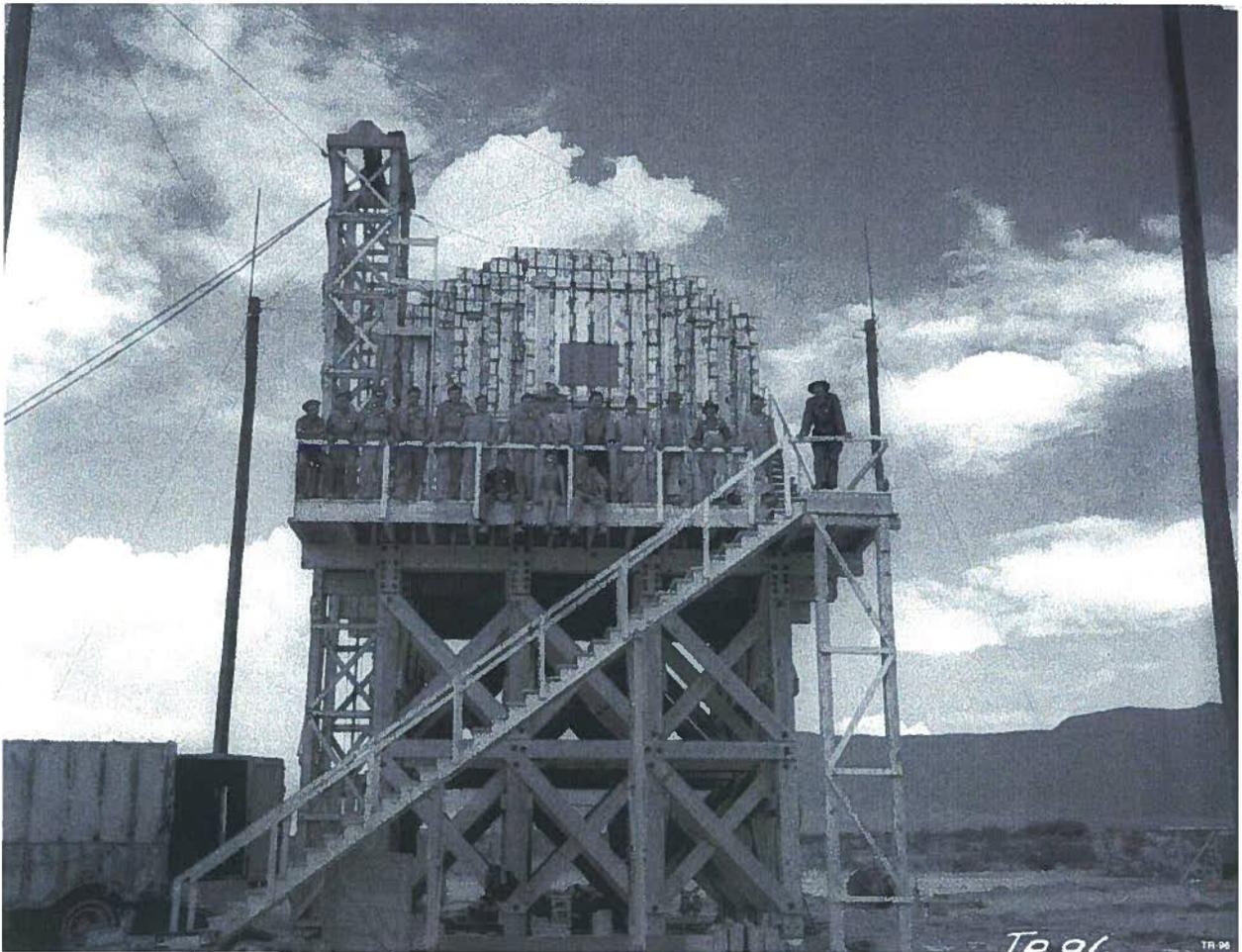


**OFFICE OF THE OMBUDSMAN
FOR THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM**

2019 ANNUAL REPORT TO CONGRESS



OFFICE OF THE OMBUDSMAN
UNITED STATES DEPARTMENT OF LABOR

Cover photo: Trinity Tower, Trinity Nuclear Explosion Site at White Sands Missile Range, New Mexico.
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PREFACE TO THE REPORT

