TAX ASPECTS OF THE BLACK LUNG BENEFITS REFORM ACT OF 1977

HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 1538

TO AMEND TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT TO IMPROVE THE BLACK LUNG BENEFITS PROGRAM ESTABLISHED THEREUNDER, TO IMPOSE AN EXCISE TAX ON THE SALE OR USE OF COAL, AND FOR OTHER PURPOSES

JUNE 17, 1977

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TAX ASPECTS OF THE BLACK LUNG BENEFITS REFORM ACT OF 1977

FRIDAY, JUNE 17, 1977

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
GENERALLY OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m. in room 2221, Dirksen Senate Office Building, Hon. Harry F. Byrd, Jr. (chairman of the subcommittee) presiding.

Present: Senators Byrd, Jr., of Virginia and Hansen.

Senator BYRD. The hour of 9 o'clock having arrived, the committee will come to order.

The Subcommittee on Taxation and Debt Management Generally is today holding a hearing on the tax aspects of S. 1538, the Black Lung Benefits Reform Act of 1977.

S. 1538 has been reported by the Committee on Human Resources and is now before this subcommittee for consideration of those elements of the bill representing an exercise of the Federal taxing powers.

[The press release announcing this hearing and the bill, S. 1538 follow. Oral testimony commences on p. 30.]

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY SETS HEARING ON TAX ASPECTS OF BLACK LUNG LEGISLATION (S. 1538)

Senator Harry F. Byrd, Jr., (I., Va.) announced today that the Subcommittee on Taxation and Debt Management Generally will hold a hearing on the tax aspects of S. 1538, a bill modifying the black lung benefits program and its financing.

The hearing will be held at 9:00 A.M. on Friday, June 17, 1977 in Room 2221, Dirksen Senate Office Building.

The present black lung benefits program provides benefits for miners disabled by pneumoconiosis and for their dependents and survivors. This program is administered by the Department of Labor and the Department of Health, Education, and Welfare. Under current law, black lung benefits are financed partly by charges against coal mine operators (to the extent that individual liability can be established) and partly by the appropriations from Federal general revenues where no individual operator is determined to be liable or where the liable operator is no longer in business.

The bill, S. 1538, would make a number of changes in eligibility standards under the black lung benefits program and would also significantly modify the method for financing the program. The bill establishes a Federal trust fund for this program and provides for financing benefits which cannot be charged to individual operators by levying an excise tax on the mining of coal. The proceeds of the coal tax would be held in a new trust fund established by the bill.

Since this funding mechanism in the bill as reported by the Senate Committee on Human Resources is an exercise of the Federal taxing power, S. 1538 has been referred to the Committee on Finance for consideration of these tax aspects of the legislation.

Requests to testify.—Senator Byrd advised that witnesses desiring to testify during this hearing must submit their requests to Michael Stern, Staff Director, Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C. 20510, not later than 12:00 noon, Friday, June 10, 1977. Witnesses will be notified as soon as possible after this cutoff date as to whether they are scheduled to appear. If for some reason the witness is unable to appear as scheduled, he may file a written statement for the record of the hearing in lieu of a personal appearance.

Consolidated testimony.—Senator Byrd also stated that the Committee urges all witnesses who have a common position or with the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Committee. This procedure will enable the Committee to receive a wider expression of views than it might otherwise obtain. All witnesses should exert a maximum effort, taking into account the limited advance notice, to consolidate and coordinate their statements.

Legislative Reorganization Act.—Senator Byrd stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committee of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify must comply with the following rules:

(1) A copy of the statement must be filed by the close of business two days before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted by noon of the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Committee, but are to confine their ten-minute oral presentations to a summary of the points included in the statement.

(5) Not more than ten minutes will be allowed for oral presentation.

Written testimony.—Senator Byrd stated that the Committee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five (5) copies by Friday, June 17, 1977, to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

Calendar No. 183

95TH CONGRESS
1ST SESSION

S. 1538

[Report No. 95-209]

IN THE SENATE OF THE UNITED STATES

MAY 16, 1977

Mr. RANDOLPH, from the Committee on Human Resources, reported the following original bill; which was read twice and ordered to be placed on the calendar

A BILL

To amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Black Lung Benefits Reform Act of 1977".

DEFINITIONS

SEC. 2. (a) Section 402 (b) of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. 801-960) (hereinafter in this Act referred to as the "Act"), is amended to read as follows:

"(b) The term 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."

(b) Section 402 (d) of the Act is amended to read as follows:

"(d) The term 'miner' means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal. Such term also includes an individual who works or has worked in coal mine construction during any period such individual was exposed to coal dust in his or her employment.".

(c) (1) Section 402 (f) of the Act is amended to read as follows:

"(f) The term 'total disability' has the meaning given it by regulation of the Secretary of Health, Education, and Welfare for part B claims, and by regulation of the Secretary of Labor for part C claims, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

"(1) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a

mine or mines in which he previously engaged with some regularity and over a substantial period of time;

"(2) such regulations shall provide that (A) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (B) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

"(3) such regulations shall not provide more restrictive criteria than those applicable under section 223 (d) of the Social Security Act; and

"(4) the Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in paragraph (1).".

(2) Section 421 (b) (2) (A) of the Act is amended by inserting immediately before the semicolon the following: ", except that such law shall not be required to provide such benefits where the miner's last employment in a coal mine

terminated prior to the Secretary's approval of the State law pursuant to this section".

(3) Section 421 (b) (2) (C) of the Act is amended by striking out "part B" and inserting in lieu thereof "part C", and by striking out "of Health, Education, and Welfare".

(4) Section 422 (c) of the Act is amended by (A) deleting "and the Secretary of Health, Education, and Welfare"; and (B) inserting in the proviso "a period after December 31, 1969" in lieu of "the period".

(5) Section 422 (h) of the Act is amended by striking out the first sentence thereof.

(d) Section 402 of the Act is further amended by adding at the end thereof the following new paragraph:

"(h) The term 'fund' means the Black Lung Disability Fund established pursuant to section 424.".

OFFSET LIMITATION

SEC. 3. The first sentence of section 412 (b) of the Act (30 U.S.C. 922 (b)) is amended by inserting immediately after "disability of such miner" the following: "due to pneumoconiosis".

BENEFIT DETERMINATION FOR EMPLOYED MINERS

SEC. 4. Section 413 of the Act is amended by adding at the end thereof the following new subsection:

"(d) No miner who is engaged in coal mine employ-

ment shall (except as provided in section 411 (c) (3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his employment terminates within one year after the date such determination becomes final.".

EVIDENCE REQUIRED TO ESTABLISH CLAIM

SEC. 5. (a) Section 413 (b) of the Act is amended by inserting immediately before the period at the end of the second sentence thereof a colon and the following: ": *Provided*, That the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified radiologic technologist or technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. In the case of a deceased miner,

where there is no medical evidence, or where such evidence is inconclusive, a claim shall nevertheless be approved if other evidence in the record, including affidavits, taken as a whole establishes that the miner was totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis".

(b) Section 413(b) of the Act is further amended by adding at the end thereof the following: "Each miner who files a claim for benefits under this title shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.".

TRUST FUND AND OPERATOR LIABILITY

SEC. 6. (a) Section 424 of the Act is amended to read as follows:

"SEC. 424. (a) (1) There is hereby established on the books of the Treasury of the United States a trust fund to be known as the Black Lung Disability Fund (hereinafter referred to as the 'fund'). The fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b).

"(2) The trustees of the fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare. The Secretary of the

Treasury shall be the managing trustee and shall hold, operate, and administer the fund.

"(b) (1) There are hereby appropriated to the fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to the taxes received in the Treasury under section 4121 of the Internal Revenue Code of 1954.

"(2) There are authorized to be appropriated to the fund, as repayable advances, such sums as may from time to time be necessary to meet obligations incurred under subsection (d) of this section. Advances made pursuant to this paragraph shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the fund for such repayments. Interest on such advances shall be at rates computed in the same manner as provided in subsection (c) (2).

"(c) (1) The Secretary of the Treasury shall hold the trust fund and (after consultation with the other trustees of the fund) shall report to the Congress not later than the first day of April of each year on the financial condition and the results of the operations of the fund during the preceding fiscal year, on its expected condition and operations during the fiscal year in which the report is made, and on

any proposed adjustment in the rate of tax imposed pursuant to section 4121 of the Internal Revenue Code of 1954. The report shall be printed as a House document of the session of the Congress to which the report is made.

"(2) It is the duty of the Secretary of the Treasury to invest such portion of the fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (A) on original issue at the issue price, or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the trust fund. The special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt. Where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum nearest such average rate. Such special obligations shall

be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

"(3) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price and such special obligations may be redeemed at par plus accrued interest.

"(4) The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund.

"(d) Amounts in the fund shall be available for the payment of—

"(1) benefits under section 422 in cases in which the Secretary determines that—

"(A) an operator liable for the payment of such benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within thirty days of an initial determination of eligibility by the Secretary, or

"(B) there is no operator who is required to secure the payment of such benefits, and

"(2) obligations incurred by the Secretary of Labor with respect to all claims of miners or their survivors in which the miner's last coal mine employment was prior to January 1, 1970, and for the repayment into the Federal Treasury of an amount equal to the sum of the amounts expended by the Secretary for such claims which were paid prior to the date of enactment of the Black Lung Benefits Reform Act of 1977, except that the fund shall not be obligated to pay or reimburse for benefits for any period of eligibility prior to January 1, 1974,

"(3) benefits under section 422 for which the fund has assumed liability under subsection (f),

"(4) repayments of, and interest on, advances to the fund under subsection (b) (2), and

"(5) all expenses of operation and administration under this part, including those of the Department of Labor.

"(c) (1) If an amount is paid out of the fund to an individual entitled to benefits under section 422 and the Secretary determines, under the provisions of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits, the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed

to him. No operator or representative of operators may bring any proceeding, or intervene in any proceedings, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423 of this title. In a case where no operator responsibility is assigned pursuant to sections 422 and 423 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

"(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest) there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

"(3) (A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes by substituting 'lien imposed by section 424(e) (2) of the Federal Coal Mine Health and Safety Act of 1969' for 'lien imposed by section 6321'; 'operator liability lien' for 'tax

lien'; 'operator' for 'taxpayer'; 'lien arising under section 424(c)(2) of the Federal Coal Mine Health and Safety Act of 1969' for 'assessment of the tax'; and 'payment of the liability is made to the Black Lung Disability Fund' for 'satisfaction of a levy pursuant to section 6332(b)' each place such terms appear.

"(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

"(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

"(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

"(4) (A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary of the Treasury may bring a civil action in a district court of the United States to enforce the lien of

the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator or, in which he has any right, title, or interest, to the payment of such liability.

"(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within six years after the date upon which payment of the liability was first due, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such six-year period. The period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the employer are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for six months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least six months.

"(f) The fund may enter into agreements with operators who may be liable for the payment of benefits under section 422 of this part, under which the fund will assume the liability of such operator in return for a payment or payments to the fund, and on such terms and conditions, as will fully protect the financial interests of the fund. During any period

in which such agreement is in effect the operator shall be deemed to be in compliance with the requirements of section 423 of this part.".

(b) Subsection (i) of section 422 of the Act is amended to read as follows:

"(i) (1) During any period in which this section is applicable to the operator of a coal mine or mines who on or after January 1, 1970, acquired such mine or mines or substantially all the assets thereof, from a person (hereinafter referred to in this paragraph as a 'prior operator') who was an operator of such mine or mines, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 423 of this part, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator.

"(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

"(3) For purposes of paragraph (1) of this subsection, the following shall apply to corporate reorganizations, liquidations, and such other transactions as are enumerated in this paragraph:

"(A) If an operator ceases to exist by reason of a

reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or change shall be treated as the operator to whom this section applies.

"(B) If an operator ceases to exist by reason of a liquidation into a parent corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

"(C) If an operator ceases to exist by reason of a sale of substantially all its assets or merger or consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to whom this section applies.

"(4) Nothing in this subsection shall be construed to require the payment of benefits by or on behalf of an operator where liability for the claim is the responsibility of the fund under section 424 of this part.".

(c) Section 422 of the Act is amended by adding the following new subsection:

"(j) Notwithstanding the provisions of this section, section 424 shall govern the payment of benefits in cases in which—

"(1) an operator liable for the payment of such

benefits has not obtained a policy or contract of insurance, or qualified as a self-insurer, as required by section 423, or such operator has not paid such benefits within thirty days of an initial determination of eligibility by the Secretary, or

"(2) there is no operator who is required to secure the payment of such benefits, or

"(3) the miner's last coal mine employment was prior to January 1, 1970.".

(d) Section 422 of the Act is further amended by adding the following new subsection:

"(k) The Secretary shall be a party in any proceeding relating to a claim for benefits under this part.".

EXCISE TAX ON COAL

SEC. 6A. (a) Chapter 32 of the Internal Revenue Code of 1954 (relating to manufacturers excise taxes) is amended by inserting after subchapter A the following new subchapter:

"Subchapter B—Coal

"SEC. 4121. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed on the sale of coal by the producer a tax at the rate of—

"(1) 30 cents per ton of coal which has an average rated British thermal unit (hereinafter 'Btu') value of 11,000 or more per pound;

"(2) 15 cents per ton of coal which has an average rated Btu value of less than 11,000 per pound but more than 8,000 per pound; and

"(3) 7.5 cents per ton of coal which has an average rated Btu value of 8,000 per pound or less.

For the purpose of this section, the term 'sale' includes the production of coal by a producer for its own use, and the rated Btu value of coal per pound shall be that Btu value assigned by the United States Bureau of Mines to the coal field or coal seam from which the coal is extracted.

"(b) DEFINITION OF TON.—For purposes of this section, the term 'ton' means 2,000 pounds.".

(b) (1) (A) Section 4221 of such Code (relating to certain tax-free sales) is amended by inserting "(other than under section 4121)" after "this chapter".

(B) Section 4293 of such Code (relating to exemption for United States and possessions) is amended by inserting "(other than under section 4221)" after "chapters 31 and 32".

(2) Section 4217(a) of such Code (relating to lease considered as sale) is amended by inserting "other than coal" after "article" the first time it appears.

(c) The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter A the following new item:

(d) The amendments made by this section apply to sales on and after October 1, 1977.

MISCELLANEOUS

SEC. 7. (a) Section 401 of the Act is amended by inserting "(a)" immediately following "SEC. 401." and by adding at the end thereof the following new subsection:

"(b) This title may be cited as the 'Black Lung Benefit Act'.".

(b) Section 411(c) of the Act is amended by striking out "and" at the end of paragraph (3) thereof, by striking out the period at the end thereof, by inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(5) in the case of a miner who dies on or before the date of enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or more in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of his death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his death.".

(c) Section 413(b) of the Act is amended (1) by

striking out "(f)," and (2) by striking out "and (l)," in the last sentence thereof and by inserting in lieu thereof "(l) and (n),".

(d) Section 421(b)(2)(D) of the Act is amended to read as follows:

"(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;".

(e) Section 422(a) of the Act is amended by inserting immediately after the words "as amended" in the first sentence thereof the following: ", and as it may be amended from time to time,".

(f) Section 422(c) of the Act is amended by adding at the end thereof the following new sentence: "In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his death, be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner.".

(g) Section 422(e) of the Act is amended by inserting "or" at the end of paragraph (1) thereof; by striking out "; or" at the end of paragraph (2) thereof and by inserting in lieu thereof a period; and by striking out paragraph (3) in its entirety.

(h) Section 422 (f) of the Act is amended to read as follows:

"(f) Any claim for benefits by a miner under this section shall be filed within three years after a medical determination of total disability due to pneumoconiosis.".

(i) Section 427 (c) of the Act is amended by striking out "of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975" and by inserting in lieu thereof "fiscal year".

(j) For the purpose of determining eligibility for benefits under title IV of the Act, a miner will be deemed to have engaged in coal mine employment for any year in which—

(1) he has four quarters of coverage, as defined in section 213 of the Social Security Act, as a miner; or

(2) he was continuously on the payroll of a coal company and was employed as a miner; or

(3) the Secretary of Labor determines on the basis of other evidence that he was employed as a miner.

In determining the number of years of a miner's coal mine employment, the Secretary of Labor shall give the miner appropriate credit for that portion of any year in which he or she worked only part of a year.

(k) Section 430 of the Act is amended by—

(1) inserting "and by the Black Lung Benefits Reform Act of 1977" immediately after "1972"; and

(2) striking out the colon and all the language that follows it and inserting in lieu thereof a period.

(l) Notwithstanding the provisions of section 422 (a), individuals appointed to hear claims pursuant to Public Law 94-504 may continue to adjudicate such claims until one year after enactment of this Act.

FIELD OFFICES

SEC. 8. (a) The Secretary of Labor is authorized to establish and operate such field offices as necessary to assist miners and survivors in the filing and processing of claims under title IV of the Federal Coal Mine Health and Safety Act of 1969. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary of Labor may, in the establishment of such field offices, enter into such arrangements as he deems necessary with the heads of other Federal departments, agencies, and instrumentalities, and with State agencies, for the use of existing facilities and personnel under their control.

(b) There are authorized to be appropriated for the purposes of subsection (a) such sums as may be necessary.

INFORMATION TO POTENTIAL BENEFICIARIES

SEC. 9. The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly disseminate to interested persons and groups the changes in title IV of the Federal Coal Mine Health and Safety Act made by this

Act, together with an explanation of such changes, and shall undertake, through appropriate organizations, groups, and coal mine operators, to notify individuals who are likely to have become eligible for the benefits by reason of such changes. Individual assistance in preparing and processing claims shall be offered and provided to potential beneficiaries.

EXPEDITED REVIEW, TRANSFER, AND PROCESSING OF DENIED CLAIMS

SEC. 10. Title IV of the Act is further amended by adding at the end thereof the following new section:

"SEC. 432. (a) Any individual who has filed a claim for benefits under this title and whose claim has been denied, may file a new claim for benefits under this part. Except as otherwise provided in subsection (c) of this section, a claim for benefits filed pursuant to this subsection shall be treated as a new claim for benefits filed under section 422. An individual who has filed a claim which has been denied under part B of this title and who has filed a new claim under part C of this title, including a claim filed under this section, shall be deemed to have met the requirements of section 422 (f).

"(b) (1) The Secretary shall promptly prescribe such regulations as are necessary to provide for the expedited processing of any claim filed under subsection (a) of this section. Such claims, and any pending claims, shall be reviewed in

light of the amendments made by the Black Lung Benefits Reform Act of 1977.

"(2) Submission by an individual to the Secretary of a request for review shall constitute the filing of a claim under subsection (a). The Secretary shall provide simple forms for such purpose, postage paid, to each individual described in subsection (a).

"(3) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary all pertinent information in the possession of the Department of Health, Education, and Welfare relating to claims denied under this title. If the evidence on file is sufficient for approval of a claim in light of the amendments made by the Black Lung Benefits Reform Act of 1977, no further evidence shall be required. If such evidence on file is not sufficient for approval of a claim, the Secretary may, in the case of a living miner, require the taking of additional medical evidence, including the administration of a roentgenogram and pulmonary function tests. Claims filed under subsection (a) of this section, as well as all other claims pending under part C of this title, shall be processed in accordance with criteria established pursuant to section 402 (f) (4) of this title.

"(c) (1) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under

part B of this title, and whose claim has been finally adjudicated as denied by the Social Security Administration, shall be awarded benefits as if such claim were filed on January 1, 1974.

"(2) Any individual whose claim is approved pursuant to this section who filed a claim for benefits under section 415 or part C of this title, and whose claim has been finally adjudicated as denied by the Department of Labor, shall be awarded benefits as of the date such claim was originally filed, or January 1, 1974, whichever is later.".

EFFECTIVE DATES

SEC. 11. (a) Except as provided in subsections (b) and (c) of this section, this Act shall take effect on the date of its enactment.

(b) The amendments made by section 6 of this Act relative to the establishment of the Black Lung Disability Fund shall take effect on October 1, 1977.

(c) Appropriations and tax revenues to the trust fund established pursuant to sections 6 and 6A of this Act shall accrue on and after October 1, 1977, and no benefits awarded due to the operation of this Act shall be paid until October 1, 1977.

OCCUPATIONAL DISEASE STUDY

SEC. 12. (a) The Secretary of Labor, in cooperation with the Director of the National Institute for Occupational

Safety and Health, shall conduct a study of all occupationally related pulmonary and respiratory diseases, including the extent and severity of such diseases in the United States. Such study shall further include analyses of (1) any etiologic, symptomatologic, and pathologic factors which are similar to such factors in coal workers' pneumoconiosis and its sequelae; (2) the adequacy of current workers' compensation programs in compensating persons with such diseases; and (3) the status and adequacy of Federal health and safety laws and regulations relating to the industries with which such diseases are associated.

(b) The study required by subsection (a) of this section shall be completed and a report thereon submitted to the President and the appropriate committees of the Congress within eighteen months after the date of enactment of this Act.

PENALTY: FAILURE TO SECURE BENEFITS

SEC. 13. Section 423 of the Act is amended by adding the following new subsection:

"(d) (1) Any employer required to secure the payment of compensation under this section who fails to secure such compensation shall be subject to a civil penalty of not more than $1,000 for each day during which such failure occurs; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also

severally liable to such civil penalty as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this section.

"(2) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

"(3) This section shall not affect any other liability of the employer under this part.".

PENALTIES: FALSE STATEMENTS AND REPORTS

SEC. 14. Title IV of the Act is further amended by adding after new section 432 the following new sections:

"SEC. 433. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

"SEC. 434. (a) The Secretary may by regulation require employers to file reports concerning employees who may be or are entitled to benefits under this part, including the date of commencement and cessations of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of the employee or employees to which such report relates.

"(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal.".

Senator BYRD. Under current laws, black lung benefits are financed partly by charges against coal mine operators, if individual liability can be established, and partly by general revenue appropriations, general appropriations, currently in excess of $1 billion a year, if no individual operator is determined is to be liable, or if an operator is no longer in business.

The bill, S. 1538, would modify many aspects of the current black lung benefit program and would modify the method for financing the program. The bill would establish a Federal trust fund under the program and would provide for financing benefits which cannot be charged to individual operators by levying an excise tax on the mining of coal.

The proceeds of the coal tax would be held in a new trust fund established by the bill.

The first witness to testify before the committee today is the distinguished senior Senator from West Virginia, Senator Randolph.

Senator Randolph welcome, and proceed as you wish, sir.

STATEMENT OF HON. JENNINGS RANDOLPH, A. U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Good morning, Mr. Chairman.

I am privileged to share my views with you as the chairman of the subcommittee, and hopefully other members of the subcommittee may join you for this hearing. But I do know, having talked to you informally, of your intense interest, your understandable concern with the subject matter that is before the Committee on Finance, which is the joint responsibility, at least in part, of that measure as reported from our committee, S. 1538, with the jurisdiction of the Committee on Finance.

I would like to talk this morning about S. 1538. We call it the Black Lung Benefits Reform Act of 1977. We know that it did have the most careful hearing process as we earlier had in 1969 and then 1972 and again last year, but because of problems between the House and the Senate and the pressure of adjournment, we were not able to bring the measure to final passage, although we hoped to do that in the final hours of the 94th Congress.

I am commendatory of you, Senator Byrd, and also the other members of not only the subcommittee but of the full committee and Senator Long, the chairman, for your cooperation in giving prompt consideration to this legislation.

Our committee, of course, as I have said, and you have indicated, has acted. Now the Committee on Finance did hold hearings and favorably reported a bill similar to this measure last September at the time we were attempting to amend the earlier statute.

And so this morning, as I look back on that bill, H.R. 10760, you, Mr. Chairman, and Senator Hansen, who joins you in this hearing, know the problems that were in the closing hours in the 94th Congress. Even though you had acted and the Human Resources Committee, then the Labor and Public Welfare Committee, had acted, and the House had acted, we were unable to bring the measure to passage in the Senate.

I think that we have had a certain indoctrination, which is good. We have had increased knowledge and expertise, I think the latter word is correct, with this legislation we developed last year, particularly the recommendations that came to us from the Finance Committee.

The Committee on Human Resources reported the measure, as you recall, with financing and trust fund provisions which are adaptations of those supported by this Committee on Finance in 1976.

We have retained the excise tax concept and have adopted verbatim most of the trust fund language that was provided by this Committee on Finance for H.R. 10760.

Now, the tax proposed in the reported bill from the Human Resources Committee, which is Senate bill 1538, is three tiered. It is based on the British thermal unit value of coal. A tax per ton is imposed as follows: 30 cents per ton on coal with a per pound Btu rating of more than 11,000; 15 cents per ton on coal with 8,000 to 11,000 Btu per pound; and 7.5 cents per ton on coal whose Btu value is 8,000 or less.

As you will understand, these categories correspond roughly to the coal classifications that we find in anthracite and bituminous and subbituminous and lignite, these coals respectively.

This approach, I think, is appropriate. I think it is valid, because there is a definite correlation between the Btu value of coal and its classification and the market price of coal.

Now, we have a table in my statement, a demonstration being set forth on this correlation, and I will just ask that I not give the breakdown.

Senator BYRD. The table will be published in the record.*

Senator RANDOLPH. The level of taxes proposed are adequate to support the anticipated expenditures of the trust fund with respect to liability under existing law and under the substantive amendments provided in the pending bill.

It is the expectation of the Committee on Human Resources and of the Congressional Budget Office that the tax rates can be cut substantially after the third year. This is so, I believe it to be so, for the reason that there will be a ballooning of obligations in the first 2 years due to the need to pay benefits retroactively to January 1, 1974, in some cases.

Section 10 of the bill provides that individuals whose claims have been denied, either under part B or part C of the Black Lung Benefits Act, may refile their claims which, if approved pursuant to the amendments made by this bill, will be awarded benefits as of January 1, 1974, in the case of refiled part B claims, and as of the date the claim was originally filed in the case of refiled part C claims.

