



*Dade Moeller & Associates, Inc.*  
Report to the United States Department of Labor

**EEOICPA  
Part E  
DOL Work Area A – Wage Loss Assessment**

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## **Executive Summary**

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) program is unique with great specificity contained in the Act and Department of Labor (DOL) Rules. Numerous data sources, industry practices and methodologies have been reviewed and evaluated in this Report. However, no single source or method is instructive for use in EEOICPA Part E wage or wage loss determination due to the detailed statutory prescription of methods for wage loss determinations and the benefits to be provided.

### *Deliverable # 1 – Annual Wages Prior to the Initial Wage Loss*

This Deliverable section reviews sources of annual wages prior to initial wage loss and provides recommendations regarding their use in EEOICPA Part E wage loss determinations.

Recommendation #1: Seek information on annual wages prior to the first wage loss directly from the claimant or from his or her survivor. This method is as strong for Radiation Exposure Compensation Act (RECA) claimants as for other EEOICPA Part E claimants.

- Claims examiners (CEs) should review any pre-existing EEOICPA or RECA claims forms, file materials or adjudication records under Parts B and D/E to identify employers for whom claimants worked during the three years prior to the claimed wage loss.
- DOL should formalize arrangements with Department of Justice (DOJ) to assure program access to RECA documents, forms and files.

Recommendation #2: Obtain the initial round of information from the claimant through claims forms and a written questionnaire for the following reasons:

- It is easily formatted into the claims process in all cases;
- It allows the claims examiner to request a large volume of information in a large volume of claims in an efficient manner;
- It facilitates the receipt of the primary wage documentation in the claimant's possession;

- It identifies third parties whom the claimant believes are likely to possess relevant wage information;
- This method is as strong for RECA claimants as for other EEOICPA claimants.

The questionnaire should be given or sent to claimants on first contact and elicit detailed information as to:

1. Employment history;
2. Names of employers;
3. Type of work performed;
4. Locations of employment; and
5. Documentation of wages or estimated amounts if actual documentation is not available.

Recommendation #3: Use employer information identified in claimant files, forms and interviews to ascertain or verify annual claimant wage information prior to the first wage loss.

Recommendation #4: Use Social Security Administration (SSA) data to ascertain or verify annual claimant wage information prior to the first wage loss. RECA claimants may require non-Federal sources of information.

- Assure access to SSA wage information for EEOICPA Part E claimants. Whether a primary source or a verification source, SSA data are a valuable source of annual wages.

RECA Recommendation #1: Assure an agreement with DOJ is reached promptly if needed to provide DOL access to RECA claims information which may identify employers.

RECA Recommendation #2: Assemble a list of RECA Section 5 employers and determine if they are already engaged to provide employment verifications. Contact available employers to seek information necessary to process Part E claims.

*Deliverable # 2 – Annual Wages after Initial Claimed Wage Loss*

This Deliverable section reviews sources of wages for use in determining annual wages following the initial wage loss and provides recommendations regarding their use in EEOICPA Part E wage loss determinations.

Recommendation #1: Use claimant-provided employment information from claims forms, EEOICPA case files and direct questioning. This method may be as effective for RECA workers as for others.

- Review and assemble information in the files mentioned. Seek missing employment information from the claimant.
- Provide a questionnaire specifically seeking an employment history if the above sources do not clearly identify employers.

Recommendation #2: Use SSA records to verify and supplement claimant and employer supplied information.

Recommendation #3: Use of any of the other identified sources of information if the attempts to obtain wage information from the sources above are unsuccessful.

*Deliverable # 3 – Calculation of Wage Loss Payments*

This Deliverable section reviews methods used to determine wage loss and benefits due to claimants under a number of other systems, and describes the specific methodology mandated for use in EEOICPA Part E claims.

Recommendation #1: If SSA annual caps were attained, estimate wages for missing quarters of data prior to the first wage loss, based upon the quarters for which there are data.

Recommendation #2: If SSA annual caps were attained, estimate wages for missing quarters of data after the first wage loss, based upon the quarters for which there are data.

Most claims should have adequate information for adjudication by DOL by this point. If quarters of wage data are still missing, DOL should determine whether to proceed with the claim, and if so, whether and how to impute wages for claimants on a case by case basis, based upon the claimant's contentions and the information that has been gathered thus far.

## **I. Introduction**

This report reviews options and identifies recommendations for determining the best sources of information to be used in calculation of the average annual wages prior to the first wage loss, identifies the best sources for determining annual wages following the first wage loss, and details a recommended methodology for determining the wage loss payment under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) statute.

Part E of EEOICPA has some unique challenges that are also present in other occupational disease programs, such as:

- Long latency periods between exposure and illness;
- Work histories and exposures forty, fifty or sixty years ago.
- Some claimants no longer living to affirm employment and wages.

Results of research on options for obtaining annual wages based on claims industry best practices are included in addition to the analysis used for the recommendations.

This report contains a methodology for using the wages described above to determine wage loss payments under Part E of the EEOICPA statute, as well as the results of research on methods other programs use to determine wage loss.

## **II. Background**

EEOICPA was initially passed into law in 2000 and amended in 2004. Part E is the section of the Act dealing with illnesses caused by exposure to toxic substances while working for the Department of Energy (DOE).

In Part E of the EEOICPA statute, there is a unique provision concerning wage loss caused by covered illnesses. There are details for the methodology required to establish a compensable wage loss and how the benefits for such losses are to be calculated.



Part E of the Act specifies an annual lump sum benefit for years of wage loss occurring prior to normal retirement age that are the result of a covered illness contracted by a covered Part E employee through work-related exposure to a toxic substance at a DOE facility.

EEOICPA provides that wage loss compensation shall be provided as follows:<sup>1</sup>

(A) The Secretary shall determine

(i) the calendar month during which the employee first experienced wage loss as the result of any covered illness contracted by that employee through exposure to a toxic substance at a DOE facility;

(ii) the average annual wage of the employee for the 36-month period immediately preceding the calendar month referred to in clause (i), excluding any portions of that period during which the employee was unemployed; and

(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act)

(I) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a DOE facility, the employee's annual wage exceeded 50 percent of the average annual wage determined under clause (ii), but did not exceed 75 percent of the average annual wage determined under clause (ii); and

(II) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a DOE, the employee's annual wage did not exceed 50 percent of the average annual wage determined under clause (ii).

(B) The employee shall receive an amount under this paragraph equal to the sum of—

(i) \$10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and

(ii) \$15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

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<sup>1</sup> PL 108-375

In addition to the death benefit for survivors, EEOICPA Part E also provides that a worker who dies prior to the normal retirement age is considered to be disabled from working for purposes of determining wage loss benefits.

Select Department of Labor (DOL) definitions for use in EEOICPA Part E are found in Appendix 1 at the end of this report <sup>2</sup>

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<sup>2</sup> 20 CFR Parts 1 and 30, Federal Register May 25, 2001 (Volume 66, Number 102), § 30.5, 3 § 30.801. These are selected Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP) definitions for use in Part E wage loss determination.

### **III. Deliverable #1 – Average Annual Wages Prior to First Wage Loss**

#### **A. Methodology**

##### *1. Data Requirements*

In order to reconstruct an accurate average annual wage for EEOICPA Part E claimants, DOL requires accurate, complete and readily available sources of wage information. The EEOICPA wage reconstruction task requires collection of decades old employment records and there may be inaccurate, incomplete and unavailable sources of wage information identified for some claims. In an effort to minimize the adverse effects of such data limitations on program adjudications, the value of the available data sources has been assessed in the context of their usefulness in expediting the wage calculation process for the largest number of claims. In order to identify and recommend the best sources of wages to meet this requirement, the wage documentation is most useful when it meets the following criteria:

1. The source(s) demonstrate and document total annual wages for the entire 36 month period, for ease of calculation.
2. The source(s) demonstrate and verify wage information for *all* employers, whether Federal, contractor or other private entities.

Desirable factors for ease of access, calculation and manipulation have also been weighed in developing recommendations for the best sources of average annual wages prior to the first wage loss. These factors include:

1. Information should be available in an easily accessible manner with the least amount of data newly created, re-created or manipulated;
2. Information should be the most detailed available;

3. The preferred information source should have information on the greatest number of workers impacted, eligible for and claiming entitlement to benefits under the EEOICPA Part E program;
4. Information should be the most accurate available in order to reduce the number of disputes arising over discrepancies, differences, and interpretations of the data;
5. Information should be seen by all parties and stakeholders as a legitimate and commonly accepted form of wage information;
6. Information should be developed contemporaneously to the period for which the average annual wage is calculated.

In addition to evaluating the sources of information for their attributes, the limitations of information sources have been considered, including:

1. Difficulty of identifying the relevant information;
2. Difficulty in obtaining the relevant information once identified;
3. Cost associated with obtaining the information;
4. Time associated with obtaining the information;
5. Reliability of information;
6. Methodology to mitigate limitations related to the reliability of information.

*Recommendation #1: Seek information on annual wages prior to the first wage loss directly from the claimant or from their survivor. This method is as strong for RECA claimants as for other EEOICPA claimants.*

- *Claims examiners (CEs) should review any pre-existing EEOICPA or RECA claims forms, file materials or adjudication records under Parts B and D/E to identify employers for whom claimants worked during the three years prior to the claimed wage loss.*
- *DOL should formalize arrangements with Department of Justice (DOJ) to assure access to RECA documents, forms and files.*

## **B. Industry Best Practices**

### *1. Introduction to Calculation of Pre-Injury Wages*

Workers' compensation benefit plans throughout the country must address the question of how to calculate the claimant's average annual wages prior to the first wages for purposes of calculating entitlement to compensation benefits. All calculations of pre-injury wages are premised upon an attempt to locate the best evidence: reliable, relevant and accurate. A variety of processes for wage calculations based on alternative evidence also exist. This report identifies available evidence, its location, methods of retrieval and the weight it should be given. In the absence of primary wage evidence, alternative evidence and processes are identified and evaluated.

Virtually universally, industry best practices for collection of information required for calculating pre-injury average wages requires an immediate three-point contact: the claimant, the employer and the medical provider<sup>3</sup>. In the vast majority of typical workers' compensation claims, these three primary sources provide sufficient evidence upon which to calculate the claimant's pre-injury wages. In private sector workers' compensation program management, the calculation of the actual earnings, those wages earned by the worker in a specified period before the injury occurred, are generally not complicated to determine.

For some EEOICPA claimants, due to the age of the work and employment records, the calculation of the actual earnings may be extremely complicated. An EEOICPA claim could require wage information for any time within the last half a century. Some RECA workers are also eligible to claim benefits under Part E. Some of these workers may have been members of a sovereign nation or have performed work on behalf of a sovereign nation, and for those workers some data sources may not be available. DOL will not have access to those employees and claimants who are deceased. RECA workers require a unique analysis – these workers were

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<sup>3</sup> See generally, Checklist: Collecting Claims Information, Workers' Compensation Business Management Guide, CCH 2001 at Paragraph 9050 and following, 2001. See CCH at Paragraph 11,335.

largely from the Southwestern United States. They performed uranium mining and other tasks in support of United States Government nuclear programs. Since many RECA workers are Native American, there may be additional complexity in obtaining records to provide annual wage information. Some employers may be out of business and employment records may be lost or destroyed. To achieve an efficient, uniform and adequate calculation of wages under EEOICPA, typical industry best practices must be substantially modified.

This report examines industry best practices for use of primary evidence of pre-injury wages and evaluates the feasibility of their use for the DOL in EEOICPA Part E. This report also investigates secondary sources of wage information not generally used in private sector workers' compensation. Later in this report is an analysis of industry practices for presuming wages when actual wages cannot be calculated.

## *2. Primary Evidence of Pre-Injury Wages*

*Recommendation #2: The most useful method by which to obtain the initial round of information from the claimant is through claims forms<sup>4</sup> and a written questionnaire for the following reasons:*

- *It is easily formatted into the claims process in all cases;*
- *It allows the claims examiner to request a large volume of information in a large volume of claims in an efficient manner;*
- *It facilitates the receipt of the primary wage documentation in the claimant's possession;*
- *It identifies third parties whom the claimant believes are likely to possess relevant wage information; and*
- *This method is as strong for RECA claimants as for other EEOICPA claimants.*

*The questionnaire should be given or sent to claimants on first contact and should ask detailed questions as to:*

### *1. Employment history;*

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<sup>4</sup> DOL EEOICPA Forms EE-1, EE-2, EE-3 and EE-4 are found in Appendix 2 at the end of this report.

2. *Names of employers;*
3. *Type of work performed;*
4. *Locations of employment; and*
5. *Documentation of wages or estimated amounts if actual documentation is not available.*

a. Information from Claimants

1. *Methods for Obtaining Information Directly from Claimants*

The first step in the private industry claims process is to ask the claimant a series of questions designed to lead to relevant wage evidence. This contact is generally undertaken within the first 72 hours after the claim is filed and has multiple purposes including obtaining a contemporaneous statement of the events surrounding the injury directly from the claimant and monitoring the medical treatment. The industry generally utilizes a recorded statement which affords an opportunity to modify questions based on the nature of the response and the level of claimant understanding. It is also a means by which to preserve a claimant's statement for use at a later date.

There are three additional methodologies utilized by the industry to obtain information from the claimant directly: a written questionnaire, a deposition and an affidavit. The written questionnaire affords the claimant more time to think through his/her answers, review their answers for accuracy and provide supporting documentation. The deposition is like the recorded statement but is much more formal and expensive given the need for a court reporter. The affidavit is more reliable because of the affirmation under oath.

Obtaining statements and documentation directly from the claimant facilitates the claims process in the private sector in ways that are not applicable to the DOL and the EEOICPA Part E claimant. The private sector claims process is adversarial. The claim's processor is gathering information from the claimant for purposes of determining what claim is being made and, at times, developing defenses against the claim.

That is unlike the EEOICPA program where DOL is administering a non-adversarial program with specific requirements for acceptance claims and provision of benefits. Claimant statements must be examined in the context of whether they facilitate development of an accurate record supportive of the claim for benefits, and with respect to their reliability.

The lapse of years or decades since the date of injury can render claimant reports less reliable. Many claimants may not have primary documents of wage earnings. Some information obtained directly from EEOICPA claimants may not support reliable annual wage determination. Some claimant employment records and reliable recollections of the employment history can lead to secondary sources of data and can be an excellent source of wage information.

The request to the claimant also serves to create a process that recognized that as an initial matter of proof, it is the claimant's burden to state the claim and to provide the supportive documentation. Preservation of the claimant's burden is essential in this program given the need to focus on a three-year period that could potentially occur at any time during a span of several decades.

