

*U.S. DEPARTMENT OF COMMERCE  
Office of Inspector General*

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## **OFFICE OF THE SECRETARY**

### *Management of Commerce's Federal Workers' Compensation Program Needs Significant Improvements*

*Final Inspection Report No. IPE-17536/March 2006*

**PUBLIC  
RELEASE**

*Office of Inspections and Program Evaluations*



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Inspector General**  
Washington, D.C. 20230

March 31, 2006

**MEMORANDUM FOR:** Otto J. Wolff  
Chief Financial Officer and Assistant Secretary for Administration

**FROM:** Johnnie E. Frazier 

**SUBJECT:** Final Inspection Report  
*Management of Commerce's Federal Workers' Compensation Program Needs Significant Improvements (IPE-17536)*

As a follow-up to our March 10, 2006, draft report, attached is the final report on our review of the Department of Commerce workers' compensation program. We thank you for your comments on our draft report. We also received comments from the Bureau of the Census and the United States Patent and Trademark Office. We have considered these comments in preparing our final report and have attached them in their entirety as appendices to the report.

We are pleased to note that you found merit in most of our recommendations addressed to your office and the Bureau of the Census, although we note your concerns about implementation of the recommendations concerning an automated case management system and returning decennial census employees to work. We commend the aggressive actions that OHRM is now taking to strengthen the Commerce workers' compensation program, including providing training to departmental personnel responsible for workers' compensation claims, identifying claims for injuries that may have been caused by third parties, seeking ways to return employees to work as soon as possible, strengthening the Department's interaction with the Labor Department, and developing a supervisor's handbook on workers' compensation. Please provide us with an action plan within 60 days that outlines the actions you have taken or plan to take to address our recommendations.

We thank you and OHRM personnel for the assistance and courtesies extended to us during our review. If you have any questions or comments about our report, please feel free to contact me on (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

Attachment

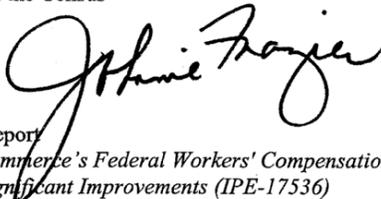




**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Inspector General**  
Washington, D.C. 20230

March 31, 2006

**MEMORANDUM FOR:** Charles Louis Kincannon  
Director, Bureau of the Census

**FROM:** Johnnie E. Frazier 

**SUBJECT:** Final Inspection Report  
*Management of Commerce's Federal Workers' Compensation  
Program Needs Significant Improvements (IFE-17536)*

As a follow-up to our March 10, 2006, draft report, attached is the final report on our review of the Department of Commerce workers' compensation program. We thank you for the Census Bureau's comments on our draft report. We also received comments from the Department's Chief Financial Officer and the U.S. Patent and Trademark Office. We have considered these comments in preparing our final report and have attached them in their entirety as appendices to the report.

We are pleased that the Bureau of the Census has concurred with our two recommendations that are specifically related to your workers' compensation program efforts. Your response indicates that the bureau will review its workers' compensation cases in conjunction with the Department and develop a comprehensive workers' compensation program and strategy for the 2010 decennial. However, we disagree with Census' opinion that our conclusions are inconsistent with the Department Administrative Order 202-810, in that Census states that it and other Commerce bureaus have a very limited role in the management of workers' compensation cases. As outlined in our report, we believe DAO 202-810 requires departmental supervisors and managers, in conjunction with the Department's Office of Human Resources Management, to play an active role in working with their employees who are on workers' compensation and to take actions to bring claimants back to work as soon as possible. We encourage the bureau to work closely with the Department to evaluate its current cases and minimize workers' compensation costs in the future.

Please provide us with an action plan within 60 days that outlines the actions you have taken or plan to take to address our recommendations. We thank Census personnel for the assistance and courtesies extended to us during our review. If you have any questions or comments about our report, please feel free to contact me on (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

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**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Inspector General**  
Washington, D.C. 20230

March 31, 2006

**MEMORANDUM FOR:** Jon W. Dudas  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

**FROM:** Johnnie E. Frazier 

**SUBJECT:** Final Inspection Report  
*Management of Commerce's Federal Workers' Compensation  
Program Needs Significant Improvements (IPE-17536)*

As a follow-up to our March 10, 2006, draft report, attached is the final report on our review of the Department of Commerce workers' compensation program. We thank you for USPTO's comments on the draft report. We also received comments from the Department's Chief Financial Officer and the U.S. Census Bureau. We have considered these comments in preparing our final report and have attached them in their entirety as appendices to the report.

We are pleased to note that USPTO has concurred with our recommendations that specifically relate to your office. Your response also indicates that USPTO has begun to work more closely with the Department of Labor to gain greater access to case information and facilitate collection of claim overpayments. Your response to our draft report also notes that USPTO has taken other actions to reduce the number of open cases on your workers' compensation rolls. We would like to get more information on the progress USPTO has made in the hope that some best practices could be identified that may also be useful to other Commerce bureaus.

Please provide us with an updated action plan within 60 days that outlines the actions you have taken or plan to take to address our recommendations. We thank you and other USPTO personnel for the assistance and courtesies extended to us during our review. If you have any questions or comments about our report, please feel free to contact me on (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

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## EXECUTIVE SUMMARY

The Federal Employees' Compensation Act (FECA)<sup>1</sup> provides medical and salary benefits for federal civilian employees who suffer work-related injuries or illnesses that prevent them from working.<sup>2</sup> The FECA program pays for medical (and associated travel) expenses related to employees' injuries or diseases, provides wage compensation until they can return to work in either their original positions or a suitable alternative position, and covers vocational rehabilitation. The basic rate of compensation for injured employees with no dependents is 66.67 percent of gross wages, increasing to 75 percent if employees have one or more dependents. All workers' compensation benefits are tax free, and there is no mandatory retirement age for employees collecting benefits.

The Department of Labor administers the FECA program—allowing or denying claims, paying benefits, and charging benefit costs back to a claimant's agency for reimbursement. Besides bearing the costs of the program, individual agencies are responsible for providing Labor with pertinent details to inform its decisions about the merits of a claim, for monitoring the status of their workers' compensation recipients, and for bringing employees back to work as soon as possible.

Since 1994, Commerce has had a centralized FECA program, administered by its Office of Human Resources Management (OHRM). Under this arrangement, the Department centrally handles FECA claims for all its bureaus except the United States Patent and Trademark Office (USPTO).<sup>3</sup> OHRM and its Office of Occupational Safety and Health (OOSH) provide guidance, policy, and oversight for the program. OOSH is responsible for taking all appropriate steps to obtain rightful benefits for eligible employees and their survivors, helping employees file claims, and submitting requisite documents to Labor in a timely, efficient manner. OOSH also must work closely with beneficiaries, bureau supervisors, managers, human resources personnel, and Labor to monitor cases and return employees to work.<sup>4</sup> These activities impact Labor's decisions on claims, distribution of funds, and ultimately, the annual bill charged back to the Department. Since October 2002, a contractor has managed a portion of the FECA workload. Currently, the contractor handles approximately 686 annual short-term claims and 74 long-term claims.

During the most recent charge-back period<sup>5</sup> (July 1, 2004 through June 30, 2005), Commerce paid over \$14.4 million in workers' compensation benefits (Figure 1) and had roughly 1,275 employees on the FECA rolls. Bureau of the Census FECA costs, at \$5.59 million, and National Oceanic and Atmospheric Administration (NOAA) FECA costs, at \$5.45 million, together generate about 76 percent of the Department's total workers' compensation costs.

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<sup>1</sup> 5 USC § 8101, *et seq.* (2005). See also 20 CFR, Part 10.

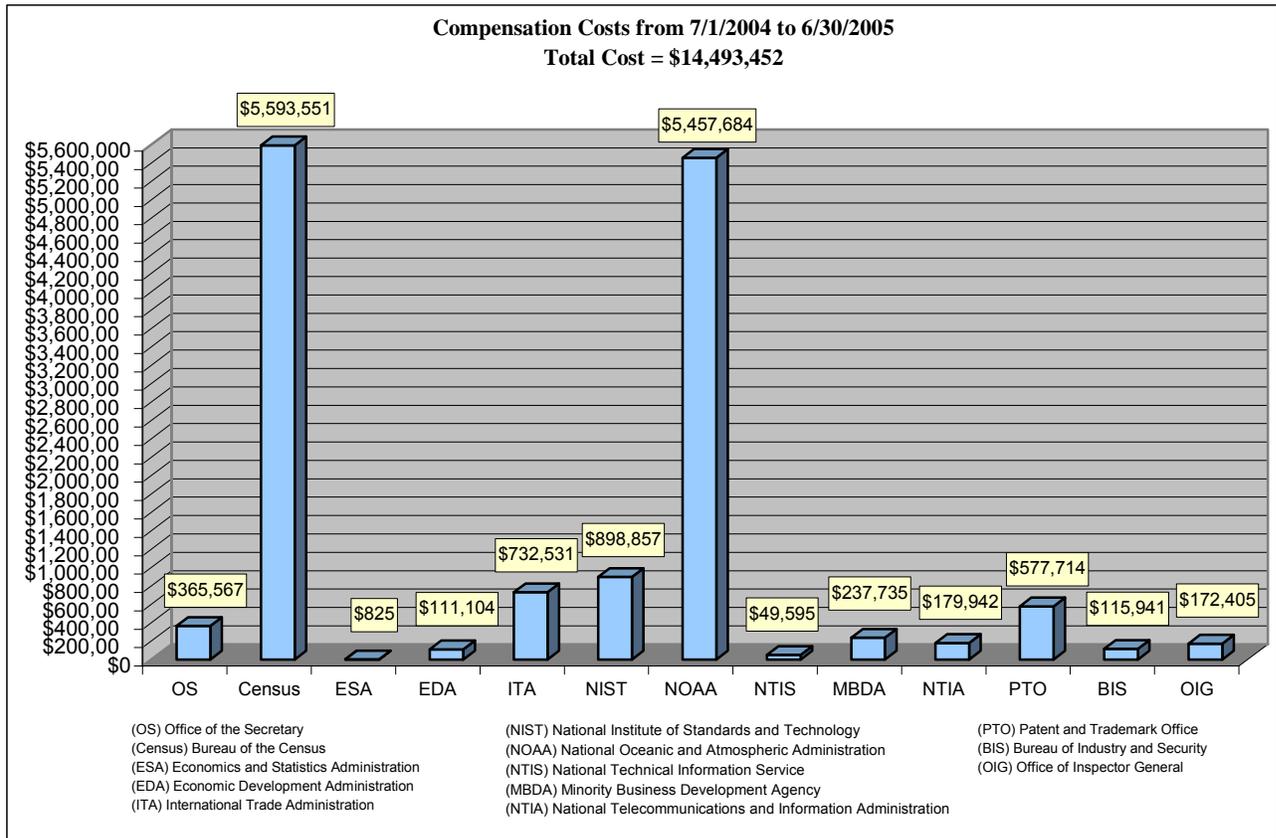
<sup>2</sup> FECA also covers temporary employees and some contract and volunteer employees.

<sup>3</sup> As of March 2000, USPTO has managed its own workers' compensation personnel and duties under authority of the 1999 American Inventors Protection Act.

<sup>4</sup> Department Administrative Order (DAO) 202-810, *Workers' Compensation For Federal Employees*, November 24, 2004.

<sup>5</sup> Each year, Labor provides the Department with a statement of workers' compensation expenses incurred between July 1 and June 30 of the previous year. Labor also provides quarterly reports to the Department.

**Figure 1: Commerce’s Recent Workers’ Compensation Costs by Bureau**



Source: Department of Labor charge-back report

***OIG Review Finds Serious Deficiencies in Commerce’s Administration of the FECA Program***

We evaluated the Department’s overall management of the workers’ compensation program to determine whether Commerce: (1) aggressively minimizes FECA costs by bringing work-capable claimants back to work as soon as possible, (2) verifies FECA charge-back costs and ensures they are reasonable, (3) adequately oversees the workers’ compensation contractor, and (4) effectively coordinates the Department’s safety program with the workers’ compensation program to identify and modify workplace conditions that contribute to costly injuries. In summary, we identified the following problems.

**Commerce’s Centralized Management of Its Workers’ Compensation Program Has Been Inadequate.** Since at least 2002, OHRM has not actively managed the program, which cost the Department unnecessary benefit payments. In 2002, all but one OHRM staff member handling workers’ compensation retired or otherwise left the office. The one remaining FECA specialist oversaw the Department’s workers’ compensation program alone and served as the contracting officer’s representative (COR) for the contractor. This individual was also responsible for managing approximately 450 long-term cases until April 2004, when Commerce transferred 74 of them to the contractor. In addition, the specialist was responsible for maintaining Department records, serving as a resource to departmental supervisors and employees, and monitoring and

evaluating the contractor's performance.<sup>6</sup> This staffing situation, in conjunction with high turnover in OOSH's top leadership position, has diminished OOSH's ability to manage the FECA program in the Department's best interest.

In addition to poorly managing short- and long-term cases and not challenging questionable costs, we found:

- OHRM has not provided adequate FECA guidance and effective training;
- The Department does not adequately track and monitor cases;
- The Department does not have a return-to-work program;
- Neither Commerce nor its workers' compensation contractor routinely pursues third party claims; and
- OHRM does not refer all cases of possible FECA fraud or misconduct to the Office of Inspector General.

Instead, OHRM has relied on the Department of Labor and a contractor to oversee cases and make long-term financial decisions on departmental claims. It has not adequately monitored the contractor, maintained proper files, or implemented internal controls. These issues gave rise to a host of problems, such as:

- Improper payments to 2 deceased claimants;
- Overpayments to 9 claimants including one who had received \$195,000 in compensation; and
- Continued payments to 17 claimants who remained on the rolls for years after medical evidence indicated they could return to work.

As a result, rather than minimize FECA costs and guard against fraud and abuse, OHRM appears to have allowed opportunities for unnecessary FECA claims (see page 11).

**Deficient Bureau-level Attention to the FECA Program Mirrors Weaknesses Found in OHRM.** While OOSH centrally manages the Department's workers' compensation program, Department Administrative Order 202-810 requires oversight by the individual bureaus and assigns specific responsibilities to them. But 5 Commerce bureaus, paying 89 percent of the 2005 workers' compensation costs, have relied on OOSH to manage their cases. The 5 bureaus believe that departmental regulations gave OOSH total responsibility for doing so. In addition, the bureaus have not routinely monitored their charge-back reports—a key tool for analyzing and minimizing FECA costs. Although OOSH is not required to distribute the charge-back reports to the bureaus, when OOSH disseminated the reports, only 7 out of 14 bureaus verified their accuracy.<sup>7</sup> As a result, we found instances in which claimants were able to work, but remained on the rolls unnecessarily for years. It also should be noted that responsible management of FECA cases can be very time-consuming and requires the attention of supervisors and managers who usually are focused on current programs and operations. Hopefully, this report will highlight the need for greater bureau as well as departmental attention on workers' compensation issues.

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<sup>6</sup> Safety specialist hired 8/1/05 and workers' compensation specialist left position on 12/23/05.

<sup>7</sup> See DAO 202-810.

Our review at specific bureaus identified many FECA management and operational problems, including those listed below.

- **Census.** The unique nature of intermittent work at Census complicates administration of the FECA program. For example, Census reported an estimated peak workforce at any one time of 500,000 temporary employees during the 2000 decennial census. While these workers may be Commerce employees for only a limited time, they are eligible for workers' compensation benefits if injured while working for the bureau. Once these employees have recovered or are ready to return to work, their length of service should not preclude them from returning to work in a short-term position. However, they can remain on Census' FECA rolls indefinitely if they are not offered a job. In fact, our review of Census' FECA rolls identified 44 active claims from the 1990 decennial and 183 from the 2000 decennial. Census stated that it did not offer new or suitable work opportunities to these individuals because its offices for the 1990 and 2000 decennials had closed. Census and OHRM need to develop a proactive plan for managing future decennial claims and bringing eligible long-term claimants from previous decennials back to work on 2010 decennial preparations and activities or sooner.
- **USPTO.** The United States Patent and Trademark Office has been responsible for independently processing and managing workers' compensation claims for its employees since it became a performance-based organization in March 2000. USPTO's independent administration of its FECA program has problems. For example, we found USPTO's case management was inconsistent; policies, guidance and training for supervisors was needed; and the workers' compensation specialist needs a detailed performance plan.
- **OIG.** The Office of Inspector General had several workers' compensation cases that had not been adequately managed at the time we started this review. To address these cases, we subsequently had to research the case histories, determine the current status of each case, and/or determine the best actions that should be taken for these individuals. We have returned 1 worker back to work full-time and 2 have returned on a part-time basis (see page 35).

**The Workers' Compensation Contractor Has a Record of Strong Performance.** We evaluated the contractor's performance in meeting 10 of 11 contract deliverables and found that it had met expectations in all but 1 area. We did not determine whether the contractor developed and provided materials to improve timely submission of claims because Labor case statistics indicated the Department has met its timeliness objectives. The contractor has instituted sound operating procedures and has capable, well-trained staff handling Commerce FECA claims.

However, the OOSH specialist, in her role as contracting officer's representative, did little to monitor the contractor's performance. During our review, we found evidence that she seldom—if ever—reviewed and acted upon reports submitted by the contractor and did not forward cases of suspected fraud the contractor identified to the Office of Inspector General. She did not visit the contractor's facility, to verify consistency of service, as required by the contract, until we initiated our evaluation. When she did visit, we were informed that she did not examine any case documentation.

While the contractor's solid performance is particularly notable, there are two issues that need to be resolved with its 2002 contract and its 2004 amendment. OHRM did not develop the required metrics to evaluate the contractor's performance. In addition, the 2004 amendment did not clearly specify that the contractor must maintain 74 long-term cases or replenish long-term cases. Currently, the contractor is reviewing 66 cases (see page 51).

On page 57, we list a summary of our recommendations for addressing these concerns.



In his response to our draft report, the Chief Financial Officer and Assistant Secretary for Administration indicated that the Department found merit in most of the 25 recommendations addressed to it and the Census Bureau. However, he indicated that the Department finds it difficult to implement 2 recommendations because of budgetary constraints and Department of Labor regulations. Specifically, for recommendation 7, the Department has not yet found a viable and cost effective automated information system to implement to better manage its FECA cases, although it has reportedly taken some steps to automate its caseload. For recommendation 25, the Department believes that a legislative or regulatory change by the Department of Labor may be necessary to develop a viable return-to-work strategy for Census' temporary decennial enumerators who are injured on the job. The Department also emphasized that it had taken a number of actions since November 2005, to improve its workers' compensation program. This includes (1) notifying Labor of 183 workers' compensation claims that may have been caused by a third party, (2) reviewing every long-term case file, (3) identifying every claimant who had filed timely for disability retirement with the Office of Personnel Management so that it could notify them of their benefit and retirement options, and (4) developing a supervisor's handbook on OWCP guidelines.

The Department also asked that our report emphasize that DOL must take a stronger role in three specific areas: third party claims, discontinuance of payments to claimants who have died, and double payments to claimants. We agree that all three of these areas need closer management oversight by both Commerce and Labor. However, the focus of our review was on the Department's management of the workers' compensation program. Therefore, we have emphasized the need for Commerce to work more closely with Labor on these issues and to address their impact on Commerce cases.

In its response to our draft report, the Bureau of the Census provided comments on 12 of the 23 recommendations that were directed to the Department's Chief Financial Officer. The bureau concurred with our 2 recommendations specifically addressed to it. The bureau will review its workers' compensation cases in conjunction with the Department and develop a comprehensive workers' compensation program for the 2010 decennial. However, the bureau disagreed with our interpretation of Department Administrative Order 202-810. Specifically, the bureau believes the Department assumes responsibility for the direct management of departmental workers' compensation cases, with each bureau playing a minimal role in FECA case management. As outlined in our report, we believe that DAO 202-810 requires departmental supervisors and managers, in conjunction with the Department's Office of Human Resource Management, to play an active role in working with their employees who are on workers'

compensation and take action to bring claimants back to work as soon as possible. We also emphasize the need for the bureau to review Labor's charge-back reports and take other actions to minimize its FECA costs.

The United States Patent and Trademark Office, in its response to our draft report, stated that, in general, it agrees with our findings and accepts the 7 recommendations addressed to it in their entirety. USPTO indicated that it will work more closely with the Labor Department on its FECA cases and reports that it has already taken actions on some recommendations. USPTO stated that it has (1) reduced the number of claimants listed on its annual charge-back by nearly 28 percent, (2) initiated efforts to recover an overpayment in benefits, (3) acquired access to Labor's Agency Query System, (4) created a spreadsheet to manage all claimants, and (5) planned to perform monthly status checks on claimants.

## **BACKGROUND**

The Federal Employees' Compensation Act (FECA)<sup>8</sup> provides medical and salary benefits for federal civilian employees who suffer work-related injuries or illnesses that prevent them from working.<sup>9</sup> The FECA program pays for medical care related to employees' injuries or diseases and provides wage compensation until they can return to work in either their original position or a suitable position that meets medical work restrictions. If an employee works in either position for 90 days, Labor will consider the position suitable and close the employee's workers' compensation case. If the claimant does not receive wages equal to that of his or her prior position, Labor will pay the difference and charge that amount to the original employing agency.

Two types of work-related injuries qualify for FECA coverage:

1. Traumatic injuries—wounds or other conditions caused by external force, stress, or strain, within a single day or work shift. For example, employees who slip at work and sprain their ankle have suffered a traumatic injury. They are entitled to continued pay, subject to normal deductions, until they can return to work. Once they exhaust 45 days of continued pay, there is a 3-day waiting period before they begin receiving workers' compensation benefits.
2. Occupational illness or disease—a physical condition produced by the work environment over a period longer than one workday or shift. For example, employees who develop carpal tunnel syndrome from performing duties every day over the course of several years would file a claim for an occupational illness. Such employees may use sick or annual leave until Labor approves and issues their benefits.

The basic rate of compensation for injured employees with no dependents<sup>10</sup> is 66.67 percent of gross wages, increasing to 75 percent if employees have one or more dependents. Benefits also cover expenses for medical care, related travel, and vocational rehabilitation. All workers' compensation benefits are tax free, and there is no mandatory retirement age for employees receiving workers' compensation. If the employee dies as a result of the injury or illness, surviving spouses, parents, and dependent children are eligible for benefits. Surviving spouses receive 50 percent of the deceased's wages. Depending on the number of surviving dependent children, benefits increase but never exceed 75 percent of the deceased's wages.

From July 2003 to June 2004, the federal government paid more than \$2.4 billion in workers' compensation for medical and death benefits and wage loss.<sup>11</sup> The Department of Labor, which administers the FECA program through its Office of Workers' Compensation Programs (OWCP), estimates that removing a single fraudulent claim from federal rolls saves the government \$300,000 to \$500,000 per claim.

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<sup>8</sup> 5 U.S.C. §8101, *et seq.* (2005). See also 20 CFR, Part 10.

<sup>9</sup> FECA also covers temporary employees and some contract and volunteer employees.

<sup>10</sup> Dependents include spouses and/or children.

<sup>11</sup> *September 2005 Semi-Annual Report to the Congress*, Department of Labor, Office of Inspector General.

The Administration's 2007 budget proposes legislation to update the FECA program's benefit structure, adopt best practices of state workers' compensation systems, and strengthen return-to-work incentives. The proposed legislation would convert prospectively retirement-age beneficiaries to a retirement annuity-level benefit, impose an up-front waiting period for benefits, streamline claims processing, permit Labor to do more to recapture compensation costs from responsible third parties, and make other changes intended to improve and update FECA. On a government-wide basis, these reforms are expected to produce significant savings.

OWCP has 12 district offices nationwide that adjudicate employees' claims and pay benefits, the cost of which is charged back to the employee's agency. Labor's claims examiners, nurses, and vocational rehabilitation experts monitor those who receive workers' compensation benefits in an effort to advance employees' return to work. Labor offices approve benefits after employees or their care providers submit medical documents in conjunction with requests for reimbursement and other benefits.

Labor classifies FECA claims as either short-term or long-term. In short-term cases, an employee is injured, recovers, and generally returns to work within 60 days. If an employee's disability lasts more than 60 days, Labor designates the claim as a long-term "periodic roll" case and pays benefits every 28 days. Labor requires additional medical information for long-term claimants only once a year or once every three years.<sup>12</sup>

Once Labor approves benefits, it lists claimants on quarterly and annual charge-back reports that it sends to the claimants' federal agencies. The report is a statement of FECA costs a federal agency incurs.<sup>13</sup> It details claimants and their component organizations, medical and monetary compensation totals, the number and dollar amount of payments issued, and type of claim (short-term or periodic roll) for each claimant.

If an agency does not have a suitable position available when a claimant is ready to return to work, Labor can approve vocational rehabilitation, including training, and education—all paid for by the agency—to retrain or improve claimants' skills and marketability for jobs outside of the employing agency. Labor determines the vocational rehabilitation status for these claimants and does not need agency approval to begin retraining. However, the agency must continue to pay benefits, rehabilitation costs, and medical fees for periodic roll employees until they return to work or retire.

A successful FECA workers' compensation process involves coordination among a number of participants. Claimants and physicians must update Labor on medical progress and work restrictions. Labor's primary mission is to approve and issue benefits to injured employees and assist them with return to work through rehabilitative benefits and programs. The Department, through its Office of Human Resources Management (OHRM), supervisors, bureaus, and the contractor, is responsible for managing Commerce cases, returning employees to work, and maintaining controls on cost, waste, and fraud. Successful case management in Commerce also

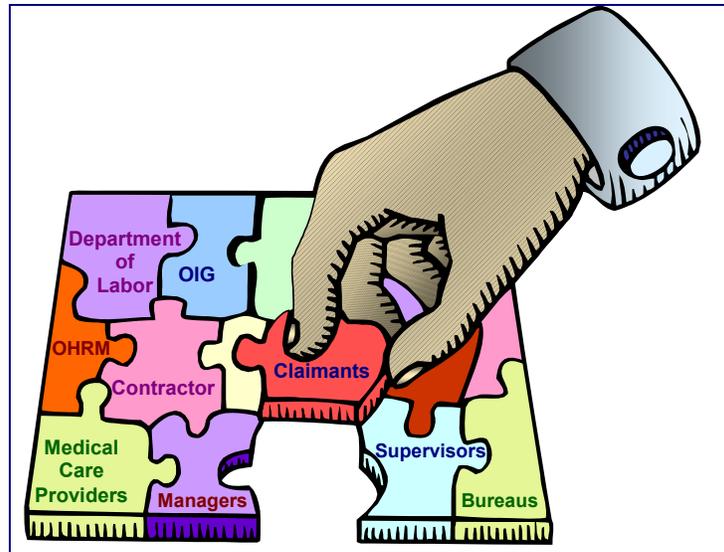
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<sup>12</sup> Department of Labor "Resource Book Training for Federal Employing Agency Compensation Specialists," p. 278, April 1999 and Department of Labor handout, "The Periodic Roll Unit is Designed to Maintain and Monitor Cases of Long-Term Disability," p. 1, (date unknown).

