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BLACK LUNG BENEFITS AMENDMENTS OF 1981: TRANSFER OF SPECIAL CLAIMS UNDER SECTION 205

I. BRIEF HISTORY OF THE FEDERAL BLACK LUNG PROGRAM

In 1969, Congress established the first federally funded and administered black lung compensation program. The increasing demand for federal aid to disabled miners, an area traditionally left to the regulation of the states, resulted in a clash of social and political viewpoints. Advocates of the program argued that a federal response was made necessary by the failure of state governments to assume responsibility for the welfare of miners afflicted with occupational disease. Program opponents, on the other hand, denounced the move as an attempted "federalization" of the various state workers' compensation systems. Federal intervention in the area unduly encroached on state interests, opposition leaders opined, and would discourage states from improving their own compensation programs. The comprehensive plan which ultimately received congressional approval was (in form, at least) responsive to the concerns voiced by both groups. Benefits under the Act were payable to miners who suffered total disability due to pneumoconiosis, and to surviving spouses of deceased miners whose deaths were attributable to that disease. Federal agencies were charged with overseeing the operations of the program for a period of approximately three years; thereafter, the responsibility for black lung benefits was to be transferred to the states under approved workers' compensation programs.

In order to facilitate the transition from federal to state authority, claims were divided into two classes. Responsibility for payment of claims filed on or before December 31, 1972 ("Part B" claims) was to be borne by the federal treasury, and the attendant administrative duties were to be performed by the Department of Health, Education and Welfare (HEW). Claims filed on or

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3 Dissatisfaction with the inadequacy of state compensation programs in this area resulted in "an extraordinary resort to federal power to rectify the situation or to induce the states to do so." LARSON, supra note 1, § 41.90; see also 30 U.S.C. § 901 (1970) (current version at 30 U.S.C. § 901(a) (Supp. V 1981)) (congressional findings and declaration of purpose).


5 See id. at 2573 (supplemental views of minority members).

6 Id. at 2575.


after January 1, 1973 ("Part C" claims) were to be processed under the appropriate state workers' compensation law, provided it met certain statutory requirements and was formally approved by the Department of Labor (DOL). If no approved state law was involved, the claim would be processed by the DOL and payment of benefits made by the responsible coal operator (either through its insurance carrier or self-insurance). Where no responsible operator could be identified, payment of benefits would be made out of general federal revenues.

This statutory scheme has been amended on numerous occasions, the first such amendment occurring in 1972. A primary purpose of the 1972 amendment was to defer the transition from Part B to Part C claims for a period of one year. The period during which Part B claims could be filed was extended to June 30, 1973. A new section (section 415) was added to the act to promote a more orderly transfer to Part C claims. Under this provision, claims filed between July 1 and December 31, 1973 were to be administered by the DOL, but responsibility for payment of benefits remained with the federal government. Part C claims would begin on January 1, 1974.

The most sweeping changes in the federal black lung program occurred in 1977. A special revenue fund, the Black Lung Disability Trust Fund

these duties were carried out by the Social Security Administration which is a part of the Department of HEW. (Department of HEW has recently been changed to the Department of Health and Human Services).

Among the requirements for approval by the DOL were the following:

1. benefits must be payable for a miner's death or total disability due to pneumoconiosis;
2. the amount of benefits must be greater than or equal to that available under Part B of the act;
3. the standards for determining death and total disability for purposes of receiving benefits must be substantially the same as those applied under Part B;
4. the period for filing a claim must be at least three years from the date of death or discovery of the condition; and
5. provision must be made for the liability of mine operators who purchase or acquire a substantial interest in a mine after a claimant's right to benefits has accrued.


Id.
(Trust Fund), was established to provide a source of money earmarked for payment of approved claims. Additionally, Congress made marked changes in the program's entitlement criteria. A series of interim presumptions—some of which were irrebuttable—were enacted to aid claimants in obtaining compensation, and changes were effected regarding the admissibility of evidence in administrative hearings on the validity of benefits claims under Part B. But the most far-reaching proposal of the 1977 amendment was the retroactive application of the liberalized eligibility provisions. A special mechanism was established (section 435) in order to review claims that were to be reopened for evaluation in light of the new amendments. A claimant whose Part B claim had been denied could elect to have such denial reviewed by either the Department of HEW or the DOL. Review by the Department of HEW was to be limited to information then available in the claim file; review by the DOL was to be a de novo proceeding, and the claimant was permitted to introduce new evidence. Part C claims which were pending or denied prior to the enactment of the 1977 amendments, as well as denied section 415 claims, were subject to automatic review by the DOL.

