

# **The Black Lung Program, the Black Lung Disability Trust Fund, and the Excise Tax on Coal**

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# The Black Lung Program, the Black Lung Disability Trust Fund, and the Excise Tax on Coal

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The federal government pays benefits to coal miners affected by coal workers' pneumoconiosis (CWP, commonly referred to as black lung disease) and other lung diseases linked to coal mining in cases where responsible mine operators are not able to pay. In 2023, the monthly benefit for a miner with no dependents is \$737.90. Benefits can be as much as \$1,475.80 per month for miners with three or more dependents. Medical benefits are provided separately from disability benefits. Benefit payments and related administrative expenses in cases in which the responsible operators do not pay are paid out of the Black Lung Disability Trust Fund.

The primary source of revenue for the trust fund is an excise tax on coal produced and sold domestically (the black lung excise tax, BLET). If BLET revenue is not sufficient to finance Black Lung Program benefits, the trust fund may borrow from the general fund of the Treasury.

The BLET rates on coal are \$1.10 per ton of underground-mined coal or \$0.55 per ton of surface-mined coal, limited to 4.4% of the sales price. These rates were established in 1986. The enactment of the law commonly referred to as the Inflation Reduction Act of 2022 (IRA, P.L. 117-169) made these BLET rates, which had previously been subject to periodic reductions, permanent.

The Black Lung Disability Trust Fund and associated BLET were established so that the coal industry, as opposed to taxpayers in general, would bear the burden associated with providing black lung benefits. Throughout its history, the Black Lung Disability Trust Fund has not raised revenues sufficient to meet obligations. As a result, at various points in time, Congress and the President have acted to increase the BLET rates on coal, forgive or refinance trust fund debt, and modify black lung benefits eligibility.

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**T**he federal government pays benefits to coal miners affected by coal workers' pneumoconiosis (CWP, commonly referred to as black lung disease) and other lung diseases linked to coal mining in cases where the responsible mine operators are not able to pay. Benefit payments and related administrative expenses are paid out of the Black Lung Disability Trust Fund. The primary source of revenue for the trust fund is an excise tax on coal produced and sold domestically. If excise tax revenue is not sufficient to finance Black Lung Program benefits, the trust fund may borrow from the general fund of the Treasury, which contains federal receipts not earmarked for a specific purpose.

The excise tax rates on coal are \$1.10 per ton of underground-mined coal or \$0.55 per ton of surface-mined coal, limited to 4.4% of the sales price. These rates were established in 1986. The enactment of the law commonly referred to as the Inflation Reduction Act of 2022 (IRA, P.L. 117-169) made these tax rates, which had previously been subject to periodic reductions, permanent.

Throughout its history, the Black Lung Disability Trust Fund has not raised revenues sufficient to meet obligations and has partially relied on borrowing from the Treasury to pay expenses and benefits. The decline in domestic coal production, recent increases in the rate of CWP, and bankruptcies in the coal sector have also contributed to the financial strain on the trust fund.<sup>1</sup>

## Federal Black Lung Program

The Black Lung Disability Trust Fund is used to finance the payment of federal Black Lung Program benefits under Part C of the Black Lung Benefits Act (BLBA) when a responsible coal operator does not meet its obligations under the law to pay benefits.

## Black Lung Disease

Coal workers' pneumoconiosis (CWP, commonly referred to as black lung disease) is an interstitial lung disease caused by the inhalation of coal dust.<sup>2</sup> Like in other types of pneumoconioses, the inhalation of coal dust results in the scarring of the lung tissue and affects the gas-exchanging ability of the lungs to remove carbon dioxide and take oxygen into the bloodstream.<sup>3</sup> Exposure to coal dust over an extended period of time can lead to CWP and continued exposure can lead to the progression from the early stages of CWP referred to as "simple CWP," to more advanced stages of scarring referred to as "complicated CWP" or progressive massive fibrosis (PMF). There is no cure for CWP and PMF. CWP can lead to loss of lung function, the need for lung transplantation, and premature death. CWP can be identified by observing light spots, or opacities, in x-ray images of the lungs and can be classified using guidelines established by the International Labour Organization (ILO).<sup>4</sup>

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<sup>1</sup> For general information on the U.S. coal industry, see CRS Report R44922, *The U.S. Coal Industry: Historical Trends and Recent Developments*, by Marc Humphries.

<sup>2</sup> For additional information on CWP, see the website of the National Institute for Occupational Safety and Health (NIOSH) at <https://www.cdc.gov/niosh/topics/cwhsp/coalminingrelatedrespiratorydiseases.html>.

<sup>3</sup> Other types of pneumoconioses include silicosis caused by the inhalation of silica dust, and asbestosis caused by the inhalation of asbestos fibers. For additional information on pneumoconioses, see the website of NIOSH at <https://www.cdc.gov/niosh/topics/pneumoconioses/>.

<sup>4</sup> For additional information on the ILO classification system, see the website of NIOSH at <https://www.cdc.gov/niosh/topics/chestradiography/ilo.html>.

Despite technological advances in mining dust control, mandatory chest x-rays for miners,<sup>5</sup> free CWP surveillance offered to miners by the National Institute for Occupational Safety and Health (NIOSH),<sup>6</sup> the enactment of numerous pieces of mine safety and health legislation,<sup>7</sup> and the promulgation and enforcement of mine safety and health standards by the Mine Safety and Health Administration (MSHA),<sup>8</sup> CWP persists in American coal miners, especially those in the Appalachian region. After reductions in rates of PMF in the 1990s, this advanced form of CWP has recently been found in Central Appalachia at rates not seen since the early 1970s.<sup>9</sup> In 2017 researchers discovered, among coal miners mostly living in Kentucky and Virginia and served by three federally funded Black Lung Clinics in Virginia,<sup>10</sup> what may be the largest cluster of PMF ever recorded.<sup>11</sup>

This cluster of miners with PMF includes a relatively high number of miners with less than 20 years of mining experience as well as cases of PMF in current miners. The occurrence of this advanced stage of CWP in short-tenured and current miners is noteworthy since MSHA standards require that any miner with evidence of CWP be given the option, without loss of compensation or other penalty, to work in an area of the mining operation in which the average concentration of coal dust in the air is continuously maintained at or below an established level that is lower than the permissible exposure level for all miners with the goal of preventing the progression of CWP.<sup>12</sup>

## Federal Black Lung Program

The federal Black Lung Program was created in 1969 with the enactment of Title IV of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act, P.L. 91-173). Section 401 of the Coal Act provides the congressional justification for the federal Black Lung Program and cites the lack of benefits for disability and death caused by CWP provided by existing state workers’

<sup>5</sup> Title 30, Section 843(a), of the *U.S. Code* requires that each miner new to coal mining be given a free chest x-ray within 18 months of starting work, a follow-up x-ray within three years of the first x-ray, and if the follow-up x-ray shows evidence of CWP, an additional chest x-ray within two years of the follow-up x-ray.

<sup>6</sup> For additional information on the NIOSH Coal Workers’ Health Surveillance Program, see the NIOSH website at <https://www.cdc.gov/niosh/topics/cwhsp/default.html>.

