U.S. Department of Labor

Office of Inspector General—Office of Audit

EMPLOYMENT STANDARDS ADMINISTRATION

ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM - DOL COULD DO MORE TO ASSIST CLAIMANTS AND FURTHER IMPROVE TIMELINESS

Date: November 12, 2008
Report Number: 04-09-002-04-437

U.S. DEPARTMENT OF LABOR
Office of Inspector General
Office of Audit

BRIEFLY…

Highlights of Report Number: 04-09-002-04-437, *Energy Employees Occupational Illness Compensation Program – Changes Needed to Further Improve Claimant Services and Timeliness*, to the Assistant Secretary for Employment Standards, dated November 12, 2008.

November 2008

WHY READ THE REPORT

Congress passed the Energy Employees Occupational Illness Compensation Program Act (Energy Employees Act) to provide timely, uniform, and adequate compensation to civilian men and women suffering from cancer and other illnesses incurred as a result of their work in the nuclear weapons production and testing programs of the Department of Energy (DOE) and its predecessor agencies. In passing the Energy Employees Act, Congress recognized that many of these employees were unknowingly exposed to and inadequately protected from radiation, beryllium, silica, and other toxic materials at DOE facilities.

Since the program began in 2001, through September 2, 2008, the Department of Labor (DOL) reported that it had received 167,498 claims, approved slightly more than 39 percent of those claims, and paid nearly $3.9 billion in compensation.

WHY OIG CONDUCTED THE EVALUATION

In response to inquiries from several members of Congress and the public, we conducted an evaluation to: (a) determine if DOL issued claim decisions that complied with applicable law and regulation and (b) assess whether DOL ensures that claims are adjudicated as promptly as possible and that claimants are kept informed. We also assessed the validity of allegations from a former claims examiner that claims examiners had been directed to inappropriately deny claims.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

http://www.oig.dol.gov/public/reports/oa/2009/04-09-002-04-437.pdf

WHAT OIG FOUND

DOL's decisions to accept or deny claims reviewed in our sample complied with applicable Federal law and regulations. The decisions were based on the evidence provided by or attained on the behalf of claimants and followed a deliberative process with several layers of review to ensure that claims were substantiated or properly denied. The allegations raised by a former claims examiner that claims examiners had been directed to inappropriately deny claims were not corroborated. However, while decisions reviewed were well documented, we found that DOL could more effectively use its Resource Centers by having the Centers work with claimants at the time the application is taken to obtain medical and employment documentation required to substantiate their claim and to explain survivor eligibility criteria.

We also found that DOL has made strides in reducing the processing time of claims for the portion of the process controlled by DOL. Nonetheless, we noted several areas where DOL could improve its procedures to further reduce processing time, including the use of new methods to obtain claimant information and developing more detailed interagency agreements with other agencies involved in the process.

Finally, the timeliness of adjudicating claims from the viewpoint of the claimant – how long it takes from the time they apply for benefits to reaching a final decision – needs to be measured and reported to show how well the Energy program is serving claimants, rather than solely measuring how long a claim is at DOL.

WHAT OIG RECOMMENDED

We made six recommendations to the Assistant Secretary for Employment Standards designed to: further reduce the time required to process claims, better utilize Resource Centers, and increase contact with claimants to keep them informed of the status of their claim.

ESA disagreed with our conclusions regarding the timeliness of the program in adjudicating claims, but did concur with most of the recommendations and, in some cases, already has efforts underway.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

November 12, 2008

Assistant Inspector General's Report

Ms. Victoria A. Lipnic
Assistant Secretary for Employment Standards
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

In response to requests from Senator Charles Schumer (D-NY) and Congressman C.W. "Bill" Young (R-FL) and inquiries from several members of Congress and the public as to whether claims are appropriately adjudicated, the Office of Inspector General (OIG) conducted an evaluation of the Energy Employees Occupational Illness Compensation Program. Specific concerns centered on whether the Department of Labor (DOL) inappropriately denied claims and whether decisions were timely. We also received allegations from a former claims examiner that claims examiners had been directed to inappropriately deny claims, and that 85 to 90 percent of claim files contained errors.

OBJECTIVES

We conducted an evaluation of the program's compliance with the Energy Employees Act. Our objectives were to answer the following questions:

1. Did DOL issue claim decisions that complied with applicable law and regulation?

2. Does DOL ensure that claims are adjudicated as promptly as possible and that claimants are kept informed?

SCOPE

Our evaluation covered the period October 1, 2005, through June 30, 2007. In addition, we reviewed specific claims covering the period November 2006 to November 2007, as part of our review of the allegations by the former claims examiner. During the period covered by our review, DOL reported that it issued decisions on 60,624 claims (20,309 accepted) and paid a total of $1.33 billion in compensation.

Our evaluation was conducted in accordance with Quality Standards for Inspections published by the Presidents Council on Integrity and Efficiency.

METHODOLOGY

To determine if DOL issued claim decisions that complied with applicable law and regulation, we reviewed a stratified random sample of 140 claims that received final decisions or were administratively closed from October 2005 through June 2007. Our review of claims decisions covered all functions performed by DOL to develop and adjudicate the claims. Although our review included the results of dose reconstructions developed by NIOSH, we did not review how NIOSH developed the dose reconstructions.

To assess whether DOL effectively communicated with claimants regarding the status of their claims, we reviewed 42 claims still pending a decision to determine how well DOL kept claimants informed of the status of their claims and how well DOL worked with the claimants to develop the necessary evidence to support their claim. In addition, we reviewed the adjudication process to determine if objections were filed by claimants and the impact of the objections on final decisions.

To determine the validity of allegations raised by the former claims examiner, we interviewed 3 individuals that the former claims examiner indicated could corroborate her allegations, as well as 7 others who worked in the Seattle District Office. We also reviewed 41 claims that the complainant was instrumental in developing decisions. Finally, we reviewed 5 specific claims that were alleged to have been decided wrongly.

To determine whether claims were processed and paid in a timely manner, and reasons why timeliness goals were not met, we analyzed DOL's timeliness measures and reviewed 42 claims with a recommended, but no final decision; 48 claims transferred from the Department of Energy (DOE); and 123 claims accepted but awaiting payment.

For further discussion of the methodology, including sampling procedures, see Appendix B.

RESULTS IN BRIEF

Based on our review, we found that the claims decisions issued by DOL were based on evidence supplied by or obtained on behalf of claimants and complied with applicable law and regulations. However, while decisions reviewed were well documented, we found that DOL could do more to effectively use its Resource Centers by having the Centers work with claimants at the time the application is taken to explain basic program requirements and obtain medical and employment documentation required to substantiate their claim. We found that 61 percent of claims (55 percent of Part B claims and 69 percent of Part E claims) were denied due to insufficient evidence to substantiate a diagnosed illness, not meeting the employment requirements, or failure to meet eligible survivor criteria. Claimants are responsible for proving their claim; however, DOL has a responsibility under the Act to assist them. Although the elapsed time to process a claim has been significantly shortened since the inception of the

program, it can still take as much as 2 years or more. We believe to further reduce the processing time DOL can and should do more to assist claimants in developing their claims and better educating applicants on general program requirements.

The allegations raised by a former claims examiner within the Division's Seattle District Office that claims examiners had been directed to inappropriately deny claims, and that 85 to 90 percent of claim files contained errors, were not corroborated. Our review of claims handled and interviews with current and former co-workers in the Seattle District Office did not corroborate any of complainant's allegations. Claims examiners stated they were never told to summarily deny a claim and claims were only denied after following the appropriate procedures. We found that the Division of Energy Employees Occupational Illness Compensation (Division) properly adjudicated these claims in compliance with the law and regulations, and the decisions were adequately supported with required evidence.

Since the program's inception, the average processing time from application to final decision for both Part B and E claims combined has been more than three years. However, DOL has made significant improvements in reducing the processing time as well as eliminating the backlog of DOE claims. In addition, DOL has taken steps to provide more focus on timely processing through the establishment and tracking of 20 timeliness goals for claims processing activities within DOL. While processing time has been reduced, the claims process is still lengthy and it may still take up to 2 years or more to process and adjudicate a claim. We identified several areas where improvements can be made that may further reduce claims processing time from application to final decision.

DOL needs to establish an overall measure of the time it takes from application to final decision and payment to present a complete picture of how well the program is serving the claimants. Since program responsibilities are divided among several agencies, there is currently no single measure that covers the entire life cycle of a claim. In addition, as the processing goal for initial development of a claim was nearly a year in 2007 (and almost 9 months in 2008), greater emphasis and measurement of interim milestones for major activities during the initial processing phase could lead to reduced claims processing time overall.

Better education of applicants at the point of application regarding program eligibility requirements and the collection of medical/employment documentation would help claimants better determine if they could be eligible and what is required to establish their eligibility. Greater emphasis and assistance to applicants upfront could also minimize the time required later in the process to gather documentation to support eligibility.

DOL needs interagency agreements with Federal and non-Federal agencies that are sufficiently detailed for the process of obtaining information to assist in the verification of claimant information. In addition, DOL initial claim processes for obtaining information required to verify employment eligibility or obtain medical records are inefficient, time

consuming, and result in inconsistent and untimely processing of information needed to develop claims.

DOL lacked an effective system for tracking claims at other agencies and for monitoring and managing the workloads of claims examiners. The Division did not track the status of more than 7,000 claims awaiting the completion of dose reconstructions at NIOSH, including 1,248 claims that had been at NIOSH for 2 years, and 683 for more than 5 years. As a result, DOL was not aware that NIOSH had administratively closed claims because the claimants had failed to return the notice allowing NIOSH to release the dose reconstruction results. Since DOL was unaware of the closure action taken by NIOSH, they did not notify claimants of their right to object. Although NIOSH notifies claimants as it processes their claims, DOL is also responsible for notifying claimants of their right to object. A comprehensive tracking mechanism for claims would allow greater oversight of claims in process and better management of resources for claims processing. It would also help DOL keep claimants better informed of the status of their claims.

DOL could do more to communicate with claimants to keep them informed of the status of their claim. For the claims we reviewed, DOL generally notified claimants when required by its internal policies, but due to the lengthy claim development process, there were often significant periods of time without communication. More frequent updates could reduce the stress and anxiety placed on claimants, many who are ill, and their families who are unsure about efforts being made to process their claim.

ESA RESPONSE

In its response to our draft report, ESA stated that it agreed with our finding that EEOICP's decisions are based on evidence and in accord with the law and implementing regulations, and specifically that a former claims examiner's allegations were without merit. However, ESA did not concur with conclusions regarding the timeliness of processing of claims. ESA took exception to our analysis that included processing time at NIOSH for dose reconstruction in an overall evaluation of the timeliness of the program in adjudicating claims, because DOL has no authority or control over NIOSH. Further, ESA believed that we did not give enough credit to its efforts to expedite claims, the trends in timeliness, or the history of the program's evolution.

ESA recognized its role as "lead agency" for the program, but responded that we misconstrued the relationship between EEOICP and NIOSH in that NIOSH has independent legal authority and responsibility for its portion of the Act. While ESA conceded that NIOSH outcomes feed into EEOICP process for affected cases, "… attempting to incorporate the time spent at NIOSH into DOL's timeliness goals would vastly distort the information and so overwhelm the time at DOL as to render the goals useless as a measurement of DOL's efforts." ESA went on to state that "… had the EEOICP focused on attempting to reduce the overall duration of cases, including the NIOSH duration, progress (or lack of it) against that goal would have had no relationship

to the EEOICP's timeliness efforts, and the global measure would not have any bearing on the effectiveness of our efforts to improve our own procedures." Finally, in regards to an overall measure, ESA stated "DOL can compute overall case durations, but they would have little or no operational utility as GPRA or operational goals absent a restructuring of the program by legislation."

ESA also did not concur with our recommendation to expand the Resource Centers' responsibilities to include helping claimants obtain evidence to support their claim and better educate claimants on requirements for eligibility.

We have incorporated ESA's response in applicable sections of the report, and its complete response is included as Appendix E of this report. We also made other changes to the report as a result of ESA's response.

OIG CONCLUSION

We acknowledge that ESA has made strides in reducing the processing time of claims for the portion of the process controlled by DOL. We also acknowledged that the Energy program is challenging to administer and by its nature requires time to adjudicate claims. Nonetheless, we noted several areas where we believe ESA could improve its procedures to further reduce processing time. ESA responded that they concurred with most of our recommendations and in some cases already have efforts underway. We did not conclude nor recommend that ESA discontinue any of its existing measures to track timeliness of claims, as ESA seems to imply in its response. Rather, we noted that the timeliness of adjudicating claims from the viewpoint of the claimant—how long it takes from applying for benefits to reaching a final decision, regardless of how many Federal agencies are involved—is not being measured or reported. We continue to believe that this is an important and appropriate measure of the success of the Energy program. Moreover, to only report measures on incremental processes in the absence of any measure of the overall timeliness of claims processing is misleading. Finally, it was not our intent to have the Resource Centers adjudicate claims. However, we do believe the Resource Centers could do more to educate claimants as to program eligibility and documentation requirements that would benefit the claimants as well as the program. We have clarified that section of the report and recommendation accordingly.

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The Energy Employees Occupational Illness Compensation Program is a complex, multi-billion dollar benefit program administered by the Department of Labor, with the input, assistance and determinations of three other major Federal agencies and a Federal advisory board. Understanding our results, findings, and recommendations requires an understanding of the legislative design; the complex regulatory requirements in establishing eligibility; and the inherent difficulty in meeting the latter due to the passage of time, unavailability of employment and other records, and the inability of sick, often aging, claimants to fully understand their rights and responsibilities

in the claims process. The background section that follows summarizes the complex structure and requirements of the program.

BACKGROUND

Congress passed the Energy Employees Occupational Illness Compensation Program Act (Energy Employees Act) to provide timely, uniform, and adequate compensation to civilian men and women suffering from cancer and other illnesses incurred as a result of their work in the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies. Department of Labor and Health and Human Services regulations implement the program and it is administered by the DOL's Division of Energy Employees Occupational Illness Compensation within the Office of Workers' Compensation Programs. In passing the Energy Employees Act, Congress recognized that many of these employees were unknowingly exposed to and inadequately protected from radiation, beryllium, silica, and other toxic materials at DOE facilities.

The Energy Employees Act requires DOL to assist claimants and potential claimants in securing medical testing and diagnosis services, and to develop the facts pertinent to their claim. DOL is required to adjudicate claims and justify its decisions to accept or deny claims based on its analysis and verification of employment history, exposure, medical diagnosis, and the probability that worksite conditions caused the claimant's illness. While DOL is required to help claimants develop their claims, the program regulations provide that, except as specifically provided for in the Act or the regulations, the claimant bears the burden of "proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility." If a claimant does not provide the necessary employment and medical evidence and if such evidence does not establish a causal link to the person's illness, DOL must deny the claim. DOL is required to communicate with claimants during the processing of their claim to inform them of the status of their claim, offering them opportunities to provide additional information to support their claim, and inform them of their rights to object to findings of facts and claims decisions.

DOL has an extensive system of claims development, adjudication, and due process to afford claimants multiple opportunities to establish a claim or object to findings of facts or decisions regarding their claim. Neither the Act nor the program regulations stipulate a time certain for completing all steps in the claims development and adjudication process. The regulations do provide certain minimum timeframes for 3rd parties to verify employment or provide other information to support a claim (90 days) and time limits for claimants to object to a decision (60 days). The claims development and adjudication process is inherently time consuming, due to the nature of the work that must be performed to develop and verify the facts of a claim, as well as the multiple opportunities afforded to claimants to voice objections and provide additional information.

Since the program began in 2001, through September 2, 2008, DOL had received 167,498 claims, and issued decisions to approve or deny benefits on nearly 82 percent

of these claims. DOL had approved slightly more than 39 percent of claims and paid nearly $3.9 billion in compensation. The Energy Program's Fiscal Year (FY) 2007 operating budget for administrative costs was $170.4 million.

Eligibility and Benefits

Various Federal agencies are involved in processing and adjudicating claims. The DOL administers those parts of the Energy Employees Act that provide compensation and medical benefits—Parts B and E. Claims may be paid under Parts B and E as follows:

- Part B generally provides compensation in the form of a $150,000 lump-sum payment and/or medical benefits to employees of DOE, its contractors, subcontractors or eligible survivors, who are diagnosed with radiation-induced cancer, chronic beryllium disease, or silicosis.

- Part E[1] provides compensation to employees of DOE contractor and subcontractors for lost wages, impairments, and medical expenses who became ill due to exposure to radiation or to any biological or toxic substances, such as chemicals, acids, and metals that could potentially cause illness or death.

See Table 1 for a comparison of Part B and Part E eligibility and benefits.

[1] Part E was created in the 2004 amendment that abolished Part D of the 2000 Employee Energy Act. This resulted in more than 25,000 Part D claims being transferred to DOL for processing under the new Part E. This created an immediate backlog of Part E claims.

Table 1
Comparison of EEOICPA Parts B and E Eligibility and Benefits

Program	Covered Employees	Diagnosed Illness	Benefits
Part B	▪ DOE employees ▪ DOE contractors or subcontractors ▪ Employees of atomic weapons employers ▪ Employees of beryllium vendors ▪ Uranium miners, millers, and ore transporters awarded under reca section 5 ▪ Eligible survivors[2]	▪ Radiation-induced cancer, chronic beryllium disease, silicosis, beryllium sensitivity	▪ $150,000 lump-sum payment ▪ $50,000 (if awarded payment under *reca* section 5) ▪ Medical expenses ▪ Beryllium sensitivity—medical monitoring only
Part E	▪ Contractor and subcontractor employees of doe-covered sites ▪ Uranium miners, millers, and ore transporters covered under reca section 5 ▪ Eligible survivors[3]	▪ Illness due to exposure to toxic substance	▪ Up to $250,000 for lost wages and impairment ▪ Medical expenses

Source: Energy Employees Occupational Illness Compensation Act of 2000 as amended

[2] The Energy Employees Act defines Part B survivors as the next of kin.
[3] The Energy Employees Act defines Part E eligible survivors as the covered spouse who was married at least one year immediately before the employee's death and a covered child who had not attained the age of 18 years, had not attained the age of 23 and a full-time student who had been continuously enrolled or had been incapable of self-support.

Dose Reconstruction and Special Exposure Cohorts (SECs)

To issue decisions related to Part B, the Energy Employees Act requires DOL to use a scientifically-approved method to estimate radiation exposure. The National Institute for Occupational Safety and Health (NIOSH)[4] calculates this estimate–dose reconstruction–based on information on the radioactive agents within a facility, and the employee's contracted cancer, occupation, work locations, and length of employment at the DOE facility.

