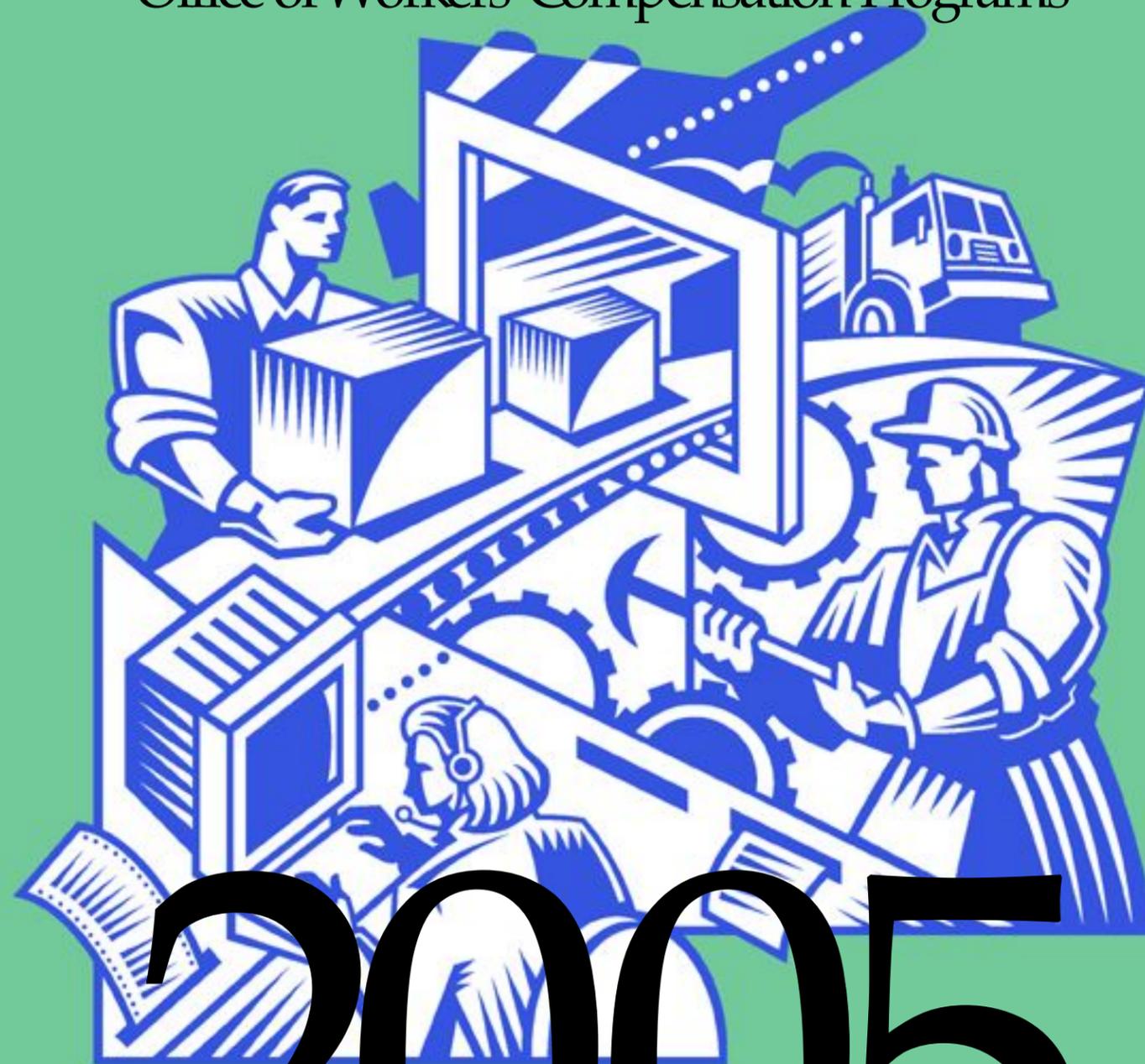


OWCP
Annual Report to Congress FY2005



Submitted to Congress 2008
U.S. Department of Labor
Employment Standards Administration

Office of Workers' Compensation Programs



2005

OWCP Annual Report to Congress FY 2005



Submitted to Congress 2008

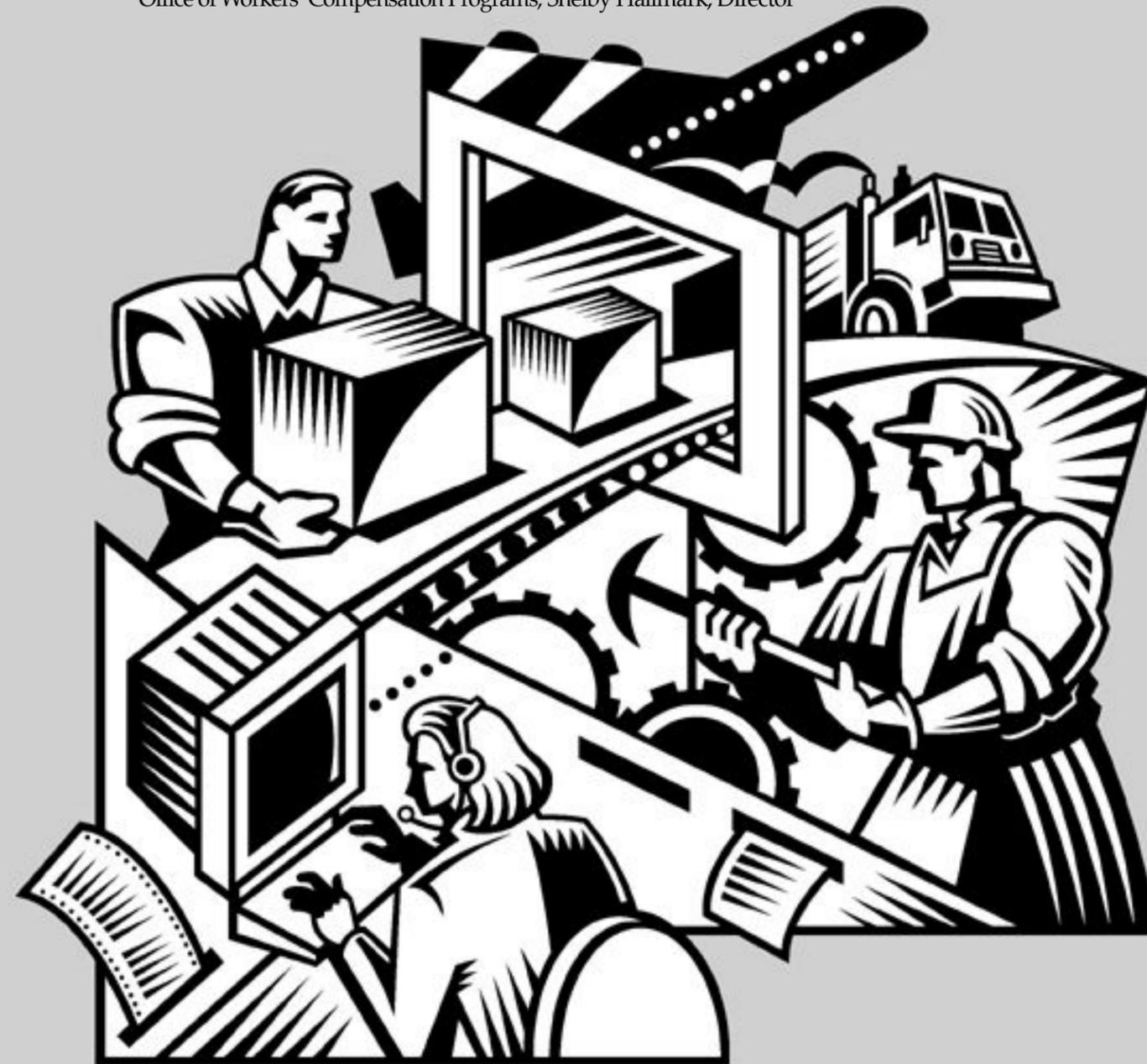
U.S. Department of Labor

Employment Standards Administration, Victoria A. Lipnic, Assistant Secretary

Office of Workers' Compensation Programs, Shelby Hallmark, Director

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U.S. Department of Labor

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

SEP 22 2008

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 2005 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, 2004, through September 30, 2005.

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,



Victoria A. Lipnic
Assistant Secretary for Employment Standards

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Assistant Secretary's Message

I am pleased to submit the Office of Workers' Compensation Programs' (OWCP) Annual Report for Fiscal Year 2005 to Congress.

In FY 2005, OWCP successfully implemented the new Part E program created by the October 2004 amendments to the Energy Employees Occupational Illness Compensation Program Act, while at the same time improving administration of Part B of that law. Important outreach and claims management services were provided to contracting agencies and insurers in response to the increase in Defense Base Act covered employment and claims associated with expanded civilian contract work in the Middle East. Government-wide performance in reducing injury rates and lost production days improved in the second year of the President's Safety, Health, and Return-to-Employment (SHARE) initiative. The SHARE goal of filing FECA injury notices in a timely manner was substantially exceeded. The goal to minimize the impact of work-related injuries was substantially achieved as 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.

Victoria A. Lipnic
Assistant Secretary for Employment Standards

Director's Message

The Office of Workers' Compensation Programs (OWCP) was challenged in Fiscal Year 2005 by receipt of a major new compensation program: Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Congress enacted Part E in October 2004 to replace the cancelled Part D of EEOICPA, which had developed a large backlog in four years at the Department of Energy. OWCP started issuing payments before the interim final rule was promulgated in June, and substantially exceeded the key goal of issuing 1,200 Part E payments by the end of FY 2005 – producing more than 1,500 payments totaling almost \$200 million in less than 10 months.

The Federal Employees' Compensation Act (FECA) program also met significant challenges. The second year of the President's Safety, Health and Return to Employment (SHARE) initiative saw improving performance, but three of its four goals were not met. The fourth SHARE goal, timely filing of FECA injury notices, was greatly exceeded, with nearly 71 percent of non-Postal agencies filing their cases with OWCP within 14 days.

The implementation of a new integrated computer support system for the FECA program brought transition problems, but FEC claims staff maintained timeliness standards and continued to improve return to work outcomes. In fact, OWCP's overall efforts to increase return to work, implement the SHARE initiative, and improve medical cost containment resulted in the lowest FECA benefit cost increase since FY 1997.

In FY 2005 OWCP's Longshore program handled an increase in Defense Base Act (DBA) claims in a timely manner, and the program provided extensive compliance assistance to DBA stakeholders, many of whom were unfamiliar with its requirements.

OWCP staff once again in FY 2005 substantially achieved the Department of Labor's Government Performance Results Act goal to "minimize the human, social, and financial impact of work-related injuries for workers and their families" by meeting or exceeding nine of its ten performance indicators. Whether addressing whole new challenges or maintaining high performance expectations, OWCP staff achieved measurable, important results for its customers and stakeholders. Their dedication and expertise are national assets.

Shelby Hallmark
Director, Office of Workers' Compensation Programs



Federal Employees' Compensation Act

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.

For more than 89 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 2005, the FEC program provided 277,000 workers and survivors nearly \$2.5 billion in benefits for work-related injuries or illnesses. Of these benefit payments, over \$1.6 billion were for wage-loss compensation, \$672 million for medical and rehabilitation services, and \$140 million for death benefit payments to surviving dependents.

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.



Benefit Outlays Under FECA FY 2005

TOTAL BENEFITS*: \$2,476 MILLION

Long Term Disability (Wage Loss)	55.0%	\$ 1,361 Million
Medical Benefits	27.1%	\$ 672 Million
Temporary Disability (Wage Loss)	12.2%	\$ 303 Million
Death Benefits	5.7%	\$ 140 Million

*Actual Obligations

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 \$10.4 million are separately appropriated to

Expenses for a small number of cases are not charged back to employing agencies, but also are covered by the DOL appropriation. For FY 2005, these non-chargeback expenses were approximately \$29 million. Non-chargeable costs are attributable to injuries that 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 2005, administrative expenditures for the FEC program totaled \$136.8 million. Of this amount, \$126.3 million, approximately 4.9 percent of total program costs, were direct appropriations to the Office of Workers' Compensation Programs (OWCP), including \$86.8 million in salaries and expenses and \$39.5 million in "fair share" expenditures out of the FECA Special Benefits account. These latter funds are specifically earmarked for OWCP capital

the Department for legal, investigative, and other support from the Employees' Compensation Appeals Board (ECAB), Office of the Solicitor, and the Office of the Inspector General.

Government Performance Results Act

In FY 2005, the Division of Federal Employees' Compensation (DFEC) achieved each of the five 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." As a result:

Fewer numbers of FECA wage-loss disability days were paid this year enabling DFEC to meet Lost Production Days rate (LPD per 100 employees) targets. LPD for U.S. Postal Service cases was reduced from an average 147.2 days in FY 2004 to 134.4 days; and LPD for all other government cases was reduced from 61 days to 56.1 days, exceeding the 61-day target.

Through use of Periodic Roll Management, DFEC produced \$23.2 million in first-year savings, exceeding its target of \$17 million.

The program achieved a rate of increase of 2.8 percent in per case medical costs in FECA compared to an increase of 8.8 percent for nationwide health care costs.

Improved FECA Customer Services was attained in key Communications areas.

Safety, Health, and Return-to-Employment Initiative

In 2004, President George W. Bush launched the Safety, Health and Return-to- Employment (SHARE) Initiative for Federal Executive Branch agencies. SHARE was established to run for fiscal years 2004 through 2006, with the Department of Labor leading the Initiative. Secretary Elaine L. Chao assigned the Occupational Safety and Health Administration and the Employment Standards Administration's Office of Workers' Compensation Programs (OWCP) with responsibility for administering and monitoring program efforts.

OWCP has completed its second year of data collection and performance tracking under the SHARE Initiative. OWCP continued to collaborate with agencies in achieving two of the Initiative's four goals: to increase the timely filing

of injury notices by at least five percent per year; and to reduce lost production days due to workplace injuries and illnesses by at least one percent per year. Agencies were encouraged to challenge themselves by setting more ambitious annual targets and many did, particularly in the area of timely claim submissions.

A major accomplishment in the second year of SHARE was the continued improvement in the timely filing of injury notices. 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 claim forms. By filing 70.9 percent of their cases with OWCP within 14 days, non-Postal agencies far exceeded this goal for the second year. FY 2005's performance exceeded the goal by nearly 30 percent and exceeded the strong FY 2004 result (61.4 percent) by more than 15 percent. Fifteen of 18 departments met or exceeded the goal, with 16 of 18 departments increasing their timeliness over the baseline in both years of the Initiative.

With non-Postal agencies averaging 56.1 lost days per 100 employees versus a goal of 54.9 lost days, the SHARE goal for lost production days (LPD) was not met in FY 2005. Nevertheless, performance in this area demonstrated a marked improvement over the FY 2004 rate of 62 days. Twelve of the 18 departments and the majority of the independent agencies met or exceeded the FY 2005 goal. In addition, eight of the departments maintained a downward trend for the second year in a row. The improvements made against this difficult goal in FY 2005 demonstrate that continued agency efforts could result in further reduction in lost days and in meeting this critical goal for the final year of the Initiative.