<sup>13</sup> FECA costs include agency charges for benefits and administrative charges.

requires frequent communication with other participants in the process to monitor their activity (see Figure 2).

**Figure 2: Participants in the FECA process**



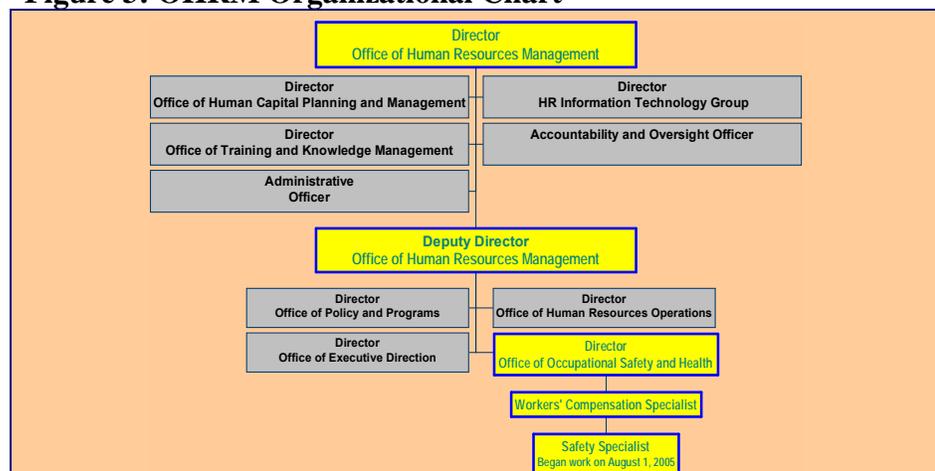
Source: Office of Inspector General

**Department of Commerce FECA Program**

Commerce has a centralized FECA program managed by OHRM. The Office of Occupational Safety and Health (OOSH), within OHRM, is responsible for providing guidance, policy, and oversight for the program.<sup>14</sup> The office must also take all appropriate steps to obtain rightful benefits for eligible employees and their survivors. OOSH and its workers' compensation staff help employees file claims and submit requisite documents to Labor in a timely, efficient manner. FECA

regulations require an agency to complete and transmit claim application forms within 10 business days after an injured employee notifies his/her supervisor or agency about the injury.<sup>15</sup> To facilitate Labor's decision making,

**Figure 3: OHRM Organizational Chart**



Source: OHRM web site

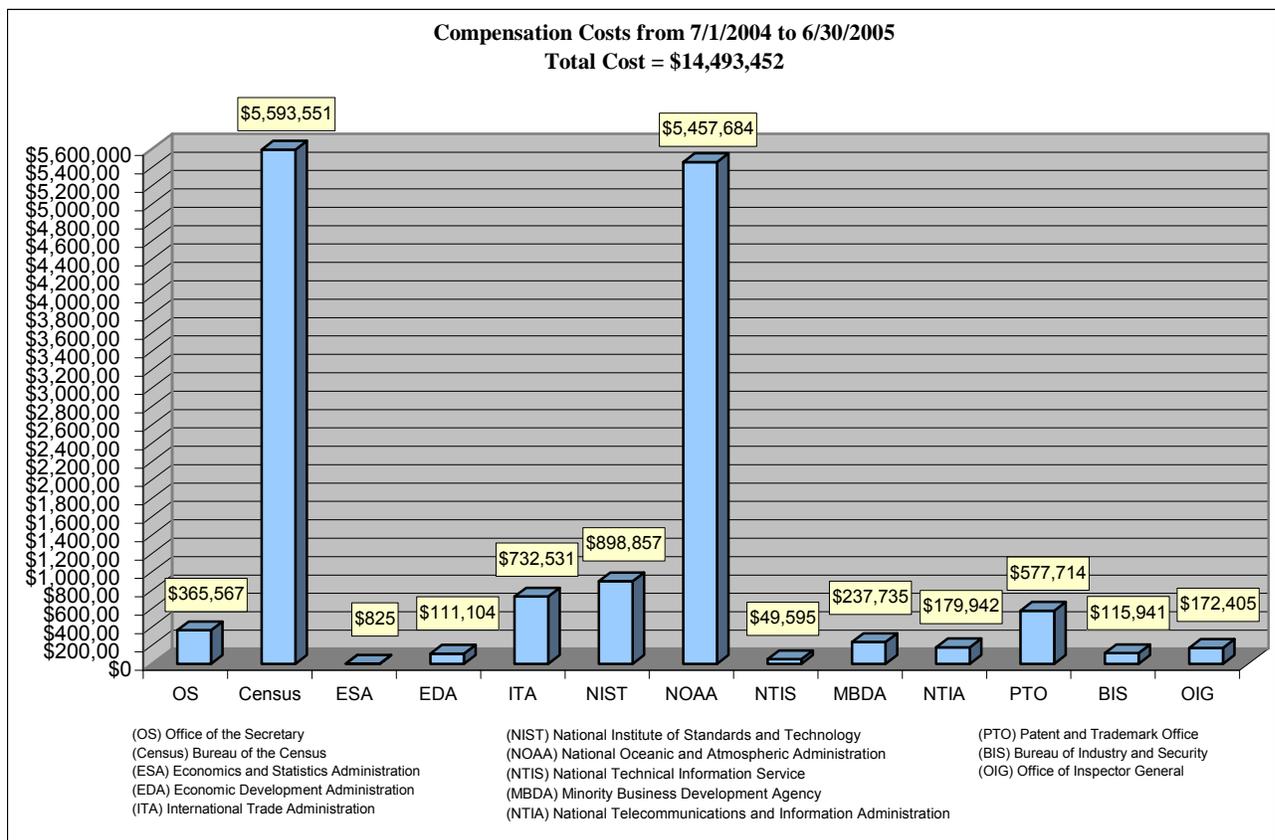
<sup>14</sup> Office of Human Resources Management web site, available at <http://ohrm.os.doc.gov/>.

<sup>15</sup> 20 CFR 10.110.

OOSH also inquires about the status of cases and identifies problem areas or issues that are important to the Department.<sup>16</sup> OOSH also must work closely with beneficiaries; bureau supervisors, managers, and human resources personnel; and Labor to oversee cases and return employees to work.<sup>17</sup> Information from these parties may impact Labor’s decisions on claims, distribution of funds, and ultimately, the annual bill charged to the Department.

During the most recent annual charge-back period (July 1, 2004 through June 30, 2005), Commerce paid over \$14.4 million in workers’ compensation benefits.<sup>18</sup> Figure 4 shows the charge-back amounts by bureau. Bureau of the Census (Census) at \$5.59 million and National Oceanic and Atmospheric Administration (NOAA) at \$5.45 million together generate about 76 percent of the Department’s FECA costs.

**Figure 4: Commerce’s Recent Workers’ Compensation Costs by Bureau**



Source: Department of Labor charge-back report

**Centralized management.** Prior to 1994, each bureau administered its own workers’ compensation program. In January 1994, the Department centralized its workers’ compensation

<sup>16</sup> DAO 202-810.

<sup>17</sup> DAO 202-810.

<sup>18</sup> Labor provides the Department with quarterly and annual reports summarizing workers’ compensation expenses incurred for each employee.

personnel by moving them from individual bureaus and placing them in OHRM.<sup>19</sup> By 1999, 11 full-time employees managed workers' compensation rolls and the Department was considering outsourcing some case management duties shared by those employees.<sup>20</sup> Each bureau generally has a safety specialist who handles workers' compensation matters as a collateral duty, but, with the exception of the U.S. Patent and Trademark Office (USPTO), there are no full-time workers' compensation specialists.

On October 1, 2002, the Department awarded a contract to a Texas company, for a base period of 1 year, with the option to renew annually until September 30, 2007. The contractor was asked to manage up to 1,600 of the Department's short-term workers' compensation claims for a firm, fixed price of \$499,999 per year. At the time of the contract award, the Department had 750 short-term claims and anticipated an average of 800-850 new claims per year.

Between October 1 and November 30, 2002, all but one OOSH staff member handling workers' compensation left the office for retirement or other opportunities. In addition to managing the Department's workers' compensation program alone, the remaining individual was also designated as the contracting officer's representative (COR) for the contractor. From December 1, 2002, until April 7, 2004, this individual was solely responsible for managing all periodic roll cases under the Department's control, maintaining Department records, serving as a resource to departmental supervisors, and monitoring and evaluating the contractor's performance. The specialist estimated that approximately 20 percent of her time was spent talking with supervisors, employees, and human resources personnel.

On April 7, 2004, the Department amended its contract to have the contractor manage from 74 to 200 of the 450 long-term cases it had at the time. OOSH lacked funding to outsource all 450 cases.<sup>21</sup> As a result, OOSH only provided 74 cases to the contractor. The 2004 amendment was incorporated with the option to extend annually until September 30, 2007.

In August 2005, after we began our review, OHRM hired a second individual (a safety specialist) to help manage the workers' compensation program. However, on December 23, 2005, the sole workers' compensation specialist left the OOSH staff after accepting another job opportunity.

**Employee, Supervisor, and Contractor Responsibilities.** Employees who wish to seek workers compensation benefits complete either Form CA-1 for a traumatic injury or CA-2 for an occupational disease and submit it to their supervisor.<sup>22</sup> Supervisors check that the form is complete, provide witness statements and contact information, and controvert questionable claims. They assist employees with appropriate paperwork, provide all relevant information to the contractor, submit the form and all relevant information, and advise employees about options for light or limited duty work, if applicable. The contractor reviews the form to ensure that injuries are work related, verifies the validity of claims according to federal regulations,

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<sup>19</sup> On September 24, 1992, our office issued a report that recommended identifying possibilities to centralize the workers' compensation program. Report Number IRM-4589, *Evaluation of Department of Commerce Management of the Federal Employees' Compensation Act*.

<sup>20</sup> Workers' Compensation Outsourcing - Position Paper, dated March 27, 2001.

<sup>21</sup> OOSH staff reviewed the 450 long-term cases, selected 160 as having potential for returning employees to work, and forwarded 74 of the 160 cases to the contractor.

<sup>22</sup> 20 CFR 10.100, 20 CFR 10.101, and DAO 202-810.

challenges questionable claims, advises claimants, evaluates eligibility, and/or controverts entitlement to continued pay. It processes claims to ensure that benefits are paid quickly and works with employees and their supervisors to help employees return to work (see Figure 5). Labor will not approve payment for medical care, benefits, or continued pay until it has all the proper forms and information to adjudicate claims.

**Figure 5: Responsibilities for the Workers' Compensation Program**

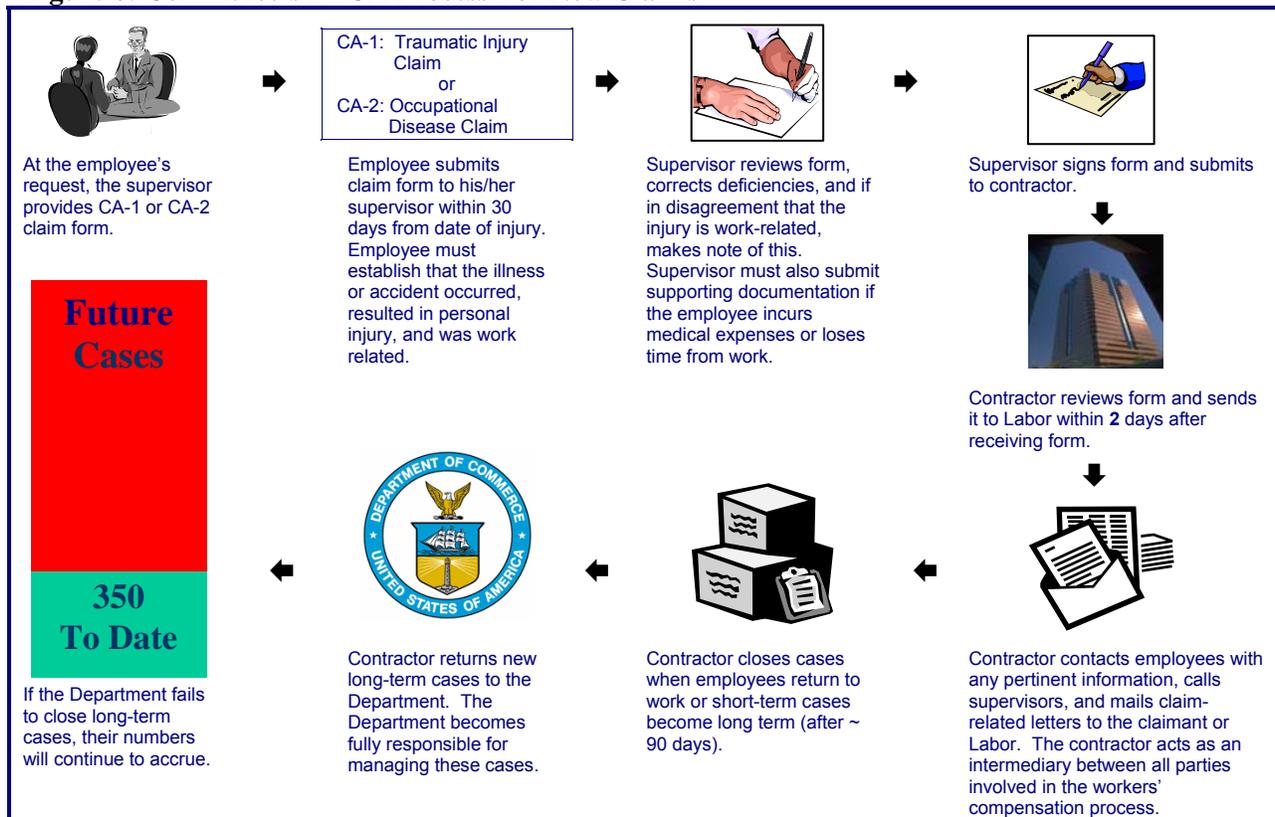
OOSH <sup>1</sup>	Workers' Compensation Specialist <sup>2</sup>	Supervisor <sup>3</sup>	Contractor <sup>4</sup>
<ul style="list-style-type: none"> <li>• Provide workers' compensation assistance to employees and their supervisors.</li> <li>• Conduct program assessments to ensure compliance with safety and health regulations.</li> <li>• Review and analyze injury and workers' compensation claims to assess causal factors and develop guidance to prevent injuries.</li> </ul>	<ul style="list-style-type: none"> <li>• Monitor and evaluate contractor performance.</li> <li>• Develop workers' compensation programs and maintain Department FECA records.</li> <li>• Develop workers' compensation input for Department reports and publications.</li> <li>• Serve as a Department-wide resource on workers' compensation issues.</li> <li>• Develop workers' compensation training.</li> <li>• Process death claims and manage long-term (periodic roll) cases.</li> <li>• Prepare reports and/or analysis.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that employees with work-related injuries receive medical attention as soon as possible and advise them that workers' compensation guidance is available from the departmental contractor and OOSH.</li> <li>• Complete the supervisor's section of forms and submit proper forms to the bureau safety office, OOSH, and the contractor in a timely manner.</li> <li>• Maintain contact with, and advise employees of the availability of light and/or limited duty.</li> <li>• Coordinate with the contractor and employee's timekeeper to modify time and attendance reports for continuation of pay, as appropriate.</li> <li>• Provide relevant case information and factual evidence to the departmental contractor.</li> <li>• Controvert questionable claims and continuation of pay.</li> </ul>	<ul style="list-style-type: none"> <li>• Review and administer all short-term claims.</li> <li>• Review and administer 74 long-term claims.</li> <li>• Challenge questionable claims.</li> <li>• Maintain contact with claimants, supervisors, and Labor to facilitate return-to-work.</li> <li>• Refer possible fraudulent claims to Labor, OHRM, or OIG.</li> <li>• Provide supervisor training at the Department's request.</li> <li>• Provide monthly status reports to the Department.</li> <li>• Maintain current medical documentation and monitor rehabilitation of claimants.</li> </ul>
<p><sup>1</sup> DOO 20-8.  <sup>2</sup> Responsibilities based on workers' compensation specialist position description and evaluation.  <sup>3</sup> DAO 202-810.  <sup>4</sup> 2002 Contract, 2004 Amendment, and DAO 202-810.</p>			

Source: Office of Human Resources Management and Sources Listed Above

Both OOSH and the contractor are also responsible for initiating efforts to return employees to work.<sup>23</sup> The contractor advises employees about what documents are needed to support their claims, notifies them of the status of their claim, initiates efforts to secure light or limited duty assignments, and forwards updates and correspondence to the Department's COR. As part of the process, the contractor maintains copies of claim forms and supporting documents, and provides periodic reports to the Department. The contractor closes its case files when employees return to work and when short-term cases enter the periodic roll. When the contractor closes case files, it sends them back to the Department (see Figure 6).

<sup>23</sup> DAO 202-810.

Figure 6: Commerce's FECA Process For New Claims



Source: Office of Inspector General

### United States Patent and Trademark Office Has Managed Its FECA Program Since 2000

The United States Patent and Trademark Office grants patents and registers trademarks as one of 13 Department of Commerce bureaus. USPTO has managed its own workers' compensation personnel and duties since October 1, 2000, because the 1999 American Inventors Protection Act gave the bureau independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions.<sup>24</sup> USPTO oversees all of its own workers' compensation claims and maintains claimant files in Crystal City and Alexandria, Virginia. It does not use the Department's workers' compensation specialist or contractor to process its claims.

USPTO's Compensation and Benefits Branch manages the workers' compensation program with one specialist,<sup>25</sup> devoted solely to workers' compensation issues (see Figure 7). This specialist has worked full-time in this capacity since 2000, except during a detail assignment between fall 2004 and January 2006.<sup>26</sup> Prior to 2000, the specialist did not have a workers' compensation

<sup>24</sup> The American Inventors Protection Act was enacted on November 29, 1999, as Public Law 106-113, and amended by the Intellectual Property and High Technology Technical Amendments Act of 2002 (Public law 107-273), enacted on November 2, 2002.

<sup>25</sup> Within the Workforce Employment Division and the overall Office of Human Resources.

<sup>26</sup> During this employee's detail, someone else was assigned to handle her FECA responsibilities. A second workers' compensation specialist also worked for USPTO between 2001 and 2003.

background. But in 2000, the specialist attended workers' compensation specialist training at Labor and received guidance from a workers' compensation staff member in the Department. The specialist processes and monitors FECA claims and provides advice and answers questions on workers' compensation for USPTO personnel.

**Figure 7: USPTO Organizational Chart**



Source: USPTO

USPTO's workers' compensation process usually begins when an injured employee goes to one of two health units at its new Alexandria campus or to the health unit in Crystal City. The staff nurse and doctor provide emergency treatment or first aid, and fill out the proper forms on the incident or injury. If the employee requires additional medical attention, the health unit staff provides authorization by filling out another form.<sup>27</sup> If an employee does not have to go to the health unit for an injury, the specialist can e-mail the employee the necessary forms and ensure completed forms are sent to the Department of Labor. The workers' compensation specialist acts as the liaison between USPTO, Labor, the claimant, and the supervisor, as necessary.

**Office of Inspector General 1992 Report on Workers' Compensation**

On September 24, 1992, our office issued a report on the Department's management of the FECA program. Table 1 compares the recommendations of that report to the recommendations of this review. Five of the major recommendations in both reports are similar. These overlaps highlight that major problem areas in Commerce's FECA program, as identified in the 1992 report, remain almost 14 years later.

**Table 1: Similar Recommendations from 1992 and 2006 OIG Reports**

Recommendations
Train supervisors and workers' compensation specialists on the FECA program.
Establish a Return-to-Work program creatively designed to reemploy injured employees in meaningful jobs.
Develop an automated tracking database for workers' compensation claims.
Review and verify Labor's chargeback reports for accuracy.
Develop a plan with the Census Bureau to minimize FECA costs for temporary decennial workers.

Source: 1992 and 2006 OIG Reports on Commerce's FECA Program

<sup>27</sup> Authorization for Examination And/Or Treatment, Form CA-16, U.S. Department of Labor.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

We evaluated the Department's overall management of the workers' compensation program to determine whether it: (1) aggressively minimizes FECA costs by returning work-capable claimants to the workforce as soon as possible; (2) verifies the accuracy of FECA charge-back costs and analyzes costs to ensure their reasonableness; (3) provides adequate oversight of the workers' compensation contractor; and (4) effectively coordinates its safety program with the workers' compensation program to identify and modify workplace conditions that contribute to costly injuries. We conducted our evaluation in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency in 2005, and under authority of the Inspector General Act of 1978, as amended, and Department Organizational Order 10-13, dated May 22, 1980, as amended.

To accomplish our objectives, we performed the following tasks:

- Reviewed appropriate and relevant laws, including the FECA, the corresponding Code of Federal Regulations (CFR), and the Department's policies and procedures used to support Commerce's FECA program.
- Interviewed officials from OHRM, departmental bureaus, and other government agencies to ascertain their understanding and application of FECA laws and regulations, requirements, and procedures.
- Assessed the adequacy of workers' compensation information available to Commerce employees, supervisors, and bureau human resources offices.
- Visited five Department of Labor district offices to review Commerce claimant case files.
- Evaluated OOSH oversight of the workers' compensation contractor by interviewing the contracting officer's representative, examining the contract, interviewing contractor staff, and reviewing a sample of case files managed by the contractor.
- Identified best practices used by other federal agencies to minimize FECA costs.
- Reviewed a random sample of 260 (20 percent) of the Department's 1,275 workers' compensation cases for the period of July 1, 2004 to June 30, 2005. Specifically, we reviewed a random sample of 166 short-term and 94 long-term cases charged to Census, NIST, NOAA, OIG, and USPTO (see Table 2).

We conducted our fieldwork from August through November 2005 at (1) Commerce headquarters in Washington, D.C.; (2) Census headquarters in Suitland, Maryland; (3) NOAA headquarters in Silver Spring, Maryland; (4) NIST headquarters in Gaithersburg, Maryland; and (5) USPTO headquarters in Alexandria, Virginia. In addition, we visited Department of Labor district offices in Dallas, Texas; Jacksonville, Florida; San Francisco, California; Seattle, Washington; and Washington, D.C. We also met with Office of Inspector General and workers' compensation personnel from the Departments of Interior, Labor, Veterans Affairs, and the Tennessee Valley Authority. During the review and at its conclusion, we discussed our findings with the Department's Chief Financial Officer and Assistant Secretary for Administration, the Director and Deputy Director of OHRM, and the Director of OOSH.

**Table 2: OIG Review of Workers' Compensation Cases**

Labor District Office	Commerce Bureau						Case Type		
	Census	NOAA	NIST	PTO	OIG	Total	Periodic Roll	Short Term	Total
Jacksonville	33	28	0	0	1	62	34	28	62
Seattle	11	44	0	0	0	55	9	46	55
Washington, DC	7	6	19	20	0	52	17	35	52
San Francisco	26	21	1	0	0	48	17	31	48
Dallas	29	2	0	0	0	31	17	14	31
No District Specified	0	0	3	9	0	12	0	12	12
<b>Totals</b>	<b>106</b>	<b>101</b>	<b>23</b>	<b>29</b>	<b>1</b>	<b>260</b>	<b>94</b>	<b>166</b>	<b>260</b>

Source: Office of Inspector General

## OBSERVATIONS AND CONCLUSIONS

### I. Commerce's Centralized Management of Its Workers' Compensation Program Has Been Inadequate

Since at least 2002, OHRM and OOSH have not actively managed Commerce's FECA program, which has resulted in unnecessary benefit payments. For most of the past 3 years, OOSH had only one workers' compensation specialist to oversee the Department's average yearly caseload of more than 1,000 claims. This staffing situation, in conjunction with high turnover in the office's top leadership position over the past 5 years and limited attention from OHRM managers, has reduced OOSH's ability to monitor the FECA program in the Department's best interest. OOSH has not tracked the status of each case or attempted to determine if and when employees may be brought back to work. It has relied on the Department of Labor and a contractor to oversee cases and make long-term financial decisions on departmental claims. However, OHRM and its OOSH are responsible for overseeing the Department's workers' compensation program.

In addition to poorly managing short- and long-term cases or challenging questionable costs, OHRM and OOSH did not (1) provide adequate FECA guidance and effective training to departmental supervisors; (2) implement an automated system for tracking and monitoring cases; (3) implement a return-to-work program; (4) pursue third parties responsible for claimant injuries; or (5) refer suspected cases of fraud and abuse to the Office of Inspector General.

#### A. The Department Needs to Better Manage Its Workers' Compensation Cases

OOSH estimated that it handles approximately 376 long-term claims, while the departmental contractor processes approximately 686 short-term claims<sup>28</sup> and 74 long-term claims. While OOSH is responsible for overseeing all departmental claims, it has not actively monitored the contractor's or its own caseload, maintained proper files, and implemented proper internal controls. As a result, rather than minimizing departmental FECA costs and guarding against fraud and abuse, OOSH has allowed opportunities for unnecessary FECA claims.

Our review of OOSH long-term files revealed that the office provided limited, if any, oversight for most cases during at least the past 3 years, and even longer for some cases.<sup>29</sup> For the 94 periodic roll or long-term cases, the average age of claimants is 64 years.<sup>30</sup> With limited OOSH oversight, these cases will continue on the Department's workers' compensation rolls with little hope of rehabilitation and/or return to work. The OOSH files were incomplete, lacking analysis, historical details, and basic, relevant information about claimants. Files showed limited contact with claimants, supervisors, care providers, and Labor personnel. Labor publication CA-810 states that agencies should "establish a record-keeping system which will enable the agency to maintain copies of claim forms, medical reports, correspondence with OWCP, and other

<sup>28</sup> Average of the last 4 yearly reporting periods beginning July 1 and ending the following June 30.

<sup>29</sup> OIG reviewed 260 workers' compensation case files, 232 located at OHRM, 28 located at USPTO.

<sup>30</sup> Based on review of 94 periodic roll cases from our sample.

materials related to each compensation claim in an orderly fashion.”<sup>31</sup> The following three cases highlight some of the inadequacies we uncovered.