The Energy Employees Act further designated employees from 4 sites[5] as Special Exposure Cohorts (SECs) and eligible for Part B compensation. SECs cover classes of employees at any DOE facility who likely were exposed to radiation at that facility but for whom it is not feasible to estimate with sufficient accuracy the radiation dose they received. Employees covered by an SEC only need to prove they worked at the facility and that they have a certain type of cancer to be eligible for compensation under the Program. The Energy Employees Act includes provisions for other groups of employees to petition the Secretary of Health and Human Services (HHS) to be designated as SECs if they believe there is insufficient information to reasonably perform a dose reconstruction to estimate radiation exposure. The Act requires HHS to evaluate the petitions and determine if it is feasible to estimate with enough accuracy the radiation dose that employees at these sites received. Based on this review, HHS's recommendation requires presidential approval to accept or deny the petition. As of August 30, 2008, 30 classes of employees had been approved as a SEC, allowing individuals associated to qualify for compensation and medical benefits.

The designation of a SEC causes an immediate increase in the number ofclaims to be processed by DOL, as many previously decided claims must be reconsidered under the SEC criteria. For example, on October 12, 2007, 6 SECs were approved. As a result, DOL reconsidered 1,949 previously filed claims. The demands resulting from such a large number of claims can cause delays in overall claims processing time.

DOL's Role in Issuing Decisions to Accept or Deny Claims for Compensation

DOL is responsible for determining the eligibility of employees and their survivors for compensation and benefits. Under both Parts B and E, DOL's decision to accept or deny a claim is based on a determination of whether:

> **Part B . . . the cancer was at least as likely as not related to radiation exposure during employment.**

[4] NIOSH is an agency within the Centers for Disease Control, U.S. Department of Health and Human Services.

[5] The four sites were the gaseous diffusion plants located at Paducah, Kentucky; Portsmouth, Ohio; Oak Ridge, Tennessee and Amchitka Island, Alaska (exposed to ionizing radiation related to underground nuclear tests).

Part E . . . the illness is at least as likely as not that exposure to a toxic substance was a significant factor aggravating; contributing to, or causing the illness during covered employment.

The Division requests information related to the claimant's medical records and employment, often from other Federal agencies, before making a decision to approve or deny compensation and benefits. Claims development is accomplished by 4 District Offices located in Cleveland, OH; Denver, CO; Jacksonville, FL; and Seattle, WA. Claims adjudication is performed by the Final Adjudication Branch (FAB) that is co-located with each District Office and in Washington, D.C. The FAB is independent to the Districts and validates the District's claims development and recommended decisions before issuing final decisions. The FAB also evaluates claimants' objections and may conduct hearings to determine if the claim is ready for a final decision. The Division contracts for operations of the 11 Resource Centers that perform outreach functions and receive claim applications. Various other Federal agencies are involved in claims processing and adjudication.

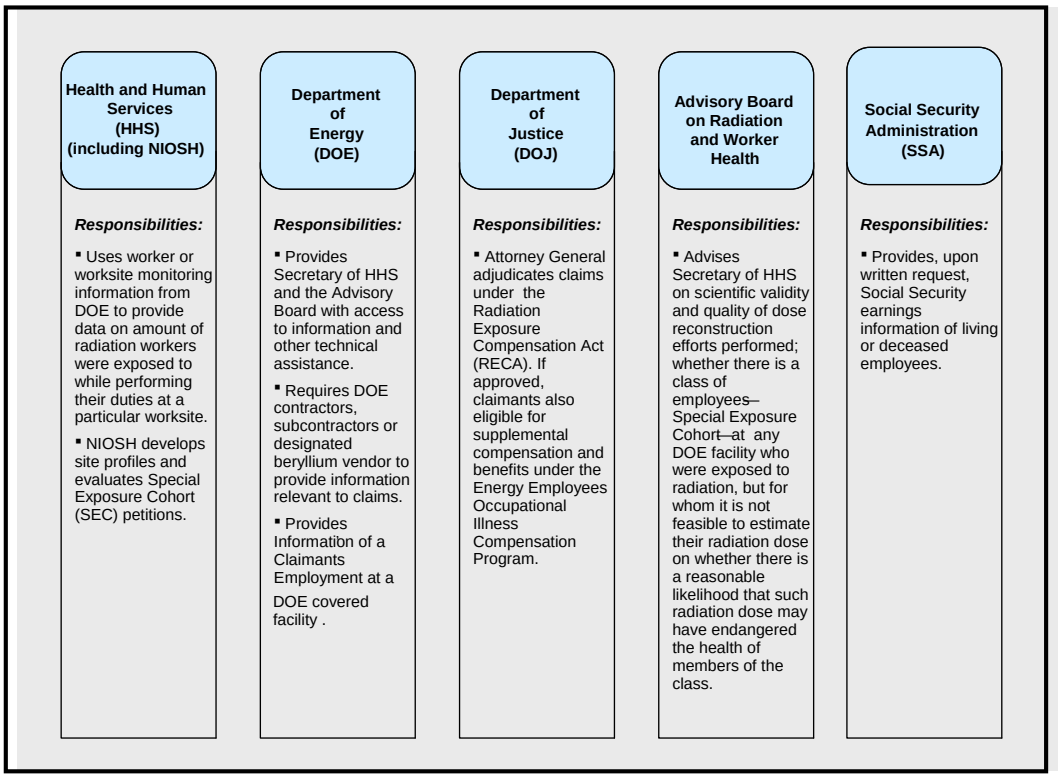
Role of Non-DOL Agencies and Consultants

The Energy Employees Act recognized the need for outside (non-DOL) experts and agencies to assist in the implementation of both Parts B and E. These include the Departments of Energy, Justice, and Health and Human Services; the Advisory Board on Radiation and Worker Health; and the Social Security Administration.

In addition, the Energy Employees Act authorized the use of physicians in evaluating and determining the extent of permanent impairments, and whether the exposure to a toxic substance aggravated, contributed to, or caused the death or illness.

Chart 1 highlights the role of the non-DOL agencies in processing Energy Employees Act claims.

Chart 1
Federal Agencies' Responsibilities in EEOICP Claims Processing



Source: OIG analysis of EEOICPA and Executive Order 13179

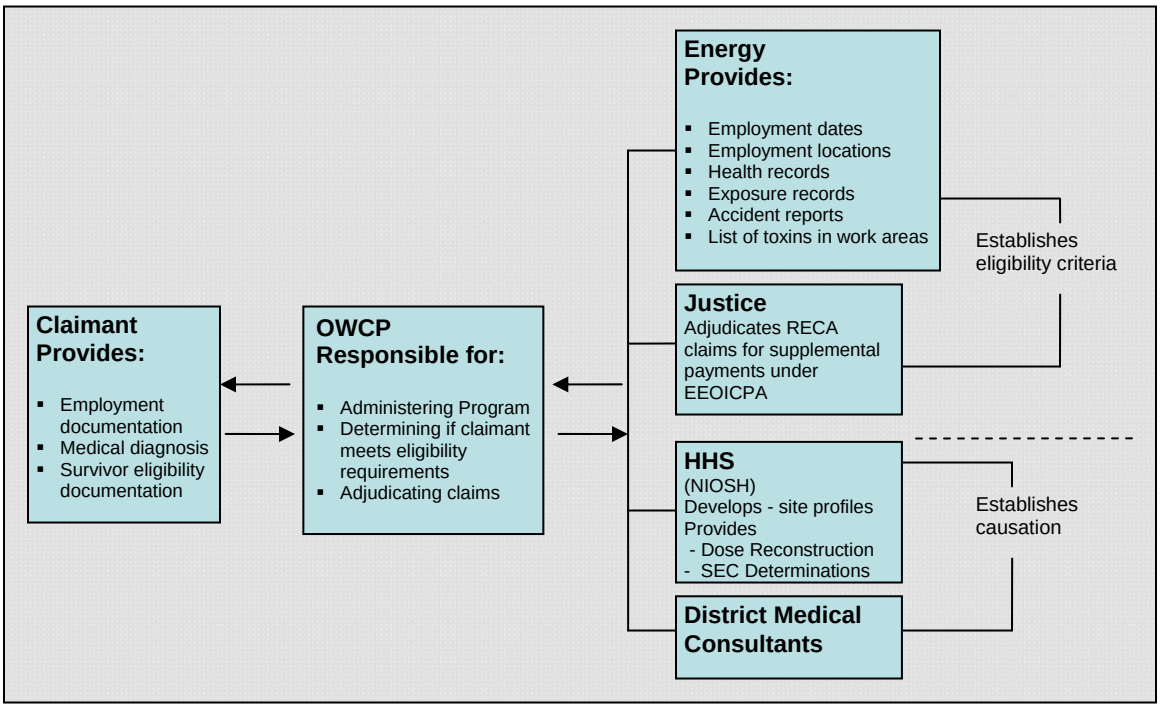
Claims Development and Adjudication

The Division's claims development and adjudication process is designed to give the claimant multiple opportunities to provide DOL with the required information related to their employment and diagnosed illness. Additionally, the Division obtains and reviews reports and medical information from agencies and consultants outside DOL in order to substantiate claims. Claimants may ask for a hearing, request a re-opening of their claim, or object to a decision. The process for developing and adjudicating claims includes the following steps:

- Claim Initialization - Application
- Eligibility Determination
- Causation Determination
- Claim Adjudication

Chart 2 shows the exchange of information needed with other agencies in order to determine eligibility and whether the illness was linked to DOE employment-related toxic exposures.

Chart 2
Federal Agencies and non-Federal Entities Information Exchange



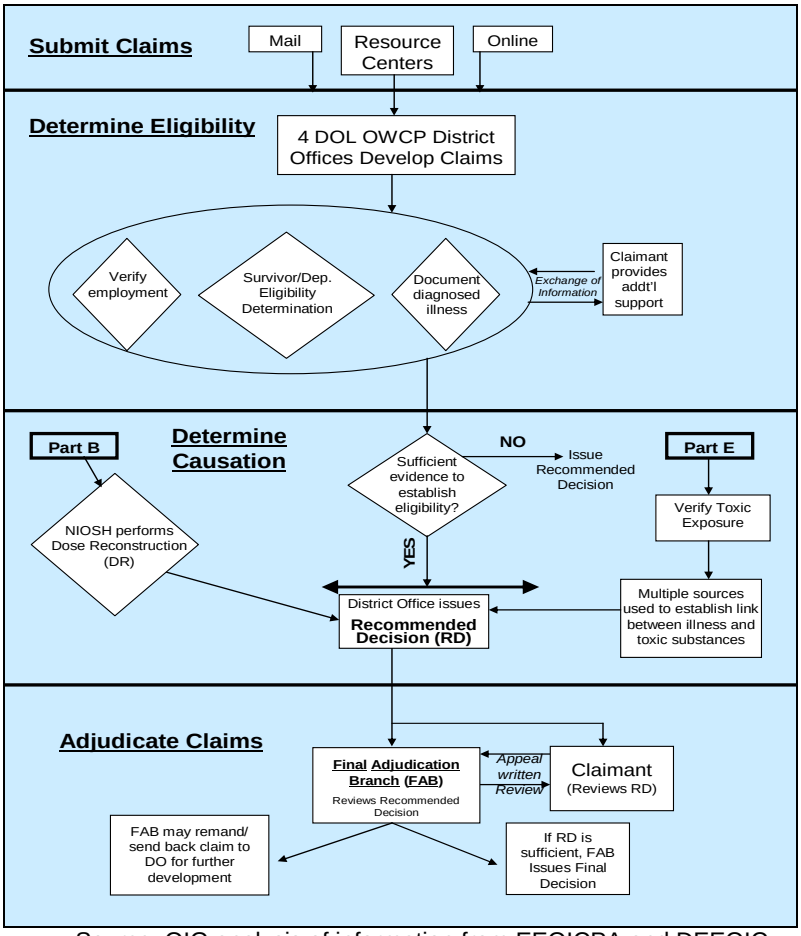
Source: OIG analysis of EEOIPCA

Throughout all phases, the Division must communicate with other Federal and non-Federal agencies, medical consultants, and the claimant to obtain required information. The Division uses the information to develop the claimants' employment and medical evidence as a basis for determining the claimant's eligibility for compensation and benefits.

The Division obtains information from the claimant and the Departments of Energy and Justice to help establish program eligibility. To determine if the claimed illness is as likely as not related to or aggravated by exposures to radiation or toxic substances during DOE employment, the Division uses the claimant's medical diagnosis and information developed by NIOSH, medical consultants, claimant's treating physician, certified toxicologists, industrial hygienist and web-based information using research from recognized medical authorities maintained by the National Library of Medicine.

Chart 3 shows the Division's development and adjudication processes. A detailed discussion of the claims development and adjudication process is included at Exhibit 1.

Chart 3
The Energy Employees Act Claims Development and Adjudication Process



Source: OIG analysis of information from EEOICPA and DEEOIC.

The process starts when the employee or their survivor(s) files a claim[6] with a District Office or Resource Center.[7] The centers conduct outreach, receive claim applications, and initiate actions to verify employment. Resource Centers forward claims received to the District Offices for development.

Once the District Office receives a claim, work begins to determine the employee's eligibility. Staff requests information from the claimant to verify employment, evidence of a diagnosed covered illness, and survivor eligibility.

[6] Examples of the claims forms are in Exhibit 2, pages 35-39.
[7] The 11 contract-operated Resource Centers are located in areas with a high density of former DOE employees. See page 49 for a list of the Resource Centers and their locations.

After the District Office has established that the claimant meets the employment criteria and has a covered illness, it requests and reviews additional information from NIOSH, medical consultants, the claimant's treating physician, certified toxicologists, and industrial hygienists, as well as web based information regarding the relationship between the illness and toxic substances, to determine if the illness was a result of exposure to radiation or toxic substances during DOE employment. NIOSH provides the results of dose reconstruction to help DOL evaluate Part B cancer claims. Using available worker workplace monitoring information, NIOSH scientifically estimates the amount of occupational radiation to which DOE workers were exposed. If workplace data are unavailable, NIOSH uses default values based on scientific assumptions as substitutes that overestimate exposures. Dose reconstructions are not required when assessing Part E claims to determine if there is a link between toxic exposures and the diagnosed illnesses.

Based on their review of this information, District Office claims examiners decide if the exposure was determined to have caused or aggravated the illness, as required by the Act. The examiners forward their assessment to a manager who issues a recommended decision to accept or deny the claim.

District Offices notify the claimant and the Final Adjudication Branch (FAB) of the recommended decision. For denials, claimants have 60 days from the date the District Office issued the recommended decision to object by requesting a formal hearing or review of the claim. The FAB then reviews the recommended decision and the claimant's objections, if any. If the decision is in compliance with program guidance, supported by evidence, and the objection (if filed) did not provide new information, the FAB issues a final decision. If the claimant provides new evidence, the FAB may return the claim to the DOL for additional development or may accept the claim based on the new evidence.

Claims Activity

As detailed in Table 2, DOL reported that since the inception of the program in 2001, workers, or their survivors, have filed 167,498 claims for compensation and medical costs. DOL has issued final decisions on 136,549 claims (82 percent).

Table 2
DOL Program Statistics on Final Decisions Issued
(as of September 2, 2008)

Claim Type	Total Claims	Pending or Closed	Claims with Final Decisions	Denied	Accepted	Total Compensation Paid
Part B	92,696	15,950	76,746	42,281	34,465	$ 2.6 billion
Part E	74,802	14,999	59,803	41,373	18,430	$ 1.3 billion
Total	167,498	30,949	136,549	83,654	52,895	$ 3.9 billion

Source: EEOICPA Program Statistics

The Division publishes an annual Operations Plan establishing program goals and objectives with respect to the adjudication of claims. Program objectives are measured in terms of workload and timeliness. While the number of claims received annually is declining, program liability studies have found that energy employee claims will continue to be filed through 2025.

RESULTS AND FINDINGS

Objective 1 – Did DOL issue claim decisions that complied with applicable law and regulations?

The Department of Labor's decisions to accept or deny claims reviewed in our sample complied with applicable Federal law and regulations. The decisions were based on the evidence provided by or attained on the behalf of claimants, and followed a deliberative process with several layers of review to ensure that claims were substantiated or properly denied. DOL afforded claimants their rights to review and object to decisions. DOL's decisions to administratively close claims were appropriate; claims were closed because the claimant died, withdrew the claim, or left no forwarding address. Furthermore, we reviewed allegations received during the course of the evaluation that claims were being summarily denied based on DOL management guidance and found no evidence that DOL arbitrarily denied claims or had any policy to that end. While we found that decisions were supported, better education of applicants at the point application regarding program eligibility requirements and the collection of medical/employment documentation would help claimants determine if they could be eligible and what is required to establish their eligibility.

DOL Decisions Complied with Federal Law and Regulations

We found that DOL decisions were based on the evidence provided by claimants and complied with Federal law and regulations. We reached this conclusion after reviewing files for a stratified random sample of 140 claims, of which 32 percent were accepted, 36 percent were denied, and 32 percent were administratively closed. Claim file documentation supported each of DOL's decisions. The Division pursued several sources of information to help the claimant establish eligibility, and submitted the evidence to multiple levels of review, as required.

We found that claim files contained the evidence necessary to adjudicate the claims. Such evidence included: medical documentation or death certificates showing diagnosis of an illness; NIOSH dose reconstruction results; medical consultant reports; employment verification reports; and birth and marriage certificates. When the Division accepted a claim, the file showed Division personnel validated the following program requirements: diagnosis of illness; employment records substantiating DOE employment; a determination of causation linking the illness to toxic exposures; and survivor eligibility. When the Division denied a claim, we found that a claim lacked support for one or more of these requirements.

Additionally, we verified that the Division followed a deliberative process to ensure that District Office personnel thoroughly and properly developed each claim. This process included multiple levels of required review and claimants' rights to review and appeal program decisions. However, as discussed later in this report, the Division did not track claims while at NIOSH, resulting in the Division not being able to keep claimants informed about the status of their claims and not taking actions to improve processing time.

Claims examiners completed initial processing to the point of developing the recommended decision and forwarded it to a senior claims examiner who reviewed the claim file and decisions for sufficient evidence. As a final "check," District Office unit managers randomly reviewed claims examiners' work to ensure recommended decisions complied with Federal law and regulations and contained sufficient evidence before sending them to the Final Adjudication Branch (FAB).

