

SECRETARY OF LABOR  
WASHINGTON, D.C. 20210

OCT 14 2016

The Honorable Joseph R. Biden  
President of the Senate  
Washington, DC 20510

Dear Mr. President:

This letter is written in response to the Office of the Ombudsman's 2014 Annual Report that was filed with Congress on January 8, 2016. Pursuant to 42 U.S.C. 7385s-15(e)(2), the Ombudsman's report provides Congress with the number and types of complaints, grievances, and requests for assistance received by his office during each calendar year, and an assessment of the most common difficulties encountered by claimants who have filed claims under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). The Secretary is required to provide to Congress a response to the Annual Report that includes a statement as to whether he agrees or disagrees with the specific issues raised by the Ombudsman and if he agrees, the response is to include a description of the corrective actions that will be taken. If he disagrees, he is required to respond with the reasoning for the non-concurrence (42 U.S.C. § 7385s-15(e)(4)(A-C)).

The administration of EEOICPA involves the coordinated efforts of four Federal agencies: the Department of Labor (DOL), the Department of Energy (DOE), the Department of Health and Human Services (HHS), and the Department of Justice. DOL, through our Office of Workers' Compensation Programs (OWCP), Division of Energy Employees Occupational Illness Compensation (DEEOIC), has primary responsibility for administering the EEOICPA, including adjudicating claims for compensation and paying benefits for conditions covered under both Parts B and E of the statute. The Ombudsman's report contains no formal recommendations; however, it provides a summary of nine common themes/concerns on pages 84-85. I have carefully reviewed those topics of discussion and offer the following responses:

#### **Informing Potential Claimants about the Program**

**The Ombudsman's summary states: "Some claimants find it troubling that although Part B was created in 2000 and Part E was created in 2004, they are just learning of the program. Claimants find it even more troubling when they first learn of the program years after its creation and then only learn of the program because of a passing comment made by a relative or friend. Some claimants continue to question why efforts were never undertaken to directly inform them of this program."**

**Response:** I agree that, despite OWCP's significant efforts to inform potential claimants of the EEOICPA, there are claimants who may have only recently become aware of the existence of it. We remain steadfast in looking for ways to increase awareness of the EEOICPA.

Since the Act's inception, OWCP has understood the critical importance of outreach to the nuclear weapons community of the EEOICPA's enactment and the potential benefits the Act could provide for the patriotic men and women and their survivors who, through their work efforts, made a vital contribution to this country's defense. Toward that end, OWCP has used a variety of cost-effective methods for making the existence of the compensation program known to the widest possible audience. OWCP has publicized the EEOICPA via its website and in press releases, brochures, pamphlets, claims kits, newspaper articles, radio ads, a video series, via social media, in its attendance at conferences, communication with advocacy groups, and Congressional briefings. It has conducted Town Hall Meetings and provided Traveling Resource Centers since 2001 for Part B and since 2005 for Part E. In 2009, the Joint Outreach Task Group was formed to allow representatives from DOL, DOE, HHS, the Office of the Ombudsman for EEOICPA, the Office of the Ombudsman for the National Institute for Occupational Safety and Health (NIOSH), and representatives from DOE's Former Worker Medical Screening Program to share resources and combine outreach efforts to target both current and potential claimants. In FY2015, we translated our most frequently accessed brochures on our website into Spanish. Additionally, OWCP utilizes its network of Resource Centers at 11 major DOE sites to provide an initial point-of-contact for workers interested in filing claims. Unfortunately, neither DOL nor DOE has access to the current addresses of many employees who worked for the hundreds of contractors and subcontractors in the nuclear weapons complex starting in 1942. In fact, no such compilation of updated addresses is known to exist so direct outreach to potential claimants could not be done.

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**Response:** I agree that some claimants question statutory eligibility requirements. DOL works to faithfully execute the statute and to provide a balanced approach to the adjudication of claims and the delivery of benefits under the existing law which fully considers the information provided by the claimant and the requirements of the statute.

