

**FY 2023**

**CONGRESSIONAL BUDGET JUSTIFICATION**

**BLACK LUNG DISABILITY TRUST FUND**

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# BLACK LUNG DISABILITY TRUST FUND

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# BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

## APPROPRIATION LANGUAGE

*Such sums as may be necessary from the Black Lung Disability Trust Fund (the "Fund"), to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (6), and (7) of the Internal Revenue Code of 1986; and repayment of, and payment of interest on advances, as authorized by section 9501(d)(4) of that Act. In addition, the following amounts may be expended from the Fund for fiscal year 2023 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): not to exceed \$42,194,000 for transfer to the Office of Workers' Compensation Programs, "Salaries and Expenses"; not to exceed \$38,407,000 for transfer to Departmental Management, "Salaries and Expenses"; not to exceed \$353,000 for transfer to Departmental Management, "Office of Inspector General"; and not to exceed \$356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury.*

*Note.— A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2022 (Division A of P.L.117-43, as amended). The amounts included for 2022 reflect the annualized level provided by the continuing resolution.*

## BLACK LUNG DISABILITY TRUST FUND

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	<b>FY 2021 Revised Enacted</b>		<b>FY 2022 Full Year C.R.</b>		<b>FY 2023 Request</b>	
	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>
<b>A. Appropriation</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>
Definite	0	\$74,365	0	\$79,760	0	\$81,310
Sequestration Reduction Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985	0	-\$4,239	0	-\$4,545	0	\$0
Indefinite	0	\$220,908	0	\$280,101	0	\$313,586
<i>Subtotal, Appropriation</i>	<i>0</i>	<i>\$291,034</i>	<i>0</i>	<i>\$355,316</i>	<i>0</i>	<i>\$394,896</i>
Bond Repayment and Payment on Advances	0	\$2,332,615	0	\$2,432,886	0	\$2,702,865
<b>B. Gross Budget Authority</b>	<b>0</b>	<b>\$2,623,649</b>	<b>0</b>	<b>\$2,788,202</b>	<b>0</b>	<b>\$3,097,761</b>
Bond Repayment and Payment on Advances	0	-\$2,332,615	0	-\$2,432,886	0	-\$2,702,865
<b>C. Budget Authority Before Committee</b>	<b>0</b>	<b>\$291,034</b>	<b>0</b>	<b>\$355,316</b>	<b>0</b>	<b>\$394,896</b>
Bond Repayment and Payment on Advances	0	\$2,332,615	0	\$2,432,886	0	\$2,702,865
<b>D. Total Budgetary Resources</b>	<b>0</b>	<b>\$2,623,649</b>	<b>0</b>	<b>\$2,788,202</b>	<b>0</b>	<b>\$3,097,761</b>
<b>E. Total, Estimated Obligations</b>	<b>0</b>	<b>\$2,623,649</b>	<b>0</b>	<b>\$2,788,202</b>	<b>0</b>	<b>\$3,097,761</b>

# BLACK LUNG DISABILITY TRUST FUND

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2022 Full Year C.R.	FY 2023 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$0	\$0	\$0
Trust Funds	\$355,316	\$394,896	+\$39,580
<b>Total</b>	\$355,316	\$394,896	+\$39,580

<b>Full Time Equivalents</b>			
General Funds	0	0	0
<b>Total</b>	0	0	0

Explanation of Change	FY 2023 Change							
	FY 2022 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Increases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Costs of pay adjustments	0	\$75,215	0	\$1,550	0	\$0	0	\$1,550
Operation and maintenance of equipment	0	\$0	0	\$0	0	\$0	0	\$0
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>+\$75,215</b>	<b>0</b>	<b>+\$1,550</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$1,550</b>
<b>B. Programs:</b>								
Payment of Bond Interest	0	\$103,221	0	\$13,227	0	\$0	0	\$13,227
BLDTF Benefits	0	\$174,823	0	\$10,451	0	\$0	0	\$10,451
Payment of Interest on Advances	0	\$2,057	0	\$9,807	0	\$0	0	\$9,807
Mandatory Workload BLDTF	0	\$0	0	\$4,545	0	\$0	0	\$4,545
<b>Programs Subtotal</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$38,030</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$38,030</b>
<b>Total Increase</b>	<b>0</b>	<b>+\$355,316</b>	<b>0</b>	<b>+\$39,580</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$39,580</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>
<b>B. Programs:</b>								
<b>Total Decrease</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>
<b>Total Change</b>	<b>0</b>	<b>+\$355,316</b>	<b>0</b>	<b>+\$39,580</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$39,580</b>