The Congressional Budget Office has calculated the obligations of the trust fund and anticipated tax revenues to the fund. That should be, we think, as follows: In the first 3 years we have set forth the obligations, the revenues and the balance in these 3 years and we ask that they be included.

Senator BYRD. They will be included.**

Senator RANDOLPH. The shortfall of $52.6 million in fiscal year 1979 would be covered by a repayable appropriation of that amount. The

*See p. 48.
**See p. 43.

trust fund would be able to repay the advance in the following year, fiscal 1980.

In the following 2 years—fiscal 1981 and 1982—the obligations of the trust fund can be met fully with a reduction in the tax rates to 25 cents per ton in the highest Btu category, 12 cents in the 8,000 to 11,000 Btu range, and 2 cents per ton for coal with 8,000 Btu or less.

In terms of cost impact on the coal companies involved, the proposed taxes will have no effect, since they are excise taxes which are passed to the consumer rather than being absorbed. The impact on the Federal Government will be negative, because there will be a reduction in the need for general revenues to pay for black lung claims. The inflationary impact of the proposed taxes will be slight: for low Btu coal (lignite) it will increase coal costs by about 2.5 percent; for subbituminous coal, the cost increase will be about 2.3 percent; and for high Btu value coal (bituminous and anthracite), assuming an average price of $25 per ton, the cost increase will approximate 1.2 percent. When the tax rates are reduced after the third year, the impact will be even less.

Mr. Chairman, this cost is a small price to pay to provide very modest recompense to miners who gave their health and lives in the production of this Nation's most important energy resource, and to their widows and children.

The attrition rate for this program is high. The old miners receiving benefits are dying with great frequency. The Congressional Budget Office assumes a mortality rate for disabled miners of 7.6 percent in fiscal 1978, with an increase in that rate of 0.3 percent per year thereafter. For survivors of miners, the rate is projected at 4.4 percent in 1978, with an annual increase of 0.2 percent after the first year.

Thus, as time goes by, the price tag on this program will constantly diminish. Hopefully, young miners will not be burdened by this terrible and debilitating set of conditions we classify as "black lung," for many mines are being cleaned up, thanks to the rigid requirements of the 1969 Coal Mine Health and Safety Act, and as technological capacity grows, dust in the mines can and must be reduced even further.

I concur, as do others, with the assessment of President Carter that this Nation will in future years rely more heavily on coal for the production of our energy needs. Although current projections support a yield of about 840 million tons by 1981, the administration anticipates that coal production can be accelerated to 1 billion tons in 5 years.

Recently I have been talking with officials of AAMCO steel company. They are opening in Boone County, W. Va., two new deep mines, very high-cost mines to put into operation. Wheel heads are involved and new types of initiative in equipment, but they have a problem in securing the miners, the 1,600 miners. They say they can lick that problem, but a problem that concerns them very, very much, where is the housing for the miners?

As you know, with those narrow valleys and the precipitous hills rising on either side, it is difficult to find the so-called plain, or the level land for housing. And some of our miners now are traveling 100 miles back and forth to work their shift in the mine.

So there are many, many problems that come with the mining of coal, and when you talk about this billion tons in 5 years, we have to frankly come to grips with many problems other than just the mining of this great fossil fuel itself.

Increased production of coal, and possible increased prices due to inflation, combined with a diminishing number of black lung benefits recipients, will result in a further reduction of revenue needs for this program.

Last year this committee proposed a tax of 15 cents per ton on anthracite and 10 cents per ton on all other coal. Mr. Chairman, the Committee on Human Resources believes that the time is long overdue for the coal industry to accept a share of the responsibility for the cost of paying benefits to those who have given their working lives to the production of coal.

Currently, coal producers are paying fewer than 200 black lung claims. They are controverting 97 percent of the claims for which they have been found responsible. It is my understanding that the coal industry has substantial profits. Companies need profits to grow and prosper, but they also have an obligation to aid their employees.

The Federal Government has paid approximately $5 billion in black lung claims since the beginning of the program in 1970. It will continue to pay benefits at a gradually diminishing level for years to come. It is now time for the coal industry to bear its share of the cost burden. The tax level proposed by this committee last year would, if adopted, expand the obligation of the general treasury; S.1538 would reduce that obligation. So, Mr. Chairman, I urge the Committee on Finance to accept the tax rates we have recommended.

The trust fund provisions of S. 1538 are essentially the same as those of H.R. 10760 as reported by this committee last fall. It is a Federal Government trust fund, the trustees of which are the Secretaries of Labor, Treasury, and Health, Education, and Welfare. The Secretary of the Treasury is the managing trustee.

Testimony before the Subcommittee on Labor by the Internal Revenue Service supports the approach taken in S. 1538. With your permission, Mr. Chairman, I submit for the hearing record and the committee's review, a copy of a supplementary statement from the Acting General Counsel of the Treasury Department relative to trust fund and tax concepts which might be addressed in legislation.

Senator BYRD. The report will be published in the record.*

Senator RANDOLPH. Thank you very much.

S. 1538 had not been introduced at the time this letter was written. References to H.R. 4544 are to the measure reported by the House Education and Labor Committee. The House of Representatives has not yet considered its counterpart amendments to the Black Lung Benefits Act.

Mr. Chairman, S. 1538 is, I believe, a good bill with a sound and solid foundation. Although the interested parties have expressed reservations or concerns about one or another of the bill's provisions, in my view it is a measure that can be supported by the union and its members, by the industry, and by the administration.

It does not hold the promise of resolving every black lung claimant's problem, but it does provide for the resolution of many of the inequi-

*See p. 45.

ties which now exist in the law or in its interpretation. Finally, it imposes the burden of responsibility for the payment of claims on the coal industry.

I urge you to ratify the action of the Committee on Human Resources by supporting S. 1538 as reported. My staff and I are available to answer questions and supply assistance to the committee and its consideration of this legislation.

Thank you very much.

Senator BYRD. Thank you, Senator Randolph.

Both the Senator from West Virginia and the Senator from Virginia represent States in which the mining of coal is an important segment in the economy. Virginia's normal tonnage is about 33 million tons per year. I do not remember West Virginia's.

Senator RANDOLPH. We will supply it for the committee; I am afraid to give it off the cuff. I will say at the moment the tonnage in West Virginia is slightly under the tonnage being produced in Kentucky. Our deep mine tonnage is much higher, of course, but our surface mining does not compare with Kentucky. Otherwise, we are first in the production of bituminous coal.

We will provide that for the record and hopefully have it this morning, that we will give it to you.

[The figure supplied by Senator Randolph was 108,863,000 tons.]

Senator BYRD. Thank you, Senator Randolph.

You mentioned several times in your testimony the legislation approved by the Finance Committee last year. I am wondering why the Committee on Human Resources selected the Btu value instead of the type of coal to determine the tax; the method of levying the tax was changed in this year's bill from that employed in last year's bill.

Senator RANDOLPH. I will give response to that, Mr. Chairman. If it is agreeable with you to let me speak just a second in perhaps a facetious way, but a factual way.

When we were talking about the tonnage in Virginia and West Virginia, I just was reading a few days ago that, although there was a time when West Virginia was first in the production of moonshine, we had fallen behind, and Georgia now is the first State. Alabama is second, North Carolina is third, Tennessee is fourth, and so forth. I do not know whether it is the wave of the South, or what. It was at least interesting.

Senator HANSEN. If I may interrupt the distinguished Senator from West Virginia for a moment, Mr. Chairman, let me observe, that in Wyoming, the land of high altitudes and low multitudes, it has often been said that we do not bushel our corn, we bottle it.

Senator RANDOLPH. I know you make good use of it.

To talk about the moonshiners, in the old days, the Revenuers would come in. They never called them "revenue agents." Those were in the days before the helicopter that they used to see the smoke lifting. In those days, it is said a Revenuer approached a tall, gangly farmer on one of our roads and said, "Son, are there any stills in operation?" The boy said, "Yes, sir, lots of them."

He said, "I would like to see one."

The boy said, "Yes, sir." He was very courteous, but nothing was done, and finally the Revenuer thought there was a monetary con-

sideration involved so he said, "I will give you $2 if you take me to that still and I will give it to you when we come back."

The boy said, "Mister, give it to me now. You ain't comin' back."

Those were difficult days.

To your question about the change in our committee and certainly all members are intensely interested in this, we studied it carefully and came to the conclusion that a tax structure should be developed that would more closely reflect the value of coal itself. In general, as the energy value of coal measured in British thermal units increases, as I indicated in my formal statement, so does the market price.

The first table included—and I asked that it be placed in the record—provides that background which demonstrates the principle. Then the tax rates recommended by this committee last year, the Finance Committee, I think clearly are too low to meet the requirement of insuring that coal producers assume full future liability for benefits to black lung victims and their families.

There is, I think, no reason for imposing additional cost burdens on the general taxpayer. He or she is now saddled with substantial obligations under part B of the Black Lung Benefits Act.

In 1969, we contemplated that the initial cost of black lung payments until 1972 would be absorbed by the Federal Government. We went on the theory that the coal industry, since it did not have notice of this program, would necessarily have to have the time to prepare for the assumption of the responsibility which we are calling for in S. 1538. In 1972, when we revised the law, we extended the Federal responsibility to January 1, 1974.

As of now, the industry still is not meeting its obligations, if we want to call it that. I believe there is an obligation to the disabled miners and the widows and the children under the law.

Senator BYRD. How strong is the correlation between the level of Btu's per ton of coal and the instance of black lung disease?

Senator RANDOLPH. I spoke of the correlation and, of course, this is a problem that we have really labored with in our committee. That correlation, I know to be substantial. Others also know it to be true.

It is believed that there is the greatest incidence of the disease in anthracite and bituminous miners, therefore, the highest tax level. There is considerably less evidence or incidence of black lung in the subbituminous coal miners, and a low incidence in lignite miners.

Senator BYRD. Because this proposed bill would impose an excise tax on coal, this could lead to a higher price for coal. Has the Human Resources Committee, in considering this bill, attempted to assess the inflationary impact of the proposed tax and, if so, what conclusions have you reached?

Senator RANDOLPH. This is a very critical matter in our consideration, and this committee's consideration.

We did consider the inflationary impact and in reporting the bill in the section entitled "Regulatory Impact," we discussed generally the inflationary impact. We say, in the language of the report, once the initial period for the retroactive payment of benefits is over, the impact on the consumer will be minimal—less than 1 percent of the cost of coal may be attributed to the tax."

Also, on page 4 of my statement today, I have indicated the temporary inflationary impact for the bulk of the coal produced. It would be about 1.2 percent now, and less in the future.

Senator BYRD. If the cost of the program is eventually going to be going down, what do you think of the idea of funding the trust for 5 years and then reexamining the program?

Senator RANDOLPH. That has been proposed. That has been discussed, and some had felt that we needed to have it clearly written in the program based on a certain number of years, and the experience would bring us to a point where, if it needed a change, it could be changed.

But, Mr. Chairman, I am not saying that the limitation, perhaps, of a certain period of years, you suggest 5, and then the review is necessarily wrong. That view is understandable, and I am glad you raised the point, because I think members are going to be considering this type of proposal as we consider so many of these programs in which the Government has had a very substantial payment record.

I do not try to run away from the figure of $5 billion having been paid out, I will say that I vote against Foreign Aid and I do it on rollcall. I would help foreign countries whenever those countries and their governments are stricken by disasters or flood or disease or a hurricane or a tornado or an earthquake, and here we have been hit by a disease, and that disease does not just happen, it is not determined overnight.

It is, I say to you, Senator Hansen, because I am sure that you have this problem, as we think of a firm commitment I think where there is black lung there must be benefits and we have talked about this. We felt that it was best to continue without termination.

Now, the fund will report annually to the Congress and that will give an opportunity for review as the present bill is written. I would rather hope that we could review at a later date any determination of when and if it should be ended.

Senator BYRD. In regard to insurance liability, the bill, as reported by the Human Resources Committee this year includes a provision under which the trust fund would set itself up as an insurance company providing for a premium protection for coal-mining companies against liabilities.

My question would be this, If the fund managers miscalculate the extent of their potential liability, would this lead to an increase in the coal tax to meet such a shortfall?

Senator RANDOLPH. You refer to section 424(f) of our reported bill. It is not mandatory. The Secretary of Labor is, in effect, given authority to cope with the cases where insurance coverage is not available and he would be acting as an insurer, as it were, of last resort. He is not required to provide such service, and in our report—and I will state the language: "Inasmuch as the Secretary has complete authority over all other aspects of the compensation program, it is appropriate that he also have standby authority to provide insurance coverage."

As I see it, there would be no need to increase the tax due to this provision and coal operators would be required to reimburse the funds in the full amount of the liability. In our provision in the reported bill, it is an amount and I quote: "As will fully protect the financial interest of the fund."

Senator BYRD. I have several other questions, but I feel that I should yield to the Senator from Wyoming.

Senator HANSEN. Mr. Chairman, thank you very much, but I would be most pleased to have you continue. I think the questions you asked are extremely relevant, and please go right ahead.

Senator BYRD. Thank you, sir.

Senator Randolph, the trust fund will be responsible for paying the cost of administering the funds. Do you have any estimates as to how much these administrative costs might be?

Senator RANDOLPH. We do not expect high administrative costs, although I have not used figures.

The current annual administration costs to the Department of Labor are running about $7 million. Additional costs, I do not believe, would be great, since that figure that I have given you includes all of the claims that are being processed, and that would be certainly the largest cost.

Senator BYRD. The present bill, the one now under consideration, provides for rebuttable presumption that a miner will be entitled to benefits after working as a miner for 15 years. Although this is not exactly an automatic entitlement, does it not come very close to being an automatic entitlement?

Senator RANDOLPH. The law now has this presumption based on 15 years. This is existing law, and is not affected by the bill that we have before us from the committee. It is a substantial aid to disabled miners in establishing their claims, but it is not an automatic entitlement and it is not a pension. There must be a showing of total disability without which a claim may not be approved for the miner.

Senator HANSEN. Mr. Chairman, if you would yield just for one question. I am certain I must be in error, having heard the statement made by the distinguished Senator from West Virginia. I was thinking that the presumption was that, after a period of 20 years of employment, a worker was presumed to have black lung. It is 15?

Senator RANDOLPH. Fifteen is the rebuttable presumption.

Bob, would you want to discuss that for just a moment?

Mr. HUMPHREY. Under the existing law, where the miner worked 15 years in an underground mine or where conditions are comparable to an underground mine, there is rebuttable presumption of disability from pneumoconiosis if there is a negative X-ray and the man is totally disabled by a respiratory or pulmonary impairment.

That is not altered in our bill. The only presumption that we add to existing law is one for widows in which, if the miner worked for 25 years or more prior to June 30, 1971, he would be rebuttably presumed to have had pneumoconiosis at the time he died. That may be rebutted by the Secretary and the widow is required to provide any medical evidence that is available.

Senator HANSEN. Thank you very much.

Senator RANDOLPH. May I add to what Mr. Humphrey just said?

In our 1969 act, the original law, we were thinking in terms of knowing what the problem was by the use of the X-ray. We found that the X-ray was not the final answer. It could be read differently. There were variances, and we have the cases—I knew of them personally and studied the claims, and we found that it should be changed and

in 1972, under the revised law, we gave emphasis to these pulmonary and respiratory tests that might be considered as a part of this determination of black lung.

As Mr. Humphrey has said, there is no real change basically except in the widow provision.

Senator HANSEN. I thank my colleague for refreshing my memory. I was just confused.

Thank you, Mr. Chairman.

Senator BYRD. For the record, why is it necessary to use the Federal taxing power to fund the benefits for this particular occupational disease when all other such problems are handled through the State workman's compensation programs?

Senator RANDOLPH. Mr. Chairman, that is really a threshhold question and it is understandable that it would be asked. That, we thought, was asked and was answered in the first law in 1969 when we had to consider whether the cost of providing black lung benefits would take the form of a tax paid out of the general fund or by the operators under workers' compensation.

Now, Congress decided in 1969 that a disabled coal miner should be compensated through Federal law. The reason was—and I think it is still valid—that States have not adequately recognized the need to compensate black lung victims. It was intended in 1969, and it continues, that States take over the compensation of disabled miners. We anticipated that that should happen.

The difficulty, and it has been a difficult problem, is that the States have not met the standards of the Secretary of Labor for such benefits. Now, a provision that we have included in S. 1538, makes it more attractive, makes it more easily done by the State—in a sense, an incentive for States to comply to meet the standards because we have eliminated that requirement of retroactivity of the benefits.

This has, in the past, been a major obstacle to performance and that would be the reasoning of our committee.

Senator BYRD. As you indicated earlier, it is anticipated that the cost of the program will go down after the first 3 or 4 years. Do you think that this program can eventually be turned back to the States, or do you feel that we are now establishing a permanent tax?

Senator RANDOLPH. I, of course, feel that the committee, our committee, and I think also that the Congress would not want to create a problem that would indicate that there was a permanence about our program. We do not feel that it is.

The black lung program, as you know, has been in existence since 1969. For coal operators, the responsibility began in 1974. The trust fund, and the tax mechanism in S. 1538, are designed to insure that the intent of Congress in creating, as I said in my statement, part C of title IV of the Coal Act, is carried out to lodge, once and for all, responsibility for black lung claims in the coal industry.

I underscore that.

Senator BYRD. One final question.

In regard to the precedent established by the black lung bill, in the past, benefit programs operated through a trust fund based on earmarked tax, and have been considered to fall within the jurisdiction of the Finance Committee, which under Senate rules, has jurisdiction over national social security.

In that light, I wonder if you would comment on whether you see a black lung program as a first step in the direction of a new, national social security program covering occupational diseases?

Senator RANDOLPH. Mr. Chairman, there has been, from time to time, a sentiment that has been expressed within the Congress and elsewhere for establishing benefit programs for occupational diseases, not just the problem of black lung. But this is, certainly, I think not due to the black lung program but rather as a result of a growing recognition, Mr. Chairman, that many occupational diseases are not being compensated adequately in the country.

That is my personal feeling.

Senator BYRD. You would not take it, then, that this is necessarily creating a precedent?

Senator RANDOLPH. No; I would not. It is an understandable thought you express in the minds of people. My experience would indicate that it would not.

Senator BYRD. Thank you, sir.

Senator Hansen?

Senator HANSEN. I have no questions. I thank our distinguished colleague for his appearance here this morning and the contribution that he has made, drawing on his great knowledge and understanding of the problems.

Thank you very much.

Senator RANDOLPH. If I could add a postscript with Senator Hansen present, the able Senator from Wyoming has introduced S. 1656 which would place under section 501(c) of the Internal Revenue Code trusts or escrow funds for the purpose of paying black lung claims, and I feel that that should be noted here in all fairness. I have not really had an opportunity to study the provisions of that bill. I believe it was introduced on June 9.

[The statement made by Senator Hansen on S. 1656 follows:]

BILL TO INSTITUTE BLACK LUNG TRUST

S. 1656

Mr. HANSEN. Mr. President, under Federal black lung legislation, coal producers incur a contingent obligation to pay black lung benefits to coal miners that contract the disease.

These obligations could continue for 50 to 75 years after a mine is closed, because the benefits apply also to a miner's dependents.

Estimates vary, but actuaries calculate it will require about $1.85 to $5 per ton of coal mined depending on the life expectancy of the mine, and the age complement of the work force to fund these claims.

If the operator elects to buy insurance, the minimum premium rates run about $7.80 for a strip mine up to $25 for an underground mine for each $100 of payroll. In purchasing insurance the coald producer pays regular premiums which, as a legitimate business expense, are deductible on a current basis.

The problem with insurance, however, is that an operator can never be certain an insurance carrier will continue to renew a policy. If a risk exposure proves too great for an insurance company, cancellation of coverage is not uncommon.

For the mine operator who chooses to self-insure and wishes to create an escrow or reserve fund to insure past as well as future obligations, there is a unique problem with respect to the setting aside of necessary funds. Payments to the reserve fund are not deductible when made.

Therefore, to balance this inequity, legislation is needed to permit the mine operator to establish a tax-exempt irrevocable trust into which he makes payments, and I am offering such a legislative proposal.

The payments into the trust would be deductible at the time of the contribution—rather than at the time the payments are made to the disabled miner or his dependens—which might be 50 or 75 years hence. Any income earned by the trust would be exempt from taxes and payments to the miner would be excluded from the miner's tax liability. The principal part of the trust could never revert to the creator of the trust. It could not be used as a tax shelter device by the mine owner with the funds to be recaptured at a later date.

There are advanages to both the miner and the operator.

First, the miner working in the mine today, should he qualify for benefits in the future, would know that his black lung disability compensation is being funded on a current basis. Irrespective of the future there would be money in the fund.

The employer, funding on a current basis, would be in a better financial position to meet this future obligation, rather than wait 20 years or more when a claim is registered

Simply stated, the coal industry recognizes the legal obligation to compensate the miner disabled by black lung. What is sought is a legal vehicle to carry the funds so that today's coal production pays for the obligations arising as a result of current production. This seems to me to be the fair way to carry out this obligation.

There is a very real problem that could arise in the future if these obligations are not currently funded.

State public service commissions might well object to approving utility rate increases based on increased coal costs resulting from obligations incurred in years past.

Never in the history of the country has an industry been singled out in the manner of the coal industry with respect to the black lung legislation and saddled with a financial obligation of this magnitude.

Legislation of the nature I am introducing should be enacted as soon as possible to help coal producers meet this requirement of the law in a reasonable manner.

I would urge my colleagues to study this matter carefully, and I welcome cosponsors so that we can carry this forward as expeditiously as possible.

Senator RANDOLPH. The concept, as I quickly looked at it last night, seems frankly, Senator Hansen, to be sound. I think it is. I would like you to consider it in this committee.

Senator HANSEN. Mr. Chairman, I thank Senator Randolph for those kind words. If I could make a very brief statement and it seems as though this is an appropriate time to do it, let me observe that coal operators are responsible for payment of black lung benefits. However, in most instances, now, the Federal Government pays the benefits.

Under Senator Randolph's bill, operators participate in a larger degree in paying claims. Operators are primarily liable in paying claims.

To the extent that responsible operators cannot be found, the Federal Government picks up the tab. The Federal program is funded by a trust fund. The money for the trust fund is derived from an excise tax based on Btu's. Any shortfall in the trust fund is funded from an appropriation.

The problem of finding a mechanism for the operator to finance his own liabilities for black lung is not really addressed—at least, in my opinion, it may not be. The bill that I have introduced addresses the operators' mode of financing.

Of course, an operator may carry private insurance, as I know Senator Randolph knows. However, should he choose to self-insure, the bill that I have introduced provides him with the opportunity for establishing an irrevocable nontaxable trust fund.

Contributions to the trust fund would be deductible just as insurance premiums would be. There is no danger of using the fund as a

tax shelter. The only use to which the income from this private fund could be used would be for the payment of black lung claims.

I might say that one of the problems that Senator Randolph, and all of us who have looked at this problem, find with trying to find a private insurer—and, of course, those funds are tax deductible—is that the insurer may at some time decide that he may no longer want to carry that risk. If he finds his experience is not one that is acceptable, he can just say that no longer will he insure someone.

The operator loses, or no longer can guarantee. You can go out with the best intentions, try to utilize the mechanism that will permit the investment of funds that are nontaxable, an insurance program, and you still cannot guarantee the worker that when he may want to call upon that insurance that it is going to be available to him, because the insurer might cut it off.

What I have attempted to do is to set up a mechanism that will enable an operator to put funds in trust. Such a system complements the very significant contribution that I think you are making and giving an operator who wants to do the best job he can an opportunity to do that.

I would hope that the two bills could be considered in tandem. I find much merit in yours and you may find some in mine.

Senator RANDOLPH. I am sure that I will. I have asked Bob Humphreys to make a special study of this situation and report to us because we have no desire, you know, to feel that we have the complete answer, but we have worked on this in our committee, beginning in 1969 and through the years, including last year, and the witnesses have been from all approaches to this problem, and we do feel that it is important that this year we do pass legislation of the type, the general thrust that we have before us.

I do not want to refer to the ability to pay when you felt at an earlier period you could, but could not later. This happens so very often. It is not wrong for me to say that the United Mine Workers' welfare fund which, it was hoped, would pay certain amounts, at times they have found that that could not be done.

So, across the board, in the union structure and in private industry and, of course, the Government always, I guess, can make money by printing it, but there is the problem of an accounting. We have to account for what we do and the bill, the ultimate cost, of course, must be paid.

We appreciate the opportunity to be with you today and to council with you on this matter. I would hope—I am not trying to press this committee—that you could help us in bringing to the floor our bill, working with your committee, a joint bill with you with the responsibility for certain parts that are not really our domain in a certain sense, there is an overlapping, so that we would not be faced with the situation that we were faced with last year where we were trying to do it. There was a desire to do it but it just did not happen and we lost valuable time.

I hope that somehow or other, before the August recess certainly, that we could act here in the Senate, but I appreciate the attention, the concern and the help that you have given to us.

Senator BYRD. I might say, whatever the committee does I hope that the committee would do it promptly. I would think that is what the Senator from West Virginia would want, expeditious action.

Senator RANDOLPH. Thank you, Mr. Chairman; thank you, Senator Hansen.

Senator BYRD. Thank you, Senator Randolph.

Senator HANSEN. Mr. Chairman, before we move to the next witness, if I may be permitted one additional operation or two, I would note that one of your questions certainly clearly implied that it is unusual for a Federal law to single out one disease and to ascribe the responsibility as the Congress has in this instance, and I note that. No one needs to remind the coal operator that that has been done. We are dealing with a factual situation.

Since that is the way it is, I think it is important that we provide a mechanism for the industry to make those commitments and contribute those sums of money necessary to insure the actuarial soundness of the program that will guarantee people who have a right to expect that they will receive benefits if they comply with other provisions in the law, that the money will be there.