- February 1983 case: A claimant had a progressive disability. However, OOSH files indicated no oversight of this case for over 21 years, including no requests for vocational rehabilitation or assessments for return-to-work potential. The claimant is now over 75 years old with little possibility for returning to work.
- August 1988 case: OOSH files indicated that Commerce paid for vocational rehabilitation twice, allowing the claimant to work limited hours outside of Commerce, because Commerce could not accommodate him. In August 2001, Commerce asked Labor for medical information and a second opinion<sup>32</sup> about the claimant’s work status. The examining doctor stated that the claimant could work sedentary 8-hour days with limited walking, standing, kneeling, and climbing. Four years later, OOSH has not acted on the second opinion.
- February 1990 case: OOSH files indicated that the claimant was capable of working in 1996, but OOSH did not ask about his capability to work until 1997. In addition, we found no correspondence between OOSH and Labor since July 1997. With the claimant currently 55 years old, OOSH could have pursued return to work for the claimant.

Labor determines whether claimants go on the periodic rolls, an action that has long-term financial ramifications for Commerce. Once Labor approves a case, OOSH and its contractor may provide new evidence to challenge the facts represented by the claimant and accepted by Labor. This is a difficult proposition. Yet we found that OOSH has not been actively involved with cases before Labor makes its decisions. Neither has it consistently asked Labor to take specific actions such as seeking second or referee<sup>33</sup> opinions about a claimant’s eligibility before moving a case to the periodic rolls. OOSH files contained little, if any, internal Commerce, Labor, and/or contractor documentation such as requests for current medical information, functional capacity evaluations, or vocational rehabilitation. In addition, we found few requests for return-to-work accommodations and little information regarding third parties<sup>34</sup> responsible for claimant injuries (see Table 3).

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<sup>31</sup> Labor Publication CA-810, “A Handbook for Employing Agency Personnel,” revised February 1994, Ch. 9-1.

<sup>32</sup> Labor can schedule a second opinion examination to determine a claimant’s work status. 20 CFR 10.320.

<sup>33</sup> 20 CFR 10.321.

<sup>34</sup> See page 27.

**Table 3: Commerce Activity in OIG Sample of 231 OOSH Cases<sup>35</sup>**

<ol style="list-style-type: none"><li>1. 53 percent—Cases with contractor activity.</li><li>2. 23 percent—Cases with OOSH activity.*</li><li>3. 19 percent—Cases where contractor requested current medical information.</li><li>4. 14 percent—Cases with bureau activity.*</li><li>5. 6 percent—Cases where OOSH requested second and/or referee opinions.</li><li>6. 6 percent—Contractor requested second and/or referee opinions.</li><li>7. 4 percent—Cases where OOSH pursued return to work for the claimant.</li><li>8. 4 percent—Cases where contractor controverted claims and/or continuation of pay.</li><li>9. 1 percent—Cases where OOSH initiated job offer to claimant.</li></ol> <p>* OOSH or bureau activity refers to any involvement in a short-term or long-term case during the last 3 years, although some of that activity may have been minimal.</p>
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Source: Office of Inspector General

Finally, OOSH could not provide an inventory of long-term active or closed cases. The workers' compensation specialist had never reviewed case files at any of the 12 Labor district offices or the contractor's office.<sup>36</sup> Labor is not required to provide any information it receives on a case. Rather, upon request, Labor will provide case information to agencies and employees.<sup>37</sup> Therefore, it is imperative that OOSH review case files to obtain information. The specialist did not know that visiting the Labor district offices was an option. Instead of consistently reviewing files and taking appropriate follow-up action, OOSH emphasized answering employee workers' compensation questions, helping employees process claims, and completing workers' compensation reports. By not visiting Labor district offices, OOSH's knowledge about claimants was very limited, including the physical condition of claimants and whether claimants were overpaid or alive or not.

Because OOSH files were in such poor condition, we visited 5 Labor district offices and the contractor's office to review files for the 260 cases in our sample. The Labor files indicated there was limited OOSH involvement. Consequently, Labor decided to initiate vocational rehabilitation and authorize second medical opinions for some departmental claimants. In one instance of limited OOSH involvement, a claimant who was injured in February 1990 received vocational rehabilitation and took college courses paid for by the Department. Contractor and Labor personnel stated that OOSH has sought little information and requested few actions for claimants.

Our review of the files documented other serious problems:

1. **Improper payments to work-ready and deceased claimants**—Seventeen claimants had medical documentation indicating recovery from their work-related injuries, but they continued to receive workers' compensation benefits because OOSH neither periodically monitored the physical condition of each claimant, nor attempted to bring them back to work.

<sup>35</sup> Our total case sample included 260 cases, but USPTO independently managed 29 cases.

<sup>36</sup> During our review, the OOSH workers' compensation specialist visited the contractor site for the first time.

<sup>37</sup> Labor Publication CA-810, "A Handbook for Employing Agency Personnel," revised February 1994, Ch. 9-1.

Two claimants had died of causes unrelated to their injuries but Labor continued to make compensation payments to their families. By matching claimant names to Social Security records, we identified approximately \$48,000 in ineligible payments for the Department. Labor is currently pursuing recovery of the funds. After we briefed OHRM officials on our finding, they stated that OOSH will compare claimant names against Social Security death records<sup>38</sup> to identify any who may have died.

2. **Overpayments**—Eight claimants received overpayments in prior years that Labor’s Agency Query System (AQS) had recognized but these overpayments had not been repaid as of November 15, 2005. AQS only identifies overpayments but not amounts. We only performed a cursory review of AQS records, which indicated the duplicate payments occurred from 11/15/83 to 5/28/02. Although OOSH had access to AQS, it did not identify any of these duplicate payments. The office did not proactively review claimant files and AQS compensation reports to identify discrepancies, obtain refunds, and lower departmental expenditures.

The following are other examples of overpayments to claimants. Claimants who return to work are supposed to notify OWCP so they can be removed from the FECA rolls. Labor confirmed that bureaus and claimants are required, but do not always notify OWCP that the employee has returned to work.<sup>39</sup> In addition, one claimant currently on Labor’s workers’ compensation rolls is still receiving compensation payments despite a change in her case status. In August 2005, this claimant’s case status was changed to receive only medical benefits from the work-related injury. Despite the change in the AQS system, this claimant has continued to receive monthly periodic roll compensation checks. As of January 21, 2006, this claimant has been overpaid \$6591.48 by Labor. Proactive case management of claimant case files, and review of the AQS reports at the Department, should have identified this error much earlier.

In addition to not reviewing Labor case files, OOSH did not review contractor information. The contractor provides online notes or comprehensive summaries of each case, which detail all correspondence between the contractor, Labor, supervisors, and doctors, and document actions taken. The contractor offered access to these notes. However, OOSH declined access to these notes, even though there were no additional costs for the access. OOSH could use the notes to maintain contact with claimants during the initial 45-day period to possibly bring some employees back to work earlier than expected, and minimize the number of cases that become long term. The contractor also prepares claimant status reports within 90 days of receiving the claim and every 120 days thereafter. OOSH did not review these reports and did not follow up on cases of questionable or changing status with the contractor. OOSH told us in November 2005 that it would begin reviewing contractor recommendations on cases.

OOSH also did not review cases that its contractor indicated had the potential for fraud or abuse. The contractor considered 20 cases as questionable enough to be referred to the OIG, but OOSH did not refer the cases to our office,<sup>40</sup> until we brought this issue to OHRM managers’ attention.

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<sup>38</sup> According to November 2001 congressional testimony, Social Security obtains 90 percent of death reports from family members and funeral homes and 10 percent from state and Federal agencies. See also 20 CFR 10.527.

<sup>39</sup> U.S. Department of Labor, OWCP, “*When the Injured Worker Accepts the Job.*” See also 20 CFR 10.525.

<sup>40</sup> See page 33.

During the course of our review, we also identified 15 cases that were problematic and we referred them to our Office of Investigations. Some of the cases we referred overlapped with the cases the contractor recommended for referral.

We attribute the deficiencies in the Department’s workers’ compensation program largely to the following problems:

- *OOSH has had only one workers’ compensation employee for almost 3 years.* In December 2002, OOSH went from 11 employees to 1 full-time workers’ compensation specialist<sup>41</sup> to oversee approximately 376 long-term cases as well as the contractor. OHRM failed to replace employees after buyouts and attrition. One employee overseeing all cases and directly handling 376 cases (along with other duties) for a Department with 38,000 employees is untenable, even with contractor support. The specialist emphasized that OOSH’s focus has been to ensure claimants receive timely payments, and not to manage cases or minimize FECA costs.
- *OOSH has had frequent management change during the past 5 years.* Changing office leadership has further diminished OOSH’s ability to properly manage the workers’ compensation program. From 2000 to early 2005, OOSH had three acting directors and three permanent directors (see Figure 8 below).

Figure 8: Tenure of OOSH Directors (2000 to Present)

Dates	2000	2001	2002	2003	2004	2005
Director(s) of OOSH	[Red]		[Red]	[Yellow]	[Red]	[Yellow]
Legend	[Red] Acting	[Yellow] Permanent				

Source: OOSH

- *OHRM management has not provided enough attention to the program.* OHRM agreed that the numerous program deficiencies are the result of inadequate attention by both the human resources office and OOSH.

To improve program management, OOSH told us that it plans to develop an inventory of all cases, prepare an electronic file for each long-term case by May 2006, and review all cases by January 2008 to determine the case status, and evaluate the return-to-work potential. We believe that completing case files by May 2006 is reasonable, but taking 2 years to review all long-term case files is unacceptable. OOSH could delay or miss opportunities to return some employees to work or otherwise remove them from the periodic roll and thereby cut its FECA costs.

<sup>41</sup> OOSH hired a second individual in August 2005 to work part-time on the workers’ compensation program.

## **RECOMMENDATIONS**

1. Review Commerce's long-term workers' compensation cases as soon as possible, and not over a 2-year period as planned. This review should include:
  - a. Evaluating the status of each case and physical condition of each claimant to identify cases with the best opportunity for returning employees to work,
  - b. Reviewing Labor's Agency Query System to identify duplicate payments and any other overpayments, and
  - c. Matching claimant names to Social Security records to identify deceased claimants.
2. Obtain access to contractor case file information to monitor the status of short-term cases.
3. Follow up on all long-term cases returned by the contractor.
4. Review and take appropriate action on cases in contractor status reports.



In its response to our draft report, the Department stated that it had reviewed every long-term case and identified every claimant who had filed timely for disability retirement with the Office of Personnel Management. It will use this information to notify affected claimants of important benefit information and options for them and their families. The Department also noted that it is developing a detailed action plan, which will include timelines, that will frame forthcoming discussions between departmental and Office of Inspector General staff.

### ***B. OHRM Needs to Provide FECA Guidance and More Comprehensive Training***

OHRM is responsible for establishing policies and procedures for effective and efficient management of the workers' compensation program.<sup>42</sup> The Department has had a centralized workers' compensation program since 1994.<sup>43</sup> During the 12 years since the Department centralized FECA, it issued a policy on workers' compensation in 1997 and 2004. However, neither OHRM nor OOSH has issued guidance on workers' compensation or offered sufficient training to departmental personnel who oversee workers' compensation issues. As of November 29, 2005, OHRM provided return-to-work guidance. OOSH confirmed that no guidance had been issued until that time.

No Guidelines. The lack of departmental guidance for this program is alarming, considering that supervisors and safety specialists need to comply with FECA and OWCP regulations.<sup>44</sup> In our 1992 review on workers' compensation, we recommended the Department publish policies and procedures to emphasize aggressive agency actions in FECA claims management. OOSH could not explain why no procedures had been issued since the Department consolidated the workers' compensation program in 1994.

<sup>42</sup> DAO 202-810.

<sup>43</sup> See page 4.

<sup>44</sup> Safety personnel for each bureau are given workers' compensation responsibilities as a peripheral duty.

After we brought this to the attention of OHRM managers, OOSH issued a draft handbook for supervisors on November 14, 2005, which details how to handle employees who suffer FECA-eligible injuries or illnesses. The handbook contains four sections: (1) General Workers' Compensation Information, (2) Safety Responsibilities, (3) Department Administrative Order 202-810, and (4) Department of Labor Office of Workers' Compensation Programs Forms. However, the handbook mostly comprises a collection of workers' compensation forms and the DAO on workers' compensation. It is not an adequate document because it does not provide all Commerce bureaus with clear, comprehensive policies and procedures to implement FECA laws and regulations, including adequate guidance and steps for supervisors on returning employees to work, verifying and validating costs, granting continuation of pay, handling third party cases, and detecting and reporting suspected fraud or abuse.

Limited Training. Departmental personnel have received little training on workers' compensation from OOSH, the contractor, and/or Labor. Supervisors may not deal with FECA on a regular basis, so they rely on the OOSH specialist for information about FECA laws, processes, and procedures.<sup>45</sup> The contractor is supposed to develop training when requested, but OOSH has not asked the contractor to provide training courses. The OOSH compensation specialist stated that neither the office nor the contractor has (1) developed a training plan,<sup>46</sup> (2) identified training needs of departmental personnel, or (3) recommended that Commerce use Labor's FECA training in the absence of any other. OHRM's training for new supervisors used to contain a component on workers' compensation, but this was eliminated a few years ago. The OOSH specialist did not know why the component was eliminated. The OOSH specialist did provide some ad hoc training to NOAA ship officers when requested to do so in 2004. However, without ongoing training, staff cannot effectively communicate with and advise injured claimants, Labor personnel, doctors, and other interested parties about the status of a claim.

Labor's OWCP offers free training to all federal workers' compensation personnel. The curriculum includes claims processing, documentation and record keeping, and counseling injured employees. OOSH stated it was aware of the Labor training, but bureau safety specialists told us that they did not know about it. In our 1992 review on workers' compensation,<sup>47</sup> we also found the Department had provided limited training to managers and specialists. We recommended then that Commerce arrange a series of periodic and ongoing training sessions for workers' compensation specialists and supervisors, and we reiterate that recommendation.

OHRM and OOSH told us at the conclusion of our review that they would make training a priority: OOSH would develop training materials and classes on workers' compensation for all supervisors and specialists. Census has developed its own workers' compensation and safety training—in consultation with OOSH, and OOSH said it would review the bureau's materials to ensure they meet minimal Department requirements. In addition, OHRM will reinstate the safety and workers' compensation module in training classes for new supervisors.

As of December 30, 2005, OOSH had given three training sessions for bureau personnel, covering types of claims, causal relationships and benefits, as well as employee and supervisor

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<sup>45</sup> Lead Workers' Compensation Specialist Position Description and Evaluation Criteria.

<sup>46</sup> The contract has a deliverable for supervisory training.

<sup>47</sup> See Table 1.

responsibilities in the claims process. OOSH stated that it plans to train all bureau personnel responsible for workers' compensation by September 2008. The new training is a good first start, but it is not comprehensive. OOSH's FECA training should be improved to adequately cover returning employees to work, verifying and validating charge-back costs, identifying third party liability, and detecting and reporting suspected FECA fraud and abuse.

Adequate training and guidance are 2 of 15 FECA best practices identified by other federal agencies. Table 4 lists those practices and shows which of them Commerce has implemented. OHRM is required by departmental guidelines to centrally administer, manage, and operate the Department's workers' compensation program.<sup>48</sup> As shown below, OOSH had not implemented most of the best practices suggested by other federal agencies. We discuss best practices 1 through 15 in this report on the pages listed.

**Table 4: Best Practices for Workers' Compensation Programs Identified by Federal Agencies**

Leadership Commitment	Implemented by DOC	Page
1. Review program goals and issue departmental guidelines.	Partially*	16
2. Employ a full-time departmental manager and adequate staff.	Partially**	15
3. Provide fraud indicators to supervisors and case specialists.	No	17
4. Send charge-back bills to the lowest departmental level.	No	39
5. Establish a department-wide return-to-work program.	No	22
Aggressive Case Management		
6. Maintain frequent contact with claimants, supervisors, and care providers.	No	11
7. Establish an ongoing relationship with Department of Labor personnel.	No	12
8. Establish an automated case management system.	No	19
9. Emphasize that case files should be well maintained.	No	11
10. Challenge questionable claims and continuation of pay.	No	13
11. Monitor and recover costs from responsible third parties.	No	27
12. Oversee departmental short-term and long-term cases.	No	11
13. Coordinate workers' compensation and safety programs.	Partially	21
Supervisor and Specialist Training		
14. Provide departmental supervisors with policies, procedures, and training.	Partially	16
15. Provide case specialists with training for effective case management.	No	16-17
* OOSH management has reviewed program goals but departmental guidelines have not been issued.		
** OOSH has had only one workers' compensation specialist for the last three years.		

Source: Lifecare<sup>49</sup> and Office of Inspector General

<sup>48</sup> Per DAO 202-810, OHRM is tasked with overseeing the workers' compensation program.

<sup>49</sup> "Critical Elements for a Successful and Cost-Effective Workers' Compensation Program." Based on Lifecare's Benchmarking of Successful Public and Private Sector Programs and its Own Experience in Providing Case Management Services to Federal Agencies Since 1995. No date.

## **RECOMMENDATIONS**

1. Prepare and maintain current, easy-to-access online policies and procedures to help Commerce supervisors and managers understand (a) FECA laws and regulations and (b) their own FECA roles and responsibilities, including facilitating the return of employees to work, verifying and validating charge-back costs, identifying third party liability, and detecting and reporting suspected FECA fraud and abuse.
2. Develop a training plan, determine which agency personnel need workers' compensation training, and offer the training to them over the coming months, rather than over a 2-year period. In the meantime, OOSH should consider utilizing OWCP's training, including its FECA seminar and the FECA supervisor's workshop, as well as in-house training.



In its response to our draft report, the Department indicated that it had taken or planned numerous actions to address our recommendations, including the following:

- It developed a supervisor's handbook on OWCP guidelines and placed it on the web for easy access by supervisors and human resource managers in all departmental bureaus.
- It provided training on workers' compensation through 7 training sessions.
- It believes DAO 202-810 provides some guidance pertaining to the Federal Employees' Compensation Act, primarily regarding processing of workers' compensation claims. However, the Department stated that the DAO is insufficient in the area of program oversight by individual bureaus. It indicated that it was revising the DAO to clearly define the roles and responsibilities of Commerce bureaus in managing their workers' compensation cases.
- It issued Human Resources Bulletin #018 in November 2005, which activates employee assignment teams that will create greater bureau involvement in the effort to return injured employees to work.

### ***C. The Department Does Not Have an Automated System for Tracking and Monitoring Cases***

OOSH does not have an automated system to manage its workers' compensation caseload, process workers' compensation claims, and consolidate safety data. It cannot perform simple statistical or trend analyses to isolate problem areas, recurring injuries, and patterns of possible abuse. OOSH stated resources have not been invested in an automated system. OOSH does have access to its contractor's database as well as to Labor's Agency Query System and paper charge-back reports. However, these do not eliminate the Department's need for its own automated system, nor do they support all the data gathering and analysis capabilities OOSH needs to effectively manage the FECA program.

*Managing paper files is inefficient.*

**Analysis and oversight.** The sheer volume of paper files supporting the Department's workers' compensation program makes manual review and analysis almost impossible, especially with only one staff person handling this responsibility. OOSH needs an automated system to compile comprehensive information and perform detailed analyses of hundreds of workers' compensation cases. Without such a system, OOSH cannot easily determine (1) the status of each case, (2) current and projected costs, (3) an employee's potential for returning to work, and (4) actions<sup>50</sup> needed to move workers off the rolls or to otherwise aggressively manage cases. OOSH agreed in November 2005 to create electronic case files as a first step toward establishing an automated claims tracking database that can be used by all appropriate departmental personnel.

Labor's AQS is a valuable source of information on case status and compensation history. But OOSH cannot use AQS to closely monitor Commerce workers' compensation cases. It does not capture all case correspondence including current medical reports or provide a tickler system on when forms are due and medical status updates are needed. If AQS goes down, OOSH has no backup for accessing this information. It needs a system of its own.

Labor's paper charge-back reports, submitted quarterly and annually to Commerce, do not capture comprehensive information for projecting program costs or identifying trends—something an online system would facilitate. The paper reports only list departmental employees receiving FECA benefits and costs, and do not allow online review and manipulation. The bureaus received the charge-back report for the 2004-2005 reporting period in July 2005. Because the most recent annual charge-back period (7/1/04-6/30/05) covered part of both fiscal years 2004 and 2005, the bureaus won't pay their FECA charges until fiscal year 2007. The bureaus will request funding for FECA charges in fiscal year 2006. NOAA confirmed that the report is inadequate for budgeting future workers' compensation costs. In fact, for the 2005 billing period, NOAA underestimated its annual fee to Labor by \$1 million.

OOSH had access to the contractor's database but did not have access to case notes, which provide weekly status entries on each claim. However, during our review, the OOSH Director obtained access to the contractor's case notes. But even this resource still does not replace an in-house system because it does not include data for the estimated 376 long-term cases that OOSH is responsible for and, should the contract end, OOSH could lose access to information about cases currently managed by the contractor.

**Claims processing.** Processing paper claims among the employee, supervisor, the contractor (in Texas), and Labor is highly inefficient and time consuming. Agencies are required to submit claim forms to Labor within 10 days of receipt. However, we found that the bureaus took from 14 to 45 days to submit workers' compensation claims to the contractor—with the average being 26.5 days—and then it took the contractor an average of 7.6 days to get claims to Labor.<sup>51</sup> The contract requires the contractor to submit claims to Labor within 2 days of receipt. Agency safety specialists stated that claimant and their own inexperience with the FECA forms and

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<sup>50</sup> Such actions include requesting second opinions from Labor or following up with bureaus on light-duty accommodations.

<sup>51</sup> Fiscal Year 2004 statistics for first two quarters.

procedures slow processing times. They also noted that they have duties other than processing workers' compensation claims, which add to the delay.

In 2005, OOSH reviewed software being developed by Labor that allows online processing among claimants, supervisors, the contractor, and Labor, but determined that the new software was not complete and fully tested. Once OOSH has developed its own database of workers' compensation claims, it will need a product that allows online claims submission. The office told us it will continue researching commercial and government off-the-shelf products to meet its need.

**Consolidated safety data.** OHRM is required by DAO 209-3 to implement an automated system that compiles data on accidents, injuries, and illnesses in the workplace, and analyze the data for causes and costs.<sup>52</sup> However, OOSH lacks an automated system that can upload and consolidate bureau safety data.<sup>53</sup> Consequently, it cannot efficiently track safety information by facility and cannot take preventive steps to minimize accidents and workers' compensation claims. For example, OOSH could not tell us the number and location of falls that occur at Commerce headquarters each year. Without this type of information and analysis, OOSH cannot evaluate whether certain areas of the building need safety modifications to reduce the number of accidents—a key to decreasing workers' compensation costs.

OOSH stated that it does not collect accident and injury statistics from the bureaus because it believes that it is the bureaus' responsibility to collect such data.<sup>54</sup> OOSH stated the bureaus maintain various safety statistics, but they do not collect data in standardized format, nor is the bureau data comprehensive.<sup>55</sup> OOSH's workers' compensation and safety specialists stated that data is exchanged between the workers' compensation and safety programs. However, the specialists emphasized they were concerned about the lack of an automated information system for data on accidents, injuries, and illnesses, as required by DAO 209-3. OOSH stated that such a system would greatly increase the efficiency and effectiveness of the workers' compensation process as well as the safety program.

## **RECOMMENDATION**

Develop an automated information system that can be used to:

- a. Verify and manage Commerce's FECA caseload, including:
  - i. Giving prompts or reminders for dates when paperwork or medical exams are due, and for periodically checking on spouses' entitlement;
  - ii. Identifying cases that need additional action, have closed, or have the potential to return employees to work; and
  - iii. Enabling Commerce personnel to analyze and manipulate the data and identify trends and possible abuse.

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<sup>52</sup> DAO 209-3, *Injury, Illness, Accident, and Fatality Investigation and Reporting*, December 7, 2004.

<sup>53</sup> OOSH has a strategic goal to implement a safety and health management information system. See Office of Occupational Safety and Health, *Program Status Briefing to the Chief Financial Officer and Assistant Secretary for Administration*, August 2005.

<sup>54</sup> DAO 209-3.

<sup>55</sup> Bureau safety statistics were not verified by OIG.

- b. Process workers' compensation claims online; and
- c. Consolidate and analyze standardized bureau safety data to help safety officials and managers identify and correct problems and take immediate corrective action to help prevent future workplace accidents and illnesses.



In its response to our draft report, the Department agrees that automation is a necessary program enhancement to enable it to better manage its FECA cases. It states that it has been searching for an off-the-shelf package that is both viable and cost effective. However, the Department has not yet identified a solution to meet its program needs, and is concerned about the cost of new system development under the current budget scenario. The response does, however, mention that OHRM has taken steps to automate its workload.

#### ***D. The Department Does Not Have a Return-to-Work Program***

Throughout the workers' compensation community, a return-to-work program is recognized as one of the most effective tools to minimize costs. Federal agencies list a return-to-work program as a best practice that is essential to an effective workers' compensation program (Table 4). We found that OHRM does not (1) monitor the medical status of employees, (2) implement return-to-work procedures, or (3) ensure supervisors take actions to return employees to work.

*OHRM and OOSH have not adequately monitored the medical status of employees.* FECA regulations allow agencies to monitor the medical status of injured employees to return employees to work at an appropriate time.<sup>56</sup> OHRM acknowledged its responsibility for monitoring claimants' medical status and ability to return to work, but has not fulfilled this departmental requirement.<sup>57</sup> OOSH lacks complete files and a comprehensive list of employees who are eligible to return to work. Since OOSH does not know whether and when claimants have recovered from their injuries or illnesses, it cannot ensure that bureaus make return-to-work offers to these eligible claimants.

OOSH monitoring efforts only consisted of sending letters to Labor requesting medical updates. This approach has been fairly ineffective. When Labor did not respond, OOSH sometimes sent subsequent letters restating the request and made follow-up calls to Labor claims examiners. We found that over a 2-year period, in some cases, Labor never responded to multiple requests. In other cases, OOSH never made more than one attempt to obtain medical information. Furthermore, OOSH never asked for medical updates in some cases.

FECA regulations permit agencies to write directly to claimants' physicians for medical information regarding an employee's capability to return to work.<sup>58</sup> The Health Insurance Portability and Accountability Act allows physicians to provide this information to agencies only

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<sup>56</sup> 20 CFR section 10.506.

<sup>57</sup> DAO 202-810 states OHRM is responsible for monitoring medical evidence and work status and pursuing reemployment.

