

FY 2021

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 [2020] 2021 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] \$40,643,000 for transfer to the Office of Workers' Compensation Programs, "Salaries and Expenses"; not to exceed [\$32,844,000] \$33,033,000 for transfer to Departmental Management, "Salaries and Expenses"; not to exceed [\$330,000] \$333,000 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, 2020.)

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AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2019 Enacted		FY 2020 Enacted		FY 2021 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	0	\$0	0	\$0	0	\$0
Definite	0	\$70,926	0	\$71,776	0	\$74,365
Sequestration Reduction Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985	0	-\$4,397	0	-\$4,235	0	\$0
Indefinite	0	\$259,835	0	\$271,612	0	\$308,626
<i>Subtotal, Appropriation</i>	<i>0</i>	<i>\$326,364</i>	<i>0</i>	<i>\$339,153</i>	<i>0</i>	<i>\$382,991</i>
Bond Repayment and Payment on Advances	0	\$2,017,606	0	\$1,988,895	0	\$2,124,084
B. Gross Budget Authority	0	\$2,343,970	0	\$2,328,048	0	\$2,507,075
Bond Repayment and Payment on Advances	0	-\$2,017,606	0	-\$1,988,895	0	-\$2,124,084
C. Budget Authority Before Committee	0	\$326,364	0	\$339,153	0	\$382,991
Bond Repayment and Payment on Advances	0	\$2,017,606	0	\$1,988,895	0	\$2,124,084
D. Total Budgetary Resources	0	\$2,343,970	0	\$2,328,048	0	\$2,507,075
E. Total, Estimated Obligations	0	\$2,343,970	0	\$2,328,048	0	\$2,507,075

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SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2020 Enacted	FY 2021 Request	Net Change
Budget Authority			
General Funds	\$0	\$0	\$0
Trust Funds	\$339,153	\$382,991	+\$43,838
Total	\$339,153	\$382,991	+\$43,838
 Full Time Equivalents			
General Funds	0	0	0
Total	0	0	0

Explanation of Change	FY 2021 Change							
	FY 2020 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	\$67,541	0	\$354	0	\$0	0	\$354
One day less of Pay	0	\$0	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	0	+\$67,541	0	+\$354	0	\$0	0	+\$354
B. Programs:								
BLDTF Payment of Interest on Advances for FY 2021	0	\$0	0	\$23,459	0	\$0	0	\$23,459
BLDTF Payment of Bond Interest for FY 2021	0	\$0	0	\$13,392	0	\$0	0	\$13,392
Processing of Mandatory Workload - BLDTF	0	\$0	0	\$4,389	0	\$0	0	\$4,389
DCMWC - Digital Case File Transition From Paper to Digital Format	0	\$0	0	\$2,000	0	\$0	0	\$2,000
DCMWC - 2 FTE for Self-Insurance Activities	0	\$0	0	\$235	0	\$0	0	\$235
BLDTF Benefits for FY 2021	0	\$0	0	\$163	0	\$0	0	\$163
Programs Subtotal	0	\$0	0	+\$43,638	0	\$0	0	+\$43,638
Total Increase	0	+\$67,541	0	+\$43,992	0	\$0	0	+\$43,992
Decreases:								
A. Built-Ins:								
To Provide For:								
One day less of Pay	0	\$0	0	-\$154	0	\$0	0	-\$154

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Explanation of Change	FY 2021 Change							
	FY 2020 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Built-Ins Subtotal	0	\$0	0	-\$154	0	\$0	0	-\$154
B. Programs:								
Programs Subtotal			0	\$0	0	\$0	0	\$0
Total Decrease	0	\$0	0	-\$154	0	\$0	0	-\$154
Total Change	0	+\$67,541	0	+\$43,838	0	\$0	0	+\$43,838

