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U.S. Department of Labor
Employment Standards Administration

Office of Workers' Compensation Programs

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OWCP Annual Report to Congress FY2004



Submitted to Congress 2007

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Elaine L. Chao, Secretary

Employment Standards Administration
Victoria A. Lipnic, Assistant Secretary

Office of Workers' Compensation Programs
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SECRETARY OF LABOR
WASHINGTON, D.C. 20210

JAN 22 2007

THE HONORABLE PRESIDENT OF THE SENATE
THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES

I have enclosed the Department of Labor's annual report to Congress on the FY 2004 operations of the Office of Workers' Compensation Programs. The report covers administration of the Federal Employees' Compensation Act as required by Section 8152 of that Act, the Black Lung Benefits Act as required by Section 426(b) of that Act, the Longshore and Harbor Workers' Compensation Act (LHWCA) as required by Section 42 of that Act, and the Energy Employees Occupational Illness Compensation Program Act, for the period October 1, 2003, through September 30, 2004.

Separate enclosures contain reports on annual audits of the Longshore and Harbor Workers' Compensation Act Special Fund and the District of Columbia Workmen's Compensation Act Special Fund accounts as required by Section 44(j) of LHWCA.

I trust that this report both fulfills the requirements of the respective laws and is useful to Congress and other interested parties as a comprehensive source of information on the administration and operation of Federal workers' compensation programs.

Sincerely,



Elaine L. Chao

Enclosures

Contents

Assistant Secretary's Message	2
Director's Message	3
Federal Employees' Compensation Act	5
Black Lung Benefits Act	15
Longshore and Harbor Workers' Compensation Act	29
Energy Employees Occupational Illness Compensation Program Act	43
Appendix	53
Office Directory	76

Assistant Secretary's Message

I am pleased to forward the Office of Workers' Compensation Programs' (OWCP) Annual Report for Fiscal Year 2004 to the Secretary, to be transmitted to Congress.

In FY 2004, OWCP continued to meet or exceed a large majority of its program performance standards for both its Government Performance Results Act goals and operational plans. The new Safety, Health, and Return-to-Employment initiative was launched and progress was made by many Federal agencies in its first year, and compliance assistance and outreach activities provided valuable information and direction to claimants and OWCP's stakeholder community on insurance coverage requirements and responsibilities, especially with regard to the operations of the Defense Base Act in connection with expanded contracting in the Middle East.

Victoria A. Lipnic
Assistant Secretary for Employment Standards

Director's Message

Fiscal Year 2004 was distinguished for OWCP by the launch of a Presidential initiative promoting one of OWCP's core objectives, reducing work days lost to disability for injured Federal employees. It also marked the third successful year of the new Energy Employees Occupational Illness Compensation program.

In January 2004, President George W. Bush announced the government-wide Safety, Health, and Return-to-Employment (SHARE) initiative, setting goals for Federal agencies to reduce injuries to Federal employees, promptly report those injuries that do occur, and reduce lost production days for employees who are disabled due to work injury. This Presidential endorsement of two of OWCP's most important endeavors (timely filing and reducing lost production days) has helped OWCP energize the Federal community in improving their safety and workers' compensation programs. The value of the initiative was already apparent nine months later when agencies demonstrated a 24 percent increase in the timeliness of filing notices of injury for the fiscal year.

The Department of Labor's Government Performance Results Act (GPRA) goal to "minimize the human, social, and financial impact of work-related injuries for workers and their families" was substantially achieved in FY 2004 through OWCP efforts to increase medical and compensation cost management, case resolutions, and timely decisions and responsiveness. The Federal Employees' Compensation (FEC) program achieved \$24.3 million in savings from its periodic roll management program, reducing the cost of long-term disability to taxpayers. The overall cost trend of FECA's medical benefits remained below that of the medical industry as a whole,

and its customer service improvement milestones for access, courtesy and timeliness of response were achieved. The Black Lung program met its GPRA goal with 82 percent of its claims resolved with no further proceedings requested after one year. The Longshore program not only met its challenging goal for earlier resolution of disputes either by its staff or in the Administrative Law Judge process, but also continued to do an excellent job in addressing the vastly increased activity under the Defense Base Act related to increased contracting in the Middle East.

The Energy Employees Occupational Illness Compensation program completed its third full year of operations, issuing compensation and medical payments in the amount of \$276 million to over 3,100 atomic weapons workers or their surviving dependents, and exceeding its goals for timely decisions in all categories.

These positive results for our customers and stakeholders were achieved by OWCP's motivated, determined staff. During FY 2004, they achieved solid performance improvements despite considerable disruption caused by administrative re-tooling related to OWCP's newly outsourced central bill payment system and other information technology projects. These major projects will bear significant fruit in terms of increased efficiency in the future, but it is a testament to the dedication of our employees that even with technology and organizational transition issues, they again delivered improved services to the injured workers for whom our programs were designed.

Shelby Hallmark
Director, Office of Workers' Compensation Programs

Federal Employees' Compensation Act

2004

Introduction
In 1916, President Wilson signed the first comprehensive law protecting Federal workers from the effects of work injuries. Amended several times, the Federal Employees'

Compensation Act (FECA) now provides workers' compensation coverage to approximately 2.7 million Federal workers. The Act also provides coverage to Peace Corps and VISTA volunteers, Federal petit and grand jurors, volunteer members of the Civil Air Patrol, Reserve Officer Training Corps Cadets, Job Corps, Youth Conservation Corps enrollees, and non-Federal law enforcement officers when injured under certain circumstances involving crimes against the United States.

Over 88 years, the Federal Employees' Compensation (FEC) program has continuously evolved to meet its commitment to high quality service to employees and Federal agencies while minimizing the human, social and financial costs of work-related injuries.

Benefits And Services

The primary goal of the FEC program is to assist Federal employees who have sustained work-related injuries or disease by providing financial and medical benefits and help in returning to work. FECA Benefits include payment for all reasonable and necessary medical treatment for work-related injury or disease. In timely-filed traumatic injury claims, the FECA requires the employer to continue the injured worker's regular pay during the first 45 calendar days of disability. If the disability continues after 45 calendar days, or in cases of occupational disease, the FEC program will make payments to replace lost income. Compensation for wage loss is paid at two-thirds of the employee's salary if there are no dependents, or three-fourths if there is at least one dependent. The FECA provides a monetary award to injured workers for permanent impairment of limbs and other parts of the body, and provides benefits to survivors in the event of work-related death. Training and job placement assistance is available to help injured workers return to gainful employment.

In FY 2004, the FEC program provided 280,000 workers and survivors over \$2.4 billion in benefits for work-related injuries or illnesses. Of these benefit payments, \$1.6 billion were for wage-loss compensation, \$704 million for medical and rehabilitation services, and \$131 million for death benefit payments to surviving dependents.



Benefit Outlays Under FECA FY 2004

TOTAL BENEFITS*: \$2,435 MILLION

Long Term Disability (Wage Loss)	52.2%	\$1,271 Million
Medical Benefits	28.9%	\$ 704 Million
Temporary Disability (Wage Loss)	13.5%	\$ 329 Million
Death Benefits	5.4%	\$ 131 Million

*Actual Obligations

Expenses for a small number of cases are not charged back to employing agencies but also are covered by the DOL appropriation. For FY 2004, these non-chargeback expenses were approximately \$29 million. Non-chargeable costs are attributable to injuries that

The FECA is the exclusive remedy by which Federal employees may obtain disability, medical, and/or survivor benefits from the United States for workplace injuries. Decisions for or against the payment of benefits may be appealed to the Employees' Compensation Appeals Board, an independent body in the Department of Labor (DOL). Program activities are carried out in the 12 program district offices around the country.

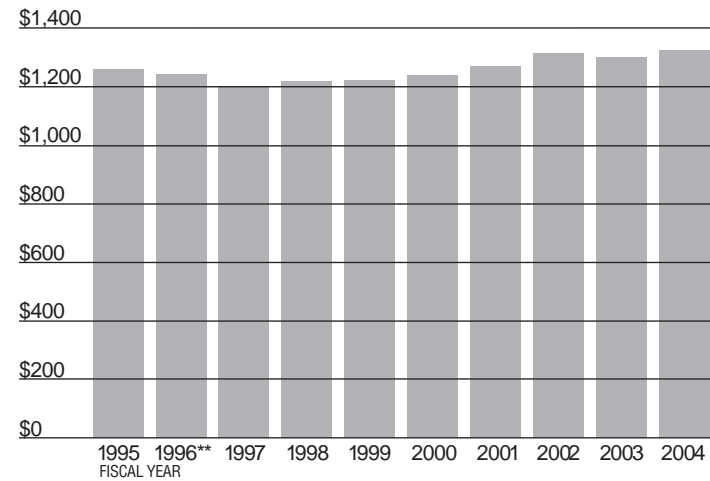
Funding

Benefits are paid from the Employees' Compensation Fund. Agencies are billed each August for benefits paid for their employees from the Fund, and most agencies, other than the U.S. Postal Service (USPS) and non-appropriated fund agencies, include those chargeback costs in their next annual appropriation request to Congress. Remittances to the Fund are not made until the first month of the subsequent fiscal year (or later, if an agency's full-year appropriation is enacted after the subsequent fiscal year begins). The annual DOL appropriation makes up any difference between prior year remittances and current year need, which is affected by Federal wage increases and inflation in medical costs.

occurred before December 1, 1960, when the chargeback system was enacted, to employees of agencies that are no longer in existence, or to injuries which have FECA coverage under various "Fringe Acts" such as the Contract Marine Observers Act, Law Enforcement Officers Act, and the War Hazards Act, that did not contain mechanisms for billing employers.

For FY 2004, administrative expenditures for the FEC program totaled \$143.9 million. Of this amount, \$133.8 million, approximately 5.2 percent of total program costs, were direct appropriations to the Office of Workers' Compensation Programs (OWCP), including \$86.3 million in salaries and expenses and \$47.5 million in "fair share" expenditures out of the FECA Special Benefits account. These latter funds are specifically earmarked for OWCP capital investments for the development and operation of automated data management and operations support systems, periodic roll case management, medical bill cost control, and the central bill processing contract. Another \$10.1 million are for legal, investigative, and other support from the Employees' Compensation Appeals Board (ECAB), Office of the Solicitor, and the Office of the Inspector General.

FECA Benefit Expenditures IN MILLIONS OF CONSTANT DOLLARS*



*Actual Obligations in current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

**FY 1996 excludes one-time (upward) adjustment of \$85.5 million to implement accrual-based accounting for benefit liabilities.

Maintain a rate of change in per case medical costs in FECA below the comparable measure for nationwide health care costs.

Improve FECA Customer Services in key Communications areas.

DFEC was not successful in meeting its goals to reduce the rate of lost production days per one hundred employees in the first year of disability by one percent from the FY 2003 baseline, either in USPS cases or in cases of all other government agencies. While USPS claims for FECA wage-loss benefits remained high in FY 2004, employment levels at the Postal Service continued to

decline, yielding fewer job slots available for the reemployment of injured Postal workers or delays in rehiring. For all other agencies (non-Postal), total claims for FECA wage-loss benefits rose by 16 percent, with the Department of Homeland Security accounting for nearly all of this increase.

As a result, OWCP continued its emphasis on the placement of injured workers with new employers that began in FY 2003. For USPS employees, OWCP reached its target for placement of employees participating in the Vocational Rehabilitation program into new jobs. Sixty-two USPS employees (against a target of 56) were placed in FY 2004. In addition to continuing the emphasis on assisting Postal Service employees, OWCP developed new online and onsite training for agency front-line managers and compensation personnel to assist Federal agencies in strengthening their injury management and reemployment programs.



FECA Benefits Charged To Employing Agencies

CHARGEBACK YEAR 2004

Chargeback Total: \$2,340 Million

Postal Service	\$ 853 Million
Defense	\$ 615 Million*
Veterans Affairs	\$ 155 Million
Homeland Security	\$ 121 Million
Transportation	\$ 93 Million
Justice	\$ 74 Million
Agriculture	\$ 69 Million
All Other	\$ 359 Million

*Defense includes Navy (\$245M), Army (\$177M), Air Force (\$129M), and Department of Defense (\$64M).

Note: The sum of individual agencies may not equal total due to rounding.

Government Performance Results Act

In FY 2004, the Division of Federal Employees' Compensation (DFEC) achieved four out of the six indicators under DOL's Government Performance Results Act (GPRA) goal to "minimize the human, social, and financial impact of work-related injuries for workers and their families." These were:

Increase FECA Vocational Rehabilitation placements with new employers for injured USPS employees by 15 percent over FY 2002.

Through use of Periodic Roll Management, produce \$18 million in first-year (\$38 million in cumulative FY 2003-04) savings.

Safety, Health, And Return-To- Employment Initiative

In January 2004, the President announced a three year initiative - Safety, Health, and Return-to-Employment or SHARE - which built on the accomplishments and outreach efforts of the Federal Worker 2000 Initiative that ran from 2000 through 2003.

The SHARE initiative calls on all Federal agencies to establish ambitious but reachable goals for reducing total injury case rates and lost time case rates for Federal employees, increasing timely submission of notice of injury to OWCP, and reducing lost production days for injured workers.

OWCP and DOL's Occupational Safety and Health Administration (OSHA) jointly manage this initiative under the leadership of Secretary Elaine L. Chao, who reports annually to the President on its progress. OWCP and OSHA worked in partnership with Federal agencies to develop achievable goals based on a baseline performance established in 2003. A minimum goal was set for each of the four categories by the Secretary, but Federal agencies were asked to stretch beyond the minimum in establishing goals for each of the years covered by this initiative.

Major successes in the first year of SHARE were the improved timeliness of Notice of Injury (CA-1) and Notice of Occupational Illness (CA-2). OWCP's ability to act promptly on medical bills and prevent any interruption of income is directly and critically related to the early submission of these forms. As part of the SHARE initiative, all agencies were called upon to improve timeliness of reporting of injuries and illnesses by at least 5 percent per year. During FY 2004, there was a noticeable increase from 49.6 percent in the baseline year of 2003 to 61.4 percent, and every Executive Branch agency improved its performance.

The SHARE goal for lost production days (LPD) in the first year of disability was a reduction of at least one percent from the FY 2003 baseline. The government-wide LPD was 86.7 days and did not meet the FY 2004 goal of 82.3 days. The U.S. Postal Service reduced its LPD rate to 147.2 days, but missed the goal of 146.1 days. LPD for all other government agencies rose to 62 days against a target of 55.4 days. Although the SHARE target was not met overall, OWCP district offices reduced the average length of disability of cases in the Quality Case Management program by five percent.

Case Adjudication And Management

Approximately 163,000 new injury and illness claims were filed under FECA in FY 2004. Eighty-five percent were for traumatic injuries, such as those caused by slips and falls. The rest were for medical conditions arising out of long-term exposure, repeated stress or strain, or other continuing conditions of the work environment. For traumatic injury claims, 98 percent were adjudicated within 45 days of when OWCP received notice of the injury. In FY 2004, the FEC program also achieved a high rate of timeliness in deciding non-traumatic injury claims despite the complexities involved. For "basic" occupational disease cases with an uncomplicated fact pattern, 95 percent were adjudicated within 90 days. Eighty-five percent of the more complex non-traumatic cases were adjudicated within 180 days. Eighty-seven percent of wage-loss claims were paid within 14 days of receipt.

Disability extended beyond the 45-day continuation-of-pay period in 15 percent of injury cases. OWCP's Quality Case Management (QCM) program is designed to work with employers, physicians, and injured workers to achieve good medical care and return to work. In FY 2004, nurses intervened in 16,717 lost time claims and 2,816 workers were referred for vocational rehabilitation services. Over 9,400 injured workers returned to work in FY 2004 with the assistance of contract nurses or rehabilitation counselors. Nearly 89 percent of these QCM cases during FY 2004 were resolved within 30 months of the date disability began. The average length of



Quality Case Management Results For FY 2004

Over 16,700 Injured Workers Were Referred To Nurses For Early Intervention.

