

OFFICE OF THE OMBUDSMAN FOR THE
ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

2018 ANNUAL REPORT TO CONGRESS



OFFICE OF THE OMBUDSMAN
UNITED STATES DEPARTMENT OF LABOR

Cover photos: Savannah River Site, the Heavy Water Components Test Reactor.

The Heavy Water Components Test Reactor, HWCTR, pronounced "Hector," has become a classic image on the Savannah River Site. It was built in the early 1960's to prove that heavy water technology, which is what the Savannah River Site's reactors used, could be used to produce electricity. It was proven, but the technology was scrapped in this country, although it is the basis for Canada's CANDU reactors. HWCTR was permanently sealed and is being decommissioned today. (Photo taken November 24, 2010).

Cover photos credit: courtesy of the Savannah River Site via Flickr.

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PREFACE TO THE REPORT

In this annual report, we assess the most common difficulties encountered by claimants and potential claimants in 2018. To fully understand these difficulties there are some underlying factors which must be kept in mind:

1. While this report separately assesses a variety of difficulties, in reality these difficulties did not necessarily arise one at a time. We routinely encountered claimants who were wrestling with multiple difficulties, and wrestling with these multiple difficulties at the same time.
2. When difficulties with this program arose, claimants usually were not in a position to put the rest of their lives on hold while they addressed this difficulty. Instead, claimants usually had to address the difficulties associated with their EEOICPA claim while facing other life challenges at the same time. For example, we routinely encountered former workers who pursued their EEOICPA claim while suffering from, being treated for, or recuperating from the very illness that was the basis of their claim. Surviving family members and others assisting claimants frequently complained that their own work schedule made it difficult to communicate with DOL during normal business hours, and made it difficult to find the time to search for the evidence needed to support the claim.
3. While they worked at these covered facilities, much of the information surrounding a claimant's employment was classified. Although much of this information has since been declassified, claimants usually have no way of knowing what has been declassified. And simply being told that most information is now declassified did not always ease their concerns. Some claimants are still hesitant to share too much information about their employment, because they believe that they possess very detailed information about their employment and thus, fear they may inadvertently disclose information that has not been declassified. It has been difficult to gauge the extent of this problem. Still, we suspect that there are claimants who, in processing their claim, withhold information because they fear they may accidentally share classified information with someone who does not have the appropriate security clearances.
4. Many claimants had reservations about raising a complaint or grievance about this program at all, and they especially questioned the wisdom of raising a complaint as long as the claims examiner (CE) and/or DOL had the ability to impact their claim. In this regard, when they approached us some claimants were under the impression that our Office would be able to access their claim file information without notifying DEEOIC. When they discovered that we had to request claim file information from DEEOIC, some of these claimants chose to limit what they discussed with us or decided not to pursue the matter.
5. Similarly, most claimants did not contact us to simply register a complaint or grievance. They mainly contacted us because they wanted help resolving a problem. When they discovered that we might not be able to resolve their problem, some decided not to pursue the matter, while others were very sparing in what they said to us.

Lastly, before providing our assessment of the most common difficulties encountered by claimants during 2018, we believe it important to acknowledge that since the inception of this program OWCP has continued to undertake measures to expedite, and assist claimants with this claims process. For example, in 2018 DEEOIC announced the creation of the Branch of Medical Benefits with the goal of improving DEEOIC operations in terms of medical bill processing, transactions, coding and payment; prior approval of Home Health Care (HHC); and the oversight of medical claims to determine if procedural, regulatory, and statutory requirements have been met. In 2018, DEEOIC also announced that prior authorization was no longer required for nursing assessment/evaluations, and announced a move toward the electronic processing of check payments. DEEOIC has also continued to sponsor workshops specifically tailored to the needs of authorized representatives and

announced new updates to the Site Exposure Matrices. We also think that it is important to note that this year, as in the past, many of the claimants who approached us with complaints, grievances, and requests for assistance made it a point to stress that their concerns were with one particular claims examiner (CE) or hearing representative (HR). These claimants thought it necessary to let us know that in the course of processing their claim they had encountered other CEs, HRs, as well as others associated with the program who had been very helpful and/or very professional.

INTRODUCTION

On October 30, 2000, Congress enacted the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) as Title XXXVI of Public Law 106-398, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The purpose of this law is “...to provide for timely, uniform, and adequate compensation of covered employees, and where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy (DOE) and certain of its contractors and subcontractors.” See 42 U.S.C. § 7384d(b).

When enacted in 2000 the EEOICPA contained two parts, Part B and Part D. However, in 2004, Congress abolished Part D and created Part E 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).¹ Consequently, the EEOICPA currently contains Part B and Part E.

Part B provides the following compensation and benefits:

1. Lump-sum payment of \$150,000 and the payment of medical expenses (for the covered illness starting as of the date of filing) for:
 - a. Employees of the DOE, as well as its contractors, subcontractors, and employees of atomic weapons employers (AWEs) with radiation-induced cancer if: (1) the employee developed cancer after working at a covered facility; and (2) the cancer is “at least as likely as not” related to covered employment.²
 - b. Employees who are members of a Special Exposure Cohort (SEC) and who develop one of the specified cancers outlined in 42 U.S.C. § 7484l(17).³
 - c. All federal employees, as well as employees of the DOE, its contractors and subcontractors, or designated beryllium vendors who worked at a covered facility where they were exposed to beryllium and who develop Chronic Beryllium Disease (CBD).⁴
 - d. Employees of the DOE or its contractors and subcontractors who worked at least 250 days during the mining of tunnels at underground nuclear weapons test sites in Nevada or Alaska and who develop chronic silicosis.

Note: if the employee is no longer living, eligible survivors of the employees listed above are entitled to \$150,000 in lump-sum compensation under Part B.

¹ Part D directed the Department of Energy to provide claimants with assistance in obtaining state-based workers’ compensation.

² An “atomic weapons employer” is an entity, other than the United States, that: (A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and (B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program [EEOICPA]. See 42 U.S.C. § 7384l(4).

³ If a claimant qualifies for inclusion in a SEC class and develops one of the specified cancers, that claimant receives compensation for that specified cancer without the completion of a radiation dose reconstruction by the National Institute for Occupational Safety and Health, and without a determination by DOL of the probability of causation that the cancer was caused by exposure to radiation at a covered facility.

⁴ The link, “Explanation of Benefits Under Part B and Part E” found on DEEOIC’s webpage outlines the employees covered under this program. According to this link, the employees entitled to \$150,000 and payment of medical benefits under Part B include,

Employees of the Department of Energy, its contractors and subcontractors, and designated beryllium vendors who worked at covered facilities where they were exposed to beryllium produced or processed for the Department of Energy who developed Chronic Beryllium Disease...

However, according to the Department of Labor’s Office of the Solicitor,

[e]very federal employee is a potential “covered beryllium employee,” as defined in 42 U.S.C. §7384l(7)(A), by virtue of inclusion of the Federal Employees Compensation Act (FECA) definition of “employee” in 5 U.S.C. §8101(1) into that definitional section.

2. A lump-sum payment of \$50,000 and medical expenses for the covered illness to uranium miners, millers, and ore transporters, or their survivors, who are awarded \$100,000 under Section 5 of the Radiation Exposure Compensation Act (RECA), 42 U.S.C. § 2210 note.
3. All federal employees, as well as employees of the DOE, its contractors and subcontractors, whose claims for beryllium sensitivity are accepted under Part B are entitled to medical monitoring to check for the development of CBD.

The compensation and benefits allowable under Part E are as follows:

1. DOE contractor and subcontractor employees who develop an illness due to exposure to toxic substances at certain DOE facilities are entitled to medical expenses and may receive monetary compensation of up to \$250,000 for impairment and/or wage-loss.
2. Eligible survivors of DOE contractor and subcontractor employees receive compensation of \$125,000 if the employee's death was caused, contributed to, or aggravated by the covered illness. If the employee had between 10 and 19 years of wage-loss, the survivor receives an additional \$25,000. If the employee had 20 or more years of wage-loss, the survivor receives an additional \$50,000.
3. Uranium miners, millers, and ore transporters are eligible for medical benefits, as well as up to \$250,000 in monetary compensation for impairment and/or wage-loss if they develop an illness as a result of toxic exposure at a facility covered under Section 5 of RECA. (Employees who qualify as uranium miners, millers, or ore transporters under Section 5 of RECA may also be eligible for Part E compensation and medical benefits even if they did not receive compensation under RECA).

The Department of Labor (DOL) has primary authority for administering Parts B and E, including adjudication of claims for compensation and payment of benefits for conditions covered by Part B and E. The EEOICPA is administered by DOL's Office of Workers' Compensation Programs (OWCP) Division of Energy Employees Occupational Illness Compensation (DEEOIC). Nevertheless, there are other federal agencies who are also involved with the administration of this program.

The National Institute for Occupational Safety and Health (NIOSH) conducts activities to assist claimants and supports the role of the Secretary of Health and Human Services (HHS) under the EEOICPA. These activities include: (1) developing scientific guidelines for determining whether a cancer is related to the worker's occupational exposure to radiation; (2) developing methods to estimate worker exposure to radiation; (3) using the dose reconstruction regulation to develop estimates of radiation dose for workers who have applied for compensation; (4) overseeing the process by which classes of workers can be considered for inclusion in the Special Exposure Cohort (SEC); and (5) providing staff support for the independent Advisory Board on Radiation and Worker Health that advises HHS and NIOSH on dose reconstructions and SEC petitions.

The DOE ensures that all available worker and facility records and data are provided to DOL. This includes: (1) providing DOL and/or NIOSH with information related to individual claims such as employment verification and exposure records; (2) supporting DOL, NIOSH, and the Advisory Board on Radiation and Worker Health with large-scale records research and retrieval efforts at various DOE sites; (3) conducting research, in coordination with DOL and NIOSH on issues related to covered facility designations; and (4) hosting the Secure Electronic Records Transfer (SERT) system, a DOE hosted environment where DOL, NIOSH, and DOE can securely share records and data.

The Ombudsman to NIOSH helps individuals with a variety of issues related to the SEC petition process and the radiation dose reconstruction process. The Ombudsman to NIOSH also conducts outreach to promote a better understanding of the EEOICPA, as well as the EEOICPA claims process.

Public Law 108-375, which was enacted in 2004, not only created Part E, it also established within DOL an Office of the Ombudsman (the Office). The duties of the Office are:

1. To provide information on the benefits available under Part B and Part E and on the requirements and procedures applicable to the provision of such benefits.
2. To make recommendations to the Secretary regarding the location of centers (to be known as “resource centers”) for the acceptance and development of claims for benefits.
3. To carry out such other duties with respect to Part B and Part E as the Secretary shall specify for purposes of this section.

See 42 U.S.C. § 7385s-15(c).

The Office is also mandated by statute to submit an annual report to Congress. This annual report is to set forth: (1) the number and types of complaints, grievances, and requests for assistance received by the Ombudsman during the preceding year and; (2) an assessment of the most common difficulties encountered by claimants and potential claimants during the preceding year. See 42 U.S.C. § 7385s-15(e).

EXECUTIVE SUMMARY

The EEOICPA continues to be a tale of two programs, where some claimants process their claims without encountering major difficulties, while others find processing a claim to be difficult and challenging.

- Some claimants experienced minimal to no delay in learning of the existence of the EEOICPA. Yet, there are others who first learned about this program recently or many years after its enactment. It is also very likely that there are potential claimants who still are not aware of this program. Delays in learning about this program can impact a claimant's ability to process his/her claim, such as impacting the availability of evidence and witnesses.
- DOL is often able to verify the worker's employment. However, we also encountered instances where DOL could not locate the records needed to verify employment. In our experience these instances usually involved subcontractor employment.
- Utilizing the available resources, some claimants are able to successfully process their claims. Yet others struggle with the claims process because they: (1) are not aware of the available resources; (2) find it difficult to access these resources, many of which are only available online; (3) do not know how to utilize these resources; and/or (4) have needs that are not addressed by these resources.
- While many claimants have adapted to the digital age, the degree to which they have adapted varies. Some claimants are proficient with computers and the internet, while others rely on family members or friends to assist them with their computer and internet needs. Some claimants have the ability to access the internet via their smart phone. Others do not have this access on their mobile devices. While some claimants have computers in their home, others do not and thus use the computer at their local library or community center. While some claimants have facsimile capabilities in their homes, others have to go to a store and pay per page in order to send a facsimile.
- Some claimants are able to comprehend the complex legal, scientific, and/or medical concepts addressed in their claims. Others are overwhelmed by these concepts.

The list could go on. We believe that these disparities help explain why DOL has paid out billions of dollars in compensation and medical expenses, and yet there are claimants, family members, and others who encountered difficulties trying to process, or trying to assist someone in processing an EEOICPA claim. Simply put, while this program works for some, it is problematic for others.

Thus, one has to ask, why do some claimants find this program problematic? From time-to-time it has been suggested that most claimants approached us simply because they disagreed with the outcome of their claim. Our experiences have indicated that this does not fully explain why claimants approached us. In some instances, the individuals who approached us had not filed a claim. These individuals usually approached us because they heard about this program, oftentimes in a passing conversation, and now wanted more information. It usually troubled these individuals that it was only by coincidence that they had learned about this program, and they were further troubled by all of the effort they had to undertake just to obtain more information.

There were other claimants who contacted us while in the midst of processing their claim. These claimants approached us because they needed guidance on how to proceed with their claim, or needed help understanding the guidance that had been given to them. In the course of talking to these claimants it often became apparent that they did not have a good understanding of this program or of its claims process. And in spite of the resources available to assist them, these claimants often complained about a lack of assistance, or questioned the quality of the assistance they received.

Some claimants contacted us because they wanted the status of their ongoing claim. These claimants usually approached us when they felt that there had not been any recent activity on their claim, and they frequently contacted us only after other efforts to determine the status of their claim had been unsuccessful.

And there were claimants who contacted us in response to the recommended or final decision they received. While these claimants usually disagreed with the outcome of their claim, they often raised concerns that went beyond their disagreement with the outcome. In many instances, they questioned the procedures and policies relied upon in reaching these outcomes. Their questions also often underscored the extent to which they did not understand this program, and/or the policies and procedures related to this program.

The complaints, grievances, and requests for assistance that we received in 2018 involved virtually every aspect of the EEOICPA claims process. Nevertheless, the common theme that arose from these complaints, grievances, and requests for assistance emphasized the extent to which claimants found the EEOICPA to be a complicated program and, how in spite of the assistance offered by DOL and in spite of the resources that had been developed, some claimants found it difficult, if not impossible, to navigate this complicated program. We routinely encountered claimants who were not aware of the resources that had been developed to assist them, as well as others who knew about these resources, but found it difficult to access and/or use them. And while they could utilize the services of an authorized representative (AR) to assist them with their claim, some claimants complained that they could not find an AR who was willing to handle their claim, some complained that they did not have the money to pay for an AR, and others had qualms about using an AR.⁵

We further found that some claimants struggled with this program because they did not understand adjudication processes in general, and/or the EEOICPA claims process in particular. As a result, even when they received advice/instructions some claimants did not understand what was being said and/or how to carry out the advice/instructions given to them.

We also found that the struggles encountered by claimants did not always end when their claim was accepted. Even after the acceptance of their claim, some claimants encountered difficulties obtaining authorization or reauthorization for home health care, while others found it difficult to process the paperwork needed to have their medical bills paid or to receive reimbursement for covered, out-of-pocket medical expenses.

This annual report sets forth the number and types of complaints, grievances, and requests for assistance that we received in 2018. In addition, based on the totality of our interactions in 2018, we provide an assessment of the most common difficulties encountered by claimants.

⁵ Some claimants did not utilize the services of an AR because they could not find an AR willing to assist them. Others noted that they did not have the money to pay an AR. In support of this argument claimants first noted that they were responsible for the payment of any fee for services that was owed and then noted that even if found entitled to monetary compensation and medical benefits they could still be left with some out-of-pocket expenses associated with their covered illness. Thus, some claimants argued that any monetary compensation they received was needed to pay other medical bills. Still, other claimants believed that retaining the services of an AR would make it appear that they were “fighting” the government and they did not want to be viewed in that light.

TABLES

TABLE 1

COMPLAINTS, GRIEVANCES, AND REQUESTS FOR ASSISTANCE BY NATURE OF THE COMPLAINT.

The following table sets forth the numbers and types of complaints, grievances, and requests for assistance received in 2018. In preparing this table, it was usually easy to identify the complaints, grievances, or requests for assistance raised by claimants when they approached us with a specific concern. However, in many instances, because they were not familiar with this program or with the claims process, claimants found it difficult to succinctly explain their concerns. Thus, as opposed to raising specific concerns it was common for claimants to recount their interaction(s) with DEEOIC. In listening to their recount, we endeavored to identify their concerns.

Consequently, in setting forth the number and types of complaints, grievances, and requests for assistance that we received in 2018, we did not include every issue mentioned by every claimant as they recounted their interactions with this program. Rather, this table sets forth what we identified as the key issues raised by claimants.

In addition, in some instances we were contacted on multiple occasions by a claimant or authorized representative (AR). To the extent that a claimant or AR contacted us on multiple occasions with the same issue, we counted this as one complaint, grievance, or requests for assistance. On the other hand, to the extent that each contact raised a new issue, each contact was counted as a new complaint, grievance, or request for assistance.

Covered Employment (General)	24
Covered Facility (Questions concerning a facility's designation as a covered facility)	17
Covered Illness (difficulties establishing a diagnosis or cause of death)	14
Difficulties establishing a diagnosis of CBD	7
Difficulties establishing a consequential illness	16
Difficulties locating employment records	20
Difficulties locating medical records	4
Difficulties locating exposure records	24
Survivor Eligibility	11
Exposure to Toxic Substances (questioning the accuracy of existing records)	31
Questioned accuracy of Site Exposure Matrices	13
Questioned the accuracy of the dose reconstruction process	21
Issues related to a Special Exposure Cohort	7
Causation (difficulties establishing that the causal link between the illness and the work-related exposures)	56
Impairment (difficulties processing impairment claim)	16
Wage-Loss (difficulties processing claims for wage-loss)	4
Medical Benefits	7
Problems with use of medical benefits card	11
Home Health Care Issues	28

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TABLE 1, cont'd.

Issues related to the payment of medical bills	23
Status Inquiries (this includes those who specifically inquired about the status of their claim as well as those who contacted us because they did not know what was happening with their claim).	39
Delays	41
Issues related to the Radiation Exposure Compensation Act	4
Inappropriate customer service	39
Telephone calls not answered or not returned	38
Urged to cancel in-person hearing	9
Complaints questioning the actions of an AR	5
Complaints questioning the acts of a provider	7
Cannot locate a physician; specialist; or provider	5
Physicians did not understand the program	2
Contacted us to ask where to file a claim	24
Difficulties related to requests to reopen/reconsideration	8
Difficulties related to an offset/coordination of benefits	4
Hearing Loss (difficulties and concerns related to claims for bilateral sensorineural hearing loss)	17
Belatedly learned that they could request a copy of their claim file	15
Evidence not discussed by CE or HR	14
Other procedural concerns	23
Requests for assistance	233
Not getting answers/information confusing	49
Terminal Illness (feels DEEOIC did not respond quickly enough to notice of terminal illness)	14
Continued use of Circular 15-06	4
Issues involving election of benefits	2
Concerned with change in claims examiner	3
TOTAL	953

TABLE 2
COMPLAINTS BY FACILITY.

We receive complaints, grievances, and requests for assistance from claimants living all across the country. In many of our conversations, especially email and telephone conversations, it was impossible to identify where the claimant lives. Yet, in an effort to give some indication of the reach of this program, the table below lists the facility where the employee worked. This is not a complete list because in many instances, claimants did not provide us with, and resolving their concerns did not require us to, identify the facility where the employee worked. Nevertheless, this table illustrates the impact of this program.

FACILITY	LOCATION	NUMBER OF COMPLAINTS
Albany Research Center	Albany, Oregon	1
Allied Chemical Corporation Plant	Metropolis, Illinois	1
American Beryllium Company	Sarasota, Florida	2
Ames Laboratory	Ames, Iowa	6
Argonne National Laboratory - East	Argonne, Illinois	1
Blockson Chemical Company	Joliet, Illinois	2
Brookhaven National Laboratory	Upton, New York	2
BWX Technologies, Inc. (Virginia)	Lynchburg, Virginia	3
Clarksville Modification Center	Clarksville, Tennessee	1
Coors Porcelain	Golden, Colorado	1
Dow Chemical Corporation (Madison Site)	Madison, Illinois	1
Feed Material Production Center	Fernald, Ohio	4
General Electric Company (Ohio)	Cincinnati/Evendale, Ohio	1
General Steel Industries	Granite City, Illinois	2
Hanford	Richland, Washington	15
Idaho National Engineering Laboratory	Scoville, Idaho	8
Iowa Ordnance Plant (Line 1 and Associated Activities)	Burlington, Iowa	18
Kansas City Plant	Kansas City, Missouri	4
Linde Ceramics Plant	Tonawanda, New York	1
Los Alamos National Laboratory	Los Alamos, New Mexico	10
Mound Plant	Miamisburg, Ohio	5
Nevada Test Site	Mercury, Nevada	7
Oak Ridge	Oak Ridge, Tennessee	13 (site not specified)
K-25		7
Y-12		18
X-10		3
Pacific Proving Ground	Republic of the Marshall Islands	1
Paducah Gaseous Diffusion Plant	Paducah, Kentucky	15

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TABLE 2, cont'd.

FACILITY	LOCATION	NUMBER OF COMPLAINTS
Pantex Plant	Amarillo, Texas	5
Pinellas Plant	Clearwater, Florida	7
Portsmouth Gaseous Diffusion Plant	Piketon, Ohio	3
Rocky Flats Plant	Golden, Colorado	12
Sandia National Laboratory	Albuquerque, New Mexico	1
Area IV of the Santa Susana Field Laboratory	Santa Susana, California	3
Savannah River Site	Aiken, South Carolina	9
Various Uranium Mines		6
Wah Chang	Albany, Oregon	1
TOTAL		200

CHAPTER I.

DIFFICULTIES ARISING FROM A LACK OF KNOWLEDGE ABOUT THIS PROGRAM.

A. LACK OF NOTICE.

i. There are potential claimants who are not aware of this program.

Hello, I [need] information about the programs on radiation related and other compensation programs related to employment at Argonne National Laboratory.

—Email from a potential eligible surviving child. October 2018.

In Response #1 to the Office of the Ombudsman’s 2015 Annual Report to Congress, DOL “...agreed that widespread direct notification to all those individuals potentially impacted by the nuclear weapons program has been challenging.” This response, as well as DOL’s response to the Office’s subsequent Annual Reports outlined some of the efforts undertaken by DOL to increase awareness of this program. See, DOL’s Response to the Office of the Ombudsman’s 2015, 2016, and 2017 Annual Reports to Congress. Still, in spite of the efforts undertaken by DOL, we continued to encounter claimants who were just learning about this program. We also continued to encounter claimants who believed that the delay in learning about this program had negatively impacted their ability to process their claim.

ii. The specific concerns involving employees of Atomic Weapons Employers (AWE) and Beryllium Vendors.

...I would like information if I would be qualified for any kind of compensation for working for Kerr-McGee nuclear corp...

—Email from a potential AWE claimant.⁶ September 2018.

Over the years, we were approached by individuals who believed that Atomic Weapons Employers (AWE) and Beryllium Vendors had been allowed to take the lead in disseminating information about this program to its employees and/or former employees. These individuals questioned the extent to which these employers had actually disseminated information and questioned the quality of the information that had been provided. Initially, while these individuals raised general concerns, they did not provide specifics.

That changed in 2017 when we were approached by former employees of an AWE who asserted that a letter from their employer that year was the first notice that they received from this employer discussing this program. More recently in 2018, an employee of a Beryllium Vendor contacted us to confirm the accuracy of the information that he/she had received from his/her employer concerning this program. This employee approached us after being told that the facility did not currently qualify as a covered facility. In spite of this information, the “DOE Facility List Database” which the employee did not realize could be accessed online, indicated that this facility continued to be a covered facility.

⁶Kerr McGee is designated as an AWE from 1963 to 1973. In addition, during the period of residual radiation which is from 1974 to March 1, 2011, employees of subsequent owners and operators of this facility are also covered under the EEOICPA.

In another instance, a former AWE employee contacted us after learning about this program from a colleague. This former employee was adamant that his/her employer had never provided him/her with any information about this program. A similar concern was raised by a former employee who contacted us following an outreach event in Lynchburg, Virginia. This employee contacted us to question why former employees of this Lynchburg facility were not eligible for the free screenings offered by the Former Worker Program.⁷ In the course of discussing his/her concerns about the screening program, this employee asserted that he/she had never received any notice from his/her Lynchburg employer telling him/her about the EEOICPA.

We are aware of instances where employees of AWEs and Beryllium Vendors were timely made aware of the EEOICPA program. Still, the concerns brought to our attention suggest that there are other AWEs and Beryllium Vendors who have not put forth much, if any, effort to disseminate information about this program to former employees and to ensure that former employees have access to accurate information.

iii. Communities benefit from any/all outreach efforts.