The crucial question which remained unanswered in the wake of the 1977 amendments was who should bear responsibility for payment of claims which had been previously denied, but were thereafter approved under section 435. The various courts which addressed the issue came to very different results. Against this background of judicial uncertainty, Congress enacted the Black Lung Benefits Amendments of 1981. The 1981 amendments were a double-edged sword: they sought to tighten the entitlement provisions of Title IV of the Federal Mine Safety and Health Act in an effort to restore solv-

Pub. L. No. 95-239, 92 Stat. 95 (1978) (codified at 30 U.S.C. §§ 901-45 (Supp. II 1978)). These amendments were passed in December of 1977 but actually became effective in March, 1978. In this article they will referred to as the 1977 amendments.


22 The interim presumptions originally promulgated by the Secretary of HEW, with a very liberal definition of “total disability,” were made binding on the DOL by operation of 30 U.S.C. § 903(f) (Supp. II 1978). See also Lopatto, supra note 1, at 691-92 (discussing the liberalizing features of the 1977 act).


25 Id.


ency to the Trust Fund and, quite inconsistently, to transfer liability for some of the claims approved under section 435 from responsible operators to the Trust Fund. The transfer provision (section 205) encompassed all claims which were "the subject of a claim denied before March 1, 1978 [the effective date of the 1977 amendments] and which [are] or [have] been approved in accordance with the provisions of section 945." The term "claim denied" was defined for purposes of this section as any claim which was (1) denied by the Department of HEW (that is, a Part B claim); (2) denied informally by the DOL more than one year prior to the effective date of the 1977 amendments, and in which the claimant "abandoned" his claim; and (3) denied by the DOL following a formal hearing under the law in effect prior to the 1977 amendments. Responsibility for all other claims approved following section 435 review remained on the responsible operator.

II. SECTION 205 AND THE SEARCH FOR LEGISLATIVE INTENT

Perhaps the foremost rule of statutory construction is that courts should attempt to determine and effectuate the "legislative intent." This is necessary, of course, in order to provide an interpretation that is in harmony with both the language of the statute and the legitimate purpose or end sought to be achieved. But the search for the intention of legislators is often a formidable, if not impossible, task for a court to undertake. Legislative journals may be silent on the point in question. Remarks of sponsors may be inconsistent or inconclusive, and attacks by opponents may be steeped more in rhetoric than in exacting analysis. The original purpose of the legislation may be

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31 Three of the five statutory presumptions were repealed (prospectively only) by the 1981 amendments:
   (a) death due to respirable disease after ten years of employment in a mine, 30 U.S.C. § 921(c)(2) (Supp. V 1981);
   (b) total disability from respirable disease after fifteen years of employment in a mine, 30 U.S.C. § 921(c)(4) (Supp. V 1981);
34 Id.
35 Specifically, this section requires that a claimant fail to request a hearing, present additional evidence, or manifest an intention to do so within one year of a formal notice of denial. 30 U.S.C. § 902(b)(2)(A) (Supp. V 1981).
37 See, e.g., Tidewater Oil Co. v. United States, 409 U.S. 151, 157 (1972) ("While the clear meaning of statutory language is not to be ignored, . . . it is essential that we place the words of a statute in their proper context by resort to legislative history.").
hopelessly lost in the twists and turns of the decision-making process or, possibly, the issue raised in litigation was never even contemplated by the drafters. In spite of such obstacles, the court must seek to identify the goals embraced by the statute—or clues as to what goals may have been intended—in order to offer a meaningful interpretation.39

