclosure authorized under subparagraph (A), (B), or (C), and any redisclosure authorized under clause (iii), (iv) (v), or (vi) of subparagraph (D), with respect to an individual shall be treated for purposes of this paragraph as applying with respect to the taxpayer.

(14) DISCLOSURE OF RETURN INFORMATION TO UNITED STATES CUSTOMS SERVICE.—The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in—

(A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or

(B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

(15) DISCLOSURE OF RETURNS FILED UNDER SECTION 6050I.—The Secretary may, upon written request, disclose to officers and employees of—

(A) any Federal agency,

(B) any agency of a State or local government, or

(C) any agency of the government of a foreign country, information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law.

(16) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF ADMINISTERING THE DISTRICT OF COLUMBIA RETIREMENT PROTECTION ACT OF 1997.—

(A) IN GENERAL.—Upon written request available return information (including such information disclosed to the Social Security Administration under paragraph (1) or (5) of this subsection), relating to the amount of wage income (as defined in section 3121(a) or 3401(a)), the name, address, and identifying number assigned under section 6109, of payors of wage income, taxpayer identity (as defined in section 6103(b)(6)), and the occupational status reflected on any return filed by, or with respect to, any individual with respect to whom eligibility for, or the correct amount of, benefits under the District of Columbia Retirement

ment Protection Act of 1997, is sought to be determined, shall be disclosed by the Commissioner of Social Security, or to the extent not available from the Social Security Administration, by the Secretary, to any duly authorized officer or employee of the Department of the Treasury, or a Trustee or any designated officer or employee of a Trustee (as defined in the District of Columbia Retirement Protection Act of 1997), or any actuary engaged by a Trustee under the terms of the District of Columbia Retirement Protection Act of 1997, whose official duties require such disclosure, solely for the purpose of, and to the extent necessary in, determining an individual's eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997.

(B) DISCLOSURE FOR USE IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.—Return information disclosed to any person under this paragraph may be disclosed in a judicial or administrative proceeding relating to the determination of an individual's eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997.

(17) DISCLOSURE TO NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.—The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsection (f), (i)(8), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal.

(18) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF CARRYING OUT A PROGRAM FOR ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.—The Secretary may disclose to providers of health insurance for any certified individual (as defined in section 7527(c)) return information with respect to such certified individual only to the extent necessary to carry out the program established by section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals).

(19) DISCLOSURE OF RETURN INFORMATION FOR PURPOSES OF PROVIDING TRANSITIONAL ASSISTANCE UNDER MEDICARE DISCOUNT CARD PROGRAM.—

(A) IN GENERAL.—The Secretary, upon written request from the Secretary of Health and Human Services pursuant to carrying out section 1860D–31 of the Social Security Act, shall disclose to officers, employees, and contractors of the Department of Health and Human Services with respect to a taxpayer for the applicable year—

(i)(I) whether the adjusted gross income, as modified in accordance with specifications of the Secretary of Health and Human Services for purposes of carrying out such section, of such taxpayer and, if applicable, such taxpayer's spouse, for the applicable year, exceeds the amounts specified by the Secretary of Health and Human Services in order to apply the 100 and 135 percent of the poverty lines under such section, (II) whether the return was a joint return, and (III) the applicable year, or

(ii) if applicable, the fact that there is no return filed for such taxpayer for the applicable year.

(B) DEFINITION OF APPLICABLE YEAR.—For the purposes of this subsection, the term “applicable year” means the most recent taxable year for which information is available in the Internal Revenue Service's taxpayer data information systems, or, if there is no return filed for such taxpayer for such year, the prior taxable year.

(C) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under this paragraph may be used only for the purposes of determining eligibility for and administering transitional assistance under section 1860D–31 of the Social Security Act.

(20) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT MEDICARE PART B PREMIUM SUBSIDY ADJUSTMENT AND PART D BASE BENEFICIARY PREMIUM INCREASE.—

(A) IN GENERAL.—The Secretary shall, upon written request from the Commissioner of Social Security, disclose to officers, employees, and contractors of the Social Security Administration return information of a taxpayer whose premium (according to the records of the Secretary) may be subject to adjustment under section 1839(i) or increase under section 1860D–13(a)(7) of the Social Security Act. Such return information shall be limited to—

(i) taxpayer identity information with respect to such taxpayer,

(ii) the filing status of such taxpayer,

(iii) the adjusted gross income of such taxpayer,

(iv) the amounts excluded from such taxpayer's gross income under sections 135 and 911 to the extent such information is available,

(v) the interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1 to the extent such information is available,

(vi) the amounts excluded from such taxpayer's gross income by sections 931 and 933 to the extent such information is available,

(vii) such other information relating to the liability of the taxpayer as is prescribed by the Secretary by regulation as might indicate in the case of a taxpayer who is an individual described in subsection (i)(4)(B)(iii) of section 1839 of the Social Security Act that the amount of the premium of the taxpayer under

such section may be subject to adjustment under subsection (i) of such section or increase under section 1860D-13(a)(7) of such Act and the amount of such adjustment, and

(viii) the taxable year with respect to which the preceding information relates.

