

OWCP Annual Report to Congress FY 2010



Submitted to Congress 2013

**U.S. Department of Labor
Office of Workers' Compensation Programs**

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**U.S. Department of Labor
Office of Workers' Compensation Programs**

U.S. Department of Labor Office of Workers' Compensation Programs
Washington, D.C. 20210

THE HONORABLE PRESIDENT OF THE SENATE
THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES

I have enclosed the Department of Labor's annual report to Congress on the FY 2010 operations of the Office of Workers' Compensation Programs. The report covers administration of the Federal Employees' Compensation Act as required by Section 8152 of that Act, the Black Lung Benefits Act as required by Section 426(b) of that Act, the Longshore and Harbor Workers' Compensation Act (LHWCA) as required by Section 42 of that Act, and the Energy Employees Occupational Illness Compensation Program Act, for the period October 1, 2009, through September 30, 2010.

Separate enclosures contain reports on annual audits of the Longshore and Harbor Workers' Compensation Act Special Fund and the District of Columbia Workmen's Compensation Act Special Fund accounts as required by Section 44(j) of LHWCA.

This report both fulfills the requirements of the respective laws and provides a comprehensive source of information on the administration and operation of Federal workers' compensation programs.

Sincerely,

Gary A. Steinberg
Acting Director

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DIRECTOR'S MESSAGE

Fiscal Year (FY) 2010 was once again a very productive and successful year for the Office of Workers' Compensation Programs (OWCP). Nearly \$4.3 billion in compensation and benefits were paid out by the four OWCP programs, which at the same time met nine of their ten Government Performance Results Act (GPRA) goals. OWCP also met or exceeded 90 percent of its 104 operational plan goals during the year. This was all accomplished during a year in which OWCP played a central and very important role in advancing several of the Department of Labor (DOL) outcome goals supporting the Secretary of Labor's vision of "good jobs for everyone."

The Federal Employees' Compensation (FEC) program exceeded the 2009 baselines in all four of its performance goals under the new Protecting Our Workers and Ensuring Reemployment (POWER) initiative. On July 19, 2010, President Obama established the new four-year POWER initiative, covering FY 2011 – FY 2014, to be jointly managed by OWCP and DOL's Occupational Safety and Health Administration. POWER, building on the accomplishments of the previous Safety, Health and Return-to-Work initiative that ended in FY 2009, established more aggressive targets for workplace safety and health efforts for seven performance areas within individual agencies of the Federal government, based on FY 2009 baseline performance. Another new and promising effort was created when the President issued Executive Order 13548 on employing persons with disabilities and reemploying injured workers. With advice from the Office of Personnel Management and the collaboration of DOL's Office of Disability Employment Policy, strategies were implemented to establish performance goals to support this initiative.

The Black Lung Benefits Act was amended by the March 23, 2010 enactment of Section 1556 of the Patient Protection and Affordable Care Act of 2010 (PPACA). PPACA, which provides for automatic entitlement for certain survivors of deceased miners, resulted in a very large upsurge in claims received. During the year, there was a 62 percent increase in new Black Lung claims filed under Part C compared to FY 2009. This surge in new claims is expected to last into FY 2012 as all cases that are newly eligible are filed and adjudicated within the claims system. Due to this unexpected increase in claims, the Black Lung program fell short of meeting its GPRA goal of an average of 200 days to process a claim from date of receipt to the issuance of a Proposed Decision and Order. The additional workload resulted in a small increase in the average to 210 days by the end of the fiscal year. The program did, however, exceed its previous GPRA goal as 81 percent of its claims were resolved with no pending request for further action within one year.

The Defense Base Act (DBA) workload continued to be successfully managed by the Longshore program. The level of DBA claims remained high during the year as total new cases received reached nearly 15,000, with a large majority of these occurring in the war zones of Afghanistan and Iraq. Several improvements to the DBA program were completed, such as strengthening compliance assistance, including tailoring the assistance to better address foreign worker needs; enhancing DBA management systems to allow for the automation of insurance and other important policy and administration related information; increased emphasis on speeding dispute resolutions; and developing and publishing agency result measures, report card rankings and other performance-related metrics to assist in improving contractor/insurance carrier performance in their management of cases. Importantly, the Longshore program met both of its new GPRA goals related to the DBA. For employer and carrier notice of injury timeliness, 75 percent of the reports were filed within 30 days against a target of 63 percent. Also, 56 percent of initial payments on DBA cases were made in 30 days compared to the target of 50 percent.

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) program completed its tenth year of operation by again achieving all three of its GPRA goals. The average number of days for an initial

determination was reduced to 97 days under Part B, 19 percent below the goal of 120 days, and to 125 days for Part E, nearly 22 percent below the goal of 160 days. In addition, final decisions by the EEOICPA program's Final Adjudication Branch were completed within program standards 97 percent of the time, versus a goal of 89 percent. All of this was accomplished during a year in which over \$1 billion in compensation and medical benefits were paid under the EEOICPA, impacting over 5,000 employees or their survivors under Part B and nearly 4,500 employees or their survivors under Part E. During FY 2010, the EEOICPA program also accomplished a great deal in the areas of customer service and outreach. A customer survey administered by the program showed that 97 percent of individuals awarded benefits and 61 percent that were denied were satisfied with the service they received during the claims process and would recommend the program. Expanded outreach activities were conducted throughout the year by the EEOICPA program staff through the use of traveling Resource Centers, town hall and other meetings with stakeholders as 21 new Special Exposure Cohort classes of employees were added. Also, a public website was launched in close coordination with the Department of Energy (DOE) that expanded the availability of site exposure matrices data that includes detailed information about toxic exposures by building and job categories within DOE complexes.

The determined effort on the part of the entire OWCP staff is responsible for meeting the challenges that were faced during this past year while at the same time meeting or exceeding nearly all of the high performance goals that were set. Their dedication and expertise in carrying out the most important OWCP mission of all, providing the highest quality service and assistance as possible to injured workers and their families, has made all of these accomplishments possible.

Gary A. Steinberg
Acting Director, Office of Workers'
Compensation Programs

FEDERAL EMPLOYEES' COMPENSATION ACT

Introduction

In 1916, President Wilson signed the first comprehensive law protecting Federal workers from the effects of work injuries. Amended several times, the Federal Employees' Compensation Act (FECA) now provides workers' compensation coverage to approximately 2.8 million Federal workers. The FECA also provides coverage to Peace Corps and VISTA volunteers, Federal petit and grand jurors, volunteer members of the Civil Air Patrol, Reserve Officer Training Corps Cadets, Job Corps, Youth Conservation Corps enrollees, and non-Federal law enforcement officers when injured under certain circumstances involving crimes against the United States.

For over 90 years, the Federal Employees' Compensation (FEC) program has continuously evolved to meet its commitment to high quality service to employees and Federal agencies, while minimizing the human, social and financial costs of work-related injuries.

Benefits and Services

The primary goal of the FEC program is to assist Federal employees who have sustained work-related injuries or disease by providing financial and medical benefits as well as help in returning to work. FECA benefits include payment for all reasonable and necessary medical treatment for work-related injury or disease. In timely-filed traumatic injury claims, the FECA requires the employer to continue the injured worker's regular pay during the first 45 calendar days of disability. If the disability continues after 45 calendar days, or in cases of occupational disease, the FEC program will make payments to replace lost income. Compensation for wage loss is paid at two-thirds of the employee's salary if there are no dependents, or three-fourths if there is at least one dependent. The FECA provides a monetary award to injured workers for permanent impairment of limbs and other parts of the body and provides benefits to survivors in the event of work-related death. Training and job placement assistance is available to help injured workers return to gainful employment.

In Fiscal Year (FY) 2010, the FEC program provided over 251,000 workers and survivors over \$2.8 billion in benefits for work-related injuries, illnesses, or deaths. Of these benefit payments, over \$1.8 billion were for wage-loss compensation, \$913 million for medical and rehabilitation services, and \$138 million for death benefit payments to surviving dependents.

The FECA is the exclusive remedy by which Federal employees may obtain disability, medical, and/or survivor benefits from the Federal government for workplace injuries. Decisions for or against the payment of benefits may be appealed to the Employees' Compensation Appeals Board (ECAB), an independent body in the Department of Labor (DOL). Program activities are carried out in the 12 program district offices around the country.

Funding

Benefits are paid from the Employees' Compensation Fund. Agencies are billed each August for benefits paid for their employees from the Fund, and most agencies, other than the U.S. Postal Service (USPS) and non-appropriated fund agencies, include those chargeback costs in their next annual appropriation request to Congress. Remittances to

the Fund are not made until the first month of the subsequent fiscal year (or later when an agency's full-year appropriation is enacted after the subsequent fiscal year begins). The annual DOL appropriation makes up any difference between prior year remittances and current year need, which is affected by Federal wage increases and inflation in medical costs.

Expenses for a small number of cases are not charged back to employing agencies, but also are covered by the DOL appropriation. For FY 2010, these non-chargeback expenses were approximately \$86.2 million. Non-chargeable costs are attributable to injuries that occurred before December 1, 1960, when the chargeback system was enacted, to employees of agencies that are no longer in existence, or to injuries which have FECA coverage under various "Fringe Acts" such as the Contract Marine Observers Act, Law Enforcement Officers Act, and the War Hazards Compensation Act (WHCA). War Hazards payouts doubled in FY 2010 as the increased involvement of contractor staff in Iraq and Afghanistan resulted in a growing volume of claims under the Defense Base Act, leading to reimbursement requests under the WHCA for injuries and deaths caused by hostile action.

For FY 2010, administrative expenditures for the FEC program totaled \$170.6 million. Of this amount, \$157.5 million, approximately 5.2 percent of total program costs, were direct appropriations to the DOL's Office of Workers' Compensation Programs (OWCP), including \$98.1 million in salaries and expenses and \$59.4 million in "fair share" expenditures out of the FECA Special Benefits account. These latter funds are specifically earmarked for OWCP capital investments for the development and operation of automated data management and operations support systems, periodic roll case management, and benefit oversight. Another \$13.0 million are separately appropriated to the Department for legal, investigative, and other support from the ECAB, Office of the Solicitor, the Office of the Inspector General, and the U.S. Treasury.

Protecting Our Workers and Ensuring Reemployment Initiative

The Safety, Health and Return-to-Employment (SHARE) Initiative was initially established in 2004 and ran through FY 2009. This initiative set goals for reducing injury and lost time rates, increasing the timely filing of injury and illness reports, and reducing lost production days attributable to workplace injuries.

When SHARE concluded in FY 2009, the Federal government as a whole (less the U.S. Postal Service) had successfully achieved all four SHARE goals. Nine departments and independent agencies met each of the performance measures in FY 2009. Although there are no additional SHARE targets to meet in FY 2010, OWCP continued to track and post data on agency progress in these areas.

In July 2010, President Barack Obama announced a new four-year initiative (FY 2011-FY 2014) – Protecting Our Workers and Ensuring Reemployment (POWER). The POWER initiative calls on Federal agencies to establish ambitious but reachable goals aimed at minimizing the impact of workplace injuries. POWER builds on the accomplishments and outreach of SHARE and tasks agencies with the additional objectives of analyzing safety data, timely filing wage-loss claims, and returning seriously injured employees to the Federal workplace.

The seven POWER goals are:

- Reducing total injury and illness case rates.
- Reducing lost time injury and illness case rates.
- Analyzing lost time injury and illness data.
- Increasing the timely filing of workers' compensation notices of injury.

- Increasing the timely filing of wage-loss claims.
- Reducing lost production day rates.
- Increasing the percentage of employees who return to work following serious injury or illness.

OWCP and the Occupational Safety and Health Administration (OSHA) jointly manage this initiative under the leadership of the Secretary of Labor. OWCP and OSHA worked in partnership to establish individual agency goals using baseline performance established in FY 2009. In September 2010, Secretary Solis set minimum thresholds for Federal agencies to reach in each of the seven goals over the four years of the initiative. OWCP and OSHA convened a meeting of safety and workers' compensation professionals and other stakeholders across the government to introduce the POWER initiative and further explain the goals set forth by Secretary Solis in October 2010.

In July 2010, President Obama also issued Executive Order 13548 on increasing the Federal employment of individuals with disabilities. The reemployment of injured workers in the Federal government is cited in this document and the Secretary of Labor is tasked with proposing specific outcome measures and targets by which each agency's progress is assessed. The goals of the POWER initiative address this directive. Major implementing strategies include establishing performance targets and providing support to Federal agencies to improve reemployment and retention of injured workers. OWCP is collaborating with the Director of the Office of Personnel Management and DOL's Office of Disability Employment Policy to pursue innovative reemployment strategies and craft and advance policies, procedures, and structures that foster improved return to work.

Government Performance Results Act

Strategically, OWCP's administration of FECA supports POWER and Executive Order 13548 by facilitating the reemployment of workers recovering from workplace injuries or illnesses and the accommodation and placement of those permanently disabled. Return to work is most successful through early identification of work injury or illness, prompt development of case information, and efficient provision of assistance services that will support recovery and return to work. Besides early intervention, the Division of Federal Employees' Compensation (DFEC) provides assistance to Federal employing agencies to elevate their participation in reemploying injured workers; makes greater use of technology to improve communications and data and information exchanges with employers and claimants; and, through regular monitoring of longer-term disability cases, identifies cases whose medical conditions improve and those individuals who could benefit from vocational rehabilitation and job placement services.

Two key indicators are used by the FEC program to measure return to work success: disability duration, measured as lost production days (LPD), and the percentage share of workers successfully returned to employment following serious injury or illness. The government-wide (less USPS) LPD was reduced in FY 2010 to 34.8 days from the FY 2009 result of 35.8 days. Success has been due to FECA's early intervention strategies in assisting injured workers to return to work, and employing agencies' continuing dedication to reemploying their workers, emphasized as government-wide goals under previous Presidential initiatives, Federal Worker 2000 and SHARE, and continuing in FY 2011 as a key measure under POWER. Under POWER, individual Executive Branch agencies are to reduce LPD rates (per 100 employees) by one percent per year through FY 2014 or maintain a rate of 15 days or less. Return-to-work rates are also covered in a new POWER goal to increase the overall share of cases that are returned to work by the 14 largest Executive Branch agencies to 92 percent as measured within two years of the cases' start of management by the FEC program.

iFECS

DFEC continues to build on its sophisticated IT claims processing support system: the integrated Federal Employees' Compensation System (iFECS). In September 2010, DFEC implemented the second phase of automated support for its Continuation of Pay (COP) nurse initiative, which seeks to identify cases where very early return-to-work intervention may be needed. The new functionality enabled DFEC to assign nurses during the COP period to cases where the injured worker has been out of work for only seven days, as opposed to the prior 15 day window. The new functionality allowed the COP nurses to view documents in iFECS and enter necessary case-related information into a secure application created especially for the COP nurses. This eliminated the need for the nurse to send or fax information to DOL; now they simply use the secure application. Once information has been submitted by the COP nurse, the claims examiner (CE) can assess and react to the data gathered more quickly than before. Several on-line query reports were also enhanced to display COP nurse information so the CEs can easily identify cases in which the injured worker remains out of work.

New functionality in iFECS also was created with regard to the electronic CA-3 form, which the employing agencies can use to report a return to work. With the COP Phase 2 enhancements, submission of a CA-3 prior to assignment of a COP nurse will automatically stop a case from becoming eligible for assignment; likewise, the submission of a CA-3 reporting a return to work will automatically close a COP nurse case once assigned, thereby saving scarce resources where intervention is not required. In conjunction with these enhancements, the Agency Query System also was updated to include fields to display the information pertaining to the COP nurse assignment, including assignment date and closure information.

Also in early FY 2010, DFEC implemented enhancements to the wage-loss claims processing component to simplify and speed the processing of CA-7 compensation claims. The project encompassed enhancements of multiple applications within iFECS to:

- Provide Compensation Management users with a popup warning message when he/she works on a payment for a claimant who has an uncollected debt.
- Enhance the Certify Payment process in the Compensation application to correctly handle the Accounts Receivable deduction on a payment; and
- Enhance the Compensation data extract report provided to employment agencies.

In FY 2010 DFEC completed gathering the business requirements, initiated the design phases, and began development of all portions of its major modernization initiative which consists of three distinct areas of functionality: an Integrated Voice Response (IVR) system; a web-based forms processing system (E-COMP); and a consolidation of district office scanning and data entry.

IVR Improvements and VOIP Phone System. The new system will automate the process of providing self service data to every caller electronically. Through this significant enhancement of claimants' access to data about their cases via telephone, the CA-110 (DFEC call record form) will be generated upon the completion of all calls within the system. This will permit the program to maintain much better control of incoming requests for information, and thereby assure more prompt and comprehensive responsiveness to customers and stakeholders. Also, DFEC will provide an "800," toll-free number for claimants to obtain an expanded menu of self service information. The system will provide monitoring and reporting capabilities for tracking workforce performance and supporting workload projections. The system will employ a Voice Over Internet Protocol (VOIP) phone system that will leverage the enterprise system with the Wage and Hour Division of DOL, and as a result will reduce toll calls, relieving this cost burden from its customers and stakeholders. DFEC's IVR system will also provide DFEC staff with the telephonic tools needed to make telework possible for the majority of its workforce.

Web Portal Forms Processing and Document Submission (E-COMP). With E-COMP, DFEC is designing a web-based portal for the entire Federal government, which will supplement the EDI-based system currently available to only a few employing agencies. E-COMP will enable all enrolled Federal employers and claimants to “e-file” DFEC forms and claims information at minimal costs to the agencies. E-COMP will allow users and approvers to select, initiate, complete, approve and submit forms online through an interactive internet environment. E-COMP will also provide claimants, employers, and medical providers the ability to electronically upload and submit documents to DFEC through its secure web portal. This will provide claimants with the ability to instantaneously communicate and submit documents to DFEC claims staff instead of mailing documents. DFEC will save on processing fees that are currently associated with scanning mail into the case file system, and claimants will save on postage fees, while both entities will enjoy a much more expeditious exchange of information while maintaining the security of personal information.

Centralization of Case-Create/Imaging (3CI). On average, over 11,000 new cases are created for DFEC claimants every month, and all documents submitted with these claim forms are imaged into iFECS. DFEC has identified a potential for significant cost savings through the centralization of these case-create functions, which are currently carried out in each of the 12 DFEC district offices. Through the 3CI enhancement, DFEC seeks to reduce administrative costs for these functions while improving productivity, accuracy and consistency of output. Analysis has shown that consolidation will not only lower costs but also improve DFEC customer services and maximize controls for closer supervision of the case creation operations.

Case Adjudication and Management

Approximately 128,000 new injury and illness claims were filed under FECA in FY 2010. Eighty-seven percent were for traumatic injuries, such as those caused by slips and falls. The rest were for medical conditions arising out of long-term exposure, repeated stress or strain, or other continuing conditions of the work environment. The program has established varying standards for the prompt adjudication of these claims, depending on the relative complexity of the case, and has met those standards in a high percentage of cases. For traumatic injury claims, 97.6 percent were adjudicated within 45 days of the day OWCP received notice of the injury. In FY 2010, the FEC program also achieved a high rate of timeliness in deciding non-traumatic injury claims despite the complexities involved. For “basic” occupational disease cases with an uncomplicated fact pattern, 94.7 percent were adjudicated within 90 days. Of the more complex non-traumatic cases, 88.2 percent were adjudicated within 180 days.

The FEC program has reduced time loss in new injury cases by approximately 20 percent under its Quality Case Management (QCM) program since FY 1996. Under QCM every injury case with a wage-loss claim filed and no return-to-work date is reviewed for assignment to an early intervention nurse contracted by the FEC program. As soon after the injury as practicable, the nurse meets with the injured worker and serves as the human face of OWCP. Coordinating medical care and return-to-work issues, the nurse not only works with the injured employee but also the attending physician and the employing agency. If it seems that the injured worker will not return to work soon, the nurse coordinates the transfer of the case for vocational rehabilitation services and/or more aggressive medical intervention.

In FY 2010, 7,401 injured Federal employees returned to work as a result of early nurse intervention. Additionally, vocational rehabilitation counselors arranged training, when necessary, and successfully placed 134 injured workers into non-Federal employment, plus another 334 with previous or new Federal employers. The average length of disability in QCM cases (lost production days within the first year from the date FECA wage-loss began) rose from 142 days in FY 2009 to 156 days in FY 2010. This rise was due to an increase in USPS cases in QCM and the Postal Service’s reduced capacity to offer or maintain return-to-work opportunities.

The FEC program continued to dedicate resources to the thorough review of long-term disability cases. As part of that review, Periodic Roll Management (PRM) staff arranges second opinion medical examinations to reassess changes in medical condition and fitness for work and recommends referral to vocational rehabilitation and

placement assistance with a goal of reemploying injured workers. Of the cases that were screened in FY 2010, the disability in 1,252 cases had either resolved or lessened to the point that return to work was possible. Adjustment or termination of benefits resulting from the changes in these cases produced \$14.2 million in first year compensation benefit savings.