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**The Ombudsman's summary states: "We encounter claimants who are not aware of the various tools/resources developed by DEEOIC and/or do not know the various agencies involved in the administration of EEOICPA. These claimants often question why more is not done to inform them of the existence of these tools. Claimants find it especially troubling when, in spite of numerous conversations with the staff of DEEOIC involving a particular issue, they were never advised of the existence of a relevant tool or resource. We**

**also find that even when they are aware of these tools/resources, some claimants find it difficult to access and/or utilize these tools/resources. Claimants often contend that it would be helpful if the agencies were more forthcoming in offering assistance (and letting claimants know that the agencies will provide assistance).”**

**Response:** I agree that the program could do a better job of communicating in this area. OWCP is implementing initiatives to enhance customer service training for agency staff, with particular focus on the staff’s responsibility to guide claimants toward access and use of brochures, forms, waiver forms, the index of terms, the Federal (EEOICPA) Procedure Manual, bulletins, circulars, the Site Exposure Matrices (SEM), the health care provider list, the medical billing website, agency websites, and online resources.

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### **Informing Claimants of Policies, Procedures and Specialist Reports during the Adjudication Process**

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**Response:** Again, I agree. The agency believes that it is important to assist claimants early in the adjudication process; thus OWCP is committed to providing claimants – prior to any written decision – an explanation and/or copies of the policies and procedures that are relevant to their cases. Likewise, in FY 2015, OWCP began including with the recommended decision copies of specialist reports (e.g., industrial hygienist, toxicology and Contract Medical Consultant [CMC] reports) that were relied upon in issuing a recommended denial. These documents should give claimants a better understanding of how their claims are evaluated. OWCP provides ongoing training to staff to ensure they fully understand the policies and procedures established for the program. OWCP has established a comprehensive accountability review process that is

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**Response:** I agree that claimants question whether the government is fully meeting its requirement to provide assistance in connection with a claim. OWCP is only required to provide claims assistance under Part B, but chooses to apply the same standards of assistance to claimants under Part E. For example, OWCP contracts with a medical provider broker to make physicians available to claimants whose doctors are unwilling or unable to provide the types of medical opinions required by the statute. OWCP also provides Industrial Hygienists (both staff and contractors) who can provide either a claimant or a contract provider with scientific support in order to help facilitate medical opinions.

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Finally, OWCP has made significant efforts to assist claimants by providing access to information and claim forms using a variety of media and sources. Most information about the program is available via the OWCP website. Claimants who prefer to not use the web can contact Resource Center staff who will provide the same information by phone, mail, or in person. Also, OWCP has made all of the paper files available electronically and in 2015, began providing claimants with the ability to submit most forms and supporting information through either the mail or electronic data upload. In addition, OWCP conducted regular outreach to claimants, providers, and physicians in an effort to educate them about medical benefits (including durable medical equipment) and billing. The Program works closely with these stakeholders to assist them with obtaining the necessary equipment and by working with OWCP's medical bill contractor as necessary.

### **Weighing of Evidence**

**The Ombudsman's summary states: "Claimants continue to approach us with complaints concerning DEEOIC's weighing of evidence. In particular, we continue to receive complaints asserting that DEEOIC does not always explain why evidence is or is not credited, and/or does not always provide a reasoned and documented explanation of its decisions. In addition, there continue to be those who contend that DEEOIC's expectations**

**are sometimes unrealistic when it comes to the evidence that claimants must submit in order to meet their burden of proof.”**

**Response:** I agree that claimants have complained about DEEOIC’s weighing of evidence. The Federal (EEOICPA) Procedure Manual states that in writing decisions, staff must address all facets of the evidence that led to a conclusion, including any interpretive analysis relied upon to justify the acceptance or denial of a claim. Beginning in 2015, DEEOIC provided extensive training to claims examiners and hearing representatives to improve the quality of written decisions. The training stressed the importance of providing an explanation regarding the adequacy or inadequacy of evidence submitted, i.e., how each piece of medical evidence was reviewed and weighed. The training also emphasized the importance of explaining DEEOIC’s use of the SEM, a database which provides exposure data for a facility and may establish a link between toxic substances and a claimant’s occupational illness. The staff was also instructed that a written decision must explain that a contract medical consultant (CMC) may have been used to provide assistance on medical issues or causation and why studies or other reports may have been used or rejected in the adjudication of the claim.