Our office received a telephone call from...He is interested in filing a claim for benefits under EEOICPA. He said he was employed at the Y-12 Plant and resides in TN.

—An email written by our Office referring a potential claimant to the Resource Center. June 2018.

In some areas of the country OWCP, as well as the other agencies involved in the administration of this program, have hosted numerous outreach events. Nevertheless, it has been our observation that even when previous outreach events had been hosted in an area, there were benefits derived from hosting, or attending, additional outreach events in these same areas. At practically every outreach event we attended there were individuals who either wanted to file a claim, or when it was available, took advantage of the opportunity to file a claim.⁸ Our conversations with some of those individuals revealed that in some instances they had just learned about this program.⁹ There were a host of reasons for why they had just learned about this program. Yet, these additional outreach events provided these potential claimants with another chance to learn about this program and/or to file a claim.¹⁰

Moreover, in determining the success of outreach events, we have found that consideration should also be given to the impact of the publicity generated by these events. It has been our experience that the publicity surrounding outreach events was often sufficient in and of itself to: (1) increase awareness of this program; and (2) ensure that those who had questions about this program now knew where to turn for help. In the days leading up to, as well as those following many of the outreach events sponsored by the Joint Outreach Task Group (JOTG),¹¹ DEEOIC, or our Office, there was a noticeable increase in contacts to our Office. We could often tell that the publicity generated by an event had prompted these contacts because many of these individuals began their

⁷ The Former Worker Screening Program provides ongoing medical screening examinations, at no cost, to all former DOE Federal, contractor, and sub-contractor workers who may be at risk for occupational diseases. The DOE subsequently initiated a separate beryllium sensitization screening effort for employees of defunct DOE beryllium vendors who were employed with these companies while they performed work for DOE. While the Lynchburg facility qualified for certain years as an AWE, employees of AWEs are not entitled to the free screenings. In addition, while this facility also operated as a Beryllium Vendor, since it was not defunct, its employees are not entitled to the screenings offered by DOE.

⁸ OWCP's Annual Report to the Congress for Fiscal Years 2013, 2014 and 2015 shows that as a result of Energy Program sponsored outreach in fiscal year (FY) 2013 DEEOIC received 55 new claims; in FY2014 the program received 113 new claims; and in FY2015 it received 78 new claims. See Energy Tables 7A, 7B, and 7C of the OWCP Annual Report to the Congress for Fiscal Years 2013, 2014 and 2015, Submitted to Congress in 2017, pages 39-40.

⁹ There were also some claimants who had previously filed claims who now wanted to file an additional claim.

¹⁰ For instance, we found that while some potential claimants had generally heard about the program (or about previous meetings), they had not paid a lot of attention to these notices because at that time they did not have an illness. However, following their own diagnosis of a potentially work-related illness, they wanted more information.

¹¹ The mission of the JOTG is to improve communications among members and coordinate efforts, thus allowing JOTG members to distribute information to a larger number of potential and existing EEOICPA claimants. JOTG members include the U.S. Department of Labor, the U.S. Department of Energy, the U.S. Department of Health and Human Services, the Office of the Ombudsman for the EEOICPA, and the Office of the Ombudsman for the National Institute for Occupational Safety and Health.

conversation by explaining why they could not attend the event, or referencing the materials distributed in their town or state announcing the event.

We also observed that some attendees came to outreach events to: (1) learn more about the program; (2) obtain answers to questions; and/or (3) receive procedural, policy and/or legal updates. In this regard, we found that while some claimants were reluctant to directly contact the Resource Center, the District Office, and sometimes our Office with their questions, they were willing to attend an outreach event and pose their questions to the representatives from the Resource Center, the District Office, and/or our Office.

iv. Disseminating information about this program to those who did not work at larger facilities, as well as those who did not live close to covered facilities.

Over the years, we encountered claimants who complained that DOL's outreach activities mainly focused on areas near facilities that employed (or once employed) large numbers of employees. These complaints continued in 2018. In 2018, we also talked to claimants and ARs who noted that some workers had commuted long distances to work at these facilities. These claimants and ARs complained that notice of this program, as well as notice of outreach events, were not always disseminated to the communities where these commuters lived.

In Response #1 of DOL's Response to the Office of the Ombudsman's 2016 Annual Report to Congress, DOL indicated that in order to reach employees and former employees of smaller facilities OWCP had, between 2016 and 2018, conducted 14 outreach events near smaller facilities. This response further noted that in 2017 OWCP placed advertisements regarding the EEOICPA in ten newspapers and newsletters.¹² According to DOL, these advertisements mentioned the names of several smaller facilities in the region and encouraged former employees to file claims. See DOL's Response to the Ombudsman's 2016 Annual Report to Congress, Response #1. In its subsequent response to the Office of the Ombudsman's 2017 Annual Report, DOL further addressed the face-to-face outreach events that it had held across the country. See Response #2 to DOL's Response to the Office of the Ombudsman's 2017 Annual Report.

Claimants appreciate the efforts undertaken by OWCP to disseminate information about this program to areas beyond the immediate vicinity of larger facilities. However, it has been noted that the DOE Facility List Database contains approximately 380 facilities.¹³ It is hoped that OWCP's efforts to reach out to those who worked at these smaller facilities will continue. Similarly, it is hoped that OWCP will continue its efforts to reach out to those who do not live close to a covered facility.

v. Potential claimant's questioned whether the government was utilizing all of the resources at its disposal to inform them of this program.

Claimants who only belatedly learned of this program often wanted to know why the government had not directly notified them of it. A frequent response that we heard to this question indicated that when this program was created rosters listing the employees who worked at these facilities were not available. Yet, in the years since the creation of this program, DOE and its Former Worker Medical Screening Program (FWP) have compiled employee rosters containing contact information for many of the former DOE employees, contractors, and

¹² The Joliet Herald (Illinois); Alaska Dispatch News (Alaska); The Village Daily Sun (Florida); Del Webb Woodbridge Newsletter (California); News Watchman (Ohio); Morning Sun (Kansas); Dallas Observer (Texas); Syracuse Post Standard and Syracuse New Times (New York); Sun City Tipster (Arizona); and the Carillon 55+Newsletter (Illinois).

¹³ DOE created the Facility List Database to provide public access to summaries of information collected on the facilities listed in the Federal Register, <https://ehss.energy.gov/Search/Facility/findfacility.aspx>.

subcontractors who worked at these covered facilities.¹⁴ These rosters do not list every employee who worked at every covered facility. Still, these rosters compiled by DOE/FWP are more extensive than the mailing lists compiled and used by DEEOIC, which only contain contact information for those who already filed an EEOICPA claim, and thus are already aware of this program.

DOL addressed the rosters compiled by DOE/FWP in Response #1 to the Ombudsman's 2016 Annual Report. In this response, DOL indicated that while privacy concerns prevented OWCP from using the mailing lists/rosters compiled by DOE/FWP, OWCP had worked with DOE/FWP to send information regarding JOTG events using the DOE/FWP lists/rosters. See DOL's Response to the Office of the Ombudsman's 2016 Annual Report, Response #1. In addition, the 2017 Annual Report issued by the FWP indicated that in 2017 the FWP assisted DOL with nine (9) of DOL's outreach efforts.¹⁵ See FWP 2017 Annual Report, page 5. Claimants hope that DOE/FWP and DOL will continue to engage in, and if possible, increase the efforts to use the rosters compiled by DOE/FWP. Utilizing the DOE/FWP rosters is a cost-effective way to reach potential claimants, especially those who over the years moved to other parts of the country. Disseminating information about this program via regional and national publications offers another cost-effective way to reach potential claimants.

vi. The delay in learning about this program can impact one's ability to collect evidence.

In some instances, claimants approached us immediately after belatedly learning about this program, wanting to know why it had taken so long to receive this notice. Yet, in other instances the complaints concerning the delays in learning about this program were raised once claimants felt they had been impacted by the delay. In a common scenario, claimants approached us to complain about the delay in learning about this program when they realized the delay had impacted their ability to collect evidence. Claimants complained that by the time they learned of this program: (1) relevant evidence, especially relevant medical records had been destroyed; (2) colleagues who could have provided affidavits had passed away, or no longer had the capacity to complete an affidavit; and/or (3) their own health had degenerated to the point where it was difficult for them to process a claim, and/or made it difficult for them to assist others in processing their claims.

B. DIFFICULTIES ACCESSING AND UTILIZING THE RESOURCES THAT HAVE BEEN DEVELOPED TO ASSIST CLAIMANTS.

DEEOIC has developed a variety of resources designed to assist claimants during the claims process. There is no doubt that these resources can be helpful. Still, a majority of the claimants who approached us either had never attempted to access these resources, or if they had attempted to access one of these resources, had encountered difficulties using the resource.

i. Many resources only available online.

The vast majority of the resources developed by DEEOIC to assist claimants are only available online. This presents a problem for claimants who do not have access or only have limited access to the internet, as well as those who are not internet savvy.

¹⁴The Former Worker Screening Program (FWP) provides no-cost medical screenings to all former DOE Federal, contractor and subcontractor employees. The screenings focuses on the early detection of health conditions that may be related to occupational exposures, <https://www.energy.gov/ehss/services/worker-health-and-safety/former-worker-medical-screening-program>.

¹⁵In its 2017 Annual Report, the FWP noted that in FY 2017 the JOTG held meetings in two locations. See Former Worker Medical Screening Program 2017 Annual Report, page 6.

In Response #2 of its Response to the Office of the Ombudsman's 2016 Annual Report, DOL stated that,

While there may be claimants who do not understand or have access to the internet, OWCP believes that the prevalence of the Internet in today's society has given the majority of claimants and their representatives opportunity to adapt to the digital age. Today's online work environment demands government agencies utilize the latest technologies, and OWCP has done so...

OWCP is to be commended for its efforts to improve its online resources and claimants' access to these resources. Nevertheless, we encountered claimants, as well as ARs, who had not fully adapted to the digital age. When asked about their access to the internet, some claimants noted that their access was through a computer at the local library or local community center. Others acknowledged that they relied on a relative or friend for internet access, or to assist them in using their computer. And some indicated that they did not have access to the internet at all.¹⁶ Therefore, that some claimants have adapted to the digital age does not negate the difficulties encountered by others who, for whatever reason, have not adapted as well. In our experience, it was the claimants who had not adapted as well to the digital age who most needed help.

In Response #4 to the Office of the Ombudsman's 2017 Annual Report, DOL noted that "[f]or claimants without Internet access, OWCP is always willing to provide verbal assistance and printed information, and will continue to do so." See DOL's Response to the Office of the Ombudsman's 2017 Annual Report, Response #4. However, some claimants have suggested that assistance is only provided if they ask for it. This can present problems because when claimants do not know that such assistance is available, they are less likely to ask for it.

ii. Merely telling a claimant that a resource existed was not always sufficient.

OWCP has placed a lot of information online. Some claimants were capable of accessing these online resources. However, we routinely encountered claimants who were not aware that these resources were available, or did not appreciate the value of these resources. In this regard, we routinely found that while a resource may have been mentioned in a decision, or in a conversation with the claimant, some claimants still did not understand what these resources were. As a result, they did not turn to these resources when they needed help. A common example illustrating this fact involved claimants who, in their conversations with us, initially asserted that no one had ever told them about the Site Exposure Matrices (SEM) database. In spite of these assertions, there were times when a review of the recommended and/or final decision issued to the claimant revealed that the SEM database had been mentioned in one or both of these decisions. As our conversations with these claimants continued, it became clear that DEEOIC's mention of this resource in a decision, or in a conversation, had not been sufficient to ensure that the claimant appreciated the value of the SEM database, and did not guarantee that when the claimant had subsequent questions about his/her exposures, he/she would realize that the SEM database might be helpful.

That it was not always enough to simply tell a claimant that a resource was available was further buttressed by our encounters with claimants who had questions concerning the EEOICPA Procedure Manual (PM), a particular EEOICP Bulletin, or a particular EEOICP Circular. While their questions were usually prompted by the CE's mention of the document, or a reference to the document in a recommended or final decision, the claimants who came to us usually had not tried to access these documents online.¹⁷ In fact, we found that because they were

¹⁶ In order for our Office to assist claimants we are required to obtain a signed Privacy Act Waiver from them in order to request information or documents from their DEEOIC claim file. In an effort to determine the best way for the claimant to provide us with this waiver, we routinely talked to them about their access to the internet since this was one option for providing us with this waiver and other documents.

¹⁷ The EEOICP Procedure Manual (PM) provides information about the organization of the Division of Energy Employees Occupational Illness Compensation; the process of collecting and evaluating evidence; the decision-making process; and how lump-sum compensation and medical benefits are processed. EEOICP Bulletins provide detailed guidance to claims staff on handling of new claim situations not addressed in the PM. EEOICP Circulars communicate items of informational value relating to the DEEOIC or announce a program change.

never informed that a resource was available to the public, or taught how to access and use the resource, some claimants assumed that the resource was for exclusive use by the claims examiner or other DEEOIC personnel.

In our conversations with claimants over the years, and particularly in 2018, it was apparent that although the average claimant may now have a computer and internet connection, they did not think to ask their CE about the online resources the CE used to adjudicate their claim, particularly when they did not learn about these resources until after they were referenced by the CE in a decision. Therefore, we found it helpful to specifically tell claimants that a resource was available online, and if possible, to provide them with the web address for the resource. We further found that claimants came away with a better appreciation of a resource if they had the opportunity to see a demonstration of the resource, or had the opportunity to see some of the information the resource could generate or provide. Thus, when talking to claimants over the telephone about a resource, we found it helpful to provide directions on how to access this resource and to briefly point out some of the features of this resource. Similarly, at outreach events we found it helpful, when internet access was available, to demonstrate how to access a resource and to provide claimants with a glimpse of the information they could obtain by accessing this resource.

During the Authorized Representative Workshops sponsored by DEEOIC attendees received a tutorial in the use of some of the resources developed by DEEOIC.¹⁸ Attendees have told us that they found this tutorial to be very helpful. However, many of the individuals who approached us with problems had not attended one of these workshops and often were not likely to attend or otherwise benefit from one of these workshops, i.e., claimants who did not have an AR, as well as close family member who were simply serving as the AR for one particular claimant.

C. DIFFICULTIES OBTAINING ASSISTANCE WITH THEIR CLAIM.

i. Claimants needed assistance with this complicated program.

“This is my first contact to your office. I do not know what steps to take now [and] I have contacted every person that I know to help with my problem.”

—Email from a claimant. July 2018.

Our office received a telephone call from...He is interested in filing a claim for benefits under EEOICPA...He indicated he is virtually blind and asked for assistance with filing a claim...

—Email from our Office forwarding an inquiry to DEEOIC. June 2018.

I just wanted to let you know my case...has been resolved in my favor...As you know, I found the process confusing and frustrating...

—Email from an eligible survivor. May 2018.

It is widely recognized that the EEOICPA is a complicated program. See DOL’s Response to the Office of the Ombudsman’s 2015 Annual Report to Congress, Response #2. Yet, in spite of their lack of familiarity with this program, there were claimants who tried to process or had processed their claim without the assistance of an authorized representative (AR), or processed their claim with the assistance of a family member who was not familiar with this program. In some instances, it was the claimant’s choice to proceed without the assistance of an AR who was familiar with this program. However, there were other claimants who felt that their circumstances

¹⁸ AR Workshops began in 2017 and there have been three workshops to date. Attendance at these workshops is limited to 25-30 people in order to allow participants access to online resources and to provide individualized attention. To date, the tutorials and presentations shared at these workshops has not been made available online.

had compelled them to proceed without an AR. Thus, some claimants proceeded without an AR because they could not locate an AR, or could not find an AR who would agree to assist them. Others proceeded without an AR because they did not have the money to pay for an AR.¹⁹

Consequently, we were routinely approached by claimants who did not have a good grasp of this program and did not have an experienced AR to assist them. These claimants often moved step-by-step in the claims process following the instructions given to them by their CE, or following whatever guidance they located on their own. Difficulties arose when: (1) the instructions or guidance they received were not as detailed or as specific as they needed; or (2) they could not understand the complex legal, medical, or scientific instructions/guidance they received.

In fact, while different claimants used different terms to describe the difficulties they encountered, we were routinely approached by claimants who complained of finding themselves in what amounted to a vicious cycle. Because they did not fully understand this complicated program, they did not know how to proceed. And yet, when they were given instructions or tried to obtain guidance on how to proceed, because this program was so complicated, they did not understand the instructions they received or the guidance they obtained.

For instance, as they departed the outreach events that had been sponsored by DEEOIC or our Office, we sometimes heard claimants suggest that they had found it impossible to grasp every concept discussed at these events. Thus, it was not unusual to hear these claimants indicate that they had focused their attention on the information that was most relevant to them at that particular time and stage in their claim process. And while they had often received hard copies of some of the basic information discussed at these events, these claimants often assured us that because this program was so complicated, they were confident that as they proceeded with their claim, they would again need to talk to someone when they encountered new difficulties.

Similar concerns of feeling overwhelmed and not knowing what to do were voiced by claimants who tried to access the online resources that had been developed to assist them. Some claimants complained that it was difficult to locate some of these online resources. In our experience, difficulties trying to locate some of these resources often stemmed from the claimant's lack of familiarity with the terms and phrases used by the program. For example, while claimants may have known that a listing of the 22 specified cancers was available online, some claimants could not locate this listing because they did not realize that access to this list was found under the link "Special Exposure Cohorts—Approved SECs." In many instances, these claimants were not familiar with the term "Special Exposure Cohort," or had heard of the term, but did not know what it was or how it was related to the specified cancers.

Claimants also complained of accessing a resource only to discover that they did not know how to utilize the resource to obtain the information they needed. Claimants who tried to access the SEM database complained of accessing this database only to realize that they did not know what they were looking for, or how to refine their SEM search to obtain information that DEEOIC would deem relevant to their claim. And they complained that they could not find any guidance to help them. Similar complaints of not knowing how to utilize a resource were expressed by claimants who tried to access the online Medical Provider Search.

Sentiments of feeling overwhelmed were also expressed by the claimants who tried to access the EEOICP Procedural Manual (PM). These claimants complained of being overwhelmed by the volume and/or the complexity of the information they encountered, and in particular asserted that it was overwhelming to discover

¹⁹ The claimant is responsible for any fee for services rendered by the AR in connection with their claim.

that the PM was over 750 pages long.²⁰ When we mentioned that the PM was searchable by word or key phrase, it became apparent that most of these claimants had not read the paragraph on the PM's homepage that explained that the PM was searchable and no one had told them about this feature.²¹ We further found that even when they knew that the PM had a search function, some claimants still encountered problems trying to locate information in the PM because they were not familiar with the specific words and key phrases used by the program.²² As a result, claimants who were not aware of the PM's search function, as well as those who found it difficult to use this search function complained that they often had to read through pages of very technical language in hopes of finding the information they needed.

Thus, at the core of many of the complaints that we received was the fact that claimants did not understand this complicated program and did not know how to access or use the tools that had been developed to assist them.

ii. Claimants do not understand the role of the Resource Centers.

There were some claimants who routinely visited or otherwise utilized the services of the Resource Centers. However, we encountered other claimants who were under the common misconception that once the Resource Center completed their Occupational History Questionnaire (OHQ) and forwarded their claim for benefits to the District Office, the Resource Centers' role in assisting them with their claim was complete. In light of this misconception, some claimants struggled with the processing of their claim all the while unaware that the Resource Center could have provided assistance. For example, we encountered claimants who had previously filed a claim who nevertheless approached us to ask where to go to file an additional claim for a new medical condition, or to file for a consequential condition related to their accepted medical condition. These claimants did not realize that the Resource Center could have assisted them. Similarly, while the link on DEEOIC's website to "Role(s) of the Resource Center, District Office, Final Adjudication Branch & National Office" explains that the Resource Centers can transmit documents to the DEEOIC District Offices, we encountered claimants who had spent their own money forwarding voluminous documents to the District Office, all the while not knowing that the Resource Center could have forwarded these documents for them. In one such instance, our Office was contacted by the AR for a claimant who was frustrated when unable to upload a large volume of documents to the claim file via the online, Energy Document Portal (EDP).²³ This particular AR was unaware that the Resource Center could send the documents to the District Office without incurring any expense, and without having to separately upload multiple batches of documents via the EDP. In light of situations such as these we believe claimants would benefit from a better understanding of the services provided by the Resource Centers.

In fact, some claimants have suggested that a packet identifying the DEEOIC resources and providing instruction on how to use them be sent to every individual each time they file a claim. This suggestion was consistent with our observation that merely putting information online did not ensure that claimants would be aware of this information. The more directly it is brought to a claimant's attention that these resources exist, and the more the claimant understands the value of these resources, the more likely it will be that, when difficulties arise, he/she will try to access these resources.

²⁰ The Federal EEOICPA Procedure Manual provides an overview of DEEOIC's program and guidance regarding the general policies and procedures used by DEEOIC claims staff in the processing and adjudication of EEOICPA claims.

²¹ On the main page of the "EEOICP Procedure Manual" link there is a paragraph that explains that the PM is searchable by word or key phrase. Many of the claimants we encountered were not aware that the PM was searchable.

²² Even the most casual conversation with claimants about this program oftentimes revealed the extent to which they were not familiar with the words and key phrases commonly used by DEEOIC personnel.

²³ The EDP is an electronic document submission system that allows EEOICPA claimants to electronically submit documents to their imaged case file managed in the OWCP Imaging System (OIS). Electronically submitted documents will be available to DEEOIC claims staff immediately after the document upload is complete thus eliminating the delays of mailing. The EDP can be accessed at <https://eclaimant.dol-esa.gov>.

iii. Difficulties encountered when trying to telephone the CE.

...Additionally, she states she does not get her call returned [by the CE]...

—Email from our Office forwarding an inquiry to DEEOIC. February 2018.

...She has called and called [the CE] and never gets an answer...

—Email forwarding a complaint to us. January 2018.

In 2017, our Office met with DEEOIC to discuss the complaints we received alleging that when some claimants called DEEOIC, usually to talk to their CE, they were unable to talk to the CE and instead had to leave messages. We noted that some of these claimants alleged that it had taken a long time for someone to call them back. We further noted that other claimants had indicated that they never received a return telephone call.²⁴ DEEOIC promised to look into this matter. The discussion of this issue in our 2017 Annual Report concluded by recognizing that since our meeting with DEEOIC some claimants had reported receiving a prompt return telephone call when they left a message for their CE. Yet, we also noted that we continued to encounter other claimants who complained that: (1) someone other than the CE had returned their telephone call and this person could not answer their questions; or (2) their messages had not been returned. Not much changed in 2018.

In many instances the claimants who complained that their CE had not called them back, or had taken a long time to call them back, did not provide a lot of details. A couple of reasons help to explain this lack of detail. For one, their difficulty trying to talk to their CE oftentimes was not the main reason for contacting us. In many instances, the claimant contacted us because he/she felt that his/her claim was being unduly delayed; he/she had questions arising from DEEOIC's directive to submit additional evidence within 30 days; and/or he/she had just received written correspondence from DEEOIC and did not understand this correspondence. The difficulty they encountered trying to talk to their CE was often raised in explaining why they had turned to us for help and/or why they were anxious to get an answer to their question or concern. We also found that some claimants were reluctant to provide us with details regarding their difficulty contacting the CE because they were afraid that the CE or DEEOIC would retaliate against them. Thus, we encountered claimants who told us that they were: (1) reluctant to provide information that might upset the CE, and/or (2) only willing to discuss these matters in detail if we could guarantee that DEEOIC would not retaliate against them. In addition, some claimants were concerned about saying anything that might prompt our Office to take action, fearing that this would alert the CE or DEEOIC that they had talked to us.

Yet, while most claimants who mentioned not receiving a return telephone call did not provide a lot of details, every year there were a few claimants who were willing to discuss their problems in detail. In 2018, it caught our attention that in two separate instances individuals described encountering a similar experience when trying to communicate with their CE. They both indicated that when they called the District Office, the CE usually was not available to talk to them, and when they left a message the person answering the telephone informed them that the CE had two days to return their call. They also indicated that in this initial conversation, the person answering the telephones: (1) suggested that if the CE did not return their call within two days, they should call back; and (2) promised that if they had to call back, he/she would try to "push" their call through.²⁵ They both indicated

²⁴ We also noted that there had been complaints alleging that the CE had returned telephone calls using a "private number." Further inquiry revealed that when CE's telephoned claimants, caller ID did not identify the call as coming from the CE or DOL, and the telephone number displayed on caller ID was not a telephone number that the claimant associated with DOL. Thus, since they did not recognize the telephone number, some claimants did not answer the telephone when the CE called back. As a result, the CE simply left a message which put the claimant right back where she/she had started with the onus on them to call the CE and to leave a message if he/she again could not talk to the CE.