## BLACK LUNG DISABILITY TRUST FUND

<b>BUDGET AUTHORITY BY OBJECT CLASS</b>				
(Dollars in Thousands)				
	<b>FY 2021 Revised Enacted</b>	<b>FY 2022 Full Year C.R.</b>	<b>FY 2023 Request</b>	<b>Diff. FY23 Request / FY22 Full Year C.R.</b>
Departmental Management	31,150	35,455	38,407	2,952
Treasury Administrative Costs	336	336	356	20
Office of Inspector General	314	323	353	30
OWCP- Division of Coal Mine Workers	38,326	39,101	42,194	3,093
<i>Subtotal</i>	<i>70,126</i>	<i>75,215</i>	<i>81,310</i>	<i>6,095</i>
Benefits	126,302	174,823	185,274	10,451
Payment of Bond Interest	90,169	103,221	116,448	13,227
Payment of Interest on Advances	4,437	2,057	11,864	9,807
<b>Total</b>	<b>291,034</b>	<b>355,316</b>	<b>394,896</b>	<b>39,580</b>



# BLACK LUNG DISABILITY TRUST FUND

## AUTHORIZING STATUTES

<b>Public Law / Act</b>	<b>Legislation</b>	<b>Statute No. / US Code</b>	<b>Expiration Date</b>
PUB. L. 91-173	Federal Coal Mine Health and Safety Act of 1969, (now called Federal Mine Safety and Health Act of 1977), Title IV, Black Lung Benefits Act, PUB. L. 91-173, Black Lung Benefits Revenue Act of 1977, PUB. L. 95-227, as amended in 1981 by PUB. L. 97-119	30 U.S.C. 901, <i>et seq.</i>	N/A
PUB. L. 107-275	Black Lung Consolidation of Administrative Responsibility Act and Section 3615 of the Emergency Supplemental Appropriations Act, 2003, PUB. L. 108-83	30 U.S.C. 801 note	N/A
PUB. L. 110-343	Emergency Economic Stabilization Act of 2008	26 U.S.C. 4121, 9501	N/A

## BLACK LUNG DISABILITY TRUST FUND

<b>APPROPRIATION HISTORY</b>					
(Dollars in Thousands)					
	<b>Budget Estimates to Congress</b>	<b>House Allowance</b>	<b>Senate Allowance</b>	<b>Appropriations</b>	<b>FTE</b>
2013					
Base Appropriation...1/	\$307,806			\$292,669	0
2014					
Base Appropriation...2/	\$316,559			\$312,305	0
2015					
Base Appropriation...3/	\$321,087			\$321,092	0
2016					
Base Appropriation...4/	\$341,467	\$341,466	\$341,467	\$313,192	0
2017					
Base Appropriation...5/	\$371,641			\$382,739	0
2018					
Base Appropriation...6/	\$418,801	\$415,162		\$401,322	0
2019					
Base Appropriation...7/ 8/	\$328,182		\$328,182	\$326,364	0
2020					
Base Appropriation...9/ 10/	\$365,240	\$365,240		\$317,552	0
2021					
Base Appropriation...11/	\$382,991			\$346,787	0
2022					
Base Appropriation...12/ 13/	\$331,505	\$331,505			0
2023					
Base Appropriation	\$394,896				0

<sup>1/</sup> Appropriation includes sequestration amount of -\$2,999 and does not include amounts for exchange of assets transactions of \$396,403 for bond principal and \$214,000 for short-term advances.

<sup>2/</sup> Appropriation includes sequestration amount of -\$4,254 and does not include amounts for exchange of assets transactions of \$397,383 for bond principal and \$401,000 for short-term advances.

<sup>3/</sup> Appropriation includes sequestration amount of -\$4,701 and does not include amounts for exchange of assets transactions of \$395,769 for bond principal and \$541,696 for short-term advances.

<sup>4/</sup> Appropriation includes sequestration amount of -\$4,502 and does not include amounts for exchange of assets transactions of \$396,213 for bond principal and \$585,000 for short-term advances.

<sup>5/</sup> Appropriation includes sequestration amount of -\$4,894 and does not include amounts for exchange of assets transactions of \$393,126 for bond principal and \$910,000 for short-term advances.