(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—

(i) IN GENERAL.—Return information disclosed under subparagraph (A) may be used by officers, employees, and contractors of the Social Security Administration only for the purposes of, and to the extent necessary in, establishing the appropriate amount of any premium adjustment under such section 1839(i) or increase under such section 1860D-13(a)(7) or for the purpose of resolving taxpayer appeals with respect to any such premium adjustment or increase.

(ii) DISCLOSURE TO OTHER AGENCIES.—Officers, employees, and contractors of the Social Security Administration may disclose—

(I) the taxpayer identity information and the amount of the premium subsidy adjustment or premium increase with respect to a taxpayer described in subparagraph (A) to officers, employees, and contractors of the Centers for Medicare and Medicaid Services, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

(II) the taxpayer identity information and the amount of the premium subsidy adjustment or the increased premium amount with respect to a taxpayer described in subparagraph (A) to officers and employees of the Office of Personnel Management and the Railroad Retirement Board, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

(III) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Health and Human Services to the extent necessary to resolve administrative appeals of such premium subsidy adjustment or increased premium, and

(IV) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Justice for use in judicial proceedings to the extent necessary to carry out the purposes described in clause (i).

(21) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT ELIGIBILITY REQUIREMENTS FOR CERTAIN PROGRAMS.—

(A) IN GENERAL.—The Secretary, upon written request from the Secretary of Health and Human Services, shall

disclose to officers, employees, and contractors of the Department of Health and Human Services return information of any taxpayer whose income is relevant in determining any premium tax credit under section 36B or any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act or eligibility for participation in a State medicaid program under title XIX of the Social Security Act, a State's children's health insurance program under title XXI of the Social Security Act, or a basic health program under section 1331 of Patient Protection and Affordable Care Act. Such return information shall be limited to—

- (i) taxpayer identity information with respect to such taxpayer,
- (ii) the filing status of such taxpayer,
- (iii) the number of individuals for whom a deduction is allowed under section 151 with respect to the taxpayer (including the taxpayer and the taxpayer's spouse),
- (iv) the modified adjusted gross income (as defined in section 36B) of such taxpayer and each of the other individuals included under clause (iii) who are required to file a return of tax imposed by chapter 1 for the taxable year,
- (v) such other information as is prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for such credit or reduction (and the amount thereof), and
- (vi) the taxable year with respect to which the preceding information relates or, if applicable, the fact that such information is not available.

(B) INFORMATION TO EXCHANGE AND STATE AGENCIES.—The Secretary of Health and Human Services may disclose to an Exchange established under the Patient Protection and Affordable Care Act or its contractors, or to a State agency administering a State program described in subparagraph (A) or its contractors, any inconsistency between the information provided by the Exchange or State agency to the Secretary and the information provided to the Secretary under subparagraph (A).

(C) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under subparagraph (A) or (B) may be used by officers, employees, and contractors of the Department of Health and Human Services, an Exchange, or a State agency only for the purposes of, and to the extent necessary in—

- (i) establishing eligibility for participation in the Exchange, and verifying the appropriate amount of, any credit or reduction described in subparagraph (A),
- (ii) determining eligibility for participation in the State programs described in subparagraph (A).

(22) DISCLOSURE OF RETURN INFORMATION TO DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR PURPOSES OF ENHANCING MEDICARE PROGRAM INTEGRITY.—

(A) IN GENERAL.—The Secretary shall, upon written request from the Secretary of Health and Human Services, disclose to officers and employees of the Department of Health and Human Services return information with respect to a taxpayer who has applied to enroll, or reenroll, as a provider of services or supplier under the Medicare program under title XVIII of the Social Security Act. Such return information shall be limited to—

(i) the taxpayer identity information with respect to such taxpayer;

(ii) the amount of the delinquent tax debt owed by that taxpayer; and

(iii) the taxable year to which the delinquent tax debt pertains.

(B) RESTRICTION ON DISCLOSURE.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Health and Human Services for the purposes of, and to the extent necessary in, establishing the taxpayer's eligibility for enrollment or reenrollment in the Medicare program, or in any administrative or judicial proceeding relating to, or arising from, a denial of such enrollment or reenrollment, or in determining the level of enhanced oversight to be applied with respect to such taxpayer pursuant to section 1866(j)(3) of the Social Security Act.

(C) DELINQUENT TAX DEBT.—For purposes of this paragraph, the term “delinquent tax debt” means an outstanding debt under this title for which a notice of lien has been filed pursuant to section 6323, but the term does not include a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or 7122, or a debt with respect to which a collection due process hearing under section 6330 is requested, pending, or completed and no payment is required.

