

U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, D.C. 20210



January 10, 2023

The Honorable Kevin McCarthy
Speaker, U.S. House of Representatives
Washington, D.C. 20515

Dear Mister Speaker:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2021 Annual Report. 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 that office during each calendar year and an assessment of the most common challenges encountered by claimants and potential claimants under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

The administration of EEOICPA involves the coordinated efforts of four federal agencies: the Department of Labor (DOL), the Department of Energy, the Department of Health and Human Services, and the Department of Justice. DOL, through its Office of Workers' Compensation Programs (OWCP), Division of Energy Employees Occupational Illness Compensation, has primary responsibility for administering EEOICPA, including the adjudication of claims for compensation and payment of benefits for illnesses covered under both Part B and Part E of the statute.

The Secretary is required to provide a response to Congress regarding the Annual Report that includes a statement of whether he agrees or disagrees with the specific issues raised by the Ombudsman. If he agrees with the recommendations for improvement, the response is to include a description of corrective actions that OWCP will take. If he disagrees, he is required to respond with reasons for the non-concurrence. This report focuses on OWCP accomplishments in fiscal year 2021 and our responses to the Ombudsman's recent recommendations. The Secretary has authorized the Director of OWCP to respond to the Ombudsman's report.

Sincerely,


CHRISTOPHER J. GODFREY
Director

Enclosure

U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, D.C. 20210



January 5, 2023

The Honorable Kamala Harris
President, United States Senate
Washington, D.C. 20510

Dear Madam President:

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Sincerely,

A handwritten signature in blue ink, appearing to read "C. J. Godfrey".

CHRISTOPHER J. GODFREY
Director

Enclosure

OWCP RESPONSE TO THE OFFICE OF THE OMBUDSMAN'S 2021 ANNUAL REPORT TO CONGRESS

Introduction

In the 2021 Annual Report to Congress, the Ombudsman for the Energy Employees Occupational Illness Compensation Program (Energy program) set forth the complaints, grievances, and requests for assistance received during calendar year 2021 and provided an assessment of the most common difficulties claimants and potential claimants encountered during 2021. On pages 5 through 9 of the annual report, the Ombudsman presented recommendations regarding the Energy program as it is implemented by the Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), Division of Energy Employees Occupational Illness Compensation (DEEOIC). OWCP appreciates the Ombudsman's review of the Energy program and welcomes the opportunity to respond to the recommendations presented in the annual report. The Ombudsman's 2021 Annual Report to Congress gives OWCP an opportunity to consider its achievements in 2021 as well as areas of the Energy program that need improvement. We will respond to the recommendations in order of their appearance in the report.

Chapter 1 - EEOICPA Awareness and Outreach Efforts

1.1 Recommendation: The Ombudsman recommended that DEEOIC expand its outreach efforts by coordinating with the Department of Energy (DOE) and DOE's Former Worker Program (FWP) to utilize the FWP's mailing lists of DOE employees to directly contact those who do not live within the mailing radius for an in-person outreach event. The Ombudsman acknowledged the Energy program's previous coordination with the DOE/FWP to utilize such mailing lists to notify former DOE workers of in-person outreach events in their area; however, the Ombudsman says it is imperative for the Energy program to move beyond its limited use of the mailing lists and instead provide notice of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to any/all former DOE workers, regardless of their proximity to in-person outreach meetings. The Ombudsman says this can be achieved in stages with thoughtful planning and the highest priority given to those areas where no outreach has been conducted to date.

Response: The Energy program agrees that there have been limitations in reaching certain employees potentially covered by EEOICPA. As we have indicated in the past, however, the Energy program does not have access to the DOE/FWP mailing lists, as they contain Personally Identifiable Information and are the property of DOE. The Energy program has no authority over DOE to require the DOE/FWP to send outreach materials, invitation letters, or educational materials to employees on their mailing lists; however, DEEOIC does ask the DOE/FWP to assist us with mailing materials whenever they deem such mailings appropriate and feasible. DEEOIC is open to further discussion with DOE/FWP to explore opportunities for collaboration to reach out to existing and former DOE workers.

Currently DEEOIC utilizes several strategies to reach potential claimants. For example, DEEOIC Resource Center staff members actively pursue referrals from existing claimants, which may aid

in reaching other individuals who worked with them. Overall, referrals from current and former workers across all facility types accounted for 367 claims and 5,354 contacts in fiscal year 2021. Additionally, DEEOIC implemented an initiative to increase its DEEOIC Stakeholder Updates email distribution list through its 11 Resource Centers located throughout the country. When callers contact DEEOIC for any reason, their call is routed into a phone queue answered by Resource Center staff. Resource Center employees ask the callers if they would like to sign up for the distribution list during the call. This initiative has been successful in adding 4,274 claimants and 325 medical providers to the distribution list since March 2021.