Any attempt to discover the policy goals underlying the transfer provisions of section 205 immediately poses difficulty. The history of the federal black lung program has been characterized by "incrementalism",40 that is, an evolutionary development brought about by the interplay of competing interest groups.41 In its present form the program is an amalgam of contradictory policy goals, one superimposed over another by repeated amendment. The resulting lack of a singular theme or purpose highlights the problems involved in determining the proper scope of section 205. Moreover, federal involvement in black lung compensation has reached the point of an "identity crisis" in which the propriety of continued federal assistance is being questioned.42 The original program established in 1969 exhibited a subtle tension between its aims which persists today: it sought to assure compensation for meritorious claimants while attempting to limit federal involvement.43 The statute was essentially a temporary measure designed to promote a transition from federal oversight to predominantly state control under workers' compensation.44 However, in the program's fourteen year history, not a single state compensation law has been approved45 and the federal government continues to shoulder a disproportionate share of the benefits payments.

Finally, it is important to note that the 1981 amendments themselves embodied mutually antagonistic goals. First, they sought to restore financial solvency to the Trust Fund, which was projected to reach a deficit of $1.5 billion by the end of fiscal year 1981.46 This was to be accomplished by repealing or severely restricting most of the liberalizing provisions of the 1977 amend-

39 See, e.g., Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975) (where the record was inconclusive, the Court relied on legislative history, excerpts from materials in related areas, and policy considerations in order to divine the "legislative intent").

40 This term was coined by political scientists to describe governmental decision-making in many contexts. See, e.g., C. Lindblom, The Science of "Muddling Through," 19 Pub. Ad. Rev. 79 (1959).

41 Id.

42 The 1981 Amendments, which brought the program's liberalized benefits provisions to an abrupt halt, suggest that Congress is reassessing the federal role in black lung compensation.

43 Claims filed under Part C were intended to be processed under approved state worker's compensation laws. The DOL was not authorized to act unless no approved law was involved or no responsible operator could be identified. See supra text accompanying notes 9-14.

44 Id.


ments. 47 Secondly, the 1981 amendments sought to transfer liability for some of the claims approved under section 435 to the Trust Fund, a goal apparently premised on equity and fairness to coal operators. 48 The language of the transfer provision, which is concededly ambiguous, has not surprisingly provided a hotbed of contention.

The purpose of this article is to analyze section 205 and to determine the range of claims intended to be encompassed by the transfer provisions. In doing so, constant resort must be had to the policies—expressed or implied—underlying the statutory scheme. Where conflicting goals are encountered which would otherwise lead to an impasse in interpretation, it will be necessary to prioritize them (and seek to effectuate the paramount policy) or to harmonize them (and seek to achieve a balance between the policies without frustrating either of them).

III. THE PROBLEM OF DUPLICATE CLAIMS

A problem which frequently occurs in applying the transfer provisions of section 205 involves duplicate claims for benefits. Most often, a claimant whose Part B claim was denied by the Department of HEW thereafter filed a Part C claim with the DOL. 49 If such a Part C claim was still pending on March 1, 1978, or was before an administrative or judicial panel for consideration at that time, it was automatically subject to review under section 435. 50 In those instances where the claim was approved after reevaluation, the question naturally arises whether the responsibility for payment of benefits is transferable. Many operators and insurance carriers urged that liability for such claims ought to be transferred to the Trust Fund since the prior Part B claim was a “claim denied” within the meaning of section 205. Since the miner's claim had been previously denied, and was approved pursuant to section 435 review, the statutory requirements for transfer had been met 51 and the benefits were not to be paid by any operator.

This analysis is sound in those cases where the claimant has specifically elected review of his denied Part B claim as required by statute, since the duplicate claims are “merged” for purposes of administration. 52 The issue becomes more perplexing, however, where the claimant failed to formally elect