(23) DISCLOSURE OF RETURN INFORMATION TO DEPARTMENT OF LABOR TO CARRY OUT BLACK LUNG BENEFITS ACT.—

(A) IN GENERAL.—*The Commissioner of Social Security shall, on written request with respect to any individual, disclose to officers or employees of the Department of Labor return information from returns with respect to net earnings from self-employment (as defined in section 1402) and wages (as defined in section 3121(a) or 3401(a)) for employment for each employer of such individual.*

(B) RESTRICTION ON DISCLOSURE.—*The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and the extent necessary in, carrying out the proper administration of the Black Lung Benefits Act (30 U.S.C. 901 et seq.).*

(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—

(1) TAX REFUNDS.—The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

(2) FEDERAL CLAIMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31.

(B) SPECIAL RULE FOR CONSUMER REPORTING AGENCY.—In the case of an agent of a Federal agency which is a consumer reporting agency (within the meaning of section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))), the mailing address of a taxpayer may be disclosed to such agent under subparagraph (A) only for the purpose of allowing such agent to prepare a commercial credit report on the taxpayer for use by such Federal agency in accordance with sections 3711, 3717, and 3718 of title 31.

(3) NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.—Upon written request, the Secretary may disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health solely for the purpose of locating individuals who are, or may have been, exposed to occupational hazards in order to determine the status of their health or to inform them of the possible need for medical care and treatment.

(4) INDIVIDUALS WHO OWE AN OVERPAYMENT OF FEDERAL PELL GRANTS OR WHO HAVE DEFAULTED ON STUDENT LOANS ADMINISTERED BY THE DEPARTMENT OF EDUCATION.—

(A) IN GENERAL.—Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer—

(i) who owes an overpayment of a grant awarded to such taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965, or

(ii) who has defaulted on a loan—

(I) made under part B, D, or E of title IV of the Higher Education Act of 1965, or

(II) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education,

for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such overpayment or loan.

(B) DISCLOSURE TO EDUCATIONAL INSTITUTIONS, ETC.—Any mailing address disclosed under subparagraph (A)(i) may be disclosed by the Secretary of Education to—



(i) any lender, or any State or nonprofit guarantee agency, which is participating under part B or D of title IV of the Higher Education Act of 1965, or

(ii) any educational institution with which the Secretary of Education has an agreement under subpart 1 of part A, or part D or E, of title IV of such Act, for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

(5) INDIVIDUALS WHO HAVE DEFAULTED ON STUDENT LOANS ADMINISTERED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—

(A) IN GENERAL.—Upon written request by the Secretary of Health and Human Services, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan made under part C <sup>1</sup> of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act, for use only by officers, employees, or agents of the Department of Health and Human Services for purposes of locating such taxpayer for purposes of collecting such loan.

(B) DISCLOSURE TO SCHOOLS AND ELIGIBLE LENDERS.—Any mailing address disclosed under subparagraph (A) may be disclosed by the Secretary of Health and Human Services to—

(i) any school with which the Secretary of Health and Human Services has an agreement under subpart II <sup>1</sup> of part C of title VII of the Public Health Service Act or subpart II <sup>1</sup> of part B of title VIII of such Act, or

(ii) any eligible lender (within the meaning of section 737(4) <sup>1</sup> of such Act) participating under subpart I <sup>1</sup> of part C of title VII of such Act,

for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such subparts for the purposes of collecting such loans.

(6) BLOOD DONOR LOCATOR SERVICE.—

(A) IN GENERAL.—Upon written request pursuant to section 1141 of the Social Security Act, the Secretary shall disclose the mailing address of taxpayers to officers and employees of the Blood Donor Locator Service in the Department of Health and Human Services.

(B) RESTRICTION ON DISCLOSURE.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, assisting under the Blood Donor Locator Service authorized persons (as defined in section 1141(h)(1) of the Social Security Act) in locating blood donors who, as indicated by donated blood or products derived therefrom or by the history of the sub-

sequent use of such blood or blood products, have or may have the virus for acquired immune deficiency syndrome, in order to inform such donors of the possible need for medical care and treatment.

(C) SAFEGUARDS.—The Secretary shall destroy all related blood donor records (as defined in section 1141(h)(2) of the Social Security Act) in the possession of the Department of the Treasury upon completion of their use in making the disclosure required under subparagraph (A), so as to make such records undisclosable.

(7) SOCIAL SECURITY ACCOUNT STATEMENT FURNISHED BY SOCIAL SECURITY ADMINISTRATION.—Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.

(n) CERTAIN OTHER PERSONS.—Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

(o) DISCLOSURE OF RETURNS AND RETURN INFORMATION WITH RESPECT TO CERTAIN TAXES.—

(1) TAXES IMPOSED BY SUBTITLE E.—

(A) IN GENERAL.—Returns and return information with respect to taxes imposed by subtitle E (relating to taxes on alcohol, tobacco, and firearms) shall be open to inspection by or disclosure to officers and employees of a Federal agency whose official duties require such inspection or disclosure.

(B) USE IN CERTAIN PROCEEDINGS.—Returns and return information disclosed to a Federal agency under subparagraph (A) may be used in an action or proceeding (or in preparation for such action or proceeding) brought under section 625 of the American Jobs Creation Act of 2004 for the collection of any unpaid assessment or penalty arising under such Act.