<sup>6/</sup> Appropriation includes sequestration amount of -\$4,680 and does not include amounts for exchange of assets transactions of \$385,968 for bond principal and \$1,285,000 for short-term advances.

<sup>7/</sup> Appropriation includes sequestration amount of -\$4,397 and does not include amounts for exchange of assets transactions of \$117,606 for bond principal and \$1,900,000 for short-term advances.

<sup>8/</sup> This bill was passed by the Senate. It was passed out of the House Subcommittee but was not reported out of the House Committee or by the full House.

<sup>9/</sup> Appropriation includes sequestration amount of -\$4,235 and does not include amounts for exchange of assets transactions of \$118,895 for bond principal and \$1,870,000 for short-term advances.

<sup>10/</sup> This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or full Appropriations Committee.

## **BLACK LUNG DISABILITY TRUST FUND**

<sup>11/</sup> Appropriation includes sequestration amount of -\$4,239 and does not include amounts for exchange of assets transactions of \$120,015 for bond principal and \$2,322,600 for short-term advances.

<sup>12/</sup> This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or the full Senate Appropriations Committee.

<sup>13/</sup> The full-year FY 2022 appropriation was not enacted at the time the budget was prepared.

# BLACK LUNG DISABILITY TRUST FUND

## OVERVIEW

The Black Lung Disability Trust Fund (BLDTF) was established by the Black Lung Benefits Revenue Act of 1977, as amended December 29, 1981, companion legislation to the Black Lung Benefits Reform Act of 1977, to shift fiscal responsibility for Black Lung benefit payments from the Federal Government to the coal industry. The BLDTF is jointly administered by the Secretaries of Labor, Treasury, and Health and Human Services and provides for payment of benefits, administrative expenses, and interest on advances related to the operation of the program. Resources for the Trust Fund are derived from: an excise tax on each ton of coal sold and used domestically; reimbursements from responsible mine operators for interim payments; interest, fines, and penalties assessed to responsible mine operators; and short-term advances from the Treasury.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), enacted April 7, 1986, raised excise tax rates from \$1.00 to \$1.10 per ton on underground-mined coal and from 50 to 55 cents per ton on surface-mined coal, in either case not to exceed 4.4 percent of the sale price, through December 31, 1995. The Omnibus Budget Reconciliation Act of 1987 continued that tax structure until 2014. The Emergency Economic Stabilization Act of 2008 (the EES Act), enacted on October 3, 2008, authorized the restructuring of the BLDTF debt by:

- (1) extending then-current coal excise tax rates of \$1.10 per ton on underground-mined coal and \$0.55 per ton on surface-mined coal until December 31, 2018 (and then reverting to the 1978 levels, or \$0.50 per ton on underground coal, and \$0.25 per ton on surface coal);
- (2) providing a one-time appropriation for the BLDTF to repay the market value of parts of the outstanding repayable advances and accrued interest; and
- (3) refinancing the remainder of the outstanding debt through the issuance of zero-coupon bonds.

Pursuant to the EES Act, these amounts were to be retired using the BLDTF's annual operating surpluses until all of its remaining obligations had been paid. Pre-payments were to be made when operating surpluses exceeded the amount of the zero-coupon bond, and short-term borrowing authority was to be utilized if operating surpluses were not sufficient. However, the Trust Fund has run at a deficit virtually since its inception. The Trust Fund's primary income source is an excise tax on coal mined in the United States for domestic sale. As noted earlier, since 1986, that tax had been \$1.10 per ton of coal mined underground, and 55 cents per ton of coal mined on the surface. In 2019, the excise tax rate was reduced by more than 50 percent. Congress later restored the tax rate to the 2018 levels for calendar years 2020 and 2021 in the Further Consolidated Appropriations Act, 2020 and the Consolidated Appropriations Act, 2021. Tax rates again reverted to the lower 2019 levels effective January 1, 2022.