Given the differing needs of DOL, the productive direct contact with the claimant would be to require the claimant to state the date upon which he/she believes the wage loss began and provide documentation with respect to wages earned in the three year period preceding the wage loss. Since DOL is not trying to defeat the claim by impeaching the claimant's representation but rather is utilizing the information to assist the claimant in the development of an accurate wage history, *it is not recommended that DOL routinely incur the additional expenses associated with a recorded statement or deposition.*

The EEOICPA program has already developed the functional equivalent of the private sector questionnaire through the use of claim forms. Although the forms may require some modification to obtain the more detailed wage information necessary to calculate the average annual wage, they do identify many essential elements of wage reconstruction and are useful to identifying collateral sources for wage information.



Forms EE-1 and EE-2 constitute the initial claim form for the employee or the survivor, respectively. They request essential information such as:

- social security number;
- date of birth; and
- address.

It also asks the claimant to identify the:

- location; and
- type of employment.

Finally, it asks the claimant to identify:

- other related claims that may have been made in the past.

The information contained in this form is necessary to access Federal and state wage information data bases, locate the facility at which the employee worked and identify collateral claim filings which may contain relevant wage data.

Form EE-3 is specifically designed to elicit employment information from the claimant. In addition to the information requested in Forms 1 and 2, it requires the claimant to provide:

- dates of employment;
- name of employers;
- position;
- nature of work; and
- a dosimetry badge number if known.

All of these questions are invaluable to the identification of other parties, especially employers, who may retain wage information.

Form EE-4 elicits information directly from the claimant in the form of an affidavit. It requests:

- dates of employment;

- the nature of the work; and
- the bases of the knowledge.

In addition to the claimant questionnaire, the private sector frequently requires the claimant to execute releases necessary to obtain information from third parties. These releases are used to obtain claimants' medical, employment, tax, social security, union and other compensation records.

For the private sector, many of the releases are formatted by the entity that possesses the records. The government agencies such as the Internal Revenue Service have pre-formatted forms for requesting records. Private sector hospitals frequently will process document requests only on their designated forms and with an advance payment of copying charges that can be as much as a dollar per page.

Obtaining records through releases is a labor intensive process. The records must be requested with some specificity as to the dates of the records. The releases frequently languish without further inquiry such as follow up telephone calls.

DOL has methods of obtaining records from third parties that are not available to the private sector claim's processor. Interagency agreements can specify relationships to provide access to DOE and SSA data on a program wide basis. Further, DOE has agreements with certain large contractor employers to provide EEOICPA data in the employment verification process. The same entities may be willing to provide wage information in addition to the employment verification activities currently underway. Finally, agreements with unions to produce wage records in their possession are a viable option.

In view of DOL's unique access to Federal and multiemployer data and documents, as well as DOL's subpoena power, the private sector use of releases is a more labor intensive, time consuming and less productive method by which to obtain collateral wage information. *It is not recommended that DOL use private sector type releases except in unusual circumstances.*

2. *Strengths and Weaknesses of Methods for Obtaining Information Directly from Claimants*

The following methodologies, as discussed above, are set forward in order of their potential value in facilitating the annual wage development process.

Written Questionnaire: *Recommended for use*

During the initial contact with the claimant, the questionnaire could request detailed documentation from these collateral sources. Tax records, social security benefits statements, union membership and benefit claims, personal injury suits, other workers' compensation claims and unemployment claims should be expressly requested. A complete medical history of all medical conditions, treatment and providers should also be requested. Educational and military records should also be requested.

Claimants should be asked to provide all documents in their possession with respect to these issues and to identify any third parties who might be in possession of these records. The claimant should be asked to provide names, dates, claim numbers, addresses and telephone numbers for any of the offices or individuals they identify. The burden of proof is expressly placed on the claimant, who is in the best position to obtain the necessary wage information.

Strengths:

- Is a strong RECA source of information
- Provides a concise statement of the claim for benefits
- Identifies collateral sources of records
- Is easily formatted
- Facilitates the request of a large amount of information from claimants
- Facilitates the request for information in a large number of claims
- Is non-labor intensive method to obtain information from claimant
- Forms EE1-EE4 are currently in use and contain much of the necessary information

Weaknesses:

- Does not allow variances in questions
- Does not facilitate the identification of misunderstandings

Affidavits: *Recommended for limited use*

Strengths:

- Under oath provides verification of otherwise unavailable information
- Can be formatted as Form EE4
- Provides option to denial where primary documentation is unavailable

Weaknesses:

- Labor intensive
- Limited in scope

Recorded Statement: *Not recommended for use*

Strengths:

- Provides a concise statement of the claim for benefits
- Allows variances in questions for productive interaction with the claimant
- Facilitates the identification of misunderstandings through direct contact
- Identifies collateral sources of records
- Is easily formatted

Weaknesses:

- Is unnecessarily expensive in a non-adversarial process

Deposition: *Not recommended for use*

Strengths:

- Provides the most accurate statement from the claimant.

Weakness:

- Is unnecessarily adversarial
- Is extremely expensive

Releases: *Not recommended for use*

Strengths:

- Facilitates the receipt of information from collateral sources

Weaknesses:

- Is not as useful as the interagency agreements and private sector agreements available to DOL

*Recommendation #3: Use employer information identified in claimant files, forms and interviews to ascertain or verify claimant annual wage information prior to the first wage loss.*

b. Information from Employers

*1. Methods for Obtaining Information from Employers*

The personnel record of the employee is the most valuable source of wage information, and in the private sector it is the employer who prepares a schedule of wages based on their records. In the context of the government-owned and contractor-operated facility, the personnel records may still be in the possession of a current DOE facility contractor or could be available via the DOE Office of Legacy Management. DOJ may have information on employers of RECA eligible workers. Private sector employers may have possession of the personnel records if the employee was working for a sub-contractor or in intermittent construction projects<sup>5</sup>.

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<sup>5</sup> Interviews with DOE personnel suggest that the proportion of subcontractors at DOE facilities varies over time across time and facilities. During the largest production years, prime contractor workers constituted more than 75% of EEOICPA covered workers.

In addition to a personnel file, DOE or its contractor employers may have a file of records retrieved for use in either employment verification or in response to a records request for another section of the EEOICPA program. Many Part E claimants have already filed a claim under EEOICPA. Prior data requests of or by DOE were not for the purpose of establishing annual wages. As such, it is unlikely that the actual wage data is currently contained in these files. There are a variety of site information and dose reconstruction documents that may contain individuals' wage information or lead to the identity of a third party with wage documentation.

2. *Strengths and Weaknesses of Methods for Obtaining Information from Employers*

The following methodologies, as discussed above, are set forward in order of their potential value to facilitate the annual wage development process.

Employer Personnel Record: *Recommended for use*

Strengths:

- Provides reliable information kept in the ordinary course of business
- Provides information produced contemporaneously to the wage period

Weaknesses:

- May be extremely labor intensive and thereby expensive to retrieve
- May not be available due to loss or destruction

DOE, DOL and DOJ claim files: *Recommended for Use*

Strengths:

- May contain relevant information
- Readily accessible

Weaknesses:

- Unlikely to contain specific wage information

c. Information in Medical Reports

1. *Methods for Obtaining Information from Medical Reports*

The third source of claim information sought in the private sector is medical records. Medical records frequently contain claimants' statements about the nature of the employment and the identity of the employer. In the private sector, the purpose of obtaining these records includes managing the course of medical treatment and the effort to return the claimant to gainful employment. It is probably not an efficient investment of time for the claims examiner to cull through medical reports in every case to glean a few pieces of data relevant to the reconstruction of wages. Although a potentially valuable source of information, it may be better utilized only in claims where other more available sources were not productive.

2. *Strengths and Weaknesses of Methods for Obtaining Information from Medical Reports*

The following methodologies, as discussed above, are set forward in order of their potential value to the facilitating the wage development process.

Medical Reports: Not Recommended for Routine Use

Strengths:

- Provides reliable information kept in the ordinary course of business
- Provides information produced contemporaneously to the wage period
- Possibly identifies collateral sources by identifying name or location of employment

Weaknesses:

- Is extremely labor intensive and thereby expensive to retrieve
- May not be available due to loss or destruction
- Potential for useful information extremely low

### *3. Secondary Sources of Pre-Injury Wages*

*Recommendation #4: Use Social Security Administration (SSA) data to ascertain or verify claimant annual wage information prior to the first wage loss. RECA claimants may require non-Federal sources of information in some instances.*

- DOL should ensure access to SSA wage information for EEOICPA Part E claimants. Whether a primary source or a verification source, SSA data are a valuable source of annual wages.*

When the primary evidence from the claimant or employer is inadequate to reasonably substantiate a pre-injury wage calculation, the industry attempts to obtain evidence from secondary sources. The secondary category of evidence consists of worker specific wage information retained by the government or third parties for collateral purposes. These include:

#### 1. United States Social Security Administration (SSA)

- SSA data are an excellent source of wage information when available, with some clear limitations described below.

#### Strengths

- These records are already utilized by other wage loss and disability programs
- There is an established data sharing arrangement between the Social Security Administration (SSA) and DOL to authorize access and provision of this information without the need for individual applicant authorization
- This source of information captures post initial wage loss annual wage information from multiple employers, not limited to DOE contractors and employers
- Information was collected from multiple employers at the time of exposure, and continued during the time of alleged reduced earnings
- Information is available on a quarterly and annual basis for determining as closely as possible, wages for calendar years beginning at any point



## Weaknesses

- Some RECA workers may not have data available through the SSA
- EEOICPA workers may exceed annual earnings caps, making the information potentially less useful decades ago (see below)

For Social Security earnings, the taxable maximum was \$4,800 from 1959 to 1965, at which point the annual taxable maximum increased by a cost of living factor on a fairly regular basis as a way to address the future benefit needs of the program.

Based on information from the 2003 Annual Statistical Supplement to the Social Security Bulletin<sup>6</sup>, in 1965, only 51% of the male workers had earnings below the \$4,800 maximum. This indicates almost half of the workers had earnings above the taxable maximum. Workers in the EEOICPA program were probably earning more than the national average for a number of reasons, including, but not limited to:

- They were unionized.
- They were working in a high paying leading edge technology industry.
- They were skilled workers in a national defense program with specialized skills and knowledge.

The percentage of DOE contract workers who would likely have attained the taxable maximum is probably higher than the overall national figures shown in the SSA table.

Berkowitz, Burton and Vroman conducted a study of wage loss among workers who were injured on the job in 1968. While collecting earnings from SSA records for 1966 to 1973, and especially in 1966 and 1967 (the years before the workplace injuries), they had difficulty with information for workers who had earnings which exceeded the taxable maximum.<sup>7</sup>

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<sup>6</sup> Produced by the SSA, Office of Policy, Office of Research, Evaluation and Statistics, Table 4.B, OASDI Covered Workers.

<sup>7</sup> Berkowitz, M., Burton, J.F., Vroman, W. 1979. *An Evaluation of State Level Human Resource Delivery Programs: Disability Compensation*. Washington, DC: National Science Foundation.

SSA records not only show the annual earnings up to the taxable maximum but, more importantly, show the quarter in which the worker meets and exceeds the taxable maximum. The authors developed calculation methods to infer wages after limits had been attained.

This was a common problem for researchers using the SSA data during the 1960s and 1970s. Since 1979, more than 90% of all workers have had earnings below the taxable maximum, so the problem is much less severe in recent decades.

This data set weakness can be overcome. A number of EEOICPA Part E claimants may be subject to the taxable maximum, indicating a need to develop a methodology to estimate annual earnings for individual workers<sup>8</sup>. In order to correct and account for earnings which have exceeded the annual maximum taxable amount, a formula or equation can be used to accurately project annual earnings. Options to resolve missing data issues are discussed in greater detail in Deliverable #3.

Additional sources of annual wage information include:

2. State Unemployment Insurance (UI);
3. Tax Records;
4. State and Federal Workers' Compensation;
5. Pension Funds;
6. Union Health and Welfare Plans and Pensions; and
7. Personal Injury Litigation Records.

The above wage sources should be used to obtain wage data for claimants on an as needed, case by case basis. Additional detail on the strengths and weaknesses of these data sources is found below. Federal data sources may not be of use to determine wages for some RECA claimants.

Summary Tables follow which show how each of the above data sources is measured against the Data Requirements and Data Desirable factors as discussed.

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<sup>8</sup> The implications of this data limitation on EEOICPA Part E claimants is not specifically known. Per DOL direction, specific claimant information was not analyzed for this report.

Table III.1 Annual Wages Prior to Initial Wage Loss – Requirements of Data Elements for Possible Wage Sources

DATA SOURCE	DATA REQUIREMENT RECORDS AVAILABLE FOR 36 MONTH PERIOD	DATA REQUIREMENT WAGE RECORDS AVAILABLE FROM ALL EMPLOYERS
Existing EEOICPA Claims Files		
RECA Claims Files		
SSA Database	✓	✓
Unemployment Insurance Records		✓
Employee Questionnaire		
Employee Affidavit		
Federal Tax Records	✓	✓
Employee Held Tax Records		
Union Records	✓	
DOE Contractor Records	✓	

Table III.2 Annual Wage Determination Prior to Initial Wage Loss – Desirable Data Elements for Possible Data Sources

DATA SOURCE	DESIRABLE EASILY ACCESSIBLE	DESIRABLE DETAILED INFORMATION	DESIRABLE GREATEST # OF WORKERS COVERED	DESIRABLE MOST ACCURATE AVAILABLE	DESIRABLE SEEN AS LEGITIMATE	DESIRABLE CONTEMPORARY
Existing EEOICPA Claims Files	✓	✓	✓			✓ parts
RECA Claims Files	✓	✓				✓ parts
SSA Database	✓	✓	✓	✓	✓	✓
Unemployment Insurance Records					✓	✓
Employee Questionnaire	✓					
Employee Affidavit	✓					✓
Federal Tax Records	✓	✓		✓	✓	✓
Employee Held Tax Records		✓	✓	✓	✓	✓
Union Records			✓		✓	✓
DOE Contractor Records		✓	✓	✓	✓	✓
Medical Reports						
State WC Records						
Personal Injury Litigation Records						

Table III.3 Wage Data Processing Options

<b>Data Sources</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
Claimant wage documentation. >>>>>>>>>>	Identify 36-month period. >>>>>>>>>>	Review documentation and determine if it is credible and complete. >>>>>>>>>>	Complete 36-month wage schedule. >>>>>>>		
Supplement above with SSA records. >>>>>>>>>>	Identify 36-month period. >>>>>>>>>>	Complete 36-month wage schedule, to extent possible. >>>>>>>>>>	Review SSA records to obtain additional wage data. >>>>>>>>>>	Review documentation and determine if it is credible and complete. >>>>>>>>>>	Complete 36-month wage schedule. >>>>>>>
Supplement above with RECA and EEOICPA claim records. >>>>>>>>>>	Identify 36-month period. >>>>>>>>>>	Complete 36-month wage schedule, to extent possible. >>>>>>>>>>	Review claim files to obtain additional wage data. >>>>>>>>>>	Review documentation and determine if it is credible and complete. >>>>>>>>>>	Complete 36-month wage schedule. >>>>>>>
Supplement above with employer personnel files. >>>>>>>>>>	Identify 36-month period. >>>>>>>>>>	Complete 36-month wage schedule, to extent possible. >>>>>>>>>>	Review employer personnel files to obtain additional wage data. >>>>>>>>>>	Review documentation and determine if it is credible and complete. >>>>>>>>>>	Complete 36-month wage schedule. >>>>>>>
Supplement above with collateral records. >>>>>>>>>>	Review records for additional information sources (union, tax, UI, state workers' compensation records). >>>>>>>>>>	Utilize agreements, releases and/or subpoenas to obtain records. >>>>>>>>>>	Review documentation and determine if it is credible and complete. >>>>>>>>>>	Complete 36-month wage schedule. >>>>>>>	
Supplement above with affidavits. >>>>>>>>>>	Review affidavits for inconsistency with records. >>>>>>>>>>	Determine if affidavits are credible. >>>>>>>	Complete 36-month wage schedule. >>>>>>>		

**C. Recommendations – Summary for Deliverable #1**

Recommendation #1: Seek information on annual wages prior to the first wage loss directly from the claimant or from their survivor. This method is as strong for RECA claimants as for other EEOICPA claimants.

