

FY 2020

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 [2019] 2020 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): not to exceed \$38,246,000 for transfer to the Office of Workers' Compensation Programs, "Salaries and Expenses"; not to exceed [\$31,994,000] \$32,844,000 for transfer to Departmental Management, "Salaries and Expenses"; not to exceed \$330,000 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.

(Department of Labor Appropriations Act, 2019.)

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AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2018 Enacted		FY 2019 Enacted		FY 2020 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	0	\$0	0	\$0	0	\$0
Definite	0	\$70,926	0	\$70,926	0	\$71,776
Sequestration Reduction Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985	0	-\$4,680	0	-\$4,397	0	\$0
Indefinite	0	\$335,076	0	\$257,789	0	\$293,464
<i>Subtotal, Appropriation</i>	<i>0</i>	<i>\$401,322</i>	<i>0</i>	<i>\$324,318</i>	<i>0</i>	<i>\$365,240</i>
Bond Repayment and Payment on Advances	0	\$1,670,968	0	\$2,017,606	0	\$2,220,840
B. Gross Budget Authority	0	\$2,072,290	0	\$2,341,924	0	\$2,586,080
Bond Repayment and Payment on Advances	0	-\$1,670,968	0	-\$2,017,606	0	-\$2,220,840
C. Budget Authority Before Committee	0	\$401,322	0	\$324,318	0	\$365,240
Bond Repayment and Payment on Advances	0	\$1,670,968	0	\$2,017,606	0	\$2,220,840
D. Total Budgetary Resources	0	\$2,072,290	0	\$2,341,924	0	\$2,586,080
E. Total, Estimated Obligations	0	\$2,072,290	0	\$2,341,924	0	\$2,586,080

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SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2019 Enacted	FY 2020 Request	Net Change
Budget Authority			
General Funds	\$0	\$0	\$0
Trust Funds	\$324,318	\$365,240	+\$40,922
Total	\$324,318	\$365,240	+\$40,922
Full Time Equivalents			
General Funds	0	0	0
Total	0	0	0

Explanation of Change	FY 2020 Change							
	FY 2019 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	0	\$66,529	0	\$0	0	\$0	0	\$0
One day more of pay	0	\$0	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	0	+\$66,529	0	\$0	0	\$0	0	\$0
B. Programs:								
BLDTF Payment of Interest on Advances FY 2020	0	\$39,140	0	\$23,918	0	\$0	0	\$23,918
BLDTF Payment of Bond Interest FY 2020	0	\$63,888	0	\$12,889	0	\$0	0	\$12,889
Processing of Mandatory Workload - BLDTF	0	\$0	0	\$4,397	0	\$0	0	\$4,397
Benefit Review Board Program Increase Request	0	\$0	0	\$850	0	\$0	0	\$850
Programs Subtotal	0	\$0	0	+\$42,054	0	\$0	0	+\$42,054
Total Increase	0	+\$169,557	0	+\$42,054	0	\$0	0	+\$42,054
Decreases:								
A. Built-Ins:								
To Provide For:								
Built-Ins Subtotal	0	\$0	0	\$0	0	\$0	0	\$0
B. Programs:								
BLDTF Benefits FY 2020	0	\$154,761	0	-\$1,132	0	\$0	0	-\$1,132
Programs Subtotal	0	\$154,761	0	-\$1,132	0	\$0	0	-\$1,132

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Explanation of Change	FY 2020 Change							
	FY 2019 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Total Decrease	0	+\$154,761	0	-\$1,132	0	\$0	0	-\$1,132
Total Change	0	+\$324,318	0	+\$40,922	0	\$0	0	+\$40,922

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BUDGET AUTHORITY BY OBJECT CLASS¹				
(Dollars in Thousands)				
	FY 2018 Enacted	FY 2019 Enacted	FY 2020 Request	Diff. FY20 Request / FY19 Enacted
Departmental Management	29,883	30,010	32,844	2,834
Treasury Administrative Costs	333	334	356	22
Office of Inspector General	308	310	330	20
OWCP- Division of Coal Mine Workers	35,722	35,875	38,246	2,371
<i>Subtotal</i>	<i>66,246</i>	<i>66,529</i>	<i>71,776</i>	<i>5,247</i>
Benefits	143,550	154,761	153,629	-1,132
Payment of Bond Interest	174,680	63,888	76,777	12,889
Payment of Interest on Advances	16,846	39,140	63,058	23,918
Total	401,322	324,318	365,240	40,922

¹ FY 2018 and FY 2019 levels reflect post-sequestration amounts. FY 2020 levels reflect pre-sequestration amounts.