In 2008, a portion (\$6.4 billion) of the Trust Fund's legacy debt was forgiven, and the remainder (\$6.5 billion) was refinanced. But excise tax receipts, which have decreased since 2008 due to a

## **BLACK LUNG DISABILITY TRUST FUND**

decline in domestic coal production, are insufficient to service that debt. As a result, the Trust Fund relies on annual advances from Treasury. The appropriations language for the BLDTF authorizes indefinite “such sums as may be necessary” for payment of benefits and for payments of interest. It also authorizes definite amounts which are appropriated for administration of the program. In FY 2021, revenue covered the definite appropriation for administration, and indefinite amounts for benefits payments and approximately 42 percent of the amounts due to Treasury for interest payments on advances and bond repayment costs. In FY 2022, current coal excise tax revenue estimates project that receipts will cover 83 percent of administrative costs and benefits payments, with interest payments on advances and bond repayments being covered by borrowing authority. In FY 2023, the estimates project that excise tax receipts will cover 57 percent of administrative costs and benefits payments, with interest payments on advances and bond repayments being covered by borrowing authority. Advances to the BLDTF from short-term borrowing authority are projected to increase to cover the balance of amounts necessary for the obligations of the indefinite appropriation for benefits and interest, for bond payments and repayment of advances to service the debt, and for definite obligations for administration costs.

The Division of Coal Mine Workers’ Compensation (DCMWC) has engaged in two separate initiatives to protect the Trust Fund. The first is a Final Rule governing the BLDTF’s payment of medical benefits, which was issued on June 14, 2018. This rule adopted modern payment formulas for physicians, hospitals, and other providers that are derived from the formulas used in the Medicare program. The revised regulations became effective on August 31, 2018. Most of them, including those governing payments for medical equipment, prescription drugs, and inpatient medical services, applied immediately. The regulations governing payment of professional medical services and outpatient medical services had a later applicability date of April 26, 2020, so that a new computer system could be developed to process these bills. Implementation of the in-hospital bill review process has yielded more than \$28 million in savings to the Trust Fund through the end of FY 2021.

The other initiative designed to protect the Trust Fund is a reevaluation of the self-insurance process. Generally, the miner’s last coal mine employer is liable for benefit payments. Coal companies must obtain either commercial insurance or authorization from the Department to self-insure their liabilities under the Act. The Department is responsible for authorizing coal companies to self-insure. As part of this process, the Department establishes security amounts that each authorized self-insurer must meet. In recent years, these security amounts have been inadequate to fully cover obligations of coal companies that have defaulted on Black Lung benefit payments. Liability for these defaulted payments then rests with the BLDTF. Accordingly, the Department is exploring possible solutions, including new regulations, to ensure that self-insured coal companies sufficiently secure their Black Lung Benefit Act liabilities.



## BLACK LUNG DISABILITY TRUST FUND

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2021 Revised Enacted</b>	<b>FY 2022 Full Year C.R.</b>	<b>FY 2023 Request</b>	<b>Diff. FY23 Request / FY22 Full Year C.R.</b>
Activity Appropriation	291,034	355,316	394,896	39,580
FTE	0	0	0	0

### **Introduction**

The Trust Fund pays all Part C Black Lung benefits, including monthly compensation and medical benefits, when no coal mine operator can be held liable for payments, or the liable operator refuses to pay. Monthly compensation payments are based on 37.5 percent of the GS-2, Step 1 salary level. The Trust Fund also pays for the costs incurred by the Department of Treasury collecting the coal excise tax and managing the Trust Fund, for the costs of the appeals process to the Office of Administrative Law Judges (OALJ) and the Benefits Review Board (BRB), legal costs associated with the Solicitor of Labor (SOL), and for costs incurred by the Office of Inspector General (OIG). Black Lung benefits for claims filed on or before December 31, 1973, are paid under the appropriation for Special Benefits for Disabled Coal Miners, also referred to as Black Lung Program Part B.

### **Five-Year Budget Activity History**

<b><u>Fiscal Year</u></b>	<b><u>Funding</u></b> (Dollars in Thousands)	<b><u>FTE</u></b>
2018	\$401,322	0
2019	\$326,364	0
2020	\$317,552	0
2021	\$346,787	0
2022	\$0	0

NOTE: A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared.

# BLACK LUNG DISABILITY TRUST FUND

## **FY 2023**

In order to meet estimated obligations for Part C of the Black Lung Program, the FY 2023 President's Request level is \$394,896,000. The amounts for definite obligations include the following amounts to be transferred from the BLDTF to General Funds:

- \$42,194,000 for DCMWC's costs associated with administering the Black Lung Program, which are discussed in the Federal Programs for Workers' Compensation (FPWC) Salaries and Expenses section of the budget.
- \$38,407,000 for the administrative costs of the Departmental Management (DM) account, which covers adjudication activities and legal services that are discussed in the DM section of the budget.
- \$353,000 for OIG administrative costs; and
- \$356,000 for the Department of the Treasury. At the Request level, the Black Lung program will focus on the budget priorities and Enterprise Risk Management emphasized in the President's Management Agenda.