Central Medical Bill Processing

OWCP's medical bill processing service continued to achieve improvements in operating efficiencies. During FY 2010, DFEC avoided \$89 million in additional costs due to further improvements in the editing of bills, which in turn reduced costs charged back to agencies without increasing costs to claimants.

Timely and accurate medical bill processing is a critical element in administration of the FECA. In FY 2010, the bill processing system was enhanced to include Place of Service, which ensures that the billed services were being rendered at the appropriate place of service (and setting) and that the cost values were being accurately calculated.

In FY 2010, the medical bill processing vendor processed 5.2 million bills and handled 782,506 telephone calls, meeting FECA communication goals. Authorizations for treatment were processed in an average of 2 work days and 98.7 percent of bills were processed in 28 days. Enrollment of 17,652 new providers brought the total of enrolled providers to 212,635.

Hearings and Review

Individuals who disagree with an Office formal decision on a claim may exercise their appeal rights by requesting an oral hearing or a review of the written record from the Branch of Hearings and Review. In FY 2010, the Branch received a total of 6,501 incoming requests for reviews of the written record and oral hearings and issued a total of 6,741 decisions.

In FY 2010, customer service and turnaround times improved in all of the measured areas. The period of time between receipt of an appealed case file and the issuance of a remand or reversal before a hearing decreased significantly, from an average of 64 days in FY 2009 to 48 days in FY 2010. For those case files where a hearing was held, the time period for issuance of a decision decreased considerably, from an average of 190 days in FY 2009 to 166 days in FY 2010. For appeals initiated from a review of the written record, the time period for issuance of a decision decreased from an average of 90 days in FY 2009 to 81 days in FY 2010.

In the interest of improving appeal processing times and efficiency, the Branch continued to handle hearing requests originating in geographical areas less traveled via telephone hearings; 1,044 telephone hearings were conducted in FY 2010 compared to 638 in FY 2009. In FY 2010, the Branch also continued to conduct proceedings via videoconferencing, increasing productivity associated with hearings.

Regulatory and Legislative Reform

The FECA regulations were last substantially revised in 1999 and were in need of updating. A Notice of Proposed Rulemaking was published in the Federal Register on August 13, 2010, and the comment period closed on October 12, 2010. The comments received are under review, and publication of the new regulations is expected in 2011.

The proposed rule updates the organizational description to reflect the Department of Labor reorganization that eliminated the Employment Standards Administration and transformed OWCP into a stand-alone organization reporting directly to the Office of the Secretary. Certain parts of the regulations needed revision to reflect statutory and technological changes and to promote fairness and greater efficiency in the claims process. Even though many FECA regulations did not require updating, the entire regulation will be republished for ease of use by our customers

and stakeholders. The proposed rule adds the skin as an organ for which a schedule award (a FECA benefit for loss/loss of use of specified organs) is available. This schedule benefit will be available for any FECA covered skin injury incurred on or after September 11, 2001, that results in permanent impairment, thus allowing awards for employees who sustained permanent impairment such as severe burns in the September 11 attacks. This schedule award provision was an outgrowth of OWCP's inter-agency discussions with the Office of Personnel Management and the Departments of Defense and State concerning benefits for Federal employees deployed to a Zone of Armed Conflict (ZOAC).

A new proposed rule gives OWCP explicit authority to contract with specific providers to provide services and appliances to improve service and contain costs. OWCP used existing legislative authority to create a new proposed special schedule to provide more equitable benefits for non-citizen non-resident employees of the United States. Other proposed updates included clarifications on recurrence of disability, loss of wage earning capacity and representative fee approvals.

As proposed in the President's Budget, DFEC also continues to pursue changes to the Federal Employees' Compensation Act that would strengthen the program by enhancing incentives for injured employees to return to work; addressing retirement equity issues; improving administration; and updating and improving benefit payments in certain circumstances. Specifically, the reform proposal includes the following:

- Convert compensation for new injuries or new claims for disability to a lower benefit at the Social Security retirement age.
- Move the 3-day waiting period during which an injured worker is not entitled to compensation to the point immediately after an injury.
- Change the way that schedule awards are paid to allow uniform lump sum payments to Federal employees eligible for such awards, and make such payments earlier.
- Eliminate augmented compensation for dependents but raise the basic benefit level for all claimants.
- Allow OWCP to recover the costs paid by responsible third parties to FECA beneficiaries during the continuation of pay period.
- Increase benefit levels for funeral expenses from \$1,000 to \$6,000.
- Increase benefit levels for disfigurement resulting from work injury.
- Identify unreported work earnings and receipt of Federal Employees Retirement System retirement benefits through regular database matching with the Social Security Administration.
- Authorize the continuation of pay for a period not to exceed 135 days for an employee who has filed a claim for a period of wage loss due to traumatic or occupational injury in the performance of duty in a designated ZOAC.

Services to Claimants and Beneficiaries

Quality customer service and customer satisfaction are key components of DFEC's mission and "Pledge to Our Customers." During FY 2010, over 1.1 million calls were received by the DFEC district offices, the majority of which were handled by Customer Service Representatives (CSRs) in the 12 district office call centers. Since 2003, average caller wait times have been reduced by nearly two-thirds; turnaround time to caller inquiries has been reduced by more than 70 percent; and response effectiveness has improved by nearly 40 percent. During FY 2010, calls were connected in an average of 1.2 minutes, which is well below the goal of three minutes.

To help ensure quality and to identify areas where additional CSR training is needed, silent monitoring of calls to the district office phone banks continued during the fiscal year. Communications Specialists on DFEC's staff listen to both sides of a conversation and, using a standardized Quality Monitoring scorecard, document the CSRs' performance. The results of quality silent monitoring coupled with local telephone survey results show that 98.9 percent of callers received courteous service in FY 2010. The use of clear and understandable language was reported in 98.9 percent of calls, and 97.7 percent of calls met knowledge and accuracy standards. The goal of 95 percent was exceeded in each of these quality categories.

During FY 2010, 81 percent of calls to the district offices were responded to on the same day they were received, exceeding the goal by eight percent. The average response time for all calls in FY 2010 was less than one day (0.50 days on average, with calls answered the same day counted as zero), which represents significant customer service improvement. Ninety-eight percent of all calls were responded to in two days or less.

Across the 12 district offices, more than 68,000 written responses to routine inquiries were provided and 94 percent were sent within 30 days. In addition, over 5,000 written priority inquiries were received and 96 percent of them were answered within 14 days. The office exceeded its goal of 90 percent in timely responding to written correspondence. Over 6,000 pieces of written correspondence were sampled in FY 2010. 100 percent of them met the standards for courtesy, 99 percent of them were written in clear and understandable language, and 97 percent met knowledge and accuracy standards. The goal of 95 percent was exceeded in all three of these quality categories.

As noted above, the Branch of Hearing and Review has also dramatically improved the timeliness of its delivery of appeal services, a key element of effective service to claimants who have concerns about initial decisions reached by the DFEC district office.

FEDERAL EMPLOYEES' COMPENSATION ACT		
	FY 2009	FY 2010
Number of Employees (FTE Staffing Used)	883	865
Administrative Expenditures ¹	\$142.2 M	\$157.5 M
Cases Created	129,690	127,526
Wage-Loss Claims Initiated	18,808	19,861
Total Compensation and Benefits (Actual Obligations) ²	\$2,732.6 M	\$2,857.8 M
Number of Medical Bills Processed	4,926,575	5,176,571

¹ OWCP expenditures; excludes DOL support costs, but includes "fair share" capital expenditures of \$52.1 million in FY 2009 and \$59.4 million in FY 2010, respectively.

² Compensation, medical, and survivor benefits.

BLACK LUNG BENEFITS ACT

Introduction

The Division of Coal Mine Workers' Compensation (DCMWC) completed its thirty-seventh year administering Part C of the Black Lung program in 2010. The initial Black Lung benefits program was enacted as part of the Coal Mine Health and Safety Act of 1969 (the Act). This law created a system to compensate victims of dust exposure in coal mines with public funds initially administered by the Social Security Administration (SSA).

The number of claims filed in the early 1970's greatly exceeded expectations. The Act was amended by the Black Lung Benefits Act of 1972 (BLBA) which simplified interim eligibility criteria for all claims filed with SSA, and transferred processing of new claims to the Department of Labor (DOL) in 1973. The Office of Workers' Compensation Programs (OWCP) assumed responsibility for processing and paying new claims on July 1, 1973. Further amendments in the Black Lung Benefits Reform Act of 1977 (Public Law 95-239) mandated that all pending and denied claims be reopened and reviewed using interim medical criteria. The Black Lung Benefits Revenue Act of 1977 (Public Law 95-227) created the Black Lung Disability Trust Fund (Trust Fund), financed by an excise tax on coal mined and sold in the United States. The law authorized the Trust Fund to pay benefits in cases where no responsible mine operator could be identified and transferred liability for claims filed with DOL based on pre-1970 employment to the Trust Fund. It also permitted miners approved under Part B to apply for medical benefits available under Part C. These amendments made the Federal program permanent but state benefits continued to offset Federal benefits where they were available.

The 1981 Amendments to the Act tightened eligibility standards, eliminated certain burden of proof presumptions, and temporarily increased the excise tax on coal to address the problem of a mounting insolvency of the Trust Fund, which was indebted to the U.S. Treasury by over \$1.5 billion at that time.

In 1997, the responsibility for managing active SSA (Part B) Black Lung claims was transferred to DOL by a Memorandum of Understanding between SSA and DOL. This change improved customer service to all Black Lung beneficiaries and was made permanent in 2002 when the Black Lung Consolidation of Administrative Responsibilities Act placed the administration of both programs with DOL.

The Act was amended by several provisions included in the Patient Protection and Affordable Care Act (PPACA) which was signed into law in March 2010. These amendments restored two provisions of the Act that had been eliminated by the 1981 Amendments. First, they reinstated the provision that dependent survivors of miners who were receiving benefits at the time of their death did not need to establish that the miner's death was due to pneumoconiosis, but were automatically entitled to benefits. Second, they restored the rebuttable presumption that a miner who had worked at least 15 years in mining and who has a totally disabling lung condition is presumed to have pneumoconiosis, or that a deceased miner with 15 years' experience and a disabling lung condition at the time of his death is presumed to have died as a result of pneumoconiosis. The amendments apply to claims filed after January 1, 2005, and which were active on or after March 23, 2010.

Benefits and Services

The Black Lung Part C program provides two types of benefits: monthly wage replacement and medical services. The program pays a standard monthly benefit (income replacement) to miners who are determined to be totally disabled from black lung disease and to certain eligible survivors of deceased miners. The monthly rate of benefits is adjusted upward to provide additional compensation for up to three eligible dependents. In FY 2010, monthly and retroactive benefit payments totaled \$207.8 million.

The Part C program also provides both diagnostic and medical treatment services for totally disabling pneumoconiosis. Diagnostic testing is provided for all miner-claimants to determine the presence or absence of black lung disease and the degree of associated disability. These tests include a chest x-ray, pulmonary function study, arterial blood gas study, and a physical examination. Medical coverage for treatment of black lung disease and directly related conditions is provided for miner-beneficiaries. This coverage includes prescription drugs, office visits, and hospitalizations. Also provided, with prior approval, are durable medical equipment (primarily home oxygen), outpatient pulmonary rehabilitation therapy, and home nursing visits.

Medical expenditures under the Black Lung Part C program during FY 2010 were \$30.6 million. This includes payments of \$4.4 million for diagnostic services, \$24.7 million for medical treatment, and \$1.5 million in reimbursements to the United Mine Workers of America Health and Retirement Funds for the cost of treating Black Lung beneficiaries. Approximately 216,000 bills were processed during the year.

Total Black Lung Part C program expenditures for all benefits in FY 2010 were \$238.4 million, a decrease of \$16.6 million from FY 2009. In FY 2010, benefits were provided from the Trust Fund to approximately 25,000 beneficiaries each month.

In addition to Trust Fund expenditures, self-insured mine operators and insurance companies paid more than \$31 million to over 4,300 miners and survivors. An estimated \$8.2 million was also paid in medical treatment benefits, for a total cost to the industry of \$39.2 million during FY 2010.

State workers' compensation laws require coal mine operators to obtain insurance or qualify as a self-insured employer to cover employee benefit liabilities incurred due to occupational diseases that are covered by state law. If state workers' compensation is paid for pneumoconiosis, any Federal black lung benefit received for that disease is offset or reduced by the amount of the state benefit on a dollar-for-dollar basis. As of September 30, 2010, there were 1,059 Federal black lung claims being offset due to concurrent state benefits. An additional 91 were being offset due to other Federal benefits, and 15 due to earnings offsets.

As an additional benefit to claimants, the law provides for payment of attorneys' fees and legal costs incurred in connection with approved benefit claims. The fees must be approved by adjudication officers. During the past year DCMWC processed 77 fee petitions and paid approximately \$0.5 million in attorneys' fees from the Trust Fund.

In FY 2010, 970 claims were forwarded for formal hearings before the Office of Administrative Law Judges (OALJ) and 378 claims were forwarded on appeal to the Benefits Review Board (BRB). At the end of FY 2010, the OALJ had 1,697 claims pending while 413 were pending before the BRB.

In the Black Lung Part B program, nearly 26,000 active beneficiaries (with almost 2,300 dependents) were receiving nearly \$17 million in monthly cash benefits as of September 30, 2010. Part B benefits in FY 2010 totaled nearly \$214 million. DCMWC completed more than 4,400 maintenance actions on Part B claims during the year, on average less than one week from notification.

Black Lung Disability Trust Fund

The Trust Fund, established in 1977 to shift the responsibility for the payment of black lung claims from the Federal government to the coal industry, is administered jointly by the Secretaries of Labor, the Treasury, and Health and Human Services. Claims that were approved by SSA under Part B of the BLBA are not paid by the Trust Fund, but rather from the general revenues of the Federal government. Because the Trust Fund was established at the same time the Reform Act liberalized eligibility for benefits, and because retroactive benefits far exceeded the collection of excise taxes (which were not applicable retroactively), the Fund soon began to require advances from the Treasury.

These advances were made in the late 1970's and early 1980's when interest rates were high. Consequently, the Trust Fund continued to require advances for the purpose of debt servicing, even though excise tax receipts and benefits eventually stabilized. Despite a moratorium on interest from 1986 through 1990, and several extensions of the excise tax rates set in 1981, by the end of FY 2008 the Trust Fund was over \$10 billion in debt to the Treasury. The Congress addressed this debt as part of Public Law 110-343, the Emergency Economic Stabilization Act enacted in FY 2009. The debt was restructured by a one-time allocation from the Treasury and the issuance of zero-coupon Treasury bonds at current interest rates.

Trust Fund revenues consist of monies collected from the industry in the form of an excise tax on mined coal that is sold or used by producers; funds collected from responsible mine operators (RMOs) for monies they owe the Trust Fund; payments of various fines, penalties, and interest; refunds collected from claimants and beneficiaries for overpayments; and repayable advances obtained from Treasury's general fund when Trust Fund expenses exceed revenues. Excise taxes, the main source of revenue, are collected by the Internal Revenue Service and transferred to the Trust Fund. In FY 2010, the Trust Fund received a total of \$594.8 million in tax revenues. An additional \$10.1 million was collected from RMOs in interim benefits, fines, penalties, and interest. Total receipts of the Trust Fund in FY 2010 were nearly \$665 million, including \$60 million in repayable advances from the Department of the Treasury.

Total Trust Fund disbursements during FY 2010 were almost \$662 million. These expenditures included \$238.4 million for income and medical benefits, \$58.6 million to administer the program (\$32.7 million in OWCP direct costs and \$25.9 million for legal adjudication and various financial management and investigative support provided by the Office of the Solicitor, the OALJ, the BRB, Office of the Inspector General, and the Department of the Treasury), and \$364.8 million in bond payments.

In 1981, the Black Lung Benefits Revenue provisions temporarily increased the previous excise tax to \$1.00 per ton for underground coal and \$0.50 per ton on surface mined coal, with a cap of four percent of sales price. In 1986, under the Comprehensive Budget Reconciliation Act of 1985, excise tax rates were increased again by 10 percent. The rates for underground and surface mined coal were raised to \$1.10 and \$0.55 per ton respectively, and the cap was increased to 4.4 percent of the sales price. Under current law, these tax rates will remain in effect until December 31, 2018, after which the rates will revert to their original levels of \$0.50 underground, \$0.25 surface, and a limit of two percent of sales price.

Central Medical Bill Processing

OWCP's medical bill processing service continued to achieve improvements in operating efficiency and effectiveness. Timely and accurate medical bill processing is a critical element in administration of the Black Lung Program. During FY 2010, DCMWC avoided \$609,000 in medical costs due to further improvements in the editing of bills.

In FY 2010, the vendor processed 215,501 Black Lung bills. A total of 99.9 percent of bills were processed within 28 days. The number of telephone calls handled was 50,440. Enrollment of 2,614 new providers brought the total of enrolled Black Lung providers to 122,658.

Legislative Action Affecting Entitlements: The Patient Protection and Affordable Care Act

As a result of the PPACA, enacted in March 2010, DCMWC experienced an increase of 62 percent in new Federal Black Lung claims filed in FY 2010 under Part C compared to FY 2009. Most DCMWC district offices received a major influx of new claims as a result of this new legislation during the third and fourth quarters of FY 2010. This increase of new claims caused an unexpected inventory of pending claims.

One important consequence of the PPACA is the reinstatement of the provision that dependent survivors of miners who were receiving benefits at the time of their death do not need to establish that the miner's death was due to pneumoconiosis, but are automatically entitled to benefits. Although many eligible survivors of miner beneficiaries would have been awarded without this provision, they have received benefits sooner because extended case development and litigation was unnecessary.

Government Performance Results Act

In FY 2010, DCMWC continued its efforts to reach DOL's GPRA goal to "minimize the human, social, and financial impact of work-related injuries for workers and their families." At the beginning of FY 2010, DCMWC had set its goal to:

- Reduce the average time required to process a claim from the date of receipt to the issuance of a Proposed Decision and Order (PDO) to no more than 200 days.

By the end of FY 2010, however, the average time required to process a claim from the date of receipt to the date of the PDO had increased to 210 days. This was a result of a sudden and unexpected increase in new claims filed after enactment of the amendments included in the Patient Care and Affordable Care Act, from 4,354 in FY 2009 to 7,044 in FY 2010, a 62 percent increase. These claim numbers include survivor's conversions that are automatically awarded. Conversion claims numbered 444 in FY 2009 and 662 in FY 2010. The total inventory of claims pending a PDO increased from 2,290 at the close of FY 2009 to 4,140 at the end of FY 2010.

Although DCMWC no longer maintains its original GPRA goal of ensuring that 80 percent of claims have no requests for further action pending one year after receipt of the claim, it continues to monitor this figure. In FY 2010, 81 percent of claims were resolved with no pending requests for further action. The Black Lung program will continue to work closely with both its stakeholder and authorized provider communities to ensure that delivery of services continues to improve and performance standards are met.

Black Lung Program Evaluation

At the beginning of FY 2010, the Government Accountability Office (GAO) issued a report (GAO-10-7) assessing DOL's policies and procedures regarding the processing and litigation of claims for Black Lung benefits, including some DCMWC procedures. As part of its response to the report, DCMWC took steps to improve physicians' documentation of disease and disability, track claimant utilization of lay and attorney representation while a claim is pending before the district director, and established a mechanism to track complaints about testing practices from stakeholders.

Operation and Maintenance of Automated Support Package

DCMWC's Automated Support Package (ASP) is provided through a contract. The ASP includes a client-server computer system for all black lung claims, statistical and data processing, telecommunications support, and administrative functions.

During FY 2010, DCMWC worked to successfully upgrade its server in the DB2 environment. DCMWC also implemented several changes to its ASP that improved the user's search capability, enhanced available information about coal mine operators, and improved database security.

Stakeholder and Regulatory Assistance

Section 423 of the BLBA requires that each coal mine operator subject to the BLBA secure payment of any benefits liability by either qualifying as a self-insurer or insuring the risk with a stock or mutual company, an association, or a qualified fund or individual. Any coal mine operator failing to secure payment is subject to a civil penalty of up to \$1,000 for each day of noncompliance.

According to FY 2010 estimates by DOL's Mine Safety and Health Administration, there were 2,035 active coal mine operators subject to the requirements of the BLBA. Under the BLBA, the Secretary of Labor can authorize a coal mine operator to self-insure after an analysis of the company's application and supporting documents. At the close of FY 2010, 77 active companies were authorized by the Secretary of Labor to self-insure. These self-insurance authorizations cover approximately 720 subsidiaries and affiliated companies.