9,408 Injured Workers Returned To Work V. 9,249 In 2003.

89% of QCM Cases Resolved Within 30 Months From Start Of Disability.

disability measured for cases that had begun wage-loss payments dropped from 162 days in FY 2003 to 154 days, equal to \$13.6 million in savings in FECA compensation costs in FY 2004 for the 14,000 cases measured.

In addition to stressing early intervention, the FEC program dedicated resources to thorough review of long-term disability cases. The Periodic Roll Management (PRM) staff arranges second opinion medical examinations, vocational rehabilitation and placement assistance, with a goal of reemploying injured workers. PRM has proven to be hugely successful, with outcomes exceeding OWCP's original estimates. In FY 2004, staff achieved compensation savings of \$24.3 million. Over 4,200 cases were screened, and benefits were adjusted or terminated in 2,392 cases where beneficiaries' disability had either resolved or lessened to the point that return to work was possible. Savings from these actions continue in subsequent years.

Central Medical Bill Processing

After a long period of planning, OWCP initiated a centralized bill processing system for DFEC early in FY 2004.

Medical bills had been data-entered in each district office, processed to decision or suspended by an OWCP-developed software application; and, if suspended, returned to the district office staff for resolution. A contract to centralize these operations was let in FY 2003 to Affiliated Computer Systems (ACS), and extensive work was done with the vendor to adapt its bill system to handle OWCP's requirements. Processing of bills began in September 2004.

An unexpectedly high volume of medical bills and phone calls received through the Central Bill Processing Call Center caused a number of customer service problems to occur at start up. Joint efforts by OWCP and the vendor resolved many of these problems as the year progressed, and performance was largely brought into line with Service Level Agreements. By the end of the year, efforts by OWCP and the contractor (now Lockheed Martin Information Technology / ACS) were directed towards increasing the efficiency and accuracy of the operation and seeking administrative cost savings. DFEC realized a \$40 million dollar reduction in costs charged back to agencies due to improved editing of bills in the new system.

At the end of the first year, the vendor processed 4,667,338 bills and handled 1,182,962 telephone calls. The vendor enrolled 234,288 new providers in the system, bringing the total of enrolled providers to 318,852 at the end of FY 2004. Ninety-four percent of bills were being processed within 28 days and authorizations for treatment were processed in an average of 3.2 work days.

Services To Claimants And Beneficiaries

During FY 2004, the FEC program continued its focus on improved customer service and satisfaction in keeping with the "Pledge to Our Customers." To signal the importance of the effort, OWCP included a group of critical communications targets as one of its GPRA indicators, emphasizing customer access, efficiency of response using supplemental media such as the internet and Interactive Voice Response, courtesy and timeliness of answer. More than 1.9 million calls were received in the DFEC District Offices. The weighted national average wait time was 2.06 minutes, a decrease of 54 seconds over FY 2003. Sixty-one percent of the calls to the district office were answered on the day they were received. On average, calls not resolved on the same day were resolved in 2.7 days.

These decreased wait and resolution times can be attributed to using staff transitioned from medical authorization and bill payment duties to positions as Customer Service Representatives (CSRs) beginning in September 2003. These positions were designed to provide a high level of "front line" customer service to injured workers, employing agency representatives, and others contacting the district offices for information and assistance and to allow claims examiners to dedicate more time to claims management and return-to-work efforts.

During FY 2004, FEC implemented quality silent monitoring of calls to the district office phone banks as another quality assurance method. Communications Specialists listen to both sides of a conversation and using a standardized Quality Monitoring scorecard, document the CSRs' performance. The results are used both for reporting purposes and for identification of training needs. Results from local telephone surveys and quality silent monitoring indicate that 97.2 percent of callers were met with courteous service, a one point increase over FY 2003. Use of clear and understandable language was reported in 97.7 percent of calls. Ninety-four percent of calls met knowledge and accuracy standards.

FECA Performance Study

In response to findings from a FY 2002 Program Assessment Rating Tool evaluation, OWCP engaged ICF Consulting to evaluate two major aspects of FECA performance: wage loss compensation and disability management. ICF engaged two well-regarded researchers in the workers' compensation field, Dr. H. Allan Hunt of the Upjohn Institute and Dr. Peter Barth of the University of Connecticut's Department of Economics, to benchmark performance against state workers' compensation systems and identify best practices. ICF's report, issued March 31, 2004 (http://www.dol.gov/esa/owcp_org.htm), acknowledged the program's "willingness and ability to monitor and adjust operational processes in order to increase program efficiency and effectiveness..." and its regular revision of GPRA goals to "motivate a high quality operation." Dr. Hunt subsequently singled out FECA's Lost Production Days goal, commenting that "lost production days may be the ultimate performance measure for a workers' compensation agency, because it represents both the incidence of claims and their duration". FECA was found to be doing relatively well when compared with state systems, although direct data comparisons were difficult to make. The report noted that workloads per examiner are high compared to most states; it recommended improving interaction with Federal agencies, particularly in the continuation-of-pay period, and for organizational changes.

Federal Employees' Compensation Act		
	FY 2003	FY 2004
Number of Employees (FTE Staffing Used)	1,008	954
Administrative Expenditures*	\$ 129.6 M	\$ 133.8 M
Cases Created	168,174	162,965
Wage-Loss Claims Initiated	24,245	24,189
Total Compensation and Benefit Payments (Actual Obligations)**	\$2,345.5 M	\$2,434.6 M
Number of Medical Bills Processed	3,094,691	4,667,338

*OWCP expenditures; excludes DOL support costs, but includes "fair share" capital expenditures of \$43.3 million in FY 2003 and \$47.5 million in FY 2004, respectively.
 **Compensation, medical, and survivor benefits.

Black Lung Benefits Act

2004

*Introduction
The Division of Coal
Mine Workers'
Compensation
(DCMWC) completed
its thirty-first year
administering Part C of
the Black Lung
program in 2004. The
initial Black Lung*

benefits program was enacted as part of the Coal Mine Health and Safety Act of 1969. This law created a system to compensate past victims of dust exposure in mines with public funds administered by the Social Security Administration (SSA).

The number of claims filed in the early seventies greatly exceeded expectations. The Act was amended by the Black Lung Benefits Act of 1972 (BLBA) to require the use of simplified interim eligibility criteria for all claims filed with SSA, and to transfer the receipt of new claims to the Department of Labor (DOL) in 1973. OWCP assumed responsibility for processing and paying new claims on July 1, 1973. Until recently, most of the claims filed prior to that date remained within the jurisdiction of SSA. Further amendments in the Black Lung Benefits Reform Act of 1977 (Public Law 95-239) mandated the use of interim criteria to resolve old unapproved claims. The Black Lung Benefits Revenue Act of 1977 (Public Law 95-227) created the Black Lung Disability Trust Fund (Trust Fund), financed by an

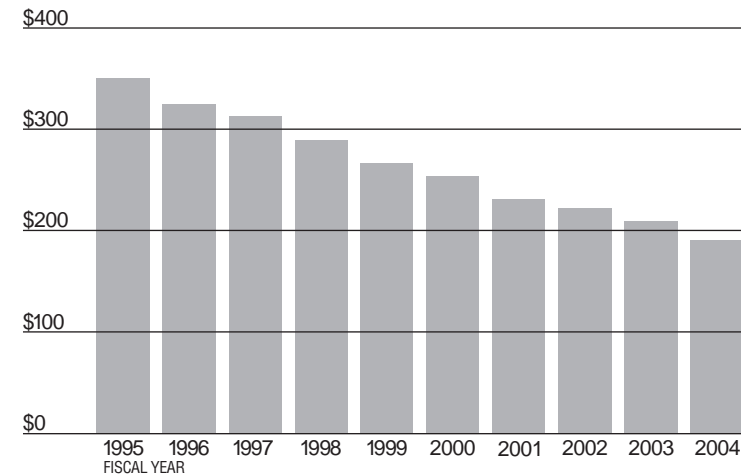
excise tax on coal mined and sold in the United States. The Law authorized the Trust Fund to pay benefits in cases where no responsible mine operator could be located and transferred liability for claims filed with DOL based on pre-1970 employment to the Trust Fund. It also permitted miners approved under Part B to apply for medical benefits available under Part C. These amendments made the Federal program permanent but state benefits continued to offset Federal benefits where they were available.

Current administration of the Black Lung Part C program is governed by legislation enacted in 1981. These amendments tightened eligibility standards, eliminated certain burden of proof presumptions, and temporarily increased the excise tax on coal to address the problem of a mounting insolvency of the Trust Fund, which was by then indebted to the U.S. Treasury by over \$1.5 billion.

In 1997, the responsibility for managing active SSA (Part B) Black Lung claims was transferred to DOL by a Memorandum of Understanding between SSA and DOL. This change improved customer service to all Black Lung beneficiaries and was made permanent in 2002 when the Black Lung Consolidation of Administrative Responsibilities Act placed the administration of both programs with DOL.

Black Lung Benefit Expenditures

IN MILLIONS OF CONSTANT DOLLARS*



*Current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

Benefits And Services

The Black Lung Part C program provides two types of benefits, monthly wage replacement and medical services. The program pays a standard monthly benefit (income replacement) to miners determined to be totally disabled from black lung disease, and to certain eligible survivors of deceased miners. The monthly rate of benefits is adjusted upward to provide additional compensation for up to three eligible dependents. In FY 2004, income benefits (monthly and retroactive payments) totaled \$292.6 million.

The Part C program also provides both diagnostic and medical treatment services. Diagnostic testing is provided for all miner claimants to determine the presence or absence of black lung disease, and the degree of

associated disability. These tests include a chest x-ray, pulmonary function study, arterial blood gas study, and a physical examination. Medical coverage for treatment of black lung disease and directly related conditions is provided for miner beneficiaries. This coverage includes prescription drugs, office visits, and hospitalizations. Also provided, with prior approval, are durable medical equipment, primarily home oxygen, outpatient pulmonary rehabilitation therapy, and home nursing visits.

Medical expenditures under the Black Lung Part C program during FY 2004 were \$54.3 million. This includes payments of \$3.2 million for diagnostic services, \$47.3 million for medical treatment, and \$3.8 million in reimbursements to the United Mine Workers of America Health and Retirement Funds for costs of treating Black Lung beneficiaries. Approximately 336,000 bills were processed during the year.

Total Black Lung Part C program expenditures for these benefits in Fiscal Year (FY) 2004 were \$346.9 million, a decrease of \$23.5 million from FY 2003. In FY 2004, benefits were provided from the Trust Fund to approximately 41,000 beneficiaries each month.

As an additional benefit to claimants, the law provides for payment of attorneys' fees and legal costs incurred in connection with approved benefit claims. The fees must be approved by adjudication officers. During the past year DCMWC processed 53 fee petitions and paid approximately \$0.6 million in attorneys' fees from the Trust Fund.

In FY 2004, 2,023 claims were forwarded for formal hearings before the Office of Administrative Law Judges (OALJ) and 378 claims were forwarded for appeal to the Benefits Review Board (BRB). At the end of FY 2004, the OALJ had 2,668 claims pending while 496 were pending before the BRB.

In the Black Lung Part B program, over 52,000 active beneficiaries (with nearly 5,900 dependents) were receiving approximately \$31 million in monthly cash benefits as of September 30, 2004. Part B benefits in FY 2004 totaled more than \$379 million. DCMWC completed nearly 10,800 maintenance actions on Part B claims during the year, on average less than one week from notification.

Black Lung Disability Trust Fund

The Black Lung Disability Trust Fund, established in 1977 to shift the responsibility for the payment of black lung claims from the Federal government to the coal industry, is administered jointly by the Secretaries of Labor, Treasury, and Health and Human Services. Claims approved by SSA under Part B of the BLBA are paid from the general revenues of the Federal Government.

Trust Fund revenues consist of monies collected from the industry in the form of an excise tax on mined coal that is sold or used by producers; funds collected from responsible mine operators (RMOs) for monies they owe the Trust Fund; payments from various fines, penalties, and interest; refunds collected from claimants and beneficiaries for overpayments; and repayable advances obtained from Treasury's general fund when Trust Fund expenses exceed revenues. Excise taxes, the main source of revenue, are collected by the Internal Revenue Service and transferred to the Trust Fund. In FY 2004, the Trust Fund received a total of \$566.0 million in tax revenues. An additional \$3.6 million was collected from RMOs in interim benefits, fines, penalties, and interest. Total receipts of the Trust Fund in FY 2004 were nearly \$1.1 billion.



Management Of SSA Part B Black Lung Claims In FY 2004

Professional And Timely Claims Maintenance Services Provided To Part B Claimants By DCMWC Included:

Completing Nearly 10,800 Maintenance Actions, With Average Completion Time Of Less Than One Week From Notification.

Managing The Expenditure Of More Than \$379 Million In Benefits.

DCMWC Was Responsible For Over 52,000 Active Part B Cases.

Total Trust Fund disbursements during FY 2004 were almost \$1.1 billion. These expenditures included \$346.9 million for income and medical benefits, \$650.6 million for interest payments on repayable advances from the Treasury,

In 1981, the Black Lung Benefits Revenue Provisions added a temporary special tax, increasing the previous excise tax to \$1.00 per ton for underground coal and \$0.50 per ton on surface mined coal, with a cap of four percent of sales price. In 1986, under the Comprehensive Budget Reconciliation Act of 1985, excise tax rates were increased by 10 percent and a five-year moratorium was imposed on the accrual of interest on all repayable advances, which expired on September 30, 1990. The rates for underground and surface mined coal were raised to \$1.10 and \$0.55 per ton respectively, and the cap was increased to 4.4 percent of the sales price. These tax rates will remain until December 31, 2013, after which the rates will revert to their original levels of \$0.50 underground, \$0.25 surface, and a limit of two percent of sales price.

and \$55.8 million to administer the program (\$32.0 million in OWCP direct costs and \$23.8 million for legal adjudication and various financial management and investigative support provided by the Office of the Solicitor, Office of Administrative Law Judges, Benefits Review Board (BRB), Office of the Inspector General, and the Department of the Treasury).

Performance Assessment

During 2003, a review of DCMWC was conducted using the Program Assessment Rating Tool. While the Black Lung program achieved a rating of “Moderately Effective,” the second-highest rating available, a number of recommendations were made that DCMWC began to implement in FY 2004. These initiatives included a renewed focus on reducing the Trust Fund’s debt (see below for details), setting a schedule of annual targets for improving performance in both GPRA goals and claims processing times, studying medical cost indices to evaluate cost containment plans, evaluating personnel utilization and allocation, and conducting a study of the program. At the close of FY 2004, an independent consulting firm had successfully bid on a contract to evaluate the Black Lung program’s outcomes, cost-effectiveness, and efficiency and compare them to those of similar compensation programs.

Legislative Proposal To Address Trust Fund Insolvency

Although tax receipts to the Trust Fund were sufficient to cover benefits and other everyday operating costs and some interest charges, borrowed funds from the U.S. Department of the Treasury in the amount of \$497 million were required to fund the remainder of the interest payment due for FY 2004. By the end of FY 2004, the Trust Fund’s cumulative debt to the Treasury was \$8.7 billion. Since benefit pay-outs for Black Lung claims in the late 1970’s and early 1980’s far exceeded revenues, the Trust Fund was forced to draw down repayable advances annually from the Treasury. While operating costs are now sufficiently covered by incoming revenues, the Trust Fund’s debt continues to climb. The Trust Fund now must borrow to cover its debt service, which amounted to over \$650 million at the end of FY 2004.

To remedy this financial problem, DOL and Treasury proposed a legislative package which would:

Provide for the restructuring of the outstanding Trust Fund debt, much of which was incurred at the higher Treasury interest rates that prevailed during the 1980’s, thereby taking advantage of current and lower Treasury interest rates.