I make that point because it could be contended, let us start out in a smaller way and, if the problem assumes proportions that would call for more money being made available at a later time, it could then be provided. The problem, of course, with that solution, a Public Service Commission may indeed refuse the industry their right to raise rates necessary to meet the obligations which it now incurs as a consequence of an earlier action or an earlier employment period of time.

With that thought in mind, I propose that the mechanism of the trust fund be established so that we will not face that situation.

Thank you, Mr. Chairman.

[The prepared statement of Senator Randolph follows:]

STATEMENT OF SENATOR JENNINGS RANDOLPH

Mr. Chairman and members of this Subcommittee, it is a privilege to present testimony in support of S. 1538, the Black Lung Benefits Reform Act of 1977, as reported from the Committee on Human Resources.

I commend you, Mr. Chairman, and also the Chairman and ranking minority member of the full Committee, for your cooperation in assuring the prompt consideration of this important legislation.

As you know, the Committee on Finance held hearings on, and favorably reported, a similar measure last September. Because it came so close to the adjournment of the 94th Congress, the bill, H.R. 10760, was not acted on by the Senate.

Utilizing the knowledge and experience associated with this legislation last year, and particularly the recommendations of this Committee, the Committee on Human Resources reported a measure with financing and trust fund provisions which are adaptations of those supported by the Committee on Finance in 1976. We have retained the excise tax concept and have adopted verbatim most of the trust fund language that was provided by this Committee for H.R. 10760.

The tax we propose in S. 1538 is three-tiered. Based on the British thermal unit value of coal, a tax per ton is imposed as follows: 80 cents per ton on coal with a per pound Btu rating of more than 11,000; 15 cents per ton on coal with 8,000 to 11,000 Btu per pound; and 7.5 cents per ton on coal whose Btu value is 8,000 or less. These categories correspond roughly to the coal classifications of anthracite and bituminous; sub-bituminous; and lignite, respectively. This

approach is also appropriate because there is a definite correlation between the Btu value of coal and its classification on the one hand, and the market price of coal on the other.

The following table demonstrates this correlation:

Coal classification	Btu value per pound	Average current price per ton fob mine	1976 production (million tons) [1]	1981 projection (million tons) [1]
Lignite	7,000- 7,500	$3.00	20.0	55
Subbituminous	9,500-11,000	6.50	48.0	120
Bituminous	11,000-15,000	[2] 13.00-20.00	580.0	650
		[3] 35.00		
Anthracite	12,500-13,000	45.00	6.2	6
Total production			665.0	830-840

[1] Tonnage reckoned at mine, after preparation if any.
[2] Steam.
[3] Methane.

Source: Bureau of Mines, Department of the Interior.

The levels of the taxes proposed are adequate to support the anticipated expenditures of the trust fund, both with respect to liability under existing law, and under the substantive amendments provided in the bill.

Further, it is the expectation of the Committee on Human Resources and of the Congressional Budget Office, that the tax rates can be cut substantially after the third year. This is so for the reason that there will be a ballooning of obligations in the first two years due to the need to pay benefits retroactively to January 1, 1974 in some cases. Section 10 of the bill provides that individuals whose claims have been denied, either under part B or part C of the Black Lung Benefits Act, may refile their claims which, if approved pursuant to the amendments made by this bill, will be awarded benefits as of January 1, 1974 in the case of refiled part B claims and as of the date the claim was originally filed in the case of refiled part C claims.

The Congressional Budget Office has calculated the obligations of the trust fund and anticipated tax revenues to the fund to be as follows in the first three years:

(In millions of dollars)

	Fiscal year		
	1978	1979	1980
Obligations	$83.2	$384.4	$171.4
Revenues	202.0	213.0	225.0
Balance	118.8	(52.6)	53.6

The shortfall of $52.6 million in fiscal year 1979 would be covered by a repayable appropriation of that amount. The trust fund would be able to repay the advance in the following year, fiscal 1980.

In the following two years—fiscal 1981 and 1982—the obligations of the trust fund can be met fully with a reduction in the tax rates to 25 cents per ton in the highest Btu category, twelve (12) cents in the 8,000 to 11,000 Btu range, and 2 cents per ton for coal with 8,000 Btu or less.

In terms of cost impact on the coal companies involved, the proposed taxes will have no effect, since they are excise taxes which are passed to the consumer rather than being absorbed. The impact on the Federal government will be negative, because there will be a reduction in the need for general revenues to pay for black lung claims. The inflationary impact of the proposed taxes will be slight: for low Btu coal (lignite) it will increase coal costs by about 2.5 percent; for sub-bituminous coal, the cost increase will be about 2.3 percent; and for high Btu value coal (bituminous and anthracite), assuming an average price of $25 per ton, the cost increase will approximate 1.2 percent. When the tax rates are reduced after the third year, the impact will be even less.

Mr. Chairman, this cost is a small price to pay to provide very modest recompense to miners who gave their health and lives in the production of this Nation's most important energy resource, and to their widows and children.

The "attrition rate" for this program is high. The old miners receiving benefits are dying with great frequency. The Congressional Budget Office assumes a mortality rate for disabled miners of 7.6 percent in Fiscal 1978, with an increase in that rate of .8 percent per year thereafter. For survivors of miners, the rate is projected at 4.4 percent in 1978, with an annual increase of .2 percent after the first year. Thus, as time goes by, the price tag on this program will constantly diminish. Hopefully, young miners will not be burdened by this terrible and debilitating set of conditions we classify as "black lung," for many mines are being cleaned up, thanks to the rigid requirements of the 1969 Coal Mine Health and Safety Act, and as technological capacity grows, dust in the mines can and must be reduced even further.

I concur, as do others, with the assessment of President Carter that this Nation will in future years rely more heavily on coal for the production of our energy needs. Although current projections support a yield of about 840 million tons by 1981, the Administration anticipates that coal production can be accelerated to a billion tons in five years.

Increased production of coal, and possible increased prices due to inflation, combined with a diminishing number of black lung benefits recipients, will result in a further reduction of revenue needs for this program.

Last year this Committee proposed a tax of 15 cents per ton on anthracite and 10 cents per ton on all other coal. Mr. Chairman, the Committee on Human Resources believes that the time is long overdue for the coal industry to accept a share of the responsibility for the cost of paying benefits to those who have given their working lives to the production of coal. Currently, coal producers are paying fewer than 200 black lung claims. They are controverting 97 percent of the claims for which they have been found responsible. It is my understanding that the coal industry has substantial profits. Companies need profits to grow and prosper, but they also have an obligation to aid their employees.

The Federal government has paid approx. $5 billion in black lung claims since the beginning of the program in 1970. It will continue to pay benefits at a gradually diminishing level for years to come. It is now time for the coal industry to bear its share of the cost burden. The tax level proposed by this Committee last year would, if adopted, expand the obligation of the general treasury; S. 1538 would reduce that obligation. So, Mr. Chairman, I urge the Committee on Finance to accept the tax rates we have recommended.

The trust fund provisions of S. 1538 are essentially the same as those of H.R. 10760 as reported by this Committee last fall. It is a Federal government trust fund, the trustees of which are the Secretaries of Labor, Treasury, and Health, Education, and Welfare. The Secretary of the Treasury is the managing trustee. Testimony before the Subcommittee on Labor by the Internal Revenue Service supports the approach taken in S. 1538. With your permission, Mr. Chairman, I submit for the hearing record and this Committee's review, a copy of a supplementary statement from the Acting General Counsel of the Treasury Department relative to trust fund and tax concepts which might be addressed in legislation. S. 1538 had not been introduced at the time this letter was written. References to H.R. 4544 are to the measure reported by the House Education and Labor Committee. The House of Representatives has not yet considered its counterpart amendments to the Black Lung Benefits Act.

Mr. Chairman, S. 1538 is, I believe, a good bill with a sound and solid foundation. Although the interested parties have expressed reservations or concerns about one or another of the bill's provisions, in my view it is a measure that can be supported by the union and its members, by the industry, and by the Administration. It does not hold the promise of resolving every black lung claimant's problem, but it does provide for the resolution of many of the inequities which now exist in the law or in its interpretation. Finally, it imposes the burden of responsibility for the payment of claims on the coal industry.

I urge you to ratify the action of the Committee on Human Resources by supporting S. 1538 as reported. My staff and I are available to answer questions and supply assistance to the Committee in its consideration of this legislation.

Thank you very much.

MAY 2, 1977.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Labor, Committee on Human Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In his testimony on April 6, 1977, on pending revisions to the Federal Coal Mine Health and Safety Act of 1969, as amended, (Act), Acting Assistant Commissioner Owens noted that the Treasury Department had some additional comments on the administration of the liability and compensation fund that would be established by the proposed legislation. This report is a supplementary statement with our views on the administrative and management aspects of the fund.

We believe that it is important to clarify that while the coal industry is to bear the cost of the liability and compensation program, the Black Lung Disability Fund is to be administered on behalf of the coal industry by the United States Government. Within this framework the fund should be structured as a wholly-Federal entity, administered solely by Government officials and not industry representatives.

As the Acting Assistant Commissioner said in his testimony, if the Treasury is to receive the collection and enforcement responsibilities with respect to the fund, the amounts collected from the coal operators should be structured as an excise tax. Thus, we would favor a provision such as that in section 6A(a) of H.R. 10760 (Senate Finance Committee print, Report No. 94-1303, 94th Congress, September 24, 1976), which would amend chapter 32 of the Internal Revenue Code of 1954 (relating to manufacturers excise taxes) to add a new section 4121 to title 26, imposing a tax on the sale of coal by producers. New section 424 (b)(1) of the Act, which would be created by section 6(a) of that print provides for an appropriation to the Black Lung Disability Fund equal to the amount collected under proposed section 4121 of title 26.

We would recommend that any bill given favorable consideration by your Committee impose the excise tax on "constructive sale," as well as actual sale of coal, and make such tax explicitly subject to the hundred percent penalty for nonpayment provided in 26 U.S.C. 6672. The latter provision would help to reinforce the industry responsibility concept underlying these proposed revisions. Further, any bill that provides for adjustment of the rate of tax should make such adjustment effective on the first day of a calendar quarter in order to facilitate the convenience of the taxpayer and to minimize administrative problems for the Internal Revenue Service.

This Department would also favor new section 424(a)(2) of the Act, created by section 6(a) of the Committee print, which would treat the fund as a wholly-Federal entity with the Secretaries of the Departments of Treasury, Labor and Health, Education and Welfare as trustees. We do note, however, that while new section 424(c)(2) of the Act, created by 6(a) of the Committee print, would correctly give investment authority to the Secretary of the Treasury, this authority is not otherwise current and should be amended to reflect the present investment practices of the Treasury Department.

The Department is strongly opposed to provisions in H.R. 4544, which would establish an industry-managed trust fund. New section 423(b)(1)(C) of the Act created by that bill, would permit any of the seven trustees of the fund to be "a full-time employee of an operator." New section 423(c)(5)(A) of the Act would give the seven trustees authority to hold, sell, buy, exchange, invest and reinvest the corpus and income of the fund." Such investment is directed to be made in accordance with the provisions of section 404(a)(1)(C) of the Employment Retirement and Income Security Act of 1974.

This is inconsistent with our policy on the management of accounts on the books of the Treasury. Only the Secretary or his delegate has the requisite expertise to set the terms and conditions on investments so as to guarantee an adequate return while at the same time maintaining the integrity of overall Federal debt management policy. Further, whether the decision is made to structure payments of coal operators as an excise tax or as earmarked receipts to a separate fund, the fund must have Federal officials as trustees. As well as being philosophically inappropriate, it is also technically incorrect to have the coal operators administer the fund. As non-Federal officials, they cannot make certification for payment against Treasury accounts.

We would like to emphasize that the black lung benefits program should be administered by the Federal Government, on behalf of the coal industry, and therefore the Government should not be made to bear the operating costs of this program. For this reason, we favor new section 424(d)(4), of the Act, in section 6(a) of the Committee print, which provides specifically that all administrative expenses of the program shall be paid from the fund. However, we recommend that the language read "title" rather than "part," and that the administrative expenses be subject to amounts specified in annual appropriation acts. If the fund were made to bear all costs of the program, the authorizations for appropriations in new section 424(b)(3) in the print and in section 420 of the existing Act would be unnecessary.

The intent of new section 423(c)(6)(A) of the Act, that would be created by H.R. 4544, would appear to be the same. However, we believe that for the sake of clarity and completeness, such language should cover administrative expenses broadly and not include just expenses of running the office of the fund, as provided by H.R. 4544.

We also favor new section 424(b)(2) of the Act, in section 6(a) of the Committee print, which provides that advances of general fund monies to the fund be repayable, with interest. However, we would recommend deletion of the date "April 1, 1978," so that advances could be made to finance any deficit resulting from payments from the fund in excess of excise tax revenues. We believe that these advances should be repayable, with interest, in order that the debt for the excess payments remain on the books of the fund to be repaid when the fund has greater resources.

We have limited our remarks to the fiscal and management aspects of the fund because we believe that the responsibility for claim adjudication and for authorizing disbursement of funds is within the purview of the Department of Labor. Likewise, the language in new section 424(e), in section 6(a) of the Committee print, should be clarified to read "Secretary of Labor" since the requirement for civil litigation in that subsection is inconsistent with existing procedures for collection of excise taxes. In addition, the administration of this section is related to the functions of the Secretary of Labor in determining beneficiary eligibility and operator liability.

In conclusion, we urge that in any black lung benefits reform bill given favorable consideration by your Committee, the fund be structured as a self-supporting, wholly-Federal entity, with investment authority lodged in the Secretary of the Treasury.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

HENRY C. STOCKELL, Jr.,
Acting General Counsel.

Senator BYRD. The point that you raised, Senator Hansen, is an important one, and I am glad that you raised it at this point.

The next witness is Hon. Donald C. Lubick, Deputy Assistant Secretary of Treasury for Tax Policy.

Before beginning that testimony, let me state in regard to the possibility of insurance not always being available, the point Senator Hansen raised, 25 years ago it was possible for apple growers to get health insurance, at a pretty high rate, but it was possible to get it. Today, it is virtually prohibitive. Either companies will not write it, or the premium is so high that it is totally unrealistic.

We will limit your presentation to 10 minutes. We had a lengthy discussion with the Senator from West Virginia. It will be necessary to limit the time. You may proceed.

STATEMENT OF DONALD C. LUBICK, DEPUTY ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY

Mr. LUBICK. Mr. Chairman and Senator Hansen, the Treasury Department endorses the objectives of the tax and trust fund provisions

of S. 1538. Since the Congress has decided that there should be a Federal program to insure benefits to victims of black lung diseases and their survivors, it is quite appropriate that the costs not met by other insurance programs should be assessed against the coal mining industry in general. My comments about the bill therefore will be directed to the details of the tax and trust fund provisions.

In the 94th Congress, the Committee on Finance adopted amendments to the trust fund and financing provisions of H.R. 10760, a predecessor of S. 1538, but H.R. 10760 was never enacted. The trust fund and financing provisions of S. 1538 reflect in a general way the changes made in H.R. 10760 by the Senate Finance Committee.

Last year, as you remember, the Finance Committee recommended that the revenue for the trust fund be raised by a tax of 10 cents a ton on coal sold by the producers, except that the tax would be 15 cents a ton on anthracite produced by underground mining. The tax was to be added to the system of manufacturers excise taxes now in the Internal Revenue Code, with the same rules as the other manufacturers excises, subject to a few modifications to reflect the "user charge" concept involved in the tax.

This year's version of the tax as reported out by the Human Resources Committee also is to be included in the manufacturers excise tax part of the Internal Revenue Code. However, the tax is to be a three-tiered one based on the average rated Btu value of the coal. The Btu value is to be that "assigned by the U.S. Bureau of Mines to the coal field or coal seam from which the coal is extracted."

The three rates—7.5 cents, 15 cents and 30 cents per ton—graduated upward according to the Btu content of the coal, are intended to reflect the fact that, in general, the price of coal reflects the Btu content and, according to the Human Resources Committee, "because the mining of higher Btu level coal produces a higher incidence of black lung as a general proposition."

As a result of discussions with representatives of the Bureau of Mines, we doubt whether that organization currently has available the information necessary to effect the decisions as to taxability required by the bill. A definite statement as to the situation should be obtained from the Bureau.

If, after due evaluation, it is decided to continue with the Btu approach, we wish to stress that full responsibility for determination of the Btu content of coal and for supporting such determination should rest with the Bureau of Mines.

The Treasury Department, more specifically, the Internal Revenue Service, does not have the expertise for making or defending such determinations.

If your committee agrees with our view that use of the Btu content as a tax determinant is likely to be difficult to put into practice, we suggest consideration of alternative methods of determining the tax on coal. The Bureau of Mines could suggest technical language to describe the three tax categories and provide expert information for purposes of selecting the three tax rates.

We defer to the Department of Interior as to the practicality of determining the tax category for all domestic coal output.

There are two minor technical changes that we suggest in the tax provisions. We see no need to define a "sale" or to amend the definition

of "lease" as is done on page 17 of the bill. Present law definitions of these terms are adequate for purposes of the new tax.

I now move on to comment on the trust fund provision. We feel that it would be desirable to simplify or "streamline" some of the details.

One, the bill provides for three Secretaries, Labor, HEW and Treasury, to act as trustees of the fund with the Secretary of Treasury acting as managing trustee. We see no need for the Secretary of the Treasury to be included as a policy determination official of the fund.

By the terms of the bill, the basic function of the Treasury Department, aside from the role of the Internal Revenue Service in collecting the tax, is to act as manager of the tax receipts and pay benefits as determined by the Department of Labor.

We, therefore, recommend that the Secretary of the Treasury merely be denoted "manager" of the fund, and the Secretary of Labor be made the trustee.

Two, in a new section 424(b)(2), after the words "repayable advances" the words "out of any money in the Treasury not otherwise appropriated" should be added to clarify that the general fund would be charged for the repayable advances.

Three, section 424(c)(2) should be revised: (1) by striking all after the first sentence and inserting in lieu thereof the following:

Such investments shall be made only in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates. The interest on such investment shall be credited to and form a part of the fund; and (2) by deleting paragraphs (3) and (4).

These amendments would give the Secretary of the Treasury the flexibility to tailor the investment program for the optimum return to the fund.

Four, proposed section 424(e)(4)(A) should be revised by deleting "the Secretary of the Treasury" and inserting either "the Attorney General" or "the Secretary of Labor."

Under the proposed section 424(e), a mine operator may be held liable to the United States for repayment of benefits already disbursed from the fund but attributable to the operator under sections 422 and 423 of the act. If the repayment is not made, an operator's liability lien is created which is fashioned after the Federal tax lien.

Any unpaid liability would, under the terms of the bill, be collected through a civil suit brought by the Secretary of the Treasury.

The Labor Department would make the determination of operator liability. Similarly, administrative appeals would be with the Secretary of Labor. As presently written, it is not clear whether Labor or Treasury would be responsible for filing the operator's liability lien.

The assignment of jurisdiction to the Secretary of Treasury would be responsible for filing the operator's liability lien.

The assignment of jurisdiction to the Secretary of Treasury to bring a civil suit to enforce the operator liability lien does not correspond to the method for enforcing a tax lien.

Treasury refers tax lien suits for the Department of Justice for litigation as provided in code section 7401.

The Treasury Department is strongly opposed to this assignment of responsibility for bringing civil suit to the Secretary of the Treas-

ury, since it would require three Departments to administer the law. Assigning the civil suit function to the Attorney General or the Secretary of Labor would be more efficient.

Five, finally, the Treasury opposes proposed section 424(f). Subsection (f) in effect provides that the fund, that is, the trustees may enter into insurance contracts with individual operators so that they may have the insurance coverage required by section 423 of the Federal Coal Mine Health and Safety Act.

The Treasury Department does not believe that it is a proper function of the Federal Government to enter into the insurance business as an underwriter of what is essentially workmen's compensation insurance. Especially the trust fund should not be jeopardized by having it subject to insurance underwriting losses.

This is a rather extensive list of recommended changes, but I do want to emphasize that we in no way consider this as reflecting on the validity of the tax and trust fund approach. As I said, we support the principles involved, and the Treasury staff is available to provide any help you wish in making adjustments that will make the tax and trust fund provisions more efficient and effective.

Senator BYRD. Thank you.

Am I to gather from your overall testimony that you have some question as to whether the bill as it is now written can be handled effectively administratively?

Mr. LUBICK. Yes, Mr. Chairman. I think that the bill provides that the three-tier arrangement with respect to the rate of tax turns upon the Btu value content per ton as assigned by the Bureau of Mines and our inquiry has led us to believe that the Bureau of Mines is not in a position to make that assignment to determine whether a Btu content is 10,500, where the breakpoint is 11,000 Btu's.

You are going to have some very difficult questions. The Internal Revenue Service simply does not have the expertise to make determination of these questions and to engage in litigation over B.t.u. content. The Bureau of Mines has indicated, and I think will indicate to you, that they may not be able to do it with that precision which is necessary.

Senator BYRD. I take it, then, that you would prefer the method that was used in last year's bill?

Mr. LUBICK. It was easier administratively, Senator Byrd. The Bureau of Mines had suggested that another possible approach might be to distinguish between surface-mined coal and underground mined coal with lignite as a separate category. I think that we would have to defer to the Department of the Interior to determine what exactly could be determined with precision so that we can have a standard that the Internal Revenue Service can enforce. We simply do not have that capability.

Senator BYRD. For that reason, you have great doubt about the administrability feasibility of the bill as it is now written.

Mr. LUBICK. I do, Mr. Chairman. If the Bureau of Mines is able to come out and make the assignments—and they said they can do it when the bill becomes effective and they can do it with precision, and we are not involved in the controversy, of course, we will go along with it. We rather doubt if that is the situation.

Senator BYRD. Many coal contracts are purchased by Btu value rather than tonnage. A more direct system of taxation would be to establish a flat tax rate on Btu value rather than the differential rates proposed by the bill.

Mr. LUBICK. I have been informed that a large volume of coal is sold by Btu value and if that is so, if there is practically no one left out, Department of the Interior might be able to give you more accurate information on that. If that is the way the coal is sold almost universally, then that might achieve exactly the same result as the tiered system.

Senator BYRD. What estimate do you have of the revenue which would be generated by this bill?

Mr. LUBICK. Mr. Chairman, we would defer to the Joint Committee on Taxation which made the estimates, the ones that they have presented in the published pamphlets prepared for you, we accept. $160 million for fiscal 1978, $180 million for fiscal 1979, $185 for fiscal 1980, $195 for 1981, $205 for 1982. We accept those estimates.

Senator BYRD. On what assumptions are those estimates based?

Mr. LUBICK. Mr. Chairman, I do not know. The staff of the Joint Committee, I think, would have to indicate that.

Senator BYRD. But you would accept the estimates?

Mr. LUBICK. We do. We have worked with them very closely and their revenue estimators sometimes assist ours and we know that they are very reliable.

Senator BYRD. What other alternative methods of establishing a workable excise tax program do you see as being available?

Mr. LUBICK. Are you talking about the formula of applying the tax? The one which was brought to mind was to distinguish between coal mined through surface techniques, coal mined through underground techniques and a special category for lignite which presumably, being softer, is less likely to be productive of black lung disease and should perhaps not bear as heavy a tax incidence.

Again, I think that you would have to explore that with the Department of the Interior as to the administrative feasibility of making those distinctions.

Senator BYRD. In regard to taxes, are you familiar with any other tax to finance employee benefits based upon value of production rather than on man-hours worked, or payroll?

Mr. LUBICK. I do not have any in mind right now, Senator Byrd.

Senator BYRD. Do you have estimates as to how much it will cost to pay the enlarged benefits proposed by this bill?

Mr LUBICK. No, Senator Byrd, we do not. We do not pay the benefits. The Department of Labor, I believe, may be able to furnish you with that information. We disburse them, but they make the determination.

Senator BYRD. Again in determination of taxes, do you believe that the proposed tax will have an adverse effect on the coal industry?

Mr. LUBICK. No, Senator Byrd, we do not. We believe that its incidence is relatively minor in terms of the total cost of energy.

Senator BYRD. Do you feel that the trustee should be a single trustee, namely, the Secretary of the Treasury?

Mr. LUBICK. No; Senator Byrd. We believe that there should be a single trustee, namely the Secretary of Labor, because the trusteeship functions, the policy making determinations, are not ours. We are simply a fund manager. Our responsibility here is simply to produce and manage the funds and produce a certain yield. The policy determinations are basically Labor's. Our functions are very simple. I think we should not be the trustee.

Senator BYRD. Thank you, sir.

Senator Hansen?

Senator HANSEN. I have no questions, Mr. Chairman.

Senator BYRD. Thank you, Mr. Secretary.

The next witness will be the Honorable Donald E. Elisburg, Assistant Secretary of Labor for Employment Standards.

STATEMENT OF DONALD ELISBURG, ASSISTANT SECRETARY OF LABOR FOR EMPLOYMENT STANDARDS; ACCOMPANIED BY JUNE PATRON, HEAD, DIVISION OF COAL MINE WORKERS' COMPENSATION, AND MARK SOLOMONS, COUNSEL FOR BLACK LUNG PROGRAM, OFFICE OF THE SOLICITOR GENERAL

Mr. ELISBURG. Good morning, Mr. Chairman and Senator Hansen.

I am pleased to have this opportunity to present to you the views of the Department of Labor on S. 1538, the Black Lung Benefits Reform Act of 1977, as reported by the Senate Committee on Human Resources. Accompanying me are June Patron, head of the Division of Coal Mine Workers' Compensation, and Mark Solomons, counsel for the black lung program in the Solicitor's office.

Mr. Chairman, I would like to make it clear at the outset that the Department of Labor shares the congressional concern regarding the welfare of miners who have contracted black lung, and of their families. The crippling and fatal effects of this disease are well known.

In administering our responsibilities under the present law, we exert every effort to assure that miners and their survivors are treated fairly, equitably, and humanely in adjudicating their claims for benefits.