The Resource Centers also conduct outreach activities that DOL deems necessary to provide information to the public and solicit EEOICPA claims. Outreach includes establishing and maintaining relationships with state and local organizations to keep the public informed about EEOICPA, staffing of booths at local community events, mass mailings of EEOICPA program information, onsite presentations at covered facilities, placing of advertisements in newspapers, and joint mailings with unions and other stakeholders. The Energy program also strives to ensure that information on outreach events and EEOICPA benefits is available on the Energy program's website and in news releases, email subscription services, and local newspaper advertisements. The Resource Centers also distribute brochures and program materials to churches, libraries, senior centers, physicians' offices, hospitals, drug stores, pharmacies, assisted living facilities, residential care facilities, hospice centers, beryllium support groups, senior ride services, the Red Cross, Department of Veterans Affairs facilities, Departments on Aging, the Elks Lodge, and Chambers of Commerce. In fiscal year 2021, the Resource Centers added Veterans of Foreign Wars and the American Legion posts to these efforts. These outreach efforts resulted in 14,071 contacts and 1,306 claims across all facility types in fiscal year 2021. In fiscal year 2022, American Veterans (AMVETS) was also added.

The Energy program recently used Census data to identify underserved/low-income communities located in proximity to the top 20 EEOICPA-covered facilities. Although data is available at the city and county levels, the Energy program used U.S. Census Tracts which provided data on smaller and more specific geographic areas (e.g., areas with a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people). In fiscal year 2022, data was collected on household income, poverty levels, and racial demographics of the Census Tracts, to develop a targeted customer service engagement plan specifically focused toward low-income and underserved communities. Since the inception of this initiative in April 2022, the Resource Centers have conducted 53 outreach activities within underserved communities, resulting in 884 contacts and 57 new claims. In fiscal years 2023 and 2024, the Resource Centers, as well as the DOL staff, will conduct targeted outreach events, literature distribution, and advertising to Census Tracts identified as having high populations of traditionally underserved communities. The Resource Centers will continue to conduct research to identify additional Census Tracts with underserved populations that are close to covered DOE facilities or have a significant population of potential claimants. DEEOIC will continue to track and assess the effectiveness of this outreach plan.

DEEOIC also undertook an examination of past in-person outreach statistics to determine areas that may benefit from in-person outreach events in the future. Statistics were reviewed to identify locations within underserved communities that have not been visited within the past five years

with an emphasis on locations that had high turnout rates. DEEOIC also worked with the Resource Centers to research additional locations that have not yet been visited. Several locations have been identified through these efforts and are priority locations for in-person outreach events in fiscal year 2023. However, the ability to plan for new events continues to be dependent upon DOL policies and procedures related to the coronavirus disease (COVID-19) pandemic.

DEEOIC also allocated additional funding to the Resource Center contract to hire two Navajo-speaking case workers who will work remotely from the Navajo Nation or surrounding area. The primary focus of these case workers will be to host satellite Resource Centers throughout the region where there are many covered uranium mines, mills, and DOE sites. These areas have limited internet and phone coverage, and a language barrier exists for many within this population; the Energy program believes these efforts will increase equity of services and provide a line of communication to tribal communities about the EEOICPA benefits that may be available to them.

Chapter 2 – Medical Billing and Treatment Authorization Issues

2.1 Recommendation: The Ombudsman recommended that the Energy program provide better guidance and assistance to claimants and medical providers when issues arise regarding treatment authorizations and medical billing. The Ombudsman noted two common threads that developed in discussions regarding medical billing and payment issues: 1) a lack of communication and transparency for claimants and providers when systemic issues were impacting the Energy program and its bill processing contractors' ability to provide timely service; and 2) the lack of a logical, streamlined process that informs claimants and authorized representatives who to contact for assistance and under what circumstances they should initiate such contact.

Response: Ensuring that Energy program beneficiaries receive prompt authorizations for medical treatments and that the Energy program pays providers quickly and correctly are critical to the administration of EEOICPA. The Energy program agrees that claimants and medical providers should have quick and reliable access to personnel who can assist them in resolving authorization requests and/or billing issues and agrees that claimants should know who to contact for assistance, especially if issues arise regarding timely authorizations or payments.