Extend until the debt is repaid the Trust Fund excise tax levels (\$1.10 per ton for underground-mined coal sold; \$0.55 per ton for

surface), which are set to decline after December 31, 2013. The tax rate will revert to the lower (original 1978) rates of \$0.50 per ton for underground-mined coal sold and \$0.25 per ton for surface in the year following the elimination of the Trust Fund’s debt.

Provide a one-time appropriation to the Trust Fund to cover the loss to the Treasury caused by the restructuring.

After consultation with interested parties and the staffs of the appropriate Congressional committees, DOL and Treasury staffs prepared a revised version of the proposed legislation that was previously transmitted to Congress in 2000 and 2002. Secretary Chao transmitted the revised legislative proposal to the Congress on February 24, 2004. Senator Charles Grassley introduced the bill on April 29, 2004, and it was referred to the Finance Committee as S.2366; however, no further action was taken on the proposed legislation prior to the adjournment of the Congress.

Government Performance Results Act

In FY 2004, DCMWC continued its efforts to reach DOL’s GPRA goal to “minimize the human, social, and financial impact of work-related injuries for workers and their families.” DCMWC achieved its goal to:

Increase by eight percent over the FY 2001 established baseline the percentage of Black Lung benefit claims filed under the revised regulations, for which, following an eligibility decision by the district director, there are no requests for further action from any party pending one year after receipt of the claim.

In FY 2004, 82.2 percent of claims were resolved with no pending requests for further action (against a target of 74.5 percent). The Black Lung program will continue to work closely with both its stakeholder and authorized provider communities to ensure that delivery of services continue to improve and performance standards are met.

Claims Processing Timeliness

The average time required to process a claim from the date of receipt to the issuance of a Proposed Decision and Order was 323 days for FY 2004. However, the average time for the last quarter of the year was below the goal of 320 days. The number of new claims declined from 5,224 during FY 2003 to 4,489 during FY 2004. The number of claims pending a decision by a district director declined from 2,299 on September 30, 2003, to 1,770 on September 30, 2004.

Operation And Maintenance Of Automated Support Package

DCMWC's Automated Support Package (ASP) is provided for through a contract with Computer Science Corporation. The ASP includes a client-server computer system for all black lung claims, statistical and data processing, medical bills processing, telecommunications support, and administrative functions.

During FY 2004, DCMWC also entered into a contract with the Commerce Department's National Technical Information Service to provide a web-based site for accessing weekly updates to the Social Security Administration's Death Master File. As a result, DCMWC now is able to obtain more current information on the deaths of claimants and provide more accurate monthly benefit payments. In addition, DCMWC moved to a faster client-server processing system which allowed for greatly improved response times for users of the system.

Another system support achievement in FY 2004 made nearly all program forms available for downloading from the Black Lung home page. The actions taken in this area are in accordance with the Government Paperwork Elimination Act.

Compliance Assistance

Section 423 of the Black Lung Benefits Act requires that each coal mine operator subject to the Act secure payment of any benefits liability by either qualifying as a self-insurer or insuring the risk with a stock or mutual company, an association, or a qualified fund or individual. Any coal mine operator failing to secure payment is subject to a civil penalty of up to \$1,100 for each day of noncompliance. State workers' compensation laws also require coal mine operators to obtain insurance or qualify as a self-insured employer to cover employee benefit liabilities incurred due to occupational diseases that are covered by state law. If state workers' compensation is paid for pneumoconiosis, any Federal black lung benefit received for that disease would be offset or reduced by the amount of the state benefit on a dollar-for-dollar basis. As of September 30, 2004, there were 1,631 Federal black lung claims being offset due to concurrent state benefits.

According to FY 2004 estimates by DOL's Mine Safety and Health Administration, there were 1,815 active coal mine operators subject to the requirements of the Act. From the inception of the Act to the close of FY 2004, the Secretary of Labor had authorized 83 companies to self-insure. These authorizations cover approximately 540 subsidiaries and affiliated companies.

The Responsible Operator (RO) Section staff in DCMWC's national office is specifically assigned to keeping records on coal mine operators and their insurance status. The staff answers frequent written, telephone, and e-mailed inquiries from operators and insurance carriers, and evaluates requests for self-insurance.

During FY 2004, the RO section sent form letters to 201 coal mine operators reminding them of their statutory requirement to insure and stay insured against their potential liability for paying black lung benefits. Of these, 124 were found to be insured, 53 were insured through parent entity or not engaged in coal mining, 10 were out of business, and nine were uninsured. Five letters were returned unclaimed. Letters were mailed to commercial insurers reminding them of the statutory requirements for writing black lung insurance and for annual reporting to DCMWC of the companies insured and policy numbers. These letters generated many questions from underwriters and resulted in improved compliance. During FY 2004, DCMWC received over 1,700 reports of new or renewed policies. DCMWC also added the insurance reporting instruction form to its website.

A new compliance assistance project was initiated by DCMWC in order to improve and standardize the reporting of medical information obtained during the complete pulmonary evaluation that the Division is required to offer to all miners who file claims for benefits. In August 2004 DCMWC mailed a letter explaining the need for more comprehensive reporting to all physicians who have been approved to perform diagnostic testing for pneumoconiosis. The letter

included the form that is used for the medical report, detailed instructions on completing it, and a number to call for further information. Fees were increased for diagnostic testing to help ensure that highly-qualified pulmonary specialists will continue to perform these services. Staff from the national office and several district offices also met with a number of physicians to provide additional information and assistance.

Litigation

Courts of Appeals

During FY 2004, the courts of appeals issued 49 decisions in cases arising under the Black Lung Benefits Act. In addition, 57 appeals were filed. The following summarizes the most significant appellate decisions, grouped by their particular issue and location in the CFR.

Duplicate Claims: 20 C.F.R. § 725.309 (1999). Three decisions involved duplicate, or subsequent, claims. The decisions involved the regulation applicable to duplicate claims that were pending on January 19, 2001 (*i.e.*, the effective date of revised regulations). That regulation, promulgated in 1978, was premised on the fact that pneumoconiosis is a progressive disease. It allowed a miner whose earlier claim for benefits had been denied to recover benefits if his black lung disease has deteriorated to the point of total disability. To avoid denial of the duplicate claim on the same grounds as the earlier denial, however, the regulation required the miner to establish a "material change in conditions."

In Grundy Mining Co. v. Flynn, 353 F.3d 467 (6th Cir. 2003), the court affirmed the administrative law judge's finding of a material change in conditions, holding that substantial evidence supported the judge's finding of a "qualitative difference" between the evidence found insufficient to establish the miner's total disability at the time of the miner's first claim and the evidence demonstrating that the miner had become totally disabled by the time of his second claim.

In Midland Coal Co. v. Director, OWCP, 358 F.3d 486 (7th Cir. 2004), the court affirmed the administrative law judge's finding of a material change in conditions, holding that substantial evidence supported the judge's finding that the miner had become totally disabled since the denial of his earlier claim. In reaching its holding, the court rejected the company's argument that pneumoconiosis is not a progressive disease. The court noted that the Department had recently issued a regulation, following notice-and-comment procedures, concluding that pneumoconiosis can be a progressive disease. The court also rejected the company's argument that, in addition to proving a change in conditions, the miner must prove that his pneumoconiosis is one of the particular kinds of pneumoconiosis that can progress.

In U.S. Steel Mining Co. v. Director, OWCP, 386 F.3d 977 (11th Cir. 2004), the court joined the Third, Fourth, and Eighth Circuits in deferring to the Director's interpretation of "material change," holding that a miner may establish a material change by proving with new evidence at least one of the elements of entitlement (e.g., pneumoconiosis or total disability) adjudicated against him in the earlier claim. It then affirmed the administrative law judge's finding that the miner established a material change by proving with new evidence that he had pneumoconiosis, an element of entitlement previously adjudicated against him.

Medical Benefits: 20 C.F.R. § 725.701. In *Lewis Coal Co. v. Director, OWCP*, 373 F.3d 570 (4th Cir. 2004), the court affirmed the administrative law judge's finding that the company was responsible for medical expenses related to treatment of the miner's coal-dust-related chronic bronchitis. (Any chronic lung disease arising out of coal mine employment is pneumoconiosis under 30 U.S.C. § 902(b).) The miner had been diagnosed with chronic bronchitis in 1971, and had been awarded monthly black lung benefits by the Social Security Administration under Part B of the Act in 1973. The miner later applied for Part C medical benefits under the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, § 11, 92 Stat. 95, 101 (1978), and in 1981 the company waived its right to contest the claim and conceded that the miner was entitled to medical benefits. Years later, however, the company refused to pay for treatment of the miner's chronic bronchitis, arguing that the disease was not pneumoconiosis. In rejecting the company's argument, the court held that the company's 1981 concession precluded it from asserting that the miner's chronic bronchitis was not pneumoconiosis.

Survivor Dependency: 20 C.F.R. §§ 725.217(a), .233(g). To be entitled to benefits as the surviving divorced spouse of a miner who died due to pneumoconiosis, a survivor who had not been receiving support from the miner under a written agreement and did not have a court order requiring the miner's support must prove that he or she nevertheless had been receiving at least one-half of his or her support from the miner at or reasonably near the time of the miner's death. In *Lombardy v. Director, OWCP*, 355 F.3d 211 (3d Cir. 2004), the Third Circuit joined the Fourth, Sixth, Seventh and Eighth Circuits in holding that a survivor's receipt of Social Security Act benefits based on a miner's earnings record did not constitute receipt of support from the miner.

Benefits Review Board

During FY 2004, the Benefits Review Board issued 564 decisions, several of which significantly affect the Secretary's administration of the black lung benefits program. The following summarizes some of the more significant decisions of the Board, categorized by issue.

Modification of Denied Claims. The Act permits a claimant to request modification of a denied claim based on a change in conditions or a mistake in a determination of fact, and provides that the request must be filed "prior to one year after rejection of a claim" to be timely. 30 U.S.C. § 932(a) (incorporating 33 U.S.C. § 922). In *Gross v. Dominion Coal Corp.*, 23 Black Lung Rep. 1-10 (2003), the Board held that the request must be filed before the end of the 365th day after the denial. In addition, the Board held that a program regulation governing the computation of time periods requires that the period for filing the

modification request be extended until the next business day when the 365th day occurs on a weekend or legal holiday.

Evidentiary Limitations. The Secretary's regulations impose limitations on the amount of medical evidence that each party may submit: (1) in support of its affirmative case; (2) in rebuttal of evidence submitted by the opposing party; and (3) to rehabilitate evidence made the subject of rebuttal. 20 C.F.R. § 725.414(a). These restrictions are intended to promote fairer and more efficient claims adjudication. In *Dempsey v. Sewell Coal Company*, 23 Black Lung Rep. 1-53 (2004), the Board held that the limitations are a valid exercise of the Secretary's regulatory authority under both the Black Lung Benefits and Administrative Procedure Acts, and are not overridden by an earlier Fourth Circuit decision which held that an ALJ may reject cumulative evidence if lacking in probative value but should err on the side of admitting such evidence. With regard to particular types of evidence, the Board held that medical evidence developed in a miner's state workers' compensation claim is subject to the evidentiary limitations and that objective test results contained in hospital records are admissible without limitation under an exception allowing admission of hospital and medical treatment records. The Board also held that the regulations do not limit the number of CT scan results a party may submit as part of its affirmative case.

Latency and Progressivity of Pneumoconiosis.

A regulation revised in 2000 codifies the Director’s longstanding position that coal workers’ pneumoconiosis is “a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.” 20 C.F.R. § 718.201(c). Given the latent and progressive nature of the disease, the Act allows a miner whose claim was denied for failure to establish total disability due to pneumoconiosis to request modification or file a new claim if his condition changes. In two published decisions, the Board agreed with the Director and held that the revised regulation does not require a miner to prove that he has a particular type of pneumoconiosis that has been found to be latent and progressive or to demonstrate actual progression in order to prove his condition has changed. Instead, a miner need only establish that he currently has the disease and is totally disabled by it to prove his black lung disease has progressed to a compensable state. *Workman v. Eastern Associated Coal Corp.*, 23 Black Lung Rep. 1-23 (2004); *Parsons v. Wolf Creek Collieries*, 23 Black Lung Rep. 1-32 (2004).

Enforcement

Agreeing with DOL’s *amicus* brief, a U.S. district court in West Virginia awarded a coal miner’s widow an additional 20 percent in black lung benefits because the responsible coal mine operator failed to pay benefits while it appealed successive awards issued by administrative law judges. *Nowlin v. Eastern Associated Coal Corp.*, 331 F.Supp.2d 465 (N.D.W.V. 2004). Because of the operator’s default, the Black Lung Disability Trust Fund was required to pay the widow throughout 20 years of litigation. Once the award became final, the widow filed an enforcement action seeking 20% additional compensation under a provision of the Black Lung Benefits Act, and an implementing regulation, providing for the award of additional compensation if the operator fails to pay benefits in a timely manner. The Court held that, absent a stay, coal mine operators must pay benefits pursuant to an ALJ award, even though the award is on appeal. The Court recognized that the additional-compensation provision provides operators with an incentive to comply with their payment obligations and protects the Trust Fund. The operator did not appeal.

On April 19, 2004, the U.S. District Court for the Northern District of Alabama issued a default judgment for \$730,000 against a former officer of the defunct Alabama Land and Mineral Corporation. OWCP had assessed a civil money penalty in that amount against two of the company’s former corporate officers based on the company’s operation of coal mines without insurance for two years. The U.S. Attorney who is handling collection of the judgment has thus far been unable to serve the other officer, who is believed to have left the country.

Black Lung Benefits Act*

	FY 2003	FY 2004
Number of Employees (FTE Staffing Used)	227	210
OWCP Administrative Expenditures** \$	31.6 M	\$ 32.0 M
Total Compensation and Benefit Payments***	\$ 370.4 M	\$ 346.9 M
Trust Fund Beneficiaries in Pay Status at End of Fiscal Year		
Monthly	41,974	39,077
Medical Benefits Only	5,322	4,437
Responsible Coal Mine Operator Beneficiaries in Pay Status at End of Fiscal Year		
Monthly	6,079	5,863
Medical Benefits Only	1,546	1,355

*Part C claims only.

**Excludes DOL and ESA management, Solicitor, Inspector General, and Treasury administrative costs of \$24.0 million in FY 2003 and \$24.5 million in FY 2004, respectively. Also excludes interest on the Trust Fund debt.

***Excludes collections from responsible coal mine operators for benefits paid by the Trust Fund on an interim basis, refunds for OWCP administrative costs paid, and other miscellaneous reimbursements.

Longshore and Harbor Workers' Compensation Act

2004

*Introduction
Enacted in 1927, the
Longshore and Harbor
Workers' Compensa-
tion Act (LHWCA)
provides compensation
for lost wages, medical
benefits, and rehabili-
tation services to
longshore, harbor and*

other maritime workers who are injured during their employment or who contract an occupational disease related to employment. Survivor benefits also are provided if the work-related injury or disease causes the employee's death. These benefits are paid directly by an authorized self-insured employer, through an authorized insurance carrier, or in particular circumstances, by an industry financed Special Fund.

In addition, LHWCA covers a variety of other employees through the following extensions to the Act:

The Defense Base Act of August 16, 1941, extends the benefits of the LHWCA to employees working outside the continental United States under certain circumstances set out in jurisdictional provisions. Primarily it covers all private employment on U.S. military bases overseas, on land used for military purposes on U.S. territories and possessions, and on U.S. Government contracts overseas.

The Nonappropriated Fund Instrumentalities Act of June 19, 1952, covers civilian employees in post exchanges, service clubs, etc. of the Armed Forces.