The Responsible Operator (RO) Section staff in DCMWC's national office is specifically assigned to record the existence of coal mine operators and their insurance status. The staff answers frequent written, telephone, and e-mail inquiries from operators and insurance carriers and evaluates requests for self-insurance.

During FY 2010, the RO section sent form letters to 600 coal mine operators reminding them of their statutory requirement to insure and stay insured against their potential liability for black lung benefits. Of these, 556 were found to be insured, 11 were insured through a parent entity or not engaged in coal mining, and 15 were uninsured companies that required assistance. The remaining 18 were returned unclaimed, delivered with no response, or failed delivery for another reason. Letters also were mailed to commercial insurers reminding them of the statutory requirements for writing black lung insurance and for annual reporting to DCMWC of the companies insured and policy numbers. These letters generated many questions from underwriters and resulted in improved compliance. During FY 2010, DCMWC received 3,228 reports of new or renewed policies.

Section 413(b) of the BLBA requires DCMWC to provide each individual miner who files a claim for benefits with the opportunity to undergo a complete pulmonary evaluation at no cost to the miner. The project to improve the quality of these medical evaluations and reports continued during FY 2010, with district directors and national office staff making a number of visits to clinics and individual physicians. At these site visits, DCMWC staff reviewed the physicians' written evaluations of the medical information obtained during the complete pulmonary evaluations and made suggestions for improving and standardizing the evaluations and reports. DCMWC officials also met several times with physicians at state and national conferences of the National Coalition of Black Lung and Respiratory Disease Clinics to help improve reporting. During FY 2010, the program also focused on updating the list of approved diagnostic physicians by contacting many physicians in order to ensure that highly-qualified doctors were available to perform medical evaluations.

In FY 2010 the program continued its long-standing commitment to ensuring that payments to beneficiaries requiring assistance are properly utilized for their use and benefit. DCMWC continued to track district office actions in the appointment of representative payees due to physical or other incapacity. For FY 2010 DCMWC continued to

evaluate representative payee appointments and expenditure reports in order to ensure that benefits paid on behalf of the beneficiary are used in his/her best interest.

Litigation

Courts of Appeals

During FY 2010, the courts of appeals published three decisions in cases arising under the BLBA. Important holdings from these cases are summarized below:

Prevailing Market Rate for Attorney Fees – 20 C.F.R. § 725.366. The Fourth Circuit vacated an ALJ’s attorney fee award because she “excused” the attorney from his “well-established burden” to submit evidence that demonstrates the prevailing market rate for his services. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276 (4th Cir. 2010). The attorney submitted a published regional survey listing hourly rates charged by attorneys practicing in the South and Middle Atlantic regions. The ALJ rejected the survey, but then substituted her own computation of a reasonable rate for the fee. She took into consideration, among other factors, the risk of loss and the contingent nature of attorney fees. The court concluded the ALJ had erred. It emphasized that the attorney bears the burden to submit the necessary evidence. The court also emphasized that the prevailing rate should be determined by evidence of the rate received from paying clients for similar work performed in similar circumstances. As possible sources of evidence, it cited: fees the attorney has previously received in other BLBA cases; affidavits from other attorneys who are familiar with the attorney’s skills and that type of litigation in the relevant community; and fees awarded in other administrative proceedings of similar complexity to BLBA cases. Finally, the court noted that risk of loss is ordinarily incorporated into the hourly rate and should therefore be reflected in the prevailing market rate. The court remanded the case for the ALJ to reconsider the attorney fee based on relevant evidence to be submitted by the attorney.

Death Due to Pneumoconiosis – 20 C.F.R. § 718.205(c). The BLBA provides benefits to a deceased miner’s survivor if she proves pneumoconiosis caused or hastened the miner’s death. In *Conley v. National Mines Corp.*, 595 F.3d 297 (6th Cir. 2010), the Sixth Circuit reiterated its view that a physician’s opinion that pneumoconiosis “hastened” a miner’s death is sufficient to establish entitlement only if the physician credibly explains how “a specifically defined process” shortened the miner’s life “by an estimable time.” In this case, the parties agreed that metastatic lung cancer was the immediate cause of the miner’s death. The claimant submitted a physician’s opinion that pneumoconiosis hastened the miner’s death because the presence of that disease compromised his ability to survive longer from the effects of his cancer. The court determined that it was bound by its prior decision in *Eastover Mining Co. v. Williams*, 338 F.3d 501 (6th Cir. 2003) (holding the hastening standard requires proof that a “specifically defined process [] reduce[d] the miner’s life by an estimable time.”). In the court’s view, the physician in this case merely stated a conclusory opinion in general terms which, if credited, would effectively link every miner’s death to pneumoconiosis because the disease weakened the miner and made him less resistant to another disease. Because the physician’s opinion was facially not credible, the court affirmed the BRB’s reversal of the ALJ award.

Sufficiency of ALJ Decision under Administrative Procedure Act – 5 U.S.C. § 557(c)(3)(A). The Administrative Procedure Act, which applies to BLBA adjudications, requires an ALJ to provide reasons for crediting or rejecting evidence in making a determination on the record awarding or denying benefits. In this case, a majority of the Tenth Circuit panel vacated an ALJ’s decision awarding disability benefits because the decision lacked sufficient explanation of the ALJ’s evidentiary findings. *Gunderson v. U.S. Dept. of Labor*, 601 F.3d 1013 (10th Cir. 2010) (O’Brien, J. dissenting). The ALJ merely stated the evidence for and against the claimant’s entitlement was “evenly balanced, and should receive equal weight.” The court concluded it could not discern the ALJ’s rationale for reaching this conclusion. Although an ALJ may legitimately find the evidence is equally balanced, the court first required a thorough explanation justifying the lack of any genuine grounds to prefer one side

or the other. The court remanded the case for the ALJ to explain his findings in sufficient detail to permit judicial review.

Benefits Review Board

During FY 2010, the Benefits Review Board (BRB) issued 529 decisions in cases arising under the BLBA, of which seven decisions were published. Important holdings from these cases are summarized below:

2010 Amendments to BLBA and Survivor Entitlement – 30 U.S.C. § 932(l). The Patient Protection and Affordable Care Act of 2010 (PPACA) amended the BLBA by providing automatic entitlement for certain survivors of deceased miners if the miner was receiving BLBA benefits at death, the survivor filed a claim after January 1, 2005, and the claim was pending on or after the March 23, 2010 enactment date of the PPACA. In *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 2010 WL 4035060 (Sept. 22, 2010), the BRB rejected an employer’s assertion that retroactive application of the amended provision violated both the Due Process and Takings clauses of the Fifth Amendment of the United States Constitution. The Board reasoned that retroactive application of the amendment does not offend due process because it is justified by a rational legislative purpose – compensating the survivors of deceased miners for the miners’ employment-related injuries. It held that retroactive application does not constitute an unlawful taking because the operator had no reasonable expectation that its BLBA liabilities would not be increased through statutory amendments.

Standard for Weighing Physicians’ Reports on Disability Causation – 20 C.F.R. § 718.204(c). In *Stover v. Peabody Coal Co.*, 24 BLR 1-159, , 2010 WL 744707 (Jan. 27, 2010) (on reconsideration *en banc*), the BRB considered whether the Sixth Circuit changed the prevailing standard for evaluating the credibility of a physician’s opinion on disability causation in BLBA cases by adopting in a civil tort case a “differential diagnosis” test. The ALJ in this case awarded benefits after evaluating the medical evidence under the “documented and reasoned” standard set forth in *Director, OWCP v. Rowe*, 710 F.2d 251 (6th Cir. 1983). The employer argued that the ALJ must reconsider the medical evidence under the Sixth Circuit’s new differential diagnosis test, which, in its view, repudiated the *Rowe* standard. The BRB rejected the employer’s argument, holding that the Sixth Circuit’s test did not apply to BLBA cases. It noted the court relied on the *Rowe* standard when reviewing a BLBA case even after it adopted the differential diagnosis test. The BRB concluded that the differential diagnosis test only applied to causation issues subject to Rule 702 of the FEDERAL RULES OF EVIDENCE, which does not apply in BLBA claims.

Due Process. In *Spangler v. Donna Kay Coal Co., Inc.*, 24 BLR 1-183, 2010 WL 3073549 (July 30, 2010), the BRB rejected the employer’s assertion that it was denied due process and thus should be relieved of liability for the claim. In an earlier proceeding, the BRB had vacated an ALJ’s denial of benefits and remanded the claim because the pulmonary evaluation that the Director is statutorily required to provide the claimant was flawed. The district director obtained a new examination and returned the claim to the ALJ. While the claim was pending before the ALJ, the miner died and his daughter-in-law was substituted as the claimant. Based on autopsy evidence, the parties stipulated to the miner’s entitlement and the ALJ issued an award. The employer appealed and argued that the delay caused by the Director’s failure to provide a reliable medical evaluation violated its due process rights. The BRB rejected this argument. Because the employer received notice of the claim, the opportunity to submit evidence, and stipulated to the miner’s entitlement, the BRB concluded that mere delay was not a basis for a due process violation.

Trust Fund Liability for Attorney Fee. Under the BLBA regulations, a claimant who uses the services of an attorney in securing an award of benefits is entitled to have his attorney fees paid by the opposing party if that party takes action to create an adversarial relationship between it and the claimant. In *Duncan v. Director, OWCP*, 24 BLR 1-153, 2010 WL 744708 (Jan. 20, 2010), the BRB addressed whether the Trust Fund was liable for an attorney fee when the responsible operator was dismissed and the Fund never disputed the claimant’s entitlement. The district director designated a responsible operator and awarded benefits. The operator requested a hearing. The ALJ dismissed the operator and eventually awarded benefits on reconsideration. He refused to award an attorney fee

because the Director had never challenged the claimant's entitlement. The BRB reversed. It held the claimant's attorney was entitled to a fee because "someone" contested the claim, which resulted in an adjudicative proceeding. As the party ultimately liable for the claim, the Trust Fund was also liable for the attorney fee regardless of which party -- the operator or the Fund -- created the adversarial relationship by declining to pay the claim.

Attorney Fee Petitions; Prevailing Market Rate. During FY 2010, the BRB issued several decisions addressing the evidence or information an attorney must provide to support a fee petition. In two virtually identical orders, the BRB rejected attorney fee petitions for work performed before it because the petitions lacked the attorney's normal billing rate and proof of the prevailing market rate. *Maggard v. International Coal Group*, 24 BLR 1-172, 2010 WL 1849313 (Apr. 14, 2010); *Bowman v. Bowman Coal Co., Inc.*, 24 BLR 1-165, 2010 WL 1849312 (Apr. 15, 2010). Both cases held the fee petitions were facially incomplete because the attorneys did not include the normal billing rates for each person performing services, which is required by a BRB rule. Both cases also held the attorneys failed to submit any proof concerning the prevailing market rates for legal services in the geographic areas of the litigation. Under Supreme Court precedent, an attorney seeking a fee under a fee-shifting statute must provide such market rate evidence to justify the requested fee. The BRB rejected the attorneys' reliance on a published survey of regional law firm rates as competent evidence because the BRB could not determine whether the listed rates were comparable to the attorneys' rates. In a third decision, the BRB vacated an ALJ's fee award because it concluded the attorney did not meet his burden of producing sufficient evidence concerning the prevailing market rate. *Parks v. Eastern Associated Coal Corp.*, 24 BLR 1-177, 2010 WL 2336261 (May 25, 2010).

BLACK LUNG BENEFITS ACT				
	Part C ¹		Part B ²	
	FY 2009	FY 2010	FY 2009	FY 2010
Number of Employees (FTE Staffing Used)	171	168	17	16
OWCP Administrative Expenditures ³	\$31.9 M	\$32.7 M	\$5.2 M	\$4.9 M
Total Compensation and Benefit Payments ⁴	\$255.0 M	\$238.4 M	\$237.8 M	\$213.8 M
Beneficiaries in Pay Status at End of Fiscal Year				
Monthly	26,080	24,067	28,911	25,593
Medical Benefits Only	1,571	1,315	N/A	N/A
Responsible Coal Mine Operator Beneficiaries in Pay Status at End of Fiscal Year				
Monthly	4,415	4,317	N/A	N/A
Medical Benefits Only	563	482	N/A	N/A

¹ Part C benefits are paid out of the Black Lung Disability Trust Fund or by the liable coal mine operator or insurer.

² Part B benefits are paid out of general revenue funds from the U.S. Treasury.

³ Part C administrative expenditures exclude DOL and Department of Treasury support costs of \$25.8 million in FY 2009 and \$25.8 million in FY 2010, respectively. Also excludes interest on the Trust Fund debt.

⁴ Part C payments include only Trust Fund compensation and benefits (excluding collections from responsible coal mine operators for benefits paid by the Trust Fund on an interim basis, refunds for OWCP administrative costs paid, and other miscellaneous reimbursements). Excluded are self-insured mine operator and insurance carrier payments that totaled approximately \$46.8 million in FY 2009 and \$39.2 million in FY 2010, respectively.

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

Introduction

Enacted in 1927, the Longshore and Harbor Workers' Compensation Act (LHWCA) provides compensation for lost wages, medical benefits, and rehabilitation services to longshore, harbor, and other maritime workers who are injured during their employment or who contract an occupational disease related to employment. Survivor benefits also are provided if the work-related injury or disease causes the employee's death. These benefits are paid directly by an authorized self-insured employer, through an authorized insurance carrier, or in particular circumstances, by an industry-financed Special Fund.

In addition, LHWCA covers certain other employees through the following extensions to the Act:

- The Defense Base Act (DBA) of August 16, 1941, extends the benefits of the LHWCA to employees working outside the continental United States under certain circumstances set out in jurisdictional provisions. Primarily it covers all private employment on U.S. military bases overseas, land used for military purposes on U.S. territories and possessions, and U.S. Government contracts overseas.
- The Nonappropriated Fund Instrumentalities Act of June 19, 1952, covers civilian employees in post exchanges, service clubs, etc. of the Armed Forces.
- The Outer Continental Shelf Lands Act of August 7, 1953, extended Longshore benefits to employees of firms working on the outer continental shelf of the United States, such as off-shore drilling enterprises engaged in exploration for and development of natural resources.
- The District of Columbia Workmen's Compensation Act (DCCA), passed by Congress on May 17, 1928, extended the coverage provided by the Longshore Act to private employment in the District of Columbia. Since the District of Columbia passed its own workers' compensation act effective July 26, 1982, OWCP handles claims only for injuries prior to that date.

The original law entitled the Longshoremen's and Harbor Workers' Compensation Act, provided coverage to certain maritime employees injured while working over navigable waters. These workers had been held excluded from state workers' compensation coverage by the Supreme Court (*Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917)).

Operations

Disability compensation and medical benefits paid by insurers and self-insurers under LHWCA and its extensions totaled \$939.8 million in Calendar Year (CY) 2009, an 11.3 percent increase compared to CY 2008, which was largely attributable to continuing increases in payouts under the Defense Base Act.

In Fiscal Year (FY) 2010, total DOL expenditures for program operations and the administration of LHWCA and its extensions were \$26.6 million, of which \$11.4 million were the direct costs of OWCP. The remaining \$15.2 million

represent the cost of legal, audit, and investigative support provided by the Office of Administrative Law Judges (OALJ), the BRB, the Office of the Solicitor (SOL), and the Office of the Inspector General (OIG).

At year's end, the Division of Longshore and Harbor Workers' Compensation (DLHWC) employed 87 people in the national office and 10 district offices.

During FY 2010, approximately 520 self-insured employers and insurance carriers reported 31,628 lost-time injuries under the LHWCA. At year's end, 15,016 maritime and other workers were in compensation payment status.

The conflict in Iraq, Afghanistan, and related military activities in the Middle East continued to generate interest in Longshore program operations as they relate to the administration of the DBA in FY 2010. Injuries occurring under DBA are reported to DLHWC District Offices determined by the geographic location of the injury occurrence. During the year, a total of 14,680 cases of injury and death were reported under DBA.

Longshore Special Fund

The Special Fund under the LHWCA was established in the Treasury of the United States pursuant to section 44 of the Act and is administered by the national office of DLHWC. Proceeds of the fund are used for payments under section 10(h) of the LHWCA for annual adjustments in compensation for permanent total disability or death that occurred prior to the effective date of the 1972 amendments, under section 8(f) for second injury claims, under section 18(b) for cases involving employer insolvency, under sections 39(c) and 8(g) for providing rehabilitation assistance to persons covered under the LHWCA, and under section 7(e) to pay the cost of medical examinations.

The Special Fund is financed through fines and penalties levied under the LHWCA; \$5,000 payments by employers for each instance in which a covered worker dies and when it is determined that there are no survivors eligible for benefits; interest payments on Fund investments; and payment of annual assessments by authorized insurance carriers and self-insurers. Fines, penalties, and death benefit levies constitute a small portion of the total amount paid into the Special Fund each year. The largest single source of money for the fund is the annual assessment.

A separate fund under the DCCA is also administered by OWCP. Payments to and from this fund apply only to the DCCA.

The LHWCA Special Fund paid \$128.1 million in benefits in FY 2010, of which \$116.7 million was for second injury (section 8(f)) claims. FY 2010 expenditures from the DCCA Special Fund totaled \$9.4 million, of which \$8.6 million was for second injury cases.

Government Performance Results Act

In FY 2010 under the Government Performance Results Act (GPRA), DLHWC measured the percentage of the Employer's First Report of Injury and the First Payment of Compensation for Defense Base Act (DBA) cases filed within 30 days. The First Report of Injury measure tracks the time from the date of injury or death, or the date of the employer's knowledge of the injury and the onset of the disability. This GPRA goal for injury report timeliness for DBA cases was exceeded as 75 percent of the cases were filed within 30 days against the target of 63 percent.

The First Payment of Compensation measure tracks the time it takes the employer or insurance carrier to issue the first payment after the worker becomes disabled or after death. In FY 2010 the GPRA target for this measure also was exceeded, with 56 percent of the initial payments for compensation being issued within 30 days versus the 50 percent target.

The growing number of DBA cases present significant challenges for the Longshore program. Between FY 2002 and FY 2010, DBA injury and death claims received have increased from 347 to 14,680. Because of overseas'

communications, geographic and other limitations, DBA claims typically entail lengthy and more resource-intensive development time for employers/carriers. Performance goals focus on the role these employers/carriers play in achieving results. The Longshore program will continue to work with large employers and carriers to improve timeliness in both the filing of injury reports and payment of benefits.

In FY 2011, two new indicators will be added to measure first injury reporting and first payment timeliness for all other (non-DBA) cases.

Performance Assessment

In addition to outcomes measured under GPRA, DLHWC monitors program performance in several areas, as indicated in the program's annual Operational Plan. Performance standards are sustained for all goals within the plan. The most noteworthy of these is dispute resolution (previously a GPRA goal, FY 2001 – FY 2009). For example, in FY 2010, the district offices conducted 3,275 informal conferences that were designed to establish the facts in each case, define the disputed issues and the positions of the parties in respect to those issues, and encourage their voluntary resolution by means of agreement and/or compromise. DLHWC continued to work on its national goal of improving the speed of its dispute resolution system to assist injured workers and employers/carriers in resolving disputed claim issues. Only three of the ten DLHWC District Offices met or exceeded their targets in this area in FY 2010, which is reflective of the staffing shortfalls at both the OWCP and OALJ levels of jurisdiction, and competition for compensation dollars among the stakeholders during times of economic uncertainty.

Other outputs include Hearing Referral timeliness, Special Fund Application Review timeliness, Request for Informal Conference Action timeliness, Conference Recommendation timeliness, Congressional Inquiry Response timeliness, and Vocational Rehabilitation Return to Work effectiveness. DLHWC met or exceeded the goals/standards in all of these areas for FY 2010.

Claims Management and Compliance Assistance Activities

The number of DBA injury and death reports of civilian contractors in Iraq and Afghanistan continued at a very high level in FY 2010, with new cases totaling 10,516, of which 426 involved the death of a worker. Between September 1, 2001 and September 30, 2010, a total of 67,192 DBA cases were reported, including 2,400 deaths, of which 49,993 cases (2,101 deaths) originated in Iraq and Afghanistan.

In response to this burgeoning number of DBA claims, DLHWC continued to handle these claims by initial screening and claim creation in the New York City District Office, then distributing the domestic claims to the district office nearest the claimant's home, ensuring that the districts with the highest number of claims were staffed with the highest number of claim specialists.

The Longshore program continued its efforts to address issues and questions about the ongoing increases in DBA claims arising from Iraq and Afghanistan. The staff has worked diligently to address such issues as the effective handling of Post-Traumatic Stress Disorder claims and the challenges of managing the claims of Iraqi and Afghani nationals in nations with complex cultural differences, communications challenges, banking and infrastructure difficulties, and lack of available medical care. The major participants, including insurance companies and contracting agencies, were invited to meetings throughout the year to discuss and resolve these issues in advance of their becoming major problems.