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47 See supra notes 30 & 31 and accompanying text.
49 Recall that Part B and Part C claims are so designed solely on the basis of the date on which the claimant's application for benefits was filed. There was no limit placed on the number of claims a single claimant could file. 20 C.F.R. § 410.705 (1983); 20 C.F.R. § 725.309 (1983).
51 20 U.S.C. § 932(e)(2) (Supp. V 1981). This proposed interpretation will be discussed more fully in the following section of this article.
52 20 C.F.R. § 727.103(c) (1983).
review of his denied Part B Claim.53 Such a case seemingly falls within a "twilight zone" in the statutory draftsmanship. In order to be transferable under section 205, it is necessary that a claim be denied before March 1, 1978 and that it be approved when reopened under section 435.54 A literal reading of the statute suggests that a duplicate Part C claim is ineligible for transfer without an election since the claimant’s Part B claim was not subsequently approved, and the Part C claim was not previously denied.55 However, the liability thus imposed on the coal mine operator clearly resulted from the retroactive application of the 1977 amendments. In order to resolve this dilemma, it was necessary to determine which policy would prevail: fiscal conservatism or fairness and equity.56

A. Round One: The Administrative Law Judges

The issue of whether transfer is permissible in the absence of an express election of review by the claimant has been addressed in seven reported cases.57 In each of them, the administrative law judge (ALJ) has determined that where a Part B claim was denied, and a subsequently filed Part C claim was approved under section 435, the requirements for transfer have been met even where the claimant did not elect review of his Part B claim. The ALJs have relied on two theories to support this finding.

1. Singular nature of the claim

Any claim for black lung benefits, whether filed under Part B or Part C of the federal program, is based on a miner’s total disability or death arising out of his employment.58 Thus, where duplicate claims have been filed by a claimant, the subject matter of both is precisely the same: a claim of death or disability due to occupational pneumoconiosis. The various applications constitute a single claim for benefits, the ALJs have concluded, and the court should not concern itself with the procedural history of each such application.59 The Part C claim should accordingly be transferred since it was

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53 The merger regulations do not apply to this case. Id.
54 The 1981 act provides that a claim is transferable only if it “was the subject of a claim denied before March 1, 1978, and . . . is or has been approved in accordance with [section 435].” 30 U.S.C. § 932(c)(2) (Supp. V 1981) (emphasis added).
55 Id.
56 See supra text accompanying notes 46-48.
"the subject of a claim denied before March 1, 1978," and was later approved in accordance with section 435. As one ALJ noted in this regard:

I find that the existence of two applications does not distort the singular nature of this matter and that their presence does not preclude the transferability of this case. Both applications arise from a singular subject, the . . . miner's claim of total disability due to pneumoconiosis. It is this subject of the claim which is the focal point for determining the applicability of [section 205].

The subject matter of the miner's claim remains constant regardless of the number of applications, and responsibility for payment may be transferred whether or not a conscious election was made.

2. Merger

The ALJs have also reasoned that even if the claims filed are separate and distinct, a claimant "in substance" elects review of his Part B claim by opting to submit his pending Part C claim to automatic review by the DOL. In reaching this conclusion, the judges have emphasized two major points. First, the submission of a formal election card for review of a Part B claim is not specifically required by statute. Second, the primary purpose of section 205 was to relieve employers of their liability for benefits ensuing from the retroactive application of the 1977 amendments. In relying solely on the automatic review of his Part C claim, a claimant has "taken full advantage of the simplest means for obtaining DOL review under [section] 435." The separate claims may therefore be merged for purposes of administration, and the previously denied Part B claim receives section 435 review vicariously. Since the claim was denied and subsequently approved, it meets the statutory requirement for transferability. This point was persuasively presented in a recent case:

In the instant case, Claimant's Part B claim was denied. The Claimant also filed with the Department of Labor, which Part C claim was automatically reviewed under the more liberal 1977 legislation . . . Moreover, the automatic review provided for the most expeditious method of obtaining section 435 review. Thus in the instant case the purpose of selection was served without the needless filing of an election postcard. In substance, an "election" occurred

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61 Yates v. Island Creek Coal Co., 5 BLACK LUNG REP. (MB) at 3-121.
62 Id.
64 Id. The statute does not require in haec verba that a claimant under Part B must file an election card to obtain review of his denied claim. It does, however, condition the Secretary's authority to review a Part B claim on the "request of the claimant." 30 U.S.C. § 945(a)(1) (Supp. V 1981).
65 Yates v. Island Creek Coal Co., 5 BLACK LUNG REP. (MB) at 3-122.
under section 435 by Claimant’s filing of a Part C claim which was automatically reviewed under section 435. Claimant’s denied Part B claim was substantively elected upon, reviewed and approved under section 435, and [section 205] is therefore applicable.  