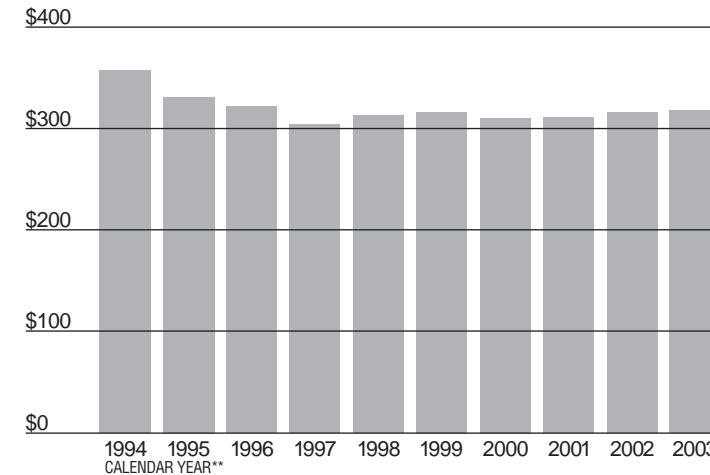
The Outer Continental Shelf Lands Act of August 7, 1953, extended Longshore benefits to employees of firms working on the outer continental shelf of the United States engaged in exploration for and development of natural resources, such as off-shore drilling enterprises.

The District of Columbia Workmen's Compensation Act (DCCA), passed by Congress on May 17, 1928, extended the coverage provided by the Longshore Act to private employment in the District of Columbia. Since the District of Columbia passed its own workers' compensation act effective July 26, 1982, OWCP handles claims only for injuries prior to that date.

The original law, entitled the Longshoremen's and Harbor Workers' Compensation Act, provided coverage to certain maritime employees injured while working over navigable waters. These workers had been held excluded from state workers' compensation coverage by the Supreme Court (*Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917)).

Longshore Benefit Expenditures

IN MILLIONS OF CONSTANT DOLLARS*



*Current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

**Includes total industry compensation and benefit payments under LHWCA and its extensions as reported on a calendar year basis.

Operations

Disability compensation and medical benefits paid by insurers and self-insurers under LHWCA and its extensions totaled \$572.6 million in Calendar Year (CY) 2003, a 2.7 percent increase compared to CY 2002.

In Fiscal Year (FY) 2004, total expenditures for program operations and the overall administration of LHWCA were \$27.9 million, of which \$10.5 million were the direct costs of OWCP. The remaining \$17.4 million were the costs of legal, audit, and investigative support provided by the Office of Administrative Law Judges (OALJ), Benefits Review Board (BRB), Office of the Solicitor, and the Office of the Inspector General.

At year's end, the Division of Longshore and Harbor Workers' Compensation (DLHWC) employed 101 people in the national office and 11 district offices.

During FY 2004, approximately 300 self-insured employers and 250 insurance carriers reported 22,646 lost-time injuries under the Act. At year's end, 15,586 maritime and other workers were in compensation payment status.

Over the past several years there has been a huge increase in attention focused on Longshore program operations related to the Defense Base Act (DBA). This increased interest in DBA is primarily a result of the conflict in Iraq and related military activities in the Middle East. Injuries occurring under DBA are reported to DLHWC District Offices determined by the geographic location of the injury occurrence. Injuries of covered employees in Iraq are reported to the New York DLHWC District Office, where claim files are maintained, provisions of the Act are enforced, and dispute resolution services offered. The number of claims filed under DBA in 2004 was 2,281, over three times the number filed in 2003 when cases in Iraq first began to appear.

Longshore Special Fund

The Special Fund under the Longshore Act was established in the Treasury of the United States pursuant to section 44 of the Act and is administered by the national office of DLHWC. Proceeds of the fund are used for payments under section 10(h) of the Act for annual adjustments in compensation for permanent total disability or death that occurred prior to the effective date of the 1972 amendments, under section 8(f) for second injury claims, under section 18(b) for cases involving employer insolvency, under sections 39(c) and 8(g) for providing rehabilitation assistance to persons covered under the Act, and under section 7(e) to pay the cost of medical examinations.

The Special Fund is financed through fines and penalties levied under the Act; payment by employers of \$5,000 for each death case when it is determined that there are no survivors eligible for the benefits; interest payments on Fund investments; and payment of annual assessments by authorized insurance carriers and self-insurers. Fines, penalties, and death benefit levies constitute a small portion of the total amount paid into the Special Fund each year. The largest single source of money for the fund is the annual assessment.

A separate fund under the District of Columbia Workmen's Compensation Act (DCCA) is also administered by OWCP. Payments to and from this fund apply only to the DCCA.

The LHWCA Fund paid \$135.2 million in benefits in FY 2004, of which \$122.4 million went for second injury (section 8(f)) claims. FY 2004 expenditures of the DCCA Special Fund totaled \$10.9 million, of which \$9.9 million went for second injury cases.

Government Performance Results Act

In FY 2004, DLHWC achieved the target for its indicator under the DOL strategic goal to "minimize the human, social, and financial impact of work-related injuries for workers and their families." DLHWC reached its target to:

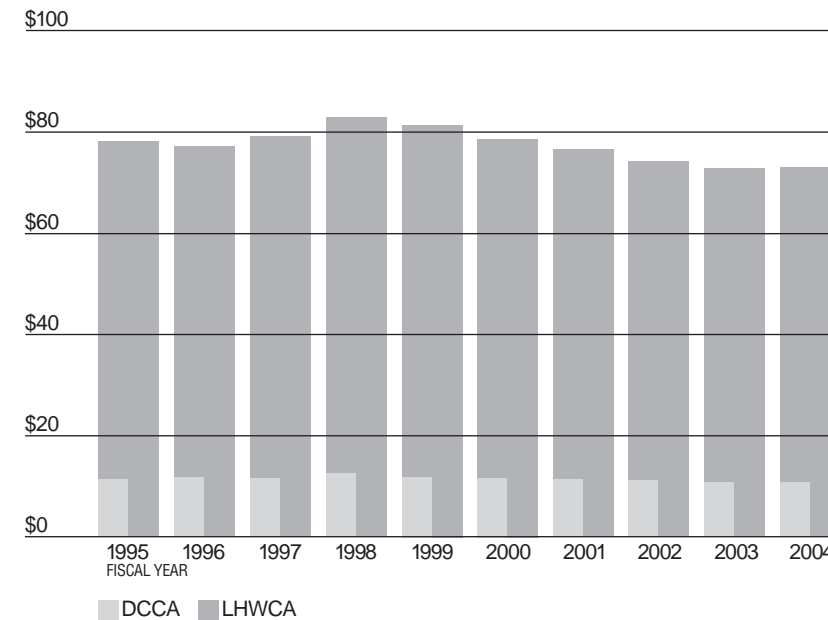
Reduce by four percent over the FY 2002 baseline the average time required to resolve disputed issues in LHWCA program contested cases.

This indicator is intended to measure OWCP's success in serving as mediator between injured workers and their employers. In FY 2004, disputed issues covered by this measure were resolved in an average of 247 days, 27 days below the target of 274 days.

The Longshore claims examiner contributes to the resolution of disputed issues that arise in claims. While not a judge or hearing officer, a claims examiner does function as a mediator in

LHWCA and DCCA Special Funds' Expenditures, FY 1995-FY 2004

IN MILLIONS OF CONSTANT DOLLARS*



*Current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

informal proceedings designed to help the parties involved reach amicable agreements and thereby avoid the time and expense involved in formal litigation. In FY 2004, the district offices conducted 2,744 informal conferences that were designed to establish the facts in each case, define the disputed issues and the positions of the parties in respect of those issues, and encourage the voluntary resolution of those issues by means of agreement and/or compromise.

To continue to meet the goals of this indicator, OWCP plans to provide claims staff with further training to improve mediation skills.

Claims Management And Compliance Assistance Activities

The number of Defense Base Act (DBA) claims from injured civilian contractors in Iraq and Afghanistan continued to grow in 2004, and that trend is expected to continue into the future. The total number of claims filed under DBA over the past four calendar years (January 2001 through December 2004) was 5,057 (311 of which were death claims). During the two calendar years immediately prior to the conflict in Iraq (January 2001 through December 2002), there were 982 claims (17 deaths) under DBA. As a comparison and to illustrate the increase in DBA claims since the onset of U.S. military presence in Iraq, during the last two calendar years (January 2003 through December 2004) there were a total of 4,075 DBA claims (294 deaths), of which 1,844 claims (233 deaths) were from cases in Iraq.

The Longshore program responded effectively to the complex issues in Iraq by initiating a series of educational seminars, meetings with top echelon leaders of the contracting agencies, and meetings of industry leaders. These

important outreach activities greatly improved the understanding of the public about the coverage requirements, claim responsibilities, and educational responsibilities of contracting agencies, contractors, and insurers.

DLHWC has regulatory responsibility in the areas of assuring coverage compliance and overseeing the availability of insurance benefits. To accomplish these goals, DLHWC followed through on a review of coverage compliance through a survey of industry leaders in each district, education of all staff on Compliance Assistance issues, including confidentiality and outreach, and greatly increased interaction with DBA industry leaders during FY 2004.

In coordinated efforts in Florida with state agencies and the private sector, DLHWC assisted in improving coverage compliance by obtaining an agreement from the Florida Division of Insurance to utilize its Compliance Bureau investigators to seek proof of coverage for Longshore insurance along with their efforts to assure state coverage. This investigation and enforcement initiative will greatly improve the coverage compliance program in Florida. Further, by initiating and participating in communications between the State and the state's rate-making organization, Longshore program staff contributed to the significant reduction in Longshore insurance premiums in the State of Florida.

The Longshore program has added significant new information to its website, including Compliance Assistance resources for the public, enhanced electronic form submission capability, Frequently Asked Questions for Special Fund recipients, detailed information about the Defense Base Act which covers defense contractor employees working overseas in such projects as the Iraq rebuilding efforts, and legal briefs important to system participants.

The program issued a Request for Proposals to study the Longshore Case Management System with the intent to modify it to be able to measure the performance of the system participants (it currently measures only internal OWCP processes), and to be compatible with the states' automated systems to allow benchmarking and comparison studies about performance, costs, and outcomes.

Security Requirements From Authorized Insurance Carriers

During FY 2004, DLHWC promulgated new regulations that will enhance the financial security of the Longshore program by reforming the methodology for measuring and collecting security deposits from the insurance industry. The new method provides exclusions from security deposits for the most financially stable companies, considers the states' guarantee funds coverage of Longshore claims, and provides for protections for the industry, workers, and the Special Fund. Final implementation of the new regulations is expected before the end of Calendar Year 2004.

Rehabilitation Reforms

Positive outcomes in the vocational rehabilitation program have declined in recent years, while costs continued to be high. The program opened 850 cases, and returned 233 employees to work in FY 2004 at a cost of \$5.0 million.

During FY 2004, DLHWC made a number of enhancements to the Longshore rehabilitation program:

Established direct program oversight in the national office with a dedicated rehabilitation specialist on staff.

Implemented an automated referral process for referring claimants for services.

Improved procedures for approving rehabilitation plans for permanently disabled workers.

Improved outreach and educational materials for claimants.

Conducted a customer satisfaction survey for all rehabilitation system participants.

Developed a new outcome measure for the rehabilitation program.

Litigation

Courts of Appeals

During FY 2004, the courts of appeals published 13 decisions in cases arising under the Longshore and Harbor Workers' Compensation Act. The most significant, grouped by their particular issue and location in the CFR, are summarized below.

The courts issued important decisions refining the scope of coverage under the Act. Both the First and Fifth Circuits applied a functional relationship test to determine situs rather than applying the literal language of the statute, the approach adopted by the Fourth Circuit. The Fifth Circuit also continued to restrict the expansive view of situs articulated in *Texports Stevedore Co. v. Winchester*, 632 F.2d 504 (5th Cir. 1980) (en banc).

Coverage: Situs. The First Circuit explicitly rejected the Fourth Circuit's view that, in order to constitute a covered situs, an "adjoining area" must touch the water. *Cunningham v. Bath Iron Works & Director*, OWCP, 377 F.3d 98 (1st Cir. 2004). The court noted that a distance of four miles from the waterfront did not, by itself, automatically preclude a finding that an area "adjoined" navigable waters. The court "assumed, without deciding" the correctness of the Ninth Circuit's functional approach to determining situs announced in *Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137 (9th Cir. 1978). The court nevertheless held that BIW's pipe-fabrication facility, located four miles from its main shipyard, was not an

"adjoining area" covered by the LHWCA. The pipe-fabrication facility was not an "adjoining area" because the four miles of land between the facility and the main shipyard were used for purposes totally unrelated to shipbuilding. Thus, the court found no coverage, despite the fact that the shipyard utilized a "just-in-time" system of delivering components from the fabrication facility to the main shipyard for installation in ships.

In *Thibodeaux v. Grasso Production Management Inc.*, 370 F.3d 486 (5th Cir. 2004), the Fifth Circuit applied a functional test to determine situs and held that a fixed oil platform built on pilings over a marsh that was inaccessible from land did not constitute either a "pier" or an "other adjoining area" under LHWCA section 3(a). Rejecting an expansive definition of "pier" espoused by the Ninth and Second Circuits, the court held that a "pier" is not any structure built on pilings over land and water. It must also have some connection to maritime activity. The court emphasized that the context of the Act required that even the locations specifically enumerated in section 3(a) must have some maritime purpose. Accordingly, the court held that because there was no functional connection between the fixed oil platform and maritime activity, the claimant was not injured on a "pier" covered by the Act. Because the area was not customarily used for maritime activity, it was not an "other adjoining area" either.

Coverage: Navigable Waters. The First Circuit's *Cunningham* decision also addressed the definition of "navigable waters," used to determine situs under the LHWCA. The Court held that the applicable definition derives from admiralty law, not Congress' Commerce Clause powers, and requires a present capability to sustain commercial shipping or contemporary navigability in fact. The evidence in this case supported the ALJ's conclusion that the brook in question, a narrow, shallow channel of water with many sharp meandering turns located in a Resource Protection Zone, could not and did not support commercial shipping. Thus, it was not a navigable waterway.

Coverage Status. In *Sidwell v. Virginia International Terminals, Inc.*, 372 F.3d 238 (4th Cir. 2004), the Fourth Circuit considered a claim for hearing loss brought by the President of Local 1970 of the International Longshoreman's Union, whose job involved resolving work grievances and negotiating work agreements between the employer and the union. The Claimant did not work on the waterfront or board vessels. He had no authority to order a work stoppage and thereby interrupt the ship loading process. The ALJ and the BRB concluded that the Claimant's responsibilities as a union officer constituted "maritime employment" under section 2(3) of the Act. The Fourth Circuit reversed, holding that the union job was not covered "maritime employment" because the Claimant's work was not integral or essential to building, repairing, loading or unloading ships but only indirectly and incidentally related to the loading and unloading process. The Court distinguished the Claimant's responsibilities from those of the union steward found covered by the LHWCA in *American Stevedoring Limited v. Marinelli*, 248 F.3d 54 (2nd Cir. 2001).

Defense Base Act: Zone of Special Danger. The war and reconstruction efforts in Afghanistan and Iraq have produced an increase in the volume of claims under the Defense Base Act (DBA), an extension of the LHWCA. This increased activity overseas has also reemphasized the significance of decisions rendered under the DBA.

A government contractor's employee stationed on the Johnston Atoll, a two mile long, one-half mile wide United States possession 700 miles west-southwest of Hawaii used by the military to store and dispose of chemical, nuclear, and other toxic weapons, was found by the Ninth Circuit to have been properly awarded compensation under the DBA. *Kalama Services, Inc. v. Director, OWCP (Ilaszczat)*, 354 F.3d 1085 (9th Cir. 2003). The employee sustained injuries in an off-duty bar fight. Nevertheless, the court affirmed the Board's decision that the employee could recover under the DBA because the horseplay he was engaged in when injured was foreseeable and arose out of a "zone of special danger" created by the isolation of the island and the limited recreational opportunities available there. His participation in a martial arts demonstration at the AMVETS social club was not so unreasonable as to take him out of the "zone of special danger." The court also held that his right to benefits was not altered by the fact that the employer subsequently terminated him from employment for this same activity.