<sup>7</sup> The major pieces of enacted coal mine safety and health legislation are the Federal Coal Mine Safety and Health Act of 1969 (P.L. 91-173), the Federal Mine Safety and Health Amendments Act of 1977 (P.L. 95-164), and the Mine Improvement and New Emergency Response Act of 2006 (MINER Act, P.L. 109-236).

<sup>8</sup> The MSHA standards for underground coal mine safety and health are published in Chapter 1, Subchapter O, of Part 30 of the C.F.R. In 2015, MSHA revised its standards on exposure to respirable coal dust to lower exposure limits for coal miners (Mine Safety and Health Administration, “Lowering Miners’ Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors,” 79 *Federal Register* 24813, May 1, 2014).

<sup>9</sup> David J. Blackley, Cara N. Halldin, and A. Scott Laney, “Resurgence of a Debilitating and Entirely Preventable Respiratory Disease among Working Coal Miners,” *American Journal of Respiratory and Critical Care Medicine*, vol. 190, no. 6 (September 15, 2014), pp. 708-709; and David J. Blackley, James B. Crum, Cara N. Halldin, et al., “Resurgence of Progressive Massive Fibrosis in Coal Miners-Eastern Kentucky, 2016,” *Morbidity and Mortality Weekly Report*, vol. 65, no. 49 (December 16, 2016), pp. 1385-1389.

<sup>10</sup> Federal Black Lung Clinics are medical clinics that provide screening and treatment for CWP regardless of a miner’s ability to pay. Federal Black Lung Clinics are supported by grants from the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) as authorized by Title 30, Section 937, of the *U.S. Code*.

<sup>11</sup> David J. Blackley, Laura E. Reynolds, Connie Short, et al., “Progressive Massive Fibrosis in Coal Miners from Three Clinics in Virginia,” *Journal of the American Medical Association*, vol. 319, no. 5 (February 6, 2018), pp. 500-501.

<sup>12</sup> 30 C.F.R. §90.3. The concentration limits of respirable coal dust are 1.5 milligrams per cubic meter (mg/m<sup>3</sup>) of air for all miners and 0.5 mg/m<sup>3</sup> for miners with evidence of CWP.

compensation systems as justification for the creation of a federal program. This section also states that the program is intended to be a cooperative effort between the federal government and the states.

The Coal Act also established mandatory safety and health standards for coal mines, including standards limiting exposure of miners to coal dust and giving miners with CWP the option of being moved, without loss of compensation or penalty, to an area of the mine with lower dust concentrations. The Coal Act was later amended by the Black Lung Benefits Act of 1972 (BLBA, P.L. 92-303).

## **Part B**

The Coal Act established Part B of the federal Black Lung Program to provide cash benefits to miners totally disabled due to CWP and to the survivors of miners who die from CWP.<sup>13</sup> Part B only applies to cases filed on or before December 31, 1973. Part B benefits are paid out of general revenue and were initially administered by the Social Security Administration (SSA). Today, with the exception of a small number of pending appellate cases, Part B benefits are administered by the Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP).

## **Part C**

The Coal Act established Part C of the Federal Black Lung Program for cases filed after December 31, 1973, and was later amended by the BLBA. Under Part C of the BLBA, all claims for benefits for disability or death due to CWP are to be filed with each state's workers' compensation system, but only if such systems have been determined by DOL as providing benefits that are equivalent to or greater than the cash benefits provided by the federal government under Part B of the BLBA and the medical benefits provided to disabled longshore and harbor workers under the federal Longshore and Harbor Workers' Compensation Act (LHWCA).<sup>14</sup> If a state's workers' compensation system is not determined by DOL to meet these standards, then Part C benefits are to be paid by the each miner's coal employer, or, if no such employer is available to pay benefits, by the federal government.

In 1973, Maryland, Kentucky, Virginia, and West Virginia submitted their state workers' compensation laws to DOL for approval, but were denied.<sup>15</sup> To date, no state workers' compensation system has been approved by DOL under Part C of the BLBA.

## **Operator Responsibility**

Because no state's workers' compensation system has been determined to be sufficient to pay benefits under Part C, each operator of an underground coal mine is responsible for the payment of benefits to that operator's miners. Operators are required to provide for these benefits either by purchasing insurance for benefits or through self-insurance approved by DOL.

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<sup>13</sup> Although Part B did not originally include medical benefits, these benefits are now available to Part B claimants under Part C and are paid by the responsible mine operators or the Black Lung Disability Trust Fund.

<sup>14</sup> For additional information on the LHWCA, see CRS Report R41506, *The Longshore and Harbor Workers' Compensation Act (LHWCA): Overview of Workers' Compensation for Certain Private-Sector Maritime Workers*, by Scott D. Szymendera.

<sup>15</sup> Peter S. Barth, *The Tragedy of Black Lung: Federal Compensation for Occupational Disease* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1987), p. 196.

A self-insured operator is required to purchase an indemnity bond or provide another form of security (such as a deposit of negotiable securities in a Federal Reserve Bank or the establishment of a trust) in an amount specified by DOL. In order to be approved for self-insurance, federal regulations require that a mine operator have been in business for at least the three previous years and have average assets over the previous three years that exceed current liabilities by the sum of expected benefit payments and annual premiums on the indemnity bond.<sup>16</sup>

When a claim for benefits is approved, benefits are to be paid by the “responsible” operator, which is generally the last coal operator to employ the miner.<sup>17</sup> If a company has acquired the assets of a mine operator, then that company is considered a “successor operator” and is responsible for the payment of claims related to the original operator.<sup>18</sup>

### **Federal Payment of Benefits and Expenses**

The federal government pays benefits in cases in which the responsible operator no longer exists and has no successor operator, or is unable to pay benefits. The federal government pays benefits when an operator has not made payment within 30 days of a determination of eligibility or when benefits are otherwise due to be paid. Initially, under Part C of the Coal Act, these federal benefits were paid out of general revenue. However, pursuant to the Black Lung Benefits Revenue Act of 1977 (P.L. 95-227), these benefits are now paid from the Black Lung Disability Trust Fund established by this law and primarily financed by an excise tax on coal. If a responsible operator can later be identified, the trust fund is authorized by law to seek to recover from this operator the amount of benefits paid by the trust fund and any interest earned on these amounts.

The trust fund is also used for the following federal Black Lung Program-related expenses:

- the payment of benefits for miners whose last coal mine employment was before January 1, 1970;
- reimbursement to the Treasury for the costs of Part C benefits paid from general revenue before April 1, 1978, for periods of benefit eligibility after January 1, 1974;
- the repayment and payment of interest on advances made from the general fund to the trust fund;
- the payment of administrative expenses related to Part C of the BLBA and the coal excise tax incurred after March 1, 1978; and
- the reimbursement of coal operators who paid Part C benefits before April 1, 1978, for miners whose last coal mine employment ended before January 1, 1970.<sup>19</sup>

### **Eligibility for Black Lung Benefits**

A miner is eligible for benefits if that miner is totally disabled due to pneumoconiosis arising out of coal mine employment. The survivors of a miner are eligible for benefits if the miner’s death was due to pneumoconiosis arising out of coal mine employment.