Additionally, the quickly escalating number of Freedom of Information Act requests, Congressional inquiries, requests for data and analysis, media questions, and submissions from contracting agencies, contractors, insurers, attorneys, and claimants continued at very high levels, requiring prioritization.

The Longshore program's efforts to enhance its Compliance Assistance to the public continued in FY 2010, with more information added to its website, continued local surveys of industry to identify pockets of coverage compliance deficiencies, and public speaking at many conferences and seminars around the country.

DBA Operational Reforms

As the State Department ramped up contracting activity in Iraq to replace the withdrawn troops and as activity in Afghanistan continued to increase and escalate in violence, the number and severity of DBA claims have correspondingly increased. As a result, there was increased interest within the Longshore/DBA stakeholder community and Congress during FY 2010 in refining and enhancing the DBA claims operations.

Under instruction from Congress to develop alternative approaches to the DBA that would both provide better service to injured workers and lower the overall costs of the private sector DBA insurance, DLHWC worked on developing alternative approaches which would achieve both goals.

DLHWC developed a number of other DBA program enhancements, including:

- Increasing the number of direct meetings with insurance executives to address DBA issues and lay out specific plans for resolving problems.
- Initiation of new national performance measures to improve the timeliness of submitting first reports of injury and of issuing first benefit payments.
- Development and implementation of an Industry Report Card that measures and publicizes on the Longshore website the timeliness of insurance companies' injury reporting and initial payment actions.

Automated Reporting Enhancements

DLHWC implemented an electronic insurance policy reporting system during FY 2010 that allows carriers to report and update policy information automatically via a partnership with the National Council on Compensation Insurance. This system allows insurance companies to simply report via their typical state workers' compensation reporting programs to DLHWC for the first time, replacing a cumbersome and costly paper reporting requirement.

Rehabilitation Activities

Again during FY 2010, the impact of the economic slowdown on the job market played a significant role in the Longshore Rehabilitation program during the year. The job market continued in its depressed state throughout the year, making the job of locating opportunities for rehabilitation program participants more challenging. Despite these challenges and in addition to the hurdles experienced in normal rehabilitation efforts, the program was very successful during the year, achieving 116 percent of its placement goal. This success is due to the excellent work of the professional providers and the oversight of DLHWC's district office staff and to the cooperation of the larger employers in the system, notably the shipyards and Non-Appropriated Fund Instrumentalities.

The Rehabilitation program in Norfolk, Virginia has achieved excellent results from an early intervention effort with the local employer community, and this approach will be expanded to other districts over the coming year.

Regulatory Activity

In FY 2010, DLHWC proposed new regulations to implement provisions of the American Recovery and Reinvestment Act of 2009 that addressed the recreational vessel industry. These proposed regulations would define

'recreational vessel,' and clarify a number of issues, including coverage for employees who perform both maritime and non-maritime work ('walk in and out of coverage') during a typical work day. The Notice of Proposed Rulemaking was published in the Federal Register on August 17, 2010. The sixty days public comment period was extended to November 26, 2010.

Litigation

During FY 2010, the courts of appeals published fourteen decisions that discussed issues arising under the LHWCA or its extensions. The Benefits Review Board (BRB) issued 195 decisions, of which twenty-three decisions were published. Important points from some of these cases are summarized below.

Courts of Appeals

Proper Court for Initial Judicial Review of Defense Base Act appeals -- 42 U.S.C. § 1653(b). Agreeing with the Director, the Second Circuit held that the court of appeals, not the district court, has jurisdiction over an appeal from the BRB involving a claim arising under the DBA. *Service Employees International, Inc. v. Director, OWCP (Barrios)*, 595 F.3d 447 (2d Cir. 2010) (Cabranes, J., dissenting). The employee worked as a tank-truck driver in Iraq for approximately one year. He developed eye strain and irritation, and his employment was eventually terminated. The district director sitting in the New York compensation district filed and served a decision issued by an ALJ awarding disability compensation, and the BRB affirmed. Prior to the 1972 LHWCA amendments, parties aggrieved by orders issued by deputy commissioners (now district directors) sought an injunction in the federal district court where the injury occurred. The 1972 amendments transferred the district directors' hearing authority to ALJs, established the BRB to review appeals from the ALJ decisions, and authorized the courts of appeals to decide appeals from final BRB decisions. The Seventh and Ninth Circuits held that appeals from BRB decisions in DBA cases are reviewable initially in the courts of appeals because the DBA incorporates the LHWCA, including the LHWCA's 1972 amendments, except as otherwise modified. The Fourth, Fifth, Sixth and Eleventh Circuits held that district courts, not the courts of appeals, exercise initial judicial review authority over appeals from the BRB on the theory that the DBA's review provision, 42 U.S.C. § 1653(b), expressly provides for review in the district court and this is an intended modification of the LHWCA. The Second Circuit reasoned that section 1653(b) is ambiguous because, read literally, it vests initial review authority in both the district courts and the courts of appeal. To resolve that ambiguity, the Court considered that one legislative purpose of the 1972 amendments was to expedite the claims process and concluded that this change was intended to apply to DBA claims as well. The Court found that the only reason the DBA included section 1653(b) was to identify the proper judicial district for claims arising out of injuries that occur overseas. Because the district director who filed and served the compensation order here was located in New York, the Court held that it had jurisdiction to conduct the initial judicial review of the BRB decision.

Compliance with Statutory Requirements for Acceptable Audiograms – 33 U.S.C. § 908(c)(13)(E). Section 908(c)(13) (E) states a hearing-loss determination "shall be made in accordance with" the AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT. In *Green-Brown v. Sealand Services, Inc.*, 586 F.3d 299 (4th Cir. 2009), the Fourth Circuit addressed whether a hearing-loss compensation award may be based on an audiogram that does not fully comply with the AMA GUIDES. The employee underwent a series of audiograms after his retirement. Only the last audiogram fully complied with the AMA GUIDES for testing at specified noise levels. The ALJ based his determination on an earlier, noncompliant, audiogram considered reliable by a medical specialist. The Court held that the statutory provision "unequivocally mandates" that determinations of hearing loss shall be made according to the AMA GUIDES, reversed the BRB's decision affirming the ALJ, and remanded for entry of an award based on the audiogram that complied with the AMA GUIDES.

Calculation of a Reasonable Hourly Rate for Attorneys Fee Under Section 928 – 33 U.S.C. § 928. Section 928 is a fee-shifting statute incorporating the "lodestar analysis" developed by the courts to determine attorney fee amounts. The starting point of the analysis is to multiply the number of hours reasonably expended by a reasonable hourly rate. Factors relevant to the hourly rate calculation in a lodestar analysis include a determination of the

proper geographic market. In *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219 (4th Cir. 2009), the Fourth Circuit found that the BRB abused its discretion in awarding an hourly rate of \$250 to counsel who succeeded in persuading the BRB to reverse the ALJ's denial of the claim. Although counsel performed all the work associated with the appeal in Washington, DC, the BRB stated only that "the prevailing hourly rate for claimants' attorneys in the geographic area where this case arose is \$250." In rejecting the Board's fee determination, the Court held that the BRB must decide whether the hourly rate should be determined with reference to Georgia where the case was heard by the ALJ or Washington, DC where the BRB sits and counsel performed the services for which fees were sought. The Court further held that the BRB must explain how it determined the rate within the relevant geographic market and to do so, may consider, but is not bound by, the *Laffey* matrix fee schedule developed to determine hourly rates of lawyers in Washington, DC.

State Insurance Guaranty Association Liable for Occupational Disease Claim as Last Responsible Carrier.

The Fifth Circuit found the Louisiana Insurance Guaranty Association (LIGA) liable for a LHWCA claim when the employer's original insurer at the time of the employee's last injurious exposure was insolvent. *La. Ins. Guaranty Ass'n v. Director, OWCP [Harvey]*, 614 F.3d 179 (5th Cir. 2010). LIGA is a state-created guaranty fund that assumes liability for certain claims when the employer's own insurer is no longer available to pay. The Court rejected LIGA's argument that it was not a "carrier" because Louisiana law requires LIGA to assume liability to the same extent as was borne by the insolvent insurance carrier. The Court also rejected LIGA's argument that a pro rata recovery scheme should be applied instead of the LHWCA's "last responsible carrier" rule even though the state guaranty statute provided for the pro rata scheme. The Court held LIGA responsible for the employee's medical benefits and held that it was not entitled to a credit for medical expenses paid by another insurer without first submitting evidence of that insurer's actual payment or obligation to pay. Finally, the Court affirmed, as supported by substantial evidence, the ALJ's factual findings on the employee's last injurious exposure, his involuntary retirement status, and his total disability.

Undocumented Immigrant's Status as Covered "Employee" – 33 U.S.C. § 902(3). The Fifth Circuit considered whether an undocumented immigrant is eligible for LHWCA benefits regardless of his immigration status. *Bollinger Shipyards, Inc. v. Director, OWCP [Rodriguez]*, 604 F.3d 864 (5th Cir. 2010) (Garwood, J. concurring). The injured employee presented a false Social Security number when hired and worked for the employer for approximately six months before he sustained an injury. The employer terminated the voluntary payment of benefits when it discovered his undocumented status. An ALJ held a hearing, found the employee totally disabled, and also found that undocumented immigrants are eligible for LHWCA benefits. The employer argued to the Court that benefits should not be awarded because the basis for any disability award would be wages that were obtained illegally. Several amici filed briefs with the Court on both sides of the question. The Court held the employee was covered by the LHWCA. It relied on the plain meaning of "employee" as defined in the Act, which makes no reference to immigration status. The Court also cited the statutory eligibility given nonresident aliens to receive benefits (33 U.S.C. § 909(g)), and Fifth Circuit precedent recognizing an undocumented employee's right to sue a vessel owner in tort under 33 U.S.C. § 905(b). Finally, the Court rejected the employer's argument that awarding benefits to an undocumented immigrant who used a fraudulent Social Security number to obtain employment would undermine the Immigration Reform and Control Act (IRCA). The Court concluded that the LHWCA did not intrude on IRCA's objectives given that the LHWCA expressly provides benefits to legal aliens. Finally, the Court distinguished the Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

Paid Holidays as "Days Worked" for Calculating Average Weekly Wage – 33 U.S.C. § 910(a). Section 910(a) provides that the average annual earnings for a five-day-per-week worker are computed by multiplying two hundred and sixty times the average daily wage "which he shall have earned during the days when so employed." To apply 10(a), the worker's total income earned in the 52 weeks prior to the injury is divided by the number of "days when so employed." The Ninth Circuit addressed the question whether paid holidays, during which the employee did not actually work, should be included as "days worked" for purposes of calculating the employee's average weekly wage. *Trachsel v. Rogers Terminal & Shipbuilding Corp.*, 597 F.3d 947 (9th Cir. 2010). Following the reasoning in a Fifth Circuit decision that required vacation days to be counted as "days worked," the Court held paid holidays

should also be counted as “days worked” if the employee is paid for that day as if he actually worked it. The Court reasoned that inclusion was necessary in order to approximate what the employee could theoretically have been expected to earn.

OCSLA Coverage Test – 43 U.S.C. § 1333(b). The Ninth Circuit has interpreted the Outer Continental Shelf Lands Act (OCSLA) to cover an injury sustained off the Outer Continental Shelf (at a shoreside facility owned by the OCSLA employer) when the injury occurs as the result of operations on the Shelf. *Valladolid v. Pacific Operations Offshore, L.L.P.*, 604 F.3d 1126 (9th Cir. 2010). The employee worked 98 percent of the time on two offshore oil platforms as a roustabout. He died in a forklift accident at the employer’s onshore oil-processing facility. Because the facility lacked direct access to navigable water and was not adjacent to any property involving maritime activities, the Court affirmed the BRB’s holding that the employee did not satisfy the LHWCA’s situs test and therefore the LHWCA did not apply directly. However, the Court reversed the BRB’s denial of coverage under the OCSLA. The Court held that OCSLA section 1333(b) extends compensation under the LHWCA to any injury resulting from operations on the Outer Continental Shelf and did not require the injury to take place on the Shelf. It defined “resulting from operations” on the Shelf to require a substantial nexus between the injury and the employer’s operations. The Court remanded the case for application of the new test and because the question remained whether the injury arose out of and in the course of employment. The employer has petitioned the Supreme Court for *certiorari* in this case.

No Coverage for Psychological Injuries Caused by Legitimate Personnel Actions – 33 U.S.C. § 902(2). The Ninth Circuit resolved an issue of first impression at the appellate level concerning the compensability of an employee’s psychological injury resulting from his employer’s legitimate adverse personnel action. *Pedroza v. National Steel & Shipbuilding Co.*, 583 F.3d 1139 (9th Cir. 2009), *amended*, 624 F.3d 926 (9th Cir. 2010). The employee was disciplined after he caused an electrical explosion while driving a forklift. He eventually was demoted; he also received medical treatment for psychological problems that were due solely to the discipline and demotion and not to the accident or generally stressful working conditions. The Court agreed with BRB precedent holding that psychological injuries arising out of legitimate personnel actions (excluding actual termination of employment) are not covered by the LHWCA because such actions are not “working conditions” that could cause those injuries. The Court concluded this interpretation of “working conditions” avoids a “trap for the unwary” employer who would otherwise simply fire the employee or limit its adverse personnel actions because of the threat of a worker’s compensation claim. As the employee had conceded his demotion was legitimate, the Court held he could not recover disability benefits for his resulting psychological problems.

Benefits Review Board

Defense Base Act: Coverage Based on Contract with the United States (42 U.S.C. § 1651(a)(4)); Employee Status (42 U.S.C. § 1651(a)); Exclusivity of Remedy (42 U.S.C. § 1651(c)). The BRB considered several issues raised by the employer’s summary judgment motion in a claim for death benefits filed pursuant to the Defense Base Act (DBA). *Irby v. Blackwater Security Consulting*, 44 Ben. Rev. Bd. Serv. 17, 2010 WL 1849314 (Apr. 14, 2010). The decedent-employee worked for the employer providing security pursuant to a contract, and died while employed in Iraq. The ALJ granted the employer’s summary judgment and denied the DBA claim. The BRB vacated the ALJ’s order but affirmed certain findings. Section 1651(a)(4) requires a contract between the United States and a private entity to perform “public work” abroad in order to establish DBA coverage. The BRB held the ALJ erroneously drew an inference in favor of employer on a material fact concerning the existence of a contract or subcontract between the United States, another contractor and the employer when none of the contracts were in evidence. The BRB held that the decedent provided security pursuant to a “service contract” involving a “public work” relating to “war activities” for purposes of § 1654(a)(4). The BRB also concluded the ALJ erroneously found the decedent was an independent contractor rather than an “employee” without considering the appropriate legal test and relevant evidence. It held the DBA, like the LHWCA, does not apply to independent contractors. Because the DBA does not define “employee,” the BRB further held an employee must satisfy the common law “master-servant” test to be covered by the DBA. Finally, the BRB upheld the ALJ’s finding that the DBA provides the claimant’s

exclusive remedy because the evidence, as a matter of law, failed to prove the employer actually intended to harm the decedent or cause his death.

Defense Base Act: Coverage Based on Contract between an Agency of the United States Government and Employer – 42 U.S.C. § 1651(a)(4). Section 1651(a)(4) requires a contract between the United States or an agency of the United States and a private entity to perform “public work” abroad to establish DBA coverage. In *Tisdale v. American Logistics Services et al.*, 44 Ben. Rev. Bd. Serv. 29, 2010 WL 1812843 (Apr. 29, 2010), the BRB addressed whether the Iraq Coalition Provisional Authority (CPA) was an “agency” of the United States Government that contracted with a private entity to perform “public work” in Iraq. The employer (a Kuwaiti company) hired the employee to work in Iraq. The employer contracted with the CPA for the work. Because the LHWCA and DBA do not define “agency,” the BRB extensively reviewed the origins of the CPA and the few cases that have considered that entity in order to determine whether the employee was covered by the DBA. The Director urged, and the BRB agreed, that the appropriate test should be the “degree of control” test adopted by the Second Circuit. The test considers whether (i) the United States has significant (but not necessarily exclusive) control over the entity; (ii) the entity serves a government purpose; (iii) private profit is excluded; and (iv) employment is restricted to government-connected persons. The BRB concluded the CPA met each of the criteria: the United States appointed the CPA administrator and was the most prominent member of the coalition forces controlling Iraq; the coalition forces were responsible for Iraq, which promoted United States interests as the leader of those forces; most of the CPA’s funding came from United States assets that were used to promote government purposes; and United States citizens constituted the overwhelming majority of CPA employees. The BRB therefore held the employee worked for an entity that had contracted with an agency of the United States to perform public work in Iraq, which conferred DBA coverage.

Market Rate for Attorney's Fees – 28 U.S.C. § 928. In *Christensen v. Stevedoring Services of America*, 44 Ben. Rev. Bd. Serv. 39, 2010 WL 2256182 (May 13, 2010), *modifying on recon.*, 43 Ben. Rev. Bd. Serv. 145 (2009), the employee’s attorney moved the BRB to reconsider its decision awarding him an attorney’s fee based on its calculation of the market rate for attorneys practicing in the Portland, Oregon area. The BRB had used the 2006 data from the Oregon Bar Survey. The BRB averaged three types of practice: workers’ compensation, plaintiff personal injury civil litigation, and plaintiff general civil litigation. After averaging the market rates for these practices, the BRB used the percentage increases in Federal locality pay tables for the Portland area to determine attorney fee market rate increases for 2006 and 2008, *i.e.*, the years the attorney had performed services in the case. The BRB then based the fee award on the market rates as it had computed them. On reconsideration, the BRB accepted the attorney’s argument that the workers’ compensation rate should be excluded because state law caps the amount of the fee and insurance community attorneys receive lower rates due to the steady work the community provides. The BRB recalculated the attorney’s market rate for 2006 and 2008 using the plaintiff personal injury and general civil litigation rates and awarded a modified fee. The BRB also refused to account for the delay in payment by using only the higher 2008 rate for the entire fee because that methodology would represent the unauthorized payment of interest attributable solely to appeals of attorney’s fee awards.

Employer Attorney Fee Liability – 33 U.S.C. § 928. Section 928(a) shifts attorney fee liability to an employer if the employee files a claim, the employer controverts the claim, the employee retains an attorney and thereafter obtains a compensation award. Section 928(b) provides for the shifting of fee liability under different conditions if the employer has voluntarily paid compensation. In *Green v. Ceres Marine Terminals, Inc.*, 43 Ben. Rev. Bd. Serv. 173, 2010 WL 545996 (Jan. 12, 2010), the employer attempted to make the terms of section 928(b), rather than section 928(a), applicable by purporting to pay compensation voluntarily instead of controverting the claim. When the employer first became aware of the employee’s claim for hearing loss, the employer immediately filed a notice of controversion. After receiving formal notice of the claim from the district director, the employer tendered \$1 – contending that the \$1 constituted a compensation payment. The employer made no more voluntary payments and continued to controvert the claim. The BRB held the ALJ rationally found the employer’s \$1 payment was simply an attempt to avoid fee liability rather than a genuine voluntary payment of compensation. Because the employer had not paid compensation prior to its controversion, the BRB held it became liable for the employee’s attorneys’ fee award pursuant to Section 928(a).

Time for Requesting Modification Based on Last Payment of Compensation – 33 U.S.C. § 922. A party may petition for modification of an award within one year after the last payment of compensation based on a change in condition or a factual mistake in the underlying award. 33 U.S.C. § 922. Voluntary payment by the employer tolls the one-year period. In *Wheeler v. Newport New Shipbuilding & Dry Dock Co.*, 43 Ben. Rev. Bd. Serv. 179, 2010 WL 387190 (Jan. 26, 2010), the employer paid the employee’s scheduled permanent partial disability award and after the scheduled award was completed, voluntarily continued to pay medical expenses. The employer paid the providers directly. Four years after the last payment on her disability claim, but within one year of the employer’s most recent payment of medical expenses, the employee petitioned for modification. Section 902(12) defines “compensation” as money “payable to an employee.” 33 U.S.C. § 902(12). The BRB held the modification petition was untimely. Citing Supreme Court and court of appeals precedent interpreting other LHWCA provisions, the BRB reasoned that a payment of compensation for purposes of Section 922 means a payment by the employer to the claimant. Because the employer paid the medical providers directly rather than the employee for expenses incurred in her medical treatment, the payments were not “compensation” that would toll the Section 922 limitation period.