Under the present program, the Federal Government pays benefits to all persons who filed a successful claim prior to July 1, 1973. In the case of those miners or their survivors who filed after that date, the Federal Government pays benefits from July 1, 1973, to January 1, 1974, and after that date only if no responsible coal operator can be found.

A responsible coal operator has been defined in the regulations as the last coal mine operator for whom the miner worked a cumulative period of 1 year. The pre-July 1973 program is administered by HEW and is known as part B; the later program is administered by the Labor Department and is known as part C.

The largest obstacle to claimants receiving benefits under State laws has been proving causality. Thus, the Federal law contains presumptions, both rebuttable and irrebuttable, that make it easier for the claimant to prove causality, and thereby his or her eligibility for benefits.

The claimant has to show total disability due to pneumoconiosis; or the survivor has to show that the miner was totally disabled by pneumoconiosis at the time of the miner's death or that the miner's death was due to pneumoconiosis. Total disability is defined in the regulations promulgated by HEW and differs in meaning for parts B and C.

The bill before you today would make significant changes in the administration, claims adjudication, and financing of the black lung program. While I will be focusing my remarks on the financing of the system, I would like first to describe briefly the other changes.

The bill reported by the Senate Human Resources Committee would change the present program in several ways.

It would make it easier for a survivor to prove his or her claim:

By removing the 3-year statute of limitations on the filing of survivor claims;

By removing the restrictions on the use of the presumption that after 15 years in the mines and a totally disabling respiratory or pulmonary impairment, the total disability is due to pneumoconiosis;

By expanding the acceptance of affidavits as evidence of disability; and

By providing that the survivor of a miner who died before enactment of this act and who had 25 years in the mines prior to June 30, 1971, is entitled to benefits unless the Government could prove that at the time of death the miner was not partially or totally disabled due to pneumoconiosis.

It would make the medical standards more equitable by allowing the Department of Labor to promulgate its own set of standards in consultation with the National Institute of Occupational Safety and Health. It would make the program permanent by eliminating the 1981 termination date for part C and it would make it harder to deny a claimant by prohibiting the rereading of X-rays by the Government if the initial reading was done by a Board-eligible or Board-certified radiologist, unless the X-ray was not of acceptable quality or fraud was suspected.

I would like now to turn to my main area of concern today—the financing of the trust fund. When the black lung bill was before the Finance Committee last year, you altered the financing mechanism from an assessment to an exercise tax. We believe that an excise tax is the proper method, and fully support those actions.

The Human Resources Committee made several minor changes in last year's system. We think these changes will help the black lung program function more efficiently and more equitably. We believe that the present method of financing benefits must be altered if the original concept of the black lung program is to be achieved. That concept was to have the coal industry pay for the benefits.

Currently, the Federal taxpayer assumes a large portion of the financial liability for the black lung program. Under the present part C program, the Government pays all claims for which a responsible operator cannot be found. However, it has proven very difficult to assess liability to individual operators. The average age of the DOL claimant population is between 60 and 65; 57 percent of the miner claimants have been out of the mines for 20 years or more; 80 percent

ceased employment prior to 1969 and almost 90 percent ceased employment before 1978. Many of the employment records are incomplete, and many of the coal companies have gone out of business.

As a result, the Department is spending considerable time, effort and money for evaluation and litigation and is only identifying a responsible operator in 25 to 30 percent of the cases.

In 95 percent of the cases where a responsible operator has been identified, the assignment of claims liability has been contested.

Fewer than 160 of the 4,500 claims approved by DOL are currently being paid by coal operators. Thus, the original intent of Congress to transfer the cost of the part C program to the coal industry has not materialized. We believe that the congressional intent can be carried out by the establishment of a Government administered fund such as is in S. 1538.

Under S. 1538, the Secretaries of Labor, Health, Education, and Welfare, and the Treasury would serve as trustees of the fund. The Secretary of the Treasury would be the managing trustee and would administer the fund. The fund would be financed principally through an excise tax on coal operators on the first sale or constructive sale—use—of coal.

The tax rate would be 7.5 cents, 15 cents, or 30 cents depending on the British thermal unit value of the coal. Any shortfall in fund revenues would be satisfied by repayable advances from Treasury. The operators would have no title or interest in the fund assets and would not be a party in any trust fund liability litigation.

The trust fund would pay:

Benefits where there is no operator, or where a responsible operator does not pay;

Benefits with respect to all claims in which the miner's last coal mine employment was before January 1, 1970;

The cost of those claims already paid by the Government under the part C program;

All expenses of operation and administration under part C, including those of the Departments of Labor, Health, Education, and Welfare, and the Treasury; and

The amount of outstanding repayable advances.

The major change made by the Human Resources Committee in the trust fund of last year's bill is the January 1, 1970, employment cutoff. Under S. 1538, the trust fund would assume liability for all part C claims of miners and their survivors when the miner's last employment occurred prior to January 1, 1970.

This would mean that the Department would no longer have to go through the expensive and time-consuming process of identifying responsible operators with regard to miners who last worked in mines many years ago.

We are in agreement with the provision in S. 1538 that the fund should be financed by a tax set by Congress with separate tax rates for different categories of coal.

We note with favor that, as we recommended, the Department of Labor would be solely responsible for disbursement determinations, while the Treasury Department would be solely responsible for tax liability determinations, collection and enforcement, funds invest-

ment and administration, and the payment of claims in accordance with the disbursement instructions received from the Department of Labor.

With respect to the specifics of the type of tax, the procedures for collection, and other aspects of fund operation contained in the bill, we defer to the views of the Department of the Treasury.

In conclusion, I would emphasize that the Department of Labor is deeply concerned about the black lung program. We are looking very seriously into ways the program can be improved to better serve the claimant.

In that regard, we have a tremendous backlog problem. We have devoted any additional resources we have to ameliorate the pressure on everyone from the fact that many claimants have not had their claims considered.

We are making some progress in that regard, and we feel that this particular trust fund arrangement will help us get out from under the large number of claims that are still in litigation and enable the miners and the survivors who have had their claims determined as being disabled, to get the matter settled once and for all.

Thank you, and we will be happy to answer any questions you have.

Senator BYRD. Thank you, Mr. Secretary.

How strong a correlation is there between black lung disease and Btu content of coal?

Mr. ELISBURG. I would like to ask Mr. Solomons to speak to that. We do believe that the evidence on the higher Btu bituminous and anthracite coal, indicates that is where the heaviest dust concentrations are. We believe that, of course, the pneumoconiosis problems, the black lung problem, come from the dust problems in the mine.

Senator BYRD. Would you identify yourself for the record?

Mr. SOLOMONS. Mr. Chairman, I am Mark Solomons, the counsel for black lung program in the Solicitors' Office in the Labor Department.

It is my understanding that the British thermal unit approach and the specific values contained in S. 1538 reflect the concern that as the British thermal unit value of the coal increase, the likelihood of an individual contracting pneumoconiosis increase as well.

As I understand it, the first segment of the tax, which is the tax based on British thermal unit value of over 11,000 Btu's, is generally reflective of the Btu value of bituminous and anthracite coal. That goes up to over 14,000 Btu.

The second segment is reflective of the Btu values, generally, of subbituminous coal, and the third segment for which there was a 7.5 cent per Btu per ton tax is reflective of the value of lignite.

It is our understanding that this approach generally recognizes, as closely as is possible——

Senator BYRD. Do you have statistical data showing just what effect Btu's do have?

Mr. SOLOMONS. No, Mr. Chairman.

Senator BYRD. No evidence?

Mr. SOLOMONS. No; we do not. I believe the Human Resources Committee did have such evidence, however.

Senator BYRD. The Labor Department has no evidence?

Mr. SOLOMONS. No.

Mr. ELISBURG. Senator, with respect to the whole process of Btu determinations and that kind of analysis, I would have to agree with the Treasury Department, this is where the technical advice of the Bureau of Mines would have to come into play. They are the repository, as it were, of the expertise on Btu's and dust levels and so forth.

Senator BYRD. What I am trying to understand, the Labor Department has no expertise one way or the other on this?

Mr. SOLOMONS. It is our understanding that there is evidence to support this. We do not possess the evidence. I agree, we have to defer to the Bureau of Mines on that question.

Senator BYRD. The cost of the disability programs have proven to be quite difficult to control. For example, it is now estimated that the Social Security disability program beyond the line will cost us twice as much as the social security tax will bring in for that program. I believe the black lung program has had similar experiences with the new coal tax concept where the coal industry will be required to bear the brunt of any runaway costs or cost overruns that may be experienced.

Would it be reasonable to let industry representatives take some sort of adversary role in the claims process to challenge cases where they think unreasonable awards are being made?

Mr. ELISBURG. That is what we are faced with now. A good deal of the litigation is going on with respect to the claims determinations, both with respect to where there is a responsible operator and, once we find that responsible operator, relitigating the claim.

There are ways, through quality control and efficient administration of a Government program as well as the normal oversight of Congress, where the responsibilities of the Secretary of Labor to be properly adjudicating claims can be reviewed.

The process of getting into second and third interest groups with regard to that kind of determination we think would lead to even more endless litigation because you would then have a situation where the operators would be involved, and perhaps, the employees' representatives. We think just the litigation costs alone would be tremendous.

We think, within the constraints of what the Congress has directed the Secretary of Labor to do, our claims determinations are holding up quite well and that not only are we not involved in abusing that process, Senator, but the Department has been subjected to substantial criticism that it has been too tough on claimants.

Senator BYRD. Mr. Elisburg, what is the administration's position on the various benefit liberalization provisions of the bill? Your statement does not seem to say anything about this. What is the administrations's position?

Mr. ELISBURG. When I testified before the Human Resources Committee on the Senate side, we had some views regarding liberalization that we supported.

We supported the elimination of the statute of limitations, the 15-year presumptions. We supported, and really are very much in favor, of the trust fund. We were in favor of the ability of the Secretary to revise the medical standards. We were not in support of the X-ray reading provisions such as were reported from the committee because

it is our basic view that the Government does have the responsibility in carrying out any program to review all medical evidence, as it were, de novo, and we are concerned how you look at quality control as to whether an X-ray was properly taken or properly read.

We oppose the concept of the automatic entitlements and are concerned about the automatic entitlement in the bill that relates to partial disability determination.

Beyond that, I will say that the bill that was reported from the Senate Human Resources Committee does reflect the Administration's views.

Senator BYRD. To get to the cost estimates, the Labor Department's cost estimates are substantially higher than the cost estimates provided by the Congressional Budget Office, which estimates are printed on page 25 of the Human Resources Committee report.

For example, for fiscal 1978, the committee report estimates the total cost to be in round figures $77 million and the Labor Department estimates it to be $210 million. The following year the committee estimated it as $269 and the Labor Department as $288. For the year after that, 1980, the committee estimates $125 million; the Labor Department estimates almost $500 million, $496 million.

If we add those 5 years, 1978 through 1982, we find that the cost estimates by the committee total $743 million, the cost estimates submitted by the Labor Department total $1.388 billion, for a difference of $645 million. That is a tremendous difference.

I would appreciate your comments about these differences in cost estimates.

Mr. ELISBURG. Perhaps I cannot answer as definitely as I wish, but I believe that the estimates that the Department submitted assumed a greater impact of the new medical standards and limitations on X-ray rereadings and of retroactive benefits and average yearly benefits than the Congressional Budget Office.

It may be as we have defined our program in recent months and began to focus more clearly on what these costs might be in light of our very current experience and really thinking through what is going on here, we may be working from a different information base than the CBO.

It is our understanding that the Congressional Budget Office was basing its estimates on some data that the Department had provided them more than a year ago.

Senator BYRD. I rather thought that might be the case. As I take it, yours is the more up-to-date information?

Mr. ELISBURG. That is our belief.

Senator BYRD. Thank you, sir.

The next witness will be Gail Falk, attorney and consultant, the United Mine Workers.

There will be a 1-minute recess.

[A brief recess was taken.]

Senator BYRD. The committee will come to order.

You may proceed.

STATEMENT OF GAIL FALK, ATTORNEY AND CONSULTANT, UNITED MINE WORKERS

Ms. FALK. My name is Gail Falk. I am a West Virginia attorney. I have been in practice there for approximately 6 years representing disabled coal miners on black lung claims.

I am pleased to transmit to the subcommittee this morning the position of the United Mine Workers of America with respect to the tax and trust fund aspects of S. 1538, the black lung benefits bill.

This bill and the problems it addresses are not new to this committee. Last September, the Committee on Finance considered and reported with amendments a bill substantially similar to the bill before you today. The 1976 bill was on the floor but was not finally acted upon in the scramble of the final hours of the 94th Congress.

This spring, the Committee on Human Resources promptly took up where it had left off. It held new hearings to get an updated picture of the needs and operation of the Federal black lung benefits program and concluded there was a continuing need for legislation to correct a variety of inequities, ambiguities and structural flaws in the black lung program.

With respect to the trust fund and tax aspects of the bill, the Committee on Human Resources essentially adopted last year's action by the Committee on Finance.

The UMWA appears today in support of the tax and trust fund aspects of S. 1538, which means we are here to endorse the action taken last September by the Committee on Finance.

Senator BYRD. The action taken by the committee last year used a different method of taxation.

Ms. FALK. I will address myself to that change.

Senator BYRD. Thank you.

Ms. FALK. Most of what I referred to as "structural flaws" in the Federal black lung benefits program stem from an understandable, but as it has turned out, mistaken congressional expectation about the course of the program. When Congress enacted the black lung benefits program as title IV of the Federal Coal Mine Health and Safety Act of 1969, pneumoconiosis—popularly referred to as black lung—was just beginning to be accorded general recognition in the American medical community as a widespread, often devastating, job-related breathing disease of coal miners.

Only three States at that time provided workmen's compensation benefits for coal miners disabled or killed by black lung. The drafters of the original black lung legislation envisioned Federal operation of the black lung benefits program as an interim measure until the States provided adequate compensation for coal workers' respiratory disease through their respective compensation systems.

A two-phase program was established. During the initial period (1969–1973) claims were filed with the Social Security Administration; all established claims were paid from the U.S. Treasury and continued to be a Federal responsibility throughout the lifetime of the disabled miner, and even after his death, so long as he has eligible dependents.

The drafters hoped and expected that by the end of 1973 most States would have enacted adequate workmen's compensation legislation to protect miners afflicted with pneumoconiosis. They established standards for evaluating the adequacy of State programs, and provided that all new claims would be filed under the appropriate State workmen's compensation programs.

A system for filing claims with the Department of Labor was established only as a back-up measure, in case and for so long as a State did not bring its compensation law into compliance with the Federal standards.

As it has turned out, no State has brought its compensation program into compliance with the Federal standards, and, as a result, all new claims continue to be filed under title IV of the Federal Coal Mine Health and Safety Act with the Federal Government.

More directly relevant to this committee's consideration, however, is the burden of payment of new claims, rather than the method of administration. The present law provides that, starting January 1, 1974, the operator or operators who are determined to be responsible for development of the miner's disease are liable for payment of benefits. This reflects the congressional opinion that after the initial period, financial responsibility for black lung benefits should shift to the coal industry. However, it has not been the case.

Mr. Elisburg stated that out of the 4,000 claims paid by the Department, only 160 are presently being paid by coal operators and all of the rest are being paid from the U.S. Treasury. As he explained, there are two reasons for this.

First of all, in the case of many miners, particularly the elderly, a responsible operator cannot be located because the company has gone out of business or has disappeared as a corporate entity and; (2) the coal industry has undertaken a massive and protracted campaign of litigating virtually every claim for which a responsible operator has been found liable.

The trust fund concept has evolved from 3 to 4 years of hearings and deliberations as a mechanism for permanently terminating Federal financial responsibility for new black lung claims while at the same time avoiding the insuperable practical and legal impediments to holding companies liable which are no longer in existence.

The fund, which is called the black lung disability insurance fund, would be supported by payments from all coal mine operators.

The UMWA fully endorses this concept of a trust fund as a way to shift financial responsibility from the overextended Federal treasury to the coal industry where we believe the burden belongs, while at the same time maintaining a system of compensation for those elderly miners who may have left the industry years ago but in whom the disease has only recently become manifest, as well as those miners afflicted with black lung who, due to isolation or ignorance, have only recently learned of the availability of compensation for their affliction.

That last comment is by way of explanation of the facts that came as some surprise to me, I must say, that 90 percent of the Department of Labor claims involve miners who have not worked in the industry since 1973. An awful lot of the claims still do involve older miners, which is interesting in a number of respects, but one way in which

it is interesting is that it indicates that the great burden of the liability for this program involves elderly miners who contracted this disease in the past, and tends to support the idea that hopefully the future liability will be limited and will decrease.

Mr. Elisburg and the other witnesses described that the trust fund established by S. 1538 would make payments in the following situations: (1) where the Department of Labor finds the claimant eligible for benefits and the responsible operator or his insurance carrier fails to start paying benefits within 30 days of the eligibility determination. The operator's failure to pay may occur because of neglect, ignorance, the filing of an appeal or even obstructionism, but regardless of the reason the miner is not penalized.

He is assured of receiving benefits regardless of the conduct of his employer. The Secretary of Labor is authorized to recoup the payments on behalf of the fund through civil action, if necessary.

Two, when there is no responsible operator. The "responsible operator" under current regulations is the last locatable coal operator for whom the miner worked for a period of at least one year. The Secretary of Labor has failed to locate a responsible operator in 2 out of every 3 cases initially approved for payment. At present, the Federal Government pays the bill for these claims.

Three, when the miner's last day of coal mine employment was before January 1, 1970. The trust fund did not cover this category of beneficiaries in last year's bill, and we think it is a wise and practical addition. What this change means is that no coal company will be individually liable for the claim of any miner who left the mines before passage of the 1969 Federal Coal Mine Health and Safety Act.

Such a provision is not constitutionally required. The Supreme Court held last year in *Usery et al. v. Turner Elkhorn Mining Co., et al.*, that Congress has the power to impose liability for disease caused by exposure prior to the date of enactment of compensation legislation. The law's present imposition of retrospective liability, while constitutional, has generated a great deal of resentment toward the black lung program on the part of the coal industry.

We feel spreading these older claims throughout the industry will first, greatly relieve the administrative burdens on the Department of Labor and speed up the claims; will take this body of claims out of the adversary claims process, a result we heartily endorse; and finally, be seen by the industry as fair to them.

Thank you very much.

Senator Byrd. In regard to the tax, do you feel that it should be on the type of coal, such as last year's proposal, or do you think it should be on Btu's?

Ms. Falk. Well, we support either formula. The Btu's generally track the type of coal. In other words, lignite coal, which generally causes less black lung, has lower Btu's; sublignite has higher Btu's, slightly more causation; and bituminous and anthracite cause the greatest extent of pneumoconiosis and have the highest amounts of Btu's. We support the Btu basis. We think that it reflects the general relationship to causation of pneumoconiosis, as did relating the tax to a word description.

Senator Byrd. I am not clear as to why the Committee on Resources changed the method, but I gather from your comments that either

would suit you. You favor the tax; either one of those methods would be satisfactory from your point of view?

Ms. FALK. That is correct, as long as sufficient revenues are provided. What you point out about coal contracts, Mr. Senator, is absolutely correct. I presently have in front of me last week's issue of "Coal Week." The list of coal prices are all based, mine by mine, in terms of average Btu by ton. These are figures that currently exist and are currently being collected in everyday business operations.

The three-tiered category in the bill from the Committee on Human Resources reflects a ratio that is appropriate.

Senator BYRD. The bill requires the Labor Department to accept the opinions of the claimants doctor concerning the interpretation of an X-ray. Do you really believe that the administering agency should be barred from challenging the evidence on its merits?

Ms. FALK. That is not exactly a correct statement of the bill. It is not a requirement that he accept the opinion of the claimant's position. It is a requirement that, where a Board-certified radiologist who, in most cases, would be somebody who would probably not be the claimant's personal physician, has taken an X-ray and when there is no reason to suspect fraud and no reason to think that the X-ray is not taken of adequate quality that that X-ray should be accepted.

We strongly advocated that position for a number of reasons. First of all, the delays caused by sending these X-rays all over the country, confusion, they get lost. It has greatly contributed to the administrative nightmare that this program has become. Furthermore, there are a series of biases built into the present rereading system that would take a whole other hearing, probably, to properly express what we have expressed in previous hearings. The selection of the rereaders, the manner of qualification, and so on have, as I say, built a number of biases into that system.

While we do not advocate just any X-ray being acceptable, when you have a high-quality radiologist taking an X-ray and interpreting it for this type of program, it is the usual practice to accept the specialist's interpretation. It is, in fact, a very great deviation in the norm of operation of these benefit programs to say we are not going to accept that doctor's opinion. He lives in Charles Town, W. Va., and we do not think he is any good. We are going to send it to somebody in Pittsburgh or Cleveland.

In fact, a lot of the opposition to this rereading system has been based on the fact that most of the rereaders are located in places like California and most of the original readers, who we feel are qualified radiologists in the coal fields, are not having their interpretations accepted, even though they are the ones who treat coal miners every day.

Senator BYRD. Do you feel that the Labor Department should not have the right to challenge?

Ms. FALK. They have got the right to review X-rays to determine whether or not they are of adequate quality. I think there would be some questions about interpretation.

I think, as that provision is written, there is nothing magic about only using one X-ray. To some extent, that provision has been blown out of proportion.

We are moving in the black lung program to a devaluing of the X-ray. All of the expert witnesses by now acknowledge that the X-rays are only one of many tools. It is, in fact, the other tests of pulmonary functions that are the most important and effective tools in determining whether a miner has a disabling case of pneumoconiosis. X-rays are only important in borderline cases where the miner has not worked long years in a mine or in cases based upon complicated pneumoconiosis.

Senator BYRD. Let me ask you one final question.

As the coal industry will be called upon to finance the payment of benefits from the new trust fund, do you think that it is appropriate that they should have a voice in determining whether the benefits are payable?

Ms. FALK. I understand the import of your question to be that they should be able to litigate in an adversary relationship individual claims paid from the trust fund?

Senator BYRD. Should they have an opportunity to present their views and contest what they believe to be unreasonable?

Ms. FALK. The coal industry is not shy and has no trouble expressing their views and the Department of Labor is pervaded with signs of the influence of the coal industry's voicing its views, and I am sure that they will continue to be heard.

If you are talking about their involvement in litigating individual claims, I might have naively said yes to that question a few years ago. The experience we have had is that operators litigate far too many cases, often just to disrupt the smooth operation of the program.

They are just making life miserable and impossible for the elderly miners caught in the middle and it has persuaded me that we must keep the operators out of the adversary proceedings. It is just not a viable way to handle these cases.

Senator BYRD. Thank you very much.

[The prepared statement, a statement of Arnold Miller, president, UMW, and a subsequent letter of Ms. Falk follow:]

STATEMENT OF GAIL FALK, COUNSEL ON BLACK LUNG, UNITED MINE WORKERS OF AMERICA

Gentlemen, I am pleased to transmit to you this morning the position of the United Mine Workers of America with respect to the tax and trust fund aspects of S. 1538, the black lung benefits bill.

This bill and the problems it addresses are not new to this Committee. Last September the Committee on Finance considered and reported with amendments a bill substantially similar to the bill before you today. The 1976 bill was on the floor but was not finally acted upon in the scramble of the final hours of the 94th Congress.

This spring the Committee on Human Resources promptly took up where it had left off. It held new hearings to get an updated picture of the needs and operation of the federal black lung benefits program and concluded there was a continuing need for legislation to correct a variety of inequities, ambiguities and structural flaws in the black lung program.[1] With respect to the trust fund and tax aspects of the bill, the Committee on Human Resources essentially adopted last year's action by the Committee on Finance.

[1] Many of these issues were addressed in the UMWA's testimony before the Committee on Human Resources. Rather than repeating this testimony here, we have appended a copy to the statement submitted to you today. In addition [illegible] by the Committee on Human Resources which accompanied S. 1538, articulately describes the purposes and rationale for S. 1538.

The UMWA appears today in support of the tax and trust fund aspects of S. 1538, which means we are here to endorse the action taken last September by the Committee on Finance.

Most of what I referred to as "structural flaws" in the federal black lung benefits program stem from an understandable, but as it has turned out, mistaken Congressional expectation about the course of the program. When Congress enacted the black lung benefits program as Title IV of the Federal Coal Mine Health and Safety Act of 1969, pneumoconosis—popularly referred to as black lung—was just beginning to be accorded general recognition in the American medical community as a widespread, often devastating, job-related breathing disease of coal miners. Only three states at that time provided workmen's compensation benefits for coal miners disabled or killed by black lung. The drafters of the original black lung legislation envisioned federal operation of the black lung benefits program as an interim measure until the states provided adequate compensation for coal worker's respiratory disease through their respective compensation systems. A two-phase program was established. During the initial period (1969–1973) claims were filed with the Social Security Administration; all established claims were and are paid from the U.S. Treasury and continue to be a federal responsibility throughout the lifetime of the disabled miner, and even after his death, so long as he has eligible dependents.

The drafters hoped and expected that by the end of 1978 most states would have enacted adequate workmen's compensation legislation to protect miners afflicted with pneumoconiosis. They established standards for evaluating the adequacy of state programs, and provided that all new claims would be filed under the appropriate State workmen's compensation program.

A system for filing claims with the Department of Labor was established only as a back-up measure, in case and for so long as a state did not bring its compensation law into compliance with the federal standards.

As it has turned out, no state has brought its compensation program into compliance with the federal standards, and, as a result, all new claims continue to be filed under Title IV of the Federal Coal Mine Health and Safety Act with the federal government.

More directly relevant to this committee's consideration, however, is the burden of payment of new claims, rather than the method of administration. The present law provides that, starting January 1, 1974, the operator or operators who are determined to be responsible for development of the miner's disease are liable for payment of benefits. This reflects the congressional opinion that after the initial period financial responsibility for black lung benefits should shift to the coal industry. However, it has not turned out that way.