Attorney Fees. The Director participated in three cases addressing the Act's attorney fee-shifting provision. 33 U.S.C. § 928. Two of the three decisions adopted the Director's position, intended to encourage competent counsel to represent LHWCA claimants.

In *Avondale Industries v. Davis*, 348 F.3d 487 (5th Cir. 2003), the Fifth Circuit vacated and remanded a Board decision that had affirmed an ALJ's order requiring the employer to pay claimant's counsel \$15,500 in attorneys fees where the claimant received \$736 in compensation plus interest, penalties and future medical care. The court held that the attorney's work was intimately related to claims on which the injured worker was successful, but in considering the fee request under section 28(b), the ALJ should have taken into account the limited nature of the worker's recovery. The ALJ was instructed to perform this analysis on remand and determine whether \$15,500 in fees is still a reasonable amount.

In *Avondale Industries v. Alario*, 355 F.3d 848 (5th Cir. 2003), the Fifth Circuit held that, for purposes of the attorney fee-shifting provision, hearing loss claims are to be treated no differently than other claims under the Act. Thus, the Act's 30 day period in which compensation must be paid in order for an employer to avoid attorney fee liability starts to run when a formal claim for hearing loss is

filed and not when the claimant submits an audiogram administered by a licensed or certified audiologist along with an accompanying interpretive report measuring the amount of the alleged hearing loss. The court held that a plain reading of the Act entitled the claimants' counsels to an attorney fee paid by the employer because nothing in the statute or regulations requires evidence to be submitted in support of a claim before the claim is considered filed.

In *Newport News Shipbuilding and Dry Dock Co. v. Brown*, 376 F.3d 245 (4th Cir. 2004), the Fourth Circuit held that the 20 percent additional compensation payment under section 14(f) (for untimely payment of compensation under a LHWCA award) qualifies as "compensation" within the meaning of section 28 of the Act. Accordingly, an employee who successfully prosecutes a claim for section 14(f) additional compensation is entitled to have the employer pay his counsel reasonable attorney fees for the work performed in pursuit of that claim. In reaching this conclusion, the Fourth Circuit rejected the Second Circuit's contrary ruling in *Burgo v. General Dynamics Corp.*, 122 F.3d 140 (2nd Cir. 1997), that section 14(f) additional compensation constitutes a "penalty" rather than compensation within the plain language of section 28 and that therefore claimant's counsel is not entitled to a fee for work done securing its payment.

Average Weekly Wage. Litigation continues to churn regarding the circumstances under which it is appropriate to determine a claimant's average weekly wage pursuant to the provisions of 33 U.S.C. § 910(a) rather than 33 U.S.C. § 910(c). In *Stevedoring Services of America v. Price*, 382 F.3d 878 (9th Cir. 2004), amending 366 F.3d 1045, the Ninth Circuit reiterated its earlier holding in *Matulic v. Director, OWCP*, 154 F.3d 1052. In *Matulic* the Ninth Circuit held that section 10(a) is presumed to apply rather than section 10(c) and that this presumption is not rebutted when a claimant works more than 75 percent of the workdays during the measuring year. In *Price*, the claimant worked 75.75 percent of the total number of possible workdays. Because *Matulic's* 75 percent bright line rule was met, the court held the presumption of section 10(a)'s applicability remained unrebutted, and that the ALJ and Board acted properly in applying it. The court also upheld as supported by substantial evidence the ALJ's finding that the claimant did not work intermittently or casually even though the amount of his work fluctuated from week to week and year to year.

Concurrent Awards and Maximum Compensation: Section 6(b)(1). The Ninth Circuit joined the United States Court of Appeals for the D.C. Circuit in explicitly providing for concurrent awards of compensation under the Act. *Stevedoring Services of America v. Price*, 382 F.3d 878 (9th Cir. 2004), amending 366 F.3d 1045. The Ninth Circuit held that concurrent awards paying a claimant benefits simultaneously for a permanent partial disability resulting from an earlier injury and for a permanent total disability due to a second separate injury sustained twenty years later did not constitute an impermissible double recovery ("double dipping"). The court reasoned that the Claimant's average weekly wage increased between the two injuries because of pay raises, not due to an increase in earning capacity, and thus, his loss of earning capacity from the first injury was not accounted for in the second award because his earnings at the time of the second injury were already diminished. Significantly, the court further held that section 6(b)(1)'s ceiling on the amount of compensation payable applies to each award separately, not to the total of concurrent awards. Agreeing with the Director's position, the court held that a claimant with two separate compensable injuries may receive overall compensation in excess of 200 percent of the average weekly wage, the current maximum compensation for a single injury. The employer has requested Supreme Court review.

Last Employer Rule. The "last employer rule" assigns full liability under the LHWCA to the last maritime employer that exposed a claimant to injurious stimuli before the claimant became aware of an injury. In *Sidwell v. Virginia International Terminals Inc.*, 372 F.3d 238 (4th Cir. 2004), the Claimant, prior to becoming a full-time union employee of Local 1970, worked for Virginia International Terminals (VIT) as a container repair mechanic where he was exposed to injurious noise. When the Claimant filed his claim against VIT seeking compensation for hearing loss, VIT attempted to shift liability to Local 1970 under the "last employer rule." The Fourth Circuit held that although the Claimant was exposed to noise in the union job, the union work was not covered "maritime employment" and therefore the Claimant could press his claim against VIT, his next most recent maritime employer.

Modification: Section 22. In *Jensen v. Weeks Marine, Inc.*, 346 F.3d 273 (2nd Cir. 2003), the Second Circuit clarified the proper legal standard for a petition for modification under section 22 of the LHWCA. While upholding the Board's decision granting the employer's request for modification of an award of

benefits, the court noted that the Board's decision may have caused confusion regarding the evidence necessary to obtain modification. The Board's decision was erroneous in that it implied that a section 22 movant must make some "threshold" proffer of new evidence before it is entitled to a review of the entire record. Thus, the court reaffirmed that a party seeking modification is not required to present new evidence. Instead, modification petitions are reviewed *de novo*; an ALJ is not bound by any prior fact-finding; and once a request for modification has been made, an ALJ has a duty to consider all of the evidence supporting an allegation of a mistake of fact or a change in conditions.

Special Fund: Absolute Defense to Liability Under Section 8(f)(3). An employer seeking to mitigate its liability pursuant to section 8(f) must present a request for such relief and a statement of the grounds supporting the request to the District Director prior to his consideration of the case. An employer's failure to timely make its request for section 8(f) relief results in an absolute bar to the granting of such relief. The Fourth Circuit agreed with

the Director that, in *Newport News Shipbuilding and Dry Dock Co. v. Firth*, 363 F.3d 311 (4th Cir. 2004), the absolute defense against Special Fund liability applied due to the employer's failure to timely present its section 8(f) request. The Court upheld the Board's reversal of the ALJ's ruling that the employer did not need to submit a section 8(f) application to the District Director because the Claimant sought to modify an already existing compensation order and the case had already been transferred to OALJ when the employer first requested section 8(f) relief. The Fourth Circuit further held that an employer's satisfaction of the legislative purpose underlying section 8(f)(3) is legally insufficient unless the employer also complies with the plain language and precise procedural requirements of section 8(f)(3).

Benefits Review Board

Section 8(j) Forfeiture. In a case that has been appealed to the Third Circuit, the Board accorded the Director deference in a published decision interpreting 33 U.S.C. § 908(j). When an agency administering its own statute enacts a regulation to fill a gap left by Congress, courts are bound to defer to the agency's construction in the regulation. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). In *Briskie v. Weeks Marine, Inc.*, BRB No. 03-0796, 38 BRBS 61 (2004), the Board held that an injured employee does not forfeit his entitlement to compensation by failing to respond to an employer's request for earnings information pursuant to section 8(j) that is made when the employer is not paying the employee compensation. Although the statutory phrase allowing an employer to request earnings information from a "disabled employee" is somewhat ambiguous, the applicable regulation, 20 C.F.R. § 702.285(a), specifically provides that an employer may require such information only from "an employee to whom it is paying compensation." The Board rejected the ALJ's holding and the employer's argument that a person became a "disabled employee" by filing a claim under the Act.

Longshore and Harbor Workers' Compensation Act

	FY 2003	FY 2004
Number of Employees (FTE Staffing Used)	101	101
Administrative Expenditures*	\$ 12.3 M	\$ 12.5 M
Lost-Time Injuries Reported	20,154	22,646
Total Compensation Paid**	\$703.6 M	\$718.2 M
Wage-Loss and Survivor Benefits	\$513.1 M	\$516.9 M
Medical Benefits	\$190.5 M	\$201.3 M
Sources of Compensation Paid		
Insurance Companies**	\$246.6 M	\$262.8 M
Self-Insured Employers**	\$310.9 M	\$309.8 M
LHWCA Special Fund	\$131.6 M	\$135.2 M
DCCA Special Fund	\$ 11.2 M	\$ 10.9 M
DOL Appropriation	\$ 2.8 M	\$ 2.7 M

*Direct administrative costs to OWCP only; excludes DOL support costs of \$16.6 million in FY 2003 and \$17.4 million in FY 2004

**Figures are for CY 2002 and CY 2003, respectively. Note: Total compensation paid does not equal the sum of the sources of compensation due to the different time periods (CY v. FY) by which the various data are reported. For Special Fund assessment billing purposes as required by section 44 of LHWCA, compensation and medical benefit payments made by insurance carriers and self-insured employers under the Acts are reported to DOL for the previous calendar year.

*Energy Employees
Occupational Illness
Compensation
Program Act*

2004

*Introduction
The Energy Employees
Occupational Illness
Compensation
Program Act (EEOICPA
or Act) was passed by
Congress in October
2000; Part B of the Act
became effective on
July 31, 2001.*

Part B was enacted to compensate current and former employees (or their eligible survivors) of the Department of Energy (DOE), its predecessor agencies, and certain of its vendors, contractors and subcontractors who were diagnosed with a radiogenic cancer, chronic beryllium disease, beryllium sensitivity or chronic silicosis as a result of their exposure to radiation, beryllium or silica while employed at covered facilities. The EEOICPA also provides compensation to individuals (or their eligible survivors) awarded benefits by the Department of Justice (DOJ) under Section 5 of the Radiation Exposure Compensation Act (RECA).

Since the program's inception, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has provided over 12,000 employees or their families with compensation payments exceeding \$910 million. In addition, the program has paid over \$43 million for medical expenses associated with the treatment of accepted medical conditions. In FY 2004 alone, over 3,100 employees or their families received compensation of \$250.6 million, while \$24.9 million was paid in covered medical benefits.

Administration

Executive Order 13179 designated four Federal agencies to administer the Program: DOL, Department of Health and Human Services (HHS), DOE, and DOJ. As the lead agency, DOL has primary responsibility for administering Part B of the Energy Employees Occupational Illness Compensation (EEOIC) program and resolving issues arising under the Act not assigned to other agencies, including adjudicating claims for compensation and paying benefits for those conditions covered by Part B.

HHS, through its National Institute for Occupational Safety and Health (NIOSH), is tasked with establishing procedures for estimating radiation doses and developing guidelines to determine the probability that a cancer was caused by workplace exposure to radiation. These "dose reconstruction" methods are applied by NIOSH, which is also responsible for producing the radiation dose estimates that DOL uses in adjudicating certain cancer claims under the Act. HHS also provides the Advisory Board on Radiation and Worker Health with administrative services and other necessary support. The Board advises HHS on the scientific validity and quality of dose reconstruction efforts and receives and provides recommendations on petitions submitted by classes of employees for inclusion as members of the Special Exposure Cohort (SEC). In addition, HHS is responsible

for designating additional classes of employees to be added to the SEC and for selecting physicians for appointment to the DOE physician panels under Part D as needed.

DOE is responsible for providing DOL and HHS with relevant information on worker exposures, including access to restricted data, and verification of covered employment. In addition, DOE is responsible for establishing a program to assist DOE contractors and subcontractors in State Workers' Compensation proceedings for conditions caused by toxic exposure during their employment in the nuclear weapons industry under Part D of the Act.

DOJ notifies beneficiaries, who have received an award of benefits under Section 5 of the RECA, of their possible EEOICPA entitlement and provides specific information required by DOL to complete the claim development and adjudication process for RECA claimants. There are three categories of claimants under Section 5: uranium miners, uranium millers and ore transporters.

DOL, with a focus on issuing quality decisions and on providing clear and effective communications to DEEOIC's customers and stakeholders, conducts an intensive Accountability Review process. This process ensures that samples of case work are scrutinized by objective reviewers, and when issues are identified, immediate corrective action is taken. The national office staff has developed effective and comprehensive procedural and policy guidance, a difficult task considering that DEEOIC is still an evolving compensation program. Although no workers' compensation program is without conflict, the level of objections to recommended decisions has been relatively low. During FY 2004, 496 hearings were requested by claimants dissatisfied with the district office's recommended decisions. Final Adjudication Branch (FAB) Hearing Representatives conducted 414 hearings during the same period.

The Government Accountability Office (GAO) evaluated "how well Labor's procedures and practices ensure timely and consistent processing of claims not referred to NIOSH." Through January 2004, 83 percent of all claims not requiring NIOSH dose reconstruction were fully processed. GAO indicated that it has "no plan to issue formal recommendations regarding DOL performance".

Benefits And Services

The statute, until recently, provided two different, but potentially overlapping benefit programs:

Part B - The program for Federal benefits, administered by DOL with support from DOE and HHS, provides the lump-sum compensation payment of \$150,000 and payment of covered medical expenses to covered employees who worked for DOE, one of its contractors or subcontractors at a DOE facility, or at a facility operated by a private company designated as an Atomic Weapons Employer (AWE) or a beryllium vendor. Qualified survivors of these workers also are entitled to the lump-sum compensation payment.

Part D - In addition to supporting DOL's implementation of the Federal benefit program, DOE administered the Part D program under which employees whose occupational diseases are found by a panel of independent physicians appointed by HHS to have been connected to work-related exposure to a toxic substance, receive assistance from DOE in obtaining state workers' compensation benefits.

Although it has no direct role in Part D, DOL worked cooperatively with DOE on Part D implementation in developing processes and procedures and through the sharing of case files where claims have been filed under both Parts. At the close of FY 2004 Congress took action to abolish Part D of EEOICPA and create a new Part E, to be administered by DOL.

Part B claims fall under different categories requiring different processing steps. Claims for the \$50,000 RECA supplement are the least complex, requiring DEEOIC to verify through contact with DOJ that a RECA award has been made, and to document the identity of the claimant and the identity and eligibility of survivors.

For claims involving beryllium disease, silicosis, or a "specified cancer" for workers at a SEC facility, the employment and medical documentation are evaluated in accordance with the criteria in the EEOICPA. DEEOIC can move directly to a decision on cases involving a "specified cancer" at an SEC facility because the Act provided a presumption that any of the listed cancers incurred by a SEC worker who meets the duration of employment requirement was caused by radiation exposure. For cases involving a claimed cancer not covered by the SEC provisions (that is, a cancer incurred at a non-SEC facility, at a SEC facility that is not one of the specified cancers listed in the Act, or by an employee who does not meet the duration of employment requirement), there is an intervening step in the process to determine causation called "radiation dose

reconstruction". In these instances, once DEEOIC determines that a worker was a covered employee and that he or she had a diagnosis of cancer, the case is referred to NIOSH so that the individual's radiation dose - the total amount and character of radiation to which the individual was exposed related to his or her employment in the nuclear weapons complex - can be estimated. In FY 2004, the district offices referred 4,073 cases to NIOSH for dose reconstruction.