The FAB, an independent unit within the Division, reviewed each claim before issuing a final decision. The FAB also issued decisions on claimant objections, if any. Claimants have the right to review findings of fact and decisions. Some claimants waived any objections they may have had, objected to all or part of the recommended decision, or requested a review of the written record or an oral hearing. When the claimant objected to a decision, the FAB reviewed the file and either issued a final decision or returned the claim to the District Office for additional development. When the claimant requested an oral hearing, the Division scheduled a hearing and documented the proceedings in a formal hearing document. We found that claimants objected to 18 percent of the 95 accepted and denied claims in our sample. Because of the hearings, for some claims where additional information was provided, the FAB determined there was sufficient

evidence to support sending the claim back to the District Office for further review. In 12 percent of the objections, the claimant provided additional evidence, and as a result, the decision to deny compensation was reversed. These "checks and balances"—especially the Division's requesting and reviewing additional information to establish claimant eligibility—ensured decisions were based on all available evidence.

The burden of proof is on the claimant to establish his/her eligibility for compensation. However, under the Act, DOL is required to assist claimants with developing their claims. DOL does this by asking other Federal and non-Federal agencies for information to verify employment, length of employment, toxic exposures, and documented health issues. This information is necessary for verifying the illness was DOE employment-related either through the NIOSH dose reconstruction or District claims examiner evaluations of the type and extent of toxic exposures. As of September 2, 2008, DOL had issued decisions to accept or deny 136,549 claims (Parts B and E) and denied approximately 61 percent of them.

Table 3 summarizes the reasons that DOL has reported for denials of Part B and Part E claims since the inception of the program in 2001.

Table 3
Reasons for Denied Claims

Reason for denial	No. denied claims	Percent of denials	No. denied claims	Percent of denials
	Part B *	Part B	Part E**	Part E
Ineligible survivor	2,131	5 %	21,128	51%
Cancer not work-related (Probability of causation less than 50 percent)	16,511	39%	4,236	10%
Insufficient medical evidence	6,841	16%	12,465	30%
Medical condition not covered	11,064	26%	N/A	N/A
Employment requirements not met	5,734	14%	3,544	9%
Total	42,281	100%	41,373	100%

Source: DEEOIC Program Statistics, as of September 2, 2008
* For Part B, 76,746 claims received a decision to accept or deny; 34,465 were approved and 42,281 were denied.
** For Part E, 59,803 claims received a decision to accept or deny; 18,430 were approved; 41,373 were denied.

Further details related to the reasons for denial shown in Table 3 are discussed below.

Ineligible Survivor

DOL reported that 21,128 (51 percent) Part E claims were denied because the survivors did not meet age requirements. Under Part E, eligible survivors include the spouse and children. In order for children to be eligible, they must be: under the age of 18; under the age of 23 and a full-time student at the time of the employee's death; or any age but incapable of self-support. The large number of "ineligible survivor" denials for Part E claims indicates that DOL needs to do a better job of informing the public of the age requirements related to survivor claims.

Cancer Not Work-Related

DOL reported that 16,511 (39 percent) Part B claims were denied because the claimant could not prove that the cancer was DOE employment-related.

The Energy Employees Act requires HHS to provide information to DOL to determine whether cancers occurred as a result of radiation exposure during employment. NIOSH calculates the radiation dose that workers received in a process called dose reconstruction. DOL must deny a claim if the calculation does not result in a 50 percent or higher probability that the cancer is employment related. In order to avoid gathering similar information for each claim associated with a particular facility, NIOSH compiles facility-specific data in "site profiles." NIOSH uses these data, employment information (documented exposure, work performed, and employment length) and the type of cancer to estimate the amount of radiation exposure. DOL uses the NIOSH results to calculate the likelihood that DOE employment caused the cancer.

DOL reported that 4,236 (10 percent) Part E claims were denied because the claimant could not prove that the cancer or other illness was DOE employment-related.

The Energy Employees Act states that DOL may also use physicians' services to determine whether illnesses (Part E cancer or non-cancer) were related to DOE employment. Doctors obtained by claimants provide an opinion after reviewing various types of information that includes, but is but not limited to: medical evidence supporting the claimed illness; types of toxic exposures; length of employment; and other individual employee factors (e.g., smoking history). The Division may also contract for the services of a doctor (medical consultant) to provide a medical opinion when a claimant does not have a personal physician to provide medical evidence, or when a second opinion is required.

Insufficient Medical Evidence

DOL reported that 12,465 (30 percent) Part E claims and 6,841 (16 percent) Part B claims were denied because claimants did not provide sufficient evidence to substantiate the illness, as required. Medical evidence may include the employee's doctor diagnosis, laboratory reports, hospital or other treatment facility reports, death certificates and opinions from medical consultants. In some cases we statistically sampled, we found claimants filed for compensation not because they were currently ill, but because they expected to become sick at a future date. In other cases, illnesses were never diagnosed, or claimants could not obtain medical documentation because physicians had retired and records were no longer available or medical facilities no longer retained old medical records.

Medical Condition Not Covered

DOL reported that 11,064 (26 percent) Part B claims were denied because the illness was not covered. In cases we statistically sampled, we found this primarily occurred because claimants did not have one of the following three illnesses: radiation-induced cancer, chronic beryllium disease, or silicosis. DOL also denied Part E claims if the medical community had not established a link between a toxic exposure and the illness. Examples of medical conditions not covered included tooth loss, extreme fatigue, hearing loss and cardiovascular problems.

Employment Requirements Not Met

DOL reported that 5,734 (14 percent) Part B claims and 3,544 (9 percent) Part E claims were denied because claimants did not meet the employment requirements of the Act. For example, DOE employees are not eligible under Part E (Part E benefits are limited to covered DOE contractor and subcontractor employees, and uranium workers). In cases we statistically sampled, we found DOE employees were unaware that they were not eligible under Part E and filed claims, which were ultimately denied.

Need to Better Educate Claimants at the Point of Application

To make it easier for claimants to file applications, the Division operates 11 Resource Centers across the country. The Resource Centers are available to assist claimants and perform outreach. However, improvements are needed to better educate applicants regarding general program eligibility requirements and the medical/employment documentation required to process their claims.

The Division's 11 Resource Centers are contractor operated and located in areas with a high density of former DOE employees, such as Amherst, New York, and Oak Ridge, Tennessee. These Resource Centers receive a large portion of the claims applications; the four District Offices receive the remainder. (See Appendix A, page 53 for a list of the 11 Resource Centers and their locations.)

District Office claims examiners we interviewed reported that the Resource Centers provide the opportunity for one-on-one contact with the claimant to obtain information and discuss the required documentation needed to ensure the applicant meets the general program eligibility requirements. Claims examiners told us Centers did help claimants in obtaining information, such as medical reports, required to substantiate and develop claims. While the Resource Centers provide valuable assistance to individuals interested in filing a claim, they could do more educate claimants about basic program requirements related to employment, diagnosed illness, and survivor eligibility.

As of September 2, 2008, the Division reported that almost 18,000 Part B and Part E claims had been denied due to insufficient medical evidence or because the diagnosed

medical condition was not covered under Part B. Claims examiners told us that employees generally knew it could take several years for DOL to issue a decision, and the employees expected they would eventually get sick as a result of their worksite exposure to radiation or toxic substances. Consequently, they applied ahead of time—unaware that you must have a covered diagnosed illness when you submit your claim. Once the application was submitted, the District Office was required to process it. If Resource Center officials had informed applicants their claims could not be approved unless they could document that they currently had a covered illness, applicants may have decided not to file a claim.

Under Part E of the Act, surviving children are eligible to receive benefits, but they must meet the following age criteria: under the age of 18; under the age of 23 and a full-time student at the time of the employee's death; or any age but incapable of self-support. Despite these clear age requirements, as of September 2, 2008, about 21,000 individuals had filed Part E claims, only to be denied as ineligible survivors and not meeting the age requirements to qualify. Ineligible survivors accounted for more than half (51 percent) of all Part E claims denied.

Many claims have been denied because basic employment requirements were not met. Not meeting basic employment requirements accounted for 14 percent of all Part B denials and 9 percent of all Part E denials. Better education of applicants at the point of application regarding employment requirements and the collection of employment documentation would help claimants determine if they could be eligible and what additional information would be required to establish their eligibility. In FY 2006, DOL modified its contracts with Resource Center operators to include initiating actions required for employment verification. Employment verification includes completing the employment history form, searching the DOE employee data base, and initiating the request for DOE employment verification. However, we believe more could be done by the Resource Centers to better educate claimants regarding basic program eligibility requirements.

After applications are filed, the claims examiners told us they had to pursue a time-consuming process of sending letters and making followup calls to claimants requesting evidence needed to satisfy the eligibility criteria. In addition, claims examiners told us that older and severely ill claimants had difficulties in understanding written requests for information or web-based material due to its technical nature.

We conclude that greater involvement by Resource Centers to assist claimants with obtaining required medical/employment documentation and better education of applicants at the point of application regarding program eligibility requirements may facilitate claim development and could reduce claimants' unwarranted expectations of potential compensation.

Allegation of Direction to Summarily Deny Claims Not Corroborated

During our review, the OIG received allegations from a former claims examiner that claims examiners had been directed to inappropriately deny claims, and that 85 to 90 percent of claim files contained errors. This individual also alleged that supervisors attached notes to files telling claims examiners to deny claims and examiners denied those claims because they feared losing their jobs.

The OIG conducted a specific inquiry into these allegations and attempted to interview the former claims examiner who made the allegations to obtain more specific information. The former claims examiner stated that she would not agree to a personal interview unless the OIG agreed to meet certain conditions. These conditions were not acceptable to the OIG, and this interview never took place. However, the former claims examiner provided the OIG with the names of three claims examiners who supposedly could support her allegations. We interviewed the three claims examiners, as well as seven more, but no one corroborated the allegations. These claims examiners stated they were never told to summarily deny a claim and claims were only denied after following the appropriate procedures. These claims examiners also stated that they were not threatened, and were not aware of any other claims examiners being threatened, if claims were not denied. Furthermore, claims examiners stated that they believed controls were adequate to ensure claim decisions were proper.

To further explore the allegations, we reviewed 41 claims (5 claims accepted for compensation, 23 denied claims, and 13 administratively closed claims) that were assigned to the former claims examiner while she was working in the Seattle District Office. We found that in all 41 of these cases the Seattle District Office issued properly documented decisions that complied with the program's regulations.

In addition, we reviewed 5 claims (3 denied and 2 accepted for compensation) that had been publicly reported as mishandled by DOL. We found that the Division properly adjudicated these claims in compliance with the law and regulations, and the decisions were adequately supported with required evidence.

Objective 2 — Does DOL ensure that claims are adjudicated as promptly as possible and claimants are kept informed?

EEOICP has made progress in reducing the timeframes to decide both Part B and Part E claims. However, to further reduce claims processing time, we believe DOL can and should do more to: measure timeliness; utilize Resource Centers; obtain claimant information earlier through comprehensive interagency agreements and better information collection processes; manage claims examiners' workload; and communicate with claimants. We also found that, while DOL has many measures of the claims processing phases it is responsible for, there is no overall measure of the time it takes from application to final decision and payment to present a complete picture of how well the program is serving the claimants.

Since the program's inception, the average processing time from application to final decision for both Part B and E claims is more than three years and, in some cases, nearly four years. We recognize that the long timeframes experienced in the earlier years of the program are in part explained by the program's growth that required developing policy guidance, personnel, processes and obtaining available information. Further, the evolution of the program included multiple legislative and program changes that resulted in claim backlogs. For example, the 2004 amendments to the Energy Employees Act abolished Part D administered by DOE, created Part E administered by DOL, and transferred all pending Part D claims to DOL to be processed under the new Part E. Each time a new SEC was approved, DOL was then required to reconsider previously decided claims to determine if claimants were eligible under the new SEC. Finally, the development of more current site profiles also meant that DOL had to rework previously decided claims.

Tables 4 and 5 below present the claims in our sample for Part B and E , respectively, by year of application and year of final decision. The "Average Days to Final Decision" time is calculated from the time of application to the issuance of final decision, and includes the time the claim was under development at NIOSH and/or other Federal agencies. As the tables indicate, the "Average Days to Final Decision" was significantly lower for the more recently received applications.

Table 4
Part B Claims
Average Number of Days from Application to Issuance of the Final Decision

YEAR OF APPLICATION		YEAR OF FINAL DECISION			
Year	Number of Claims Sampled	Number of Claims	Number of Claims	Number of Claims	Average Days to Final Decision
		2005	2006	2007	
2001	15	7	6	2	1713
2002	20	2	12	6	1622
2003	6	2	2	2	1267
2004	3		2	1	777
2005	3		1	2	646
2006	0				n/a
2007	1			1	20
	48	11	23	14	

Source: OIG Stratified Random Sample of Claims Accepted or Denied for Compensation

Table 5
Part E Claims
Average Number of Days from Application
to Issuance of the Final Decision

YEAR OF APPLICATION		YEAR OF FINAL DECISION					
Year	Number of Claims Sampled	Number of Claims	Number of Claims	Number of Claims	Number of Claims	Number of Claims	Average Days to Final Decision
		2003	2004	2005	2006	2007	
2001	7			2	3	2	1556
2002	14	1		2	8	3	1528
2003	9				4	5	1187
2004	13				9	4	892
2005	4				1	3	672
2006							n/a
2007							n/a
Totals	47	1	0	4	25	17	

Source: OIG Stratified Random Sample of Claims
Accepted or Denied for Compensation

In response to our draft report, ESA took exception to the original presentation of Tables 4 and 5, contending delays in processing claims were attributed to ESA when the more significant delays occurred while the claim was at NIOSH or other Federal agencies. To address this concern, we have revised Table 4 and now make no distinction between the various DOL or NIOSH processing phases. However, we continue to believe that the overall duration of time from initial application to final decision is a more meaningful measure of overall program timeliness from the claimant's perspective.

ESA stated that it has made real strides in reducing the timeframes to decide both Part B and Part E cases, noting that initial processing of claims in the District Offices has met the EEOICP's key GPRA average days goals for each year except FY 2002. Further ESA stated that FY 2009 targets for average duration for initial processing will be significantly reduced for both Parts B and E, in part due to resolving the backlog of aged cases in their District Offices.

In FY 2007, DOL reported three program performance measures of EEOICP claim processing activities in its annual Performance and Accountability Report: average number of days to process initial claims for Energy Employees Occupational Illness benefits; percentage of Final Decisions in the Part B and Part E Energy Program processed within 180 days (hearing cases) or 75 days (all other cases); and percentage of Part E claims backlog receiving initial decisions. The results reported by ESA are consistent with the decrease in case processing duration times for more recent applications, as shown in Tables 4 and 5 above. In addition, we note DOL has met its

incremental processing goals and most recently reduced the initial processing goals from 300 days in 2007 to an average of 226 for Part B claims and 290 days for Part E claims in 2008.

While the incremental processing goals are important, DOL does not have an overall measure of the time it takes from application to final decision that presents a complete picture of how well the program is serving the claimants. We recognize that many processes related to the processing of claims are not under DOL's direct control. However, we believe it is important to measure how well the program is serving the claimant and not to solely measure how long a claim is at DOL. In addition, even with the improvements in processing time for the initial development phase of a claim, the average target measure is still almost 9 months at DOL, not including time spent at NIOSH. We believe greater emphasis and measurement of interim milestones for major activities during the initial processing phase could lead to reduced claims processing time overall.

In addition to the lack of measures and reporting on the overall effectiveness of claims adjudication for the Energy Program, we noted several areas where we believe DOL can further improve timeliness and communications with claimants:

- utilize Resource Centers more effectively;
- obtain claimant information earlier through comprehensive interagency agreements and better information collection processes;
- develop a more comprehensive tracking system to facilitate workload management; and
- increase communications with claimants.

Each of these findings is discussed below.

Need to Establish Better Measures of Timeliness

To ensure claims are processed as promptly as possible, DOL needs an overall goal for the duration of time from application to final decision, as well as interim milestones for the initial processing of claims. The duration of time from application to final decision varies based on whether the claim is a Part B or Part E. Part B claims generally require a dose reconstruction by NIOSH, whereas Part E claims do not. DOL administers the program; it does so with the input, assistance and determinations of two other major Federal agencies: Department of Justice (DOJ) and HHS. Accordingly, the duration of time to issue a decision on a claim is affected by processing at NIOSH or DOJ. While DOL has established and tracks 20 timeliness goals for the claims processing activities within DOL, it does not measure the timeliness of claims processed by other agencies nor the total time from application to final decision.

ESA stated that, although DOL is identified as the "lead agency" by Executive Order 13179, HHS/NIOSH has independent legal authority and responsibility to oversee or guide HHS/NIOSH activities. Furthermore, ESA stated that while the outcome of the dose reconstruction conducted by NIOSH ultimately feeds into the EEOICP's adjudication process for affected cases, attempting to incorporate time spent at NIOSH in DOL's timeliness goals would vastly distort the information and so overwhelm the time at DOL as to render the goals useless as a measurement of DOL's efforts.

Although we recognize that many processes are not under DOL's direct control, we believe it is important to measure how well the program is serving the claimant and not to simply measure how long a claim is at DOL.

In addition, DOL needs interim milestones for the initial claim processing phase. During this phase, claims examiners review and process claims for eligibility, assist in obtaining evidence to substantiate the claims, analyze the documented evidence and make program eligibility determinations. (See Exhibit 1.) The FY 2008 goal for the initial processing phase was 266 days. When interviewed, claims examiners expressed concerns about meeting this goal because of difficulties they often encountered in obtaining the necessary evidence. These difficulties involved obtaining employment information and medical documentation from multiple sources. In FY 2007, the initial processing goal of 300 days was reported as not met.

ESA stated that the Division has continually updated its procedures to speed up initial processing of all claims, and has sought ways to efficiently pursue multiple information development efforts. Beginning in September 2005, Resource Centers were directed to initiate employment verification and occupational history development at the inception of each claim. While DOL has reduced claims processing times, and certainly the measuring of goals at significant processing phases is essential, the lack of an overall timeliness goal for processing a claim from application receipt hampers DOL's ability to ensure claimants' needs are being addressed as promptly as possible. Also, because the initial processing phase is lengthy, establishing milestones within this phase based on the detailed actions and major activities required may help identify reasons for processing delays and highlight areas needing increased management oversight.

Need to Better Utilize Resource Centers

As discussed in Objective 1, District Office claims examiners reported that Resource Centers provide the opportunity for one-on-one contact with the claimant to discuss and obtain documentation needed to ensure the applicant meets the general program eligibility requirements.