(2) TAXES IMPOSED BY CHAPTER 35.—Returns and return information with respect to taxes imposed by chapter 35 (relating to taxes on wagering) shall, notwithstanding any other provision of this section, be open to inspection by or disclosure only to such person or persons and for such purpose or purposes as are prescribed by section 4424.

(3) TAXES IMPOSED BY SECTION 4481.—Returns and return information with respect to taxes imposed by section 4481 shall be open to inspection by or disclosure to officers and employees of United States Customs and Border Protection of the Department of Homeland Security whose official duties require such

inspection or disclosure for purposes of administering such section.

(p) PROCEDURE AND RECORDKEEPING.—

(1) MANNER, TIME, AND PLACE OF INSPECTIONS.—Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) PROCEDURE.—

(A) REPRODUCTION OF RETURNS.—A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

(B) DISCLOSURE OF RETURN INFORMATION.—Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

(C) USE OF REPRODUCTIONS.—Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section and section 6104(c). Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsection (c), (e), (f)(5), (h)(1), (3)(A), or (4), (i)(4), or (8)(A)(ii), (k)(1), (2), (6), (8), or (9), (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13)(D)(iv), (13)(D)(v), (13)(D)(vi) <sup>2</sup> (14), (15), (16), (17), or (18), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such

person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

(B) REPORT BY THE SECRETARY.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint committee to such persons and for such purposes as the joint committee may, by record vote of a majority of the members of the joint committee, determine.

(C) PUBLIC REPORT ON DISCLOSURES.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (7)(A)(ii), or (l)(6), and the Government Accountability Office the number of—

(I) requests for disclosure of returns and return information,

(II) instances in which returns and return information were disclosed pursuant to such requests or otherwise,

(III) taxpayers whose returns, or return information with respect to whom, were disclosed pursuant to such requests, and

(ii) describes the general purposes for which such requests were made.

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5), or (7), (j)(1), (2), or (5), (k)(8), (10), (11), or (15), (l)(1), (2), (3), (5), (10), (11), (13)(A), (13)(B), (13)(C), (13)(D)(i), (14), (17), **or (22)]** (22), or (23), (o)(1)(A), or (o)(3), the Government Accountability Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(1)(C), (3)(B)(i), or (7)(A)(ii), or (k)(10), (l)(6), (7), (8), (9), (12), (15), or (16), any appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or (15), subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20), or any entity described in subsection (l)(21), shall, as a condition for receiving returns or return information—

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission, the Government Accountability Office, or the Congressional Budget Office for ensuring the confidentiality of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), (k)(10), or (l)(6), (7), (8), (9), or (16), any appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or (15) or subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20) return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,

(ii) in the case of an agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5) or (7), (j)(1), (2), or (5), (k)(8), (10), (11), or (15), (l)(1), (2), (3), (5), (10), (11), (12), (13)(A), (13)(B), (13)(C), (13)(D)(i), (14), (15), (17), [or (22),] (22), or (23), (o)(1)(A), or (o)(3) or any entity described in subsection (l)(21), the Government Accountability Office, or the Congressional Budget Office, either—

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this para-

graph continue to be met with respect to such returns or return information, and

(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable;

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission, including an agency, an appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or (15) or subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20) or any entity described in subsection (l)(21), or the Government Accountability Office or the Congressional Budget Office, has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency, an appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or (15) or subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), (16), (18), (19), or (20) or any entity described in subsection (l)(21), or the Government Accountability Office or the Congressional Budget Office, until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent or which receives any information under paragraph (6)(A), (10), (12)(B), or (16) of subsection (l) and which discloses any such information to any agent, or any person including an agent described in subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), or (16), this paragraph shall apply to such agency and each such agent or other person (except that, in the case of an agent, or any person including an agent described in subsection (l)(10), (13)(A), (13)(B), (13)(C), (13)(D)(i), or (16), any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

(5) REPORT ON PROCEDURES AND SAFEGUARDS.—After the close of each calendar year, the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions, the Government Ac-

countability Office, and the Congressional Budget Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances of deficiencies in, and failure to establish or utilize, such procedures.

(6) AUDIT OF PROCEDURES AND SAFEGUARDS.—

(A) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions and the Congressional Budget Office pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall notify the Secretary before any such audit is conducted.

(B) RECORDS OF INSPECTION AND REPORTS BY THE COMPTROLLER GENERAL.—The Comptroller General shall—

(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the Government Accountability Office under subsection (i)(8)(A)(ii) and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

(ii) furnish an annual report to each committee described in subsection (f) and to the Secretary setting forth his findings with respect to any audit conducted pursuant to subparagraph (A).

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

(7) ADMINISTRATIVE REVIEW.—The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to meet the requirements of such paragraph.

(8) STATE LAW REQUIREMENTS.—

(A) SAFEGUARDS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

(B) DISCLOSURE OF RETURNS OR RETURN INFORMATION IN STATE RETURNS.—Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is re-

quired to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

(q) REGULATIONS.—The Secretary is authorized to prescribe such other regulations as are necessary to carry out the provisions of this section.