In this Annual Report to Congress, the Ombudsman for the Energy Employees Occupational Illness Compensation Program sets forth the complaints, grievances, and requests for assistance received during calendar year 2019, and provides an assessment of the most common difficulties encountered by claimants and potential claimants in that year. However, before addressing the complaints, grievances and requests for assistance received in 2019, we would like to acknowledge some of the efforts undertaken by the Division of Energy Employees Occupational Illness Compensation (DEEOIC) in calendar year 2019 to assist claimants in filing and processing claims under the Energy Employees Occupational Illness Compensation Act (EEOICPA):

- DEEOIC developed an informational “rack card” that lists nearly all of the resources available on the DEEOIC website, which includes a link to the website. The rack card had been made available at Resource Center (RC) offices, and is distributed at outreach events and in some mailings.
- DEEOIC expanded the role of the Resource Centers (RCs) to begin answering all incoming calls to a DEEOIC centralized phone queue, which includes all District Office and Final Adjudication Branch (FAB) general and toll free lines.
- DEEOIC added a self-guided video demonstration of the Site Exposure Matrices (SEM) database to the website. DEEOIC announced it was also working with OWCP’s Central Bill Processor to provide tutorials, demonstrations and guidance regarding the medical billing process.
- DEEOIC published several changes to the Procedure Manual (Version 2.3). The changes to the Procedure Manual included changes to presumptive standards applied for evaluating claims for bladder cancer, hearing loss, lung cancer, mesothelioma, ovarian cancer, and pleural plaques. The changes were incorporated into the Procedure Manual Exhibit 15-4, Exposure and Causation Presumptions with Development Guidance for Certain Conditions.
- The following outreach events and workshops were held: (sourced from JOTG Monthly Conf. Call Minutes published by DEEOIC)
 - Joint Outreach Task Group (JOTG) Meeting in Oak Ridge, Tennessee on April 24, 2019;
 - JOTG Meeting in Middle Island, New York on May 2, 2019;
 - Authorized Representative Workshop in Las Vegas, Nevada on June 4-5, 2019;
 - JOTG Meeting in Paducah, Kentucky on June 20, 2019;
 - Department of Labor (DOL) Satellite Offices in Albany, Oregon on July 23, 2019; Pahrump, Nevada on July 25, 2019; Largo, Florida on August 6, 2019; Erwin, Tennessee on August 29, 2019;
 - Town Hall Meeting in Bolingbrook, Illinois on September 5, 2019;
 - Energy Outreach Event in Central Falls, Rhode Island on November 5, 2019;
 - JOTG Meeting in Amarillo, Texas on December 5, 2019

In addition, we wish to acknowledge the many instances throughout the year where members of the DEEOIC staff assisted claimants and/or our Office in resolving matters brought to their attention.

INTRODUCTION

Section 7385s-15 of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, requires the Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program (the Office) to submit an annual report to Congress. *See* 42 U.S.C. § 7385s-15. In this annual report, we are to set forth: (a) the numbers and types of complaints, grievances, and requests for assistance received by the Office during the preceding year; and (b) an assessment of the most common difficulties encountered by claimants and potential claimants during that year. *See* 42 U.S.C. § 7385s-15(e). The following is the Office’s annual report for calendar year 2019.

I. An Overview of the Energy Employees Occupational Illness Compensation Program Act (the EEOICPA)

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

In enacting this program, Congress recognized that:

1. Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Nuclear weapon production and testing have involved unique dangers, including potential catastrophic nuclear accidents that private insurance carriers have not covered and recurring exposures to radioactive substances and beryllium that, even in small amounts, can cause medical harm.
2. Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.
3. Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.

See 42 U.S.C. § 7384(a)(1),(2), and (3).