The DEEOIC district office issues a recommended decision (recommending either acceptance or denial of the claim) to the claimant. The claimant may agree with the recommended decision, or may object and request either a review of the written record or an oral hearing (the latter will normally be held at a location near the claimant's residence). In either case, the FAB reviews the recommended decision and any evidence/testimony submitted by the claimant and issues a final decision, either awarding or denying benefits (or the Branch may remand the decision to the district office should further development of the case be necessary). A Final Decision may be appealed to the U.S. District Courts. In FY 2004, district offices issued 11,097 claim-level recommended decisions and FAB issued 10,201 claim-level final decisions. Of that FAB total, 3,370 were approvals and 6,831 were denials.

Funding

In FY 2004, the Department of Labor (DOL) spent \$36.3 million to administer EEOICPA. These funds supported 240 full-time equivalent staff. Additional funding of \$53.2 million was transferred to support the activities of the Department of Health and Human Services' NIOSH.

The DOL funding provides for operations and support in the Washington, D.C. National Office; five FAB Offices; four DEEOIC District Offices in Jacksonville, FL, Cleveland, OH, Denver, CO, and Seattle, WA; IT support systems; on-going systems operations; and the cost of the 11 DOL and DOE jointly-run Resource Centers. To further enhance its operations and streamline the medical bill payment process, medical bills are processed by a private sector contractor. The NIOSH portion included funds for the radiation dose reconstruction process and support of the Advisory Board on Radiation and Worker Health.

Government Performance Results Act

High performance standards focusing on moving claims rapidly through the initial and secondary adjudication stages were established for the EEOIC program. During FY 2004, the DEEOIC continued to improve on these results, exceeding its Government Performance Results Act (GPRA) standards on all counts and driving down the average times to complete each phase of the different types of claims.

The DEEOIC's two indicators achieved under DOL's GPRA goal to "minimize the human, social, and financial impact of work-related injuries for workers and their families" were:

For initial processing of claims for benefits, make initial decisions in 77 percent of the cases within 120 days for cases from DOE facilities and in RECA claims, and within 180 days for AWE, beryllium vendor, and subcontractor cases (for which employment and other critical information is generally more difficult to obtain).

Through the efforts of the FAB, 77 percent of final decisions are processed within the standard timeframes.

DEEOIC has received over 58,000 Part B claims from program inception through the end of FY 2004, made recommended decisions or a referral to NIOSH for dose reconstruction in 95 percent of these claims, and had a working inventory of 4,507 claims as of September 30, 2004. The four district offices' staff made timely initial decisions in 92 percent of the cases processed which well exceeded the 77 percent goal.

Ninety-nine percent of final decisions were processed within the program standards, also in excess of the goal of 77 percent. Achieving this goal required the persistent, case-by-case effort of the entire staff of the DEEOIC, as well as the continuing support of DOL's Solicitor's Office, HHS, DOJ and DOE.

Services To Claimants

In FY 2004, the DEEOIC website continued to be maintained with weekly content updates including the posting of medical and compensation benefit statistics along with data on the status of the program's claims processing activities. The website also provides the statute and regulations governing the program, claim reporting forms, resource center and district office locations and contact numbers, medical provider enrollment information, links to the DOE, DOJ, and NIOSH websites, and toll free hot-line numbers where additional information and assistance can be obtained.

The DEEOIC continued its relationship with DOE to jointly establish and sponsor a network of Resource Centers at major DOE sites where workers and their families can receive assistance in filing claim forms for both the DOE and DOL programs and also be informed about the Act. In FY 2004, the DEEOIC opened its eleventh Resource Center in Livermore, California to serve the needs of potential claimants in California. The Centers provide valuable information about the claims process to claimants and also assist the claimant in completing the necessary forms and

transmitting documents to the DEEOIC District Offices. The Resource Centers can provide assistance either in person or over the telephone, and thus are able to service individuals who are outside the immediate geographical area. All of the Resource Centers have toll-free telephone numbers. In FY 2004, these Resource Centers helped 9,490 claimants file EEOICPA claims.

Additional assistance is provided to claimants and families in locations outside the immediate area of the Resource Centers through Traveling Resource Centers (TRCs). A major outreach activity of the Program is planning and conducting the TRCs as a means of providing claimant assistance in geographical areas of the country where there is no permanent Resource Center, but where covered facilities either presently exist or formerly existed, and a significant number of current or former workers reside. In FY 2004, TRCs conducted six meetings, lasting two or three days each, at locations around the country. The TRCs helped 369 claimants file their claims in FY 2004.

In keeping with its commitment in locating potential claimants and educating them about the program, during FY 2004 the DEEOIC organized two separate TRCs in the State of New York resulting in 84 claims. Several mini-TRCs also were offered to assist potential claimants throughout New York who have questions about the program and want to file a claim for benefits. In addition to the TRCs, DEEOIC and NIOSH representatives met on five separate occasions with groups of concerned claimants and claimant advocacy groups from the Western New York area to address concerns regarding the estimation of radiation exposures used to determine eligibility for awarding benefits for cancer claims.

The DEEOIC also coordinated and conducted educational outreach meetings with pension funds, union groups, medical providers and other interested stakeholder groups who may be able to disseminate the message about the EEOIC program to retirees and workers or their survivors who no longer live in close proximity to a DOE facility and may be eligible for benefits.

Thirty-one public meetings to provide information on the EEOIC program were conducted in FY 2004. During the year DEEOIC also expanded its website's Keyword Index to allow rapid search across all decision documents, added more than 1,300 published decisions to the site, and provided a NIOSH statistics report dictionary. In addition, the capability for claimants to complete and submit claim forms on-line was implemented.

Energy Employees Occupational Illness Compensation Program Act

	FY 2003	FY 2004
Number of Employees (FTE staffing used)	241	240
Administrative Expenditures*	\$ 40.1 M	\$ 36.4 M
Claims Created	12,413	12,143
Recommended Decisions (Claims)	12,520	11,097
Final Decisions (Claims)	14,924	10,201
Number of Claims Approved (Final)	4,650	3,370
Total Lump Sum Compensation Payments	\$305.0 M	\$250.6 M
Number of Medical Bill Payments	18,510	36,077
Total Medical Payments	\$ 14.4 M	\$ 24.9 M

*Includes Department of Labor expenditures only; excludes funds transferred to the Department of Health and Human Services for that agency's responsibilities under EEOICPA (\$18.0 million in FY 2003 and \$53.2 million in FY 2004, respectively).

Appendix

A. FECA Tables A1–A4	54
B. Black Lung Tables B1–B7	58
C. LHWCA Tables C1–C5	65
D. EEOICPA Tables D1–D5	70

Note: Unless otherwise stated, the financial information in the following appendix tables may differ from what is reported in the Department of Labor's Consolidated Financial Statement. These differences are due to accrual versus cash basis financial reporting requirements and adjustments made during statement compilation.

Table A—1

Federal Employees' Compensation Rolls

FY 1995—FY 2004
(Cases at End-of-Year)

Roll Type	Fiscal Year									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total Periodic Roll	59,605	58,329	55,484	56,159	54,897	54,709	56,133	56,751	58,621	57,827
% change v. prior yr.	-	-2.1%	-4.9%	1.2%	-2.2%	-0.3%	2.6%	1.1%	3.3%	-1.4%
Long-Term Disability	50,685	50,021	49,319	50,105	48,957	48,870	50,409	51,092	53,099	52,377
% change v. prior yr.	-	-1.3%	-1.4%	1.6%	-2.3%	-0.2%	3.1%	1.4%	3.9%	-1.4%
Death	6,537	6,353	6,165	6,054	5,940	5,839	5,724	5,659	5,522	5,450
Short-term ¹	2,383	1,955	0	0	0	0	0	0	0	0

¹ Beginning in FY 1997, short-term periodic roll cases are no longer tracked separately.

Table A—2

**Federal Employees' Compensation Program
Summary of Claims Activity**

FY 1995—FY 2004

Claim Activity	Fiscal Year									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Incoming Cases										
Cases Created	180,350	175,052	173,319	165,135	166,544	174,471	165,915	158,118	168,174	162,965
Traumatic	154,250	150,204	146,489	138,975	140,383	145,915	137,877	132,250	142,325	138,521
No Lost Time	74,602	75,829	78,642	75,321	83,472	91,620	86,402	80,439	84,368	80,018
Lost Time	79,648	74,375	67,847	63,654	56,911	54,295	51,475	51,811	57,957	58,503
Occupational Disease	25,835	24,689	26,680	25,954	25,999	28,406	27,869	25,739	25,747	24,320
Fatal Cases	265	159	150	206	162	150	169	129	102	124
Wage-Loss Claims Initiated	21,755	20,392	19,181	19,315	19,759	21,899	23,386	23,193	24,245	24,189
Hearings and Review¹										
Total Requests for Hearing	7,357	7,951	7,642	7,496	7,164	6,992	6,875	6,820	6,751	8,132
Total Hearing Dispositions	7,019	7,101	7,525	8,087	7,926	7,418	6,599	6,272	6,743	7,682
Pre-Hearing Remands	742	970	1,036	1,056	723	678	704	543	605	993
Dismissals	1,184	1,375	1,227	1,191	992	944	1,003	980	1,032	987
Affirmations	2,686	2,474	2,604	2,965	3,178	2,945	2,266	2,170	2,266	2,412
Post-Hearing Remands	906	876	958	910	958	1,068	944	848	983	1,020
Reviews of the Written Record	806	806	1,022	1,179	1,253	1,167	1,118	1,209	1,334	1,673
Withdrawals/No-Shows	695	600	678	786	822	616	564	522	523	597

¹ As a result of an internal audit conducted by DFEC, hearings and review data were revised for the years 1995-1996. Management reports were compared with automated system data that began in 1992, and corrections were made to reconcile differences between the two sources.

Table A—3

Federal Employees' Compensation Program Obligations

FY 1995—FY 2004

(\$ thousands)

Type of Obligation	Fiscal Year									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total Obligations	\$1,953,952	\$2,062,325	\$1,968,256	\$2,024,494	\$2,076,475	\$2,170,247	\$2,308,595	\$2,418,364	\$2,475,108	\$2,568,390
Total Benefits	1,880,754	1,984,209	1,887,363	1,944,259	1,989,050	2,078,715	2,199,276	2,307,942	2,345,472	2,434,609
Compensation Benefits	1,309,562	1,375,808	1,314,603	1,343,879	1,370,206	1,403,154	1,453,740	1,509,275	1,556,845	1,600,501
Medical Benefits	453,208	481,833	450,206	476,167	492,835	548,596	617,414	667,797	658,121	703,571
Survivor Benefits	117,984	126,568	122,554	124,213	126,009	126,965	128,122	130,870	130,506	130,537
Total Administrative Expenditures	73,198	78,116	80,893	80,235	87,425	91,532	109,319	110,422	129,636	133,781
Salaries and Expenses	67,914	65,145	67,303	69,207	67,567	70,634	78,971	81,210	86,358	86,253
Fair Share	5,284	12,971	13,590	11,028	19,858	20,898	30,348	29,212	43,278	47,528

Table A—4

Federal Employees' Compensation Program Chargeback Costs by Major Federal Agency

CBY 1995—CBY 2004

(\$ thousands)

Federal Agency	Chargeback Year ¹									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total Costs	\$1,835,129	\$1,840,811	\$1,833,926	\$1,887,980	\$1,908,256	\$2,024,634	\$2,129,097	\$2,219,448	\$2,323,288	\$2,339,782
U.S. Postal Service	536,643	547,141	551,142	577,159	594,503	666,310	720,518	785,199	846,876	852,945
Department of the Navy	256,816	256,210	247,488	243,938	240,492	241,585	246,881	248,250	245,461	245,145
Department of the Army	165,461	163,986	159,781	162,152	163,127	166,989	169,219	174,832	181,298	177,250
Department of Veterans Affairs	143,047	140,729	136,607	140,118	137,865	143,221	145,909	151,612	157,315	155,391
Department of the Air Force	119,184	116,141	117,242	124,302	123,349	128,134	134,106	132,538	135,509	129,229
Department of Homeland Security	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	83,975	121,089
Department of Transportation	89,308	89,407	89,369	95,823	97,155	96,936	99,556	101,716	94,682	92,659
Department of Justice	55,757	58,136	63,878	67,875	76,319	83,873	91,197	95,620	66,131	74,011
Department of Agriculture	59,332	58,926	59,230	60,348	59,851	64,882	66,750	69,563	72,312	69,245
Department of Defense	62,096	61,069	61,360	62,729	63,563	64,797	64,761	63,888	65,429	63,816
All Other Agencies	347,485	349,066	347,829	353,536	352,033	367,907	390,201	396,230	374,299	359,003

¹ A year for chargeback purposes is from July 1 through June 30.

Table B—1

Part C Black Lung Claims Adjudication at the Initial Level

FY 2004

Type of Claim	PDO's Issued ¹	Approval Rate
Trust Fund	1,089	
Approved	126	11.57%
Denied	963	
Responsible Operators	5,406	
Approved	589	10.90%
Denied	4,817	
Total Findings	6,495	
Total Approved	715	11.01%
Total Denied	5,780	

¹ PDO is "Proposed Decision and Order".

Table B—2

Distribution of Part C Black Lung Claims and Disbursements, by State

FY 2004

State	Total Claims Received ¹	MBO Claims ²	In Payment ³	Total Benefits (\$ 000) ⁴
Alabama	33,003	111	1,176	\$8,949
Alaska	148	0	12	92
Arizona	2,016	9	160	1,221
Arkansas	3,797	22	232	1,770
California	6,442	30	329	2,507
Colorado	6,985	29	530	4,044
Connecticut	994	3	89	676
Delaware	767	3	84	638
District of Columbia	286	1	20	152
Florida	11,754	125	980	7,478
Georgia	1,608	11	174	1,318
Hawaii	16	0	1	8
Idaho	240	0	17	14
Illinois	30,711	100	1,497	11,411
Indiana	17,660	62	921	6,937
Iowa	5,114	17	301	2,289
Kansas	2,167	4	93	710
Kentucky	88,454	1,222	5,297	40,410
Louisiana	346	1	26	198
Maine	44	0	6	46
Maryland	6,616	35	433	3,295
Massachusetts	233	1	23	173
Michigan	10,452	30	539	4,110
Minnesota	146	1	13	99
Mississippi	357	4	38	290
Missouri	4,610	5	255	1,942
Montana	854	3	45	343
Nebraska	127	0	11	84
Nevada	418	2	46	347
New Hampshire	27	0	6	46
New Jersey	4,274	25	344	2,625
New Mexico	2,356	5	145	1,106
New York	3,995	14	269	2,046
North Carolina	3,333	33	359	2,736
North Dakota	159	0	8	61
Ohio	53,096	213	3,421	26,105
Oklahoma	3,771	25	200	1,523
Oregon	626	2	45	343
Pennsylvania	135,481	1,217	12,635	96,394
Rhode Island	40	0	3	23
South Carolina	875	9	131	999
South Dakota	49	0	7	53
Tennessee	20,592	212	1,249	9,531
Texas	1,694	9	140	1,068
Utah	4,043	24	301	2,296
Vermont	49	0	8	61
Virginia	42,119	659	3,818	29,135
Washington	1,587	5	94	1,064
West Virginia	108,347	1,501	8,665	66,122
Wisconsin	447	2	41	313
Wyoming	2,570	3	192	1,465
All Other	447	3	26	198
Total	626,342	5,792	45,455	\$346,864

¹ All filings since July 1, 1973, including terminated and nonapproved claims.² Active Medical Benefits Only (MBO) claims as of 9/30/04.³ Active claims in payment status, excluding MBO claims, as of 9/30/04.⁴ Disbursements of income and medical benefits for all claims, including claims paid by the Trust Fund and claims in interim pay status.