OWCP also implemented a procedure requiring claims examiners to provide claimants with any underlying supporting documents upon which s/he relied in reaching his/her recommended decision. For example, when any recommended decision to deny a case is based, in part, on the decision of a CMC, the CMC report is provided to the claimant along with the recommended decision. The claimant will then have the opportunity to object to any findings in the report at the Final Adjudication Branch (FAB) level before a final decision on his/her claim is issued. OWCP also conducts an annual Accountability Review of cases to ensure staff compliance with published policy and procedures. The review also assesses the quality of written narratives and clear communication regarding weight of medical evidence assessment.

OWCP is cognizant of claimant frustration about meeting their “burden of proof,” in situations where information is not accessible. Under the EEOICPA, the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category, as set forth in 20 CFR § 30.111. OWCP takes its responsibility to assist claimants seriously, establishing policies and practices which provide significant assistance to claimants to help them meet their burden of proof. The agency works closely with DOE, DOE’s Former Worker Medical Screening Program, and the Center for Construction Research and Training to verify employment and has an agreement with the SSA to obtain earnings information on behalf of claimants. Additionally, in an ongoing effort to assist claimants in meeting this burden, OWCP constructed and maintains the SEM, a database that provides a repository of information on toxic substances present at DOE and Radiation Exposure Compensation Act sites covered under Part E, and information about scientifically established links between toxic substances and recognized occupational illnesses. Further, the agency uses CMCs to assist claimants in proving their entitlement to medical benefits and to help establish a work-related cause of illness. In adjudicating claims, OWCP also relies on the facility and exposure information provided by HHS/NIOSH in its site profiles, technical basis documents, technical bulletins, Program Evaluation Reports, radiation dose reconstruction reports, and its Special Exposure Cohort determinations. The agency is

committed to doing everything possible to assist the claimant through our communications and outreach activities as well as the work of our Resource Centers.

### **Due Process**

**The Ombudsman's summary states: "This year, there were instances where claimants question whether they were afforded due process. In particular, there were instances where provisions of the Federal (EEOICPA) Procedure Manual (PM), a bulletin, or a circular were given the weight of law, and thus cited as the basis for resolving a claim. Without the documentation used to support these provisions, claimants often found it difficult, if not impossible, to develop a credible challenge to these provisions."**

**Response:** Federal agencies routinely use procedural manuals, bulletins, and circulars, to disseminate policy and procedures. While these documents do not have legal force, they are meant to advise program staff and the public of how an agency interprets the statutes and rules that do have the force of law, and they provide the foundation for program implementation and operations. OWCP uses certain source documents from a variety of sources including the DOE to develop its procedural manuals, bulletins, and circulars. OWCP works with the solicitor's office to ensure that its procedural manuals, bulletins, circulars and other program documents are consistent with the program's statute and regulations. Procedural manuals, bulletins, and circulars are available on OWCP's website. OWCP will endeavor to include source documents on the website, as appropriate.