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AUTHORIZING STATUTES

Public Law / Act	Legislation	Statute No. / US Code	Expiration Date
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

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APPROPRIATION HISTORY					
(Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2010					
Base Appropriation...1/	\$300,099	\$302,408	\$302,408	\$302,494	0
2011					
Base Appropriation...2/	\$367,452	\$297,686	\$297,686	\$296,152	0
2012					
Base Appropriation...3/	\$300,495	\$301,415	\$301,415	\$295,000	0
2013					
Base Appropriation...4/	\$307,806			\$292,669	0
2014					
Base Appropriation...5/	\$316,559			\$312,305	0
2015					
Base Appropriation...6/	\$321,087			\$321,092	0
2016					
Base Appropriation...7/	\$341,467	\$341,466	\$341,467	\$313,192	0
2017					
Base Appropriation...8/	\$371,641			\$382,739	0
2018					
Base Appropriation...9/	\$418,801	\$415,162		\$401,322	0
2019					
Base Appropriation...10/ 11/	\$328,182		\$328,182	\$324,318	0
2020					
Base Appropriation	\$365,240				0

^{1/} Appropriation does not include amount for exchange of assets transactions of \$353,424 for bond principal.

^{2/} Appropriation does not include amounts for exchange of assets transactions of \$379,286 for bond principal and \$60,000 for short-term advances.

^{3/} Appropriation does not include amounts for exchange of assets transactions of \$394,297 for bond principal and \$107,749 for short-term advances.

^{4/} 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.

^{5/} 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.

^{6/} 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.

^{7/} 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.

^{8/} 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.

^{9/} 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.

^{10/} 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.

^{11/} 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.

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 or 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 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 Act, these amounts are to be retired using the BLDTF's annual operating surpluses until all of its remaining obligations have been paid. Pre-payments will be made when operating surpluses exceed the amount of the zero-coupon bond, and short-term borrowing authority will be utilized if operating surpluses are 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 has 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.

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 decline in domestic coal production, are insufficient to service that debt. As a result, the Trust Fund has been forced to rely on annual advances from Treasury. Beginning in FY 2018, excise tax revenue of \$384,375,000 was also not sufficient to cover all of the BLDTF's obligations of \$401,382,000. This amount consisted of \$66,269,000 in definite obligations for administration, and indefinite obligation amounts of: \$143,550,000 for benefits payments, \$174,600,000 for

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interest on bond payments, and \$16,846,000 for interest on advances from short term borrowing authority. 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. Based on current excise coal tax revenue estimates, in FY 2019 revenue will cover the definite appropriation for administration, and indefinite amounts for benefits payments and approximately 16 percent of the amounts of interest payments on bonds and advances. In FY 2020, the estimates project that excise tax receipts will cover the definite appropriation for administration and approximately 80 percent of the indefinite appropriation amount for benefits payments, with no revenue left to cover interest payments on bonds and advances. As this trend continues, advances to the BLDTF from short term borrowing authority will be necessary to cover the balance of amounts necessary for the obligations of the indefinite appropriation for benefits and interest, and for bond payments and repayment of advances to service the debt. These advances with interest repayment are projected to increase at an unsustainable rate.

At the request of Representatives Bobby Scott and Sander Levin, the Government Accountability Office (GAO) initiated an engagement on the Trust Fund and released a report, “Black Lung Benefits Program: Options for Improving Trust Fund Finances,” on June 4, 2018. The report outlines the various options— such as adjusting the coal tax and forgiving interest or debt—for reducing future borrowing and improving the Trust Fund's financial position. Future congressional action to implement one or more of these options may impact BLDTF budget requests.

A small, but not insignificant portion of the Trust Fund's recent debt was made worse by a number of coal mine bankruptcies. Since 2010, six major self-insured coal mine operators have filed for bankruptcy. Three of those companies cannot meet their obligations to pay black lung benefits and it is anticipated that this will result in roughly \$325 million in additional liability for the Trust Fund, as the Trust Fund pays benefits when no financially viable coal company or insurance carrier can be found.

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 who have defaulted on black lung benefit payments.

Accordingly, the Department recently developed a new process to ensure that self-insured coal companies sufficiently secure their Black Lung Benefits Act liabilities. The process involves a more robust analysis of operators' financial health and projected black lung benefits liabilities. The revised process, which was developed with the help of auditors, economists, and actuaries, will allow the Office of Workers' Compensation Programs (OWCP) to set security deposit amounts that more accurately reflect self-insureds' actuarial-estimated liabilities and risk of default. Forms required for collecting the necessary financial information were published for public comment pursuant to the Paperwork Reduction Act information-collection-approval process. OWCP will submit the information collection request for review and approval in

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accordance with the Paperwork Reduction Act prior to fully implementing the revised self-insurance methodology.

Based on the current-law estimates for coal tax receipts, \$2,390,080,000 in short-term borrowing authority will be required in FY 2020 to fund obligations and exchange of assets amounts. This is a projected increase in borrowing authority necessitated by a combination of declining coal tax revenue estimates and increasing interest rates. This amount plus estimated interest of \$80,785,000 will be repaid in FY 2021.

