

Civil Division
U.S. Department of Justice

**Radiation Exposure
Compensation Act Trust Fund**

**FY 2009 PERFORMANCE BUDGET
Congressional Submission**

February 2008

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Radiation Exposure Compensation Act Trust Fund

Overview

On October 5, 1990, Congress passed the Radiation Exposure Compensation Act (RECA or the Act). The Act offers an apology and monetary compensation to individuals who contracted certain cancers and other serious diseases as a result of their exposure to radiation released during above-ground atmospheric nuclear weapons tests or as a result of their occupational exposure while employed in the uranium industry during the build-up to the Cold War. This unique program was designed as an alternative to litigation in that the statutory criteria do not require claimants to establish causality. Specifically, if the claimant can satisfy the requirements outlined in the statute, which include demonstrating that he or she contracted a compensable disease after working or residing in a designated location for a specified period of time, he or she qualifies for compensation. The amount of the award is statutorily prescribed and ranges from \$50,000 to \$100,000, depending on claimant category. Congress charged the Attorney General with responsibility for adjudicating claims under the Act.

“It is the purpose of this Act to establish a procedure to make partial restitution to the individuals... for the burdens they have borne for the Nation as a whole. ...The Congress apologizes on behalf of the Nation to the individuals... and their families for the hardships they have endured.”

Radiation Exposure Compensation Act

The Department of Justice (DOJ) established the Radiation Exposure Compensation Program (the Program) within the Civil Division. The Program commenced operations in April 1992. Since its inception, 27,492 claims have been filed and over \$1.2 billion has been awarded to 18,885 claimants (as of January 6, 2008).

The RECA Program was evaluated with OMB’s Program Assessment Rating Tool (PART) during FY 2006. See page six for more information on the results of this evaluation.

Electronic copies of DOJ’s Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.usdoj.gov/jmd/2009justification/>.

Program Description

Mission Statement: Fairly and expeditiously adjudicate claims, fully consistent with the Radiation Exposure Compensation Act, as amended; educate the public about the Act; and develop strategies for improving the Program.

The Program office is located in Washington, D.C. and is administered by a staff of attorneys, claims examiners, and an office assistant within the Civil Division’s Torts Branch. The support

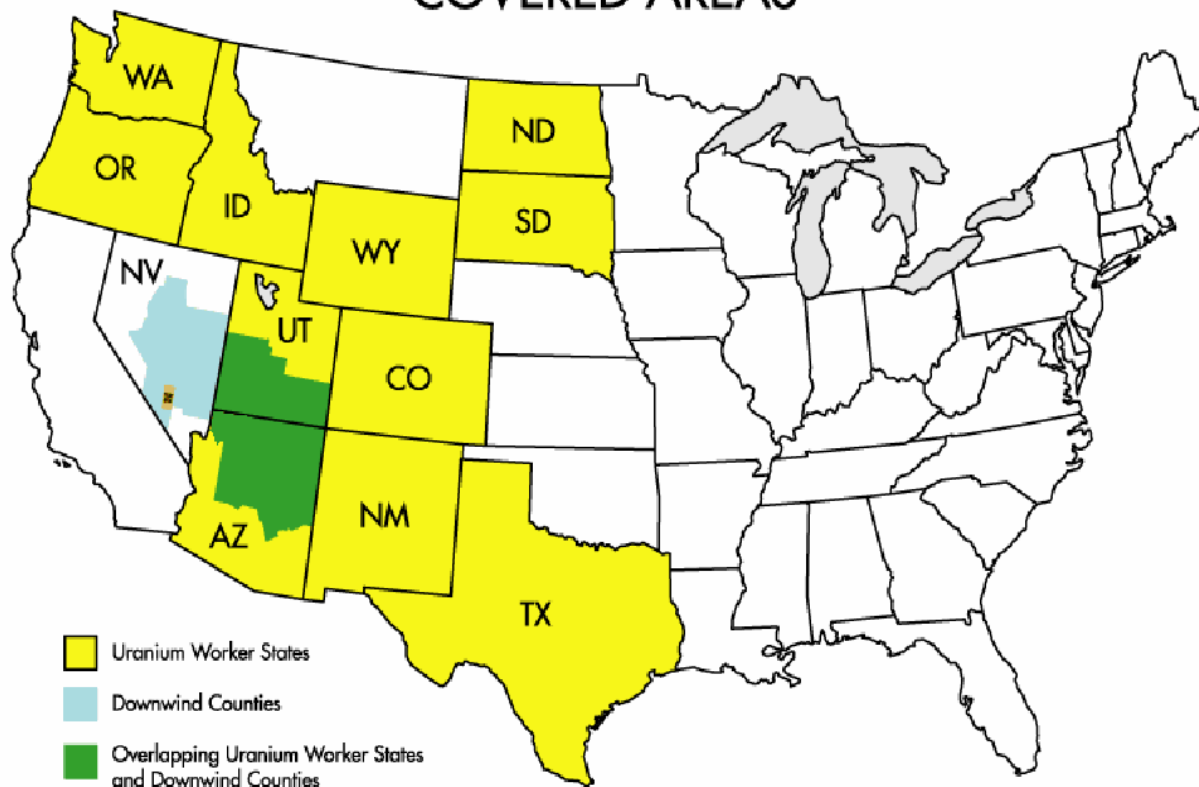
staff reviews claims packages, assists claimants with their applications, and manages physical case files. The Civil Division strives to process and resolve claims fairly and efficiently.

