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**Delegation of Authority and Assignment
of Responsibility to the Ombudsman for
the Energy Employees Occupational
Illness Compensation Program Act; Notice**

DEPARTMENT OF LABOR**Office of the Secretary**

[Secretary's Order 1-2005]

Delegation of Authority and Assignment of Responsibility to the Ombudsman for the Energy Employees Occupational Illness Compensation Program Act

1. *Purpose and Scope.* The purpose of this Secretary's Order is to formally create the Office of the Ombudsman under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and to delegate authorities and assign responsibilities to the EEOICPA Ombudsman, as required by Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

2. *Authorities and Reference.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 of 1950 (5 U.S.C. Appendix 1); EEOICPA (Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-398), as amended by Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (FY 2005 Defense Authorization Act). See also Executive Order 13179, Providing Compensation to America's Nuclear Weapons Workers (December 7, 2000).

3. *Background.* Section 3161 of the FY 2005 Defense Authorization Act amended EEOICPA to create a new Part E, Contractor Employee Compensation, which replaces Part D of EEOICPA with a program that provides covered employees with a federal payment and medical benefits for occupational illnesses that result from exposure to toxic substances at Department of Energy (DOE) and certain other facilities. Eligible survivors also may receive federal compensation, if the employee's death was caused by, or contributed to by, the covered occupational illness. In general, Part E is administered by the Department's Employment Standards Administration (see Secretary's Order 4-2001). Part E, however, also creates a new independent Office of the Ombudsman. See Section 3161 of the FY 2005 Defense Authorization Act, establishing Section 3686 of EEOICPA (42 U.S.C. 7385s-15). By statute, the Ombudsman is responsible for providing information about Part E benefits, requirements and procedures; making recommendations to the Secretary about the location of

EEOICPA resource centers; and filing an annual report with the Congress, assessing complaints and requests for assistance received by the Ombudsman. Finally, the statute provides for the Office of the Ombudsman to expire on October 28, 2007.

4. *Office of the Ombudsman.* The Office of the Ombudsman and the position of Ombudsman are established by this Order. The Ombudsman's specific responsibilities are set forth in Paragraph 5 of this Order. The Ombudsman will report to the Office of the Deputy Secretary through an official (to be designated by the Deputy Secretary) whose responsibilities are consistent with the Office of the Ombudsman's independence as required by EEOICPA.

5. *Delegation of Authorities and Assignment of Responsibilities to the Ombudsman.* A. The Ombudsman is assigned responsibility for fulfilling the role of ombudsman under Section 3686 of EEOICPA, including the following duties:

(1) Providing information about EEOICPA Part E benefits, requirements and procedures.

(2) Making recommendations to the Secretary about the location of EEOICPA resource centers for the acceptance and development of claims for benefits under EEOICPA Part E and about possible improvements to DOL practices in administering Part E of EEOICPA.

(3) Preparing and submitting to Congress the annual report required by Section 3686(e) of EEOICPA. As required by the statute, the report will include the number and types of complaints, grievances, and requests for assistance received by the Ombudsman, as well as the Ombudsman's assessment of the most common difficulties encountered by claimants and potential claimants.

B. The Ombudsman is delegated authority to undertake outreach to advise the public of the existence and duties of the Office of the Ombudsman.

C. The Ombudsman is delegated authority to invoke all appropriate governmental privileges, arising from the functions of the Ombudsman, following personal consideration of the matter and in accordance with the following guidelines:

(1) *Generally Applicable Guidelines.* The Ombudsman may not re-delegate the authority to invoke a privilege. The privilege may be asserted only with respect to specifically described information and only where the Ombudsman determines the privilege is applicable. In asserting a privilege, the Ombudsman will articulate in writing

specific reasons for preserving the confidentiality of the information.

(2) *Deliberative Process Privilege* (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, in cases arising under Part E of EEOICPA including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions, or advice on legal or policy matters). To assert this privilege, the Ombudsman must first determine that: (i) The information is not purely factual and does not concern recommendations that the Department expressly adopted or incorporated by reference in its ultimate decision; (ii) the information was generated prior to and in contemplation of a decision by a part of the Department; and (iii) disclosure of the information would have an inhibiting effect on the Department's decision-making processes.

(3) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to the Ombudsman in cases arising under Part E of EEOICPA). To assert this privilege, the Ombudsman must first determine that disclosure of the privileged matter may: (A) Interfere with the Ombudsman's responsibilities under the authority delegated or assigned in this Order; (B) adversely affect persons who have provided information to the Ombudsman; or (C) deter other persons from reporting violations of the statute or other authority.

(4) Prior to filing a formal claim of privilege, the Ombudsman will personally review the information sought to be withheld, including all the documents sought to be withheld (or, in cases where the volume of information is so large that all of it cannot be personally reviewed in a reasonable time, an adequate and representative sample of such information) and a description or summary of the matter in which the disclosure is sought.

(5) The Ombudsman may comply with any additional requirements imposed by local court rules or precedent in asserting a governmental privilege.

(6) In determining whether to assert a governmental privilege, the Ombudsman will consult with the Office of the Solicitor (SOL) and may ask SOL to prepare and file any necessary legal documents.

D. The Ombudsman will perform any additional duties which are assigned to the Ombudsman by applicable law or regulation.

6. *Responsibilities of the Solicitor of Labor.* The Solicitor of Labor is delegated authority and assigned

responsibility for providing legal advice and assistance to all officers of the Department relating to the administration and implementation of this Order. The bringing of legal proceedings, the representation of the Secretary and other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

7. *Responsibilities of the Assistant Secretary for Administration and Management.* The Assistant Secretary for Administration and Management is responsible for:

A. Providing appropriate administrative and management support, as required, for the efficient and effective operation of these programs.

B. Assuring that any transfer of resources required to implement this Order is fully consistent with the budget

policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by any exchange of responsibilities is conducted.

8. *Responsibilities of Agency Heads.* Consistent with their statutory responsibilities and other applicable Secretary's Orders and guidelines, all DOL agency heads are assigned responsibility for cooperating with the Ombudsman and complying with related regulations, guidance and policies.

9. *Directives Affected:*

A. This Order clarifies Secretary's Order 4-2001 to provide that the responsibilities of the Ombudsman under EEOICPA Part E reside in the Office of the Ombudsman, but does not otherwise affect the authority or responsibilities of the Assistant Secretary for Employment Standards under that Order.

B. This Order does not affect the authorities or responsibilities of the

Assistant Secretary for Public Affairs under Secretary's Order 6-83.

C. This Order does not affect the authorities or responsibilities of the Office of Inspector General (OIG) under the Inspector General Act of 1978, as amended, or under Secretary's Order 2-90.

10. *Redelegations of Authority.* Unless provided otherwise in this or another Secretary's Order, the authority delegated in this Order may be redelegated, as permitted by law or regulation.

11. *Effective Date and Termination.* This Order is effective immediately. This Order will terminate upon the expiration of EEOICPA Section 3686.

Dated: June 1, 2005.

Elaine L. Chao,

Secretary of Labor.

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