As originally enacted in October 2000, the EEOICPA contained two parts, Part B and Part D. Part B which is administered by the Department of Labor (DOL) provides the following compensation and benefits:

- Lump—sum payment of \$150,000 and the payment of medical expenses (for the accepted illness starting as of the date of filing) for:
 - Employees of the DOE, as well as its contractors, subcontractors, and employees of atomic weapons employers (AWEs) with radiation-induced cancer if: (a) the employee developed

cancer after working at a covered facility; and (b) the cancer is “at least as likely as not” related to covered employment.¹

- Employees who are members of Special Exposure Cohort (SEC) and who develop one of the specified cancers outlined in 42 U.S.C. § 7484i(17).²
- All federal employees, as well as employees of the DOE, its contractors and subcontractors, or designated beryllium vendors who worked at a covered facility where they were exposed to beryllium and who develop Chronic Beryllium Disease (CBD).
- Employees of the DOE or its contractors and subcontractors who worked at least 250 days during the mining of tunnels at underground nuclear weapons test sites in Nevada or Alaska and who develop chronic silicosis.

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

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

Part D of the EEOICPA required the DOE to establish a system by which DOE contractor employees and their eligible survivors could seek assistance in obtaining state workers’ compensation benefits if a Physicians Panel determined that the employee sustained an accepted illness as a result of work-related exposure to a toxic substance at a DOE facility. On October 28, 2004, Congress abolished Part D and created Part E in Subtitle E of Title XXXI of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, 118 Stat. 1811, 2178 (October 28, 2004). Part E is administered by DOL.

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

- DOE contractor and subcontractor employees who develop an illness due to exposure to toxic substances at certain DOE facilities are entitled to medical expenses and may receive monetary compensation of up to \$250,000 for impairment and/or wage-loss.
- Eligible survivors of DOE contractor and subcontractor employees receive compensation of \$125,000 if the employee’s death was caused, contributed to, or aggravated by the covered illness. If the employee had between 10 and 19 years of wage-loss, the survivor receives an

¹ An atomic weapons employer is an entity, other than the United States, that: (A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and (B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program [EEOICPA]. See 42 U.S.C. § 7384i(4).

² If a claimant qualifies for inclusion in a SEC class and develops one of the specified cancers, that claimant receives compensation for that specified cancer without the completion of a radiation dose reconstruction by the National Institute for Occupational Safety and Health, and without a determination by DOL of the probability of causation that the cancer was caused by exposure to radiation at a covered facility.

additional \$25,000. If the worker had 20 or more years of wage-loss, the survivor receives an additional \$50,000.

- Uranium miners, millers, and ore transporters are eligible for medical benefits, as well as up to \$250,000 in monetary compensation for impairment and/or wage-loss if they develop an illness as a result of toxic exposure at a facility covered under Section 5 of RECA. (These uranium miners, millers, or ore transporters are eligible for compensation and medical benefits under Part E even if they did not receive compensation under RECA).

DOL has primary authority for administering Part B and Part E of the EEOICPA. However, other federal agencies are also involved with the administration of this program.

- The DOE ensures that all available worker and facility records and data are provided to DOL. This includes: (1) providing DOL and/or the National Institute for Occupational Safety and Health (NIOSH) with information related to individual claims such as employment verification and exposure records; (2) supporting DOL, NIOSH, and the Advisory Board on Radiation and Worker Health with large-scale records research and retrieval efforts at various DOE sites; (3) conducting research, in coordination with DOL and NIOSH on issues related to covered facility designations; and (4) hosting the Secure Electronic Records Transfer (SERT) system, a DOE hosted environment where DOL, NIOSH, and DOE can securely share records and data.
- NIOSH conducts activities to assist claimants and supports the role of the Secretary of Health and Human Services (HHS) under EEOICPA. These activities include: (1) developing scientific guidelines for determining whether a cancer is related to the worker's occupational exposure to radiation; (2) developing methods to estimate worker exposure to radiation (dose reconstruction); (3) using the dose reconstruction regulations to develop estimates of which classes of workers can be considered for inclusion in a SEC class; and (4) providing staff support for the independent Advisory Board on Radiation and Worker Health that advises HHS and NIOSH on dose reconstructions and SEC petitions.
- The Ombudsman to NIOSH helps individuals with a variety of issues related to the SEC petition process and the dose reconstruction process. The Ombudsman to NIOSH also conducts outreach to promote a better understanding of the EEOICPA, as well as the claims process.