Claims examiners told us that Resource Centers helped claimants obtain information, such as medical reports, required to substantiate and develop claims. When all documentation was not obtained by the Resource Center, the District Office claims examiner followed a more time-consuming process of sending letters and making follow-up calls to claimants requesting required documentation. Claims examiners

stated that older and severely ill claimants had difficulties understanding written requests for information or web-based material due to its technical nature. As discussed in Objective 1, the main reasons for denials, other than the inability to establish that the illness was DOE employment-related, were lack of medical evidence of a diagnosed illness, failure to meet survivor eligibility criteria, and inability to verify sufficient employment.

ESA stated that Center responsibilities for assisting and educating claimants have grown incrementally over time. ESA further explained that, while the contractor operated Centers provide information that might lead a claimant to decide against filing, to direct the Centers to pre-judge eligibility and attempt to block the filing of apparently ineligible claims would be contrary to the letter and spirit of the EEOICPA. ESA stated that one major type of invalid application – Part B claims for diseases other than the three covered conditions – is no longer a significant problem, while recognizing Part E ineligible survivors remained an issue and agreed it would be valuable to explore expedited evaluation by District Office staff to speed the resolution of these claims.

We agree that Centers should not attempt to block the filing of a claim and that the Division should explore expedited evaluation techniques. However, we conclude that better educating applicants at the point of application regarding program requirements and the collection of medical/employment documentation would help applicants determine if they could be eligible and what is required to establish their eligibility. Greater emphasis and assistance to applicants upfront could also minimize the time required later in the process to gather documentation to support eligibility.

Need Improvements in Obtaining Claimant Information through Comprehensive Interagency Agreements and Better Collection Processes

DOL needs interagency agreements with Federal and non-Federal agencies that clearly delineate each agency's responsibilities for obtaining information needed to verify claimant eligibility. These agreements should provide timelines within which each agency is expected to complete assigned tasks. In addition, the processes used by DOL to obtain information required to verify employment eligibility or obtain medical records are inefficient, time consuming, and result in inconsistent and untimely processing of information in developing claims.

While DOL has interagency agreements with other Federal agencies, the agreements are not specific in describing the process for information sharing. The existing HHS agreement addresses annual funding along with financial operating budgets and the current operational activities and plans at NIOSH for claims processing. However, the agreement does not provide sufficient details of the processes agreed to for the access and exchange of information. For example, methods of information transfers, required response times, and procedures for followup requests are not addressed.

ESA noted that the Division's Procedural Manual documents the arrangement with DOE to promote the efficient verification of employment status and documents detailed

agreements reached with NIOSH on a wide range of issues. ESA further stated that DOL has established and maintained informal interagency agreements with its partner agencies, but recognized the need to explore developing formal Memoranda of Understandings with the other agencies (DOE, DOJ, and HHS).

In November 2007, DOL took steps to improve interagency information coordination with DOE. DOL engaged DOE in discussions about the types of information required to develop and adjudicate claims filed under the Act. District Office personnel stated the discussions were beneficial in identification of information requirements. Also, DOE personnel better understood how DOL used the information to process and adjudicate claims. However, steps have not been taken to improve the processes for sharing information so as to increase timeliness. The lack of detailed working processes with other Federal and non-Federal agencies for obtaining information to assist in the verification of the claim results in inconsistent and untimely processing of information needed to develop claims.

We also found that DOL's processes for verifying employment eligibility and obtaining medical records were time consuming and contributed to the Division not meeting its milestone for the initial processing of claims. Claimants are required to provide evidence to support their claims, but the Division assists claimants by obtaining employment information and medical records from other sources.

District claims examiners stated that the process to request and receive additional employment information required a written request and response. If no response to the initial request was received within 30 to 60 days, the claims examiner sent a followup request. Often several attempts to obtain information were necessary. This process is inefficient because it relies heavily on written requests transmitted through regular mail. In addition, claims examiners do not pursue all sources of employment information from the outset to minimize time elapsed if one source does not provide necessary documentation. For example, a claims examiner may spend several weeks pursuing employment records from DOE, only to learn that DOE cannot confirm the employment. Only then will the claims examiner begin pursuing other sources of information to verify employment.

Table 6 shows various sources that the Division seeks to obtain needed information.

Table 6
Sources for Employment Verification

Source	Verifying Information
DOE	Employment dates Employment locations Radiological dose records Incident or accident Reports Medical records Job description Industrial Hygienist and safety records Pay and salary records
Social Security Administration	Salary records Identification of employer Dates of reported income
Center for the Protection of Workers' Rights	Employment periods Employer Work location(s)
Employers (Contractors)	Employment dates Employment locations
DOJ	Employment records
Claimants	Affidavits verifying employment Personal employment records

ESA told us that DOL has continually updated its procedures to speed initial processing of all claims, and has sought ways to efficiently pursue multiple information development efforts simultaneously. ESA indicated that delays in employment verification we cited have been significantly addressed by these changes, noting a decline in the number of processing days for Part B and E claims.

While we recognize the efforts of the DOL have resulted in improvements, the claims examiners interviewed continue to report they were challenged to meet the Division goal to complete the initial processing milestones because of the difficulties in obtaining information needed to process the claim. This was particularly significant in processing contractor or subcontractor employee claims for which DOE did not have the complete employment records. For example, cases reviewed disclosed that as many as 120 days could elapse while awaiting responses from the sources used to verify employment. Even more time elapsed when the needed information was not provided in response to the first request and followup requests were required.

We do note that while a legal requirement may exist for formalizing in writing certain aspects of the claim processing, other aspects may not require this formality and should be handled through more expedient methods, such as electronic and automated communication. In addition, efforts to pursue all sources of employment information from the outset would minimize time elapsed, particularly for those claims where one source does not provide the needed information.

ESA informed us that DEEOICP will continue to streamline its development procedures and pointed to upcoming procedural changes that will expedite Part E loss and impairment claims by initiating evidence-gathering earlier in the overall process.

Need a Comprehensive Tracking System to Facilitate Workload Management

DOL is primarily responsible for the timely processing of claims of employees and their survivors for Parts B and E compensation and benefits. However, other agencies outside of DOL's control, such as DOE and HHS/NIOSH, have a major role in the process. DOL lacked an effective mechanism for tracking claims under development at other agencies. As a result, DOL did not track the status of claims undergoing dose reconstruction at NIOSH. As of February 21, 2008, there were more than 7,000 claims at NIOSH -- 1,248 claims had been at NIOSH for more than 2 years, and 683 for more than 5 years.

Monitoring claims under development at other agencies is critical to enabling DOL to keep claimants informed regarding their claim status and allowing actions required by DOL to be conducted timely. For example, we noted claims that had been administratively closed by NIOSH because the claimants failed to return the notice to release the dose reconstruction results. DOL was unaware of these administrative closures and unable to notify claimants of their right to object. Although NIOSH notifies claimants as it processes their claims, DOL is also responsible for notifying claimants of their right to object.

ESA stated DOL does not track overall case resolution times (including NIOSH times). ESA noted that, given the delays inherent and institutional in NIOSH dose reconstruction development and the lack of statutory authority to affect change in that process, any attempt by DOL to implement a NIOSH case-tracking protocol would be wasteful and prove fruitless. Further, ESA stated that DOL can compute overall case durations, but they would have little or no operational utility as GPRA or operational goals absent a restructuring of the program by legislation.

We have previously reported that many processes related to the processing of a claim are not under DOL's direct control. However, we believe it is important to measure how well the program is serving the claimant and not to simply measure how long a claim is at DOL. Currently, the timeliness of adjudicating claims from the viewpoint of the claimant – how long it takes from application to final decision, regardless of how many Federal agencies are involved – is not being tracked or measured.

In addition, comprehensive system reporting is needed to enable DOL to monitor and manage each claims examiner's workload. Claims examiners stated they did not use available reports to manage their cases and they were concerned about their inability to monitor their workloads. The Division provided several internal reports to assist its District Offices in monitoring claim status. District Office managers could, but were not required to, use these reports to assess progress in meeting timeliness goals. Three key reports were:

- Claims pending payments
- Claims that had received a recommended decision awaiting a final decision
- Part E (formerly Part D) claims requiring development

We judgmentally reviewed 213 claims identified in the three key monitoring claim status reports. We reviewed 90 claims for timeliness in processing and 123 for late payments. We found 17 of 123 claims (14 percent) with late payments that ranged from 43 to 383 days. We attribute the late payments to the lack of consistent use of available reports by fiscal officers to monitor required payments and that payment forms were not properly prepared prior to release. The lack of supervisory oversight and followup procedures for ensuring that required payment forms are returned in a timely manner also contributed to the late payments.

ESA stated it uses workload reports that track the internal progress of case adjudications, for all stages through payment. ESA noted that these reports are constantly evolving and are refined as necessary.

In 2007, DOL reported that it did not meet 7 of 20 timeliness goals for processing claims. In addition, while we noted improvements in claims processing timelines in the 95 claims we reviewed, the process from application to final decision is still very lengthy and many claims continue to take as long as 2 years to process. According to the claims examiners we interviewed, delays in processing were due to the large number of claims under development, which sometimes prevented them from being aware that specific claims were not going to meet the Division's claims processing goals. While the Division provides the District Offices with detailed data to monitor how claims examiners are managing their cases and the status of claims, all Districts did not use the data to ensure cases were being effectively managed. Claims examiners were concerned about their inability to better monitor their workload because their performance standards included timeliness measures.

ESA told us that the planned implementation of the Unified Energy Case Management System (UECMS) will allow for even more effective means of monitoring case progress to ensure timely outcomes. However, we conclude that a comprehensive tracking system that addresses all claim processing activities would allow increased oversight of claims in process, improved management of resources for claims processing, and timelier information on the status of claims.

Need Increased Communication with Claimants

The Division could do more to communicate with claimants. Communication with claimants throughout the claims development and adjudication process is typically done by telephone, as well as through written requests for information. Contact points throughout the process include notification of: status of claim; recommended and final decisions; rights to file objections; closure of claims; reopening of claims; reconsiderations of claims; remanded claims; and claims pending payments. In addition, the program has a web site that provides general program information.

We reviewed 115 of 1,008 items of correspondence from FYs 2006 and 2007 and found that many were related to disagreements with issued decisions. However, more than 50 percent (60 of 115) of the correspondence involved requests for updates on claims' status and complaints about the time required to process claims. We reviewed 42 claims that had not received a recommended final decision, and 95 claims that had received final decisions (including 17 claims that involved an appeal) to determine the type of communication DOL was having with claimants. The Division generally communicated with claimants as required by its internal policy, but due to the lengthy claims development process, there were often extended periods of time without any communication.

ESA concurred with the need to continually improve its communication with claimants. ESA stated that upon deployment of its new case management system, it will have a platform that will support the future development of much more substantial electronic communication. This will include case imaging and internet access to case status. However, ESA does not believe that it should routinely communicate with claimants regarding the status of activities being conducted by NIOSH, citing duplication of NIOSH communications and the opportunity for confusion and error.

OIG believes that DOL, as the lead agency, must develop the necessary coordination with other Federal agency processing partners to avoid claimant confusion and duplication of effort. OIG further believes that, because multiple agencies are involved and may be communicating with the claimant, it may reduce confusion if the claimant had a single point of contact at DOL. More frequent updates could reduce the stress and anxiety placed on claimants, many of whom are ill, and their families, who are unsure as to efforts being made to process their claims.

Recommendations

We recommend that the Assistant Secretary for Employment Standards:

1. Establish a comprehensive system to track all claims from point of application through final decision and payment. Such a system should account for all steps in the claims intake, development, adjudication, and payment process, regardless of the agency handling the processing. This system should be used consistently by all District Offices to better manage and prioritize work.

2. Establish improved interagency agreements with all Federal partner agencies that specify expectations and the details of work to be performed.

3. Establish an overall performance measure for the timeliness of processing claims from point of application to final decision and payment, as well as delineating more milestones and goals for the initial processing phase.

4. Expand Resource Centers' responsibilities to include helping claimants obtain evidence to support claim and better educate the claimant on requirements for eligibility.

5. Pursue multiple sources of information required to develop and/or verify evidence to establish a claim simultaneously, rather than one source at a time.

6. Increase contact with claimants to keep them informed of the status of their claim and information and/or actions needed to complete their claim. Automate communications and use electronic exchange of information with partner agencies, and to the extent possible, with claimants.

Elliot P. Lewis

Exhibits

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Exhibit 1

Claims Development and Adjudication Process

Submit Claims. The employee or their survivor(s) (if employee is deceased) may file a claim in person or by mail to a District Office (DO) or Resource Center, or via the Internet.[8] Resource Center staff may assist employees or survivors in filling out necessary forms and obtaining accurate information on the employee's employment and occupational history–required for the District Office to review and develop the claim. The Resource Centers send the claim form to the DOs for development.

Determine Eligibility. The four District Offices are responsible for determining eligibility. Eligibility is defined as establishing survivor's eligibility if the claim is being filed for a deceased DOE employee. Also, eligibility must be established to show employment and a diagnosed illness.

a. Survivor eligibility. To determine if claims are valid, the District offices must establish survivor eligibility. The Division requires claimants provide documents such as marriage and birth certificates, and divorce decrees to show proof there is an established relationship with the employee, as required by the Energy Employees Act. The Division may recommend a decision to deny the claim because there is insufficient evidence to establish survivor eligibility.

b. Employment Verification. District Offices verify employment to establish that the employee worked at covered DOE site and to confirm locations (e.g., location of DOE facility) and periods he/she performed the work. The District Offices require this information in order to determine whether the employee's exposure at a DOE facility were as likely as not the cause of the illness. DOE is the primary source used to verify employment. However, because of the numerous contractors and subcontractors, the Division requests information from several other sources to verify employment, including:

1. Oak Ridge Institute of Science and Education (ORISE) database of DOE employees.
2. Direct contact with previous employers (contractors and subcontractors) to obtain employment information.
3. Social Security Administration requests to obtain pay and employer information.
4. Center for the Protection of Workers Rights, a trade union organization that can provide dates and employer information.
5. Affidavits provided by co-worker attesting to DOE employment.

c. Medical documentation. Part B covers the following illnesses: radiation-induced cancer, chronic beryllium disease and chronic silicosis. Part E covers illnesses

[8] A claim form is available at http://www.dol.gov/esa/owcp/energy/regs/compliance/EEOICPForms/ee-1.pdf.

or death resulting from exposure to a toxic substance. Claimants are required to provide medical evidence to establish the claim. Medical evidence includes a diagnosis specifying the illness (strongest support) or copies of laboratory reports or test results. The Energy Employees Act regulations stipulate that the burden of proof is the responsibility of the claimant. However, the Division also requests medical records from DOE to assist in verifying the diagnosis of an illness.

Determine Causation. Based on program eligibility, the District Offices use the services of NIOSH and medical consultants for completing the claims development process. NIOSH provides services for evaluating Part B and Part E cancer claims, by performing dose reconstructions. Medical consultants, claimant's treating physician, certified toxicologist, industrial hygienist and web-based information on relationship between illnesses and toxic substances are used by claims examiners to assess Part E illnesses to determine if there is a link between toxic exposures and claimed illnesses. After reviewing the information, the District Office determines whether the exposure was related to causing or aggravating the illness. The District Office then proceeds to issue a recommended decision to accept or deny the claim.

a. The Energy Employees Act provides guidelines for determining whether Part B cancer claims (if not included in a Special Exposure Cohort petition) were at least as likely as not related to employment at the DOE facilities. These guidelines include methods for estimating the radiation doses received by the employee. At the time of our evaluation, NIOSH had issued 32 guidance changes, resulting in DOL re-evaluation of 12,955 cases to determine whether a new dose reconstruction was required. NIOSH changed its guidance because of new information about specific DOE sites that affected the dose reconstruction process.

b. To determine if the exposure to toxic substances caused the illness or death, Part E of the Energy Employees Act includes guidelines to use physician services to establish the link between exposures and illness. The medical consultants provide medical opinions whether the diagnosed illnesses or death was aggravated, contributed to, or caused by exposure to toxic substances. The Division used 7 appointed and 78 contracted medical consultants. Considering the specific issues of each case, claims examiners identify the medical specialty required to assess the medical condition and to make determinations as to whether the claimed illness was induced by toxic exposures during DOE employment.

Additionally, the Division maintains a database called the Site Exposure Matrix (SEM) to assist claims examiners in determining whether toxins known to exist at DOE sites may have caused or aggravated the illness. The SEM includes information by occupational titles, toxins present within the specific work locations, and information linking the toxins to the claims' illness. Division procedures require the use of this database, but allow review of information from other sources in establishing the link between the toxin and the illness.

Adjudicate Claims. District Offices prepare and issue the recommended decision based on the eligibility and causation development actions. The Offices send the recommended decisions simultaneously to the claimant and the Final Adjudication Branch (FAB). District Offices may recommend decisions to either accept or deny the claim for compensation. Accepted claims include validated eligibility criteria and a determination that illness was a result of employment exposure to radiation or toxic substances. Reasons to deny a claim may include: ineligibility of survivor, insufficient medical or employment information, the probability of causation for radiation exposure less than 50 percent, or the medical consultant's determination that the claimed illness was not caused by work-related toxic exposures. The FAB's role is to provide another level in the Division's processes to ensure that issued decisions complied with law and program guidance. The FAB reviews the decision for sufficiency, and also reviews appeals made by claimants if there are disagreements with the decision.

After receiving the recommended decision and the supporting case documents, the FAB determines whether it is in compliance and adequately supported. If unsupported, the FAB will return the claim to the District Office. If the FAB agrees with the recommended decision, and the claimant does not object, the FAB issues the final decision.

The Energy Employees Act regulations include procedures for the claimant to object to all or part of the recommended decisions. Claimants may object to decisions by requesting a formal hearing or a review of the claim. In either case, the FAB considers current and new evidence provided before issuing a decision. Depending on the impact of the additional evidence, the FAB may return the case to the District Office for additional work or decide the new information does not substantially alter the recommended decision and issue a final decision. After a final decision is issued, the claimant may still request the reopening of the claim. The request can be based on disagreement with the decision, presentation of new facts, or the onset of a newly diagnosed illness. Claimants can always request a reopening of their claim based on new evidence or the onset of another illness. Therefore, the Division never considers a case as closed.

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Exhibit 2

DEEOIC Claim Forms
EE-1 Energy Employee Claim Form

Claim for Benefits Under the Energy Employees Occupational Illness Compensation Program Act

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

Note: Provide all information requested below. Do not write in the shaded areas.