IFECs-Based Case Adjudication and Management

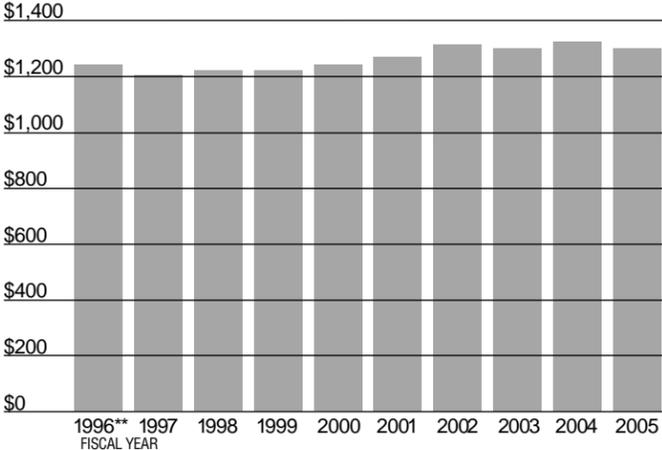
FY 2005 was a momentous year for the FEC program as it replaced its FECS claims adjudication and management system with the new integrated Federal Employees' Compensation System (iFECS) computer support system. As the old legacy computers supporting FECS began to experience serious stability issues that threatened the program's ability to create new claims and make compensation payments, management initiated the iFECS deployment in a phased roll-out to its 12 district offices between February and April 2005.

Although iFECS did not have complete functionality and experienced numerous start-up and stability challenges in the second and third quarters of FY 2005, claims work and bill payments were not seriously disrupted during the roll-out. Enhancements and application fixes have yielded continuous improvements to the system that are helping claims examiners become more effective and efficient in case adjudication and management of claims.

Approximately 152,000 new injury and illness claims were filed under FECA in FY 2005. 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, 93 percent were adjudicated within 45 days of when OWCP received notice of the injury. In FY 2005, the FEC program also achieved a high rate of timeliness in deciding non-traumatic injury claims despite the complexities involved. For "basic" occupational

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.

disease cases with an uncomplicated fact pattern, 88 percent were adjudicated within 90 days. Seventy-six percent of the more complex non-traumatic cases were adjudicated within 180 days.

While early intervention is crucial, the FEC program continued to dedicate resources to the 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 extremely successful, with outcomes exceeding OWCP's target estimate of \$17 million. In FY 2005, staff achieved compensation savings of \$23.2 million. Of the cases that were screened, benefits were adjusted or terminated in nearly 2,200 cases where beneficiaries' disability had either resolved or

lessened to the point that return to work was possible. Savings from these actions will continue in subsequent years.

Central Medical Bill Processing

The second year of OWCP's centralized medical bill processing services contract with Lockheed Martin Information Technology and Affiliated Computer Systems achieved even greater improvements in operating efficiencies. During FY 2005, DFEC realized a \$44.7 million reduction in costs due to further improvements in the editing of bills, which in turn reduced costs charged back to agencies.

At the end of FY 2005, the vendor processed 4,898,090 bills and handled 948,703 telephone calls. The vendor enrolled 42,768 new providers in the system, bringing the total of enrolled providers to 406,627 at the end of the fiscal year. Nearly 98 percent of bills were being processed within 28 days and authorizations for treatment were processed in an average of 2.2 work days.

Services to Claimants and Beneficiaries

In keeping with the "Pledge to Our Customers", the FEC program continued to focus on improving customer service and satisfaction during FY 2005. The number of calls to the DFEC district offices decreased to 1.5 million from the more than 1.9 million received the previous year. The decrease in volume can be attributed to the resolution of the customer service problems which occurred with the start up of OWCP centralized bill payment operations. Because of the improved customer service provided by the bill payment contractor, fewer calls were directed to DFEC district offices. Nearly a third of the calls were handled by Customer Service Representatives (CSRs) in the district office call centers. The weighted national average wait time of 2.55 minutes was nearly 35 seconds less than the goal of 3.13 minutes.

More calls, particularly those of a complex nature, are now being handled by the CSRs, and not passed on to claims examiners. This work shift is beneficial on several levels. Callers receive a high level of service and information at the time of their call. Callers whose concerns are addressed at the time of their call report a higher level of customer satisfaction than those requiring a returned call. Having to return fewer calls enable claims examiners to devote more time to claims management and return-to-work efforts.

Quality silent monitoring of calls to the district office phone banks as a quality assurance method continued during the fiscal year. Communications Specialists on DFEC's staff listen to both sides of a conversation and, using a



FECA Benefits Charged To Employing Agencies

CHARGEBACK YEAR 2005

Chargeback Total: \$2,334 Million

Postal Service	\$ 840 Million
Defense	\$ 600 Million*
Veterans Affairs	\$ 156 Million
Homeland Security	\$ 138 Million
Transportation	\$ 93 Million
Justice	\$ 80 Million
Agriculture	\$ 69 Million
All Other	\$ 358 Million

*Defense includes Navy (\$238M), Army (\$175M), Air Force (\$125M), and Department of Defense (\$63M).

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

standardized Quality Monitoring scorecard, document the CSRs' performance. The results are used both for reporting purposes and for identifying training needs. Local telephone survey and quality silent monitoring results show that 98 percent of callers received courteous service, a nearly one point increase over FY 2004. Use of clear and understandable language was reported in 99.2 percent of calls, an increase of a point and a half. Increasing nearly three points over FY 2004, 96.8 percent of calls met knowledge and accuracy standards.

Hearings and Review

If an individual disagrees with the claims examiner's formal decision on a claim, he or she may request from the Branch of Hearings and Review that an oral hearing or a written review of the record take place. In FY 2005, the Branch of Hearings and Review received a total of 6,757 incoming requests for reviews of the written record and oral hearings, and issued a total of 6,961 decisions. The period of time between receipt of a case file and the issuance of a remand or reversal before a hearing was an average of 128 days. For those case files where a hearing was held, time period for a decision averaged 280 days between the date the case file was received and the date the hearing decision was issued. The Branch averaged 127 days for decisions emanating from a review of the written record.

In an effort to maintain cost efficiency, improve customer service and expedite cases where hearings are held, the Branch began to offer telephone hearings in lieu of face-to-face hearings in FY 2005. This option has been well received by all interested parties and it is expected that the number of such requests will increase dramatically in the future.

FECA Performance Study

In FY 2005, DFEC pursued recommendations made by ICF Consulting in its 2004 evaluation of the FEC program. ICF Consulting recommended improving communications and assistance to Federal agencies, particularly in the continuation-of-pay period when the agency has the initial jurisdiction over the injury claim. This recommendation indicates that improvement of injury case outcomes rests significantly on strengthened efforts by Federal employers in assisting with case processing and medical and reemployment issues.

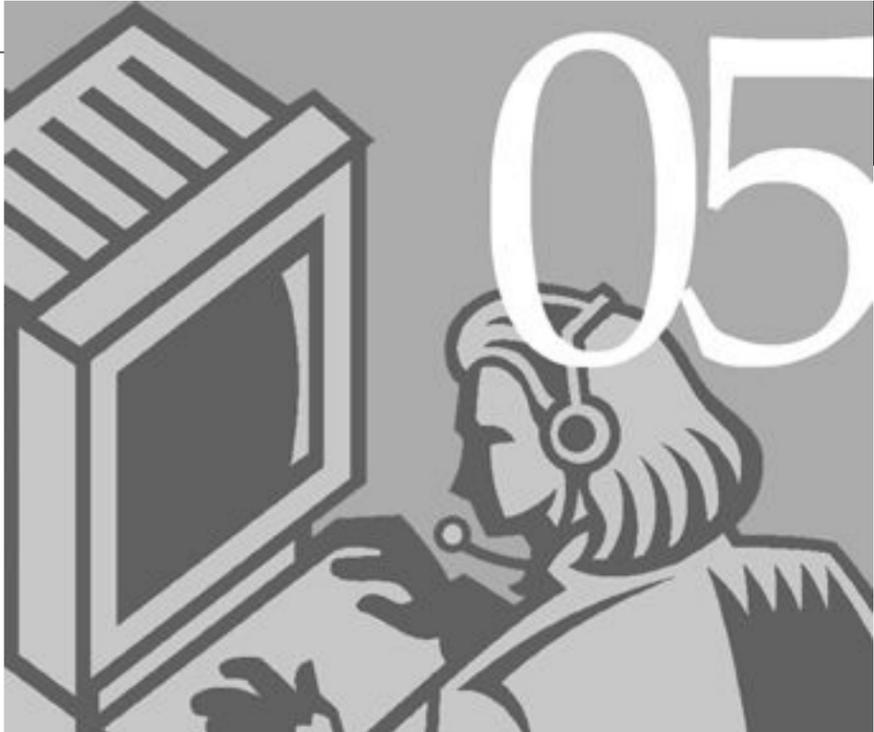
To better assist agencies with their injury management and reemployment programs, DFEC developed new on-line and on-site training for agency front-line managers and compensation personnel, and continued to improve automated services to enable Federal agencies to more readily access claims-specific and agency-level performance and cost information related to FECA.

In FY 2005, DFEC began to research and develop new approaches that would adopt best practices to strengthen its current COP-period Telephonic Case Management nurse intervention program and expand its technical assistance and training programs. DFEC seeks to help agencies: adopt effective practices to create re-employment opportunities, facilitate job retention, and create opportunities for advancement; better process new injury claims and manage injury caseloads; and, better consider disability management costs and benefits in their human resource and personnel policies and operations. Partnering with the agencies to improve disability management is a key FEC program strategy. The program also seeks to perpetuate the heightened agency interest and commitment that have been generated by the Safety, Health and Return-to-Employment initiative with goals to reduce injury rates, speed submission of claims, and reduce lost production days.

Legislative Reform

In FY 2005, OWCP proposed, as part of the Administration's FY 2007 Budget, legislation to reform the Federal Employees' Compensation Act. The goals of the reform are to enhance incentives for injured employees to return to work; address retirement equity issues; and update and make other benefit changes. Specifically, the reform proposes to:

- Convert** compensation for new injuries or new claims for disability to a lower benefit at the Social Security retirement age.
- Move** the 3-day waiting period during which an injured worker is not entitled to compensation to the point immediately after an injury.
- Change** the way that schedule awards are paid to allow uniform lump sum payments to federal employees eligible for such awards.



Federal Employees' Compensation Act

	FY 2004	FY 2005
Number of Employees (FTE Staffing Used)	954	912
Administrative Expenditures*	\$ 133.8 M	\$ 126.3 M
Cases Created	162,965	151,690
Wage-Loss Claims Initiated	24,189	21,455
Total Compensation and Benefit Payments (Actual Obligations)**	\$2,434.6 M	\$2,476.5 M
Number of Medical Bills Processed	4,667,338	4,898,090

*OWCP expenditures; excludes DOL support costs, but includes "fair share" capital expenditures of \$47.5 million in FY 2004 and \$39.5 million in FY 2005, respectively.
 **Compensation, medical, and survivor benefits.

- Eliminate** augmented compensation for dependents but raise the basic benefit level for all claimants.
- Allow** OWCP to recover the costs, estimated at over \$2 million annually, paid by responsible third parties to FECA beneficiaries during the continuation of pay period.
- Increase** benefit levels for funeral expenses from \$1,000 to \$5,000.
- Increase** benefit levels for disfigurement resulting from work injury.
 - Estimated savings to the Government over ten years through the enactment of these proposals would be \$592 million.

Black Lung Benefits Act

Introduction

The Division of Coal Mine Workers' Compensation (DCMWC) completed its thirty-second year administering Part C of the Black Lung program in 2005. 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 victims of dust exposure in coal mines with public funds initially 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 identified 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 indebted to the U.S. Treasury by over \$1.5 billion at that time.

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 in 2002, an Administration proposal to place the administering responsibility for both programs with DOL was made permanent under the Black Lung Consolidation of Administrative Responsibilities Act.

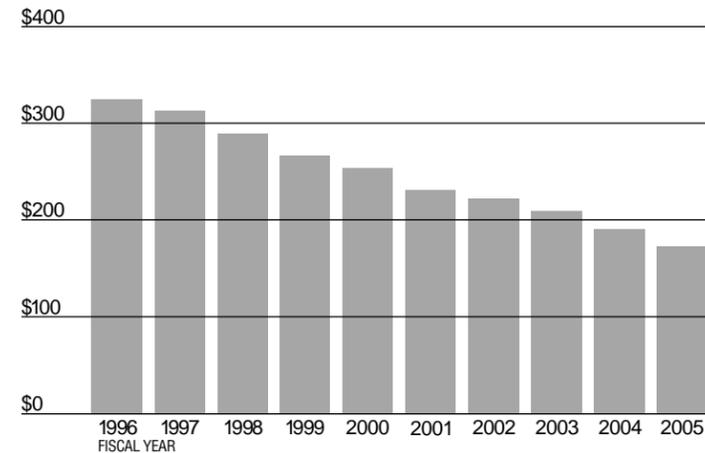
Benefits and Services

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 2005, monthly and retroactive benefit payments totaled \$280.0 million.

The Part C program also provides both diagnostic and medical treatment services for totally disabling pneumoconiosis. 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

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.

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 2005 were \$50.0 million. This includes payments of \$3.8 million for diagnostic services, \$43.0 million for medical treatment, and \$3.1 million in reimbursements to the United Mine Workers of America Health and Retirement Funds for the cost of treating Black Lung beneficiaries. Nearly 367,000 bills were processed during the year.

Total Black Lung Part C program expenditures for all benefits in FY 2005 were \$329.9 million, a decrease of \$17.0 million from FY 2004. In FY 2005, benefits were provided from the Trust Fund to approximately 38,000 beneficiaries each month.

State workers' compensation laws 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 is offset or reduced by the amount of the state benefit on a dollar-for-dollar basis. As of September 30, 2005, there were 1,533 Federal black lung claims being offset due to concurrent state benefits.

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 34 fee petitions and paid approximately \$0.4 million in attorneys' fees from the Trust Fund.

In FY 2005, 1,423 claims were forwarded for formal hearings before the Office of Administrative Law Judges (OALJ) and 566 claims were forwarded on appeal to the Benefits Review Board (BRB). At the end of FY 2005, the OALJ had 2,531 claims pending while 515 were pending before the BRB.

In the Black Lung Part B program, over 46,000 active beneficiaries (with nearly 5,000 dependents) were receiving approximately \$29 million in monthly cash benefits as of September 30, 2005. Part B benefits in FY 2005 totaled more than \$346 million. DCMWC completed more than 10,000 maintenance actions on Part B claims during the year, on average less than one week from notification.

During FY 2005, DCMWC completed a two-year project of updating Part B beneficiary information using the same method by which Part C beneficiary information is kept current. This process enabled DCMWC to reduce erroneous payments caused, for example, by incorrect addresses.

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 that were approved by SSA under Part B of the BLBA are not paid by the Trust Fund, but rather 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 of 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 2005, the Trust Fund received a total of \$609.9 million in tax revenues. An additional \$3.3 million was collected from RMOs in interim benefits, fines, penalties, and interest. Total receipts of the Trust Fund in FY 2005 were nearly \$1.1 billion, including \$446 million in repayable advances from the Department of Treasury.

In 1981, the Black Lung Benefits Revenue provisions temporarily increased 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 again by 10 percent. 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.

Total Trust Fund disbursements during FY 2005 were almost \$1.1 billion. These expenditures included \$329.9 million for income and medical benefits, \$674.9 million for interest payments on repayable advances from the Treasury, and \$56.9 million to administer the program (\$32.6 million in OWCP direct costs and \$24.3 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).