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## Minority Views on H.R. 6102, the *Black Lungs Benefits Improvement Act of 2022*

### Introduction

The Federal Black Lung Program and the Black Lung Disability Trust Fund (Trust Fund) need major reforms, but unfortunately H.R. 6102 misses the mark. This bill was drafted behind closed doors, without input from Republicans, and released less than 24 hours before the Workforce Protections Subcommittee's hearing on the bill.<sup>1</sup> H.R. 6102 creates more bloated bureaucracy, raises costs, and increases the debt of the Trust Fund.

The 1969 *Black Lung Benefits Act* established the Federal Black Lung Program to provide cash assistance and medical benefits to coal miners who have been disabled due to pneumoconiosis, commonly known as black lung disease.<sup>2</sup> Benefits are paid by the responsible coal mine operators, but when these operators cannot be identified or cannot pay, benefits are paid from the Trust Fund.

Federal law requires that coal mine operators secure their black lung benefit liability to limit the risk of transferring benefit responsibility to the Trust Fund.<sup>3</sup> Operators must either purchase a commercial policy to insure against this liability or self-insure their benefits if they meet criteria established by the Department of Labor's (DOL or the Department) Office of Workers' Compensation Programs (OWCP). OWCP is responsible for authorization and oversight of the self-insurance program as well as for monitoring whether non-self-insured coal mine operators maintain continuous commercial coverage. If responsible employers either fail to obtain adequate insurance for their benefit liabilities or face bankruptcy, the responsibility for these payments can transfer to the Trust Fund and exacerbate the fund's existing financial difficulties.

H.R. 6102, the *Black Lung Benefits Improvement Act*, makes a number of changes to the Federal Black Lung Program. The bill creates a new federal program to pay for a claimant's attorneys' fees and medical expenses before the claim has been adjudicated. It significantly increases penalties for operators who cannot secure payment of benefits from \$1,000 per day to \$25,000 per day. It raises the amount of benefits paid to claimants and further strains the Trust Fund. It also requires the Secretary of Labor to assist in the development of additional medical evidence for claimants whose claims are opposed by another party or claimants whose compensation case is heard by an administrative law judge.

### H.R. 6102 Worsens the Trust Fund's Insolvency

The Trust Fund has been plagued by financial difficulties since it began over 40 years ago and has been in debt since it was created.<sup>4</sup> Its expenditures consistently exceed revenue, causing it to borrow from the Department of the Treasury's general fund nearly every year. In Fiscal Year

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<sup>1</sup> *Strengthening the Safety Net for Injured Workers: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Labor*, 117th Cong. (Dec. 2, 2021).

<sup>2</sup> Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, tit. IV (1969) (later renamed the Federal Mine Safety and Health Act of 1977, Pub. L. No. 95-164 (1977)).

<sup>3</sup> 30 U.S.C. § 932(b).

<sup>4</sup> <https://www.gao.gov/assets/gao-20-21.pdf>.

2021, it borrowed \$2.3 billion to cover its expenses. At the current rate, its debt could exceed \$15 billion by 2050.<sup>5</sup> On September 30, 2021, total liabilities of the Trust Fund exceeded assets by over \$6 billion.<sup>6</sup> In FY 2023, estimates project that excise tax receipts will cover 57 percent of administrative costs and benefit payments.<sup>7</sup> Many of the Trust Fund's problems stem from DOL's decades-long failure to provide proper oversight or enforcement, as well as from interest accumulation on the Trust Fund's debt.

The Trust Fund is funded primarily through a tax on coal. From 1986 to 2018, the 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 the pre-1986 levels of \$0.50 and \$0.25, respectively, up to 2 percent of the sales price.<sup>8</sup> Congress reauthorized the pre-2019 rate for one year in 2020, and extended the reauthorization through 2021,<sup>9</sup> but the tax decreased again on December 31, 2021.

At a time when the Trust Fund's financial position is dire, Democrats are moving forward with a bill that further exacerbates its insolvency. Section 106 of H.R. 6102 establishes a new program at DOL to pay a claimant's attorneys' fees and medical expenses for still-contested claims, which would cost the Trust Fund \$8 million per year.<sup>10</sup> Section 107 of the bill increases the amount of benefits paid out by the already insolvent Trust Fund. Section 131 drastically increases the civil penalties levied on operators unable to secure payments of benefits, increasing their likelihood of filing for bankruptcy and transferring their debt to the Trust Fund.

### **H.R. 6102 Forces the Trust Fund and Taxpayers to Pay Legal Fees and Benefits on Contested Claims**

Section 106 of H.R. 6102 establishes a new program at DOL to pay a claimant's attorneys' fees and medical expenses for still-contested claims not to exceed a total of \$4,500 in attorneys' fees nor more than \$3,000 in medical expenses for any single contested claim. If the claim is ultimately successful, the operator reimburses the program. If the claim is unsuccessful, then the Trust Fund pays the expenses. The Department estimates this section would cost the Trust Fund \$8 million per year.<sup>11</sup> In FY 2022, the Department was appropriated \$35 million to pay for legal services and adjudications in the Trust Fund.<sup>12</sup> Section 106 would increase the costs of the Trust Fund's departmental management account by 23 percent. It is inappropriate to force taxpayers to pay attorney's fees or medical expenses on claims that are ultimately unsuccessful or that lack merit.