OMB Number: 1215-0197
Expiration Date: 08/31/2010

Employee Information (Please Print Clearly) Submit Reset Print

1. **Name** (Last, First, Middle Initial)
2. **Social Security Number**
3. **Date of Birth** (Month, Day, Year)
4. **Sex** ☐ Male ☐ Female
5. **Dependents** ☐ Spouse ☐ Children ☐ Other:
6. **Address** (Street, Apt. #, P.O. Box)
   (City, State, ZIP Code)
7. **Telephone Number(s)**
   a. Home: ( ) -
   b. Other: ( ) -

8. Identify the Diagnosed Condition(s) Being Claimed as Work-Related (check box and list specific diagnosis)

	9. Date of Diagnosis Month	Day	Year
☐ **Cancer** (List Specific Diagnosis Below)			
a.			
b.			
c.			
☐ **Beryllium Sensitivity**			
☐ **Chronic Beryllium Disease** (CBD)			
☐ **Chronic Silicosis**			
☐ **Other Work-Related Condition(s) due to exposure to toxic substances or radiation** (List Specific Diagnosis Below)			
a.			
b.			
c.			

Awards and Other Information

10. Did you work at a location designated as a Special Exposure Cohort (SEC)?	☐ YES ☐ NO
11. Have you filed a lawsuit seeking either money or medical coverage for the above claimed condition(s)?	☐ YES ☐ NO
12. Have you filed any workers' compensation claims in connection with the above claimed condition(s)	☐ YES ☐ NO
13. Have you or another person received a settlement or other award in connection with a lawsuit or workers' compensation claim for the above claimed condition(s)?	☐ YES ☐ NO
14. 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
15. Have you applied for an award under Section 5 of the Radiation Exposure Compensation Act (RECA)? **If yes, provide RECA Claim #:**	☐ YES ☐ NO
16. Have you applied for an award under Section 4 of the Radiation Exposure Compensation Act (RECA)?	☐ YES ☐ NO

Employee Declaration

Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under 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 EEOICPA and affirm that the information I have provided on this form is true. If applicable, I authorize the Department of Justice to release any requested information, including information related to my RECA claim, to the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency, including the Social Security Administration) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Employee Signature _____ Date _____

Resource Center Date Stamp

Form EE-1
April 2005

Next Page

EE-1 Page 2, containing instructions for completion, is not included but is available on the DOL website at http://www.dol.gov/esa/owcp/energy/regs/compliance/claimsforms.htm

EE-2 Claim for Survivor Benefits

Claim for Survivor Benefits Under the Energy Employees Occupational Illness Compensation Program Act

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

Note: Provide all information requested below. Do not write in the shaded areas.
Submit | Reset | Print

OMB Number: 1215-0197
Expiration Date: 08/31/2010

Deceased Employee Information (Please Print Clearly)

1. Name (Last, First, Middle Initial)
2. Sex ☐ Male ☐ Female
3. Social Security Number
4. Date of Birth (Month / Day / Year)
5. Date of Death (Month / Day / Year)
6. Was an autopsy performed on the employee? ☐ YES - List Medical Facility: ☐ NO ☐ DON'T KNOW

Survivor Information (Please Print Clearly)

7. Name (Last, First, Middle Initial)
8. Sex ☐ Male ☐ Female
9. Social Security Number
10. Date of Birth (Month / Day / Year)
11. Your relationship to the deceased employee ☐ spouse ☐ child ☐ step child ☐ parent ☐ grandparent ☐ grandchild ☐ Other:
12. Address (Street, Apt. #, P.O. Box) (City, State, ZIP Code)
13. Telephone Numbers a. Home: ( ) - b. Other: ( ) -

14. Identify the Diagnosed Condition(s) Being Claimed as Work-Related (check box and list specific diagnosis)

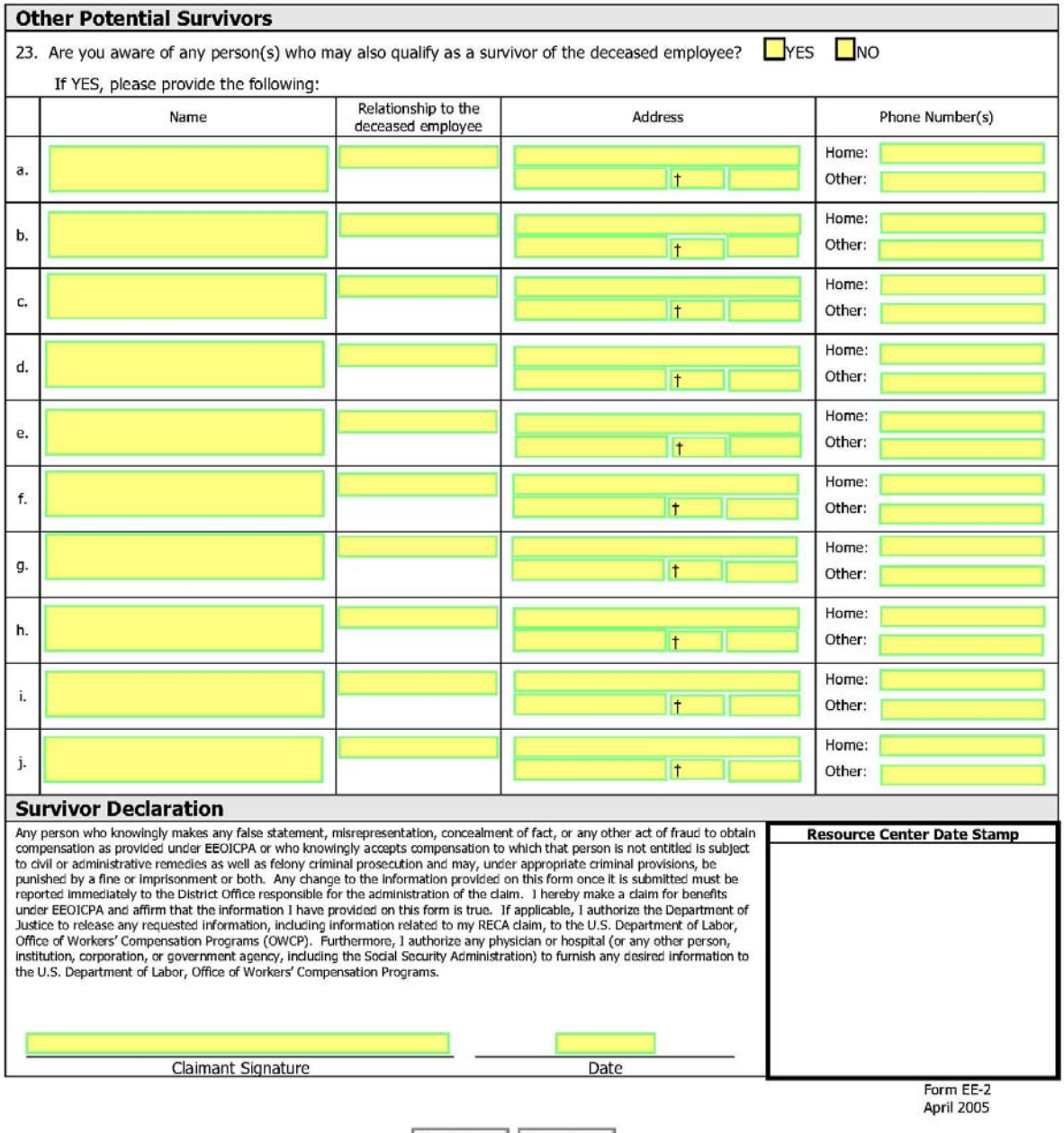
	15. Date of Diagnosis Month	Day	Year
☐ Cancer (List Specific Diagnosis Below)			
a.			
b.			
c.			
☐ Beryllium Sensitivity			
☐ Chronic Beryllium Disease (CBD)			
☐ Chronic Silicosis			
☐ Other Work-Related Condition(s) due to exposure to toxic substances or radiation (List Specific Diagnosis Below)			
a.			
b.			
c.			

Awards and Other Information

16. Did the employee work at a location designated as a Special Exposure Cohort (SEC)?	☐ YES ☐ NO
17. Have you or the deceased employee filed a lawsuit seeking either money or medical coverage for the claimed condition(s)?	☐ YES ☐ NO
18. Have you or the deceased employee filed any workers' compensation claims in connection with the claimed condition(s)?	☐ YES ☐ NO
19. Have you, the deceased employee, or another person received a settlement or other award in connection with the above claimed condition(s)?	☐ YES ☐ NO
20. 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
21. Have you or the employee applied for an award under Section 5 of the Radiation Exposure Compensation Act (RECA)? If yes, provide RECA Claim #:	☐ YES ☐ NO
22. Have you or the employee applied for an award under Section 4 of the Radiation Exposure Compensation Act?	☐ YES ☐ NO

Form EE-2
April 2005

Next Page



Other Potential Survivors

23. Are you aware of any person(s) who may also qualify as a survivor of the deceased employee? ☐YES ☐NO

If YES, please provide the following:

	Name	Relationship to the deceased employee	Address	Phone Number(s)
a.			†	Home: Other:
b.			†	Home: Other:
c.			†	Home: Other:
d.			†	Home: Other:
e.			†	Home: Other:
f.			†	Home: Other:
g.			†	Home: Other:
h.			†	Home: Other:
i.			†	Home: Other:
j.			†	Home: Other:

Survivor Declaration

Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under 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 EEOICPA and affirm that the information I have provided on this form is true. If applicable, I authorize the Department of Justice to release any requested information, including information related to my RECA claim, to the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency, including the Social Security Administration) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Claimant Signature _____ Date _____

Resource Center Date Stamp

Form EE-2
April 2005

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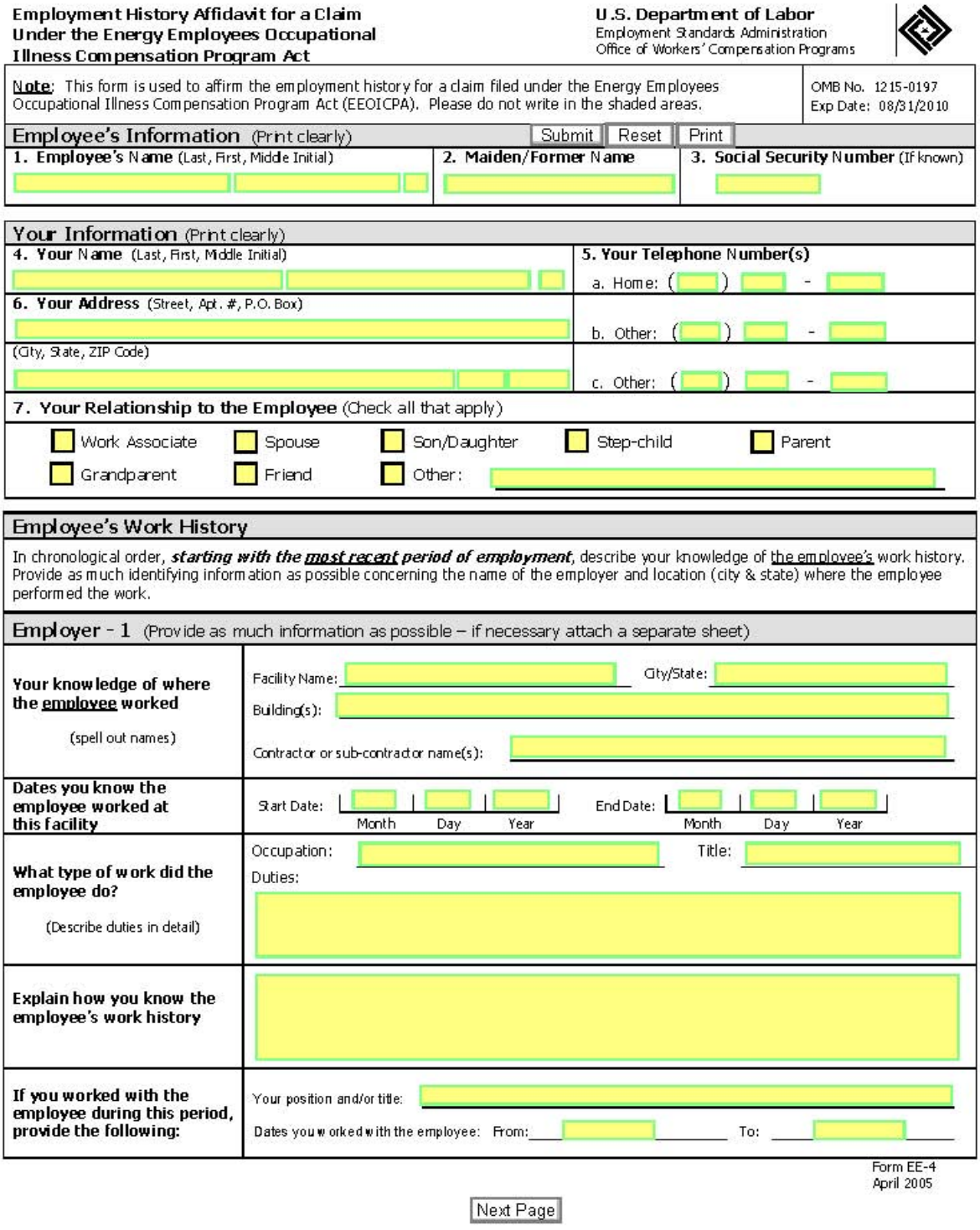
EE-2 Page 3, containing instructions for completion, is not included but is available on the DOL website at http://www.dol.gov/esa/owcp/energy/regs/compliance/claimsforms.htm

EE-4 Employment History Affidavit



Employment History Affidavit for a 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 for a claim filed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Please do not write in the shaded areas.

OMB No. 1215-0197
Exp Date: 08/31/2010

Submit Reset Print

Employee's Information (Print clearly)

1. **Employee's Name** (Last, First, Middle Initial)
2. **Maiden/Former Name**
3. **Social Security Number** (If known)

Your Information (Print clearly)

4. **Your Name** (Last, First, Middle Initial)
5. **Your Telephone Number(s)**
   a. Home: ( ) -
   b. Other: ( ) -
   c. Other: ( ) -
6. **Your Address** (Street, Apt. #, P.O. Box)
   (City, State, ZIP Code)
7. **Your Relationship to the Employee** (Check all that apply)
   Work Associate; Spouse; Son/Daughter; Step-child; Parent; Grandparent; Friend; 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 the employee performed the work.

Employer - 1 (Provide as much information as possible – if necessary attach a separate sheet)

Your knowledge of where the employee worked (spell out names)	Facility Name: City/State: Building(s): Contractor or sub-contractor name(s):
Dates you know the employee worked at this facility	Start Date: Month Day Year End Date: Month Day Year
What type of work did the employee do? (Describe duties in detail)	Occupation: Title: Duties:
Explain how you know the employee's work history	
If you worked with the employee during this period, provide the following:	Your position and/or title: Dates you worked with the employee: From: To:

Form EE-4
April 2005

Next Page

EE-4 Page 2, containing instructions for completion, is not included but is available on the website at http://www.dol.gov/esa/owcp/energy/regs/compliance/claimsforms.htm

EE-7 Medical Requirements Under EEOICPA

Medical Requirements under the Energy Employees Occupational Illness Compensation Program Act

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

OMB No. 1215-0197
Expiration Date: 08/31/2010

The information in this form is intended to notify a claimant or physician of the medical evidence needed to support all claims under Part B or Part E of EEOICPA, and to establish a diagnosis of the following defined illnesses: Beryllium Sensitivity, Established Chronic Beryllium Disease, Chronic Silicosis and Radiogenic Cancer. Medical evidence may include narrative reports, physician notes, diagnostic test results, imaging studies, laboratory work-ups, pathology reports, operative reports, pulmonary function assessments, autopsy evaluations, death certificates, etc. The completed medical package should be submitted to the appropriate district office of OWCP. Decisions regarding coverage under EEOICPA are contingent on the submission of appropriate medical and factual evidence. This form provides information regarding medical requirements only. Maintain a copy of all documents for your records.

General Requirements

All claims filed under EEOICPA must include a medical report(s) providing:

- A history of the claimed illness or death
- A physical examination and its findings
- The clinical laboratory tests performed and discussion of the results
- A diagnosis (ICD-9 coded, if possible) and the date when it was first documented

Requirements for a Diagnosis of Beryllium Sensitivity Under Part B Only

- Abnormal Beryllium Lymphocyte Proliferation Test (LPT) performed on blood or lung lavage cells

Requirements for a Diagnosis of Established Chronic Beryllium Disease Under Part B Only

If the initial date of diagnosis was made **on or after January 1, 1993**, medical documentation must include an Abnormal Beryllium Lymphocyte Proliferation Test (LPT) and at least one (1) of the following:

- Lung biopsy showing a process consistent with chronic beryllium disease
- A computerized axial tomography scan showing changes consistent with chronic beryllium disease
- A pulmonary function study or exercise tolerance test showing pulmonary deficits consistent with chronic beryllium disease

If the initial date of diagnosis was made **before January 1, 1993**, medical documentation must include at least three (3) of the following:

- Characteristic chest radiograph or computed tomography denoting abnormalities
- A restrictive or obstructive lung physiology test or diffusion lung capacity defect
- Lung pathology consistent with chronic beryllium disease
- A clinical course consistent with chronic respiratory disease disorder
- Immunologic tests showing beryllium sensitivity (skin patch test or beryllium test preferred)

Requirements for a Diagnosis of Chronic Silicosis Under Part B Only

One (1) of the following:

- A chest radiograph, interpreted by a NIOSH-certified B reader, confirming the existence of pneumoconiosis with a 1/0 ILO category or higher
- Results from a computer-assisted tomograph or other imaging technique consistent with silicosis
- A lung biopsy consistent with silicosis

Requirements for a Diagnosis of Radiogenic Cancer Under Part B or Part E

- The pathology report(s) (e.g., tissue biopsy or blood test) that forms the basis for the diagnosis of cancer and identifies the malignant neoplasm present
- A narrative report that addresses whether there are metastases present and the affected anatomic sites, as well as the presence of any cancer-related syndromes or other complications

Form EE-7
April 2005

EE-7 Page 2, containing instructions for completion, is not included but is available on the website at http://www.dol.gov/esa/owcp/energy/regs/compliance/claimsforms.htm

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Exhibit 3

DEEOIC Timeliness Goals Trends 2007

The Division of Energy Employees Occupational Illness Compensation develops and publishes an annual Operational Plan that includes objectives and goals. The Operational Plan includes workload and timeliness goals. The timeliness goals evaluate discrete actions to be taken as part of the claims development and adjudication processes. There are 16 goals evaluating District Office performance and 4 evaluating the Final Adjudication Branch. The goals have generally remained consistent since FY 2001. The following table shows the FY 2007 goals and accomplishments:

DEEOIC Timeliness Goals Trends 2007

	Goal	Target	Part B (Actual)	Part E (Actual)	Goal Achieved
1	Create claims within 5 calendar days of receipt	95%	96.6%	96%	Yes
2	Take initial action within 14 calendar days of creating claim	90%	96.3%	85.3%	No
	Take initial action within 25 calendar days of creating claim	95%	97.8%	87.2%	No
3	Complete initial processing of Claims within 180 calendar days of claim receipt	60%	60%	47.9%	No
	Complete initial processing of Claims within 300 calendar days of claim receipt	80%	76.5%	65.3%	No
4	Establish baseline (average number of days) for completion of initial processing		238	266.7	n/a
5	Complete initial processing for 90 percent of the claims received before June 8, 2005 by the end of FY 2007	90%	97%	94.7%	Yes
6	Calculate probability of causation (POC) and issue recommended decision within 60 days after NIOSH returns the claim (Parts B and E)	90%	83.2		No

	Goal	Target	Part B (Actual)	Part E (Actual)	Goal Achieved
7	When Cases are returned due to an addition to the Special Exposure Cohort (SEC), complete Part B recommended decisions or refer to NIOSH within the timeframes established for the particular SEC group. .	75%	In FY 2007, DEEOIC did not meet timeliness goals for 11 of the 14 sites for which it was monitoring SEC petition approvals.		N/A
8	Issue final decisions within 30 calendar days of receiving the claimant's waiver to his/her right to a hearing or review of record	85%	88%	89%	Yes
9	Issue final decisions in all approved or no-contest claims within 75 calendar days of the recommended decision (GPRA Goal)	85%	87%	84%	No
10	Issue final decisions for review of written record within 75 calendar days of the request for review of the written record (GPRA Goal)	85%	79.3%	82.5%	No
11	Issue final hearing decisions in formal hearing within 180 calendar days of the request for hearing (GPRA Goal)	85%	80%	85.8%	No
12	Take initial actions on remands and director's orders within 30 calendar days of receiving the claim in the District Office	90%	96.3%	93.2%	Yes
13	Make recommended decision after remand or director's order within 120 days	75%	67.9%	70.9%	No
14	Process lump sum payments within 15 calendar days of receiving claimant's EN-20 form (payment-related information)	90%	97.8%	98%	Yes
15	Respond to priority inquiries within the time frame established by Secretary Information Management System (generally 14 calendar days)	See next measure			
16	District Office (DO) responds to telephone inquiries within 2 business days	90%	96.4% (average of all DOs for Parts B and E)		Yes
17	Complete reopening request in the District office within 90 days	75%	79.7%	93.7%	Yes

	Goal	Target	Part B (Actual)	Part E (Actual)	Goal Achieved
18	Respond to requests for medical authorization (threads) within 5 calendar days	75%	75% (for both Parts B and E)		Yes
19	Complete recommended decisions on the total available part E Backlog claims (GPRA Goal)	100%		100%	Yes
20	Establish baseline measurements for completing recommended decisions on wage loss and impairment (Part E only)				
	Wage-loss (from receipt of Wage loss Claim)			321.1 days	n/a
	Impairment (from receipt of Impairment Claim)			209.5 days	n/a

Source: DEEOIC 2007 Operational Plans and Summary Results for both Parts B and E claims

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Appendices

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Appendix A

Background

U.S. Nuclear Weapons Industry

Since World War II, the Department of Energy (DOE) and its predecessor agencies have employed thousands of people in jobs related to the production of nuclear weapons. Due to national security concerns related to the U.S. nuclear weapons testing and production, the Federal government gave workers limited information about the work. Many employees were unknowingly exposed to high levels of radiation and dangerous substances such as uranium and beryllium, and may have not received adequate protection.[9] Between 1980 and 2000, more than two dozen scientific findings showed that certain groups of employees who worked at DOE nuclear weapons facilities had faced increased risks of dying from cancer and other diseases. Some studies showed a correlation with the diseases and exposure to radiation and beryllium.[10]

The Energy Employees Occupational Illness Compensation Program Act of 2000

Congress passed the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOIPCA or Energy Employees Act) as Title XXXVI (Public Law 106-398) of the Floyd D. Spencer National Defense Authorization Act for Fiscal Year 2001. The president signed it into law on October 30, 2000. Congress's intent was to provide compensation to nuclear energy workers and their survivors for work-related illnesses. Executive Order 13179, signed on December 7, 2000, assigned responsibilities to:

> The Secretary of Labor for administering and deciding all questions not assigned to other agencies, arising under the Act, including determining the eligibility of individuals and their survivors for compensation and benefits.
>
> The Secretary of Health and Human Services for arriving at and providing estimates of radiation doses received by individuals applying for assistance for whom there are inadequate records of radiation exposure; for considering and issuing determinations on petitions by classes of employees to be treated as members of the Special Exposure Cohort; and for providing the Advisory Board with administrative services, funds, facilities, staff, and other necessary support services.
>
> The Secretary of Energy for providing the Secretary of Health and Human Services and the Advisory Board on Radiation and Worker Health with access to all relevant information and other technical assistance needed to carry out the

[9] Executive Order 13179 — Providing Compensation to America's Nuclear Weapons Workers. December 7, 2000.
[10] Title 42. The Public Health and Welfare. Chapter 84. The Department of Energy. Subchapter XVI-Energy Employees Occupational Illness Compensation Program. Part A – Establishment of Compensation Program and Compensation Fund. (a) (5) and (6).

responsibilities; for requiring DOE contractors, subcontractors or designated beryllium vendor to provide information relevant to a claim.

The Attorney General for notifying claimants or their survivor whose claim for compensation under section 5 of the Radiation Exposure Compensation Act (RECA) has been or is approved by the Department of Justice, of the available supplemental compensation and benefits under the Energy Employees Occupational Illness Compensation Program.

Advisory Board on Radiation and Worker Health for advising the Secretary of Health and Human Services on scientific validity and quality of dose reconstruction efforts performed; for advising whether there is a class of employees at any Department of Energy facility who were exposed to radiation, but for whom it is not feasible to estimate their radiation dose; and for advising on whether there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

Parts B and E

The Energy Employees Act of 2000 established Part B, which provided compensation and benefits for beryllium, silicosis and radiation-related cancers. Part B provides a lump sum payment of $150,000 and medical benefits to eligible workers (DOE employees, contactors and subcontractors employees) who are ill due to exposure to radiation, beryllium, or silica while working for the Department of Energy (DOE) in the nuclear weapons industry. It also compensates employees' survivors and offers supplemental lump-sum payments of up to $50,000 to individuals already found eligible for benefits for illnesses covered under Section 5 of the RECA, and, where applicable, for their survivor.

The 2004 amendments to the Energy Employees Act abolished Part D, created Part E and extended compensation to uranium workers, eligible under section 5 of RECA.[11] Part E compensates covered DOE contractor, subcontractor employees, and uranium workers who are diagnosed with an illness due to toxic exposures at DOE and AWE facilities. Part E compensation pays benefits to employees based upon degree of impairment and lost wages.

Administration

The Division of Energy Employees Occupational Illness Compensation (the Division), within the Employment Standards Administration's Office of Workers' Compensation Programs (OWCP), is responsible for administering the Energy Employees Act.

In FY 2007, the Division had 464 authorized full-time equivalent positions. The Division contracts for operations of the 11 Resource Centers that conduct outreach and accept EEOICPA claims applications. They are located in:

[11] Uranium workers as defined by RECA are miners, millers and ore transporters.

- Amherst, New York
- Espanola, New Mexico
- Idaho Falls, Idaho
- Las Vegas, Nevada
- Livermore, California
- North Augusta, South Carolina
- Oak Ridge, Tennessee
- Paducah, Kentucky
- Portsmouth, Ohio
- Richland, Washington
- Westminster, Colorado

The four District Offices (Cleveland, Ohio; Denver, Colorado; Jacksonville, Florida, and Seattle, Washington) are responsible for claims development. The Division's Headquarters (Washington, D.C.) and each District Office house a Final Adjudication Branch (FAB). The FAB is independent of the District Offices and validates the District Offices' recommended decisions before issuing final decisions.

Budget

The Division's annual budget includes funds to support administrative operations at both the Departments of Labor and Health and Human Services. The Division's total administrative budget for fiscal years 2006 and 2007 was as follows:

Operating Budget for DEEOIC
FY 2006 and FY 2007 (Dollars in thousands)

	2006 (Actual)	2007 (Actual)	2008 Request
DOL	$ 95,904	$115,621	$ 106,272
HHS	$ 59,830	$ 54,836	$ 55,358
TOTAL	$155,674	$170,457	$ 161,630

Source: Division of Energy Employees Occupational Illness Compensation

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Appendix B

Objectives, Scope, Methodology, and Criteria

Objectives

Our objectives were to answer the following questions:

1. Did DOL issue claim decisions that complied with applicable law and regulations?

2. Does DOL ensure that claims are adjudicated as promptly as possible and that claimants are kept informed?

The evaluation was performed in response to requests from Senator Charles Schumer (D-NY) and Congressman C.W. "Bill" Young (R-FL) and inquiries from several members of Congress and the public as to whether claims are appropriately adjudicated.

Scope

For Objective 1, our scope covered claims with decisions to accept or deny for compensation and administratively closed claims for the period October 1, 2005, through June 30, 2007. From the universe of 20,309 (Parts B and E) claims with decisions to accept for compensation, 40,315 (Parts B and E) claims with decisions to deny; and 8,886 (Parts B and E) claims administratively closed, we randomly selected 140 claims with decisions or administrative closures to test. We selected the most recent decisions issued in order to review the controls and quality of the Division's decisions. We extracted information from the Division's Energy Case Management System (ECMS) by individual claim associated with a single worker. A worker represents a case level that can have multiple associated claims with different processing times and circumstances. For example, a worker may file a Part B and/or Part E claim, or there may be multiple survivors (spouse, natural children, or adopted children), each potentially representing a separate claim. Files were reviewed to determine whether DOL issued claims that complied with applicable law and regulations.

For Objective 2, our scope covered management's processes to ensure that claims are adjudicated as promptly as possible and claimants are kept informed. We focused on timeliness goals established by the Division in their annual Operational Plan from FY 2004 through FY 2007, to include four Government Performance Review Act (GPRA) timeliness goals and the actions taken to ensure that the goals were met. We used ECMS management reports, as of July 1, 2007, that identified claims that were not meeting the Operational Plan standards. The specific timeliness standards reviewed were claims pending payment that were more than 60 days old (total of 123 claims), Part E Backlog (formerly Part D) claims transferred to DOL in 2005 (total of 48 claims), and claims that had received a recommended decision but had not been issued a final decision within 60 days (total of 42 claims). We also reviewed 42 out of 4,109 claims that had not received a decision prior to January 1, 2006, to determine why the claims had not received a final decision.

Our evaluation was conducted in accordance with Quality Standards for Inspections published by the Presidents Council on Integrity and Efficiency.

Methodology

We designed our tests to include the 4 District Offices responsible for the development and claims adjudication. We conducted field work at DEEOIC District Offices in Cleveland, Ohio; Denver, Colorado; Jacksonville, Florida, and Seattle, Washington. We also conducted field work at the National Office (HQ) in Washington, D.C.

In planning and performing the evaluation, we relied on computer-generated data maintained in ECMS. We determined that the data were sufficiently reliable. We tested the data for completeness to verify that all claims in the scope of our review were identified. Then we traced the claims' status to source documents for those claims included in our samples. We reported program statistics provided on the DOL web site as of September 2, 2008, identifying the reasons claims were denied since program inception to provide an overview of program operations.

To accomplish Objective 1, we requested claims information, by claimant, from the Division's ECMS. The number of claims totaled 69,510. We sampled 140 claims that had received decisions using a stratified random sampling methodology and tested the decisions on those claims to determine whether DOL had complied with law and regulations. We did not project our results to the population. The population of claims from which we randomly sampled is presented in the table below.

TYPE	POPULATION	SAMPLE
Final Decision to Accept (FDA)	40,315	45
Final Decision to Deny (FDD)	20,309	50
Administrative Closure (AC)	8,886	45
Totals	**69,510**	**140**

To determine if claims were appropriately adjudicated, we reviewed evidence in files used by claims examiners in the development of recommended decisions and by the Final Adjudication Branch to issue final decisions. The evidence reviewed included:

- Employment and payroll records verifying DOE employment.
- Death certificates verifying survivor eligibility and cause of death (diagnosed illness).
- Marriage certificates verifying survivor eligibility.
- Doctor or pathology reports verifying the claimed illness.
- NIOSH dose reconstruction results showing that the diagnosed cancer was at least as likely as not caused by radiation exposure during DOE employment.

- Claimant reports of toxic exposures.
- Site Exposure Matrices results showing toxic exposures based on occupation, DOE facility, and whether there was a known causal link between the toxic exposure and the diagnosed illness.
- Industrial hygienist reports verifying whether toxic substances were present at DOE facilities.
- District Medical Examiner reports as to whether the exposure to toxic substances was at least as likely as not a contributing factor in aggravating, contributing to or causing the diagnosed illness.

We also discussed individual claims with program officials (claims examiners, senior claims examiners, branch chiefs, hearing representatives, and senior leadership at the FABs and District Offices) to verify the processes and questionable facts.

We interviewed key program officials and contractors, and reviewed program guidance contained in the statute, regulations, and technical bulletins to develop an understanding of the program. We reviewed claims assigned to the National Office and 4 District Offices and the Final Adjudication Branch for decision development.

We also reviewed claimant and Congressional correspondence in the Division's Secretary Information Management System to identify concerns and program issues. We judgmentally reviewed 115 out of a 1,008 letters submitted to DOL from October 1, 2005, through March 30, 2007, to identify program-related issues.

In developing our test of internal controls, we interviewed program officials to identify program controls implemented to ensure appropriate decisions. Multiple levels of review were established based on the program structure. Each District Office was comprised of units including claims examiners, senior claims examiners and section leaders. Claims could receive at least 2 levels of review before the District Office issued its recommended decision. Within the FAB, the claims examiner reviewed the claim and recommended decision to validate them before the branch's chief issues the final decision. If the FAB identified facts that were not considered, the FAB has authority to remand (return) the claim to the District Office for additional development. The FAB also conducts a hearing at the request of the claimant to address disagreements or to explain the findings. Based on the information provided by the claimant at the hearing, the FAB could return the claim to the District Office for additional development. Program guidance was issued in regulation, procedure manuals, and technical bulletins.

Using the stratified random sample of accepted and denied claims, we reviewed the claims to determine if the claimants appealed recommended decisions and to determine the outcome of the appeals. Using ECMS data, we identified the appealed claims, reason for appeals, actions taken to review the claim based on the appeal, and the decisions issued as a result of the appeal.

Using the stratified random sample of claims that were administratively closed, we reviewed the claims to determine if the claim was delayed prior to the claimant's death and what DOL actions were taken to issue a decision.

We also selected a stratified random sample of 42 claims from a population of 4,109 claims in ECMS that had not received a decision prior to December 31, 2005. We determined why a decision had not been issued if the Division had unduly delayed the claim processing, and if the Division claimants were notified of DOL's development actions and the claim's status. The sample was established using a 90 percent confidence level, 10 percent precision, and a 10 percent expected error rate. The sample was selected by unique claim number.

To address the allegations made by the former Seattle Claims examiner, a separate inquiry was performed. The former claims examiner would not agree to a personal interview, but provided the OIG with names of three claims examiners who supposedly could support her allegations. We interviewed the three claims examiners, and seven others that had worked with her. We also reviewed claims identified in the ECMS where the claims examiner issued decisions or were identified in interviews the claims examiner gave to news reporters. These decisions were developed by the claims examiner between August and September 2007. We tested these decisions to determine whether they were in accordance with laws and regulations and fully documented in the case files.

To accomplish Objective 2, we identified the goals established in the Division's annual Operational Plans to ensure timely claims processing and actions taken as a result of Quarterly Review and Analysis meetings addressing program execution. We obtained a listing of management reports used to monitor the claims development process. Based on available reports, we selected those identifying significant process points to identify and determine why claims were or were not processed in accordance with the timeliness goals. The areas selected for review were Part E backlog cases that were transferred to the Division in FY 2004; claims with a recommended decision but no final decision; and claims that had received a final decision to accept compensation payment, but had not been paid. We did not validate the accuracy of the reports.

We judgmentally selected 213 individual claims from these reports that were 30 days since a decision was issued and required further actions to complete the payment or issue a final decision. We reviewed claim files and other documentation showing the development actions taken. We interviewed claims examiners, fiscal officers, and senior district officials to gain an understanding of the process, controls, and reports to ensure timely and accurate processing. We validated the Division's action to process payments up to the point it sent payment information to the Department of Treasury for disbursement.

We talked with program officials (claims examiners, senior claims examiners, branch chiefs, hearing representatives, and senior leadership at the FABs and District Offices)

about individual claims to verify the processes and questionable facts. We reviewed the following evidence:

- Notification of initial development letters
- Notification of recommended decisions
- Notification of final decisions
- Notification of dose reconstruction
- Notification of dose reconstruction results
- Correspondence requesting additional information to substantiate employment, the claimed illness, or survivor eligibility.

To determine whether claimants objected to decisions and the outcomes of those objections, we reviewed the ECMS case data for the 95 claims (45 accepted and 50 denied) to determine if the claimant objected to a recommended decision, the type of objection (request for review of the written record or request for a hearing), and the final decision issued as a result of the adjudication process.

Criteria

Energy Employees Occupational Illness Compensation Act of 2000, as amended

Executive Order 13179, issued December 7, 2000; Providing Compensation to America's Nuclear Weapons Workers

20 CFR Parts 1 and 30, Performance of Functions; Claims for Employees Under the Energy Employees Occupational Illness Compensation Act of 2000, as Amended; Final Rule

42 CFR Part 82, Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Final Rule

Division of Energy Employees Occupational Illness Compensation, Part B Procedure Manual, dated September 2004

Division of Energy Employees Occupational Illness Compensation, Part E Procedure Manual, dated September 2005

Energy Employees Occupational Illness Compensation Program Final Bulletins 2002 through 2007

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Appendix C

Acronyms and Abbreviations

CBD	Chronic Beryllium Disease
CBS	Chronic Beryllium Sensitivity
CE	Claims Examiner
CFR	Code of Federal Regulations
COPD	Chronic Obstructive Pulmonary Disease
DEEOIC	Division of Energy Employees Occupational Illness Compensation
DOL	Department of Labor
DMC	District Medical Consultant
DO	District Office
DOE	U.S. Department of Energy
DOJ	U.S. Department of Justice
DR	Dose Reconstruction
ECMS	Energy Case Management System
EEOICPA	Energy Employees Occupational Illness Compensation Program Act
ESA	Employment Standards Administration
FAB	Final Adjudication Branch
FD	Final Decision
GPRA	Government Performance Review Act
HHS	U.S. Department of Health and Human Services
IH	Industrial Hygienist
NIOSH	National Institute for Occupational Safety and Health
NO	National Office
OIG	Office of Inspector General
OWCP	Office of Workers' Compensation Programs
ORISE	Oak Ridge Institute of Science and Education
RC	Resource Center
RD	Recommended Decision
RECA	Radiation Exposure Compensation Act
SEC	Special Exposure Cohort
SEM	Site Exposure Matrix
SSA	Social Security Administration
USC	U. S. Code

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Appendix D

Glossary of Terms

Adjudication – Final processes for DEEOIC to review the Energy Employees Act claims and issue the recommended and final decision to approve or deny compensation and/or medical benefits.

