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The Black Lung Benefits Program

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Summary

The federal black lung program (codified at 30 U.S.C. 901 et seq.) provides medical and income assistance to coal mine workers who suffer disability or death due to pneumoconiosis and related diseases. One of the goals of the program was to make benefits more readily available than they might be under state workers compensation laws. Thus, it uses certain streamlined rules of evidence, but pursuing cases can still be rather involved. A trust fund, supported by a tax on coal, was established to finance the benefits, but the fund has chronically been in deficit. The Treasury Department has proposed a refinancing that would eventually extinguish the accumulated debt. This report will be updated should significant legislative actions occur.

It has long been known that working in coal mines was associated with lung disorders, but official recognition of a specific disease caused by coal-dust – coal workers’ pneumoconiosis (CWP), now widely known as black lung – first came in 1942 in the United Kingdom. CWP occurs as dust particles accumulate in the lungs. The “simple” stage entails a reduction in lung function. If it progresses to the “complicated” stage, scarring and degeneration of the lung tissue occurs, physical activity becomes very difficult, and the disease becomes progressive and irreversible.

After the scope of the problem in the United States was highlighted by studies in the 1960s, and after a major mine disaster in Farmington, WV, Congress passed the Federal Coal Mine Health and Safety Act (P.L. 91-173) in 1969. (Together with subsequent amendments, the benefits program is codified in 30 U.S.C. 901 et seq.) In addition to a comprehensive safety enforcement regime, the Act mandated limits on miners’ dust exposure and provided income and medical support to those who become disabled by black lung. Dust control has yielded some success in a reduction of new cases, but nearly 5,000 new claims are still being received each year and more than 60,000 primary beneficiaries remain on the rolls.

Benefits

Former miners who suffer total disability or death due to CWP or related diseases are eligible for medical and income benefits. The medical benefit consists of diagnostic testing (available for all claimants) and services needed due to the disease, including drugs, durable medical equipment, home nursing visits and hospitalization. The base rate of the income benefit is equal to three-eighths of the federal salary for an employee in grade GS-2, Step 1, i.e., a base rate of \$518 per month in calendar year 2002. The benefit is augmented if the miner (or his survivor) has dependents, up to as much as double the base rate when there are three or more dependents. Black lung benefits are not subject to federal income tax but may be taxed by the states. The benefits may be subject to offsets, depending on when the initial claim was made, against various other income support systems such as workers compensation, disability insurance and Social Security.

The program is administered by the Division of Coal Mine Workers' Compensation, which is a component of the Office of Workers' Compensation Programs in the Department of Labor.¹ Decisions can be appealed to the Office of Administrative Law Judges, then to the independent Benefits Review Board, and finally to the U.S. Courts of Appeal.

Eligibility

Definition of Black Lung

Defining and diagnosing the medical conditions that should qualify one for compensation have been contentious issues throughout the legislative, regulatory and adjudicative history of the program. The statutory definition of black lung is less specific than the currently accepted medical criteria for CWP. The law makes a person eligible if one has "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment" (30 U.S.C. 902(b)). This clearly includes clinically-defined CWP but it could also include chronic obstructive pulmonary disease (COPD), e.g., bronchitis, emphysema or asthma. While CWP is almost always associated with mine employment, COPD has many other common causes, including smoking. The current Department of Labor regulation (20 C.F.R. 718.201) explicitly allows for COPD to be compensated as black lung, but the Department emphasizes that the burden of persuasion lies with the claimant to show that the disease arose out of his coal mine employment.

Another point of contention has been the requirement of being *totally disabled due to pneumoconiosis*. The difficulty, again, is that other causes may lead to the disability in question. The current regulation (20 C.F.R. 718.204) requires that, if a miner with black lung also has a disabling impairment unrelated to mine employment, then the black lung must at least be a *substantially contributing cause* of his disability.

¹ In FY1998 responsibility for managing "Part B" claims (those originating before June 30, 1973) were transferred from the Social Security Administration.