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<sup>16</sup> 20 C.F.R. §726.101.

<sup>17</sup> 20 C.F.R. §725.495.

<sup>18</sup> 20 C.F.R. §725.492.

<sup>19</sup> 26 U.S.C. §9501(d).

Benefits are only available to miners and their survivors. The BLBA defines a miner as

any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.<sup>20</sup>

Thus, other workers who may be exposed to coal dust in their work, such as railroad workers or workers at coal-fired power plants are not eligible for benefits. Persons who live near coal mines or power plants are also not eligible for benefits even if they are exposed to coal dust. In addition, while a miner's family members may receive benefits as survivors and the number of family members can increase the amount of a miner's monthly benefits, family members may not claim benefits on their own due to exposure to coal dust in the home such as from cleaning the miner's soiled clothing.

The BLBA defines pneumoconiosis for the purposes of benefit eligibility as "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."<sup>21</sup> The BLBA directs the Secretary of Labor to develop, through regulations, standards for determining if a miner is totally disabled due to pneumoconiosis or died due to pneumoconiosis.<sup>22</sup>

### **Clinical and Legal Pneumoconiosis**

The federal Black Lung Program regulations provide that the definition of pneumoconiosis includes medical or "clinical" pneumoconiosis and statutory or "legal" pneumoconiosis. Clinical pneumoconiosis is defined as follows:

"Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.<sup>23</sup>

Legal pneumoconiosis is defined as

any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.<sup>24</sup>

Through these definitions, DOL has established that benefits are available not just to miners with CWP, but also to those miners with other respiratory diseases arising out of coal mine employment such as chronic obstructive pulmonary disease (COPD) even though these diseases are not pneumoconioses and may be linked to other factors unrelated to exposure to coal dust such as cigarette smoking.<sup>25</sup>

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<sup>20</sup> 30 U.S.C. §902(d).

<sup>21</sup> 30 U.S.C. §902(b).

<sup>22</sup> 30 U.S.C. §921(b). These regulations are at 20 C.F.R. §§718.201-718.206.

<sup>23</sup> 20 C.F.R. §718.201(a)(1).

<sup>24</sup> 20 C.F.R. §718.201(a)(2).

<sup>25</sup> For example, deaths due to COPD are strongly linked to cigarette smoking. The Centers for Disease Control and Prevention (CDC) estimated an average of 114,462 annual deaths due to COPD in the form of bronchitis, emphysema,

## Eligibility Presumptions

The BLBA contains five presumptions used to determine if a miner is eligible for black lung benefits.<sup>26</sup> Three of these presumptions are “rebuttable,” meaning that, in the absence of contrary evidence, eligibility is presumed. One presumption is “irrebuttable” and eligibility for Black Lung program benefits is established if the statutory requirements of the presumption are met. Three of these presumptions apply to current Black Lung Program claims while two apply only to cases filed before the end of 1981. **Table 1** provides a summary of the following five presumptions provided by the BLBA.<sup>27</sup>

1. A rebuttable presumption that the pneumoconiosis of a miner who was employed in mining for at least 10 years was caused by his or her employment.
2. A rebuttable presumption that the death of a miner who worked in mining for at least 10 years and who died of any respirable disease, was due to pneumoconiosis. This presumption does not apply to claims filed on or after January 1, 1982, the effective date of the Black Lung Benefits Amendments of 1981 (P.L. 97-119).
3. An irrebuttable presumption that a miner with any chronic lung disease which meets certain statutory tests or diagnoses is totally disabled due to pneumoconiosis or died due to pneumoconiosis.
4. A rebuttable presumption that a miner employed in mining for at least 15 years, and who has a chest x-ray that is interpreted as negative with respect to certain statutory standards but who has other evidence of a totally disabling respiratory or pulmonary impairment, is totally disabled due to pneumoconiosis or died due to pneumoconiosis. This presumption may only be rebutted by the Secretary of Labor establishing that the miner does not or did not have pneumoconiosis or that the miner’s respiratory or pulmonary impairment did not arise out of connection to mine employment.
5. A presumption that a miner who died on or before March 1, 1978, and who was employed in mining for at least 25 years before June 30, 1971, died due to pneumoconiosis, unless it is established that at the time of the miner’s death, he or she was not at least partially disabled due to pneumoconiosis. This presumption does not apply to claims filed on or after June 29, 1982, which is 180 days after the effective date of the Black Lung Benefits Amendments of 1981. This presumption is not listed in the law as either rebuttable or irrebuttable.

## Affordable Care Act Amendments

The Patient Protection and Affordable Care Act (commonly referred to as the Affordable Care Act (ACA), P.L. 111-148) included two provisions that amended the BLBA to reinstate one of the eligibility presumptions and a provision affecting survivors’ benefits. The effect of these changes

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and chronic airway obstruction during the period between 1997 and 2001 in the United States. Of these deaths, 79.1% were attributable to cigarette smoking (Centers for Disease Control and Prevention, “Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses-United States, 1997-2001,” *Morbidity and Mortality Weekly Report*, vol. 54, no. 25 (July 1, 2005), pp. 625-628).

<sup>26</sup> 30 U.S.C. §921(c).

<sup>27</sup> The presumption number corresponds to the paragraph number in Subsection (c) of Section 411 of the Black Lung Benefits Act (30 U.S.C. §921(c)).

was to increase the opportunity to establish eligibility through the statutory presumptions and make it easier for certain survivors to receive benefits.

Pursuant to Section 202(a) of the Black Lung Benefits Amendments of 1981, the fourth presumption did not apply to cases filed on or after January 1, 1982. Section 1556(a) of the ACA removed the prohibition on applying the fourth presumption to cases filed on or after January 1, 1982.

The BLBA provides that, for Part C claims, the survivors of a miner who was determined to be eligible to receive benefits at the time of his or her death are not required to file new claims for benefits or revalidate any claim for benefits, thus permitting the payment of survivors' benefits in these cases even if the miner's death was not caused by pneumoconiosis.<sup>28</sup> Pursuant to Section 203(a)(6) of the Black Lung Benefits Amendments of 1981, this provision did not apply to claims filed on or after January 1, 1982. Section 1556(b) of the ACA removed from this provision the exception for claims filed on or after January 1, 1982.

The amendments to the BLBA provided in Section 1556 of the ACA apply to any claims filed under Part B or C of the act after January 1, 2005, that were pending on or after March 23, 2010, the date of enactment of the ACA.

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<sup>28</sup> 30 U.S.C. §932(l).