<sup>58</sup> 20 CFR 10.506.

if the employee has signed a medical release waiver.<sup>59</sup> During the last three years, OOSH rarely used this option to monitor the medical status of injured employees. However, during our case review, we saw copies of direct correspondence between previous OHRM specialists and medical providers. In addition, OOSH could have independently sent “Duty Status Report” forms<sup>60</sup> directly to the claimants’ medical providers. During our review, current OOSH personnel told us they were unaware these options existed.

Office of Personal Management regulations<sup>61</sup> give Commerce and other federal agencies authority to arrange for medical examinations of compensation claimants at the agencies’ expense.<sup>62</sup> While the examination can only be used to determine the employee’s work capacity, some agencies use it to assist in return to work efforts. The agencies are required to send examination results to Labor and notify Labor if the employee refuses the examination. The results do not necessarily affect the employee’s entitlement to compensation, but OWCP can use the information to take follow-up actions, such as schedule second opinions.

Finally, as mentioned earlier, OOSH could have visited district offices to review case files, but OHRM staff claimed they did not know this. One OOSH employee did tell us, however, that compensation specialists may have visited Labor district offices in the last decade. A 1988 letter in a San Francisco district office case file indicated that OHRM staff conducted cases reviews there during that year. Since we reminded OOSH of this option, it has visited the Washington, D.C. district office and established a schedule for visiting other district offices associated with the highest compensation costs.

We also found that OOSH did not know Labor had liaison staff at the Jacksonville and Seattle district offices to help federal agencies get the information they need. While visiting these offices, we talked with the liaisons<sup>63</sup> responsible for the Department of Commerce. They told us that agencies usually contact them after Labor claims examiners have not responded to written requests, and that they have had no calls or interaction with any Commerce employee.

*OHRM and OOSH have not properly implemented return-to-work procedures.* According to Labor, the longer employees are out of work, the more difficult it is for them to return. FECA provisions indicate that injured employees must return to suitable light, limited, or regular duty employment as dictated by their medical restrictions<sup>64</sup> and require that “the employer should advise the employee in writing as soon as possible of his or her obligation to return to work.”<sup>65</sup> OWCP emphasizes in its training that employers should have a plan to return injured employees to suitable employment.<sup>66</sup> Several OHRM employees acknowledged that the Department does not have a return-to-work program, which they attributed to limited resources and management’s

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<sup>59</sup> “Returning Injured Employees to Work,” *OWCP Online Training and Presentations*, page 9.

<sup>60</sup> Agencies may send these forms to physicians at anytime to inquire about an employee’s ability to return to work and obtain work restrictions.

<sup>61</sup> 5 CFR, Parts 339 and 353.

<sup>62</sup> Labor Publication CA-810, “A Handbook for Employing Agency Personnel,” revised February 1994, Ch. 6-4.

<sup>63</sup> San Francisco and Dallas do not have agency liaisons. We did not confirm the availability of liaisons in the remaining eight districts.

<sup>64</sup> 20 CFR 10.515.

<sup>65</sup> 20 CFR 10.505.

<sup>66</sup> “Returning Injured Employees to Work,” *OWCP Online Training and Presentations*, page 3.

lack of emphasis on this aspect of the FECA program. As a result, Commerce has been paying benefits to employees who are able to work.

During our review, we found no evidence that OOSH formally notified claimants they were expected to return to work after receiving medical clearance. Neither did OOSH emphasize to supervisors the importance of maintaining continuous contact with employees during recovery, especially within the initial 45 days following injury. Furthermore, OHRM has not given the bureaus guidance for creating light and limited duty positions nor developed creative solutions for placing recovered employees elsewhere in the Department if their employing bureaus cannot accommodate them.

In the absence of clear guidelines from OHRM, the bureaus do not know what constitutes proper return to work procedures and sometimes mishandle the process. In one of our sample cases, an employee suffered a back injury on the job in 2003. In March 2004, an independent medical evaluation released the employee to work 8 hours a day with permanent restrictions from pushing or pulling anything heavier than 20 pounds and from lifting more than 15 pounds. Since the bureau indicated it would be unable to accommodate his physical limitations, Labor provided vocational rehabilitation to the employee at Commerce's expense. After the claimant completed vocational rehabilitation, his compensation benefits were reduced. However, he remains on the rolls, because Commerce has not found a position for him and he has not gained full employment elsewhere. Labor's June 2005 chargeback report shows that for the preceding year, the claimant received \$66,353.90 in compensation (excluding medical expenses). This employee will continue to receive compensation unless he becomes fully employed.

*OOSH needs to ensure that supervisors take appropriate actions to return employees to suitable work.* Prior to our review, only a claimant's immediate supervisor determined whether the bureau could accommodate a returning employee's job needs. When informed of a claimant's restrictions, many supervisors in our sample cases immediately notified OOSH or the contractor that they could not offer light or limited duty.<sup>67</sup> In some cases, there was no documentation to demonstrate that the supervisors made any attempts to accommodate employees or supervisors did not always provide reasons for their inability to offer suitable work arrangements. When supervisors provided reasons, OOSH did not verify their validity.

If employees are able to resume regular duty after injury, most return to work on their own. Out of the 231 cases in our sample, 105 employees or 45 percent returned to work on their own accord without need for accommodation. Problems occurred when bureaus had to make accommodations. Out of the 41 cases that required accommodations, 23 employees or 56 percent were not accommodated and did not return to work. Supervisors did not have return-to-work guidance and OHRM did not provide oversight to ensure supervisors offered suitable work when necessary. Our case file reviews and Labor and contractor interviews indicate some supervisors (1) may not have understood their workers' compensation responsibilities and unintentionally failed to provide light or limited duty assignments, (2) may not have wanted an employee to return to work, or (3) could not provide suitable work.

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<sup>67</sup> Light duties are duties and responsibilities outside an employee's regular position that meet the employee's work capabilities. Limited duties are specific duties and responsibilities of an employee's regular position that meet the employee's current work capabilities. See DAO 202-810.

In the following two examples, the Commerce employees recovered from their injuries but their agencies did not accommodate their work restrictions. As a result, these employees remain on workers' compensation.

- In March 2000, an employee injured himself on the job. Since the injury, he experienced anxiety attacks and his medical report stated that he would not be able to work at his current job. Since the bureau did not provide suitable work, he was placed in vocational rehabilitation. On the April 2001 work tolerance form,<sup>68</sup> the physician indicated the employee was capable of working eight hours a day. However, the claimant remains on the compensation rolls. The June 2005 chargeback report stated this employee received \$19,380 in compensation during the previous year.
- In April 2000, an employee injured herself while performing her work duties. After receiving surgery, she was released to limited duty. At that time, a Labor claims examiner noted that the agency was resistive to limited duty. After the employee returned to work, she re-injured herself, but was released again to limited duty in December 2000. The employee stopped working in January 2001, because the agency could not accommodate her medical restriction. A May 2001 second opinion examination supported the restriction. Both a second opinion doctor and the claimant's physician wrote in July 2003 that the employee could work light duty with restrictions, but since she has not received a job offer from Commerce, she still remains on FECA rolls. The June 2005 chargeback stated the employee received \$9,980 in compensation during the previous year.

During our review, OHRM developed a return-to-work policy bulletin. On November 29, 2005, the office sent the bulletin to all bureau safety managers and principal human resource managers. Figure 9 lists the procedures OOSH plans to follow to help return recovered employees to work. OOSH is currently in the process of applying these procedures. Its success has been limited so far, since one employee's second opinion report supported total disability and another employee rejected a job offer. Having procedures in place for future employees who recover from injury or illness is a positive step, but we believe OHRM should take further action to return recovered claimants who currently remain on workers' compensation.

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<sup>68</sup> The work tolerance form indicates the number of hours an employee can work and the type of activities that can be performed.

**Figure 9: Commerce Workers' Compensation Return-to-Work Procedures**

1. The OOSH Director will establish an employee assignment team after receiving notification that an injured employee can return to work.
2. A representative from the employee's human resources servicing office, the first-line supervisor, and a bureau/office senior management official will be members of the team.
3. The team will review the employee's workers' compensation file and physician's medical recommendations to formulate a return-to-work plan.
4. If feasible, the team will make a return-to-work recommendation, including a proposed job assignment and any associated medical accommodations required, to the bureau/office appointing authority.
5. The bureau/office appointing authority will accept or reject the return-to-work recommendation and return his/her decision in writing to the OOSH Director.
6. If the return-to-work plan is rejected by the appointing authority, the OOSH Director will notify the Chief Financial Officer and Assistant Secretary for Administration of the appointing authority's decision to not return the employee to work.

Source: OHRM Human Resources Bulletin #018, Effective November 29, 2005

## **RECOMMENDATIONS**

1. Monitor the medical status of injured and ill employees by:
  - a. Obtaining medical information from Labor and/or employees' physicians;<sup>69</sup>
  - b. Conducting case reviews at Labor district offices;
  - c. Establishing a relationship with Labor's liaison staff who can be contacted when Labor claims examiners do not respond to written requests; and
  - d. Arranging and paying for independent medical examinations to determine employees' work capacity, as necessary, if Labor does not take action on claimants' cases.
2. Expand OHRM's recently issued return-to-work procedures to identify specific responsibilities for the employee, supervisor, and bureau, including guidance on developing limited- and light-duty positions.
3. Incorporate creative approaches, such as telework or light-duty work pools across the Department, when bureaus cannot make suitable job offers.
4. Determine if suitable job offers can be made for current work capable employees who were previously not offered positions and, where possible, return them to work.

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<sup>69</sup> The Health Insurance Portability and Accountability Act allows physicians to provide this information to agencies only if the employee has signed a medical release waiver.



The Department did not specifically address these recommendations in its written comments on our draft report. But it did attach its November 2005 Human Resources Bulletin #018, which outlines the Department's return-to-work policy and the establishment of employee assignment teams, composed of bureau officials, who will work with OHRM to return employees to work on a full-time or light-duty assignment.

The Department's response to our draft report also notes that efforts to return temporary decennial census workers to work is complicated by current Department of Labor regulations that mandate that such FECA claimants must receive at least a 90-day job offer while most Census enumerator position appointments are for 45 days. The Department stated that it will continue to work with DOL and the Census Bureau on a solution, recognizing that a legislative or regulatory change by DOL may be necessary.

In its response to the draft report, Census stated that it is prepared to make every effort to return workers to employment as soon as possible, but reiterated its belief that the real need is to extend creative thinking outside federal employment and to solicit Labor's agreement to help identify jobs in the private sector for returning Census FECA claimants.

#### ***E. Neither Commerce Nor Its Workers' Compensation Contractor Routinely Pursues Third Party Claims***

OOSH has not identified and encouraged employees to pursue recoveries from third parties responsible for claimant injuries. The Department's contractor also has not routinely encouraged employees to pursue third parties. Approximately 16 percent of our sample (38 cases) involved third party injuries.<sup>70</sup> However, OOSH did not manage employees' pursuit of these parties in all 38 cases. This inaction has been costly. A lack of OOSH oversight and untrained bureau staff and supervisors have resulted in failure to push employees to seek recovery from third parties or their insurance companies.

Without OOSH's knowledge, at least 13 Commerce claimants attempted to recover from third parties under Labor's direction.

**Figure 10: Third Party Definition and Examples**

**Third Party Claim:** If a person or company is not working as a federal employee or operating as a federal agency, they are considered third parties. If third parties cause injuries to a Commerce employee while in work status, they are liable for the injuries they caused, even if they are only responsible for part of the employee's injuries.

**Common examples of third party injuries include:**

- *Car accidents* – third parties involved in car accidents with Commerce employees should pay for the injuries they cause.
- *Trips and falls on private property* – property owners should pay if a Commerce employee is injured because of the condition of the property.
- *Broken chairs and other equipment* – manufacturers of equipment used by Commerce employees should pay for injuries that occur when the equipment fails.

Source: Department of Labor

<sup>70</sup> Labor subsequently denied benefits for 3 of these claims due to reasons unrelated to third party involvement. Despite Labor's decisions, these claims still provide information about the Department's involvement in third party claims.

However, OOSH has made no apparent effort to emphasize the need for claimants and supervisors to identify third party involvement on FECA claim forms or follow up with Labor on third party claims. Our file reviews also indicate that some employees and supervisors do not understand what third party means or that failing to pursue third parties can cost the Department.

FECA provides compensation for work-related injuries caused or worsened by private parties who are not engaged in activities for the federal government, known as “third parties.” With these types of claims, Labor may require employees to pursue the third party for damages, and if the employee fails to do so, Labor may suspend or terminate benefits. Labor will not require employees to pursue third parties if the total compensation costs are “minor” (below \$1,500).<sup>71</sup> However, any claim that compensates for lost wages is not considered minor. Under these terms, at least 8 of the 38 third party claims in our sample may qualify as minor.

As an alternative, the law allows Labor’s Office of the Solicitor to pursue recovery from third parties on an employee’s behalf. In practice, the Office of the Solicitor prefers that employees pursue third parties themselves, and offers its services as a liaison between claimants and the OWCP district office. The Office of the Solicitor is generally unaware of third party liabilities until the district notifies it about claims in writing. If it receives a letter from an agency or its injured employee, it will contact the appropriate OWCP district for a referral. When an employee recovers funds from a third party or its insurance company, the money is supposed to offset workers’ compensation costs before any other interests. However, Labor stated that claimants sometimes keep funds they receive from insurance companies, not disclosing their insurance claim recovery to the employing agency.

*OOSH has not overseen third party cases.* While OOSH is not specifically required to pursue third party recoveries, it is required to oversee all aspects of case management. However, OOSH was unresponsive in *all* 38 cases in our sample that indicated possible third party liability, failing to manage employees’ pursuit of these parties. OOSH did not: (1) ensure that claimants and supervisors identified third parties, (2) ask Labor to inform claimants of their responsibility to pursue third parties, (3) ensure that claimants pursued third party recoveries, or (4) track the progress of third party recovery efforts. Such widespread failure to pursue such claims is alarming and potentially costly.

Fourteen, or less than half of the 38 files, had supporting documentation, such as police or accident reports to identify third parties and facilitate the recovery of funds. And we found only one instance in which OOSH inquired about third party liability. However, that inquiry was in response to a letter Labor issued to a claimant about potential third party liability. Labor copied OOSH on its letter to the claimant and OOSH responded by requesting a copy of the claimant’s response.

For cases handled by the contractor (18 out of the 38 in our sample), the contractor notified Labor of third party involvement in 6 out of the 18 cases. For the remaining 12 cases, there was no indication that the contractor had identified or pursued third party recoveries. OOSH did not

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<sup>71</sup> U.S. Department of Labor – Office of Audit “Service Auditor’s Report on the Integrated Federal Employees’ Compensation System and Central Bill Process,” Report Number: 22-06-002-04-431, p. 39.

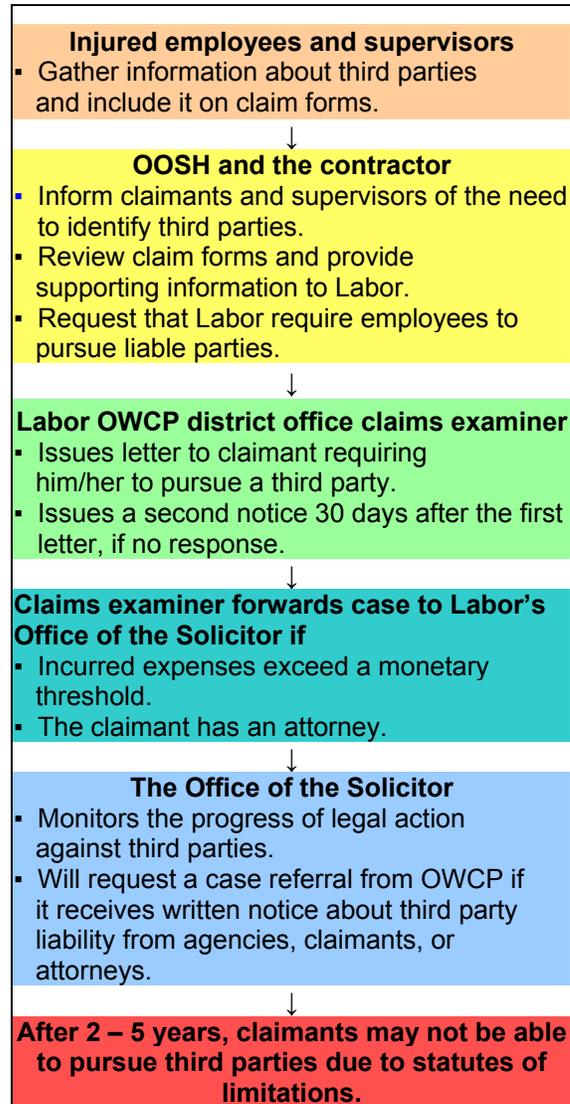
ask the contractor to make sure claimants identify and pursue third parties and that Labor is involved in the process. The contract does not specifically address third parties and steps the contractor must take for third party claims. Nevertheless, the contractor is responsible for identifying third parties because it processes claim applications, including a section for third party identification.

OOSH's oversight influences whether Labor proceeds with third party claims. Labor's attention to third party liability is minimal because the employing agencies bear the burden of identifying and tracking progress against such claims, and Labor's (OWCP's) primary responsibilities are to adjudicate cases and provide benefits. But Labor strongly urges agencies to investigate third party liability and share related information with it. If Commerce contacts an OWCP district about pursuing a third party claim, district office staff told us they would gladly pursue the matter. The Department can request that an OWCP district issue letters informing claimants about their responsibility to pursue third parties, and district staff may try to follow up with employees to enforce action. However, when Labor tells employees to pursue third parties and they fail to do so, it rarely terminates or suspends benefits, as permitted by law. With active oversight, Commerce may request such actions when appropriate.

Likewise, the Office of the Solicitor does not oversee third party recoveries because the Department does not push OWCP district offices to refer claims and does not personally notify the Solicitor's office of third party claims. As noted earlier, if the Department notified the Office of the Solicitor, it would request a referral for action from the appropriate OWCP district. Without the Department's involvement, Labor stated it will not prioritize referrals or pursue any aspects of third party claims.

After we brought this issue to OHRM's attention, OOSH reported that it identified 187 third party cases by searching the contractor's and Labor's AQS databases. OOSH reported that it sent letters for all 187 cases to the appropriate Labor district offices asking for status updates and

**Figure 11: How the Process for Pursuing Third Party Claims Should Work**



Source: DAO 202-810 and Labor (Interviews)

explanations for why some cases hadn't been referred to the Office of the Solicitor.<sup>72</sup> We note that only 8 of the cases OOSH identified were from our sample of 38. The remaining 30 did not show up in its database searches, which underscores the importance of identifying third parties on claim forms and bringing them to Labor's attention early. If claims are not identified correctly or otherwise brought to Labor's attention, they may not be properly categorized and tracked in databases.<sup>73</sup>

*OOSH has not educated staff and supervisors regarding third party liability.* Department administrators and injured employees are not adequately informed about the third party aspect of the FECA program. OOSH does not offer training or other guidance that addresses the importance of identifying and pursuing third parties. Additionally, OOSH training materials released in December 2005, do not stress the importance of third party claims or delineate the steps for identifying and pursuing them.

Claimants and supervisors sometimes misunderstand what creates a third party claim and how to properly submit such a claim. We found at least four cases where third parties were involved, but the initial claim forms did not indicate third party involvement.<sup>74</sup> In one case, a supervisor erroneously indicated that no third party was involved, when a third party was involved. We also found cases that indicated third party involvement, but the claim forms did not have adequate third-party contact information. In addition, at least one case erroneously indicated third party involvement, when third parties did not appear to have been involved.<sup>75</sup> Such misunderstanding of federal law and regulations hurts both the Department and the employee.

Departmental employees, supervisors, and OOSH are responsible for gathering information about third parties, identifying them on claim form applications, and encouraging recovery efforts. The workers' compensation claim forms have a section to indicate third party liability and write in contact information for the third party. Labor is not responsible for processing the case as a third party claim, unless this section of the form is completed (see Figure 12).

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<sup>72</sup> The content of the letters varied based on the information provided in the databases. In two frequent inquiries, OOSH sought explanations for why some cases were not forwarded to the Labor Office of Solicitor and why recoveries were not credited to the Department.

<sup>73</sup> Practices vary by Labor district office and among claims examiners. Some claims examiners may notice that a third party is liable and process the application as a third party case. However, if the Department does not indicate third party involvement on the claim form, examiners are not responsible for categorizing the claim as a third party case.

<sup>74</sup> We do not have data to confirm the total number of sample claims that did/did not identify third party liability.

<sup>75</sup> In a second case, a claimant was injured aboard a ship while moving deck plates. Based on information in the file, it was not clear whether this was caused by a third party or was simply an accident. The claim application indicated a third party was involved, but did not identify a third party.

**Figure 12: Labor’s Suggested Best Practices for Third Party Cases**

<i>Employee</i>	<i>Supervisor</i>	<i>DOC, OOSH, and Contractor</i>	<i>Labor</i>
<i>Cites the facts</i>	<i>Marks the Box</i>	<i>Provides Oversight</i>	<i>Manages Claims</i>
<p>Indicate third party involvement on claim forms.</p> <p>Provide contact information for third parties.</p> <p>Submit witness, police, and accident reports.</p>	<p>Indicate third party involvement on claim forms.</p> <p>Provide contact information for third parties.</p> <p>Submit witness, police, and accident reports.</p>	<p>Ask Labor to inform claimants of their responsibility to pursue third party cases.</p> <p>Ask Labor for third party status.</p> <p>Monitor recovery efforts.</p> <p>Ensure recovered funds are properly credited to Commerce’s charge-back report.</p>	<p>Notify Labor’s Office of the Solicitor about claims.</p> <p>Monitor recovery efforts.</p> <p>Ensure recovered funds are properly credited to Commerce’s charge-back report.</p>

Source: DAO 202-810 and Labor Interviews

The Department has lost and will continue to lose funds by not pursuing third party recoveries. This is because it incurs charge-back costs for the duration of claims despite third party liability for those expenses. Expenses include vocational rehabilitation, medical care and surgeries, and therapy programs that can span years for individual employees. An OWCP specialist on third party claims estimated that depending on the claim, Commerce could save thousands of dollars if it aggressively pursued third party liability.

If employees wait too long to pursue third parties, they may lose the right to do so. Various states have statutes of limitations that set a time limit on a person’s right to pursue legal recourse.<sup>76</sup> Eleven of the 38 third party claims in our sample, approximately 29 percent, are no longer eligible for legal action because too much time has elapsed since the injury (see Table 5 below). Thirteen claims may soon join this category. With each new claim involving third parties, the Department incurs costs that could be recovered if its claimants pursue legal remedy.

<sup>76</sup> Labor’s Office of the Solicitor estimated that statutes of limitations vary by state, ranging between 2 and 5 years from the time of the injury.

**Table 5: OIG Sample of Third Party Claims**

<b>38 Third Party Claims From 231 Sample Cases:<sup>1</sup></b>		<b>(16% of Sample)</b>
<b>Majority of Claims Involve Census Employees:</b> (The remaining 4 claims are from NOAA.)	34	89% of Third Party Claims
<b>Number of Claims Resulting from Car Accidents:</b>	30	79% of Third Party claims
<b>Number of Claims that Generated Notable Expenses:</b> (MRI, surgery, therapy, vocational rehabilitation)	19	50% of Third Party Claims
<b>Third Party Recovery Amounts</b>		
<b>Total Amount of Funds Recovered from Third Parties by Claimants:<sup>2</sup></b>	7 cases	(\$118,257.56)
<b>Additional Claims Pursued by Claimants:<sup>3</sup></b>	7 cases	(Amount Unknown)
<b>Is the Department Able to Pursue Its Third Party Claims?</b>		
<b>Claims Not Pursued With Potential For Recovery:</b>	10	
<b>Claims that Cannot Be Pursued Because of Statute of Limitations:</b>	11	

<sup>1</sup> Labor denied 3 of the 38 claims for reasons unrelated to third party liability. Therefore, these 3 only provide information about identifying third parties and the beginning steps to pursuing them. One USPTO case is not factored into this table's data.

<sup>2</sup> This figure may be larger because some claim files indicated claimants may receive additional funds in the future, but the files did not provide information to determine whether claimants received these funds or whether funds were credited to the Department.

<sup>3</sup> Based on our file review, some injured employees apparently pursued third parties, but there was no indication in the files whether they were successful or the Department recovered funds.

Source: Office of Inspector General

**RECOMMENDATIONS**

1. Identify third party claims and ensure OOSH, the contractor, and Labor OWCP district offices monitor recovery efforts.
2. Educate Commerce safety specialists, administrators, supervisors, employees, and the contractor on the importance of adequately identifying third parties and pursuing funds from the time the claim is filed.
3. Include responsibilities for identifying and monitoring the pursuit of third parties as requirements in future contracts for workers' compensation management.



In its response to our draft report, the Department reported that it had notified the Department of Labor about 183 claims for workers' compensation injuries that may have been caused by a third party. This number differs from the 187 claims the Department originally reported to our office. Upon our request, the Department stated it changed the number because it determined that 4 of the 187 claims were not third party claims. In its response to our draft report, the Department also noted that it thought Labor should take a much stronger role in pursuing third-party claims, and it hopes that the referrals to Labor will reduce the government's liability and result in a credit of previously expended Commerce funds.

Census' response indicates that the bureau believes there are factors, such as an injured worker's incapacity, that may make information on third parties unavailable at the time that claim forms are first submitted. When the claimants and supervisors complete the forms, they must ensure the third party box is marked and third party contact information is provided, where applicable. We agree that a variety of factors can affect the completion of workers' compensation forms. DAO 202-810 states that supervisors and managers are responsible for "providing any additional factual evidence to the contractor, as required by Labor in its adjudication of claims." Supervisors and managers must subsequently provide third party information to Labor when it becomes known, if it was not initially indicated on the workers' compensation forms.

In its response, Census also reports that in future FECA manuals and training given to supervisors, it will include specific guidance on how to accurately provide third party information.

***F. OHRM Needs to Refer All Cases of Possible FECA Fraud or Misconduct to the Office of Inspector General***

OOSH has not been referring potential fraud cases to the Office of Inspector General. Our evaluation of 260 short-term and long-term cases resulted in 15 referrals for investigation. In addition, we found the Department's FECA contractor had sent 20 cases to OOSH for referral to our office, but OOSH did not refer any of them to our office until we recently raised this matter with OHRM managers.<sup>77</sup>

Commerce regulations do not explicitly state that OOSH, employees, and/or the contractor must report questionable FECA claims to our office. However, employees must promptly notify the Office of Inspector General of suspected violations of law, rules, regulations, or mismanagement, and any information indicating gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.<sup>78</sup> In addition, the contractor is required to challenge questionable claims and refer them to Labor.<sup>79</sup> If the contractor believed certain claims were suspect, OOSH should have submitted them to our office. Proven FECA fraud or abuse is

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<sup>77</sup> There is some overlap between cases referred to OIG, and the cases OIG identified for investigation during our review.