Background

From 1945 through 1962, the United States conducted extensive atmospheric atomic weapons testing as it developed and built the effective arsenal that became the cornerstone of the Nation's Cold War security strategy. Critical to the production of atomic weapons was the mining, milling, and transporting of uranium ore by the tens of thousands of individuals employed in that industry. Many people exposed to radiation resulting from the nuclear weapons development and testing subsequently developed serious diseases, including various types of cancer. In order to establish a procedure to make partial restitution to these individuals, the Radiation Exposure Compensation Act was enacted in 1990.

The Act established monetary compensation for specified diseases in three defined populations: underground uranium miners, who receive \$100,000; individuals present at test site locations, who receive \$75,000 (on-site participants); and individuals who lived downwind of the Nevada Test Site, who receive \$50,000 (downwinders). The map below shows the geographic areas covered by the Act. Although the vast majority of claims are filed by people living in the Four Corners Region (Utah, Colorado, New Mexico, and Arizona), the Program has awarded compensation to individuals residing in every state as well as several foreign countries.

MAP OF RADIATION EXPOSURE COMPENSATION ACT COVERED AREAS



On July 10, 2000, amendments to RECA (2000 Amendments) were enacted that markedly expanded the scope of the Program. Major changes included the creation of new categories of beneficiaries (above-ground uranium miners, uranium mill workers, and ore transporters) who receive \$100,000 in compensation; the expansion of eligible diseases, geographic areas, and time period; and the reduction in the radiation exposure threshold that miners must meet to receive compensation. As a result, there was a flood of new claim filings and a sharp rise in monetary awards.

Scientific Studies

The National Research Council of the National Academy of Sciences (NAS) published a study in April 2005 concerning possible changes to RECA, particularly whether other groups of individuals or additional geographic regions or diseases should be covered. The report concluded that: 1) based on current scientific evidence, no additional diseases should be included under RECA; 2) further study should be conducted to assess all radionuclides and radiogenic diseases to establish a probability of causation model to determine possible expansion of compensation beyond current geographic boundaries; and 3) Congress should set new eligibility criteria based on a scientific assessment.

Proposed Legislation

As a result of this study, regardless of the findings, there was initially a rise in the number of claims filed due to increased awareness of the Program within affected communities. The study also spurred congressional interest. Legislation to amend RECA has been introduced in the current session of Congress. On August 1, 2007, Senators Craig, Crapo, Baucus, and Tester sponsored legislation (S. 1917) to add the states of Idaho and Montana as affected “downwinder” areas. On August 3, 2007, Congresswoman Bordallo introduced a bill (H.R. 3379) to include the Territory of Guam. Current workload and funding projections do not account for the possible impact of any scientific studies or substantive statutory changes.

Government Accountability Office (GAO) Audit

Since enactment of the 2000 Amendments, which included a provision requiring GAO to report to Congress every 18 months on the administration of the Program, there have been four audit reports. The most recent report on Program administration, dated September 17, 2007, was very favorable. The report noted that \$1.2 billion was paid to eligible claimants between 1992 and June 2007 and almost half of that amount was paid to downwinder claimants. GAO also determined that average processing times for each individual category of claims have decreased over the last four years. No negative findings were made and no response was required by the Department. The FY 2008 Omnibus Appropriations Bill, section 1502(g), struck this statutory reporting requirement.