B. Round Two: The DOL Regulations

In May, 1983 the DOL issued a final rule amending its regulations governing review of claims under section 435 to conform with the changes brought about by the 1981 amendments. The interpretation of the transfer provisions offered by the DOL differed markedly from that of the published ALJ opinions. Where duplicate claims for benefits existed, it was essential to the transferability of a denied Part B claim that the claimant formally elect section 435 review of such denial. The alternative theories proposed by the ALJs—singular nature of the claims and merger—were specifically rejected.

In its accompanying commentary, the DOL called into question the ALJs’ interpretation of the purpose underlying the 1981 amendments. The judges had suggested that the primary goal of the amendments was to relieve operators of the obligation to pay those claims which were approved after review under the 1977 eligibility criteria. This view was attacked as being overly broad. In this regard, the DOL stressed that the transfer provisions were not intended to relieve coal operators and their insurers from all of the unanticipated liability arising out of the liberal 1977 amendments. Rather, they were to be a partial release of liability “applicable only to certain specific and carefully defined classes of claims.” The 1981 amendments were designed to accomplish not one, but three interrelated goals: 1) tightening of the program’s eligibility requirements; 2) restoring the solvency of the Trust Fund; and 3) transferring a portion of the unanticipated liability imposed by the 1977 amendments by defining a particular class of claims to be paid out of the

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67 Id.
69 The language of the new regulation reads as follows: For a claim filed with and denied by the Social Security Administration [that is, a Part B claim] prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election card or other equivalent document. In accordance with section 435(a) and its implementing regulations.
70 See generally id. at 24,283-84.
71 E.g., Yates v. Island Creek Coal Co., 5 BLACK LUNG REP. (MB) at 3-122.
73 Id.
Trust Fund. The ALJ view accorded too much deference to the third goal, thereby undermining the effectiveness of the others.

The chief flaw in the reasoning of the ALJs, the commentary emphasized, was that their unitary treatment of duplicate claims upset the careful balance that was struck by Congress. Since a claim for benefits was viewed as a single cause of action, the presence of subsequent applications by a claimant was of no consequence because they arose out of the same subject matter. But claims are not susceptible of such singular treatment, the DOL retorted, and should more properly be analogized to preliminary pleadings. Accordingly, claims must be treated separately, each having a distinctive procedural history. Congress had selected only certain classes of claims to transfer to the Trust Fund, making appropriate numerical and financial estimates on the basis of that selection, and the DOL was not free to tamper with them. A formal election of review of a denied Part B claim was mandated by statute, and any effort to bring such claims within the purview of section 205 by any other means would disrupt the carefully drawn statutory scheme.

Of particular interest is the DOL's use of congressional estimates of the number of claims affected by the transfer provisions. The consensus of legislation proponents appears to have been that approximately 10,200 claims would be transferred to the Trust Fund under section 205. The DOL had raised the congressional reference to this figure in opposing transfer of Part B claims in the absence of an election card, but the ALJs had dismissed the argument as unpersuasive. The projection of the number of claims involved, it was urged, was a matter "separate and distinct from the purpose Congress was trying to achieve . . . ." The DOL, on the other hand, found the estimates to be strongly indicative of the legislative intent. And since the regulations as drafted (specifically requiring an election card) were expected to embrace as many as 12,000 claims, any more liberal interpretation would run awry of the express congressional intent.