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<sup>5</sup> <https://www.gao.gov/assets/gao-22-105546.pdf>.

<sup>6</sup> [https://fiscal.treasury.gov/files/reports-statements/financial-report/2021/fr-02-17-2022-\(final\).pdf](https://fiscal.treasury.gov/files/reports-statements/financial-report/2021/fr-02-17-2022-(final).pdf).

<sup>7</sup> <https://www.dol.gov/sites/dolgov/files/general/budget/2023/CBJ-2023-V2-08.pdf>.

<sup>8</sup> <https://www.crs.gov/Reports/R46451?source=search&guid=50703a3efec544508c8b9661a6f3ad15&index=2>.

<sup>9</sup> Consolidated Appropriations Act of 2020, Pub. L. No. 116-93 (2019); Consolidated Appropriations Act of 2021, Pub. L. No. 116-260 (2020).

<sup>10</sup> Information provided to Committee on Education and Labor Republican staff by DOL.

<sup>11</sup> *Id.*

<sup>12</sup> <https://www.dol.gov/sites/dolgov/files/general/budget/2023/FY2023BIB.pdf>.

## **H.R. 6102 Weakens the Mining Industry's Ability to Self-Insure**

Federal law requires that coal mine operators secure their black lung benefit liability to limit the risk of transferring benefit responsibility to the Trust Fund.<sup>13</sup> Operators must purchase a commercial policy to insure against this liability or must self-insure if they meet certain criteria established by OWCP. OWCP is responsible for monitoring whether non-self-insured coal mine operators maintain continuous commercial coverage. If responsible employers do not obtain adequate insurance for their benefit liabilities or face bankruptcy, the responsibility for these payments can transfer to the Trust Fund, exacerbating the fund's existing financial difficulties. The Government Accountability Office (GAO) has made several recommendations to improve DOL's oversight of black lung self-insurance.

Instead of making real reforms to the Federal Black Lung Program, section 131 of H.R. 6102 adds a new provision punishing the mining industry by raising fines on operators who are unable to secure the payment of benefits from \$1,000 per day to \$25,000 per day. These fines pile on the financial pressure operators face brought on by distressed coal markets and increased environmental regulatory burdens. If an operator is already struggling to pay benefits, increasing fines will only force them closer to bankruptcy. Additionally, this provision will make it even more difficult for struggling operators to self-insure and stay in business by increasing liability risks and costs. Congress should ensure that coal operators are allowed to be successful so they have the collateral and funds available to pay claims, not attempt to bankrupt them. Increased fines will discourage employers from self-insuring in the future. These penalties are disproportionate and only serve to further the Democrats' war on coal.

At the Committee markup of H.R. 6102, Rep. Mondaire Jones (D-NY) offered and withdrew an amendment which would have prohibited coal operators from self-insuring for black lung benefit liabilities. This amendment shows the Democrats' ultimate goal is to expand federal programs and eliminate self-insurance.

## **H.R. 6102 Continues the Democrats' War on Coal**

During the Obama administration, Democrats repeatedly asserted that their regulations on coal-fired power plants would not jeopardize the industry.<sup>14</sup> We now know that was false. Democrats' war on coal has led to the bankruptcy of dozens of operators, jeopardizing the economies of rust belt states and leading to increased Trust Fund liabilities. Democrat environmental policies jeopardize the industry's future as well as the security and reliability of our nation's electrical grid.<sup>15</sup>

Section 131, which would significantly increase penalties for operators who are unable to secure payment of benefits from \$1,000 a day to \$25,000 a day, seeks to penalize coal operators out of business or out of self-insurance. This is yet another not-so-thinly veiled shakedown of coal operators that would unfairly punish job creators still reeling from the impact of the Democrats' war on coal. To be clear, Committee Republicans do not condone coal operators who violate

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<sup>13</sup> 30 U.S.C. § 932(b).

<sup>14</sup> <https://freebeacon.com/issues/sierra-club-pressed-epa-to-create-impossible-coal-standards/>.

<sup>15</sup> <https://thehill.com/opinion/energy-environment/503006-we-still-need-coal-to-ensure-power-grid-reliability>.

important workers' compensation laws, and we have always supported the authority of OWCP to hold bad actors accountable through enforcement. What Democrats are proposing, however, is a punitive policy change directed at coal mine operators in general rather than targeted at violators.