Central Medical Bill Processing

During FY 2005, the Black Lung program began utilizing the OWCP centralized medical bill processing services contract with Lockheed Martin Information Technology (LMIT) and Affiliated Computer Services (ACS). The service is called Central Bill Processing (CBP). The CBP service includes:

The ACS Web portal, which provides medical facilities with Internet service with convenient, around-the-clock access to DCMWC information and services. This portal reduced the number of inquiries and services handled by telephone, allowing increased services to providers at no additional cost to DCMWC. The Web portal also has restricted-access features that enable providers to inquire about medical authorization, eligibility, and bill status, as well as provider enrollment.

The Prescription Drug Claim System provides around-the-clock pharmacy point-of-sale and paper pharmacy bill processing, information management and a full complement of clinical systems and services. These include prospective and retrospective drug utilization review, physician profiling, utilization reporting and prior authorization.

Stored Image Retrieval, a web-based application which provides an efficient way to retrieve stored information and to access on-line audit reports.

Omni-Track, a multi-purpose correspondence tracking system for claimant and provider inquiries, as well as medical bill processing.

From October 1, 2004, through February 5, 2005, DCMWC's contract with Computer Sciences Corporation (CSC) provided the resources to operate and maintain DCMWC's Automated Support Package (ASP). The ASP included the client-server computer system, data processing operations, medical bill processing, telecommunications support, and certain administrative functions. CSC continues to do

processing for DCMWC's Claimant and Payment System and the Black Lung Accounting System using ASP software, which still resides in a client-server environment.

During FY 2005, DCMWC completed the processing of 366,528 medical bills.

Performance Assessment

A review of DCMWC was conducted in 2003 using the Program Assessment Rating Tool. While the Black Lung program achieved a rating of "Moderately Effective," noting that the program purpose is clear, that the program effectively targets its resources, has ambitious long-term performance measures, and maintains a relatively low (less than 2 percent) erroneous payment rate, 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 an independent study of the program to compare it to similar workers' compensation programs and suggest practices and procedures for improvement.

During FY 2005, an independent consulting firm initiated an evaluation of the Black Lung program's outcomes, cost-effectiveness, and efficiency in order to compare them to those of similar compensation programs. The evaluation included site visits to Black Lung district offices, interviews with stakeholders and state workers' compensation officials, and observation of the program's accountability review of one district office.

Legislative Proposal to Address Trust Fund Insolvency

Although tax receipts to the Trust Fund were sufficient to cover benefits, current operating costs and some interest charges, the Trust Fund needed to borrow \$446 million from the Treasury to pay the balance of the FY 2005 interest due. By the end of FY 2005, the Trust Fund's cumulative debt to the Treasury was \$9.2 billion. Since benefit payouts for Black Lung claims in the late 1970's and early 1980's far exceeded revenues, the Trust Fund was forced to draw on repayable advances from the Treasury in order to meet benefit obligations. While operating costs are now covered by revenue, the Trust Fund's debt continues to climb. The Trust Fund now must borrow to cover its debt service, which amounted to nearly \$675 million at the end of FY 2005.

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 prevalent during the 1980's, thereby taking advantage of current and lower Treasury interest rates.



Management Of SSA Part B Black Lung Claims FY2005

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

Completing Over 10,000 Maintenance Actions, With Average Completion Time Of Less Than One Week From Notification.

Managing The Expenditure Of More Than \$346 Million In Benefits.

DCMWC Was Responsible For Over 46,000 Active Part B Cases.

revised version of the proposed legislation that was previously transmitted to Congress in 2000, 2002, and 2004. Secretary Chao and Treasury Secretary Snow transmitted the revised legislative proposal to the Congress on

Extend until the debt is repaid the current Trust Fund excise tax levels (\$1.10 per ton for coal mined underground; \$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 Treasury's loss of income caused by the restructuring.

After consultation with interested parties and the staffs of the appropriate Congressional committees, DOL and Treasury staffs prepared a

September 13, 2005. Representative Ron Lewis of Kentucky introduced the bill on September 27, 2005, and it was referred to the House Ways and Means Committee as HR 3915.

Government Performance Results Act

In FY 2005, 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 10 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 2005, 80.6 percent of claims were resolved with no pending requests for further action (against a target of 76.5 percent). The Black Lung program will continue to work closely with both its stakeholder and authorized provider communities to ensure that delivery of services continues 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 (PDO) declined from 323 days in FY 2004 to 259 days in FY 2005. As a result of this improvement, the program set its goal for FY 2006 at 250 days. The number of new claims increased from 4,489 during FY 2004 to 4,567 in FY 2005. The number of claims awaiting issuance of a Schedule for the Submission of Additional Evidence by a district director rose slightly from 1,770 at the end of FY 2004 to 1,801 at the end of FY 2005. However, this was offset by a slight decline in claims awaiting issuance of a PDO – the next stage in the claims adjudication process – from 1,379 to 1,304.

Operation and Maintenance of Automated Support Package

DCMWC's Automated Support Package (ASP) is provided 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 2005, DCMWC transferred medical bill processing to Affiliated Computer Systems, an action outlined earlier in the report. In addition, DCMWC automated the transmission of payment files to the Treasury Department. At the end of FY 2005, DCMWC began planning to convert ASP's database to conform to ESA's Enterprise Architecture.

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.

According to FY 2005 estimates by DOL's Mine Safety and Health Administration, there were 2,093 active coal mine operators subject to the requirements of the Act. From the inception of the Act, the Secretary of Labor has had the authority to authorize a coal mine operator to self-insure after an analysis of the company's application and supporting documents. At the close of FY 2005, 70 active companies were authorized by the Secretary of Labor to self-insure.

These self-insurance authorizations cover approximately 680 subsidiaries and affiliated companies.

The Responsible Operator (RO) Section staff in DCMWC's national office is specifically assigned to record the existence of 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 2005, the RO section sent form letters to 584 coal mine operators reminding them of their statutory requirement to insure and stay insured against their potential liability for black lung benefits. Of these, 390 were found to be insured, 51 were insured through a parent entity or not engaged in coal mining, and 53 uninsured companies required additional assistance. Thirty-two letters were returned unclaimed. The remaining 58 were delivered with no response, returned for a better address, or failed delivery for another reason. Letters also 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 2005, DCMWC received 1,561 reports of new or renewed policies. DCMWC also added the insurance reporting instruction form to its website.

During FY 2005, the project to improve the reporting of medical evaluations that DCMWC is required to offer to all miners who file claims for benefits continued, with District Directors and national office staff making visits to physicians and clinics. These visits included reviews of the physician's written evaluations of the medical information obtained during the complete pulmonary evaluation and suggestions for improving and standardizing the evaluations.

Litigation

COURTS OF APPEALS

During FY 2005, the courts of appeals issued 46 decisions in cases arising under the Black Lung Benefits Act. Fifty-five new appeals were filed. The following summarizes the most significant appellate decisions, grouped by their particular issue and location in the CFR.

Time Limit for Appeal: 30 U.S.C. § 932(a) Incorporating 33 U.S.C. § 921(c). A party adversely affected or aggrieved by a final Benefits Review Board order may seek review of that order by filing a petition for review in the appropriate court of appeals within 60 days of "issuance" of the Board's order. Relying on the Board's regulations governing issuance, service, and appeal of decisions, the Fourth Circuit concluded in *Mining Energy, Inc. v. Director, OWCP*, 391 F.3d 571 (4th Cir. 2004), that the 60-day appeal period

begins when the Board files its decision with the Clerk of the Board. In reaching this conclusion, the court rejected the Director's and the employer's argument that issuance includes service of the decision on the parties. Thus, the court held that the Board's failure to serve the employer's counsel with its decision did not prevent the jurisdictional appeal period from running.

Statute of Limitations: 30 U.S.C. § 932(f) and 20 C.F.R. § 725.308. The statute and regulations limit the time period during which a miner may file a claim to three years after a medical determination of total disability due to pneumoconiosis is communicated to the miner. In *Roberts & Schaefer Co. v. Director, OWCP*, 400 F.3d 992 (7th Cir. 2005), the Seventh Circuit construed these provisions and held that the "limitations period does not begin to run until the claimant is informed either that his respiratory or pulmonary impairment is 'pneumoconiosis' or that the impairment arose out of exposure to coal dust." In so holding, the court rejected the employer's argument that a diagnosis of chronic obstructive pulmonary disease or emphysema alone, even if later found to have arisen from coal mine employment, triggers the limitations period. Because the miner filed his claim before he received a medical determination satisfying the statute's prerequisites, the court concluded that he timely filed his claim.

Duty to Adequately Consider Medical Evidence.

Two decisions emphasized the fact-finder's responsibility to critically evaluate the medical evidence when making claim determinations

under the Black Lung Benefits Act. In *Killman v. Director, OWCP*, 415 F.3d 716 (7th Cir. 2005), the Seventh Circuit vacated an ALJ's decision where, in adjudicating whether the miner was totally disabled, the ALJ did not adequately consider whether the physicians whose opinions he relied upon to deny the claim knew the miner's job duties. The court noted that "an ALJ may not reasonably rely on medical opinions that are predicated on a misunderstanding of the claimant's job requirements." Accordingly, the court remanded the case for further consideration of the evidence. And in *Martin v. Ligon Preparation Co.*, 400 F.3d 302 (6th Cir. 2005), the Sixth Circuit concluded that the ALJ's weighing of the medical opinion testimony was inconsistent with the underlying factual record. There, the ALJ relied upon two physicians who testified that if the miner had pneumoconiosis, they would expect to see certain objective testing results. The record contained precisely those results, but the ALJ did not explain why the physicians' conclusions were nonetheless valid in light of those results. Accordingly, the court remanded the case to the ALJ for further explanation.

State Insurance Guaranty Fund Liability. In *Boyd and Stevenson Coal Co. v. Director, OWCP*, 407 F.3d 663 (4th Cir. 2005), the miner successfully prosecuted his claim for benefits. His most recent coal-mine employer's insurance carrier paid his

benefits until the carrier was declared insolvent; thereafter, the Virginia Property and Casualty Insurance Guaranty Association assumed payments in the carrier's stead. After the miner's death, his widow filed a claim for survivor's benefits. The ALJ awarded benefits but found that the Association was not the liable entity because the widow filed her claim long after the court-ordered time period for filing claims against the Association had expired. Instead, the ALJ found that the miner's next-most-recent-coal-mine employer (who was solvent and insured) was liable for the widow's benefits. The Benefits Review Board affirmed the ALJ's decision, but the Fourth Circuit disagreed. Applying principles of insurance law, the court concluded that the Association could not "bar recovery by creating a technical defense" — the time limit on filing claims — "impossible for" the widow to satisfy. Accordingly, it held that the Association was liable for the widow's benefits.

BENEFITS REVIEW BOARD

During FY 2005, DOL filed over 625 pleadings with the Benefits Review Board. The Board issued several decisions that significantly affect the Secretary's administration of the benefits program. The following summarizes some of these decisions, categorized by issue.

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. The program regulation governing admission of evidence at the hearing states that evidence that exceeds the limitations "shall not be admitted into the hearing record in the

absence of good cause." In *Smith v. Martin County Coal Corp.*, 23 Black Lung Rep. 1-71 (2004), the Board addressed whether the limitations may be waived by agreement of the parties. It held that the limitations are mandatory and may not be waived. The Board reasoned that the regulations require an administrative law judge to exclude evidence in excess of the limitations unless the proponent of the excess evidence establishes good cause for its submission.

Collateral Estoppel. The doctrine of collateral estoppel precludes a party from relitigating an issue previously decided against it in an earlier action. In *Polly v. D & K Coal Company*, 23 Black Lung Rep. 1-79 (2005), the ALJ found the responsible coal miner operator was precluded from contending that the miner did not suffer from black lung disease when defending a claim filed by the miner's survivor because the operator had lost that issue when benefits were awarded in the miner's claim. The Board held that the ALJ erred by not considering the operator's argument that application of collateral estoppel was unfair because it had little incentive to vigorously litigate the miner's claim. The benefits awarded the miner were offset entirely by his state award. The Board reasoned that under established precedent, a fact-finder has discretion not to apply the doctrine if the party to

be estopped lacked financial incentive to litigate the earlier case and future suits were not foreseeable.

Subsequent Claims by Survivors. The program regulations provide that a survivor's claim filed more than one year after the denial of a prior survivor's claim must also be denied unless two conditions are met: (1) at least one of the grounds on which the prior claim was denied (referred to as the "applicable conditions of entitlement") must be unrelated to the miner's physical condition at the time of death; and (2) the claimant must establish that at least one of the applicable conditions of entitlement has changed since the prior claim was denied. In practical effect, this means that in order to have a subsequent claim adjudicated, the survivor's prior claim must have been denied on at least one ground that is capable of change, and such a change must have occurred

since the denial. The Board addressed this rule in two decisions in FY 2005. In *Tucker v. Director, OWCP*, 23 Black Lung Rep. 1-43 (2004), the Board held that a surviving divorced spouse's subsequent claim must be denied because her first claim had been denied based solely on her failure to establish that she was dependent on the miner, a condition of entitlement that is not subject to change after the miner's death. In *Boden v. G.M. & W. Coal Company*, 23 Black Lung Rep. 1-39 (2004), the Board held that because the survivor's first claim was denied solely on grounds related to the miner's physical condition, her second claim must be denied as well.



Black Lung Benefits Act*

	FY 2004	FY 2005
Number of Employees (FTE Staffing Used)	210	199
OWCP Administrative Expenditures** \$	32.0 M	\$ 32.2 M
Total Compensation and Benefit Payments***	\$ 346.9 M	\$ 329.9 M
Trust Fund Beneficiaries in Pay Status at End of Fiscal Year		
Monthly	39,077	36,325
Medical Benefits Only	4,437	3,636
Responsible Coal Mine Operator Beneficiaries in Pay Status at End of Fiscal Year		
Monthly	5,863	5,562
Medical Benefits Only	1,355	1,146

*Part C claims only.
 **Excludes DOL and Department of Treasury support costs of \$24.5 million in FY 2004 and \$24.8 million in FY 2005, 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

Introduction

Enacted in 1927, the Longshore and Harbor Workers' Compensation Act (LHWCA) provides compensation for lost wages, medical benefits, and rehabilitation 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.

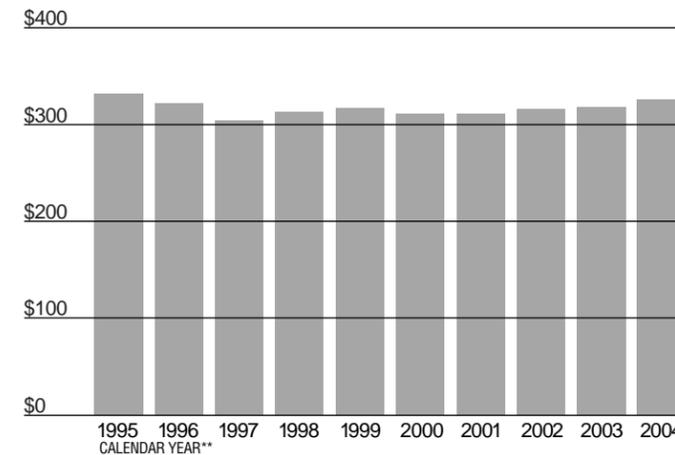
The Outer Continental Shelf Lands Act of August 7, 1953, extended Longshore benefits to employees of firms working on the outer continental shelf of the United States, such as off-shore drilling enterprises engaged in exploration for and development of natural resources.

