

115TH CONGRESS
1ST SESSION

S. _____

To ensure that claims for benefits under the Black Lung Benefits Act are processed in a fair and timely manner, to better protect miners from pneumoconiosis (commonly known as “black lung disease”), and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To ensure that claims for benefits under the Black Lung Benefits Act are processed in a fair and timely manner, to better protect miners from pneumoconiosis (commonly known as “black lung disease”), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Black Lung Benefits
5 Improvement Act of 2017”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Findings.

TITLE I—BLACK LUNG BENEFITS

PART A—IMPROVING THE PROCESS FOR FILING AND ADJUDICATING CLAIMS FOR BENEFITS

- Sec. 101. Mandatory disclosure of medical information and reports.
 Sec. 102. Attorneys' fees and medical expenses payment program.
 Sec. 103. Clarifying eligibility for black lung benefits.
 Sec. 104. Restoring adequate benefit adjustments for miners suffering from black lung disease and for their dependent family members.
 Sec. 105. Treatment of evidence in equipoise.
 Sec. 106. Providing assistance with claims for miners and their dependent family members.
 Sec. 107. False statements or misrepresentations, attorney disqualification, and discovery sanctions.
 Sec. 108. Development of medical evidence by the Secretary.
 Sec. 109. Establishment of pilot program to provide impartial classifications of chest radiographs.
 Sec. 110. Medical evidence training program.
 Sec. 111. Technical and conforming amendments.
 Sec. 112. Readjudicating cases involving certain chest radiographs.
 Sec. 113. Disclosure of employment and earnings information for Black Lung Benefits Act claims.

PART B—REPORTS TO IMPROVE THE ADMINISTRATION OF BENEFITS UNDER THE BLACK LUNG BENEFITS ACT

- Sec. 121. Strategy to reduce delays in adjudication.
 Sec. 122. GAO report on black lung program.

TITLE II—STANDARD FOR RESPIRABLE DUST CONCENTRATION

- Sec. 201. Standard for respirable dust concentration.

TITLE III—ESTABLISHING THE OFFICE OF WORKERS' COMPENSATION PROGRAMS

- Sec. 301. Office of Workers' Compensation Programs.

TITLE IV—SEVERABILITY

- Sec. 401. Severability.

1 **SEC. 3. FINDINGS.**

2 Congress finds the following:

- 3 (1) The Black Lung Benefits Act (30 U.S.C.
 4 901 et seq.) was enacted to provide health care and
 5 modest benefits to coal miners who develop pneumo-
 6 coniosis (referred to in this section as “black lung

1 disease”) resulting from exposure to coal dust dur-
2 ing their employment. Yet the determination of a
3 claimant’s eligibility for these benefits often requires
4 complex, adversarial litigation. Resource disparities
5 between coal companies and such claimants are
6 widespread within the statutory and regulatory
7 framework of such Act. Comprehensive reforms are
8 necessary to ensure that coal miners are not at a
9 disadvantage when filing claims for benefits.

10 (2) The Government Accountability Office has
11 found that many claimants under the Black Lung
12 Benefits Act are not equipped with the medical and
13 legal resources necessary to develop evidence to meet
14 the requirements for benefits. Miners often lack
15 complete and reliable medical evidence, consequently
16 increasing the risk that the individuals who review
17 claims for benefits will be presented with insufficient
18 medical evidence. Similarly, without better options
19 for legal representation, significant numbers of such
20 claimants proceed with their claims through a com-
21 plex and potentially long administrative process
22 without resources that Department of Labor officials
23 and black lung disease experts note are important
24 for developing evidence and supporting their claims.
25 Only 33 percent of claimants are represented by an

1 attorney during the initial claims determination. Ab-
2 sent efforts to remedy administrative problems and
3 address structural weaknesses in the process for ob-
4 taining benefits, claimants with meritorious claims
5 will not receive benefits.

6 (3) Full exchange and disclosure between the
7 parties of relevant medical information is essential
8 for fair adjudication of claims under the Black Lung
9 Benefits Act, regardless of whether the parties in-
10 tend to submit such information into evidence.
11 Records of adjudications reveal that some mine oper-
12 ators' legal representatives have withheld relevant
13 evidence from claimants, administrative law judges,
14 and, in some cases, even their own medical experts.
15 In several cases, the disclosure of such evidence
16 would have substantiated a miner's claim for bene-
17 fits. Withholding medical information can endanger
18 miners by depriving them of important information
19 about their own health and the potential need to
20 seek medical treatment.

21 (4) Given the remedial nature of the Black
22 Lung Benefits Act, when an adjudicator determines
23 that evidence is evenly balanced, it is appropriate for
24 any resulting doubt to be resolved in favor of the
25 claimant. The Supreme Court vacated this long-

1 standing legal principle, not on substantive grounds,
2 but because its application conflicted with the re-
3 quirements of another statute. Such principle needs
4 to be reinstated in the Black Lung Benefits Act be-
5 cause it provides fairness and improves the adminis-
6 tration of benefits.

7 (5) Physicians who read lung x-rays as part of
8 pulmonary assessments used in proceedings for
9 claims under the Black Lung Benefits Act are re-
10 quired to demonstrate competency in classifying
11 chest radiographs by becoming certified as B Read-
12 ers by the National Institute for Occupational Safety
13 and Health (referred to in this section as
14 “NIOSH”). However, investigations have uncovered
15 that there are NIOSH-certified B Readers who have
16 systematically misclassified chest radiographs while
17 employed by coal operators or their law firms for the
18 purpose of opposing claims under such Act. In re-
19 sponse, the Department of Labor has directed claims
20 examiners “not to credit negative chest x-ray read-
21 ings for pneumoconiosis” by one widely used physi-
22 cian employed at a prominent medical center unless
23 the conclusions of such physician “have been reha-
24 bilitated”. Where chest radiographs are needed to
25 establish entitlement to benefits, claimants should

1 have access to accurate interpretations so as to en-
2 sure the fair adjudication of such claims.

3 (6) As of the date of enactment of this Act,
4 more than one year has passed since survivors were
5 denied benefits on claims under the Black Lung
6 Benefits Act that involved the consideration of chest
7 radiograph interpretations rendered by a certain
8 physician whose interpretations have since been de-
9 termined by the Department of Labor to be gen-
10 erally not worthy of credit. Such survivors should be
11 permitted to file a new claim for benefits under such
12 Act. However, a survivor is effectively barred from
13 filing a new claim one year after a decision regard-
14 ing such benefits is final, constituting an injustice
15 that merits a remedy.

16 (7) Between the calendar years 2004 and 2014,
17 a reduction in the number of administrative law
18 judges in the Department of Labor, coupled with a
19 large increase in the number of cases filed under the
20 Black Lung Benefits Act, cuts to nondefense discre-
21 tionary spending, furloughs resulting from seques-
22 tration, and the 16-day shutdown of the Federal
23 Government during the calendar year 2013, has cre-
24 ated extensive delays in adjudicating claims under
25 such Act and numerous other labor and employment

1 laws. Due to the imbalance between resources and
2 caseloads, a typical claim under such Act remains
3 unresolved for an average of nearly 2 years prior to
4 a decision by an administrative law judge. These
5 delays directly and severely impact the lives of work-
6 ers throughout the United States, placing an undue
7 financial and emotional burden on the affected indi-
8 viduals and their families.

9 (8) Contrary to the intent of Congress, benefits
10 payments under the Black Lung Benefits Act do not
11 automatically increase with the rising cost of living.
12 Benefit payments are tied to the monthly pay rate
13 for Federal employees in grade GS-2, step 1. In sev-
14 eral of the fiscal years prior to the enactment of this
15 Act, there was a pay freeze for Federal employees,
16 which had the effect of eliminating cost-of-living ad-
17 justments for miners, surviving spouses, and depend-
18 ents under the Black Lung Benefits Act during such
19 years.

20 (9) A competent assessment of medical infor-
21 mation and testimony, which often involves multiple
22 physicians disputing a diagnosis, is necessary in de-
23 termining whether to award benefits under the
24 Black Lung Benefits Act. To ensure that a deter-
25 mination regarding a claim for benefits under such

1 Act is fair and accurate, regular training is needed
2 regarding—

3 (A) developments in pulmonary medicine
4 relating to black lung disease;

5 (B) medical evidence necessary to sustain
6 claims for such benefits; and

7 (C) the proper weight to be given to con-
8 flicting evidence.

9 (10) Black lung disease has been the underlying
10 or contributing cause of death of more than 76,000
11 miners since 1968. After decades of decline, the inci-
12 dence of coal miners with black lung disease is on
13 the rise. According to NIOSH, miners are devel-
14 oping advanced cases of the disease at younger ages.
15 In response, the Department of Labor has taken im-
16 portant steps to combat the disease, including pro-
17 mulgating a rule that reduces the allowed concentra-
18 tion of coal dust and eliminates weaknesses in the
19 current dust sampling system. Retrospective studies
20 should be continued to determine whether revisions
21 to the standards are necessary to eliminate the dis-
22 ease.

23 (11) To eliminate an avoidable delay in evalu-
24 ating claims under such Act, the Inspector General
25 of the Department of Labor has recommended legis-

1 lation that would authorize the Department of Labor
2 to have electronic access to miners' earning records
3 held by the Social Security Administration.