Funding History

The RECA Trust Fund was subject to discretionary appropriations from FY 1992 to FY 2001. Following enactment of the 2000 Amendments, the appropriation became insufficient to meet the increase in the number of claims deemed eligible for compensation. In 2002, Congress

addressed the problem within the Department of Defense Authorization Act for FY 2002, which established annual funding against mandatory spending caps. However, by 2003 the increased rate of new claim filings and approvals proved the caps to be inadequate, and a funding shortfall ensued. Working in close coordination, the appropriators and authorizers effectively devised legislative solutions to the funding problems. The following statutes ensure that all compensable RECA claims will be fully funded throughout the life of the Program.

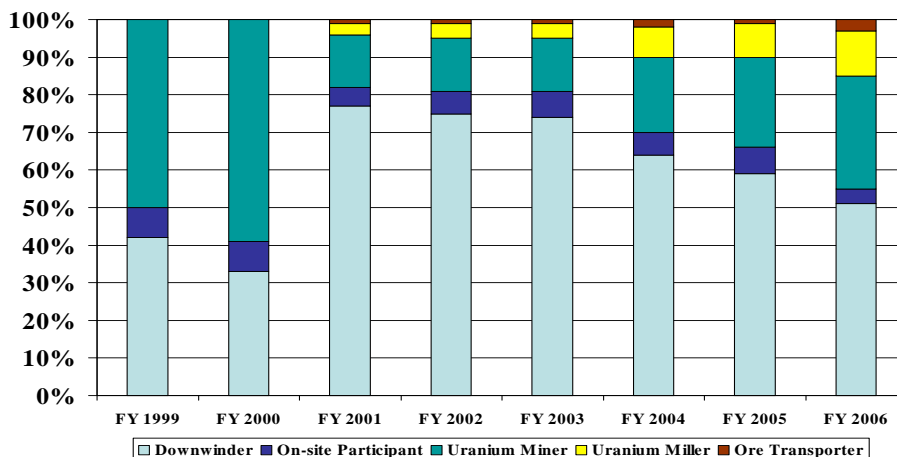
- The Consolidated Appropriations Act for 2005 contained language that made funding for the RECA Trust Fund mandatory and indefinite beginning in FY 2006. Henceforth, the Fund has exclusively paid Section 4 claimants (downwinders and on-site participants).
- The National Defense Authorization Act for FY 2005 requires that RECA Section 5 claimants (uranium miners, millers, and ore transporters) be paid out of the Energy Employees Occupational Illness Compensation Fund.

Claim Statistics

Over the past 15 years, more than 26,700 claims have been filed with the Program. Approximately 70 percent of the claims that have been adjudicated were approved. In FY 2006, total RECA awards over the life of the Program topped \$1 billion.

Prior to enactment of the 2000 Amendments, receipts had tapered off and approximately 43 percent of claims were approved. Following enactment, the number of claims filed and the portion found to be eligible increased sharply. By the end of FY 2002, the workload had increased more than fivefold to 6,349 claims, and the average approval rate had increased to about 80 percent. The chart below shows how the 2000 Amendments changed the distribution of awards across the claimant categories. The changes in statutory requirements for compensation resulted in greater numbers of qualifying claimants, especially downwinders.

Distribution of Approved RECA Claims
By Claimant Category



The table on page seven displays actual data from FY 2004 through FY 2007 and projections through FY 2009. Overall, the number of claims filed has been decreasing – there were 25 percent fewer new claims in FY 2007 than in FY 2004. A decline in awards is also expected – the value of awards in FY 2009 is projected to be 40 percent less than in FY 2004. The projections are based on the following assumptions: 1) the number of new claims filed will decline gradually; 2) the approval rate will not increase significantly; and 3) there will be no substantive statutory changes.

The Civil Division’s projections for claim filings, adjudications, and awards have been reviewed by the Department of Justice’s independent auditor since FY 2005. Using historic data, a model has been developed to estimate the contingent liability associated with RECA awards through the sunset of the program in FY 2022. Each year, the Civil Division has received a clean audit opinion on this methodology and the resulting liability estimates.