²⁵ Both the claimant and the AR in separate conversations indicated that the person answering the telephones had referred to trying to "push" a telephone call through. Neither could fully explain what this meant.

that whenever the CE did not return their call within two days, they would again telephone the District Office and would again be told that the CE was not available. This time, as promised, the person answering the telephones indicated that he/she would try to “push” their call to the CE. However, according both individuals, in spite of the effort to “push” the call through, they were still unable to talk to the CE and thus had to leave another message. In our conversation with the claimant, he/she noted that while “pushing” the call to the CE had not worked, the CE did eventually return his/her call. The AR, on the other hand, noted that while in some instances the CE returned his/her call, in other instances the CE had not returned his/her messages.

This same AR also told us of four (4) other instances where the CE had not responded, or had not promptly responded, to written inquiries. In all four of these instances the AR wanted to confirm that the claimant had submitted sufficient evidence to establish a diagnosis of a specified cancer²⁶ and to establish the claimant’s inclusion in a Special Exposure Cohort (SEC) class.²⁷ The AR approached us when the CE did not promptly respond to his/her written inquires seeking this confirmation. This AR indicated that in some of these instances his/her concerns were prompted by a notice from DEEOIC indicating that the claim had been forwarded to NIOSH for a radiation dose reconstruction. Since the AR believed that these claimants had submitted sufficient evidence to establish inclusion in a SEC, the AR wanted to understand why these claims were being forwarded to NIOSH for a radiation dose reconstruction. This AR felt that a quick response to his/her questions could ensure that the processing of these claims were not unduly delayed. This AR complained that it took a lot of time and a lot of effort to receive a response to his/her written inquiries.

We will continue to pay close attention to complaints alleging that claimants cannot get through when they telephone their CE, and that their messages were not returned.

iv. Difficulties talking to the CE were exasperated when the claimant felt that he/she was under a time constraint.

In some instances, while the claimant initially asserted that DEEOIC had not returned his/her call, further inquiry revealed that DEEOIC had returned the call but just not as promptly as the claimant had wanted or needed. These scenarios highlighted another difficulty that sometimes caused concern for claimants. When they called their CE, some claimants were under the belief that they were operating under very tight deadlines and felt that an immediate response from the CE was essential. For instance, after receiving a letter that gave them 30 days to submit additional evidence, claimants sometimes had follow-up questions for the CE. Believing that they had to submit their evidence within 30 days, some claimants viewed the CE’s lack of a prompt response to their inquiry as equivalent to no response, which then compelled them to proceed with their claim without having their questions answered.²⁸

²⁶ The term “specified cancer” means any of the following:

- A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).
- Bone cancer.
- Renal cancers.
- Leukemia (other than chronic lymphocytic leukemia), if initial occupational exposure occurred before 21 years of age and onset occurred more than two years after initial exposure.

42 U.S.C. § 7384i(17).

²⁷ The EEOICPA originally established four (4) SEC classes which includes employees who worked at gaseous diffusion plants in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee, for a total of at least 250 work days before February 1, 1992, and were monitored for radiation exposure with dosimetry badges or had jobs with similar exposures to those monitored; and employees who worked before January 1, 1974, on Amchitka Island, Alaska and were exposed to radiation related to the Long Shot, Milrow, or Cannikin underground nuclear tests. EEOICPA also authorizes the Secretary of Health and Human Services to add other classes of employees to the SEC. A current listing of all SEC work sites can be found at: <https://www.dol.gov/owcp/energy/regs/compliance/law/SEC-Employees.htm>.

²⁸ In some instances, the claimants would contact us to see if we could help them obtain an answer to their question. In other instances, the claimant might decide to proceed without submitting their additional evidence, or would proceed to develop their additional evidence without input from the CE.

In one instance this year, a hearing scheduled for December 5th was postponed when the government was unexpectedly closed on that day. Believing that the FAB hearing representative (HR) had a deadline of December 22 to issue a decision, both the claimant and the AR became concerned as December 22nd drew near and the AR had been unable to contact the HR. When the AR contacted our Office, he/she was already starting to conjure up scenarios of what he/she would have to do if the hearing was not held before December 22nd. Following our inquiry on behalf of the claimant, DEEOIC provided the AR with the new date for the hearing.

v. Some claimants complained that their CEs were too busy with other matters.

A gentleman...had [his] impairment rating completed on ...but the CE keeps telling him she is behind.

—Email from an advocate. September 2018.

...You specifically mentioned that when [the claimant] called yesterday for a status update on his claim for ...cancer his CE told him that he was too “backed up” to get to his case...

—Email from the Ombudsman to the claimant reiterating our telephone conversation with that claimant. July 2018.

We were approached by claimants who complained that when they called, the CE was never able to talk to them because he/she was always busy doing something else. Similarly, we talked to claimants who found it troubling that to the extent they were provided with a reason for why their CE was delayed in returning their telephone call, a heavy caseload was often cited as the reason. In addition, while conceding that they were never provided a specific reason for the delays in talking to their CE, there were other claimants who complained that whenever they were able to talk to their CE, they felt rushed in these conversations.

Claimants also found it troubling to call their CE only to discover that because the CE was away, they had to talk to someone else about their claim. These claimants fully understood the need to take time away from work. Nevertheless, they questioned the adequacy of the answers they received from someone who was not familiar with their claim. And once again it did not help when the person to whom their claim had been redirected complained about his/her heavy workload, or when claimants felt that they were being rushed in these conversations.

vi. Some claimants need step-by-step instructions.

"...But after looking at [SEM] a bit, it occurs to me that I have no idea what kind of results you guys want from a study of the website. There is only the most minimal directions on how to use the site, and nothing at all about what sort of results you guys want..."

—Email from advocate, December 2018.

Because they were not very familiar with the EEOICPA or the EEOICPA claims process, many of the claimants we encountered proceeded through the claims process simply doing whatever they were told to do, oftentimes what their CE told them to do. Problems arose when, in spite of the instructions given to them, claimants still had questions. And while DEEOIC has developed resources to assist claimants, these resources did not always provide the level of assistance that claimants needed. Some of these resources only provided general guidance, yet some claimants needed, or hoped, to receive, detailed, step-by-step instructions outlining how to proceed. We further found that in addition to being told what to do, some claimants also wanted to understand why they

were being asked to take a particular action. The need for step-by-step instructions and the need to understand why they had been instructed to take an action helped to explain why some claimants contacted us after talking to their CE.

An example of this need for step-by-step instructions involved claimants who wanted to challenge a facility's designation, or lack of designation as a covered facility. In our 2016 Annual Report, we stated that claimants had complained that there was little guidance to assist them in challenging a facility's designation as a covered facility. In its response, DOL indicated that Chapter 13 of the Procedure Manual (PM) clearly outlines OWCP's guidance for establishing covered employment. See DOL's Response to the Office of the Ombudsman's 2016 Annual Report to Congress, Response #3. A review of Chapter 13 reveals that Chapter 13.2(a)(4) states, "[d]esignating additional AWE facilities is the responsibility of DOE..." Chapter 13.18(a) later states that, "[n]ew designations [of AWEs] are the responsibility of DOE. Accordingly, requests for new AWE designations are referred to DOE." See EEOICP Procedure Manual, Chapter 13.2(a)(4), and 13.18(a) (Version 2.3) (July 24, 2018).

The claimants who approached us wanting to know how to challenge a facility's designation were not aware of Chapter 13 of the PM. Moreover, these claimants often approached us seeking step-by-step instructions outlining how to raise this challenge. Thus, simply identifying the agency responsible for designating additional facilities did not always answer all of their questions. Claimants wanted to know if they had to directly submit their request to this other agency, or if they could submit their request to DOL and have DOL forward the request to the appropriate agency. Assuming their request had to be submitted directly to this other agency, they wanted to know to whom at this agency to submit their request. They also wanted to know if they needed to submit evidence along with these requests, and if so, what kind of evidence they needed to submit; when did this evidence have to be submitted; was there someone who could assist them with this process; and if so, who was this person and how could they contact this person. Claimants complained that they cannot find this information.

Another scenario where claimants often needed step-by-step instructions involved medical bill-pay issues. The complaints involving medical bill-pay issues usually arose when claimants submitted a bill for reimbursement and there were problems with payment. In many of these instances, the problem was that medical or billing information was missing, or erroneous information needed to be corrected. The claimants who encountered these issues often complained that the tools developed by and/or the guidance they received from DEEOIC did not provide the specific instructions needed to accurately identify and/or resolve these issues. In the end, many of these medical bill-pay issues were ultimately resolved with the help of DEEOIC. Nevertheless, claimants frequently complained that these problems had persisted for weeks or months while they repeatedly received instructions that they did not understand and/or did not resolve the problem. These claimants often made it clear that they believed that these medical bill-pay problems could have been resolved sooner had DEEOIC decided to work with them or the provider to address the problem as soon as they asked for help.²⁹

Claimants who were hoping to obtain step-by-step instructions, further complained that it was disappointing to instead be referred to lengthy documents or simply to be directed to call another agency. Claimants found it particularly disappointing when the documents to which they were referred turned out to be very technical scientific, medical, legal, or procedural documents that they could not understand.³⁰ They also found it troubling when told to call another agency or organization, but were not given a specific name, division, or group to ask for.

²⁹ In addition, while some claimants felt they only received medical bill-pay assistance when they escalated the matter to the National Office or brought the matter to the attention of the Office of the Ombudsman, we encountered others who were not aware they could escalate such matters to the DEEOIC National Office. There were also some claimants refused to escalate these matters fearing that this might result in retaliation or being labeled as a trouble-maker.

³⁰ Claimants were sometimes initially relieved when told they could view the PM which contains the policies and procedures that claims examiners and hearing representatives are to follow when adjudicating claims. However, upon accessing the PM, some claimants quickly realized that this document was apparently written for those with a firm understanding of this program. Thus, claimants often found the PM to be very challenging to comprehend and apply to their circumstances.

CHAPTER II.

DIFFICULTIES DEVELOPING EVIDENCE.

A. THE ABILITY TO DEVELOP EVIDENCE WAS SOMETIMES IMPACTED BY THE CLAIMANT'S INABILITY TO UNDERSTAND THIS PROGRAM AND/OR THE ADJUDICATION PROCESS.

As we previously noted, a majority of the claimants who approached us did not have an AR, or were processing their claim with the assistance of a family member. These claimants and family members usually were not familiar with the EEOICPA claims process and for that matter, usually were not familiar with adjudication processes in general. Consequently, we frequently found that these claimants and ARs did not understand how to develop and submit evidence, and as a result, did not take the steps necessary to develop sufficiently supportive documentation.

For example, our interactions this year revealed instances where claimants had received letters from DEEOIC clearly stating the evidence needed to prove their claim, and explaining why this evidence was needed. However, these letters did not explain to claimants how they could go about obtaining such evidence, or more importantly, did not inform claimants that, in many instances, DEEOIC was in possession of some of the evidence they could use to build their case. Thus, we frequently found that when claimants were developing evidence, they were not aware, and no one told them, that they could have requested a copy of their Occupational History Questionnaire and the employment and exposure information that DOL had gathered, including the SEM searches that DEEOIC had performed. As a result, they did not have this information to give to their treating physicians when they asked them to prepare a medical report, and were not in a position to advise these physicians that such information was available. We further found that in those instances where claimants finally learned that they could have asked for this information, it troubled claimants that this information was not shared with them unless they asked for it. Not having this information shared with them was even more troubling when they also learned that DEEOIC had shared this information with its specialists when seeking an opinion for a claim.

A similar difficulty stemming from a claimant's lack of familiarity with the claims process arose with the reports prepared by DEEOIC's specialists. While DEEOIC now provides claimants with copies of the reports prepared by its specialists along with the recommended decision, we found that in many instances it never dawned on claimants to take these reports prepared by the specialists with them when they approached their treating physician for a medical report addressing the link between their covered employment and illness.

Encounters such as this have led us to believe that when some claimants complained that their treating physicians needed more guidance, part of the problem stemmed from the fact that these claimants were not aware of the evidence they could have obtained from DEEOIC and, more importantly, were not aware that providing this evidence to the treating physician could have assisted this physician in preparing a well-reasoned and documented report. In fact, the more we talked to claimants, the more we have come to believe that one of the more significant problems facing many claimants was that they did not know how to develop the evidence needed to prove their claim. Consequently, it was not surprising when the reports prepared by their physicians were deemed insufficient.

B. SOME CLAIMANTS FOUND IT DIFFICULT TO LOCATE ACCURATE EVIDENCE.

In the EEOICPA, except as otherwise provided, claimants bear the burden of providing each criterion by a preponderance of the evidence. See 20 C.F.R. § 30.111(a). Claimants complained that meeting this burden of proof was sometimes hampered because: (1) relevant records were no longer available; and (2) the records that were available were not accurate.

i. Relevant records could not be found.

Claimants complained of discovering that relevant records they were seeking no longer existed or that relevant information had not been reduced to writing. When it came to employment records, the complaints that we encountered usually involved difficulties verifying subcontractor employment. These difficulties arose because although the program has had some success locating DOE contractor employment records, it has not had the same success locating DOE subcontractor employment records. As a result, every year we were approached by claimants who encountered difficulties trying to verify subcontractor employment. This year was no exception. In these instances, DEEOIC was usually able to verify that the worker had been employed by the subcontractor, but experienced difficulty verifying that: (1) the subcontractor had a contract with DOE or a DOE contractor; and/or, (2) the employee worked for the subcontractor onsite at the covered facility. In approaching us, these claimants almost always argued that if the government could not locate the documents needed to verify their employment, it was unreasonable to expect them to locate these documents. In raising these complaints, while claimants recognized that they bore the ultimate burden of proof, they argued that it was unfair to deny their claims when they never possessed (and/or never had access to) critical evidence needed to verify their claims. And it especially troubled claimants when their employer or the government was the one who had lost or destroyed this critical evidence.³¹ These situations led some claimants to complain that they were being penalized for the actions of their employer or the government. We also encountered other claimants who questioned if sufficient effort was undertaken to search for relevant records.

The complaints that it was unfair to deny their claims when they never possessed critical evidence, and the questions concerning the sufficiency of the efforts undertaken to locate relevant records, were the precise issues repeatedly raised by an AR who represents former employees of Area IV of the Santa Susana Field Laboratory (SSFL). This AR does not believe that the government has obtained all of the relevant records that could help identify the employees who worked at the areas of this facility covered by this program, and questions whether the government has done everything within its powers to obtain these records.³²

Similar concerns were raised by a former employee who questioned the efforts undertaken to verify his subcontractor employment at the Clarksville Modification Center in Clarksville, Tennessee.³³ In this instance, it was established that this claimant had performed similar work at other covered facilities. At issue was whether this claimant had worked at Clarksville. Complicating this claimant's struggles was the fact that the dosimetry records which could have verified this employment had either been lost or destroyed, and the government could

³¹ According to the PM, "The process of employment verification is a difficult and challenging hurdle in many cases. Because the atomic weapons program dates back to the early 1940s, and involves a large number of public and private organizations, locating pertinent individual employment records can be difficult. Moreover, records may be missing, degraded, lost, or destroyed. As the statute allows latitude in the assessment of evidence, it is not necessary for the CE to collect evidence that establishes that the claimed employment is proven beyond a reasonable doubt, but merely that a reasoned basis exists to conclude that the employment occurred as alleged. This ensures that the claimant receives favorable treatment during the employment verification process." PM, Chapter 13.5, Version 2.3 (July 24, 2018).

³² According to DOL, the SSFL is divided into four administrative and operational portions based on ownership and operations. Area IV was devoted to nuclear operations. Thus, it is Area IV that is covered under EEOICPA as a DOE facility.

³³ Clarksville Modification Center was a DOE facility from 1949-1967. See DOE Facility List Database at <https://ehss.energy.gov/Search/Facility/findfacility.aspx>.

not find any other records. This claimant repeatedly questioned why, in the absence of any evidence to the contrary, his testimony describing in detail the sprinkler system that he installed and how he installed it, was not sufficient to verify that he had worked onsite at the Clarksville Modification Center. In addition to stressing that DEEOIC had already confirmed the credibility of his testimony as it related to his work at other covered facilities, this claimant questioned if any effort had been undertaken to confirm the credibility of the testimony that he provided regarding his work at this site.³⁴

With respect to exposure evidence, in the past few years we have witnessed an increased concern by claimants with obtaining and ensuring the accuracy of exposure records. This increased concern with exposure records is in response to what claimants have sensed as an increased emphasis by DEEOIC, when adjudicating claims, on the extent and the level of the worker's exposure to a toxic substance. Our conversations with these claimants often revealed that they were not aware that they could have asked DEEOIC for a copy of any/all evidence in their claim file, including copies of their records the claims examiner obtained from DOE.³⁵

There were also some claimants who questioned if DOE had provided DEEOIC with all of their exposure records. These questions were often raised in response to statements suggesting that DOE had provided DEEOIC with all of the records that contained the worker's name. We encountered claimants who strongly felt that there were other records that did not mention them by name that would nevertheless be relevant in identifying the toxic substances to which they had been exposed while performing their duties. It troubled claimants to think that their claims were adjudicated without any apparent search for these other records. It further troubled them whenever it was suggested that if they thought these other records existed, they needed to identify (and specifically request) these other records. Claimants often responded to this suggestion by noting that, at these covered facilities, information was closely guarded. Therefore, claimants usually had to concede that since they never had access to these documents, they could not specifically identify these documents. Yet while they could not identify these documents by name or date, claimants still felt that there needed to be a mechanism for searching for the other records that might shed light on the exposures they sustained while working at these covered facilities and on where these exposures occurred. In light of DEEOIC's emphasis on the extent and level of their exposures, claimants argued that a thorough search for these documents was critical.

One of the major difficulties associated with locating medical records involved the fact that most medical facilities only retained medical records for ten years or less.³⁶ We encountered claimants who complained that by the time they were aware of this program, and/or by the time this program was created, relevant medical records had been destroyed. We especially heard this from claimants who had felt that a delay in learning about this program had been a factor in their inability to locate relevant medical records.³⁷ Another difficulty associated with medical records involved the inability to locate physicians who were willing to treat EEOICPA claimants and/or who were willing to write the medical reports and narratives that claimants needed. This issue is discussed in more detail in Chapter V.

³⁴ In his conversation with us, this claimant argued that if someone wanted to accompany him to this facility, he could verify his statements by identifying unique features of this sprinkler system.

³⁵ DOL routinely requests DAR records from the DOE in Part E cases. The DAR records are specific to the claimant, and typically include Personnel records, Site Medical records, Industrial Hygiene records, and Radiological and Dose records, among others. See PM, Chapter 13.8(i) and Chapter 15.5(c) Version 2.3 (July 24, 2018).

³⁶ Medical record retention laws or rules are usually determined by the state, and vary from state to state.

³⁷ In addition to finding that medical records had been destroyed, we also talked to claimants who indicated that by the time they became aware of this program colleagues who could have provided affidavits had passed away, moved away, or no longer had the capacity to complete an affidavit.

ii. Claimants overestimated the volume and the quality of the records that DEEOIC could obtain.

We encountered claimants who were under the assumption that the government had the ability to access most, if not all, of the information needed to verify their employment and exposures. Citing the security that usually surrounded these covered facilities, these claimants assumed that detailed information addressing their employment and their exposures was stored in a “safe” place. This assumption sometimes impacted the claimant’s approach to the Occupational History Questionnaire (OHQ) interview conducted by the Resource Center when they initially filed their claim for benefits, as well as his/her approach to subsequent conversations with his/her CE or HR. Because they assumed that DEEOIC would, on its own, obtain more detailed information, some claimants did not discuss their employment and exposure history in detail when participating in the OHQ interview or in their subsequent conversations with the CE or HR. In fact, we found that some claimants continued to believe that DEEOIC had the ability to obtain more detailed records even after DEEOIC asked them to provide additional information. Thus, in some instances it was only when they reviewed the recommended or final decision that some claimants finally realized that DEEOIC did not have the level of detailed information that they had assumed.³⁸

iii. Some claimants questioned the accuracy of the records that DEEOIC relied on.

A common complaint in 2018 came from claimants who questioned the accuracy of the records obtained by DEEOIC in connection with their claim. In particular, claimants complained that the radiation dose reconstruction performed by NIOSH and/or the recommended or final decision issued by DEEOIC failed to recognize all of the duties they performed, all of the locations where these duties were performed, and/or all of the radioactive and toxic substances to which they were exposed while engaged in these duties.

When work orders were written or any work was to be done, the maintenance supervisor for that group was notified and the supervisor assigned personnel to perform that specific task. There were no records kept as to which employee[s] were assigned specific tasks or daily job duties. [Tasks] were assigned each day or as the need arose. There were also no records kept as to which building employees were assigned [to] work.

It is impossible to get information on specific employee[s] pertaining to job assignments and building assignments before approximately mid 2000’s.

—From an affidavit from a Y-12 colleague. Submitted to the Office in May 2018.

It recently came to our attention that...numerous [work at] Los Alamos National Laboratory placed [the claimant] at the Los Alamos Airport which, as we recently learned is part of the Lost Alamos National Laboratory...[her] physical presence at...was never included in prior analysis of her covered employment...

—Letter from an AR. August 2018.

A common complaint maintained that in determining their employment and exposure history, DOE and DEEOIC only relied on the documents that outlined the job descriptions and written procedures for certain job titles and facilities. Claimants frequently argued that these written descriptions and outlines did not accurately reflect

³⁸ In some instances, even when they reviewed the recommended or final decision, some claimants did not accept that more detailed evidence did not exist. Instead, they questioned the efforts undertaken by DEEOIC to obtain this information.

how operations were carried out on a day-to-day basis. They further complained that too much weight was given to these written outlines or procedures, and not enough time was taken to talk to the workers who actually performed this work. This concern was routinely raised by claimants who questioned DEEOIC's reliance on the SEM database in adjudicating their claim. Concerns involving SEM are discussed later in this chapter.

iv. Some claimants complained that it was difficult to correct inaccurate records.

We also encountered claimants who asserted that it was difficult to correct inaccuracies found in the evidence that had been compiled by their employer and/or the government. During the course of this year we heard this complaint from claimants who encountered difficulties trying to correct information concerning their exposure to toxic substances, as well as from claimants who tried to correct information concerning their labor categories and/or work processes. A common complaint noted how in spite of the time invested by the claimant to carefully explain to the CE why information was inaccurate, the subsequently issued recommended or final decision did not acknowledge the claimant's evidence/testimony and/or did not provide an explanation as to why their evidence had not been accepted/credited.

Claimants asserted that when the CE did not indicate whether he/she had taken into consideration the additional information and evidence they provided they were left wondering what to do next. This led to situations where claimants approached us hoping that we could convince the CE (or HR) to consider this evidence, or at least provide an explanation for why their evidence had not been acknowledged or accepted.³⁹

v. Because of national security concerns claimants did not always share everything about their employment and exposure.

On occasion, a claimant would say something that caused us to question if he/she was sharing with us and/or with DEEOIC, everything they knew about their employment and exposures. In a few instances when we asked, claimants admitted that due to the oath of secrecy they took, they were withholding certain potentially relevant information. However, more often claimants were reluctant to discuss whether they were withholding information. Instead, when asked if they were withholding information, claimants would just smile (in face-to-face encounters) or there would be a long pause on the telephone. The passage below involves the routine telephone interview that NIOSH conducts with a claimant prior to completing the radiation dose reconstruction. In addition to indicating how this claimant tried to discuss 27 years of employment in an hour and a half interview, this passage also reflects how, in talking to NIOSH about the details of his/her employment, this claimant was concerned with national security.

...NIOSH... [interviewed me] for 1.5 hours for 27 years of service at the Savannah River Site...As my interviewer questioned... [me] about different quantities of radioactive material, different areas I worked, and names I just shut down. This plant is still in operations and is of National security...

—Email from a claimant, October 2018.

In another instance this year, a claimant found him/herself in a quandary when advised by the government that aspects of his/her work were still classified. Thus, in processing his/her claim this claimant was well aware that he/she could only talk about this work with someone who had the appropriate clearance. It troubled this claimant that someone with the proper clearance was never assigned to work with him/her. It further concerned this claimant that DEEOIC denied his/her claim without any indication that it had looked into this classified employment and exposures, and definitely had not talked to him/her about this classified employment.

³⁹ We routinely had to explain to claimants that we did not have the authority to make DEEOIC alter or reconsider a decision.

C. DIFFICULTIES WITH THE OCCUPATIONAL HISTORY QUESTIONNAIRE.

When a new claim is filed, the Resource Center completes an Occupational History Questionnaire (OHQ) by interviewing each claimant about his/her employment and exposure history. Rarely, if ever, did a claimant contact us to specifically complain about the OHQ. Instead, in the course of our conversation with claimants, they would raise issues that revealed their lack of understanding of the importance of the OHQ during the adjudication process. These issues usually involved instances where information in their OHQ that could have helped their case had been ignored, or where the information provided during the OHQ was used against them when they later provided additional information to DEEOIC.⁴⁰

i. Claimants did not appreciate the importance of the OHQ.