4 **TITLE I—BLACK LUNG BENEFITS**

5 **PART A—IMPROVING THE PROCESS FOR FILING**

6 **AND ADJUDICATING CLAIMS FOR BENEFITS**

7 **SEC. 101. MANDATORY DISCLOSURE OF MEDICAL INFOR-**

8 **MATION AND REPORTS.**

9 Part A of the Black Lung Benefits Act (30 U.S.C.
10 901 et seq.) is amended by adding at the end the fol-
11 lowing:

12 **“SEC. 403. MANDATORY MEDICAL INFORMATION DISCLO-**

13 **SURE.**

14 “(a) **REPORT.**—In any claim for benefits under this
15 title, an operator that requires a miner to submit to a
16 medical examination regarding the miner's respiratory or
17 pulmonary condition shall, not later than 21 days after
18 the miner has been examined, deliver to the claimant a
19 complete copy of the examining physician's report. The ex-
20 amining physician's report shall—

21 “(1) be in writing; and

22 “(2) set out in detail the findings of such physi-
23 cian, including any diagnoses and conclusions, the
24 results of any diagnostic imaging tests, and any
25 other tests performed on the miner.

1 “(b) DISCLOSURE.—In any claim for benefits under
2 this title, each party shall provide all other parties in the
3 proceeding with a copy of all medical information devel-
4 oped regarding the miner’s physical condition relating to
5 such claim, even if the party does not intend to submit
6 the information as evidence. Such medical information
7 shall include the opinion of any examining physician, and
8 any examining or nonexamining physician’s interpreta-
9 tions of radiographs or pathology.

10 “(c) REGULATIONS.—The Secretary shall promulgate
11 regulations regarding the disclosure of medical informa-
12 tion under this section, and such regulations may establish
13 sanctions for noncompliance with this section.”.

14 **SEC. 102. ATTORNEYS’ FEES AND MEDICAL EXPENSES PAY-**
15 **MENT PROGRAM.**

16 Part A of the Black Lung Benefits Act (30 U.S.C.
17 901 et seq.), as amended by section 101, is further amend-
18 ed by adding at the end the following:

19 **“SEC. 404. ATTORNEYS’ FEES AND MEDICAL EXPENSES PAY-**
20 **MENT PROGRAM.**

21 “(a) PROGRAM ESTABLISHED.—

22 “(1) IN GENERAL.—Not later than 180 days
23 after the date of enactment of the Black Lung Bene-
24 fits Improvement Act of 2017, the Secretary shall
25 establish a payment program to pay attorneys’ fees

1 and other reasonable and unreimbursed medical ex-
2 penses incurred in establishing the claimant's case,
3 using amounts from the fund, to the attorneys of
4 claimants in qualifying claims.

5 “(2) QUALIFYING CLAIM.—A qualifying claim
6 for purposes of this section is a contested claim for
7 benefits under this title for which a final order has
8 not been entered within one year of the filing of the
9 claim.

10 “(3) USE OF PAYMENTS FROM THE FUND.—
11 Notwithstanding any other provision of law,
12 amounts in the fund shall be available for payments
13 authorized by the Secretary under this section.

14 “(b) PAYMENTS AUTHORIZED.—

15 “(1) ATTORNEYS' FEES.—

16 “(A) APPROVAL.—If a claimant for bene-
17 fits under this title obtains a proposed decision
18 and order from a district director with an
19 award of benefits for a qualifying claim, or an
20 award for a qualifying claim before an adminis-
21 trative law judge—

22 “(i) the district director may approve
23 attorneys' fees for work done before such
24 director in an amount not to exceed
25 \$1,500; and

1 “(ii) an administrative law judge may
2 approve attorneys’ fees for work done be-
3 fore such judge in an amount not to exceed
4 \$3,000.

5 “(B) PAYMENT.—The Secretary shall,
6 through the program under this section, pay
7 any amounts approved under subparagraph (A).

8 “(2) MEDICAL EXPENSES.—

9 “(A) APPROVAL.—If a claimant for bene-
10 fits under this title obtains a proposed decision
11 and order from a district director with an
12 award of benefits for a qualifying claim, or an
13 award for a qualifying claim before an adminis-
14 trative law judge, such district director and ad-
15 ministrative law judge may each approve an
16 award, in an amount not to exceed \$1,500, to
17 the claimant’s attorney of reasonable and unre-
18 imbursed medical expenses incurred in estab-
19 lishing the claimant’s case.

20 “(B) PAYMENT.—The Secretary shall,
21 through the program under this section, pay
22 any amounts approved under subparagraph (A).

23 “(3) MAXIMUM.—The Secretary, through the
24 program established under this section, shall for any
25 single qualifying claim pay—

1 “(A) not more than a total of \$4,500 in at-
2 torneys’ fees; and

3 “(B) not more than \$3,000 in medical ex-
4 penses.

5 “(c) REIMBURSEMENT OF FUNDS.—In any case in
6 which a qualifying claim results in a final order awarding
7 compensation, the liable operator shall reimburse the fund
8 for any fees or expenses paid under this section, subject
9 to enforcement by the Secretary under section 424 and
10 in the same manner as compensation orders are enforced
11 under section 21(d) of the Longshore and Harbor Work-
12 ers’ Compensation Act (33 U.S.C. 921(d)).

13 “(d) ADDITIONAL PROGRAM RULES.—Nothing in
14 this section shall limit or otherwise affect an operator’s
15 liability for any attorneys’ fees or medical expenses award-
16 ed by the district director or an administrative law judge
17 that were not paid by the program under this section.
18 Nothing in this section shall limit or otherwise affect the
19 Secretary’s authority to use amounts in the fund to pay
20 approved attorneys’ fees in claims for benefits under this
21 title for which a final order awarding compensation has
22 been entered and the operator is unable to pay.

23 “(e) NO RECOUPMENT OF ATTORNEYS’ FEES.—Any
24 payment for attorneys’ fees or medical expenses made by

1 the Secretary under this section shall not be recouped
2 from the claimant or the claimant's attorney.”.

3 **SEC. 103. CLARIFYING ELIGIBILITY FOR BLACK LUNG BEN-**
4 **EFITS.**

5 Section 411(c) of the Black Lung Benefits Act (30
6 U.S.C. 921(c)) is amended by striking paragraphs (3) and
7 (4) and inserting the following:

8 “(3) If x-ray, biopsy, autopsy, or other medi-
9 cally accepted and relevant test or procedure estab-
10 lishes that a miner is suffering or has suffered from
11 a chronic dust disease of the lung, diagnosed as
12 complicated pneumoconiosis or progressive massive
13 fibrosis (pneumoconiosis that has formed an opacity,
14 mass, or lesion whose greatest diameter exceeds 1
15 centimeter), then there shall be an irrebuttable pre-
16 sumption that such miner is totally disabled due to
17 pneumoconiosis, that the miner's death was due to
18 pneumoconiosis, or that at the time of death the
19 miner was totally disabled by pneumoconiosis, as the
20 case may be. A chest radiograph, which yields one
21 or more large opacities (whose greatest diameter ex-
22 ceeds 1 centimeter), and would be classified in cat-
23 egory A, B, or C in the International Classification
24 of Radiographs of Pneumoconioses by the Inter-
25 national Labor Organization, shall be sufficient to

1 invoke the presumption, in the absence of more pro-
2 bative evidence sufficient to establish that the eti-
3 ology of a large opacity is not pneumoconiosis.

4 “(4) If a miner was employed for 15 years or
5 more in one or more coal mines, and if there is a
6 chest radiograph submitted in connection with the
7 claim under this title of such miner or such miner’s
8 surviving spouse, child, parent, brother, sister, or de-
9 pendent and it is interpreted as negative with re-
10 spect to the requirements of paragraph (3), and if
11 other evidence demonstrates the existence of a to-
12 tally disabling respiratory or pulmonary impairment,
13 then there shall be a rebuttable presumption that
14 such miner is totally disabled due to pneumoconiosis,
15 that the miner’s death was due to pneumoconiosis,
16 or that at the time of death the miner was totally
17 disabled by pneumoconiosis. In the case of a living
18 miner, a spouse’s affidavit may not be used by itself
19 to establish the presumption under this paragraph.
20 The presumption under this paragraph may be re-
21 butted only by establishing that such miner does
22 not, or did not, have pneumoconiosis, or that no part
23 of such miner’s respiratory or pulmonary impair-
24 ment or death was caused by pneumoconiosis.”.

1 **SEC. 104. RESTORING ADEQUATE BENEFIT ADJUSTMENTS**
2 **FOR MINERS SUFFERING FROM BLACK LUNG**
3 **DISEASE AND FOR THEIR DEPENDENT FAM-**
4 **ILY MEMBERS.**

5 Section 412(a) of the Black Lung Benefits Act (30
6 U.S.C. 922(a)) is amended by striking paragraph (1) and
7 inserting the following:

8 “(1) In the case of total disability of a miner
9 due to pneumoconiosis, the disabled miner shall be
10 paid benefits during the disability—

11 “(A) for any calendar year preceding Jan-
12 uary 1, 2015, at a rate equal to 37½ percent
13 of the monthly pay rate for Federal employees
14 in grade GS–2, step 1;

15 “(B) for the calendar year beginning on
16 January 1, 2015, at a rate of \$7,980 per year,
17 payable in 12 equal monthly payments; and

18 “(C) for each calendar year thereafter, at
19 a rate equal to the amount under subparagraph
20 (B) increased by an amount equal to any in-
21 crease in the annual rate of the Consumer Price
22 Index for Urban Wage Earners and Clerical
23 Workers, as published by the Bureau of Labor
24 Statistics.”.

