



U.S. Congressman  
**Nick Rahall**  
*WORKING FOR WEST VIRGINIANS*

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## **BLACK LUNG BENEFITS DEBATE ESCALATES INTO FULL-SCALE WAR**

**WASHINGTON, D.C.** -- U.S. Rep. Nick J. Rahall (D-WV) today announced that he has joined the chairman of a key House panel in introducing comprehensive legislation to reform the federal black lung program to make it more responsive to claimants. Entitled the "Black Lung Benefits Act of 1990," the bill is a compilation of legislation introduced by Rahall as well as other congressmen.

"The legislative battle to obtain just and fair compensation for those who suffer from the crippling effects of black lung has now escalated into a full-scale war," Rahall declared.

In a recent letter to Subcommittee on Labor Standards Chairman Austin Murphy, whose panel has jurisdiction over black lung legislation, Rahall and 17 other House Members stated: "We appreciate the oversight hearings you have held on this issue, but we urge you to begin action on the legislative remedies that have been offered. Thousands of miners or their widows are being victimized by this program that was intended to bring them relief."

After having conducted a number of hearings on the federal black lung program, including one held at Chapmaville in Logan County on March 30th, Murphy told Rahall it is time to address the inequities in the program.

The bill would:

\* Provide for the approval of black lung claims based on a single piece of qualifying evidence. This provision is based on Rahall's bill, H.R. 814, the "Black Lung Benefits Eligibility Clarification Act of 1989," which was introduced in response to a 1987 Supreme Court decision. The High Court, in what is known as the Mullins case, found the claimant to be ineligible despite the existence of a qualifying x-ray, two qualifying ventilatory studies and one qualifying physician's opinion. However, Rahall and others maintain that Congress in both the Black Lung Benefits Act of 1972 and Black Lung Benefits Reform Act of 1977 intended for a claimant to be able to establish a presumption of black lung with a single piece of qualifying evidence. The class of claims covered by the legislation are those filed between July 1, 1973, and April 1, 1980.

"Through years of administrative maneuverings aggravated by some extremely harmful judicial interpretations, there can be no denial of the fact that black lung proceedings before the Labor Department today are extremely adversarial in nature against the claimant," Rahall stated. "This is not how Congress originally intended for this program to work."

\* Requires the Secretary of Labor to review any black lung claim filed prior to April 1, 1980, that was either denied or is still pending to insure that the proper eligibility criteria were used.

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**\* Exempts claimants who have received benefits for at least two years from having to repay the amount if the case is successfully appealed. If the claimant has already been required to repay benefits, the Secretary of Labor would have to make a refund. This provision is based on legislation introduced by Rahall and U.S. Rep. Frank McCloskey (D-IN), H.R. 4160. The Department of Labor begins granting black lung benefit payments to eligible persons even though their case may be under appeal. However, the appeals process is extremely time-consuming and cases can remain pending for as long as 10 years. Currently, if the benefit award is ultimately overturned, the claimant is required to repay the benefits that have been received.**

**"These people, who are already in ill health, are terrorized by the Labor Department when they receive a notice that their benefit award must be repaid," Rahall said. "It's not like they just received the money. The repayment request can be made years and years after the initial award was made."**

**\* Seeks to bolster a claimant's ability to obtain legal representation. Currently, lawyers are not prone to take on black lung claimants as clients because of the low claim approval rate (the lawyer is only paid if the claimant is successful) and disputes over how many hours the attorney spent on the case. The legislation would allow a claimant to enter into an arrangement with a lawyer that provides for a set percentage of the benefit payment to be paid as legal fees.**

**Rahall said that he will push for the legislation to be considered during the remaining time left in the Congressional session this year.**