Note: Data in column no. 1 may not be consistent with changes from previous years due to a change in computer systems.

Table B—3

Black Lung Claims, by Class of BeneficiaryFY 1995—FY 2004¹

Class of Beneficiary	Number of Beneficiaries ²									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Primary Beneficiaries:										
Miners	35,220	32,452	29,839	27,340	24,838	22,568	18,248	16,395	14,773	13,398
Widows	43,688	43,155	42,468	41,585	40,517	39,053	35,660	34,236	32,615	30,810
Others	1,362	1,393	1,444	1,476	1,508	1,497	1,467	1,221	1,238	1,247
<i>Total Primary Beneficiaries</i>	80,270	77,000	73,751	70,401	66,863	63,118	55,375	51,852	48,626	45,455
Dependents of Primary Beneficiaries:										
Dependents of Miners	29,377	26,845	24,599	22,158	19,953	17,978	13,924	12,432	11,131	10,020
Dependents of Widows	1,614	1,558	1,491	1,417	1,384	1,306	1,123	1,077	1,052	1,006
Dependents of Others	508	520	511	512	516	508	108	386	353	238
<i>Total Dependents</i>	31,499	28,923	26,601	24,087	21,853	19,792	15,155	13,895	12,536	11,264
Total, All Beneficiaries	111,769	105,923	100,352	94,488	88,716	82,910	70,530	65,747	61,162	56,719

¹ As of September 30 of each year.² Active claims, including those paid by a RMO, cases paid by the Trust Fund, cases in interim pay status, cases that are being offset due to concurrent Federal or state benefits, and cases that have been temporarily suspended. Does not include MBO beneficiaries.

Table B—4

Department of Labor Black Lung Benefits Program Obligations

FY 1995—FY 2004

(\$ thousands)

Type of Obligation	Fiscal Year									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total Obligations	\$995,722	\$992,128	\$1,004,672	\$999,822	\$1,005,246	\$1,013,593	\$1,016,994	\$1,034,096	\$1,046,303	\$1,053,246
Total Benefits ¹	525,563	499,622	487,910	459,061	439,442	422,656	396,928	384,234	370,389	346,864
Income Benefits ²	423,736	404,623	392,546	376,985	363,871	350,266	336,813	320,039	307,371	292,555
Medical Benefits ³	101,827	95,000	95,363	82,076	75,571	72,390	60,116	64,196	63,018	54,309
Administrative Costs ⁴	51,502	47,314	46,128	46,035	50,788	49,820	52,252	54,273	55,332	55,803
Interest Charges ⁵	418,656	445,192	470,635	494,726	515,016	541,117	567,814	595,589	620,582	650,579
Repayable Advances ⁶	375,100	373,500	375,000	370,000	402,000	490,000	505,000	465,000	525,000	497,000
Cumulative Debt⁷	\$4,738,057	\$5,111,557	\$5,486,557	\$5,856,557	\$6,258,557	\$6,748,557	\$7,253,557	\$7,718,557	\$8,243,557	\$8,740,557

¹ Excludes collections from responsible mine operators for benefits paid by Trust Fund on an interim basis, refunds for OWCP administrative costs paid, and other miscellaneous reimbursements.² Monthly and retroactive benefit payments.³ Includes diagnostic and treatment costs, and reimbursements to the Centers for Medicare & Medicaid Services of the Department of Health and Human Services and the Health and Retirement Funds of the UMWA.⁴ Administrative expenses include reimbursements to SSA.⁵ Starting in 1979, the Trust Fund had to borrow funds from the Treasury Department to pay operating costs not covered by revenues. Interest charges reflect the cost to the Trust Fund for those advances from the Treasury.⁶ Reflects advances from the Treasury Department during the fiscal year.⁷ Shows the cumulative debt of the Trust Fund to the Treasury.

Note: Detail may not add to totals due to rounding.

Table B—5

Monthly Part C Black Lung Benefit Rates 1973—2004

Period	Benefit Rates by Type of Beneficiary			
	Claimant	Claimant and 1 Dependent	Claimant and 2 Dependents	Claimant and 3 or More Dependents
7/1/73-9/30/73	\$169.80	\$254.70	\$297.10	\$339.50
10/1/73-9/30/74	177.60	266.40	310.80	355.20
10/1/74-9/30/75	187.40	281.10	328.00	374.80
10/1/75-9/30/76	196.80	295.20	344.40	393.50
10/1/76-9/30/77	205.40	308.10	359.50	410.80
10/1/77-9/30/78	219.90	329.80	384.80	439.70
10/1/78-9/30/79	232.00	348.00	405.90	463.90
10/1/79-9/30/80	254.00	381.00	444.50	508.00
10/1/80-9/30/81	279.80	419.60	489.60	559.50
10/1/81-9/30/82	293.20	439.80	513.10	586.40
10/1/82-12/31/83	304.90	457.30	533.60	609.80
1/1/84-12/31/84 ¹	317.10	475.60	554.90	634.20
1/1/85-12/31/86	328.20	492.30	574.30	656.40
1/1/87-12/31/87	338.00	507.00	591.50	676.00
1/1/88-12/31/88	344.80	517.20	603.40	689.60
1/1/89-12/31/89	358.90	538.30	628.10	717.80
1/1/90-12/31/90	371.80	557.70	650.60	743.60
1/1/91-12/31/91	387.10	580.60	677.40	774.10
1/1/92-12/31/92	403.30	605.00	705.80	806.60
1/1/93-12/31/93	418.20	627.30	731.90	836.40
1/1/94-12/31/94	427.40	641.10	748.00	854.80
1/1/95-12/31/95	427.40	641.10	748.00	854.80
1/1/96-12/31/96	435.10	652.70	761.50	870.20
1/1/97-12/31/97	445.10	667.70	779.00	890.20
1/1/98-12/31/98	455.40	683.10	796.90	910.70
1/1/99-12/31/99	469.50	704.30	821.60	939.00
1/1/00-12/31/00	487.40	731.00	852.80	974.70
1/1/01-12/31/01	500.50	750.80	875.90	1,001.00
1/1/02-12/31/02	518.50	777.80	907.40	1,037.00
1/1/03-12/31/03	534.60	801.90	935.50	1,069.20
1/1/04-12/31/04	549.00	823.50	960.80	1,098.00

¹These benefit rates include the additional one-half percent increase that was granted retroactive to January 1, 1984. The rates in effect prior to the retroactive payments (1/1/84 through 6/30/84) were: \$315.60 for a claimant only; \$473.30 for a claimant and 1 dependent; \$552.20 for a claimant and 2 dependents; and, \$631.10 for a claimant and 3 or more dependents.

Table B—6

Funding and Disbursements of the Black Lung Disability Trust Fund FY 2004 (\$ thousands)

Month	Funding				Disbursements						
	Coal Excise Tax Revenue	Treasury Advances	Reimburse ¹	Total	Income Benefits ²	Medical Benefits Diagnostic	Medical Benefits Treatment ³	Total Benefits	Admin. Costs	Interest on Advances	Total
October 2003	\$7,027	\$0	\$195	\$7,222	\$24,709	\$370	\$4,790	\$29,869	\$3,573	\$0	\$33,442
November 2003	48,724	0	331	49,055	24,673	277	3,188	28,138	1,809	0	29,948
December 2003	43,169	0	57	43,226	24,389	291	3,227	27,907	3,328	0	31,235
January 2004	42,511	0	295	42,806	24,272	171	3,476	27,918	6,891	0	34,809
February 2004	41,344	0	172	41,516	24,828	258	4,063	29,148	5,872	0	35,021
March 2004	46,830	0	493	47,323	24,684	346	7,327	32,357	5,024	0	37,382
April 2004	45,508	0	494	46,002	24,597	236	3,953	28,786	4,885	0	33,671
May 2004	46,395	0	231	46,626	24,262	240	4,164	28,666	4,884	0	33,550
June 2004	49,856	0	200	50,056	24,498	366	5,300	30,164	4,102	0	34,266
July 2004	49,400	0	171	49,571	23,772	231	3,903	27,906	5,145	0	33,051
August 2004	49,025	0	366	49,391	23,939	222	3,638	27,799	5,173	0	32,972
September 2004	96,190	497,000	607	593,797	23,933	237	4,037	28,207	5,117	650,579	683,903
Totals	\$565,979	\$497,000	\$3,613	\$1,066,592	\$292,555	3,244	\$51,065	\$346,864	\$55,803	\$650,579	\$1,053,246

¹ Reimbursements include collections from RMOs, and fines, penalties, and interest.

² Includes monthly and retroactive benefit payments.

³ Treatment expenditures include reimbursements to the United Mine Workers' Health and Retirement Funds.

Table B—7

Comparison of Benefit Payments Under the Black Lung Benefits Act (BLBA) With Payments for Permanent Total Disability Under Selected State Workers' Compensation Laws

(As of September 30, 2004)

Benefit Under:	Maximum Monthly Benefit (Miners Only)	Maximum Monthly Benefit (Incl. Dependents)	Minimum Monthly Benefit (Miners Only)
BLBA	\$ 549.00	\$1,098.00	\$ 549.00
Alabama	2,541.71	2,541.71	675.48 ¹
Alaska	3,602.56	3,602.56	476.30 ²
Arizona	1,619.46	1,619.46	N/A
Arkansas	1,961.49	1,961.49	86.60
Colorado	2,852.77	2,852.77	713.19
Illinois	4,382.00	4,382.00	1,643.27
Indiana	2,546.04	2,546.04	324.75 ¹
Iowa	4,905.89	4,905.89	588.44 ¹
Kansas	1,905.20	1,905.20	108.25
Kentucky	2,547.90	2,547.90	509.59
Maryland	3,204.20	3,204.20	216.50 ¹
Missouri	2,868.84	2,868.84	173.20
Montana	2,108.71	2,108.71	N/A
New Mexico	2,378.77	2,378.77	155.88 ¹
North Dakota	2,403.15	2,403.15 ³	1,311.99 ¹
Ohio	2,866.46	2,866.46	1,433.23 ¹
Oklahoma	2,286.24	2,286.24	129.90 ¹
Pennsylvania	2,987.70	2,987.70	1,659.77 ¹
Tennessee	2,675.94	2,675.94	401.39
Texas	2,325.21	2,325.21	350.73
Utah	2,069.74	2,069.74 ³	194.85
Virginia	2,992.03	2,992.03	748.00 ¹
Washington	3,833.30	3,833.30	186.92 ¹
West Virginia	2,325.21	2,325.21	624.38
Wyoming	1,626.52	1,626.52	N/A

¹ Actual wage paid if less than monthly minimum.² Minimum is \$476.30, or \$731.77 if employee shows proof of wages, or worker's spendable weekly wage if less.³ Additional weekly compensation is paid for each dependent, not to exceed the worker's net wage in North Dakota, and 85 percent of the state average weekly wage in Utah.⁴ Minimum compensation benefit ranges from \$185.00 to \$352.00, according to marital status and number of dependents.

N/A=Not Applicable

Table C—1

Total Industry Compensation and Benefit Payments Under LHWCA¹

CY 1994—CY 2003²

(\$ thousands)

Payments By:	Calendar Year									
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Self-Insured Employers	\$273,667	\$257,895	\$272,688	\$263,255	\$261,559	\$283,991	\$278,952	\$307,708	\$310,940	\$309,843
Insurance Carriers	247,157	238,474	226,592	219,352	238,464	232,778	249,671	236,726	246,603	262,753
Total Payments	\$520,824	\$496,369	\$499,280	\$482,607	\$500,023	\$516,769	\$528,623	\$544,434	\$557,543	\$572,596

¹ Includes disability compensation and medical benefit payments under LHWCA, DCCA, and all other extensions to the Act.² Industry payments are reported to the Department of Labor on a calendar year basis.

Table C—2

National Average Weekly Wage (NAWW) and Corresponding Maximum and Minimum Compensation Rates and Annual Adjustments Pursuant to Sections 6(b), 9(e), and 10(f) of LHWCA

Period	NAWW	Maximum Payable	Minimum Payable	Annual Adjustment (% Increase in NAWW)
11/26/72-9/30/73	\$ 131.80	\$ 167.00	\$ 65.90	—
10/01/73-9/30/74	140.26	210.54	70.18	6.49
10/01/74-9/30/75	149.10	261.00	74.57	6.26
10/01/75-9/30/76	159.20	318.38	79.60	6.74
10/01/76-9/30/77	171.28	342.54	85.64	7.59
10/01/77-9/30/78	183.61	367.22	91.81	7.21
10/01/78-9/30/79	198.39	396.78	99.20	8.05
10/01/79-9/30/80	213.13	426.26	106.57	7.43
10/01/80-9/30/81	228.12	456.24	114.06	7.03
10/01/81-9/30/82	248.35	496.70	124.18	8.87
10/01/82-9/30/83	262.35	524.70	131.18	5.64
10/01/83-9/30/84	274.17	548.34 ¹	137.09	4.51
10/01/84-9/30/85	289.83	579.66	144.92	5.71 ²
10/01/85-9/30/86	297.62	595.24	148.81	2.69
10/01/86-9/30/87	302.66	605.32	151.33	1.69
10/01/87-9/30/88	308.48	616.96	154.24	1.92
10/01/88-9/30/89	318.12	636.24	159.06	3.13
10/01/89-9/30/90	330.31	660.62	165.16	3.83
10/01/90-9/30/91	341.07	682.14	170.54	3.26
10/01/91-9/30/92	349.98	699.96	174.99	2.61
10/01/92-9/30/93	360.57	721.14	180.29	3.03
10/01/93-9/30/94	369.15	738.30	184.58	2.38
10/01/94-9/30/95	380.46	760.92	190.23	3.06
10/01/95-9/30/96	391.22	782.44	195.61	2.83
10/01/96-9/30/97	400.53	801.06	200.27	2.38
10/01/97-9/30/98	417.87	835.74	208.94	4.33
10/01/98-9/30/99	435.88	871.76	217.94	4.31
10/01/99-9/30/00	450.64	901.28	225.32	3.39
10/01/00-9/30/01	466.91	933.82	233.46	3.61
10/01/01-9/30/02	483.04	966.08	241.52	3.45
10/01/02-9/30/03	498.27	996.54	249.14	3.15
10/01/03-9/30/04	515.39	1,030.78	257.70	3.44

¹ Maximum became applicable in death cases (for any death after September 28, 1984) pursuant to LHWCA Amendments of 1984. Section 9(e)(1) provides that the total weekly death benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefits that the deceased would have been eligible to receive under section 6(b)(1). Maximum in death cases not

applicable to DCCA cases (*Keener v. Washington Metropolitan Area Transit Authority*, 800 F.2d 1173 (D.C. Cir. (1986))).

² Five percent statutory maximum increase applicable in FY 1985 under section 10(f) of LHWCA, as amended. Maximum increase not applicable to DCCA cases (see note¹, above).

Table C—3

LHWCA and DCCA Special Funds' Expenditures¹

FY 1995—FY 2004

(\$ thousands)

FY	LHWCA Expenditures (\$)					Number of Second Injury Cases	DCCA Expenditures (\$)					Number of Second Injury Cases
	Total	Second Injury Cases ²	Pre Amend. Cases ³	Rehab. ⁴	Other ⁵		Total	Second Injury Cases ²	Pre Amend. Cases ³	Rehab. ⁴	Other ⁵	
1995	\$116,656	\$104,317	\$2,738	\$4,328	\$5,272	5,023	\$11,435	\$10,284	\$845	\$0	\$305	641
1996	118,260	106,536	2,627	4,110	4,987	5,126	11,868	10,266	819	0	783	659
1997	123,772	111,732	2,570	4,170	5,300	5,209	11,548	10,375	807	1	366	651
1998	129,777	118,496	2,699	3,718	4,864	5,208	12,521	10,810	802	4	904	638
1999	131,152	117,574	2,439	4,888	6,251	5,145	11,879	10,748	747	6	377	617
2000	131,564	119,198	2,459	4,595	5,313	5,025	11,804	10,521	728	0	555	612
2001	133,374	119,952	2,295	5,121	6,006	4,953	11,341	10,368	708	0	265	601
2002	131,715	119,661	2,240	4,801	5,013	4,880	11,386	10,214	702	0	469	585
2003	131,589	119,965	2,153	4,628	4,844	4,778	11,184	9,997	664	0	523	572
2004	135,247	122,358	2,081	4,990	5,818	4,694	10,920	9,867	645	0	408	544

¹ Special Fund expenditures shown in this table are reported on a cash basis, i.e., expenses are recognized when paid.