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 \$601.4 million in Calendar Year (CY) 2004, a 5 percent increase compared to CY 2003.

In Fiscal Year (FY) 2005, total expenditures for program operations and the administration of LHWCA and its extensions were \$25.5 million, of which \$10.5 million were the direct costs of OWCP. The remaining \$15.0 million represents the cost of legal, audit, and investigative support provided by the Office of Administrative Law Judges (OALJ), the Benefits Review Board (BRB), the 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 99 people in the national office and 11 district offices.

During FY 2005, approximately 560 self-insured employers and insurance carriers reported 24,980 lost-time injuries under the Act. At year's end, 14,418 maritime and other workers were in compensation payment status.

There continued to be a major increase in attention focused on Longshore program operations related to the Defense Base Act (DBA). The increased interest in DBA is primarily a result of the conflict in Iraq, Afghanistan, 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 to 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. Total claims filed under DBA in FY 2005 were 4,944, more than double the number filed in FY 2004.

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; \$5,000 payments by employers for each instance in which a covered worker dies and when it is determined that there are no survivors eligible for 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 Special Fund paid \$134.6 million in benefits in FY 2005, of which \$122.4 million was for second injury (section 8(f)) claims. FY 2005 expenditures from the DCCA Special Fund totaled \$10.6 million, of which \$9.8 million was for second injury cases.

Government Performance Results Act

In FY 2005, DLHWC set the following target for the indicator under the DOL strategic goal to "minimize the human, social, and financial impact of work-related injuries for workers and their families":

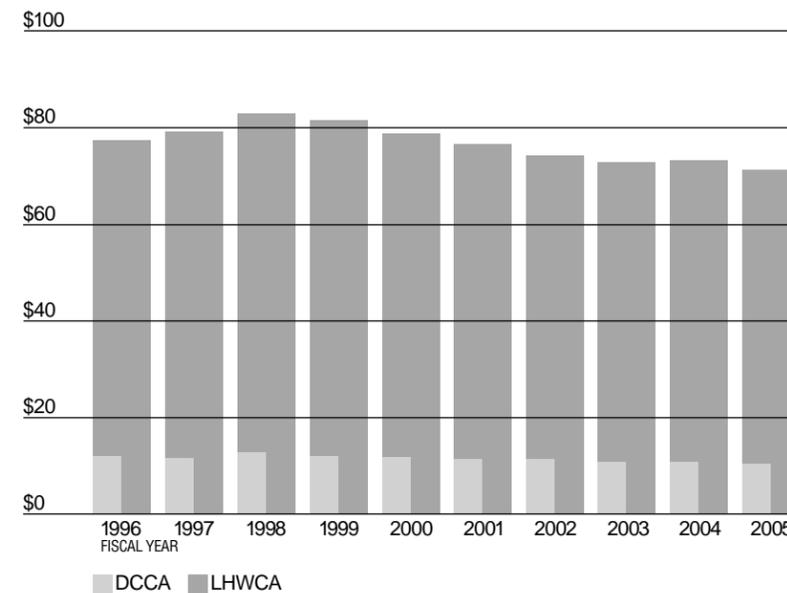
To reduce by fourteen percent versus the FY 2002 baseline the average time required to resolve disputed issues in LHWCA program contested cases, from an average of 285 days in FY 2002 to 245 days in FY 2005.

This indicator is intended to measure OWCP's success in resolving claim disputes between injured workers and their employers and insurers. Dispute resolution is one of the core missions of the Longshore program. While not a judge or a hearing officer, a Longshore claims examiner contributes to the resolution of disputed issues by acting as a mediator in informal proceedings designed to help parties to a claim to reach amicable agreement and thereby avoid the time and expense required by formal litigation. In FY 2005, the district offices conducted 2,778 informal conferences that were designed to establish the facts in each case, define the disputed issues and the positions of the parties in respect to those issues, and encourage their voluntary resolution by means of agreement and/or compromise.

In light of the program's success in meeting its GPRA targets in the previous two years, DLHWC changed its FY 2005 target to reduce the time it takes to resolve claim disputes from the originally planned 268 days (six percent below the FY 2002 baseline) to 245 days (14 percent below FY 2002 baseline). The program failed to meet the target primarily because a

LHWCA and DCCA Special Funds' Expenditures, FY 1996-FY 2005

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.

higher proportion of disputed cases required referral to the OALJ for formal hearings, increasing overall processing times. In addition, a correction in coding inconsistencies in some of the DLHWC district offices resulted in a slight increase in the average number of days required to resolve disputes at the district office level. In FY 2005, disputed issues covered by this measure were resolved in an average of 254 days, 9 days above the target of 245 days.

To ensure that the goals of this indicator remain ambitious, OWCP expanded the scope of the Longshore program's dispute resolution measurement in FY 2005 to include two additional dispute types, those of Last Responsible Employer and Attorney Fees. New targets were developed

and adopted in FY 2005 for implementation from FY 2006 through FY 2008. OWCP continues to provide its claims staff with additional training to improve mediation skills and case management strategies to shorten the time required to resolve disputes.

Performance Assessment

During 2005, a review of DLHWC was conducted using the Program Assessment Rating Tool. The Longshore program achieved a rating of "Adequate" and a number of recommendations were made to improve the program's performance and efficiency. These included identifying needed reforms to strengthen the LHWCA, evaluating the automated claims system to identify more effective alternatives for tracking the benefit delivery services of employers and carriers and to allow comparisons with similar programs, and eliminating shortcomings identified in a 2004 audit by strengthening the processes and controls in the program's disbursement systems. By the close of FY 2005, the Longshore program had implemented internal controls to strengthen its disbursement program.

Claims Management and Compliance Assistance Activities

The number of Defense Base Act injury and death claims from civilian contractors in Iraq and Afghanistan continued to grow in FY 2005, with claims totaling 3,411, of which 296 involved the death of the worker. Between FY 2003 and FY 2005, a total of 7,821 DBA claims were filed, including 513 death claims, of which 4,736 claims (449 deaths) originated in Iraq and Afghanistan.

In response to the continuing high level of claim activity arising from the Middle East, the Longshore program continued to hold educational seminars, meetings with the contracting agencies, and meetings of industry leaders. These important outreach activities continue to enhance the public's understanding of the coverage requirements, claim responsibilities, and educational responsibilities of contracting agencies, contractors, and insurers.

To follow-up on DLHWC's upgrades from the previous year, significant new information was added to or enhanced on the Longshore program website during FY 2005, including Compliance Assistance resources for the public, enhanced electronic form submission capabilities, 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.

SRA, a private consulting firm, was retained to perform a study of the Longshore Case Management System (LCMS) to evaluate a potential upgrading of the system to allow for

automated data input from the industry, standardization of data elements following industry leads, and the ability to benchmark and compare outcomes with other workers' compensation systems. The LCMS was developed in the early 1980's as a tool for managing the internal processes of the Longshore Division, but was not intended for use as a performance monitoring or measurement system. Today's managerial demands and regulatory responsibilities require an automated system capable of more than the LCMS can currently deliver.

The study was initiated in January 2005, with the final report and recommendations submitted in January 2006. The study proposed three short-term and five long-term enhancements to the system, including the development of an interface with other OWCP automated systems and developing a new, customized program for Longshore's claims management functions. Other suggested changes include improved data collection and reporting capabilities, purchasing commercial case management and document management systems, and outsourcing system monitoring and comparison capabilities to two private organizations, the National Council on Compensation Insurance and the Workers' Compensation Research Institute.

Security Requirements from Authorized Insurance Carriers

During FY 2005, DLHWC implemented new regulations to enhance the financial security of the Longshore program by reforming the methodology for measuring and collecting security deposits from the insurance industry. A final rule (70 Fed Reg. 43224 (2005) (to be codified at 20 C.F.R. § 701 and 703)) took effect on August 25, 2005. The rule addresses the problem of insurance carrier insolvency and seeks to protect the Special Fund from having to assume benefit obligations as a result of such insolvencies. The regulations require LHWCA insurance carriers either to demonstrate that their obligations are financially secure or to deposit security with OWCP. Under the rule, OWCP determines the amount of a required security deposit by considering factors such as the availability of State guaranty funds, the carrier's financial stability, and the carrier's unsecured LHWCA financial obligations. The regulations excuse the deposit requirement for the most financially sound carriers. The smooth transition reflected industry's acceptance of the need for this reform. DLHWC is committed to reviewing the states' legislation each year to ensure that the required deposits are kept consistent with security needs.

Litigation

During FY 2005, the Supreme Court defined the term "vessel" for purposes of determining coverage under the LHWCA and the Jones Act. The courts of appeals published six decisions arising under the Longshore and Harbor Workers' Compensation Act. Important points from these cases, grouped by issue, are summarized below.

SUPREME COURT

Definition of a "Vessel." In *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005), the Supreme Court addressed whether a watercraft is a "vessel" for purposes of the LHWCA and the Jones Act. The LHWCA excludes from coverage "a master or member of a crew of any vessel," thereby establishing who may claim coverage as a seaman under the Jones Act. The Court adopted the definition of vessel appearing in 1 U.S.C. § 3, that is any contrivance used or capable of being used as a means of transportation on water. Applying that definition, the Court held that a dredge digging a trench beneath Boston Harbor for the Ted Williams tunnel was a "vessel" and that therefore the maritime engineer injured on it in the course of his employment was entitled to proceed with his Jones Act claim. The Court explained that the dredge was a vessel because it carried machinery, equipment, and a crew over water. The Supreme Court concluded that a vessel "is any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment." Thus, the maritime engineer was a crew member of a vessel and could proceed with his Jones Act claim - despite the fact the dredge had no means of self-propulsion and lay idle at the time his injury occurred.

Other Supreme Court Action. The United States Supreme Court also denied *certiorari* in two Ninth Circuit LHWCA cases. The Court left intact the Ninth Circuit's "last responsible employer" decision in *Metropolitan Stevedore Company v.*

Crescent Wharf and Warehouse, Co. (William Price), 339 F.3d 1102 (9th Cir. 2003), *cert. denied*, 543 U.S. 940 (2004). It also declined to review the Ninth Circuit's decision in *Stevedoring Services of America v. Price*, 382 F.3d 878 (9th Cir. 2004), *cert. denied*, 544 U.S. 960 (2005), in which the Court of Appeals ruled that: (1) where a claimant is entitled to receive two concurrent awards, the maximum weekly compensation rate established by section 6(b)(1) applies to each individual award and not to the total combined amount of compensation received; and (2) where a claimant worked more than 75 percent of the workdays during the measuring year, average weekly wage is correctly determined under section 10(a) rather than section 10(c) because he has worked "substantially the whole of the year."

COURTS OF APPEALS

Pursuant to the Supreme Court's decision in *Stewart v. Dutra*, the Second Circuit affirmed the denial of a widow's claim for LHWCA death benefits in *Uzdavines v. Weeks Marine, Inc.*, 418 F.3d 138 (2nd Cir. 2005), because her husband's fatal exposure to asbestos took place while he maintained the engine of a "bucket dredge." Because her husband had worked on a "vessel," the Jones Act, as opposed to the LHWCA, provided coverage for his death. The "bucket dredge" constituted a "vessel" under *Stewart* because it transported equipment and workers across water to perform its channel-deepening function. The Supreme Court's decision superseded the Second Circuit's test articulated in *Tonnensen v. Yonkers Contracting Co.*, 82 F.3d 30 (2nd Cir. 1996) (a floating structure does not

qualify as a vessel if the "transportation function performed by the [purported vessel is] merely incidental to the primary purpose of serving as a work platform"). Thus, pursuant to *Stewart*, so long as a watercraft can be used as a means of transportation over water, even if only as a matter of practical possibility, it is a vessel in navigation, and on-board injuries to its crew members are not covered by the LHWCA.

Coverage: Situs – Navigable Waters. The Second Circuit held that Cayuga Lake is part of the navigable waters of the United States and, thus, a covered situs under LHWCA section 3(a). *Lockheed Martin Corp. ACE USA v. Morganti*, 412 F.3d 407 (2nd Cir. 2005). Although Lockheed Martin argued that economic conditions made commercial shipping unprofitable, and therefore made the lake not navigable, the Court noted that the lake was connected by locks to the Erie Canal system and was physically capable of supporting commercial water traffic including shipping. Since it was capable of being used for commerce, Cayuga Lake was navigable for purposes of the LHWCA. The Second Circuit also held that because Morganti drowned in navigable waters, he was covered by the LHWCA regardless of his duties or activities pursuant to the Supreme Court's decision in *Director, OWCP v. Perini N. River Assocs.*, 459 U.S. 297 (1983).

Coverage: Situs – Adjoining Area. In *Tarver v. Bo-Mac Contractors, Inc.*, 384 F.3d 180 (5th Cir. 2004), *cert. denied*, 544 U.S. 948 (2005), the Fifth Circuit held that an excavation site was not an area adjoining navigable waters and therefore not a covered situs under LHWCA section 3(a). Tarver suffered serious injuries when he was pinned against a scaffold by an 80-foot beam. His employer was building two new barge slips on vacant, dry land along the Intracoastal Waterway in Louisiana. At the time of the accident, the land between the slip holes and the water had not yet been removed, and Tarver was working as a welder on the land side of the excavation. The Fifth Circuit rejected the claimant's argument that when

construction was complete, the site would serve a maritime purpose. Relying on *Boomtown Belle Casino v. Bazor*, 313 F.3d 300 (5th Cir. 2002), the Court held that the location of claimant's injury was not a situs covered by the statute because the site had never previously been maritime in nature and was not yet part of navigable waters at the time of the accident.

Coverage: Status. Two Second Circuit decisions address the requirement that a worker must be injured while engaged in maritime employment in order to be covered by the LHWCA. The Court examined section 2(3)'s status requirement in *Uzdavines v. Weeks Marine, Inc.*, 418 F.3d 138 (2nd Cir. 2005), and *Lockheed Martin Corporation, ACE USA v. Morganti*, 412 F.3d 407 (2nd Cir. 2005). In *Uzdavines*, the deceased employee had worked on land for 35 years before spending 3 to 4 weeks working on a bucket dredge. The Court affirmed the Board and ALJ's decisions that the status inquiry was properly resolved without consideration of the decedent's work history prior to his employment on the dredge. The dispositive question was whether the decedent had a substantial connection to the dredge, a vessel, at the time of the injury. The Court concluded that the employee's connection was substantial, both in duration and nature, not transitory or sporadic and that he was not engaged in maritime employment covered by the LHWCA.

In *Morganti*, a Lockheed Martin test engineer spent 30-40 percent of his work time (one-and-a-half to two days per week) on a research barge moored to two buoys in Lake Cayuga performing underwater tests of sonar equipment to be used by the US Navy. The barge could disconnect from the buoys within minutes but had no independent means of propulsion. To get to the barge, Morganti was ferried from shore in a shuttle boat. He drowned when he fell into the lake while untying the shuttle boat in preparation for a return trip from the barge to land. The Court found that the barge was floating and not fixed, distinguishing a fixed structure directly supported by rigid posts from the barge which was anchored by chains and ropes to a mooring buoy. The Court also rejected Lockheed's argument that Morganti was excluded from LHWCA coverage because he was a data processor. The Court agreed with the Director that Morganti performed analytical duties when reviewing the sonar equipment's test results and therefore did not fall within the data processing exclusion. Thus, Morganti, unlike *Uzdavines*, was engaged in maritime employment and was covered by the LHWCA.