**Table 1. Eligibility Presumptions Provided in the BLBA, as Amended by Section 1556 of the Affordable Care Act (ACA)**

Presumption Number <sup>a</sup>	Type of Presumption	Minimum Number of Years of Mine Employment	Basic Presumption	Exception
1	Rebuttable	10	If a miner has pneumoconiosis, then pneumoconiosis was caused by employment	None
2	Rebuttable	10	If death was from respirable disease, then death was due to pneumoconiosis	Does not apply to claims filed on or after January 1, 1982
3	Irrebuttable	None	If a miner has chronic dust disease of the lung which meets statutory standards, then he or she is totally disabled due to pneumoconiosis or died due to pneumoconiosis	None
4	Rebuttable	15	If a miner has negative chest roentgenogram, but has other evidence of respiratory or pulmonary impairment, then he or she is totally disabled due to pneumoconiosis or died due to pneumoconiosis	None <sup>b</sup>
5	Rebuttable <sup>c</sup>	25, before June 30, 1971	If a miner died before March 1, 1978, then miner died due to pneumoconiosis, unless it is established that the miner did not have at least a partial disability due to pneumoconiosis at the time of death	Does not apply to claims filed on or after June 29, 1982

**Source:** Congressional Research Service (CRS).

- The presumption number corresponds to the paragraph number in Subsection (c) of Section 411 of the Black Lung Benefits Act (30 U.S.C. §921(c)) and listed in this report.
- Prior to the enactment of the ACA, this presumption did not apply to claims filed on or after January 1, 1982.
- This presumption is not listed in the law as either rebuttable or irrebuttable, but based on the requirements of this presumption, it can be classified as rebuttable.

## Black Lung Program Benefits

### Medical Benefits

Eligible miners receiving benefits under Parts B and C are entitled to medical coverage for their pneumoconiosis and related disability. This medical coverage is provided at no cost to the miner and can generally be obtained from the miner's choice of medical providers.

### Disability Benefits

Eligible miners are also entitled to cash disability benefits. The basic benefit rate is set at 37.5% of the basic pay rate at GS-2, Step 1, on the federal pay schedule without any locality

adjustment.<sup>29</sup> If the miner has one dependent (a spouse or minor child), the miner is eligible for a benefit of 150% of the basic benefit. A miner with two dependents is eligible for 175% of the basic benefit and a miner with three or more dependents is eligible for 200% of the basic benefit. Benefits may also be paid to the divorced spouse of a miner if the marriage lasted at least 10 years and the divorced spouse was dependent on the miner for at least half of the spouse's support at the time of the miner's disability. A child is considered a dependent until the child marries or reaches age 18, unless the child is either disabled using the Social Security Disability Insurance (SSDI) definition of *disability* or is under the age of 23 and a full-time student.<sup>30</sup> The benefit rates are adjusted whenever there are changes to the federal employee pay schedules, but are not separately adjusted to reflect changes in the cost of living. **Table 2** provides the benefit rates for 2023. Benefits are offset by state workers' compensation or other benefits paid on account of the miner's disability or death due to pneumoconiosis. Part C benefits, but not Part B benefits, are considered workers' compensation for the purposes of reducing a miner's SSDI benefits.<sup>31</sup>

**Table 2. Monthly Black Lung Benefit Amounts for CY2023**

Category	Monthly Benefit Amount
Claimant with no dependents	\$737.90
Claimant with one dependent	\$1,106.90
Claimant with two dependents	\$1,291.30
Claimant with three or more dependents	\$1,475.80

**Source:** Office of Worker's Compensation Programs (OWCP) website at <https://www.dol.gov/owcp/dcmwc/regs/compliance/blbene.htm>.

**Notes:** Benefits listed are for Part C claims, which are rounded up to the nearest 10 cents. Benefits for Part B claims are the same amount as for Part C, but rounded to the nearest dollar.

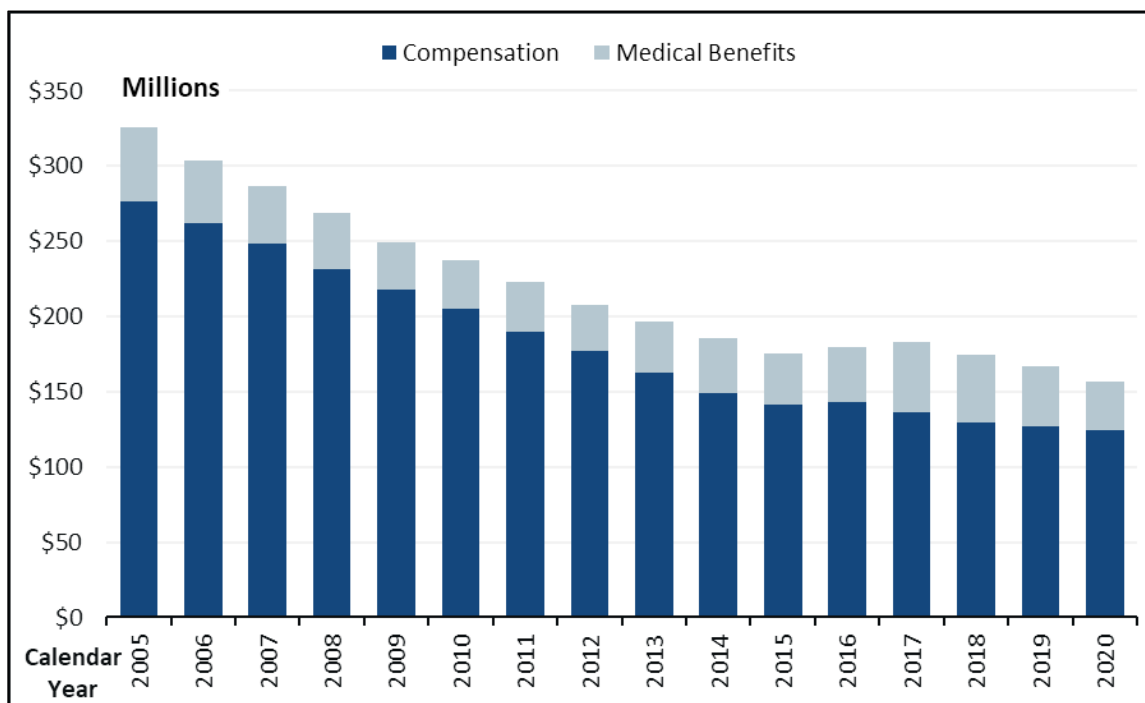
While the total amount paid in cash disability benefits has fallen over time, it has stabilized in recent years as illustrated in **Figure 1**. More is paid in compensation than is paid in medical benefits.

<sup>29</sup> The 2023 General Schedule (Base) pay rates are available on the website of the Office of Personnel Management at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule/>.

<sup>30</sup> The SSDI definition of *disability* is provided at Title 42, Section 423, of the *U.S. Code* and generally requires that a person be unable to work full-time because of a disability. For additional information on SSDI and the definition of *disability*, see CRS In Focus IF10506, *Social Security Disability Insurance (SSDI)*, by William R. Morton.

<sup>31</sup> Section 224 of the Social Security Act (42 U.S.C. §424) provides that in cases in which a person receives both SSDI and workers' compensation benefits in a given month, the amount of the monthly SSDI benefit or the workers' compensation benefit is reduced, but not below zero, until the combined amount of the benefits equals 80% of the person's pre-disability wage depending on the type of workers' compensation benefit. In the case of Part C benefits, the person's SSDI benefit is reduced.