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BUDGET AUTHORITY BY OBJECT CLASS¹				
(Dollars in Thousands)				
	FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request	Diff. FY21 Request / FY20 Enacted
Departmental Management	30,010	30,906	33,033	2,127
Treasury Administrative Costs	334	335	356	21
Office of Inspector General	310	311	333	22
OWCP- Division of Coal Mine Workers	35,875	35,989	40,643	4,654
<i>Subtotal</i>	<i>66,529</i>	<i>67,541</i>	<i>74,365</i>	<i>6,824</i>
Benefits	146,471	151,768	151,931	163
Payment of Bond Interest	63,888	76,777	90,169	13,392
Payment of Interest on Advances	49,476	43,067	66,526	23,459
Total	326,364	339,153	382,991	43,838

¹ FY 2019 and FY 2020 levels reflect post-sequestration amounts. The FY 2021 level reflects the pre-sequestration amount.

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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
2011					
Base Appropriation...1/	\$367,452	\$297,686	\$297,686	\$296,152	0
2012					
Base Appropriation...2/	\$300,495	\$301,415	\$301,415	\$295,000	0
2013					
Base Appropriation...3/	\$307,806			\$292,669	0
2014					
Base Appropriation...4/	\$316,559			\$312,305	0
2015					
Base Appropriation...5/	\$321,087			\$321,092	0
2016					
Base Appropriation...6/	\$341,467	\$341,466	\$341,467	\$313,192	0
2017					
Base Appropriation...7/	\$371,641			\$382,739	0
2018					
Base Appropriation...8/	\$418,801	\$415,162		\$401,322	0
2019					
Base Appropriation...9/ 10/	\$328,182		\$328,182	\$326,364	0
2020					
Base Appropriation...11/ 12/	\$365,240	\$365,240		\$339,153	0
2021					
Base Appropriation	\$382,991				

^{1/} Appropriation does not include amounts for exchange of assets transactions of \$379,286 for bond principal and \$60,000 for short-term advances.

^{2/} Appropriation does not include amounts for exchange of assets transactions of \$394,297 for bond principal and \$107,749 for short-term advances.

^{3/} 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.

^{4/} 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.

^{5/} 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.

^{6/} 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.

^{7/} 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.

^{8/} 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.

^{9/} 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.

^{10/} 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.

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^{11/} 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.

^{12/} 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

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 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 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 recently restored the tax rate to the 2018 levels in the Further Consolidated Appropriations Act, 2020, but only for calendar year 2020.

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

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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. Based on current coal excise tax revenue estimates, in FY 2020, revenue will cover the definite appropriation for administration, and indefinite amounts for benefits payments and approximately 86 percent of the amounts of interest payments on bonds and advances. In FY 2021, the estimates project that excise tax receipts will cover the definite appropriation for administration and approximately 93 percent of the indefinite appropriation amount for benefits payments, with interest payments on bonds and advances being covered by borrowing authority. In FY 2022, the estimates project that excise tax receipts will cover 72 percent of administrative costs and benefits payments, with interest payments on bonds and advances 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.

DCMWC has engaged in two separate initiatives to protect the Trust Fund. The first is a Final Rule governing the Black Lung Disability Trust Fund’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 Medical program. Implementation of the in-hospital bill review process yielded \$11.4 million in savings to the Trust Fund for FY 2019.

The other initiative designed to protect the Trust Fund was an overhaul of the self-insurance process, which was completed in June 2019. 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. Liability for these defaulted payments then rests with the BLDTF.

Accordingly, the Department recently implemented a new process to help ensure that self-insured coal companies sufficiently secure their Black Lung Benefits Act liabilities. The process involves a more robust initial analysis of operators’ financial health and projected black lung benefits liabilities and includes annual recertification. 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-insured operators’ actuarial-estimated liabilities and risk of default. This should ultimately bolster the Trust Fund’s reserves in the event of an operator defaulting on their benefit liabilities.

The FY 2021 BLDTF request level includes increases of \$235,000 for additional resources to hire staff to support OWCP’s new self-insurance evaluation process and \$2,000,000 for additional resources to convert all paper files to electronic files and implement a fully digital claims process. The requests will focus on the areas of shifting from low-value to high-value work and improving customer experience as emphasized in the President’s Management Agenda.

