
Black Lung Benefits Revision*

On December 29, 1981, President Reagan signed the Black Lung Benefits Revenue Act of 1981 (Public Law 97-119), effective January 1, 1982. This legislation marked the third major revision since the program was established by title IV of the Federal Coal Mine Health and Safety Act of 1969. The program provides monthly cash benefits to coal miners who are disabled because of pneumoconiosis, or "black lung," and to survivors of miners who died from or were disabled by this disease.

Historical Background

The black lung benefit program was intended to be temporary. It was administered by the Federal Government and benefits were paid out of general revenues. The program was established in two parts, with the Social Security Administration implementing the initial phase and the U.S. Department of Labor the second. In the expectation that State workers' compensation programs would eventually provide this protection, Congress stipulated that the program would end December 30, 1976. (In 1972, the termination date was extended to December 30, 1981.)

The program allowed a large number of individuals to file for benefits—including workers who became disabled and survivors of workers who died long before the passage of the law. By 1973, nearly 500,000 miners, widows, and children were receiving monthly benefits under the black lung program. The benefit amount was established at one-half the minimum monthly benefit amount payable to a totally disabled Federal Government employee in the first step of grade GS-2 under the workers' compensation program for Federal employees. A dependent's allowance was also payable.

In 1972, Congress made a number of liberalizations in the program and extended from December 1972 to December 1973 the date after which the Department of Labor took responsibility for administering all new black lung claims. The benefits were to be paid by the State if the State had been certified by the Department of Labor as having an adequate workers' compensation program for pneumoconiosis. If there was no such coverage, benefits were to be paid by the responsible coal mine operator. And if a responsible operator could not be established, then the Department of Labor was to pay claims from general revenues. Claims initiated before July 1973 (and, in certain survivor cases, by December 1973) continued to be paid by the Social Security Administration from general funds.

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In addition to the cash benefits authorized under the original law, the Labor Department program was expanded to include benefits for medical diagnosis and treatment for conditions resulting from pneumoconiosis. (In 1978, this provision was broadened to include beneficiaries under the original legislation as well.)

Eventually it became evident that the States were not going to amend their workers' compensation laws to meet the Federal standards for taking over black lung benefits. Consequently, the act was further amended in 1978 to provide an industry trust fund (the Black Lung Disability Trust Fund), which, beginning in 1978, provided benefits when no responsible coal mine operator could be identified. The Government-administered Trust Fund was to be financed by an excise tax on coal taken from mines.

In the same 1978 legislation, coverage and eligibility under the Department of Labor program were expanded; benefits were provided for new categories of workers and rules for medical eligibility were liberalized. The program termination date in the law was eliminated, and the program was made permanent.

There were other important changes in the 1978 law. First, claims could no longer be denied automatically because a worker was currently employed in a coal mine. Similarly, survivor claims could no longer be denied solely because the miner was still employed in a mine at the time of death. Second, benefit eligibility was established for survivors of workers having at least 25 years of coal mine employment before June 30, 1971, unless it could be shown that the miner had not been partially or totally disabled because of black lung disease at the time of death. (This provision adds to two earlier presumptions that made survivors eligible for benefits if the deceased worker had at least 10 or 15 years of mining experience and had established a disabling respiratory condition of specified severity.) Third, X-rays interpreted by board-qualified physicians were to be accepted as valid evidence, without further review, to establish disability resulting from pneumoconiosis.

From the inception of the program in 1970 through 1981, about \$12.2 billion in black lung benefits have been paid to coal mine workers and their survivors. About 82 percent was paid through the Social Security Administration and 18 percent through the Department of Labor. Of the \$1.7 billion paid in 1981, 62 percent was through the Social Security Administration and 38 percent through the Department of Labor.

In 1981, only about one-third of the benefits paid through the Department of Labor were financed by the excise tax. The remaining two-thirds—a \$500 million deficit—came primarily from general revenues. The amount needed from general revenues has increased each year since the Trust Fund began in 1978. These deficits were counter to the intent of Congress and the

Administration when they established the Fund, since it was supposed to eliminate the burden of the Labor Department's program on general revenues.