<sup>78</sup> DAO 207-10, *Inspector General Investigations*, January 19, 1981.

<sup>79</sup> DAO 202-810, *Workers' Compensation for Federal Employees*, November 24, 2004.

grounds for reducing or terminating benefits and possible criminal prosecution.<sup>80</sup> For example, a joint investigation conducted by our Office of Investigations and Labor's OIG recently resulted in an administrative determination that a Commerce claimant must repay \$195,000 in workers' compensation benefits, based on his failure to report income earned during the 4-year period he was receiving benefits.

The OOSH workers' compensation specialist believed the cases flagged by the contractor did not need referral to either our office or to Labor. The OOSH director, on the other hand, was unaware and upset that questionable cases were not referred to us. By failing to refer certain cases, OOSH missed the opportunity to uncover potential fraud, bring an employee back to work, and/or reduce compensation payouts and long-term benefits. We believe the OOSH director should have been told about these questionable cases and been the one to decide whether to refer them to our office and/or Labor. After we brought this matter to the attention of OHRM managers, OOSH referred 26 cases to our Office of Investigations between November 7, 2005 and February 9, 2006. However, the OIG team reviewing the worker's compensation program had already submitted 10 of the 26 cases to our Office of Investigations.

### **RECOMMENDATION**

Direct all bureau managers, OOSH, and the contractor to refer cases of suspected FECA fraud, waste, and abuse to the Office of Inspector General and the Department of Labor. OOSH and the contractor should also carefully monitor suspected cases of FECA abuse, including questionable cases, such as multiple claim submissions from a single employee.



The Department agreed with our finding. In its response to our draft report, the Department reports that since October 2005, it has reviewed and referred 23 cases of suspected fraud to our office.

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<sup>80</sup> 20 CFR 10.17 and 18 U.S.C. § 1920.

## II. Deficient Bureau-Level Attention to the FECA Program Mirrors Weaknesses Found in OHRM

While OOSH centrally manages the Department's workers' compensation program,<sup>81</sup> Commerce regulations require bureau supervisors and managers to be involved with their own FECA cases. But 5 out of 13 Commerce bureaus, with 89 percent of the 2005 workers' compensation costs, have relied on OOSH to manage their cases. The 5 bureaus believe that departmental regulations gave OOSH total responsibility for managing cases. Second, bureaus have not adequately monitored their charge-back reports or requested them from the Department when they are not provided on a regular basis. Third, Census lacks a proactive strategy for handling past and future FECA claims, particularly those involving its temporary decennial census workers. Fourth, USPTO needs to improve oversight of its workers' compensation cases. We found that the bureaus' lack of attention to their own case rolls was a serious contributing factor to OOSH's overall poor management of the FECA program.

### A. The Bureaus Have Not Effectively Monitored Their Workers' Compensation Cases

Commerce bureaus have taken a hands-off approach to their workers' compensation cases because OOSH is charged, under DAO 202-810, with managing the FECA program. The 5 bureaus are Census, NOAA, NIST, ITA, and NTIA. While the DAO does not explicitly state that the bureaus must maintain workers' compensation programs including systematically reviewing cases, the DAO does assign specific responsibilities to bureau supervisors and managers (see Figure 13).

**Figure 13: Bureau Responsibilities for Workers' Compensation Cases**

Supervisor and Manager Responsibilities
1. Assist employees with work-related injuries so they receive medical attention as soon as possible.
2. Advise employees that workers' compensation guidance is available from the departmental contractor and OOSH.
3. Complete the supervisor's section of all forms and submit forms to the contractor in a timely manner.
4. Submit Form CD-137, "Report of Accident/Incident," to OOSH and the bureau safety office.
5. Coordinate with the contractor and employee's timekeeper to modify time and attendance reports for continuation of pay, as appropriate.
6. Provide all relevant case information to the departmental contractor on questionable claims, and where appropriate, controvert continuation of pay in accordance with regulatory guidelines.
7. Provide any factual evidence to the departmental contractor as required by Labor in its adjudication of claims.
8. Maintain contact with and advise employees of the availability of light and/or limited duty.

Source: Commerce Department Administrative Order 202-810

Some bureau managers stated they did not pay attention to workers' compensation cases and costs for various reasons including: (1) they believed when the Department centralized the program in 1994, it made OOSH responsible for managing all aspects of the program on their behalf; (2) OOSH has not conveyed adequate information about the claims process or the

<sup>81</sup> See Background Section.

bureaus' role in managing it; and (3) OOSH has only sporadically distributed Labor charge-back bills Department-wide, so bureau personnel did not know what their FECA costs were or that they were to be monitored, and consequently had no full-time staff dedicated to monitoring these cases and costs.<sup>82</sup>

Bureau attention to FECA cases is essential to the Department's success at reducing workers' compensation costs and returning employees to work. Bureau personnel should know who from their organization is on the rolls, and they are in the best position to identify errors in case-related records and documentation. They also know what reemployment accommodations are possible, if needed, when employees are ready to come off the rolls. However, as stated earlier, we found that some bureau personnel were unaware of their FECA responsibilities and departmental regulations or found them confusing.

Without bureau involvement and cooperation, OOSH cannot adequately monitor workers' compensation cases and minimize costs. For example, we asked Census and NOAA to determine whether 61 workers had returned to work or were still injured. Census and NOAA could not find 14 of the 61 workers' or 23 percent on their employee rolls (3 for Census and 11 for NOAA). Fourteen workers were receiving compensation payments while Census and NOAA were unaware of their case status. Not being able to identify all of its claimants hinders a bureau's ability to manage its workers' compensation costs.

## **RECOMMENDATIONS**

1. Revise DAO 202-810 to clearly define the roles and responsibilities of Commerce bureaus in managing their workers' compensation cases, verifying costs, and returning employees to work as soon as possible.
2. Improve OHRM's coordination with bureau supervisors, human resources offices, and safety offices, and ensure that each bureau:
  - a. Designates at least one individual to oversee its workers' compensation cases and coordinate closely with OOSH and the contractor to bring employees off the rolls as quickly as possible, and
  - b. Considers incorporating a performance element for minimizing workers' compensation costs into the performance plans of appropriate personnel.



The Department's response to our draft report indicates that it is revising DAO 202-810 to more clearly define bureau roles and responsibilities for the workers' compensation program. The response also indicates that OHRM issued guidance on its return-to-work initiative, Human Resources Bulletin #018 dated, November 2005, during our review (see page 25). The bulletin identifies Commerce workers' compensation return-to-work procedures including the OOSH Director's establishment of an employee assignment team after receiving notification that an injured employee can return to work. A representative from the employee's human resources

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<sup>82</sup> PTO has a full-time workers' compensation specialist.

servicing office, the first-line supervisor, and a bureau/office senior management official will be members of the team. We believe the actions called for in the bulletin, when fully implemented, will address recommendation 2a above. However, OHRM will need to provide adequate oversight to help ensure that each bureau understands and complies with the bulletin.

***B. Neither OOSH Nor the Bureaus Routinely Determine the Accuracy of Charge-back Bills***

We found that OOSH and the bureaus have not systematically verified the charge-back reports from Labor. DAO 202-810 requires OHRM to review and reconcile workers' compensation charges billed by Labor. Labor's charge-back reports, submitted quarterly and annually to OOSH, list the claimant names and associated costs for each workers' compensation case. These reports are a key tool for analyzing and minimizing FECA costs.<sup>83</sup>

The charge-back reports detail the cost of FECA cases for the Department, medical and monetary compensation totals, the number of payments, and type of claim. By not reviewing the charge-back reports, bureaus are unable to verify claimants belong to their bureau or that claimants receive the correct level of compensation. In addition, the charge-back reports give bureaus an opportunity to identify all employees who are receiving benefits and verify that they are entitled to remain on the rolls. Since some claimants may have been on the rolls for long periods of time, the current bureau supervisors or managers may not know the claimants and should be able to check whether they can be brought back to work or taken off the rolls. Without any incentive or accountability for bureau supervisors to manage their claims, errors on the reports can be missed, and claimants may remain on FECA rolls for indefinite periods of time without any verification as to their eligibility.

OOSH personnel stated they never verified charge-back reports and only recently began to look at them, in response to our review. OOSH informed our office that it is in the process of verifying information on charge-back reports. On February 1, 2006, OOSH emailed a bureau regarding a discrepancy with one claimant on the report.

OOSH also did not consistently distribute Labor charge-back reports. OOSH could not confirm that it sent charge-back reports to bureaus prior to 2000, and since then, OOSH's distribution has been sporadic. Since 2000, OOSH has provided 9 of the Department's 14 bureaus with charge-back reports.<sup>84</sup> However, OOSH had provided only 4 bureaus with copies of the 2005 annual charge-back report. Census and NOAA, the bureaus with the largest workers' compensation expenditures, have not received charge-back reports for over 2 years and 1 year, respectively. Table 6 lists the charge-back reports distributed to bureaus.

Although they continued to pay FECA bills, the bureaus did not consistently request charge-back reports from OOSH to verify information. Of the 9 Commerce bureaus receiving charge-back

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<sup>83</sup> Department of the Interior Workers' Compensation Program OIG Evaluation Report Number: E-IN-MOA 0008-2004, pp 7-8. Department of Veterans Affairs Audit of VA's Workers' Compensation Program Cost, OIG Report Number: 8D2-G01-067, p. ii.

<sup>84</sup> OOSH confirmed that workers' compensation charges for BEA and ESA are combined on one charge-back report, meaning the \$825 ESA bill applies to both bureaus. USPTO has been a performance-based organization (PBO) since 2000, and receives its reports directly from Labor.

reports, only 6 took additional action after receiving the reports. Census and NOAA were among those bureaus whose safety officers did not review the reports received.

**Table 6: OOSH's Charge-back Report Distribution by Bureau (2000-2005)**

Bureau	Bureau Costs (7/1/04-6/30/05)	Charge-back Reports Received Since 2000	Bureau Actions After Receiving Charge-back Report
Census	\$5,593,551	7/1/03-9/30/03	Census' Safety and Health Office does not review reports.
NOAA	\$5,457,684	7/1/04-9/30/04 7/1/03-6/30/04 7/1/02-6/30/03 7/1/01-6/30/03	NOAA's Safety and Health Division does not review reports.
NIST	\$898,857	7/1/04-6/30/05 7/1/03-6/30/04 7/1/03-9/30/03 7/1/02-6/30/03	Occupational Safety and Health Director reviews reports.
ITA	\$732,531	None	Not Applicable
USPTO	\$577,714	7/1/04-6/30/05 (USPTO receives reports directly from Labor)	Workers' Compensation Specialist reviews reports.
OS	\$365,567	7/1/04-6/30/05 7/1/03-3/31/04	OOSH Safety Director reviews reports.
MBDA	\$237,735	None	Not Applicable
NTIA	\$179,942	7/1/04-6/30/05 7/1/02-6/30/03 7/1/01-6/30/02 7/1/00-6/30/01	Safety Manager reviews reports.
OIG	\$172,405	7/1/04-6/30/05 7/1/01-6/30/02	Safety Manager began reviewing reports in May 2005.
BIS	\$115,941	7/1/03-6/30/04 7/1/02-6/30/03	Reports reviewed against employees on rolls.
EDA	\$111,104	None	Not Applicable
NTIS	\$49,595	7/1/04-12/31/04 7/1/04-09/30/04	Budget analyst reviews reports.
ESA	\$825	None	Not Applicable
BEA	Not Applicable	7/1/03-12/31/03	Not Applicable

Source: OOSH and Departmental Bureaus

Our review of the charge-back reports identified case information, such as the following, which the bureaus or OOSH could have acted upon if they analyzed the reports themselves:

- Two individuals were listed on the wrong Commerce bureau reports (one from NOAA and one from Census) from April 1, 2005, until November 8, 2005. After we notified OOSH of the mistake, the office contacted Labor to correct the errors. Since no charge-backs had been sent to NOAA for over a year, and to Census in over 2 years, the bureaus

would not have caught the errors. OOSH stated that it has no internal controls to identify such errors billed to the 2 agencies. This indicates that the wrong agency may have been overcharged for the period from April 1, 2005 to November 8, 2005.

- An individual in the Office of Inspector General had been on workers' compensation for many years without current management's knowledge. As a result of reviewing our charge-back report, we identified this individual and current management was able to successfully act on this claim and reduce FECA costs.

The failure to analyze charge-back reports is not a new problem. Our 1992 review noted the following:

Some specialists were not familiar with the charge-back list at all. Many agencies were not aware that they have a charge-back code and were unable to locate their claims on the charge-back list. Some agencies did not understand the information provided by the charge-back listing. Others reviewed the list but had no method or routine for verifying.<sup>85</sup>

We recommended that workers' compensation specialists receive instructions on reviewing and verifying the accuracy of the chargeback reports. Thirteen years later, in our current review, we noted the same problem, and our 1992 recommendation had not been implemented.

OOSH believed that unless requested by the bureau, it did not have to distribute the charge-back reports, and it has never been the Department's practice to do so. DAO 202-810 does not explicitly require bureaus to review charge-back reports. Bureaus also believed they were not required to review the reports, and one bureau manager told us he did not know the report existed. In addition, the bureaus also had no incentive to review the reports because the bureau finance offices pay the workers' compensation bills, and bureau employee appraisals contain no performance measures to encourage supervisors to manage workers' compensation costs. However, OOSH is now establishing contacts in each bureau budget office and plans to send the quarterly and annual charge-backs to them.

## **RECOMMENDATION**

Distribute quarterly and annual charge-back reports regularly to all bureaus and instruct the bureaus to carefully review and verify the accuracy of the charge-back costs and create incentives for them to do so. For example, the Department could use data from the charge-back reports to generate a listing of claimants and costs by line office to increase their accountability for justifying those costs.

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<sup>85</sup> Office of Inspector General, *Evaluation of Department of Commerce Management of the Federal Employees' Compensation Act*, Report Number IRM-4589, 9/24/92, p. 17.



The Department's response did not specifically address this recommendation, although it did state that the Labor Department should take a stronger role in discontinuing payments to claimants who have died and identifying double payments to claimants.

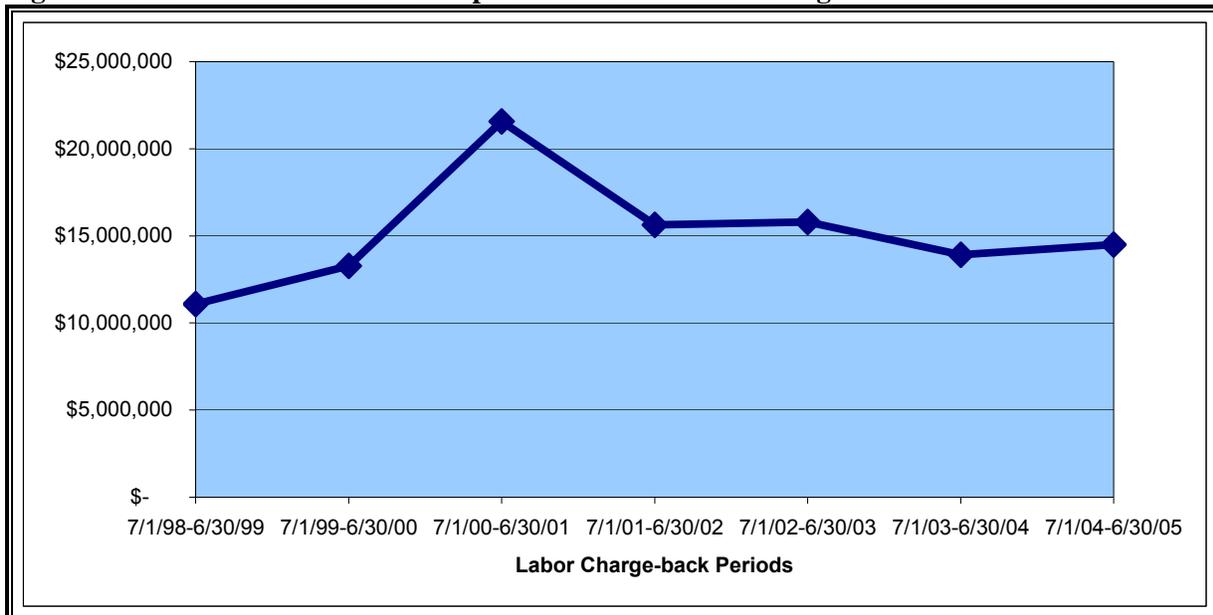
In its response to our draft report, Census stated it is willing to evaluate ways to increase line office accountability for FECA costs. However, it believes it needs charge-back data in an electronic, sortable format from Labor. Currently, Labor provides the charge-back reports in paper form. However, this should not preclude Census from reviewing its charge-back reports for accuracy and completeness.

***C. OHRM and Census Need a Plan for Moving Temporary Workers from Past Decennials Off FECA Rolls and for Proactively Managing Future Decennial Claims***

Our review of Census Bureau FECA rolls identified 44 active claims from the 1990 decennial and 183 from the 2000 decennial. It is unnecessary and costly when so many temporary staff hired to conduct the 1990 and 2000 decennial censuses are injured on the job and remain on the rolls to this day. Census stated that its return-to-work obligation to temporary workers on FECA rolls is only to find them suitable employment for 90 days, but Census did not keep a list of any of its employees who could potentially return to work. Claimants who take such positions need only work for 90 days and the Department's FECA obligation ends. Claimants who decline a suitable offer of temporary employment lose benefits immediately, with no further expense incurred by the Department. Instead, Census continues to pay FECA benefits to recovered individuals. To avoid repeating this mistake with employees injured during the 2010 decennial, or tests in preparation for that count, Census and OHRM need to develop a proactive plan for reemploying claimants as soon as they are able to work.

*Short-term workers become long-term claimants.* For the 1990 and 2000 decennials, Census hired approximately 500,000 temporary enumerators and other staff. The huge influx of workers created more opportunities for injuries and higher workers' compensation costs. Census data collection may put temporary employees in situations that hold risk of injury. Temporary employees often work at night and may have to drive or walk in unsafe and high crime areas. Figure 14 shows a sharp spike in costs during the 2000 decennial time frame, and much of this increase occurred when the Department employed Census' temporary contingent. Commerce paid over \$21 million in workers' compensation benefits between July 1, 2000, and June 30, 2001, which coincides with the tenure of most temporary Census workers. Costs subsequently decreased and have remained relatively stable, as staffing levels at the bureau returned to normal.

**Figure 14: Commerce Workers' Compensation Costs Rose During the 2000 Decennial Census**



Source: OOSH

Census stated that it struggles with following up on decennial cases because of resources and the difficulty of bringing people back to work because of the short-term nature of decennial jobs. Table 7 lists claim-related information for four Census enumerators injured on the job during the last two decennials, and shows problems in Census' and OOSH's management of these cases.

**Table 7: Data on Four Census Workers' Compensation Claims**

Claimant	Current Claimant Age	Year of Injury	Medical Compensation (7/1/04-6/30/05)	Monetary Compensation (7/1/04-6/30/05)	Estimated Compensation to Date <sup>86</sup>
1	65	1990	\$ 0	\$ 8,703	\$ 130,554
2	59	1991	\$ 0	\$ 22,365	\$ 313,115
3	56	2000	\$ 1,264	\$ 13,563	\$ 74,138
4	45	2000	\$ 2,946	\$ 13,125	\$ 80,358
<b>Total</b>					<b>\$ 598,165</b>

Source: Labor Charge-back Period 7/1/04-6/30/05

- Claimant 1 sustained multiple injuries in 1990. Subsequent surgeries, recovery, and completion of the Census left this claimant without a return to work offer. In 1998, OHRM believed the claimant's medical documentation did not support the claimant remaining on workers' compensation. However, she has remained on the rolls collecting over \$130,554 in compensation in addition to payments for medical bills.

<sup>86</sup> Calculated from Labor chargeback report dated 7/1/04-6/30/05. Estimated compensation includes monetary compensation multiplied by the number of years since the injury plus medical expenses from the 7/1/04-6/30/05 report. Actual compensation would be higher if medical compensation was known for the years since the injury.

- Claimant 2 sustained a minor injury in 1991, and some 15 years later, remains on the Department's rolls at a cost of more than \$313,115 to date. Claimants 1 and 2 received no recent medical compensation, indicating they no longer have medical expenses related to their Census injuries and may be able to return to work.
- Claimant 3 was injured in a fall while on the job in 2000. She did not recover before the term of duty expired. In the 6 years since this incident, this claimant has received \$74,138 in compensation.
- Claimant 4 was injured while conducting interviews in 2000. Her term of duty also expired before she could return to work. She has remained on the rolls for over 5 years and received \$80,358 in compensation.

Census has known it could offer temporary assignments to previously injured workers. However, Census stated that it faces problems reemploying workers. The vast majority of decennial jobs last less than 90 days and occur within a specific calendar year window. Typically, most, if not all, decennial positions have ceased to exist by the time a worker is available to return to work.

As Table 8 below shows, the 1990 and 2000 decennial census injuries accounted for 49.4 percent of the bureau's workers' compensation costs on the last Labor chargeback report. These workers are unique in the limited amount of time they spend as Department employees. However, their length of hire should not preclude them from returning to work in short-term positions. Commerce data shows that most injured employees recover quickly and return to work on their own. Census decennial workers should be no different, despite their temporary status. However, Table 8 shows that these temporary employees are, in fact, different, and their cases are far costlier than other Census claims. Costs will only increase with the passage of time and medical care compensation increases as claimants' age. Instead of keeping recovered temporary employees on the FECA rolls indefinitely, Census should have tried to find other temporary positions for them.

**Table 8: Census Workers' Compensation Costs<sup>87</sup>**

Type	Number of Claims	Total Cost	Percent of Total Cost	Average Case Cost
1990 Decennial Census	44	\$ 661,481	11.83	\$15,034
2000 Decennial Census	183	\$ 2,103,740	37.61	\$11,496
<b>Decennial Subtotals</b>	<b>227</b>	<b>\$ 2,765,221</b>	<b>49.44</b>	<b>\$12,182</b>
<b>All Other Census Claims</b>	<b>426</b>	<b>\$ 2,828,330</b>	<b>50.56</b>	<b>\$ 6,639</b>
<b>Totals</b>	<b>653</b>	<b>\$ 5,593,551</b>	<b>100.00</b>	<b>\$ 8,566</b>

Source: Labor Charge-back Period 7/1/04-6/30/05

<sup>87</sup> From Labor Charge-back Period 7/1/04-6/30/05.

Census is proactive in trying to prevent or minimize new FECA claims and costs. Census gives new supervisors detailed training handbooks on workers' compensation procedures, as well as tips on containing these costs.<sup>88</sup> Its regional offices issue memos advising enumerators to be mindful of their safety while on the job, hang safety posters in field offices that feature tips on preventing slips and falls, put safety reminders in monthly newsletters to field representatives, and equip their laptops with on-screen safety reminders. Earning and leave statements for temporary workers even contain messages on avoiding injury.<sup>89</sup>

Despite such preventive efforts, injuries occur among temporary employees. Moving employees off compensation rolls is made more difficult because terms of duty often expire before workers have been cleared for return to work. Local offices close, leaving Census often unable to offer employment, and injured employees become long-term cases. OWCP personnel stated that Census could offer jobs to employees within 1 hour of their original location. However, Census stated that even with 12 regional offices, it would be difficult to find 227 jobs for the workers injured during the 1990 and 2000 decennials. Census emphasized that most regional offices mainly have full-time employees and few temporary jobs.

Census has the opportunity to move many of these workers off the rolls by hiring them for the 2010 decennial and related operations leading up to it. Some of the injured decennial employees worked in Census field offices that are only open during each decennial. A district director for Labor's OWCP suggested that Census modify job descriptions for these positions to accommodate the injured employee's medical limitations.

## **RECOMMENDATIONS**

1. Review all Census FECA cases in conjunction with OOSH, and identify those employees able to return to work, whether in a full-time or temporary capacity. Take necessary actions to bring those employees back to work as soon as possible.
2. Develop a comprehensive FECA program for the 2010 decennial, that includes:
  - a. Guidance for supervisors/managers on how to handle FECA claims immediately upon initiation through case management;
  - b. A return to work strategy, complete with modified temporary positions to quickly bring injured enumerators or others back to work if they are injured during the 2010 decennial; and
  - c. Identification of current claimants who could be offered a job in the 2010 decennial preparations and/or operations and brought back to work.

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<sup>88</sup> "An Overview of Office of Workers' Compensation Programs (OWCP): Supervisory Responsibilities," presentation provided by U. S. Bureau of the Census, Safety Office, 10/26/05.

<sup>89</sup> Commerce Safety Council Presentation by Safety and Health Manager, Census, 1/27/05.



In its response to our draft report, the Department indicated that it is complex to develop a return-to-work strategy for Census enumerators, since Labor regulations mandate a 90-day minimum job offer and Census enumerator positions are for 45 days. The Department stated it “will continue to work with DOL and the Bureau of the Census to arrive at a solution, recognizing that a legislative or regulatory change by DOL may be necessary.” While this discussion takes place, we believe the Department should determine if reemployment opportunities for Census enumerators in other Commerce bureaus are available.

In its response to our draft report, Census agreed with our 2 recommendations that were specifically addressed to it, but strongly disagreed with 2 issues in our report. The bureau also provided general and specific comments on the report and recommendations addressed to the Department (see Appendix D for Census’ full response). We made changes to the report, where necessary, to reflect some of Census’ comments.

Census’ comments also included the following points.