- CEs should review any pre-existing EEOICPA or RECA claims forms, file materials or adjudication records under Parts B and D/E to identify employers for whom claimants worked during the three years prior to the claimed wage loss.
- DOL should formalize arrangements with DOJ to assure program access to RECA documents, forms and files.

Recommendation #2: Obtain the initial round of information from the claimant through claims forms and a written questionnaire, for the following reasons:

- It is easily formatted into the claims process in all cases;
- It allows the claims examiner to request a large volume of information in a large volume of claims in an efficient manner;
- It facilitates the receipt of the primary wage documentation in the claimant's possession;
- It identifies third parties whom the claimant believes are likely to possess relevant wage information;
- This method is as strong for RECA claimants as for other EEOICPA claimants.

The questionnaire should be given or sent to claimants on first contact and should ask detailed questions as to:

1. Employment history;
2. Names of employers;
3. Type of work performed;
4. Locations of employment; and
5. Documentation of wages or estimated amounts if actual documentation is not available.

Recommendation #3: Use employer information identified in claimant files, forms and interviews to ascertain or verify claimant annual wage information prior to the first wage loss.

Recommendation #4: Use Social Security Administration (SSA) data to ascertain or verify claimant annual wage information prior to the first wage loss. RECA claimants may require non-Federal sources of information.

- DOL should assure access to SSA wage information for EEOICPA Part E claimants. Whether a primary source or a verification source, SSA data are a valuable source of annual wages.

RECA Recommendation #1: Ensure an agreement with DOJ is reached promptly if needed to provide DOL access to RECA claims information which may identify employers.

RECA Recommendation #2: DOL should assemble a list of RECA Section 5 employers and determine if they are already engaged to provide employment verifications.

- DOL should contact available employers to seek information necessary to process Part E claims.

## **IV. Deliverable #2 – Average Annual Wages Following the First Wage Loss**

### **A. Methodology**

#### *1. Data*

The information sources for this deliverable, while perhaps the same as those used to determine claimant average annual wage prior to the first wage loss, do not necessarily serve the same purpose here. Information for this section is needed on a calendar year basis for each year of claimed wage loss after the initial wage loss.

Annual wages for use in wage loss determination after the initial wage loss must take into account employment and wage information from DOE, its contractors or subcontractors, as well as other employers for whom claimants may have worked and earned wages during any part of a calendar year in which they are attempting to establish a reduction in earning capacity.

Most disability and state and Federal workers' compensation systems place the burden for demonstrating post-injury wage loss on workers and claimants to demonstrate reduced and actual wage earnings demonstrated with wage records.

The claimant clearly bears the burden of proving (by a preponderance of evidence) the existence of each and every criterion to establish eligibility under *any* claim category in Part E.

Preponderance is defined by "being as likely as not" in this program, which establishes a threshold lower than most disability and workers' compensation programs but also allows for adequate access to benefits under this program.

Workers' Compensation and other disability systems rely on post-injury wage records as presumptive of two things:

- 1) The claimants' actual earned wages demonstrate the best reflection of post-injury earning capacity which may be reduced to some degree by;



2) A temporary or permanent injury caused in whole or in part from a work related injury or occupational disease.

The report's recommendations concentrate on information to demonstrate annual wages after the date a claimant contends they lost wages due to an EEOICPA covered condition.<sup>9</sup> Gathering information from sources so long after exposure and demonstrating annual earnings decreased due to the covered condition can be difficult.

Average annual wages, for the purpose of measuring annual wages after the first wage loss are for the purpose of this project, the quarterly calculated and documented calendar year earnings from DOE contractor employers and all other employers regardless of their connection to DOE.

## *2. Data Requirements*

In order to identify and recommend the best sources of wages to meet the requirements of statutory language, wage documentation should meet these three critical criteria:

1. The sources need to both demonstrate and document total annual wages for the entire annual period. To accurately and equitably calculate the correct entitlement amounts for claimants, records and earnings must be demonstrated as existing or not existing for twelve month periods after the claimant first alleges wage loss due to exposure to a toxic substance at a DOE facility. It is critical to determine whether the claimant meets the reduced earning standard of 50 or 75% of their average annual wage prior to the first wage loss.
2. The source(s) need to provide information across multiple calendar years to facilitate ease of calculations. The requirements to establish the entitlement to benefits must be available for annual periods and cover more than one annual period.

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<sup>9</sup>In order to establish wage loss and medical evidence on an EE-10 according to DOL's proposed Rules. This form is not currently available for inclusion.

3. The source(s) need to demonstrate and verify wage information for *all* employers, whether Federal, contractor or other private entities. This is necessary to fully demonstrate whether a claimant’s annual wages after the first claimed wage loss exceed 50 or 75% of their average annual wage prior to the first wage loss.

*3. Data Desirable Factors*

In addition, the following factors are desirable for ease of access, calculation and manipulation and have been weighed in the recommendation for best source of wage earning capacity and demonstration purposes.

1. Information should be available in an easily accessible manner with the least amount of data being newly created, re-created or manipulated. Information in existing databases can be of good quality and is very useful. If information is being collected for other purposes in easily accessible formats, it can be used to independently verify annual wages and wage loss.
2. Information should be the most detailed available. If data can provide information from the most periods of time and from the most sources, it can provide the greatest amount of detail. In turn, detail in records, specifically wage records, can help to establish actual earning levels to the best degree.
3. The preferred information source should have information on the greatest number of workers impacted, eligible for and claiming entitlement to benefits under the EEOICPA Part E program. In order to be a useful resource for DOL, the information source should provide detailed wage records for the most covered workers and claimants so that the preferred data source(s) can be accessed and utilized with efficiency for the most claimants possible.
4. Information should be the most accurate available in order to reduce the number of disputes arising over discrepancies, differences, and interpretations of the data.

5. Information should be seen by all parties and stakeholders as a legitimate and accurate source of wage information. In order to be legitimate, stakeholders must understand and accept the wage data source as a legitimate source of information.
  
6. Information should be developed contemporaneously. As with our recommendation in item #1 to have a verifiable source of information, it is important to have information that corresponds closely with and was collected at the time the reduced post-injury annual wages were earned.

### **B. Possible Annual Wage Sources**

This section identifies some commonly utilized sources of information for determining annual wages following the first wage loss. The sources of wage loss are listed in order of preference.

*Recommendation #1: Use claimant-provided employment information from claims forms, EEOICPA case files and direct questioning. This method may be as effective for RECA workers as for others.*

- *Information in the files mentioned should be reviewed and assembled. Missing employment information should be sought from the claimant.*
- *Claimants should be given a questionnaire specifically seeking an employment history if the above sources do not clearly identify employers.*

1. Adjudicated Findings from DOL or DOE or DOJ

- These case files and claims forms are an excellent source of information for claimants for whom there is already a RECA or EEOICPA claim.

If the claims have already been filed under RECA or EEOICPA and found to be compensable and a wage level has been established, determining the 50/75% thresholds for awards after the date of first exposure should be a relatively simple exercise. Wage documentation should already be in place for the period of time prior to lost time.

2. Employer Wage Records

- Employer records are an excellent source of data when available but they are not always complete and may need to be verified. This source is equally robust for RECA and other EEOICPA claimants.

Strengths

This source is closest to the nexus for wage earners under this program. DOL and DOE can require contractors to provide this information for Part D/E claims. Wage earnings would be fairly accurate and contemporaneously created.

At most of DOE's major facilities with active operations, records from former contractors are maintained by either the contractor or DOE office. Records retrieval efforts from these entities has constituted a significant expenditure so far in the EEOICPA program. Although these records may be expensive to retrieve, the contained data are extremely robust for that specific employment.

Weaknesses

Not all employment periods and employers would be present. This would serve as only one of many pieces of wage information for post-injury wage loss. Collection of this data source from many locations and sources would require interaction with current or former employers who may

or may not be able to provide the information. For instance, they may be out of business, or no longer have the records.

Under ongoing EEOICPA employment verifications, a number of private sector employers who maintain employment data for covered workers have agreed to cooperate in provision of this information. These employers should be contacted and asked to provide wage information in addition to employment verification whenever possible.

Although some employers have agreed to provide employment verifications, the additional resources required to provide wage data could have associated costs.

*Recommendation #2: Use SSA records to verify and supplement claimant and employer supplied information.*

### 3. United States Social Security Administration (SSA)

- SSA data are an excellent source of wage information when available, with some clear limitations described below.

#### Strengths

- These records are already utilized by other wage loss and disability programs
- There is an established data sharing arrangement between the SSA and DOL to authorize access and provision of this information without the need for individual applicant authorization
- This source of information captures annual wage information following the first wage loss from multiple employers, not limited to DOE contractors and employers
- Information was collected from multiple employers at the time of exposure, and continued during the time of alleged reduced earnings
- Information is available on a quarterly and annual basis for determining as closely as possible wages for calendar years beginning at any point

#### Weaknesses

- Some RECA workers may not have data available through the SSA
- EEOICPA workers may exceed annual earnings caps, making the information potentially less useful decades ago (see below)

For Social Security earnings, the taxable maximum was \$4,800 from 1959 to 1965, at which point, the annual taxable maximum increased by a cost of living factor on a fairly regular basis as a way to address the future benefit needs of the program.

Based on information from the 2003 Annual Statistical Supplement to the Social Security Bulletin<sup>10</sup>, in 1965, only 51% of the male workers had earnings below the \$4,800 maximum. This indicates almost half of the workers had earnings above the taxable maximum. Workers in the EEOICPA program were probably earning more than the national average for a number of reasons, including, but not limited to:

- They were unionized.
- They were working in a high paying leading edge technology industry.
- They were skilled workers in a national defense program with specialized skills and knowledge.

The percentage of DOE contract workers who would likely have attained the taxable maximum is probably higher than the overall national figures shown in the SSA table.

Berkowitz, Burton and Vroman conducted a study of wage loss among workers who were injured on the job in 1968. While collecting earnings from SSA records for 1966 to 1973, and especially in 1966 and 1967 (the years before the workplace injuries), they had difficulty with information for workers who had earnings which exceeded the taxable maximum.<sup>11</sup>

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<sup>10</sup> Produced by the SSA, Office of Policy, Office of Research, Evaluation and Statistics, Table 4.B, OASDI Covered Workers.

<sup>11</sup> Berkowitz, M., Burton, J.F., Vroman, W. 1979. *An Evaluation of State Level Human Resource Delivery Programs: Disability Compensation*. Washington, DC: National Science Foundation.

SSA records not only show the annual earnings up to the taxable maximum but also, more importantly show the quarter in which the worker meets and exceeds the taxable maximum. The authors developed calculation methods to infer wages after limits had been attained.

This was a common problem for researchers using the SSA data during the 1960s and 1970s. Since 1979, more than 90% of all workers have had earnings below the taxable maximum, so the problem is much less severe in recent decades.

This data set weakness can be overcome. A number of EEOICPA Part E claimants may be subject to the taxable maximum, indicating a need to develop a methodology to estimate annual earnings for individual workers. In order to correct and account for earnings which have exceeded the annual maximum taxable amount, a formula or equation can be used to accurately project annual earnings. Options to resolve missing data issues are discussed in greater detail in Deliverable #3.

*Recommendation #3: Use any of the below sources of information if the attempts to obtain wage information from the sources above are unsuccessful.*

#### 4. State Unemployment Insurance (UI) Information

- UI data can be valuable to verify wages and for some workers, may be able to subsidize or verify other information, but this system should be used on a case by case basis.

These data can be valuable for some workers. They are not centrally or uniformly retained and are not readily available for some workers in some jurisdictions. On an individual basis, like in Washington state, the data are available for workers since the early 1970s. This could be a helpful source of data to process claims for Hanford workers – especially if their wages are capped by SSA annual maximums.

#### Strengths

- UI data is not capped and collects taxable gross income;

- Data are available on a quarterly basis and would correspond to the pre-exposure quarter basis;
- Information is reportable for all employers;
- For the state of Washington, workers could have a backup verification of wages going back to at least 1979 - data may be robust for that period.

#### Weaknesses

- There is no central national repository as states aren't required to report UI earnings and wages to the Federal Government;
- There is no consistent requirement for data elements collected or length of time records are held from state to state;
- Wages and earnings are not reported for independent contractors, self-employed and underground workers;
- Data can be “dirty” with no verification by employers, employees or states. W-2s on the other hand, are seen by all three and can be monitored for accuracy during tax time.
- Data retention varies from state to state. Most states do not keep records for more than six quarters. Many states joined a centralized standardized data standard program which was de-funded in the early to mid 80s. Washington state is the only entity still maintaining data in the standard format;
- Data are available only as far back as the late 1970s (only for Washington).

#### 5. United States Internal Revenue Service

Quarterly taxable wages – While individual tax returns may not be the most accurate as they likely present a combined family wage, W-2 forms, if available, would document wage earnings well. This source may not work well for some RECA claimants.

#### 6. Personally Held Ongoing Wage Records

- These records can be excellent when available.

#### Strengths



These records may be readily available for recent conditions. After a worker suffers a recent injury, it is relatively easy to track, consolidate and file documentation. Wage stubs are regularly provided in a timely manner with little more than a two to four week delay between earnings and payments.

Post-injury wage earnings for the Longshore and Harbor Workers Compensation (LHWC) and by extension the Defense Base Act (DBA) programs, as well as most other contemporary workers' compensation and wage replacement systems must be regularly documented to the insurance company or employer and monitored by OWCP via a Report of Earnings form LS-200<sup>12</sup>. The burden for proving post-injury wage loss and earning capacity is on the worker and documented with pay or wage stubs. Providing documentation and records for occupational disease cases presents unique challenges due to the chance for missing or inaccurate information because of the age of the data required.