During fiscal year 2021, the Energy program faced the challenge of providing timely claims adjudication and benefits delivery during the COVID-19 pandemic. To overcome these challenges, the program modified operations to expand the use of telemedicine and virtual technical assistance and outreach through the DEEOIC Resource Centers. Throughout the COVID-19 pandemic, the Resource Centers remained fully operational and committed to addressing the needs of claimants, authorized representatives, and stakeholders. Resource Center staff continued to be available by telephone to answer questions, file claim forms, and conduct services necessary to continue operations. When claimants needed to transmit documents, the Energy program initiated a process that allowed stakeholders to leave those documents at the door of the Resource Center for staff members to pick them up. When COVID-19 restrictions eased, the Resource Centers opened to visitors by appointment only. In fiscal year 2021, 17,061 claimants contacted the Resource Centers for more information about covered medical services under the Energy program. During fiscal year 2021, the Resource Centers processed 2,153 Medical Reimbursement Forms and assisted another 4,315 claimants who had questions about medical

reimbursements. They also assisted 242 medical providers with the enrollment process and addressed 15,871 billing issues. When further assistance was required for full resolution of an issue, the Resource Centers directed calls to the appropriate person within DEEOIC. Additionally, in fiscal year 2021, the Energy program identified new strategies to encourage medical providers to work with the program and, as a result, enrolled 4,790 newly active medical providers, bringing the total number of enrolled medical and pharmacy providers to 18,384.

In response to the Energy program's ongoing increase in the volume of medical requests,¹ the Energy program centralized the processes for medical benefits adjudication and medical bill functions by creating the Branch of Medical Benefits Adjudication and Bill Processing (Branch of Medical Benefits or BMB) in the National Office. BMB staff is composed of medical benefit examiners (MBEs), who are responsible for adjudicating medical benefit claims, and bill payment and coding analysts, who assist with making sure payments to providers are timely and accurate.

In fiscal year 2021, to improve service to customers, the Energy program hired additional MBE staff, filling 10 positions, and bringing the total number of MBEs to 33. In fiscal year 2022, the BMB expanded the Medical Benefits Adjudication Unit (MBAU) to four sub-units, each with a supervisor, and added three MBEs to the unit. The total staffing allocation for the MBAU is now 36 MBEs, four Unit Supervisors, and an MBAU manager. In the Medical Bill Payment Unit (MBPU), the BMB added three additional staff positions and a supervisor position to create a Medical Billing Operations Team (MBOT) within the MPBU. The MBOT is tasked with working closely with both the bill payment and pharmacy benefits contractors to resolve medical and pharmacy billing issues. The MBOT is also the primary DEEOIC contact for Resource Center staff when they need help assisting claimants with billing issues. With the creation of the BMB, the shift in responsibilities across DEEOIC, and additional staffing, the Energy program has seen improvement in timeliness and efficiency in responding to medical requests. Our records show that in fiscal year 2021, the Energy program processed 928,944 medical bills; 92.5% of these medical bills were processed within the target of 28 days. The BMB staff is further supported by the Performance Management Branch, which consists of program integrity analysts that complete audits and analysis to reduce potential provider waste, fraud, or abuse; quality assurance analysts who oversee the analysis and tracking of claims examiner performance; and data reporting analysts responsible for all general reporting and data analytic needs.

The Energy program encourages claimants to register through OWCP's Employees' Compensation and Operations Management Portal (ECOMP) to utilize the self-service functions of the medical bill processing contractor's web portal. The self-service functions provide access to information related to provider enrollment, claimants' accepted conditions, submitted authorizations, and bill payment, as well as copies of correspondence issued by the contractor. The status of case-specific information is also available via the medical bill processing contractor's Interactive Voice Response system. Medical providers have access to this same information directly through the medical bill processor's web portal.

In fiscal year 2021, OWCP's bill processing contractor similarly faced challenges in providing

¹ The Energy program's volume of requests for medical benefits has continued to increase due to the growing home health care industry and the program's elderly claimant population.

timely service during the COVID-19 pandemic. The Energy program had met with the medical bill processing contractor's leadership team in fiscal year 2020 to reiterate the need for its staff to be adequately trained and capable of differentiating between EEOICPA claims, providers, and payments, versus other OWCP programs.² The Energy program had also established an agreement with the medical bill processing contractor for them to conduct additional training of staff, routine knowledge checks, and supervisor monitoring of performance. In fiscal year 2021, the Energy program worked closely with its medical bill processing contractor to resolve system issues that caused billing delays or denials. When such issues were brought to the Energy program's attention through notifications by specific providers, the Energy program implemented system-wide solutions so that no providers would further encounter such issues. Additionally, the Energy program identified deficiencies in the medical bill processing contractor's call center performance, which allowed OWCP to work closely with the contractor to make improvements in call responses and in the quality of information provided to claimants. The recompete of the DEEOIC bill processing contract in FY 2023 may help to improve services in the future, as the Energy program plans to improve contract language to underscore more clearly the requisite performance and timeliness standards and to introduce and manage the network of medical providers.