**Figure 1. Black Lung Part C Benefit Costs**  
CY2005-CY2020

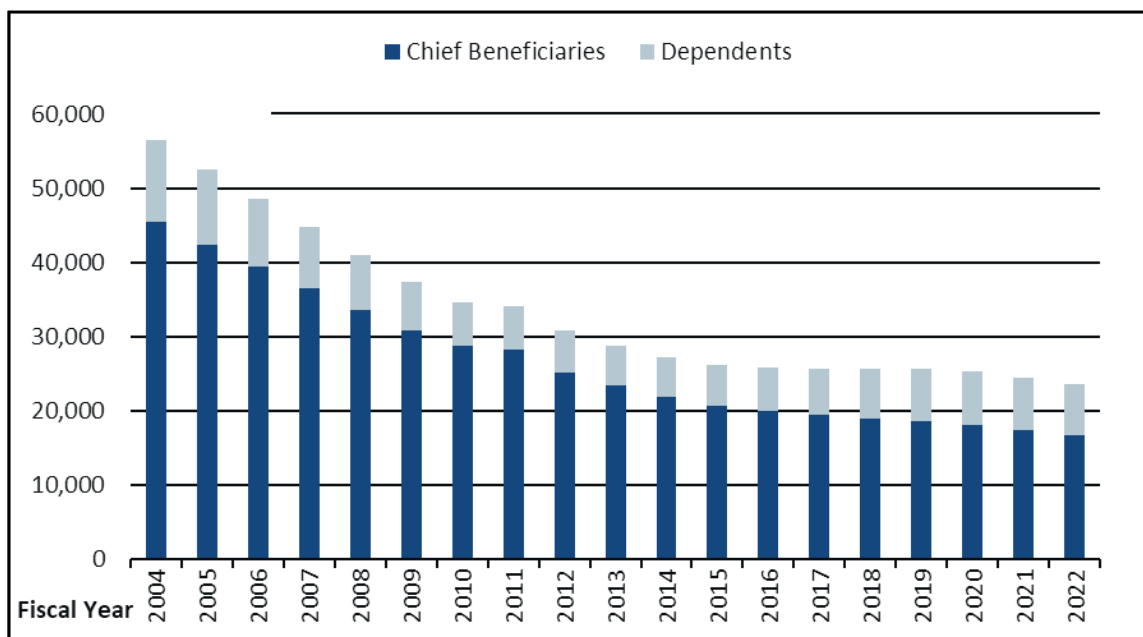


**Source:** Griffin T. Murphy and Jennifer Wolf, *Workers' Compensation: Benefits, Coverage, and Costs (2020 Data)*, National Academy of Social Insurance, November 2022, p. 78, <https://www.nasi.org/research/workers-compensation/workers-compensation-benefits-costs-and-coverage/>; and earlier editions.

## Survivors' Benefits

Certain survivors of a miner whose death was due to pneumoconiosis are eligible for cash benefits. In the case of a surviving spouse or divorced spouse, the spouse's benefit is equal to what the miner would have received and is based on the number of dependents of the spouse as provided in **Table 2**. If there is no surviving spouse, then benefits are awarded to the surviving minor children in equal shares. If there are no surviving minor children, then benefits can be paid to the miner's dependent parents or dependent siblings. If there are no eligible survivors, no benefits are paid upon the miner's death and benefits do not go to the miner's estate or to any other person, including a person named by the miner in a will. The number of miners and survivors receiving benefits has declined over time, as illustrated in **Figure 2**.

**Figure 2. Black Lung Part C Beneficiaries**  
FY2004-FY2022



**Source:** Office of Workers' Compensation Programs (OWCP) website at <https://www.dol.gov/owcp/dcmwc/statistics/PartsBandCBeneficiaries.htm>.

**Notes:** Data is taken from September 30 of each fiscal year. Chief Beneficiary is either the miner or the miner's primary survivor.

## Black Lung Disability Trust Fund Revenues

The primary revenue source for the Black Lung Disability Trust Fund is a per-ton excise tax on coal. Historically, the coal excise tax has not generated enough revenue to meet the trust fund's obligations. Thus, additional funds have been provided from the general fund of the Treasury.<sup>32</sup> The general fund includes governmental receipts not earmarked for a specific purpose and the proceeds of general borrowing and is used for general governmental expenditures.

### Excise Tax on Coal

Internal Revenue Code (IRC) Section 4121 imposes the black lung excise tax (BLET) on sales or use of domestically mined coal.<sup>33</sup> Generally, a producer that sells the coal is liable for the tax. Producers that use their own domestically mined coal, such as integrated utilities or steel companies, are also liable for the tax.

The tax rate depends on how coal is mined. Under current law, the tax on underground-mined coal is the lesser of (1) \$1.10 per ton, or (2) 4.4% of the sale price. The tax on surface-mined coal

<sup>32</sup> Certain excise taxes related to Black Lung Benefit Trusts are also deposited in the Black Lung Disability Trust Fund. Generally, since very little or no amounts have been reported for these excise taxes, a discussion of these taxes has not been included in this report. Black Lung Benefit Trusts are tax-exempt trusts, as described in Internal Revenue Code (IRC) Section 501(c)(21). There are no active 501(c)(21) organizations at this time.

<sup>33</sup> The tax does not apply to lignite (brown coal).

is the lesser of (1) \$0.55 per ton, or (2) 4.4% of the sales price. In FY2021, approximately \$189 million was collected on coal mined underground (see **Figure 3**). Nearly all (96.2%) of this coal was taxed at the \$1.10 per ton rate. In FY2021, approximately \$135 million was collected on surface-mined coal. Just over half (50.1%) of this coal was taxed at the \$0.55 per ton rate, with the rest subject to the maximum rate of 4.4% of sales price.<sup>34</sup>

The tax is imposed on “coal from mines located in the United States” and does not apply to imported coal. The tax is designed to support the Black Lung Disability Trust Fund for domestic miners. Very little domestically consumed coal is imported.<sup>35</sup>

The BLET also does not apply to exported coal, as required under the Export Clause of the United States Constitution.<sup>36</sup> A credit or refund can be claimed if coal is taxed before it is exported.<sup>37</sup>

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<sup>34</sup> Internal Revenue Service (IRS), *SOI Bulletin Historical Table 20*, Fiscal Years 1999-2021, June 1, 2022, <https://www.irs.gov/statistics/soi-tax-stats-historical-table-20>.