Performance, Resources, and Strategies

Performance Plan and Report for Outcomes

The Radiation Exposure Compensation Program supports Goal 2 of the Department of Justice’s Strategic Plan, specifically Objective 2.7: “Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.”

The Program’s primary objective is to implement civil justice reform initiatives to resolve categories of claims for which traditional litigation has proven ineffective and to administer compensation programs enacted by Congress that offer non-litigation solutions for radiation exposure claimants.

Strategies to Accomplish Outcomes

The Program will employ the following strategies to accomplish this mission:

- Hire skilled claims examiners to conduct the initial review of claims, freeing the Program attorneys to conclude the adjudication and render the final determination.
- Access external data sources, such as the Social Security Administration, the National Institute for Occupational Safety and Health, the Public Health Service, and state cancer and tumor registries to assist claimants in securing the necessary documentation in support of their claims.
- Coordinate with the Department of Labor’s (DOL) Energy Employees Occupational Illness Compensation Program to ensure that eligible Section 5 RECA claimants receive compensation in a timely manner. This includes review of RECA claimant files to determine eligibility pursuant to the Energy Employees Occupational Illness Compensation Program Act.
- Brief Members of Congress and their staffs as requested; provide information to Members and the public in an open, timely, and complete manner.

- Coordinate with the Department of Health and Human Services' Radiation Exposure Screening and Education Program to assist grantees in providing relevant information on the RECA Program to individuals screened for disease in the affected geographic regions.
- Use a toll-free phone line and website to communicate with claimants.
- Conduct outreach by traveling to areas with populations of potential claimants and participating in workshops held by congressional delegations for their constituents. Last year, staff members traveled to the Navajo Indian Reservation to meet with tribal officials and representatives from the Navajo Nation, Office of Navajo Uranium Workers, and the Indian Health Service to discuss initiatives to increase efficiencies in claims adjudication. Also, Program staff members attended town hall meetings with DOL officials in Shiprock and Grant, New Mexico; Grand Junction, Colorado; Moab, Utah; and Kayenta, Arizona, to assist in providing information regarding DOL and RECA benefits.

Results of Program Assessment Rating Tool (PART) Reviews

The RECA Program was evaluated with the Office of Management and Budget's Program Assessment Rating Tool (PART) during FY 2006. The Program received a rating of "Adequate." This rating describes a program that needs to set more ambitious goals, achieve better results, improve accountability, or strengthen its management practices.

OMB's findings include:

- The Program has developed ambitious annual and long-term goals focusing on outcomes that meaningfully reflect the purpose of the Program. However, the Program must ensure that partners are committed to achieving annual and long-term goals.
- The Program's statutory scheme contains flaws with respect to some of its claimant categories. Although the statute is founded on the scientifically-based association between exposure and illness for occupationally exposed uranium workers, the same is not true for other claimant categories.

The Department of Justice will take the following actions to improve the RECA Program's performance:

- Ensure Program partners are expressly committed to achieving the stated annual and long-term performance goals of the Program.
- Develop a plan to tie resources to specific performance measures.
- Monitor the activities of the National Academy of Sciences and similar organizations that are studying the Act's eligibility criteria.

**Radiation Exposure Compensation Act Workload
Claims Filed and Approved
(Dollars in Thousands)**

	FY 2004 Actual	FY 2005 Actual	FY 2006 Actual	FY 2007 Actual	FY 2008 Estimate	FY 2009 Estimate
Section 4 Claims:						
Downwinders						
Pending, Beginning of Year	1,582	1,537	1,139	1,093	420	421
Claims Filed	1,517	1,367	999	1,037	849	695
Claims Approved	1,163	1,457	902	1,363	713	549
Value of Approvals	\$58,150	\$72,850	\$45,100	\$68,150	\$35,650	\$27,450
On-Site Participants						
Pending, Beginning of Year	260	268	247	208	91	89
Claims Filed	231	268	174	148	130	114
Claims Approved	99	181	80	156	58	48
Value of Approvals	\$7,053	\$12,666	\$5,547	\$11,280	\$4,350	\$3,600
Subtotal Section 4 Claims						
Pending, Beginning of Year	1,842	1,805	1,386	1,301	511	510
Claims Filed	1,748	1,635	1,173	1,185	979	809
Claims Approved	1,262	1,638	982	1,519	771	597
Value of Approvals	\$65,203	\$85,516	\$50,647	\$79,430	\$40,000	\$31,050
Section 5 Claims (Uranium Miners, Millers, and Ore Transporters)						
Pending, Beginning of Year	971	813	644	761	296	244
Claims Filed	715	943	1,087	660	688	666
Claims Approved	539	845	786	748	495	400
Value of Approvals	\$53,900	\$84,407	\$78,600	\$74,776	\$49,500	\$40,000
TOTAL						
Pending, Beginning of Year	2,813	2,618	2,030	2,062	807	754
Claims Filed	2,463	2,578	2,260	1,845	1,667	1,475
Claims Approved	1,801	2,483	1,768	2,267	1,266	997
Claims Denied	857	683	460	833	454	408
<i>Total Adjudications (Approved + Denied)</i>	<i>2,658</i>	<i>3,166</i>	<i>2,228</i>	<i>3,100</i>	<i>1,720</i>	<i>1,405</i>
Approval Rate	68%	78%	79%	73%	74%	71%
Value of Approvals	\$119,103	\$169,923	\$129,247	\$154,206	\$89,500	\$71,050