The 1981 Amendments

The Black Lung Benefits Revenue Act of 1981 was intended to stabilize the program administered by the Labor Department by reforming certain eligibility and benefit provisions and by increasing Trust Fund revenues. The major provisions of this act are summarized below. Each provision is effective January 1, 1982, unless otherwise specified.

Trust Fund Financing

The coal producers excise tax. The excise tax on coal was increased to the lesser of (1) \$1 per ton of coal from underground mines and \$0.50 per ton of coal from surface mines, or (2) 4 percent of the coal's selling price. Previously, the tax was the lesser of (1) \$0.50 per ton from underground mines and \$0.25 per ton from surface mines, or (2) 2 percent of the selling price. For the first 6 months of 1982, about half of the tax revenues collected for the Trust Fund were from the \$1 per ton rate, more than one-fourth from the \$0.50 rate, and the remainder from the 4 percent of the selling price rate. The 1981 amendments provide that the new rates will revert to those under the previous law by the earlier of January 1, 1996, or after all principal and interest owed to the Treasury by the Trust Fund have been paid.

These higher tax rates are expected to have by far the largest short-term effect of all the 1981 amendments in improving the solvency of the Trust Fund. Projections made by the Labor Department indicate that the Fund should be solvent and previous advances repaid by 1995.

Proceeds from excise taxes. The 1972 amendments provided that a coal mine operator could self-insure the liability for black lung benefits by making contributions to a qualified tax-exempt trust. Specified misuse of such a trust triggers certain excise taxes. Part of the proceeds of these taxes went to the Black Lung Disability Trust Fund and the remainder to the general fund of the Treasury. As a result of the 1981 law, all the proceeds of these taxes are to be automatically appropriated to the Trust Fund.

Increased interest rates. Before the 1981 legislation, mine operators could delay paying benefits for which they were responsible and the benefits would then be paid by the Trust Fund. The operators could repay the benefits advanced by the Trust Fund and interest at an annual interest rate of 6 percent—considerably below recent market rates. The 1981 law raised the interest rate to 15 percent in 1982; after 1982 the interest rate will be based on the average rate for all marketable and interest-bearing obligations of the public debt. The increase

in the interest rate is to discourage responsible operators from delaying payment of black lung benefits.

Conditions for Benefits

Under the black lung program, a claimant must meet three general conditions in order for the application to be approved: (1) the miner must have (or, if deceased, must have had) pneumoconiosis; (2) the miner must be totally disabled by the disease (or must have been totally disabled by it at the time of death); and (3) the pneumoconiosis must have been the result of coal mine employment. Eligibility for benefits can be established through a variety of tests, including medical diagnostic procedures such as chest X-rays, pulmonary function studies, blood-gas tests, and general physical examinations, as well as by autopsy in the event of death.

Regulations define disability and pneumoconiosis and establish conditions to be taken into account in evaluating the available medical information. These conditions include a number of presumptions used to determine eligibility even when X-rays and other medical information do not provide conclusive evidence of pneumoconiosis or disability. These legislative provisions and regulatory conditions include features added by the 1972 and 1978 amendments, as well as those in the original 1969 legislation.

The 1981 amendments made several changes in the evidentiary rules. All of these changes are prospective—that is, they affect only new claims filed after January 1, 1982.

Second opinion. The Department of Labor was given authority to use a second opinion on chest X-rays for diagnosing black lung disease. As noted earlier, the 1978 amendments required the Labor Department to accept the positive reading by a qualified radiologist of an X-ray of satisfactory quality as proof of black lung disease: there was no provision for Government rereading, so long as there was other evidence of a pulmonary or respiratory impairment and no evidence of fraud.

Elimination of presumptions. Three evidentiary presumptions were eliminated that had been available previously to determine a claimant's mining employment as the cause of black lung disease and therefore to establish his eligibility for benefits.