1 **SEC. 105. TREATMENT OF EVIDENCE IN EQUIPOISE.**

2 Section 422 of the Black Lung Benefits Act (30
3 U.S.C. 932) is amended by adding at the end the fol-
4 lowing:

5 “(m) In determining the validity of a claim under this
6 title, an adjudicator who finds that the evidence is evenly
7 balanced on an issue shall resolve any resulting doubt in
8 the claimant’s favor and find that the claimant has met
9 the burden of persuasion on such issue.”.

10 **SEC. 106. PROVIDING ASSISTANCE WITH CLAIMS FOR MIN-**
11 **ERS AND THEIR DEPENDENT FAMILY MEM-**
12 **BERS.**

13 Section 427(a) of the Black Lung Benefits Act (30
14 U.S.C. 937(a)) is amended by striking “the analysis, ex-
15 amination, and treatment” and all that follows through
16 “coal miners.” and inserting “the analysis, examination,
17 and treatment of respiratory and pulmonary impairments
18 in active and inactive coal miners and for assistance on
19 behalf of miners, spouses, dependents, and other family
20 members with claims arising under this title.”.

21 **SEC. 107. FALSE STATEMENTS OR MISREPRESENTATIONS,**
22 **ATTORNEY DISQUALIFICATION, AND DIS-**
23 **COVERY SANCTIONS.**

24 Section 431 of the Black Lung Benefits Act (30
25 U.S.C. 941) is amended to read as follows:

1 **“SEC. 431. FALSE STATEMENTS OR MISREPRESENTATIONS,**
2 **ATTORNEY DISQUALIFICATION, AND DIS-**
3 **COVERY SANCTIONS.**

4 “(a) IN GENERAL.—No person, including any claim-
5 ant, physician, operator, duly authorized agent of such op-
6 erator, or employee of an insurance carrier, shall—

7 “(1) knowingly and willfully make a false state-
8 ment or misrepresentation for the purpose of obtain-
9 ing, increasing, reducing, denying, or terminating
10 benefits under this title; or

11 “(2) threaten, coerce, intimidate, deceive, or
12 knowingly mislead a party, representative, witness,
13 potential witness, judge, or anyone participating in
14 a proceeding regarding any matter related to a pro-
15 ceeding under this title.

16 “(b) FINE; IMPRISONMENT.—Any person who en-
17 gages in the conduct described in subsection (a) shall,
18 upon conviction, be subject to a fine in accordance with
19 title 18, United States Code, imprisoned for not more than
20 5 years, or both.

21 “(c) PROMPT INVESTIGATION.—The United States
22 Attorney for the district in which the conduct described
23 in subsection (a) is alleged to have occurred shall make
24 every reasonable effort to promptly investigate each com-
25 plaint of a violation of such subsection.

26 “(d) DISQUALIFICATION.—

1 “(1) IN GENERAL.—An attorney or expert wit-
2 ness who engages in the conduct described in sub-
3 section (a) shall, in addition to the fine or imprison-
4 ment provided under subsection (b), be permanently
5 disqualified from representing any party, or appear-
6 ing in any proceeding, under this title.

7 “(2) ATTORNEY DISQUALIFICATION.—In addi-
8 tion to the disqualification described in paragraph
9 (1), the Secretary may disqualify an attorney from
10 representing any party in a proceeding under this
11 title for either a limited term or permanently, if the
12 attorney—

13 “(A) engages in any action or behavior
14 that is prejudicial to the fair and orderly con-
15 duct of such proceeding; or

16 “(B) is suspended or disbarred by any
17 court of the United States, any State, or any
18 territory, commonwealth, or possession of the
19 United States with jurisdiction over the pro-
20 ceeding.

21 “(e) DISCOVERY SANCTIONS.—An administrative law
22 judge may sanction a party who fails to comply with an
23 order to compel discovery or disclosure, or to supplement
24 earlier responses, in a proceeding under this title. These
25 sanctions may include, as appropriate—

1 “(1) drawing an adverse inference against the
2 noncomplying party on the facts relevant to the dis-
3 covery or disclosure order;

4 “(2) limiting the noncomplying party’s claims,
5 defenses, or right to introduce evidence; and

6 “(3) rendering a default decision against the
7 noncomplying party.

8 “(f) REGULATIONS.—The Secretary shall promulgate
9 regulations that—

10 “(1) provide procedures for the disqualifications
11 and sanctions under this section and are appropriate
12 for all parties; and

13 “(2) distinguish between parties that are rep-
14 resented by an attorney and parties that are not
15 represented by an attorney.”.

16 **SEC. 108. DEVELOPMENT OF MEDICAL EVIDENCE BY THE**
17 **SECRETARY.**

18 Part C of the Black Lung Benefits Act (30 U.S.C.
19 931 et seq.) is amended by adding at the end the fol-
20 lowing:

21 **“SEC. 435. DEVELOPMENT OF MEDICAL EVIDENCE BY THE**
22 **SECRETARY.**

23 “(a) COMPLETE PULMONARY EVALUATION.—Upon
24 request by a claimant for benefits under this title, the Sec-
25 retary shall provide the claimant an opportunity to sub-

1 stantiate the claim through a complete pulmonary evalua-
2 tion of the miner that shall include—

3 “(1) an initial report, conducted by a qualified
4 physician on the list provided under subsection (d),
5 and in accordance with subsection (d)(5) and sec-
6 tions 402(f)(1)(D) and 413(b); and

7 “(2) if the conditions under subsection (b) are
8 met, any supplemental medical evidence described in
9 subsection (c).

10 “(b) CONDITIONS FOR SUPPLEMENTAL MEDICAL
11 EVIDENCE.—The Secretary shall develop supplemental
12 medical evidence, in accordance with subsection (c)—

13 “(1) for any claim in which the Secretary rec-
14 ommends an award of benefits based on the results
15 of the initial report under subsection (a)(1) and a
16 party opposing such award submits evidence that
17 could be considered contrary to the findings of the
18 Secretary; and

19 “(2) for any compensation case under this title
20 heard by an administrative law judge, in which—

21 “(A) the Secretary has awarded benefits to
22 the claimant;

23 “(B) the party opposing such award has
24 submitted evidence not previously reviewed that

1 could be considered contrary to the award
2 under subparagraph (A); and

3 “(C) the claimant or, if the claimant is
4 represented by an attorney, the claimant’s at-
5 torney consents to the Secretary developing
6 supplemental medical evidence.

7 “(c) PROCESS FOR SUPPLEMENTAL MEDICAL EVI-
8 DENCE.—

9 “(1) IN GENERAL.—Except as provided under
10 paragraph (2), to develop supplemental medical evi-
11 dence under conditions described in subsection (b),
12 the Secretary shall request the physician who con-
13 ducted the initial report under subsection (a)(1)
14 to—

15 “(A) review any medical evidence sub-
16 mitted after such report or the most recent sup-
17 plemental report, as appropriate; and

18 “(B) update his or her opinion in a supple-
19 mental report.

20 “(2) ALTERNATIVE PHYSICIAN.—If such physi-
21 cian is no longer available or is unwilling to provide
22 supplemental medical evidence under paragraph (1),
23 the Secretary shall select another qualified physician
24 to provide such evidence.

1 “(3) COMPLICATED PNEUMOCONIOSIS.—In di-
2 agnosing whether there is complicated pneumo-
3 coniosis as a part of a medical examination con-
4 ducted under paragraphs (1) or (2), the Secretary
5 shall authorize a high-quality, low-dose or standard
6 CT scan where one or more of the following is
7 found:

8 “(A) Any certified B reader of a chest
9 radiograph associated with the examination
10 under section 413(b) finds advanced pneumo-
11 coniosis (ILO category 2/1 or greater).

12 “(B) Any certified B reader of a chest
13 radiograph associated with the examination
14 under section 413(b) finds a coalescence of
15 small opacities.

16 “(C) Any certified B reader of a chest
17 radiograph associated with the examination
18 under section 413(b) has a reasonable belief
19 that there may be a large opacity in the upper
20 lungs that has been obscured by bony struc-
21 tures.

22 “(d) QUALIFIED PHYSICIANS FOR COMPLETE PUL-
23 MONARY EVALUATION AND PROTECTIONS FOR SUIT-
24 ABILITY AND POTENTIAL CONFLICTS OF INTEREST.—

1 “(1) QUALIFIED PHYSICIANS LIST.—The Sec-
2 retary shall create and maintain a list of qualified
3 physicians to be selected by a claimant to perform
4 the complete pulmonary evaluation described in sub-
5 section (a).

6 “(2) PUBLIC AVAILABILITY.—The Secretary
7 shall make the list under this subsection available to
8 the public.

9 “(3) ANNUAL EVALUATION.—Each year, the
10 Secretary shall update such list by reviewing the
11 suitability of the listed qualified physicians and as-
12 sessing any potential conflicts of interest.

13 “(4) CRITERIA FOR SUITABILITY.—In deter-
14 mining whether a physician is suitable to be on the
15 list under this subsection, the Secretary shall consult
16 the National Practitioner Data Bank of the Depart-
17 ment of Health and Human Services and assess re-
18 ports of adverse licensure, certifications, hospital
19 privilege, and professional society actions involving
20 the physician. In no case shall such list include any
21 physician—

22 “(A) who is not licensed to practice medi-
23 cine in any State or any territory, common-
24 wealth, or possession of the United States;

1 “(B) whose license is revoked by a medical
2 licensing board of any State, territory, common-
3 wealth, or possession of the United States; or

4 “(C) whose license is suspended by a med-
5 ical licensing board of any State, territory, com-
6 monwealth, or possession of the United States.