#### Weaknesses

Worker records may only show the annual earnings up to the taxable maximum; also, more importantly, long term exposure cases do not present themselves for many years, and records may be incomplete or non-existent. For this reason alone, personally held wage records are unreliable. Worker provided records may not contain the complete set of all earnings and must be independently verified to determine whether the complete set of all earnings is represented by submitted documentation. This analysis varies, of course, if an individual has retained all pay or wage stubs for a given time period.

#### 7. Personally Held Tax Returns

#### Strengths

This information can be matched and independently verified with another Federal agency (Internal Revenue Service (IRS)) records.

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<sup>12</sup> A copy of the form can be found in Appendix 2 at the end of this report.

## Weaknesses

Survivors may not have access to information from deceased workers and claimants. Records may be incomplete for the years needed to demonstrate wage loss post-injury. Many records are only held for a recommended period of five to seven years and may be destroyed. Records may have been lost, may be incomplete or altered. The last concern may not be significant if independent verification can occur.

Perhaps the most challenging attributes of personally held tax records are that they may include gross earnings, unemployment, disability or other wages and also may include earnings from other family members that would inflate annual wages following the first wage loss.

## 8. Union Records

### Strengths

Union records from local affiliates can be relatively accurate and a great source of demonstrating work assigned during certain time periods. These records may help to establish pre- and post-injury employers and contractors to which claimants are assigned. These records have been especially helpful in cases where claimants have had multiple employment stints for short periods of time with multiple contractors.

### Weaknesses

Wage earnings and detailed information may not be fully documented within this data source. Additionally, since not all claimants worked through the same Union Locals at the same location, records may be scattered among many different Locals and entities. These records can be difficult to obtain.

## 9. Union Pension / Health and Welfare Records

### Strengths

Union pension records are likely able to document complete union wages that are earned for purposes of calculating contributions, entitlement and ultimate pension benefits. These may be good secondary sources for records.

#### Weaknesses

Records from single or multi-employer union funds may not include work and earnings made at non-union employers or for second jobs with other employers. Access to these records is difficult to obtain and would require negotiations with multiple unions or pension funds.<sup>13</sup>

Tables follow that summarize the data sources above according to both Data Requirements and Data Desirable factors.

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<sup>13</sup> Building and Construction Trades Department (BCTD) of the AFL-CIO is currently assisting in employment verification for EEOICPA claimants. They may be able to provide access to detailed wage information for some claimants.

Table IV.1 Annual Wage Determination Following Initial Wage Loss – Requirements of Data Elements for Possible Data Sources

DATA SOURCE	DATA REQUIREMENT RECORDS AVAILABLE FOR 36 MONTH PERIOD	DATA REQUIREMENT WAGES RECORDS AVAILABLE FROM ALL EMPLOYERS
Existing EEOICPA Claims Files	✓	
RECA Claims Files		
SSA database	✓	✓
Unemployment Insurance records		✓
Employee Questionnaire		
Employee Affidavit		
Federal tax records	✓	✓
Employee held tax records		
Union records	✓	
DOE Contractor records	✓	

Table IV.2 Post-injury wage determination – Desirable Data Elements for Possible Data Sources

DATA SOURCE	DESIRABLE EASILY ACCESSIBLE	DESIRABLE DETAILED INFORMATION	DESIRABLE GREATEST # OF WORKERS COVERED	DESIRABLE MOST ACCURATE AVAILABLE	DESIRABLE SEEN AS LEGITIMATE	DESIRABLE CONTEMPORARY
Existing EEOICPA Claims Files	✓	✓	✓			✓ parts
RECA Claims Files	✓	✓				✓ parts
SSA database	✓	✓	✓	✓	✓	✓
Unemployment Insurance records					✓	✓
Employee Questionnaire	✓					
Employee Affidavit	✓					✓
Federal tax records	✓	✓		✓	✓	✓
Employee held tax records		✓	✓	✓	✓	✓
Union records			✓		✓	✓
DOE Contractor records		✓	✓	✓	✓	✓
Medical reports						
State WC records						
Personal Injury Litigation records						

### **C. Examples of What Other Programs and Jurisdictions do to Establish Wage**

#### 1. Federal Employees Compensation Act (FECA)

- FECA benefits are based on worker pre-injury wages

An occupational disease is defined as a condition produced in the work environment over a period longer than one workday or shift. It may result from systemic infection, repeated stress or strain, exposure to toxins, poisons, or fumes, or other continuing conditions of the work environment.

An injured worker, or someone acting on their behalf, making claim for occupational disease under this program must give notice of occupational disease on Form CA-2.

The employer provides copies of the appropriate checklist, Form CA-35a-h, for the disease claimed. Specific checklists have been devised for various conditions.<sup>14</sup> The employer is also in the best position at the time of notice to explain the need for detailed information to the employee and advise him or her to furnish supporting medical and factual information requested on the checklist.

In FECA, form CA-7 is used to file a claim for compensation because of pay loss. The claim should be filed within 10 days after pay stops or when the employee returns to work, whichever occurs first. Form CA-7 is also used to claim continuing compensation and to initiate a claim for schedule award for permanent impairment resulting from occupational disease.

Compensation is based upon pre-injury wages with the burden upon the worker to provide evidence of wages claimed. Under FECA, if a worker suffers the onset of a latent occupational disease after retirement, compensation is two-thirds of the National Average Weekly Wage (NAWW) multiplied by the percentage of impairment resulting from the disease.

#### 2. Black Lung Benefits Act

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<sup>14</sup> DOL program documentation on website.

- Benefits are based on total current disability from working and are additionally based upon the number of dependents.

The United States Department of Labor – Office of Workers’ Compensation Programs – Division of Coal Mine Workers’ Compensation (DCMWC) is a Federal program established in 1969 which provides benefits and medical treatment to miners and former miners who are totally disabled by pneumoconiosis (black lung disease) and to their eligible survivors, with supplementary allowances for dependents.<sup>15</sup>

Currently, the OWCP administers about \$726 million in annual and medical benefits under the combined programs for 120,000 beneficiaries.

Total disability determinations under the Black Lung program are determined by Federal Act and defined in Part §902 as such:

(f)(1) The term ‘total disability’ has the meaning given it by regulations of the Secretary of Health and Human Services for claims under part B of this subchapter, and by regulations of the Secretary of Labor for claims under part C of this subchapter, subject to the relevant provisions of subsections (b) and (d) of section 923 of this title, except that -

(A) in the case of a living miner, such regulations shall provide that a miner *shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;* (emphasis added).

The most pertinent and similar part of this Act to EEOICPA is the determination of permanent disability and the standards determining whether the miner is capable of performing usual and customary work.

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<sup>15</sup> Information obtained from the United States Department of Labor, Office of Workers’ Compensation Programs.

While the DCMWC standard is similar to EEOICPA in creating a process for determining loss and entitlement to benefits based upon a standard, the DCMWC presumption and determining factors are based almost entirely upon medical diagnosis, findings and tests. EEOICPA entitlement is based on wage loss information.

Additionally, entitlement to benefits from DCMWC are ongoing and paid on a monthly basis which can last the entire life of the claimant, or can be rescinded, and interrupted if a claimant engages in ANY (highlight added) work.<sup>16</sup>

Monthly benefit rates are updated and increased every year. Monthly benefits are based upon the number of beneficiaries and can be coordinated and offset by or against other benefit programs such as Social Security Disability Insurance (SSDI), SSA, state disability and workers' compensation programs.

The DCMWC program, while not entirely analogous, is a Federally operated entitlement program for occupational disease which may be instructive in determining entitlement to benefits.

### 3. EEOICPA – Part B

- DOL administers other EEOICPA benefit programs. Although the program does not pay lost wage benefits (except as defined under Part E now), it has required gathering of important claimant and employer information.

The EEOICPA 2000 statute has a number of Parts in addition to Part E – which provides remedies for illnesses caused by exposure to toxic substances while working for DOE.

Part B provides uniform benefits to qualified covered workers. Workers or their eligible survivors receive \$150,000 and medical care for their covered conditions. No wage replacement benefits are paid under this Part. A large percentage of the current Part E claimants are also

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<sup>16</sup> 902(f)(1)(A)



claimants to Part B. Not only has DOL verified those workers' covered employment, but by definition, has identified employers or employment of the workers.

DOL has procedures for the EEOICPA employment verification process. The procedures that have to do with seeking information from claimants as well as identifying and seeking information from employers could be extremely helpful for use in EEOICPA Part E. However, the information from covered Part B and E employers for purposes of verifying covered employment will not be adequate to develop wage information from workers in all cases. As discussed elsewhere in this report, the information gathered in adjudicating other programs, such as RECA and EEOICPA, can be valuable as a source of claimant identified employment.

#### 4. Radiation Exposure Compensation Act (RECA)

- Under RECA successful claims receive \$150,000 and medical care – in addition to any benefits specified under Part E. Specific medical evidence is required.

DOJ administers RECA claims for employees exposed to radiation through their work in uranium mines during the period of 1942 through 1971. To establish eligibility, the claimant must establish exposure or 12 months of covered employment.

In determining the methodology for the determination for covered employment verification, DOJ reviewed the demographics of its claimant populations and determined the following:

The employee population engaged in three occupational categories: miners, millers and transporters.

- The wages of each of the occupations are very similar.
- The employees are predominately located in the Southwest of the United States in four states: Arizona, Utah, Colorado and New Mexico.
- The employers of the claimant populations were subject to Social Security payroll taxes.

In view of the population demographics, DOJ devised a methodology that utilizes the Social Security wage records in conjunction with a standardized monthly wage for the relevant

occupational categories. For example, if an employee's Social Security wage records recorded \$1,000 in a quarter and the standardized monthly wage for that occupation during that year and quarter was \$3,000, DOJ would determine that the employee had worked a total of one month during that quarter. DOJ would continue with this process until it had verified a total of 12 months of employment, the statutory threshold.

In cases where DOJ encountered difficulties in obtaining wage records not reported through the Social Security System (and by legislative mandate in EEOICPA 2000), DOJ allows for the establishment of covered employment through affidavits. DOJ instituted an affidavit verification process, which requires a review of the document for any inconsistencies or other indications the declarant is not truthful. Thereafter, Social Security records of the claimant are reviewed for inconsistencies such as the claimant being employed elsewhere during the relevant time frame. The Social Security records of the affiant are also cross-referenced. Likewise, if the affiant is also a RECA claimant, his/her claim file documents and Social Security records are cross-referenced for inconsistencies.

DOJ maintains claim records which are presumably available to DOL. These records are likely to be extremely limited and inadequate for DOL's purposes for the following reasons:

- The time period they cover is unlikely to be identical or even overlapping for any quarters of employment relevant to the DOL review.
- Similarly to the anticipated limitations of the DOE wage verification records, DOJ is not tasked to calculate an actual wage amount but rather to verify the existence of the employment.

That is not to say that the records would not be valuable to DOL, but it should not be anticipated that they would resolve the wage calculation issues for DOL in the RECA claims.

Likewise, the calculation process adopted by DOJ may not be practical for DOL to utilize. A large number of states and occupational categories may create an overly cumbersome

methodology. The demographics of the Part E claim population would need review before any attempts to reconstruct the DOJ methodology could be considered.

5. Division of Longshore and Harbor Workers Compensation Act (LHWC)

DOL's OWCP administers this Federal program authorized under 33 U.S.C. §§ 901-50, which provides medical benefits, compensation for lost wages and rehabilitation services to longshoremen, harbor workers and other maritime workers who are injured during the course of employment *or suffer from diseases* caused or worsened by conditions of employment.

Workers are eligible for payment of Permanent Total Disability (PTD) for the LHWC program. Compensation is two-thirds of the employee's average weekly wage, subject to a maximum amount two times the national average weekly wage (NAWW).

Compensation for permanent total disability is adjusted each October 1, based on the percentage change in the national average weekly wage from the previous year, subject to a maximum adjustment of 5%.

This methodology is similar to the schemes in some jurisdictions and programs (CA, DC, HI, ID, IL, ME, MD, MN, MT, NH, OR, RI, SD, VT, VI, VA, WA, FECA, LHWC) which have provisions to allow for increases in some or all types of permanent benefit payments. These calculation methods to determine permanent total benefits provide a cost of living or inflationary increase in wage replacement payments to avoid erosion of benefit levels due to inflation. Earning capacity replacement systems are based on actual earned or lack of earned wages. Courts have found actual post-injury wages are demonstrative of true earning capacity.

Post-injury wage earnings for the LHWC must be regularly documented and are monitored by OWCP via a Report of Earnings form LS-200 (in Appendix 2). The burden for proving post-injury wage loss and earning capacity is on the worker and documented with wage stubs.

6. Defense Base Act (DBA)

- Provides uniform benefit levels based upon NAWW.

Federal law requires all U.S. government contractors and subcontractors to secure workers' compensation insurance for their employees working overseas. The related statutes include the Defense Base Act, 42 U.S.C. §§ 1651-54 and the Longshore and Harbor Workers' Compensation Act (LHWC).<sup>17</sup>

The DBA adopts the provisions of the LHWC with a few exceptions. The insurance requirements for the DBA are identical to those found in the LHWC.

The DBA provides disability, medical and death benefits to covered employees injured or killed in the course of employment, whether or not the injury or death occurred during work hours. This program pays for diseases endemic to the region where the employee contracted the illness or disease.

Permanent total disability benefits can be established and paid for life and are subject to annual cost of living adjustments. In order to establish entitlement, a written claim for benefits must be filed with OWCP within one year of the injury or within one year from the last payment of compensation, whichever is later.

The DBA program comparison is included here because wages are paid through an insurance product policy (approved and monitored by OWCP) purchased by contractors working on public work contracts with any U.S. government agency, including construction and service contracts in connection with national defense or with war activities outside the United States.

There are similar benefits provided to all claimants based on a standard NAWW in this program. This model is attractive when considering establishing an imputed normalized "straw man" wage and benefit level consistent to all employees independent of actual pre- and post-injury wages. This provides benefits that are equitable on a national basis, but the system does not address

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<sup>17</sup> OWCP

actual differences in earning abilities and capacity which occurred between individuals, locations, classes of workers and states.

7. Silicosis

- Under EEOICPA, successful claimants receive \$150,000 and medical care – in addition to any benefits specified under Part E. Specific medical evidence is required.

Silicosis is an occupational disease with many presentations of symptoms that can have a long latency period. Exposure can occur over many years with different employers and symptom presentation can take years to materialize to the point where a disease is diagnosed, lost time and lost wages are experienced and payments, if eligible, are made.

Silicosis injuries are generally recognized as occupational diseases in most jurisdictions and not treated as a special program with the singular exception of the EEOICPA program which has a special cohort group for silicosis for workers in Nevada and Alaska who performed work on certain types of tunneling.