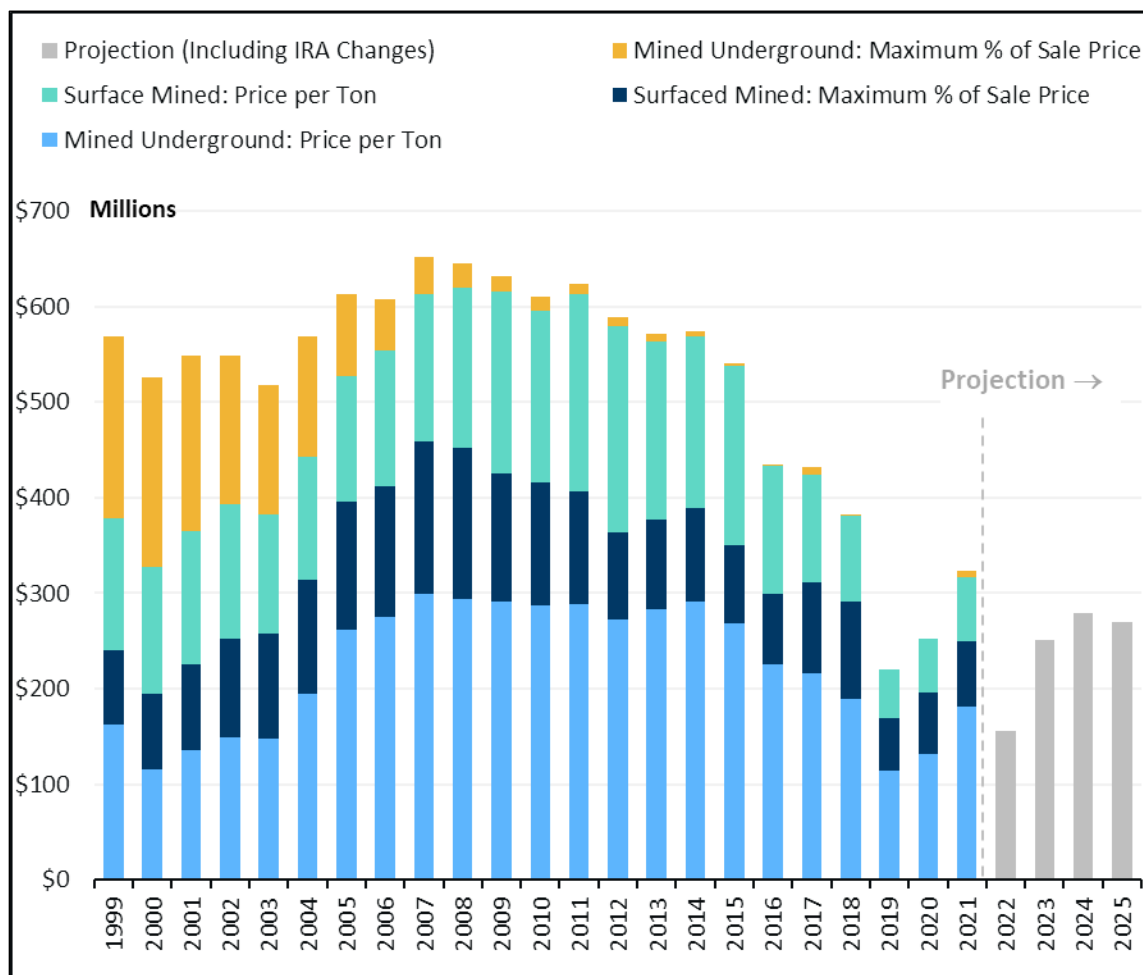
<sup>35</sup> In 2021, 545.7 million short tons of coal were consumed domestically. In that same year, coal imports to the United States totaled 5.4 million short tons. Data on coal consumption and imports is available from the Energy Information Administration (EIA), at <https://www.eia.gov/coal/data.php>.

<sup>36</sup> See IRS, *Excise Taxes (Including Fuel Tax Credits and Refunds)*, Publication 510, July 2021, pp. 31-32; and CRS Report R42780, *Export Clause: Limitation on Congress's Taxing Power*, by Erika K. Lunder.

<sup>37</sup> Through the first three quarters of 2022, 14.2% of coal produced in the United States was exported. Data on coal production and exports is available from the Energy Information Administration (EIA), at <https://www.eia.gov/coal/data.php>.

**Figure 3. Coal Excise Tax Collections**

FY1999-FY2025



**Sources:** Internal Revenue Service (IRS), *SOI Bulletin Historical Table 20*, Fiscal Years 1999-2021, June 1, 2022, <https://www.irs.gov/statistics/soi-tax-stats-historical-table-20>; Department of the Treasury, Bureau of the Fiscal Service, *Treasury Bulletin*, March 2022, p. 77, <http://www.fiscal.treasury.gov>; and Joint Committee on Taxation, "Estimated Budget Effects of the Revenue Provisions of Title I—Committee on Finance, of an Amendment in the Nature of a Substitute to H.R. 5376, 'An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14,' as Passed by the Senate on August 7, 2022, and Scheduled for Consideration by the House of Representatives on August 12, 2022," JCX-18-22, August 9, 2022, <https://www.jct.gov/publications/2022/jcx-18-22/>.

**Note:** The projected collections include those made by the Department of the Treasury before the Inflation Reduction Act of 2022 (IRA; P.L. 117-69) made the current BLET rates permanent as well as JCT's estimated revenue effects associated with the policy change.

BLET collections have generally declined in recent years (see **Figure 3**). The decline in BLET collections follows the general decline in U.S. coal production.<sup>38</sup> As the price of coal rose in the 2000s, coal mined underground tended to pay the tax at a fixed rate of \$1.10 per ton, as opposed to paying the maximum rate of 4.4% of the sales price. Pronounced declines in excise tax revenue were also seen when reduced excise tax rates were in effect (e.g., 2019 and 2022; see "Legislative

<sup>38</sup> See Energy Information Administration, *Average U.S. Coal Mining Productivity Increases as Production Falls*, March 7, 2018, available at <https://www.eia.gov/todayinenergy/detail.php?id=35232#>.

History” for details). In these cases, excise tax receipts increased when higher excise tax rates were reinstated.

## Legislative History

The excise tax on coal was established to help ensure the coal industry shared in the social costs imposed by black lung disease. Over time, the rate of the tax has been increased in an effort to provide sufficient revenue to meet this objective.

### *Establishing an Excise Tax on Coal*

The Black Lung Benefits Revenue Act of 1977 (P.L. 95-227) first imposed the Section 4121 excise tax on coal. When enacted, the tax was \$0.50 per ton for coal from underground mines, and \$0.25 per ton for coal from surface mines. The tax was limited to 2% of the sales price. The tax was effective for sales after March 31, 1978.

Before P.L. 95-227 was enacted there was considerable debate surrounding how black lung benefits programs should be financed.<sup>39</sup> Various mechanisms to shift the costs of the black lung benefits program to the coal industry and its customers were considered. These debates ultimately led to the establishment of the Black Lung Disability Trust Fund and the related excise tax on coal.

There was also debate about how to structure the proposed tax. Some suggested a graduated tax, with higher rates imposed on coal with a higher British thermal unit (Btu) content, as such coal was believed to be more likely to cause black lung disease.<sup>40</sup> There were concerns, however, that such a tax could be difficult to administer. Other proposals suggested that coal be subject to a uniform rate, with coal mined from underground deposits subject to a higher rate than other coal (including lignite). A concern with this approach was that coal prices vary substantially per ton for different types of coal (lignite is less expensive than anthracite), meaning that the tax as a percent of the sales price could differ substantially across different types of coal. One answer to this concern would be to impose an *ad valorem* tax, or a tax based on the sales price. Another approach that was considered was to impose a “premium rate” at a level that would fully finance the Black Lung Disability Trust Fund, giving authority to the Department of Labor to adjust the fee as necessary. The tax as enacted was the lesser of the per-unit price or the *ad valorem* rate of 2%.

