

FY 2022

CONGRESSIONAL BUDGET JUSTIFICATION

BLACK LUNG DISABILITY TRUST FUND

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BLACK LUNG DISABILITY TRUST FUND

TABLE OF CONTENTS

Appropriation Language	1
Amounts Available for Obligation.....	2
Summary of Changes	3
Budget Authority by Object Class	5
Authorizing Statutes.....	6
Appropriation History.....	7
Overview.....	9
Budget Activities	11
Black Lung Disability Trust Fund	11

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BLACK LUNG DISABILITY TRUST FUND

APPROPRIATION LANGUAGE

(INCLUDING TRANSFER OF FUNDS)

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 [2021] 2022 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): not to exceed [\$40,643,000] \$41,464,000 for transfer to the Office of Workers' Compensation Programs, "Salaries and Expenses"; not to exceed [\$33,033,000] \$37,598,000 for transfer to Departmental Management, "Salaries and Expenses"; not to exceed [\$333,000] \$342,000 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, 2021.)

BLACK LUNG DISABILITY TRUST FUND

AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2020 Revised Enacted		FY 2021 Enacted		FY 2022 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	0	\$0	0	\$0	0	\$0
Definite	0	\$71,776	0	\$74,365	0	\$79,760
Sequestration Reduction Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985	0	-\$4,235	0	-\$4,239	0	\$0
Indefinite	0	\$250,011	0	\$276,661	0	\$251,745
<i>Subtotal, Appropriation</i>	<i>0</i>	<i>\$317,552</i>	<i>0</i>	<i>\$346,787</i>	<i>0</i>	<i>\$331,505</i>
Bond Repayment and Payment on Advances	0	\$1,988,895	0	\$2,442,615	0	\$2,553,188
B. Gross Budget Authority	0	\$2,306,447	0	\$2,789,402	0	\$2,884,693
Bond Repayment and Payment on Advances	0	-\$1,988,895	0	-\$2,442,615	0	-\$2,553,188
C. Budget Authority Before Committee	0	\$317,552	0	\$346,787	0	\$331,505
Bond Repayment and Payment on Advances	0	\$1,988,895	0	\$2,442,615	0	\$2,553,188
D. Total Budgetary Resources	0	\$2,306,447	0	\$2,789,402	0	\$2,884,693
E. Total, Estimated Obligations	0	\$2,306,447	0	\$2,789,402	0	\$2,884,693

BLACK LUNG DISABILITY TRUST FUND

SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2021 Enacted	FY 2022 Request	Net Change
Budget Authority			
General Funds	\$0	\$0	\$0
Trust Funds	\$346,787	\$331,505	-\$15,282
Total	\$346,787	\$331,505	-\$15,282
Full Time Equivalents			
General Funds	0	0	0
Total	0	0	0

Explanation of Change	FY 2021 Base		FY 2022 Change				Total	
	FTE	Amount	Trust Funds FTE	Trust Funds Amount	General Funds FTE	General Funds Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	0	\$70,126	0	\$1,225	0	\$0	0	\$1,225
Operation and maintenance of equipment	0	\$0	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	0	+\$70,126	0	+\$1,225	0	\$0	0	+\$1,225
B. Programs:								
BLDTF Payment of Bond Interest - FY 2022	0	\$90,169	0	\$13,052	0	\$0	0	\$13,052
Processing of Mandatory Workload - BLDTF	0	\$0	0	\$8,144	0	\$0	0	\$8,144
BLDTF Benefits - FY 2022	0	\$143,758	0	\$876	0	\$0	0	\$876
Responsible Operator Self-Insurance and BLCS Maintenance - DCMWC	0	\$0	0	\$265	0	\$0	0	\$265
Programs Subtotal	0	\$0	0	+\$22,337	0	\$0	0	+\$22,337
Total Increase	0	+\$304,053	0	+\$23,562	0	\$0	0	+\$23,562
Decreases:								
A. Built-Ins:								
To Provide For:								
Built-Ins Subtotal	0	\$0	0	\$0	0	\$0	0	\$0
B. Programs:								

BLACK LUNG DISABILITY TRUST FUND

Explanation of Change	FY 2022 Change							
	FY 2021 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
BLDTF Payment of Interest on Advances - FY 2022	0	\$42,734	0	-\$38,844	0	\$0	0	-\$38,844
Programs Subtotal			0	-\$38,844	0	\$0	0	-\$38,844
Total Decrease	0	+\$42,734	0	-\$38,844	0	\$0	0	-\$38,844
Total Change	0	+\$346,787	0	-\$15,282	0	\$0	0	-\$15,282