Chapter 2-0800 of EEOICPA identifies the criteria for establishing eligibility for silicosis under Part E, including a finding from a chest film B reader. 42 U.S.C. §7384r(e) describes the medical evidence required from the claimant that must be presented in order to establish a compensable chronic silicosis illness.

DOL CEs verify that all the necessary medical evidence is presented in accordance with the requirements listed in the statute. The following are the statutory requirements for establishing a diagnosis of silicosis:

- A. A written medical narrative from a qualified physician that includes a diagnosis of chronic silicosis and the date of initial onset. In addition, one of the following must be submitted:

- a. A chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health (NIOSH) as a B reader, classifying the existence of pneumoconiosis of category 1/0 or higher;
  - b. Results from a computer assisted tomography or other imaging technique that are consistent with silicosis;
  - c. Lung biopsy findings consistent with silicosis.
- B. The initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years.
- C. Upon review of the evidence presented in a claim, the CE should verify the presence of the necessary medical and diagnostic evidence to support a diagnosis of silicosis. If deficiencies are noted, the CE must request evidence from the claimant.

Benefits paid under this program equal a one-time lump sum benefit payment of \$150,000 as well as ongoing medical care for the covered illness. In this system, unlike many others, benefits received are independent of wages.

Until the October 2004 EEOICPA amendments became law, the predecessor program did not specify the level of wage loss benefit available to EEOICPA claimants.

#### 8. Asbestosis

- There is currently no uniform Federal remedy or benefit for Asbestos illnesses.

Due to inconsistencies in ways benefits are provided across states and specifically among occupational disease cases, there has been discussion and actions in support of Federalization of occupational disease cases such as silicosis and asbestosis.

A recent RAND Corporation Study<sup>18</sup> studying developments in the asbestos related litigation

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<sup>18</sup>Asbestos Litigation, Stephen J. Carroll, Deborah R. Hensler, Jennifer Gross, Elizabeth M. Sloss, Matthias Schonlau, Allan Abrahamse and J. Scott Ashwood. RAND Corporation, Santa Monica, CA, 2005.

fields found more than 730,000 people had filed asbestos related claims (not restricted to workers' compensation systems) from the 1970s through 2002.

The United States Congress has been reviewing proposed legislation for years regarding establishment of a Federal program for payment of asbestos cases. Recently, a Senate panel passed a bill authorizing a pool of \$140 billion to be set up not only for payments to workers, but also to residents living within certain distances of asbestos or vermiculite manufacturing operations. No current Federal remedy exists for asbestos related diseases at this point in time.

#### 9. States Workers' Compensation and Occupational Disease Programs

- In these programs, benefit levels are based upon pre-injury wages which are typically set as the last day of injurious exposure – often defined as the last day of employment at an employer against whom the workers' compensation claim has been filed.

Over the past two years, a number of states have passed bills that specifically establish medical criteria for employees to meet and establish before applying for benefits for asbestos and silica related diseases. Early workers' compensation laws had no provisions for occupational diseases and exposures, but now every state has either incorporated occupational disease coverage into existing workers' compensation laws or has created separate benefit programs.

Definitions of occupational disease vary from state to state, but in general, jurisdictions allow for benefits and payments where a disease arises out of employment and is caused by conditions and exposures which are peculiar to employment.<sup>19</sup> Recent research suggests that workers' compensation programs cover at most 20 percent of the costs of occupational diseases, and likely a smaller percentage.<sup>20</sup>

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<sup>19</sup> The Workers' Compensation Guide – 2<sup>nd</sup> Edition, International Risk Management Institute, Inc. Dallas, TX. June 1997.

<sup>20</sup> Leigh, J. Paul and Robbins, John A., *The Millbank Quarterly*, Vol. 82, No. 4 (2004), Pages 689-721

State workers' compensation administrations routinely struggle with issues such as disease latency and time to onset or presentation, as well as medical causation, wage determination and diagnosis.

Many states base wage loss and subsequent benefit payments on the date of last exposure, rather than current rates which can lead to a reduced benefit amount in comparison to other more recently accepted diseases.

Part E of the current EEOICPA program standardizes benefits for wage loss due to work related illnesses among claimants by associating benefits with an annual assessment of the percentage of wage loss.

These programs' methods of wage loss calculation are not necessarily instructive for EEOICPA Part E claims as each program specifies the benefit levels and calculations.

#### **D. Other Programs – Occupational Disease Cases**

A number of states have special disability and/or occupational disease funds set up as separate entities to handle specific exposures or illnesses:

**Indiana:** has established a Residual Asbestos Injury Fund for the purpose of providing compensation to employees who become totally and permanently disabled from an exposure to asbestos while in employment within Indiana and who are eligible for benefits under section 3 of this chapter and not eligible for benefits under IC 22-3-7 (Normal occupational disease compensation section of the workers' compensation code).

Eligible employees are entitled to a lump sum payment of \$4000 or a weekly benefit amount not to exceed the difference between the other available benefits and 66 2/3% of the average weekly wage on the date of disablement for a period not to exceed 52 weeks.



The fund is administered by the workers' compensation board and funded through a separate 0.05% assessment against insurers and self-insured employers.

**Nevada:** has created a Silicosis and Disabled Pension Fund – specifically recognizes these exposures as occupational diseases and allows for employees to claim normal disability benefits under the statute from this program.

**Ohio, Kentucky and West Virginia:** maintain separate specific programs for coal miners pneumoconiosis disease which interact with the Federal program. Standards of disability and benefit levels differ in each system. States and other jurisdictions also have differing dates for determining onsets of disability and liability for and payment of benefits.

In the following states, the employer and insurance company at the time of LAST exposure is liable for benefit payments if found eligible: **AR, CO, FL, GA, IL, IN, KS, KY, ME, MD, NH, NC, OK, TN, VT and VA.**

In the following states, the employer alone at the time of LAST exposure is liable for benefit payments if found eligible: **AL, IA, MI, MO, MT, NM, PA, SD, TX and UT.**

In the following states, liability and responsibility for benefits is apportioned among responsible employers if found eligible: **CA, MN, NY, RI and WA.**

Latency issues are addressed by states in myriad ways but in general, onset of a disability or death resulting from exposures must occur within the following periods:

Table IV.3 Comparison of Occupational Disease Latency Requirements by Jurisdiction

<b>Latency period from last exposure to onset of disability or death</b>	<b>Jurisdiction or Program</b>
1 year after last exposure	AR, ID, IA, KS, ND (death), PR, SC
2 years after last exposure	IL, IN, NM (death), NC
3 years after last exposure	AL (death), AR (silicosis or asbestosis), IL (silicosis or asbestosis), ME, PR (death),
4 years after last exposure	ID (silicosis),
5 years after last exposure	PA
7 years after last exposure	AR (death), FL (death), GA, ID (death)
In general – No specific limitation – some specific disease and exposure exclusions.	AK, AZ, CA, CO, CT, DE, DC, Guam, HI, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, OH, OK, OR, RI, SD, TN, TX, UT, VT, VI, VA, WA, WV, WI, WY, FECA, LSHWC

Claim filing timelines are implemented and created by many jurisdictions to ensure timely notice to responsible parties. In general, reports or claims must be filed within a reasonable time following a diagnosis, or from when a claimant should have known they suffered a disability resulting from an occupational exposure.

Table IV.4 Comparison of Occupational Disease Filing Timelines by Jurisdiction

<b>Time limits on notification to employer for filing of a claim*</b>	<b>Jurisdiction or Program</b>
1 year after last exposure	AZ, CA, DE, DC, GA, Guam, ID, KS, LA, MT, NV, NM, ND, OR, SD, TN, TX, WY
2 years after last exposure	AL, AK, AR, CO, FL, HI, IN, IA, ME, MD, MI, MS, MO, NE, NH, NJ, NY, NC,

	ND (death), OH, OK, RI, SC, SD (death), VA, WA,
3 years after last exposure	CT, IL, KY, MN, PA, PR, VA (death) , WV, FECA, LSHWC
4 years after last exposure	MA
6 years after last exposure	NC (death), UT, VT
No limit	WI
* Typically after employee receives diagnosis or should have known symptoms were related to a work exposure. May be some specific disease and exposure exclusions or differences.	

Information in these tables is derived from other sources<sup>21 22 23</sup>

<sup>21</sup> 2004 Analysis of Workers’ Compensation Laws – U.S. Chamber of Commerce – Statistics and Research Center. Washington, DC. 2004

<sup>22</sup> State Workers’ Compensation Administration Profiles – United States Department of Labor – Employment Standards Administration, OWCP, Washington, DC. October 2004.

<sup>23</sup> State Workers’ Compensation Laws – United States Department of Labor – Employment Standards Administration, OWCP, Washington, DC. October 2004.

**E. Recommendations – Summary for Deliverable #2**

Recommendation #1: Use claimant-provided employment information from claims forms, EEOICPA case files and direct questioning. This method may be as effective for RECA workers as for others.

- Information in the files mentioned should be reviewed and assembled. Missing employment information should be sought from the claimant.
- Claimants should be given a questionnaire specifically seeking an employment history if the above sources do not clearly identify employers.

Recommendation #2: Use SSA records to verify and supplement claimant and employer supplied information.

Recommendation #3: Use any of the below sources of information if the attempts to obtain wage information from the sources above are unsuccessful.

## **V. Deliverable #3 – Calculation of Wage Loss Payments**

This section details the methodology for using the wages determined in Deliverables #1 and #2 above to determine wage loss under EEOICPA Part E for both living claimants and survivors. The Act is very specific in establishing payments for wage loss and setting forth calculations.

DOL's recently released Interim Final Rules contain specific instructions for the determination of average annual wage and percentages of loss, including special provisions for some survivors.

As was the case in the discussions of annual wage determinations prior to and following the first wage loss, the wage loss calculation in EEOICPA Part E does not lend itself to a typical discussion of industry best practices. The Act and DOL's recently released Rules clearly specify how to determine wages as well as how to adjust the two wage observations to permit comparison of one to the other. Other systems' methodologies of benefit calculation may not be directly instructive for similar reasons. A number of important issues remain, even with the great specificity contained within both the Rules and the Statute. These issues are discussed below.

### **A. Industry Best Practices – Other Systems' Wage Loss Determinations**

1. Federal Employees Compensation Act (FECA)
  - FECA benefits are based on worker pre-injury wages.

Benefit payments are based upon a worker's pre-injury earnings, which is distinctly different from the wage loss methodology prescribed in EEOICPA Part E.

In EEOICPA Part E, the burden is upon the worker to provide evidence of wages claimed. Under FECA, if a worker suffers the onset of a latent occupational disease after retirement, compensation is two-thirds of the National Average Weekly Wage (NAWW) multiplied by the percentage of impairment resulting from the disease.

2. Black Lung Benefits Act

- Benefits are based on total current disability from working and are additionally based upon the number of dependents.

The DCMWC standard is similar to EEOICPA in that it uses a process for determining loss and entitlement to benefits that is based upon a single standard. The DCMWC presumption and determining factors are based largely upon medical diagnoses, findings and tests. EEOICPA entitlement to benefits is based upon wage loss information. Benefits from DCMWC are paid monthly and can last the entire life of the claimant.<sup>24</sup>

Monthly benefit rates are updated and increased every year. Monthly benefits are based upon the number of beneficiaries and can be coordinated and offset by or against other benefit programs such as Social Security Disability Insurance (SSDI), SSA, state disability and workers' compensation programs. Benefits for this program are prescribed by statute.

3. EEOICPA – Part B

There were no wage loss benefits prescribed in EEOICPA Part B prior to the Part E amendment that is the subject of this report. Part B claimants may now be eligible for the wage loss benefits prescribed in EEOICPA Part E.

4. Radiation Exposure Compensation Act (RECA)

- Under RECA, successful claimants receive \$150,000 and medical care in addition to any benefits specified under Part E. Specific medical evidence is required.

There are no wage loss benefits prescribed in RECA based upon claimant earnings. Benefits are lump sum benefits and are prescribed by law.

5. Division of Longshore and Harbor Workers Compensation Act (LHWC)

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<sup>24</sup> 902(f)(1)(A)

Workers are eligible for payment of Permanent Total Disability (PTD) for the LHWC program. Compensation is two-thirds of the employee's average weekly wage, subject to a maximum amount of two times the national average weekly wage (NAWW).

Post-injury wage earnings for the LHWC must be regularly documented and are monitored by DOL's Office of Workers' Compensation Programs (OWCP) via a Report of Earnings form LS-200 (in Appendix 2). The burden for proving post-injury wage loss and earning capacity is on the worker and documented with wage stubs.

6. Defense Base Act (DBA)

- Provides uniform benefit levels based upon NAWW.

There are similar benefits provided to all claimants based on a standard NAWW in this program. This model is attractive when considering establishing an imputed normalized "straw man" wage and benefit level consistent to all employees independent of actual pre- and post-injury wages. This provides benefits that are equitable on a national basis, but the system does not address actual differences in earning abilities and capacity which occurred between individuals, locations, classes of workers and states.

7. States Workers' Compensation Programs

- States typically base post-injury wage loss benefits upon workers' pre-injury earnings. Most states provide benefits at the level of 66 2/3 % of a worker's pre-injury wages without removal of taxes.
- In these programs, benefit levels are based upon pre-injury wages which are typically set as the last day of injurious exposure – often defined as the last day of employment at an employer against whom the workers' compensation claim has been filed.

Part E of the current EEOICPA program standardizes benefits for wage loss due to work related illnesses among claimants by associating benefits with an annual assessment of the percentage of wage loss.

Although the above programs illustrate a number of wage loss determination methodologies, none is specifically instructive for Part E claimants. The EEOICPA statute and DOL rules clearly mandate methods for determining wage loss for claimants under this program.

## **B. EEOICPA Evidence of Wage loss**

### *Determinations of Average Annual Wage Prior to Wage Loss*

To determine the initial calendar years of wage loss, according to their recently released Rules, DOL will rely upon claimant reports as a starting point. DOL will determine the quarter in which a covered Part E employee first sustained wage loss due to exposure to a toxic substance while engaged in employment at a DOE facility or a RECA section 5 facility.

To calculate the average annual wage of a covered Part E, DOL will:

Aggregate the wages for the twelve quarters that preceded the quarter during which the covered Part E employee first experienced wage loss, excluding any quarter during which the employee was unemployed, adding all additional wages earned by the employee during those quarters;

Divide the sum of the above 12 described quarters by 12, subtracting from observation any quarters during which the employee was unemployed; and

Multiply this figure by four to calculate the covered Part E employee's average annual wage.

### *Calculation of Percentages of Loss*



DOL will compare the calendar-year wages for that employee, as adjusted,<sup>25</sup> with the average annual wage determined as described above for each calendar year beginning with the calendar year that includes the quarter in which the wage loss commenced, and concluding with the last calendar year of wage loss prior to the submission of the claim or the calendar year in which the employee reached normal retirement age, whichever occurred first.