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74 Id. at 24,284.
75 Id.
76 Id.
77 See, e.g., Yates v. Island Creek Coal Co., 5 BLACK LUNG REP. (MB) at 3-121; Dye v. Jewell Ridge Coal Co., 5 BLACK LUNG REP. (MB) at 3-3. This basic premise underlies both of the theories articulated by the ALJs.
79 Id.
80 Id. at 24,283-84.
81 Id. at 24,282.
82 E.g., Yates v. Island Creek Coal Co., 5 BLACK LUNG REP. (MB) at 3-122.
83 Id.
85 Id.
IV. JUDICIAL REVIEW: SECTION 205 IN THE COURTS

The many questions raised by the 1981 amendments, and the response of the DOL through the exercise of its rulemaking power, ensure that the transfer issue will ultimately make its way into the courts. The interpretations offered by the administrative law judges and the DOL demonstrate a fundamental disagreement regarding the purpose and scope of Congress' transfer remedy. It is unlikely that coal operators and their insurance carriers, who worked so fervently to secure passage of section 205,85 will sit idly by in the wake of the new regulations. The disposition of potentially thousands of claims rests on a judicial resolution of these matters.87

A. The Policy of Deference

There is a general judicial policy according deference to the interpretation of a statute made by the agency charged with administering it.88 This policy stems from a respect for the views of the "masters of the subject" who face the task of implementing the programs outlined by Congress, and were often instrumental in drafting the legislation they are called upon to interpret.89 But this inclination to defer to the construction placed upon statutes by non-judicial bodies is obviously not without limits. It is the duty of the courts to finally resolve matters of statutory construction; to permit any other course would be tantamount to abdicating the judicial role.90

A precisely defined analysis to be used in establishing whether or not deference is to be permitted, as well as the nature and extent of such deference, are not to be found in the case law.91 Oftentimes courts will address the issue in an ambiguous way, or dismiss the matter in conclusory terms.92 Taken collectively, however, the cases suggest that certain criteria must be met in order to trigger the deference principle. First, the statute which is the subject of administrative interpretation must be ambiguous. Where the words of a statute are plain and unequivocal, giving rise to only one reason-

85 Lopatto, supra note 1, at 699.
87 It is estimated that approximately 80% of all claims transferred will come from Part B. 48 Fed. Reg. 24,284 (1983). The number of Part B claimants who failed to file an election card is probably substantial, especially among those who subsequently filed a Part C claim. The impact of this on earlier estimates is difficult to predict.
88 See generally Annot., 39 L.Ed.2d 942 (1974).
89 United States v. Moore, 95 U.S. 760, 763 (1877).
91 The confusing nature of the deference analysis is set out in Annot., 39 L.Ed.2d 942 (1974).
92 The analytic approach of the court may prove to be circular. For example, it may require ambiguity in the statute as a prerequisite for deference, and later address the very same question in determining the correctness of the administrative construction. Id. at 958-65.
able construction, there is no room for interpretation and deference is imper-
missible.\textsuperscript{53} Second, an "expressly articulated position . . . as to the meaning
and impact" of the statute must be tendered by the agency which is respon-
sible for implementing it.\textsuperscript{54} Such a requirement prevents an agency from
merely contriving post hoc justifications for its actions.\textsuperscript{55} Finally, the admin-
istrative interpretation must not be inconsistent with the statutory mandate
or frustrate the underlying policy of the law.\textsuperscript{56} This is perhaps the most
demanding requirement. It entails not only a searching inquiry of the objectives
which the legislation seeks to achieve, but also a means-ends analysis to de-
termine whether the administrative action is in harmony with these goals.

B. The Deference Test in Operation

As previously noted, the first criterion for invoking judicial deference is
that the statute in question be ambiguous. The standard to be applied in mak-
ing this determination is one of reasonableness: the statute must be suscep-
tible of more than one reasonable interpretation.\textsuperscript{57} The language of section
205, despite the care of legislators in the drafting process, left certain vital
matters in doubt. Perhaps the most glaring (and troublesome) omission is the
absence of a definition of the term "claim."\textsuperscript{58} It is uncertain, on the fact of the
statute, whether Congress intended for the term to be construed expansively
(referring generally to the miner's claim for benefits) or restrictively (refer-
ring to specific applications for benefits under Part B or Part C). The in-
tended scope of this term is the crux of the dispute over the necessity of an
election card to ensure the transfer of a denied Part B claim.\textsuperscript{59} The lack of an
authoritative definition prompted the need to address the problem administra-
tively by rulemaking.\textsuperscript{60} Since the 1981 amendments harbored inconsistent
goals, either of these interpretations could possibly have been within the in-
tendment of Congress. The view formally adopted by the DOL in its regula-
tions therefore meets the reasonableness test.