II. The Office of the Ombudsman

Public Law 108-375, which was enacted on October 28, 2004, also established within the DOL an Office of the Ombudsman. The National Defense Authorization Act for 2020, which became effective December 20, 2019, amended the EEOICPA provisions with respect to the Office of the Ombudsman by changing the sunset date for the Office to October 28, 2020, and establishing a new duty for the Office, that being, "To provide guidance and assistance to claimants." Public Law 116-92 (Dec. 20, 2019). Thus, the EEOICPA outlines four (4) specific duties for the Office:

1. Provide information to claimants and potential claimants on the benefits available under Part B and Part E, and on the requirements and procedures applicable to the provision of such benefits.
2. Provide guidance and assistance to claimants.
3. Make recommendations to the Secretary of Labor regarding the location of resource centers for the acceptance and development of EEOICPA claims.
4. Carry out such other duties as the Secretary specifies.

See 42 U.S.C. § 7385s-15(c).

The EEOICPA also requires the Office to submit an annual report to Congress which sets forth:

1. The number and types of complaints, grievances, and requests for assistance received by the Office during the preceding year; and
2. An assessment of the most common difficulties encountered by claimants and potential claimants during the preceding year.

See 42 U.S.C. § 7385s-15(e).

Most of the individuals who contacted the Office did not want to merely register a complaint or grievance. Rather, they were usually looking for guidance/assistance with their claim. In our experience, the two most prominent reasons an individual contacts our Office are: (1) they did not know where else or who else to turn to for assistance and eventually he/she was provided with our contact information; or, (2) other efforts to resolve their concerns were unsuccessful.

Within the limits of our authority, we make every effort to assist claimants and individuals who contact our Office with information and assistance. This assistance may involve: (1) directing the claimant to the appropriate office or agency that can best provide the needed information and assistance; (2) explaining the benefits, as well as the requirements and procedures for obtaining these benefits; (3) answering questions about the program; (4) informing claimants about the various tools and resources developed to assist them, and providing guidance on how to access and use these tools and resources; and (5) providing an ear to listen to the concerns that claimants want someone to hear.

This report is a synthesis of the many e-mails, letters, telephone calls, facsimiles, and face-to-face conversations that the Office had with claimants, potential claimants, family members, authorized representatives, health care providers, and others during calendar year 2019.

EXECUTIVE SUMMARY

In 2019, claimants saw a variety of changes and developments with respect to the EEOICPA, the implementing regulations, and the policies and procedures promulgated by the DEEOIC. For instance, the federal regulations implementing the EEOICPA were updated on April 9, 2019. Some of these updates generated complaints and inquiries to our Office. In particular, the updates to 20 C.F.R. § 30.403(c) setting out the new process that DEEOIC will use for pre-authorizing the payment for in-home health care generated a lot of comments. Furthermore, the Federal (EEOICPA) Procedure Manual was revised on April 5, 2019; May 16, 2019; and November 14, 2019. And consistent with the recommendation of the Advisory Board on Toxic Substances and Worker Health (ABTSWH), revisions were made to the toxic substance exposure and causation presumptions under Part E of the EEOICPA. On December 20, 2019, the Office's duties under the EEOICPA were expanded to include providing guidance and assistance to claimants, and the term of the Office was extended to October 28, 2020.