7 “(5) CONFLICTS OF INTEREST.—The Secretary
8 shall develop and implement policies and procedures
9 to ensure that any actual or potential conflict of in-
10 terest of qualified physicians on the list under this
11 subsection, including both individual and organiza-
12 tional conflicts of interest, are disclosed to the De-
13 partment, and to provide such disclosure to claim-
14 ants. Such policies and procedures shall provide
15 that, unless the claimant knowingly and with the
16 benefit of full disclosure waives the following limita-
17 tions, a physician shall not be used to perform a
18 complete pulmonary medical evaluation under sub-
19 section (a) that is reimbursed pursuant to subsection
20 (f), if—

21 “(A) such physician is employed by, under
22 contract to, or otherwise providing services to a
23 private party opposing the claim, a law firm or
24 lawyer representing such opposing party, or an

1 interested insurer or other interested third
2 party; or

3 “(B) such physician has been retained by
4 a private party opposing the claim, a law firm
5 or lawyer representing such opposing party, or
6 an interested insurer or other interested third
7 party in the previous 24 months.

8 “(e) RECORD.—Upon receipt of any initial report or
9 supplemental report under this section, the Secretary shall
10 enter the report in the record and provide a copy of such
11 report to all parties to the proceeding.

12 “(f) EXPENSES.—All expenses related to obtaining
13 the medical evidence under this section shall be paid for
14 by the fund. If a claimant receives a final award of bene-
15 fits, the operator liable for payment of benefits, if any,
16 shall reimburse the fund for such expenses, which shall
17 include interest.”.

18 **SEC. 109. ESTABLISHMENT OF PILOT PROGRAM TO PRO-**
19 **VIDE IMPARTIAL CLASSIFICATIONS OF**
20 **CHEST RADIOGRAPHS.**

21 (a) ESTABLISHMENT.—Part C of the Black Lung
22 Benefits Act (30 U.S.C. 931 et seq.), as amended by sec-
23 tion 108, is further amended by adding at the end the
24 following:

1 **“SEC. 436. ESTABLISHMENT OF PILOT PROGRAM TO PRO-**
2 **VIDE IMPARTIAL CLASSIFICATIONS OF**
3 **CHEST RADIOGRAPHS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) B READER.—The term ‘B Reader’ means
6 an individual who—

7 “(A) has a valid license to practice medi-
8 cine in not less than one State, territory, com-
9 monwealth, or possession of the United States;
10 and

11 “(B) has demonstrated a proficiency,
12 through an examination administered by the
13 National Institute for Occupational Safety and
14 Health, in classifying chest radiographs for
15 findings consistent with pneumoconiosis using
16 the International Classification of Radiographs
17 of Pneumoconioses by the International Labor
18 Organization.

19 “(2) B READER PANEL.—The term ‘B Reader
20 Panel’ means a panel of not less than 3 B Readers
21 selected by the Director exclusively from the B
22 Reader Panel Pool.

23 “(3) DIRECTOR.—The term ‘Director’ means
24 the Director of the National Institute for Occupa-
25 tional Safety and Health.

1 “(4) ILO CLASSIFICATION.—The term ‘ILO
2 classification’ means the standardized categorization
3 of chest radiographs for findings consistent with
4 pneumoconiosis using the International Classifica-
5 tion of Radiographs of Pneumoconioses by the Inter-
6 national Labor Organization.

7 “(5) B READER PANEL POOL.—The term ‘B
8 Reader Panel Pool’ means the group of physicians
9 included in the pool described in subsection (c).

10 “(b) B READER PANEL PROGRAM.—

11 “(1) ESTABLISHMENT OF PILOT PROGRAM.—

12 “(A) IN GENERAL.—The Director shall es-
13 tablish, in the National Institute for Occupa-
14 tional Safety and Health, a pilot program to be
15 known as the ‘B Reader Panel Program’. The
16 B Reader Panel Program shall establish B
17 Reader Panels that—

18 “(i) are operated in a manner to as-
19 sure accurate ILO classifications, which
20 may be used for claims for benefits de-
21 scribed in subparagraph (C);

22 “(ii) only classify chest radiographs;
23 and

24 “(iii) classify all appearances de-
25 scribed in the International Classification

1 of Radiographs of Pneumoconiosis by the
2 International Labor Organization or illus-
3 trated by the International Labor Organi-
4 zation standard radiographs.

5 “(B) DURATION.—The B Reader Panel
6 Program established under this section shall be
7 conducted for a duration of one year, beginning
8 after the issuance of necessary protocols and in-
9 terim final rules under subsection (h).

10 “(C) APPLICABILITY.—A chest radiograph
11 classification may only be requested under this
12 section for a claim for benefits under this title
13 where the presence or absence of complicated
14 pneumoconiosis or progressive massive fibrosis
15 (large opacities greater than or equal to cat-
16 egory A of the ILO classification) is in fact at
17 issue.

18 “(2) PROGRAM PERSONNEL MATTERS.—

19 “(A) IN GENERAL.—The Director may hire
20 such personnel as are necessary to establish,
21 manage, and evaluate the B Reader Panel Pro-
22 gram, including a B Reader Program Director
23 described in subparagraph (B).

24 “(B) B READER PROGRAM DIRECTOR.—
25 The B Reader Program Director shall be a phy-

1 appearance of bias or lack of suffi-
2 cient impartiality;

3 “(II) a requirement that each
4 such B Reader submits a conflict of
5 interest disclosure statement to the
6 Director and annually updates such
7 statement; and

8 “(III) requirements for the con-
9 tent of the conflict of interest dislo-
10 sure statements required under sub-
11 clause (II).

12 “(B) B READER ETHICS OFFICER.—The
13 Director shall designate an employee of the Na-
14 tional Institute for Occupational Safety and
15 Health as the B Reader Ethics Officer whose
16 responsibilities shall include—

17 “(i) reviewing all conflict of interest
18 disclosures of B Readers on the B Reader
19 Panel Pool;

20 “(ii) investigating the validity of such
21 disclosures;

22 “(iii) maintaining a list of such B
23 Readers who fail to disclose a conflict of
24 interest;

1 “(iv) addressing complaints about in-
2 complete or inaccurate conflict of interest
3 disclosures;

4 “(v) assessing whether any such B
5 Reader has been improperly assigned to a
6 panel due to a conflict of interest; and

7 “(vi) assuring full transparency of
8 conflict of interest disclosures to the pub-
9 lic.

10 “(4) QUALITY ASSURANCE PROGRAM.—

11 “(A) PROTOCOLS.—

12 “(i) ESTABLISHMENT.—The Director
13 shall establish a quality assurance program
14 consisting of protocols to ensure that the
15 results produced by B Reader Panels meet
16 or exceed standards of performance re-
17 quired for accuracy and consistency.

18 “(ii) PROTOCOLS.—The protocols
19 under this subparagraph shall include pro-
20 tocols—

21 “(I) for each B Reader to pre-
22 pare an individual ILO classification
23 report for each chest radiograph; and

1 derline positive or negative for complicated
2 pneumoconiosis or progressive massive fi-
3 brosis (large opacities greater than or
4 equal to category A of the ILO classifica-
5 tion) with accuracy and consistency.

6 “(v) BLIND READINGS.—In reading a
7 radiograph to make an ILO classification,
8 a B Reader shall be blinded from the ori-
9 gin of the radiograph.

10 “(B) CONTINUOUS IMPROVEMENT.—The
11 Director shall establish a process for providing
12 feedback to B Readers in the B Reader Pool
13 with respect to their performance in providing
14 ILO classifications and provide suggestions for
15 improvement.

16 “(c) CREATION AND MAINTENANCE OF B READER
17 PANEL POOL.—

18 “(1) ESTABLISHMENT.—The Director shall es-
19 tablish a B Reader Panel Pool to be used for the B
20 Reader Panel Program under this section. The Di-
21 rector shall solicit and select physicians who are B
22 Readers for inclusion in the B Reader Panel Pool.

23 “(2) SELECTION AND RETENTION FOR B READ-
24 ERS ON B READER PANEL POOL.—

1 “(A) IN GENERAL.—The Director shall es-
2 tablish and disclose criteria by which B Readers
3 are selected and retained within the B Reader
4 Panel Pool, including minimum standards of
5 performance described in subparagraph (B).

6 “(B) MINIMUM STANDARDS OF PERFORM-
7 ANCE.—The minimum standards of perform-
8 ance for inclusion in the B Reader Panel Pool
9 shall include requiring the B Reader to make
10 radiograph classifications consistent with ILO
11 classification criteria that are consistently with-
12 in acceptable norms, as established by the Di-
13 rector.

14 “(C) CONSIDERATIONS FOR SELECTION.—
15 In selecting a B Reader to be included in the
16 B Reader Panel Pool, the Director shall—

17 “(i) assess, to the maximum extent
18 practicable, the prior performance of the B
19 Reader in making ILO classifications;

20 “(ii) consult the National Practitioner
21 Data Bank of the Department of Health
22 and Human Services for information on
23 physician suitability; and

24 “(iii) assess reports of adverse licen-
25 sure, certifications, hospital privilege, and

1 professional society actions involving the B
2 Reader.