### **H.R. 6102 Falsely Promises Reforms**

Many provisions in H.R. 6102 are unnecessary because DOL already has existing authority to implement the policy goals stated in the bill and has already done so. Section 103 requires the Secretary of Labor to develop additional medical evidence for claimants upon request. This section merely codifies two DOL bulletins.<sup>16</sup>

Section 105 allows claimants to readjudicate cases involving certain chest radiographs interpreted by physicians whom the Secretary has directed not be credited in this regard. However, this provision is unnecessary because there is only one physician who has been so designated, and the Department issued a bulletin and subsequent Q&A allowing for claimants whose chest radiographs were interpreted by this physician to reapply for benefits.<sup>17</sup> Both sections 103 and 105 have already been implemented by DOL; statutory changes at this time could hinder the Department's flexibility to address the needs of miners it currently serves by being overly prescriptive and misdirecting DOL to implement its program in a way not in line with best practices.

### **H.R. 6102 Ignores the Trump Administration's Reforms and GAO Recommendations**

In February 2020, GAO released a study which found that DOL oversight of the Trust Fund and coal mine operator insurance was lacking for decades and resulted in severe underfunding of coal company black lung benefit liabilities.<sup>18</sup> The study also examined coal mine operator bankruptcies filed from 2014 through 2016 and found these bankruptcies expanded the Trust Fund benefit liability by \$865 million, partially due to DOL's limited oversight of coal mine operator insurance. DOL's previous estimate of the benefit liability—between \$313 million and \$325 million—was much lower, and DOL attributed this discrepancy to recent increases in black lung benefit award rates, higher medical treatment costs, and an underestimate of one company's future benefit claims.

The GAO study additionally found several longstanding shortcomings in DOL oversight of the Trust Fund and coal mine operator insurance. First, DOL did not properly estimate future black lung benefit claims. Second, DOL did not regularly review self-insurance authorizations or change necessary collateral amounts based on companies' financial positions or updated benefit liability estimates. Third, DOL did not take adequate enforcement actions to protect the Trust Fund from assuming additional benefit liabilities. Fourth, DOL did not monitor whether coal mine operators with commercial insurance maintained continuous coverage. The GAO report made three recommendations to improve DOL oversight: 1) develop procedures for self-

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<sup>16</sup> <https://www.dol.gov/sites/dolgov/files/owcp/dcmwc/blba/indexes/BL20-01OCR.pdf>.

<sup>17</sup> <https://www.dol.gov/sites/dolgov/files/owcp/dcmwc/blba/indexes/BL14.09OCR.pdf>;  
<https://www.dol.gov/agencies/owcp/negativechestxrays>.

<sup>18</sup> <https://www.gao.gov/assets/gao-20-21.pdf>.

insurance renewals and non-renewals; 2) identify timelines for self-insured operator appeals; and 3) implement procedures to monitor compliance with commercial insurance requirements.<sup>19</sup>

In February 2020, then-OWCP Director Julia Hearthway testified before the Subcommittee on Workforce Protections on actions that OWCP was already taking to implement GAO recommendations regarding self-insurance reauthorizations and lapsed commercial insurance coverage.<sup>20</sup> In December 2020, DOL published a bulletin outlining the new self-insurance process guidelines to implement the GAO recommendations.<sup>21</sup> GAO stated as follows:

This bulletin was the culmination of DOL’s approximately 5-year effort to reform the self-insurance program. The guidelines included actions that would have addressed our recommendations. For instance, DOL specified that it would authorize operators to self-insure for a period of one year (after which an operator would be required to submit a self-insurance renewal application), and it set a goal to resolve coal operator appeals within 90 days after receiving supporting documents or meeting with the operator to discuss their concerns. Additionally, DOL stated that it would set collateral requirements based on an operator’s actuarial estimated benefit liabilities and risk of insolvency and reassess the collateral requirements quarterly based on review of an operator’s financial statements.<sup>22</sup>

In February 2021, the Biden administration withdrew the bulletin, subsequently freezing implementation of GAO’s recommendations.<sup>23</sup>

In December 2021, GAO testified before the Workforce Protections Subcommittee that OWCP has not addressed any of GAO’s recommendations that would increase the solvency of the Trust Fund and stated that “DOL officials could not describe any anticipated changes to coal operator self-insurance going forward.”<sup>24</sup> The Biden administration OWCP Director confirmed in his testimony that any reforms to the Federal Black Lung Program will be months in the future, even though the Trump administration was in the process of addressing GAO’s recommendations.<sup>25</sup> DOL should not wait months to provide miners and operators with peace of mind.

Instead of addressing these longstanding oversight issues, H.R. 6102 weakens the solvency of the Trust Fund and pushes operators closer to bankruptcy. One “reform” in the bill is unnecessary because it merely codifies action DOL is already taking. Section 131 in the bill directs DOL to

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<sup>19</sup> <https://www.gao.gov/assets/gao-20-21.pdf>.

<sup>20</sup> *Asleep at the Switch: How the Department of Labor Failed to Oversee the Black Lung Disability Trust Fund: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab.*, 116th Cong. 31-33 (2020) (statement of Julia Hearthway, Dir., Off. of Workers’ Compensation Programs, DOL).

<sup>21</sup> <http://web.archive.org/web/20210327211056/https://www.dol.gov/sites/dolgov/files/OWCP/dcmwc/blba/indexes/BL21-01OCR.pdf>.