Evidence and Procedure

One of the motivating factors behind the black lung program was to overcome what were perceived as the burdensome evidentiary requirements of state workers compensation laws. In support of this objective, the Act mandated five presumptions to facilitate the consideration of claims, two of which still apply to new claims (generally those filed after 1981). These are: (1) that if a miner suffering from pneumoconiosis was employed for 10 years or more in coal mines, then there is a *rebuttable* presumption that his disease arose out of that employment, and (2) that if a miner suffering from a chronic dust disease of the lung meets certain diagnostic standards by X-rays, biopsy or autopsy, then there is an *irrebuttable* presumption of qualifying total disability. (30 U.S.C. 921(c)) Moreover, the definition of *total disability* is less stringent than in most other laws. A miner is considered totally disabled if black lung prevents him from engaging in his usual mine employment. (30 U.S.C. 902(f)(1))

The criteria in the Act and amendments have been further elaborated by administrative and judicial cases and by regulation. In December 2000, the Department of Labor issued the first comprehensive revision of its regulations for the program since 1983.² The standards in regard to “evidentiary development” now provide that:

- The claimant is entitled to a complete pulmonary evaluation performed by a physician of his choice from a list of qualified specialists;
- Both sides (claimant and mine operator) are limited in how much medical evidence they may present: two each of chest x-ray interpretations, pulmonary function tests, blood gas studies and medical reports. Also one of each category of evidence may be submitted by each side in the rebuttal phase;
- The testimony of the miner’s treating physician may be given additional weight if he/she is adjudged to have in-depth understanding of the miner’s condition;
- In testing pulmonary function, it is mandatory to use the flow-volume loop method (spirometry testing); and
- If a claim is denied, a subsequent claim may be made a year or more later if matters have changed, e.g. the miner’s condition has worsened.

It was expected that the changes of 2000 would lead to an increase in the number of successful claims, but it is still too early to quantify any such effect. According to the United Mine Workers, only 7% of claims were being accepted under the previous regulations.

²The regulations were stayed upon a court challenge by the National Mining Association, but the stay was lifted and the regulations upheld in a ruling on August 9, 2001. Billings, Deborah. Court Upholds New Black Lung Rules. *Daily Labor Report*, August 10, 2001. p. A-11,A-12.

Financing and Administration

Evolution of the Program

Virtually all of the expectations for the Black Lung Benefits Act³ when it was enacted in 1969, e.g., the numbers of claims submitted or approved, were contradicted by subsequent experience. Corrective legislation was adopted in 1972, 1977 and 1981, including the establishment of trust fund financing in 1977, but results have continued to be at variance with expectations. As a consequence, the trust fund has perennially been in a position of growing deficit.

The program initially provided a “Part B” benefit intended to deal with existing (or even deceased) cases caused by prior years of coal dust exposure. Part B was funded by general revenues and administered by the Social Security Administration. It was expected that most states would bring new black lung cases into their workers compensation laws in accord with general standards of the new federal law.⁴ The number of new cases would rapidly dwindle due to the dust control measures mandated by the mine safety act, and in the interim a federal “Part C” benefit, administered by the Labor Department and funded mostly by the employers of the claimants (“responsible operators”), would serve as a temporary backstop. What happened, though, was that claims were much more numerous than expected, while it proved difficult to find responsible operators, litigate their challenges, and collect from them. Even so, the rate of claim rejections was high enough to produce widespread dissatisfaction and elicit a liberalization of criteria via the 1972 and 1977 amendments.⁵

In response to these developments, trust fund financing was established in 1977 to reduce reliance on the Treasury and make the mining industry cover the lion’s share of costs. This was done by levying a tax on coal production.⁶ Interestingly, the program then had in place a financing mechanism which was mirrored a few years later in the much larger environmental program known as Superfund: recovery of costs so far as possible from “responsible parties,” backed up by a general levy on the industry. Still, costs continually outpaced revenues.

³ Title IV of the Federal Coal Mine Health and Safety Act, P.L. 91-173.