Abbott Doctrine – Entitlement to Compensation for Total Disability While Participating in Vocational Rehabilitation. The Ninth Circuit joined the Fourth and Fifth Circuits in adopting the Director's view that a claimant may be found entitled to compensation for total disability although physically capable of performing some work if participation in a vocation rehabilitation program precludes him from engaging in otherwise suitable employment. In *General Construction Co. v. Castro*, 401 F.3d 963 (9th Cir.

2005), the Ninth Circuit followed the rule established in *Louisiana Ins. Guaranty Ass'n v. Abbott*, 40 F.3d 122 (5th Cir. 1994). Castro, a pile driver, injured his right knee resulting in a permanent partial disability that prevented him from resuming his usual work. His vocational rehabilitation counselor approved a plan for two years of college classes and stated that it would be very difficult to work at the same time. The Court held that Castro was entitled to total disability benefits while he participated in vocational rehabilitation.

Attorney Fees. The Fourth Circuit joined the Fifth Circuit in holding that, under LHWCA section 28(b), liability for an injured worker's attorney fees shifts to the employer only if all of that section's requirements are satisfied. These requirements include the district director holding an informal conference and issuing a written recommendation. In *Virginia International Terminals, Inc., v. Edwards*, 398 F.3d 313 (4th Cir. 2005), the employer voluntarily paid temporary total disability benefits. Thereafter, the claimant's attorney requested a conference, arguing that the claimant was owed three additional days of compensation because the benefit period should have started on the date of injury. The employer paid the additional compensation without attending a conference or receiving a recommendation. Although the BRB awarded claimant's counsel a fee to be paid by the employer for the work he performed before the ALJ, the Fourth Circuit reversed holding that because an informal conference was never held and a written recommendation never issued, the fee award was not authorized by the Act.

Average Weekly Wage. In *Castro*, the Ninth Circuit affirmed the ALJ's determination that LHWCA section 10(a) was the applicable provision to calculate the claimant's average weekly wage. The Ninth Circuit reaffirmed its holding in *Matulic v. Director, OWCP*, 154 F.3d 1052 (9th Cir. 1998), that section 10(a) is presumed to apply when a claimant works more than 75 percent of the workdays of the measuring year. In this case, Castro had worked for approximately 77.4 percent of the applicable workdays.

The Fifth Circuit did not adopt *Matulic's* bright line test for presumptive application of section 10(a), but in *Gulf Best Electric, Inc. v. Methe v. Director, OWCP*, 396 F.3d 601 (5th Cir. 2004), held that section 10(a) did apply where the claimant worked 91 percent of the workdays in the year prior to his injury. In doing so, it cited *Matulic* favorably and noted that over-compensation is built into the system and therefore does not justify applying section 10(c) when section 10(a) may be applied.

Procedural: Collateral and Judicial Estoppel. In *Uzdavines*, the Second Circuit held that the employer was not estopped from contesting LHWCA coverage of the deceased worker in his widow's death benefits case even though it had stipulated to coverage in the course of the worker's disability claim. The disability claim was found barred by LHWCA section 33(g)

because the worker entered into third-party settlements without the prior written approval of the employer. In the death benefits claim, the employer convinced the ALJ that the worker should be excluded from LHWCA coverage as a member of a crew of a vessel. The Court found that collateral estoppel did not apply because the stipulation in the benefits claim was limited to that claim only. The Court further found that judicial estoppel did not apply because no one was misled by the stipulation in the disability claim, and it did not compromise judicial integrity.

Procedural: Fifth Amendment Due Process. The Ninth Circuit held in *Castro* that the employer was not denied due process when the District Director implemented the claimant's vocational rehabilitation program before affording it an ALJ evidentiary hearing on the necessity of the program. The Court reasoned that liability for compensation under the *Abbott* doctrine did not arise until the claimant sought benefits during his vocational rehabilitation program. Since the employer disputed claimant's entitlement to those benefits, the employer received an ALJ hearing before it was required to pay claimant permanent benefits. At that hearing, the claimant established that his participation in the rehabilitation program precluded his performing suitable alternative employment and entitled him to benefits. Thus, implementation of the rehabilitation plan by itself did not automatically trigger the employer's payment of compensation.

Procedural: Statutory Right to an ALJ Hearing. The employer in *Castro* also contended that both LHWCA section 19(c) and the Administrative Procedure Act guaranteed it an ALJ hearing addressing the reasonableness and necessity of a vocational rehabilitation plan before the District

Director entered an award of such a plan. The Ninth Circuit held that because LHWCA section 39(c) authorizes the Secretary to direct and approve vocational rehabilitation and the Secretary has delegated that authority to the district director, the employer was not entitled to an ALJ hearing on the reasonableness of Castro's plan prior to its implementation.

Procedural: Timeliness of Petition for Review. In *Methe*, the Fifth Circuit applied the plain language of LHWCA section 21(c) and required that a petition for review of a Board decision be filed within 60 days. Although the employer filed a timely petition for review, the claimant filed a petition 70 days after the Board issued its decision and order. The claimant sought review of a determination that the average-weekly-wage calculation should not include employer contributions to his retirement and health insurance funds. Although the claimant called his petition a "cross-application to enforce" the Board order, the Court found that in substance, the filing sought to reverse the Board's order on the contested point. As such, it amounted to a petition for review and was barred by section 21(c) because it was not timely filed. The Court also rejected the claimant's argument that because a petition for modification of the compensation award had already been filed, the Court would eventually have to hear the issue and should review the Board's holding in the interest of equity or judicial efficiency.

Permanent Partial Disability – Shoulder is an Unscheduled Injury. In *Keenan v. Director for the Benefits Review Board*, 392 F.3d 1041 (9th Cir. 2004), the Ninth Circuit addressed whether a longshoreman who injured his shoulder should be compensated for a permanent partial scheduled injury to the arm under section 8(c)(1), an unscheduled permanent partial loss of wage-earning capacity under section 8(c)(21), or a nominal “*Rambo*” award. First, the Court reaffirmed its “*situs of the injury*” rule, under which an injury to a body part not listed in the section 8(c)(1)-(20) schedule must be compensated as a section 8(c)(21) unscheduled injury even though the symptoms may extend beyond the injured area and cause impairment to a scheduled body part. The Court implicitly rejected the argument that the shoulder is part of the arm for purposes of compensating permanent partial disability and affirmed the denial of a scheduled

award. Following the shoulder injury, the employee was reassigned to a position as a marine clerk where his post-injury wages were significantly higher than those before his injury. Continuing medical restrictions required that he pass up a promotion to foreman however. Because the LHWCA only obligates the employer to compensate the injured worker up to the level of his pre-injury wages and not for an inability to earn hypothetical wages that he would have enjoyed but for the injury, the Court held that claimant was also not entitled to benefits under section 8(c)(21) on account of the missed promotion. However, a majority of the panel held that the employee had significant potential to suffer diminished wage-earning capacity in the future as a result of the injury and therefore reversed the denial of a *de minimis* award of the kind sanctioned in *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121 (1997).



Longshore and Harbor Workers' Compensation Act

	FY 2004	FY 2005
Number of Employees (FTE Staffing Used)	101	99
Administrative Expenditures*	\$ 12.5 M	\$ 12.5 M
Lost-Time Injuries Reported	22,646	24,980
Total Compensation Paid**	\$718.2 M	\$750.3 M
Wage-Loss and Survivor Benefits	\$516.9 M	\$540.3 M
Medical Benefits	\$201.3 M	\$210.0 M
Sources of Compensation Paid		
Insurance Companies**	\$262.8 M	\$278.9 M
Self-Insured Employers**	\$309.8 M	\$322.5 M
LHWCA Special Fund	\$135.2 M	\$134.6 M
DCCA Special Fund	\$ 10.9 M	\$ 10.6 M
DOL Appropriation	\$ 2.7 M	\$ 2.6 M

*Direct administrative costs to OWCP only; excludes DOL support costs of \$17.4 million in FY 2004 and \$15.0 million in FY 2005.

**Figures are for CY 2003 and CY 2004, 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

Introduction

Congress passed the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or Act) in October 2000; Part B became effective on July 31, 2001. Part B of the Act compensates current or former employees (or their 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 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).

The EEOICPA initially included a Part D program that required DOE to establish a system for contractor employees and their eligible survivors to seek DOE assistance in obtaining state workers' compensation benefits if the employee had sustained a covered illness as a result of work-related exposure to a toxic substance at a DOE facility. In the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375 (October 28, 2004), Congress abolished Part D of EEOICPA, and created a new Part E program that was assigned to the Department of Labor (DOL) to administer. Part E established a new system of federal payments for DOE contractor employees, eligible survivors of such employees, and uranium miners, millers, and ore transporters as defined by RECA Section 5.

As of the end of FY 2005, since the program's inception, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) had provided over 15,000 employees or their families with compensation payments totaling nearly \$1.2 billion under Part B. In addition, the program had paid over \$73.1 million for medical expenses associated with the treatment of accepted medical conditions. In FY 2005 alone, nearly 4,000 employees or their families received Part B compensation of \$319.1 million, while \$32.8 million was paid in covered medical benefits.

At the end of FY 2005, since Part E's inception, DEEOIC had provided 1,535 employees or their families with Part E compensation payments exceeding \$194.3 million.

Administration

Executive Order 13179 designated four federal agencies to administer the Act: DOL, the Department of Health and Human Services (HHS), DOE, and DOJ. As the lead agency, DOL has primary responsibility for administering the Act, including adjudication of claims for compensation and payment of benefits for conditions covered by Parts B and E. DOL is focused on issuing quality decisions, and providing clear and effective communication to DEEOIC's customers and stakeholders.

HHS, through its National Institute for Occupational Safety and Health (NIOSH), establishes procedures for estimating radiation doses and develops guidelines to determine the probability that a cancer was caused by workplace exposure to radiation. 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). Under the Act, Congress established the SEC to allow eligible claims to be compensated without the completion of a radiation dose reconstruction or determination of the probability of causation. To qualify for compensation under the SEC, a covered employee must have at least one of twenty-two "specified cancers" and have worked for a specified period of time at an SEC facility. As of September 30, 2005, SEC facilities, for certain workers and specified timeframes, included three gaseous diffusion

plants in Oak Ridge, Tennessee, Paducah, Kentucky, and Portsmouth, Ohio; an underground nuclear test site on Amchitka Island, Alaska; Mallinckrodt Chemical Works, Destrehan Street Facility, St. Louis, Missouri; the Iowa Army Ammunition Plant, Burlington, Iowa; and the Y-12 Plant, Oak Ridge, Tennessee.

DOE provides DOL and HHS with relevant information on worker exposures, including access to restricted data and verification of covered employment.

DOJ notifies beneficiaries who have received an award of benefits under RECA Section 5 of their possible EEOICPA eligibility and provides RECA claimants with information required by DOL to complete the claim development process.

The inventory of EEOICPA case files for living employees and for qualified survivors of deceased workers continued to grow. In FY 2005 alone, DOL created a total of 6,998 case files (9,972 claims) for living or deceased employees under Part B and 34,899 cases (39,830 claims) under Part E.

The Final Adjudication Branch (FAB) maintained its central office in Washington, D.C., with offices collocated with each district office. To accommodate the Part E caseload in FY 2005, FAB's office space was increased and new staff hired, doubling FAB's size. The FAB provided reviews of each recommended district office

decision to ensure that the Act's requirements, program policy, and procedures were followed. FAB also considered challenges brought forth by claimants through reviews of the written record or oral hearings. During FY 2005, FAB scheduled and conducted 656 oral hearings at locations near claimants, issuing final decisions regarding the claim and specific claimant challenges. The DEEOIC continued to allow claimants to challenge final FAB decisions through reconsideration and reopening processes. Once claimants exhaust their administrative remedies under the Act, they may pursue judicial review at the district court level.

Benefits under the Act

Parts B and E of the EEOICPA are separate programs with unique criteria for establishing positive claims. Some workers may qualify for both types of benefits.

Part B. To qualify for benefits under Part B of the Act, an employee must have worked for DOE or a DOE contractor or subcontractor during a covered time period at a DOE facility, or have worked for a private company designated as a covered Atomic Weapons Employer (AWE) or beryllium vendor. The worker must have developed cancer, chronic beryllium disease, beryllium sensitivity, or chronic silicosis (for individuals who worked in Nevada and Alaskan nuclear test tunnels) due to exposures at the covered work site. A covered employee who qualifies for benefits under Part B

may receive a one-time lump-sum payment of \$150,000 plus medical expenses related to his or her accepted, covered condition. Survivors of these workers may also be eligible for a lump-sum compensation payment. Part B also provides for payment of \$50,000 to individuals (or their eligible survivors) who received an award from DOJ under Section 5 of the RECA.

There are several different types of claims under Part B of the Act. Claims for the \$50,000 RECA supplement are the least complex, involving verification by DOJ that a RECA award has been made, and documentation of the identity of the claimant (including survivor relationship). For all claims, the employment and illness documentation is developed by claims staff and evaluated in accordance with the criteria in the EEOICPA and relevant regulations and procedures. DOL district offices then issue recommended decisions to claimants.

DOL can move relatively quickly to recommended decisions on cases involving "specified cancers" at SEC facilities because the Act provides a presumption that any of the twenty-two listed cancers incurred by an SEC worker was caused by radiation exposure at the SEC facility.

For cases involving claimed cancers that are not covered by SEC provisions (that is, either cancers incurred at a non-SEC facility, a non-specified cancer incurred at an SEC facility, or an employee who did not have sufficient employment duration to qualify for the SEC designation), there is an intervening step in the process to determine causation called "dose reconstruction." In these instances, once DOL 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 can be estimated. After NIOSH completes the dose reconstruction and calculates a

dose estimate for the worker, DOL takes this estimate and applies the methodology promulgated by HHS in its probability of causation regulation to determine if the statutory causality test is met. The standard is met if the cancer was "at least as likely as not" related to covered employment, as indicated by a determination of at least 50 percent probability. DOL's district office then issues a recommended decision on eligibility for EEOICPA benefits. In FY 2005, the district offices referred 3,073 Part B cases to NIOSH for dose reconstruction.

Part E. EEOICPA's Part E establishes a system of federal payments for employees of DOE contractors and subcontractors (or their eligible survivors) for illnesses determined to have resulted from exposure to toxic substances at a DOE facility. Uranium miners, millers, and ore transporters as defined by Section 5 of the RECA may also receive Part E benefits. Benefits are provided for any illness once it is determined that the illness was at least as likely as not that exposure to a toxic substance was a significant factor in causing, contributing to, or aggravating the illness or death of an employee. Additionally, the Act provides that any determination made under Part B to award benefits (including RECA Section 5 claims), as well as any positive finding by a physician panel under Part D that was accepted by DOE, is an automatic acceptance under Part E for causation of the illness. The maximum benefit under Part E is \$250,000 for all claims relating to any individual employee.