### **Procedures for Reporting Inappropriate Customer Service**

**The Ombudsman's summary states: "There is a belief that DEEOIC needs to outline specific procedures for reporting inappropriate customer service, and that these procedures should be sensitive to the fears that claimants have regarding retaliation."**

**Response:** I agree that no claimant should ever have any fear retaliation for submitting a complaint about the program or the handling of his or her claim. Complaints about inappropriate customer service should be direct to [Deeoic-public@dol.gov](mailto:Deeoic-public@dol.gov). OWCP encourages claimants to submit comments and/or complaints in writing, by phone, via public email, or by using any of the three customer satisfaction surveys available on the OWCP/DEEOIC websites and via phone. Any complaints registered through the surveys are totally anonymous. OWCP is committed to providing professional and courteous customer service, and OWCP's management teams at the National Office and the District and FAB offices strive to work with claimants and staff to resolve all complaints. Further, DEEOIC analyzes stakeholders' concerns in order to continually improve the program.

### **Independent Administrative Review**

**The Ombudsman's summary states: "Claimants are excited that Congress approved the creation of an Advisory Board on Toxic Substances and Worker Health. The hope is that this board will help resolve many of the concerns that arise with issues related to exposure and causation under Part E of the EEOICPA. Nevertheless, we continue to hear from**

**claimants who believe that it would help if there was an independent review of the decisions of DEEOIC. While DEEOIC maintains that the Final Adjudication Branch provides an independent review of recommended decision, we talk to claimants who question the extent of FAB's independence and the adequacy of its review."**

**Response:** I acknowledge that claimants have expressed concerns about FAB's independence. I must, however, respectfully disagree with the suggestion that claims/cases be reviewed outside the current process.

The FAB issues final agency decisions on benefit entitlement. The current structure of the EEOICPA program maintains the necessary independence of the FAB, and allows for an independent and objective review of the claimant's claim. It maintains a National Office in Washington, D.C. and four district FAB offices geographically located with the District Offices. The FAB maintains separate operational management and its performance is measured separately from the District Offices. The FAB independently reviews each recommended decision to ensure adherence to the EEOICPA and established program policies and procedures. Claimant objections are considered by way of review of the written record or oral hearings. Oral hearings are scheduled by FAB and are conducted at a location near the claimant. After due consideration of any argument or evidence presented by the claimant, the FAB issues a written final decision that discusses the finding of FAB and addresses any specific objection brought forth by a claimant.

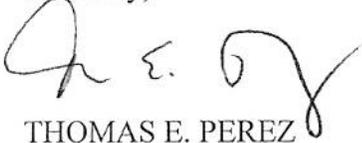
After a final decision, the claimant may request a reconsideration of the final decision or a reopening of the claim. However, claimants are not required to request any of these types of administrative review. Under the Act, claimants are afforded independent review of their claims in the federal court system. Those adversely affected or aggrieved by a final decision of the FAB can seek judicial review of that decision in United States district court.

Finally, the Act specifically provided the Secretary the flexibility to develop administrative review procedures through regulations, which resulted in the FAB's creation and authority (42U.S.C. § 7385s-6(b)).

#### CONCLUSION

OWCP administers its responsibilities under the EEOICPA with the intent of following the will of Congress in enacting the EEOICPA: to pay all eligible nuclear weapons workers (or their eligible survivors) who incurred illnesses in the performance of duty at a covered facility. The 2014 Ombudsman's report provides OWCP with valuable data we will use to further improve the administration of EEOICPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. E. Perez', written over a white background.

THOMAS E. PEREZ

SECRETARY OF LABOR  
WASHINGTON, D.C. 20210

OCT 14 2016

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### **Due Process**

**The Ombudsman’s summary states: “This year, there were instances where claimants question whether they were afforded due process. In particular, there were instances where provisions of the Federal (EEOICPA) Procedure Manual (PM), a bulletin, or a circular were given the weight of law, and thus cited as the basis for resolving a claim. Without the documentation used to support these provisions, claimants often found it difficult, if not impossible, to develop a credible challenge to these provisions.”**

**Response:** Federal agencies routinely use procedural manuals, bulletins, and circulars, to disseminate policy and procedures. While these documents do not have legal force, they are meant to advise program staff and the public of how an agency interprets the statutes and rules that do have the force of law, and they provide the foundation for program implementation and operations. OWCP uses certain source documents from a variety of sources including the DOE to develop its procedural manuals, bulletins, and circulars. OWCP works with the solicitor’s office to ensure that its procedural manuals, bulletins, circulars and other program documents are consistent with the program’s statute and regulations. Procedural manuals, bulletins, and circulars are available on OWCP’s website. OWCP will endeavor to include source documents on the website, as appropriate.