The Procedure Manual contains a discussion of the OHQ in the chapter that discusses establishing toxic substance exposure and causation. There, the PM states,

The OHQ is an important document because it is used to record information supplied by an employee or a survivor concerning first-hand knowledge of the employee's occupational exposure to toxic substances.

See Federal (EEOICPA) Procedure Manual, Chapter 15.5(e), Version 2.3 (July 24, 2018). In participating in the OHQ interviews, which are conducted by Resource Center staff at the very beginning of the claims process, claimants were encouraged to share as much information as possible about their employment and exposure(s) at covered facilities. However, many of the claimants we encountered did not appreciate the importance of the OHQ. Thus, some claimants confided to us that while they earnestly tried to provide information during the OHQ interview, they did not always discuss their employment and exposure in detail. A common misconception was that as their claim progressed, DEEOIC would undertake its own efforts to obtain more detailed information about their employment and exposure history. What these claimants did not realize was that while DEEOIC requested and obtained additional information, this information was not always as detailed as they assumed.

Claimants also assured us that it was impossible, during one interview, to tell the Resource Center staff everything about their employment and exposure history, especially when that employment spanned many years, involved a variety of different job duties, and/or was performed many years ago. Consequently, some claimants suggested that during the OHQ interview they did not provide a lot of detail in discussing their employment and exposure history because they assumed that as their claim progressed, DEEOIC would come back to request from them more specific information as needed. Therefore, when they subsequently received the recommended and/or final decision to deny their claim, claimants were sometimes surprised to discover that DEEOIC did not, in their opinion, have an accurate understanding of their employment and or exposure history.

ii. Claimants did not know that they could ask for a copy of the OHQ.

Some of the Part E claimants who contacted us disagreed with DEEOIC's conclusions concerning the work they performed, the locations where this work was performed, and/or the toxic substances to which they were exposed. These claimants often wanted to see the information that DEEOIC had relied upon in reaching these

⁴⁰ We talked to claimants who complained that when they tried to update or clarify the information that they provided in the OHQ, it was suggested that they were changing their story. Some claimants responded by arguing that they had not changed their story, rather they were now clarifying what they had said earlier. Others noted that the narrowing of the issues in controversy had placed them in a better position to provide detailed information, details that they did not think were relevant until now.

determinations. When we told them that the OHQ was one of the documents relied upon, some of these claimants wanted to ensure that the OHQ accurately reflected what they had said in their interview. However, claimants are not informed by DEEOIC that they may ask for a copy of their interview to review, and they rarely, if ever, realized that they could ask DEEOIC for a copy of the OHQ.

Moreover, in many instances, it was only after the claimant had completed the OHQ interview that DEEOIC began to attempt to identify the toxic substances to which the claimant had been exposed. As the claim proceeded and the focus of the claim turned to linking the claimant's illness to exposure to one or more of these toxic substances, DEEOIC often provided claimants with the opportunity to submit additional evidence. Our interactions with claimants who received what is called a "development letter" from DEEOIC revealed that in responding to this letter, claimants usually focused on developing the specific information that DEEOIC had requested. Claimants rarely if ever, took this time to consider if, in light of the developments that had occurred with their claim, they should now review the OHQ to determine if more detailed information should be provided to DEEOIC. In fact, it was our observation that once they completed the OHQ, the claimants we encountered rarely reviewed their OHQ for accuracy, updated their OHQ to provide more detailed information about their exposures to toxic substances identified by them or DEEOIC, or updated the specific labor categories and/or work processes identified by them or DEEOIC.

D. DIFFICULTIES ARISING FROM DEEOIC'S USE OF THE SEM ONLINE DATABASE.

The Site Exposure Matrices (SEM) database is an online tool created by DEEOIC in 2005 to help claims staff research toxic substance data relating to employees working at DOE facilities.⁴¹ See Advisory Board on Toxic Substances and Worker Health—Full Board Meeting, November 14, 2018, page 145.

i. Some claimants did not know what the Site Exposure Matrices database was.

When they approached us with questions concerning their exposure to toxic substances most claimants either wanted a list from DEEOIC regarding the toxic substances they were exposed to, or they wanted to know how DEEOIC had arrived at its list of toxic substances. In either event, a good starting point for these claimants would have been to review the SEM searches that the CE had performed in adjudicating their claim. However, the claimants we encountered usually did not know what the SEM database was, and thus, did not appreciate the value of the SEM. They also did not know that they could ask DEEOIC for a copy of the SEM searches that the CE had performed, and inserted in their claim file.

We also found that when we advised claimants that they could obtain this information, they were sometimes reluctant to request this information from their CE. This was another example of a phenomenon that we routinely observed. Where claimants were not specifically informed of a right to information, or where information was not automatically provided to them, we sometimes found that claimants were reluctant to exercise their right to request this information.⁴² Claimants usually explained this reluctance stating that they feared retaliation; they did not want to come off as too demanding; and/or they did not want to bother the CE.

⁴¹ The SEM database is used by DEEOIC claims staff in Part E claims to identify toxic substance exposure; the links between toxic substances and illnesses; and in some instances, to verify aspects of a worker's employment.

⁴² Requests for an extension of time to submit evidence was another instance where we frequently found that because DEEOIC never told them that they could request an extension, most claimants were reluctant to even raise this possibility with their CE.

ii. Accessing and navigating the SEM online database.

While most of the claimants who approached us had never accessed the SEM online database, we often found that they had at least heard of SEM.⁴³ In some instances, claimants would admit that in the course of processing their claim, someone had mentioned SEM. In other instances, a review of the claim would reveal that the SEM database had been mentioned in the recommended and/or final decision that the claimant received. Nevertheless, in spite of being aware of the SEM, or at least having it mentioned to them, some claimants had never tried to access the SEM database and did not understand why they would want to. And we found this to be true even when they had specific questions concerning the toxic substances to which they had been exposed. We also found that where claimants had tried to access SEM, they often had no idea where to start. These claimants often noted that SEM had a variety of data-fields and complained that they did not know how to navigate these fields.

Thus, as with many of the other resources developed to assist claimants, we found that merely telling a claimant that the SEM database existed, or providing a claimant with a recommended or final decision that mentioned SEM, was not always sufficient to ensure that he/she: (1) was aware that this tool was available online; (2) appreciated the value of this tool in adjudicating their claim; or (3) knew how to navigate this database.⁴⁴ We found that it helped to specifically inform claimants that the SEM database was available online and to provide them with the web address for SEM. We further found that claimants often came away with a better appreciation of the SEM when they were given a demonstration of the information available in the SEM database; an explanation of how to navigate this database; and informed how this information could assist in the development of their claim.⁴⁵

iii. Claimants questioned the accuracy of the SEM online database.

The SEM Webpage states that the data regarding the work processes conducted at covered facilities was drawn from a wide range of data sources. Claimants argued that in populating information in the SEM database, DEEOIC had simply relied on the written procedures and policies from the facility or on their job description. They complained that this information did not accurately describe how operations were carried out on a day-to-day basis, or the types of exposures encountered by workers on a day-to-day basis.

In particular, when creating and maintaining SEM, claimants questioned how much effort had been undertaken by DEEOIC to obtain information from former workers. And to the extent DEEOIC had talked to former workers, claimants questioned how many former workers, which former workers, and how long ago these conversations occurred. DEEOIC addressed this concern at a public meeting of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) held on November 14, 2018. At that meeting DEEOIC noted that, “at the beginning” the contractor who developed SEM held 53 worker roundtable meetings at 37 different DOE facilities, meeting with about 950 workers. DEEOIC further noted that since that time this contractor had continued to research documents. See Transcript of the Advisory Board on Toxic Substances and Worker Health – Full Board Meeting, November 14, 2018, page 149. Yet, with approximately 135 facilities listed in the SEM database, and with multiple work processes and labor categories associated with each of these facilities, claimants questioned the extent to which DEEOIC had been able to obtain accurate information concerning each facility, as well as update each work process, incident, building, area, and/or labor category.⁴⁶

⁴³ There were some claimants who were adamant in insisting that they were never told about SEM, as well as others who maintained that they did not have access to the internet, or were not very skilled with using the internet.

⁴⁴ And this assumes that the claimant had the ability to access the internet.

⁴⁵ The Authorized Workshops hosted by DEEOIC provide ARs with a chance to learn more about some of the tools developed by DEEOIC. However, most of the claimants we encountered either did not have an AR or their AR was a close family member who was simply handling that one claim and did not or could not attend the workshop.

⁴⁶ For instance, Adrian-General Motors, the first facility in SEM has 56 listed work processes and 20 listed labor categories. Yucca Mountain Site Characterization Project, the last facility listed in SEM has 252 listed work processes and 49 listed labor categories.

This precise concern has been repeatedly raised by former security guards at the Iowa Ordnance Plant (IOP).⁴⁷ They questioned how many former security guards from IOP were interviewed in populating the data found in the SEM.⁴⁸ They further questioned the accuracy of the information that was relied on in determining their exposures at this facility. Some former guards found it particularly troublesome that in SEM “Guard Sergeant” and “Lieutenant of Guards” were listed as aliases for the labor category of “Guard,” and that under site work process of “Security Activities” the only buildings in SEM where “Security Activities” were listed were the North Guard Gate and the Master Mechanic’s Office. Citing to this information in the SEM database, these former guards wondered whether DEEOIC had simply talked to a sergeant and a lieutenant who, unlike many of the other guards, had stationary jobs at one or both of these listed locations. The former guards we encountered were adamant that their duties required them to be present at, or to be stationed at, areas all around this facility.

For claimants who question the accuracy of the information in SEM, it is possible to submit additional documentation addressing site-related or disease-related information to the SEM Administrator. Over the years we did not encounter many claimants who had tried to submit evidence to the SEM Administrator. This year we heard from two such claimants and both complained that they had not received any response to their submissions. This appeared to be another instance where claimants did not have a working understanding of a resource. The SEM Webpage states that, “[i]ndividuals submitting information for review will only be contacted in the event additional documentation is required.” These two claimants were not aware that it was possible that they might only be contacted in the event additional documentation was required. Moreover, when informed of this they made it abundantly clear that they found it troubling that after taking time to collect and submit evidence, they might never be told if the information they submitted was sufficient, and if it was not sufficient, why it was not sufficient. The possibility of no response caused these claimants to question the value of submitting additional evidence.

iv. Claimants questioned the weight accorded to the SEM database search results in the adjudication process.

DEEOIC clearly states that the SEM database is not a decisional tool. Yet, we routinely talked to claimants who felt that this was not the case. Claimants were often troubled by the extent to which it appeared that the SEM database had been the measure by which DEEOIC determined if evidence or testimony they submitted was to be accepted.

At a public hearing of the Advisory Board on Toxic Substances and Worker Health in 2016, DEEOIC stated,

“We are not going to exclude information, particularly information that the claimant does know and they are very specific. And we can say, ‘This is what this person says they did.’ That is something we can move forward to both the IH and/or the physician when we are making that assessment.

So, we are not trying to say we are going to ignore everything that the claimant says. We are just saying that a lot of times the claimants don’t know very much. And so, it is a starting point.”

See Transcript of Advisory Board on Toxic Substances and Worker Health – Full Board Meeting, April 27, 2016, page 57. Statements similar to this are found in the PM:

⁴⁷ According to SEM there are no buildings, areas, work processes or incidents at the facility linked to the labor category “guard”, and there are no known toxic substances a “guard,” would have potentially encountered at the facility.

⁴⁸ SEM is updated from time-to-time. However, only a small segment of the individuals we encountered, mainly those ARs who routinely handled claims, tended to review SEM for updates.

...Self-reported employment and workplace information can be very helpful in directing development on exposure. The CE is to recognize that the information supplied by a claimant may be a valuable resource for helping shape SEM searches, resolving issues involving work history, and providing information regarding work processes. Statements regarding work processes are considered reliable when sufficient detail or other information is provided that documents the scope and type of work performed.

—See Federal (EEOICPA) Procedure Manual, Chapter 15.9(e), Version 2.3 (July 24, 2018).

Nevertheless, we encountered claimants who asserted that when they submitted an affidavit, or provided testimony, DEEOIC only credited this evidence or provided it to the DEEOIC specialists when it was supported by the SEM database or other evidence in the record. This often convinced these claimants that SEM was in fact a decisional tool.

v. Claimants questioned the efforts undertaken to improve the SEM database.

In June 2010, DEEOIC contracted with the Institute of Medicine of the National Academies (IOM) to conduct a study of the scientific rigor of the relationship between exposure to toxic substances and occupational diseases cited in the SEM database, and to make recommendations on ways in which the SEM database could be improved. The IOM published its findings on March 27, 2013. As soon as the IOM published its findings, some advocates and ARs began to question the extent to which DEEOIC would address the findings and adopt the recommendations of the IOM. See the Office of the Ombudsman’s 2013 Annual Report to Congress, August 12, 2014, pages 34-40.

In recent years, and especially following some of the public meetings of the Advisory Board on Toxic Substances and Worker Health, some of these same advocates and ARs have again approached us to question the extent to which DEEOIC has addressed the findings of the IOM. They also complain that there is no system in place to monitor DEEOIC’s efforts to address the IOM’s findings and recommendations. These advocates and ARs believe that their concerns were buttressed by Recommendation #2 issued by the Board on November 4, 2016, recommending that the disease exposure links identified by the sources listed in Table 3-1 of the IOM report be included in the SEM database; and by the discussions at the meeting of the Board on April 27, 2016, see Transcript of the meeting of the Advisory Board on Toxic Substances and Worker Health, April 27, 2016, pages 66-79. These concerns were further intensified by discussions by the Advisory Board at the meeting on November 15, 2018, indicating that few of the IOM’s recommendations had been adopted.⁴⁹

vi. The difficulties encountered by first responders.

Over the years, individuals who worked (or had worked) as first responders approached us to complain that the SEM database did not list all of the buildings; all of the incidents; and/or all of the toxic substances they encountered in the course of performing their jobs. These workers noted that unlike many of the day-to-day activities of other labor categories that were not documented in detail or with great specificity, many of the accidents and incidents they responded to were documented. Thus, they questioned why so little data was in the SEM database when, in many instances, so much relevant documentation was created.

⁴⁹ See the discussion on pages 110 - 111, Transcript of the Full Board Meeting of the Advisory Board on Toxic Substances and Worker Health, November 15, 2018.

We were also approached by some first responders who talked about the efforts that had been undertaken to compensate the 9/11 first responders, as well as the efforts being undertaken in their respective states to recognize the dangers faced by first responders because of the potential of exposure to toxic substances. In light of these efforts, the first responders who worked at covered facilities believe that it is time for this program to rethink its approach to compiling information in the SEM database about their exposures, and to adjudicating the claims they file.

CHAPTER III.

DIFFICULTIES WITH THE AVAILABILITY AND WEIGHING OF EVIDENCE.

A. NOT GIVEN SUFFICIENT TIME TO DEVELOP EVIDENCE.

After a claim is filed, DEEOIC sends the claimant a “development letter” asking them to submit evidence in support of their claim. Moreover, when DEEOIC deems the evidence submitted by the claimant to be insufficient, DEEOIC sends a development letter asking the claimant to submit additional evidence. In these letters, claimants are usually given 30 days to submit his/her additional evidence.

Claimants complained that it was often impossible to obtain and submit evidence within 30 days. We especially heard this from claimants who needed to submit additional medical evidence. Claimants routinely told us of instances where the earliest available appointment to see the physician was more than 30 days away. Thus, they argued that it was unreasonable to expect them not to just see, but to also obtain a report from the physician within 30 days.⁵⁰

During the course of the year, we also encountered claimants who complained that development letters from DEEOIC directing them to submit additional evidence had misled them as to the amount of time they actually had to submit evidence. According to these claimants, the initial development letter from DEEOIC giving 30 days to submit evidence did not tell them that if they did not respond to the first letter, they would receive a second letter affording them another 30 days to submit evidence. As a result, some claimants complained that had they known from the start that they had 60 days to submit evidence, they would have, or could have, pursued the development of evidence much differently.⁵¹

Chapter 11.4(b) of the EEOICP Procedure Manual (PM), version 2.3 (July 24, 2018) provides that, an extension (of time) can be granted by the CE if the claimant “has committed to the submission of additional evidence within a reasonable period after the initial 30-day period, or the CE has received a justifiable explanation from the claimant as to any delay...” The claimants who complained to us about only being given 30 days to submit evidence usually were not aware of Chapter 11.4(b) of the PM, nor had they been informed by DEEOIC that they could have requested an extension of time to submit evidence.

B. CLAIMANTS QUESTIONED DEEOIC’S APPROACH TO SELF-REPORTED EMPLOYMENT AND EXPOSURE EVIDENCE.

In many of the instances brought to our attention, self-reported employment and/or exposure evidence was an important aspect of the claimant’s claim. Claimants questioned the weight accorded by DEEOIC to affidavits prepared by them, as well as their testimony and other evidence they submitted in support of their claim. These concerns were usually raised by former employees who felt that the CE or HR had ignored the detailed employment and exposure evidence they provided.

⁵⁰ None of the claimants who contacted our office with this complaint were ever informed by DEEOIC that they could request an extension of time, and this was true even after the claimant had contacted their CE to complain about not having enough time to submit the requested evidence.

⁵¹ There were claimants who noted that because they believed they only had 30 days to submit evidence, they limited the evidence they sought to develop, or chose not to develop certain evidence because they were certain that it was impossible to develop this evidence in 30 days.

Chapter 15.9.e of the Procedure Manual states that,

...Self-reported employment and workplace information can be very helpful in directing development on exposure. The CE is to recognize that the information supplied by a claimant may be a valuable resource for helping shape SEM searches, resolving issues involving work history, and providing information regarding work processes. Statements regarding work processes are considered reliable when sufficient detail or other information is provided that documents the scope and type of work performed.

See Federal (EEOICPA) Procedure Manual, Chapter 15.9(e), version 2.3 (July 24, 2018). Most of the claimants we encountered were not aware of Chapter 15.9(e). Thus, in their complaints, claimants did not specifically refer to the PM. Nevertheless, the gist of their complaints suggested that DEEOIC's actual approach to self-reported employment and workplace information was quite different from that stated in Chapter 15.9(e). A common scenario involved claimants who felt that they had shared detailed information about their employment and/or exposure to the CE, and yet this evidence either was not acknowledged in the subsequent decision, or if acknowledged, no explanation had been given for why it had not been credited. It troubled claimants that after taking time to submit this evidence, they did not see any efforts undertaken to determine if their statements were credible. Situations such as this led some claimants to believe that if their employment and workplace information was not supported by other, independent evidence in the record, it was summarily rejected by DEEOIC.

Claimants who questioned DEEOIC's approach towards self-reported employment and exposure information were very vocal in asserting that this policy/practice failed to recognize that self-reported information was most needed when other supporting evidence could not be located, or where existing records were incomplete. Thus, claimants complained that DEEOIC's approach to self-reported employment and exposure information made it difficult, if not impossible, to use this evidence in the very instances where this evidence was most needed.

DOL addressed these concerns by claimants in Response #7 of its Response to the Office of the Ombudsman's 2017 Annual Report. In this response DOL stated that, "[c]laimant-submitted evidence is weighed along with all of the other information in the case file in order to make an informed decision." See DOL's Response to the 2017 Annual Report to Congress, Response # 7. In spite of this statement, we have continued to encounter claimants who complained that the decisions they received did not acknowledge or discuss the evidence they submitted. In addition, DOL's response does not fully clarify whether there must be other evidence in the record before the self-reported information submitted by claimants will be credited.

C. CLAIMANTS QUESTIONED THE EFFORTS UNDERTAKEN TO DETERMINE THE CREDIBILITY OF EVIDENCE SUBMITTED BY EMPLOYERS, THE DOE, AND DEEOIC SPECIALISTS, AS WELL AS THAT FOUND IN THE SEM ONLINE DATABASE.

We were approached by claimants who strongly felt that there was a distinct difference in how CE's scrutinized and weighed evidence submitted by claimants versus evidence produced by the DOE, the contractor they worked for at a covered facility, or even the data in the SEM database. These complaints suggested that while evidence submitted by or on behalf of claimants was closely scrutinized or sometimes not even acknowledged, the evidence submitted by employers, DOE, and/or DEEOIC contractors was often accepted with little, if any, scrutiny. Once again, DEEOIC's approach to affidavits prepared by claimants was often cited as an example

of this concern. Claimants noted that while the testimony they gave and the affidavits they prepared were only credited by DEEOIC when supported by other evidence in the record, the evidence collected by DOL from employers, DOE, DEEOIC specialists, and SEM was automatically deemed credible without the need for supplemental evidence.

Another instance where a claimant questioned the effort undertaken to determine the credibility of evidence developed by DEEOIC involved an impairment rating performed by one of DEEOIC's Contract Medical Consultants (CMC). It troubled this claimant that in accepting the impairment rating report prepared by the CMC, the CE accepted an impairment rating prepared by a physician who specifically stated that he/she did not have a copy of the claimant's last impairment rating. This claimant believes that had he chosen the physician to perform his impairment rating, and in offering his/her opinion that physician had specifically noted that he/she had not reviewed the last impairment rating, it is highly unlikely DEEOIC would have accepted the report. It also troubled this claimant when DEEOIC later told him/her that it never provided CMCs with the last impairment rating because in this case the CE had provided the CMC with prior impairment ratings, but not the last (or most recent) impairment rating of record. This claimant believed that by providing the CMC with previous, but not the most recent impairment rating report, the CMC's conclusions were uninformed and not accurate.

D. WEIGHING OF EVIDENCE NOT EXPLAINED OR DISCUSSED IN DECISIONS.

"...They just keep telling me [that DOL denied my claim] and they are not telling me [how]...they arriving at their decision to deny me..."

—Email received September 2018.

DEEOIC has continued to take steps to ensure that decisions contain adequate reasoning and documentation for the conclusions reached. Nevertheless, we continued to encounter claimants who, after being asked by DEEOIC to submit additional evidence, came to us to try to find out why the previous evidence they submitted to their CE was not sufficient. Similarly, when their claims were denied, some claimants contacted us wanting to know why the evidence they submitted had not been acknowledged by the decision writer, or was deemed insufficient to establish their entitlement to compensation and/or benefits.

In some instances, when the claimant complained that the CE had not provided reasoning (or sufficient reasoning) for his/her weighing of the evidence, we never had the opportunity to review the recommended and/or final decisions. However as in other years, there were some instances where we were provided with documentation that supported the concerns raised by these claimants.

In one instance brought to our attention, in objecting to the recommended decision, the claimant specifically asserted that he/she had submitted three medical reports and only one of these reports had been acknowledged. While the decision by the Final Adjudication Branch (FAB) specifically recognized this objection, the Final Decision did not address whether the other two reports had been received and did not explain why these reports, as well as other evidence submitted by the claimant, had not been deemed sufficient.

A similar concern was brought to our attention where a claimant, in his brief to the United States District Court Western District of Kentucky, argued that DOL's decision had failed to adequately consider medical records from the dispensary at the Paducah Gaseous Diffusion Plant, which documented an array of respiratory issues to which he had complained. DOL had obtained the claimant's medical records from the DOE, and some of these medical records were relied upon by claimant to support his claim for benefits. DOL referred the case to a CMC, but the

CMC did not acknowledge that he considered the medical records submitted by claimant when he provided his opinion and report to DOL. Ultimately, the court held that there was no indication the CMC reviewed the medical evidence, nor had DOL acknowledged or discussed these particular records.

In its response to the Office of the Ombudsman's 2017 Annual Report, DOL noted that, "[a]lthough a particular piece of evidence may not have been mentioned in a report, it does not mean that the evidence was not reviewed or that the totality of evidence for the claim was not considered..." See DOL's Response to the Office of the Ombudsman's 2017 Annual Report, Response #8. This approach presents a problem for claimants. If relevant evidence is not mentioned and is not credited, then claimants do not know what to do next. Since the evidence was not mentioned, they do not know if it was reviewed. Thus, they do not know whether to again ask for this evidence to be reviewed, or if they need to develop additional evidence. And to the extent they need to develop additional evidence, since they do not understand why the previous evidence was not credited, they do not know how to correct the deficiencies in their evidence. Thus, they fear developing additional evidence only to later be told that this evidence contains the same deficiencies.

CHAPTER IV.

RESCINDED CIRCULAR 15-06 AND HEARING LOSS.

A. RESCINDED CIRCULAR 15-06.

As soon as it was issued on December 17, 2014, claimants had concerns with Circular 15-06, “Post-1995 Occupational Toxic Exposure Guidance.” In particular, claimants took exception with the language in this Circular indicating that,

...For employees diagnosed with an illness with a known health effect associated with any toxic substance present at a DOE facility after 1995, it is accepted that any potential exposures that they might have received would have been maintained within existing regulatory standards and/or guidelines.