Unlike Part B, which compensates employees with a uniform lump-sum payment of \$150,000 for certain occupational illnesses, regardless of how severe or debilitating that illness is, Part E compensates covered employees for the varying percentage of impairment of the whole person that is related to a covered illness. Impairments included in ratings are those that have reached maximum medical improvement (MMI), i.e., they are well-stabilized and unlikely to improve substantially with or without medical treatment. MMI is not required if an illness is in a terminal or progressive stage. The Act specifically requires that impairment be determined in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment (AMA's Guides)*. Eligible employees receive \$2,500 for each percentage point of impairment found to be attributable to a covered illness under Part E.

Under Part E, covered employees may also be eligible to receive compensation for wage loss. Wage loss is based on each qualifying year (prior to normal Social Security Administration retirement age) in which, as a result of the covered illness, an employee's earnings fell a specific percentage below his or her average annual earnings for the 36-month period prior to suffering wage loss (not including periods of unemployment). The Act provides that covered, eligible employees may receive \$15,000 for any year in which they made less than 50 percent of their pre-disability average annual wage, as a result of a covered illness, and \$10,000 for any year in which they made more than 50 percent but less than 75 percent of that average annual wage. Medical benefits for the covered condition are also payable, in addition to compensation, and are not limited by the \$250,000 cap.

Part E survivor benefits include a basic lump sum of \$125,000 where it is established that the employee was exposed to a toxic substance at a DOE facility and that the exposure caused, contributed to, or aggravated the death of the employee. Part E also provides \$25,000 in additional benefits to eligible survivors, if the deceased employee had, as of his or her normal retirement age under the Social Security Act, at least ten aggregate calendar years of wage-loss of at least 50 percent of his or her average annual wage. If an employee had twenty or more such years, the additional amount paid to an eligible survivor may increase to \$50,000. The maximum Part E compensation benefit for a survivor is \$175,000.

Recommended Decisions and Final Decisions. The DEEOIC district offices issue recommended decisions (recommending either acceptance or denial of claims) to claimants. Claimants may agree with the recommended decision, or may object and request either a review of the written record or an oral hearing. In either case, FAB reviews the recommended decision and any evidence/testimony submitted by the claimant and issues a final decision, either awarding or denying benefits. FAB may also remand a decision to the district office if further development of the case is necessary. Claimants can appeal a Final Decision to the U.S. District Courts.

In FY 2005, district offices issued 13,668 claim-level recommended decisions under Part B and 2,792 claim-level recommended decisions under Part E. The FAB issued 11,709 claim-level final decisions under Part B and 2,105 claim-level final decisions under Part E, significantly surpassing the operational plan goals put in place for the issuance of final agency decisions for Part B and Part E claims. Under Part B, 4,319 claims (37 percent) received approval, while 7,390 (63 percent) were denied. Most Part B claims' denials occurred because the claimed condition was not covered under the Act, the period of employment or claimed facility were not covered under the Act, there was an ineligible survivor, or there was insufficient causal connection between the claimed employment, radiation exposure, and the condition or disease claimed. Under Part E, 2,042 claims (97 percent) received approval, while 63 (3 percent) were denied.

Part E Transfer

With Part E's enactment, DOE transferred all Part D cases (over 25,000) to DOL. Part D cases initially were shipped to the Jacksonville District Office for review and were then forwarded to the appropriate district offices for processing. In instances where claims had also been filed under Part B, case files were merged into one Part B/Part E case. Claimants were notified of this change and of the status and locations of their case files.

DOL also quickly identified certain types of claims that met specific, straightforward criteria contained in the amendment itself for immediate adjudication. Within two months of enactment, DOL began providing compensation under the newly established Part E, using preliminary procedural guidance. On January 10, 2005, Assistant

Secretary of Labor for Employment Standards Victoria A. Lipnic, along with Senator Lamar Alexander, presented one of the first Part E compensation payments of \$125,000 to a surviving widow of an employee who worked at the Y-12 facility in Oak Ridge, Tennessee. In addition, DOL increased its district office staffing to accommodate the influx of new Part E claims.

DOL successfully met Congress's 120-day deadline to prescribe regulations and to begin implementing the new Part E. The Interim Final Rule (IFR), published on June 8, 2005, directed the Act's administration and the claims adjudication process. Prior to the issuance of the Part E IFR, DOL paid over \$55 million to 447 recipients. Following the IFR's publication, the National Office finalized comprehensive procedural and policy guidance for Part E and trained all DEEOIC staff members nationwide to implement all aspects of Part E claims.

In August 2005, DOL published a procedure manual for Part E to address the full scope of the EEOICPA, including definitions, resource center roles, case management, evidentiary requirements, wage loss/impairment determinations, coordination with state workers' compensation programs, and the related adjudication processes. DEEOIC also issued seven policy bulletins in FY 2005 to clarify the administration of Part E. All district offices and resource centers received the DEEOIC manuals and bulletins and the DEEOIC web site made the manuals and bulletins publicly available. New forms were required to allow claimants to file under Part E of the EEOICPA. Under the new guidelines, DEEOIC changed old forms and created new forms to accommodate Part E.

DEEOIC's Energy Case Management System (ECMS) was first deployed on July 31, 2001 to provide a standardized system to ensure rapid online entry, maintenance, and tracking of Energy worker claims submitted under the Act. In FY 2005, DEEOIC rapidly expanded ECMS to accommodate the new and different requirements of Part E, and to track Part E claims, activities, payments, and workload. ECMS training, job aides, notes, and technical support also was provided to staff.

In FY 2005, DEEOIC also initiated a tool called the Site Exposure Matrices (SEM) database which will house information from a variety of sources, including DOE, former worker medical survey programs, and epidemiological studies, regarding toxic substances present at major DOE sites, AWE facilities, and the 4,000 uranium mines and mills covered by RECA. The SEM also will contain information on the types of illnesses affiliated with exposure to particular biological or chemical substances. Designed as a living database that will be continually enhanced, the SEM will serve as a valuable resource for DOL claims examiners in assessing the types of toxic exposures employees sustained as a result of employment at DOE facilities. The SEM will ease claimants' evidentiary burdens and speed the claims process.

Funding

In FY 2005, DOL spent \$60.5 million under Part B and \$34.7 million under Part E to administer EEOICPA. These funds supported 245 full-time equivalent (FTE) staff for Part B and 27 FTE for Part E. Additional funding under Part B in the amount of \$47.3 million was transferred to support activities at the Department of Health and Human Services' NIOSH.

DOL funding covered direct and indirect expenses to administer the Washington, D.C. National Office; five Final Adjudication Branch Offices; four DEEOIC District Offices in Seattle, Washington; Cleveland, Ohio; Denver, Colorado; and Jacksonville, Florida; and twelve Resource Centers. A private contractor processed medical bills to reduce overhead and to increase program efficiency. The NIOSH portion included \$4.5 million in funds for the radiation dose reconstruction process and support of the Advisory Board on Radiation and Worker Health.

Government Performance Results Act

DOL is committed to measuring its outcomes and maintaining accountability for achieving the fundamental goals of the Energy Employees Occupational Illness Compensation Program (EEOICP). High performance standards, focusing on moving EEOICP claims rapidly through the initial and secondary adjudication stages, were established. 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" under Part B were as follows:

For initial processing of Part B claims for benefits, DOL's FY 2005 goal was to complete initial processing in 80 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 was generally more difficult to obtain). Through the efforts of the four district offices, timely initial processing was completed in 81 percent of the cases, exceeding the 80 percent goal.

In the processing of Part B final decisions through the efforts of FAB, 95 percent of the decisions in FY 2005 were within the program standards, also in excess of the goal of 80 percent.

The Labor Department, in an urgent response to claimants whose cases had been transferred from DOE to DOL and who had been waiting for up to four years for a decision, also established a goal to issue at least 1,200 Part E payments by the end of FY 2005. As of September 30, 2005, DOL exceeded that goal by making 1,535 payments totaling \$194.3 million in Part E compensation to eligible claimants.

Services to Claimants

DEEOIC's network of Resource Centers at major DOE sites continued to afford assistance to current or former DOE employees, surviving family members, contractors and subcontractors, and uranium workers who sought to file claims. In FY 2005, DEEOIC opened its twelfth Resource Center in Amherst, New York to assist claimants in completing the necessary claim forms. DOL's Most Efficient Organization (MEO) initiative allowed resource centers to assume additional responsibilities related to initial employment verification and occupational history development for Part E claims. In FY 2005, resource centers processed 439 initial employment verification requests and conducted 315 occupational history interviews.

In FY 2005, DEEOIC hosted 73 town hall meetings in 37 locations throughout the country to help educate the public about the Part E program. As a result of the town hall meetings, Resource Centers generated 566 new Part E claims and 485 Part B claims.

DEEOIC's web site continued to be maintained with weekly content updates. The web site allowed claimants to access brochures, complete forms, and file claims electronically. The site also offered information about the statute and regulations governing Part B and Part E; the locations and times of town hall meetings; district office and resource center locations and contact numbers; press releases; medical provider enrollment information; current statistics; links to DOE, DOJ, and NIOSH websites; and toll free numbers where additional information and assistance could be obtained. In FY 2005, DEEOIC posted the new EEOICPA regulations, added a searchable database of DEEOIC final decisions, created a link to provide Part E information that included the EEOICPA Part E procedure manual, and added DEEOIC and NIOSH weekly web statistics.

In order to provide improved medical bill payment processes, OWCP retained the services of Lockheed Martin Information Technology / Affiliated Computer Services, Inc. (ACS) in FY 2001 and the service was implemented in DEEOIC in FY 2005. The use of a central bill processing vendor allowed the DEEOIC to provide a high level of service to eligible employees and their medical providers in FY 2005. DEEOIC issued detailed procedures and conducted training for staff that outlined the medical bill submission process, electronic communication, prompt payment

issues, prior authorizations, and the use of the ACS interactive web portal. ACS accessed claimant data for determination of eligible claimants and approved medical conditions, and received and processed bills submitted for authorized medical and travel expenses. ACS also stored and maintained information pertinent to provider enrollment, along with data and criteria pertaining to procedures, drugs, diagnoses, and payment history necessary for maintenance of the system's edit and audit criteria files. The use of a centralized medical bill processing service in FY 2005 allowed DEEOIC to streamline its medical payments and provide greater ease for claimants seeking assistance and providers seeking reimbursement for services rendered.

Under the new Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, 42 U.S.C. § 7385s-15, signed into law on October 28, 2004, an Office of the Ombudsman was created for a period of three (3) years, to provide information to claimants, potential claimants, and other interested parties on the benefits available under EEOICPA and how to obtain those benefits. The Office of the Ombudsman, independent from OWCP, reports annually to Congress concerning complaints, grievances, and requests for assistance received during the calendar year covered by the report.

Statutory and Regulatory Activities

As noted previously, EEOICPA was originally enacted on October 30, 2000 and established a federal compensation program (known as Part B of the Act) that has been administered by DEEOIC since its inception on July 31, 2001. The initial version of EEOICPA also created a second program (known as Part D of the Act) that required DOE to establish a system by which DOE contractor employees (and their eligible survivors) could seek assistance from DOE in obtaining state workers' compensation benefits if a Physicians Panel determined that the employee in question had sustained a covered illness as a result of work-related exposure to a toxic substance at a DOE facility. A positive panel finding that was accepted by DOE required DOE, to the extent permitted by law, to order its contractor not to contest the claim for state workers' compensation benefits.

In FY 2005, Congress amended EEOICPA in Subtitle E of Title XXXI of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, 118 Stat. 1811, 2178 (October 28, 2004), by abolishing Part D and creating a new Part E (codified at 42 U.S.C. 7385s through 7385s-15) that it assigned to DOL for administration. Part E establishes a new system of variable federal payments for DOE contractor employees, uranium workers covered by section 5 of the Radiation Exposure Compensation Act, and eligible survivors of such employees. Congress also amended several other provisions contained in EEOICPA that applied to Part B and specified that DOL was to prescribe regulations

implementing the amendments to EEOICPA and commence administration of Part E within 210 days of its enactment.

Immediately following enactment of this legislation, the EEOICPA Part E Interim Final Rule Team was assembled and began analyzing the numerous issues presented by this very complex new legislation. The analysis led to development of possible options for resolving each of the issues that had been identified. An extensive series of meetings then took place to determine which option to adopt in regard to each issue. As these determinations were being made, regulatory text was being drafted to implement the selected options. The EEOICPA Interim Final Rule was signed by the Assistant Secretary for Employment Standards on May 26, 2005, within the 210 day deadline, and was published in the *Federal Register* on June 8, 2005. 70 Fed. Reg. 33,590 (2005).

Litigation

Fink v. Chao, 395 F. Supp. 2d 625 (N.D. Ohio 2005), was the first lawsuit brought by a plaintiff challenging the denial of his claim for benefits under Part B of EEOICPA. Fink asserted that he had complied with the election of remedies provision of the statute, found at 42 U.S.C. § 7385d(a), which provides that claimants are ineligible for EEOICPA Part B benefits unless they timely dismiss corresponding tort claims against either a beryllium vendor or an atomic weapons employer. He also asserted that DEEOIC had violated his constitutional right to equal protection by failing to adjudicate his claim the same way as it had other similarly situated claimants. The court agreed with the Secretary of Labor's position that Fink's dismissal of his appeal from an adverse summary judgment decision of an Ohio trial court in his tort action against a beryllium vendor did not satisfy the election of remedy requirement in EEOICPA that he "dismiss such tort case." The court found that Fink was required to adhere to the specific rules governing "dismissal" of the tribunal where his tort action was pending, and that under Ohio law, his dismissal of his appeal, even though this may have terminated all further proceedings in the case, resulted in the adverse decision of the Ohio trial court becoming final and did not dismiss the case itself. The court also found that Fink's equal protection claim was moot as the government could not be said to discriminate against a person by refusing to provide statutory benefits to which he is not entitled. Therefore, the court granted the Secretary's motion to dismiss Fink's lawsuit under F.R.C.P. 12(b)(6).



Energy Employees Occupational Illness Compensation Program Act

	FY 2004	Part B FY 2005	Part E* FY 2005
Number of Employees (FTE staffing Used)	240	245	27
Administrative Expenditures**	\$ 36.4 M	\$ 60.5 M	\$ 34.7 M
Claims Created	12,143	9,972	39,830
Recommended Decisions (Claims)	11,097	13,668	2,792
Final Decisions (Claims)	10,201	11,709	2,105
Number of Claims Approved (Final)	3,370	4,319	2,042
Total Lump Sum Compensation Payments	\$250.6 M	\$319.1 M	\$194.3 M
Number of Medical Bill Payments	36,077	70,251	328
Total Medical Payments***	\$ 24.9 M	\$ 32.8 M	\$ 0.02 M

*Part E became effective during FY 2005 (October 28, 2004).

**Includes Department of Labor expenditures only; Part B excludes funds transferred to the Department of Health and Human Services for that agency's responsibilities under EEOICPA (\$53.2 million in FY 2004 and \$47.3 million in FY 2005, respectively), while Part E excludes \$0.2 million to fund an ombudsman position.

***Part B medical payments in FY 2005 represent payments made for cases accepted under both Part B and Part E. Part E medical payments in FY 2005 represent payments made for Part E only.