DOL will aggregate the number of calendar years of wage loss in which the employee's wages, as adjusted, did not exceed 50% of the average annual wage determined above and the number of calendar years of wage loss in which the employee's wages, as adjusted, exceeded 50% of such average annual wage but did not exceed 75% of such average annual wage.

For each calendar year of wage loss during which the employee's wages did not exceed 50% of his or her average annual wage, DOL will pay the employee \$15,000 as compensation for wage loss. For each calendar year of wage loss during which the employee's calendar-year wages exceeded 50% of his or her average annual wage but did not exceed 75% of such average annual wage, DOL will pay the employee \$10,000 as compensation for wage loss.

A covered Part E employee previously awarded compensation for wage loss may file for additional compensation for wage loss suffered by the employee during periods subsequent to a period for which a wage loss claim for the employee has already been adjudicated by DOL. No compensation for wage loss shall be awarded for any period following the year during which the covered Part E employee attained normal retirement age for purposes of the Social Security Act.

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<sup>25</sup> The DOL Rules specify the method of inflation adjustment to be used in Part E. There are a number of alternative methods by which to adjust wages for inflation over time. Per DOL instruction, there is neither an evaluation of the DOL adjustment methodology nor any recommendations on this topic included in this report.

**C. Illustration of Wage Loss Calculation**

$$(\text{Annual Wage}_{\text{ after initial wage loss}}) / (\text{Average Annual Wage}_{\text{ prior to initial wage loss}}) = \% \text{ Wage}$$

If % Wage is < (less than) or = (equal to) 50%: **Benefit is \$15,000;**

If % Wage is > (greater than) 50% and (less than) or = (equal to) 75%: **Benefit is \$10,000.**

*For Living workers:* Aggregate the number of annual benefits at each level that are due before a worker reached normal retirement age.

*For Survivors<sup>26</sup>:* Aggregate the number of annual periods of wage loss prior to normal retirement age.

If a deceased covered Part E employee had an aggregate of not less than ten calendar years of adjusted earnings that did not exceed 50 % of his or her average annual earnings:

**Benefit due is \$25,000;**

If the aggregate number of these years is at least 20:

**Benefit due is \$50,000.**

The calculations for determination of pre-onset annual wages are extremely clear. In particular, both quarters during which workers were either retired or unemployed are specifically dispensed with in the DOL Rules.

DOL’s recently released Rules contain an extremely unique provision for some survivor claimants. As seen above, for purposes of adjudicating a claim of a survivor of a deceased covered Part E employee, DOL presumes that employee’s experienced wage loss for each calendar year after the calendar year of his or her death through and including the calendar year in which the employee would have reached normal retirement age under the Social Security Act. During those years, DOL will presume that the deceased employee’s subsequent calendar-year wages did not exceed 50% of his or her average annual wage.

<sup>26</sup> 20 CFR Parts 1 and 30, Federal Register May 25, 2001 (Volume 66, Number 102), § 30.815

**D. Missing or Unavailable Wage Data – Prior to First Wage Loss**

*Missing Quarters - SSA Annual Caps*

When data are missing due to SSA caps, the missing quarters can be imputed if:

- The annual income was stable across quarters; and
- At least two quarters of data exist for each calendar year.

*Statistical Projections Based on Partial Wage Data*

Where individual wage evidence is unavailable, prohibitively expensive to reproduce or otherwise difficult to obtain, a pre-injury wage can be calculated from partial wage data contained in statistical databases. Utilizing a database containing partial wage data and rational statistical manipulation, a statistical projection of the partial wages can produce a reasonably reliable pre-injury wage calculation.

In some programs, the social security wages *are* utilized to project actual wages for each claimant. The social security database provides actual wage earnings up to the employment tax maximum. The records also provide the quarter in which the claimant met the taxable maximum. Assuming that the wages were consistent in every quarter of the tax year, for some claimants, a projection of wages could be made from the earnings known.

The process would need to be utilized in cases in which there was some credible evidence as to the consistency of the employment during the entire year.

*Missing Quarters - Other Reasons*

Presumed Wages Based on Co-workers

Where actual evidence of the claimant's wages is unavailable, some compensation systems utilize the wages for co-workers where such evidence is deemed to be reflective of the claimant's

actual wages based on employment records that can identify not only the facility where the worker was working, but also the detailed description of the occupation or duties of the claimant.

#### Presumed Minimum Wages

Many state workers' compensation systems have a minimum dollar benefit for workers to receive. Many state workers' compensation systems also say that the worker gets either the minimum amount or two-thirds of the worker's actual pre-injury wage, whichever is lower.

#### National or State 'Typical Wage'

A wage can be derived for claimants based either upon state or national data. NAWW would provide consistent benefit levels across jurisdictions, and Statewide Average Weekly Wages (SAWW) would provide a more state-specific measure of a claimant's likely wages in years past.

#### Statewide Average Weekly Wage (SAWW)

SAWW is a good source of information upon which to base a 'straw man' or calculated quarterly wage if necessary. As the name clearly states, it is weekly measure that is easily translatable into quarters. It is most reflective of workers who worked in the same part of the country as where the work occurred. It may be available with specificity as to the industry and occupation where the work was performed.

The SAWW would not provide a uniform benefit for EEOICPA Part E claimants. All other benefits under EEOICPA are uniformly determined irrespective of the facility or state where the work occurred. Using SAWW would perhaps reflect actual state experience better than a national measure, but similar aged workers, who did similar work and developed a similar illness would be treated differently. Further, the initial EEOICPA statute contained state variability in benefits – a model overturned in the 2004 amendments.

#### National Average Weekly Wage (NAWW)

A NAWW would provide uniform benefit levels to EEOICPA Part E claimants irrespective of the jurisdiction and DOE facility at which the toxic exposure occurred.

Use of similar data from co-workers – state specific for SAWW – probably represents lower wages than those of some DOE production workers.

### **E. Missing or Unavailable Wage Data – After First Wage Loss**

Claimants are responsible for providing evidence of wages. If there is a failure to produce or provide evidence of annual wages following the initial wage loss, DOL must determine how to proceed with the claim. There are four basic alternatives to deal with missing quarters of wage data. They are:

1. Delay adjudication or deny the claim until necessary information is available;
2. Missing quarters could be construed as evidence of no earnings, resulting in a higher likelihood of showing a decrease in wages, thereby permitting access to benefits;
3. Missing quarters could be removed from the analysis, similar to the handling of quarters for unemployment under this Part;
4. Missing quarters of data could be replaced with imputed wage amounts. If imputed wages are needed, a number of methods can be used, including: SAWW, NAWW, and co-worker data.

### **E. Recommendations – Summary for Deliverable #3**

This report describes the sources and recommended prioritization of those sources for use in obtaining wage information prior to and following the first reported wage loss caused by the EEOICPA Part E covered condition.

In most cases, and for most claimants, the sources and methods described above will result in adequate information upon which to base initial and subsequent wage and wage loss determinations. For some claimants, quarters of data may still be missing.

If there are missing data due to SSA annual caps, imputing the missing quarters is a reasonable way to proceed if the worker contends that the missing quarters of work were similar before and after the SSA annual cap was reached.

After the methods described above to find evidence of wages have been exhausted, and the claim is still absent proper documentation to establish wages, DOL should proceed on a case by case basis to determine if :

- The absence of data is evidence of \$0 in earnings; or
- A wage should be calculated or imputed for the missing quarters.

This determination is individual, requiring consideration of all evidence presented by the claimant. If wage is to be imputed, the method used should be determined based on the individual attributes of the case. Claims could be closed or held, pending claimant-provided evidence of wages and wage loss as required by the Act, or processed with an imputed wage value.

Recommendation #1: If SSA annual caps were attained, estimate wages for missing quarters of data prior to the first wage loss, based upon the quarters for which there are data.

Recommendation #2: If SSA annual caps were attained, estimate wages for missing quarters of data after the first wage loss, based upon the quarters for which there are data.

## **VI. Appendix 1**

### Time of injury means:

(1) In regard to a claim arising out of exposure to beryllium or silica, the last date on which a covered Part B employee was exposed to such substance in the performance of duty in accordance with sections 7384n(a) or 7384r(c) of the Act; or

(2) In regard to a claim arising out of exposure to radiation under Part B, the last date on which a covered Part B employee was exposed to radiation in the performance of duty in accordance with section 7384n(b) of the Act or, in the case of a member of the Special Exposure Cohort, the last date on which the member of the Special Exposure Cohort was employed at the Department of Energy facility or the atomic weapons employer facility at which the member was exposed to radiation; or

(3) In regard to a claim arising out of exposure to a toxic substance, the last date on which a covered Part E employee was employed at the Department of Energy facility or Radiation Exposure Compensation Program Act Section 5 facility, as appropriate, at which the exposure took place.

Average annual wage means four times the average quarterly wages of a covered Part E employee for the 12 quarters preceding the quarter during which he or she first experienced wage loss due to exposure to a toxic substance at a DOE facility or RECA Section 5 facility, excluding any quarters during which the employee was unemployed. Because being “retired” is not equivalent to being “unemployed,” quarters during which an employee had no wages because he or she was retired will not be excluded from this calculation.

Normal retirement age means the age at which a covered Part E employee first became eligible for unreduced retirement benefits under the Old-Age, Survivors and Disability Insurance (OASDI) provisions of the Social Security Act. In general, persons born during or before 1937 are eligible for unreduced OASDI retirement benefits at age 65, and that age increases in monthly increments until it reaches 67, which is the age at which persons born during or after 1960 become eligible for unreduced OASDI retirement benefit.

Quarter means the three-month period January through March, April through June, July through September, or October through December.

Quarter during which the employee was unemployed means any quarter during which the covered Part E employee had \$700 (in constant 2005 dollars) or less in wages unless the quarter is one during which the employee was retired.

Year of wage loss means a calendar year during which the covered Part E employee's earnings were less than his or her average annual wage, after such earnings have been adjusted using the Consumer Price Index for All Urban Consumers (CPI-U), as produced by the Bureau of Labor Statistics, to reflect their value in the year during which the employee first experienced wage loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility.



**VII. Appendix 2**

**Claim for Benefits under Energy Employees  
Occupational Illness Compensation Program Act**

**U.S. Department of Labor**  
Employment Standards Administration  
Office of Workers' Compensation Programs



Provide all information requested below. **DO NOT FILL IN SHADED AREAS.**

OMB Number: 1215-0197  
Expiration Date: 8/31/2007

EMPLOYEE INFORMATION		
1. Name (Last, First, Middle Initial)	2. Social Security Number	3. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
4. Address (Street, Apt #, P.O. Box)	5. Date of Birth	6. Telephone Number
(City, State, ZIP Code)	7. Dependents <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other _____	

ILLNESS BEING CLAIMED		
8. Identify Diagnosed Condition(s) Being Claimed <i>Click for Help</i>	9. Date of Diagnosis Month Day Year	
<input type="checkbox"/> Cancer Specify Type(s):	a) _____	
	b) _____	
<input type="checkbox"/> Beryllium Sensitivity		
<input type="checkbox"/> Chronic Beryllium Disease		
<input type="checkbox"/> Chronic Silicosis		
<input type="checkbox"/> RECA Illness Specify Type:		

EMPLOYMENT CLASSIFICATION	
10. Identify Location or Type of Employment (Mark any that apply):	
<input type="checkbox"/> <b>Department of Energy Facility</b> <small>This is defined as any building, structure or premise in which the activities of federal employees, contractors or subcontractors have been conducted by or on behalf of the Department of Energy.</small>	<input type="checkbox"/> <b>Beryllium Vendor</b> <small>This is defined as any privately operated entity engaged in producing or processing beryllium for sale or use by the Department of Energy.</small>
<input type="checkbox"/> <b>Atomic Weapons Facility</b> <small>This is defined as a privately-owned facility in which radioactive material has been processed for use by the United States in the manufacture of atomic weapons. (Excludes mining, milling, or transporting uranium ore)</small>	<input type="checkbox"/> <b>Uranium Worker</b> <small>This is defined as employment activity associated with the mining, milling or transportation of uranium ore for use in the manufacture of atomic weapons.</small>

SPECIAL EXPOSURE COHORT		
11. Prior to February 1, 1992, did you work at a gaseous diffusion plant in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee?	<input type="checkbox"/> YES List site(s) _____	<input type="checkbox"/> NO
12. Prior to January 1, 1974, did you work at the Long Shot, Milrow, or Cannikin underground nuclear tests on Amchitka Island, Alaska?	<input type="checkbox"/> YES List site(s) _____	<input type="checkbox"/> NO
13. Are you a member of a group added to the Special Exposure Cohort by the Department of Health and Human Services?	<input type="checkbox"/> YES List group designation _____	<input type="checkbox"/> NO <input type="checkbox"/> DON'T KNOW

AWARDS AND OTHER INFORMATION	
14. Have you applied for an award under the Radiation Exposure Compensation Act? <input type="checkbox"/> YES <input type="checkbox"/> NO	15. Have you filed a lawsuit seeking either money or medical coverage for the claimed condition? <input type="checkbox"/> YES <input type="checkbox"/> NO
16. Excluding any workers' compensation awards, have you received a settlement or other award in connection with the claimed condition(s)? <input type="checkbox"/> YES <input type="checkbox"/> NO	17. Have you either pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation? <input type="checkbox"/> YES <input type="checkbox"/> NO

EMPLOYEE DECLARATION	
18. Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. Any change to the information provided on this form once it is submitted must be reported immediately to the District Office responsible for the administration of the claim.	I hereby make a claim for benefits under the Energy Employees Occupational Illness Compensation Program Act and affirm that the information I have provided on this form is true. Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Claimant Signature \_\_\_\_\_ Date \_\_\_\_\_

## **BENEFITS UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT**

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides for a lump sum payment of \$150,000 and medical benefits to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provides for payment of compensation to certain survivors of these covered employees, as well as for a \$50,000 lump sum payment and medical benefits to individuals, or their survivor(s), who have been found eligible for compensation under the Radiation Exposure Compensation Act (RECA).

## **INSTRUCTIONS FOR COMPLETING FORM EE-1**

Complete all items on the form. If additional space is required to explain or clarify any point, attach a supplemental statement to the form. If the requested information is not submitted, the responsible party should explain the reason for the delay and indicate when the information will be forthcoming. Submit the completed claim form and all other pertinent documentation to the appropriate district office administering the EEOICPA in the region where your most recent Energy employer is/was located.

### ***Illness Being Claimed***

**Item #8** — Identify the diagnosed condition(s) being claimed. If you require additional space, attach a supplemental statement to this form. For RECA illness, list the condition(s) claimed in conjunction with the Radiation Exposure Compensation Act.