### *Increasing the Rate of Tax*

In the early 1980s, it was observed that coal excise tax revenues were not sufficient to meet the trust fund’s obligations. The Black Lung Benefits Revenue Act of 1981 (P.L. 97-119) doubled the excise tax rates to \$1.00 per ton for coal from underground mines, and \$0.50 per ton for coal from surface mines, not to exceed 4% of the sales price. The higher rates were effective January 1, 1982. The doubled rates were temporary, and scheduled to revert to the previous rates on January 1, 1996. Further, the rates could be reduced earlier if the trust fund repaid all advances and

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<sup>39</sup> See U.S. Congress, Senate Committee on Finance, *Tax Aspects of Black Lung Legislation*, committee print, prepared by Joint Committee on Taxation and Committee on Finance, 95<sup>th</sup> Cong., June 21, 1977, JCS-35-77, <https://www.jct.gov/publications.html?func=startdown&id=4028>.

<sup>40</sup> Ibid.

interest from the general fund of the Treasury. A stated goal of this legislation was to eliminate the Black Lung Disability Trust Fund's debt.<sup>41</sup>

The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) again increased the BLET rates to \$1.10 for underground-mined coal, and \$0.55 for surface-mined coal, not to exceed 4.4% of the sales price (referred to as the "current-law rates"). These rates continued to be temporary and in effect through the earlier of January 1, 1996, or when all repayable advances and interest were repaid. P.L. 99-272 also provided for new reduced rates, to go into effect at the expiration of the higher BLET rates, of \$0.50 per ton for underground-mined coal and \$0.25 per ton for surface-mined coal, not to exceed 2% of the sales price.

The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) extended the current-law rates through 2013. Current-law rates were extended through 2018 as part of the Emergency Economic Stabilization Act of 2008 (EESA; P.L. 110-343). When extending the increased rates, Congress reiterated the original intent of establishing trust fund financing for black lung benefits, observing that it is "to reduce reliance on the Treasury and to recover costs from the mining industry."<sup>42</sup> It was also observed that the program's expenses had continued to exceed revenues over time, and that the debt to the Treasury was not likely to be paid off by 2013. For these reasons, "the Congress believe[d] that it [was] appropriate to continue the tax on coal at the increased rates beyond the expiration date."<sup>43</sup>

On January 1, 2019, the current-law rates expired and the reduced rates went into effect. This reduction ended on December 31, 2019, with the resumption of current-law rates provided for in the Further Consolidated Appropriations Act (P.L. 116-94). P.L. 116-94 provided for current-law rates through 2020. The current-law rates were then extended through 2021 by the Consolidated Appropriations Act, 2021 (P.L. 116-260).

On January 1, 2022, the reduced rates again went into effect. The current-law rates were then made permanent, effective October 1, 2022, by the Inflation Reduction Act of 2022 (IRA, P.L. 117-169).

## Borrowing and Debt

When receipts of the trust fund are less than expenditures, advances are appropriated from the general fund of the Treasury to the trust fund. These advances are repayable, and interest charged on these advances is also payable to the general fund.<sup>44</sup> The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) provided a five-year forgiveness of interest on debt owed to the Treasury's general fund. As a result, the principal amount of trust fund debt outstanding was relatively unchanged throughout the late 1980s.<sup>45</sup> The moratorium on interest payments ended September 30, 1990.

<sup>41</sup> For additional information, see CRS Report 82-59 EW, *Summary and Legislative History of P.L. 97-119, "Black Lung Benefits Revenue Act of 1981,"* by Barbara McClure (out of print; available to congressional clients from the authors).

<sup>42</sup> U.S. Congress, Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 110<sup>th</sup> Congress*, 110<sup>th</sup> Cong., March 2009, JCS-1-09, p. 302.

<sup>43</sup> Ibid.

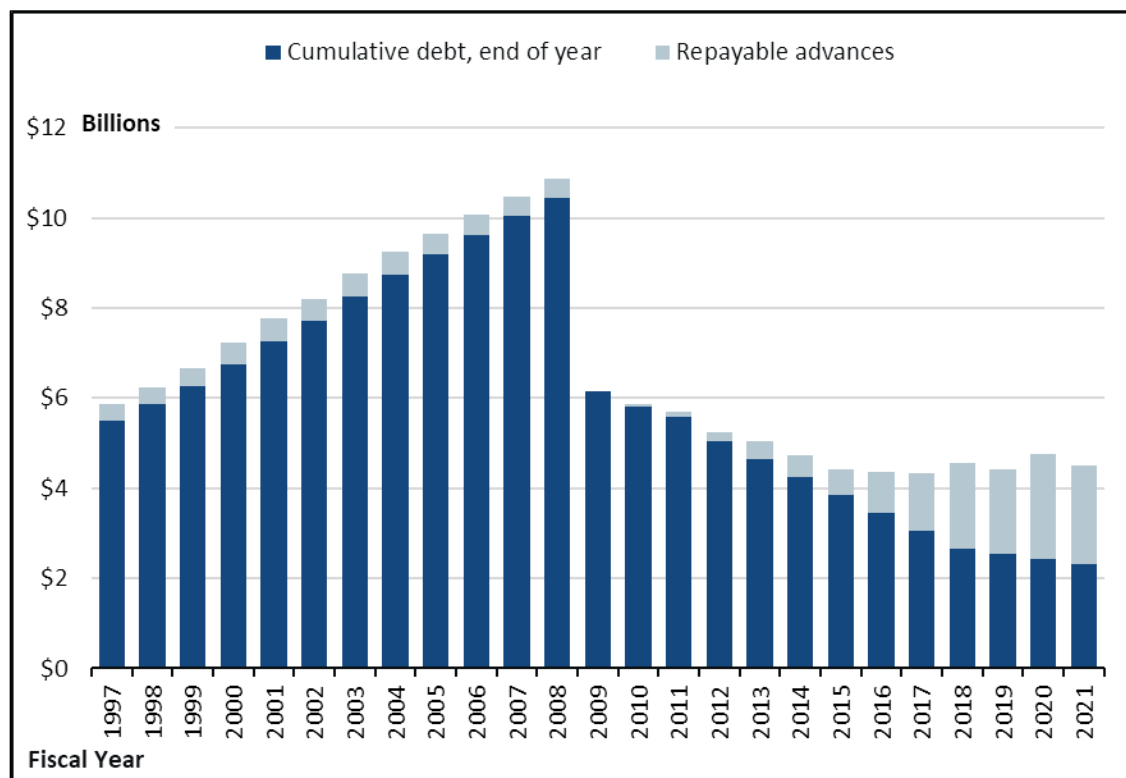
<sup>44</sup> Repayable advances must be repaid once there is money available in the Black Lung Disability Trust Fund for such purpose.