3 “(D) MONITORING.—The Director shall
4 monitor ILO classifications conducted under
5 this section to determine if any B Reader in-
6 cluded in the B Reader Panel Pool dem-
7 onstrates a pattern of providing ILO classifica-
8 tions that are erroneous or not consistently
9 within the acceptable norms, as established by
10 the Director.

11 “(3) PROCESS FOR REMOVAL.—

12 “(A) IN GENERAL.—The Director shall be
13 authorized to suspend or remove any B Reader
14 from the B Reader Panel Pool for—

15 “(i) consistently failing to meet the
16 minimum standards of performance under
17 paragraph (2)(B);

18 “(ii) breaching the code of ethics
19 under subsection (b)(3)(A); or

20 “(iii) other disqualifying conduct, as
21 established by rule or policy.

22 “(B) REVIEW.—The Director shall provide
23 a process for a B Reader who is aggrieved by
24 a decision of the Director under subparagraph
25 (A) to seek review by the Secretary of Health

1 and Human Services. The review by such Sec-
2 retary shall not stay the suspension of the B
3 Reader during the pendency of the review.

4 “(4) DISCLOSURE.—The Director shall make
5 publicly accessible—

6 “(A) the names and qualifications of the B
7 Readers included in the B Reader Panel Pool;

8 “(B) the names of B Readers who have
9 been suspended or removed from the B Reader
10 Panel Pool and the reasons for such suspension
11 or removal;

12 “(C) the conflict of interest disclosure
13 statements required under subsection
14 (b)(3)(A)(ii)(II); and

15 “(D) any pertinent information which the
16 Director determines necessary to assure trans-
17 parency and program integrity.

18 “(d) ELIGIBILITY TO REQUEST ILO CLASSIFICA-
19 TIONS.—Each of the following individuals may request an
20 ILO classification under this section:

21 “(1) Claimants or operators, or their authorized
22 representatives, in a claim for benefits that meets
23 the requirements of subsection (b)(1)(C).

24 “(2) Individuals defined as adjudication officers
25 by regulations of the Secretary.

1 “(e) TIMING OF REPORTS.—Following the receipt of
2 a written request for the classification of a chest
3 radiograph, the Director shall provide a report conducted
4 by a B Reader Panel—

5 “(1) for digital chest radiographic images, with-
6 in 45 days; and

7 “(2) for film-based chest radiographs, within 90
8 days.

9 “(f) TESTIMONY.—

10 “(1) AVAILABILITY OF DIRECTOR OR DES-
11 IGNEE.—The Director, or a designee of the Director,
12 shall be available to respond to interrogatories or ap-
13 pear and testify about a B Reader Panel’s conclu-
14 sions or the process by which B Reader Panels clas-
15 sify radiographs in a case under subsection
16 (b)(1)(C), upon the request of a party to such case.

17 “(2) INTERROGATORIES AND SUBPOENAS FOR B
18 READERS.—To the extent that additional informa-
19 tion is reasonably necessary for the full development
20 of evidence pertaining to a B Reader Panel Report
21 in a case under subsection (b)(1)(C), a B Reader of
22 a B Reader Panel—

23 “(A) may be required to respond to inter-
24 rogatories with respect to the ILO classification

1 provided by the B Reader in the case, only if
2 so ordered by an administrative law judge; and

3 “(B) may not be required to appear and
4 testify under subpoena, unless the party making
5 such request demonstrates to an administrative
6 law judge that—

7 “(i)(I) the B Reader Panel Report is
8 incomplete or lacks information that is rea-
9 sonably necessary for such full develop-
10 ment; and

11 “(II) if responses to interrogatories
12 were ordered, the responses are unclear or
13 incomplete; or

14 “(ii) there is an extraordinary cir-
15 cumstance in which additional information
16 that is reasonably necessary for such full
17 development is otherwise unavailable from
18 the Director and can only be provided by
19 such B Reader.

20 “(g) ADMINISTRATIVE COSTS.—

21 “(1) ESTABLISHMENT.—Funds necessary to es-
22 tablish and operate the B Reader Panel Program
23 under this section shall be paid as an administrative
24 cost from the fund. The Director shall consult with

1 the Secretary on allocations of funds in establishing
2 such program.

3 “(2) COSTS OF REPORTS FOR B READER PAN-
4 ELS.—

5 “(A) FEES.—

6 “(i) IN GENERAL.—The Director shall
7 establish a fee for a B Reader Panel Re-
8 port in accordance with clause (ii). Such
9 fee shall be payable by the party request-
10 ing such report. No fee shall be charged if
11 the request for such ILO classification is
12 made by an individual defined as an adju-
13 dication officer by regulations of the Sec-
14 retary.

15 “(ii) LIMITATION.—The amount of a
16 fee under clause (i) shall not exceed the di-
17 rect cost of hiring the B Readers of the B
18 Reader Panel that made the ILO classi-
19 fication.

20 “(B) LEGAL COSTS.—

21 “(i) IN GENERAL.—The National In-
22 stitute for Occupational Safety and Health
23 shall use amounts in the fund to pay for
24 all costs related to the appearance and re-
25 sponses to interrogatories of the Director

1 or a designee of the Director, or a B Read-
2 er of a B Reader Panel, in a proceeding
3 under this section.

4 “(ii) REPRESENTATION OF THE NA-
5 TIONAL INSTITUTE FOR OCCUPATIONAL
6 SAFETY AND HEALTH.—The Office of the
7 General Counsel of the Department of
8 Health and Human Services shall, in con-
9 sultation with the Solicitor of Labor, rep-
10 resent the National Institute for Occupa-
11 tional Safety and Health in any proceeding
12 under this section, the costs of which shall
13 be payable from the fund.

14 “(h) PROTOCOLS AND INTERIM FINAL RULES.—Not
15 later than 180 days after the date of enactment of the
16 Black Lung Benefits Improvement Act of 2017, the Sec-
17 retary of Health and Human Services shall issue protocols
18 and promulgate interim final rules, as necessary, to com-
19 mence the implementation of this section.

20 “(i) REPORT TO CONGRESS.—

21 “(1) IN GENERAL.—Not later than 30 days
22 after the completion of the pilot program under this
23 section, the Director shall, in consultation with the
24 Secretary of Labor, prepare and submit a report to
25 the Committee on Health, Education, Labor, and

1 Pensions of the Senate and the Committee on Edu-
2 cation and the Workforce of the House of Rep-
3 resentatives that includes the information in para-
4 graph (2).

5 “(2) CONTENTS.—The report under this sub-
6 section shall include—

7 “(A) the number of B Reader Panels es-
8 tablished under this section;

9 “(B) the number of B Readers partici-
10 pating in the pilot program under this section;

11 “(C) the effectiveness of the quality assur-
12 ance program under subsection (b)(4);

13 “(D) the accuracy of the ILO classifica-
14 tions conducted by B Readers under this sec-
15 tion;

16 “(E) challenges in the administration and
17 implementation of such pilot program;

18 “(F) the costs and revenues of such pilot
19 program;

20 “(G) the impact of the pilot program on
21 the claims-adjudication process;

22 “(H) a recommendation on whether the
23 pilot program under this section should extend
24 beyond the one-year duration under subsection
25 (b)(1)(B); and

1 “(I) recommendations for any necessary
2 modifications to such pilot program, if the Di-
3 rector recommends such an extension.”.

4 (b) CONFORMING AMENDMENT RELATED TO DE-
5 POSIT OF FEES.—Section 9501(b) of the Internal Rev-
6 enue Code of 1986 (26 U.S.C. 9501(b)) is amended by
7 adding at the end the following new paragraph:

8 “(3) CERTAIN FEES.—Amounts collected as
9 fees authorized under section 436(g)(2)(A) of the
10 Black Lung Benefits Act.”.

11 **SEC. 110. MEDICAL EVIDENCE TRAINING PROGRAM.**

12 Part C of the Black Lung Benefits Act (30 U.S.C.
13 931 et seq.), as amended by sections 108 and 109, is fur-
14 ther amended by adding at the end the following:

15 **“SEC. 437. MEDICAL EVIDENCE TRAINING PROGRAM.**

16 “(a) IN GENERAL.—Not later than 60 days after the
17 date of enactment of the Black Lung Benefits Improve-
18 ment Act of 2017, the Secretary, in coordination with the
19 National Institute for Occupational Safety and Health,
20 shall establish and implement a training program, to pro-
21 vide education on issues relating to medical evidence rel-
22 evant to claims for benefits under this title, to each of
23 the following individuals who engage in work under this
24 title:

25 “(1) District directors.

1 “(2) Claims examiners working under such di-
2 rectors.

3 “(3) Administrative law judges and attorney
4 advisors supporting such judges.

5 “(4) Members of the Benefits Review Board es-
6 tablished under section 21(b) of the Longshore and
7 Harbor Workers’ Compensation Act (33 U.S.C.
8 921(b)).

9 “(b) TRAINING PROGRAM TOPICS.—The training
10 program under this section shall provide an overview of
11 topics that include—

12 “(1) new developments in pulmonary medicine
13 relating to pneumoconiosis;

14 “(2) medical evidence, and other relevant evi-
15 dence, sufficient to support a claim for benefits
16 under this title; and

17 “(3) weighing conflicting medical evidence and
18 testimony concerning eligibility for such benefits.