To help increase stakeholders' understanding of the medical benefits and reimbursement processes, DEEOIC offered webinars on the following topics during the past two calendar years: Medical Benefits Coverage (April 2021), Medical Bill/Reimbursement Processing (June 2021), DOE's Former Worker Medical Screening Program (April 2022), and Medical Benefit Authorizations (June 2022). The Energy program also provides a comprehensive Medical Benefits Brochure on its website. The Energy program will continue to look for ways to improve its communication with stakeholders regarding the processing of medical benefits claims and its billing processes.

In fiscal year 2019, the Office of Management and Budget (OMB) identified DEEOIC as a High Impact Service Provider (HISP). OMB issued guidance to HISPs to incorporate the principles of customer experience into their organizations and ensure that customer experience practices are integrated into program delivery. To act upon the commitment to stakeholders and to fulfill HISP requirements, the Energy program created a Customer Experience (CX) Team within the Branch of Outreach and Technical Assistance consisting of a Stakeholder Engagement Analyst and a Customer Experience Strategist. The mission of this team includes soliciting feedback from stakeholders, conducting analyses of data, and making data-driven recommendations for programmatic and procedural improvements, including through surveys. One such survey, conducted in March of 2022 focused on the medical travel reimbursement process and the experience claimants had when filing for medical travel reimbursements. A total of 2,000 surveys were sent out, and 856 (43.3%) were returned. As a result of these responses, the Energy program is looking for ways to provide more educational resources about the process and will be working with OWCP to consider making changes to the form itself. Results and recommendations from the CX surveys, including the Medical Travel Reimbursement survey, are available on the Energy program's website at:

² OWCP provides benefits under the Federal Employees' Compensation Act, Black Lung Benefits Act, Longshore and Harbor Workers' Compensation Act, and the Energy Employees Occupational Illness Compensation Program Act. The OWCP medical bill processing contractor performs medical billing services for all four OWCP Programs.

https://www.dol.gov/agencies/owcp/energy/regs/compliance/customer_experience_survey. In fiscal year 2023, the CX Team plans to develop an additional survey that focuses on claimants' experiences when requesting and processing home health care authorizations. DEEOIC uses participants' comments and responses from its surveys to determine ways in which to improve performance drivers, equity, and overall performance in specific areas.

Chapter 3 – Difficulties with Part E Claims

The Ombudsman stated that complaints received involving Part E claims in 2021 highlighted the need for better communication between DEEOIC and claimants, as well as increased consistency during the claims adjudication process. The Ombudsman specifically cited concerns involving the Occupational History Questionnaire (OHQ), the Site Exposure Matrices (SEM) database, expert opinion reports, and consequential illnesses. The Energy program agrees that communication between DEEOIC and claimants and consistency during the claims adjudication process are critical to the success of the Energy program. The agency welcomes the Ombudsman's suggestions for ways to improve the adjudication of Part E claims.

3.1 Recommendation: The Ombudsman recommended that claimants be informed, in advance, of the topics the OHQ will cover and be provided a copy of the OHQ prior to the interview so they can take notes or give their responses some thought ahead of time.

Response: The DEEOIC Resource Centers conduct initial occupational history interviews of employees or their eligible survivors to assist in determining eligibility under Part E. DEEOIC uses the OHQ to record information about an employee's work history, occupation, and work-related exposures to toxic substances. The Energy program agrees with the Ombudsman's suggestion that claimants be informed in advance of the topics the OHQ will cover, and in fact, provides an OHQ pamphlet as part of its welcome packet for new claimants. The OHQ pamphlet describes how DEEOIC uses the OHQ to record information about an employee's work history, occupation, and work-related exposures to toxic substances, and it lists the topic areas and questions to be addressed. The OHQ pamphlet explains that Part E claimants will be asked to participate in an OHQ interview with the DEEOIC Resource Centers to collect relevant information about their work histories involving DOE operations; it explains how that interview is scheduled and conducted, the process if there are multiple surviving claimants, and the anticipated length of the interview.