Appendix

A. FECA Tables A1–A4	56
B. Black Lung Tables B1–B6	60
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D. EEOICPA Tables D1–D5	71

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 A1

Federal Employees' Compensation Rolls

FY 1996—FY 2005
(Cases at End-of-Year)

Roll Type	Fiscal Year									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total Periodic Roll	56,374	55,484	56,159	54,897	54,709	56,133	56,751	58,621	57,827	60,709
Long-Term Disability	50,021	49,319	50,105	48,957	48,870	50,409	51,092	53,099	52,377	55,257
Death	6,353	6,165	6,054	5,940	5,839	5,724	5,659	5,522	5,450	5,452

Table A2

Federal Employees' Compensation Program Summary of Claims Activity

FY 1996—FY 2005

Claim Activity	Fiscal Year									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Incoming Cases										
Cases Created	175,052	173,319	165,135	166,544	174,471	165,915	158,118	168,174	162,965	151,690
Traumatic	150,204	146,489	138,975	140,383	145,915	137,877	132,250	142,325	138,521	129,427
No Lost Time	75,829	78,642	75,321	83,472	91,620	86,402	80,439	84,368	80,018	74,071
Lost Time	74,375	67,847	63,654	56,911	54,295	51,475	51,811	57,957	58,503	55,356
Occupational Disease	24,689	26,680	25,954	25,999	28,406	27,869	25,739	25,747	24,320	22,114
Fatal Cases	159	150	206	162	150	169	129	102	124	149
Wage-Loss Claims Initiated	20,392	19,181	19,315	19,759	21,899	23,386	23,193	24,245	24,189	21,455
Hearings and Review										
Total Requests for Hearing	7,951	7,642	7,496	7,164	6,992	6,875	6,820	6,751	8,132	6,757
Total Hearing Dispositions	7,101	7,525	8,087	7,926	7,418	6,599	6,272	6,743	7,682	6,961

Table A3

Federal Employees' Compensation Program Obligations

FY 1996—FY 2005
(\$ thousands)

Type of Obligation	Fiscal Year									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total Obligations	\$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	\$2,602,815
Total Benefits	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	2,476,479
Compensation Benefits	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	1,664,405
Medical Benefits	481,833	450,206	476,167	492,835	548,596	617,414	667,797	658,121	703,571	672,006
Survivor Benefits	126,568	122,554	124,213	126,009	126,965	128,122	130,870	130,506	130,537	140,068
Total Administrative Expenditures	78,116	80,893	80,235	87,425	91,532	109,319	110,422	129,636	133,781	126,336
Salaries and Expenses	65,145	67,303	69,207	67,567	70,634	78,971	81,210	86,358	86,253	86,811
Fair Share	12,971	13,590	11,028	19,858	20,898	30,348	29,212	43,278	47,528	39,525

Table A4

Federal Employees' Compensation Program Chargeback Costs, by Major Federal Agency

CBY 1996—CBY 2005
(\$ thousands)

Federal Agency	Chargeback Year ¹									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total Costs	\$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	\$2,334,194
U.S. Postal Service	547,141	551,142	577,159	594,503	666,310	720,518	785,199	846,876	852,945	840,141
Department of the Navy	256,210	247,488	243,938	240,492	241,585	246,881	248,250	245,461	245,145	237,791
Department of the Army	163,986	159,781	162,152	163,127	166,989	169,219	174,832	181,298	177,250	174,660
Department of Veterans Affairs	140,729	136,607	140,118	137,865	143,221	145,909	151,612	157,315	155,391	156,170
Department of Homeland Security	N/A	N/A	N/A	N/A	N/A	N/A	N/A	83,975	121,089	138,342
Department of the Air Force	116,141	117,242	124,302	123,349	128,134	134,106	132,538	135,509	129,229	124,516
Department of Transportation	89,407	89,369	95,823	97,155	96,936	99,556	101,716	94,682	92,659	92,687
Department of Justice	58,136	63,878	67,875	76,319	83,873	91,197	95,620	66,131	74,011	80,090
Department of Agriculture	58,926	59,230	60,348	59,851	64,882	66,750	69,563	72,312	69,245	68,681
Department of Defense	61,069	61,360	62,729	63,563	64,797	64,761	63,888	65,429	63,816	62,996
All Other Agencies	349,066	347,829	353,536	352,033	367,907	390,201	396,230	374,299	359,003	358,120

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

Table B1

**Part C Black Lung Claims Adjudication
at the Initial Level**

FY 2005

Type of Claim	PDO's Issued ¹	Approval Rate
Trust Fund	814	
Approved	118	14.50%
Denied	696	
Responsible Operator	3,845	
Approved	477	12.41%
Denied	3,368	
Total Findings	4,659	
Total Approved	595	12.77%
Total Denied	4,064	

¹ PDO is "Proposed Decision and Order".

Table B2

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

FY 2005

State	Total Claims Received ¹	MBO Claims ²	In Payment ³	Total Benefits (\$ 000) ⁴
Alabama	33,424	89	1,078	\$8,395
Alaska	149	0	11	86
Arizona	2,028	6	152	1,183
Arkansas	3,812	18	208	1,619
California	6,457	22	306	2,383
Colorado	7,007	24	491	3,824
Connecticut	1,000	2	83	646
Delaware	770	2	69	537
District of Columbia	285	0	16	125
Florida	11,800	97	893	6,953
Georgia	1,628	11	173	1,347
Hawaii	16	0	1	8
Idaho	244	0	17	132
Illinois	31,056	82	1,344	10,465
Indiana	17,761	48	841	6,548
Iowa	5,126	12	273	2,125
Kansas	2,169	2	77	599
Kentucky	89,709	1,076	5,112	39,809
Louisiana	349	1	24	187
Maine	44	0	3	23
Maryland	6,639	31	404	3,146
Massachusetts	237	1	26	202
Michigan	10,471	27	491	3,824
Minnesota	146	0	12	93
Mississippi	362	2	30	234
Missouri	4,624	6	220	1,713
Montana	856	2	40	311
Nebraska	128	0	11	86
Nevada	420	2	40	311
New Hampshire	28	0	7	54
New Jersey	4,279	20	307	2,391
New Mexico	2,371	3	130	1,012
New York	4,005	15	234	1,822
North Carolina	3,396	31	349	2,718
North Dakota	158	0	6	47
Ohio	53,401	176	3,090	24,062
Oklahoma	3,778	20	177	1,378
Oregon	628	2	40	311
Pennsylvania	136,002	972	11,638	90,631
Rhode Island	40	0	3	23
South Carolina	897	10	124	956
South Dakota	50	0	6	47
Tennessee	20,795	164	1,169	9,103
Texas	1,701	7	128	997
Utah	4,076	23	289	2,250
Vermont	49	0	6	47
Virginia	42,752	581	3,681	28,664
Washington	1,590	5	83	646
West Virginia	109,355	1,182	8,218	63,996
Wisconsin	444	2	36	280
Wyoming	2,589	3	182	1,417
All Other	451	3	21	163
Total	631,552	4,782	42,370	\$329,933

¹ All filings since July 1, 1973, including terminated and nonapproved claims.

² Active Medical Benefits Only (MBO) claims as of 9/30/05.

³ Active claims in payment status, excluding MBO claims, as of 9/30/05.

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 B3

Black Lung Claims, by Class of BeneficiaryFY 1996—FY 2005¹

Class of Beneficiary	Number of Beneficiaries ²									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Primary Beneficiaries:										
Miners	32,452	29,839	27,340	24,838	22,568	18,248	16,395	14,773	13,398	12,012
Widows	43,155	42,468	41,585	40,517	39,053	35,660	34,236	32,615	30,810	29,110
Others	1,393	1,444	1,476	1,508	1,497	1,467	1,221	1,238	1,247	1,248
<i>Total Primary Beneficiaries</i>	77,000	73,751	70,401	66,863	63,118	55,375	51,852	48,626	45,455	42,370
Dependents of Primary Beneficiaries:										
Dependents of Miners	26,845	24,599	22,158	19,953	17,978	13,924	12,432	11,131	10,020	9,004
Dependents of Widows	1,558	1,491	1,417	1,384	1,306	1,123	1,077	1,052	1,006	944
Dependents of Others	520	511	512	516	508	108	386	353	238	213
<i>Total Dependents</i>	28,923	26,601	24,087	21,853	19,792	15,155	13,895	12,536	11,264	10,161
Total, All Beneficiaries	105,923	100,352	94,488	88,716	82,910	70,530	65,747	61,162	56,719	52,531

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 B4

Department of Labor Black Lung Benefits Program Obligations

FY 1996—FY 2005

(\$ thousands)

Type of Obligation	Fiscal Year									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total Obligations	\$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	\$1,061,698
Total Benefits ¹	499,622	487,910	459,061	439,442	422,656	396,928	384,234	370,389	346,864	329,933
Income Benefits ²	404,623	392,546	376,985	363,871	350,266	336,813	320,039	307,371	292,555	279,965
Medical Benefits ³	95,000	95,363	82,076	75,571	72,390	60,116	64,196	63,018	54,309	49,968
Administrative Costs ⁴	47,314	46,128	46,035	50,788	49,820	52,252	54,273	55,332	55,803	56,872
Interest Charges ⁵	445,192	470,635	494,726	515,016	541,117	567,814	595,589	620,582	650,579	674,894
Repayable Advances ⁶	373,500	375,000	370,000	402,000	490,000	505,000	465,000	525,000	497,000	446,000
Cumulative Debt⁷	\$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	\$9,186,557

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 B5

Monthly Part C Black Lung Benefit Rates

1973—2005

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
1/1/05-12/31/05	562.80	844.10	984.80	1,125.50

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 (1/84 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 B6

Funding and Disbursements of the Black Lung Disability Trust Fund

FY 2005

(\$ 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 2004	\$8,949	\$0	\$236	\$9,185	\$23,725	\$290	\$2,904	\$26,919	\$3,140	\$0	\$30,058
November 2004	50,832	0	354	51,186	23,584	240	2,978	26,802	3,212	0	30,014
December 2004	50,735	0	199	50,934	23,606	335	4,079	28,020	4,688	0	32,708
January 2005	47,002	0	357	47,359	23,382	327	4,296	28,005	5,152	0	33,157
February 2005	46,155	0	107	46,262	23,688	262	3,132	27,081	5,073	0	32,154
March 2005	47,705	0	345	48,050	23,709	475	6,495	30,678	5,073	0	35,751
April 2005	50,562	0	187	50,749	23,531	275	3,684	27,490	5,070	0	32,560
May 2005	52,674	0	430	53,104	23,271	326	4,684	28,281	5,070	0	33,351
June 2005	53,640	0	214	53,854	23,065	462	4,111	27,638	5,951	0	33,589
July 2005	51,171	0	230	51,401	22,867	289	3,360	26,516	4,606	0	31,122
August 2005	51,402	0	289	51,691	22,864	295	4,098	27,256	4,772	0	32,028
September 2005	99,059	446,000	393	545,452	22,673	270	2,306	25,249	5,066	674,894	705,208
Totals	\$609,886	\$446,000	\$3,340	\$1,059,226	\$279,965	\$3,843	\$46,125	\$329,933	\$56,872	\$674,894	\$1,061,698

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 C1

Total Industry Compensation and Benefit Payments Under LHWCA¹

CY 1995—CY 2004²

(\$ thousands)

Payments By:	Calendar Year									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Self-Insured Employers	\$257,895	\$272,688	\$263,255	\$261,559	\$283,991	\$278,952	\$307,708	\$310,940	\$309,843	\$322,520
Insurance Carriers	238,474	226,592	219,352	238,464	232,778	249,671	236,726	246,603	262,753	278,887
Total Payments	\$496,369	\$499,280	\$482,607	\$500,023	\$516,769	\$528,623	\$544,434	\$557,543	\$572,596	\$601,407

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 C2

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
10/01/04-9/30/05	523.58	1,047.16	261.79	1.59

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 C3

LHWCA and DCCA Special Funds' Expenditures¹

FY 1996—FY 2005

(\$ 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	
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
2005	134,549	122,418	1,973	5,002	5,156	4,588	10,604	9,767	597	0	240	527

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 2005. 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 C4

LHWCA and DCCA Special Funds' Assessments¹

CY 1996—CY 2005

(\$ 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
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
2005	135,000	388,258	CY 2004	11,500	5,402	CY 2004

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 C5

Summary of Case Processing Activities Under LHWCA¹

FY 1996—FY 2005

Adjudication Level and Case Status	Fiscal Year									
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
District Offices										
Pending Inventory of Cases	6,207	7,759	6,974	9,006	8,675	6,489	7,391	5,495	6,051	6,375
OALJ										
Carryover from Previous FY	4,141 ²	4,909	3,849 ⁷	3,862	3,668	3,562	3,388	2,980	2,517	2,355
New Cases	4,107	3,520 ⁵	3,579	3,462	3,566	3,500	3,276	3,036	2,926	2,763
Total Docket	8,248	8,429	7,428	7,324	7,234	7,062	6,664	6,016	5,443	5,118
(Dispositions)	3,339	3,557	3,566	3,656	3,672	3,674	3,529	3,499	3,088	2,800
Pending Inventory	4,909	4,872	3,862 ⁸	3,668	3,562	3,388	2,980 ¹¹	2,517	2,355	2,318
BRB										
Carryover from Previous FY	1,661 ³	399	348	318	326	295	248	208	267	222
New Cases	481	457	419	421	423	317	260	332	297	288
Total Docket	2,142	856	767	739	749	612	508	540	564	510
(Dispositions)	1,721 ³	539	464	438	467	384	319	282	355	304
Pending Inventory	399 ⁴	348 ⁶	318 ⁹	326 ¹⁰	295 ¹⁰	248 ¹⁰	208 ¹⁰	267 ¹⁰	222 ¹⁰	211¹⁰

¹ 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 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.

³ 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.

⁴ Number adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

⁵ Excludes 116 new "33(g)" cases and 1,496 "33(g)" cases remanded from BRB being held in abeyance.

⁶ Number adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ Data adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

¹¹ Includes dispositions of Boone 33(g) cases.

Table D1 Part B

Status of All EEOICPA Applications at the End of FY 2005¹

Case Status/Claims Activity	Case ²	Claim ³
Total Received-Program Inception Through 9/30/2005	49,452	69,237
Final Decisions Completed by Final Adjudication Branch (FAB) ⁴	33,420	42,857
Final Approved	12,020	17,324
Final Denied	21,400	25,533
Recommended Decisions by District Offices ⁵	2,120	2,996
Recommended Decisions Only, to Approve	294	454
Recommended Decisions Only, to Deny	1,826	2,542
Completed Initial Processing- Referred to NIOSH	10,617	15,829
Pending Initial Processing In District Office ⁶	3,295	7,555

¹ Statistics show the status of all applications filed from program inception through September 30, 2005.

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 D1 Part E

Status of All EEOICPA Applications at the End of FY 2005¹

Case Status/Claims Activity	Case ²	Claim ³
Total Received-Program Inception Through 9/30/2005	34,899	39,830
Backlog	25,530	
New	9,369	
Final Decisions Completed by Final Adjudication Branch (FAB) ⁴	2,064	2,105
Final Approved	2,027	2,042
Final Denied	37	63
Recommended Decisions by District Offices ⁵	239	309
Recommended Decisions Only, to Approve	168	180
Recommended Decisions Only, to Deny	71	129
Completed Initial Processing- Referred to NIOSH	125	165
Pending Initial Processing In District Office ⁶	32,471	37,251

¹ Statistics show the status of all applications filed from program inception through September 30, 2005.