<sup>22</sup> <https://www.gao.gov/assets/gao-22-105546.pdf>.

<sup>23</sup> Black Lung Benefits Act Self-Insurance: Withdrawal of Guidance, 86 Fed. Reg. 8806 (Feb. 9, 2021).

<sup>24</sup> Statement of Thomas Costa, Dir., Educ., Workforce, & Income Security, GAO, *supra* note 1.

<sup>25</sup> Statement of Christopher J. Godfrey, Dir., Off. of Workers’ Compensation Programs, DOL, *supra* note 1, at 9.

publish an interim final rule on requirements for an operator to qualify as a self-insurer, but DOL is already in the process of promulgating such a rule.<sup>26</sup>

## **Republican Amendments**

During consideration of H.R. 6102, Committee Republicans offered amendments to improve the bill, which were rejected by Committee Democrats. Rep. Fred Keller (R-PA) offered an amendment replacing section 106 in the bill with language allowing the settlement of claims whenever both parties to any claim for compensation agree to terms and an administrative law judge approves the settlement. Section 106 establishes a new program at DOL to pay a claimant's attorneys' fees and medical expenses for still-contested claims. Taxpayers should not pay attorney's fees or benefits on claims that are unsuccessful or lack merit. Black lung cases often take a long time to go through the legal process because current law prohibits the settlement of claims, even when both parties agree that settlement is the best option. This amendment incorporates in the *Black Lung Benefits Act* a provision in current law from the *Longshore and Harbor Workers' Compensation Act* allowing claims to settle upon approval of an administrative law judge.<sup>27</sup> Unfortunately, Committee Democrats chose not to improve the law and allow miners to settle their claims, rejecting the amendment in a party-line vote.

Republican Leader Virginia Foxx (R-NC) offered an amendment to prohibit OWCP from monitoring state workers' compensation programs. State workers' compensation programs were established more than 100 years ago under state constitutions and legislation completely independent from federal programs. These programs are continually monitored by an array of regulatory agencies at the state level and reviewed by many research and ratings bureaus. DOL does not need to trample on states' rights and create additional levels of federal bureaucracy. The authority does not exist in current law, nor should it. Committee Democrats chose not to protect states' rights and rejected this amendment along party lines.

## **Conclusion**

A decades-long, recurring deficit proves that the Federal Black Lung Program needs major reforms. Instead of fixing the program, H.R. 6102 creates a new taxpayer-funded program to pay claimants legal fees and benefits before claims are adjudicated. The bill also increases the amount of benefits paid out by the insolvent Trust Fund, and it increases penalties on operators while failing to address the most pressing problems in the program as identified by GAO. Congress should not make legislative changes that would put further stress on the Trust Fund. For these reasons, Congress should reject H.R. 6102 so that Democrats and Republicans can work together to reform the Federal Black Lung Program and ensure that miners receive the benefits and medical care they deserve.

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<sup>26</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1240-AA16>.

<sup>27</sup> See Longshore and Harbor Workers' Compensation Act § 8(i), 33 U.S.C. § 908(i).





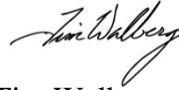
Virginia Foxx  
Ranking Member



Joe Wilson  
Member of Congress



Glenn "GT" Thompson  
Member of Congress

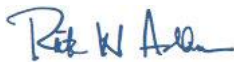


Tim Walberg  
Member of Congress



Glenn Grothman  
Member of Congress

Elise M. Stefanik  
Member of Congress



Rick W. Allen  
Member of Congress



Jim Banks  
Member of Congress



James Comer  
Member of Congress



Russ Fulcher  
Member of Congress



Fred Keller  
Member of Congress



Mariannette Miller Meeks, M.D.  
Member of Congress



Burgess Owens  
Member of Congress



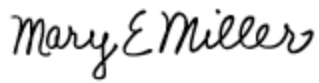
Bob Good  
Member of Congress



Lisa C. McClain  
Member of Congress



Diana Harshbarger  
Member of Congress



Mary E. Miller  
Member of Congress

Victoria Spartz  
Member of Congress



Scott Fitzgerald  
Member of Congress

Madison Cawthorn  
Member of Congress

Michelle Steel  
Member of Congress



Chris Jacobs  
Member of Congress

Brad Finstad  
Member of Congress



Joe Sempolinski  
Member of Congress



**Virginia Foxx, Ranking Member**  
**Joe Wilson**  
**Glenn “GT” Thompson**  
**Tim Walberg**  
**Glenn Grothman**  
**Rick W. Allen**  
**Jim Banks**  
**James Comer**  
**Russ Fulcher**  
**Fred Keller**  
**Mariannette Miller Meeks, M.D.**  
**Burgess Owens**  
**Bob Good**  
**Lisa C. McClain**  
**Diana Harshbarger**  
**Mary E. Miller**  
**Scott Fitzgerald**  
**Chris Jacobs**  
**Joe Sempolinski**