Estimated amounts for indefinite obligations include:

- \$185,274,000 for benefit payments.
- \$116,448,000 for payments of bond interest; and
- \$11,864,000 for interest on short-term advances.

The requested amount does not include amounts for repayment of bond principal and advances, which are exchange of assets transactions. These include \$123,663,000 for payment of bond principal and \$2,579,202,000 for repayment of estimated short-term advances. In addition to coal tax receipts and other income, an estimated \$2,944,761,000 in short-term advances will be required to fund obligations and exchange of assets.

The BLDTF budget request will support the President's vision of delivering excellent Federal services and improving customer experience; advance equity initiatives to support underserved stakeholder communities; handle a significant incoming workload volume projected to reach 6,000 claims in FY 2023; advance modernization and standardization initiatives designed to improve the speed and quality of Black Lung claims processing; ensure Trust Fund beneficiary maintenance; and maintain a balanced approach to claims inventory management.

## **FY 2022**

In FY 2022, the Black Lung Program continued to address the complex operational challenges presented by the COVID-19 pandemic, while handling a significant incoming workload volume. In addition, the program advanced modernization and standardization initiatives designed to optimize overall efficiency; ensured Trust Fund beneficiary maintenance; and maintained a balanced approach to claims inventory management with a special emphasis on reducing the number of claims pending at the start of the fiscal year by the end of the fiscal year.



## **BLACK LUNG DISABILITY TRUST FUND**

### **FY 2021**

In FY 2021, the Black Lung program focused on operational strategies with an emphasis on optimizing overall efficiency and positioning the program to implement flexible solutions to the complex challenges presented by the COVID-19 pandemic. These strategies included addressing the impact of the COVID-19 pandemic on program operations, completing a multi-year project to scan more than 20 million pages and transition to a fully digital claims process, maximizing productivity, optimizing claims inventory management, and maintaining stakeholder partnerships. The program continued to focus efforts on prioritizing the resolution of claims pending for more than 365 days and maintaining the quality and timeliness of claims decisions. Services included adjudicating claims; paying benefits; monitoring eligibility; processing beneficiary and entitlement changes; validating representative payee requests and accounting reports in order to enforce Federal financial management requirements; minimizing erroneous payments; and increasing administrative efficiencies.

## BLACK LUNG DISABILITY TRUST FUND

<b>WORKLOAD AND PERFORMANCE SUMMARY</b>					
	<b>FY 2021 Revised Enacted</b>		<b>FY 2022 Full Year C.R.</b>	<b>FY 2023 Request</b>	
	<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>	
<b>Black Lung Disability Trust Fund</b>					
<b>Strategic Goal 3 - Improve Administration of and Strengthen Worker Safety Net Programs</b>					
<b>Strategic Objective 3.1 - Ensure timely and accurate income support when work is unavailable by strengthening benefits programs and program administration.</b>					
BLDTF WL 1	Number of Claims Received	7,000[p]	5,552	6,500[p]	6,000[p]
BLDTF WL 2	Number of Trust Fund Beneficiaries	12,350[p]	11,401	11,074[p]	10,000[p]
BLDTF WL 3	Number of Beneficiaries Paid by Responsible Operators	5,900[p]	5,946	6,178[p]	6,400[p]

Legend: (r) Revised (e) Estimate (base) Baseline -- Not Applicable TBD - To Be Determined [p] - Projection

# **BLACK LUNG DISABILITY TRUST FUND**

## **Workload and Performance**

In FY 2023, the requested resources will continue to provide for the payment of benefits and ongoing medical treatment costs and the administrative expenses of Black Lung Part C program operations, including adjudicatory and litigation costs. The Division of Coal Mine Workers' Compensation (DCMWC) expects to pay monthly compensation and ongoing medical treatment benefits from the Black Lung Disability Trust Fund to an estimated 10,000 beneficiaries in FY 2023.

The DCMWC will monitor cash and medical treatment payments disbursed in the private sector by coal mine operators to approximately 6,400 additional beneficiaries under Part C; and will process an estimated 6,000 incoming claims. DCMWC established the FY 2021 projection for the 'Number of Claims received' workload measure prior to observation of the effects the COVID-19 pandemic had on new claims filings. Various factors associated with the pandemic resulted in fewer FY 2021 new claims filings than projected. DCMWC expects new claim filings to increase in FY 2022 as COVID-19 restrictions are lifted.