State Insurance Guaranty Association Liability for LHWCA Claims. In *Zamora v. Friede Goldman Halter, Inc.*, 43 Ben. Rev. Bd. Serv. 160, 2009 WL 4548853 (Nov. 25, 2009), the BRB addressed the Texas Property and Casualty Insurance Guaranty Association’s (TPCIGA) liability for attorneys’ fees under the LHWCA when the employer’s original insurer was insolvent. An employer may be liable for an employee’s attorneys’ fees under certain conditions. 33 U.S.C. § 928(a). The employee met all of the criteria for shifting fee liability to his employer. Because the employer was bankrupt and its insurer was declared “impaired,” Texas law required the TPCIGA to assume liability if the employee’s LHWCA claim was a “covered claim” as defined by the TPCIGA enabling statute. The BRB found applicable the version of the state guaranty law in effect when the insurer became impaired in 2001. The statute provided that a “covered claim” did not include attorneys’ fees incurred prior to the date an insurer became impaired. Because the statute did not expressly exclude attorneys’ fees incurred after that date, the BRB held the TPCIGA was liable for those fees. The BRB further held that the employer, although bankrupt, was responsible for the fees incurred prior to the insurer’s date of impairment because 33 U.S.C. § 904(a) imposes primary compensation liability on an employer and that liability is not extinguished by the insurer’s bankruptcy.

Concurrent Disability Awards for Separate Injuries. The employee received a scheduled award for hearing loss and a separate award for a back injury. The back-injury award paid various types of compensation for distinct periods, but eventually culminated in a continuing permanent partial disability award. As a scheduled award, the hearing-loss award was payable for a statutorily prescribed period of weeks. Except for the five days of payment that the hearing-loss award pre-dated the back-injury award, the two awards were paid concurrently for a period of time. The ALJ found the hearing-loss award was payable only for the first five days; thereafter, it was permanently subsumed in the back-injury award. In *Bogden v. Consolidation Coal Co.*, 44 Ben. Rev. Bd. Serv. 43, 2010 WL 2716790 (June 14, 2010), the BRB held the hearing-loss award was subsumed in the back-injury award only for the duration of the back-injury award. Once the back-injury award converted to permanent partial disability compensation, the BRB held the hearing-loss award could be revived. Finally, the BRB held the employee could receive payment on the concurrent awards up to the statutory maximum for permanent total disability. In order to ensure the employee received the full benefit of both awards, the BRB held the number of weeks for which the hearing-loss award was payable could be extended until the full amount of that award had been paid.

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT		
	FY 2009	FY 2010
Number of Employees (FTE Staffing Used)	98	87
Administrative Expenditures ¹	\$12.8 M	\$13.4 M
Lost-Time Injuries Reported	28,952	31,628
Total Compensation Paid ²	\$983.8 M	\$1,084.8 M
Wage-Loss and Survivor Benefits	\$706.0 M	\$768.8 M
Medical Benefits	\$277.8 M	\$316.0 M
Sources of Compensation Paid		
Insurance Companies ²	\$504.3 M	\$551.7 M
Self-Insured Employers ²	\$340.3 M	\$388.1 M
LHWCA Special Fund	\$132.7 M	\$128.1 M
DCCA Special Fund	\$10.1 M	\$9.4 M
DOL Appropriation	\$2.2 M	\$2.0 M

¹ Direct administrative costs to OWCP only, including Trust Funds; excludes DOL costs of \$13.7 million in FY 2009 and \$15.2 million in FY 2010, respectively, for support provided by the OALJ, BRB, SOL, and OIG.

² Figures are for CY 2008 and CY 2009, respectively. Note: Total compensation paid does not equal the sum of the sources of compensation due to the different time periods (CY v. FY) by which the various data are reported. For Special Fund assessment billing purposes as required by section 44 of LHWCA, compensation and medical benefit payments made by insurance carriers and self-insured employers under the Acts are reported to DOL for the previous calendar year.

ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

Introduction

Congress passed the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) in October 2000. Part B of the EEOICPA, effective on July 31, 2001, compensates current or former employees (or their survivors) of the Department of Energy (DOE), its predecessor agencies, and certain of its vendors, contractors and subcontractors, who were diagnosed with a radiogenic cancer, chronic beryllium disease, beryllium sensitivity or chronic silicosis as a result of exposure to radiation, beryllium, or silica while employed at covered facilities. The EEOICPA also provides compensation to individuals (or their eligible survivors) awarded benefits by the Department of Justice (DOJ) under Section 5 of the Radiation Exposure Compensation Act (RECA).

Part E of the EEOICPA (enacted October 28, 2004) replaced the former Part D and compensates DOE contractor/subcontractor employees, eligible survivors of such employees, and uranium miners, millers, and ore transporters as defined by RECA Section 5 for any occupational illnesses that are linked to toxic exposures in the DOE or mining work environment.

On July 31, 2010, the Department of Labor (DOL) marked the ninth anniversary of its administration of the EEOICPA. DOL has served a far larger claimant population than even the proponents of the statute predicted at the time of enactment, and the compensation totals have far exceeded Congress' initial expectations. From the program's inception to the end of Fiscal Year (FY) 2010, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has awarded compensation and medical benefits totaling over \$6.2 billion under both Parts B and E of the EEOICPA. During this time, 63,010 employees or their families have received over \$5.6 billion in compensation and nearly \$590 million in medical expenses associated with the treatment of accepted medical conditions. Part B compensation has totaled more than \$3.5 billion (since 2001) while Part E compensation has totaled more than \$2.1 billion (since 2005).

In FY 2010 alone, 5,034 employees or their families received \$448.7 million in Part B compensation. In addition, 4,429 employees or their eligible survivors received \$381.0 million in Part E compensation. A total of \$212.3 million was paid in covered medical benefits in FY 2010 under both Parts B and E of the EEOICPA, bringing total benefits to over \$1 billion for the year.

Administration

Implementation of the EEOICPA is a uniquely intergovernmental activity, involving the coordinated efforts of four federal agencies to administer: DOL, DOE, DOJ, and the Department of Health and Human Services (HHS). DOL has primary responsibility for administering the EEOICPA, including adjudication of claims for compensation and payment of benefits for conditions covered by Parts B and E.

DOE designates Atomic Weapons Employer (AWE) facilities and provides DOL and HHS with verification of covered employment and relevant information on exposures including access to restricted data. DOJ notifies beneficiaries who have received an award of benefits under RECA Section 5 of their possible EEOICPA eligibility and provides RECA claimants with information required by DOL to complete the claim development process.

HHS, through its National Institute for Occupational Safety and Health (NIOSH), establishes procedures for estimating radiation doses, develops guidelines to determine the probability that a cancer was caused by workplace exposure to radiation, establishes procedures for designation of new Special Exposure Cohort (SEC) classes, and carries out the actual dose reconstruction for cases referred by DOL. Under the EEOICPA, Congress established the SEC to allow eligible claims to be compensated without the completion of a radiation dose reconstruction or determination of the probability of causation. To qualify for compensation under the SEC, a covered employee must have at least one of twenty-two "specified cancers" and have worked for a certain period of time at a facility designated in the statute or by HHS as a class within the SEC. HHS also provides administrative services and other necessary support to the Advisory Board on Radiation and Worker Health. The Board advises HHS on the scientific validity and quality of dose reconstruction efforts, and receives and provides recommendations on petitions submitted requesting additional classes of employees for inclusion as members of the SEC.

Benefits under the EEOICPA

Part B. To qualify for benefits under Part B of the EEOICPA, an employee must have worked for DOE or a DOE contractor or subcontractor during a covered time period at a DOE facility, or have worked for a private company designated as a covered AWE or beryllium vendor. The worker must have developed cancer, chronic beryllium disease, or beryllium sensitivity due to exposures at a covered work site, or chronic silicosis (for individuals who worked in Nevada and Alaskan nuclear test tunnels). A covered employee who qualifies for benefits under Part B may receive a one-time lump-sum payment of \$150,000, plus medical expenses related to an accepted, covered condition. Survivors of these workers may also be eligible for a lump-sum compensation payment. Part B also provides for payment of \$50,000 to uranium workers (or their eligible survivors) who received an award from DOJ under Section 5 of the RECA.

For all claims filed under Part B, the employment and illness documentation is developed by claims staff and evaluated in accordance with the criteria in the EEOICPA and relevant regulations and procedures. DOL district offices then issue recommended decisions to claimants. Claims filed under Part B for the \$50,000 RECA supplement are the least complex, involving verification by DOJ that a RECA award has been made, and documentation of the identity of the claimant (including survivor relationship). DOL can also move quickly on cases involving "specified cancers" at SEC facilities because the EEOICPA provides a presumption that any of the twenty-two listed cancers incurred by an SEC worker was caused by radiation exposure at the SEC facility. For cases involving claimed cancers that are not covered by SEC provisions (that is, either cancers incurred at a non-SEC facility, a non-specified cancer incurred at an SEC facility, or an employee who did not have sufficient employment duration to qualify for the SEC designation), there is an intervening step in the process to determine causation called "dose reconstruction." In these instances, once DOL determines that a worker was a covered employee and that he or she had a diagnosis of cancer, the case is referred to NIOSH so that the individual's radiation dose can be estimated. After NIOSH completes the dose reconstruction and calculates a dose estimate for the worker, DOL takes this estimate and applies the methodology promulgated by HHS in its probability of causation regulation to determine if the statutory causality test is met. The standard is met if the cancer was "at least as likely as not" related to covered employment, as indicated by a determination of at least 50 percent probability.

Part E. The EEOICPA's Part E establishes a system of federal payments for employees of DOE contractors and subcontractors (or their eligible survivors) for illnesses determined to have resulted from exposure to toxic substances at a covered DOE facility. Uranium miners, millers, and ore transporters as defined by Section 5 of the RECA may also be eligible to receive Part E benefits. Benefits are provided for any illness if it can be determined that it was "at least as likely as not" that work-related exposure to a toxic substance was a significant factor in

causing, contributing to, or aggravating the illness or death of an employee. Additionally, the EEOICPA provides that any determination made under Part B to award benefits (including RECA Section 5 claims) is an automatic acceptance under Part E for causation of the illness, where the employment criteria are also met. The maximum payable compensation under Part E is \$250,000 for all claims relating to any individual employee, meaning that a total of \$400,000 can be paid in Part B plus E compensation with respect to a single worker.

Under Part E, a covered employee may be eligible to receive compensation for the percentage of impairment of the whole person that is related to a covered illness. The EEOICPA specifically requires that impairment be determined in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA's *Guides*). Impairments included in ratings are those that have reached maximum medical improvement (MMI), *i.e.*, they are well-stabilized and unlikely to improve substantially with or without medical treatment. MMI is not required if an illness is in a terminal stage. Eligible employees receive \$2,500 for each percentage point of impairment found to be attributable to a covered illness under Part E.

Also under Part E, covered employees may be eligible to receive wage-loss benefits. Wage-loss benefits are paid for each qualifying calendar year (prior to reaching normal Social Security Act retirement age) in which, as a result of the covered illness, an employee's earnings fell a specific percentage below his or her average annual earnings for the 36-month period prior to the month in which the employee first experienced wage-loss (not including periods of unemployment). The EEOICPA provides that covered, eligible employees may receive \$15,000 for any year in which they made less than 50 percent of their baseline wage, as a result of a covered illness, and \$10,000 for any year in which they made more than 50 percent but less than 75 percent of that baseline wage. Medical benefits for the covered illness are also payable, in addition to monetary compensation.

Part E survivor benefits include a basic lump sum of \$125,000 where it is established that the employee was exposed to a toxic substance at a DOE facility and that the exposure was "at least as likely as not" a significant factor in causing, contributing to, or aggravating the illness and death of the employee. Part E also provides \$25,000 in additional benefits to eligible survivors, if the deceased employee had, as of his or her normal retirement age under the Social Security Act, at least ten aggregate calendar years of wage loss of at least 50 percent of his or her baseline wage. If an employee had twenty or more such years, the additional amount paid to an eligible survivor may increase to \$50,000. The maximum Part E compensation benefit for a survivor is \$175,000.

Funding

DOL funding covers direct and indirect expenses to administer the Washington, D.C. National Office; five Final Adjudication Branch Offices; four DEEOIC District Offices in Seattle, Washington; Cleveland, Ohio; Denver, Colorado; and Jacksonville, Florida; and eleven Resource Centers operated by a contractor. A private contractor processes medical bills to reduce overhead and to increase program efficiency. In FY 2010, DOL spent \$53.2 million under Part B and \$74.1 million under Part E to administer the EEOICPA. These funds supported 285 full-time equivalent (FTE) staff for Part B and 256 FTE for Part E. Additional funds in the amount of \$0.4 million under Part B and \$0.5 million under Part E supported the Office of the Ombudsman position. Funding for the NIOSH radiation dose reconstruction process and the Advisory Board on Radiation and Worker Health was provided in the Health and Human Services appropriation.

Adjudication of Claims

In FY 2010, DEEOIC continued to receive a substantial number of new claims, creating a total of 6,510 new cases (10,194 claims) for living or deceased employees under Part B, and 6,566 new cases (8,677 new claims) under Part E. Each case represents an employee whose illness is the basis for a claim; however, a single case may contain multiple survivor claims. Under the EEOICPA, workers or their survivors may qualify for Part B benefits only, Part E benefits only, or benefits under both Parts B and E. Claims and cases under Parts B and E are counted separately

(that is, if a claimant is potentially eligible under both Parts, his or her claim will be counted under both Part B and Part E).

Under the EEOICPA, the Secretary of HHS is responsible for adding new classes of employees to the SEC where a complete dose reconstruction cannot be performed by NIOSH. The Act itself initially designated certain employees at four sites (the three gaseous diffusion plants in Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio; and an underground nuclear test site on Amchitka Island, Alaska) as belonging to the SEC. As of September 30, 2010, NIOSH had added 65 additional classes of employees to the four statutory classes in the SEC which combined represent workers at 54 facilities. During FY 2010, NIOSH added 21 classes of employees at the following facilities: BWX Technologies, Inc., in Lynchburg, Virginia; St. Louis Airport Storage Site in St. Louis, Missouri; Downey Facility in Los Angeles County, California; University of Rochester Atomic Energy Project in Rochester, New York; Mound Plant in Miamisburg, Ohio; Los Alamos National Laboratory in Los Alamos, New Mexico; Bethlehem Steel in Lackawanna, New York; De Soto Avenue Facility in Los Angeles County, California; Canoga Avenue Facility in Los Angeles County, California; Area IV of the Santa Susana Field Laboratory in Ventura County, California; Lawrence Berkeley National Laboratory in Berkeley, California; Lawrence Livermore National Laboratory in Livermore, California; Nevada Test Site in Mercury, Nevada; Westinghouse Electric Corporation in Bloomfield, New Jersey; Brookhaven National Laboratory in Upton, New York; Hanford Engineer Works in Richland, Washington; Metals and Controls Corporation in Attleboro, Massachusetts; Oak Ridge Hospital in Oak Ridge, Tennessee; Piqua Organic Moderated Reactor in Piqua, Ohio; Norton Company in Worcester, Massachusetts; and Lake Ontario Ordnance Works in Niagara Falls, New York. When a new class of employees is added to the SEC, DOL reviews all affected cases and makes a determination on whether the employee in question meets the criteria for inclusion in the new class. Any previously denied claim with employment meeting the new definition is reopened for additional development and a new recommended decision.

For claims filed under Part E, claims examiners use an array of tools including the Site Exposure Matrices (SEM) database that provides information about substances used in specific DOE facilities and the occupational illnesses and health effects associated with exposure to specific toxic substances. District offices also rely on DOE's records that contain employees' radiological dose records, incident or accident reports, industrial hygiene or safety records, personnel records, job descriptions, medical records, and other records that prove useful in determining causation. Additionally, a referral to a District Medical Consultant (DMC) may be required to determine a medical diagnosis, whether or not an illness is indicative of toxic substance exposure versus a natural medical process, whether there is a causal relationship between claimed illnesses and the occupational exposure history, or to evaluate an employee's cause of death. DMC referrals may also be necessary for impairment evaluations and for opinions regarding the causal relationship between a covered illness and claimed wage loss. As of September 30, 2010, 79 board-certified physicians were enrolled as DMC contractors for the program. Claims may also be referred to a health physicist, industrial hygienist, or toxicologist for review when a scientific determination regarding the case is required.

Recommended Decisions and Final Decisions. The DEEOIC district offices process EEOICPA claims to the "recommended decision" stage: for each claim, they issue a recommended decision to approve or deny the claim. Each recommended decision made by the district office must be reviewed by the Final Adjudication Branch (FAB), which ensures that the EEOICPA's requirements, program policies, and procedures are followed and issues a final decision. Before making a final decision, the FAB considers any challenges brought by the claimant through either a review of the written record or an oral hearing. During FY 2010, the FAB conducted 1,265 reviews of the written record and oral hearings for 1,052 claimants. For each claim, the FAB reviews the evidence of record, the recommended decision, and any objections/testimony submitted by the claimant or his/her representative, and issues a final decision either awarding or denying benefits. The FAB may also remand a decision to the district office, if further development of the case is necessary. A claimant may challenge the FAB's final decisions by requesting reconsideration or reopening of the claim, or may file a petition for review of a final decision with the appropriate U.S. District Court.

While Part B and Part E of the EEOICPA each have unique eligibility criteria, DEEOIC usually adjudicates all claims for benefits under Parts B and E as a unified claim for greater efficiency, and where possible, decisions are

issued that address both Parts B and E simultaneously. However, partial decisions may also be issued in cases where benefits under some provisions can be awarded, but claims under other provisions require further development.

During FY 2010, DEEOIC district offices issued 12,439 Part B claim-level recommended decisions and 11,197 Part E claim-level recommended decisions. Further, the FAB issued 10,797 Part B claim-level final decisions and 10,867 Part E claim-level final decisions. DOL approved benefits in 53.2 percent of covered Part B claims and 58.2 percent of covered Part E claims that were issued a final decision during FY 2010. Covered applications are those claims which met the basic eligibility requirements of covered employment and a covered occupational illness under Part B, or for covered employment and survivorship under Part E.

Outreach Activities

DEEOIC's staff continues to sponsor outreach activities to disseminate information about EEOICPA benefits and to provide one-on-one assistance to claimants in applying for benefits.

Resource center and district office personnel supported the collaborative outreach efforts led by DEEOIC's Branch of Outreach and Technical Assistance (BOTA) in the national office. During FY 2010, as additional classes of employees were added by the Secretary of HHS to the SEC, DOL sponsored nine town hall meetings and traveling resource centers in Ronkonkoma, New York; Kennewick, Washington; Las Vegas, Nevada; Simi Valley, Livermore, and Emeryville, California; Santa Fe, New Mexico; and Lynchburg, Virginia. These public events presented details about new SEC classes at the Brookhaven National Laboratory, Hanford, Nevada Test Site, Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, Area IV of the Santa Susana Field Laboratory, Los Alamos National Laboratory, BWX Technologies, Inc., and Downey and De Soto Avenue facilities. Nearly 1,000 individuals attended these town hall meetings and traveling resource centers, and as a result of these meetings resource center staff submitted 314 new claims to DOL for adjudication. Further, in response to large attendance at past town hall meetings held in the Navajo Nation, DEEOIC continues to conduct monthly meetings in Shiprock, New Mexico, and Kayenta, Arizona, to provide in-person assistance to Navajo and other EEOICPA claimants.

Working with DOE's Former Worker Medical Screening Program, HHS and the Office of the Ombudsman, DEEOIC staff continued to participate in a joint outreach task group to provide information and clarification regarding the EEOICPA to former nuclear weapons workers and their families. During FY 2010, DEEOIC staff attended joint outreach task-group-sponsored town hall meetings in Amarillo, Texas; Denver, Colorado; Santa Fe and Albuquerque, New Mexico; and Idaho Falls, Idaho. Further, at the request of the Office of the Ombudsman, the DEEOIC national office, district office, and resource center staff continued to participate in all Ombudsman sponsored outreach initiatives by providing claim status updates to claimants, taking new claims, and answering questions as needed.

Other examples of DEEOIC outreach activities conducted during FY 2010 include meetings with local governments and chambers of commerce, presentations to personnel at covered facilities and unions, and other community initiatives. Additionally, during FY 2010 the district offices received 160,347 phone calls and the FAB received 6,229 phone calls. Nearly all calls that required a return call were returned within two business days.

Services to Claimants

The Departments of Labor, Health and Human Services, Energy, and Justice provide assistance to current and potential claimants and surviving family members, to help them understand the EEOICPA and claimants' rights and obligations under the program. DOL has implemented several strategies to assist workers and survivors in filing claims, collecting evidence to support claims, and understanding the adjudication process from start to finish:

Website. DEEOIC's website provides important information about the statute and regulations governing Parts B and E of the EEOICPA, and gives claimants access to brochures, claim forms, and electronic filing of claims.

During FY 2010, twenty-three policy bulletins and four final circulars concerning the administration of the EEOICPA were posted to the site. Further, the website also provides DEEOIC's Procedure Manual; the locations and times of town hall meetings; district office and resource center locations and contact numbers; press releases; and medical provider enrollment information. Claimants can also view DEEOIC and NIOSH weekly web statistics; payment statistics at the national, state, and facility levels; and the searchable database of DEEOIC final decisions. The website also provides links to DOE, DOJ, and NIOSH's websites and toll-free numbers where additional information and assistance can be obtained.