19 “(c) TIMING OF TRAINING.—

20 “(1) INDIVIDUALS HIRED OR APPOINTED PRIOR
21 TO THE BLACK LUNG BENEFITS IMPROVEMENT ACT
22 OF 2017.—Any district director, claims examiner, ad-
23 ministrative law judge, attorney advisor supporting
24 such judge, or member of the Benefits Review Board
25 described in subsection (a)(4), who was hired or ap-

1 pointed prior to the date of enactment of the Black
2 Lung Benefits Improvement Act of 2017 shall com-
3 plete the training program under this section not
4 later than 60 days after the establishment of such
5 program under subsection (a) and not less than an-
6 nually thereafter.

7 “(2) INDIVIDUALS HIRED OR APPOINTED AFTER
8 THE BLACK LUNG BENEFITS IMPROVEMENT ACT OF
9 2017.—Any district director, claims examiner, admin-
10 istrative law judge, attorney advisor supporting such
11 judge, or member of the Benefits Review Board de-
12 scribed in subsection (a)(4), who is not described in
13 paragraph (1) shall complete the training program
14 under this section prior to engaging in any work
15 under this title and not less than annually there-
16 after.”.

17 **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

18 The Black Lung Benefits Act (30 U.S.C. 901 et seq.)
19 is amended—

20 (1) in section 401(a) (30 U.S.C. 901(a)), by in-
21 sserting “or who were found to be totally disabled by
22 such disease” after “such disease”;

23 (2) in section 402 (30 U.S.C. 902)—

24 (A) in subsection (a), by striking para-
25 graph (2) and inserting the following:

1 “(2) a spouse who is a member of the same
2 household as the miner, or is receiving regular con-
3 tributions from the miner for support, or whose
4 spouse is a miner who has been ordered by a court
5 to contribute to support, or who meets the require-
6 ments of paragraph (1) or (2) of section 216(b) of
7 the Social Security Act or paragraph (1) or (2) of
8 section 216(f) of such Act. An individual is the
9 ‘spouse’ of a miner when such individual is legally
10 married to the miner under the laws of the State
11 where the marriage was celebrated. The term
12 ‘spouse’ also includes a ‘divorced wife’ or ‘divorced
13 husband’, as such terms are defined in paragraph
14 (1) or (4) of section 216(d) of such Act, who is re-
15 ceiving at least one-half of his or her support, as de-
16 termined in accordance with regulations prescribed
17 by the Secretary, from the miner, or is receiving
18 substantial contributions from the miner (pursuant
19 to a written agreement), or there is in effect a court
20 order for substantial contributions to the spouse’s
21 support from such miner.”;

22 (B) by striking subsection (e) and insert-
23 ing the following:

24 “(e) The term ‘surviving spouse’ includes the spouse
25 living with or dependent for support on the miner at the

1 time of the miner’s death, or living apart for reasonable
2 cause or because of the miner’s desertion, or who meets
3 the requirements of subparagraph (A), (B), (C), (D), or
4 (E) of section 216(c)(1) of the Social Security Act, sub-
5 paragraph (A), (B), (C), (D), or (E) of section 216(g)(1)
6 of such Act, or section 216(k) of such Act, who is not
7 married. An individual is the ‘surviving spouse’ of a miner
8 when legally married at the time of the miner’s death
9 under the laws of the State where the marriage was cele-
10 brated. Such term also includes a ‘surviving divorced wife’
11 or ‘surviving divorced husband’, as such terms are defined
12 in paragraph (2) or (5) of section 216(d) of such Act who
13 for the month preceding the month in which the miner
14 died, was receiving at least one-half of his or her support,
15 as determined in accordance with regulations prescribed
16 by the Secretary, from the miner, or was receiving sub-
17 stantial contributions from the miner (pursuant to a writ-
18 ten agreement) or there was in effect a court order for
19 substantial contributions to the spouse’s support from the
20 miner at the time of the miner’s death.”;

21 (C) in subsection (g)—

22 (i) in paragraph (2)(B)(ii), by striking
23 “he ceased” and inserting “the individual
24 ceased”; and

1 (ii) in the matter following paragraph
2 (2)(C), by striking “widow” each place it
3 appears and inserting “surviving spouse”;

4 (D) in subsection (h), by striking “Internal
5 Revenue Code of 1954” and inserting “Internal
6 Revenue Code of 1986”; and

7 (E) in subsection (i), by striking “Internal
8 Revenue Code of 1954” and inserting “Internal
9 Revenue Code of 1986”;

10 (3) in section 411 (30 U.S.C. 921)—

11 (A) by striking subsection (a) and insert-
12 ing the following:

13 “(a) The Secretary shall, in accordance with the pro-
14 visions of this title, and the regulations promulgated by
15 the Secretary under this title, make payments of benefits
16 in respect of—

17 “(1) total disability of any miner due to pneu-
18 moconiosis;

19 “(2) the death of any miner whose death was
20 due to pneumoconiosis;

21 “(3) total disability of any miner at the time of
22 the miner’s death with respect to a claim filed under
23 part C prior to January 1, 1982;

24 “(4) survivors’ benefits for any claim filed after
25 January 1, 2005, that is pending on or after March

1 23, 2010, where the miner is found entitled to re-
2 ceive benefits at the time of the miner's death as a
3 result of the miner's claim filed under part C; and

4 “(5) survivors' benefits where the miner is
5 found entitled to receive benefits at the time of the
6 miner's death resulting from the miner's claim filed
7 under part C before January 1, 1982.”; and

8 (B) in subsection (c)—

9 (i) in paragraph (1), by striking “his
10 pneumoconiosis” and inserting “the min-
11 er's pneumoconiosis”; and

12 (ii) in paragraph (2), by striking “his
13 death” and inserting “the miner's death”;

14 (4) in section 412 (30 U.S.C. 922)—

15 (A) in subsection (a)—

16 (i) by striking paragraph (2) and in-
17 serting the following:

18 “(2) In the case of a surviving spouse—

19 “(A) of a miner whose death is due to pneumo-
20 coniosis;

21 “(B) in a claim filed after January 1, 2005,
22 and that is pending on or after March 23, 2010, of
23 a miner who is found entitled to receive benefits at
24 the time of the miner's death as a result of the min-
25 er's claim filed under part C;

1 “(C) of a miner who is found entitled to receive
2 benefits at the time of the miner’s death as a result
3 of the miner’s claim filed under part C before Janu-
4 ary 1, 1982; or

5 “(D) in a claim filed under part C before Janu-
6 ary 1, 1982, of a miner who was totally disabled by
7 pneumoconiosis at the time of the miner’s death,
8 benefits shall be paid to the miner’s surviving spouse at
9 the rate the deceased miner would receive such benefits
10 if the miner were totally disabled.”;

11 (ii) in paragraph (3)—

12 (I) by striking “(3) In the case”
13 and all that follows through “section
14 411(c)” and inserting the following:
15 “(3)(A) In the case of the child or
16 children of a miner described in sub-
17 paragraph (B)”;

18 (II) by striking “he” each place
19 it appears and inserting “the child”;

20 (III) by striking “widow” each
21 place it appears and inserting “sur-
22 viving spouse”; and

23 (IV) by adding at the end the fol-
24 lowing:

1 “(B) Subparagraph (A) shall apply in the case of any
2 child or children—

3 “(i) of a miner whose death is due to pneumo-
4 coniosis;

5 “(ii) in a claim filed after January 1, 2005,
6 that is pending on or after March 23, 2010, of a
7 miner who is found entitled to receive benefits at the
8 time of the miner’s death as a result of the miner’s
9 claim filed under part C;

10 “(iii) of a miner who is found entitled to receive
11 benefits at the time of the miner’s death as a result
12 of the miner’s claim filed under part C before Janu-
13 ary 1, 1982;

14 “(iv) in a claim filed under part C before Janu-
15 ary 1, 1982, of a miner who was totally disabled by
16 pneumoconiosis at the time of the miner’s death;

17 “(v) of a surviving spouse who is found entitled
18 to receive benefits under this part at the time of the
19 surviving spouse’s death; or

20 “(vi) entitled to the payment of benefits under
21 paragraph (5) of section 411(c).”;

22 (iii) in paragraph (5)—

23 (I) by striking the first sentence
24 and inserting the following: “In the
25 case of the dependent parent or par-

1 ents of a miner who is not survived at
2 the time of death by a surviving
3 spouse or a child and (i) whose death
4 is due to pneumoconiosis, (ii) in a
5 claim filed after January 1, 2005,
6 that is pending on or after March 23,
7 2010, who is found entitled to receive
8 benefits at the time of the miner's
9 death as a result of the miner's claim
10 filed under part C, (iii) who is found
11 entitled to receive benefits at the time
12 of the miner's death as a result of the
13 miner's claim filed under part C be-
14 fore January 1, 1982, or (iv) in a
15 claim filed under part C before Janu-
16 ary 1, 1982, who was totally disabled
17 by pneumoconiosis at the time of the
18 miner's death, (I) in the case of the
19 dependent surviving brother(s) or sis-
20 ter(s) of such a miner who is not sur-
21 vived at the time of the miner's death
22 by a surviving spouse, child, or par-
23 ent, (II) in the case of the dependent
24 parent or parents of a miner (who is
25 not survived at the time of the miner's