Claimants and potential claimants who contacted our Office during 2019 did not do so mainly to file a complaint. More often than not claimants contacted our Office primarily to find resources, better understand what was being asked of them from DEEOIC, determine the status of their claim, or receive advice on how to proceed with their claim. Because they did not understand the EEOICPA, or the EEOICPA claims process, claimants often found it difficult to articulate their concerns to us. Therefore, rather than outlining specific concerns, in many instances they provided us with a recount of their interactions with DEEOIC, or a description of their employment and exposures at these covered facilities. In other instances, while they asked specific questions, to answer those questions our Office had to obtain more information about the claimant's interactions with DEEOIC and/or their employment and exposure history. As a result, our encounters with claimants often provided us with the opportunity to gain in-depth insights not only into the specific complaints they raised, but also into their overall experience with the EEOICPA claims process. The assessment of the most common difficulties encountered by claimants and potential claimants found in this Annual Report is based on the opportunities we had throughout 2019 where claimants, ARs, home health care providers, advocates, and others shared with our Office their concerns and experiences with the EEOICPA program.

1. Effectiveness of Outreach

Each year since the inception of the Energy Program, the DEEOIC and other agencies involved with the implementation of the EEOICPA have individually, and collectively, participated in in-person outreach events around the country. Despite these efforts, there are still significant areas of the country where current and former employees, as well as the survivors of these workers have not benefited from these outreach efforts. Additionally, over the past decades, individuals and their family members who previously lived near a facility have moved to other areas of the country. To reach these individuals, efforts need to be continued, and if possible expanded to develop a more dynamic approach to outreach, including taking advantage of opportunities to mail information directly to former workers, to hold smaller events in areas that have yet to be visited, and to utilize local newspapers and social media on a broader scale. Nevertheless while efforts need to be expanded to reach those who do not live near larger facilities, as well as those who have moved away, we recognize that there are benefits derived from continuing to hold outreach events near larger facilities, as well as near areas where previous outreach events have already been held. With respect to these areas, the emphasis should be on expanding the information shared at these events. For example, at some outreach events there could be more

emphasis on demonstrating how to use some of the resources and tools available online. Similarly, ARs and claimants might find it very helpful if materials disseminated by the various agencies that participate in the Authorized Representative Workshop trainings were made available online for those who are unable to attend the workshops due to the limited capacity of these events or their inability to travel to these training sessions. These workshops have been well-attended and the feedback from this training has been positive. Thus, it would appear worthwhile to broaden the distribution of this information.

2. Lack of Understanding of the EEOICPA

Claimants and ARs consistently find that navigating the claims adjudication process is challenging. The claimants who approach us each year with complaints and requests for assistance rarely understand the EEOICPA program or the EEOICPA claims process, and thus approach our Office seeking basic information as to where they are in the adjudication process, what they can expect going forward, who they can expect to work with along the way, and what resources are available to assist them. Moreover, when a claim for benefits is accepted, there are claimants who are confused as to how their claim for medical and/or additional benefits will proceed, and what will be expected of them. Similarly, even after going through the claims process and having a claim accepted, we frequently find that claimants are still unaware that each time they seek additional compensation benefits, they will need to file a claim for those benefits, and will receive another recommended decision and final decision before further compensation benefits are paid. Claimants are informed that their CE is their primary contact as they navigate these processes, but our Office is consistently contacted by claimants and ARs complaining of the unavailability of the claims examiner (CE) or hearing representative (HR). Thus, claimants complain to our Office and also seek resources from us to move forward to the best of their ability. Claimants would benefit from a better awareness of the current resources that are available; where these resources can be found; how to use these resources; and when to use them.