During FY 2010, in an effort to be as accessible and transparent as possible to the claimant community, the DEEOIC continued to add new information to its website, providing the public with additional information concerning DEEOIC's administration of the EEOICPA. This information included statistical information displaying the overall average adjudication time for certain types of claims, including those claims requiring a NIOSH dose reconstruction; graphs showing DEEOIC performance in meeting its Government Performance Results Act goals; and additional statistical graphs showing the amount of compensation paid over time at various facilities covered under the EEOICPA including the Ames Laboratory, General Atomics, Hanford, Iowa Ordnance Plant, Oak Ridge Gaseous Diffusion Plant (K-25), Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Mallinckrodt Chemical Company, Destrehan Street Plant, Nevada Test Site, Nuclear Materials and Equipment Corporation (Apollo), Paducah Gaseous Diffusion Plant, Portsmouth Gaseous Diffusion Plant, Rocky Flats Plant, S-50 Oak Ridge Thermal Diffusion Plant, Oak Ridge National Laboratory (X-10), and the Y-12 Plant.

Unified Procedure Manual. During FY 2010, the DEEOIC revised and updated the program's procedure manual used by DEEOIC claims staff to adjudicate claims. The new Unified Procedure Manual, published on February 26, 2010, replaced the Part B and Part E Procedure Manuals, and provides an overview of the DEEOIC program and current authorized policies and procedures used in the processing and adjudication of claims under the EEOICPA. Further, the EEOICPA Procedure Manual incorporates DEEOIC policy bulletins and circulars, which are currently posted on the DEEOIC website.

Role of Resource Centers. DEEOIC's network of Resource Centers (RCs) at major DOE sites provides an initial point-of-contact for workers interested in the program and in-person and toll-free telephone-based assistance to individuals filing claims under the EEOICPA. In FY 2010, the RC contractor had 64 employees at 11 sites to help claimants complete necessary claim forms and gather documentation that can support their claims.

The RC's assist with initial claim-filing and Part E occupational history development, and forwards all claims and associated documentation to the appropriate district offices. During FY 2010, the RCs helped claimants file 12,906 claims, received more than 95,000 telephone calls, conducted over 64,000 follow-up actions with claimants, and completed 6,800 occupational history interviews. RC staff also supported DEEOIC's town hall meetings and traveling resource center in locations around the country.

The RC staff also continued to assist claimants with the medical bill payment process, preparation of requests for pre-authorized medical travel, and submission of claims for reimbursement related to medical travel. During FY 2010, the RC staff made approximately 32,000 contacts related to medical bills. In addition, RC staff enrolled over 300 new medical providers into the program.

Center for Construction Research and Training. The Center for Construction Research and Training (CPWR), formerly called the Center to Protect Workers' Rights, continues its work under contract with the DEEOIC. The CPWR has been tasked with researching and providing employment information for construction/trade workers (who worked at DOE, AWE, or beryllium vendor facilities) in cases where DOL has been unable to obtain reliable information through other available resources. In FY 2010, CPWR provided responses to 1,030 requests for information. CPWR also maintains a website-accessible database that identifies and confirms the existence of contractual relationships between contractor and subcontractor employers and certain covered facilities. This database is available to DEEOIC claims examiners.

Site Exposure Matrices (SEM) Database. In FY 2010, DEEOIC continued to enhance its database of “site exposure matrices” to assist claims examiners in determining the types of chemicals and toxic substances that existed at the major DOE facilities, easing claimants’ evidentiary burdens and speeding the claims process. The SEM project team added information on two new DOE sites and updated existing SEM matrices of 38 DOE sites during FY 2010. A total of 89 new toxic substances were added to the SEM database as a result of public and worker input. As of September 30, 2010, SEM housed information on 9,588 toxic substances/chemicals used at 99 DOE sites, 4,170 uranium mines, 47 uranium mills, and 17 uranium ore buying stations covered under the EEOICPA.

DOL continued to provide funding to support further development and expansion of the National Library of Medicine (NLM) Haz-Map Occupational Health Database. This database contains information about the possible effects of exposure to hazardous agents that assists DOL in developing and adjudicating claims filed under Part E of EEOICPA, and relieves claimants of some of the burden of proof in their claims. The funding provided in FY 2010 allowed NLM to complete 1,804 new or updated health/chemical profiles for its Haz-Map database.

DOL launched an expanded SEM website during FY 2010 to provide the public the same detailed SEM database information used by DEEOIC claims examiners for DOE and RECA Section 5 facilities. Information on all but six DOE sites was posted on the website as of the end of FY 2010. DOE requires that information be reviewed and approved for release prior to posting on the public SEM website. Expanded data for the remaining six sites is now under review by DOE; general data on toxic materials at those facilities also remains available.

Database Systems. DEEOIC’s Branch of Automated Data Processing Systems (BAS) is responsible for providing DEEOIC’s internal and external customers an entire array of secure and reliable computer services and support. This includes the support of the Energy Case Management System (ECMS) which serves as a repository for data related to claims adjudication activities and compensation benefits. New software releases delivered in FY 2010 provided an upgrade to facilitate the medical eligibility file transfer process and an upgrade to the payment process required for terminal claimants. These enhancements ensure the effectiveness of administering compensation benefits to claimants to once again meet and exceed strategic and operational goals.

DEEOIC is currently developing an integrated, modernized and expanded mission-critical case management system. The new unified system will replace the separate Part B and Part E management systems that have supported DEEOIC’s users since Part B (2001) and Part E’s (2005) inception.

Ombudsman. Under the Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, 42 U.S.C. § 7385s-15, signed into law on October 28, 2004, an Office of the Ombudsman was created for a period of three years, to provide information to claimants, potential claimants, and other interested parties on the benefits available under Part E of the EEOICPA and how to obtain those benefits. In January 2008, the National Defense Authorization Act of 2008 extended the term of this office to October 28, 2012; on October 28, 2009, the National Defense Authorization Act of 2009 expanded the authority of the Office to also include Part B of the EEOICPA. The Office of the Ombudsman, within the Department of Labor but independent from OWCP, reports annually to Congress concerning complaints, grievances, and requests for assistance received during the calendar year covered by the report. DEEOIC continues to work directly with the Ombudsman’s office to promptly resolve any issues and concerns stemming from the Ombudsman’s findings.

Government Performance Results Act

DOL is committed to measuring its outcomes and maintaining accountability for achieving the fundamental goals of the EEOICPA. High performance standards, focusing on moving EEOICPA claims rapidly through the initial and secondary adjudication stages, have been established, and DOL has maintained a strong record of meeting its key performance goals under the Government Performance Results Act (GPRA).

DEEOIC’s three indicators achieved under DOL’s GPRA goal to “provide good jobs for everyone through income maintenance” were as follows:

- In FY 2007, DEEOIC began to measure average days for completion of initial processing of claims, as that measure is a good indicator of overall effectiveness in delivering initial services to claimants. During FY 2009, a goal of 160 days was set for Part B claims and DEEOIC exceeded this goal by taking an average of 113 days to process initial claims under Part B. In FY 2010, a goal of 120 days was set, and DEEOIC exceeded this goal by taking an average of only 97 days to process initial claims under Part B of the EEOICPA during FY 2010.
- During FY 2009, 159 days on average were needed to process initial Part E claims. In FY 2010, a target of 160 days was set. Again, DEEOIC exceeded its goal, as 125 days on average were needed to process initial claims under Part E of the EEOICPA during FY 2010. These results reflect DEEOIC's success in clearing the backlog of older claims such that a "steady state" processing of current cases is now the norm.
- Timely processing also extends to final decisions issued by DEEOIC's FAB. The timeliness standards for both Part B and Part E claims are to complete final decisions within 180 days where there is a hearing and within 75 days where there is no hearing. In the processing of Part B and Part E final decisions through the efforts of the FAB, 97 percent of Part B and Part E decisions in FY 2010 were within the program standards, in excess of the goal of 89 percent.

Central Medical Bill Processing

The OWCP central bill processing service continued to provide a high level of service to eligible claimants and providers in FY 2010. Timely and accurate medical bill processing is critical in the administration of the EEOICPA. In FY 2010, DEEOIC avoided \$9.7 million in costs during the year due to further improvements in the editing of bills. These savings were achieved without impacting on services to claimants.

By the end of FY 2010, the bill processing vendor had processed 355,000 EEOICPA bills and handled 44,604 telephone calls. Authorizations for medical treatment were processed in an average of 1.1 workdays and 99.4 percent of bills were processed within 28 days. Enrollment of 3,378 new providers brought the total of enrolled providers for EEOICPA services to 123,833.

Program Evaluation

In FY 2010 DEEOIC hired a contractor to conduct a customer service satisfaction survey to measure the perceptions of claimants who had filed a claim under the EEOICPA. Claimants who had been through the claims process and received a final decision to award or deny compensation and benefits were asked to assess their satisfaction with the service they received as part of the claims process. DEEOIC mailed surveys to 3,070 claimants and achieved a response rate of 30.6 percent with 865 respondents. Of the 865 people completing the survey, 588 respondents provided additional feedback in the form of written comments. An analysis of the survey was completed on June 29, 2010. The survey indicated that 97 percent of individuals who were awarded benefits and 61 percent of those denied benefits would recommend the program to a friend. DEEOIC will analyze the full results of the survey to further enhance internal and external processes and to improve service to claimants and delivery of benefits.

In July 2010, DEEOIC hired a new Medical Director, who was tasked with assembling an improved network of recognized medical specialists to assist in the review of complex EEOICPA cases. The Medical Director is reviewing the process utilized by DEEOIC with respect to obtaining DMC opinions for adjudication of cases, reviewing the qualifications of DMC's who work with DEEOIC, and evaluating DMC reports for consistency and quality. DEEOIC is also reinstating quarterly DMC teleconferences, which address procedural and medical issues, new guidance, and other issues of common interest to the DMCs.

Statutory Activity

On October 28, 2009, § 7385s-15 of EEOICPA was amended for the second time by § 3142(a) of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84, 123 Stat. 2190, 2715-16. These amendments expanded the scope of the duties assigned to the Office of the Ombudsman in § 7385s-15, which prior to these amendments was limited to Part E of EEOICPA, to also include Part B.

Litigation

DEEOIC strives in every case to administer the Energy program in accordance with the law and governing regulations. During FY 2010, two U.S. District Courts published decisions in cases arising under Part E of EEOICPA. Important points from these cases are summarized below.

Coordination of Part E Benefits with State Workers' Compensation Benefits. In *Meridieth v. Chao*, 723 F.Supp.2d 1044 (E.D. Tenn. 2010), a beneficiary under Part E filed a petition seeking review of a final decision that coordinated his Part E benefits with a payment he had received to settle his state workers' compensation claim for the same covered illness, thereby reducing the amount of his Part E benefits. The plaintiff argued that he should be exempt from the required coordination by operation of 20 C.F.R. § 30.626(c)(3), which states that "coordination of benefits will not occur if the beneficiary under a state workers' compensation program receives state workers' compensation benefits for both a covered and a non-covered illness arising out of and in the course of the same work-related incident." The plaintiff based his argument on language used in the state court order accepting the settlement of his state workers' compensation claim that referred to "any non-malignant respiratory injury" and the fact that he had been diagnosed with a non-malignant lung condition that DEEOIC did not accept as a "covered illness" under Part E. The court reviewed both the settlement and the medical evidence in the file in depth, and concluded that the final decision to coordinate the plaintiff's Part E benefits with the settlement proceeds of his state workers' compensation claim was not "arbitrary and capricious" on two different grounds. First, the court agreed that the "any non-malignant respiratory injury" language in the state court order did not mean that the plaintiff's state workers' compensation claim was for any condition other than the "covered illness" also accepted by DEEOIC. And second, the court held that even if his state workers' compensation settlement was for both his "covered illness" and a non-covered illness, the plaintiff was not exempt from having his Part E benefits coordinated under 20 C.F.R. § 30.626(c)(3) because the medical evidence established that the non-covered illness at issue, chronic obstructive pulmonary disease, did not arise "out of and in the course of the same work-related incident" that led to his "covered illness" of asbestosis, *i.e.*, his employment-related exposure to asbestos.

Wage-loss Benefits. In *Trego v. U.S. Department of Labor*, 681 F.Supp.2d 894 (E.D. Tenn. 2009), the plaintiff filed a petition seeking court review of DEEOIC's final decision denying him wage-loss benefits under Part E of EEOICPA. In that decision, DEEOIC had awarded him medical benefits for his covered illness of chronic obstructive pulmonary disease (COPD), but had denied the plaintiff's request for wage-loss benefits because the evidence failed to establish that he suffered wage-loss as a result of his covered illness. The plaintiff argued that his COPD had caused him to lose wages at Y-12, but the court found that the evidence established he lost his job at Y-12 because of a reduction-in-force (RIF), not because of his COPD. The plaintiff also argued that he suffered wage-loss because his COPD prevented him from securing other employment after the RIF. He argued that his wage-earning capacity, *i.e.*, his potential to earn wages, was diminished because of his COPD. The court found that EEOICPA does not provide benefits for a loss of capacity to earn potential wages but, instead, provides wage-loss benefits only when the covered illness results in a reduction in *actual wages*, and in doing so distinguished EEOICPA from other federal statutes that allow consideration of an employee's wage-earning capacity in determining compensation, such as the FECA and the LHWCA.

ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT				
	Part B		Part E ¹	
	FY 2009	FY 2010	FY 2009	FY 2010
Number of Employees (FTE Staffing Used)	316	285	281	256
Administrative Expenditures ²	\$50.6 M	\$53.2 M	\$65.2 M	\$74.1 M
Claims Created	7,179	10,194	7,509	8,677
Recommended Decisions (Covered Applications)	10,979	12,439	11,726	11,197
Final Decisions (Covered Applications)	11,606	10,797	11,889	10,867
Number of Claims Approved (Final)	5,447	5,748	6,879	6,330
Total Lump Sum Compensation Payments ³	\$437.5 M	\$448.7 M	\$428.7 M	\$381.0 M
Number of Medical Bill Payments	199,437	262,417	16,057	25,957
Total Medical Payments ⁴	\$115.7 M	\$200.5 M	\$4.9 M	\$11.8 M

¹ Part E became effective during FY 2005 (October 28, 2004).

² Includes Department of Labor expenditures only; beginning in FY 2009, funding for the Department of Health and Human Services responsibilities under the EEOICPA are provided for in that agency's appropriation. During FY 2010, funding of \$0.4 million for Part B and \$0.5 million for Part E (\$0.8 million in FY 2009 under Part E) for the Office of the Ombudsman is excluded.

³ Excludes payments made by DOL for Department of Justice (DOJ) Radiation Exposure Compensation Act (RECA) Section 5 claims. DOL serves as a pass through and utilizes the compensation fund established under EEOICPA for DOJ's payments of \$100,000 to qualifying Section 5 RECA claimants as provided for in 42 U.S.C. § 7384u(d). These payments totaled \$36.3 million in FY 2009 and \$29.1 million in FY 2010, respectively.

⁴ Part B medical payments represent payments made for cases accepted under both Part B and Part E. Part E medical payments represent payments made for Part E only.

Appendix

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Note: Unless otherwise stated, the financial information in the appendix tables below may differ from what is reported in the Department of Labor’s Consolidated Financial Statement. These differences are due to accrual versus cash basis financial reporting requirements and adjustments made during statement compilation.

Table A-1
Federal Employees' Compensation Rolls, FY 2001 - FY 2010
(Cases at End-of-Year)

Roll Type	Fiscal Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>Total Periodic Roll</i>	56,133	56,751	58,621	57,817	60,709	50,362	51,125	50,263	49,672	49,517
<i>Long-Term Disability</i>	50,409	51,092	53,099	52,367 ^R	55,257	44,910 ^R	46,258	45,604	45,162	45,263
<i>Death</i>	5,724	5,659	5,522	5,450	5,452	5,452 ^R	4,867	4,659	4,510	4,254

^R Revised

Table A-2
Federal Employees' Compensation Program
Summary of Claims Activity, FY 2001 - FY 2010

Claim Activity	Fiscal Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
INCOMING CASES										
Cases Created	165,915	158,118	168,174	162,965	151,690	139,874	134,360	134,013	129,690	127,526
Traumatic	137,877	132,250	142,325	138,521	129,427	119,082	114,592	115,715	112,640	111,121
No Lost Time	86,402	80,439	84,368	80,018	74,071	67,127	64,896	66,812	64,130 ^R	61,067
Lost Time	51,475	51,811	57,957	58,503	55,356	51,955	49,696	48,903	48,510 ^R	50,054
Occupational Disease	27,869	25,739	25,747	24,320	22,114	20,592	19,633	18,190	16,951	16,300
Fatal Cases	169	129	102	124	149	200	135	108	99	105
Wage-Loss Claims Initiated	23,386	23,193	24,245	24,189	21,455	19,819	19,104	19,187	18,808	19,861
HEARINGS AND REVIEW										
Total Requests for Hearing	6,875	6,820	6,751	8,132	6,757	6,241	6,556	6,584	6,438	6,501
Total Hearing Dispositions	6,599	6,272	6,743	7,682	6,961	7,424	7,581	6,789	7,085	6,758

^R Revised

Table A-3
Federal Employees' Compensation Program Obligations, FY 2001 - FY 2010
(\$ thousands)

Type of Obligation	Fiscal Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Obligations	\$2,308,595	\$2,418,364	\$2,475,108	\$2,568,390	\$2,602,815	\$2,553,930	\$2,707,196	\$2,800,284	\$2,874,754	\$3,015,333
Total Benefits	2,199,276	2,307,942	2,345,472	2,434,609	2,476,479	2,418,796	2,563,055	2,657,634	2,732,577	2,857,806
Compensation Benefits	1,453,740	1,509,275	1,556,845	1,600,501	1,664,405	1,621,357	1,684,248	1,736,649	1,747,650	1,807,450
Medical Benefits	617,414	667,797	658,121	703,571	672,006	668,205	743,124	781,594	847,373	912,796
Survivor Benefits	128,122	130,870	130,506	130,537	140,068	129,234	135,683	139,391	137,554	137,560
Total Administrative Expenditures	109,319	110,422	129,636	133,781	126,336	135,134	144,141	142,650	142,177	157,527
Salaries and Expenses	78,971	81,210	86,358	86,253	86,811	88,435	90,113	89,416	90,049	98,116
Fair Share	30,348	29,212	43,278	47,528	39,525	46,699	54,028	53,234	52,128	59,411

Table A-4
Federal Employees' Compensation Program Chargeback Costs, by Major Federal Agency
CBY 2001 - CBY 2010
(\$ thousands)

Federal Agency	Chargeback Year 1/									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Costs	\$2,129,097	\$2,219,448	\$2,323,288	\$2,339,782	\$2,334,194	\$2,440,711	\$2,494,096	\$2,572,864	\$2,669,115	\$2,697,107
U.S. Postal Service	720,518	785,199	846,876	852,945	840,141	884,078	924,138	978,629	1,055,221	1,101,200
Department of the Navy	246,881	248,250	245,461	245,145	237,791	244,318	244,037	242,440	240,004	234,251
Department of Veterans Affairs	145,909	151,612	157,315	155,391	156,170	164,091	166,087	175,637	179,922	182,212
Department of the Army	169,219	174,832	181,298	177,250	174,660	180,248	178,993	179,503	181,775	177,236
Department of Homeland Security	N/A	N/A	83,975	121,089	138,342	156,734	158,529	161,070	164,611	160,502
Department of the Air Force	134,106	132,538	135,509	129,229	124,516	126,663	130,298	131,059	131,301	129,323
Department of Justice	91,197	95,620	66,131	74,011	80,090	89,156	94,395	98,825	104,772	104,573
Department of Transportation	99,556	101,716	94,682	92,659	92,687	92,830	93,609	97,931	99,251	97,687
Department of Agriculture	66,750	69,563	72,312	69,245	68,681	70,185	70,802	72,869	73,670	72,876
Department of Defense	64,761	63,888	65,429	63,816	62,996	65,460	62,630	60,737	63,051	63,581
All Other Agencies	390,201	396,230	374,299	359,003	358,120	366,948	370,578	374,164	375,537	373,666

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

**Table B-1
Part C Black Lung Claims Adjudications at the
District Director Level, FY 2010**

Type of Claim	PDO's Issued 1/	Approval Rate
TRUST FUND	522	
Approved	77	14.75%
Denied	445	
RESPONSIBLE OPERATORS	3,187	
Approved	432	13.56%
Denied	2,755	
TOTAL DECISIONS	3,709	
Total Approved	509	13.72%
Total Denied	3,200	

1/ PDO is "Proposed Decision and Order".