### **Procedures for Reporting Inappropriate Customer Service**

**The Ombudsman’s summary states: “There is a belief that DEEOIC needs to outline specific procedures for reporting inappropriate customer service, and that these procedures should be sensitive to the fears that claimants have regarding retaliation.”**

**Response:** I agree that no claimant should ever have any fear retaliation for submitting a complaint about the program or the handling of his or her claim. Complaints about inappropriate customer service should be direct to [Deeoi-public@dol.gov](mailto:Deeoi-public@dol.gov). OWCP encourages claimants to submit comments and/or complaints in writing, by phone, via public email, or by using any of the three customer satisfaction surveys available on the OWCP/DEEOIC websites and via phone. Any complaints registered through the surveys are totally anonymous. OWCP is committed to providing professional and courteous customer service, and OWCP’s management teams at the National Office and the District and FAB offices strive to work with claimants and staff to resolve all complaints. Further, DEEOIC analyzes stakeholders’ concerns in order to continually improve the program.

### **Independent Administrative Review**

**The Ombudsman’s summary states: “Claimants are excited that Congress approved the creation of an Advisory Board on Toxic Substances and Worker Health. The hope is that this board will help resolve many of the concerns that arise with issues related to exposure and causation under Part E of the EEOICPA. Nevertheless, we continue to hear from**

**claimants who believe that it would help if there was an independent review of the decisions of DEEOIC. While DEEOIC maintains that the Final Adjudication Branch provides an independent review of recommended decision, we talk to claimants who question the extent of FAB's independence and the adequacy of its review."**

**Response:** I acknowledge that claimants have expressed concerns about FAB's independence. I must, however, respectfully disagree with the suggestion that claims/cases be reviewed outside the current process.

The FAB issues final agency decisions on benefit entitlement. The current structure of the EEOICPA program maintains the necessary independence of the FAB, and allows for an independent and objective review of the claimant's claim. It maintains a National Office in Washington, D.C. and four district FAB offices geographically located with the District Offices. The FAB maintains separate operational management and its performance is measured separately from the District Offices. The FAB independently reviews each recommended decision to ensure adherence to the EEOICPA and established program policies and procedures. Claimant objections are considered by way of review of the written record or oral hearings. Oral hearings are scheduled by FAB and are conducted at a location near the claimant. After due consideration of any argument or evidence presented by the claimant, the FAB issues a written final decision that discusses the finding of FAB and addresses any specific objection brought forth by a claimant.

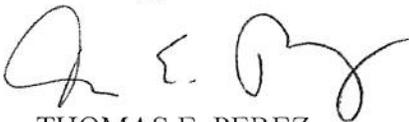
After a final decision, the claimant may request a reconsideration of the final decision or a reopening of the claim. However, claimants are not required to request any of these types of administrative review. Under the Act, claimants are afforded independent review of their claims in the federal court system. Those adversely affected or aggrieved by a final decision of the FAB can seek judicial review of that decision in United States district court.

Finally, the Act specifically provided the Secretary the flexibility to develop administrative review procedures through regulations, which resulted in the FAB's creation and authority (42U.S.C. § 7385s-6(b)).

#### CONCLUSION

OWCP administers its responsibilities under the EEOICPA with the intent of following the will of Congress in enacting the EEOICPA: to pay all eligible nuclear weapons workers (or their eligible survivors) who incurred illnesses in the performance of duty at a covered facility. The 2014 Ombudsman's report provides OWCP with valuable data we will use to further improve the administration of EEOICPA.

Sincerely,



THOMAS E. PEREZ