Advisory Board on Radiation and Worker Health – Presidentially-appointed body that advises the Secretary of Health and Human Services on dose reconstruction issues and approval of petitions for certain classes of DOE workers to be designated as a Special Exposure Cohort.

Beryllium - A naturally-occurring light, hard, silver-gray metal used in the production of weapons and reactors. Beryllium's toxic dusts and fumes may produce an immune response known as "sensitization" that can be detected in the blood.

Beryllium sensitivity - An immune system allergic reaction to the presence of beryllium in the body as the result of inhaling beryllium dust particles or fumes.

Chronic Beryllium Disease - A pulmonary disorder in which granulomatous inflammation develops after exposure and subsequent sensitization to beryllium. The lungs and thoracic lymph nodes are the primary sites involved.

Claims development – DEEOIC District Offices' process of collecting and reviewing information and evidence related to employment, worksite exposure, medical diagnosis, and related conditions to support an individual's claim under the Energy Employees Act.

Claimant – An employee or survivor who applies for Energy Employees Act benefits.

Dose reconstruction – A scientific estimate of the amount of occupational radiation to which DOE workers were exposed. NIOSH uses available worker and/or workplace monitoring information. In cases where radiation exposures are not available, default values based on reasonable scientific assumptions are used as substitutes that err on the side of overestimating exposures.

Covered facilities – There are 365 facilities listed in the Federal Register (Vol. 69; No. 162) as covered facilities which are approved DOE, Office of Health, Safety, and Security as authorized facilities.

District Medical Consultant – Physicians under contract with DEEOIC to help determine if there is a link between toxic exposures and claimed illnesses.

Division of Energy Employees Occupational Illness (The Division) – A division within the Office of Workers' Compensation Programs (OWCP), which is responsible for administering the Energy Employees Act.

Energy Employees Occupational Illness Compensation Program Act (Energy Employees Act) – Federal law passed in 2000 and amended in 2004 that provides compensation and medical benefits to eligible DOE workers and contractor employees who developed cancer or other debilitating illnesses due to exposure to radiation and other toxic materials while engaged in nuclear weapons production. Eligible survivors may receive compensation.

Final Adjudication Branch (FAB) – A National Office organization with District Office locations in: Jacksonville, Florida; Cleveland, Ohio; Denver, Colorado; and Seattle, Washington. The National Office FAB is located in Washington, D.C. The FAB Chief is located in the Washington, D.C. office and oversees the operations of the NO FAB and the four FAB offices co-located with the Districts. The FAB issues final decisions on Energy Employees Act claims.

Final decision – This is the decision of the Final Adjudication Branch (a separate entity within the DOL's Office of Workers' Compensation Programs). The regulation governing the implementation of the Energy Employees Act specifies that all recommended decisions are to be forwarded to the Final Adjudication Branch for issuance of the final decision. The regulation allows claimants to object to all or part of the recommended decision within 60 days from the date the decision is issued. The FAB is required to consider all timely filed objections to the recommended decisions and if requested, conduct a hearing. Regardless of whether or not an objection is filed, the FAB must review all recommended decisions, all arguments and evidence of record, and then issues a final decision. A Final Decision can then be appealed to the U.S. District Courts.

Government Performance and Results Act (GPRA) – Federal law, passed by Congress in 1993, requires Federal programs to annually set performance targets and report whether or not they were achieved.

Hearing – A formal hearing conducted at the request of the claimant to object to the recommended decision, or a claimant request for a review of the written record before a final decision is issued by the FAB. The FAB will review the written record, the claimant's objection, and any additional evidence submitted, to determine whether or not the DO findings should be accepted. Once this review is complete, the FAB issues a final decision.

Industrial Hygienist – A professionally trained person who can identify, evaluate, prevent and control environmental factors from the workplace, which may cause sickness or impaired health. In reviewing Part E claims, Division uses certified industrial hygienists, claimant's treating physician, certified toxicologist, and web-based information on relationship between illnesses and toxic substances.

Oak Ridge Institute of Science and Education (ORISE) – Institute managed for the U.S. Department of Energy by Oak Ridge Associated Universities. ORISE maintains a Human Studies Research Database with information covering more than 400,000 DOE

employees from the 1940's until the early 1990's. DEEOIC Resource Centers use the database to verify employment for some Energy Employees Act claimants.

Probability of causation (POC) – The determination, made by the DEEOIC, of whether or not the employee's cancer was at least as likely as not related to employment at the work site. DEEOIC reviews various types of information to make the determination, including the type of cancer, the energy employee's age, the year the cancer was diagnosed, and the type and level of radiation to which the energy employee was exposed. For those claims with radiation related cancer, DOL uses the Interactive Radio Epidemiological Program to interpret the NIOSH dose reconstruction results.

Radiation Exposure Compensation Act (RECA) – Law passed by Congress in 1990 that provides compensation to individuals who contracted certain cancers due to their exposure to radiation released during above-ground nuclear weapons tests or as a result of their exposure to radiation during employment in underground uranium mines. The Department of Justice adjudicates claims under RECA.

Recommended decision – District Office's proposed acceptance or denial of Energy Employees Act claim for benefits. District Office sends all recommended decisions to the Final Adjudication Branch (FAB) for review and notifies the claimant of the action.

Remand – During the adjudication process, the FAB may return the case to the District Office and request additional information or evidence to support the claimant's eligibility.

Resource Center (RC) – One of 11 contractor-operated facilities administered by the DEEOIC which help claimants file for benefits under the Energy Employees Act. The RCs help claimants obtain required information and documentation and forwards applications to DEEOIC District Offices.

Silicosis – Illness resulting from long-term exposure (more than 20 years) to low silica dust. The dust causes swelling in the lungs and chest lymph nodes and may obstruct breathing.

Site Exposure Matrix (SEM) – A database on toxic substances present at DOE and RECA sites covered under Energy Employees Act Part E. The database is available on the Internet (www.sem.dol.gov). This website also has information on scientifically established links between toxic substances and recognized occupational illnesses. DOL uses the SEM in conjunction with information from the claimant's treating physician, certified toxicologist, industrial hygienist and other web-based information to establish relationships between illness and toxic substances in determining if the illness was a result of exposure to radiation or toxic substances during DOE employment.

Site Profile – A document prepared by NIOSH with information on DOE facilities' activities and radiation protection practices. NIOSH uses site profiles to "evaluate the personal and site specific data for each case" it receives from DEEOIC.

Special Exposure Cohort (SEC) – A presidentially-approved class of employees at any DOE facility whose Energy Employees Act claims can be compensated without dose reconstruction or determination of the probability of causation because insufficient recorded data exists on radiation exposures at the DOE or AWE facilities where they worked. SEC members must be diagnosed with at least one of 22 specified cancers and have worked at one of the approved SEC work sites. NIOSH reviews SEC petitions.

Survivor Eligibility – Criteria used to determine if an individual may lawfully receive compensation benefits for an individual who filed for benefits under Part B or E of the Energy Employees Act. Under Part B, survivor eligibility is determined at the time of compensation payment. Survivorship under Part E is determined at the time of the covered employee's death.

Appendix E

Agency Response to Draft Report

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

October 30, 2008

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
For Audits

FROM: VICTORIA A. LIPNIC

SUBJECT: Audit of the Energy Employees Occupational Illness Compensation Program
Report No. 04-08-004-04-437

Thank you for the opportunity to comment on the Office of the Inspector General's (OIG) audit report regarding the performance of the Energy Employees Occupational Illness Compensation Program (EEOICP) claims adjudication process.

Summary Response

We concur with the central finding of the report that the EEOICP's decisions are based on evidence and in accord with the law and implementing regulations, and specifically that a former claims examiner's allegations of impropriety in the Seattle district office were totally without merit. These are important findings in light of the questions raised by various parties as to whether EEOICP claims processing was being accomplished fairly and in accord with law. We are gratified that OIG's case reviews confirmed the Office of Worker's Compensation Programs' (OWCP) own evaluation of its case work practices via its annual accountability review process.

However, we do not concur with the report's conclusions under Objective Two: 'Does DOL have a system in place to ensure that claims are adjudicated as promptly as possible and claimants are kept informed?' The report makes significant errors and omissions which result in mischaracterizing the EEOICP's systematic efforts to accomplish both timeliness and effective communications.

Based on a review of a sample of decisions reached in 2006 and 2007, the report concludes that EEOICP cases continue to take several years to reach a final decision, and that DOL does not have a system in place to ensure prompt adjudication. However, that conclusion for Part B is based almost entirely on data that incorporates the extremely long NIOSH dose reconstruction process, over which DOL has no authority or control. Further, the data presented for Part E does not discuss the history of that program's evolution and does not acknowledge the intensive and ongoing EEOICP efforts to expedite Part E claims, and

therefore, misrepresents the trends in timeliness for Part E. More broadly, the report does not acknowledge the substantial changes the EEOICP has made in both its adjudication processes and its performance management systems to address the dramatic program shifts that have occurred.

Contrary to the report's findings, the EEOICP has made real strides in reducing the timeframes to decide both Part B and Part E cases. Initial processing of claims in the district offices has met the EEOICP's key GPRA average days goals for each year except FY 2002, at the inception of the program, and we met these goals again in FY 2008. The FY 2009 targets for average duration for initial processing will be significantly reduced for both Part B and E, in part because we succeeded this year in resolving virtually the entire aged backlog of cases in our district offices. Likewise, timeliness of DOL's final adjudication process has been steadily improved throughout the seven-year history of the program, with nearly 93 percent of claims receiving final decisions within program target timeframes in FY 2008. These positive trends reflect the impact of DOL's effective, and continuously improved, tracking and program performance management systems. They are certainly not compatible with the OIG finding that "DOL does not have an effective system to ensure that claims are processed and adjudicated as promptly as possible."

Errors Regarding DOL/EEOICP's Relationship with HHS/NIOSH for Part B cases

With respect to the National Institute for Occupational Safety and Health (NIOSH) component, the report misconstrues the relationship between the EEOICP and NIOSH. Although DOL is identified as the "lead agency" by Executive Order 13179, the Department of Health and Human Services (HHS)/NIOSH has independent legal authority and responsibility for its portion of the Act, and DOL/EEOICP is given no authority or responsibility to oversee or guide HHS/NIOSH's activities. While EEOICP's timeliness goals do incorporate data received from the Department of Energy (DOE), this is not the case for information derived from NIOSH's does reconstruction process. The NIOSH dose reconstruction process is an entirely stand-alone activity, which reaches its own independent conclusion for each case, typically after a period of years at NIOSH. While that outcome ultimately feeds into the EEOICP's adjudication process for affected cases, attempting to incorporate time spent at NIOSH into DOL's timeliness goals would vastly distort the information and so overwhelm the time at DOL as to render the goals useless as a measurement of DOL's efforts. In addition, in part because the NIOSH process must continually reflect new factual and scientific information, it has undergone continual and significant changes over the years, making any attempt by the EEOICP to project the timeliness of dose reconstructions extraordinarily difficult.

Attachment A shows the relative durations for all Part B cases decided as of September 30, 2008, which either required both EEOICP and NIOSH processing, or EEOICP processing only. The latter cases have been adjudicated within an average of 266 days, versus an average of 1,200 days for NIOSH-involved cases. The EEOICP has performance goals for reducing the processing time for each of the three components it controls: initial preparation of a case before referral to NIOSH, completion of the recommended decision after NIOSH's dose reconstruction is complete, and issuing the final decision. With the

exception of the period between 2005-2007, which was negatively impacted by the creation of the Part E program and our receipt of a huge backlog of cases from the DOE's former Part D program, the EEOICP has been able to gradually and progressively reduce those time frames. During the years covered by the OIG's sample, had the EEOICP focused on attempting to reduce the overall duration of cases, including the NIOSH duration, progress (or lack of it) against that goal would have had no relationship to the EEOICP's timeliness efforts, and the global measure would not have any bearing on the effectiveness of our efforts to improve our own processes.

The report's finding that the EEOICP is remiss in not tracking in detail and communicating with claimants about the internal processing stages of the NIOSH dose reconstruction activity is similarly not supportable. As already noted, NIOSH's processes are wholly independent, and NIOSH communicates extensively and directly with claimants while they are engaged in their process. Any attempt by the EEOICP to track, monitor and duplicate that communication would be duplicative and wasteful. It would also create additional confusion for claimants, introduce multiple opportunities for mis- and cross-communication errors, and generate disputes between the agencies. Claimants are already overwhelmed with the complex information provided by NIOSH and the EEOICP; to further complicate that flow of information with an additional, overlapping layer would be extremely counterproductive.

In sum, the report treats the legally and operationally separated NIOSH and EEOICP processes as if they were a unified system. We fully acknowledge that the interface between the EEOICP and NIOSH is complex and difficult for claimants to understand, but DOL has no authority to unilaterally absorb or unify the two systems without legislative change.

Errors Regarding Part E

The report likewise asserts that Part E processing is untimely, citing average time frames to reach a final decision of three or more years. However, the report's analysis of Part E durations is wrong, as demonstrated in its discussion of the small sample of cases presented in Table 5, p. 24. One of the report's most serious errors is that its Table 5 discussion fails to note that the Part E program was not created until October 2004, and that 42 of the 46 cases displayed in the table suffered the greater part of their delay with DOE, not DOL.

The report also erroneously suggests that the somewhat reduced durations for 2004 and 2005 cases resulted from the maturation of the program at the EEOICP. This is incorrect because the earlier years' claims simply lingered longer at DOE under the former Part D program. No valid assessment of the current trend in timeliness of Part E adjudication can be made based on an analysis that includes the time cases were pending at DOE under another piece of legislation that was subsequently repealed. Thus, it is reasonable to conclude that the EEOICP was only able to make timely decisions on cases after it was given the statutory responsibility for Part E.

Further, the report makes a passing reference (in Exhibit 1, not in the body of the report) to the Site Exposure Matrices. EEOICP has developed this important automated tool to assist Part E claimants and EEOICP staff in documenting exposures and medical causation. Its ongoing enhancement has allowed EEOICP staff to greatly expedite Part E claim development in a large portion of cases.

Following are a number of more specific concerns or suggested corrections regarding the report, as well as our responses to the report's individual recommendations.

Detailed Responses

1. **The report errs in displaying EEOICPA benefit payments (Table 2, p. 16). Total benefits as of September 2, 2008 exceeded $4.2 billion, not $3.7 billion.**

2. **Page 17 of the report indicates that 32% of claims included in its "statistical sample" of 140 were administratively closed.**

   OWCP is unsure of the basis for this specific claim. In fact, OWCP data for all claims filed during the life of the program shows that only 7.6% have been administratively closed.

3. **Table 4 on page 23 of the report (showing the average number of days for Part B claims processing) misrepresents the timeliness of DOL adjudication of these cases.**

   Although the data is described as a "statistical sample," the 16 cases which are represented as "Claims that did not require NIOSH dose reconstruction" are shown as averaging several years to complete. This is a startling outcome in light of DOL statistics for such cases. For all Part B claims adjudicated by DOL (2001 to 2008), the average time to issue a final decision for cases not requiring a NIOSH dose reconstruction is 266 days (see attachment A).

   Based on that disparity, DOL requested and received a list of the 16 claims that are represented on Table 4 as claims that did not require NIOSH dose reconstruction. Thirteen of the 16 cases were, contrary to the table, actually sent to NIOSH to receive a dose reconstruction, and the overwhelming bulk of the delay for each of those 13 cases was incurred at NIOSH. Two other claims were administratively closed and then reopened years later, but the table inappropriately included all the intervening time in the calculation of duration.

4. **The report mischaracterizes DOL's timeliness goals for initial processing. The report states (p. 25 and elsewhere) that "the timeliness goal for initial processing of a claim is nearly a year."**

   In fact, DOL has set differing goals for initial processing in different fiscal years, reflective of the then current state of the two parts of the program (large initial

backlogs, the expectation of workoff of old cases, etc.). For FY 2008 the GPRA goal for Part B was an average of 226 days, and final result was 164 days. For Part E the goal was 290 days, and actual performance was 284 days. The goals for FY 2009 will be lowered further, in recognition that most of the older cases have now been resolved and the inventory is therefore "younger." This is a complex, evolving program, and while we continue to work to speed processing, occupational disease cases will always be time-consuming to develop.

5. **The report asserts that DOL is unable to effectively inform a claimant that their claim has been administratively closed by NIOSH because DOL does not track the progress of claims while being processed at NIOSH (p. 29).**

   This is incorrect. In fact, NIOSH formally notifies the EEOICP when they determine that a case should be administratively closed. Upon such NIOSH notification, the EEOICP contacts the claimant or next of kin to inform them of any steps necessary to avoid an administrative closure, or that the claim will be administratively closed.

6. **The OIG obtained and reviewed certain DOL case tracking reports, and identified from them 17 instances where payment had been delayed (p. 29).**

   Some of those cases were unfortunately delayed despite having been flagged on these management reports, however, since FY 2003 97.6% of the almost 38,000 payments were made timely, i.e., within the program's targeted goal of 15 days from receipt of form EN-20 (the last piece of documentation required from the beneficiary). As evidence of further progress, you should be aware that 99% of the payments issued in FY 2008 met that important standard.

Responses to OIG Recommendations

Recommendation No. 1: Establish a comprehensive system to track all claims from point of application through final decision and payment. Such a system should account for all steps in the claims intake, development, adjudication, and payment process, regardless of the agency handling the processing. This system should be used consistently by all District Offices to better manage and prioritize work.

Response: For the reasons discussed above, the EEOICP tracks only the overall progress of cases that have been transferred to NIOSH, not internal NIOSH stages. Also, the EEOICP does not track overall case resolution times (including NIOSH time). Given the delays inherent and institutional in NIOSH dose reconstruction development and our lack of statutory authority to affect change in that process, any attempt by DOL to implement a NIOSH case-tracking protocol would be wasteful and prove fruitless. DOL already works with NIOSH where possible to expedite work in the program, but dedicating DOL resources to an interagency tracking effort

would neither improve our ability to serve our claimant population nor lead to improvements in NIOSH performance. DOL can compute overall case durations, but they would have little or no operational utility as GPRA or operational goals absent a restructuring of the program by legislation.