Table B-2
Distribution of Part C Black Lung Claims and Disbursements, by State, FY 2010

State	Total Claims Received 1/	MBO Claims 2/	In Payment 3/	Total Benefits (\$ 000) 4/
Alabama	34,984	24	664	\$5,522
Alaska	153	0	9	75
Arizona	2,126	4	100	832
Arkansas	3,852	3	120	998
California	6,488	4	165	1,372
Colorado	7,109	6	307	2,553
Connecticut	1,003	0	44	366
Delaware	786	1	42	349
District of Columbia	286	0	9	75
Florida	12,017	32	594	4,940
Georgia	1,702	3	142	1,181
Hawaii	16	0	1	8
Idaho	252	0	12	100
Illinois	31,748	22	781	6,495
Indiana	18,161	19	565	4,698
Iowa	5,155	2	144	1,197
Kansas	2,183	1	36	299
Kentucky	96,610	469	4,033	33,538
Louisiana	354	0	11	91
Maine	45	0	2	16
Maryland	6,708	12	255	2,121
Massachusetts	245	0	15	125
Michigan	10,534	9	291	2,420
Minnesota	147	1	5	42
Mississippi	368	1	18	150
Missouri	4,668	0	125	1,039
Montana	860	2	22	183
Nebraska	130	0	2	17
Nevada	444	1	30	249
New Hampshire	27	0	4	33
New Jersey	4,314	5	191	1,588
New Mexico	2,445	1	81	674
New York	4,041	2	136	1,131
North Carolina	3,654	18	274	2,279
North Dakota	159	0	3	25
Ohio	54,473	50	1,936	16,099
Oklahoma	3,807	4	97	807
Oregon	629	0	19	158
Pennsylvania	138,148	296	7,383	61,395
Rhode Island	40	0	2	17
South Carolina	985	5	103	857
South Dakota	53	0	4	33
Tennessee	21,785	67	812	6,752
Texas	1,765	5	84	699
Utah	4,216	7	180	1,497
Vermont	50	0	4	33
Virginia	45,779	274	2,890	24,033
Washington	1,592	2	45	374
West Virginia	115,821	444	5,741	47,741
Wisconsin	458	0	19	158
Wyoming	2,640	0	109	906
All Other	450	1	10	83
TOTAL	656,465	1,797	28,671	\$238,423

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

2/ Active Medical Benefits Only (MBO) claims as of 9/30/10.

3/ Active claims in payment status, excluding MBO claims, as of 9/30/10.

4/ Disbursements of income and medical benefits for all claims, including claims paid by the Trust Fund and claims in interim pay status.

Note: Data in column no. 1 may not be consistent with changes from previous years due to a change in computer systems.

Table B-3
Part C Black Lung Claims, by Class of Beneficiary, FY 2001 - FY 2010 1/

Class of Beneficiary	Number of Beneficiaries 2/									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Primary Beneficiaries:										
Miners	18,248	16,395	14,773	13,398	12,012	10,857	9,744	8,654	7,699	6,967
Widows	35,660	34,236	32,615	30,810	29,110	27,366	25,556	23,690	21,913	20,495
Others	1,467	1,221	1,238	1,247	1,248	1,258	1,241	1,230	1,214	1,209
TOTAL PRIMARY BENEFICIARIES	55,375	51,852	48,626	45,455	42,370	39,481	36,541	33,574	30,826	28,671
Dependents of Primary Beneficiaries:										
Dependents of Miners	13,924	12,432	11,131	10,020	9,004	8,088	7,205	6,442	5,726	5,202
Dependents of Widows	1,123	1,077	1,052	1,006	944	874	840	777	723	681
Dependents of Others	108	386	353	238	213	146	140	132	122	113
TOTAL DEPENDENTS	15,155	13,895	12,536	11,264	10,161	9,108	8,185	7,351	6,571	5,996
TOTAL, ALL BENEFICIARIES	70,530	65,747	61,162	56,719	52,531	48,589	44,726	40,925	37,397	34,667

1/ As of September 30 of each year.

2/ Active claims, including those paid by a RMO, cases paid by the Trust Fund, cases in interim pay status, cases that are being offset due to concurrent Federal or state benefits, and cases that have been temporarily suspended. Does not include MBO beneficiaries.

Table B-4
Department of Labor Part C Black Lung Benefits Program Obligations, FY 2001 - FY 2010
(\$ thousands)

Type of Obligation	Fiscal Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Obligations	\$1,016,994	\$1,034,096	\$1,046,303	\$1,053,246	\$1,061,698	\$1,060,006	\$1,068,295	\$1,070,958	\$7,152,627	\$661,798
Total Benefits 1/	396,928	384,234	370,389	346,864	329,933	307,067	291,310	273,232	254,987	238,423
Income Benefits 2/	336,813	320,039	307,371	292,555	279,965	265,365	252,020	235,347	221,298	207,801
Medical Benefits 3/	60,116	64,196	63,018	54,309	49,968	41,702	39,290	37,885	33,689	30,622
Administrative Costs 4/	52,252	54,273	55,332	55,803	56,872	57,975	59,772	58,257	57,712	58,618
Interest Charges 5/	567,814	595,589	620,582	650,579	674,894	694,964	717,214	739,469	0	0
Bond Payments 6/									341,939	364,757
Principal									337,472	353,424
Interest									4,467	11,333
Repayable Advances 7/	505,000	465,000	525,000	497,000	446,000	445,000	426,000	426,000	6,497,989	60,000
Cumulative Debt 8/	7,253,557	7,718,557	8,243,557	8,740,557	9,186,557	9,631,557	10,057,557	10,483,557	6,370,580	6,289,746
Principal									6,158,245	5,864,821
Capitalized Interest									212,335	424,925

1/ Excludes collections from responsible mine operators for benefits paid by Trust Fund on an interim basis, refunds for OWCP administrative costs paid, and other miscellaneous reimbursements.

2/ Monthly and retroactive benefit payments.

3/ Includes diagnostic and treatment benefits, and reimbursements to the UMWA Health and Retirement Funds.

4/ Administrative costs include support for DCMWC, Office of the Inspector General, Office of the Solicitor, Office of Administrative Law Judges, and Benefits Review Board within DOL, and reimbursements to the Department of Treasury and the Social Security Administration.

5/ Interest charges on repayable advances to the Trust Fund from the Department of Treasury.

6/ Scheduled repayments of principal and interest on zero-coupon bonds issued to refinance the BLDTF debt as mandated under the Emergency Economic Stabilization Act of 2008 (EESA).

7/ Advances from the Department of Treasury. FY 2009 is a one-time non-repayable appropriation under the EESA. Beginning in FY 2010, EESA classifies these advances as one-year obligations that must be repaid to the Treasury.

8/ Shows the cumulative debt of the Trust Fund to the Department of Treasury. Starting in FY 2009, this debt includes principal and capitalized loan interest related to the zero-coupon bonds issued under EESA and payable to the Bureau of Public Debt.

Note: Detail may not add to totals due to rounding.

Table B-5
Monthly Part C Black Lung Benefit Rates, 1973 - 2010

Period	Benefit Rates by Type of Beneficiary			
	Claimant	Claimant and 1 Dependent	Claimant and 2 Dependents	Claimant and 3 or More Dependents
7/1/73-9/30/73	\$169.80	\$254.70	\$297.10	\$339.50
10/1/73-9/30/74	177.60	266.40	310.80	355.20
10/1/74-9/30/75	187.40	281.10	328.00	374.80
10/1/75-9/30/76	196.80	295.20	344.40	393.50
10/1/76-9/30/77	205.40	308.10	359.50	410.80
10/1/77-9/30/78	219.90	329.80	384.80	439.70
10/1/78-9/30/79	232.00	348.00	405.90	463.90
10/1/79-9/30/80	254.00	381.00	444.50	508.00
10/1/80-9/30/81	279.80	419.60	489.60	559.50
10/1/81-9/30/82	293.20	439.80	513.10	586.40
10/1/82-12/31/83	304.90	457.30	533.60	609.80
1/1/84-12/31/84 1/	317.10	475.60	554.90	634.20
1/1/85-12/31/86	328.20	492.30	574.30	656.40
1/1/87-12/31/87	338.00	507.00	591.50	676.00
1/1/88-12/31/88	344.80	517.20	603.40	689.60
1/1/89-12/31/89	358.90	538.30	628.10	717.80
1/1/90-12/31/90	371.80	557.70	650.60	743.60
1/1/91-12/31/91	387.10	580.60	677.40	774.10
1/1/92-12/31/92	403.30	605.00	705.80	806.60
1/1/93-12/31/93	418.20	627.30	731.90	836.40
1/1/94-12/31/94	427.40	641.10	748.00	854.80
1/1/95-12/31/95	427.40	641.10	748.00	854.80
1/1/96-12/31/96	435.10	652.70	761.50	870.20
1/1/97-12/31/97	445.10	667.70	779.00	890.20
1/1/98-12/31/98	455.40	683.10	796.90	910.70
1/1/99-12/31/99	469.50	704.30	821.60	939.00
1/1/00-12/31/00	487.40	731.00	852.80	974.70
1/1/01-12/31/01	500.50	750.80	875.90	1,001.00
1/1/02-12/31/02	518.50	777.80	907.40	1,037.00
1/1/03-12/31/03	534.60	801.90	935.50	1,069.20
1/1/04-12/31/04	549.00	823.50	960.80	1,098.00
1/1/05-12/31/05	562.80	844.10	984.80	1,125.50
1/1/06-12/31/06	574.60	861.80	1005.50	1,149.10
1/1/07-12/31/07	584.40	876.50	1022.60	1,168.70
1/1/08-12/31/08	599.00	898.40	1048.10	1,197.90
1/1/09-12/31/09	616.30	924.50	1078.50	1,232.60
1/1/10-12/31/10	625.60	938.30	1094.70	1,251.10

1/ These benefit rates include the additional one-half percent increase that was granted retroactive to January 1, 1984. The rates in effect prior to the retroactive payments (1/1/84 through 6/30/84) were: \$315.60 for a claimant only; \$473.30 for a claimant and 1 dependent; \$552.20 for a claimant and 2 dependents; and, \$631.10 for a claimant and 3 or more dependents.

Table B-6
Funding and Disbursements of the Black Lung Disability Trust Fund, FY 2010
(\$ thousands)

Month	Funding				Disbursements							
	Coal Excise Tax Revenue	Treasury Advances	Reimburse. 1/	Total	Income Benefits 2/	Medical Benefits		Total Benefits	Admin. Costs	Interest on Advances	Bond Payments 4/	Total
						Diagnostic	Treatment 3/					
October 2009	\$9,910	\$0	\$933	\$10,843	\$17,982	\$331	\$1,692	\$20,005	\$4,045	\$0	\$0	\$24,050
November 2009	60,127	0	609	60,736	17,378	309	1,826	19,514	4,044	0	0	23,557
December 2009	55,054	0	707	55,761	17,320	319	2,132	19,772	3,993	0	0	23,765
January 2010	53,958	0	427	54,385	17,039	235	1,874	19,148	5,755	0	0	24,903
February 2010	47,391	0	910	48,301	17,272	297	2,077	19,647	5,097	0	0	24,744
March 2010	50,215	0	961	51,176	17,223	429	2,892	20,545	5,101	0	0	25,646
April 2010	57,631	0	799	58,430	17,547	282	2,139	19,968	5,100	0	0	25,068
May 2010	30,753	0	781	31,534	17,135	312	2,267	19,714	5,098	0	0	24,812
June 2010	56,926	0	872	57,798	17,531	603	2,655	20,789	5,093	0	0	25,882
July 2010	53,905	0	1,224	55,129	17,184	370	2,198	19,753	5,097	0	0	24,850
August 2010	40,188	0	1,063	41,251	17,221	391	1,881	19,493	5,097	0	0	24,590
September 2010	78,745	60,000	769	139,514	16,968	567	2,541	20,076	5,097	0	364,757	389,930
TOTALS	\$594,803	\$60,000	\$10,054	\$664,857	\$207,801	\$4,446	\$26,176	\$238,423	\$58,618	0	\$364,757	\$661,798

1/ Reimbursements include collections from RMOs, and fines, penalties, and interest.

2/ Includes monthly and retroactive benefit payments.

3/ Treatment expenditures include reimbursements to the United Mine Workers' Health and Retirement Funds.

4/ Repayment of principal and interest on principal for the zero-coupon bonds issued to refinance the BLDTF debt under the Emergency Economic Stabilization Act of 2008.

Table C-1
Total Industry Compensation and Benefit Payments Under LHWCA 1/
CY 2000 - CY 2009 2/
(\$ thousands)

Payments By:	Calendar Year									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<i>Self-Insured Employers</i>	\$278,952	\$307,708	\$310,940	\$309,843	\$322,520	\$325,694	\$368,744	\$325,544	\$340,336	\$388,088
<i>Insurance Carriers</i>	249,671	236,726	246,603	262,753	278,887	325,027	367,625	456,773	504,348	551,716
Total Payments	\$528,623	\$544,434	\$557,543	\$572,596	\$601,407	\$650,721	\$736,369	\$782,317	\$844,684	\$939,804

1/ Includes disability compensation and medical benefit payments under LHWCA, DCCA, and all other extensions to the Act.

2/ Industry payments are reported to the Department of Labor on a calendar year basis.

**Table C-2
National Average Weekly Wage (NAWW) and Corresponding Maximum
and Minimum Compensation Rates and Annual Adjustments Pursuant
to Sections 6(b), 9(e), and 10(f) of LHWCA**

Period	NAWW	Maximum Payable	Minimum Payable	Annual Adjustment (% Increase in NAWW)
11/26/72-9/30/73	\$131.80	\$167.00	\$65.90	--
10/01/73-9/30/74	140.26	210.54	70.18	6.49
10/01/74-9/30/75	149.10	261.00	74.57	6.26
10/01/75-9/30/76	159.20	318.38	79.60	6.74
10/01/76-9/30/77	171.28	342.54	85.64	7.59
10/01/77-9/30/78	183.61	367.22	91.81	7.21
10/01/78-9/30/79	198.39	396.78	99.20	8.05
10/01/79-9/30/80	213.13	426.26	106.57	7.43
10/01/80-9/30/81	228.12	456.24	114.06	7.03
10/01/81-9/30/82	248.35	496.70	124.18	8.87
10/01/82-9/30/83	262.35	524.70	131.18	5.64
10/01/83-9/30/84	274.17	548.34 ^{1/}	137.09	4.51
10/01/84-9/30/85	289.83	579.66	144.92	5.71 ^{2/}
10/01/85-9/30/86	297.62	595.24	148.81	2.69
10/01/86-9/30/87	302.66	605.32	151.33	1.69
10/01/87-9/30/88	308.48	616.96	154.24	1.92
10/01/88-9/30/89	318.12	636.24	159.06	3.13
10/01/89-9/30/90	330.31	660.62	165.16	3.83
10/01/90-9/30/91	341.07	682.14	170.54	3.26
10/01/91-9/30/92	349.98	699.96	174.99	2.61
10/01/92-9/30/93	360.57	721.14	180.29	3.03
10/01/93-9/30/94	369.15	738.30	184.58	2.38
10/01/94-9/30/95	380.46	760.92	190.23	3.06
10/01/95-9/30/96	391.22	782.44	195.61	2.83
10/01/96-9/30/97	400.53	801.06	200.27	2.38
10/01/97-9/30/98	417.87	835.74	208.94	4.33
10/01/98-9/30/99	435.88	871.76	217.94	4.31
10/01/99-9/30/00	450.64	901.28	225.32	3.39
10/01/00-9/30/01	466.91	933.82	233.46	3.61
10/01/01-9/30/02	483.04	966.08	241.52	3.45
10/01/02-9/30/03	498.27	996.54	249.14	3.15
10/01/03-9/30/04	515.39	1,030.78	257.70	3.44
10/01/04-9/30/05	523.58	1,047.16	261.79	1.59
10/01/05-9/30/06	536.82	1,073.64	268.41	2.53
10/01/06-9/30/07	557.22	1,114.44	278.61	3.80
10/01/07-9/30/08	580.18	1,160.36	290.09	4.12
10/01/08-9/30/09	600.31	1,200.62	300.16	3.47
10/01/09-9/30/10	612.33	1,224.66	306.17	2.00

^{1/} Maximum became applicable in death cases (for any death after September 28, 1984) pursuant to LHWCA Amendments of 1984. Section 9(e)(1) provides that the total weekly death benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefits that the deceased would have been eligible to receive under section 6(b)(1). Maximum in death cases not applicable to DCCA cases (*Keener v. Washington Metropolitan Area Transit Authority*, 800 F.2d 1173 (D.C. Cir. (1986))).

^{2/} Five percent statutory maximum increase applicable in FY 1985 under section 10(f) of LHWCA, as amended. Maximum increase not applicable to DCCA cases (see note 1/, above).

Table C-3
LHWCA and DCCA Special Funds' Expenditures 1/
FY 2001 - FY 2010
(\$ thousands)

FY	LHWCA						DCCA					
	Expenditures (\$)					Number of Second Injury Cases	Expenditures (\$)					Number of Second Injury Cases
	Total	Second Injury Cases 2/	Pre Amend. Cases 3/	Rehab. 4/	Other 5/		Total	Second Injury Cases 2/	Pre Amend. Cases 3/	Rehab. 4/	Other 5/	
2001	\$133,374	\$119,952	\$2,295	\$5,121	\$6,006	4,953	\$11,341	\$10,368	\$708	\$0	\$265	601
2002	131,715	119,661	2,240	4,801	5,013	4,880	11,386	10,214	702	0	469	585
2003	131,589	119,965	2,153	4,628	4,844	4,778	11,184	9,997	664	0	523	572
2004	135,247	122,358	2,081	4,990	5,818	4,694	10,920	9,867	645	0	408	544
2005	134,549	122,418	1,973	5,002	5,156	4,588	10,604	9,767	597	0	240	527
2006	133,270	123,412	1,811	2,749	5,298	4,908	10,246	9,418	588	0	240	621
2007	131,920	117,524	1,796	6,715	5,885	4,728	10,087	9,260	613	0	214	603
2008	126,933	116,894	1,673	2,330	6,035	4,533	9,960	9,104	630	0	226	582
2009	132,688	121,203	1,656	2,832	6,996	4,378	10,094	9,197	590	0	306	550
2010	128,110	116,703	1,484	3,183	6,740	4,201	9,388	8,598	548	0	241	516

1/ Special Fund expenditures shown in this table are reported on a cash basis, i.e., expenses are recognized when paid.

2/ Section 8(f) payments to employees who sustain second injuries that, superimposed on a pre-existing injury, result in the employee's permanent disability or death.

3/ Section 10(h) of the Act requires that compensation payments to permanent total disability and death cases, when the injury or death is caused by an employment event that occurred prior to enactment of the 1972 amendments, be adjusted to conform with the weekly wage computation methods and compensation rates put into effect by the 1972 amendments. Fifty percent of any additional compensation or death benefit paid as a result of these adjustments are to be paid out of the Special Fund accounts.

4/ In cases where vocational or medical rehabilitation services for permanently disabled employees are not available otherwise, and for maintenance allowances for employees undergoing vocational rehabilitation, sections 39(c) and 8(g) of the Act authorize the cost of these services to be paid by the Special Fund.

5/ For cases where impartial medical exams or reviews are ordered by the Department of Labor (section 7(e) of Act) and where a compensation award cannot be paid due to employer default (section 18(b)), the expenses or payments resulting from these actions may be covered by the Special Fund. Also included as "Other" expenditures of the Funds are disbursements under section 44(d) to refund assessment overpayments in FY 2001 - FY 2006. Excluded are disbursements from proceeds of employer securities redeemed under section 32 of the Act. These monies are exclusively for payment of compensation and medical benefits to employees of companies in default.

Note: Special Fund expenditure totals for some years as shown above may differ from those reported to Congress in the Appendix to the President's budget. The figures here are from year-end Status of Funds reports while the President's budget reflects total outlays as reported to the Department of Treasury and may include technical adjustments made by Treasury or the Office of Management and Budget.

Table C-4
LHWCA and DCCA Special Funds' Assessments 1/
CY 2001 - CY 2010
(\$ thousands)

CY	LHWCA			DCCA		
	Total Industry Assessments 2/	Preceding Year Total Industry Payments 3/	Assessment Base Yr.	Total Industry Assessments 2/	Preceding Year Total Industry Payments	Assessment Base Yr.
2001	\$133,000	\$361,549	CY 2000	\$12,000	\$5,103	CY 2000
2002	125,000	372,376	CY 2001	11,000	5,552	CY 2001
2003	125,000	364,194	CY 2002	10,800	4,746	CY 2002
2004	137,000	368,671	CY 2003	11,500	4,286	CY 2003
2005	135,000	388,258	CY 2004	11,500	5,402	CY 2004
2006	125,000	418,714	CY 2005	10,500	4,277	CY 2005
2007	125,000	471,133	CY 2006	10,000	4,185	CY 2006
2008	124,000	495,148	CY 2007	8,500	4,758	CY 2007
2009	125,000	564,798	CY 2008	11,500	3,598	CY 2008
2010	124,000	621,671	CY 2009	7,500	3,437	CY 2009

1/ Annual assessments of employers and insurance carriers are the largest single source of receipts to the Special Funds. Other receipts to the Funds include fines and penalties, payments for death cases where there is no person entitled under the Act to the benefit payments, interest earned on Fund investments, overpayment and third party recoveries, and monies received from redemption of securities under section 32 of the Act to pay compensation due employees of companies in default. These payments constitute a small portion of the total receipts of the Special Funds.