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 D2 Part B

**Processing Activity During FY 2005
on All EEOICPA Cases/Claims¹**

Processing Activity	Case ²	Claim ³
Total Cases/Claims Received-FY 2005	6,998	9,972
Final Decisions by FAB Offices in FY 2005	8,138 ⁴	11,709
Final Approved	2,762	4,319
Final Denied	5,376	7,390
Modification Orders in FY 2005	208	253
Recommended Decisions by District Offices in FY 2005	9,100	13,668
Recommended Decisions Only, to Approve	3,117	4,923
Recommended Decisions Only, to Deny	5,983	8,745
Referrals to NIOSH in FY 2005	3,073	see case statistics
Lump Sum Compensation Payments in FY 2005	see claim statistics	3,913

¹ Activity statistics capture actions made during FY 2005 only, therefore the number of activities reported do not add up to the total number of cases/claims received during FY 2005. (Many activities recorded occurred on cases/claims received prior to FY 2005).

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 2005.

Table D2 Part E

Processing Activity During FY 2005 on All EEOICPA Cases/Claims

Processing Activity	Case ²	Claim ³
Total Cases/Claims Received-FY 2005	34,899	39,830
Final Decisions by FAB Offices in FY 2005	2,064 ³	2,105
Final Approved	2,027	2,042
Final Denied	37	63
Modification Orders in FY 2005	120	130
Recommended Decisions by District Offices in FY 2005	2,633	2,792
Recommended Decisions Only, to Approve	2,469	2,523
Recommended Decisions Only, to Deny	164	269
Referrals to NIOSH in FY 2005	125	see case statistics
Lump Sum Compensation Payments in FY 2005	see claim statistics	1,535

¹ "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).

² "Claim" counts are greater than case counts because they include numbers of employees and all survivors of employees who filed for benefits.

³ Total includes cases with recommended decisions in FY 2005.

Table D3 Part B

EEOICPA Cases With Approved Decisions and Payments by Category, Program Inception Through September 30, 2005

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	3,755	31.4%	6,106	\$187,173	16.0%
Special Exposure Cohort Cancer (CN)	3,471	29.1%	4,971	507,182	43.3%
Dose Reconstructed Cancer (CN)	1,739	14.6%	2,376	257,450	22.0%
Beryllium Disease (CBD) ⁴	1,815	15.2%	1,786	202,845	17.3%
Beryllium Sensitivity-Only (BS)	1,035	8.7%	N/A	N/A	N/A
Silicosis (CS)	59	0.5%	65	8,850	0.8%
Multiple Conditions ⁵	66	0.6%	64	8,700	0.7%
Total	11,940	100.0%	15,368	\$1,172,200	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 9/30/2005, but payments were not issued.

² Represents total lump sum compensation payments from EEOIC program inception to September 30, 2005.

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 D3 Part E

**EEOICPA Cases With Approved Decisions and Payments
by Category, Program Inception Through September 30, 2005**

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	225	11.1%	167	\$20,942	10.8%
Special Exposure Cohort Cancer (CN)	1,417	69.9%	1,208	153,318	78.9%
Dose Reconstructed Cancer (CN)	4	0.2%	4	500	0.3%
Beryllium Disease (CBD) ⁴	79	3.9%	61	7,425	3.8%
Beryllium Sensitivity-Only (BS)	18	0.9%	N/A	N/A	N/A
Silicosis (CS)	4	0.2%	1	125	0.1%
Multiple Conditions ⁵	9	0.4%	3	375	0.2%
Other	271	13.4%	91	11,638	6.0%
Total	2,027	100.0%	1,535	\$194,322	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 9/30/2005, but payments were not issued.

² Represents total lump sum compensation payments from EEOIC program inception to September 30, 2005.

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 D4 Part B

**EEOICPA Cases With Final Decision To Deny,
Program Inception Through September 30, 2005**

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	2,747
Alleged Survivor Not an Eligible Beneficiary	406
Claimed Condition Not Covered Under Part B of EEOICPA	9,552
Dose Reconstruction Reveals the Probability That the Cancer is Related to Employment is Less Than 50 Percent	5,509
Medical Evidence is Insufficient to Establish Entitlement	3,179
Other ¹	7
Total	21,400²

¹ Cases denied for other reasons.

² 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 D4 Part E

EEOICPA Cases With Final Decision To Deny, Program Inception Through September 30, 2005

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	11
Alleged Survivor Not an Eligible Beneficiary	21
Dose Reconstruction Reveals the Probability That the Cancer is Related to Employment is Less Than 50 Percent	0
Medical Evidence is Insufficient to Establish Entitlement	5
Total	37¹

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 D5 Part B

Most Prevalent Non-Covered Medical Conditions, EEOIC Program Inception Through September 30, 2005

Non-Covered Medical Condition	Percentage of All Denials For This Condition ¹
Other Lung Conditions	21%
Heart Condition/Failure/Attack/Hypertension	9
Chronic Obstructive Pulmonary Disease & Emphysema	7
Asbestosis	5
Renal Condition or Disorder (Kidney Failure, Kidney Stones)	5
Hearing Loss	3
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 9,750 cases that were denied because claimed condition was not covered under Part B of EEOICPA. These figures exclude cases that have a "covered" condition whereas Table D-4 Part B includes these cases.

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

Office Directory

U.S. Department of Labor
Office of Workers' Compensation Programs
200 Constitution Avenue, NW., Washington, D.C. 20210
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
Steven D. Breeskin, Deputy 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)
Rachel P. Leiton, Director
Roberta Mosier, Deputy Director
LuAnn Kressley, Chief, Final Adjudication Branch

Region I/II—Northeast
(Connecticut, Maine, Massachusetts,
New Hampshire, New Jersey, New York, Puerto Rico,
Rhode Island, Vermont, Virgin Islands)

Regional Office (New York)
R. David Lotz, Acting Regional Director
U.S. Department of Labor, ESA/OWCP
201 Varick Street, Room 740
New York, NY 10014
646-264-3100

New York FECA District Office
Zev Sapir, District Director
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New York Longshore District Office
Richard V. Robilotti, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
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David San Lorenzo, Office Manager
6000 North Bailey Avenue, Suite 2A, Box #2
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Boston FECA District Office
Susan Morales, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
JFK Federal Building, Room E-260
Boston, MA 02203
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Boston Longshore District Office
David Groeneveld, District Director
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617-624-6750

Region III—Philadelphia
(Delaware, District of Columbia, Maryland, Pennsylvania,
Virginia, West Virginia)

Regional Office
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Curtis Center, Suite 780 West
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215-861-5402

Philadelphia FECA District Office
John McKenna, District Director
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Philadelphia, PA 19106-3308
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Baltimore Longshore District Office
Emma Riley, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
The Federal Building, Room 410-B
31 Hopkins Plaza
Baltimore, MD 21201
410-962-3677

Norfolk Longshore District Office
Theresa Magyar, 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
Stuart Glassman, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
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

Maribeth Girton, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
100 N. Wilkes-Barre Blvd., Room 300 A
Wilkes-Barre, PA 18702
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Charleston Black Lung District Office

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Charleston Federal Center, Suite 110
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Greensburg Black Lung District Office

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Parkersburg Black Lung Sub-District Office

Vicki Frye, Supervisory Claims Examiner
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Federal Building, Suite 3116
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Parkersburg, WV 26101
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Mine Safety & Health Academy, Rm. G-100
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Beckley, WV 25802
304-255-6195

U.S. Department of Labor
ESA/OWCP/DCMWC
601 Federal Street
Bluefield, WV 24701
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U.S. Department of Labor
ESA/OWCP/DCMWC
Randolph Co. Senior Citizens' Center
Fifth and Railroad Avenue
Elkins, WV 26241
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U.S. Department of Labor
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513 Dingess Street
P.O. Office Box 1979
Logan, WV 25601
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U.S. Department of Labor
ESA/OWCP/DCMWC
Post Office Box 790
Uneeda, WV 25205
304-369-6050

U.S. Department of Labor
ESA/OWCP/DCMWC
Coal Mine Safety & Health District 3
5012 Mountaineer Mall
Morgantown, WV 26505
304-291-4277

Region IV—Southeast

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

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400 West Bay Street, Room 943
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Jacksonville FECA District Office

Magdalena Fernandez, District Director
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Jacksonville Longshore District Office

Charles Lee, District Director
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Jacksonville, FL 32202
904-357-4788

Jacksonville Energy District Office

James Bibeault, District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
400 West Bay Street, Room 722
Jacksonville, FL 32202
904-357-4705 (Toll-Free 1-877-336-4272)

EEOICPA Resource Center (Paducah Site)

Jim Monahan, Office Manager
Barkely Center, Unit 125
125 Memorial Drive
Paducah, KY 42001
270-534-0599 (Toll-Free 1-866-534-0599)
paducah.center@rrohio.com

EEOICPA Resource Center (Savannah River Site)

Karen Hillman, Office Manager
1708 Bunting Drive
North Augusta, SC 29841
803-279-2728 (Toll-Free 1-866-666-4606)
srs.center@rrohio.com

EEOICPA Resource Center (Oak Ridge Site)

Susan Adkisson, Office Manager
Jackson Plaza Office Complex
800 Oak Ridge Turnpike - Suite C 103
Oak Ridge, TN 37830
865-481-0411 (Toll-Free 1-866-481-0411)
or.center@rrohio.gov

Pikeville Black Lung District Office

Harry Skidmore, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
164 Main Street, Suite 508
Pikeville, KY 41501
606-432-0116 (Toll-Free 1-800-366-4599)

Mt. Sterling Black Lung Sub-District Office

Brenda K. Jamison, Assistant District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
402 Campbell Way
Mt. Sterling, KY 40353
859-498-9700 (Toll-Free 1-800-366-4628)

Region V/VII—Midwest

(Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin, overseas cases)

Regional Office (Chicago)

Nancy Jenson, Regional Director
U.S. Department of Labor, ESA/OWCP
230 South Dearborn Street, Room 800
Chicago, IL 60604
312-596-7131

Chicago FECA District Office

Joan Rosel, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
230 South Dearborn Street, Room 800
Chicago, IL 60604
312-596-7157

Cleveland FECA District Office

Robert M. Sullivan, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
1240 East Ninth Street, Room 851
Cleveland, OH 44199
216-357-5100

Cleveland Energy District Office

Annette Prindle, District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
1001 Lakeside Avenue, Suite 350
Cleveland, OH 44114
216-802-1300 (Toll-Free 1-888-859-7211)

EEOICPA Resource Center (Portsmouth Site)

Pam Mallory, Office Manager
1200 Gay Street
Portsmouth, OH 45662
740-353-6993 (Toll-Free 1-866-363-6993)
portsmouth.center@rrohio.com

Columbus Black Lung District Office

Don Dopps, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
1160 Dublin Road, Suite 300
Columbus, OH 43215
614-469-5227 (Toll-Free 1-800-347-3771)

Kansas City FECA District Office

Lois Maxwell, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
Two Pershing Square Bldg.
2300 Main Street, Suite 1090
Kansas City, MO 64108-2416
816-502-0301

Region VI/VIII—Southwest

(Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming)

Regional Office (Dallas)

E. Martin Walker, Regional Director
U.S. Department of Labor, ESA/OWCP
525 South Griffin Street, Room 407
Dallas, TX 75202
972-850-2409

Dallas FECA District Office

Frances Memmolo, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
525 South Griffin Street, Room 100
Dallas, TX 75202
972-850-2300

Houston Longshore District Office

Brad Soshea, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
8866 Gulf Freeway, Suite 140
Houston, TX 77017
713-943-1605

New Orleans Longshore District Office

David Duhon, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
600 S. Maestri Place, Suite 617
New Orleans, LA 70130
504-589-2671

Denver FECA District Office

Shirley Bridge, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
1999 Broadway, Suite 600
Denver, CO 80202
720-264-3000

Denver Black Lung District Office

Debra Thurston, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
1999 Broadway, Suite 690
P.O. Box 46550
Denver, CO 80202-6550
720-264-3100 (Toll-Free 1-800-366-4612)

Denver Energy District Office

Ron Sanchez, Acting District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
1999 Broadway, Suite 1120
P.O. Box 46550
Denver, CO 80201-6550
720-264-3060 (Toll-Free 1-888-805-3389)

EEOICPA Resource Center (Rocky Flats Site)

Janele Horner, Office Manager
8758 Wolff Court, Suite 101
Westminster, CO 80031
720-540-4977 (Toll-Free 1-866-540-4977)
denver.center@rrohio.com

EEOICPA Resource Center (Española Site)

Wilfred Martinez, Office Manager
412 Paseo De Onate, Suite D
Española, NM 87532
505-747-6766 (Toll-Free 1-866-272-3622)
espanola.center@rrohio.com

Region IX/X—Pacific

(Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington)

Regional Office (San Francisco)

Sharon Tyler, Regional Director
U.S. Department of Labor, ESA/OWCP
90 Seventh Street, Suite 15-100
San Francisco, CA 94103-6716
415-848-6880

San Francisco FECA District Office

Andy Tharp, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
90 Seventh Street, Suite 15-300
San Francisco, CA 94103-6716
415-625-7500

San Francisco Longshore District Office

R. Todd Bruininks, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
90 Seventh Street, Suite 15-100
San Francisco, CA 94103-6716
415-625-7669

Long Beach Longshore District Office

Eric Richardson, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
401 East Ocean Blvd., Suite 720
Long Beach, CA 90802
562-980-3577

Honolulu Longshore Sub-District Office

R. Todd Bruininks, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
300 Ala Moana Blvd., Room 5-135
Post Office Box 50209
Honolulu, HI 96850
808-541-1983

Seattle FECA District Office

Marcus Tapia, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
1111 Third Avenue, Suite 650
Seattle, WA 98101-3212
206-398-8100

Seattle Longshore District Office

Karen Staats, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
1111 Third Avenue, Suite 620
Seattle, WA 98101-3212
206-398-8255

Seattle Energy District Office

Christy Long, District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
719 2nd Avenue, Suite 601
Seattle, WA 98104
206-373-6750 (Toll-Free 1-888-805-3401)

EEOICPA Resource Center (Idaho Falls Site)

Steve Beehler, Office Manager
1820 East 17th Street, Suite 375
Exchange Plaza
Idaho Falls, ID 83404
208-523-0158 (Toll-Free 1-800-861-8608)
idaho.center@rrohio.com

EEOICPA Resource Center (Las Vegas Site)

Joe Krachenfels, Office Manager
Flamingo Executive Park
1050 East Flamingo Road, Suite W-156
Las Vegas, NV 89119
702-697-0841 (Toll-Free 1-866-697-0841)
vegas.center@rrohio.com

EEOICPA Resource Center (Hanford Site)

Steve Beehler, Office Manager
303 Bradley Blvd., Ste.104
Richland, WA 99352
509-946-3333 (Toll-Free 1-888-654-0014)
hanford.center@rrohio.com

EEOICPA Resource Center (California Site)

Joe Krachenfels, Office Manager
2600 Kitty Hawk Road, Suite 101
Livermore, CA 94551
925-606-6302 (Toll-Free 1-866-606-6302)
california.center@rrohio.com

National Operations Office

(District of Columbia, Maryland, Virginia)

Linda DeCarlo, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
National Operations Office
800 N. Capitol St., NW.
Room 800
Washington, DC 20211
202-513-6800