3. Difficulties Developing Evidence and Responding to DEEOIC Requests for Evidence

As claimants proceed through the claims process, DEEOIC generally collects relevant evidence. This evidence may include medical evidence, employment evidence, toxic exposure evidence, and causation evidence. While claimants are often asked to submit additional evidence, they usually are not aware of DEEOIC's efforts to collect evidence, nor are they aware that the evidence collected by DEEOIC is in their claim file and that they can request copies of this evidence. A routine problem that we continue to see involves instances where after obtaining and submitting to DEEOIC a letter from their doctor linking their toxic substance exposure to their claimed illness, claimants were informed by DEEOIC that the doctor's report was insufficient because it was not "well-rationalized." Claimants have complained of not understanding what this term means, and as a result, not knowing what was needed to provide a "well-rationalized" report. This, in our opinion, was another manifestation of the problems that arise when claimants struggle to process a claim without a clear understanding of the program or what is expected of them. To address these concerns claimants need (1) to know the evidence that is available in the claim file and that they have the right to request this evidence; (2) to understand why evidence is deemed insufficient and/or when additional evidence is requested, what that additional evidence needs to address; and (3) to be able to directly interact with someone with knowledge of the EEOICPA program and with access to their claims file, who can assist them as needed.

4. Concerns with Policies and Procedures

Where claimants or ARs submitted evidence to DEEOIC in support of their claim, it was confusing when the subsequent letter or decision from DEEOIC did not explain why their evidence was not credited or how it was weighed in light of the other evidence in the file. Additionally, claimants complained about decisions that did not explain whether or how evidence was evaluated in light of DEEOIC policy, procedures, regulations or the Act. Policies and procedures were also a source of concerns from claimants who did not understand, for example, why the evidence they submitted seemed to be discounted because it was not also found in the SEM database. Other claimants complained about the continued use of DEEOIC policy regarding hearing loss as too narrow and rigid. Instead, claimants generally agreed with the recommendations and discussions regarding hearing loss that have been put forth by the ABTSWH. And claimants who believed that Circular 15-06 had been rescinded in February 2017 reported growing frustration with the fact that instead of DEEOIC applying the presumption that toxic exposures after 1995 were within regulatory limits, now it was simply the IHs who were applying the same exact presumption, with DEEOIC's position being that it is in the discretion of the IHs to make this finding. Thus, claimants agree with the ABTSWH's first recommendation in 2016 which found no empirical basis for this post-1995 toxic substance exposure policy. Claimants and ARs object to its continued use by DEEOIC contract IHs in claims with any post-1995 exposure history as it requires claimants to satisfy a higher burden of proof with evidence they do not have access to or the ability to obtain.

5. Difficulties Obtaining Medical Treatment and Payment of Medical Bills

Admittedly, it can be challenging for individuals to find a doctor in many areas of the country for any number of health care needs. However, claimants with DEEOIC medical benefits cards, which allow for the health care provider to bill DEEOIC directly for services, argue that it has become increasingly difficult to find a doctor who accepts payment from DEEOIC, and where they have such a doctor, increasingly more difficult to retain that doctor. Unfortunately, claimants have reported specific doctors, as well as entire medical practices, deciding to no longer accept patients who use the DEEOIC medical benefits card. Claimants also complained of instances where, due to problems receiving payment from DEEOIC, providers ultimately billed the claimant's other health insurance carrier. This can be a concern for claimants because while the decision to bill the other carrier is made by their provider, claimants worry that this decision could potentially open them up to problems with Medicare or these other insurance carriers should these other carriers become aware that DEEOIC is the primary payor. Other claimants have complained of difficulties obtaining approval to bill for medical treatment and services, or emergency home health care. Whether the issue involves authorization to bill for care, or the need for assistance with unpaid medical bills, the claimants who contacted us frequently complained of a lack of continuity and consistency with respect to the assistance they received. In addition, because of the number of individuals associated with DEEOIC who might be involved in a medical benefits issue, claimants contacted our Office in 2019 complaining that they did not know who to contact when a problem arose.