See EEOICPA Circular NO. 15-06 (December 17, 2014) (Superseded). On February 2, 2017, consistent with the recommendation of the Advisory Board on Toxic Substances and Worker Health, OWCP rescinded this Circular. See EEOICPA Circular NO. 17-04 (February 2, 2017). However, since February 2, 2017, we have been approached by claimants who complained that DEEOIC specialists, as well as CEs and HRs, have continued to use and have appeared to base their denials of claims on language from or similar to that found in rescinded Circular 15-06.

DOL addressed the continued use of this language in Response number 8 to the Ombudsman’s 2017 Annual Report to Congress. In this response, DOL stated that the fact the Circular was rescinded does not mean that the use of 1995 as a threshold to indicate generally that exposures would have been within regulatory limits was not factual. DOL further indicated that the Circular was rescinded so that cases with exposure only after 1995 would still be evaluated on a case-by-case basis through a referral to an industrial hygienist, as appropriate. See DOL’s Response to the Office of the Ombudsman’s 2017 Annual Report to Congress, Response #8.

Claimants questioned if rescinding Circular 15-06, only to have the industrial hygienist use the same language, adequately addressed the concerns raised by the Advisory Board in recommending that this Circular be rescinded. They also questioned if DOL and the industrial hygienists (IH) were properly evaluating DOL’s guidance that exposures were generally within regulatory limits. In particular, claimants questioned the basis for the IH’s conclusion. They questioned whether, before concluding that exposures had generally been within regulatory limits, the IH had reviewed, and thus had some knowledge of the conditions at their particular work site. In addition, they questioned the significance of whether their exposures were within regulatory limits. Claimants noted that in stating that their exposures were within regulatory limits, the IH and/or DOL seemed to suggest that exposures within regulatory limits could not be a significant factor in causing, contributing to, or aggravating their illness. Claimants argued that before DOL could find that exposures within regulatory limits had not been a significant factor in causing, contributing to, or aggravating their illness, there needed to be evidence in the record supporting this conclusion.

In fact, some claimants saw this as another example of what they deemed to be a double standard. They asserted that if their physician had opined that exposures within the regulatory limits had been a significant factor in contributing to or aggravating their illness, DOL would require their physician to provide a rationale, along with supporting documentation for this conclusion, and they argued that DOL would be very demanding in terms of the evidence that it would accept in support of this conclusion. Thus, they argued that if a DOL specialist concluded that exposures within regulatory limits were not a significant factor in causing, contributing to, or aggravating their illness, this specialist should be required to provide a rationale, along with supporting documents particular to their claim.⁵² And they felt that the opinion of this specialist should be reviewed using the same standards used to evaluate the opinions submitted by their physicians. Claimants believe that this is an issue that the Advisory Board should consider.

The concerns raised by claimants regarding the references to exposures being within regulatory limits were further fueled by Congress' finding number 6 of the EEOICPA. In this finding, Congress noted that studies indicated that 98 percent of radiation-induced cancers within the nuclear weapons complex occurred at dose levels below existing maximum safe thresholds. See 42 U.S.C. §7384(a)(6). While this finding refers to exposures to radiation, claimants question whether there have been studies of the level of exposure to other toxic substances at which other illnesses occurred at the nuclear weapons complex, and if so, what were the results.

B. HEARING LOSS.

Since 2012, the Ombudsman's Annual Report to Congress has discussed the concerns and complaints raised by claimants with regard to DEEOIC's bilateral sensorineural hearing loss policy, hereinafter referred to as "hearing loss policy", which was first introduced in 2008. DEEOIC introduced this hearing loss policy in the DEEOIC Procedure Manual and designated it a policy "presumption".⁵³ In its response to our 2015 Annual Report to Congress, OWCP generally explained its use of policy presumptions under Part E as follows,

Federal agencies like OWCP use procedure manuals, bulletins, and circulars to disseminate policy and procedures to their staffs. While these documents do not have legal force, per se, 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 conducts research to develop its procedure manuals, bulletins, and circulars and works with the department's Solicitor's Office to ensure that those and other program documents are consistent with the program's statute and regulations. OWCP publishes the material on its website, making it available to the public.

Regarding the use of a 'presumption' under Part E, OWCP has conducted significant research which supports the creation of certain presumptions regarding *exposure* (e.g., if an individual worked in a particular labor category for at least 250 days prior to 1995,

⁵² The reports of CMCs, Second Opinion physicians, and Referee Specialists should contain a well-reasoned response to the questions presented by the CE, including a summary of the evidence and medical references used. See EEOICPA Procedure Manual, Chapter 16.4(c) (Version 2.3) (July 24, 2018). Claimants question DOL's consistency in ensuring that these reports are well-reasoned.

⁵³ The statute and implementing regulations make no mention of hearing loss. The statutory burden of proof under Part E of the EEOICPA is as follows,

[A] Department of Energy contractor employee shall be determined for purposes of this part to have contracted a covered illness through exposure at a Department of Energy facility if—

(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

See 42 U.S.C. § 7385s-4.

it can be presumed that the worker had *significant exposure* to asbestos). Research also supports OWCP's creation of certain presumptions regarding *causation* (e.g., if the employee was significantly exposed to asbestos and was diagnosed with asbestosis, laryngeal cancer, ovarian cancer, or mesothelioma and had a particular latency period, OWCP can presume that the *condition was causally related to the exposure* to asbestos). We have been able to make such presumptions through research for a number of different conditions under Part E.

The fact that a claimant may not have a designated presumptive illness, however, does not mean his/her claim will be denied. Lack of a presumptive illness is never justification, standing alone, for denial of a claim. A claimant is always legally entitled to prove his/her case, regardless of any presumption. The case will still be fully adjudicated, but exposure and/or causal relationship must be proved by the claimant without the use of a presumption. Awards of benefits are routinely entered based on the strength of the evidence alone, without applying any legal presumption. [Emphasis in original].

See OWCP's Response to the Office of the Ombudsman's 2015 Annual Report to Congress, Response No. 7.

In spite of OWCP's 2015 response indicating that a claimant was always legally entitled to prove his/her case regardless of any presumption, we continued to encounter claimants who complained that once it was determined that they had not satisfied the criteria outlined in DEEOIC's hearing loss policy, their claim for hearing loss was denied without further review. Since 2015, the Procedure Manual has been updated six times, and the hearing loss policy presumption has been modified as well. The hearing loss presumption as of July 24, 2018 stated,

Part E causation for hearing loss can be presumed without referral to National Office specialists if all three following conditions are satisfied:

- a. Medical: The file contains a diagnosis of bilateral sensorineural hearing loss (conductive hearing loss is not known to be linked to toxic substance exposure).
- b. Employment: The verified covered employment must be within at least one specified job category listed below (or any combination thereof) for a period of 10 consecutive years, completed prior to 1990. The labor categories are the following:
 - Boilermaker
 - Chemical Operator
 - Chemist
 - Electrician/Electrical Maintenance/Lineman
 - Electroplater/Electroplating Technician
 - Garage/Auto/Equipment Mechanic
 - Guard/Security Officer/Security Patrol Officer (i.e., firearm cleaning activities)
 - Instrument Mechanic/ Instrument Technician
 - Janitor
 - Laboratory Analyst/Aide
 - Laboratory Technician/Technologist
 - Lubricator
 - Machinist
 - Maintenance Mechanic
 - Millwright
 - Operator (most any industrial kind, the test being whether the operator position is one in which there is potential for solvent exposure)
 - Painter
 - Pipefitter
 - Printer/Reproduction clerk
 - Refrigeration Mechanic/HVAC Mechanic
 - Sheet Metal Worker
 - Utility Operator
- c. Exposure: Evidence in the file must not only establish that the employee worked within a certain job category listed above, but that the employee was concurrently exposed to at least one of the specified organic solvents listed below:
 - Carbon Disulfide
 - Ethyl Benzene
 - Methyl Ethyl Ketone
 - Methyl Isobutyl Ketone
 - N-Hexane
 - Styrene
 - Toluene
 - Trichloroethylene
 - Xylene
- d. For hearing loss claims in which the employee provides evidence asserting a causative link between covered employment and exposure to OTHER solvents not listed in this Exhibit, the CE forwards such evidence to the NO for specialist review.

e. **Challenges to the DEEOIC Conditions of Acceptance.** This policy guidance represents the sole evidentiary basis a CE is to use in making a decision concerning whether it is “at least as likely as not” that an occupational exposure to a toxic substance was a significant factor in aggravating, contributing to or causing a diagnosed bilateral sensorineural hearing loss. Claims filed for hearing loss that do not satisfy the conditions for acceptance outlined in this procedure cannot be accepted, because these standards represent the only scientific basis for establishing work-related hearing loss due to exposure to a toxic substance. The CE is to undertake routine development (i.e., SEM, SEM mailbox, IH referral, etc.) on any hearing loss claim that does not meet the criteria described in this procedure, including communicating to the claimant the evidence necessary for a compensable hearing loss claim. As part of that development, the CE is to notify the claimant of his or her ability to challenge the scientific underpinnings of the DEEOIC hearing loss policy. The claimant has the burden of establishing, through the submission of probative scientific evidence, that the criteria used by the program do not represent a reasonable consensus drawn from the body of available scientific data. If a claimant seeks to argue that the standard by which DEEOIC evaluates claims is not based on a correct interpretation of available scientific evidence, or that a toxic substance that is not listed as having a health effect of hearing loss exists, he or she will need to provide probative epidemiological data to support the claim. Any claimant submission of scientific documentation, including journals, periodicals, or other literature (including citations to literature) has to relate to the topic of the correlation between hearing loss and toxic substance exposure. Scientific evidence that does not relate to or reference hearing loss is insufficient. With the receipt of compelling scientific data relating to a challenge to the DEEOIC conditions of acceptance for hearing loss, the CE is to prepare a referral of the documentation to the Policy Branch for examination by a Health Scientist who will respond to whether the evidence warrants a change to program policy regarding hearing loss. [Emphasis added]. See PM Version 2.3, Exhibit 15-4(8) (July 24, 2018).

Consequently, according to Version 2.3 of the PM, claimants are no longer legally entitled to prove their case regardless of any presumption.⁵⁴ Instead, the PM indicates that, “[c]laims filed for hearing loss that do not satisfy the conditions for acceptance outlined in this procedure cannot be accepted...” The claimants who contacted our office in 2018 after attempting to prove their claim when it did not satisfy DEEOIC’s hearing loss policy were informed by DEEOIC that absent evidence satisfying the policy criteria, their claims were denied.

Claimants frequently expressed frustration with being unable to challenge the criteria outlined in DEEOIC’s hearing loss policy, and questioned why they were unable to present evidence to establish that they met their burden of proof under Part E even though they did not satisfy the criteria outlined in the PM. Of significant import to claimants was the fact that they were prohibited from challenging: (1) the labor category criteria;⁵⁵ (2) the 10 years of exposure criteria; (3) the consecutive years of exposure criteria; or (4) the 1990 cut-off date criteria.⁵⁶

The impact on the claimants who brought their complaints and concerns to our attention in 2018 demonstrate that in practice, the hearing loss policy is implemented as a rule of law. The following two cases illustrate these concerns.

⁵⁴ Version 3.0 of the EEOICPA Procedure Manual, (April 5, 2019), still discusses hearing loss in the chapter entitled “Exposure and Causation Presumptions with Development Guidance for Certain Conditions,” which indicates that “[t]he Part E causation standard” can be satisfied if the three criteria (outlined in the PM) are satisfied. Version 2.3 of the PM, on the other hand, indicated that Part E causation for hearing loss could be presumed without referral to the National Office if the three criteria were satisfied.

⁵⁵ A more recent update to the PM, Version 3.0, provides a procedure to address instances where a claimant makes a claim that a job performed by the employee is synonymous to one of the qualifying labor categories. See EEOICPA Procedure Manual, Appendix 1, Chapter 15-4(8)(b) (April 5, 2019).

⁵⁶ DEEOIC’s response to the Advisory Board on Toxic Substances and Worker Health 2017 Recommendation #1, Presumption for Solvent-Related Hearing Loss was that the 1990 cut-off date is appropriate because the Occupational Safety and Health Administration (OSHA) promulgated its Hearing Conservation Amendment in 1981 with a modification in 1983, and therefore, DEEOIC determined that by 1990 agencies would have had time to comply with the standards set forth by OSHA with regard to hearing loss.

In the first example, the employee met all of the qualifying conditions to satisfy the hearing loss policy except 10 consecutive years of employment completed prior to 1990. This employee worked in one of the listed labor categories from April 1, 1965 to February 24, 1975, and from February 18, 1983 to February 26, 1994, but there were breaks during his years of employment that DEEOIC determined did not satisfy the 10 consecutive years required by the policy. The employee submitted a medical report from his treating physician stating, “the hearing loss present is most likely multi-factorial in nature with contributing factors including but not limited to extensive exposure to high level noise and extensive exposure to potentially ototoxic chemicals and agents, including Trichloroethylene and presbycusis (the natural of the auditory system).” While DEEOIC acknowledged that this evidence “reaffirms your diagnosis and the potential link between occupational exposures and your hearing loss” the evidence was not considered by DEEOIC. Instead, DEEOIC concluded the employee still had not submitted employment evidence to satisfy the 10 consecutive years of employment component of the hearing loss policy.

DEEOIC also informed this claimant that, “The new SEM search did not identify any toxic substances associated with hearing loss that would allow the district office to evaluate the claim outside the presumption outlined above.” The claimant found this statement curious since hearing loss is not a health effect that can be found in the SEM database. It also concerned this claimant that a SEM search for his/her labor category at his/her covered facility identified some organic solvents to which he/she would have been exposed and these organic solvents are listed in the hearing loss policy. It troubled this claimant that DEEOIC did not accept this SEM data as evidence he/she was exposed to organic solvents listed in the hearing loss policy because he/she did not have 10 consecutive years of covered employment. This claimant, as well as others we encountered questioned why their claims were denied without further review when SEM data indicated that their labor category was exposed to organic solvents listed in the hearing loss policy.

In another instance, the employee worked as a firefighter from 1973 to 2008, and maintained that he/she was significantly exposed to organic solvents throughout the period of covered employment. This employee also submitted scientific studies to support his/her exposure to organic solvents. However, the employee’s claim was denied solely because the employee’s work as a firefighter was not included as one of the specified labor categories in DEEOIC’s hearing loss policy. DEEOIC refused to consider that, in spite of not meeting the conditions outlined in its hearing loss policy, a firefighter could meet the burden of proof under Part E.

In addressing hearing loss, Version 2.3 of the PM provides that the CE is to undertake routine development of any hearing loss claim that does not meet the criteria described in the hearing loss policy, including communication to the claimant the evidence necessary for a compensable hearing loss claim. As part of that development the CE is to notify the claimant of his ability to challenge the scientific underpinnings of the DEEOIC hearing loss policy, and the claimant has the burden of establishing that the criteria used by the program do not represent a reasonable consensus drawn from the body of available scientific data. However, it is unclear what this means. In the first case discussed above, while the CE suggested that it may be possible to review a claim outside the presumption, the only avenue of adjudication made available was through the SEM database, which does not contain the health effect of hearing loss. In other cases, claimants asserted that when their claims did not meet the criteria described in the hearing loss policy, the CE simply reiterated the need to meet the criteria and denied the claim. They noted that they were not provided with another avenue to adjudicate their claim. Thus, claimants feel that DEEOIC needs to clarify what it means when it says that CEs are to undertake routine development of any hearing loss claim that does not meet the criteria outlined in the hearing loss policy.

Another complaint brought to our attention argued that having to establish that the criteria used by the program did not represent a “reasonable consensus drawn from the body of available scientific data” imposed a high and costly burden on them. Claimants argued that this was a higher burden than having to establish that it

was at least as likely as not that their exposure to a toxic substance was a factor in causing, contributing to, or aggravating their illness. They further noted that it would be very expensive to develop this evidence, and complained that they did not know how to do so.

Finally, a frequent complaint questioned whether the hearing loss policy in the PM was consistent with the fact that under Part E claims are to be accepted if the claimant establishes that it is at least as likely as not that exposure to a toxic substance at a covered DOE facility was a significant factor in contributing to or aggravating their hearing loss. DEEOIC has acknowledged that the SEM database only contains data regarding whether a toxic substance “causes” an illness, but does not contain data regarding whether a toxic substance contributes to or aggravates an illness. As written, it is unclear how or whether the hearing loss policy accounts for and/or allows claimants to establish that it is at least as likely as not that their toxic substance exposure(s) at a covered DOE facility was a significant factor in not only causing, but also contributing to or aggravating their hearing loss. In practice, the claimants who contacted our office in 2018 provided copies of decisions denying their claim for hearing loss that did not appear to consider any other evidence, including any evidence of contribution or aggravation. Thus, the body of decisions we reviewed and the claimant complaints we received suggest a very rigid compliance to the hearing loss policy to the exclusion of any other path to a compensable Part E claim for bilateral sensorineural hearing loss.

CHAPTER V.

ADMINISTRATIVE DIFFICULTIES.

A. DIFFICULTIES TRYING TO LOCATE AUTHORIZED REPRESENTATIVES.

i. Difficult to locate an Authorized Representative (AR).

There were claimants who complained that even when they wanted to use an AR, it was difficult to locate an AR. These complaints were often raised by claimants who did not live close to a covered facility that had employed a large number of employees. They complained that the attorneys practicing near them were not familiar with EEOICPA and/or did not want to get involved with an EEOICPA claim. They also complained that they could not find, and DOL did not post, a list of potential ARs. We further observed that in some instances a claimant's efforts to locate an AR were further hampered by his/her preference to utilize an AR with whom he/she could have face-to-face meetings. Thus, in spite of their efforts, some claimants were unable to locate an AR who was willing to represent them.

ii. ARs were not willing to render certain services in connection with some claims.

Another problem facing claimants who wanted to retain the services of an AR was the fact that some ARs limited their services in connection with certain EEOICPA claims. From what we can tell, these ARs generally did not provide a list of the specific services they would render or would not render. Yet two of the most common services that some ARs would not provide were those associated with obtaining authorization for medical benefits and with bill-pay issues. Although these ARs usually did not provide a reason for limiting their services, many claimants felt that the attorney fee schedule was the reason.⁵⁷

The attorney fee schedule is found in the statute. In relevant part, the statute provides that the representative of an individual may not receive for services rendered in connection with a claim more than:

- (1) 2 percent for the filing of an initial claim for payment of lump-sum compensation; and
- (2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

See 42 U.S.C. § 7385g.⁵⁸ In suggesting that the fee schedule was the reason some ARs did not render certain services, claimants noted that the services ARs often refused to render, i.e., assistance with medical benefits and bill-pay issues, were not addressed by the attorney fee provision. This led claimants to believe that some ARs refused to provide these services because they wanted to avoid any misunderstanding that might arise from charging a fee for services not addressed by the statutory fee schedule, or because they wanted to avoid rendering services for which they might not be able to collect a fee.

Claimants also noted that, as written, the attorney fee provision did not contain a mechanism for considering the amount of time spent working on a claim or the complexity of the claim. Thus, claimants argued that, as currently

⁵⁷ It is our understanding that this fee schedule applies to all ARs, whether they are attorneys or lay representatives.

⁵⁸ Section 7385g is made applicable to payments under Part E by 42 U.S.C. § 7385s-10.

written, the attorney fee schedule encouraged ARs to avoid the more complex and/or time-consuming cases. Claimants found this troubling because the more complex and time-consuming cases were the very cases where they most needed an AR.

iii. Claimants did not always have the ability to pay an AR.

Even when they did not otherwise understand this program, claimants were often aware that while the statute provided them with the right to utilize the services of an AR, they were responsible for any fee owed to this AR for services rendered. Consequently, claimants frequently assured us that they needed any monetary compensation they received to pay for the medical services associated with their covered illness that were not paid by this program.⁵⁹

B. DIFFICULTIES INVOLVING MEDICAL BILL-PAY ISSUES AND LOCATING AND/OR WORKING WITH HEALTH CARE PROVIDERS/CONTRACTORS.

i. Medical Bill-Pay Issues.

When a claim filed by a worker is accepted, that worker is generally entitled to medical benefits, and may also be entitled to monetary compensation. When medical benefits are obtained from a provider who is enrolled with the Office of Workers' Compensation Program (OWCP), the provider (the enrolled provider) directly submits all bills to DEEOIC and Conduent, DEEOIC's bill pay contractor, and payment is made directly to that provider pursuant to the OWCP fee schedule. Consequently, when workers utilize an enrolled provider and the process operates as it should, the claimant is not involved in the bill-pay process and has no out-of-pocket expenses.

In almost every medical bill-pay issue that we encountered in 2018, before coming to us, the claimant had tried to resolve this bill-pay issue by working with the provider, DEEOIC and/or Conduent. These claimants turned to us when these efforts were not successful. Thus, by the time they turned to us, claimants were already upset because of the obstacles they had encountered and the amount of time already devoted towards obtaining reimbursement for the out-of-pocket medical expense they had paid and were fully expecting to be reimbursed.⁶⁰

In particular, some claimants complained that they found it unsettling to be told that a medical bill coding problem was preventing the payment of their medical bill or their reimbursement for out-of-pocket expenses. When told about these coding problems, claimants usually responded by asserting that these codes had been entered into the system by their provider or DEEOIC, and not by them. Therefore, they complained that these coding problems placed them in the middle of a problem that they had not caused, and could not resolve. In fact, in a common scenario, claimants complained of repeatedly being told by DEEOIC that the provider needed to enter the correct code, and yet when they approached the provider, the provider repeatedly insisted that he/she could not change the code or insisted that he/she was using the correct code. When they finally approached us, these claimants were often at wits end as DEEOIC, Conduent, and their health care provider(s) each pointed to the other to fix the problem, but would not contact each other to coordinate the resolution of the issue.

⁵⁹ In asserting that they had other uses for any monetary compensations received, claimants noted that entitlement to medical benefits was as of the date on which the individual submitted the claim for those benefits. See 42 U.S.C. §7384t(d) and 42 U.S.C. §7385s-8. Thus, some asserted that they needed any money received to pay for medical services rendered prior to the filing of the claim. Others feared that even after the claim was accepted, DOL might not pay for all of the medical expenses associated with their illness.

⁶⁰ Many of the medical bill-pay issues involved instances where the claimant was seeking reimbursement for out-of-pocket expenses that he/she had paid. However, there were other instances where the claimant had been alerted to an unpaid bill that he/she assumed DEEOIC would pay. Claimants often felt compelled to involve themselves in resolving these unpaid bills because they wanted to avoid a collection action being initiated against them and/or wanted to do everything possible to ensure that the provider did not terminate services due to a lack of payment.

DOL has indicated that when DEEOIC is made aware of a claimant having medical billing issues, the medical bill processing team does everything within its purview to assist. See DOL's Response to the Office of the Ombudsman's 2017 Annual Report to Congress, Response #4. Yet, many of the claimants who came to us with medical bill-pay issues complained that their efforts to work with their provider, DEEOIC and/or Conduent to resolve the problem had been unsuccessful. And where we were subsequently advised that these problems had been resolved, they were usually resolved when DEEOIC or the Resource Center contacted the provider and worked with the provider directly to resolve the matter. While these claimants were happy to have these issues resolved, they sometimes questioned why it took so long for someone from DEEOIC or Conduent to work with the provider to resolve the matter.

This was the scenario presented to our office in 2018 by a claimant who required dental work to treat his covered illness. After the claimant and his oral surgeon obtained authorization from DEEOIC to proceed with the recommended treatment, his oral surgeon informed him he would no longer participate with the EEOICP. Claimant then found a new doctor but ran into an issue with identifying the correct ICD codes for the treatment. The claimant worked with the CE, the Resource Center staff, and the doctor's office, but was unable to determine the nature of the problem or how to resolve it. Our office outlined the claimant's issues to DEEOIC, and they were ultimately resolved when a DEEOIC representative with bill-pay experience called and spoke to their medical billing counterpart in the doctor's office. When we followed up with claimant to relay how the matter was being resolved, the claimant questioned why this conversation between DEEOIC and the provider could not have taken place sooner so he could have received his treatment in a timely manner.

At an outreach event we attended this year we had the opportunity to talk to representatives from a home health care provider about their experiences with medical bill-pay issues. These representatives questioned if the medical bill pay-problems they were encountering were a consequence of DEEOIC's decision to no longer display the medical billing codes, known as ICD-10 codes, for the claimant's covered illness(es) on the back of their Medical Benefits Identification Card (MBIC). On October 1, 2015, DEEOIC adopted the use of the International Classification of Diseases, 10th Edition diagnosis and procedure codes (ICD-10) on a schedule aligned with the Centers for Medicare & Medicaid Services. Following this decision, the MBIC was redesigned and the redesigned cards were issued to eligible claimants. In issuing new cards DEEOIC stated that due to changes in government billing requirements, and to better protect the privacy and the confidentiality of claimants, the ICD-10 codes for claimant's covered medical conditions would no longer be displayed on the MBIC. Instead, the back of the MBIC card referred claimants and health care providers to a toll-free number and web-portal where this information could be accessed. The representatives we talked to questioned if some of the medical billing issues they encountered arose because providers were too busy to call or go online, or were not aware that they could call DEEOIC or go online to verify the codes for the claimant's accepted medical conditions. This is something that we will pay attention to in 2019.

ii. Locating providers.