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BUDGET AUTHORITY BEFORE THE COMMITTEE²				
(Dollars in Thousands)				
	FY 2018 Enacted	FY 2019 Enacted	FY 2020 Request	Diff. FY20 Request / FY19 Enacted
Activity Appropriation	401,322	324,318	365,240	40,922
FTE	0	0	0	0

Introduction

The Trust Fund pays all Part C Black Lung benefits, including income maintenance and medical benefits, when no coal mine operator can be held liable for payments. Income maintenance 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 Funds, 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

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2015	\$321,092	0
2016	\$313,192	0
2017	\$382,739	0
2018	\$401,322	0
2019	\$324,318	0

FY 2020

In order to meet estimated obligations for Part C of the Black Lung Program, the FY 2020 Budget level is \$365,240,000. The amounts for definite obligations include the following amounts to be transferred: \$38,246,000, for the Office of Workers' Compensation Programs' (OWCP) Salaries and Expenses costs associated with administering the Black Lung Program, which are discussed in OWCP's Salaries and Expenses section of the budget; \$32,844,000, 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, including an \$850,000 program increase for BRB; \$330,000, for OIG administrative costs; and \$356,000 for the Department of Treasury. Estimated amounts for indefinite obligations include: \$153,629,000 for benefit payments; \$76,777 for payments of bond interest; and \$63,058 for interest on short-term advances.

² FY 2018 and FY 2019 levels reflect post-sequestration amounts. FY 2020 levels reflect pre-sequestration amounts.

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The requested amount does not include amounts for exchange of assets transactions. These include \$118,895,000 for payment of bond principal and \$2,101,945,000 for repayment of estimated short-term advances. In addition to coal tax receipts and other income, an estimated \$2,390,080,000 in short-term advances will be required to fund obligations and exchange of assets transactions.

BLDTF's FY 2020 Budget level will provide necessary funding to address sustained, high incoming claims volume, ensure Trust Fund beneficiary maintenance, maintain a balanced, sustainable approach to claims inventory management with a special emphasis on claims pending for more than 365 days, and enhance the quality and timeliness of claims decisions. Notably, while beneficiary counts have been declining in the Black Lung Program, the average number of incoming claims received remains high. After receiving approximately 5,400 claims in FY 2012, the program received 7,000 claims on average over the next six years with a projected incoming claims volume of 7,000 in FY 2019 and FY 2020.

FY 2019

In FY 2019, DCMWC's efforts will focus on achieving optimal productivity levels by facilitating uniformity, consistency, and standardization across the program, prioritizing the resolution of claims pending for more than 365 days, and enhancing the quality and timeliness of claims decisions. Services will include adjudicating claims, paying benefits, monitoring eligibility, processing beneficiary and entitlement changes, and validating representative payee requests and accounting reports in order to enforce Federal financial management requirements, minimize erroneous payments, and increase administrative efficiencies. The program will continue to leverage efficiencies gained by centralizing and modernizing administrative functions to enable professional staff to increase decision-making productivity on new and pending claims. These resources are necessary to respond to the economic changes impacting coal mine employers, keep pace with the sustained, high incoming claims volume, and ensure accurate and timely adjudication of benefits.

FY 2018

In FY 2018, the Trust Fund paid benefits and ongoing medical treatment costs and the administrative expenses of Black Lung Part C program operations, adjudicatory and litigation costs. Monthly compensation and ongoing medical treatment benefits were paid from the BLDTF to 14,237 recipients, a 6 percent decline from FY 2016, which is low when compared to the historical decline of roughly 12 percent in 2014 and the prior six-year average decline of 9 percent. The program monitored cash and medical treatment payments disbursed in the private sector by coal mine operators to 5,302 additional recipients under Part C; and processed 6,673 new incoming claims. In addition, large operator bankruptcies are especially challenging because benefits for impacted beneficiaries must be transferred under tight time constraints to ensure that there are no disruptions to monthly and medical benefit payments to beneficiaries. Additional detail regarding work associated with this program can be found in the workload summary discussion for the Division of Coal Mine Workers' Compensation (DCMWC).

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WORKLOAD AND PERFORMANCE SUMMARY				
	FY 2018 Enacted		FY 2019 Enacted	FY 2020 Request
	Target	Result	Target	Target
Black Lung Disability Trust Fund				
Strategic Goal 3 - Administer Strong Workers' Compensation and Benefits Programs				
Strategic Objective OWCP 3.1 - Provide workers' compensation benefits for workers who are injured or become ill on the job.				
BLDTF WL 1 Number of Claims Received	7,500[p]	6,673	7,000[p]	7,000[p]
BLDTF WL 2 Number of Trust Fund Beneficiaries	15,100[p]	14,237	13,500[p]	12,900[p]
BLDTF WL 3 Number of Beneficiaries Paid by Responsible Operators	5,000[p]	5,302	5,350[p]	5,400[p]

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

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Workload Summary

In FY 2020, 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, adjudicatory and litigation costs. Monthly compensation and ongoing medical treatment benefits will be paid from the BLDTF to an estimated 12,900 recipients in FY 2020. The program will monitor cash and medical treatment payments disbursed in the private sector by coal mine operators to approximately 5,400 additional recipients under Part C; and will process an estimated 7,000 incoming claims. Greater detail on workload associated with this program can be found in the workload summary discussion for the Division of Coal Mine Workers' Compensation (DCMWC).