6. Customer Service, Delays, and Other Administrative Difficulties

When claimants were requested to submit evidence supporting their claim, this evidence usually had to be submitted to DEEOIC within 30 days. In 2019, as in prior years, claimants explained that a request to submit additional evidence often generated questions that they needed answered before they could proceed. Thus, we received complaints when claimants encountered difficulties trying to reach their CE, when they encountered problems having their telephone calls returned, and/or because they experienced rude behavior or poor customer service. Oftentimes facing a deadline to submit evidence, claimants needed immediate access to someone who could accurately and timely answer their questions. Similarly, claimants who encounter rude or poor customer service, first and foremost want to ensure that such conduct is not repeated. Some claimants also indicated to our Office that they wanted to complain to DEEOIC directly about this rude or poor customer service, yet told us that they were hesitant to do so because they feared retaliation. Words of assurance are usually not enough to ease these concerns. Rather, claimants want to file their complaints with a specific person, not just whoever answers the telephone or opens the mail, and they want to file their complaints with someone who is not and will not be involved in the adjudication of their claim. Another administrative issue that became the subject of complaints to our Office in 2019 involved instances where claimants were troubled or sought advice when advised by their CE to withdraw their claim for certain illnesses or for certain benefits. What particularly concerned these claimants was that this advice was often given without any explanation as to why they should withdraw their claim, the impact this action would have on their claim, or how to reopen their claim if/when they wished to proceed with it. And finally, claimants who had received a final decision were often shocked to learn of their right to file an appeal in U.S. District Court, and that the time to file this appeal may have expired before ever learning of this right. Claimants found it misleading to be informed of two out of three of their avenues open to them when they received a final decision and the commensurate deadlines, but not being informed of the third avenue available to them.

These and other issues are discussed in further detail in this Report. It is our hope that this Annual Report provides context for the complaints that we received, and leads to opportunities for improvement and/or ways to address the difficulties that claimants continue to encounter.

TABLES

The Office of the Ombudsman is required to submit to Congress an Annual Report that sets forth: (1) the number and types of complaints, grievances, and requests for assistance that we receive in the preceding year, and (2) an assessment of the most common difficulties encountered by claimants and potential claimants received in the preceding year. 42 U.S.C. § 7385s-15(e)(2). Setting forth the number and types of complaints, grievances, and requests for assistance that we receive in the calendar year is always a challenge. First and foremost, each claimant we encounter comes with their own unique set of problems which they articulate to us in their own unique manner. Under these circumstances identifying the type, or nature or a complaint, can be challenging since claimants rarely express their concerns using the terms and phrases commonly utilized by those who administer the program.

Second, while some claimants approach us with specific questions or concerns, it is more common to be approached by claimants, who especially in their initial conversation with us, do not identify a specific concern. Thus, we are often approached by claimants who simply asks, “Where is my claim?” or “Why was my claim denied?” It is also common to encounter claimants who begin the conversation by providing us with a history of their employment and their exposures at a covered facility, or by recounting their experiences with the EEOICPA claims process. Identifying the specific complaints, grievances, and/or requests for assistance raised by these claimants is generally achieved by asking questions, and obtaining additional documents that shed light on the claimants’ concerns. In the table that follows, the focus is on the concern(s) or request(s) that prompted the claimant to contact us, not every issue that was discussed in the conversations that ensued in order to provide the claimant with a full understanding of the EEOICPA and the EEOICPA claims process.

TABLE 1 – COMPLAINTS, GRIEVANCES, AND REQUESTS FOR ASSISTANCE BY NATURE OF COMPLAINT

NATURE OF COMPLAINT	Number
Difficulties collecting records	
General complaints	44
Employment records	30
Exposure records	39
Concerns with the dose reconstruction	11
Concerns with information found in SEM	23
Difficulties establishing terminal status	25
Difficulties establishing causation	24
Request for assistance	
Sought assistance, did not specify the type of assistance	254
Specifically requested assistance developing evidence	114