**Item #9** — List the date a qualified physician first diagnosed your claimed condition(s).

### ***Employment Classification***

**Item #10** — Check the box for the location and/or the type of work activities that best describes your employment situation. Mark all that apply. The Department of Energy has compiled a list of facilities categorized by location and employment designation. The list is available at the Department of Energy's web site or by contacting the regional Division of Energy Employees Occupational Illness Compensation district office.

### ***Special Exposure Cohort***

**Items #11–12** — The EEOICPA allows for employees who have met particular criteria and have been employed at certain facilities to be designated as members of the Special Exposure Cohort. If you worked at any of the listed locations prior to the dates indicated, mark YES and identify the site name.

**Item #13** — The EEOICPA permits the Department of Health and Human Services (HHS) to include new groups of employees in the Special Exposure Cohort. If you can identify yourself as a member of a designated group that has been added to the Special Exposure Cohort, mark YES and describe the group in which you belong.

### ***Awards and Other Information***

**Item #14** — The EEOICPA provides for supplemental compensation to be paid to certain individuals who filed and received an award under RECA. You must specify whether or not you have ever applied for an award under RECA.

**Item #15** — Indicate whether you have filed a civil lawsuit in regard to your claimed condition. If you mark YES, provide copies of all court documentation.

**Item #16** — You must identify whether or not you have received any type of settlement or other type of award in connection with the claimed conditions(s). If you mark YES, provide copies of any relevant documentation.

**Item #17** — Mark the appropriate box indicating whether or not you have ever pled guilty or been convicted of any charges connected to an application for or receipt of federal or state workers' compensation.

## **PRIVACY ACT**

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (42 U.S.C. 7384 et seq.) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has received will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office of Workers' Compensation Programs and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collections actions required or permitted by the Debt Collection Act. (6) Disclosure of the claimant's social security number (SSN) or tax identification number (TIN) is mandatory. The SSN or TIN, and other information maintained by the Office, may be used for identification, to support debt collection efforts carried on by the Federal government, and for other purposes required or authorized by law. (7) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

## **PUBLIC BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 17 minutes per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim form to this address. Completed claims are to be submitted to the appropriate district office of the Office of Workers' Compensation Programs. Persons are not required to respond to the information collections on this form unless it displays a currently valid OMB number.

**Claim for Survivor Benefits under Energy Employees Occupational Illness Compensation Program Act**

**U.S. Department of Labor**  
 Employment Standards Administration  
 Office of Workers' Compensation Programs



Provide all information requested below. **DO NOT FILL IN SHADED AREAS.**

OMB Number: 1215-0197  
 Expiration Date: 8/31/2007

[Click for Help](#)

**SURVIVOR INFORMATION**

1. Name (Last, First, Middle Initial)		2. Social Security Number	3. Date of Birth
4. Address (Street, Apt #, P.O. Box)  (City, State, ZIP Code)			5. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
			6. Telephone Number
7. What was your relationship to the deceased employee at the time of his/her death? (Spouse, child, parent, grandchild, grandparent)			

**DECEASED EMPLOYEE INFORMATION**

8. Name (Last, First, Middle Initial)		9. Social Security Number (if known)	10. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
11. Date of Birth	12. Date of Death	13. Was an autopsy performed on the employee? <input type="checkbox"/> YES List medical facility <input type="checkbox"/> NO	

14. Identify Diagnosed Condition(s) Being Claimed		15. Date of Diagnosis	
<input type="checkbox"/> Cancer Specify Type(s):	a)	Month	Day
	b)		Year
<input type="checkbox"/> Beryllium Sensitivity			
<input type="checkbox"/> Chronic Beryllium Disease			
<input type="checkbox"/> Chronic Silicosis			
<input type="checkbox"/> RECA Illness Specify Type:			

16. Identify Location or Type of Employment Performed by the Deceased Employee (Mark any that apply):

<input type="checkbox"/> <b>Department of Energy Facility</b> <small>This is defined as any building, structure or premise in which the activities of federal employees, contractors or subcontractors have been conducted by or on behalf of the Department of Energy.</small>	<input type="checkbox"/> <b>Beryllium Vendor</b> <small>This is defined as any privately operated entity engaged in producing or processing beryllium for sale or use by the Department of Energy.</small>
<input type="checkbox"/> <b>Atomic Weapons Facility</b> <small>This is defined as a privately-owned facility in which radioactive material has been processed for use by the United States in the manufacture of atomic weapons. (Excludes mining, milling, or transporting uranium ore.)</small>	<input type="checkbox"/> <b>Uranium Worker</b> <small>This is defined as employment activity associated with the mining, milling or transportation of uranium ore for use in the manufacture of atomic weapons.</small>

**SPECIAL EXPOSURE COHORT**

17. Prior to February 1, 1992, did the deceased work at a gaseous diffusion plant in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee?  
 YES List site(s)  NO

18. Prior to January 1, 1974, did the deceased work at the Long Shot, Milrow, or Cannikin underground nuclear tests on Amchitka Island, Alaska?  
 YES List site(s)  NO

19. Was the deceased a member of a group added to the Special Exposure Cohort by the Department of Health and Human Services?  
 YES List group designation  NO  DON'T KNOW

**AWARDS AND OTHER INFORMATION**

20. Have you or the deceased ever applied for an award under the Radiation Exposure Compensation Act?  
 YES  NO

21. Has a lawsuit seeking either money or medical coverage for the condition(s) being claimed on this form ever been filed?  
 YES  NO

22. Excluding any workers' compensation award, has a settlement or other award been granted in connection with the claimed condition(s)?  
 YES  NO

23. Have you either pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation?  
 YES  NO

## OTHER POTENTIAL SURVIVORS

24. Are you aware of any other person who may qualify as a survivor of the deceased? (See instructions for survivor definition)

YES

NO

If yes, please provide the following:

	Name	Age	Relationship to deceased Employee	Address	Phone Number
a.					
b.					
c.					
d.					

## SURVIVOR DECLARATION

25. Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. Any change to the information provided on this form once submitted must be reported immediately to the District Office responsible for the administration of the claim.

I hereby make a claim for benefits under the Energy Employees Occupational Illness Compensation Program Act and affirm that the information I have provided on this form is true. Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency) to furnish any desired information to the United States Department of Labor, Office of Workers' Compensation Programs.

Claimant Signature

[Redacted Signature]

Date

09/21/2004

## PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (42 U.S.C. 7384 et seq.) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the employee at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collections actions required or permitted by the Debt Collection Act. (6) Disclosure of the claimant's social security number (SSN) or tax identification number (TIN) is mandatory. The SSN or TIN, and other information maintained by the Office, may be used for identification, to support debt collection efforts by the Federal government, and for other purposes required or authorized by law. (7) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

## PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 21 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim to this address. Completed claims are to be submitted to the appropriate regional district Office of Workers' Compensation Programs. Persons are not required to respond to this information collection unless it displays a currently valid OMB number.

## BENEFITS FOR SURVIVORS UNDER ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides for a lump sum payment of \$150,000 to eligible survivors of a covered employee who prior to the time of death had a designated illness incurred as a result of exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provides for a lump sum payment of \$50,000 to certain survivors of deceased covered employee's, who were found eligible for compensation under the Radiation Exposure Compensation Act. (RECA).

[Click to Return](#)

### DEFINITION OF SURVIVOR UNDER THE ACT

Entitlement to any lump sum payment for living survivor(s) of a deceased covered employee is determined at the time of payment. Under the EEOICPA, certain limitations apply to the definition of persons who may be eligible survivors. A lump sum payment will be paid to eligible survivors of the employee in the following order:

1. All to a surviving spouse
2. If no spouse, equal shares to all children
3. If no spouse or children, equal shares to the parents.
4. If no spouse, children or parents, equal shares to all grandchildren.

Any claim from a survivor must be accompanied by proof of relationship to the employee. This includes a copy of a marriage license, birth certificate, or adoption papers.

### INSTRUCTIONS FOR COMPLETING FORM EE-2

Complete all items on the form. If additional space is required to explain or clarify any point, attach a supplemental statement to the form. If the requested information is not submitted, the responsible party should explain the reason for the delay and indicate when the information will be forthcoming. Submit the completed claim form and all other pertinent documentation to the appropriate district office administering the EEOICPA in the region where the employee's most recent Energy employer is/was located.

#### **Deceased Employee Information**

**Item #14** — Identify the condition related to employment the employee suffered prior to death. Attach to the claim form any pertinent medical documentation and a copy of the employee's death certificate. It is not necessary to establish death was caused by the claimed condition. Rather, the evidence must demonstrate a qualified physician diagnosed a covered condition prior to death.

**Item #15** — List the date a qualified physician first diagnosed the claimed condition(s).

**Item #16** — Mark location or type of work activities that best describe the deceased employee's work situation. If more than one of the listed categories applies, indicate such on the form. The Department of Energy has also compiled a list of covered facilities. This list is available at the Department of Energy's web site or by contacting the regional Division of Energy Employees Occupational Illness Compensation district office.

#### **Special Exposure Cohort**

**Items #17–18** — The Act allows for employees who have met particular criteria and have been employed at certain facilities to be designated as members of the Special Exposure Cohort. If the deceased employee worked at any of the listed locations prior to the dates indicated, mark YES and identify the site name.

**Item #19** — The Act permits the Department of Health and Human Services (HHS) to include new groups of employees in the Special Exposure Cohort. If you can identify the deceased employee as a member of a designated group that has been added to the Special Exposure Cohort, mark YES and describe the group in which he/she belonged.

#### **Awards and Other Information**

**Item #20** — The EEOICPA provides for supplemental compensation to be paid to certain individuals who have applied to and received an award under RECA. You must indicate whether or not you or the deceased employee have ever applied for an award under RECA.

**Item #21** — Indicate whether a lawsuit seeking money or medical coverage for the claimed condition(s) was ever filed. If you mark YES, provide copies of all court documentation.

**Item #22** — You must identify whether any type of settlement or other award has been received in connection with the claimed condition(s). If you mark YES, provide copies of any relevant documentation.

**Item #23** — Mark the appropriate box indicating whether or not you have ever pled guilty or been convicted of any charges connected to an application for or receipt of federal or state workers' compensation.

#### **Other Potential Survivors**

**Item #24** — Every eligible survivor of a covered employee must be identified prior to the payment of compensation. If you are aware of any individual who meets the description of a survivor as described in these instructions, provide his/her name, age, relationship to deceased employee, address and phone number.

**Employment History for Claim Under  
Energy Employees Occupational Illness  
Compensation Program Act**

**U.S. Department of Labor**  
Employment Standards Administration  
Office of Workers' Compensation Programs



Do not fill in shaded areas.	OMB No. 1215-0197 Expiration Date: 08/31/2007
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**EMPLOYEE INFORMATION**

Print Name  _____ Last    First    M.I.	Social Security Number (if known)
Former Name (e.g. maiden name/legal name change/other)  _____ Last    First    M.I.	Employee Number (if known)

In the following section, list the complete employment history of the employee named above in chronological order. Begin with the most recent period of employment. If you require additional space to explain or clarify any point, attach a supplemental statement to this form.

**EMPLOYER 1**

Dates of Employment	Start Date	End Date
Employer (Provide the employer name and city/state where work was performed)		
Position Title & Description of Work Performed		
Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)		
Was a dosimetry badge worn while employed? <input type="checkbox"/> YES      Dosimetry Badge Number, if known _____ <input type="checkbox"/> NO		

**EMPLOYER 2**

Dates of Employment	Start Date	End Date
Employer (Provide the employer name and city/state where work was performed)		
Position Title & Description of Work Performed		
Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)		
Was a dosimetry badge worn while employed? <input type="checkbox"/> YES      Dosimetry Badge Number, if known _____ <input type="checkbox"/> NO		

**EMPLOYER 3**

Dates of Employment	Start Date <input type="text"/>	End Date <input type="text"/>
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Employer (Provide the employer name and city/state where work was performed)

Position Title & Description of Work Performed

Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)

Was a dosimetry badge worn while employed?

YES      Dosimetry Badge Number, if known        NO

**EMPLOYER 4**

Dates of Employment	Start Date <input type="text"/>	End Date <input type="text"/>
---------------------	---------------------------------	-------------------------------

Employer (Provide the employer name and city/state where work was performed)

Position Title & Description of Work Performed

Describe all factor(s) believed to have contributed to the development of the claimed illness. (N/A for none)

Was a dosimetry badge worn while employed?

YES      Dosimetry Badge Number, if known        NO

**DECLARATION OF PERSON COMPLETING FORM**

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

Print Name

Street Address

City/State/ Zip    Phone

I affirm that the employment history provided on this form is accurate and true.

Signature  Date



## INSTRUCTIONS FOR COMPLETING FORM EE-3

This form is used to gather information regarding an Energy employee's work history. List all periods of employment. If additional space is required, attach a supplemental statement to this form. For employment that was clearly not for the Department of Energy (e.g., employment as a clerk in a grocery store), you only need to list the dates of employment and name of employer. If you are uncertain about whether a particular period of employment was for the Department of Energy, complete all items as fully as possible. **YOU MAY USE AS MANY COPIES OF FORM EE-3 AS NECESSARY TO PROVIDE A COMPLETE EMPLOYMENT HISTORY FOR THE EMPLOYEE.**

### Dates of Employment

Beginning with the most recent period of employment and working backward, list the period of employment for each job held.

### Employer

Identify the name of the employer. Spell out any initials used to describe a facility. For example, TVA should be spelled out as the Tennessee Valley Authority. Individuals who worked for a contractor or subcontractor should list the name of the company for which they worked and the entity that held the contract. Specify the location where employment activities were conducted including the city and state. Provide any other useful descriptive information about where work was performed such as the name of the facility, site, laboratory, building, mine etc.

### Position Title & Description of Work Performed

Identify the job title and the type of work activities performed during the listed period of employment.

### Describe All Factors(s) Believed to have Contributed to the Development of the Claimed Illness

Provide a brief statement explaining the date and circumstance of all factors believed to have contributed to the claimed illness.

### Was a Dosimetry Badge Worn While Employed?

Indicate whether or not the employer required a dosimetry badge to be worn. If yes, provide the dosimetry badge identification number.

## PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (42 U.S.C. 7384 et seq.) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collection actions required or permitted by the Debt Collection Act. (6) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

## PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim to this address. Completed claims are to be submitted to the appropriate regional District Office of Workers' Compensation Programs. Persons are not required to respond to this information collection unless it displays a currently valid OMB number.

**Employment History Affidavit for Claim  
Under the Energy Employees Occupational  
Illness Compensation Program Act**

**U.S. Department of Labor**  
Employment Standards Administration  
Office of Workers' Compensation Programs



Note: This form is used to affirm the employment history of a living or deceased individual who incurred a designated illness as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors, and subcontractors.