- It strongly disagreed with 2 themes in our report.
  1. Our report states that while OHRM and OOSH centrally manage the Department’s workers’ compensation cases, Commerce regulations require bureau supervisors and managers to be involved in their FECA cases. Census believes that bureaus have a minimal role in workers’ compensation case management, because the Department centralized its FECA program in 1994 and gave OHRM and OOSH responsibility for FECA program management and operations. Census states that, “The Department’s 1994 assimilation of the bureaus’ workers’ compensation FTEs limits our ability to absorb additional workers’ compensation duties without additional resources.” Census also maintains that DAO 202-810 does not provide departmental bureaus with responsibility for managing workers’ compensation cases “beyond the prompt, accurate reporting of injuries and the prompt response to Departmental requests for assistance.” While our report states that the Department’s FECA program was centralized in 1994, we also point out that Commerce regulations (1) require bureau supervisors and managers to provide oversight for their own FECA cases and (2) assign specific responsibilities to them. In addition to the examples the bureau cites, DAO 202-810 states that supervisors and managers are responsible for (1) providing all relevant case information to [the departmental contractor] on questionable claims, and where appropriate, controverting continuation of pay in accordance with regulatory guidelines; (2) providing any additional factual evidence to the departmental contractor, as required by Labor in its adjudication of claims; and (3) maintaining contact with, and advising the employee of the availability of light and/or limited duty. We believe these 3 tasks indicate bureau responsibility for developing and maintaining proactive involvement with their workers’ compensation cases for the duration of the claim. Therefore, we disagree with Census’ premise that departmental bureaus take a reactive approach to managing its workers’ compensation cases.

2. Census believes our report underestimates the heavy financial costs the bureau sustains from errors, inefficiencies, and inflexibility of Labor's OWCP. We recognize that Census has concerns regarding Labor's administration of the FECA program. However, the focus of our review was on Commerce's management of its workers' compensation program and whether Commerce: (1) aggressively minimizes FECA costs by bringing work-capable claimants back to work as soon as possible, (2) verifies FECA charge-back costs and ensures they are reasonable, (3) adequately oversees the workers' compensation contractor, and (4) effectively coordinates the Department's safety program with the workers' compensation program to identify and modify workplace conditions that contribute to costly injuries.
- Census also took exception with the statement in our draft report that Labor's primary FECA responsibility is to provide benefits and not to minimize agency costs. It believes the President's 2004 Safety, Health, and Return-to-Employment (SHARE) Initiative places primary responsibility on Labor to take the lead in improving workplace safety and health and reducing the costs of injury to workers and taxpayers. SHARE is a collaborative effort between Labor and other federal agencies for fiscal years 2004 to 2006. SHARE's four main goals are to: (1) reduce total injury and illness case rates by at least 3 percent annually, (2) reduce lost time due to injury and illness case rates by at least 3 percent annually, (3) increase timely filing of claims by at least 5 percent annually, and (4) reduce lost production days due to injury and illness by at least 1 percent annually. As the lead participant, Labor is responsible for tracking each federal agency's performance and comparing the results to fiscal year 2003 baseline workers' compensation data. However, federal agencies are responsible for lowering workplace injury and illness case rates, lowering lost-time injury and illness case rates, providing timely reporting of injuries and illnesses, and reducing lost days resulting from work injuries and illnesses. Labor reports indicate that Commerce has met or surpassed 3 of the 4 SHARE goals, but the Department's lost production days continue to rise annually and have never met the SHARE target.
  - Census believed that waiting 4 more years until the 2010 decennial to reemploy the 227 claimants from the 1990 and 2000 decennials would not be cost effective. We agree. Census states that it would be more cost efficient for Labor to place the 227 employees who cannot be rehired by the bureau in the public or private sectors. However, Census believes Labor has not adequately addressed the re-employment of decennial workers' compensation claimants, and it notes that Census was unsuccessful in its efforts to convince Labor to increase its emphasis on private sector placement. Census stated Labor's criteria for re-employment of decennial claimants is too restrictive. It thought that perhaps the Department could initiate a "higher-level dialog" with Labor to better resolve these issues and lead to improved service to claimants. We agree that more active departmental engagement with Labor may be helpful, but we also note that Census should not be solely dependent on Labor to bring its 227 claimants from the 1990 and 2000 decennials off of the long-term rolls. While Labor plays a key role in returning employees to work, we believe Census should engage in a collaborative effort with the

Department and Labor to develop a proactive return-to-work program that is continuous throughout the decade for decennial employees. As noted previously, the Department stated in its response to the draft report, that it will continue to work with Labor and the Census Bureau to help bring temporary decennial Census employees back to work.

#### ***D. USPTO's Independent Administration of its FECA Program Has Problems***

USPTO became a performance-based organization in March 2000. It has been responsible for independently processing and managing workers' compensation claims for its employees since October 1, 2000. One workers' compensation specialist in the Office of Human Resources is the primary person handling this responsibility. According to its annual charge-back report,<sup>90</sup> the bureau has 65 workers' compensation claims. Based on our review of 29 cases, the bureau processes most claims well within the 10 days required by law.<sup>91</sup> USPTO employees typically return to work within 2 weeks. USPTO does not have a written policy for its FECA program, nor does it provide adequate performance plans for the staff handling FECA cases and claims. As a result, we found some administrative and program weaknesses similar to those identified for the rest of the Department.

##### *Case management is inconsistent.*

**Case file oversight.** USPTO independently administers its FECA program and should maintain complete FECA case files, closely monitor claimants, and regularly document their status, but it does not do so consistently. For most short-term cases in our sample, USPTO's staff frequently corresponded with claimants, supervisors, and Labor. However, USPTO did not have files for 3 of our 29 sample cases and one file contained no activity for a 19-month period. In addition, long-term case files had minimal evidence of USPTO involvement. The agency's workers' compensation specialist reported that she does not review long-term cases or contact long-term claimants and their doctors. She believes that long-term case management is Labor's responsibility and has never reviewed files at Labor. This limited approach hinders USPTO's ability to minimize costs and verify that employees who receive compensation remain eligible for benefits.

**Verification of charge-back reports.** The USPTO workers' compensation specialist told us that she skims all charge-back reports and has not found any inaccuracies. During our file review, we found that Labor had notified USPTO in 2002 that it discovered a claimant had received dual payments and the claimant owed \$14,000 to the government. This example underscores the need for USPTO to carefully review charge-back reports. Since we inquired about the status of that repayment, the workers' compensation specialist contacted Labor's claims examiner for an update. Our office contacted Labor and confirmed that as of February 14, 2006, Labor had not yet issued a letter asking the claimant for repayment.

**Returning employees to work.** USPTO does not have a written return-to-work policy, although its workers' compensation specialist emphasized that senior level management is very aggressive

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<sup>90</sup> Annual USPTO charge-back report for the period between July 1, 2004 and June 30, 2005.

<sup>91</sup> 20 CFR 10.110.

in returning employees to work. According to the specialist, most supervisors understand that they must assist employees in returning to work. A supervisory human resources specialist also stated that supervisors have support from a human resources specialist and the USPTO Office of Civil Rights to meet employees' work needs and limitations. Based on our review, most USPTO employees hold sedentary positions and experience minor injuries that occur in an office environment, such as sprains, slips, and falls. These types of injuries permit employees to return to work on their own, often within days of their injuries. In our sample of 29 cases, at least 16 claimants returned to work. However, we noted the following problems in our sample cases that delayed the return of work capable claimants:

- A claimant received two medical opinions in 2002 and 2003 that cleared her for work, but USPTO's case file did not document any return-to-work efforts. In May 2003, Labor notified USPTO that it would schedule a third medical exam, but the file did not indicate whether this exam occurred or any subsequent activity to bring the claimant back on the job. We requested an update on this case from USPTO but its response is still pending.
- A claimant receiving benefits since 1992 was ruled medically ready for light duty in March 2003, but the file showed no effort by USPTO to find a suitable position for the employee or gather subsequent medical information. The claimant received \$13,923.33 in benefits on a recent annual charge-back report and USPTO's workers' compensation specialist confirmed that there has been no USPTO activity on this claim since it acquired FECA cases from the Department's OHRM in 2000.
- USPTO offered a claimant a job in 1986 but the claimant did not return to work and remains on the rolls. The case file contains no information as to why the claimant did not take the job or what his current medical condition is. In response to our inquiry about this specific case, the USPTO workers' compensation specialist explained that limited training and additional responsibilities have hindered her success with taking aggressive measures on claims.

**Manual tracking process.** Like the Department, USPTO does not have a computerized system for managing cases. It works exclusively with paper files and manual follow-up procedures, or relies on Labor's Agency Query System. Labor's AQS is a valuable source of information on case status and compensation history. But USPTO cannot use AQS to closely monitor its workers' compensation cases because it does not capture all case correspondence including current medical reports. It also does not alert USPTO when forms and medical status updates are due. When we asked about specific claims, the workers' compensation specialist had to contact supervisors and sometimes the claimants themselves to gather information. A computerized system would help workers' compensation staff quickly access case information and track when updates with claimants are necessary. We believe USPTO, like the Department, could benefit from a computerized system for managing workers' compensation cases.

**Third party claims.** In one case, USPTO did not inform the claimant that she should pursue a third party involved in her injury and the claimant did not do so. The claim application form

clearly identified the responsible third party,<sup>92</sup> but Labor did not process the claim as a third party matter and USPTO paid the full cost of the claim. The workers' compensation staff did not seek clarification from Labor on whether it made a decision regarding the third party issue or simply overlooked it.

*A written FECA policy, guidance, and training for supervisors are needed.* USPTO does not have a written policy for its FECA program, but the Office of Human Resources is developing an Agency Administrative Order to outline FECA responsibilities. USPTO provides general staff guidance on workers' compensation through an intranet site with a brief explanation of the types of injuries covered by FECA, a short list of actions that employees and supervisors need to take to treat injuries and submit a claim application, and contact information for USPTO health units and the Office of Human Resources. The site is not comprehensive. Written guidance is needed that outlines employee and supervisor responsibilities throughout the FECA process, and policies and procedures for returning employees to work, verifying or validating costs, addressing third party liability, and detecting and reporting suspected FECA fraud and abuse. USPTO told us that it is updating the workers' compensation information available on its intranet site. It should ensure that the site and/or its written FECA guidance is comprehensive.

In addition, USPTO does not provide workers' compensation training for supervisors. Until 2 years ago, USPTO included workers' compensation responsibilities in its new supervisory training program. A bureau official told us that she did not know why the training stopped and acknowledged the need to train supervisors on their FECA responsibilities. USPTO told us that it would incorporate this training in a program currently under development. It will be a new supervisor certificate program that is scheduled to start in March 2006. The new program, and supplementary training for existing supervisors, needs to include comprehensive FECA training for supervisors who handle workers' compensation responsibilities.

In the meantime, USPTO employees and supervisors approach the workers' compensation program without complete information and guidance, which complicates employees' efforts to receive benefits and supervisors' efforts to bring staff back to work. For example, a supervisor waited 2 weeks before forwarding an employee's claim application and never sent other key documents supporting the claim, thus delaying initiation of benefits. In another case, a supervisor did not recognize an employee's injury as qualifying for workers' compensation and erroneously challenged the claim but was overridden by Labor.

**Reporting suspected FECA fraud.** USPTO does not have written policies and procedures for reporting suspected FECA fraud. The supervisory human resources specialist reported the workers' compensation specialist reviews claim applications and reports suspicious claims to Labor. However, USPTO should establish guidelines that require all employees and supervisors to report suspected FECA fraud or abuse to OIG and Labor. USPTO has made no such referrals to OIG since 2000, but has questioned Labor about two claims.

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<sup>92</sup> The claimant suffered injuries after stepping off an elevator that was not level with the floor. The property owner of the building was listed as the third party on the claim application.

Workers' compensation specialist needs a detailed performance plan. The workers' compensation specialist receives some oversight and support from her supervisor, but the specialist's performance plan does not address her workers' compensation duties. The supervisor stated that she uses face-to-face contact, telephone calls, and emails to supervise the workers' compensation specialist. She also stated that she and previous USPTO supervisors have occasionally discussed cases and pending FECA issues with the specialist. But this usually happened after managers inquired about employees and their return-to-work status. More importantly, the supervisor stated that she evaluated the specialist twice a year based on a generic performance plan that does not include specific workers' compensation duties. This makes it difficult to evaluate the employee's progress on, and hold her accountable for the performance of, specific workers' compensation tasks.

At the time of this report, USPTO was restructuring the workers' compensation staff and supervision. It should ensure that performance plans for staff members include workers' compensation duties and supervisors should evaluate the performance of staff in this area, as applicable.

## **RECOMMENDATIONS FOR USPTO**

1. Actively manage USPTO's short-term and long-term FECA cases to include:
  - a. Maintaining well-documented case files,
  - b. Regularly communicating with all participants in the FECA process,
  - c. Reviewing files at Labor district offices,
  - d. Reviewing all existing long-term cases as soon as possible,
  - e. Periodically evaluating the status of each case and physical condition of each claimant for possible return to work,
  - f. Periodically reviewing Labor's Agency Query System and charge-back reports to identify duplicate payments and any other overpayments, and
  - g. Periodically matching claimant names to Social Security records to identify deceased claimants.
2. Establish a return-to-work program and develop procedures to:
  - a. Identify specific responsibilities for the employee, supervisor, and USPTO workers' compensation staff,
  - b. Give supervisors guidance for developing limited- and light-duty positions, and
  - c. Incorporate creative approaches, such as telework or light-duty work pools with the Department, when USPTO cannot make accommodations.
3. Consider implementing an automated system for managing FECA cases.
4. Pursue cost-recovery opportunities by more carefully identifying and pursuing third party liability.
5. Issue a USPTO administrative order and provide current, online guidance to:
  - a. Clearly define the FECA roles and responsibilities of USPTO supervisors, employees, and workers' compensation and human resources personnel and

- b. Provide pertinent information on FECA laws, regulations, and procedures, coordination with the Department of Labor, returning employees to work, verifying and validating charge-back costs, identifying and pursuing third party liability, and detecting and reporting suspected FECA fraud and abuse.
6. Develop and provide FECA training to all appropriate USPTO personnel.
7. Ensure that performance plans for appropriate staff include workers' compensation responsibilities and supervisors use the plans to oversee the performance of the workers' compensation staff.



In its response to our draft report, USPTO agreed with our findings and concurred with our 7 recommendations directed to it. Specifically, USPTO's response outlines actions it has taken or plans to take to address our recommendations within the next 7 months. USPTO also noted that it (1) reduced the number of open cases listed on its annual charge-back by nearly 28 percent, (2) initiated efforts to recover an overpayment in benefits, (3) acquired access to Labor's AQS system, (4) created a spreadsheet to track all claimants, and (5) planned to perform monthly status checks on claimants. We commend USPTO's vigorous efforts to improve management of its workers' compensation program and would like to get more information on USPTO's progress in the hope that some best practices could be identified and shared with the Department and other Commerce bureaus.

### III. The Workers' Compensation Contractor Has a Record of Strong Performance

Since October 2002, the contractor has managed all short-term workers' compensation cases. In April 2004, the contract was amended to include management of 74 to 200 long-term cases. Prior to October 2005, OOSH's workers' compensation specialist, in her role as the contracting officer's representative (COR), had never visited the contractor to evaluate its performance. In addition, the Department could not produce copies of any performance evaluations conducted throughout the 3 years of the contract's existence. Failure to monitor contractor performance opens the door for waste, fraud, and abuse of federal funds. While our review determined that the contractor has met most of its requirements (see Table 9), it is imperative that Commerce closely oversees this contract to ensure the FECA program is managed efficiently and cost-effectively. In addition, OHRM needs to address several issues concerning the terms of the workers' compensation contract.

#### A. The Contractor Performed Most of Its Responsibilities Well

Based on a limited review of the contractor's files and interviews with company officials, the contractor met 10 of 11 contract deliverables (Table 9).<sup>93</sup> It has instituted sound operating procedures and has capable, well-trained staff handling FECA claims on Commerce's behalf. The contractor believes it has saved the Department more than \$15 million over the last 3 years by helping to remove claimants from workers' compensation rolls.<sup>94</sup>

Operating Procedures. The contractor has instituted a series of procedures that enable its FECA specialists to fulfill contract terms. Within 24 to 48 hours of receiving a claim form, specialists must establish three-point contact with the claimant, physician, and employer. Specialists must also make diary entries in claimant case files every 60 to 90 days, summarizing all actions taken by the contractor and related outcomes (e.g., contact and correspondence with the supervisor, claimant, physician, and Labor). For the long-term cases, specialists write status reports every 120 days, recommending Commerce action, and submit the reports to OOSH's workers' compensation specialist. The contractor's claims manager conducts random case reviews weekly to ensure that specialists are following procedures. Specialists are rated on the number of cases they review each week, diary entries made, and three-point contacts initiated.

Training and Guidance. The specialists felt they were adequately trained and equipped to perform their tasks. Although the contractor did not offer formal training sessions to its own staff, each specialist has a FECA rules and regulations handbook and a FECA Question and Answer pamphlet. The specialists stated that when they encounter difficulty, they consult the senior specialists and claims manager who have extensive experience with FECA. The specialists use form letters to contact medical providers, Labor, and the claimant as needed. They share their work experiences and notify each other when Labor district offices adjust their operating procedures. The contractor hosts periodic working lunch sessions to update specialists on FECA changes and other important program information.

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<sup>93</sup> The contractor did not meet expectations in 1 area, and we did not review 1 contract deliverable.

<sup>94</sup> OIG did not verify the contractor figures.

**Table 9: Evaluation of Contractor’s Responsibilities**

Deliverable	Did Contractor Deliver?	OIG Observations
1. Process all incoming claims and maintain a record of all claims and claims-related transactions	Yes	Injured employees and/or supervisors send the contractor claim forms and the contractor submits the forms to Labor. The contractor keeps copies of all claim information in paper and electronic files.
2. Provide assistance to employees and supervisors	Yes	Contractor staff told us they are required to establish three-point contact with employee, supervisor, and physician and are rated accordingly on their performance appraisal. Our review of the case files confirmed this.
3. Authorize continuation of pay (COP) benefits	Yes	Contractor staff reported performing this task. Our review of Labor files confirmed this.
4. Assist in payment of wage loss claims (including leave buy-back claims)	Yes	Contractor staff stated they performed this task. Our review of Labor files confirmed this.
5. Resolve all outstanding claims issues	Yes	Contractor staff provide diary entries every 60 to 90 days to record case activity. These diary entries list actions specialists take to resolve claims issues. We reviewed copies of diary entries for our sample cases. (Contractor continuously works to resolve claims issues.)
6. Maintain complete case file records of claims activity from submission of claim form to claim resolution	Yes	During our site visit, the contractor retrieved requested case files and provided us with copies of case notes and status reports from its database.
7. Provide supervisory training	No	The contractor attended 2 training sessions where it described its role and gave out information packets on what to do in case of injury. However, it did not provide comprehensive training on supervisors’ responsibilities.
8. Develop and provide materials needed to improve timely submission of claims	Not reviewed	We did not review this deliverable because Labor statistics indicated that Commerce, including the contractor, has submitted claims in a timely manner.
9. Provide a single point of contact, such as an account manager, to be the primary interface with the agency	Yes	Both OOSH and the contractor stated the contractor’s claims manager interacts regularly with OOSH’s workers’ compensation specialists.
10. Provide COR with timely reports on claims and COP activity	Yes	Contractor sends status reports on each long-term case to OOSH workers’ compensation specialist at least every 120 days. Contractor updates COR on short-term claims and COP activity when necessary.
11. Provide monthly status reports to include, at a minimum, the number of claims received, the number of claims in-process, the number of claims resolved, etc.	Yes	COR accesses the contractor’s database to obtain the information required for the monthly reports.

Source: 2002 Contract and Office of Inspector General

*Estimated Cost Savings.* The contractor believes its aggressive case management has saved Commerce more than \$15 million by helping Labor and the Department to remove short-term and long-term claimants from the FECA rolls.

**Table 10: Contractor’s Estimated Savings By Removing Commerce Claimants from FECA Rolls<sup>95</sup>**

Contract Type	Claims Removed	Compensation Saved in 1 <sup>st</sup> Year	Lifetime Cost Avoidance	Total Cost Avoidance
2002 Original Contract	9	\$ 217,376	\$ 9,479,019	\$ 9,696,395
2004 Amendment (Claims from 10/1/04 – 6/30/05)	8	\$ 190,160	\$ 5,306,880	\$ 5,497,040
<b>Total</b>	<b>17</b>	<b>\$ 407,536</b>	<b>\$ 14,785,899</b>	<b>\$ 15,193,435</b>

Source: Contractor and Office of Occupational Safety and Health

The following examples describe how the contractor’s actions resulted in Labor terminating FECA benefits for 3 Commerce employees who were on the long-term rolls.

- In May 2000, a claimant was injured while performing Census enumerator duties. In November 2002, a doctor provided a second opinion at Labor’s request, finding the claimant capable of performing sedentary light-duty work, not exceeding 6 hours. In December 2002, the contractor requested medical documentation from Labor to justify compensation. Labor did not send the information and the contractor requested a medical update in March 2003. In July 2003, a doctor provided a referee opinion, finding the claimant was capable of performing job tasks. In July 2004, Labor provided the referee report to the contractor after 5 requests. The contractor requested case closure because the referee opinion addressed unrelated injuries. As a result, the claimant was released for full duty. Labor terminated claimant compensation in February 2005. The June 2005 chargeback report indicated the claimant received \$7,005.39 in total compensation the year before Labor terminated benefits.<sup>96</sup>
- In May 2000, an employee filed a workers’ compensation claim for an injury. The employee’s supervisor and bureau both immediately disputed the claim. However, Labor accepted the claim because the medical report supported the injury. Labor conducted second opinions in 2001 and 2002, supporting the injury and indicating the claimant could not return to work. In 2003, Labor’s vocational rehabilitation specialist recommended the employee undergo a third opinion or referee examination. In January 2005, the contractor notified Labor it was responsible for the case and immediately requested a second opinion. It had been 5 years since the employee was injured. In March 2005, the contractor again requested Labor perform a second opinion. The employee received an examination in March 2005. The doctor stated the employee had a

<sup>95</sup> Office of Inspector General has not verified cost avoidance totals from the contractor. The contractor uses a 70-year life span to compute lifetime cost avoidance.

<sup>96</sup> On February 9, 2006, the Office of Inspector General determined that this claimant returned to the long-term rolls, after a hearing on the termination.

pre-existing condition before he sustained temporary aggravation from the May 2000 injury. In addition, the doctor believed the employee should have recovered within two months of the injury in May 2000, and was now capable of working eight hours per day with restrictions. In April 2005, the contractor requested the claimant's medical status from Labor. On June 8, 2005, the employee's compensation benefits were terminated because the medical report did not support the injury. The June 2005 charge-back indicated the claimant received \$13,666.44 in total compensation the year before Labor terminated benefits.

- In July 2000, an employee was injured lifting a heavy box. In 2001, the claimant was released to full-time sedentary duty. Labor scheduled a second opinion in 2002. OOSH requested a copy of the report, but Labor did not send it. OOSH did not follow up on its request for the second opinion report. In December 2004, OOSH sent this long-term case to the contractor. The contractor immediately obtained from Labor the second opinion releasing the claimant to work. The contractor also questioned whether the medical evidence supported continued compensation. Since the second opinion released the claimant to work, the contractor requested Labor to review this case. Labor terminated the claimant's compensation. Within 4 months of receiving this case, the contractor removed the claimant from the rolls. The June 2005 charge-back report stated the claimant received \$14,191.60 in total compensation the year before Labor terminated benefits.

### ***B. OOSH's Oversight of the Contractor Is Inadequate***

The OOSH workers' compensation specialist is responsible for monitoring the Department's FECA contractor as the contracting officer's representative, but the specialist did not properly oversee the contractor since becoming the COR in October 2002.<sup>97</sup>

*No review of contractor cases, work processes, and deliverables.* As COR, the specialist is required to visit the contractor's facility to verify consistency of service.<sup>98</sup> The COR never visited the facility, nor did any other Commerce staff member, until we began our review. Only then did OHRM senior managers require the COR to visit the contractor, which she did during the week of October 3, 2005—2 weeks before our visit.

During her visit, we were told that the COR did not review any cases or the contractor's quality assurance processes, and she did not request access to the contractor's case notes on Commerce claimants. The case notes offer a detailed look at contractor, Labor, medical, and claimant correspondence throughout the claim. According to the contractor, its other federal clients regularly visit the office and insist on access to the notes.

The contract stipulates that the COR must review each deliverable (e.g., case status reports, monthly reports, case notes) to determine its acceptability, and reject deliverables that do not meet requirements. Contractor staff told us that the COR had not rejected any deliverables.

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<sup>97</sup> The OOSH workers' compensation specialist was responsible for COR duties from October 2002 until November 2005 when OHRM reassigned the specialist's COR duties to the OOSH Director.

<sup>98</sup> 2002 workers' compensation contract.

Further, the contractor mails status reports every 90-120 days on periodic roll cases to the COR, as required by the contract, but we found no visible evidence that the COR reviewed these reports.

The contractor also sent 17 workers' compensation case files back to the COR between December 2004 and April 2005, because of contractual limitations regarding periodic roll cases. Some cases required OIG referral and/or COR follow up. In 3 of the cases, the contractor recommended referral to OIG for investigation. The COR did not refer them. In 4 cases, the contractor requested the COR follow up on the case, however, only two of the case files at Commerce showed visible evidence that the COR had taken or followed up on the contractor's recommended actions.

Although the COR did not explain why she provided limited oversight of the contractor, we believe multiple factors affected the oversight provided. The first contributing factor was likely the lack of consistent leadership during her tenure as COR. Five individuals have filled the OOSH director position since she became COR in 2002. A second factor was that the COR's performance plan was vague, stating that, as COR, she "evaluates the performance of the contractor," and "monitors the performance level of contracted workers' compensation services." However, the plan did not have any detailed performance criteria for her role as COR. Third, while the COR had extensive COR training, she did not develop specific performance measures for the contractor to provide proper oversight of this contract. The COR attended at least 7 COR training sessions since 2001, 6 of which occurred after the contract was awarded in 2002.

Since our visit to the contractor, the Department has named a new COR, as well as an alternate. The new COR plans to visit the contractor by the end of June 2006 to review case files, clarify the terms of the contractual amendment that added 74 of the Department's long-term claims, and discuss performance measures and information security.

Given the lack of COR oversight, we were impressed by how well the contractor has been managing both short and long-term cases. The contractor's staff has been keeping meticulous case notes; showing continual follow up with claimants, Labor, and medical personnel; and making a good effort to return claimants to work.

## **RECOMMENDATIONS**

1. Clarify the role, responsibilities, and performance evaluation measures for the new contracting officer's representative, and alternate COR, for the workers' compensation contract and include them in their performance plans.
2. Ensure that the new COR and alternate COR receive all necessary training, including Labor's FECA course and Commerce's COR training.
3. Review the COR's performance several times a year to ensure contract oversight performance is adequate. The new COR should:
  - a. Ensure that the contractor complies with all terms and conditions of the contract, including training requirements; and

- b. Review the contractor's performance measures and determine if a revision is necessary.