⁴ To date, no state has been found to provide “adequate coverage.” The most recent formal finding to that effect is in the *Federal Register*, December 20, 2000. p. 80,054.

⁵ The 1981 amendment reversed that trend, making claims harder to sustain.

⁶ At present, the tax is \$1.10 per ton for underground-mined coal, \$0.55 for surface-mined (or 4.4% of the sale price if that is less).

Financial Results

As shown in **Table 1**, the population of Part C beneficiaries⁷ on the rolls has been declining by about 5% per year over the last decade. The decline has resulted from a combination of declining employment in underground coal mining, better control of dust (hence fewer new cases), and passing away of older beneficiaries. The generational transition is evident in an almost-stable population of widows. As miners have died, women have been transferred from dependent to widow status. But, since peaking in 1993, even the widow beneficiary ranks have been decreasing.

Table 1. Number of Part C Beneficiaries (September 30 of each year)

	Miners	Widows	Dependants and others	Total
2000	24,568	39,053	21,289	84,910
1999	24,838	40,517	23,361	88,716
1998	27,340	41,585	25,563	94,488
1997	29,839	42,468	28,045	100,352
1996	32,452	43,155	30,316	105,923
1995	35,220	43,688	32,861	111,769
1994	37,970	44,073	35,526	117,569
1993	40,866	44,103	38,244	123,213
1992	43,723	43,967	41,071	128,761
1991	46,450	43,831	43,924	134,205
1990	49,306	43,404	47,144	139,854
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avg. annual rate of decline	6.7%	1.1%	7.6%	4.9%

Source: U.S. Department of Labor. Employment Standards Administration.

Table 2 shows the factors leading to a growing indebtedness of the trust fund to the Treasury. Each year the expenses of the Part C program (benefits, administration and interest) have exceeded revenues, with an advance from Treasury making up the difference and accumulating as a debt. Interestingly, though, in almost every year of the

⁷ The older, Part B benefits are financed from general revenues rather than the trust fund, and totaled \$509 million in FY2000. As of 2000, there were 89,000 Part B beneficiaries, including 12,000 miners and 62,000 widows, more than 80% of whom were over 75 years of age.

last decade, direct costs (benefits and administration) have been less than revenues. If it were not for interest on the accumulated deficit, the trust fund would be self-supporting. In effect, the annual advances from the Treasury are being used to pay back interest to the Treasury, while the debt has been growing as if with compound interest.

Table 2. Growth of Black Lung Trust Fund Debt
(\$ millions)

Fiscal Year	Debt, 1 October	+ Benefit costs	+ Administrative costs	+ Interest charge	- Revenues	Debt, 30 September
2002	7254	388	55	593	594	7696
2001	6749	393	52	568	536	7254
2000	6259	423	50	541	525	6749
1999	5857	439	51	515	604	6259
1998	5487	459	46	495	645	5857
1997	5112	488	46	471	626	5487
1996	4738	500	47	445	623	5112
1995	4363	526	52	419	620	4738
1994	3949	554	53	388	578	4363
1993	3606	562	56	367	644	3949
1992	3266	575	56	342	635	3606

Source: U.S. Department of Labor, Employment Standards Administration

The Treasury Department has proposed restructuring the trust fund's debt so that it could eventually be extinguished.⁸ The plan is to convert the debt into a series of zero-coupon bonds payable from the trust fund to the Treasury. The bonds' implicit interest rates would be lower than the rates on the current debt (because rates generally have fallen in recent years). In order to reimburse the Treasury for receiving less interest than currently scheduled, a one-time appropriation would be made. (It is presumed that the one-time appropriation would not trigger budgetary "pay-go" limitations because it would be only an intragovernmental transfer.) Treasury projects that coal tax revenues at current rates would be adequate to eventually pay off the bonds (if the tax were extended past its currently scheduled expiration of 2014).

⁸ Originally proposed in October 2000, the plan was again broached in the budget justification document for the black lung trust fund for FY2003.