B: Summary of Requirements

Summary of Requirements
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

	Perm. Pos.	FTE	Amount
2007 Enacted	\$73,650
2008 Enacted	40,000
Adjustments to Base:			
Program Decrease	(8,950)
2009 Current Services	31,050
2009 Total Request	31,050
2008 - 2009 Total Change	(8,950)

Estimates by budget activity	FY 2007 Enacted			FY 2008 Enacted			FY 2009 Adjustments to Base			FY 2009 Current Services			FY 2009 Increases			FY 2009 Offsets			FY 2009 Request			FY 2008-2009 Total Change		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	\$73,650	....	....	\$40,000	....	....	(\$8,950)	....	....	\$31,050	....	....	....	....	....	....	....	....	\$31,050	....	....	(\$8,950)

D: Resources by DOJ Strategic Goal and Objective

Resources by Department of Justice Strategic Goal and Objective
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Strategic Goal and Objective	FY 2007 Enacted		FY 2008 Enacted		FY 2009 Current Services		FY 2009 Increases/Offsets		FY 2009 Request		FY 2008-2009 Total Change	
	Amount		Amount		Amount		Amount		Amount		Amount	
	FTE	\$000s	FTE	\$000s	FTE	\$000s	FTE	\$000s	FTE	\$000s	FTE	\$000s
Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People 2.5: Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.	\$73,650	....	\$40,000	....	\$31,050	....	....	....	\$31,050	....	(\$8,950)
Subtotal, Goal 2	73,650	....	40,000	....	31,050	....	....	....	31,050	....	(8,950)
GRAND TOTAL	\$ 73,650	....	\$ 40,000	....	\$ 31,050	....	....	....	\$ 31,050	....	\$ (8,950)

E. Justification for Base Adjustments

Justification for Base Adjustments

Radiation Exposure Compensation

Payments to the Radiation Compensation Trust Fund

Decreases

Program Decrease. Based on out-year statistical projections for downwinders and on-site participants, the Division requests an adjustment to base reduction of (\$8,950,000) for FY 2008.

F: Crosswalk of 2007 Availability

Crosswalk of 2007 Availability
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Activity/Program	FY 2007 Enacted			Rescissions			Carryover/ Recoveries			FY 2007 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	\$73,650	....	....	....	....	....	\$8,918	....	....	\$82,568

G: Crosswalk of 2008 Availability

Crosswalk of 2008 Availability
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Activity/Program	FY 2008 Enacted			Rescissions			Carryover/ Estimated Recoveries			FY 2008 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	\$40,000	....	....	....	....	....	\$9,000	....	....	\$49,000

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class
 Radiation Exposure Compensation
 Payments to the Radiation Compensation Trust Fund
 (Dollars in Thousands)

Object Classes	FY 2007 Actual Obligation		FY 2008 Enacted		FY 2009 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
41.0 Grants, Subsidies and Contributions	\$73,650	....	\$40,000	....	\$31,050	....	(\$8,950)
Total obligations	73,650	....	40,000	....	31,050	....	(8,950)
Unobligated balance, start of year		6,800		8,343		....	
Unobligated balance, end of year		(6,291)		....		....
Recoveries of prior year obligations		2,118		....		....
Total Requirements		74,159		40,000		31,050		