In its response to our draft report, the Department notes that it has taken steps since November 2005 to address the OIG's concerns regarding contract oversight by appointing a new contracting officer's representative. It reported that by the end of June 2006, the new COR will visit the contractor's worksite to review files and better monitor contract performance.

### ***C. OHRM Has Not Adequately Addressed Two Issues Involving the Contract***

The Department needs to resolve two issues involving the 2002 contract and 2004 contract amendment. The 2002 contract required the Department and contractor to develop performance productivity and customer satisfaction metrics during the first year of the contract. However, neither the Department, nor the contractor, had established these metrics 3 years into the contract. The contracting officer (CO) stated that all current contracts should include performance measures, but in 2002, the Department did not emphasize performance measures in contracts. The CO stated—and we confirmed—that the 2004 amendment included performance measures. Because performance measures were not included in the 2002 contract, the CO emphasized that the contractor would have to agree to performance measures being incorporated into the contract. However, the CO believes the contract should include performance measures. We agree.

In 2004, the contract was amended to allow the contractor to manage between 74-200 long-term cases. However, OHRM and the contractor have different interpretations of the meaning of the contract amendment. There appears to be confusion as to whether the amendment requires the contractor to manage 74 cases at all times, or if the contractor is simply required to manage a minimum of 74 cases over each option year.

## **RECOMMENDATIONS**

1. Review the 2002 contract with the contractor to incorporate performance productivity and customer satisfaction metrics.
2. Consult with the Office of General Counsel, Contract Law Division, to determine the correct interpretation of the terms of the 2004 contract amendment, including whether the contractor is required to manage 74 cases at all times or manage a minimum of 74 cases over each option year, and ensure that the contract is properly enforced.

## **SUMMARY OF RECOMMENDATIONS**

### **We recommend that the Chief Financial Officer and Assistant Secretary for Administration take the following actions:**

1. Review Commerce's long-term workers' compensation cases as soon as possible, and not over a 2-year period as planned. This review should include:
  - a. Evaluating the status of each case and physical condition of each claimant to identify cases with the best opportunity for returning employees to work,
  - b. Reviewing Labor's Agency Query System (AQS) to identify duplicate payments and any other overpayments, and
  - c. Matching claimant names to Social Security records to identify deceased claimants (see page 16).
2. Obtain access to contractor case file information to monitor the status of short-term cases (see page 16).
3. Follow up on all long-term cases returned by the contractor (see page 16).
4. Review and take appropriate action on cases in contractor status reports (see page 16).
5. Prepare and maintain current, easy-to-access online policies and procedures to help Commerce supervisors and managers understand (a) FECA laws and regulations and (b) their own FECA roles and responsibilities, including facilitating the return of employees to work, verifying and validating charge-back costs, identifying third party liability, and detecting and reporting suspected FECA fraud and abuse (see page 19).
6. Develop a training plan, determine which agency personnel need workers' compensation training, and offer the training to them over the coming months, rather than over a 2-year period. In the meantime, OOSH should consider utilizing OWCP's training, including its FECA seminar and the FECA supervisor's workshop, as well as in-house training (see page 19).
7. Develop an automated information system that can be used to:
  - a. Verify and manage Commerce's FECA caseload, including:
    - i. Giving prompts or reminders for dates when paperwork or medical exams are due, and for periodically checking on spouses' entitlement;
    - ii. Identifying cases that need additional action, have closed, or have the potential to return employees to work; and
    - iii. Enabling Commerce personnel to analyze and manipulate the data and identify trends and possible abuse.
  - b. Process workers' compensation claims online; and
  - c. Consolidate and analyze standardized bureau safety data to help safety officials and managers identify and correct problems and take immediate corrective action to help prevent future workplace accidents and illnesses (see pages 21 and 22).

8. Monitor the medical status of injured and ill employees by:
  - a. Obtaining medical information from Labor and/or employees' physicians;
  - b. Conducting case reviews at Labor district offices;
  - c. Establishing a relationship with Labor's liaison staff who can be contacted when Labor claims examiners do not respond to written requests; and
  - d. Arranging and paying for independent medical examinations to determine employees' work capacity, as necessary, if Labor does not take action on claimants' cases (see page 26).
9. Expand OHRM's recently issued return-to-work procedures to identify specific responsibilities for the employee, supervisor, and bureau, including guidance on developing limited- and light-duty positions (see page 26).
10. Incorporate creative approaches, such as telework or light-duty work pools across the Department, when bureaus cannot make suitable job offers (see page 26).
11. Determine if suitable job offers can be made for current work capable employees who were previously not offered positions and, where possible, return them to work (see page 26).
12. Identify third party claims and ensure OOSH, the contractor, and Labor OWCP district offices monitor recovery efforts (see page 32).
13. Educate Commerce safety specialists, administrators, supervisors, employees, and the contractor on the importance of adequately identifying third parties and pursuing funds from the time the claim is filed (see page 32).
14. Include responsibilities for identifying and monitoring the pursuit of third parties as requirements in future contracts for workers' compensation management (see page 32).
15. Direct all bureau managers, OOSH, and the contractor to refer cases of suspected FECA fraud, waste, and abuse to the Office of Inspector General and the Department of Labor. OOSH and the contractor should also carefully monitor suspected cases of FECA abuse, including questionable cases, such as multiple claim submissions from a single employee (see page 34).
16. Revise DAO 202-810 to clearly define the roles and responsibilities of Commerce bureaus in managing their workers' compensation cases, verifying costs, and returning employees to work as soon as possible (see page 36).
17. Improve OHRM's coordination with bureau supervisors, human resources offices, and safety offices, and ensure that each bureau:
  - a. Designates at least one individual to oversee its workers' compensation cases and coordinate closely with OOSH and the contractor to bring employees off the rolls as quickly as possible, and

- b. Considers incorporating a performance element for minimizing workers' compensation costs into the performance plans of appropriate personnel (see page 36).
18. Distribute quarterly and annual charge-back reports regularly to all bureaus and instruct the bureaus to carefully review and verify the accuracy of the charge-back costs and create incentives for them to do so. For example, the Department could use data from the charge-back reports to generate a listing of claimants and costs by line office to increase their accountability for justifying those costs (see page 39).
19. Clarify the role, responsibilities, and performance evaluation measures for the new contracting officer's representative, and alternate COR, for the workers' compensation contract and include them in their performance plans (see page 55).
20. Ensure that the new COR and alternate COR receive all necessary training, including Labor's FECA course and Commerce's COR training (see page 55).
21. Review the COR's performance several times a year to ensure contract oversight performance is adequate. The new COR should:
  - a. Ensure that the contractor complies with all terms and conditions of the contract, including training requirements; and
  - b. Review the contractor's performance measures and determine if a revision is necessary (see pages 55 and 56).
22. Review the 2002 contract with the contractor to incorporate performance productivity and customer satisfaction metrics (see page 56).
23. Consult with the Office of General Counsel, Contract Law Division, to determine the correct interpretation of the terms of the 2004 contract amendment, including whether the contractor is required to manage 74 cases at all times or manage a minimum of 74 cases over each option year, and ensure that the contract is properly enforced (see page 56).

**We recommend that the Chief Financial Officer and Assistant Secretary for Administration, the Director of the Bureau of the Census, and the Director of OHRM take the following actions:**

24. Review all Census FECA cases in conjunction with OOSH, and identify those employees able to return to work, whether in a full-time or temporary capacity. Take necessary actions to bring those employees back to work as soon as possible (see page 43).
25. Develop a comprehensive FECA program for the 2010 decennial, that includes:
  - a. Guidance for supervisors/managers on how to handle FECA claims immediately upon initiation through case management;
  - b. A return to work strategy, complete with modified temporary positions to quickly bring injured enumerators or others back to work if they are injured during the 2010 decennial; and

- c. Identification of current claimants who could be offered a job in the 2010 decennial preparations and/or operations and brought back to work (see page 43).

**We recommend that the Under Secretary for Intellectual Property and Director, USPTO take the following actions:**

- 26. Actively manage USPTO's short-term and long-term FECA cases to include:
  - a. Maintaining well-documented case files,
  - b. Regularly communicating with all participants in the FECA process,
  - c. Reviewing files at Labor district offices,
  - d. Reviewing all existing long-term cases as soon as possible,
  - e. Periodically evaluating the status of each case and physical condition of each claimant for possible return to work,
  - f. Periodically reviewing Labor's Agency Query System and charge-back reports to identify duplicate payments and any other overpayments, and
  - g. Periodically matching claimant names to Social Security records to identify deceased claimants (see page 49).
- 27. Establish a return-to-work program and develop procedures to:
  - a. Identify specific responsibilities for the employee, supervisor, and USPTO workers' compensation staff,
  - b. Give supervisors guidance for developing limited- and light-duty positions, and
  - c. Incorporate creative approaches, such as telework or light-duty work pools with the Department, when USPTO cannot make accommodations (see page 49).
- 28. Consider implementing an automated system for managing FECA cases see page 49).
- 29. Pursue cost-recovery opportunities by more carefully identifying and pursuing third party liability (see page 49).
- 30. Issue a USPTO administrative order and provide current, online guidance to:
  - a. Clearly define the FECA roles and responsibilities of USPTO supervisors, employees, and workers' compensation and human resources personnel and
  - b. Provide pertinent information on FECA laws, regulations, and procedures, coordination with the Department of Labor, returning employees to work, verifying and validating charge-back costs, identifying and pursuing third party liability, and detecting and reporting suspected FECA fraud and abuse (see pages 49 and 50).
- 31. Develop and provide FECA training to all appropriate USPTO personnel (see page 50).
- 32. Ensure that performance plans for appropriate staff include workers' compensation responsibilities and supervisors use the plans to oversee the performance of the workers' compensation staff (see page 50).

## **APPENDICES**

### ***Appendix A - List of Acronyms***

<b>AQS:</b>	Agency Query System
<b>BEA:</b>	Bureau of Economic Analysis
<b>BIS:</b>	Bureau of Industry and Security
<b>Census:</b>	Bureau of the Census
<b>CFR:</b>	Code of Federal Regulations
<b>CO:</b>	Contracting Officer
<b>COR:</b>	Contracting Officer's Representative
<b>DAO:</b>	Department Administrative Order
<b>DOL:</b>	Department of Labor
<b>DOO:</b>	Department Organizational Order
<b>EDA:</b>	Economic Development Administration
<b>ESA:</b>	Economics and Statistics Administration
<b>FECA:</b>	Federal Employees' Compensation Act
<b>ITA:</b>	International Trade Administration
<b>MBDA:</b>	Minority Business Development Agency
<b>NIST:</b>	National Institute of Standards and Technology
<b>NOAA:</b>	National Oceanic and Atmospheric Administration
<b>NTIA:</b>	National Telecommunications and Information Administration
<b>NTIS:</b>	National Technical Information Service
<b>OHRM:</b>	Office of Human Resources Management
<b>OIG:</b>	Office of Inspector General
<b>OOSH:</b>	Office of Occupational Safety and Health
<b>OS:</b>	Office of the Secretary
<b>OWCP:</b>	Office of Workers' Compensation Programs
<b>USPTO:</b>	United States Patent and Trademark Office

*Appendix B - OIG Determined Funds To Be Put To Better Use*

Issue	Amount	Page
Savings from overpayments to 2 deceased claimants	\$48,000	13
Savings from overpayment to claimant whose compensation status changed to just medical benefits	6,591	14
<b>Total Amount</b>	<b>\$54,591</b>	

Source: Office of Inspector General

Appendix C - Office of the Secretary's Response to Draft Report



UNITED STATES DEPARTMENT OF COMMERCE  
Chief Financial Officer  
Assistant Secretary for Administration  
Washington, D.C. 20230

APR 10 2006

MEMORANDUM FOR Jill Gross  
Assistant Inspector General for Inspections and  
Program Evaluations

FROM Otto J. Wolff  
Chief Financial Officer and  
Assistant Secretary for Administration

SUBJECT: Draft Inspection Report, Management of Commerce's  
Federal Worker's Compensation Program Needs  
Significant Improvement (IPE-17536)

This is in response to the subject draft report dated March 10, 2006. We appreciate the effort the Office of Inspector General expended in its review of the Department's Office of Worker's Compensation Program (OWCP). The information and recommendations provided in the report will be helpful in the on-going efforts to improve program delivery and oversight undertaken by the Office of Human Resources Management (OHRM).

The report contains twenty-three recommendations directed to the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA). (Recommendations 1-23, page 51-52.) The report also contains two additional recommendations directed to the CFO/ASA, the Director of the Bureau of the Census and the Director of OHRM. (Recommendations 24-25, page 53-54.) The remaining recommendations (numbers 26-32) are directed to the Under Secretary for Intellectual Property and Director, USPTO and are not addressed in this response.

We find the majority of the recommendations to have merit. OHRM is currently developing a detailed action plan inclusive of a reasonable timeline which will frame forthcoming discussions between our staffs. Upon review, however, two of the recommendations directed to this office cause concern as they are currently drafted. They are:

**Recommendation 7 a-c** — This recommendation suggests the development of an automated information system to better manage cases. We agree that automation is a necessary program enhancement and we have been researching the existence of an off-the-shelf package that is both viable and cost effective. To date we have not identified a solution that meets fundamental program needs or the specifics of recommendation 7 a-c. Cost of system development is a significant concern under the current budget scenario. We have, however, taken steps to automate our case load.

**Recommendation 25** — This recommendation addresses taking action to develop a return-to-work strategy for Census enumerators. Under current Department of Labor (DOL) regulations,

Page 2

SUBJECT: Draft Inspection Report, Management of Commerce's  
Federal Worker's Compensation Program Needs  
Significant Improvement (IPE-17536)

the response to this recommendation is complex, and not within the Department's exclusive control. DOL regulations mandate the minimum requirement be for a 90-day job offer. Census enumerator positions are for 45 days. We will continue to work with DOL and the Bureau of the Census to arrive at a solution, recognizing that a legislative or regulatory change by DOL may be necessary.

While we appreciate the program review this audit provided, we wish to note that since November 2005 the following actions have been undertaken to improve the overall workers' compensation program:

- We notified DOL of 183 claims that may have been caused by a third party. We asked DOL to review these claims and provide the Department a final assessment for each. These reviews may reduce the government's liability and result in a credit of previously expended funds. Program staff has initiated a more insistent posture in interacting with DOL. *To assist in our efforts to have DOL appropriately execute its responsibilities, it would be helpful if the final audit report emphasize that DOL must take a stronger role in three specific areas: third-party claims, discontinuance of payments to claimants who have died, and double payments to claimants.*
- We reviewed every long-term case file and identified every claimant who had filed timely for disability retirement with the Office of Personnel Management (OPM). We confirmed this list with OPM to ensure accuracy. We will use this information to notify affected claimants in order to provide important benefit information and options for them and their families.
- We developed a supervisor's handbook on OWCP. This handbook is on the web and is provided to each supervisor receiving OWCP training and to principle human resources managers throughout the Department.

Attached to this response are additional comments regarding the content of the report. Please contact Fred Fanning, Director of the Office of Occupational Safety and Health, if you or your staff require further information. He may be reached at 202-482-0211. Thank you.

Attachments

**Chief Financial Officer/Assistant Secretary for Administration  
Comments on Draft Report IPE-17536**

Comments on specific findings are provided below, arranged in order of their appearance in the draft report.

1. Page iii, second bullet of paragraph two, states that the Office of Human Resources Management (OHRM) has not provided Federal Employees Compensation Act guidance and effective training. Guidance on some portions of the Act already exists in the form of Department Administrative Order 202-810, dated November 24, 2004 (attachment 1). This directive provides guidance primarily regarding processing of an injured employee's claim, which is important to ensure prompt medical assistance for the injured employee. Nevertheless, we recognize that the guidance in the directive is insufficient in the area of program oversight by individual bureaus. Accordingly, we are revising the directive to clearly define the roles and responsibilities of Commerce bureaus in managing their workers' compensation cases. We also issued a bulletin that provides preliminary guidance to bureaus on their involvement in the return-to-work initiative (attachment 2—Human Resources Bulletin #018, FY 06, 5 CFR 339.306-0021). This bulletin activates employee assignment teams which will create greater bureau involvement in the effort to return injured employees to work.

In addition, training was provided to 152 employees in the following organizations:

Minority Business Development Agency	November 17, 2005
Bureau of Economic Analysis	December 1, 2005
Office of Human Resources Management	December 1, 2005
Office of Inspector General	January 26, 2006
Human Resources Summit	February 8, 2006
Office of Inspector General	March 8, 2006
Office of the Secretary	March 13, 2006

2. Page 11, the second paragraph of section I, states that OHRM and the Office of Occupational Safety and Health (OOSH) poorly managed short and long-term claims. Simultaneously, the report commends the strong performance of the contractor employed by OHRM to assist in managing these claims. We can infer, then, that it is our management of the contractor with which the Inspector General finds fault. Since November 2005, we have taken steps to address the report's concern regarding contract oversight. We have appointed a new Contracting Officer's Technical Representative (COTR). This quarter, the COTR will be visiting the contractor's Dallas worksite to review the files and to better monitor contract performance.

3. Page 31; section F, states that OOSH has not been referring potential fraud cases to the Office of Inspector General. We agree with this finding and took immediate measures to correct the situation. The worker's compensation specialist who misjudged the contractor recommendations to refer claims to the Office of Inspector General for fraud no longer works for OOSH. Since October 2005 we have reviewed and referred 23 cases to the OIG for suspected fraud.

4. Page 33, recommendation 2a, states that each bureau should designate at least one individual to oversee its worker's compensation cases and coordinate closely with OOSH and the contractor. We have addressed this recommendation in Human Resources Bulletin #018, cited above, which incorporates the use of bureau employee assignment teams to strengthen the return-to-work program.

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**WORKERS' COMPENSATION FOR FEDERAL EMPLOYEES**

**Number:** DAO 202-810

**Effective Date:** 2004-11-24

**SECTION 1. PURPOSE.**

.01 This Order outlines authorities, establishes policies and describes responsibilities for administration and management of the centralized operation of the Workers' Compensation (WC) Program under the Federal Employees' Compensation Act.

.02 This is a general revision which: defines terms related to workers' compensation; identifies forms required for workers' compensation claims; and generally updates the Order.

**SECTION 2. AUTHORITY.**

.01 The authority for providing compensation benefits to Federal employees for injuries and illnesses sustained while in the performance of duty is governed by the Federal Employees' Compensation Act (FECA) as amended, 5 United States Code (USC) § 8101 et seq. This Act is administered by the Secretary of Labor.

.02 The administrative regulations implementing the FECA are set forth in 20 Code of Federal Regulations (CFR) Part 10.

**SECTION 3. REFERENCES.**

.01 The following references apply to this Order:

- a. 29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs;
- b. Department Administrative Order (DAO) 209-3, "Injury, Illness, Accident, and Fatality Investigation and Incident Reporting;"
- c. Injury Compensation for Federal Employees, A Handbook for Employing Agency Personnel, Publication CA-810, prepared by the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor.

**SECTION 4. APPLICABILITY AND SCOPE.**

This Order applies to all Department of Commerce (the Department) bureaus, agencies, offices, operating units, and other components.

**SECTION 5. POLICY.**

The Department is responsible for taking all appropriate steps necessary to obtain rightful benefits to eligible employees, their dependents or survivors; to assist them in processing claims and related documents in a timely, efficient manner; and to work closely with injured employees and supervisors to return the employee to work.

**SECTION 6. DEFINITIONS.**

.01 The following definitions are applicable to this Order:

- a. Continuation of Pay (COP). The process by which an employee's regular pay may continue for up to 45 calendar days of wage loss due to disability and/or medical treatment after a traumatic injury. COP is not paid in cases of occupational illness.
- b. Controversion. The process by which a supervisor or an agency recommends to the Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), that COP be denied.

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c. Illness. A condition produced by the work environment over a period longer than a single workday or shift.

d. Light Duty. Those duties and responsibilities that are outside an employee's regular position, but that meet the employee's current work capabilities as identified by a physician. They may be performed for a full work shift or for shorter time periods.

e. Limited Duty. Those specific duties and responsibilities of an employee's regular position that meet the employee's current work capabilities as identified by a physician. These duties may include all or part of the employee's regular job assignment. They may be performed for a full work shift or for shorter time periods.

f. Medical Services. Services and supplies provided by or under the supervision of a physician. Reimbursable chiropractic services are limited to physical examinations and related laboratory tests, x-rays performed to diagnose a subluxation of the spine and treatment consisting of manual manipulation of the spine to correct a subluxation.

g. Periodic Roll Claims. If medical reports indicate that disability will continue for at least 60 days after COP, OWCP places the employee on the periodic roll and payments are automatically paid by OWCP every 4 weeks with appropriate medical documentation.

h. Short Term Claims. Term for claims from the time of injury until employee is placed on the periodic roll.

i. Traumatic Injury. A condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

#### **SECTION 7. RESPONSIBILITIES.**

.01 The Departmental Office of Human Resources Management (OHRM). The Director, OHRM or designated staff member serves as the Department's liaison officer with DOL. OHRM centrally administers the Department's WC Program and is responsible for program administration, management, operations, and the oversight of the workers' compensation contractor, Contract Claims Services, Incorporated (CCSI), as follows:

a. Establishing policies, procedures, and guidelines that ensure effective and efficient management of the WC Program including:

1. Claims Assistance - assisting and counseling employees with their periodic roll claims and coordinating with employees, supervisors and physicians to collect and send to DOL complete documentation when requested.
2. Leave Buy-Back - establishing guidelines for the repurchase of earned and advanced, sick and annual leave, which includes procedures for the submission and processing of applications.
3. Case Management - strategically managing periodic roll claims through monitoring medical evidence and work status.
4. Reemployment - pursuing job modification(s) or other means of enabling employees to work within their restrictions; requesting vocational rehabilitation assistance where indicated; and coordinating reemployment efforts with DOL, which may cross organizational lines and reach outside the agency.
5. Costs - reviewing and preparing cost reports for the Office of Financial Management (OFM) based on billing by the DOL, OWCP, for compensation benefits paid for work-related injuries and deaths.

b. Providing necessary liaison with DOL, including:

1. Reviewing DOL transcripts of hearings, and providing to DOL, relevant evidence and arguments

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supporting the Department's position, as appropriate.

2. Reviewing and reconciling charges for compensation benefits billed to the Department by DOL.

.02 Office of the Director for Financial Management (OFM). The OFM is responsible for:

- a. Recording DOL charges in appropriate suspense account(s).
- b. Issuing bills based on any distributions made by OHRM to appropriate operating units, at the lowest practicable level.
- c. Maintaining appropriate records (subsidiary listing of charges and distributions for suspense accounts).

.03 Contract Claims Services, Incorporated (CCSI). The workers' compensation contractor for the Department, CCSI, is responsible for:

- a. Claims Assistance - assisting and counseling employees in filing claims, and coordinating with employees, supervisors, and physicians to collect and send to DOL complete and accurate facts for timely adjudication of short terms claims.
- b. Continuation of Pay (COP) - approving COP for injured employees and notifying supervisors to indicate COP, code 67, on employees' time and attendance records.
- c. Leave Buy-Back - Preparing paperwork for DOL to process an employee's claim to buy back his/her leave.
- d. Case Management - reviewing short term claims for compensation; challenging questionable claims; referring possible fraudulent claims to DOL; accommodating partially recovered injured employees by maintaining contact with them and their supervisor and affording limited duty, as warranted by the medical evidence.

.04 Supervisors and Managers. Supervisors and managers are responsible for:

- a. Assisting an employee who has reported a work-related injury in obtaining medical attention as quickly as possible.
- b. Ensuring that an injured employee is advised that workers' compensation guidance is available from CCSI and the Office of Occupational Safety and Health (OOSH) in OHRM.
- c. Completing the supervisor's section of Forms CA-1 (for traumatic injury) and/or CA-2 (for occupational disease) and any other required DOL form in a timely manner, and in accordance with DOL operating guidance, and submitting such form(s) to CCSI. Also, completing Form CD-137, "Report of Accident/Incident," and providing a copy to the bureau's safety office.
- d. Coordinating with the Department's contractor, CCSI, and the injured employee's timekeeper to modify the time and attendance reports for Continuation of Pay (COP) or compensation, as appropriate.
- e. Providing all relevant information to CCSI in relation to questionable claims, and where appropriate, controverting COP in accordance with regulatory guidelines.
- f. Providing any additional factual evidence to CCSI, as required by DOL in its adjudication of claims.
- g. Maintaining contact with, and advising the employee of the availability of light and/or limited duty.

.05 Human Resources Offices may be requested to provide:

- a. Personnel information required to establish eligibility for workers' compensation benefits.

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b. Copies of health benefit enrollment forms to establish entitlement to Federal Employees' Health Benefits.

c. Retirement election forms.

d. Position descriptions or copies of personnel actions.

e. Information concerning the availability of light and/or limited duty jobs.

f. Assistance in reemploying an injured employee.

.06 Employees. Employees are responsible for:

a. Notifying the supervisor promptly of any work injury or occupational illness which has caused, aggravated, or adversely affected a medical condition.

b. Submitting the appropriate claim form to his/her supervisor within required time limits, as described on Form CA-1 and/or Form CA-2.

c. Establishing that the injury, or illness was causally related to factors of employment through the submission of factual and medical evidence which supports the claim filed.

d. Submitting claims for disability through his/her supervisor on a Form CA-7, "Claim for Compensation." The medical evidence submitted must support disability and/or medical treatment on the dates claimed.

e. Advising the supervisor promptly when the treating physician has medically released him/her to light and/or limited full duty.

.07 Other Claimants. Claimants for survivor benefits or for burial benefits are responsible for:

a. Submitting the appropriate claim form to the employee's supervisor within required time limits.

b. Establishing that the death was causally related to factors of employment through the submission of factual and medical evidence which supports the claim filed.

.08 Health Units. Health units are responsible for:

a. Providing first aid for all injured employees, upon request.

b. Referring injured workers for further medical treatment beyond the scope of the medical facility/health unit, at the request of the employee.

c. Issuing to an employee, or person designated to act on behalf of the employee, the appropriate DOL forms to report injury or illness.

.09 HCHB Health Unit. The HCHB Health Unit is responsible for:

a. Providing an assigned Health Unit physician (Medical Review Officer) to act as the Department's representative, as necessary, in obtaining information from referral physicians which is needed for review of OWCP cases.

**SECTION 8. PROCEDURES.**

.01 The supervisor will send all CA-1 and CA-2 claims for workers' compensation to CCSI within two working days of receipt. CCSI can be contacted at 1-800-743-2231.

.02 CCSI will:

a. Review claims for completion and forward them to DOL for adjudication.

