May 22, 2024

BLACK LUNG BENEFITS PROGRAM

Lack of Resolution on Coal Operator Self-Insurance Increases Financial Risk to Trust Fund

GAO Highlights

Highlights of GAO-24-107597, a testimony before the Subcommittee on Employment and Workplace Safety, Committee on Health, Education, Labor and Pensions, U.S. Senate

Why GAO Did This Study

The Trust Fund, which pays benefits to coal miners disabled due to black lung, faces financial challenges. It has borrowed from the U.S. Treasury's general fund almost every year since 1979 to make needed expenditures. In February 2020, GAO found that DOL's limited oversight of coal mine operator insurance exposed the Trust Fund to additional financial risk.

This testimony is based on reports GAO issued in 2020 and 2018. GAO found in 2020 that in overseeing coal operator self-insurance DOL did not (1) estimate future benefit liability when setting the amount of collateral required to self-insure, (2) regularly review operators to assess whether the required amount of collateral should change, or (3) always take action to protect the Trust Fund by revoking an operator's ability to self-insure as appropriate.

GAO testified on these findings and its related priority recommendations before the Subcommittee on Workforce Protections, Committee on Education and Workforce, House of Representatives, in December 2021. Since that time, GAO has contacted DOL periodically to obtain updates on actions taken to implement GAO's recommendations. In February 2023, GAO also contacted DOL about the October 2022 coal tax rate increase and how it may affect Trust Fund finances.

What GAO Recommends

DOL agreed with the recommendations made in GAO's 2020 report that DOL should establish procedures for self-insurance renewals and coal operator appeals. Both of these priority recommendations remain open.

View GAO-24-107597. For more information, contact Cindy Brown Barnes at (202) 512-7215 or brownbarnesc@gao.gov.

What GAO Found

The Department of Labor (DOL) took initial steps to implement GAO's 2020 recommendations to improve its oversight of self-insured coal mine operators, but its reform effort was hindered by the COVID-19 pandemic, according to DOL officials. Additionally, the incoming administration undertook a review of DOL's coal operator self-insurance program, according to DOL officials. Black lung benefits are generally paid by liable coal mine operators, and federal law generally requires coal mine operators to secure their black lung benefit liability. Operators are allowed to self-insure if they meet certain DOL conditions. The federal government's Black Lung Disability Trust Fund (Trust Fund) pays benefits when no responsible mine operator can be identified, or the liable mine operator does not pay. This can happen, for example, when an operator goes bankrupt.

As GAO reported in 2020, the bankruptcies of some self-insured operators that occurred from 2014 through 2016 led to the transfer of $865 million in estimated benefit responsibility to the Trust Fund, according to DOL. This occurs when the amount of collateral DOL requires from a self-insured coal operator does not fully cover the operator's benefit responsibility should the operator become insolvent. Since 2016, several other self-insured operators have also filed for bankruptcy, according to DOL.

In December 2020, DOL issued a preliminary bulletin for coal operator self-insurance that described significant changes and included actions that would have addressed GAO's recommendations. For instance, DOL set a goal to resolve coal operator appeals within 90 days after receiving supporting documents or meeting with the operator to discuss their concerns. However, in February 2021, DOL rescinded the preliminary bulletin while the incoming administration reviewed DOL's coal mine operator self-insurance program, according to DOL officials. Officials said that this review was completed in November 2021.

In January 2023, DOL published a Notice of Proposed Rulemaking in the Federal Register that proposed changes to its process for coal mine operators to self-insure. For example, the proposed rule would require that all self-insured operators obtain collateral equal to 120 percent of their estimated black lung benefit liabilities. Additionally, the proposed rule would make changes to the coal mine operator self-insurance application, renewal, and appeals process. For instance, the proposed rule would require DOL to notify the self-insurance applicant of the date its authorization is effective, the date its authorization will expire, and the date the applicant must apply to renew its authorization if it intends to continue self-insuring. The proposed rule would also require that operators that wish to appeal a DOL determination must do so within 30 days of receiving that determination and to provide any supporting documentation within that period. In May 2024, DOL submitted its final draft rule on coal operator self-insurance to the Office of Management and Budget for review.