First, the 15-year presumption of pneumoconiosis was rescinded. Under this earlier rule, there was a rebuttable presumption that the miner was totally disabled due to pneumoconiosis even though he was not diagnosed as having complicated pneumoconiosis if evidence showed that (1) there was a totally disabling pulmonary or respiratory impairment of some kind, and (2) the miner had been employed in a coal mine (underground or with conditions substantially similar to underground) for at least 15 years. This presumption had also been allowed for survivor benefit claims to

show that a miner had died from pneumoconiosis or that at the time of death the miner was totally disabled by pneumoconiosis.

Second, the 10-year presumption concerning death was rescinded. Previously if a miner had been engaged in coal mine employment for 10 years or more and died from a respiratory disease, there was a rebuttable presumption that death was due to pneumoconiosis.

Third, the 25-year survivor presumption was rescinded, effective for claims filed more than 6 months after the date of enactment. This standard had provided that eligible survivors were presumed to be entitled to benefits if the miner died on or before March 1, 1978, and had been employed for 25 or more years in a coal mine before June 30, 1971. This presumption did not apply to miners who were found not to be even partially disabled due to pneumoconiosis at the time of death.

Trust Fund responsibility. Part of the requirement that the Trust Fund pay benefits in contested cases was rescinded. Under the 1981 amendments, the Trust Fund is no longer responsible for any retroactive lump-sum benefits (those payable to claimants who are entitled as of a date earlier than their application). However, the Trust Fund will continue to pay benefits that accrue after the initial determination while the claim is being contested.

Benefits for survivors. Eligibility for survivor benefits was restricted in two additional ways. First, affidavits to establish that a miner is totally disabled or died due to pneumoconiosis (where no medical or other relevant evidence is available) are now sufficient to establish entitlement only if they are provided by disinterested third parties who cannot receive benefits. (Previously affidavits supplied by widows were acceptable.) Second, the survivor of a miner who had been totally disabled by pneumoconiosis is eligible for benefits only if the miner's death can be established to have been from pneumoconiosis. Previously, benefits were awarded in such cases regardless of the cause of death.

Benefit offset. The same earnings test that is applied to Social Security benefits is now applied to the black lung benefits of miners: The benefit is reduced by \$0.50 for each \$1 of excess earnings. Black lung benefits to miners who had filed claims under the provisions administered by the Social Security Administration were already subject to this earnings reduction.

All of the above changes are expected to reduce the proportion of claims that are approved. The first two changes—permitting X-rays to be reread and the elimination of the 15-year presumption of pneumoconiosis—are each expected to reduce the costs of the program more than any of the other changes.

Transfer of Claims to the Trust Fund

Approximately 10,200 claims being made against responsible coal mine operators have been transferred to the Trust Fund. In general, these claims had been denied before March 1, 1978, but had been reviewed and approved under the liberalized criteria of the Black Lung Benefits Reform Act of 1977. Before being transferred to the Trust Fund, the great majority of the claims were being contested by employers. (Others were being paid by mine operators.) They represent a significant additional cost to the Trust Fund, since many of these cases that were previously in interim pay status will now be permanent liabilities of the Trust Fund, thus offsetting much of the cost reduction expected from other provisions of the 1981 amendments.

Mandated Study

The 1981 legislation had several other provisions. The most noteworthy was the mandate for the Labor Department, in consultation with the Department of Health and Human Services, to undertake a study of: (1) the current medical methods for diagnosing pneumoconiosis, (2) the nature and extent of impairment and disability attributable to simple and complicated pneumoconiosis, and (3) the benefits provided by the Black Lung Benefits Act, other benefits received by black lung beneficiaries, and benefits that would be received if workers' compensation programs were applicable in lieu of benefits under the Black Lung Benefits Act. The Labor Department report is due by July 1, 1983.

Summary

The overall effects of the 1981 amendments will not be fully seen for some time, although the doubling of the excise tax on coal mine operators has already started to improve the financial solvency of the program. However, the major effects of the new eligibility restrictions will be long-term rather than immediate since they only apply to new claims. Also, a substantial number of beneficiaries will be kept on the rolls as a result of the provision that transfers to the Trust Fund the liability for approximately 10,000 claimants who had been made eligible under the 1978 amendments. Of course, the overall operation of the economy in the light of energy needs and the demand for coal will be another significant factor in determining the future financial status of the black lung benefits program.