The Energy program made the decision that OHQs needed to be completed with the assistance of a Resource Center case worker, and the agency still believes that type of assistance is necessary. The question of whether a claimant could receive the OHQ prior to the interview and complete a blank OHQ without the assistance of the case worker – and then submit it – would almost certainly come up if DEEOIC were to start sending out blank OHQs. The Energy program will consider whether providing a sample OHQ might be helpful (rather than providing a blank questionnaire). The Energy program will also consider adding specific directions in the OHQ pamphlet, suggesting that claimants review the topic areas to be covered during an interview and that they give careful thought to their work histories prior to the interview. The Energy program will also repeat this advice during the scheduling phone call.

3.2 Recommendation: To help claimants recall information about their workplace history and/or exposures, the Ombudsman recommended that claimants be able to see, early in the claims adjudication process, what is and is not part of their DOE employment record.

Response: To obtain employment verification, the Energy Program relies on DOE records but also obtains records from a variety of other sources, including corporate verifiers, union records, and social security records. Therefore, the case records may contain a voluminous amount of employment information from various sources. Given that the evidence in a case file is constantly being updated and changed, including employment evidence, it is not feasible to send claimants copies of their case file on a regular or interval basis. However, the Energy program encourages claimants to request a copy of their entire case file at any time and provides the initial copy of records free of charge. Rather than attempting to select specific records for the claimant's review and risk the omission of other important records, Energy program staff will likely advise a claimant to request an entire copy of his or her case file.

Claimants can also now view a majority of their case file through a web portal. In fiscal year 2020, OWCP expanded ECOMP to provide case information for Energy program claimants as well as direct access to medical and pharmaceutical bill pay information for claimants. In fiscal year 2021, the program utilized ECOMP to provide claimants access to their digital case files. This access reduced the time it takes for claimants to see their case files and reduced the staff burden in copying and mailing case files to claimants. The Energy program sought to maximize the ease with which claimants could view and obtain information in their case file, while maximizing the protection of personal information. This provided claimants with the means to quickly access case records.

3.3 Recommendation: The Ombudsman recommended that claimants be made aware of the distinction between illnesses not listed in the SEM (e.g., hearing loss and asthma) and illnesses or toxic substances not found during a search of the SEM; i.e., claimants should understand more clearly the limitations of the SEM database and how it is used to obtain probative evidence for a claim.

Response: The Energy program agrees with the Ombudsman's recommendation that claimants should understand the limitations of the SEM database and how it is used to obtain probative evidence for a claim. The SEM is a web-based tool designed to assist claims examiners in developing for evidence of exposure to a toxic substance. The SEM identifies the toxic substances that were commonly used in each DOE and Radiation Exposure Compensation Act (RECA) Section 5 facility and contains two general categories of information that may be searched: chemical profiles and site-specific information tailored to the covered facility or site. The SEM provides information about labor categories, buildings, and work processes at DOE sites and RECA facilities, and information regarding scientifically established links between toxic substances and illnesses.

The Energy program provides SEM training via the DEEOIC website; this training covers the background history of the SEM, best practices for exploring claimant data, a look at the search categories, a video demonstration of a SEM search, and tips on using the SEM for exposure development. DEEOIC provides similar training on the SEM during the program's Authorized Representative workshops. Additionally, the program provides a *Site Exposure Matrices Website*

Users Guide on its website. In August 2020 and again in August 2022, the Energy program offered webinars that provided an overview of the SEM, tips on how to search the SEM, best practices when using the SEM, an explanation of the role of the SEM in causation determinations, and additional usage guidance.

The Ombudsman also recommended that claimants be made aware of the distinction between illnesses not listed in the SEM (e.g., hearing loss and asthma) and illnesses or toxic substances not found during a search of the SEM. The SEM allows claimants to search for diseases by alias, and a search for “asthma” in SEM reveals its link to “coal workers’ pneumoconiosis.” A search for “hearing loss” in SEM reveals “no diseases matching the search.” The Energy program has determined that the best approach on hearing loss claims is to outline the criteria for acceptance in the Federal (EEOICPA) Procedure Manual and then have district office claims examiners work one-on-one with claimants during the claims process so that they clearly understand the criteria for hearing loss acceptance. The Energy program sees the potential for confusion if the Energy program tries to explain which illnesses are or aren’t in the SEM and therefore disagrees with the Ombudsman on this point. The Energy program has always noted that the SEM is not the sole resource for determining causation under Part E but represents only one avenue by which causal links can be established.

3.4 Recommendation: The Ombudsman recommended that expert opinion reports be fact-checked and that claimants be given a copy of the expert opinion report and an opportunity to respond to it prior to a recommended denial.