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- b. Notify employees of receipt of claims and provide them information regarding their claims.
- c. Prepare memorandum approving COP, when entitled.
- d. Work with the Department, supervisors, employees, DOL, and medical providers to ensure that the employees are receiving all benefits to which they are entitled.

.03 DOL will:

- a. Review claims and request any additional information needed to adjudicate them.
- b. Accept or deny claims based on the information provided.

.03 Send all claims and documentation related to an employee's death in the performance of duty to OOSH, OHRM.

**SECTION 9. FORMS.**

.01 The following forms, as applicable, are required to establish a workers' compensation claim:

- a. DOL Form CA-1, "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation;"
- b. DOL Form CA-2, "Notice of Occupational Disease and Claim for Compensation;"
- c. DOL Form CA-5, "Claim for Compensation by Widow, Widower and/or Children;"
- d. DOL Form CA-5b, "Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren;"
- e. DOL Form CA-6, "Official Supervisor's Report of Employee's Death;" and

.02 The following forms may be used in a workers' compensation claim:

- a. DOL Form CA-7, "Claim for Compensation;"
- b. DOL Form CA-16, "Authorization for Examination and/or Treatment;" and
- c. DOL Form CA-20, "Attending Physician's Report."

**SECTION 10. EFFECTS ON OTHER ORDERS.**

This Order supersedes Department Administrative Order 202-810, dated September 23, 1997, and the provisions of all operating unit directives that prescribe authorities, responsibilities or policies related to workers' compensation.

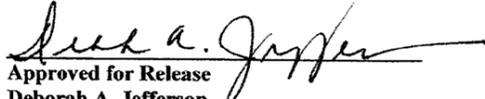
Director for Human Resources Management

Approved:

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Chief Financial Officer and  
Assistant Secretary for Administration

Office of Primary Interest  
Office of Human Resources Management

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Approved for Release  
Deborah A. Jefferson  
Director for Human Resources  
Management

11/29/05  
Date

DEPARTMENT OF COMMERCE  
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN # 018, FY06, 5 CFR 339.306-0021

**SUBJECT:** Workers' Compensation Return To Work Initiative

**EFFECTIVE DATE:** Upon release of the HR Bulletin

**EXPIRATION DATE:** November 1, 2007

**SUPERSEDES:** N/A

**BACKGROUND:** In FY 2004 the Department spent more than \$14 million in workers' compensation and medical costs for employees hurt on the job. A comprehensive return-to-work policy will generate long-term savings by removing injured employees from long-term disability rolls and increase their self-esteem and self-worth by getting them back to work.

**PURPOSE:** This HR Bulletin outlines the Department's return-to-work policy.

**PROCEDURES:** Upon receipt of medical documentation that indicates an injured worker may be able to return to the workplace either full time or in a light duty assignment, the Director of the Office of Occupational Safety and Health will establish an employee assignment team. The team will include a representative from the employee's HR servicing office, their first-line supervisor, and a bureau/office senior management official. The employee assignment team will review the employee's workers' compensation claim file and physician's medical recommendations to formulate a return-to-work plan. If feasible, the review team will make a return-to-work recommendation to the bureau/office's appointing authority. This recommendation will include a proposed job assignment and any associated medical accommodations required.

The bureau/office appointing authority will accept or reject the return-to-work recommendation and return his/her decision in writing to the Director of the Office of Occupational Safety and Health.

2

If a return-to-work plan is rejected by the appointing authority, the Director of the Office of Occupational Safety and Health will notify in writing the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) of the appointing authority's decision to not return the employee to work.

**REFERENCES:** Federal Employee Compensation Act (FECA) (5 U.S.C. 8101 et seq.) is administered by the Office of Workers' Compensation Programs (OWCP) of the U.S. Department of Labor, DAO 202-810, Workers' Compensation For Federal Employees dated November 24, 2005. (5 CFR 339.306-0021).

**OFFICE OF OCCUPATIONAL SAFETY AND HEALTH:** Fred Fanning, Director, [ffanning@doc.gov](mailto:ffanning@doc.gov), 202-482-0211

**PROGRAM MANAGER CONTACT INFORMATION:** Kathy Mattingly, [kmattingly@doc.gov](mailto:kmattingly@doc.gov), (202) 482-0689 or Adrienne Ross, [aross@doc.gov](mailto:aross@doc.gov), 202-482-4943

Appendix D - Census' Response to Draft Report



UNITED STATES DEPARTMENT OF COMMERCE  
Economics and Statistics Administration  
U.S. Census Bureau  
Washington, DC 20233-0001

MAR 31 2006

**MEMORANDUM FOR:** Jill Gross  
Assistant Inspector General for Inspections and Program  
Evaluations

**From:** Tyra Dent Smith *Tyra Dent Smith*  
Chief, Human Resources Division

**Subject:** Draft Inspection Report No. IPE-17536/March 2006 –  
*Management of Commerce's Federal Workers' Compensation  
Program needs Significant Improvements*

The attached document responds to your request for comments on the above-captioned report. We appreciate both the opportunity to review the report prior to publication, as well as the considerable time and effort expended by your staff to assess the Workers' Compensation Program. It is the hope of the U.S. Census Bureau that the final report will help all parties involved to effect real improvements in this important public stewardship.

Attachments

USCENSUSBUREAU

www.census.gov

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Draft Inspection Report No. IPE-17536/March 2006 – Management of Commerce's Federal  
Workers' Compensation Program Needs Significant Improvements

U.S. Census Bureau Comments  
March 31, 2006

General Comments

We sincerely thank OIG for highlighting the need to significantly reduce FECA costs, and for identifying many opportunities to do so. We agree with OIG that, while Census' efforts to prevent work-related injuries are effective and of the utmost importance, accident prevention alone will not control FECA costs. As our specific comments will reflect, Census intends to undertake specific actions to support the review of existing FECA cases and to implement an initiative to reduce the number of injuries that become long-term disability cases. Nevertheless, we are concerned with two themes that prevail throughout this report. The first is the perception that, under current policy, Commerce bureaus have responsibility for managing Workers' Compensation cases beyond the prompt, accurate reporting of injuries and the prompt response to Departmental requests for assistance. The second is the underestimation of the very heavy financial costs we sustain due to the errors, inefficiencies, and inflexibility of the Department of Labor's Office of Workers' Compensation Programs (OWCP).

The Department's assumption for the direct management of all Workers' Compensation cases is well documented in an August 17, 1994 Memorandum from Elizabeth Stroud, Director for Human Resources Management to all Commerce Employees, captioned "Centralization of Workers' Compensation Program." It stated:

- "The centralized office will provide the following services:
- Information and assistance in filing claims
  - Claims processing
  - Case management
  - Re-employment services"

The Department's concurrent appropriation of all bureau Workers' Compensation FTEs confirmed the minimal role Bureaus were to have in the management of this program. As recently as 2004, we were instructed that, based on DOC General Counsel guidance, bureau "safety and health managers will not have access to CA-1 and CA-2's except for limited need-to-know circumstances" (DOC safety and Occupational Health Council Minutes, January 8, 2004.) This information is essential to the management of Workers Compensation cases.

We are also concerned about the draft report's references to the responsibility of the Department of Labor (DOL) to practice better stewardship of the public resources we entrust to them. On pages 27-28, the report states "Labor's primary job is to provide benefits and not to minimize agency costs." However, the President's January 9, 2004 SHARE Initiative memorandum states,

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“Government agencies should strive to do more to improve workplace safety and health and reduce the costs of injury to workers and taxpayers.”, and assigns the lead in this initiative to DOL.

Census has already met directly with DOL management to discuss our lack of job placement options that meet its highly-specific criteria for re-employment of decennial Workers' Compensation claimants. We were unsuccessful in our efforts to convince DOL to increase its emphasis on private sector placement, which is within their authority. Perhaps the opening of a higher-level dialog between the Departments of Commerce and Labor could better resolve these issues and lead to improved service to claimants as well as more efficient use of public resources.

#### Specific Comments

Page iii - We respectfully disagree with OIG's interpretation of Department Administrative Order 202-810 as it pertains to those duties assigned to the bureaus. For example, with regard to returning employees to work, DAO 202-810 describes agencies' responsibilities:

“Supervisors and managers are responsible for” ... “advising the employee of the availability of light and/or limited duty.”, and  
“Human Resources Offices may be requested to provide” ... “assistance in reemploying an injured employee.”

We believe the draft report's conclusions are not consistent with the DAO, the 1994 Stroud memo referenced earlier, or the direction the Department has provided to the bureaus since the 1994 consolidation of Workers' Compensation responsibilities.

Page iv - The figure of 500,000 represents peak workforce at any one time during Census 2000, but it does not accurately represent total Census 2000 employment or, therefore, exposure to work-related injuries and their resultant costs. During the year 2000, Census peak employment was 512,826; however, total employment for the same year was 978,600 - nearly double the figure cited by OIG.

Page 17 - OIG notes Census has provided FECA training to managers and administrative personnel on its own initiative. We believe the report should reflect that this training was developed in consultation with OOSH.

Page 19 - OIG comments on the need for an automated tracking system to manage FECA cases. Agencies are hampered in tracking these cases by the lack of any relevant time-keeping codes other than for Continuation of Pay (COP).

Pages 27 to 29 - OIG notes that on “at least” four of 38 claims involving third parties, third party involvement was not noted on the initial Workers' Compensation form. A variety of factors such as the injured worker's incapacity or police investigation may make this information initially

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unavailable. There is no discussion of how and when such information might have been provided subsequently to an initial claim. OWCP is responsible for processing cases as third party claims if the pertinent section of the form is completed, but it appears they will not perform this function unless OOSH and the bureaus press them to do it.

Page 33 - The report states that "... we asked Census and NOAA to determine whether 61 workers had returned to work or were still injured. Census and NOAA could not find 14 of the 61 workers' or 23 percent on their employee rolls. Fourteen workers were receiving compensation payments while Census and NOAA were unaware of their case status."

Our records show that OIG submitted 37 of these 61 names to Census, of which we failed to confirm only four. We believe the report should attribute to Census only those numbers pertaining to Census and likewise for NOAA.

Pages 37 to 39 - We believe that OIG's comments on Census' capability to re-employ disabled decennial workers need to be expanded and clarified. On page 38, you note "The vast majority of decennial jobs last less than 90 days and occur within a specific calendar year window. Typically, most, if not all, decennial positions have ceased to exist by the time a worker is available to return to work..." and, on page 39, "terms of duty often expire before workers have been cleared for return to work". Paradoxically, you also comment on page 39, "Commerce data shows that most injured employees recover quickly and return to work on their own. Census decennial workers should be no different, despite their temporary status."

Any consideration of Census' past or future efforts to re-employ decennial employees must be made in light of OWCP's job suitability requirements, which are not detailed in this report. In addition to addressing any physical limitations a worker may have, a re-employment offer must be for a minimum of 90 days, regardless of the original terms of the worker's employment. Furthermore, any job offer must meet OWCP's "wage earning capacity" requirements, which are often skewed upward by a brief, but lucrative decennial position. In addition, any job that requires relocation must lead to permanent employment.

Census re-employment efforts are also, as we noted, constrained by legal and logistical requirements. Almost all decennial jobs are filled under "Schedule A" appointments, which confer no competitive status for any future federal employment. Most appointments are also very short-term lasting a period of eight weeks, although in actuality the average Census 2000 enumerator worked only four days per week and 4.5 hours per day for a total of 70.21 hours (2000 Census Payroll System [PAMS/ADAMS].) Furthermore, during decennial operations, workers' homes are their duty stations, which are dispersed throughout every county and city in the nation. After the decennial, the Census field workforce dropped to about 1 per cent of the decennial peak workforce. As OIG found, most, if not all, decennial positions ceased to exist by the time injured workers are available to return to work; therefore, it doesn't seem reasonable to base a FECA cost reduction strategy on Census' ability to provide "suitable" employment offers.

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We agree with your statement on Page 39 that "recovered temporary employees" should not remain on the FECA rolls indefinitely. We draw OIG's attention to DOL Publication CA-810, "A Handbook for Employing Agency Personnel." Section 8-5 of this document, "Vocational Rehabilitation Services" states "OWCP will routinely consider a case for rehabilitation services if the agency cannot reemploy the employee so that placement with another employer may be considered." In the cases it has reviewed, has OIG evaluated DOL's efforts to locate employment options outside the federal government? DOL has the authority to make these placements; Census does not.

Page 39 - The Census Bureau appreciates OIG's acknowledgment of our extensive and ongoing effort to prevent and minimize work-related injuries. We are proud of the commitment to employee safety demonstrated by top management and at all levels of our headquarters and field operations.

Page 40 - The report states "Census has the opportunity to move many (existing cases) off the rolls by hiring them for the 2010 decennial." We believe this to be at odds with the underlying premise of OIG's report, which is to reduce FECA costs by getting workers off Workers' Compensation rolls as quickly as possible. Relying on re-employment of the recipients for the 2010 decennial would result in the Federal government incurring four more years of benefits payments. We believe a more cost efficient strategy would be to work with DOL which has both the capacity and the authority to provide immediate job placement in either the public or private sector to employees who cannot be rehired by Census.

Comments on Recommendations

**We recommend that the Chief Financial Officer and Assistant Secretary for Administration take the following actions:**

1. Review Commerce's long-term workers' compensation cases as soon as possible, and not over a 2-year period as planned. This review should include:
  - a. Evaluating the status of each case and physical condition of each claimant to identify cases with the best opportunity for returning employees to work,
  - b. Reviewing Labor's Agency Query System (AQS) to identify duplicate payments and any other overpayments, and
  - c. Matching claimant names to Social Security records to identify deceased claimants.

No comment.

2. Obtain access to contractor case file information to monitor the status of short-term cases (see page 15).

Comment: It is important that Bureaus have access to this information; this is central to our

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strategy to reduce future FECA costs by preventing short-term cases from become long-term.

3. *Follow up on all long-term cases returned by the contractor (see page 15).*

No comment

4. *Review and take appropriate action on cases in contractor status reports (see page 15).*

No comment

5. *Prepare and maintain current, easy-to-access online policies and procedures to help Commerce supervisors and managers understand (a) FECA laws and regulations and (b) their own FECA roles and responsibilities, including facilitating the return of employees to work, verifying and validating charge-back costs, identifying third party liability, and detecting and reporting suspected FECA fraud and abuse (see page 18).*

No comment

6. *Develop a training plan, determine which agency personnel need workers' compensation training, and offer the training to them over the coming months, rather than over a 2-year period. In the meantime, OOSH should consider utilizing OWCP's training, including its FECA seminar and the FECA supervisor's workshop, as well as in-house training (see page 18).*

Comment: Census already provides training on Workers' Compensation issues to supervisors, managers, and administrative staff as OIG notes on page 17, and will continue to do so.

7. *Develop an automated information system that can be used to:*
- a. *Verify and manage Commerce's FECA caseload, including:*
    - i. *Giving prompts or reminders for dates when paperwork or medical exams are due, and for periodically checking on spouses' entitlement;*
    - ii. *Identifying cases that need additional action, have closed, or have the potential to return employees to work; and*
    - iii. *Enabling Commerce personnel to analyze and manipulate the data and identify trends and possible abuse.*
  - b. *Process workers' compensation claims online; and*
  - c. *Consolidate and analyze standardized bureau safety data to help safety officials and managers identify and correct problems and take immediate corrective action to help prevent future workplace accidents and illnesses (see page 21).*

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Comment: We suggest that existing automated timekeeping systems be enhanced to support this process. Other than a timekeeping code for Continuation of Pay (COP) leave, Commerce currently possesses no automated mechanism to track an employee's absence due to work-related illness. This is a significant omission, because injured employees frequently use their own leave while waiting for approval of COP or approval of OWCP-compensated leave beyond COP. In addition, some injured workers may return on part-time status or have occasional absences for medical treatment covered by OWCP.

8. Monitor the medical status of injured and ill employees by:
- a. Obtaining medical information from Labor and/or employees' physicians;
  - b. Conducting case reviews at Labor district offices;
  - c. Establishing a relationship with Labor's liaison staff who can be contacted when Labor claims examiners do not respond to written requests; and
  - d. Arranging and paying for independent medical examinations to determine employees' work capacity, as necessary, if Labor does not take action on claimants' cases (see page 25).

8. a-d, No comment

9. Expand OHRM's recently issued return-to-work procedures to identify specific responsibilities for the employee, supervisor, and bureau, including guidance on developing limited and light duty positions (see page 25).

Comment: We look forward to the opportunity to take a more active roll in management of our Workers' Compensation cases. In this report, OIG has noted Census' proactive efforts to prevent workplace injuries and to train staff in the management of FECA claims; we are proud of our safety staff's efforts in this regard. However, the Department's 1994 assimilation of the bureau's Workers' Compensation FTEs limits our ability to absorb additional Workers' Compensation duties without additional resources. Commerce's own audit of the Census Safety Office in September, 2003 expressed concern about the small size of the office compared to its workload, and this workload has increased significantly in the intervening period.

10. Incorporate creative approaches, such as telework or light-duty work pools across the Department, when bureaus cannot make suitable job offers (see page 25).

11. Determine if suitable job offers can be made for current work capable employees who were previously not offered positions and, where possible, return them to work (see page 25).

Comments on recommendations 10 and 11:

The Census Bureau is prepared to make every effort to place as many returning, injured workers to employment as possible. Please note our specific comments on Pages 37 -39 to reiterate the

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real need to extend this sort of creative thinking outside the box of federal employment.

*12. Identify third party claims and ensure OOSH, the contractor, and Labor OWCP district offices monitor recovery efforts (see page 30).*

*13. Educate Commerce safety specialists, administrators, supervisors, employees, and the contractor on the importance of adequately identifying third parties and pursuing funds from the time the claim is filed (see page 30).*

Comments on recommendations 12 and 13

The Census Bureau will incorporate specific guidance on the accurate provision of third-party information in future FECA-related supervisory manuals and training.

*14. Include responsibilities for identifying and monitoring the pursuit of third parties as requirements in future contracts for workers' compensation management (see page 30).*

No comment

*15. Direct all bureau managers, OOSH, and the contractor to refer cases of suspected FECA fraud, waste, and abuse to the Office of Inspector General and the Department of Labor. OOSH and the contractor should also carefully monitor suspected cases of FECA abuse, including questionable cases, such as multiple claim submissions from a single employee (see page 31).*

Comment: On page 31, OIG notes its belief that the OOSH director should be the one who decides whether to refer questionable Workers' Compensation cases to OIG or the Department of Labor. We agree with this reasoning, and do not believe that Census managers should be assigned this responsibility.

*16. Revise DAO 202-810 to clearly define the roles and responsibilities of Commerce bureaus in managing their workers' compensation cases, verifying costs, and returning employees to work as soon as possible (see page 33).*

*17. Improve OHRM's coordination with bureau supervisors, human resources offices, and safety offices, and ensure that each bureau:*

*a. Designates at least one individual to oversee its workers' compensation cases and coordinate closely with OOSH and the contractor to bring employees off the rolls as quickly as possible, and*

*b. Considers incorporating a performance element for minimizing workers' compensation costs into the performance plans of appropriate personnel (see page 33).*

Comments on recommendations 16 and 17

Our comments on recommendation 9 express our belief that Census' efforts to support the control of Workers' Compensation have already exceeded the Department's current requirements. We are willing to do more, but will require additional staffing and resources to do so.

*18. Distribute quarterly and annual charge-back reports regularly to all bureaus and instruct the bureaus to carefully review and verify the accuracy of the charge-back costs and create incentives for them to do so. For example, the Department could use data from the charge-back reports to generate a listing of claimants and costs by line office to increase their accountability for justifying those costs (see page 36).*

Comment: Census is willing to explore ways to increase line office accountability for FECA costs; we need accurate and complete charge-back data in an electronic, sortable format in order to do this.

*19. Clarify the role, responsibilities, and performance evaluation measures for the new contracting officer's representative, and alternate COR, for the workers' compensation contract and include them in their performance plans (see page 49).*

*20. Ensure that the new COR and alternate COR receive all necessary training, including Labor's FECA course and Commerce's COR training (see page 49).*

*21. Review the COR's performance several times a year to ensure contract oversight performance is adequate. The new COR should:*

- a. Ensure that the contractor complies with all terms and conditions of the contract, including training requirements; and*
- b. Review the contractor's performance measures and determine if a revision is necessary (see pages 49 and 50).*

*22. Review the 2002 contract with the contractor to incorporate performance productivity and customer satisfaction metrics (see page 50).*

*23. Consult with the Office of General Council, Contract Law Division, to determine the correct interpretation of the terms of the 2004 contract amendment, including whether the contractor is required to manage 74 cases at all times or manage a minimum of 74 cases over each option year, and ensure that the contract is properly enforced (see page 50).*

No comments on recommendations 19 through 23.

**We recommend that the Chief Financial Officer and Assistant Secretary for Administration, the Director of the Bureau of the Census, and the Director of OHRM take the following actions:**

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*24. Review all Census FECA cases in conjunction with OOSH, and identify those employees able to return to work, whether in a full-time or temporary capacity. Take necessary actions to bring those employees back to work as soon as possible (see page 40).*

Comment: Census will seek a temporary, contractual backfill position to allow Bureau Safety staff to assist OOSH in this effort.

*25. Develop a comprehensive FECA program for the 2010 decennial, that includes:*  
*a. Guidance for supervisors/managers on how to handle FECA claims immediately upon initiation through case management;*  
*b. A return to work strategy, complete with modified temporary positions to quickly bring injured enumerators or others back to work if they are injured during the 2010 decennial; and*  
*c. Identification of current claimants who could be offered a job in the 2010 decennial preparations and/or operations and brought back to work (see page 40).*

Comments:

The Census Safety Office has already developed and presented guidance and training in the management of new FECA cases and the need to return injured employees to work as soon as possible. This material has already been implemented during Test Census operations and will be updated to reflect changes in policy and operation as they occur. Census Safety will continue to work in close cooperation with Decennial Management and staff, and with OOSH, to develop a program and strategy as outlined above.

Appendix E - USPTO's Response to Draft Report



UNITED STATES PATENT AND TRADEMARK OFFICE

Office of the Chief Administrative Officer

March 30, 2006

MEMORANDUM FOR Jill Gross  
Assistant Inspector General  
for Inspections and Program Evaluations

FROM: Vickers B. Meadows  
Chief Administrative Officer

SUBJECT: Draft Inspection Report *Management of Commerce's Federal  
Workers' Compensation Program Needs Significant  
Improvements (IPE-17536)*

On March 10, 2006, you sent a letter to Under Secretary and Director Jon W. Dudas, regarding Draft Inspection Report, *Management of Commerce's Federal Workers' Compensation Program Needs Significant Improvements (IPE-17536)*. We appreciate having the opportunity to comment specifically on the United States Patent and Trademark Office's (USPTO) portion. Your letter has been referred to me for response. In general, the USPTO agrees with the findings and accepts the recommendations in their entirety.

The USPTO strives to continuously improve the Workers' Compensation Program, and your recommendations will strengthen our management process and procedures. Attached are the actions we have taken and plan for the near-term future.

If you have any questions concerning this matter please do not hesitate to contact me at 571-272-9200.

Attachment

**United States Patent and Trademark Office  
Response to Draft Inspection Report (IPE-17536)  
Management of Commerce's Federal Workers' Compensation Program Needs  
Significant Improvements**

The USPTO's Office of Human Resources (OHR) transitioned its Workers' Compensation Program to the Work Life Branch, Workforce Relations Division (WRD), in February 2006. The program coordinator, supervisor and branch chief are coordinating program improvements to implement the Inspector General's seven recommendations provided in the March 2006, Draft Inspection Report. We anticipate a timely resolution in addressing the recommendations, especially in view of the small number of open cases in our purview. In addition, the 65 cases listed on Department of Labor's FECA 2004-2005 chargeback report have been reduced to 47 open cases.

**Recommendation 1: *Actively manage USPTO's short-term and long-term FECA cases.***

**USPTO Action:**

We will work more closely with the Department of Labor (DOL) to analyze information and take action. DOL has recently granted the USPTO permission to use their Agency Query System (AQS) to periodically review for duplicate payments and other overpayments, and take appropriate action with DOL to collect from the employee. Existing long-term cases are in review to evaluate the status of each case and physical condition of claimants for possible return to work. DOL has been contacted to collect the duplicate payment identified in the findings. Additionally, each new case file has been thoroughly documented. We also plan to:

- Thoroughly review the charge-back report and take appropriate action with DOL as necessary. To date, eighteen cases have been addressed, reducing open cases from 65 to 47.
- Contact participants in the FECA process monthly for status of their condition.
- Increase support for the Workers' Compensation Program (possibly by contracting for additional support) so that there are adequate resources and skills to closely monitor the program.

**Target Completion Date: *October 2006***

**Recommendation 2: *Establish a return-to-work program with written procedures for employees, supervisors and USPTO staff.***

USPTO Action:

The Workers' Compensation Program information has been updated on the OHR's website. Additionally, we are working to:

- Develop written procedures for a return-to-work program for employees, supervisors and USPTO staff.
- Add comprehensive information on the return-to-work program procedures to the OHR website.

Target Completion Date: July 2006

**Recommendation 3: *Implement an automated system for managing FECA cases.***

USPTO Action:

- For the short-term, we have developed a spreadsheet to manage all cases. We are in the process of evaluating a fully automated solution.

Target Completion Date: October 2006

**Recommendation 4: *Pursue cost-recovery opportunities by more carefully identifying and pursuing third party liability.***

USPTO Action:

- We will actively pursue this recommendation (possibly include as a task in a contract).

Target Completion Date: June 2006

**Recommendation 5:** *Issue a USPTO administrative order and provide current online guidance to clearly define FECA roles and responsibilities of supervisors, employees, workers' compensation and human resources personnel, and provide pertinent information on FECA laws.*

USPTO Action:

- An Agency Administrative Order (AAO) on the Workers' Compensation Program is being finalized.

Target Completion Date: July 2006

**Recommendation 6:** *Develop and provide FECA training to all USPTO personnel.*

USPTO Action:

FECA training is planned for the new supervisor's course. We will incorporate the information in current sessions for new supervisors. We will also:

- Post and announce an on-line reference manual for all USPTO personnel.
- Additionally, a plan for future training options (e.g., briefings to staff, supervisors and managers, USPTO Human Capital Council) is being developed.

Target Completion Date: July 2006

**Recommendation 7:** *Ensure that performance plans for appropriate staff includes workers' compensation responsibilities and supervisors use the plans to oversee the performance of the workers' compensation staff.*

USPTO Action:

- Performance plans for appropriate staff will incorporate workers' compensation responsibilities.

Target Completion Date: October 2006