<sup>45</sup> U.S. Government Accountability Office, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, GAO-18-351, May 2018, available at <https://www.gao.gov/products/GAO-18-351>.

Throughout the 1990s and into the 2000s, the cumulative end-of-year debt of the trust fund grew, and the trust fund continued to receive repayable advances from the general fund to cover expenses. The trust fund was subject to financial restructuring when the current excise tax rates were extended through 2018 in EESA.

The Black Lung Disability Trust Fund debt was restructured in FY2009. Essentially, the partial forgiveness and restructuring allowed the trust fund to refinance outstanding repayable advances and unpaid interest on those advances. As a result of the partial forgiveness and refinancing, the cumulative debt was reduced from \$10.4 billion at the end of FY2008 to \$6.2 billion by the end of FY2009. At the time of the restructuring it was expected that the trust fund's debt would be fully eliminated by FY2040.<sup>46</sup> The trust fund's cumulative debt has trended downward since the restructuring (see **Figure 4**). However, coal excise tax revenue has been less than anticipated in recent years. As a result, the trust fund's debt is not on the anticipated path toward elimination.

**Figure 4. Black Lung Disability Trust Fund Debt**  
FY1997-FY2021



**Source:** CRS graphic using data from Department of the Treasury, Bureau of the Fiscal Service, *Treasury Bulletin*, March 2022, p. 77, <http://www.fiscal.treasury.gov>; and earlier editions.

**Notes:** Data for FY1997-FY2021 is the cumulative end-of-year debt plus repayable advances received in the fiscal year. The repayable advance received in FY2009 of \$6.5 billion as part of debt restructuring is not included.

<sup>46</sup> Ibid.

## Other Revenue Sources

In addition to revenue from the BLET and repayable general fund advances, the trust fund receives revenue from the collection of certain fines, penalties, and interest paid by coal operators and miners and reimbursements from responsible operators.

### Fines, Penalties, and Interest

Part C of the BLBA authorizes fines and civil penalties for violations of the act, with the civil penalties adjusted annually for inflation based on changes in the cost-of-living-index for all urban consumers (CPI-U) in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of the Bipartisan Budget Act of 2015; P.L. 114-74).<sup>47</sup> Effective January 15, 2023, the following civil penalties are authorized:

- a civil penalty of up to \$3,446 per day for a mine operator's failure to secure benefits through insurance or approved self-insurance;<sup>48</sup> and
- a civil penalty of up to \$1,724, for a mine operator's failure to file a report on miners who are or may be entitled to benefits as required by DOL.<sup>49</sup>

The following fines are also authorized by Part C of the BLBA:

- a fine of up to \$1,000 upon conviction of the misdemeanor offense of knowingly destroying or transferring property of a mine operator with the intent to avoid the payment of benefits for which the mine operator is responsible;<sup>50</sup> and
- a fine of up to \$1,000 upon conviction of the misdemeanor offense of making a false or misleading statement or representation for the purposes of obtaining benefits.<sup>51</sup>

The amount of these penalties and fines, as well as interest assessed, is paid into the trust fund. In FY2021, trust fund receipts from fines, penalties, and interest totaled \$2.2 million. This is a small source of trust fund revenue relative to the coal excise tax, which generated \$285.9 million in trust fund revenues in FY2021.<sup>52</sup>

### Collection from Responsible Mine Operators

The trust fund is authorized to begin paying benefits within 30 days of a determination of eligibility or when benefits are otherwise due to be paid if no responsible operator has begun payment. If, after paying benefits, DOL is able to identify a responsible operator, the trust fund may seek to collect from that operator the costs of benefits already paid by the trust fund and interest assessed on this amount.<sup>53</sup> The amount of these collections is paid into the trust fund. In

<sup>47</sup> The inflation-adjusted amounts for 2022 (effective January 15, 2022) are provided at Department of Labor, "Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2022," 87 *Federal Register* 2328, January 15, 2022.

<sup>48</sup> 30 U.S.C. §933(d)(1).

<sup>49</sup> 30 U.S.C. §942.

<sup>50</sup> 30 U.S.C. §933(d)(2). This offense can also result in imprisonment for up to one year.

<sup>51</sup> 30 U.S.C. §941. This offense can also result in imprisonment for up to one year.

<sup>52</sup> Department of the Treasury, Bureau of the Fiscal Service, *Treasury Bulletin*, March 2022, p. 77, <http://www.fiscal.treasury.gov>.

<sup>53</sup> 30 U.S.C. §934(b).

FY2021, \$22.9 million was collected from responsible mine operators. The amount collected from responsible mine operators has fluctuated over time, but has averaged about 1% of total receipts since 1995.<sup>54</sup>

## Financial Condition and Outlook

Various factors have contributed to the ongoing situation of trust fund expenditures exceeding trust fund revenues. Throughout the 1980s, black lung benefit payments and administrative expenditures exceeded trust fund revenue. As a result, the trust fund accumulated debt. As discussed above, over time, various efforts have been made to improve the fiscal condition of the trust fund. However, as of the end of FY2021, the trust fund remains in debt. The trust fund's cumulative debt at the end of FY2021 was \$4.6 billion.<sup>55</sup> This includes the \$2.2 billion borrowed from the general fund that same year.

The IRA permanently establishing higher coal excise tax rates improves the fiscal outlook of the trust fund. Benefit payments and administrative expenses are expected to total \$1.1 billion from FY2021 to FY2025.<sup>56</sup> With the enactment of the IRA, excise tax receipts are expected to be close to \$1.2 billion over that same period (as compared to the \$0.8 billion in projected excise tax receipts before the IRA).<sup>57</sup> Revenues, however, are not expected to be sufficient to allow the fund to repay its debts. A 2018 GAO study also found that maintaining higher coal excise tax rates was not likely to be sufficient to eliminate the trust fund's outstanding debt over time.<sup>58</sup>

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<sup>54</sup> Department of the Treasury, Bureau of the Fiscal Service, *Treasury Bulletin*, March 2022, p. 77, <http://www.fiscal.treasury.gov>; and earlier editions.

<sup>55</sup> Ibid.

<sup>56</sup> Department of the Treasury, Bureau of the Fiscal Service, *Treasury Bulletin*, March 2022, p. 77, <http://www.fiscal.treasury.gov>

<sup>57</sup> Ibid; and Joint Committee on Taxation, "Estimated Budget Effects of the Revenue Provisions of Title I—Committee on Finance, of an Amendment in the Nature of a Substitute to H.R. 5376, 'An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14,' as Passed by the Senate on August 7, 2022, and Scheduled for Consideration by the House of Representatives on August 12, 2022," JCX-18-22, August 9, 2022, <https://www.jct.gov/publications/2022/jcx-18-22/>.

<sup>58</sup> U.S. Government Accountability Office, *Black Lung Benefits Program: Options for Improving Trust Fund Finances*, GAO-18-351, May 2018, p. 22, available at <https://www.gao.gov/products/GAO-18-351>.

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