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BUDGET AUTHORITY BEFORE THE COMMITTEE²				
(Dollars in Thousands)				
	FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request	Diff. FY21 Request / FY20 Enacted
Activity Appropriation	326,364	339,153	382,991	43,838
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 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

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2016	\$313,192	0
2017	\$382,739	0
2018	\$401,322	0
2019	\$326,364	0
2020	\$339,153	0

FY 2021

In order to meet estimated obligations for Part C of the Black Lung Program, the FY 2021 Budget level is \$382,991,000. The amounts for definite obligations include the following amounts to be transferred:

- \$40,643,000 to OWCP’s Salaries and Expenses, Division of Coal Mine Workers’ Compensation (DCMWC), for administration of the Black Lung Program, including program increases of \$235,000 and 2 FTE for Black Lung Self- Insurance Audit Activities, and \$2,000,000 to convert all paper files to electronic files and implement a fully digital claims process, which are discussed in OWCP’s Salaries and Expenses section of the Budget;

² FY 2019 and FY 2020 admin levels reflect post-sequestration amounts. The FY 2021 admin level reflects the pre-sequestration amount.

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- \$33,033,000, 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;
- \$333,000, for OIG administrative costs; and
- \$356,000 for the Department of Treasury.

Estimated amounts for indefinite obligations include:

- \$151,931,000 for benefit payments;
- \$90,169,000 for payments of bond interest; and
- \$66,526,000 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 \$120,015,000 for payment of bond principal and \$2,004,069 for repayment of estimated short-term advances. In addition to coal tax receipts and other income, an estimated \$2,290,072 in short-term advances will be required to fund obligations and exchange of assets transactions.

BLDTF's FY 2021 Budget level will provide necessary funding to address sustained high incoming claims volume, projected to reach 7,000 claims received in FY 2020, ensure Trust Fund beneficiary maintenance, and maintain a balanced sustainable approach to claims inventory management with a special emphasis on claims pending for more than 365 days. The Black Lung program will also focus on IT modernization to better allocate budget resources and Enterprise Risk Management (ERM) as emphasized in the President's Management Agenda.

FY 2020

In FY 2020, DCMWC's efforts will focus on maximizing productivity and boosting efficiency across the program, prioritizing the resolution of claims pending for more than 365 days, and maintaining the quality and timeliness of claims decisions. Services will include 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. DCMWC will devote significant resources to converting paper files to electronic files to enhance records management capabilities and make significant progress towards a fully digital claims process. 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. The program will also continue the transition from low-value to high-value work by backfilling every GS-7 or lower administrative position with a claims examiner or analyst. 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 2019

In FY 2019, the Trust Fund paid benefits and ongoing medical treatment costs and the administrative expenses of Black Lung Part C program operations, adjudicatory and litigation

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costs. Monthly compensation and ongoing medical treatment benefits were paid from the BLDTF to 13,257 beneficiaries. The program monitored cash and medical treatment payments disbursed in the private sector by coal mine operators to 5,386 additional beneficiaries under Part C; and received 6,806 new incoming claims while issuing 6,239 decisions. 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 DCMWC.

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WORKLOAD AND PERFORMANCE SUMMARY				
	FY 2019 Enacted		FY 2020 Enacted	FY 2021 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	7,000[p]	6,806	7,000[p]	7,000[p]
BLDTF WL 2 Number of Trust Fund Beneficiaries	13,500[p]	13,257	12,800[p]	12,350[p]
BLDTF WL 3 Number of Beneficiaries Paid by Responsible Operators	5,350[p]	5,386	5,650[p]	5,900[p]

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

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Workload Summary

In FY 2021, 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 12,350 beneficiaries in FY 2021. The program will monitor cash and medical treatment payments disbursed in the private sector by coal mine operators to approximately 5,900 additional beneficiaries 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 DCMWC.