DEEOIC's Webpage contains a link to "Medical Provider Search." This provider search function allows users to search for medical providers who have enrolled with DEEOIC.⁶¹ In most instances, the claimants who approached us had not tried to access the various online tools. The exception to this rule was the online medical provider search tool. It was not unusual to be approached by claimants who had tried to access the online provider search function only to find that this resource did not provide the help they needed.

⁶¹ The description "enrolled provider" means that the health care provider (i.e., doctor, hospital, pharmacy, home health care provider, etc.) has completed the necessary forms to receive direct payment from EEOICP for services rendered to claimant. It does not serve as an endorsement of the provider by the Department of Labor. Where a provider declines to enroll with EEOICP, claimants can still obtain services from the provider, but must cover the cost for services themselves and then seek reimbursement from EEOICP. We have encountered instances where the reimbursement amount was less than the out-of-pocket payment because all EEOICP medical reimbursement rates are determined by a fee schedule.

A common complaint came from claimants who noted that while the online medical provider search tool listed a number of enrolled providers, the enrolled providers on these lists were not located close to where they lived. We especially heard this complaint from claimants who did not live close to a covered facility. And while it is possible for claimants to request preauthorization from DEEOIC to cover their travel expenses to see providers located far from them, some claimants maintained that because of their illness or other limitations, they were not able to travel the distances necessary to see an enrolled provider. We also found that while DEEOIC has indicated that its Resource Centers will work with providers to assist them in enrolling in this program, most of the claimants we encountered were not aware that the Resource Centers would undertake this effort, or did not feel comfortable requesting or explaining to providers that they needed them to enroll with EEOICP in order to pay with their medical benefits card.

One of the ancillary medical benefits covered under the EEOICPA is home modifications necessitated as a result of an accepted covered or consequential illness. In 2018, we were approached by two claimants who were having difficulties trying to find contractors enrolled in this program who could perform the home remodeling work necessitated by their covered illnesses. Their problems stemmed from the fact that while DEEOIC has an online medical provider search that can assist claimants in finding an enrolled health care provider, these claimants needed assistance locating enrolled contractors for home modifications.

In one instance, a claimant with an accepted illness complained that in seeking approval for modifications to his/her house, he/she had been instructed by the CE to submit two bids for this work from contractors who were enrolled in the program. This claimant complained that he/she could only locate one enrolled contractor anywhere near him/her who performed the needed work, and thus wanted help locating a second enrolled contractor, or in the alternative wanted to know what to do if he/she could not locate a second enrolled provider. As the year concluded, another claimant contacted us with a similar issue. This claimant similarly needed modifications done to his/her house and similarly had been instructed that he/she needed to submit two bids from enrolled contractors. This claimant complained that he/she could not locate any enrolled contractors in his/her locale who could perform the needed work. Both of these claimants noted that in trying to find an enrolled contractor, they came to realize that contractors who did home modification work did not feel compelled to enroll in this program just to bid on, or accept, a single job. Moreover, in spite of the online link to "Medical Provider Search," these claimants complained that this resource did not include home remodeling contractors. They maintained that if DEEOIC was requiring them to solicit bids from and to use enrolled contractors, then DEEOIC needed to offer assistance in locating enrolled contractors or in enrolling these contractors.

iii. Physicians unwilling to provide treatment to or write narrative medical reports for EEOICPA claimants.

Some claimants reported encountering physicians who were not interested in involving themselves in worker compensations claims. Other claimants complained of encountering physicians who specifically expressed a desire to avoid EEOICPA claims. And where the physician specifically indicated that he/she wanted to avoid EEOICPA claims, claimants noted that these physicians usually offered at least one of three reasons for this decision: (1) prior problems receiving payment for medical treatment of DEEOIC claimants; (2) not wanting to be second guessed by DEEOIC; or (3) the amount of paperwork associated with this program.

Some claimants have suggested that some of DEEOIC's policies and/or procedures contributed to the decision by some physicians to avoid EEOICPA claimants. For example, claimants noted that when they received development letters from DEEOIC asking them to submit a well-rationalized medical report linking their exposures to toxic substances at a covered facility and their claimed illness, these letters did not provide them with, or tell them that they could request, copies of the employment and toxic exposure evidence in their claim

file (i.e., OHQ, DAR records, SEM search results, employment verification records, and exposure records).⁶² Without this evidence, which was usually already in their claim file, the claimant's doctor was not in a position to discuss the claimant's work and exposure history with much, if any, specificity. As a result, the medical report from the claimant's physician was often found to be insufficient and DEEOIC would then request the claimant to obtain more information from his/her physician. Each time a claimant returned to their physician for a supplemental report, it meant more paperwork for the physician.⁶³

Another policy that, according to some claimants, contributed to the decision by some physicians to avoid EEOICPA claimant's concerns DEEOIC's policy to not share copies of the reports of DEEOIC's specialist reports with the claimant until they received their recommended decision. Claimants argued that this policy put them in a position where, after receiving their recommended decision (and the accompanying DEEOIC specialist report), and learning of the 60-day deadline to file an objection to the recommended decision, they found it necessary to return to their physician to ask him/her to review the reports prepared by the DEEOIC specialist(s), and to write another report for them. Claimants asserted that in these situations their physicians were not happy to be asked to review evidence they believed should have been provided before they wrote their original report. Claimants further noted that, in addition to being upset because they now had to write a supplemental report, treating physicians were also upset when asked to write this supplemental report in a relatively short period of time.⁶⁴

In talking about the difficulties they encountered trying to locate physicians, many claimants also felt it important to stress that in the communities where they lived, the operations of these covered facilities had often been cloaked in a cloud of secrecy, and these facilities, as well as the employers who operated them, often wielded a lot of clout. Consequently, we encountered claimants who alleged that local physicians were often reluctant to treat them and/or to prepare a narrative medical report for them because these physicians: (1) were intimidated by the secrecy surrounding these facilities and did not want to get involved in issues involving the employment and exposure that occurred at these facilities; or, (2) perceived that in being asked to prepare a medical report they were being asked to "take on" DOE or one of DOE's contractors, and did not want to take on these powerful entities.

iv. Claimants not aware of what was relevant to provide to the treating physician.

We further found that because some claimants were not familiar with the adjudication process in general, or with the EEOICPA claims process in particular, when they approached their physician to ask him/her to prepare a narrative medical report linking their workplace exposures to their illness, they did not provide the physician with the evidence and documents that could have assisted this physician in preparing the report.

For example, because they were never told that they could ask for the results of the SEM searches, the OHQ and DAR records, as well as the other employment and exposure evidence in their claim file, we frequently found that claimants did not have this evidence when they approached their physician for a narrative medical report. And in some instances, because they were never told they could obtain this information, they still did not have this information when they returned to their physician for the supplemental report. Thus, it was not surprising that some physicians were not anxious to prepare medical reports to support some claims. In some instances, claimants were unable to fully explain what was needed and/or did not provide the physician with the documentation needed to prepare a well-reasoned and documented medical report.

⁶² It is this type of evidence that DEEOIC requires a CE send to a Contract Medical Consultant for review when the CE is seeking an opinion on Part E causation. The CE is required to submit this evidence, along with their questions and relevant medical records, to the CMC.

⁶³ In addition, it would often annoy the claimant's physician to see his/her report questioned because of employment and/or exposure evidence that had never been provided to him/her.

⁶⁴ Once a recommended decision is issued to deny a claim, claimants are on a strict timeline to object and provide evidence to dispute the recommended decision. As noted earlier, most of the claimants we encountered had not been informed, and were not otherwise aware, that they could have requested an extension of time to submit these supplemental reports.

C. HOME HEALTH CARE.

When claims filed by workers are accepted, in addition to any monetary compensation to which they may be eligible, the worker is also entitled to medical benefits for the treatment of the accepted covered illness. In relevant part, the statute provides that,

The United States shall furnish, to an individual receiving medical benefits...for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.

See 42 U.S.C. §7384t(a) and 42 U.S.C. §7385s-8. During the course of the year, we were approached by claimants who had concerns with the process for obtaining authorization or reauthorization for home health care. In particular, claimants complained of letters from DEEOIC in which treating physicians were asked to respond to questions posed by nurse consultants concerning their request for home health care. In its 2017 response to the Ombudsman's Annual Report, DOL addressed this concern stating that,

If the medical information is deficient or unclear, the medical benefits examiner explains the nature of the deficiencies and the specific information necessary in order to proceed with adjudication of the home health care request.

See DOL's Response to the Office of the Ombudsman's 2017 Annual Report to Congress, Response #9. Nevertheless, some claimants and providers questioned the necessity and relevance of these questions, as well as the credentials of those questioning the treating physicians. We were told of instances where physicians took exception to the fact that it appeared to be a nurse who had never examined the claimant who was questioning their opinion. We also heard from claimants and providers who felt that these questions were intended to either intimidate the treating physician, or to gently suggest to the physician to decrease the level of care that he/she had ordered. This concern was often raised in instances where claimants and providers felt that the questions being asked simply sought for the physician to restate (using other words) what he/she had already said. Thus, while they recognized that it was the CE's responsibility to evaluate evidence, claimants stressed that CEs needed to be mindful that treating physicians were often busy and did not have an unlimited amount of time to devote to an individual request for home health care. The fear was that such detailed requests would cause more physicians to decide not to treat EEOICPA patients.

Another concern that we encountered in 2018 was raised by claimants who argued that more consideration needed to be given to their time and circumstances. At least 2 claims brought to our attention scenarios where the claimant, who was ill, traveled a significant distance from home to attend the second opinion appointment scheduled by DEEOIC, and when they arrived were informed that the appointment was for a different date or time, or would require more appointment time than allotted. In each case, the claimant was sent home and forced to wait for another appointment before they could learn if their claim for HHC benefits was going to be authorized at the level prescribed by their treating physician. This consequently resulted in the delay of their request for authorization and/or reauthorization of HHC benefits.

D. INAPPROPRIATE CUSTOMER SERVICE.

“I hope that you can help me. I’m having problems (again) with...He is rude and is delaying my refund...He’s asking for a copy of a letter that he originally sent to me...”

—Email from a claim. February 2018.

“He [the claimant] asked our office to follow up on his request because he says he was spoken to in an unprofessional manner...”

—Email from our Office to DEEOIC relaying the request that we received from a claimant. March 2018.

“...You mentioned that you were present when your father was speaking to the CE, and that the CE was unprofessional and rude to your father. In an effort to seek assistance and complain about the behavior of the CE, your father then contacted the ...district office and was again spoken to in an unprofessional manner by an Energy program employee...”

—From a letter prepared by this Office to an AR recounting what had been said to us. July 2019.

As in previous years, in 2018 it was rare for claimants to contact us solely for the purpose of reporting an incident of inappropriate customer service. The more common situation for us involved instances where, in the course of a conversation, the claimant mentioned an act, or acts of inappropriate customer service encountered while interacting with his/her CE or other DEEOIC representatives. These allegations of inappropriate customer service varied from case-to-case. There were some claimants who alleged that someone associated with DEEOIC, usually their CE, had been rude to them. In other instances, claimants complained of encountering condescending comments, or statements that appeared to have been uttered in an effort to chill their desire to pursue their claim. For instance, this year we talked to claimants who complained of being told by their CE that they had already received enough money.

Yet, while these acts of inappropriate customer service usually were not the primary reason claimants approached us, based on the information that we were able to gather, we identified some ongoing and persistent concerns involving the conduct encountered by some claimants.

i. Claimants not aware that they can report inappropriate customer service directly to DEEOIC.

In its response to the Office of the Ombudsman’s 2014 Annual Report, DEEOIC stated that, “[c]omplaints about inappropriate customer service should be directed to Deeoic-public@dol.gov.” See DOL’s Response to the Office of the Ombudsman’s 2014 Annual Report to Congress. In Response #6 to the Office of the Ombudsman’s 2016 Annual Report, DOL further indicated that,

While OWCP cannot currently provide a single point of contact for complaints, OWCP staff is trained in customer service, and OWCP’s management team at the national office and the district and FAB offices strive to work with claimants and staff to resolve all complaints. OWCP encourages claimants to submit comments and/or customer service complaints in writing, by phone, through public email, or via customer satisfaction survey. All responses and comments made on the customer satisfaction survey are anonymous.

See DOL's Response to the Office of the Ombudsman's 2016 Annual Report to Congress, Response #6. The statements contained in DOL's Response #6 are not easily accessible on DEEOIC's webpage.⁶⁵ Consequently, we continued to find that claimants were not aware that DEEOIC encouraged the submission of comments and customer service complaints, and were not aware of the procedures established by OWCP for submitting these complaints. We believe that making these statements public is important because as it stands, some claimants question whether these acts of inappropriate conduct are condoned by the National Office.

ii. Claimants preferred to directly talk to someone when complaining of customer service.

The claimants who approached us with complaints of inappropriate customer service were usually hesitant, if not absolutely reluctant to report these act(s) to DEEOIC. And those claimants who were willing to report these act(s) to DEEOIC usually voiced a strong preference for reporting these act(s) to a specifically identified person. However, as noted above, in its response to the Office of the Ombudsman's 2016 Annual Report to Congress, DOL indicated that DEEOIC cannot currently provide a single point of contact for complaints (alleging inappropriate customer service). Nevertheless, our conversations with claimants during the year reinforced our belief that without a single point of contact many claimants would continue to be reluctant to report their encounters with act(s) of inappropriate customer service to DEEOIC. Even when they did not otherwise have a firm grasp of this program, most claimants appreciated the critical role that the CE and/or the HR had in the adjudication of their claim. Thus, claimants often told us that they saw it as important to establish and maintain a good working relationship with the CE and the HR.⁶⁶ Consequently, in contemplating how to respond to instances of inappropriate customer service, claimants often expressed a strong preference for having their complaints reviewed by someone who was not, and would not be, directly involved in the adjudication of their claim. In fact, it was often when they started to feel that their relationship with their CE or HR was beginning to fray that some claimants turned to us hoping to use us as a buffer to ensure that this relationship did not fray any further. These claimants feared that their relationship with their CE or HR would deteriorate (or further deteriorate) if the CE or HR discovered that they had reported these act(s) of inappropriate customer service. Even more, they feared that the CE or HR might retaliate by taking it out on their claim. In this regard, because the CE and/or HR holds such power over their claim, claimants questioned if DEEOIC could, even if it wanted, closely monitor their claim to ensure that the CE or HR did not retaliate against them if they reported an act(s) of inappropriate customer service. Therefore, in the opinion of some claimants, a single point of contact, especially if that person did their job, offered some level of assurance that there was a buffer between them and their CE or HR.

We also found that in deciding how to respond to act(s) of inappropriate customer service, claimants wanted to know that there were written procedures in place for handling these complaints. Simply suggesting that they submit their complaints and concerns in writing, by phone, through public email, or via customer satisfaction survey did not provide claimants with a lot of confidence that there were procedures in place for addressing these complaints.⁶⁷

⁶⁵ To access DOL's response to Office of the Ombudsman's Annual Reports, from DEEOIC's website, one has to click to the link for the "Public Reading Room."

⁶⁶ This belief that it was necessary to establish and maintain a good working relationship with the CE or the HR was often a critical concern voiced by claimants who, oftentimes without prior warning, learned that a new CE or HR had been assigned to their claim. After taking time and devoting effort to establish a good working relationship with one CE or HR, claimants found it troubling that they now had to start over again to establish a good working relationship with another CE or HR.

⁶⁷ To date, there are no written procedures in the EEOICP Procedure Manual or on the DEEOIC website discussing how customer service complaints are to be received, addressed and/or responded to. Rather, there is the assumption that claimants will complain to either the person making the decision on their claim for benefits, or via a customer satisfaction survey that does not indicate any responsive communication will occur.

iii. Relaying complaints directly to DEEOIC.

Response #6 of DOL's Response to the Office of the Ombudsman's 2016 Annual Report to Congress stated that if claimants would rather not complain directly to DEEOIC in the ways currently available to them, it would be helpful if our Office could relay those complaints directly to OWCP at the times they are received, so that specific problems could be addressed directly. If the claimant clearly states his/her desire to have his/her complaints, including complaints of inappropriate customer service, brought to the attention of DEEOIC, we have and will continue to forward these complaints to DEEOIC. However, without the claimant's permission, we do not think that it is appropriate to forward the complaints that we receive to DEEOIC.

We did not encounter many claimants who indicated that they had formally submitted a complaint to DEEOIC. However, in the one instance brought to our attention this year the AR for a claimant wrote a formal letter of complaint to the DEEOIC and sent it to the District Director for the district office. The letter outlined the customer service issues and concluded with the following request, "I am writing to you because I do not feel that the communication is good and it would be pointless to contact [the CE] again. I look forward to hearing from you about this matter." The AR reported receiving no response to this letter.

E. WITHDRAWING CLAIMS AND CANCELLING THE IN-PERSON HEARING.

I have noticed that the Hearing Officer is calling to schedule a telephone hearing without any indication that an in person hearing is an option...

—Email from an advocate. September 2018.

During the course of this year we were approached by claimants with questions and concerns arising from the request by the CE to withdraw one, or more, of their claims.⁶⁸ We were also approached by ARs who complained that they or a claimant had been contacted by the hearing representative (HR) who tried to get them or the claimant to cancel the in-person hearing that had been scheduled, and to instead agree to a telephone hearing.

i. Some claimants asserted that they had been asked to withdraw a claim.

We encountered claimants who alleged that in the course of processing one claim, the CE had instructed them to withdraw another claim he/she had filed. In other instances, while talking to the claimant about other matters, he/she mentioned that per the instructions of the CE, he/she had withdrawn another claim. These claimants did not understand why they had been directed to withdraw one of their claims and wanted to better understand the impact of withdrawing (or having withdrawn) that claim.

Most of these claimants indicated that they had been led to believe that withdrawing the one claim was somehow necessary to facilitate the processing of another claim. Yet, they could not explain how or why withdrawing the one claim would expedite the processing of another claim, or would ensure the acceptance of the other claim. Therefore, when they approached us they usually wanted to know: (1) if it was (or had been) necessary to withdraw one of their claims; (2) if they withdrew a claim, could they later reactivate that claim; and (3) assuming they could reactivate the withdrawn claim, when and under what circumstances could they reactive this claim.⁶⁹ In addition, since they were often under the impression that withdrawal of one claim was related

⁶⁸ Based on our experiences, this appeared to occur more frequently when a claimant had more than one medical condition being worked on by the CE at the same time; or when a claimant had both an impairment claim and a new medical condition being worked on by the CE at the same time.

⁶⁹ Since we did not understand why these claimants had been instructed to withdraw one of their claims, we could not answer whether this action was necessary.

to the acceptance of another claim, they wanted to understand the ramifications of reactivating the withdrawn claim. In particular, they wanted to know if reactivating the withdrawn claim would put at risk the compensation and benefits awarded under the claim that had been previously accepted. They also wondered if the CE would be upset if after directing them to withdraw the claim, they subsequently reactivated that claim.

Another common inquiry for these claimants concerned the impact that withdrawing a claim would have on the filing date if they ever chose to reactivate the claim. DOL addressed this concern in Response #3 of its Response to the Office of the Ombudsman's 2016 Annual Report to Congress. In that response DOL stated, in part,

“With regard to preserving the date of filing, as described in the Federal EEOICPA Procedure Manual Chapter 7(9), a claimant is able to withdraw his or her claim for benefits for any claimed condition(s) prior to the issuance of a final decision for the requested benefit(s). Withdrawal of a claim does not change the record of initial date of filing.”

See DOL's Response to the Office of the Ombudsman's 2016 Annual Report to Congress, Response #3. In our experience, the claimants who approached us because they had been instructed to withdraw a claim had usually already discussed this matter with their CE. In fact, these claimants usually indicated that it had been the CE who had instructed them to withdraw one of their claims. Yet, these claimants usually did not understand why they had been instructed to withdraw one of their claims; had not been made aware of Chapter 7(9) of the PM; and had not been informed that withdrawal of a claim did not change the record of their initial date of filing.

This is also an instance where the relevant resource did not provide the step-by-step information sought by claimants. The relevant passage of Chapter 7(9) of the PM states that:

“A claimant is able to withdraw his or her claim for benefits for any claimed conditions(s), or wage-loss or impairment, prior to the issuance of a FD for the requested benefit(s). All requests to withdraw a claim for benefits must be in writing, signed by either the claimant or his or her AR, and specific in reference to what Part or Parts under the EEOICPA the claim is to be withdrawn.

Federal EEOICPA Procedure Manual Chapter 7(9) (Version 2.3) (July 24, 2018). Although Chapter 7(9) of the PM states that a claimant is able to withdraw his or her claim for benefits prior to the issuance of a final decision for the requested benefits, this provision does not indicate that it applies “with regard to preserving the date of filing.”

ii. Cancelling the in-person hearing.

During the course of the year, some ARs approached us with concerns about their scheduled in-person hearings. When claimants receive a recommended decision, they can agree with the decision and waive their right to file objections, or they can object to the decision (in whole or in part) and request a review of the written record or a hearing. In one instance, an AR complained that after requesting an in-person hearing the claimant was subsequently contacted by the FAB hearing representative (HR) who encouraged the claimant to cancel the in-person hearing, and to instead agree to a telephone hearing. It troubled this AR that he/she had not been included in the conversation about whether to cancel the in-person hearing and to instead hold a telephone hearing.⁷⁰ In other instances, we talked to ARs who indicated that there had been times when either they or the claimant had

⁷⁰ Chapter 12.6 of the EEOICP Procedure Manual states that after a claimant properly appoints a representative and that representative is contacted by letter by the CE or FAB acknowledging the appointment (and until the claimant removes or changes the representative), the CE and FAB will communicate with the designated representative and copy them on all written interactions intended for the claimant. It concerned this AR that when it came to cancelling the in-person hearing, the CE had chosen to only talk to the claimant.

been contacted by the HR in an effort to have the in-person hearing cancelled and to instead hold a telephone hearing. These ARs often complained that the HR had been very persistent in trying to convince them and/or the claimant to change from an in-person hearing to a telephone hearing. Still another AR contacted us on multiple occasions to complain that claimants were not being fully advised of their right to an in-person hearing.

We were also told of instances where claimants were contacted by HRs just days before the scheduled in-person hearing and informed that the in-person hearing had to be rescheduled. The HR would then offer the claimant the option of: (1) holding the in-person hearing at a later date, or (2) agreeing to cancel the in-person hearing, whereupon the HR promised to promptly schedule a telephone hearing. Because they were anxious to proceed with his/her claim, some claimants agreed to cancel the in-person hearing and to hold a telephone hearing instead. In other instances, they agreed to cancel the in-person hearing because they were concerned about upsetting a HR who seemed intent on changing the date and/or format of their hearing.

During a meeting for claimants, advocates and representatives hosted by OWCP in Washington, DC on October 24, 2018, ARs had the opportunity to voice their concerns about encounters where they or claimants had been encouraged by the HR to cancel the in-person hearing and proceed with a telephone hearing instead. DEEOIC responded by assuring these ARs that it did not have a policy that encouraged or instructed HRs to cancel in-person hearings. ARs were relieved to hear this. Nevertheless, some of these ARs questioned if there were still some HRs who were deciding, on their own, to limit the number of in-person hearings he/she had to attend.

F. MOST DEEOIC POLICY CHANGES ARE ONLY POSTED ONLINE, LEAVING CLAIMANTS UNAWARE OF THEM.

When DEEOIC issued a new bulletin, circular, or other significant policy change, such changes were announced on DEEOIC's website under "Latest Program Highlights" or under "Program News." Changes to the PM were described in EEOICP Transmittals, which were only available online. Many of the claimants we encountered only became aware of a new bulletin, circular, change to the PM, or some other significant policy change when we mentioned the change to them.⁷¹ These claimants often found it troubling to first learn of a change in policy or procedure well after the change had been made. The degree to which they found this troubling was often directly related to the extent they felt the change impacted their claim. The more they felt that the change could have impacted their claim, the more likely it was that they would suggest that there needed to be a system in place to alert them to relevant changes. When advised that these changes were often announced online, we were reminded that some claimants did not have access to the internet. We were also reminded that even where they had access to the internet, many claimants did not routinely visit DEEOIC's website to look for changes in law, policy, and/or procedure; and it was further noted that in many instances it was unlikely claimants would be able to identify an update as potentially impacting their claim for benefits. Claimants especially stressed that once their claim was denied, they did not routinely continue to visit DEEOIC's website. Rather, once their claim was denied, they assumed that DEEOIC would contact them if there were changes to law, policy, or procedure that could impact their claim.⁷²

⁷¹ On rare occasions a claimant would approach us with questions after learning about a policy change, or a change in the PM, bulletin, or circular from a friend or colleague.