BLACK LUNG DISABILITY TRUST FUND

BUDGET AUTHORITY BY OBJECT CLASS¹				
(Dollars in Thousands)				
	FY 2020 Revised Enacted	FY 2021 Enacted	FY 2022 Request	Diff. FY22 Request / FY21 Enacted
Departmental Management	30,906	31,150	37,598	6,448
Treasury Administrative Costs	335	336	356	20
Office of Inspector General	311	314	342	28
OWCP- Division of Coal Mine Workers	35,989	38,326	41,464	3,138
<i>Subtotal</i>	<i>67,541</i>	<i>70,126</i>	<i>79,760</i>	<i>9,634</i>
Benefits	140,565	143,758	144,634	876
Payment of Bond Interest	76,777	90,169	103,221	13,052
Payment of Interest on Advances	32,669	42,734	3,890	-38,844
Total	317,552	346,787	331,505	-15,282

¹ The FY 2020 and FY 2021 levels reflect the post-sequestration amounts. The FY 2022 level reflects the pre-sequestration amount.

BLACK LUNG DISABILITY TRUST FUND

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

BLACK LUNG DISABILITY TRUST FUND

APPROPRIATION HISTORY					
(Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2012					
Base Appropriation...1/	\$300,495	\$301,415	\$301,415	\$295,000	0
2013					
Base Appropriation...2/	\$307,806			\$292,669	0
2014					
Base Appropriation...3/	\$316,559			\$312,305	0
2015					
Base Appropriation...4/	\$321,087			\$321,092	0
2016					
Base Appropriation...5/	\$341,467	\$341,466	\$341,467	\$313,192	0
2017					
Base Appropriation...6/	\$371,641			\$382,739	0
2018					
Base Appropriation...7/	\$418,801	\$415,162		\$401,322	0
2019					
Base Appropriation...8/ 9/	\$328,182		\$328,182	\$326,364	0
2020					
Base Appropriation...10/ 11/	\$365,240	\$365,240		\$317,552	0
2021					
Base Appropriation...12/	\$382,991			\$346,787	0
2022					
Base Appropriation	\$331,505			\$331,505	

^{1/} Appropriation does not include amounts for exchange of assets transactions of \$394,297 for bond principal and \$107,749 for short-term advances.

^{2/} 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.

^{3/} 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.

^{4/} 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.

^{5/} 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.

^{6/} 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.

^{7/} 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.

^{8/} 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.

^{9/} 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.

^{10/} 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.

BLACK LUNG DISABILITY TRUST FUND

^{11/}This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or full Appropriations Committee.

^{12/}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.

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 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.

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 relies on annual advances from Treasury. The appropriations language for the BLDTF

BLACK LUNG DISABILITY TRUST FUND

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 2021, revenue will cover the definite appropriation for administration, and indefinite amounts for benefits payments and approximately 56 percent of the amounts due to Treasury for interest payments on advances and bond repayment costs. In FY 2022, the estimates project that excise tax receipts will cover the definite appropriation for administration and approximately 4 percent of the amounts due to Treasury for interest payments on advances and bond repayment costs. In FY 2023, the estimates project that excise tax receipts will cover 75 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 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 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. However, 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 yielded \$10 million in savings to the Trust Fund for FY 2020.

The other initiative designed to protect the Trust Fund was an overhaul 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 to ensure that self-insured coal companies sufficiently secure their Black Lung Benefit Act liabilities. The Department will propose solutions to ensure that adequate security exists to bolster the Trust Fund’s reserves for when a self-insured operator defaults on benefit liabilities in the future.

The FY 2022 BLDTF request includes an increase of \$265,000 in additional funding for the Black Lung Responsible Operator Database and Black Lung Claims System (BLCS) Maintenance. The request will focus on the areas of enhancing the efficiency of program operations, improving customer experience, and fulfilling the Secretary’s fiduciary duty to protect the BLDTF.

BLACK LUNG DISABILITY TRUST FUND

BUDGET AUTHORITY BEFORE THE COMMITTEE²				
(Dollars in Thousands)				
	FY 2020 Revised Enacted	FY 2021 Enacted	FY 2022 Request	Diff. FY22 Request / FY21 Enacted
Activity Appropriation	317,552	346,787	331,505	-15,282
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 or the liable operator refuses to pay. 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>
2017	\$382,739	0
2018	\$401,322	0
2019	\$326,364	0
2020	\$317,552	0
2021	\$346,787	0

FY 2022

In order to meet estimated obligations for Part C of the Black Lung Program, the FY 2022 CBJ Request level is \$331,505,000. The amounts for definite obligations include the following amounts to be transferred:

- \$41,464,000, including an increase \$265,000 for DCMWC’s Responsible Operator Self-Insurance and Black Lung Claims System investments, which are discussed in the Federal Programs for Workers’ Compensation (FPWC) Salaries and Expenses section of the budget;
- \$37,598,000 for the administrative costs of the Departmental Management (DM) account, which covers Black Lung claim adjudication activities and legal services that are discussed in the DM section of the budget;

² The FY 2020 and FY 2021 levels reflect the post-sequestration amounts. The FY 2022 level reflects the pre-sequestration amount.