The Committee on Human Resources found that out of 2200 claims being paid under the Department of Labor black lung program, only 200 were being paid by the coal operators. The rest were being paid from the U.S. Treasury. There are two reasons for this: (1) in the case of many miners, particularly the elderly, a responsible operator cannot be located because the company has gone out of business or has disappeared as a corporate entity and; (2) the coal industry has undertaken a massive and protracted campaign of litigating virtually every claim for which a responsible operator has been found liable.

The trust fund concept has evolved from 3–4 years of hearings and deliberations as a mechanism for permanently terminating federal financial responsibility for new black lung claims while at the same time avoiding the insuperable practical and legal impediments to holding companies liable which are no longer in existence. The fund, which is called the Black Lung Disability Insurance Fund, would be supported by payments from all coal mine operators. The UMWA fully endorses this concept of a trust fund as a way to shift financial responsibility from the overextended federal treasury to the coal industry where we believe the burden belongs, while at the same time maintaining a system of compensation for those elderly miners who may have left the industry years ago but in whom the disease has only recently become manifest, as well as those miners afflicted with black lung who, due to isolation or ignorance, have only recently learned of the availability of compensation for their affliction.

The trust fund established by S. 1538 would make payments in the following situations: (1) where the Department of Labor finds the claimant eligible for benefits and the responsible operator or his insurance carrier fails to start paying benefits within 30 days of the eligibility determination. The operator's failure to pay may occur because of neglect, ignorance, the filing of an appeal or even

obstructionism, but regardless of the reason the miner is not penalized. He is assured of receiving benefits regardless of the conduct of his employer. The Secretary of Labor is authorized to recoup the payments on behalf of the fund through civil action, if necessary. (2) When there is no responsible operator. The "responsible operator" under current regulations is the last locatable coal operator for whom the miner worked for a period of at least one year. The Secretary of Labor has been unable to locate a responsible operator in two out of every three cases initially approved for payment.[1]

At present the federal government pays the bill for these claims. (3) When the miner's last day of coal mine employment was before January 1, 1970. The trust fund did not cover this category of beneficiaries in last year's bill, and we think it is a wise and practical addition. What this change means is that no coal company will be individually liable for the claim of any miner who left the mines before passage of the 1969 Federal Coal Mine Health and Safety Act. Such a provision is not constitutionally required. The U.S. Supreme Court held last year in *Usery et al. v. Turner Elkhorn Mining Co. et al.*, ——— U.S. ——— (July 1, 1976) that Congress has the power to impose liability for disease caused by exposure prior to the date of enactment of compensation legislation. The law's present imposition of retrospective liability, while constitutional has generated a great deal of resentment toward the black lung program on the part of the coal industry. Paying these claims from the trust fund will appropriately spread the burden of those old claims over the industry as a whole. Furthermore, by virtue of being paid from the trust fund these claims will not be subject to protest by individual coal operators and thus will not be subject to the extensive litigation which marks claims involving responsible operators. This is an important and humane by-product of paying these claims through the fund since most of the miners and survivors in this category are aged and generally unable to understand or cope with the level of litigation these claims involve. (4) For all expenses of operation and administration of the program, including those of the Department of Labor. This provision obviously takes an additional financial burden off the federal government. At present the Department of Labor is a quagmire of delay, and totally inaccessible to its intended beneficiaries. A recent in-house Task Force report recently found it took an average of nearly two years to make an initial decision on a claim and that as a matter of policy routine correspondence was not answered. Department officials say budgetary constraints are the source of the problem. If so, and they are certainly part of the problem, the trust fund method of payment may be a way to get the bureaucratic wheels turning.

The fund would be supported primarily by a tax on every ton of coal. The tax would be levied upon the first sale or constructive sale (use) of the coal. S. 1538 differs somewhat in the method of assessment from H.R. 10760 as reported from the Committee on Finance. Instead of basing the assessment upon mining techniques or coal rank, the bill before you establishes a three-tier tax based upon British thermal unit (Btu) value. The Bureau of Mines maintains figures on coal Btu value. The rates established in S. 538 means that bituminous and anthracite coal will be taxed at the rate of 30¢ per ton, sub-bituminous will be taxed at 15¢ per ton, and lignite will be taxed at 7.5 cents per ton. This 1:2:4 ratio seems fair to us when the price of thevarious grades of coal is considered along with the propensity of the coal to cause pneumoconiosis. Btu basis is an objective basis for a tax which is rationally related to the purposes of the legislation.

We prefer a Btu basis to a tax based upon mining method. In the first place the Btu basis will cause less disruption to the structure of the coal industry because the proposed rates roughly reflect the present price ratio of the various types of coal. A tax based upon mining method would give yet another competitive disadvantage to underground mining, which in turn, we fear, can lead to cutting corners on underground coal mine safety. That obviously would be an unfortunate and ironic result of a program designed to promote coal mine health. More important, we are not persuaded that there is a strong relationship between mining method and causation of pneumoconiosis. Both underground and surface mines have some workers employed at the point of coal production exposed to a great deal of dust and some workers employed at a

[1] Second Annual Report of the Secretary of Labor on Administration of the Black Lung Benefits Act of 1972 (July 1976).

distance from the point of production exposed to far less coal dust. In our experience it is the length of the worker's exposure, the worker's role in production, the composition of the coal, the prevention techniques of the particular coal company, and the individual's susceptibility to pulmonary disease which determines the extent to which he will contract pneumoconiosis—and not the bare fact of whether the mine is an underground mine or a surface mine.

We have reviewed the cost estimates and production figures relied upon by the Committee on Human Resources in establishing the tax rates. We believe the rates are reasonable and will provide adequate funding for a well-administered program without overcharging or overburdening the coal industry. The demand for coal is firm and will become stronger. The proposed tax is slightly more than 1 per cent of the present mean price of coal. This is a burden the industry and our energy-hungry nation can well bear to secure compensation for those workers and families who sacrifice their well being to produce the coal which has fueled our country's economic development in this century.

TESTIMONY OF ARNOLD MILLER, PRESIDENT, UNITED MINE WORKERS OF AMERICA, ON BLACK LUNG LEGISLATION

My name is Arnold Miller, President of the United Mine Workers of America. It is a privilege to appear before you today to testify on the Black Lung Reform Act of 1977. It is appropriate that this subcommittee which played such a masterful role under the leadership of its chairman, Senator Harrison A. Williams, Jr., in achieving the passage of P.L. 91-173 as amended should now focus its attention once more on title IV. It is even more appropriate that Senator Jennings Randolph, the ranking majority member of the full committee and the subcommittee, should chair these hearings. He was the sponsor of the initial coal mine health and safety bills and was joined by Senator Robert C. Byrd in sponsoring the original bill providing black lung benefits. Mr. Chairman, you and other members of the subcommittee, including Senators Jacob K. Javits and Richard S. Schweiker, played a major role in assuring the provisions of benefits for black lung victims as well as the ultimate passage of P.L. 91-173 and P.L. 92-303. We are appreciative of the continuing surveillance of the administration of this legislation which this subcommittee has provided for the last seven years. Mr. Chairman, I am sure you share our desire to complete this year those legislative measures necessary to assure all black lung victims that they will now receive the benefits mandated by Congress. As you know I speak to you about this subject with the deep concern and knowledge of my own disability due to black lung. Moreover, there are those tens of thousands of members and former members who suffer from this devastating disease.

My testimony will not contain startling new information. The problems I will be discussing with you today are not new; although some of them have intensified under the program of the Department of Labor and virtually all of them have been discussed with this committee in the past. They will not be solved through congressional inaction. And until they are solved we will find ourselves in the position of returning to relate the continuing inequities of the federal program and the suffering of the victims of black lung.

The UMA has worked for a two-pronged approach to black lung: (1) financial relief for all past and present victims of pneumoconiosis, and (2) prevention of the disease in the present and future. In response to the committee's invitation, my testimony today will focus upon the needs of those who are already victims of the disease. Their needs and demands are pressing and just and deserve your continuing concern. I want to make clear, however, my own conviction and the position of the United Mine Workers of America that in the future pneumoconiosis can and must be eliminated by vigilant control of dust levels in the mines, combined with the chest X-rays of the working miners. No amount of money can ever adequately compensate a human being for the loss of his or her health, and certainly not the amounts paid in the federal black lung program.[1] Just as we now ask with every mine accident fatality "How could this accident have been prevented?", we must also ask with every new case of pneumoconiosis "How could this disease have been prevented?"

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[1] For a miner or widow living alone the present monthly benefit is $205.40. For a miner or widow with one dependent the monthly benefit is $308.10. The maximum monthly payment, for a miner or widow with three or more dependents is $410.80.

In the past, entitlement based on length of service has been the main focus of UMWA testimony before this Subcommittee. Rather than taking up your time by repeating those remarks, I refer you to our previous testimony for our arguments as to why this approach is justified and will result in the prompt, predictable, equitable payment of claims.

Since our previous testimony the underlying circumstances which led us to advocate this approach have actually worsened with the shift of the program to the Department of Labor.

The federal black lung program is administered from a central office here in Washington. Decisions are made by people who have no day-to-day contact with coal miners, who never meet and rarely ever speak with the people whose claims they are deciding, who are inaccessible by phone and letter, and who have become hopelessly tied up in red tape. It is acknowledged that entitlement based on years of service may produce some arbitrary results, but they are no more arbitrary than the results coming out of the present set-up.

The recent office of Workmen's Compensation Task Force Report on the Black Lung Benefits Program (December 1976) contained some grim facts about the present program. The report said the average processing time for a black lung claim is 630 days. This means of course, that for every claimant who is lucky enough to have his or her claim processed in one year, there is someone else who will be waiting three years—just for an initial decision! This 630 day figure does not include the additional years which may be involved if any party appeals. Claimants for black lung benefits are by definition old, sick, and of limited means. For those who die while their claims are pending, and even for those who survive it is literally true that "Justice delayed is justice denied."

In nearly four years DOL has received more than 106,700 black lung claims of which about 53,500 have been disallowed and 40,200 are pending. About 4,000 claims have been approved. Of these approximately 60 percent (2,400) are receiving federal black lung benefits because DOL has been unable to locate the last employer. The last employer has been located for the remaining 40 percent (1,600) and DOL has authorized federal payment of benefits for all of them except the 138 who are being paid by the employer. For various reasons the responsible operators are contesting their payment of the other 1,462 claims.

Officials of the Department of Labor acknowledge that it is their policy not to give out their telephone numbers in the coal fields and not to respond to mail from miners, widows and their representatives because they can't handle the work they have. Clearly this is a system that is not functioning, that needs major overhaul and major policy changes. Entitlement based upon years of service is our method of simplifying the claims adjudication process. I will address other methods later in my testimony.

We realize that our proposal for eligibility based solely upon years of service has been controversial. Alternative methods have been proposed, such as eligibility based upon years of service for miners who have medical evidence of lung disease. I want to make it clear to this committee that I am not opposed to considering any alternative which will lead to the ultimate goal which we insist upon; prompt, predictable and fair processing of claims.

There are two separate issues involving the practice of offsetting black lung payments against benefits received from other sources.

1. SUBTRACTING ALL STATE WORKERS' COMPENSATION BENEFITS FROM FEDERAL BLACK LUNG BENEFITS

A disabled miner who receives black lung benefits under the Part B program (the program administered by Social Security) is subject to having any workers' compensation payments he gets subtracted from his federal black lung check. It is extremely difficult for our members to understand why payments they receive in compensation for their lung disease should be reduced because of compensation they may receive for a leg or back injury, or for loss of hearing. This is particularly so because black lung benefits are not intended in and of themselves to provide an adequate monthly retirement benefit. By statute black lung benefits are set at one-half the minimum monthly payment to a totally disabled federal employee in grade GS-2.[1]

Furthermore, this provision results in what we call the "double offset". If a miner receives Social Security disability benefits, his workers' compensation

[1] Section 412 of the Federal Coal Mine Health and Safety Act, as amended, 30 U.S.C. sec. 922(a)(1).

benefits are substracted both from his Social Security check and from his black lung check. This leads to the extremely unfair result that a person may be worse off financially by receiving workers' compensation payments than if he had received none at all. As you can imagine, the coal industry is fond of this provision because it keeps miners from filing or appealing legitimate workers' compensation claims. Incidentally, the federal district court in Birmingham, Alabama recently held the "double offset" unlawful on the grounds that it penalized a recipient of federal benefits because of his receipt of workers' compensation benefits. The case is now on appeal.[8]

2. SUBTRACTING PART C BLACK LUNG BENEFITS FROM SOCIAL SECURITY DISABILITY BENEFITS

The black lung benefits of miners who applied after June 30, 1973 (Part C benefits) are substracted in the same way as state compensation payments from Social Security disability benefits. The Black Lung Benefits Act of 1972 ended the offset of Part B black lung benefits from Social Security benefits. What was right then is right now. A disabled miner should not receive less money merely because he signed up on July 1 rather than June 30, 1973.

We therefore urge you to amend the law to provide that workers' compensation benefits shall not be subtracted from federal black lung benefits and that Part C benefits like Part B benefits shall be excluded from the offset provisions of the Social Security Act.

Both Social Security and the Department of Labor have taken the position that, except in very rare instances, a person who is employed as a coal miner cannot be disabled by black lung.

It may be abstractly logical, but it does not make real-world sense to conclude that, because a man is still working as a miner, he is necessarily less disabled than a man who has stopped working in the mines. Many factors, such as financial burdens, lack of job alternatives, degree of commitment to the work ethic, physical demands of the miner's particular job, and psychological tolerance for misery influence a miner's decision to continue working. It is a fact of life in the coalfields that thousands of men have literally worked themselves to death because they could not afford to retire. If these men had lived a few more months, or a few more years to retirement age, they or their widows could have long since qualified for benefits.

This rule, together with the delays in processing and the agencies' unwillingness to inform a miner who is still working whether he would be eligible if he stopped working have defeated the whole purpose of the black lung program in thousands of cases where economic duress forces a miner to continue working despite evidence of serious lung disease. Knowing that it takes 18 to 24 months, and often more, just to get an initial decision on a claim, a miner with family responsibilities will force himself to continue working despite medical advice because he cannot afford a year or more without income and the chance that at the end of that time he still may not qualify for benefits.

If such a miner dies while still employed, his widow will probably be unable to qualify for benefits. Penalized by the family stress created when a man who knows he is sick drags himself to work, penalized again by the miner's untimely death, the mine accident widow is penalized again by the denial of her black lung claim due to the fact that the miner did not live long enough to retire.

To remedy these very serious problems, we urge you to amend the law to permit a miner who is still working to be notified whether or not he will be eligible if he stops working, and to provide that the fact that a miner was working at the time of his death shall not be considered proof that he was not disabled by pneumoconiosis.

I believe this refers to the Appeals Council's practice of reviewing some favorable hearing decisions by administrative law judges. Although not a great number of claims are affected by the practice of appealing claims favorable to the claimant, this procedure has been unfair to those who are involved. It has destroyed the supposed non-adversary role of Social Security's Bureau of Hearings and Appeals in claims adjudication. We support a ban against Appeals Council review of favorable hearing decisions.

Far more numerous are the problems and delays which plague the Part C appeals system. What you do in this area will depend upon the kind of trust fund you establish, but in any case we urge reform of the Part C appeals process.

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[8] *Freeman* v. *Mathews*, No. 74-A-573-S (N.D. Ala. 6/29/76); Apppeal pending in Fifth Circuit.

We do not support the reprocessing of claims in the absence of substantial changes in eligibility criteria. Reopening the claims without a change in the standards would simply raise hopes only to destroy them again.

However, if the entitlement rules are reformed, we firmly advocate the review of all Part B claims in light of the new standards. Requiring the filing of a new claim to get the benefit of the new standards would lead to totally unnecessary expense, confusion, and duplication. For consistency, we would advocate that this review be done by the Department of Labor, and not until its current management problems are corrected and not until it establishes black lung field offices.

Under current regulations there are two sets of eligibility criteria: (1) The "interim standards" promulgated following passage of the 1972 amendments and applicable to claims filed before July 1, 1973; and (2) the "permanent standards" applicable to claims filed after July 1, 1973. Social Security has an intricate justification for the double standard,[4] but its impact is very simple: In order to qualify for federal black lung benefits miners who applied on or after June 30, 1978 must be far sicker than miners who applied before that date.

H.R. 4544 the black lung bill recently reported from the House Education and Labor Committee, provided that the standards for judging claims of miners who filed after June 30, 1973 should be no more restrictive than the standards used to evaluate the claim of a miner who applied on June 30, 1973. The interim standards were by no means ideal. Nearly four of every ten miners' claims were denied under these standards. We have criticized their failure to include new blood gas standards and their overreliance on a single breathing test score.

However, these standards can provide a base point, and we urge enactment of a guarantee that any new standards will be no more restrictive than the interim standards. In developing new regulations we urge that the Department of Labor utilize the lung formation standards established by the I.L.O.

Present law provides that lay evidence must be considered in evaluating a claim. However, we continue to see decisions drawing a negative inference from a lack of medical evidence. In the past miners did not seek medical attention for breathing problems and doctors did not diagnose pneumoconiosis as a distinct disease; "miner's asthma" was considered "normal" in a coal miner and not clinically significant. Even today when pneumoconiosis is more widely recognized many miners do not seek medical attention for the disease because they dread the diagnosis and know there is no cure.

Most often a miner's co-workers, his neighbors and his family are in the best position to know how his breathing problems affect his ability to function. We believe the law should be clarified to provide that lay testimony should be given equal weight with medical tests. In the absence of medical evidence lay affidavits should be accepted as proof of disability in survivors claims.

We wholeheartedly endorse the concept of a national industry-supported black lung insurance trust fund. We believe that the damage done by coal dust to miners' lungs is a cost of producing coal, and that black lung benefits should be paid by the coal industry. We think a national fund will prevent at least some of the delay, confusion, and litigation which have resulted from the present Part C system, in which the coal operators are individually responsible for payment of claims of their former employees. And we think it is past time to get the federal government out of the business of paying for new claims. At a hearing last fall before the Senate Finance Committee, Department of Labor officials said that only 101 Part C claims were being paid by coal operators. In contrast the federal government was paying for about 8500 claims. Clearly the present law is not effectively shifting the costs of the Part C program to the coal industry.

H.R. 4544 contains a mixed formula for payments into the fund: coal operators would have been billed annually for their share of the costs of the fund, and a uniform tax on every ton of coal mined would have provided the financing for residual claims—those claims for which no responsible operator can be located.

We prefer a fund for paying all new claims by a tonnage tax, though not necessarily a uniform tax. We believe this approach more fully carries out the purposes of the fund. The fund concept is a response to the difficulty of accurately apportioning liability in the case of any individual worker who has been employed in more than one mine, and to the very great likelihood of discrimination in hiring older miners so long as operators are individually liable for workers they

[4] See September 14, 1974 letter from William J. Kilberg, Solicitor of Labor, to John Rhinelander, HEW General Counsel, stating Kilberg's position that the interim standards should apply to claims filed after July 1, 1973. Report 94-770 to accompany H.R. 10760, at 14.

have employed. By paying benefits with the revenues from an industry-wide tax, a black lung insurance fund would diminish the probability of discrimination against experienced workers and would remove the direct adversary relationship between worker and employer.

Such a fund makes it possible to remove the coal operators from the claims adjudication process. Under the present Part C program, which gives coal operators the right to protest claims, operators have protested 97 percent of awards for which they are liable, causing protracted delays, hearings, the need for miners to hire attorneys, and uncertainty throughout the system. Based on our experiences with the Department of Labor program, we consider it essential that, whatever form of fund you finally decide upon, individual coal operators be entirely removed from the claims adjudication process.

We appreciate the argument that a uniform tonnage tax might unfairly disfavor lower-priced low-ranked coal. We would support the approach advocated last year by the Senate Finance Committee establishing separate rates for anthracite, bituminous, and lignite coal in recognition of statistics that show that higher-priced, higher-rank anthracite coal is more likely than bituminous coal to cause pneumoconiosis and low-rank, low-price lignite is less likely to cause pneumoconiosis.

The basic pressure for black lung benefits reform comes from the tens of thousands of miners and widows around the country who feel their claims have been unfairly denied, and from their relatives, friends, and former co-workers who agree. It comes also from the miners still working who are starting to realize that they will be unable to draw black lung benefits unless some changes are made. I am certain that nearly every one of you has heard descriptions of the sick men whose benefits have been denied. Miners with severe breathing problems and 20, 30, even 40 or more years in the mines are still being denied benefits. This is because of several factors, which I will review briefly.

1. There is no single generally accepted objective test for the existence of pneumoconiosis in a living miner, or for functional disability due to lung disease. Thus diagnosis is highly subjective. In an effort to introduce an aura of objectivity into the claims adjudication process, Social Security has issued regulations which require overreliance on pulmonary function test scores which are, at best, only a part of the picture of whether or not a man is able to work. Claim adjudication has become a mechanical numbers game, and the losers are miners like some of those here today, who have worked away their breath and health in the mines but cannot qualify for benefits.

2. Doctors disagree widely on the diagnosis of pneumoconiosis as well as evaluations of impairment. This is particularly true in the interpretation of chest x-rays. While the Act now says that no claim can be decided solely on the basis of a negative chest x-ray, the x-ray is still an extremely important piece of evidence in a claim. As a method of controlling the number of favorable awards, Social Security and the Department of Labor have adopted a system of re-reading x-rays interpreted by coalfield physicians, even where the coalfield doctor may be a well-trained radiologist with long years of experience in treating coal miners. The result of this system has been to deny thousands of claims which would otherwise have been approved. Coal miners become understandably and justly outraged when the opinion of their own physician, who has known and treated them for years, is ignored in favor of an opinion of a medical consultant who has never seen or examined them, and, more likely than not, does not even live in the coalfields.

It is of interest to note that the recent Task Force Report cited the x-ray reading program as one of the major causes in the delay of claim processing.

3. Medical witnesses in past years before the Labor Standards Subcommittee in the House and this Subcommittee have explained the significance of the exercise blood gas test, the only test which can actually measure the capacity of a miner to transfer oxygen from his lungs into the blood for use by the body. Yet the procedures and regulations of the administering agencies have, in most cases, prevented any use from being made of blood gas test results. In the first place, applicants are not ordinarily offered the opportunity for exercise blood gas testing, and they may obtain these tests only if they know enough to request them, and even then they will seldom be paid for by the agency. Second, the criteria for evaluating blood gas test scores are unduly strict. The criteria are equivalent to the criteria used for evaluating Social Security disability claims, and have never been adjusted to reflect the liberalized definition of disability contained in

the 1972 amendments.[3] Third, in the case of high altitude miners, where the results are within the listed criteria, blood gas tests are often ignored.[4]

In response to these problems we propose the following amendments in addition to those I have already discussed:

1. The routine re-reading of x-rays should be barred. Re-reading of x-ray reports should be permitted only where the administering agency has reason to believe the film is not of sufficient quality to demonstrate the presence or absence of pneumoconiosis, or whre there is a suspicion of misrepresentation.

2. No claim should be denied unless the miner has been given a full pulmonary evaluation, including the opportunity (but not the requirement) of undergoing exercise blood gas testing, and a physical examination by a doctor of the miner's choice. This would also imply giving the results of these examinations full evidentiary weight.

3. The blood gas criteria should be adjusted to bring them in line with the revised definition of disability added to the Act by the 1972 amendments.[5]

The mines are still dusty, and progression of the disease is still taking place. We are not proud of this. But for the present it is a grim fact working miners must live with.

As part of the Federal Coal Mine Health and Safety Act of 1969 Congress mandated that respirable dust levels in the mines be reduced to the level of 2 milligrams per cubic meter of air. You hoped that, at this level, new cases of pneumoconiosis would not develop. We still have no way of knowing whether or not the 2 milligram level can prevent the development of pneumoconiosis, because this level has not been achieved. At the request of the Congress, the GAO conducted a thorough investigation of the dust monitoring program which was intended to police and to evaluate the federally-mandated dust standards. The GAO study confirmed what we had been hearing repeatedly from our miners: the dust control program should be made more effective. GAO concluded that the dust sampling program contains so many weaknesses that it is "virtually impossible to determine how many mine sections are in compliance with statutorily established dust standards. The GAO study confirmed an earlier report by W. G. Courtney, Research Supervisor of the Bureau of Mines Dust Control and Life Support Group. In a memo dated November 29, 1974 Courtney warned the director of the Bureau of Mines that "our coal mine personnel are being subjected to flagrantly hazardous environments, despite public reports to the contrary."

We see the human costs of this neglect. When the Social Security Administration ceased operation of the black lung benefits program on July 1, 1973 nearly 600,000 applications had been filed. Of this number about 225,000 totally disabled miners and 140,000 widows were approved for federal black lung benefits. Since the inception of the SSA program seven years ago on December 30, 1969 nearly 60,000 of these disabled miners have died. It is likely that half of these deaths

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[3] This aspect of the problem is more fully explained in the 1975 testimony of D. L. Rasmussen, M.D., before the Labor Standards Subcommittee of the House Committee on Education and Labor.

[4] The details of this aspect of the problem are explained in the 1974 testimony of Harvey Phelps, M.D., before the General Subcommittee on Labor of the House Committee on Education and Labor and in a prepared statement submitted to the Senate Subcommittee on Labor dated April 2, 1976.

[5] Dr. D. L. Rasmussen, who has probably administered exercise blood gas tests to more coal miners than any other physician in the country, suggests these values as more appropriate to the statutory definition of disability than the present standards:

p. CO_2 (mm Hg):	p. O_2 (mm Hg)
30	75
31	74
32	73
33	72
34	71
35	70
36	69
37	68
38	67
39	66
40	65

can be directly attributed to the chronic pulmonary diseases occurring among coal miners. *This means more than eleven men every day wheeze away their lives as the penalty for mining coal to earn a living.* (Emphasis supplied.) Were the 77 deaths a week to occur all on the same day in the same place—remember the Farmington disaster and its 78 victims—the nation would undoubtedly demand immediate and universal compliance with mandated standards.