Another requirement for triggering the deference principle is that the in-
terpretation be made by the agency authorized to administer the law, and

\begin{footnotesize}
\begin{enumerate}
\item Houghton v. Payne, 194 U.S. 88, 100 (1904).
\item Id. at 628.
\item Federal Election Comm'n v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 32
\item Houghton v. Payne, 194 U.S. at 99.
\item This omission is particularly noteworthy in view of the painstaking care taken in defining
the term "claim denied." See supra notes 35 & 36 and accompanying text.
\item Both of the theories advanced by the ALJs viewed the term expansively so as to permit
transfer of liability. The restrictive view was adopted by the DOL.
\item The DOL regulations do not set out a definition of the term "claim." They do so only by in-
ference. 48 Fed. Reg. 24,292 (to be codified at 20 C.F.R. § 725.496(d)).
\end{enumerate}
\end{footnotesize}
that it be accompanied by a statement of explanation and authority. The first part of this test is easily met in regard to section 205, since the DOL is expressly commissioned by the compensation act to oversee the processing of both section 415 and Part C claims. This authority extends to section 435 review in all duplicate Part C claims where there has been no election. Moreover, the DOL prepared a lengthy defense of its proposed regulations in response to the comments and suggestions of industry officials and other interested parties. This detailed treatment of the recommended changes included repeated references to statutory authority as well as to the policy considerations which prompted the passage of the 1981 amendments. The clarity and completeness of this accompanying statement is sufficient to avoid the evil eschewed by the earlier court decisions: after-the-fact rationalizations by government agencies.

The focal point in determining whether deference is permissible is, of course, the statutory purpose. Only where a regulation comports with both the letter and spirit of the law to be implemented should the courts defer to the expertise of executive officials. But, as was discussed earlier, the search for the legislative intent is often fraught with difficulty. In reaching its decision, a court must make reference to other sources which may prove helpful in judging the accuracy of the administrative construction. The United States Supreme Court, in addressing this matter, identified several useful reference points.

In determining whether a particular regulation carries out the congressional mandate in a proper manner, we look to see whether the regulation harmonizes with the plain language of the statute, its origin, and its purpose. A regulation may have particular force if it is a substantially contemporaneous construction of the statute by those presumed to have been aware of congressional intent. If the regulation dates from a later period, the manner in which it evolved merits inquiry. Other relevant considerations are the length of time the regulation has been in effect, the reliance placed on it, the consistency of the [agency's] interpretation, and the degree of scrutiny Congress has devoted to the regulation during subsequent reenactments of the statute.

Bearing these factors in mind, we may make several observations regarding the history of the 1981 amendments. When the federal black lung program was established, claim applications were divided into two classes based

103 20 C.F.R. § 727.103(c) (1983).
106 See supra text accompanying notes 37-39.
upon the date of filing. This distinction was retained when the Act was amended in 1977. The rules governing review of denied claims were based exclusively on the class into which a given claim happened to fall.108 Part C claims were to be reevaluated automatically by the DOL, while Part B claims would be reviewed only on the request of the claimant.109 When Congress tackled the problem of transfer of liability, and agreed on the wording of section 205, it was careful to preserve this distinction based upon the procedural history of each claim.110

As was stated forcefully by the DOL, the 1981 amendments must be interpreted in light of the complex array of goals they reflected.111 The disparity of treatment among claims based solely on their procedural status was specifically mandated in certain cases.112 To do likewise in regard to duplicate claims also seems in accord with congressional intention. In this regard, the DOL argued that uniformity of treatment could be achieved only at the cost of either refusing to transfer all denied Part B claims or permitting transfer of liability whether or not the claimant elected review.113 The first alternative would deny coal mine operators and their insurers of the release from liability expressly authorized by Congress. The second would result in a substantially greater number of transferred claims, and would seriously jeopardize the goal of solvency for the beleaguered Trust Fund.114