1 death by a surviving spouse or child)
2 who are entitled to the payment of
3 benefits under paragraph (5) of sec-
4 tion 411(c), or (III) in the case of the
5 dependent surviving brother(s) or sis-
6 ter(s) of a miner (who is not survived
7 at the time of the miner’s death by a
8 surviving spouse, child, or parent)
9 who are entitled to the payment of
10 benefits under paragraph (5) of sec-
11 tion 411(c), benefits shall be paid
12 under this part to such parent(s), or
13 to such brother(s), or sister(s), at the
14 rate specified in paragraph (3) (as if
15 such parent(s) or such brother(s) or
16 sister(s), were the children of such
17 miner).”;

18 (II) in the fourth sentence—

19 (aa) by striking “brother
20 only if he” and inserting “broth-
21 er or sister only if the brother or
22 sister”;

23 (bb) by striking “before he
24 ceased” and inserting “before the
25 brother or sister ceased”;

1 (iv) in paragraph (6), by striking
2 “prescribed by him” and inserting “pre-
3 scribed by such Secretary”;

4 (B) in subsection (b)—

5 (i) by striking “his” each place it ap-
6 pears and inserting “such miner’s”;

7 (ii) by striking “widow” each place it
8 appears and inserting “surviving spouse”;
9 and

10 (C) in subsection (e), by striking “Internal
11 Revenue Code of 1954” and inserting “Internal
12 Revenue Code of 1986”;

13 (5) in section 413 (30 U.S.C. 923)—

14 (A) in subsection (b)—

15 (i) in the second sentence, by striking
16 “his wife’s affidavits” and inserting “affi-
17 davits of the miner’s spouse”;

18 (ii) in the ninth sentence, by striking
19 “widow” and inserting “surviving spouse”;
20 and

21 (iii) by striking the last sentence; and

22 (B) in subsection (c), by striking “his
23 claim” and inserting “the claim”;

24 (6) in section 414 (30 U.S.C. 924)—

25 (A) in subsection (a)—

1 (i) in paragraph (1), by striking
2 “widow, within six months after the death
3 of her husband” and inserting “surviving
4 spouse, within six months after the death
5 of the miner”; and

6 (ii) in paragraph (2)(C), by striking
7 “his” and inserting “the child’s”; and

8 (B) in subsection (e)—

9 (i) by striking “widow” and inserting
10 “surviving spouse”; and

11 (ii) by striking “his death” and insert-
12 ing “the miner’s death”;

13 (7) in section 415(a) (30 U.S.C. 925(a))—

14 (A) in paragraph (1), by striking “Internal
15 Revenue Code of 1954” and inserting “Internal
16 Revenue Code of 1986”; and

17 (B) in paragraph (2)—

18 (i) by striking “he” and inserting
19 “such Secretary”; and

20 (ii) by striking “him” and inserting
21 “such Secretary”;

22 (8) in section 421 (30 U.S.C. 931)—

23 (A) in subsection (a), by striking “widows”
24 and inserting “spouses”; and

25 (B) in subsection (b)(2)—

1 (i) in the matter preceding subpara-
2 graph (A), by striking “he” and inserting
3 “such Secretary”; and

4 (ii) in subparagraph (F), by striking
5 “promulgated by him” and inserting “pro-
6 mulgated by such Secretary”;

7 (9) in section 422 (30 U.S.C. 932)—

8 (A) in subsection (a)—

9 (i) by striking “Internal Revenue
10 Code of 1954” and inserting “Internal
11 Revenue Code of 1986”; and

12 (ii) by striking “he” and inserting
13 “such Secretary”;

14 (B) in subsection (i)(4), by striking “Inter-
15 nal Revenue Code of 1954” and inserting “In-
16 ternal Revenue Code of 1986”; and

17 (C) in subsection (j), by striking “Internal
18 Revenue Code of 1954” each place it appears
19 and inserting “Internal Revenue Code of
20 1986”;

21 (10) in section 423(a) (30 U.S.C. 933(a)), by
22 striking “he” and inserting “such operator”;

23 (11) in section 424(b) (30 U.S.C. 934(b))—

1 (A) in the matter following subparagraph
2 (B) of paragraph (1), by striking “him” and in-
3 serting “such operator”;

4 (B) in paragraph (3), by striking “Internal
5 Revenue Code of 1954” each place it appears
6 and inserting “Internal Revenue Code of
7 1986”; and

8 (C) in paragraph (5), by striking “Internal
9 Revenue Code of 1954” and inserting “Internal
10 Revenue Code of 1986”;

11 (12) in section 428 (30 U.S.C. 938)—

12 (A) in subsection (a), by striking “him”
13 and inserting “such operator”; and

14 (B) in subsection (b)—

15 (i) in the first sentence, by striking
16 “he” and inserting “the miner”;

17 (ii) in the third sentence, by striking
18 “he” and inserting “the Secretary”;

19 (iii) in the ninth sentence—

20 (I) by striking “he” each place it
21 appears and inserting “the Sec-
22 retary”; and

23 (II) by striking “his” and insert-
24 ing “the miner’s”; and

1 (iv) in the tenth sentence, by striking
2 “he” each place it appears and inserting
3 “the Secretary”; and
4 (13) in section 430 (30 U.S.C. 940)—
5 (A) by striking “1977 and” and inserting
6 “1977,”; and
7 (B) by striking “1981” and inserting
8 “1981, and the Black Lung Benefits Improve-
9 ment Act of 2017, and any amendments made
10 after the date of enactment of such Act,”.

11 **SEC. 112. READJUDICATING CASES INVOLVING CERTAIN**
12 **CHEST RADIOGRAPHS.**

13 (a) DEFINITIONS.—In this section:

14 (1) COVERED CHEST RADIOGRAPH.—The term
15 “covered chest radiograph” means a chest
16 radiograph that was interpreted as negative for sim-
17 ple pneumoconiosis, complicated pneumoconiosis, or
18 progressive massive fibrosis by a physician with re-
19 spect to whom the Secretary has directed, in writing
20 and after an evaluation by the Secretary, that such
21 physician’s negative interpretations of chest
22 radiographs not be credited, except where subse-
23 quently determined to be credible by the Secretary
24 in evaluating a claim for benefits under the Black
25 Lung Benefits Act (30 U.S.C. 901 et seq.).

1 (2) COVERED INDIVIDUAL.—The term “covered
2 individual” means an individual whose record for a
3 claim for benefits under the Black Lung Benefits
4 Act includes a covered chest radiograph.

5 (3) COVERED SURVIVOR.—The term “covered
6 survivor” means an individual who—

7 (A) is a survivor of a covered individual
8 whose claim under the Black Lung Benefits Act
9 was still pending at the time of the covered in-
10 dividual’s death; and

11 (B) continued to seek an award with re-
12 spect to the covered individual’s claim after the
13 covered individual’s death.

14 (b) CLAIMS.—A covered individual or a covered sur-
15 vivor whose claim for benefits under the Black Lung Bene-
16 fits Act (30 U.S.C. 901 et seq.) was denied prior to the
17 enactment of this Act may file a new claim for benefits
18 under this Act not later than one year after the date of
19 enactment of this Act.

20 (c) ADJUDICATION ON THE MERITS.—

21 (1) IN GENERAL.—Any new claim filed under
22 subsection (b) shall be adjudicated on the merits and
23 shall not include consideration of a covered chest
24 radiograph.

1 (2) COVERED SURVIVOR.—Any new claim filed
2 under subsection (b) by a covered survivor shall be
3 adjudicated as either a miner’s or a survivor’s claim
4 depending upon the type of claim pending at the
5 time of the covered individual’s death.

6 (d) TIME OF PAYMENT.—

7 (1) MINER’S CLAIM.—If a claim, filed under
8 subsection (b) and adjudicated under subsection (c)
9 as a miner’s claim, results in an award of benefits,
10 benefits shall be payable beginning with the month
11 of the filing of the denied claim that had included
12 in its record a covered chest radiograph.

13 (2) SURVIVOR’S CLAIM.—If a claim, filed under
14 subsection (b) and adjudicated under subsection (c)
15 as a survivor’s claim, results in an award of benefits,
16 benefits shall be payable beginning with the month
17 of the miner’s death.

18 (e) CONTRIBUTING IMPACT.—The Secretary shall
19 have the discretion to deny a new claim under subsection
20 (b) in circumstances where the party opposing such claim
21 establishes through clear and convincing evidence that a
22 covered chest radiograph did not contribute to the decision
23 to deny benefits in all prior claims filed by the covered
24 individual or the covered survivor.

1 (f) LIMITATION ON FILING OF NEW CLAIMS.—A new
2 claim for benefits may be filed under subsection (b) only
3 if the original claim was finally denied by a district direc-
4 tor, an administrative law judge, or the Benefits Review
5 Board established under section 21(b) of the Longshore
6 and Harbor Workers' Compensation Act (33 U.S.C.
7 921(b)).

8 **SEC. 113. DISCLOSURE OF EMPLOYMENT AND EARNINGS**
9 **INFORMATION FOR BLACK LUNG BENEFITS**
10 **ACT CLAIMS.**

11 (a) TAX RETURN INFORMATION.—Section 6103(l) of
12 the Internal Revenue Code of 1986 is amended by adding
13 at the end the following new paragraph:

14 “(23) DISCLOSURE OF RETURN INFORMATION
15 TO DEPARTMENT OF LABOR TO CARRY OUT BLACK
16 LUNG BENEFITS ACT.—

17 “(A) IN GENERAL.—The Commissioner of
18 Social Security shall, on written request with
19 respect to any individual, disclose to officers or
20 employees of the Department of Labor return
21 information from returns with respect to net
22 earnings from self-employment (as defined in
23 section 1402) and wages (as defined in section
24 3121(a) or 3401(a)) for employment for each
25 employer of such individual.