Your hopes that pneumoconiosis would be eradicated promptly once the industry was fully aware of the dangers of coal dust have not been fulfilled. Coal workers pneumoconiosis is a disease of our present as well as our past. We are confident that black lung will one day become a disease of history. But that day has not yet come nor is it in sight.

At the same time, not a single state has brought its workers' compensation program into compliance with federal standards. Thus the original Congressional hope that the black lung program would be phased out by being incorporated into state programs has not come to pass. 1981—the present termination date for the black lung program—is fast approaching. Whatever other action you may take this year, we urge you to remove this Sword of Damocles from the black lung program and its present Part C beneficiaries.

The primary objection to black lung reform legislation by the administration and by the industry has been its costs, and in closing I want to address myself to the question of costs.

In the first place, let's talk about what the costs really are. During last year's debates great fears were spread about the costs of the bill even though our estimates showed a net federal savings as a result of the bill by 1979 and Congressional Budget Office figures showed a net federal savings by 1982. The amendments we support would increase the costs, but not to an unthinkable level. If all the amendments proposed by our testimony were adopted, the total cost per ton to the industry would be about 25 cents a ton in 1977. Steam coal (coal sold to utilities) presently sells for $18–$19 a ton and metallurgical coal sells for about $45 a ton. At these prices, 25 cents a ton is hardly going to unbalance the coal industry.

Furthermore, the widespread and once-accurate picture of the coal industry as a marignal enterprise simply does not apply today.

Last spring the Council on Wage and Price Stability reported the "tripling in coal prices in recent years." Coal industry profits were reported at an average return on investment of 25.2 percent in 1974, and, the Council said, it is probable that company profits rose even higher in 1975. The rise in coal prices is not attributable to rising costs of production but rather to market conditions caused by the rise in oil prices. We have trouble swallowing the argument that the black lung benefits reforms proposed here will have any serious impact on coal industry profits or on consumer utility bills.

We appreciate the fact that this is a cost-conscious congress. But at the same time was ask you to remember that we are the ones who will bear the costs unless reform legislation is passed. By doing nothing, or by not doing enough to solve the real problems of the black lung program you will not actually be cutting costs. You will simply be assuring that black lung victims and their families rather than the coal industry for whom they labored, will bear the costs.

UNITED MINE WORKERS OF AMERICA,
Washington, D.C., June 20, 1977.

Hon. HARRY BYRD,
Chairman, Taxation and Debt Management,
417 RSOB,
Washington, D.C.

DEAR SENATOR BYRD: At your Subcommittee's hearing on S. 1538 last Friday, June 17, 1977, some confusion was generated by new cost figures submitted to you by the Department of Labor. These figures appeared to conflict with figures included in Congressional Budget Office cost estimates relied upon by the Committee on Human Resources.

I have reviewed the new Department of Labor figures, and I believe they are not so inconsistent as they first appeared.

The new figures show greatly increased cost estimates in two categories: (1) new medical standards; (2) X-ray rereading. S. 1538 gives full discretion to the Secretary of Labor to promulgate new medical standards in consultation with

NIOSH. These medical standards will determine how much weight will be given to X-rays as an eligibility criterion. If the Secretary is now quadrupling the cost estimates for the medical criteria he will promulgate, that is alright with us. However, the fact that he is now saying he will promulgate more liberal medical standards then he previously stated, should not be used to cast out the case for accuracy of the C.B.O. figures relied upon by the Committee on Human Resources.

In any event, the X-ray rereading cost estimate is vastly inflated. The X-ray rereading provision of the bill can only increase costs when it is relied upon for an eligibility determination. Medical opinion is moving away from reliance upon X-rays as a base for eligibility. S. 1538 takes two or three more steps away from reliance upon the X-ray by extending use of the section 411 (c) (4) presumption, by requiring a full pulmonary exam, (requiring new medical standards). It is highly unlikely that any new standards promulgated by the Secretary of Labor and NIOSH would rely upon the X-ray in most cases.

In addition, the Department of Labor figure include the costs of black lung clinics in the costs of the trust fund. This is probably a good idea from a policy standpoint, but I do not believe S. 1538 presently provides for this.

Thank you for the opportunity of addressing your Subcommittee.

Very truly yours,

GAIL FALK,
Counsel on Black Lung.

Senator BYRD. The next witness will be Mr. Larry B. Correll, Director of Insurance and Employee Relations, Westmoreland Coal Co., speaking on behalf of the National Coal Association.

There will be a very brief recess.

[A brief recess was taken.]

Senator BYRD. Welcome gentlemen. You may proceed as you wish.

STATEMENT OF LARRY B. CORRELL, DIRECTOR OF INSURANCE AND EMPLOYEE RELATIONS FOR WESTMORELAND COAL CO.; ACCOMPANIED BY ROBERT BEIN, VICE PRESIDENT OF JOHNSON & HIGGINS, NEW YORK, N.Y., AND JOHN A. C. GIBSON, LEGISLATIVE REPRESENTATIVE, NATIONAL COAL ASSOCIATION

Mr. CORRELL. I am Larry B. Correll, director of insurance and employee relations for Westmoreland Coal Co. I appear here today on behalf of the National Coal Association, a trade association representing most of the Nation's major coal producing companies as well as many other companies associated in various ways with the coal industry.

Appearing with me are Robert Bein, vice president of Johnson & Higgins, a New York based actuarial firm, and John A. C. Gibson, a legislative representative for the National Coal Association. This testimony reflects the collective viewpoint of the industry with respect to S. 1538, the Black Lung Benefits Reform Act of 1977.

The Federal black lung program has been in effect since the beginning of this decade. It is presently compensating over half a million victims of this disease or their survivors at a cost of around $1 billion annually. Approximately 60 percent of all applicants for benefits have qualified and are receiving those benefits today, over half a million people.

Forty-nine States compensate black lung victims through their workers compensation systems.

The coal industry is spending millions of dollars for procedures designed to reduce coal dust levels in the mines to the 2 milligrams now

required by law. This concentration of dust is considerably below that at which black lung disease can be contracted.

The industry also faces a potential $1 billion liability over the next 15 years for compensation of black lung victims by individual coal companies.

The response to black lung disease on the part of the States, the Federal Government, and the coal industry is truly massive and comprehensive. The just demands of black lung victims for compensation and the concern for preventing the disease in the future are being met now.

For the reasons, Mr. Chairman, the industry believes that only one additional amendment to existing law is necessary, in the area of tax treatment of black lung trust funds.

We are aware, however, that there is some support in Congress for making additional changes in this law. As we have testified before other committees, the industry's primary concern is that we not be required to subsidize a second coal miners' pension program in the guise of an occupational disease compensation program.

If it is the judgment of Congress that there should be modification of the financing of the black lung program, we believe that the program should compensate only the victims of the disease and their eligible survivors.

I would be pleased to submit a copy of our statement to the Senate Labor Subcommittee in this regard for your record.

[The following was subsequently supplied for the record:]

STATEMENT BY CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION

Mr Chairman, Members of the Committee, my name is Carl E. Bagge. I am President of the National Coal Association. With me this morning is Robert Bein, Vice President of Johnson and Higgins, an independent actuarial consulting firm based in New York City, and John Gibson, a legislative representative on my staff at National Coal Association.

NCA POSITION

Two years ago, I appeared before the House Labor Standards Subcommittee to give the coal industry's views on the black lung program and proposals to amend it. At that time, on behalf of the coal industry and in response to the Subcommittee's request for suggested amendments, I presented an affirmative proposal to create an industry-financed, industry-managed black lung trust fund which would assume prospective liability under Part C of the existing program.

Let me briefly review that proposal. We appeared with what we believed was a positive program, one not easily arrived at, representing substantial concessions by members of the National Coal Association. Its specific features were predicated upon four overriding principles which we continue to believe are essential if the federal coal workers' pneumoconiosis program is to be workable for the long term. These principles are:

First, any black lung program should be a workers' compensation program and not a miners' pension system.

Second, the industry must know for whom they are responsible and be as free as possible from retroactivity.

Third, the program should be based upon an industry-financed and industry-administered system.

Fourth, the compensation program should contribute to the major and overriding concern of industry in the area of coal workers' pneumoconiosis, the elimination of the disease.

Based upon these principles, we evolved a specific set of recommendations for your consideration, which we believed would have established a program on coal

workers' pneumoconiosis which would have been workable over the long term and which at the same time provided justice to the true victims of disease and equity to the industry. The elements of this proposal were:

1. An industry-financed, industry-administered trust fund to pay for claims arising under Part C, Title IV of the Coal Mine Health and Safety Act of 1969;

2. Extension of Part B of Title IV for a period of time to bring under the federal program all possible claimants with retroactive liability and further that after this period, a statutory limitation be imposed on all claimants not employed in the industry as of December 31, 1971;

3. Diagnosis of disease be based upon the preponderance of medical evidence and that for Part C claimants and applicability of presumptions be tied to causality with proven disability;

4. A statutory limitation on the applicability of medical benefits for Part B beneficiaries under Part C of the Act;

5. Continued research to help refine diagnostic techniques relating to coal workers' pneumoconiosis, as well as to assist all persons concerned with reducing the incidence of disease;

6. A careful study of federal/state relationship in this area and that any final program be so structured that it can be rolled into any study of a national workers' compensation program which may evolve from the Congress; and,

7. Any revisions made by this Committee be so structured that the program will be turned from that of a miner's pension toward a true workers' compensation program.

These specific recommendations formed the basis of the National Coal Association's position developed in response to the House Subcommittee's request, which was reaffirmed as recently as last month by our Board of Directors. Taken together, we believe that they formed the basis of a long term solution to the current dilemma in black lung, providing justice for the victim of disease and at the same time equity for the industry. When the House Subcommittee rejected these suggestions, we felt we had no choice but to oppose the amendments which were reported as embodied in H.R. 10760.

Due to some confusion which subsequently arose with respect to our industry's position on the bill, I believe it is necessary for me to state that we oppose any attempts to extend black lung benefits to miners or survivors based: (1) solely on any number of years of exposure, (2) on claims approval procedures which restrict the employment of objective medical evidence, or (3) on procedures which restrict the ability of the industry to rebut claims by introducing objective evidence of its own. That is precisely what last year's bill, H.R. 10760, did and that is why the coal industry opposed it.

Mr. Chairman, last year when we appeared before you, we presented a cost study of the House bill prepared by Johnson and Higgins, a nationally respected actuarial consulting firm. As you will recall, results of this study showed the following:

1. The 30-year entitlement would have cost at least 1.5 billion dollars.

2. The interim medical standards would have cost at least 1.2 billion dollars.

3. The industry's assumption of the claims now paid by the Department of Labor would have cost at least half a billion dollars.

4. Prohibiting re-reading X-rays would have cost at least 2.4 billion dollars.

5. The total cost of only these elements of the bill to the coal industry would have been 5.6 billion dollars. That was a minimum figure due to the fact that many potential cost items in H.R. 10760 could not even be estimated. Those elements of cost which do not lend themselves to actuarial analysis are:

1. Notification of potential claimants by HEW of benefit availability.

2. Acceptance of affidavits as evidence in survivor claims.

3. Expansion of eligibility to survivors of certain miners killed in mine accidents.

4. Limitation on right to appeal.

Some versions of the bill considered in the Senate last year were even costlier. The price tag of one bill, S. 3183 was estimated to be at least 9.7 billion dollars. A Senate Committee Print of H.R. 10760 released in June, 1976 by this Subcommittee containing prospective and retrospective entitlements would have cost at least 30 billion dollars.

The coal industry, therefore, was faced with legislation which would have cost from 6.6 billion dollars to many times that amount. Considering that the coal industry's entire capitalized value is only five billion dollars, our concern about these proposals is understandable. We believe this issue must be viewed in

this perspective. Mr. Chairman, I have copies of Johnson and Higgins' study and would be pleased to submit them once again for your record, if you so desire. The House Education and Labor Committee has reported a bill, H.R. 4544, which is identical to last year's bill in every respect except re-reading of X-rays. The coal industry urges that any legislative developments this year in the Senate be in the opposite direction—toward development of a workable, fair and rational program to compensate victims of totally disabled coal worker's pneumoconiosis.

Given that kind of program, the coal industry will work with you and your staff to develop an equitable financing mechanism.

SUBJECT OF THESE HEARINGS

These hearings are billed as oversight hearings on the existing Federal program. While the administration of the black lung benefits program is of concern, it appears that there are several major issues common to the many proposals to amend the present program which should be discussed here today. My testimony, therefore, will address those general issues rather than any specific bills. Before discussing legislative provisions, a threshold question should be addressed by this Committee. Is there a need for any amendments at this time? I would like to begin my discussion with this fundamental issue.

NEED FOR LEGISLATION

The coal industry does not believe that the existing statute needs to be amended. A fact which seems frequently to be ignored in discussions of the black lung benefits program is that it is an ongoing, working program which has already compensated over half a million miners and survivor claimants at a cost to the government and the coal industry of over four billion dollars. This year's budget requests an additional nearly one billion dollars for black lung benefits in fiscal year 1978. Furthermore, our actuaries have estimated that the coal industry collectively faces a potential one billion dollar liability over the next fifteen years under existing law.

It is not only unfair but inaccurate, therefore, to speak of this program in terms of one which fails to compensate black lung victims or their survivors. Quite the opposite, it appears to have succeeded far beyond the projections of its initial sponsors.

One subject of frequent criticism of the program is the so-called low approval rate under Part C which is administered by the Department of Labor. What has happened, we believe and certain of the administrators of the program believe, is that most black lung victims and survivors of black lung victims qualified under part B. Present-day claimants whose claims are being denied do not have totally disabling coal workers' pneumoconiosis.

The critics of the program who want to see it liberalized also ignore the fact that the program continues through 1981. Up to that time, any victim of totally disabling coal workers' pneumoconiosis or an eligible survivor of any such person may apply for benefits and may qualify upon submission of adequate proof of disability. Furthermore, forty-nine States now cover victims of this disease under their workers' compensation laws.

Mr. Chairman, existing law already makes coal operators responsible for claimants for whom they are the last employer. It is true that only 138 such claims are currently being paid by operators and that most operators are controverting claims assigned to them. The law gives us this right as we believe the Constitution requires it must.

As with all statistics, though, that one can be misinterpreted and we believe it often is by supporters of additional amendments to the Black Lung Act. It does not reflect the fact that some operators are putting money into irrevocable trust funds to pay black lung claims, or, that other operators are purchasing black lung liability insurance at over $20 per $100 of payroll. Both such actions are required under existing law. Existing law also requires us to meet the 2 milligram dust standard in our mines and we are willing to do this at a cost of millions of dollars annually.

It is neither accurate nor fair, then to say that the current law lets operators get by with only de minimis liability. We have heavy liability already and, as the Johnson and Higgins report documents, we are looking at a potential liability under existing law amounting to some $1 billion over roughly the next fifteen years.

In summary, we do not believe that an adequate case has been made for any amendment to this law which would even further relax eligibility for benefits.

ENTITLEMENTS

The proposal to entitle claimants to black lung compensation after a specified length of exposure in coal mines was probably the single most objectionable feature of the bills considered in the 94th Congress. It would have had one real effect—it would have completely turned the black lung program from a workers' compensation program into a second, supplemental, Federally-imposed pension program for coal miners.

It is totally without support or basis in medical evidence. An entitlement assumes a 100 percent correlation between years of exposure and incidence of the disease. No one has found that level of correlation to exist after any length of exposure even for simple pneumoconiosis which is not compensable under existing law.

Authorities differ on the incidence of the disease among miners with varying periods of exposure, but upon one point they all agree—it is not 100 percent at any time.

I must also point out, Mr. Chairman, that this correlation includes all levels of pneumoconiosis, both simple and complicated. The law will compensate only for total disability due to pneumoconiosis and that can come only from the most serious form of the disease. No study shows the rate of that form of the disease to be high enough to justify an absolute entitlement to benefits.

INTERIM MEDICAL STANDARDS

The coal industry also objects to adoption of the so-called interim medical standards. The effect of this step would be to give black lung benefits to claimants who do not have totally disabling pneumoconiosis. In the absence of this level of disability we can see no reason for awarding benefits. If the disease becomes progressive that the claimant is subsequently totally disabled, then he can and should be able to qualify for benefits at that time.

This proposal is, in our opinion, merely another attempt to convert the black lung program further into a pension program and we must oppose it as such. If, on the other hand, it appears that the existing medical standards operate to bar claimants who are totally disable by coal workers' pneumoconiosis, then the coal industry would be pleased to work with Congress and the Labor Department to develop new standards which would more adequately achieve the purpose of this program.

X-RAY EVIDENCE

Last year's House bill and some versions of legislation considered by the Senate Committee proposed to ban re-reading of x-rays submitted by family physicians. We would oppose any such amendment to existing law.

The Labor Department has found that over 60 percent of the x-rays submitted as showing evidence of pneumoconiosis do not, in fact, support any such conclusion. Taking and properly analyzing x-rays is an exact science and one which is beyond the capability of general practitioners. Moreover, there is nothing about re-reading to insure that the procedures or equipment used to take the initial x-rays are sufficient.

It appears to us that prohibiting x-ray re-reading amounts to nothing more than preventing the program administrators from obtaining sufficient, objective, medical evidence to determine whether a claimant qualifies for benefits.

Johnson and Higgins' actuaries analyzed the effect of this single element on the claims approval rate of the Labor Department and concluded that this proposal alone would cost 2.4 billion dollars over the lives of the claimants whose claims are likely to be submitted and approved over the next 15 years.

AFFIDAVIT EVIDENCE

Where the survivor of a miner cannot produce medical evidence relating to the miner's health at the time of his death and where none can be found by the administrators of the program, affidavits should be admissible, provided that there are adequate safeguards against and penalties for fraud.

TERMINATION OF THE PROGRAM

Initially, this program was to have ended last year. In 1972, that date was extended to December 30, 1981. We can see no reason to remove or extend that deadline.

First, we believe that the incidence of the disease is demonstrably declining and that dust levels in the base majority of the nation's coal mines are now below the level at which black lung disease can be contracted.

In addition, all coal mining states and all but one of the non-coal producing states now will compensate black lung victims under their workers' compensation law. The program has always been intended, in part, to spur the states to action, to induce them to recognize the problem of black lung disease and to compensate its victims. That goal has been achieved.

We should add, however, that the 1981 cut-off date should terminate only applications for benefits. It should not operate to terminate the benefits of claimants already receiving them or to bar approval of eligible claims filed up to that date.

INDUSTRY TRUST FUND

In amending the law in 1972, Congress accepted a responsibility on the part of the Federal Government for those claims which could not be assigned to the last employer of the claimant. It appears that some people now are advocating the shift of even that liability on to the coal industry. The thrust of our 1975 House testimony was, that if Congress felt it was necessary to amend the law and to create a new financing mechanism for Part C, the industry would cooperate but only if the program were a workers' compensation program rather than a pension program. As I said earlier, that remains our position.

We have two observations to make with respect to a fund, however. First, we believe that the due process clause of the Constitution requires that operators, either individually or through representatives must be given the opportunity to contest claims for which they have individual responsibility. Therefore, if Congress wishes to retain the last responsible operator concept, we believe that responsible operators must have full rights of participation in the claims approval process as well as appeal from decisions of the Secretary. What this feature of the program would do is take operators' property—in the form of benefits payments—without giving the operator an opportunity to be heard. We believe there is an obvious Constitutional bar against any such action.

Second, we believe that the most equitable method to finance such a fund is through an excise or use tax. This vehicle is preferable for two reasons. It enables the cost of the program to be borne directly by the beneficiary of the coal mined. Not every coal operator can pass costs directly on to his customers. That ability varies according to the terms of individual coal sales contracts. In addition, it gives Congress and the Executive Branch a continuing ability to oversee the administration and costs of the program since any increase in tax rates will have to come from Congress.

CONCLUSION

In conclusion, Mr. Chairman, let me repeat a point I made earlier—we will be happy to work with you to improve this program, if improvements are needed and provided it remains a workers' compensation program. We sincerely appreciate having had this opportunity to share our views with you.

Mr. CORRELL. In the event a trust fund concept is enacted, we believe that the fairest, most effective way to finance any such trust fund is by means of an excise tax, such as the one provided for in S. 1538. This system places the cost of compensation on the product itself.

It is the surest way we know of guaranteeing that black lung compensation becomes a social cost of coal use.

As to the question of tax rates, we believe it is extremely difficult to forecast accurately the amount of benefits which would be paid out. Therefore, it is quite difficult to say whether the tax rates provided for

in this bill would be adequate. Let me give you a brief historical footnote in this context.

In 1969, when the act was originally being considered, the high cost of the program was estimated to be $300 million in toto. The program now costs about $1 billion annually. You can see how difficult the cost projection problem really is.

We would make two additional observations. First, the size of the tax necessary to finance the fund's liability is necessarily related to the liberality of the standards for qualifications for black lung benefits.

If the program is further liberalized to compensate other than claimants who are actually disabled by coal workers pneumoconiosis, then the cost of the program and the taxes needed to finance it will increase. If Congress enacts provisions liberalizing disability criteria, prohibiting reexamination of evidence, and simply giving benefits to certain classes of claimants, the costs of the program will increase.

Furthermore, assigning the fund the ill-defined responsibility for administrative costs practically guarantees annual cost increases.

Therefore, we believe it is clearly within the scope of this committee's jurisdiction to review the qualifications standards for this program, both those contained in this bill and those which may later come about by administrative regulations.

The coal industry has retained Johnson & Higgins, a highly respected actuarial consulting firm, to provide a cost estimate for this bill. We have that report and will be pleased to submit it for your record.

Johnson & Higgins have estimated that the costs to the coal industry attributable to S. 1538 will total at least $1.5 billion in addition to the $1 billion liability the industry faces under existing law. This liability will accrue over roughly the next 15 years.

This additional cost figure does not include certain costs which the actuaries could not estimate due to inadequate data or other reasons.

An example of such costs is those attributable to the provision removing the July 1, 1971, cut off date as applied to the section 411(c)(4) presumption under existing law. Another example is administrative costs which, if salaries and other such costs are to be included, could be very high.

Also, Johnson & Higgins assumed that the new medical standards to be adopted by the Labor Department will be somewhat less liberal than the so-called interim medical standards applied under part B.

We note that the Congressional Budget Office does not make this assumption. If the new medical standards were the same as the interim standards, the additional cost attributable to this factor alone would be about $0.6 billion.

The Johnson & Higgins report, which we have submitted for your record, explains these costs and the underlying assumptions to reach them. Briefly, they break down as follows: new medical standards are $0.6 billion; X-ray evidence is $0.4 billion; and industry fund claims are $0.5 billion, for a total of $1.5 billion.

[The following was subsequently supplied for the record:]

REPORT TO NATIONAL COAL ASSOCIATION, BY JOHNSON AND HIGGINS ON COST ANALYSIS OF BLACK LUNG BENEFITS REFORM ACT OF 1977, JUNE 1977

We present in this report our cost analysis of the proposed Black Lung Benefits Reform Act of 1977 (S. 1538). The analysis focuses on the impact this bill may have on the coal industry.

We show below a list of those aspects of S. 1538 which are likely to affect coal industry costs:

(*a*) Establishment of new medical standards for disability.
(*b*) Limited re-reading of X-rays.
(*c*) Industry obligation for miners' claims when no responsible operator can be found.
(*d*) Re-filing under Part C of claims previously denied under Parts B and C.
(*e*) Removal of offsets for certain workmen's compensation awards.
(*f*) Removal of three year limit for claim filing after miner's death.
(*g*) Acceptance of affidavits as evidence in survivor claims.
(*h*) Expansion of definition of miner.
(*i*) extension of 15-year rebuttable presumption to years after June 30, 1971.

Using information you received from the Department of Labor, we developed cost estimates for items A, B, & C (with recognition given to item D). We realize that the remaining items in the above list will result in additional cost to the coal industry, but sufficient data was not available to reasonably estimate the amount of such extra cost.

We consider the various cost estimates submitted with the proposed bill to be insufficient because only costs arising in the initial year and some subsequent years are shown. These estimates do not recognize that an obligation has been incurred for the lifetimes of the miner and his dependents. Thus, a small cost in the first year belies the existence of a large aggregate cost over the lifetimes of the benefit recipients. Our cost estimate does take into account these lifetime payments.

We split our cost figures into two parts. The first is the cost resulting from the expansion of coverage under the Black Lung Law: the anticipated adoption of more liberal medical standards for disability and the limitation on the re-reading of X-rays. The second part is the coal industry's obligation to pay benefits to miners where no responsible operator could be found, an obligation the Department of Labor previously had. (We assumed that those claims with a known responsible operator would either be successfully controverted or benefits paid, so that the proposed law has no effect on these claims.)

The bill provides that the cost for no-last-responsible-operator claims be paid by a government trust fund financed by an excise tax on coal. We did not use the excise tax to determine industry cost in our analysis because of the reason cited above: the excise tax does not consider the lifetime nature of the escalating benefit obligation. Instead, we estimated the aggregate cost over the lifetime of the benefit recipients.

In the following table, we show the aggregate payments, reflecting the above comments, which may result from S. 1538. These payments are in addition to those required by the present law. We assumed that benefits would increase at a rate of 5% per year, reflecting the increase in salary which is likely to be applicable to a government employee in a GS-2 category—the underlying basis for future benefit increases.

Aggregate benefit payments due to S. 1538 in excess of current black lung costs

	Billion
Expansion of Coverage:	
New medical standards	$0.6
Limited rereading of X-rays	.4
Subtotal	1.0
Cost for no-last-responsible-operator claims	.5
Additional cost to coal industry[1]	1.5

[1] Further costs are likely to result from such provisions as removal of 3-year time limit for survivor claims and other items. Also, these figures do not reflect claims filed after 1980.

In determining the above costs we considered the status of four kinds of claims: approved or potentially approved claims, pending claims awaiting further evidence, denied claims and future claims. We used information furnished to us in 1976 (current information was not available). There were 5,200 claims in the first category, 45,000 pending and 30,000 denied claims.