⁷² DEEOIC's website contains a link that allows individuals to subscribe to receive Medical Provider Updates via email, and in 2018, DEEOIC added a link allowing individuals to subscribe to program and policy updates via email as well. However, as with other online resources, most of the claimants we encountered were not aware that these email updates were available.

i. Claimants are not advised when DEEOIC conducts internal reviews to determine if reopening of certain claims are required.

There were instances where DEEOIC's procedures required the identification and review of previously denied claims that might be impacted by a change in policy or rule. These procedures often directed each District Office to prepare a list of previously denied claims (affected by the change) and to have the district office(s) or the Final Adjudication Branch review the claims on this list to determine if reopening of the claim was warranted. These procedures did not require claimants to be notified that a review of their claim was underway, and did not require them to be notified if DEEOIC's internal review determined that reopening was not warranted. Thus, where a claim was reviewed by DEEOIC because of a change in policy or rule, but was not reopened, claimants oftentimes were not aware that the review had occurred. Instead, they learned of DEEOIC's internal review when someone other than DEEOIC told them about the review. Learning about this internal review from someone other than DEEOIC often prompted the claimant to want to ensure that his/her claim had been included in this internal review. And where they felt that the change in policy or rule had impacted their eligibility for benefits, claimants found it troubling that DEEOIC engaged in an internal review of their claim without first providing them with an opportunity to submit additional evidence to satisfy the updated change in law, regulation or policy.

DOL indicated that DEEOIC did not typically notify every claimant who may be part of these reviews, such as in situations involving new SECs or Program Evaluation Reports, because in many situations there is low likelihood any new evidence will alter the claim outcome. See DOL's Response to the Office of the Ombudsman's 2017 Annual Report to Congress, Response #8. Some claimants see this as a lack of transparency in the program. It troubles claimants when they are not timely and directly informed of developments involving their claim. And it further troubles them when, without notice and without an opportunity to develop additional evidence, DEEOIC determines that additional evidence would not alter the outcome of the claim. Since it is their claim, claimants would have preferred the opportunity to determine for themselves if they should try to develop additional evidence.

RECOMMENDATIONS

DEEOIC is to be commended for the efforts it has undertaken and the resources that it has developed to assist claimants with this program. Yet, more needs to be done. Here are our recommendations to address many of the common difficulties brought to our attention in calendar year 2018.

1. We recommend that DEEOIC continue to hold, and if possible, increase the number of outreach events that it sponsors each year. Outreach events not only provide an opportunity for potential claimants who are not aware to finally become aware of this program, they also provide an opportunity for individuals to ask questions and to gain further insights into this complicated program. In this regard, we have observed that while some claimants will not call to obtain assistance, they will attend outreach events in hopes that their questions might be answered at these events. In addition, some claimants prefer face-to-face encounters when talking about their claim. Outreach events offer the opportunity for claimants to speak face-to-face with representatives from the agencies in attendance.
2. In an effort to reach as many potential claimants as possible we also recommend:
 - a. That DEEOIC and DOE/FWP continue, and if possible, increase their work together on outreach utilizing the rosters compiled by DOE/FWP. The mailing lists compiled from DEEOIC data only contain the names of individuals who have already filed claims. The rosters compiled by DOE/FWP are more extensive because they also contain contact information for individuals who have not filed an EEOICPA claim. Utilizing the DOE/FWP rosters is a cost-effective way to disseminate information about this program to potential claimants who are not already aware of this program, especially those who, over the years, dispersed all over the country.
 - b. DEEOIC give greater consideration to utilizing regional and national media, and other outlets, to disseminate information about this program. This is another cost-effective way to reach potential claimants who, over the years, have dispersed around the country. DOJ saw a significant increase in new claims following an article in an AARP publication.
3. The packet received by claimants when they file a claim DEEOIC should include a document that describes some of the more common resources available to claimants, and provide information on where to find these resources, including the web address where relevant. Many of the claimants we encountered: (1) were not aware of the resources that had been developed; (2) did not know how to access these resources; and/or (3) did not appreciate the value of these resources. In this regard, it has been our experience that even when they had access to a computer, claimants who are not computer savvy usually did not search the web when they needed help. Moreover, since merely mentioning a resource is not always sufficient, it would also be helpful if the claimants had a document that informed them how to access these resources and briefly explained what these resources were and how they could be useful.
4. Some claimants would come away with a better appreciation of a resource, and a better understanding of how to navigate a resource, if they could see a demonstration of that resource. The SEM and the medical provider search are two such resources. Adding a tutorial/demonstration of these resources on

DEEOIC's website would be beneficial. For example, including on its website a video from the sessions at the AR workshop where SEM and the medical provider search function were discussed.

5. More effort needs to be undertaken to ensure that claimants are able to promptly talk to their CE and HR, and that their messages are promptly returned. Thus, if CEs have two days to return calls, then there needs to be a mechanism to ensure that calls are returned within two days. In addition, if the claimant does not receive a return call within two days, there needs to be a mechanism that ensures that if he/she calls again, the claimant will be able to immediately talk to someone who can assist him/her. Some claimants are (or think they are) operating under strict timelines. Others do not want the processing of their claim delayed. Frustrations arise when it is difficult to timely communicate with the CE or HR. Even worse, when they do not receive a prompt response, some claimants proceed with their claim without the information or answers they need.
6. Claimants need to be informed that they can request their claim file or documents from their claim file. This lack of knowledge often impacts the ability of claimants to develop their claim, such as their ability to obtain a well-documented and well-rationalized reports from their physician. A big step in resolving this problem would be to let claimants know that they can request their claim file or documents from their claim file. And to lessen the instances where claimants have to return to their physician for supplemental reports, this information needs to be relayed to claimants as early in the claims process as possible.
7. Similarly, DEEOIC needs to clarify its policy/procedure of working with the claimant's treating physician. We continue to encounter instances where the medical reports prepared by the claimant's treating physician was deemed inadequate, yet it did not appear that DEEOIC had undertaken any effort to work with this physician to remedy/resolve the concerns with his/her medical report. Claimants (and their physicians) need a clear understanding of when and how this policy/procedure is applied.
8. A statement from DEEOIC encouraging the submission of comments and customer service complaints, and outlining how to submit these comments and complaints, should be posted on DEEOIC's website. The claimants who approached us after encountering an act of inappropriate customer service were usually hesitant, if not outright reluctant, to report these incidents due to their concerns of retaliation. In fact, some claimants questioned if such acts were condoned by the National Office. Measures need to be taken to assure claimants that DEEOIC values and wants to hear their comments and complaints, and that there is a process in place to respond to them.
9. We wish to reiterate our belief that a single point of contact for complaints would ease some of the concerns that claimants have with reporting complaints directly to DEEOIC. And it would further ease their concerns if this single point of contact was not directly involved in the adjudication of the claimant's claim. DEEOIC has indicated that it cannot currently provide a single point of contact. Nevertheless, we recommend that DEEOIC continue to explore opportunities to provide such a person.
10. Where DEEOIC recommends or suggests that a claimant withdraw a claim, DEEOIC should provide the claimant with the reasons for withdrawing the claim, and should explain the impact that

withdrawing the claim will have if the claimant ever wants to reactivate that claim. Claimants need to fully understand why they are being asked to take this action and the impact of this action. This is crucial in order for them to make an informed decision whether to withdraw their claim and to know how to proceed thereafter.

11. Where medical billing issues arise, immediate effort should be undertaken to work with the provider to resolve these matters. When these situations arise, there is usually little the claimant can do to resolve them. Thus, claimants are often caught in the middle as DEEOIC and the provider blame each other for the billing problem. In our experience, these problems often linger until DEEOIC finally works directly with the provider. Yet, claimants are often anxious to have these bill-pay issues quickly resolved as they want to prevent these issues from impacting their credit and/or impacting the relationship with their provider. Thus, to avoid the frustrations that arise with these situations, more effort needs to be undertaken to ensure that the direct interaction between DEEOIC and the provider to resolve these matters occurs sooner.
12. Most of the claimants we encountered did not fully understand this program. Difficulties arose when they could not obtain clear and/or timely instructions, when they did not understand the instructions they received, or when the instructions did not resolve the problem. To assist claimants in navigating this complicated program we recommend that:
 - a. DEEOIC clarify the role of the Resource Center. Most of the claimants we encountered believed that once they filed their claim and had their OHQ interview, the Resource Center's involvement with their claim was complete. To the extent the Resource Centers provide other services this needs to be made abundantly clear. And this information needs to be widely disseminated to reach those who may not live close to one of the 11 Resource Centers.
 - b. When an online resource is referenced in a letter or decision, DEEOIC should include the web address for that resource. Merely mentioning a resource is not always sufficient to alert claimants that this resource is available online. Providing the web address will facilitate the claimant's ability to locate this resource.
 - c. DEEOIC continue to emphasize the importance of well-reasoned and well-rationalized decisions that acknowledge the relevant evidence submitted by claimants, and explains why this evidence is credited or not credited. And in this regard, DEEOIC's policy about self-reported evidence provided by claimants needs to be clearly stated and clearly available to claimants. In particular, claimants need to clearly understand if other evidence must be in the record before self-reported evidence will be credited.
13. Consideration should be given to a more effective way of providing claimants with the step-by-step instructions they often need. Currently, the CE or the HR is the primary resource for claimants as they process their claim. The CEs and HRs endeavor to assist claimants and in some instances their assistance is sufficient. However, in other instances, this assistance is not enough. In light of all of duties they have to perform, one has to question if CEs and HRs always have the time to devote to each claimant. Moreover, some claimants question the adequacy of the guidance provided to them by the person whose primary job it is to adjudicate their claim. And they especially question the adequacy of this guidance once this person has indicated or decided how he/she is going to rule on the claim.



APPENDIX 1

SOME COMMON MISCONCEPTIONS ABOUT THE EEOICPA PROGRAM

1. Some claimants believe that in creating this program, Congress intended to cover anyone who worked onsite at a facility associated with the development and building of U.S. nuclear weapons.
2. We encounter claimants who believe that the EEOICPA only compensates those with claims for cancer.
3. Some claimants do not realize that if their claim is denied, they can file additional claims if they suffer new illnesses.⁷³
4. Part B specifically compensates for only four illnesses. As a result, when it comes to Part E some claimants incorrectly assume that there is a list of the illnesses potentially covered under this part as well. Consequently, some claimants delay filing their claim while they first try to determine if their Part E illness is on any such list.
5. Many claimants are not aware they can appeal a final decision to U.S. federal district court.
6. The cap on monetary compensation under Part E is \$250,000. Some claimants mistakenly believe that every successful Part E claim will, over time, result in the receipt of \$250,000.
7. There was a belief that when a claim was expedited because the claimant was terminally ill, DEEOIC eliminated certain steps in the claims process.
8. While many claimants know that Resource Centers will assist with the filing of new claims, they are unaware that these Centers will also assist with a variety of other claim processes, such as help with finding a physician or resolving medical bill-pay issues.
9. Many claimants erroneously believe that the SEM database includes links between toxic substances and illnesses that can be aggravated by or contributed to exposure to these substances. In fact, the SEM database only includes illnesses that have a causal link to a toxic substance.
10. Employees of AWEs may have worked with toxic substances other than radiation, but under the EEOICPA they are only covered for cancers caused by exposure to radiation.

⁷³ While some claimants are aware of the option to request reopening of a claim, we found that many were not aware that they could file a new claim if they subsequently developed new illnesses. We especially found that claimants whose claims for skin cancer had been denied were not aware that they could file new claims if new skin cancers were diagnosed.

APPENDIX 2

DOL'S RESPONSE TO THE OFFICE OF THE OMBUDSMAN'S 2017 ANNUAL REPORT TO CONGRESS

The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) administers its responsibilities under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) with the intent of following the will of Congress in enacting the EEOICPA: to pay compensation and medical benefits to all eligible nuclear weapons workers (or their eligible survivors) who incurred illnesses in the performance of duty at a covered facility. In FY 2017, OWCP continued to improve benefit delivery by strengthening program integrity, improving technology, updating policy, and enhancing the accuracy and efficiency of medical claims adjudication and payments. The Energy program's mission is an important one and OWCP remains committed to serving its claimants, beneficiaries, and their families.

1 – Difficulties with the Statute

The Ombudsman states that claimants find it difficult to obtain guidance from DOL when trying to understand and apply the attorney fee schedule.

Response: The guidance regarding attorney fees originates in the EEOICPA statute and regulations. The statute states that under Part B, with respect to services rendered in connection with a claim, an individual cannot receive a payment that is more than two (2) percent for the filing of an initial claim for payment of lump-sum compensation, and ten (10) percent with respect to objections to a recommended decision denying payment of lump-sum compensation. Payments under Part E apply to the same extent as Part B. Guidance regarding representative services can be found on the Division of Energy Employees Occupational Illness Compensation (DEEOIC) website in Chapter 12 of the DEEOIC Procedure Manual.

There are stark differences in the way claims are filed, adjudicated, and paid, between Part B and Part E of the EEOICPA. OWCP agrees the attorney fee structure does not work for Part E, for many of the reasons that the Ombudsman notes on pages 17, 18, and 34 of his report. Further, the fee structure provides little incentive for authorized representatives to take on EEOICPA claimants who have complex and/or time-consuming cases. The complaints the Ombudsman receives from claimants and authorized representatives regarding the attorney fee structure are accurate and in fact have been raised ever since Part E was enacted in 2004. However, OWCP cannot change or remove the limits imposed by Congress in the statute. Any change to the fee limits and the way that they apply can only be attained through legislation.

Claimants asked whether the Division of Energy Employees Occupational Illness Compensation can develop a procedure that allows claimants to file a claim (and thus establish a date of filing) yet postpone the processing of the claim when they are currently facing other pressing life challenges.

Response: With regard to preserving the date of filing, a claimant who wishes to postpone action on a claim can do so by withdrawing his or her claim. A claimant is able to withdraw a claim for benefits (for any claimed condition) at any time prior to the issuance of a final decision for the requested benefits. Withdrawal of a claim does not change the record of the initial date of filing. OWCP honors all requests to withdraw a claim for benefits that are submitted in writing and signed by either the claimant or his or her authorized representative. Claimants may also request a reopening of their claims at any time. OWCP ensures claims are processed and adjudicated as quickly as possible, and therefore manages the timeliness of claims from the date of initial filing to recommended and final decisions. OWCP's claims examiners are held to strict standards for adjudication timeliness; once a claim is filed, they are allowed limited windows of time for certain actions. If claimants were allowed to file to preserve a filing date, without withdrawing a claim or receiving a recommended or final decision, it would be difficult for OWCP to ensure all claimants are treated fairly by an expeditious, objective process.

2 – Difficulties Arising from a Lack of Awareness of the EEOICPA Program

The Ombudsman mentions that there are potential claimants who are still not aware of this program. He notes that DEEOIC's outreach efforts have primarily focused on areas near covered facilities. The Ombudsman would like OWCP to explain efforts undertaken to bring awareness of the program to those who have moved away from covered facilities to other areas of the country.

Response: OWCP understands the importance of outreach to the nuclear weapons community, and agrees that the agency must use a variety of outreach strategies to reach as many people as possible. The Energy program continues to focus its outreach on both nuclear weapons workers and healthcare providers. The purpose of the outreach is to educate potential claimants, current beneficiaries, and authorized representatives about the program; provide assistance in filing claims; provide an understanding of the adjudication process; and inform healthcare providers (including physicians and home health care organizations) about EEOICPA benefits as well as their responsibilities in prescribing care and providing services.

OWCP recognizes former employees or their survivors may no longer live close to covered facilities. The agency has therefore tried various methods to reach a broader audience. In FY 2017 and FY 2018, the program conducted a series of face-to-face outreach events across the country with nuclear weapons workers and their families, to raise awareness of the program. These events drew 567 people and targeted employees of facilities located in Colorado, Illinois, Iowa, Missouri, New Mexico, Pennsylvania, Utah, and West Virginia. In FY 2018, OWCP also conducted outreach in Ames, Iowa, to align with the new Ames Laboratory Special Exposure Cohort effective February 1, 2018. OWCP also placed advertisements in newspapers and newsletters in Alaska, Arizona, California, Illinois, Florida, Kansas, New York, Ohio, and Texas, to alert readers to the names of covered facilities in the various regions and how to file claims under the program.

As mentioned, OWCP's outreach efforts target multiple audiences. During FY 2017 and FY 2018, OWCP conducted twelve medical teleconferences for medical providers, reaching 454 callers. The agency held training in Florida and Washington for more than 45 authorized representatives, after sending invitation letters to more than 2,200 individuals currently serving as authorized representatives in 17 states. OWCP

utilizes an email subscription service for 629 current subscribers seeking medical updates, and 5,684 subscribers interested in policy updates (as of January 2019). The agency also utilizes its website and social media platforms to provide comprehensive program information online to the general public.

The Energy program's network of resource centers in 11 regions of the country provide an initial point-of-contact for workers interested in the program and those filing claims under the EEOICPA. The resource centers serve new claimants who need to complete claim forms and gather documentation to support their claims, and they assist claimants who have been awarded compensation and medical benefits under the program. For example, the resource centers help beneficiaries complete prior authorization forms for medical care and durable medical equipment, fill out medical and travel reimbursement claim forms for out-of-pocket expenses, and resolve medical billing issues. They also help medical providers enroll in the program. Further, they provide information about the program to local groups and organizations; support OWCP's outreach efforts across the country; coordinate with covered facilities to distribute program information to unions and employee newsletters; and place program information at senior centers, residential care facilities, Departments on Aging, libraries, etc.

OWCP partners with the Joint Outreach Task Group (JOTG) whose members include OWCP, the Department of Energy (DOE), the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH), the Office of the Ombudsman for the EEOICPA, and the Office of the Ombudsman for NIOSH. JOTG members plan the locations and annual schedule of all JOTG-sponsored town hall meetings, and they help advertise these events. In FY 2017 and FY 2018, JOTG-sponsored outreach included town hall meetings in Simi Valley, California; San Bernardino, California; Pasco, Washington; and Santa Fe, New Mexico. The meetings drew 266 participants. Accordingly, OWCP utilizes multiple outreach strategies to reach audiences and continually seeks new ways to improve its outreach efforts to potential claimants, and will continue to do so.

3 – Claimants Do Not Understand the EEOICPA Program

The Ombudsman states that his office encounters claimants who do not have a basic understanding of the EEOICPA program. He says that, according to claimants, information is only provided if and when they specifically ask for information. Claimants do not know what to ask for and often receive vague information or pertinent information well after the timeframe in which it would have been most useful.

Response: OWCP understands claimants may not fully understand the EEOICPA, the claims adjudication process, or their role versus the supportive role of OWCP in collecting evidence to support a claim. Although a great amount of information is provided to claimants, the fact is Congress created EEOICPA as a complex, ever-changing program with different eligibility criteria between Part B and Part E and multi-faceted issues to develop and adjudicate on any given case.

During the development of a claim, claims examiners communicate with claimants primarily by phone and through written development letters to explain "next steps" and provide guidance on what information is needed from the claimant. OWCP continually works with claims staff to ensure development letters

are specific in requesting what is needed and advising of actions the claims examiner will take or has taken already. The Final Adjudication Branch provides written guidance for hearings, final decisions, remands, and reopenings, and OWCP's medical bill contractor and DEEOIC's Branch of Medical Benefits Adjudication and Bill Processing provide ongoing guidance concerning medical benefits and medical bill pay.

OWCP would benefit if the Ombudsman could convey more specific questions being asked as they occur, so that OWCP can immediately address a claimant's need for information.

4 – Difficulties Obtaining Assistance

The Ombudsman states that claimants' lack of familiarity with the program hinders their ability to seek assistance. He explains that claimants do not know where to turn for assistance. For example, the Ombudsman's office has been approached by claimants who were trying to resolve medical bills. He also notes that claimants who do not have access to the Internet or who are not familiar with using the Internet are at a disadvantage when it comes to obtaining information about the EEOICPA. Likewise, the use of program terminology and acronyms are a barrier to claimants' understanding of the claims process and what is expected of them.

Response: OWCP invests a great deal of time in communicating with, supporting, and working with claimants on a one-on-one basis. In FY 2017, for example, the resource centers responded to 31,157 phone calls, conducted 4,538 occupational history interviews; and performed 112,698 follow-up actions with claimants. In FY 2018, their interactions included 28,969 phone calls, 4,071 occupational history interviews, and 118,999 follow-ups. The resource centers also worked with claimants to file 18,366 claims in the two fiscal years combined. At the district offices, claims examiners worked directly with claimants to collect information and evidence to support their claims, leading to the issuance of 22,400 recommended decisions in FY 2017 and 21,289 recommended decisions in FY 2018. The Final Adjudication Branch issued 35,432 final decisions in the two fiscal years combined. In all communication to claimants throughout the claims process, OWCP provides instructions (including phone numbers, fax numbers, and mailing addresses) regarding who to contact for questions and assistance. Claimants are also given access to printed brochures, Frequently Asked Questions, a list of acronyms, and the Federal (EEOICPA) Procedure Manual. In addition, resource center staff are available to assist claimants with their use of website tools such as the Electronic Document Portal (EDP), Claimant Status Page, the DOE Facility List Database, Site Exposure Matrices (SEM), BTComp Subcontractor Database, and OWCP's Medical Provider Search.

In April 2018, DEEOIC added a new Branch of Medical Benefits Adjudication and Bill Processing, which has a new Branch Chief and two Unit Supervisors, one overseeing Medical Benefits Adjudication and the second overseeing Medical Bill Processing and Program Integrity. Employees selected to serve as medical benefits examiners are experts in medical authorizations and billing. The new OWCP structure has helped to ensure a consistent decision-making process with respect to medical requests, increased effectiveness in processing medical benefits claims, and more efficient one-on-one resolution of medical bills. When DEEOIC is made aware of a claimant having medical billing issues, the medical bill processing team does everything within its purview to assist. This includes outreach to the provider to resolve any billing

issues or clear up any discrepancies. The central bill processing agent is required to process bills within 30 days of submission of a properly completed bill, and as long as the services are related to an accepted 4 condition and any preauthorization requirements are met, the services are paid. The claimants may also contact the appropriate district office and speak with their claims examiners regarding any medical bill. In addition, the resource centers assist with medical billing issues; resource center staff can provide assistance in person or over the telephone.

OWCP understands some claimants may not use or have access to the Internet and this can prevent their access to the information, tools, and resources available on the website. However, OWCP believes its investment in online technology is a critical benefit to a majority of claimants. For instance, the agency has seen an increased use of the EDP which allows claimants to submit documents electronically. Since 2015, when the EDP was first implemented, DEEOIC has seen a steady increase in the number of documents submitted online (35,904, 72,358, 81,544, and 87,313 in fiscal years 2015, 2016, 2017, and 2018, respectively) while simultaneously seeing the number of documents received through the mail room decrease. This demonstrates a substantial increase in claimants' use of the web-based EDP over the four years and a reduction in physical mail compared to pre-EDP levels.

For claimants without Internet access, OWCP is always willing to provide verbal assistance and printed information, and will continue to do so. When the Ombudsman's office encounters claimants with these issues, it would be helpful if they could provide the claimants with the educational materials that they have created and/or are available through the Program's web site.

5 – Difficulties Obtaining Representation and Locating Physicians

The Ombudsman noted that some claimants cannot find an authorized representative who is willing to assist them and/or assist them with certain aspects of their claim.

Response: The duty of an authorized representative under the EEOICPA is to the appointing claimant. The claimant has the ultimate decision-making authority to designate or remove an authorized representative from acting on his or her behalf with regard to a claim. Each claimant also bears the responsibility of paying any fee or other costs associated with the actions of a representative. OWCP does not attempt to persuade a claimant toward representation, nor do we interfere in his or her choice of representative. It should be noted representation is not required in order to file a claim or receive payment. It is the claimant's option to choose representation. The same level of support and service is provided to all claimants, regardless of representation.

The Ombudsman reports that claimants encounter difficulties finding physicians to treat them. Physicians often cite one or more of three reasons for refusing to treat EEOICPA claimants: prior problems getting paid, not wanting to be second-guessed by DEEOIC, or too much paperwork.

Response: Physicians play an important role as OWCP's partner in improving the quality of care for claimants. The OWCP is committed to helping claimants access the highest quality physicians, hospitals, and other healthcare providers. The OWCP medical bill contractor offers the following services to assist

physicians: online functionality, one-day authorizations, one of the shortest application processes in the industry, reimbursement amounts above Medicare, and a 24-hour pharmacy call center. Through their website, physicians are able to enroll online, submit medical 5 bills electronically, receive guidance on OWCP pricing methodologies, and access a range of topics, including International Classification of Diseases code set 10 (ICD-1 0) announcements, prior authorization requirements, EEOICPA bulletins, and impairment evaluations, to name a few.

OWCP district offices also assist physicians, often serving as the intermediary between the claimant and his or her physician. For instance, claims examiners may contact physicians to collect and clarify medical evidence; delineate between a claimant's covered and non-covered illnesses; explain what is needed in a letter of medical necessity; discuss medical bills; discuss authorizations for durable medical equipment; and/or simply update provider information. In addition, DEEOIC's National Office conducts quarterly teleconferences, which include specific topics and question and-answer sessions, with medical providers. DEEOIC's Branch of Medical Benefits Adjudication and Bill Processing oversees medical benefits adjudication and medical bill processing, and works with providers to resolve medical billing issues.