² Section 8(f) payments to employees who sustain second injuries that, superimposed on a pre-existing injury, results in the employee's permanent disability or death.

³ Section 10(h) of the Act requires that compensation payments to permanent total disability and death cases, when the injury or death is caused by an employment event that occurred prior to enactment of the 1972 amendments, be adjusted to conform with the weekly wage computation methods and compensation rates put into effect by the 1972 amendments. Fifty percent of any additional compensation or death benefit paid as a result of these adjustments are to be paid out of the Special Fund accounts.

⁴ In cases where vocational or medical rehabilitation services for permanently disabled employees are not available otherwise, and for maintenance allowances for employees undergoing vocational rehabilitation, sections 39(c) and 8(g) of the Act authorize the cost of these services to be paid by the Special Fund.

⁵ For cases where impartial medical exams or reviews are ordered by the Department of Labor (section 7(e) of Act) and where a compensation award cannot be paid due to employer default (section 18(b)), the expenses or payments resulting from these actions may be covered by the Special Fund. Also included as "Other" expenditures of the Funds are disbursements under section 44(d) to refund assessment overpayments in FY 1991 - FY 1993, and FY 1995 - FY 2004. Excluded are disbursements from proceeds of employer securities redeemed under section 32 of the Act. These monies are exclusively for payment of compensation and medical benefits to employees of companies in default.

Note: Special Fund expenditure totals for some years as shown above may differ from those reported to Congress in the Appendix to the President's budget. The figures here are from year-end Status of Funds reports while the President's budget reflects total outlays as reported to the Department of Treasury and may include technical adjustments made by Treasury or the Office of Management and Budget.

Table C—4

LHWCA and DCCA Special Funds' Assessments¹

CY 1995—CY 2004

(\$ thousands)

CY	LHWCA			DCCA		
	Total Industry Assessments ²	Preceding Year Total Industry Payments ³	Assessment Base Year	Total Industry Assessments ²	Preceding Year Total Industry Payments	Assessment Base Year
1995	\$118,000	\$360,566	CY 1994	\$12,000	\$6,787	CY 1994
1996	113,000	344,103	CY 1995	11,300	6,754	CY 1995
1997	110,000	350,711	CY 1996	11,300	6,361	CY 1996
1998	111,000	334,339	CY 1997	11,000	5,911	CY 1997
1999	130,000	343,146	CY 1998	11,300	6,232	CY 1998
2000	133,000	353,462	CY 1999	12,700	5,179	CY 1999
2001	133,000	361,549	CY 2000	12,000	5,103	CY 2000
2002	125,000	372,376	CY 2001	11,000	5,552	CY 2001
2003	125,000	364,194	CY 2002	10,800	4,746	CY 2002
2004	137,000	368,671	CY 2003	11,500	4,286	CY 2003

¹ Annual assessments of employers and insurance carriers are the largest single source of receipts to the Special Funds. Other receipts to the Funds include fines and penalties, payments for death cases where there is no person entitled under the Act to the benefit payments, interest earned on Fund investments, overpayment and third party recoveries, and monies received from redemption of securities under section 32 of the Act to pay compensation due employees of companies in default. These payments constitute a small portion of the total receipts of the Special Funds.

² Assessments as shown here are not receipts to the Fund which were received during a given calendar year, but total assessments that are receivable from

employers and insurance carriers based on the Special Fund assessment formula as prescribed under section 44(c) of the Act.

³ Annual industry assessments prior to CY 1985 were based on each employer's or insurance carrier's total disability compensation and medical benefit payments under the Act during the preceding calendar year. The LHWCA Amendments of 1984 revised the method for computing assessments in two ways. Effective in CY 1985, assessments are based on disability compensation payments only, thereby excluding medical benefits from the computation. Also, a factor for section 8(f) payments attributable to each employer/carrier was added to the assessment base.

Table C—5

Summary of Case Processing Activities Under LHWCA¹

FY 1995—FY 2004

Adjudication Level and Case Status	Fiscal Year									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
District Offices										
Pending Inventory of Cases	5,401	6,207	7,759	6,974	9,006	8,675	6,489	7,391	5,495	6,051
OALJ										
Carryover from Previous FY	3,957	4,141 ³	4,909	3,849 ⁸	3,862	3,668	3,562	3,388	2,980	2,517
New Cases	3,324	4,107	3,520 ⁶	3,579	3,462	3,566	3,500	3,276	3,036	2,926
Total Docket	7,281	8,248	8,429	7,428	7,324	7,234	7,062	6,664	6,016	5,443
(Dispositions)	3,527	3,339	3,557	3,566	3,656	3,672	3,674	3,529	3,499	3,088
Pending Inventory	3,754	4,909	4,872	3,862 ⁹	3,668	3,562	3,388	2,980 ¹²	2,517	2,355
BRB										
Carryover from Previous FY	3,745	1,661 ⁴	399	348	318	326	295	248	208	267
New Cases	885	481	457	419	421	423	317	260	332	297
Total Docket	4,630	2,142	856	767	739	749	612	508	540	564
(Dispositions)	1,397	1,721 ⁴	539	464	438	467	384	319	282	355
Pending Inventory	3,250 ⁵	399 ⁵	348 ⁷	318 ¹⁰	326 ¹¹	295 ¹¹	248 ¹¹	208 ¹¹	267 ¹¹	222¹¹

¹ Beginning in FY 1988, DCCA cases are excluded from DLHWC's District Offices' inventory as administration of these cases was delegated to the District of Columbia government effective July 18, 1988. Case processing and adjudication activities at the Office of Administrative Law Judges (OALJ) and Benefits Review Board (BRB) levels continue to include both LHWCA and DCCA cases.

² Data adjustments by the BRB account for the difference between the sum of activity in FY 1995 and that year's pending inventory at year-end.

³ The difference between the carryover in FY 1996 and pending inventory at the end of FY 1995 is due to data adjustments made by the OALJ.

⁴ 3,250 total appeals were carried over, but figures were adjusted by BRB to take into account 1,636 separate appeals that were consolidated and disposed of by 5 decisions.

⁵ Number adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

⁶ Excludes 116 new "33(g)" cases and 1,496 "33(g)" cases remanded from BRB being held in abeyance.

⁷ Number adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

⁸ The difference between the carryover in FY 1998 and pending inventory at the end of FY 1997 is due to data modifications and corrections made by the OALJ.

⁹ The FY 1998 numbers do not include 2,877 section 33(g) cases that were pending at the beginning of the year, or the 30 dispositions that occurred in such cases.

¹⁰ Data adjustments by the BRB account for the difference between the sum of activity in FY 1998 and that year's pending inventory at year-end.

¹¹ Data adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

¹² Includes dispositions of Boone 33(g) cases.

Table D—1

Status of All EEOICPA Applications at the End of FY 2004¹

Case Status/Claims Activity	Case ²	Claim ³
Total Received-Program Inception Through 9/30/2004	43,282	58,877
Final Decisions Completed by Final Adjudication Branch (FAB) ⁴	25,825	32,372
Final Approved	9,369	13,311
Final Denied	16,456	19,061
Recommended Decisions by District Offices ⁵	2,447	3,539
Recommended Decisions Only, to Approve	245	411
Recommended Decisions Only, to Deny	2,202	3,128
Completed Initial Processing- Referred to NIOSH	12,605	18,459
Pending Initial Processing In District Office ⁶	2,405	4,507

¹ Statistics show the status of all applications filed from program inception through September 30, 2004.

² "Case" counts are numbers of employees (or survivors of employees) whose work and illness or death are the basis for a "claim." (One case may have multiple survivor claims).

³ "Claim" counts are greater than case counts because they include numbers of employees and all survivors of employees who filed for benefits.

⁴ Each case or claim also received recommended decision by district office.

⁵ Each case or claim still pending final decision by FAB.

⁶ Includes remanded cases now in development and closed cases.

Table D—2

Processing Activity During FY 2004 on All EEOICPA Cases/Claims Received Since Program Inception¹

Processing Activity	Case ²	Claim ³
Total Cases/Claims Received-FY 2004	8,366	12,171
Final Decisions by FAB Offices in FY 2004	6,918 ⁴	10,201
Final Approved	2,275	3,370
Final Denied	4,643	6,831
Modification Orders in FY 2004	535	660
Recommended Decisions by District Offices in FY 2004	8,052	11,097
Recommended Decisions Only, to Approve	2,396	3,696
Recommended Decisions Only, to Deny	5,656	7,401
Referrals to NIOSH in FY 2004	4,073	see case statistics
Lump Sum Compensation Payments in FY 2004	see claim statistics	3,122

¹ Activity statistics capture actions made during FY 2004 only, therefore the number of activities reported do not add up to the total number of cases/claims received during FY 2004. (Many activities recorded occurred on cases/claims received prior to FY 2004).

² "Case" counts are numbers of employees (or survivors of employees) whose work and illness or death are the basis for a "claim." (One case may have multiple survivor claims).

³ "Claim" counts are greater than case counts because they include numbers of employees and all survivors of employees who filed for benefits.

⁴ Total includes cases with recommended decisions in FY 2003.

Table D—3

EEOICPA Cases With Approved Decisions and Payments, by Category, Program Inception Through September 30, 2004

Category	Number of Approved Cases ¹	Percentage of Total Final Approvals	Number of Paid Claimants ¹	Total Compensation Paid ² (\$ thousands)	Percentage of Total Compensation Paid
Radiation Exposure Comp. Act (RECA) ³	3,180	34.4%	5,221	\$158,057	17.4%
Special Exposure Cohort Cancer (CN)	3,126	33.9%	4,497	475,108	52.2%
Dose Reconstructed Cancer (CN)	716	7.8%	897	100,275	11.0%
Beryllium Disease (CBD) ⁴	1,153	12.5%	1,394	162,963	17.9%
Beryllium Sensitivity-Only (BS)	970	10.5%	N/A	N/A	N/A
Silicosis (CS)	52	0.6%	55	7,350	0.8%
Multiple Conditions ⁵	34	0.4%	32	4,650	0.5%
Other	N/A	N/A	23	2,280	0.3%
Total	9,231	100.0%	12,119	\$910,683	100.0%

¹ There is not a direct correlation between number of approved cases and number of paid claimants for two reasons: (1) more than one claimant can receive payment on a single approved case, and (2) some cases were approved prior to 9/30/2004, but payments were not issued.

² Represents total lump sum compensation payments from EEOIC program inception to September 30, 2004.

³ RECA cases are not counted in any other category of this table.

⁴ Cases approved for both CBD and BS are counted in the CBD category, only.

⁵ Cases counted in the Multiple Conditions category were approved for CN and CBD, or CN and CS, or CBD and CS, or CN and BS, or CS and BS.

Table D—4

EEOICPA Cases With Final Decision To Deny, Program Inception Through September 30, 2004

Reason for Denial	Number of Cases
Employee Did Not Work at a Covered DOE Facility, Atomic Weapons Employer, or Beryllium Vendor During a Covered Time Period	2,393
Alleged Survivor Not an Eligible Beneficiary	321
Claimed Condition Not Covered Under Part B of EEOICPA	9,131
Dose Reconstruction Reveals the Probability That the Cancer is Related to Employment is Less Than 50 Percent	2,074
Medical Evidence is Insufficient to Establish Entitlement	2,380
Total	16,299¹

¹ A case may have more than one final decision. (For example, a request for modification may result in a second final decision on a case). Therefore, the total number shown does not represent the number of cases with final decisions to deny.

Table D—5

Most Prevalent Non-Covered Medical Conditions, EEOIC Program Inception Through September 30, 2004

Non-Covered Medical Condition	Percentage of All Denials For This Condition ¹
Other Lung Conditions	23%
Heart Condition/Failure/Attack/Hypertension	9
Chronic Obstructive Pulmonary Disease & Emphysema	7
Asbestosis	6
Renal Condition or Disorder (Kidney Failure, Kidney Stones)	5
Hearing Loss	4
Benign Tumors, Polyps, Skin Spots	3
Diabetes	3
Neurological Disorder	2
Thyroid Conditions (e.g., Hypothyroidism)	2
Anemia	1
Back or Neck Problems	1
Parkinson's Disease	1
Psychological Conditions	1
All Other Non-Covered Conditions (Each Less Than 1%)	23
No Condition Reported on Claim Form	9

¹ Based on 9,077 cases that were denied because claimed condition was not covered under Part B of EEOICPA.

Note: The sum of individual items may not equal 100 percent due to rounding.

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202-693-0031
www.dol.gov/esa/owcp_org.htm

Director,
Office of Workers' Compensation Programs
Shelby Hallmark

Deputy Director,
Office of Workers' Compensation Programs
Nancy M. Flynn

Director,
Division of Planning, Policy and Standards
Cecily Rayburn

Division of Federal Employees' Compensation
(www.dol.gov/esa/regs/compliance/owcp/fecacont.htm)
Douglas C. Fitzgerald, Director
Edward Duncan, Deputy Director

Division of Coal Mine Workers' Compensation
(www.dol.gov/esa/regs/compliance/owcp/bltable.htm)
James L. DeMarce, Director

Division of Longshore and Harbor Workers' Compensation
(www.dol.gov/esa/owcp/dlhwc/lstable.htm)
Michael Niss, Director

Division of Energy Employees Occupational Illness Compensation
(www.dol.gov/esa/regs/compliance/owcp/eoicp/main.htm)
Peter M. Turcic, Director
Roberta Mosier, Deputy Director
LuAnn Kressley, Chief, Final Adjudication Branch

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Zev Sapir, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
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Virginia, West Virginia)

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Curtis Center, Suite 780 West
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Philadelphia, PA 19106-3313
215-861-5402

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Baltimore Longshore District Office
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The Federal Building, Room 410-B
31 Hopkins Plaza
Baltimore, MD 21201
410-962-3677

Norfolk Longshore District Office
Basil Voultzides, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
Federal Building, Room 212
200 Granby Mall
Norfolk, VA 23510
757-441-3071

Johnstown Black Lung District Office
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Penn Traffic Building
319 Washington Street
Johnstown, PA 15901
814-533-4323, Ext 401 (Toll-Free 1-800-347-3754)

Wilkes-Barre Black Lung District Office

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Wilkes-Barre, PA 18702
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Greensburg, PA 15601
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Parkersburg, WV 26101
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U.S. Department of Labor
ESA/OWCP/DCMWC
Mine Safety & Health Academy, Rm. G-100
Airport Road
Beckley, WV 25802
304-255-6195

U.S. Department of Labor
ESA/OWCP/DCMWC
601 Federal Street
Bluefield, WV 24701
304-325-2164

U.S. Department of Labor
ESA/OWCP/DCMWC
Randolph Co. Senior Citizens' Center
Fifth and Railroad Avenue
Elkins, WV 26241
304-636-4747

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ESA/OWCP/DCMWC
513 Dingess Street
P.O. Office Box 1979
Logan, WV 25601
304-752-9514

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U.S. Department of Labor
ESA/OWCP/DCMWC
Coal Mine Safety & Health District 3
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Morgantown, WV 26505
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Region IV—Southeast

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

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Region V/VII—Midwest

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