For future claims we only considered those which may be expected to be filed over the next five years because of the difficulty in projecting claims far into the future. The Department of Labor indicated last year that about 12,000 claims were expected for 1976, diminishing to 5,000 per year beginning in 1979. For the five year period, we assumed a total of 38,500 claims would be filed. In this respect our cost estimates may be understated because certain aspects of S. 1538 will affect claims filed beyond the next five years.

Here are some of the important assumptions we used in our estimates:

1. Material furnished to you by the Department of Labor indicated that the 1976 approval rate was about 8 percent; furthermore, the effect of using Part B interim medical standards would raise this approval rate by only an additional 7 percent. Because it seems unlikely that the new medical standards to be promulgated by the Secretary of Labor will be as liberal as the Part B interim medical standards, we assumed the approval rate would increase by only 8½ percent.

2. The Department of Labor has indicated that about half the time claims approved on first reading of an X-ray are denied on a re-reading. A total elimination of the rereading process could therefore result in a doubling of approved claims. If the usual approval rate, adjusted for the use of new medical standards, is about 11½ percent (see above), then the effect of totally elliminating the re-reading of X-rays would add another 11½ percent of otherwise denied claims to the number of approved claims. However, the only X-rays by-passing the re-reading process will be those of acceptable quality interpreted by qualified radiologists, so it seems reasonable to assume that only a fraction of X-rays that would otherwise have caused a claim denial would now result in claim approval. We concluded this provision would add only 2½ percent of otherwise denied claims to the number of approved claims.

3. We assumed that medical payments covered by Part C would be about $500 a year during the lifetime of the disabled miner, increasing by 10 percent per year on account of inflation.

4. We assumed that the average benefit to be paid involves one dependent, a wife. This assumption recognizes that some miners will have more than one dependent while others will have no dependents.

5. We used a mortality table for disabled miners representing 150 percent of the mortality rates from the 1959–1961 Mortality Table for White Males in the U.S.

6. The expected additional claims under the bill were distributed into broad age groups using certain age breakdowns supplied to you by the Department of Labor.

7. According to the report submitted last year with H.R. 10760 no responsible operator could be found for about half of all awards. We used this assumption in determining the shift of cost from the Department of Labor to the industry supported trust fund for existing awards. For future awards over the next five years, we assumed—based on information the Department of Labor furnished—that only 25 percent of the awards would not have a last-responsible-operator.

Additional black lung costs to coal industry under part C due to S. 1538

	Total estimated aggregate payments (billion)
New medical standards for disability	$0.6
Limited rereading of X-rays	.4
New trust fund obligation for no-last-responsible-operator claims	.5
Total Additional Black Lung Cost to Coal Industry	1.5

Notes: 1. Further costs are likely to result from such other S. 1538 provisions as removal of three year time limit for survivor claims, acceptance of affidavits in survivor claims, and other items.
2. Benefits assumed to increase at 5 percent per year.
3. Does not reflect claims which may be filed after 1980.

Mr. CORRELL. Second, we believe this committee should make some provision for periodic review of the program, both for adjusting the tax rates in accordance with fund liability and for determining whether the program, and therefore, the excise tax on coal, continues to be necessary.

The simplest way to guarantee this kind of review is to provide for a termination date for the program or, at the very minimum, for the excise tax.

Senator BYRD. Let me ask you at this point what term would you put on an expiration date, 5 years, 10 years?

Mr. CORRELL. We believe 1981 would be a proper date.

Senator BYRD. About 8 years?

Mr. CORRELL. Yes, sir.

We strongly urge you to retain the December 31, 1981, program termination date, which is contained in existing law.

We believe that there is one change which should be made in the program as it now exists. Under part C—that is, in the case of claims filed after July 1, 1973—individual coal operators must pay claims filed by miners or survivors of miners whom they last employ. This facet of the program will remain the same even if S. 1538 is enacted. Basically, operators may provide for that liability in two ways—by purchasing insurance or by self-insuring.

Many operators have purchased insurance, but there are difficulties with that method. Insurance may be difficult to obtain or keep. Insurance premiums vary from $3 to $28—or even more, in some cases—per $100 of payroll, depending on company liability and location.

Senator BYRD. Is black lung insurance obtainable now?

Mr. CORRELL. In some cases, for some companies, it is not. For many more companies, it is extremely difficult to obtain.

In addition, these rates are artificially high, in many instances, due to the fact that they do not reflect the black lung experience of each individual company.

Faced with these facts, many companies have chosen self-insurance. Some have satisfied the Department of Labor that they will be able to meet their black lung liability out of their income. A few others have tried to meet this liability by setting up trust funds—guaranteeing compensation by setting aside current income in irrevocable trust to pay benefits to successful black lung claimants.

Although these payments into trust are irrevocable and in that sense are similar to insurance premium payments, the Internal Revenue Service has refused to treat these payments as deductible current business expenses in the way insurance premium payments are treated. In addition, the Internal Revenue Service has indicated that the income of these individual funds will be taxable as income.

Senator Hansen has introduced a bill, S. 1656, which would correct this situation by exempting black lung trust fund income from taxation and by permitting companies to treat contributions to these funds as ordinary current business expense.

We strongly support this bill and urge that it be incorporated in any black lung amendments that this committee reports.

The only revenue loss to the Federal Government, if any, will be paid in the form of taxes which would otherwise have been paid on the corporate income set aside for these trusts.

In view of the fact that this income will never inure to the benefit of the companies who set up trust funds and will only be used to secure black lung benefits required under the law, we believe it would be worthwhile for the Federal Government to give the same tax treatment to this method that it gives to insurance premium payments.

Once again, Mr. Chairman, we do not believe that the present law requires amendment, other than as provided in S. 1656. If Congress decides otherwise, however, we hope the amendment will contain the excise tax concept incorporated in S. 1538.

This concludes my formal statement. I shall be happy to answer any questions that you may have.

Senator BYRD. Would you list for the committee, one, two, three, your main objections to the pending legislation?

Mr. CORRELL. The main objection is that it further liberalizes the black lung legislation. Over 5,000 miners and their dependents are receiving benefits at an annual cost of $1 billion for a total of $5 billion to the public already. We believe further liberalization of medical standards is not truly indicative of the disability of the miner.

Senator BYRD. The Department of Labor representative, the Assistant Secretary who testified awhile ago, that the Department disapproves of some of the liberalizing provisions. Does your objection go beyond the Labor Department's objections on the liberalization?

Mr. CORRELL. I would certainly concur with the Labor Department's objection to a 25 entitlement for widows without objective medical evidence and I would concur with the rest of the Department's objections. Of course, we firmly oppose further liberalization of medical standards.

Senator BYRD. That is your primary objection to the bill, the liberalization features?

Mr. CORRELL. Yes, sir.

Senator BYRD. What about the tax?

Mr. CORRELL. We believe that if we have to have legislation, then an excise test on the use of coal is the fairest method to fund.

Senator BYRD. Is the fairest method?

Mr. CORRELL. Yes, sir.

Senator BYRD. Do you have a preference as a matter of equity between the tax being based on Btu's or the tax being based on the type of coal?

Mr. CORRELL. I would have to defer that question to Mr. Gibson.

Mr. GIBSON. I am John Gibson from National Coal. The association has no policy on whether the tax is on Btu's, or what have you. I have spoken to staff. As a practical matter, we believe that most coal contracts were written for the purchase of millions of Btu's of coal as opposed to tons of coal. It might be simpler to administer a tax if we levied at a flat rate per million Btu's of coal.

For example, the Federal Power Commission keeps records of utility coal purchase contracts that gives in millions of Btu's purchased under contracts. It would be a ready source of data.

Senator BYRD. Do I understand that you feel that perhaps it would be better to put the tax on Btu's rather than the type of coal?

Mr. GIBSON. I think it would achieve the same result both ways. Of course, the higher the Btu value, the more likely you are to have a relationship with the incidence of black lung disease. Also, the higher the Btu value, the Btu value reflects the classes of coal.

Senator BYRD. Let me phrase it this way. So far as your industry is concerned, it does not make much difference to it whether the Congress this year follows what the Senate Finance Committee approved last year, or whether it takes this new version, as far as the tax is concerned?

Mr. GIBSON. They both do about the same thing.

Senator BYRD. Both would be about an equal cost to the industry?

Mr. GIBSON. That is correct, sir.

Senator BYRD. Do you concur with Senator Randolph's estimate? If I can remember it accurately, he estimated that it would cost, that it would add about 2.1 percent to the cost of coal?

Mr. GIBSON. I could not say that across the board.

Mr. CORRELL. It depends, Senator, on exactly how liberal the bill becomes and what payments are being made.

Senator BYRD. Take the bill as it is now.

Mr. CORRELL. What is it costing the coal companies today?

Senator BYRD. The pending legislation.

Mr. CORRELL. We believe at the lowest point, rather than a percentage, I think we can say that the $1.5 is a low side estimate. That would add 15 cents per ton of coal. The higher the actual payments become, the higher the cost of coal.

Senator BYRD. The committee has had submitted to it two estimates of cost, one by the committee and one by the Labor Department and there is a very substantial difference between the two. The Labor Department cost estimate is $1.388 billion if my recollection is correct, which is pretty close to what you estimate the cost. You estimate it at $1.5 billion?

Mr. CORRELL. We do not have the same information that the Department of Labor has. There are some parts of the bill where we can make no estimates because of lack of information.

Senator BYRD. I want to get a figure clear in my mind. Your $1.5 billion, you say 5 years or 15 years?

Mr. CORRELL. Fifteen years. We are only estimating the additional cost for three portions of the bill. That is estimating the additional costs if we go to new medical standards and we are thinking they would be less liberal than the Budget Office thinks, which is $0.6 billion.

We believe that the denial of rereading of X-rays will cost an additional $0.4 billion and the industry fund claims will cost an additional half-billion dollars.

Those are the only three sections of the bill for which we were able to come up with a good estimate.

Senator BYRD. I am wondering whether we are talking about two different types of cost. As I understand the Labor Department's estimate of cost, it applies to the 5-year cost to the trust fund which would be $1.38 billion over 5 years and your estimate of the cost over 15 years applies to the industry costs over and above this?

Mr. BEIN. The $1.5 billion figure that we came up with is the cost to the coal industry which, as we understand the proposed legislation, would actually be paid out by the Government trust fund. It, of course, finds its way back to the coal industry and its obligation in that area.

Mr. CORRELL. We are only estimating three portions of the liberalization of the bill. We have not been able to estimate the entire bill, as proposed.

Mr. GIBSON. If I may make one point to clarify this, we have maintained all along that one, the difficulty of accurately estimating this kind of program is monumental and consistently sponsors of the legislation, going back from 1975, have underestimated the cost. In fact, that is also true, to some extent, over the entire history of the program.

We have just taken a look at the Labor Department numbers and apparently what they have done is reexamine their claimant population and have come up with figures that are higher than we came up with, but we simply do not have access to this data. We were using the data that, I suspect, the Congressional Budget Office was using, which was about a year old, so the assumptions are about a year old.

We simply said that we always qualify our cost estimates by saying that they are on the low side. We think this underscores that point.

Senator BYRD. The Labor Department's cost estimates are based on the most recent information?

Mr. GIBSON. Apparently, sir.

Senator BYRD. Concern has been expressed that the liable party, the coal industry, has no voice in the claims process. Do you consider this a major concern, and what do you suggest as a means of dealing with this concern?

Mr. CORRELL. Yes, sir, we do believe it is a major concern. We believe that the accused should be on the stand to defend himself and we should have an opportunity to help in the adjudicatory process. We should have the opportunity to know if we are the responsibly identifiable operator and we should have the opportunity to review all of the medical evidence and make a determination on our opinion and the opinion of our experts if the miner is disabled by the disease. Without those opportunities, it really denies our basic rights.

Senator BYRD. In regard to your proposal embodied in Senator Hansen's legislation, an irrevocable trust fund, would not the cost of that be about what the cost of the excise tax would be?

Mr. CORRELL. It is difficult to say. I have not, in recent months, taken a look at a reevaluation of our own company's liability in line with the proposed amendments to the law. I can tell you as our experience as to why we desire the legislation and why we think that it is good for our employees.

Back in 1973, we took a look at our employee population, present and past, and we wanted to know what costs there would be to provide these benefits to our past miners and our present miners, and we went to Johnson & Higgins and asked them for an actuarial study and the numbers, quite frankly, staggered a company of our size and the profits we were making back in the 1973 period and we realized that we had to in some way be sure that we were a prudent and responsible coal company, guaranteed that our miners would have benefits payable to them when the bill came due.

We looked at insurance. We could not be sure if it were available and would remain available.

Senator BYRD. Let me see if I understand this correctly. Would Senator Hansen's bill, supplement the proposed legislation or take the place of the present legislation?

Mr. CORRELL. Supplement.

Senator BYRD. It seems to me that that has a good deal of merit to it.

Mr. CORRELL. We believe it does.

Senator BYRD. It would not take the place of the legislation?

Mr. CORRELL. No. it would not. What it would do, in my opinion, is to allow us to guarantee that the money is there to pay our coal miners and that is what the proper thing is.

Senator BYRD. Each company would make its own decision?

Mr. CORRELL. Make its own decision.

Senator BYRD. To get back to the current legislation, what percentage of benefits do you think would be paid by the trust fund and what percent do you think would be paid by the independent responsible operators?

Mr. CORRELL. I do not have an answer to that.

Senator BYRD. Do you have a view as to whether the tax rates provided in the bill are about right to cover the anticipated costs of the program?

Mr. CORRELL. No, I do not.

I do want to express our concern that the tax rate by right and more study be given to it, to ascertain the true costs of the program and to be sure that we are not underfunding or overfunding, but we do not know if the tax rate is presently correct.

Senator BYRD. As I understand it, assuming there is going to be an excise tax, it does not make a great deal of difference whether it be on Btu's or be on something else?

Mr. CORRELL. I think they are both representative, yes.

Senator BYRD. Do you have any information as to what percent of operators are currently paying into a trust fund?

Mr. CORRELL. I believe, Senator, I cannot swear to the accuracy of it, I believe there are three coal companies, to my knowledge today, attempting to have a trust fund qualify. Westmoreland Coal Co., is one of those coal companies.

Quite frankly, the qualification of that trust and the deductibility of that trust is not in trouble.

Senator BYRD. How many States do you operate in?

Mr. CORRELL. Virginia, West Virginia, Montana, and Colorado.

Senator BYRD. In what State do you have the heaviest production?

Mr. CORRELL. Our heaviest production would be in the State of West Virginia, with Virginia very close to it.

Senator BYRD. Thank you, gentlemen.

Our next witness is Mr. John L. Kilcullen, attorney on behalf of National Independent Coal Operators Association.

STATEMENT OF JOHN L. KILCULLEN, ATTORNEY, ON BEHALF OF NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION

Mr. KILCULLEN. Senator, I have a prepared statement which I have previously submitted and I would like to have it made a part of the record.

Senator BYRD. It will be made a part of the record, and published in full and you may summarize it, or proceed as you wish.

Mr. KILCULLEN. On behalf of the Independent Coal Mine Operators Association, I would like to state that we are strongly opposed to the provisions of this bill in its entirety. We think it would, in effect, institutionalize on a permanent basis a Federal program of black lung benefits which is not really necessary.

When Congress enacted the black lung legislation in 1969, the intention was that the States would take over the program under their workmen's compensation statutes. After the Federal act was passed, the major coal producing States undertook to amend their workmen's compensation and occupational disease laws so as to conform with the requirements of the Federal statute, and these States have, for the most part, adopted amendments to their occupational disease statutes which provide adequate benefits for coal miners who are suffering from black lung, coal workers pneumoconiosis.

It would be perfectly proper and appropriate to the Federal Government to turn over this program to the States. There is no valid reason why it should not be turned over to the States. There has been one obstacle: that is that the States cannot apply their statutes retroactively. They cannot provide benefits to miners who became disabled by pneumoconiosis prior to the enactment of the State law.

This would be unconstitutionally retroactive under the Constitution and the laws of the State. I think that Senator Randolph made this point in his comments to this committee this morning.

As far as the benefit levels are concerned, and adoption of the Federal presumptions, most of the State laws have already accomplished this. Under the laws of Virginia the actual benefits that a miner may receive are substantially higher than the Federal benefits.

This is true, I think, in Kentucky and West Virginia, and the other Appalachian coal-producing States.

The only thing that is holding back the transfer of this program to the States is a desire on the part of various people to retain it as a Federal program. For this reason we do not favor the trust fund idea because it would, in effect, make it a permanent Federal program.

Our experience has been that Federal programs never die, they just expand, and this, I am sure, would be true in this case.

Other features of the bill, I think, would aggravate some existing inequities in this law. The liberalizing of the criteria, the standards for eligibility would make the black lung benefits available to thousands, tens of thousands of persons who are not genuinely disabled by coal workers' pneumoconiosis.

In fact, our experience has been at the present time that there are large, large numbers of people who are not permanently disabled I

have handled quite a number of cases. I think perhaps I can say that I have probably handled more of the litigation under this statute than anyone else that I know of, and we have seen hundreds of cases where workers are working full time in normal occupations, and receiving black lung benefits.

These are people who left the coal industry years ago, some 25, 30 years ago, went into the automotive industry, let us say, and are still working full time in the automotive industry. They apply for black lung benefits and the Department of Labor approves it because they can show evidence of pulmonary impairment. This pulmonary impairment may be due to other causes than coal miners' pneumoconiosis. It may be due to emphysema brought on by smoking which, of course, the medical profession recognizes as the primary cause of respiratory impairments.

It may be caused by asthma, which is an organic problem usually, or chronic bronchitis or various other respiratory ailments, but as long as there is evidence of some respiratory impairment the Department of Labor will approve the claim, and then notify the coal mine operator that employed this man back in 1945 that he is obligated to pay benefits to this man.

This, I think, is a totally inequitable approach. This retroactive imposition of liability upon the coal industry is contrary to reason.

The provisions of S. 1538 would aggravate and exacerbate these problems. It would make it far easier for a claimant to qualify for benefits although he is not disabled. In respect to the question that has been raised as to whether operator participation in the adjudication function should be allowed, we feel it is absolutely necessary to prevent laxness in the administration of the program.

All Members of Congress have had the experience, whenever a claimant has his claim denied by the Labor Department, the first thing he does is write to his Congressman or Senator protesting the action of the Labor Department, and the Congressman usually complains to the Department of Labor. In fact, the Department of Labor has said about half of their time is taken up by answering congressional mail.

The Congressman complains to the Department of Labor and demands reconsideration of the claim. Under this bill, S. 1538, I am sure that the Department of Labor would find it expedient to approve all claims rather than subject itself to congressional pressures in situations where the claims have been denied.

I think that it is absolutely essential that the operators have an opportunity to contest a claim, particularly since the operator might have to reimburse the trust fund for any amounts of benefits paid out in his behalf to former miners who were employed by him.

There has been criticism here, particularly from the mine workers' representative, that coal mine operators are frustrating the program by litigating. Well, we make no apologies for that. We feel that the litigation we have undertaken is appropriate and legitimate.

Let me explain briefly, when the Department of Labor makes a determination of eligibility, they notify the coal mine operator. They give him no information as to the basis upon which the determination was made and as it was indicated, 90 percent of the claims proc-

essed are claims by miners who have left the industry many, many years ago.

In some cases, there are no records available, no employment records available. So the coal mine operator gets a notification from the Department of Labor that he is held to be the responsible operator to pay claims to John Smith who was employed back in the 1940's on the basis that John Smith is currently suffering from coal workers' pneumoconiosis.

The coal mine operator, in that situation, has no opportunity to really make any judgment as to whether he should be liable and the only proper thing for him to do is to controvert the claim, and that is the reason why these claims are being controverted by the industry.

It is the procedure of the Department of Labor that makes it necessary.

Senator BYRD. I understand you are opposed to the entire bill?

Mr. KILCULLEN. That is correct, sir.

Senator BYRD. Could you indicate what two or three, one or two, parts that are the most objectionable to you? The liberalization of the benefits?

Mr. KILCULLEN. That definitely would be the most objectionable feature of the bill. As has been indicated, there are more than a half a million people receiving benefits now and I think that this would simply open the door for hundreds of thousands of additional qualifying claimants.

Senator BYRD. This committee is primarily concerned with the tax aspects. In regard to the tax aspects, do you have any particular feeling, assuming there will be an excise tax, as to whether it will be on Btu or whether it should be the way it was last year?

Mr. KILCULLEN. I do not have any partciular feeling. I think perhaps a flat tax would be better. I am not advocating it.

Senator BYRD. I understand. You do not advocate a tax. I was trying to get it in my mind, clearly, assuming there is a tax, whether it would make a real difference if it would be on Btu's as the present bill proposes, or whether it be like last year's proposal.

Mr. KILCULLEN. I think it would be more difficult to administer with the graduated——

Senator BYRD. Btu's?

Mr. KILCULLEN. Yes, I think it should be on the basis of a flat tax.

Senator BYRD. A flat tax on Btu's or a flat tax per ton?

Mr. KILCULLEN. Per ton of coal, as in the bill last year.

Senator BYRD. Thank you very much.

[The prepared statement of Mr. Kilcullen follows:]

STATEMENT OF JOHN L. KILCULLEN

Mr. Chairman and members of the committee, we are appearing here today to present views and comments on behalf of the National Independent Coal Operator's Association, an association which represents approximately 1,000 small and medium sized coal producers in the states of Pennsylvania, West Virginia, Ohio, Kentucky, Virginia, and Tennessee. The members of this Association are seriously concerned as to the adverse effect the proposed black lung amendments contained in S. 1538 would have upon the smaller coal producers, and upon the entire coal industry.

The black lung legislation has been on the statute books now for more than seven years. In those seven years some 750 thousand claims for benefits have been

filed, and more than 500 thousand miners and miners widows are currently receiving black lung benefits. Approximately 200 thousand claims have been denied on grounds of lack of medical evidence to support the claim, and between 50 and 100 thousand claims are still pending before the Department of Labor.

Benefit payments to black lung beneficiaries has cost the Federal Treasury more than five billion dollars, and the cost continues to rise each year. In addition, the coal mine operators are obligated to expend enormous sums for compensation insurance to cover their black lung liability.

Like virtually all other welfare type programs the black lung program has grown to proportions far beyond anything that Congress ever envisioned at the time it enacted this legislation in 1969. The program has been aptly described as a "gravy train" for persons who are not genuinely disabled, but who can nevertheless claim that their breathing functions have been affected by the fact that they once worked in a coal mine.

Although more than a half million miners and widows are now receiving black lung benefits, Congress is still being bombarded with demands that the program be expanded to include hundreds of thousands of additional claimants, and to liberalize the medical criteria for eligibility. The additional cost of meeting these demands, which would run into more billions of dollars, would be imposed upon the coal industry and indirectly upon consumers by an excise tax imposed upon each ton of coal sold by coal producers.

The National Independent Coal Operators' Association is strongly opposed to the provisions of S. 1538 for a number of reasons. In the first place we feel it is unnecessary. It is difficult to believe that after seven years of administration of this program, under the very liberal eligibility rules adopted by both HEW and the Department of Labor, that any miner who is genuinely disabled by coal workers' pneumoconiosis is not already receiving benefits. The black lung legislation as presently written provides for very broad presumptions under which eligibility for benefits can be granted even where there is no substantial evidence of coal workers' pneumoconiosis as a causative factor, and there are undoubtedly tens of thousands of persons receiving black lung benefits who are not in fact disabled in any real sense. Under the Act and the Department of Labor regulations a claimant may be declared totally disabled even though there has never been any interruption in his regular employment and he is working fulltime in a job which requires substantial physical effort.

As it is being administered, this program permits healthy persons to receive disability compensation in amounts much greater than the compensation benefits received by a coal miner who has been totally disabled by the loss of a leg or a broken back in a mine accident, and who receives only the compensation benefits authorized under applicable state workmen's compensation statutes. It permits large numbers of former coal miners to draw combined Social Security disability and black lung benefits in excess of the amount of money they made when they were employed.

It is no wonder that Congress is bombarded with complaints of those who feel they have been unjustly denied benefits, when they see their healthy neighbors drawing benefits and simultaneously working fulltime. It is quite obvious that even if Congress further liberalizes this program to cover another 200,000 to 300,000 people you are still going to get a continuing number of complaints from people who feel they should also be entitled, and you will never get to a point where everyone will be satisfied.

The reason for this is that this legislation is not really what it purports to be, namely a disability compensation program. Although it was originally conceived as a disability compensation program, it has become a sort of hybrid between public welfare and workmen's compensation. About 90% of those who are receiving black lung benefits are former miners whose employment in the coal mines terminated years prior to the time the black lung legislation was enacted in 1969. Many of these ex-miners left the coal industry during the 1940's and 1950's and went into other industries where they are continuing to work fulltime. Because the Act's definition of total disability permits payments to persons who are in fact fully and gainfully employed, tens of thousands of able bodied workers in major industries are receiving black lung benefit payments. When these workers reach retirement age they apply for Social Security benefits and become qualified for a combination of Social Security, black lung, and retirement and pensions from their most recent employment.

Under the provisions of S. 1538 the eligibility requirements for black lung benefits would be lowered almost to the vanishing point. Even persons still working in coal mine employment could be determined totaly disabled, and the only medical evidence required would be an x-ray or other report from a doctor who may have no qualifications for diagnosing pulmonary disease. Unless there is evidence of fraud the Department of Labor would not be permitted to re-read X-rays to confirm the reliability of the evidence of pneumoconiosis.

Under S. 1538 the term pneumoconiosis would be expanded to cover all respiratory conditions including asthma, bronchitis, emphysema, fibrosis, and other lung ailments which are not casually related to coal mine employment. The time limitations on the filing of claims set forth in the present legislation, particularly the filing of claims of widows whose husbands died many years prior to passage of the Act in 1969, would be virtually eliminated. All claims which had previously been denied either by HEW or the Department of Labor for lack of supporting medical evidence would be subject to review and approval under the reduced eligibility criteria.