If a claimant is having difficulty locating a physician, OWCP can provide a list of enrolled medical providers. OWCP can also provide a list of physicians who are qualified to conduct impairment evaluations. There are also provider search features on the DEEOIC website and the Web Bill Processing Portal, which allow claimants to search for medical providers in their locale. The provider search feature allows searches by the following: provider type, physician's last name or practice name, physician's first name, city, state, zip code, and specialty. Each of the providers listed in the search feature is actively enrolled with OWCP as a medical provider and has opted to be included in the search feature.

A listed provider (or services rendered by the provider) does not constitute an endorsement by OWCP, nor does it guarantee the medical provider/facility will be reimbursed by OWCP for specific medical services provided to a particular claimant. The appearance of a specific medical provider's name in the listing of providers does not require the provider to treat a particular claimant. This is true even if OWCP has already advised the claimant in writing medical treatment for a particular condition within the provider's listed specialty has been authorized. With respect to physicians not wanting to be second-guessed, pursuant to the statute and regulations DEEOIC is under an obligation to obtain supporting medical rationale for any statements made by a physician, rather than to simply accept them as factual.

6 – Difficulties Locating Evidence

The Ombudsman said claimants question the assistance they can expect to receive from OWCP when trying to locate employment and exposure records since these records are not always available. He also noted claimants' concern that 30 days is not sufficient time to develop and submit evidence, especially medical evidence. He noted that when given 30 days to submit evidence, claimants are not aware that they can ask for an extension of time. Claimants have also indicated they do not always receive adequate guidance on what DEEOIC needs from them in order to approve their claim.

Response: Under the EEOICPA, unless otherwise specified in the statute, the claimant bears the burden of proving by a preponderance of evidence the existence of each and every criterion necessary to establish

eligibility under any compensable claim category. To help claimants meet this burden, OWCP is required by § 7384v to provide claims assistance under Part B, specifically, assistance in securing medical testing and diagnostic services for covered beryllium illnesses, chronic silicosis, or radiogenic cancer, and such other assistance as may be required to develop facts pertinent to the claim. To meet its statutory obligation under Part B, OWCP has implemented a number of policies and procedures to assist claimants in gathering facts or finding evidence. OWCP has also voluntarily applied the same standards of assistance to claimants under Part E.

To assist claimants in verifying their employment, OWCP has implemented interagency agreements with both DOE and the Social Security Administration for access to earnings/ employment records, and in the case of DOE, any retained health records or other work-related documents. OWCP works closely with DOE and DOE's Former Worker Medical Screening Program on locating records. Additionally, OWCP contracts with the Center for Construction Research and Training to maintain a database of contractor/ subcontractor employers at certain DOE facilities. Evidence of employment by DOE, a DOE contractor or subcontractor, beryllium vendor, or atomic weapons employer (A WE) may be made by the submission of any trustworthy contemporaneous records that on their face, or in conjunction with other such records, establish the employee was so employed, along with the location and time period of such employment. No single document is likely to provide all elements needed for a finding of covered employment, but rather, each piece of evidence can contribute valuable elements needed to make a finding of covered employment.

Regarding exposure records, the Site Exposure Matrix (SEM) database goes a long way toward helping claimants meet their burden of proof to establish work-related exposure to toxic substances under Part E. OWCP, with the assistance of DOE, conducted extensive research and investigation into sites, facilities, groups of workers (i.e., job categories, job duties, etc.), exposures, diseases, and exposure links. Based on this research, OWCP developed the SEM database, which contains information on the types of known toxic substances at DOE facilities (and uranium mines and mills) covered under the EEOICPA, the associated job categories likely exposed to the toxic substances, and the possible health effects of exposure. In addition to utilizing the SEM, OWCP considers DOE employment and exposure records, security clearances, dosimetry badging, incident or accident reports, industrial hygiene and safety records, and affidavits attesting to the accuracy of a claim.

OWCP contracts for the services of industrial hygienists to conduct individual exposure assessments for Part E claims. This is particularly important when claimants may not have been aware of the extent of their exposure to toxic substances while performing their jobs. Further, OWCP provides the services of contract medical consultants to assist claimants in establishing work-related causes of illnesses, particularly in cases where a claimant's treating physician may not be able to provide the necessary medical support for the claim.

OWCP sets deadlines for submission of evidence to prompt timely action on claims by both claims staff and claimants. However, a claimant who requests an extension of time beyond 30 days may be granted an extension. OWCP continually strives to improve its communication to claimants, including guidance regarding the medical and exposure evidence necessary to prove a claim and the timeframes in which information must be submitted. The procedure manual guidance and 7 training provided to claims examiners are available on the OWCP, Division of Energy Employees Occupational Illness web site.

7 – Difficulties with the Weighing of Evidence

The Ombudsman reports that claimants complain that DEEOIC does not independently judge the credibility of the affidavits prepared by claimants and close family members.

Response: OWCP considers statements provided by way of an affidavit in conjunction with other evidence submitted in support of a claim. Affidavits completed by co-workers, supervisors, family members, or other credible sources are accepted when they are consistent and make sense with the claim as a whole. The claims examiner must use his or her own judgment to ascertain the weight given to any piece of evidence, including affidavits. The Federal (EEOICPA) Procedure Manual provides the following guidance:

- When documentation in the file supports portions of an affidavit, the probative value of the remainder of the content of that affidavit is high. In the alternative, when an affidavit is in conflict with other material in the file, its probative value is diminished.
- Affidavits from co-workers and managers generally carry more weight than those from family members, as it is likely they would be in a better position to provide details about job descriptions, labor categories, buildings, covered timeframes, monitoring, and potential exposure.
- Affidavits alone are usually insufficient to prove the existence of a contractual relationship between DOE and a company.
- More detailed affidavits carry more weight than vague, generalized statements because more specific information is more easily corroborated than that which is ambiguous.
- An affidavit not containing first-hand knowledge has very little probative value, as it is nothing more than hearsay.

The Ombudsman reports that claimants do not understand why they are not provided a copy of their Occupational History Questionnaire. He said claimants complained they were not provided with an adequate opportunity to supplement the evidence they submitted.

Response: The Occupational History Questionnaire (OHQ) is used to record information supplied by an employee or a survivor concerning first-hand knowledge of the employee's occupational exposure to toxic substances. For Part E causation claims, the OHQ is important because it helps identify the labor categories and job titles an employee held and when these jobs were held at each claimed site. The OHQ provides the claimant an opportunity to identify the buildings and work areas the employee was assigned, union affiliation, the chemicals or substances that the employee may have used or encountered, and his or her use of any personal protective equipment and how that equipment was used in his or her daily work. If a claimant requests a copy of the OHQ at the time it is recorded, one is provided. Additionally, a claimant may request a copy of his or her case file at any time. If a claimant needs to add information to his or her case file, including information which they believe was missing on the OHQ, he or she may do so. The EDP allows claimants, their attorneys, authorized representatives, and authorized family members to easily upload claim documentation into the OWCP Imaging System (OIS). Claimants may also contact their claims examiners at any time to submit additional evidence to support their claims.

The Ombudsman said claimants felt that DEEOIC did not credit evidence they submitted if it was not consistent with the information found in the Site Exposure Matrices (SEM).

Response: Under Part E, claims examiners must determine whether sufficient evidence exists to show that an employee's occupational exposure to a toxic substance was "at least as likely as-not" a significant factor that caused, contributed to, or aggravated his or her diagnosed condition (CFR 30.230d(l)(ii)). During the development of a claim, a claims examiner will research medical, employment, and occupational records for evidence of an employee's exposure to toxic substances. The claims examiner will also utilize the SEM database to determine if there is a known causal link between covered employment, exposure to toxic substances during such covered employment, and the resultant illnesses arising out of such exposure.

While the SEM is a valuable tool in developing and assessing for exposure information and potential relationships between exposure and disease, it is one of many sources claims examiners use. When claimants and/or authorized representatives provide information regarding exposure or causation, claims examiner weigh the information along with all of the other documentation they can obtain. This may include a search in SEM, referral to an industrial hygienist or toxicologist, or referrals to contract medical consultants. Claimant-submitted evidence is weighed along with all of the other information in the case file in order to make an informed decision.

The OWCP would benefit if the Ombudsman could convey the specific concerns raised as they occur, so that OWCP can immediately address a claimant's need for more information.

The Ombudsman reported that claimants do not understand why DEEOIC specialists are provided a Statement of Accepted Facts (SOAF) and documentation from their claim file before issuing report, but neither they nor their physician are provided this documentation when being asked to produce similar reports or evidence. The Ombudsman said claimants wonder why they are not permitted to speak to the Industrial Hygienist (IH) or Contract Medical Consultant, or why they are not provided DEEOIC specialist reports prior to receiving their recommended decision.

Response: Sometimes a claimant will submit documentation of a scientific nature that s/he believes shows a relationship between their illness and exposure to a toxic substance that is not validated by available program resources (e.g., SEM). In these instances, the matter is referred to a toxicologist or industrial hygienist who is asked to assess whether such studies are appropriate to establish a scientifically established health effect. For a toxicology referral, the claims examiner prepares a Statement of Accepted Facts (SOAF) along with a set of questions relating to the issue(s) for determination. The claims examiner must include factual information on the SOAF that is relevant to assist the toxicologist with his or her review. A claims examiner also uses the SOAF when referring a case to a contract medical consultant, for example, when DEEOIC seeks an opinion on whether medical records support an acceptance of an illness, or a second opinion/referee opinion is required.

Copies of relevant consultant reports are sent with a recommended decision denying a claim based on causation. If the claimant requests a copy of the specialist's report outside of this process, the claims examiner will provide a copy of the report along with a cover letter which explains the specialist is acting in a consulting capacity to DOL on an aspect of the claim and DOL will make the final decision on the claim. OWCP agrees there are

situations in which it would be beneficial to send a SOAF or similar document to the treating physicians and is currently training claims staff to ensure that they provide treating physicians with an equal opportunity to review information where appropriate and feasible.

8 – Difficulties with the Adjudication Process

The Ombudsman mentioned that there are instances where evidence that claimants submit is not acknowledged or discussed in the decisions issued by DEEOIC.

Response: Chapter 24.6 of the Federal (EEOICPA) Procedure Manual provides guidance to claims examiners on writing recommended decisions. The guidance states that in writing decisions, claims examiners are to provide a robust, descriptive explanation of how the evidence satisfied or failed to satisfy the eligibility requirements of the EEOICPA, including any interpretive analysis the claims examiner relied upon to justify the decision. In a recommended denial, the claims examiner will discuss the evidence he or she sought; how the claims examiner advised the claimant on evidence sought; deficiencies of the evidence; assistance provided to overcome a defect; and the claimant's response. The claims examiner's recommended decision is to communicate to the claimant the claims examiner's interpretive analysis of available evidence in satisfying the legal requirement for claim acceptance or denial, and provides the narrative content, which allows the Final Adjudication Branch to properly conduct its role of independently assessing the sufficiency of the claims examiner's recommendation.

Not every single piece of evidence will be mentioned in a decision. Given the disparate types of evidence that may exist in a claim record, there may be instances where the discussion is based exclusively on the presentation of undisputed evidence that clearly affirms findings leading to a conclusion. In other instances, there will be a need to use inference or extrapolation to support a finding. In either situation, the claims examiner is to provide a compelling argument as to how the evidence is interpreted to support the various findings leading to acceptance or denial of benefit entitlement. This is particularly important in situations involving toxic chemical exposure analysis under Part E, conflicting medical opinion, or other complex procedural applications. The assessment will rest on various factors, such as the probative value of documentation, relevance to the issue under contention, weight of medical opinion, as well as the reliability of testimony, affidavits, or other evidence.

The OWCP would benefit if the Ombudsman could convey the specific concerns raised as they occur, so that OWCP can immediately address a claimant's need for information.

The Ombudsman mentioned that there are instances where evidence that claimants submit is not acknowledged in the reports prepared by DEEOIC specialists.

Response: Although a particular piece of evidence may not have been mentioned in a report, it does not mean the evidence was not reviewed or that the totality of evidence for the claim was not considered. In any referral, the district office sends all pertinent information to the specialist for review.

The Ombudsman states that when DEEOIC undertakes, on its own initiative, to determine if reopening of a claim is warranted, the claimant is not notified that reopening is under consideration; if the claim is not reopened, the claimant is not informed that his/her claim was reviewed and that it was determined a reopening was not warranted. Claimants are only provided an opportunity to participate after a Reopening Order is issued and their claim is in a posture for a Recommended Decision to be issued.

Response: OWCP may reopen a claim for a variety of reasons: a claimant request; requests by the district offices or Final Adjudication Branch for the DEEOIC Director to review a prior final decision; the designation of a new class of employees to the Special Exposure Cohort (SEC); the release of a Program Evaluation Report (PER) by NIOSH; audits and/or requirements to reopen a claim to implement a corrective action; and specific changes to program policy (for example, changes to presumptive standards applied to the evaluation of claims for specific illnesses as outlined in EEOICPA Bulletin No. 19-03).

DEEOIC processes reopenings on its own when there is a likelihood that a prior final decision needs to be vacated to allow for a new decision due to some change in circumstance. DEEOIC may not necessarily notify a claimant that his or her claim underwent a reopening review, because it may be that the original decision is found to be correct. In situations like a new SEC or PER, DEEOIC casts a wide net for any case potentially affected. This generally means a large population of cases are reviewed. We do not typically notify every claimant who may be part of such a review, because in many situations there is low likelihood any new evidence will alter the claim outcome. Nonetheless, it is important to review the claims. Once we are confident a case with a final decision to deny may likely change to a positive decision due to a program change, DEEOIC will issue a Director's Order to the claimant and/or authorized representative and develop the case to allow for a new recommendation.

The Ombudsman notes that DEEOIC's continued use of language from Circular 15-06 in recommended and final decisions, as well as in reports prepared by DOL specialists, has spurred concerns that this Circular is still being applied in the adjudication of claims.

Response: Circular 15-06, "Post-1995 Occupational Toxic Exposure Guidance," issued December 17, 2014, communicated the fact DOE had made significant methodical improvements in worker safety and health by 1995, including better recordkeeping, careful monitoring of employees, and increased involvement of employees in identifying potential hazards. The Circular was intended to provide a "context" for claims examiners that starting in 1995 DOE had implemented sufficient worker protections and monitoring programs suggesting exposure after 1995 would generally be within regulatory limits. OWCP understood hazards, incidents, and significant toxic substance exposures were possible after 1995, and the Circular was never intended to prevent employees with evidence of significant or increased exposures after 1995 from seeking compensation and benefits under EEOICPA. The Circular caused some confusion and complaints among stakeholders, and the Advisory Board on Toxic Substances and Worker Health recommended that OWCP rescind this Circular. OWCP did so, at their request, on February 2, 2017. The fact the Circular was rescinded does not mean that the use of 1995 as a threshold to indicate generally exposures would have been within regulatory limits was not factual. In fact, in April 2017, the Board agreed to the use of 1995 as a threshold date. The Circular was rescinded so that cases with exposures only after 1995 will still be evaluated on a case-by-case basis through a referral to an industrial hygienist, as appropriate.

The Ombudsman states that claimants are confused by DEEOIC's current approach to hearing loss claims, and says that claimants want to know whether there is a presumption of causation for hearing loss, or if the presumptive language in the Procedure Manual is a rule which must be satisfied in order to have a claim accepted. Specifically, they want to know if the following apply to hearing loss claims: the statement that lack of a presumptive illness (alone) is never justification for a denial of a claim, and the statement that claimants are legally entitled to prove his/her case regardless of any presumption.

Response: The Federal (EEOICPA) Procedure Manual, in Exhibit 15-4 Section 8, explains the standards for evidence which must be presented to determine an employee's claim for hearing loss is work-related. The guidelines specify one must first establish a diagnosis of bilateral sensorineural hearing loss (conductive hearing loss is not known to be linked to toxic substance exposure). Additionally, the employee must have worked in a particular labor category for 10 consecutive years prior to 1990 and have been exposed to particular ototoxic substances. DEEOIC continues to evaluate its hearing loss standard to update it, given new or evolving epidemiological evidence. As recently as July 2018, DEEOIC made revisions to the standard to add two new substances with a known hearing loss health effect: Carbon Disulfide and N-Hexane. Due to this change, DEEOIC reevaluated prior claims to determine if this update changed any determination made by the program from a negative to positive outcome. DEEOIC, in collaboration with its Advisory Board on Toxic Substances and Worker Health, also continues to consider additional modifications to the hearing loss standard.

9 – Interactions with DEEOIC

The Ombudsman mentions that claimants complain it is difficult to talk to the claims examiner when they call the District Office. He also states that DEEOIC's method for reporting incidents of inappropriate customer service is only available online. He says claimants are wary of reporting such incidents to the District Office that employs the staff member and prefer to direct their complaints to a specific person who is not part of the team or office adjudicating their claims.

Response: I agree it is important claimants be able to contact their claims examiner for questions and submit customer service complaints. OWCP staff is trained in customer service, and OWCP's management teams at the National Office, district offices, and Final Adjudication Branch strive to work with claimants and staff to resolve all matters of concern. If a claimant is frustrated by "phone 12 tag" with his or her claims examiner, s/he may call the district office's toll-free number and ask to speak with a unit manager. Claimants may submit comments and/or customer service complaints to the National Office in writing, by phone, through public email via Deeoic-public@dol.gov, or via customer satisfaction survey. Contact information for the National Office is found on the DEEOIC website. All responses/comments made on the customer satisfaction survey are anonymous. If a claimant would rather not provide feedback in the manners we have available, it would be helpful if the Ombudsman's office could relay those complaints directly to OWCP at the times they are received so specific problems can be addressed directly.

The Ombudsman states that there are continuing problems with delays and that in addition to the anxiety that arises when a delay occurs, claimants are not notified of delays and do not receive a full explanation of the reasons for delays.

Response: I agree it can be frustrating for a claimant if s/he feels his or her case is being delayed. Delays may occur during the adjudication process, for example, when the claims examiner is waiting on information from the Social Security Administration or DOE regarding employment; waiting for the results of a dose reconstruction by NIOSH; trying to resolve an issue related to exposure; waiting on a physician for a letter of medical necessity or medical records; or when there has been a request to the claimant or physician for additional information. Such delays do not mean that the case is dormant; the claims examiner may well be attending to other aspects of the case while waiting for information needed for another part of the case. Claimants who are concerned about delays may contact their claims examiner directly or send a letter to the district office or National Office requesting a status update on their claim.

DEEOIC also provides an online web-based Claimant Status Page, which gives claimants access to claims information from our ECS electronic claims database as utilized by DEEOIC claim examiners. The Claimant Status Page allows claimants to access certain information contained in his or her claim under the EEOICP. The Claimant Status Page makes information available online to claimants regarding their claimed medical conditions, worksite locations, most recent claim action, payment information, and current case location. Claimants under the EEOICP are provided with an individual claim identification number to gain access to their claim information and to prevent the access by other individuals to a claimant's specific claim information.

Given the Ombudsman's concern that claimants are not notified of delays or given a full explanation of the reasons for delays, OWCP is developing improved processes for notifying claimants when delays occur.

The Ombudsman states that when there is a delay in reauthorizing home health care, claimants report that they experience a lapse in service.

Response: DEEOIC grants six-month authorizations for in-home health care when prescribed by a qualified physician and which DEEOIC considers medically necessary because of an employee's accepted work-related illness or injury. All requests for reauthorization require review and updated medical information prior to expiration of a previous authorization. To prevent lapses in service, the medical benefits examiners send notification letters to providers and claimants sixty (60) days prior to expiration, reminding them of the need for updated medical information. A failure to provide updated information can result in another reminder letter, again stating the need for updated medical information. A failure to produce updated medical evidence or a letter of medical necessity may ultimately result in a denial letter advising that care cannot be reauthorized due to lack of necessary medical evidence. If a physician or a claimant is not clear about the exact information that is needed, he or she may contact the medical benefits examiner, and the medical benefits examiner will provide a verbal explanation to the physician or claimant of what is required and why. Upon receipt of medical evidence, it is the medical benefits examiner's responsibility to evaluate such evidence and determine if information provided is sufficient to authorize the care requested. If the medical information is deficient or unclear, the medical benefits examiner explains the nature of the deficiencies and the specific information necessary in order to proceed with adjudication of the home health care request. OWCP has a reporting structure in place which is monitored to ensure that there are no lapses in authorizations. To our knowledge, there have been no lapses in home health care authorizations for which we did not provide multiple communications to the claimant/provider to explain the reason for termination of care.

10 – Circumstances Confronting Claimants Not Adequately Addressed by the Program

The Ombudsman's report notes that some claimants have physical and/or cognitive limitations which prevent them from handling their claim on their own and states that DEEOIC does not have adequate procedures currently in place to accommodate this population of claimants. ·

Response: OWCP recognizes EEOICPA claimants may face physical challenges that include ill health, bodily impairment, lack of mobility, pain, diminished hearing and/or vision, and weakened abilities following surgery. OWCP understands due to illness and disability, a claimant may have difficulty speaking, walking, breathing, performing manual tasks, and/or caring for oneself, and some may have cognitive limitations in thinking, reasoning, learning, remembering, and following instructions. Some are end-stage terminally ill and in hospice care. OWCP is aware that this population of claimants requires special care. The agency has customer care strategies intended to meet the needs of each individual claimant. Below are just a few examples of how OWCP accommodates these claimants.

A claimant may, at any time, request reasonable accommodation for his or her needs by calling the contact number provided on the DEEOIC website. The DOL also offers TTY phone assistance through a toll-free number posted on the website. The TTY is a special device that lets people who are hard of hearing, deaf, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening.

Since no claim under EEOICPA is identical to another claim, OWCP works with each claimant individually. Each person who files a claim is assigned a claims examiner whose task is to provide one-on-one assistance throughout the claims process. Claims examiners communicate via phone, development letters, written decisions, and cover letters, advising claimants on deadlines and next steps. If a claimant needs additional help, he or she may arrange the services of an authorized representative to represent him or her. A claimant may also contact the resource center for assistance at any time. If a claimant is hospitalized or unable to travel for medical reasons, resource center staff can (as needed) make home/hospital/nursing home visits to obtain signatures on forms. The Final Adjudication Branch offers each claimant the option of a hearing by telephone, video conference, or in-person, and a claimant may be accompanied at the hearing by a person other than himself or his authorized representative. The Final Adjudication Branch reimburses a claimant for reasonable and necessary travel expenses if s/he has to travel more than 200 miles roundtrip for the hearing. If a claimant is end-stage terminal, OWCP takes steps to expedite the claim and the payment.

In planning outreach events, OWCP considers the need for wheelchair access, accessible parking designated for person with disabilities, effective egress for individuals with difficulty in mobility in case of emergency, accessible restrooms, and accessible water fountains. At such events, OWCP may authorize a claimant's use of a service animal, offer seating up front, provide an adjustable height table or armrest, distribute large-print handouts, make room for a family member or accompanying aid, arrange seating appropriate for expected wait times, and/or contract with a sign language interpreter or conference interpreter. Speakers at these events use microphones to enhance sound, and printed handouts and large-screen PowerPoint presentations to aid presentations. At OWCP's workshops for authorized representatives, OWCP arranges small group sessions, schedules, and handouts to enhance the training. If a claimant needs earphones, headsets, clipboards, etc., they will be provided. At outreach events, OWCP staff also provide one-on-one claims updates and answer questions specific to any claim. OWCP also addresses the claimant's medical needs related to his or her covered illness through the benefits provided. Medical benefits under the program include any of the following: diagnostic laboratory and radiological testing, reasonable and customary medical care (doctor's office visits, medical treatments, and consultations), travel (and companion travel) associated with the treatment of a covered illness, emergency room visits, ambulance services, inpatient and outpatient hospital stays, rehabilitative therapy, durable medical equipment, drugs prescribed by a physician, home health care, nursing home or assisted living facilities, hospice care, psychiatric treatment, chiropractic treatment, acupuncture treatment, organ or stem cell transplants, home modifications, health or gym facility memberships, home exercise equipment, and home and automobile modifications. OWCP has a long standing policy of considering the changing needs of claimants when adjudicating claims and making payments under the EEOICPA to ensure appropriate accommodations are available to the fullest extent possible.

CONCLUSION

From its inception to the end of fiscal year (FY) 2018, the Energy program awarded more than 121,000 claimants compensation and medical benefits totaling over \$15.6 billion. This included \$11.1 billion in compensation and just over \$4.4 billion in medical expenses.

OWCP appreciates the work of the Office of the Ombudsman and their assistance in helping EEOICPA stakeholders. We will continue to work toward improving this program and providing quality assistance to eligible employees, former employees, and their eligible family members.



OFFICE OF THE OMBUDSMAN
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