1 “(B) RESTRICTION ON DISCLOSURE.—The
2 Commissioner of Social Security shall disclose
3 return information under subparagraph (A)
4 only for purposes of, and the extent necessary
5 in, carrying out the proper administration of
6 the Black Lung Benefits Act (30 U.S.C. 901 et
7 seq.).”.

8 (b) SOCIAL SECURITY EARNINGS INFORMATION.—
9 Notwithstanding section 552a of title 5, United States
10 Code, or any other provision of Federal or State law, the
11 Commissioner of Social Security shall make available to
12 the officers and employees of the Department of Labor,
13 upon written request, the Social Security earnings infor-
14 mation of living or deceased individuals who are the sub-
15 ject of a claim under the Black Lung Benefits Act (30
16 U.S.C. 901 et seq.), which the Secretary of Labor may
17 require to carry out such Act. Such information shall be
18 made available in electronic form.

19 **PART B—REPORTS TO IMPROVE THE ADMINIS-**
20 **TRATION OF BENEFITS UNDER THE BLACK**
21 **LUNG BENEFITS ACT**

22 **SEC. 121. STRATEGY TO REDUCE DELAYS IN ADJUDICA-**
23 **TION.**

24 (a) IN GENERAL.—Not later than 90 days after the
25 date of enactment of this Act, the Secretary of Labor shall

1 submit to the Committee on Health, Education, Labor,
2 and Pensions and the Committee on Appropriations of the
3 Senate and the Committee on Education and the Work-
4 force and the Committee on Appropriations of the House
5 of Representatives a comprehensive strategy to reduce the
6 backlog of cases pending on such date of enactment before
7 the Office of Administrative Law Judges of the Depart-
8 ment of Labor.

9 (b) CONTENTS OF STRATEGY.—The strategy under
10 this section shall provide information relating to—

11 (1) the current and targeted pendency for each
12 category of cases before the Office of Administrative
13 Law Judges of the Department of Labor;

14 (2) the number of administrative law judges,
15 attorney advisors supporting such judges, support
16 staff, and other resources necessary to achieve and
17 maintain the targeted pendency for each category of
18 such cases;

19 (3) the necessary resources to improve effi-
20 ciency and effectiveness, such as equipment for video
21 conferences, training, use of reemployed annuitants,
22 and administrative reforms;

23 (4) the impact of sequestration, furloughs, and
24 the Federal Government shutdown, which occurred
25 from October 1 to October 16, 2013, on increasing

1 administrative burdens and the backlog of cases
2 pending before such office; and

3 (5) with respect to claims filed under the Black
4 Lung Benefits Act (30 U.S.C. 901 et seq.), the nec-
5 essary resources needed to reduce the average pend-
6 ency of cases to less than 12 months from the date
7 of receipt of the case to the date of disposition of
8 such case.

9 (c) CONSULTATION.—In preparing such strategy, the
10 Secretary of Labor shall consult with organizations that
11 have ongoing interactions with the Office of Administra-
12 tive Law Judges of the Department of Labor, including
13 organizations that represent parties in cases under the
14 Black Lung Benefits Act, the Longshore and Harbor
15 Workers' Compensation Act (33 U.S.C. 901 et seq.), and
16 Federal statutes regarding whistleblowers, wages and
17 hours for employees, and immigration.

18 **SEC. 122. GAO REPORT ON BLACK LUNG PROGRAM.**

19 (a) IN GENERAL.—Not later than one year after the
20 date of enactment of this Act, the Comptroller General
21 of the United States shall submit to the Committee on
22 Health, Education, Labor, and Pensions of the Senate and
23 the Committee on Education and the Workforce of the
24 House of Representatives a report on any barriers to
25 health care faced by coal miners with pneumoconiosis.

1 (b) CONTENTS.—The report required under sub-
2 section (a) shall include—

3 (1) an assessment of possible barriers to health
4 care under the Black Lung Benefits Act (30 U.S.C.
5 901 et seq.) and the degree to which any barriers
6 impact the ability of miners with legitimate medical
7 needs, particularly such miners in rural areas, to ac-
8 cess treatment for pneumoconiosis;

9 (2) recommendations necessary to address
10 issues, if any, relating to patient access to care
11 under such Act; and

12 (3) an evaluation of whether the benefit pay-
13 ments authorized under such Act, as amended by
14 this Act, are sufficient to meet the expenses of dis-
15 abled miners, surviving spouses, dependents, and
16 other family members entitled to receive benefits
17 under the Black Lung Benefits Act.

18 **TITLE II—STANDARD FOR RES-**
19 **PIRABLE DUST CONCENTRA-**
20 **TION**

21 **SEC. 201. STANDARD FOR RESPIRABLE DUST CONCENTRA-**
22 **TION.**

23 Section 202 of the Federal Mine Safety and Health
24 Act of 1977 (30 U.S.C. 842) is amended by adding at
25 the end the following:

1 “(i) REPORTS.—

2 “(1) RETROSPECTIVE STUDY.—

3 “(A) IN GENERAL.—Beginning on August
4 1, 2021, the Secretary shall conduct a retro-
5 spective study evaluating data collected using
6 continuous personal dust monitors to determine
7 whether to—

8 “(i) lower the applicable standard for
9 respirable dust concentration to protect the
10 health of miners;

11 “(ii) increase the frequency for taking
12 samples of respirable dust concentration,
13 using continuous personal dust monitors;

14 “(iii) modify the engineering controls
15 and work practices used by mine operators
16 to comply with the applicable standard for
17 respirable dust concentration;

18 “(iv) convert samples taken for shifts
19 that are greater than 8 hours to an 8-hour
20 equivalent concentration to more accu-
21 rately assess the conditions of miners
22 working on longer shifts; and

23 “(v) lower the 100 $\mu\text{g}/\text{m}^3$ standard
24 for quartz (crystalline silica) in respirable
25 dust to better protect miners’ health.

1 “(B) COMPLETION DEADLINE.—By Au-
2 gust 1, 2022, the Secretary shall complete the
3 study required by subparagraph (A) and report
4 the findings of such study to the Committee on
5 Health, Education, Labor, and Pensions of the
6 Senate and the Committee on Education and
7 the Workforce of the House of Representatives.

8 “(2) SUBSEQUENT STUDIES.—By August 1,
9 2025, and every 3 years thereafter, the Secretary
10 shall conduct a new study as described in paragraph
11 (1)(A) and report, by not later than one year after
12 the commencement of the study, the findings of such
13 study to the Committee on Health, Education,
14 Labor, and Pensions of the Senate and the Com-
15 mittee on Education and the Workforce of the
16 House of Representatives.

17 “(3) REVISED STANDARDS.—If any report of
18 the Secretary under this subsection concludes that
19 the applicable standard for respirable dust con-
20 centration should be lowered to protect the health of
21 miners, or that the incidence of pneumoconiosis
22 among coal miners in the United States, as reported
23 by the National Institute for Occupational Safety
24 and Health, has not been reduced from such inci-
25 dence prior to the implementation of the most recent

1 applicable standard for respirable dust concentra-
2 tion, the Secretary shall, consistent with the require-
3 ments of this section and section 101, accordingly
4 revise such standard and any applicable sampling or
5 testing procedures not later than 24 months after
6 the publication of such report of the Secretary under
7 this subsection.”.

8 **TITLE III—ESTABLISHING THE**
9 **OFFICE OF WORKERS’ COM-**
10 **PENSATION PROGRAMS**

11 **SEC. 301. OFFICE OF WORKERS’ COMPENSATION PRO-**
12 **GRAMS.**

13 (a) ESTABLISHMENT.—There shall be established, in
14 the Department of Labor, an Office of Workers’ Com-
15 pensation Programs (referred to in this section as the “Of-
16 fice”).

17 (b) DIRECTOR.—

18 (1) IN GENERAL.—The Office shall be directed
19 by a Director for the Office of Workers’ Compensa-
20 tion (referred to in this title as the “Director”) who
21 shall be appointed by the President, by and with the
22 advice and consent of the Senate.

23 (2) DUTIES.—The Director shall carry out all
24 duties carried out by the Director for the Office of

1 Workers' Compensation as of the day before the
2 date of enactment of this Act.

3 (c) FUNCTIONS.—The functions of the Office on and
4 after the date of enactment of this Act shall include the
5 functions of the Office on the day before the date of enact-
6 ment of this Act, including all of its personnel, assets, au-
7 thorities, and liabilities.

8 (d) REFERENCES TO BUREAU OF EMPLOYEES' COM-
9 PENSATION.—Reference in any other Federal law, Execu-
10 tive order, reorganization plan, rule, regulation, or delega-
11 tion of authority, or any document of or relating to the
12 Bureau of Employees' Compensation with regard to func-
13 tions carried out by the Office of Workers' Compensation
14 Programs, shall be deemed to refer to the Office of Work-
15 ers' Compensation Programs.

16 **TITLE IV—SEVERABILITY**

17 **SEC. 401. SEVERABILITY.**

18 If any provision of this Act, or an amendment made
19 by this Act, or the application of such provision to any
20 person or circumstance, is held to be invalid, the remain-
21 der of this Act, or an amendment made by this Act, or
22 the application of such provision to other persons or cir-
23 cumstances, shall not be affected.