If these extremely liberalized provisions are adopted it is not unreasonable to assume that hundreds of thousands of additional persons will become qualified for black lung benefits, and it is inevitable that the coal excise tax specified in S. 1538 will go up and up and up year after year to meet the costs of the expanded program. The addition of these taxes to the price of coal will have a greater impact upon the small and medium sized coal mine operators than on the larger commercial producers. The small operator is already saddled with high costs for workmen's compensation and occupational disease insurance coverage, and under S. 1538 he will still be obligated to carry such insurance coverage to reimburse the Trust Fund for benefits paid out by the Fund on the claim of any miner or former miner he employed. When the new excise tax is added to his already higher costs the small coal mine operator will find it more difficult to remain in competition with the larger producers.

There is also another factor in that the actuarial exposure of the small coal mine operator for black lung liability is greater than that of the larger operators because the average age of miners employed in small mines is substantially higher than in the larger mines. Many of the miners employed in small mines are there primarily because their age and education level precludes them from employment in the larger mines. Consequently, under S. 1538 the small mine operator will be exposed to a disproportionately higher number of claims than the large commercial producers.

One of the most objectionable provisions of this bill is the provision amending section 424 of the present Act so as to provide that "No operator or representative of operators may bring any proceeding, or intervene in any proceeding held for the purpose of determining claims for benefits to be paid by the Fund . . ." In substance, this requires that the operator who is obligated to finance the establishment of the Trust Fund, and to reimburse the Fund for benefits paid out on the claim of any miner or former miner he employed, is deprived of the right to participate in any manner in the adjudication process for determination of such claims.

Another aspect of this proposed legislation which NICOA strongly opposes is its disregard of changes in mine ownership, and the imposition of liability upon currently operating companies for black lung claims of miners employed by a former owner of the mine. At the same time, S. 1538 provides that the former owner shall also remain liable for such claims, a provision which will inevitably result in litigation over which operator must pay the benefits in any given case S. 1538 would also amend section 422 of the present Act so as to disregard legitimate corporate changes involving acquisition of coal mine properties, with the result that the successor corporation would have the obligation to pay black lung benefits to miners whose employment with the predecessor company had terminated prior to the date of the acquisition. Thus, this bill would create new liabilities which were never contemplated by the parties at the time of their transaction, and would place the current operator in a position of having to assume the obligation to finance black lung benefits for miners he never employed. The legal validity of such a provision is, to say the least, highly doubtful.

There are many other aspects of this proposed legislation which are poorly conceived, are imprudent, are discriminatory, and are of dubious constitutionality. This proposed legislation is so poorly drafted that it would be difficult for

even the most experienced lawyers to construe or to determine the scope of its applicability in specific situations. Although this legislation masquerades as a workmen's compensation program it runs counter to every principle established under workmen's compensation laws over the past fifty years. It is in fact a perversion of the workmen's compensation concept, and if it is adopted as a precedent for occupational disease legislation in other industries could well result in a complete breakdown of the established workmen's compensation structure. Moreover, the cost could well run into a hundred billion dollars a year or more.

For some reason which we find difficult to comprehend Congress in recent years has had a tendency to carry to excess many programs which in their initial concept were sound humanitarian programs designed to correct hardships and economic distress. Inevitably these programs have been expanded and liberalized to the point where they become either a national scandal or a travesty of government bungling. This is precisely the case with the black lung program. It was initially designed to reach those unfortunate people who are disabled by coal workers' pneumoconiosis. The National Independent Coal Operators' Association sincerely favors such a program, and has been instrumental in obtaining amendments to state occupational disease acts to include coal workers' pneumoconiosis. There are already excellent programs in the various states which are benefitting tens of thousands of miners and their families. In addition there are a half million people drawing benefits under the federal black lung program. There is, therefore, no demonstrated need for further expansion of the federal law in this area, praticularly in the terms in which S. 1538 would do so. It is an invitation to fraud and deceit and a contempt for the laws of the land.

We therefore urge that this Committee, and the Senate reject this irresponsible, unreasonable and discriminatory legislation.

Senator BYRD. The next witness will be James D. Strader, general attorney, workers' compensation and casualty, United States Steel Corp., and Mr. M. Russell Guy, assistant to manager, safety and worker's compensation, Bethlehem Steel, on behalf of the American Iron & Steel Institute.

STATEMENTS OF JAMES D. STRADER, GENERAL ATTORNEY, WORKERS' COMPENSATION AND CASUALTY, UNITED STATES STEEL CORP., AND M. RUSSELL GUY, ASSISTANT TO MANAGER, SAFETY AND WORKERS' COMPENSATION, BETHLEHEM STEEL, ON BEHALF OF AMERICAN IRON AND STEEL INSTITUTE

Mr. STRADER. Mr. Chairman, Mr. Guy and I are appearing on behalf of the American Iron & Steel Institute that represents 63 domestic iron and steel companies, accounting for approximately 95 percent of the steel production in this country. Member companies of AISI also produce approximately 50 million tons of coal annually.

As previous speakers have indicated, title IC of the Federal Coal Mine Health and Safety Act, as passed in 1969, was an interim measure. It was estimated that the cost of the program would be approximately $40 million per year. Some Members of this Congress estimated it would be even lower.

In 1972, when the act was amended and liberalized, the interim nature of the legislation was maintained. Since this committee is primarily interested in the cost of financing the program, we would be remiss if we did not point out that costs have escalated to the point where the Social Security Administration is making payments in the amount of $1 billion per year under part B. The Labor Department, in 1975, paid $7 million per year, in addition to payments made by coal operators.

Let us emphasize to you that we recognize and accept our responsibility under part C to provide benefits to eligible miners totally disabled by pneumoconiosis. We strongly support the responsible operator theory and if a responsible operator can be identified, then that operator should pay the claim regardless of the date of last employment.

However, we do object to a further liberalization of eligibility requirements which would mandate benefits to those not suffering from the disease and to the imposition on the coal industry of costs that were originally intended to be assumed by the Federal Government.

Briefly, S. 1538 would: By expansion of the definition of the term "pneumoconiosis," include other respiratory and pulmonary impairments not medically recognized as being part of that disease process.

Include other occupations such as railroad, barge and dock workers, all of whom are presently covered by various Federal compensation programs;

Shift the responsibility for establishing medical disability criteria from the Department of Health, Education, and Welfare to the Department of Labor;

Permit the approval of claims without medical evidence; and

Allow all denied part B and part C claims to be reopened and a new determination made based on the revised criteria of the proposed legislation.

For many of these claims, this will constitute a second reevaluation after an initial denial. However, this time, if a claimant is finally successful, the trust fund will be required to pay rather than the Federal Government.

Require the trust fund to reimburse the Department of Labor all monies expended under part C. These include interim benefits which are theoretically made to avoid hardship but are in reality paid to all claimants where an initial determination of eligibilty is made. Many of these determinations have been or will be reversed at a later stage of the proceedings.

Require the trust fund to pay all administrative expenses incurred by the Department of Labor.

Prevent the trust fund and operators from challenging the Department of Labor determinations in cases where the coal mine employment date is prior to January 1, 1970. Our experience indicates that a significant percentage of these determinations are being reversed by administrative law judges at formal hearings.

Grant the Department of Labor an unlimited right to become a party in any proceeding relating to a claim for benefits.

The most damaging feature in the bill is a lack of due process. The coal industry would not be permitted to participate in the adjudication of the cases under the trust fund. Mr. Elisburg said that due process can be replaced by the oversight of the Congress and Ms. Falk from the mine workers indicated that due process should step aside when it creates problems for her and her clients.

We feel that the Constitution cannot be so easily set aside. We further feel that if the act is going to be amended to give the Department of Labor an unlimited right to participate in part C claims, then certainly we should be given an equal right to participate in claims under the trust fund.

The act would further remove the time limitations for filing of claims and, as I said earlier, make the program permanent.

I would like to defer to Mr. Guy for the rest of my remarks.

Mr. GUY. Thank you, Mr. Chairman.

I think we will go right to section 6 of S. 1538, the crux of our testimony for you today. Of course, that section establishes the black lung disability fund and operator liability. As previously indicated, the fund is financed through an excise tax on the sale of coal.

Section 6A creates a new subchapter B, coal under chapter 32 of the Internal Revenue Code of 1954 and imposes a tax based on the British thermal unit value of a ton of coal.

The rate on bituminous coal, which is used extensively in the steel industry, amounts to $0.30 per ton. Coal with a lower Btu value is rated accordingly.

At a maximum, this would generate $200 million annually, based on a national production figure of approximately 670 million tons per year. We seriously question the adequacy of such sums, considering the potential benefits payable under S. 1538.

It should be noted that there are 180,000 denied part B claims and in excess of 93,000 cases filed under part C, in which a high percentage represents pre-1970 employment. If we assume that all of these claimants will be eligible for benefits, the potential additional cost could exceed $1 billion per year.

Proponents of this legislation may argue that all denied claims will not be found eligible on reconsideration. However, since there will be new disability criteria promulgated by the Secretary of Labor and time limitations will be eliminated, we can only assume that the intent is to pay as many claimants as possible. Therefore, a cost in the area of $1.50 per ton seems more realistic.

We note with interest that when similar legislation was before the Senate Finance Committee, less than 1 year ago in the last Congress, the committee substantially amended the provision to provide for a tax of 10 cents per ton with any additional funding required to be provided from general revenue appropriations.

In light of the history of unrealistically low estimates concerning the cost of this program, we urge that similar restrictions be included in any amending black lung legislation.

We justify this position on the basis that 180,000 part B claims may be refiled and benefits paid by the trust fund. It is unfair to assess the present coal industry for the burden originally assumed by the Federal Government under part B.

Of even greater significance and importance is the precedent which this legislation would establish. This legislation is directed toward less than 0.2 of 1 percent of the active work force in this Nation. This, at best, is a piecemeal approach to addressing occupational disease and workers' compensation.

The establishment of a trust fund concept, coupled with further liberalized criteria, would establish a dangerous precedent and a radical departure from traditional workers' compensation legislation and we urge its rejection.

We thank the committee for the opportunity to share our concerns in this legislation.

Thank you.

Senator BYRD. In regard to the taxes, I assume that you do not have any pronounced view, or definite view, as to whether it would be better to put it on a flat tax on Btu's or a flat tax on per ton of coal?

Mr. GUY. I would much prefer it to be a flat tonnage tax if there has to be a trust fund at all. I am not indicating that there should be.

Senator BYRD. I understand; you are not advocating it.

Mr. GUY. The coal industry here has taken it on the chin, if you will. We are being blamed for contesting claims. I think the Department of Labor must share a large burden in the slow process that we have. They have been in charge of the program since 1973. Over 93,000 filings have taken place, although they have processed only a small amount of those claims and the claims that my company is getting, we expect to win in excess of 50 percent of those Department of Labor approvals based on disability criteria.

They are approving claimants that only have simple pneumoconiosis, and the Surgeon General testified back in 1969, that only 2 percent of the miner population ever contracts complicated pneumoconiosis. The Supreme Court acknowledged that simple pneumoconiosis generally is not regarded as being disabling.

That is exactly our experience.

Senator BYRD. I asked Senator Randolph if the committee had considered the inflationary impact and he said that the committee had. If I recollect his figures accurately, he thought it would add about 1.2 percent to the cost of a ton of coal.

How do you assess it?

Mr. STRADER. I think our figures, Mr. Chairman, which we do not have access to the total information that was available to the Human Resources Committee, but our estimates indicate on a very gross basis that the Human Resources Committee is grossly underestimating the impact of this legislation.

You cannot really assess how the cases are going to be decided because you cannot really know what the medical criteria that is going to be used to determine the cases until this legislation is passed, and then the Department of Labor decides what criteria they want to set up.

Senator BYRD. Do you have any feeling, assuming that a trust fund will be established, as to whether there should be a single trustee named by the Secretary of Labor, or should it be a joint trusteeship?

Mr. GUY. I do not have any preference one way or the other. I personally would like to see the Department of Labor be removed from the program as much as possible.

You must bear in mind that the coal industry, if you will, takes on the Labor Department at any turn in the proceeding. The claim is filed and processed through the Labor Department. It is set for informal hearing before a Deputy Commissioner who is a Labor Department employee. It then goes to a formal hearing, to an ALJ, who is also a Department of Labor employee. It then goes to the Benefits Review Board, which is also in the Labor Department.

If we are going to have the Labor Department determine these claims and then throw them into a trust fund for us to pay, I strongly object to that without any right of controversion.

Senator BYRD. You would prefer a three-way trusteeship?

Mr. GUY. Yes, sir.

Senator BYRD. Thank you, gentlemen.

The committee will stand in recess until the call of the Chair.

[Thereupon, at 1:35 p.m. the hearing in the above-entitled matter was recessed, to reconvene subject to the call of the Chair.]

[By direction of the chairman the following communications were made a part of the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 20, 1977.

Senator HARRY F. BYRD, Jr.,
Chairman, Subcommittee on Taxation and Debt Management, Committee on Finance, 417 Russell Office Building

DEAR MR. CHAIRMAN: As your Subcommittee considers S. 1538, the proposed Black Lung Benefits Reform Act of 1977, I urge your members not to be misguided by emotional appeals of its supporters but to look instead to the legislative history of the existing program and allow this program to become the responsibility of the coal industry under State workers' compensation programs as Congress originally intended.

First, the legislative history:

In November of 1968, a coal mine exploded in Farmington, West Virginia, taking the lives of 78 miners. That tragedy was the catalyst for the 1969 Federal Coal Mine Health and Safety Act (FCMHSA). During the debate on that legislation, Congress learned that the accumulation of fine coal dust particles in the human lung could lead to pneumoconiosis (black lung), which could cause severe disability and premature death.

The argument was made that, now that we had identified black lung as a disease, it should be made compensable in the future; claims should be processed just as other workers' compensation cases were processed and the same sort of benefits should be paid to coal miners disabled by this disease as were paid to other workers who had industrial diseases.

That was a logical argument, but it was impossible to look back over the course of years and determine who would have been the responsible employer during the time when this was not recognized as an industrial disease. Therefore, Congress determined in Title IV of the FCMHSA that the Federal government (through the Social Security Administration) would assume responsibility for benefits to those coal miners disabled by black lung prior to enactment. Then, in 1972, we were unequivocably assured by the program's sponsors, the program would become the industry's responsibility through State workers' compensation.

When 1972 arrived, however, the same people who sponsored Title IV and who are promoting its liberalization now persuaded Congress to remove various eligibility requirements, extend the Federal responsibility for another two years and assign the program's administration to the Department of Labor.

Now, the proponents of S. 1538 and its House counterpart, H.R. 4544, contend that the claims of too many coal miners and their dependents continue to be delayed and denied and that responsibility for these benefits should be shifted to the coal industry.

Why are black lung claimants facing processing delays? I believe a major cause is temporary, the court challenges legally raised by coal mine operators concerning their responsibility under the program.

Part of the blame may also have to rest with the Department of Labor. In fact, Assistant Secretary of Labor Donald Ellisburg testified before the House Education and Labor Committee that the Department's recent evaluation of the black lung program uncovered several administrative inefficiencies to be corrected.

Aside from administrative problems, the program suffers greatly from misconceptions. The prevalent belief in the coal mining community is that all miners and their families are entitled to black lung benefits, and that all respiratory difficulties are caused by coal dust. This simply is not so. As medical experts testified before our Committee, disabling black lung disease can be diagnosed and respiratory diseases are caused by many elements.

These misconceptions have brought about the charges that some coal miners are not getting their just desserts; misconceptions have meant that thousands

of claims have been filed that should not have been filed, thus burdening the system and contributing to the delay that miners deserving of benefits experience.

Miners disabled by pneumoconiosis should be compensated, and the coal industry should pay these benefits. The main issue is whether Congress should turn what was originally a one-shot disability benefit into a permanent Federal program for one class of workers.

We do not need another law to accomplish the goals sought in S. 1538 and H.R. 4544. Existing law fulfills the Federal responsibility promised in 1969 and liberalized in 1972, and the problems of delays can be alleviated administratively. Future claims can be handled through State workers' compensation programs, provisions for industrial disease.

If we have the courage to follow through as Congress originally intended, we will provide equity to coal miners, to other workers, and to all taxpayers. All this requires is to refrain from legislating and allow the law now in existence to follow its course.

I thank you for your attention to this alternative and ask that my letter be included in the Subcommittee's hearing record.

Very truly yours,

JOHN N. ERLENBORN, M.C.

APPALACHIAN RESEARCH AND DEFENSE FUND OF KENTUCKY, INC.,
Lexington, Ky., June 15, 1977.

Re.: Time limitations on filing black lung claims.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Subcommittee on Taxation and Debt Management, U.S. Senate, 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: This is written on behalf of the Kentucky Black Lung Association to ask you to consider the removal of all time limitations on the filing of black lung claims if such a matter is within the province of your committee.

We noted that Senate Bill 1538 would remove the time limitations which apply to survivors but would leave intact the limitations applying to living miners. We believe that bill eliminates the necessity for any time limitation on filing claims, including those applying to living miners.

The purpose of any statute of limitation is the protection of the adversary party, the party defending against a claim. The adversary party needs protection against having to defend against stale claims, claims in which the passage of time has worked unfairly to his detriment. In black lung claims, the adversary party needing such protection is the coal operator who is responsible for payment of benefits.

The proposed amendment to the black lung program would eliminate the need to provide protection to any coal operator by establishing a trust fund to make payments of benefits. The time limitations must have been originally established by the Congress based on a weighing of the right of the claimant to pursue his claim against the right of the coal operator to be free of stale claims. Now that the proposed amendment would eliminate the coal operator's right from the balancing of interests, there is no reason to restrict a claimant's right to file for benefits to any time period.

In establishing the black lung program the stated intention of Congress was to compensate coal miners who suffer from disabling pneumoconiosis and their survivors. Many within the group Congress intended to compensate do not receive benefits because of their failure to file within the prescribed time period. Such a situation is unfortunate but justifiable as long as the right of the coal operator to avoid stale claims is considered, but once the trust fund assumes responsibility for payment of benefits, there is no other right to consider. At that point there is no justification for denying benefits to any miner suffering from disabling pneumoconiosis or the survivors of such a miner, regardless of when the claim is filed.

Thank you in advance for your consideration of these comments.

Yours truly,

SAM BEGLEY,
Legal Clerk,
LAURA BOWERS VANDERGAW,
Staff Attorney.

AMAX COAL CO.,
Indianapolis, Ind., June 27, 1977.

DEAR SENATOR LONG: When considering the trust fund provisions of the Black Lung bill (S. 1538), I urge you and the members of the Senate Finance Committee to vote for a method of coal taxation that will spread the tax burden equally between surface and deep mine operations.

We believe that either a payroll or variable tonnage tax is the fairest to all concerned. Black Lung benefits are awarded to individual miners and a straight tonnage tax will cause surface operators to contribute a grossly disproportionate share to the fund. In fact, surface mines: (a) have fewer employees than deep mines, (b) mine substantially more tons per year than deep mines and (c) have a much lower incidence of black lung disease.

It is my understanding that the committee is considering a tax of 24¢ per ton on all coal (bituminous and sub-bituminous) with no distinction between deep and surface. The following example demonstrates that unless some distinction is drawn between surface and deep mined coal, surface operators will bear an inequitable share of the tax burden.

Take two mines producing two million tons per year; the deep mine would employ approximately 655 miners and the surface mine would employ approximately 238 miners. At 24¢ a ton, regardless of the number of employees, each operation would pay about $480,000 in taxes. Thus, the surface operator would pay $2,017.00 per employee while the deep operator's share is only $733.00 per employee.

Solution.—(example only) A variable tax of 36¢ for underground coal and 12¢ for surface coal. Thus, at 36¢ per ton with 655 employees, a deep operator would contribute $1,099.00 per employee and at 12¢ per ton with 238 employees a surface operator would contribute $1,008.00 per employee.

Under a variable tax, both surface and deep would be paying their fair share and the tax would not penalize a surface mine which produces more tonnage per employee. On the other hand, a 24¢ tax on *all* coal could cause a surface operator to pay more for 200 employees than a deep operator would for 600 employees.

If a variable tonnage tax is not acceptable we would support an ad valorem tax.

Thank you for considering this matter.

Sincerely,

LOWRY BLACKBURN.

NOTE.—The above example compares mid-western deep and surface operations mining 2 million tons per year; the need for a variable tax is much greater when you consider a Western surface operation that employs 300 miners and mines 15,000,000 tons per year.

NATIONAL COAL ASSOCIATION,
Washington, D.C., June 21, 1977.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: The National Coal Association testified on Friday, June 17, before Senator Byrd's Subcommittee in opposition to S. 1538, the black lung bill. We oppose that legislation because we believe additional Federal legislation is unnecessary in light of the efforts being made by the Federal Government and the States to provide compensation for black lung victims and their survivors.

We are also opposed to provisions of the bill which would further liberalize an already liberal program. There is no evidence that any person actually suffering from disabling coal workers pneumoconiosis or eligible survivors of any such person cannot already qualify for State or Federal benefits.

We do believe that if Congress wishes to amend the law to provide for total coal industry financing of part C, then the excise tax mechanism in S. 1538 is the fairest and most efficient way to raise the necessary monies.

We realize your Committee has no jurisdiction over the substantive provisions of this bill, but we also submit that the Committee charged with raising revenue to finance the program cannot be indifferent to the provisions of the program which give rise to additional and unnecessary costs. We urge you to do two things, therefore. First, retain the December 31, 1981, program termination date

for the existing program as applied to the excise tax. This step will force reexamination of the program in order to determine how effectively it is working and whether it ought to be continued. Second, if there are liberalizing provisions in the bill which concern you as much as they concern the coal industry, we hope you will say so in your report.

To repeat, this is an unnecessary and a potentially costly liberalization of an already liberal and costly program and, therefore, we must oppose it.

Sincerely yours,

CARL E. BAGGE.

DAWSON, NAGEL, SHERMAN & HOWARD,
ATTORNEYS AT LAW,
Denver, Colo., June 20, 1977.

Re Black Lung Benefits Reform Act of 1977.

Senator RUSSELL B. LONG,
Chairman, Senate Finance Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: The primary purpose of this letter is to express my concern over certain provisions of the "Black Lung Benefits Reform Act of 1977" as it is being reported to your committee for your review prior to its submission to the full Senate, and to suggest some changes to the legislation.

As you are no doubt aware, Title IV of the Federal Coal Mine Health & Safety Act of 1969 (Act), as amended, requires employers of coal miners to contribute to the payment of benefits for any worker who is the victim of occupational pneumoconiosis in any state in which the state workmen's compensation statute provides inadequate health, disability and death coverage for such workers. The Secretary of Labor is given discretion to determine which states' statutes are adequate, and which are not. In the event that a state workmen's compensation statute is deemed to provide inadequate benefits to black lung victims, section 423 of the Act provides in pertinent part as follows:

"[E]ach operator of a coal mine in such State shall secure the payment of benefits for which he is liable under § 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation."

A very useful vehicle through which employers could insure adequate coverage for benefits for their employees who are victims of occupational pneumoconiosis could be a tax-exempt organization formed under section 501(c) of the Internal Revenue Code of 1954, as amended. Employers could make current contributions into such a fund, which contributions would be sheltered from claims of creditors and which would avoid "unreasonable accumulation" problems for the employers. Benefits to victims of occupational pneumoconiosis could thereupon be paid out of the fund and, where necessary to prevent depletion of the fund, directly from employers.

At the present time, the use of a 501(c)(9) organization for such a use appears to be unavailable. The section itself provides that "voluntary employees' benefit associations providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of the association (other than through such payments) inures to the benefit of any private shareholder or individual" shall be exempt from taxation. While the type of organization contemplated would seem to fit squarely within the description of an exempt organization as set out above, the Internal Revenue Service has determined that this very type of organization should not qualify for tax exempt status as it would be providing workmen's compensation benefits which the corporation is already obligated to pay. *See* Rev. Rul. 74-18.

We believe that the Black Lung Benefits Reform Act of 1977 should contain a provision amending section 501(c)(9) of the Internal Revenue Code of 1954 to specifically permit the formation of employee benefit organizations for black lung disease victims and their families, to allow the funding of such organizations by contributions from employers, and to treat such contributions and the income derived from investments of funds held by the organization in the same

manner as other 501(c)(9) organizations. This would help insure that victims of occupational pneumoconiosis are adequately protected, and at the same time allow employers of coal miners to make funds available for payment of benefits, which funds would be sheltered from the claims of creditors of the employer. A 501(c)(9) organization would allow accumulation of the funds necessary to insure the employer's ability to pay benefits without triggering unreasonable accumulation problems with the Internal Revenue Service. We have attached a copy of suggested wording for such an amendment to § 501(c)(9). Our purpose in suggesting this amendment is not to exempt such an organization from all of the normal rules pertaining to 501(c)(9) organizations. On the contrary, we feel that no significant changes in the regulations under that section or in the intent of the statute itself will be affected by such an amendment.

While it is true that insurance to provide for benefits for coal miners could be obtained through private insurance companies, we believe that allowing the formation of a 501(c)(9) organization would provide greater security to the mine worker and constitute an attractive alternative to traditional insurance.

For these reasons, we believe that allowing formation of a tax-exempt organization as described above would be in the best interests of all concerned, most especially the coal miners and their families who are the intended beneficiaries of all of the Black Lung Benefits legislation, including the Black Lung Benefits Reform Act of 1977. Thank you for your consideration of this matter.

Sincerely,

DOUGLAS M. CAIN.

CODE SECTION 501 EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

"(c)(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, including but specifically not limited to the victims of occupational pneumoconiosis and related afflictions as defined in Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, if no part of the net earning of such association inures (other than through such payments) to the benefit of any private shareholder or individual."

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