Response: The Energy program agrees with the Ombudsman’s suggestion that expert opinion reports be fact-checked and, as such, has robust quality control mechanisms in place to review Industrial Hygienist (IH) and Contract Medical Consultant (CMC) referrals. The Energy program may make a referral to an IH³ who utilizes expertise and knowledge to make well-rationalized unbiased opinions on the nature, frequency, and duration of exposure. The Energy program may also use the services of a contractor to coordinate referrals of cases to qualified medical specialists. A CMC⁴ is a contracted physician who conducts a review of case records to render opinions on medical questions and provide clarity to claims situations in the absence of pertinent or relevant medical evidence from other sources. The accuracy of these referrals and expert opinion reports is extremely important in the adjudication of claims under EEOICPA.

For IH referrals, non-journey level claims examiners prepare an IH referral package for approval by their supervisor or other office designee. After the IH referral is sent to the DEEOIC IH team, IH staff complete an additional review in which they determine if it is necessary to obtain clarification directly from the claimant or claims examiner regarding the circumstances of an employee’s work that brought them into contact with a particular toxic substance. In these situations, claims examiners and claimants are able to address any issues prior to the completion of the IH report. In addition, every IH report undergoes a second level review before being returned to the claims examiner. For CMC referrals, each district director designates a claims assistant who processes and tracks CMC referrals. The claims assistants conduct thorough reviews of the referral

³ In fiscal year 2021, the Energy program made 2,556 referrals to an IH.

⁴ In fiscal year 2021, the Energy program made 1,937 referrals to a CMC.

packages to ensure all required documentation is present, questions to the CMC are clear, and imaged records are legible. The CMC contractor also inspects the referrals to ensure that relevant factual findings have been reached that will allow for a comprehensive and reliable analysis. Throughout this process, there is a system in place that allows the CMC to request additional information or clarification from the claims examiner. Additionally, after a CMC submits their report to the contractor, the contractor performs a quality control review to ensure that the report is complete, rationalized, and fully responsive to the questions posed by the claims examiner.

In addition to the quality control mechanisms in place during the processing of referrals, supervisory claims examiners regularly sample the work of claims examiners to ensure the accuracy of their work. OWCP created a standardized computer system that supervisors use to review the work of claims examiners. If a CMC or IH referral was completed during the processing of a sampled claim, the supervisor is required to thoroughly review the referral for accuracy. If errors are found, they are presented to the claims examiner and, if necessary, additional training is provided to the claims examiner. DEEOIC's Quality Assurance Team, which is a National Office team that reviews a random sample of case files for quality throughout the year, also reviews materials related to IH and CMC referrals.

The Ombudsman recommended that claimants be given a copy of an expert opinion report and an opportunity to respond to it prior to a recommended denial; however, DEEOIC's adjudication process directs that claimants be provided copies of expert opinion reports when they receive a recommended denial decision. If a claimant does not agree with the decision or s/he believes that the IH or CMC reports are incorrect, s/he has the right to file objections with the Final Adjudication Branch (FAB) and request a hearing or a review of the written record. Thus, the Energy program disagrees with the Ombudsman's idea of giving claimants an opportunity to respond to a recommended denial while the claim is still under review by a district office. Sending the expert report(s) with the recommended decision has been sufficient, given that the claimant has an opportunity to object to the recommended decision at the FAB level.

3.5 Recommendation: The Ombudsman recommended that DEEOIC should explain how and why certain medical conditions must be filed separately as consequential conditions; the Ombudsman suggested that DEEOIC provide a separate claim form or a space on the existing Form EE-1 dedicated solely to claims for consequential conditions.

Response: The Energy program recognizes that in some instances, a "chain of causation" can result in injuries, illnesses, impairments, or diseases that are a direct consequence of an accepted work-related illness. When medical evidence is present to establish that an injury, illness, impairment, or disease is medically linked to a previously accepted work-related illness, the consequential condition in the causal chain is compensable under EEOICPA. The acceptance of a consequential condition results in medical coverage for that condition(s) under Part B and/or Part E as appropriate. The Energy program agrees with the Ombudsman's suggestion that DEEOIC provide a separate claim form for consequential conditions or provide a space on the existing Form EE-1 dedicated solely to claims for consequential conditions. In fiscal year 2023, the Energy program will explore the feasibility of either updating the EE-1 (and EE-2) forms or creating a separate claim form for consequential conditions. On September 28, 2022, the Energy program offered a webinar for stakeholders which addressed the claims process and post-adjudication

actions and included information about filing for consequential conditions.