BLACK LUNG DISABILITY TRUST FUND

- \$342,000 for OIG administrative costs; and
- \$356,000 for the Department of the Treasury.

The amounts above provide \$79,760,000 in administrative funding from the BLDTF including an increase of \$1,225,000 to cover pay raises and increased benefits costs (\$556,000 for DCMWC, \$660,000 for DM, and \$9,000 for OIG).

Estimated amounts for indefinite obligations include:

- \$144,634,000 for benefit payments;
- \$103,221,000 for payments of bond interest; and
- \$3,890,000 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 \$121,786,000 for payment of bond principal and \$2,431,402,000 for repayment of estimated short-term advances. In addition to coal tax receipts and other income, an estimated \$2,648,789,000 in short-term advances will be required to fund obligations and exchange of assets transactions.

The BLDTF budget request will provide the necessary funding to address the complex operational challenges presented by the COVID-19 pandemic; handle a significant incoming workload volume, projected to reach 6,500 claims in FY 2022; advance modernization and standardization initiatives designed to optimize overall efficiency; ensure Trust Fund beneficiary maintenance; and maintain a balanced approach to claims inventory management with a special emphasis on reducing the number of claims pending for more than 365 days.

FY 2021

In FY 2021, the Black Lung program will focus 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 include addressing the impact of the COVID-19 pandemic on program operations, transitioning to a fully digital claims process, maximizing productivity, optimizing claims inventory management, and maintaining stakeholder partnerships. The program will also continue 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 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.

FY 2020

In FY 2020, the Black Lung program effected a proactive and transparent response to the COVID-19 pandemic by implementing key initiatives to assist stakeholders while minimizing disruptions to core program operations. This included automatically extending claims adjudication deadlines by 60 days to provide all parties with additional time to submit evidence and supporting materials. In addition, for situations in which deadlines could not be extended for

BLACK LUNG DISABILITY TRUST FUND

statutory or regulatory reasons, program staff worked collaboratively with parties to prevent an adverse impact due to timeliness limitations. Moreover, the program implemented a new policy temporarily allowing beneficiaries to receive up to a 90-day supply of covered medications for the purpose of facilitating safe access to vital treatments during the pandemic. Prescriptions were previously limited to a 30-day supply. The increase to 90-day supply increments allowed beneficiaries to make fewer trips to the pharmacy and increased mail order pharmacy options.

Furthermore, the program issued a bulletin that expanded use of telemedicine services for miner beneficiaries. Under the new policy, miners may receive telemedicine services in place of in-person, non-emergency, routine medical services. These policies helped ensure continued access to healthcare services for the miner beneficiary population during the pandemic. In addition, the program reorganized its National Office structure to streamline operations and provide better service and support to field staff. The new organizational structure includes specific units dedicated to operations and data analysis. The program used staff in these units to develop targeted strategies for managing cases pending for more than 365 days.

BLACK LUNG DISABILITY TRUST FUND

WORKLOAD AND PERFORMANCE SUMMARY					
	FY 2020 Revised Enacted		FY 2021 Enacted	FY 2022 Request	
	Target	Result	Target	Target	
Black Lung Disability Trust Fund					
Strategic Goal 13 - Improve Administration of and Strengthen Worker Safety Net Programs					
Strategic Objective 3.1 - Ensure timely and accurate income support when work is unavailable by strengthening benefits programs and program administration.					
BLDTF WL 1	Number of Claims Received	7,000[p]	5,336	7,000[p]	6,500[p]
BLDTF WL 2	Number of Trust Fund Beneficiaries	12,800[p]	12,388	12,350[p]	11,500[p]
BLDTF WL 3	Number of Beneficiaries Paid by Responsible Operators	5,650[p]	5,687	5,900[p]	6,200[p]

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

BLACK LUNG DISABILITY TRUST FUND

Workload Summary

In FY 2022, 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. 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 11,500 beneficiaries in FY 2022. The DCMWC will monitor cash and medical treatment payments disbursed in the private sector by coal mine operators to approximately 6,200 additional beneficiaries under Part C; and will process an estimated 6,500 incoming claims. The FY 2021 target for the 'Number of Claims received' workload measure was established prior to observation of the effects the pandemic has had on new claims filings in FY 2021. Due to the limited operating status of Black Lung clinics during the pandemic, there has been a limited availability for testing and claimant access to benefits counselors which has resulted in fewer new claims filings to date than projected.