OMB No. 1215-0197

Expiration Date: 8/31/2007

**NAME OF THE PERSON COMPLETING AFFIDAVIT:**

Print Full Name	
Street Address	
City, State, Zip Code	

**AFFIRMING THE EMPLOYMENT HISTORY OF THE FOLLOWING PERSON:**

Print Full Name	
Maiden/Former Name	
Social Security Number (If known)	

**RELATIONSHIP BETWEEN PERSON COMPLETING AFFIDAVIT AND EMPLOYEE:**

Spouse     
  Son/Daughter     
  Parent     
  Grandparent  
 Friend     
  Work Associate     
  Other \_\_\_\_\_

**EMPLOYEE'S WORK HISTORY:**

In chronological order, starting with the most recent period of employment, describe your knowledge of the employee's work history. Provide as much identifying information as possible concerning the name of the employer and location (city & state) where work was performed.

**Employer 1**

Dates of Employment	Start Date	End Date
Employer name and work site location		
Describe the type of work performed		
Explain how you know the employee worked for this employer		

**Employer 2**

Dates of Employment	Start Date <input type="text"/>	End Date <input type="text"/>
Employer name and work site location	<input type="text"/> <input type="text"/>	
Describe the type of work performed	<input type="text"/>	
Explain how you know the employee worked for this employer	<input type="text"/>	

**Employer3**

Dates of Employment	Start Date <input type="text"/>	End Date <input type="text"/>
Employer name and work site location	<input type="text"/> <input type="text"/>	
Describe the type of work performed	<input type="text"/>	
Explain how you know the employee worked for this employer	<input type="text"/>	

**Employer4**

Dates of Employment	Start Date <input type="text"/>	End Date <input type="text"/>
Employer name and work site location	<input type="text"/> <input type="text"/>	
Describe the type of work performed	<input type="text"/>	
Explain how you know the employee worked for this employer	<input type="text"/>	

**DECLARATION OF PERSON COMPLETING FORM**

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under the EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. I affirm that the information provided on this form is accurate and true.

Signature  Date

Contact Phone Number

## FORM EE-4

This form is used to affirm the employment history of a living or deceased Energy employee. The EE-4 is an acceptable format for providing an affidavit in support of an otherwise unsupported work history and can be filled out by anyone with knowledge of a covered employee's work history. Use as many EE-4 forms as needed. If you require additional space to provide comments, attach a signed supplemental statement.

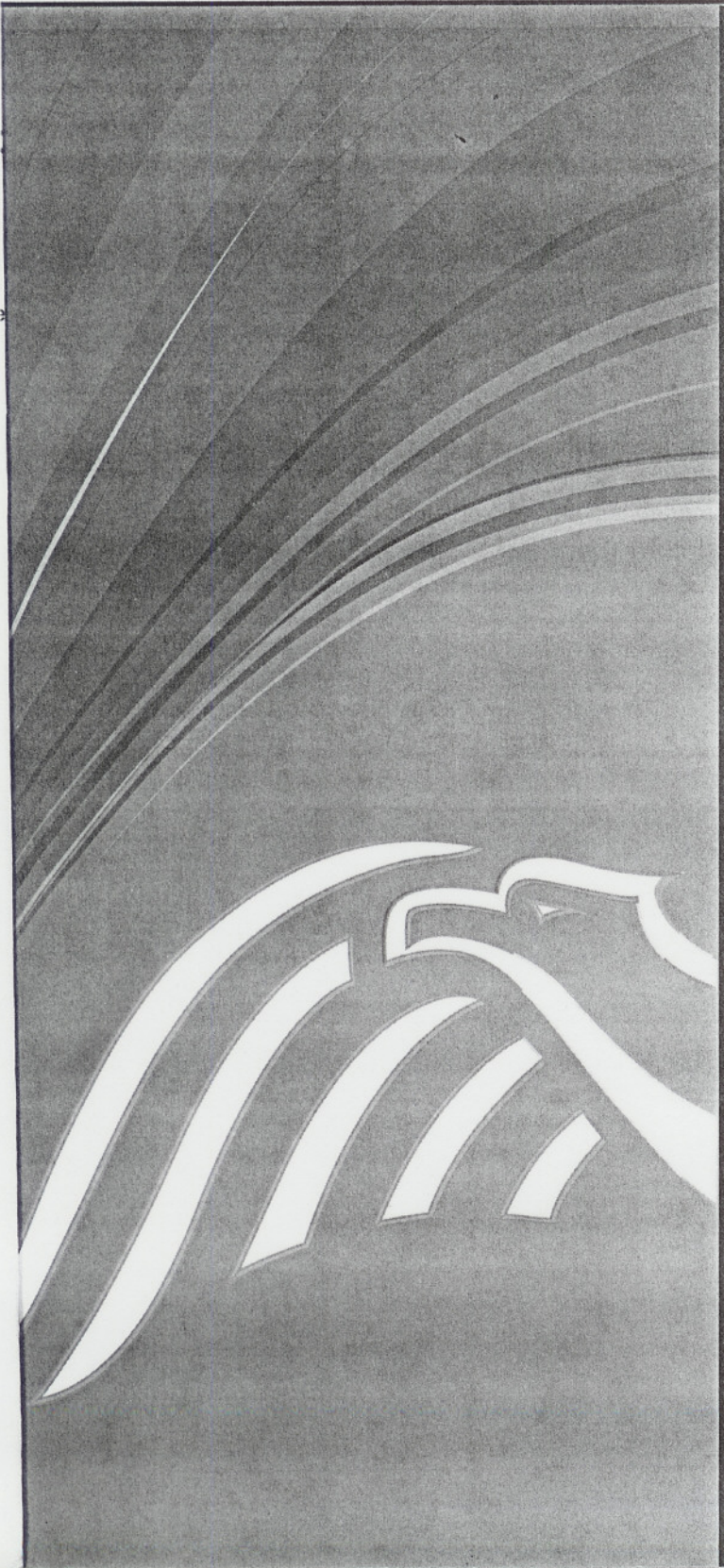
## PRIVACY ACT

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Energy Employees Occupational Illness Compensation Program Act (42 U.S.C. 7384 et seq.) (EEOICPA) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for, and the amount of, benefits payable under the EEOICPA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agencies or private entities which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider other relevant matters. (4) Information may be disclosed to physicians and other health care providers for use in providing treatment or medical rehabilitation, making evaluations for the Office and for other purposes related to the medical management of the claim. (5) Information may be given to Federal, state, and local agencies for law enforcement purposes, to obtain information relevant to a decision under the EEOICPA, to determine whether benefits are being paid properly, including whether prohibited payments have been made, and, where appropriate, to pursue salary/administrative offset and debt collection actions required or permitted by the Debt Collection Act. (6) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision. This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the EEOICPA.

## PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3524, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Do not submit the completed claim to this address. Completed claims are to be submitted to the appropriate district office of the Office of Workers' Compensation Programs. Persons are not required to respond to this information collection unless it displays a currently valid OMB number.

2003



**Annual  
Statistical  
Supplement**  
to the  
**Social Security  
Bulletin**

Social Security Administration  
Office of Policy  
Office of Research, Evaluation, and Statistics

## 4.B OASDI: Covered Workers

**Table 4.B4—Percentage of workers with earnings below annual maximum taxable, by sex, selected years 1937–2001**

Year	All workers <sup>a</sup>			All self-employed workers			Annual maximum taxable earnings (dollars)
	Total	Men	Women	Total	Men	Women	
1937	96.9	95.8	99.7	...	...	...	3,000
1940	96.6	95.4	99.7	...	...	...	3,000
1945	86.3	78.6	98.9	...	...	...	3,000
1950	71.1	59.9	94.6	...	...	...	3,000
1951	75.5	64.6	96.7	65.4	62.6	83.3	3,600
1952	72.1	60.0	95.4	64.1	61.2	83.5	3,600
1953	68.8	55.5	93.8	62.9	59.5	83.1	3,600
1954	68.4	55.4	93.0	62.6	58.8	82.8	3,600
1955	74.4	63.4	95.9	74.0	72.3	86.3	4,200
1956	71.6	59.7	94.5	71.2	69.1	86.0	4,200
1957	70.1	58.7	93.1	69.6	67.2	85.5	4,200
1958	69.4	58.4	91.8	68.8	66.3	85.7	4,200
1959	73.3	62.7	94.3	72.0	69.6	88.0	4,800
1960	72.0	60.9	93.5	71.6	69.2	87.7	4,800
1961	70.8	59.6	92.4	70.3	67.8	86.9	4,800
1962	68.8	57.1	91.1	67.9	65.3	85.3	4,800
1963	67.5	55.5	90.0	66.3	63.4	85.3	4,800
1964	65.5	53.1	88.5	63.8	60.5	84.4	4,800
1965	63.9	51.0	87.3	59.5	55.8	82.5	4,800
1966	75.8	64.4	95.6	68.3	65.0	88.4	6,600
1967	73.6	61.5	94.2	66.7	63.2	87.5	6,600
1968	78.6	68.0	96.3	70.3	67.2	89.7	7,800
1969	75.5	62.8	96.0	68.3	65.0	89.1	7,800
1970	74.0	61.8	93.5	67.8	64.3	88.3	7,800
1971	71.7	59.1	91.7	66.7	63.3	86.2	7,800
1972	75.0	62.9	93.9	68.8	65.0	89.7	9,000
1973	79.7	68.9	96.2	71.1	67.4	91.0	10,800
1974	84.9	76.2	97.8	75.7	72.1	94.0	13,200
1975	84.9	76.4	97.5	77.8	74.4	93.9	14,100
1976	85.1	76.3	97.5	78.6	75.1	94.3	15,300
1977	85.2	76.3	97.5	79.3	75.8	94.1	16,500
1978	84.6	75.4	97.1	79.3	75.6	94.0	17,700
1979	90.0	83.6	98.6	84.3	81.3	95.9	22,900
1980	91.2	85.5	98.8	86.9	84.2	96.6	25,900
1981	92.4	87.4	99.0	89.4	87.1	97.2	29,700
1982	92.9	88.3	98.9	91.0	88.8	97.7	32,400
1983	93.7	89.6	99.0	92.0	90.0	97.7	35,700
1984	93.6	89.4	98.9	91.8	89.7	97.6	37,800
1985	93.5	89.3	98.8	92.0	89.8	97.5	39,600
1986	93.8	89.7	98.7	92.3	90.2	97.5	42,000
1987	93.9	89.9	98.6	92.5	90.4	97.5	43,800
1988	93.5	89.4	98.3	91.7	89.4	97.1	45,000
1989	93.8	90.1	98.3	92.4	90.1	97.3	48,000
1990	94.3	90.9	98.4	93.3	91.3	97.7	51,300
1991	94.4	91.1	98.3	93.6	91.6	97.7	53,400
1992	94.3	91.0	98.1	93.6	91.7	97.6	55,500
1993	94.4	91.3	98.1	93.7	91.9	97.4	57,600
1994	94.6	91.4	98.1	93.9	92.0	97.5	60,600
1995	94.2	91.0	97.9	93.9	92.0	97.5	61,200
1996	93.9	90.6	97.7	93.9	92.0	97.4	62,700
1997	93.8	90.5	97.6	93.8	91.9	97.3	65,400
1998	93.7	90.3	97.5	94.0	92.2	97.3	68,400
1999 <sup>b</sup>	93.9	90.7	97.5	94.2	92.3	97.4	72,600
2000 <sup>b</sup>	93.8	90.6	97.4	94.2	92.3	97.3	76,200
2001 <sup>b</sup>	94.1	91.0	97.5	94.6	92.7	97.5	80,400

a. For 1937–1950, relates to wage and salary workers. Beginning in 1951, includes self-employed workers.

b. Preliminary data.

SOURCE: Social Security Administration, Master Earnings File, 1 percent sample.

NOTE: ... = not applicable.

CONTACT: Greg Diez (410) 965-0153 or William Kearns (410) 965-6750.

**Report of Earnings**Longshore and Harbor Workers' Compensation Act,  
or ExtensionU.S. Department of Labor  
Employment Standards Administration  
Office of Workers' Compensation ProgramsInstructions to Employee: You are required to complete and sign this form and return it to the employer/insurance carrier/  
special fund listed in item 4 within 30 days after receipt even if you have no earnings to report. (20 CFR 702.286) See  
page 2 for definition of "Earnings" and additional instructions. Loss of compensation benefits may result if this form is  
not completed and filed in accordance with instructions.

OMB No.: 1215-0160

Instructions to Employer / Insurance Carrier: Complete items 1 through 6.

1. Place within brackets			2. OWCP No.
Last Name	First Name	M.I.	3. Carrier's No.
Name and Address of Employee (Type or print)			
line 1:	city:		
line 2:	st:	zip:	
	country:		

4. Name of Employer/Insurance Carrier/Special Fund	5. Address of Employer/Insurance Carrier/Special Fund
	line 1: city:
	line 2: st: zip:

6. Period For Which Earnings From Employment or Self-Employment Must be Reported	7. Have You Had Any Earnings From Employment or Self-Employment During the Period Shown in item 6? (See page 2 for definition of "Earnings")
From To	Yes No

8. Complete the Following if You Had Earnings From Employment During the Period Shown In Item 6.

Name and Address of Employer	Periods of Employment		Amount Earned
	From	To	
Name city: st: zip:			
Name city: st: zip:			
Name city: st: zip:			
Name city: st: zip:			

9. Complete the Following if You Had Earnings From Self-Employment During The Period Shown In Item 6.

Type of Business or Service	Dates Performed		Gross Revenue Received	Profits or Net Earnings Received
	From	To		

10. I certify that the above information I have provided is true, complete and correct to the best of my knowledge and belief.

Signature and Print Name

Date

**IMPORTANT NOTICE**

Section 31(a)(1) of the Longshore Act, 33 U.S.C. 931(a)(1), provides as follows: Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this Act shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed \$10,000, by imprisonment not to exceed five years, or both.

**INSTRUCTIONS TO EMPLOYEE**

You are required to report on this form all earnings from employment or self-employment earned during the period specified on page 1 of this form (20 CFR 702.286). An employee who fails to report his/her earnings when requested or knowingly and willfully omits or understates any part of such earnings may forfeit his/her right to compensation with respect to any period during which this report is required. Compensation forfeited, if already paid, shall be deducted from any future compensation which may be due in accordance with a schedule determined by the District Director of the Office of Workers' Compensation Programs having jurisdiction in the case. (33 U.S.C. 908(j)).

Earnings are defined as all monies received from any employment and includes but is not limited to wages, salaries, tips, sales commissions, fees for services provided, piecework and all revenue received from self-employment even if the business or enterprise operated at a loss or if the profits were reinvested.

An employer, insurance carrier, or the Director of the Office of Workers' Compensation Programs (for those cases being paid from the Special Fund) may require an employee to file this report semiannually. The information provided will be used to determine entitlement to benefits. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

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**Public Burden Statement**

We estimate that it will take an average of 10 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the U.S. Department of Labor, Division of Longshore and Harbor Workers' Compensation, Room C4315, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **DO NOT SEND THE COMPLETED FORM TO THIS OFFICE**

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