Chapter 4 – Delays, Customer Service, and Other Administrative Issues

4.1 Recommendation: The Ombudsman noted that some of the complaints and concerns expressed in fiscal year 2021 pertained to the ongoing impact of the COVID-19 pandemic on agencies such as DOE and the Social Security Administration (SSA). The Ombudsman noted that because of the COVID-19 pandemic's impact on their agencies, both DOE and SSA experienced delays in providing information and/or documentation to DEEOIC. An additional complaint pertained to the Department of Health and Human Services' pause on performing radiation dose reconstructions for claimants with Part B claims. The Ombudsman noted that when NIOSH temporarily paused the processing of a sizable portion of DEEOIC claims, claimants and authorized representatives found it frustrating not to receive more case-specific, timely information from DEEOIC. **The concern raised by claimants was that DEEOIC had continued to adjudicate claims without relevant records and did not fully inform them of the unavailability of records. The Ombudsman recommended that all claimants and their authorized representatives be informed in writing whenever the Energy program is unable to obtain records/evidence from specific agencies.**

Response: The Energy program disagrees with the assertion that in fiscal year 2021 our agency adjudicated claims without the necessary evidence. The Energy program acknowledges that in fiscal year 2021 both DOE and SSA delayed providing employment documentation to DEEOIC; however, any claims impacted by the inability of DOE and SSA to provide records were held in abeyance until the relevant information/evidence became available. Starting on May 3, 2021, NIOSH began updating its cybersecurity, which delayed its ability to process radiation dose reconstructions. Under the law, the Energy program cannot make determinations for non-Special Exposure Cohort (SEC) cancers under Part B of the program until it receives individual dose reconstructions from NIOSH. In fiscal year 2021, the program held non-SEC cancer claims in abeyance until dose reconstructions were completed. During this time, the Energy program continued to process SEC cancer claims, terminal cases, and claims for conditions other than cancer filed under Part B and Part E. In other words, the Energy program continued to adjudicate cases that they could adjudicate and temporarily held others when insufficient information prevented the claims examiners from making claim determinations. In all instances, the Energy program gathered the evidence necessary to properly adjudicate claims. When NIOSH delayed radiation dose reconstructions, the Energy program was proactive in notifying people; DEEOIC placed a notification on its website and utilized an email blast to stakeholders to explain the delays. Currently, there are no delays, and the Energy program is promptly receiving records from other agencies.

4.2 Recommendation: In fiscal year 2021, the Ombudsman also received complaints regarding delays in DEEOIC's processing of medical treatment authorizations, medical bill payments, and compensation payments, as well as issuance of decisions. **The Ombudsman recommended that DEEOIC routinely update claimants regarding the status of their claims, particularly when there are delays in the adjudication process, and that the Energy program share the timelines for the issuance of decisions. The Ombudsman said that this would help claimants be prepared for the next steps in claims processing, be less anxious regarding their claim status,**

and know when they might receive a decision or move on to the next phase of claims adjudication.

Response: The Energy program agrees with the Ombudsman's recommendation that DEEOIC share the timelines for the issuance of decisions. In fiscal year 2022, DEEOIC's CX Team developed a series of Infographics to aid stakeholders' understanding of the Energy program. The following Infographics are available on the DEEOIC public-facing website: Claims Adjudication Timeframes, Covered Medical Benefits, Using ECOMP, and Using the Energy Document Portal (EDP). The Claims Adjudication Timeframes Infographic is included in the program's Claims Acknowledgement Packet.

4.3 Recommendation: The Ombudsman noted that claimants and authorized representatives complained of insensitive and sometimes rude behavior by DEEOIC staff or DEEOIC contractor staff and had difficulty interacting with and obtaining assistance through the online portals and databases utilized by DEEOIC. **The Ombudsman recommended that DEEOIC utilize its CX Team as a single point-of-contact to receive complaints from stakeholders.** The Ombudsman suggested that this team should, at a minimum, acknowledge receipt of complaints and provide the complainant with a response; in so doing, the single point-of-contact could help alleviate concerns of retaliation. The Ombudsman said that a single point-of-contact could give claimants confidence that their complaints would be received.