2/ Assessments as shown here are not receipts to the Fund that were received during a given calendar year, but total assessments that are receivable from employers and insurance carriers based on the Special Fund assessment formula as prescribed under section 44(c) of the Act.

3/ Annual industry assessments prior to CY 1985 were based on each employer's or insurance carrier's total disability compensation and medical benefit payments under the Act during the preceding calendar year. The LHWCA Amendments of 1984 revised the method for computing assessments in two ways. Effective in CY 1985, assessments are based on disability compensation payments only, thereby excluding medical benefits from the computation. Also, a factor for section 8(f) payments attributable to each employer/carrier was added to the assessment base.

Table C-5
**Summary of Case Processing Activities Under LHWCA 1/
 FY 2001 - FY 2010**

Adjudication Level and Case Status	Fiscal Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
District Offices										
Pending Inventory of Cases	6,489	7,391	5,495	6,051	6,375	6,338	8,563 4/	7,726	8,075	7,700
OALJ										
Carryover from Previous FY	3,562	3,388	2,980	2,517	2,355	2,318	1,984	2,123	2,168	2,324
New Cases	3,500	3,276	3,036	2,926	2,763	2,413	2,614	2,657	2,696	2,884
Total Docket	7,062	6,664	6,016	5,443	5,118	4,731	4,598	4,780	4,864	5,208
(Dispositions)	3,674	3,529	3,499	3,088	2,800	2,747	2,475	2,612	2,540	2,798
Pending Inventory	3,388	2,980 3/	2,517	2,355	2,318	1,984	2,123	2,168	2,324	2,410
BRB										
Carryover from Previous FY	295	248	208	267	222	211	182	152	134	114
New Cases	317	260	332	297	288	248	241	226	229	200
Total Docket	612	508	540	564	510	459	423	378	363	314
(Dispositions)	384	319	282	355	304	288	282	260	256	195
Pending Inventory	248 2/	208 2/	267 2/	222 2/	211 2/	182 2/	152 2/	134 2/	114 2/	130 2/

1/ Beginning in FY 1988, DCCA cases are excluded from DLHWC's District Offices' inventory as administration of these cases was delegated to the District of Columbia government effective July 18, 1988. Case processing and adjudication activities at the Office of Administrative Law Judges (OALJ) and Benefits Review Board (BRB) levels continue to include both LHWCA and DCCA cases.

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

3/ Includes dispositions of Boone 33(g) cases.

4/ The increase in pending inventory compared to FY 2006 was due to the large number of new Defense Base Act cases created in the second quarter of FY 2007. The total number of new cases increased by 42 percent during FY 2007.

Table D-1 Part B
Status of All EEO/CPA Applications at the End of FY 2010 1/

Case Status/Claims Activity	CASE 2/	CLAIM 3/
Total Applications Received-Program Inception Through 9/30/2010	73,091	110,689
Total Covered Applications Received-Program Inception Through 9/30/2010	58,470	92,671
Final Decisions Completed by Final Adjudication Branch (FAB) 4/		
Final Approved	51,488	77,024
Final Denied	30,070	45,584
	21,418	31,440
Recommended Decisions by District Offices 5/	1,470	3,109
Outstanding Recommended Decision to Approve	457	1,182
Outstanding Recommended Decision to Deny	1,013	1,927
Completed Initial Processing - Referred to NIOSH	2,734	6,525
Pending Initial Processing In District Office 6/	2,778	6,013
Lump Sum Compensations	28,111	43,048
Total Payment Amounts		\$3,530,881,806

1/ Statistics show the status of all applications filed from program inception through September 30, 2010.

2/ "Case" counts are numbers of employees (or survivors of employees) whose work and illness or death are the basis for a "claim." (One case may have multiple survivor claims).

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

4/ Each case or claim also received recommended decision by district office.

5/ Each case or claim still pending final decision by FAB.

6/ Includes remanded cases now in development and closed cases.

**Table D-1 Part E
Status of All EEO/CPA Applications at the End of FY 2010 1/**

Case Status/Claims Activity	CASE 2/	CLAIM 3/
Total Applications Received-Program Inception Through 9/30/2010	64,402	91,604
Total Covered Applications Received-Program Inception Through 9/30/2010	52,951	61,577
Final Decisions Completed by Final Adjudication		
Branch (FAB) 4/	44,870	47,750
Final Approved	24,976	26,635
Final Denied	19,894	21,115
Recommended Decisions by District Offices 5/	1,488	1,990
Outstanding Recommended Decision to Approve	468	727
Outstanding Recommended Decision to Deny	1,020	1,263
Completed Initial Processing - Referred to NIOSH	1,413	1,866
Pending Initial Processing In District Office 6/	5,180	9,971
Compensation Payments (Unique Cases and Claims)	18,851	19,962
Total Compensation Payment Amts.		\$2,105,776,495
Lump Sum Allocations (Unique Cases and Claims)	9,070	9,739
Total Lump Sum Payment Amts.		\$1,273,909,346
Wage Loss Allocations (Unique Cases and Claims)	1,564	1,925
Total Wage Loss Payment Amts.		\$93,544,605
Impairment Allocations (Unique Cases and Claims)	6,513	6,513
Total Impairment Payment Amts.		\$738,322,544

1/ Statistics show the status of all applications filed from program inception through September 30, 2010.

2/ "Case" counts are numbers of employees (or survivors of employees) whose work and illness or death are the basis for a "claim." (One case may have multiple survivor claims).

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

4/ Each case or claim also received recommended decision by district office.

5/ Each case or claim still pending final decision by FAB.

6/ Includes remanded cases now in development and closed cases.

Table D-2 Part B
Processing Activity During FY 2010
on All EEOICPA Cases/Claims 1/

Processing Activity	CASE 2/	CLAIM 3/
Total Cases/Claims Received-FY 2010	6,510	10,194
Total Cases/Claims (Covered Applications) Received-FY 2010	6,136	9,729
Final Decisions by FAB Offices in FY 2010	7,469 4/	10,797
Final Approved	3,800	5,748
Final Denied	3,669	5,049
Modification Orders in FY 2010	272	330
Recommended Decisions by District Offices in FY 2010	8,226	12,439
Recommended Decision Only, to Approve	4,365	6,919
Recommended Decision Only, to Deny	3,861	5,520
Referrals to NIOSH in FY 2010	3,296	4,435
Lump Sum Compensation Payments in FY 2010	3,278	5,034
ECMS-Generated Payments	3,243	4,983
Non ECMS-Generated Payments	35	51
Remands	202	294

1/ Activity statistics capture actions made during FY 2010 only, therefore the number of activities reported do not add up to the total number of cases/claims received during FY 2010. (Many activities recorded occurred on cases/claims received prior to FY 2010).

2/ "Case" counts are numbers of employees (or survivors of employees) whose work and illness or death are the basis for a "claim." (One case may have multiple survivor claims).

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

4/ Total includes cases with recommended decisions in FY 2010.

Table D-2 Part E
Processing Activity During FY 2010
on All EEO/CPA Cases/Claims 1/

Processing Activity	CASE 2/	CLAIM 3/
Total Cases/Claims Received-FY 2010	6,566	8,677
Total Cases/Claims (Covered Applications) Received-FY 2010	5,892	6,982
Final Decisions by FAB Offices in FY 2010	10,577 4/	10,867
Final Approved	6,178	6,330
Final Denied	4,399	4,537
Modification Orders in FY 2010	356	425
Recommended Decisions by District Offices in FY 2010	10,809	11,197
Recommended Decision Only, to Approve	6,327	6,525
Recommended Decision Only, to Deny	4,482	4,672
Referrals to NIOSH in FY 2010	1,956	2,106
Compensation Payments in FY 2010 (Unique Cases and Claims)	4,312	4,429
ECMS-Generated Payments	4,288	4,403
Non ECMS-Generated Payments	24	26
Total Compensation Payment Amts.		\$380,986,882 5/
Lump Sum Allocations (Unique Cases and Claims)	1,396	1,480
Total Compensation Payment Amts.		\$159,310,270
Wage-Loss Allocations (Unique Cases and Claims)	496	538
Total Wage-Loss Payment Amts.		\$22,924,283
Impairment Allocations (Unique Cases and Claims)	2,699	2,699
Total Impairment Payment Amts.		\$188,929,724
Remands	238	332

1/ Activity statistics capture actions made during FY 2010 only, therefore the number of activities reported do not add up to the total number of cases/claims received during FY 2010. (Many activities recorded occurred on cases/claims received prior to FY 2010).

2/ "Case" counts are numbers of employees (or survivors of employees) whose work and illness or death are the basis for a "claim." (One case may have multiple survivor claims).

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

4/ Total includes cases with recommended decisions in FY 2010.

5/ Total includes compensation payments of \$9,822,605 that were not generated by Energy Case Management System.

Table D-3 Part B
EEOICPA Cases With Approved Decisions and Payments by Category,
Program Inception Through September 30, 2010

Category	Number of Approved Cases 1/	Percentage of Total Final Approvals	Number of Paid Claimants 1/	Total Compensation Paid 2/ (\$ thousands)	Percentage of Total Compensation Paid
Radiation Exposure Comp. Act (RECA) 3/	6,733	22.4%	10,472	\$334,842	9.5%
Special Exposure Cohort Cancer (CN)	11,909	39.6%	18,712	1,740,910	49.3%
Dose Reconstructed Cancer (CN)	7,481	24.9%	10,536	1,110,748	31.5%
Beryllium Disease (CBD) 4/	1,980	6.6%	2,604	292,580	8.3%
Beryllium Sensitivity-Only (BS)	1,611	5.4%	N/A	N/A	N/A
Silicosis (CS)	81	0.3%	99	11,650	0.3%
Multiple Conditions 5/	258	0.9%	280	37,950	1.1%
TOTAL	30,053	100.0%	42,703	\$3,528,680 6/	100.0%

1/ There is not a direct correlation between number of approved cases and number of paid claimants for two reasons: (1) more than one claimant can receive payment on a single approved case, and (2) some cases were approved prior to 9/30/2010, but payments were not issued.

2/ Represents total lump sum compensation payments from EEOIC program inception through September 30, 2010.

3/ RECA cases are not counted in any other category of this table.

4/ Cases approved for both CBD and BS are counted in the CBD category, only.

5/ Cases counted in the Multiple Conditions category were approved for CN and CBD, or CN and CS, or CBD and CS, or CN and BS, or CS and BS.

6/ Total compensation paid does not include cases that could not be attributed to the designated categories.

Table D-4 Part B
EEOICPA Cases With Final Decision to Deny,
Program Inception Through September 30, 2010

Reason for Denial	Number of Cases 1/
Employee Did Not Work at a Covered DOE Facility, Atomic Weapons Employer, or Beryllium Vendor During a Covered Time Period	4,938
Alleged Survivor Not an Eligible Beneficiary	635
Claimed Condition Not Covered Under Part B of EEOICPA 2/	9,433
Dose Reconstruction Reveals the Probability That the Cancer is Related to Employment is Less Than 50 Percent	15,038
Medical Evidence is Insufficient to Establish Entitlement	5,745
TOTAL	35,789

1/ A case may have more than one final decision. (For example, a request for modification may result in a second final decision on a case). Therefore, the total number shown does not represent the number of cases with final decisions to deny.

2/ Non-covered applications.

Table D-4 Part E
EEOICPA Cases With Final Decision to Deny,
Program Inception Through September 30, 2010

Reason for Denial	Number of Cases 1/
Employee Did Not Work at a Covered DOE Facility, Atomic Weapons Employer, or Beryllium Vendor During a Covered Time Period	3,472
Alleged Survivor Not an Eligible Beneficiary	7,689
Claimed Condition Not Covered Under Part E of EEOICPA 2/	143
Dose Reconstruction Reveals the Probability That the Cancer is Related to Employment is Less Than 50 Percent	6,328
Medical Evidence is Insufficient to Establish Entitlement	13,423
TOTAL	31,055

1/ A case may have more than one final decision. (For example, a request for modification may result in a second final decision on a case). Therefore, the total number shown does not represent the number of cases with final decisions to deny.

2/ Non-covered applications.

Table D-5 Part B
Most Prevalent Non-Covered Medical Conditions,
EEOIC Program Inception Through September 30, 2010

Non-Covered Medical Condition	Percentage of All Denials For This Condition 1/
Other Lung Conditions	22 %
Heart Condition/Failure/Attack/Hypertension	11
Chronic Obstructive Pulmonary Disease & Emphysema	9
Asbestosis	6
Renal Condition or Disorder (Kidney Failure, Kidney Stones)	6
Hearing Loss	3
Benign Tumors, Polyps, Skin Spots	3
Diabetes	3
Neurological Disorder	2
Thyroid Conditions (e.g., Hypothyroidism)	2
Anemia	1
Back or Neck Problems	1
Parkinson's Disease	1
Psychological Conditions	1
All Other Non-Covered Conditions (Each Less Than 1%) or Other (Not Listed)	22
No Condition Reported on Claim Form or Blank Condition Type	8

1/ Based on cases that were denied because claimed condition was not covered under Part B of EEOICPA. These figures exclude cases that have a "covered" condition, whereas Table D-4 Part B includes these cases.

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

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Office of Workers'
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200 Constitution Avenue, NW.
Washington, DC 20210
202-693-0031
www.dol.gov/owcp**

**Director, Office of Workers'
Compensation Programs**
Gary A. Steinberg, Acting

Division of Administration and Operations
Michael Tyllas, Director

Division of Financial Administration
Joseph Shellenberger, Director

Division of Federal Employees' Compensation
(www.dol.gov/owcp/dfec)
Douglas C. Fitzgerald, Director
Julia Tritz, Acting Deputy Director

Division of Coal Mine Workers' Compensation
(www.dol.gov/owcp/dcmwc)
Steven D. Breeskin, Director
Michael McClaran, Deputy Director

**Division of Longshore and Harbor Workers'
Compensation**
(www.dol.gov/owcp/dlhwc)
Antonio Rios, Acting Director

**Division of Energy Employees Occupational
Illness Compensation**
(www.dol.gov/owcp/energy)
Rachel P. Leiton, Director
Christy A. Long, Deputy Director
LuAnn Kressley, Chief, Final Adjudication Branch

Region I/II -- Northeast

*(Connecticut, Maine, Massachusetts, New Hampshire, New Jersey,
New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands)*

Regional Office (New York)

Zev Sapir, Regional Director
U.S. Department of Labor, OWCP
201 Varick Street, Room 740
New York, NY 10014
646-264-3100

New York FECA District Office

Rholanda Basnight, District Director
U.S. Department of Labor
OWCP/DFEC
201 Varick Street, Room 740
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New York Longshore District Office

Richard V. Robilotti, District Director
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Boston FECA District Office

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OWCP/DFEC
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Boston Longshore District Office

David Groeneveld, District Director
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Region III -- Philadelphia

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Regional Office

John McKenna, Acting Regional Director
U.S. Department of Labor, OWCP
Curtis Center, Suite 780 West
170 S. Independence Mall West
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215-861-5406

Philadelphia FECA District Office

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170 S. Independence Mall West
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267-687-4160

Baltimore Longshore District Office

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The Federal Building, Room 410-B
31 Hopkins Place
Baltimore, MD 21201
410-962-3677

Norfolk Longshore District Office

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U.S. Department of Labor
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Federal Building, Room 212
200 Granby Mall
Norfolk, VA 23510
757-441-3071

Johnstown Black Lung District Office

Douglas Dettling, District Director
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Greater Johnstown Tech Park
1 Tech Park Drive, Suite 250
Johnstown, PA 15901-1267
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Charleston Black Lung District Office

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Greensburg Black Lung District Office

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Parkersburg Black Lung Sub-District Office

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DCMWC Claimant Service Locations:

U.S. Department of Labor
OWCP/DCMWC
Mine Safety & Health Academy, Rm. G-100
139 Airport Road
Beckley, WV 25802
304-252-9514

Benefit Counselors
Bluestone Health Center
3997 Beckley Road
Princeton, WV 24740
304-431-5499

U.S. Department of Labor
OWCP/DCMWC
1103 George Kostas Drive
Logan, WV 25601
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U.S. Department of Labor
OWCP/DCMWC
Mine Safety and Health Administration Office
1664 Pond Fork Road
Madison, WV 25130
1-800-347-3749

U.S. Department of Labor
OWCP/DCMWC
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U.S. Department of Labor
OWCP/DCMWC
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Region IV -- Southeast

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

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Jacksonville FECA District Office

Magdalena Fernandez, District Director
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OWCP/DFEC
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Jacksonville Longshore District Office

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OWCP/DLHWC
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Jacksonville Energy District Office

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Pikeville Black Lung District Office

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164 Main Street, Suite 508
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Mt. Sterling Black Lung Sub-District Office

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EEOICPA Resource Center

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Region V/VII -- Midwest

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

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Cleveland FECA District Office

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Cleveland Energy District Office

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Kansas City FECA District Office

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Two Pershing Square Building
2300 Main Street, Suite 1090
Kansas City, MO 64108-2416
816-268-3040

EEOICPA Resource Center

Contract Facility:

(Portsmouth Site)

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

Region VI/VIII -- Southwest

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

Regional Office (Dallas)

Sharon Tyler, Acting Regional Director
U.S. Department of Labor, OWCP
525 South Griffin Street, Room 407
Dallas, TX 75202
972-850-2409

Dallas FECA District Office

Christina Stark, District Director
U.S. Department of Labor
OWCP/DFEC
525 South Griffin Street, Room 100
Dallas, TX 75202
214-749-2320

Houston Longshore District Office

David Widener, District Director
U.S. Department of Labor
OWCP/DLHWC
Mickey Leland Federal Building
1919 Smith Street, Suite 870
Houston, TX 77002
713-209-3235

New Orleans Longshore District Office

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

Denver FECA District Office

Shirley Bridge, District Director
U.S. Department of Labor
OWCP/DFEC
P.O. Box 25602
One Denver Federal Center, Bldg. 53
Denver, CO 80225-0602
303-202-2500

Denver Black Lung District Office

Valerie Jackson, District Director
U.S. Department of Labor
OWCP/DCMWC
Building 53 – Suite D2212
One Denver Federal Center
Denver, CO 80225-0603
720-264-3100 (Toll-Free 1-800-366-4612)

Denver Energy District Office

Janet Kapsin, District Director
U.S. Department of Labor
OWCP/DEEOIC
P.O. Box 25601
One Denver Federal Center, Bldg. 53
Denver, CO 80225-0601
720-264-3060 (Toll-Free 1-888-805-3389)

EEOICPA Resource Center Contract Facilities:

(Rocky Flats Site)

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

(Española Site)

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

Region IX/X -- Pacific

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

Regional Office (San Francisco)

Sharon Tyler, Regional Director
U.S. Department of Labor, OWCP
90 Seventh Street, Suite 15-100F
San Francisco, CA 94103-6716
415-241-3300

San Francisco FECA District Office

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

San Francisco Longshore District Office

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

Long Beach Longshore District Office

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

Honolulu Longshore Sub-District Office

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

Seattle FECA District Office

Marcus Tapia, District Director
U.S. Department of Labor
OWCP/DFEC
300 Fifth Avenue, Suite 1050F
Seattle, WA 98104-2429
206-470-3100

Seattle Longshore District Office

R. Todd Bruininks, District Director
U.S. Department of Labor
OWCP/DLHWC
300 Fifth Avenue, Suite 1050L
Seattle, WA 98104
206-504-5287

Seattle Energy District Office

Joyce Vail, District Director
U.S. Department of Labor
OWCP/DEEOIC
300 Fifth Avenue, Suite 1050E
Seattle, WA 98104-2397
206-373-6750 (Toll-Free 1-888-805-3401)

EEOICPA Resource Center Contract Facilities:

(Idaho Falls Site)

Joe Krachenfels, Office Manager
Exchange Plaza
1820 East 17th Street, Suite 250
Idaho Falls, ID 83404
208-523-0158 (Toll-Free 1-800-861-8608)
idaho.center@rroho.com

(Las Vegas Site)

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

(Hanford Site)

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

(California Site)

Joe Krachenfels, Office Manager
7027 Dublin Blvd., Suite 150
Dublin, CA 94568
925-606-6302 (Toll-Free 1-866-606-6302)
california.center@rroho.com

National Operations Office

(District of Columbia, Maryland, Virginia)

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