The strong interrelationship among the goals embraced by the amendments and the scanty legislative record suggest that no single objective was intended to be paramount. Congress was apparently torn between two desires, and the compromise product vividly portrays the inner conflict which dominated its pathway to approval. As a result, it is necessary to harmonize the conflicting goals of the amendments in order to properly mark the bounds of section 205. The informal balancing test suggested by the DOL discussion above is well adapted to fulfill that function.115 To give full effect to the goal of relieving operators of the unanticipated liability, by making Part B claims transferable even without an election card, would severely impair the goal of revitalizing the Trust Fund. Similarly, emphasizing the objective of Trust

109 Id.
112 Note, for example, the difference in treatment of otherwise identical Part C claims based on whether the DOL denial was informal or followed a formal administrative or judicial hearing. 30 U.S.C.A. § 902(i)(2) (Supp. 1983). Informally denied Part C claims also required "abandonment" by the claimant whereas formally denied Part C claims did not. See supra note 35 & 36 and accompanying text.
114 Id.
115 The primary goal of harmonizing contradictory policy goals is to so balance them that the effectiveness of each is maximized without unduly impinging on the others.
Fund solvency would defeat the plain letter of the statute by permitting substantially fewer transfers. The compromise position espoused by the DOL in its regulations not only enhances the efficacy of both goals, but also preserves the original preference that Part B claims be reopened only upon request. Moreover, if the figures compiled on behalf of the DOL are accurate, the number of claims expected to be transferred under the new regulations is more consistent with congressional estimates.

But courts need not rely solely on the stale legislative record in order to resolve the question of congruency between statute and regulation. Other pertinent factors may be looked to, such as the proximity in time between the enactment of the statute and the promulgation of the regulation. Where an agency prescribes rules and regulations almost contemporaneously with the passage of a statute, it may be presumed that those responsible for interpreting it were conscious of the congressional intent. In the case of the transfer of liability provisions, the DOL first published its proposed regulations in May, 1982—less than six months after the passage of the 1981 amendments. This strengthens the case for deference. The DOL response followed closely on the heels of the adoption of the transfer scheme, and it may be inferred that officials were fully apprised of the purpose underlying that provision. Courts are also permitted to consider the thoroughness, validity, and consistency of the administrative interpretation. This, too, appears to tip the scale in favor of deference. The statement accompanying the regulations is replete with references to the interests and policies considered by Congress, excerpts from Committee hearings and congressional debates, and commentary. Finally, the absence of any legislative efforts to "repeal" the regulations, or in any way to limit their effect, may give rise to an inference of congressional approval. While this factor may not be compelling, especially in light of the lack of time to assess the correctness of the regulations, it is yet another element weighing in favor of deference.

V. CONCLUSION

The controversy over the breadth of section 205 was almost inevitable given the steadfastness of both black lung insurers and the DOL. But the task of interpreting the 1981 Act was made difficult by the host of related

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117 Id. at 24,282.
118 National Muffler Dealers Ass'n, Inc. v. United States, 440 U.S. at 477.
119 Id. at 477.
121 Federal Election Comm'n v. Democratic Senatorial Campaign Comm., 454 U.S. at 37; see also National Muffler Dealers Ass'n, Inc. v. United States, 440 U.S. at 477.
questions which followed in its wake. The definition of the federal role in black lung compensation remained unclear, and the statute made no attempt to reconcile rival policy goals. Moreover, the purposes of Congress' transfer remedy were shrouded in mystery, and it was necessary to rely on extrinsic sources to divine the legislative intent. The resulting mass of data was collected and analyzed by administrative law judges and the DOL, who reached vastly differing conclusions. The purpose of this article has been to take the dispute one step further in order to project the outcome in future judicial review of this issue.

Of primary importance in resolving this matter is the general policy of deference to prior administrative constructions. The deference principle, despite its superficial simplicity, entails a thorough examination of the purposes underlying the statute and the validity of the suggested interpretation. The DOL regulations implementing section 205, it has been shown, do not run contrary to the spirit of the 1981 amendments. Indeed, they achieve the laudable goal of carrying out all of the recognized objectives of the 1981 Act. A conscientious review of the available information leads to the conclusion that the DOL interpretation is consistent with the congressional mandate, and the judiciary should accordingly ratify it.

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