

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

DEC 30 2019

Dr. Steven Markowitz
Chair
Advisory Board on Toxic Substances &
Worker Health
Queens College, Remsen Hall
65-30 Kissena Boulevard
Flushing, NY 11367

Dear Dr. Markowitz:

I am writing with regard to the recent amendments to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) that were enacted as part of the National Defense Authorization Act of 2020. The changes made in 42 U.S.C. § 7385s-16 relate directly to the duties of the Advisory Board on Toxic Substances and Worker Health ("Board"). In order for the Department of Labor to effectively implement the amendments, it is appropriate to outline certain guidelines for future interactions between the Department and the Board.

First, as amended, 42 U.S.C. § 7385s-16(b)(1) describes a new duty for the Board to provide advice upon "the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits." To comply with this amendment, the Office of Workers' Compensation Programs (OWCP) will provide the Board with advance notice of any changes to procedures prior to their publication, as it does with similar notifications to employee unions. Many of OWCP's procedural updates result in the potential for increased eligibility of claimants who may not have previously been eligible (e.g., the addition of new causation presumptions). As such, it is imperative that new procedures be put in place as quickly as possible, and OWCP will proceed to publication within ten days after submission to the Board. The Board is welcome to submit recommendations regarding changes to the procedures at any time, as provided for under the terms of the Federal Advisory Committee Act (FACA). Once any recommendation by the Board is received, OWCP will consider any suggested changes.

Second, another amendment to § 7385s-16(g) requires OWCP to make available the program's medical director, toxicologist, industrial hygienist, and support contractors when requested by the Board. To ensure that OWCP's specialists are fully prepared for interactions with the Board, the Board should make such requests following a specified format. The Board should include a set of questions in writing to be addressed by the specialist, so that OWCP may ensure that the appropriate specialist is responding and has ample time to prepare. The specialist will then respond to these questions. If the Board has additional follow-up questions that require further interaction, OWCP will work with the Board to determine the appropriate forum.

Third, an amendment to 42 U.S.C. § 7385s-16(h) requires that not later than 60 days after submission of the Board's recommendations to the Secretary of Labor, the Secretary will respond to the Board in writing. The Secretary's response will include a statement of whether he

accepts or rejects the Board's recommendations; if the Secretary accepts the Board's recommendations, the timeline for when they will be implemented will also be provided; and if the Secretary does not accept the recommendations, the response will describe the reasons the Secretary does not agree and provide to the Board all scientific research supporting that decision. To timely comply with this requirement, the Board should follow certain guidelines when making recommendations. In support of each recommendation, the Board should include a detailed rationale and explanation, along with all supporting scientific research and indexed references. In addition, the Board should state how each recommendation falls within its enumerated duties under EEOICPA.

Finally, the amendments also provide that the Board will advise the Secretary of Labor with respect to other matters that the Secretary considers appropriate. Accordingly, OWCP may provide the Board with directives in the future regarding specific topics for its review and recommendations.

We appreciate the important work of the Board on behalf of the communities we serve, and look forward to an ongoing cooperative relationship. Please share this letter with your fellow Board members and direct any questions to Julia Hearthway through Carrie Rhoads at (202) 354-9669 or Rhoads.Carrie@dol.gov.

Sincerely,



Patrick Pizzella
Deputy Secretary
U.S. Department of Labor