Response: The Ombudsman noted that their office received 32 complaints in fiscal year 2021 involving interactions with DEEOIC staff; of the 32 complaints, 23 involved telephone calls not returned or could not get through and 9 involved rude and/or insensitive behavior. The Energy program's records show that in fiscal year 2021, the District Offices received a total of 102,731 telephone calls that were return/direct/transfer call types and responded to 97% of those calls within one day and to 99 percent of calls within two days. The FAB offices received a total of 3,144 telephone calls that were return/direct/transfer call types and responded to 97% of those calls within one day and 99 percent of calls within two days. Regarding poor customer service, the Energy program has consistently over the years disagreed with the Ombudsman's idea of a single point-of-contact for complaints. OWCP's website provides contact information for all of its offices, including the DEEOIC National Office, DEEOIC Field Operations, FAB, District Offices, and Resource Centers. OWCP encourages stakeholders who need assistance to submit correspondence to -- or call -- any one of these offices, call the toll-free phone numbers, or visit a Resource Center. Stakeholders have several options if they wish to submit a comment or complaint; they may contact a claims examiner or a hearing representative (or a unit supervisor or branch chief) if they have case-related or program-related concerns. Stakeholders may also submit questions or comments by phone, public email at DEEOIC-public@dol.gov, through customer satisfaction surveys, or in written correspondence to supervisors or other DEEOIC or OWCP leadership.

The Energy program disagrees with the idea that the CX Team be used as the single point-of-contact for complaints from stakeholders. The Energy program has prioritized customer experience and the equitable delivery of its services for claimants, and the mission of the CX Team is to conduct surveys, objectively and systematically gather both positive and negative feedback from stakeholders, conduct analyses of data, and make data-driven recommendations for

programmatic and procedural improvements. Through surveys and follow-up phone calls to a representative sample of claimants, the division has gathered and evaluated claimant feedback and developed recommendations for program improvements. Although the CX Team may hear of complaints while in the process of conducting a survey or speaking with a claimant or authorized representative, that is not the primary purpose of their work. The Energy program instead recommends that stakeholders utilize the public email box and/or written correspondence to present complaints; those complaints are then presented to supervisors and/or the management team for resolution. DEEOIC trains claims staff to be courteous, professional, and flexible; help claimants through each stage of the claims process; keep them informed about the status of their cases; and respond promptly to any complaint.

5 – Issues Related to Impairment Claims

5.1 Recommendation: The Ombudsman's office states that it was brought to their attention in 2021 that DEEOIC Nurse Consultants were analyzing the impairment evaluation reports submitted by physicians whose qualifications to conduct impairment ratings had already been approved by DEEOIC. The Ombudsman expressed concern that claimants and their authorized representatives were not being provided copies of notes or guidance provided by Nurse Consultants as part of the claims adjudication process. **The Ombudsman recommended that DEEOIC inform claimants and their authorized representatives of contradictory opinions and/or information that may impact their claims for benefits (e.g., copies of notes or guidance provided by Nurse Consultants as part of the claims adjudication process) and allow claimants an opportunity to review and respond to these notes or guidance prior to a decision being issued in their case.**

Response: The Energy program disagrees with the conclusions reached by the Ombudsman regarding the role of DEEOIC Nurse Consultants. The Energy program utilizes Nurse Consultants as subject matter experts who can apply their nursing expertise and case management skills to assist DEEOIC claims examiners (including MBE staff) in obtaining evidence needed to resolve claims for compensation and medical benefits. Nurse Consultants do not make decisions regarding the approval or denial of any claim. They only serve as consultants and their opinions can be used to inform the claims examiner or MBE regarding the types of follow-up questions to ask of a treating physician or other medical provider. Nurse Consultants may interact with physicians, second opinion or referee examiners, DME providers, hospitals, nursing homes, etc. to obtain and review medical records to help clarify patient status or functionality, activities of daily living, or information related to in-home care. With regard to claims for impairment, Nurse Consultants only review impairment information when asked by the MBAU to clarify the medical necessity of home and residential health care, as they relate to the claimants' ability to perform activities of daily living. They do not analyze impairment reports for any determination of impairment ratings; this would be beyond the scope of practice of a Registered Nurse. All Nurse Consultant reports are part of the case file and available to the claimant either through the ECS portal, or upon request.

Conclusion

OWCP remains fully committed to administering its responsibilities under EEOICPA, to provide benefits to eligible employees (or to eligible survivors of employees), including lump-sum

compensation under Part B, wage-loss or impairment benefits under Part E, and medical benefits under Part B and/or Part E of EEOICPA. Since the establishment of EEOICPA to the end of fiscal year 2021, the Energy program awarded compensation and medical benefits totaling more than \$20.24 billion to 131,000 claimants. This total includes \$12.99 billion in compensation and \$7.25 billion in medical expenses. In fiscal year 2021, DEEOIC provided benefits to 17,783 individual claimants (including lump-sum, impairment, wage-loss, or medical benefits). The Energy program stands ready to work with the Ombudsman to ensure that eligible claimants receive compensation and benefits under EEOICPA, and that claimants, authorized representatives, medical providers, and other stakeholders receive the best service possible.