DOL does, however, utilize workload reports that track the internal progress of case adjudications, for all stages through payment. These reports are constantly evolving and are refined as necessary. The planned implementation of a Unified Energy Case Management System (UECMS) will allow for even more effective means of monitoring of case progress and ensuring timely outcomes.

Recommendation No. 2: Establish improved interagency agreements with all Federal partner agencies that specify expectations and the details of work to be performed.

Response: As the Audit Report notes (p. 26, referencing a cooperative effort with DOE to coordinate information gathering procedures), DOL has established and maintained informal interagency agreements with its partner agencies since program inception. The DEEOIC's Procedure Manual (Chapter 2-400) documents the cooperative arrangement with the Department of Energy to promote the efficient verification of employment status. This chapter outlines the target timeframes DOL and DOE have agreed to, and provides instruction to claims examiners regarding the procedure for development of employment criteria. Other portions of the Procedure Manual (and multiple Bulletins and Circulars) document the extensive and detailed agreements reached with NIOSH on a wide range of issues, including each Special Exposure Cohort class designation.

DOL will explore the potential for developing formal Memoranda of Understanding with the other agencies (DOE, DOJ, and HHS) which have EEOICPA responsibility under the Executive Order.

Recommendation No. 3: Establish an overall performance measure for the timeliness of processing claims from point of application to final decision and payment, as well as delineating more milestones and goals for the initial processing phase.

Response: For the reasons described above, DOL does not concur with the recommendation to establish an overall timeliness goal that includes NIOSH processing time.

DOL has considered developing and tracking additional milestones within our initial processing phase, but has determined that the existing approach is more efficacious. For example, interim timeliness goals for completion of employment verification and/or medical evidence or exposure documentation would be inefficient in that they would require more data entry with little payoff. Since there are many different types of EEOICPA

claims which require differing development approaches, a meaningful categorization of the interim stages of the various types of claims would create a substantial additional burden and could detract from actual claims processing.

Instead, DOL has focused on improvements that can be tailored to each claim, regardless of the issues involved. Claims examiners have the ability to create an individualized claims monitoring system by utilizing the call-up feature in ECMS to alert themselves (and supervisors) of pending deadlines for specific cases. This process will be improved with the introduction of the UECMS.

Recommendation No. 4: Expand Resource Centers' responsibilities to include helping claimants obtain evidence to support claim and better educate the claimant on requirements for eligibility, as well as screening out more claims that do not meet eligibility requirements.

Response: The Resource Centers' responsibilities have grown incrementally over time and have always included helping claimants obtain evidence relevant to their claim, educating claimants on eligibility requirements, explaining the medical evidence necessary for a claim, and a number of other tasks. We will continue to work to improve the efficacy of the Centers' intake and education processes.

However, we cannot concur with the recommendation that the Centers serve as a filter to screen out cases unlikely to involve an eligible claimant. While the Centers provide information that might lead a claimant to decide against filing, to direct the Centers to pre-judge eligibility and attempt to block the filing of apparently ineligible claims would be contrary to the letter and spirit of the EEOICPA. This is because the Centers, which are staffed by contractor employees, lack the authority to make benefits decisions on behalf of the DOL.

As shown in Attachment B, one major type of invalid application – Part B claims for diseases other than the three conditions covered by that Part – is no longer a significant problem. Attachment C shows that the other major category – Part E claims from ineligible (typically "adult children") survivors – may remain an issue. However, the potential eligibility of such individuals requires some level of adjudication, and cannot be accomplished via screening by contractor staff in the Centers, who, as stated above, do not have such authority. We will evaluate whether an expedited evaluation by our district office staff could speed the resolution of these claims.

Recommendation No. 5: Pursue multiple sources of information required to develop and/or verify evidence to establish a claim simultaneously, rather than one source at a time.

Response: Especially since the inception of Part E, DOL has continually updated its procedures to speed initial processing of all claims, and has sought ways to efficiently pursue multiple information development efforts simultaneously. The delays in employment verification cited in the report have been significantly addressed by these changes, as indicated in attachments D and E. Beginning in September 2005, the Resource Centers were directed to initiate employment verification and occupational history development at the inception of each claim. The Centers begin this process by first explaining the requirements of the law to each claimant and assisting in gathering required evidence, including employment and medical evidence. Once the district office receives a claim, the claims examiner commences immediate concurrent development actions to obtain any additional employment, exposure, or medical evidence needed for that claim. DEEOICP will continue to streamline its development procedures. For example, upcoming procedural changes will expedite Part E wage loss and impairment claims by initiating evidence-gathering earlier in the overall process.

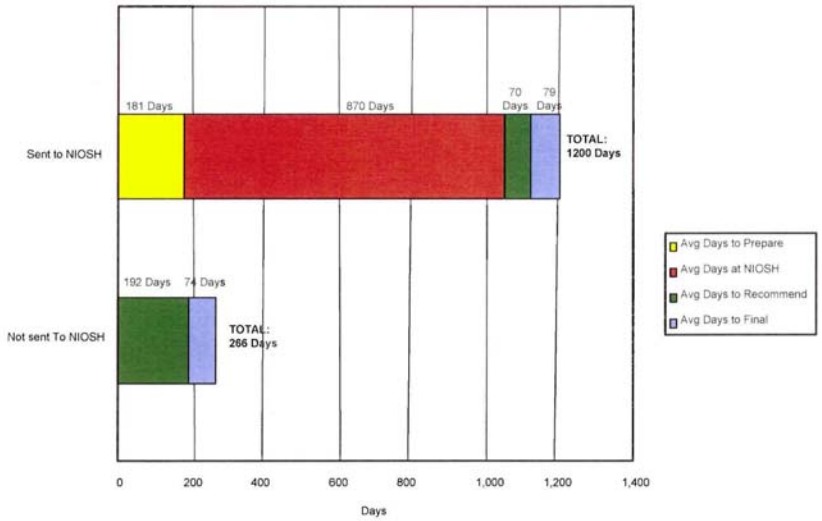
Recommendation No. 6: Increase contact with claimants to keep them informed of the status of their claim and information and/or actions needed to complete their claim. Automate communications and use electronic exchange of information with partner agencies, and to the extent possible, with claimants.

Response: DOL concurs with the need to continually improve its communication with claimants. Because of the need for maximum speed in starting up both Part B in 2001 and Part E in 2005, DOL had no choice but to base its claims processing system on the traditional paper case file. Efforts continue to upgrade the automation of the program, including the development of the Unified ECMS which will replace the current legacy system (which had been developed to provide basic support under essentially emergency time constraints). Upon deployment of UECMS DOL will have a platform that will support the future development of much more substantial electronic communication, such as case imaging and internet access to case status.

In the interim, the EEOICP is making significant progress towards improved claimant communications. The Resource Centers serve as points of contact for the majority of claimants, and have been given increasing roles over time, such as the addition this year of the responsibility to aid claimants in resolving medical bill payment issues. Further, the EEOICP is currently planning to give the Centers increased access to ECMS information to allow them to provide more detailed case status information to all claimants.

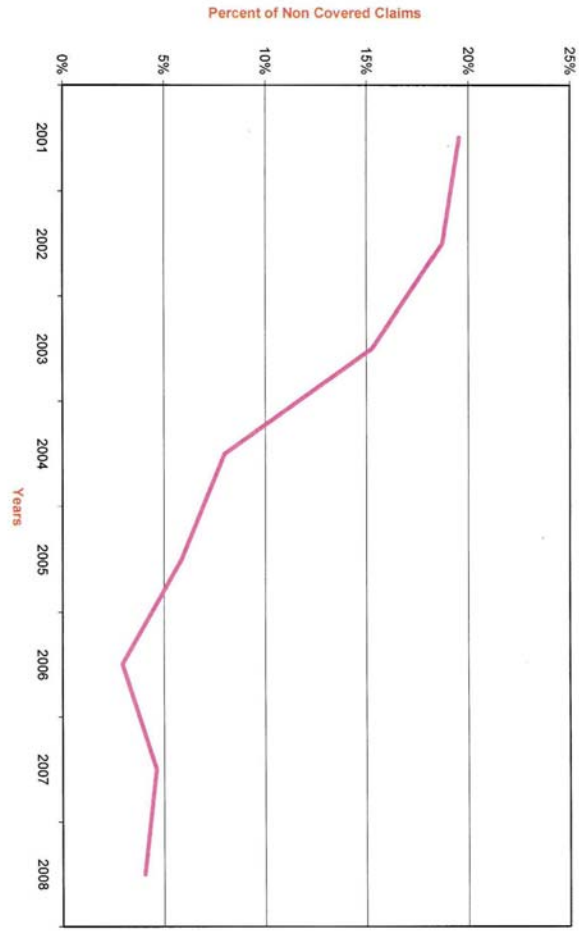
DOL does not concur, however, in the suggestion that we should begin communicating routinely regarding the status of activities being conducted by NIOSH while the case remains at NIOSH. As discussed, this would both duplicate NIOSH communications and introduce additional confusion and opportunity for error.

Time to Process Part B EEOICPA Claims
NIOSH Dose Reconstruction Cases vs. Cases Never Sent to NIOSH



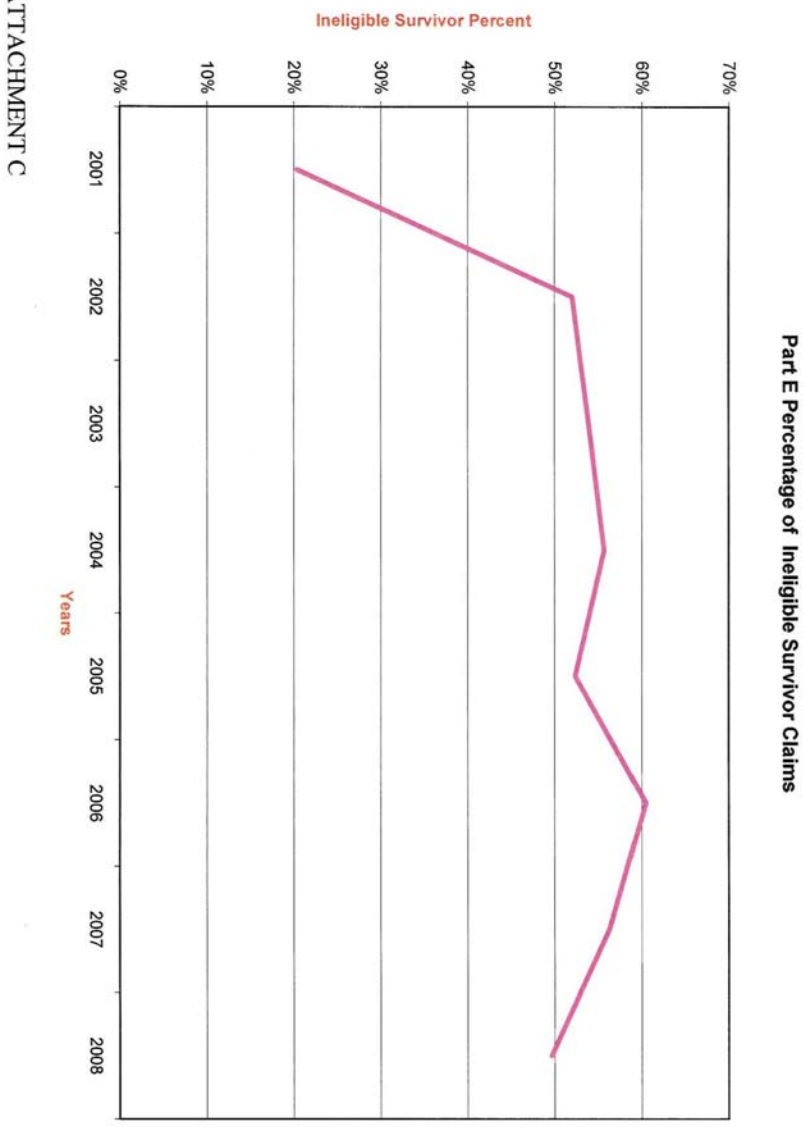
- Average Processing Time for all Part B claims from date of filing through final decision date – for all claims with final decisions issued through September 30, 2008
- Cases sent to NIOSH for dose reconstruction took 1,200 days
- Cases never sent to NIOSH took 266 days

ATTACHMENT B



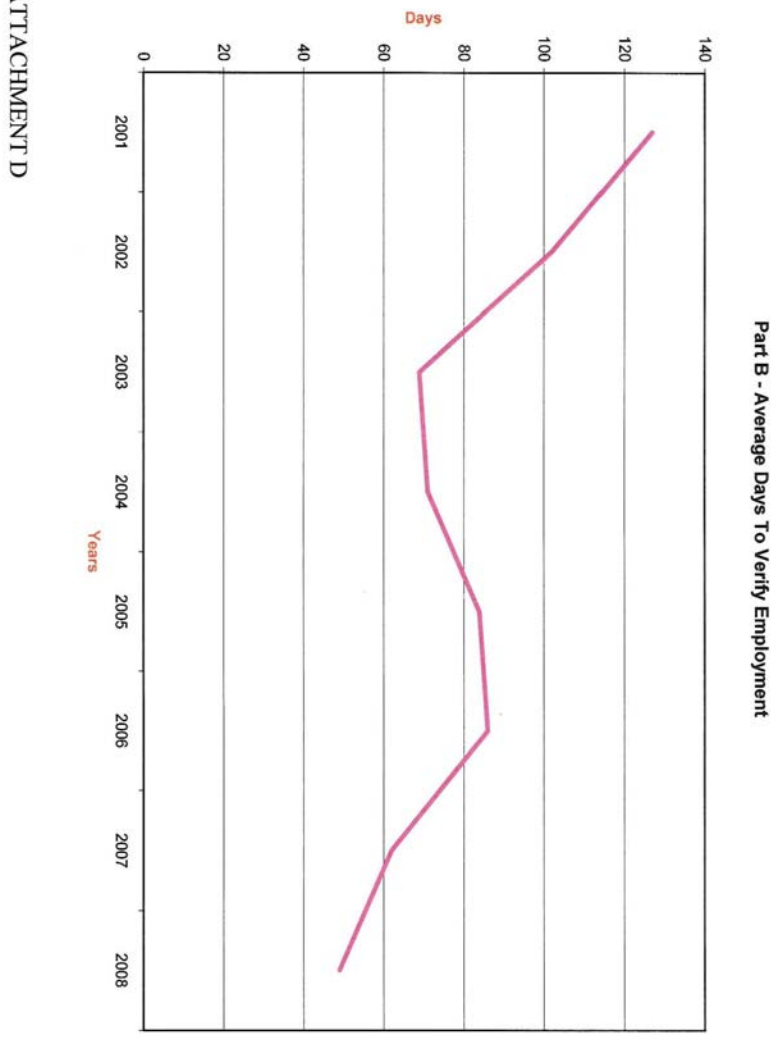
Part B - Percentage of "Non Covered Conditions" Claims

ATTACHMENT C

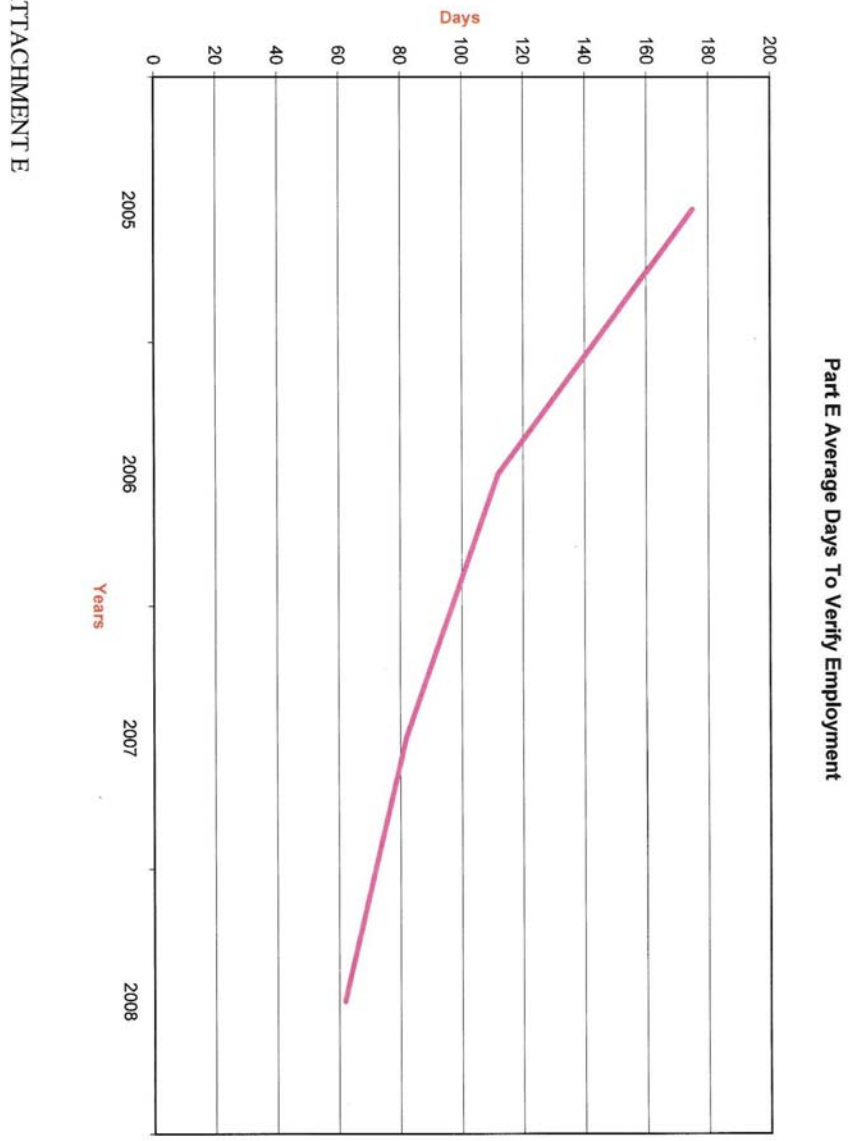


Part E Percentage of Ineligible Survivor Claims

ATTACHMENT D



ATTACHMENT E



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Fax:	202-693-7020
Address:	Office of Inspector General U.S. Department of Labor 200 Constitution Avenue, N.W. Room S-5506 Washington, D.C. 20210