Request for status of claim	29
Issues involving interactions with staff of DEEOIC	
General	43
Telephone calls not returned/cannot get through	45
Difficulty scheduling the FAB hearing	4
Rude and/or insensitive behavior	37
Urged to withdraw claim by CE/HR	52
Complaints involving claims for impairment or wage-loss	34
Complaints regarding DEEOIC's application of policy or procedure	
In general (Circular 15-06; presumptions, etc.)	25
Hearing Loss	15
Complaint concerning the cap on benefits	5
Complaints concerning a claimant's interaction with an AR	6
Complaints concerning a claimant's interactions with a health provider	6
Requests for assistance with issues concerning RECA claims	5
Medical Benefits	
Difficulties obtaining authorization or questioning the denial of a request of medical benefits	59
Difficulties enrolling in DEEOIC program	6
DME/massage therapy/home modification issues	21
Complaints alleging a delay in the processing of a claim	57
Claimant needed assistance verifying that he/she was a covered employee or worked at a covered facility	7
Difficulties establishing survivor eligibility	6
Difficulties establishing eligibility in a SEC class	13
Difficulties obtaining payment of a medical bill	51
Difficulties establishing diagnosed illness/consequential illness	18
Just learned of program, need to file a claim	12
Coordination of benefits	1

Reopening/Reconsideration	10
Trying to locate a provider	3
Complained because ineligible for free medical screening	3
Miscellaneous	196
TOTAL	1321

TABLE 2 - COMPLAINTS BY FACILITY

In order to assist claimants, it is not always necessary to identify the facility where the worker was employed. Moreover, even when identifying the facility is necessary, this does suggest any fault on the part of the facility. Rather, the intent of the Table of Facilities is to illustrate the reach of this program and the need for more outreach. Claimants who worked at facilities all across this country contact us with complaints, grievances, and requests for assistance. Some of the facilities on this Table employed large numbers of employees, while others employed smaller numbers. Some operated as covered facilities for many years, while others engaged in covered employment for a relatively short period of time. Yet, regardless of the size of the facility or the number of years it operated as a covered facility, there are those who work, or once worked at these facilities, who have questions and concerns that need to be addressed.

FACILITY	LOCATION	NUMBER OF COMPLAINTS
Allied Chemical Corporation Plant	Metropolis, IL	2
Ames Laboratory	Ames, IA	2
Area IV OF The Santa Susana Field Laboratory	Santa Susana, CA	8
Bethlehem Steel	Lackawanna, NY	2
Blockson Chemical Company	Joliet, IL	2
Brookhaven National Laboratory	Upton, NY	1
BWX Technologies, Inc.	Lynchburg, VA	1
Clarksville Modification Center	Clarksville, TN	1
Feed Material Production Center	Fernald, OH	29
General Electric Company	Cincinnati/Evendale, OH	4
General Electric Plant	Shelbyville, IN	2
General Steel Industries	Granite City, IL	1
Hanford	Richland, WA	33
Idaho National Laboratory	Scoville, ID	4
Iowa Ordnance Plant	Burlington, IA	4
Kansas City Plant	Kansas City, MO	7
Lawrence Livermore National Laboratory	Livermore, CA	4
Los Alamos National Laboratory	Los Alamos, NM	20
Mallinckrodt Chemical Company	St. Louis, MO	2
Mound Plant	Miamisburg, OH	8
Nevada Test Site	Mercury, NV	26
Nuclear Materials and Equipment Corporation	Apollo, PA	3
Nuclear Materials and Equipment Corporation	Parks Township, PA	1
Oak Ridge	Oak Ridge, TN	39
Oak Ridge Gaseous Diffusion Plant (K-25)	Oak Ridge, TN	7
Oak Ridge National Laboratory (X-10)	Oak Ridge, TN	8
Oak Ridge Y-12 Plant	Oak Ridge, TN	19
Pacific Northwest National Laboratory	Richland, WA	1
Pacific Proving Ground	Marshall Islands	1
Paducah Gaseous Diffusion Plant	Paducah, KY	23
Pantex Plant	Amarillo, TX	17
Pinellas Plant	Clearwater, FL	3

Portsmouth Gaseous Diffusion Plant	Piketon, OH	20
Rocky Flats Plant	Golden, CO	40
Sandia National Laboratory	Albuquerque, NM	6
Savannah River Site	Aiken, SC	7
Southern Research Institute	Birmingham, AL	2
Speedring, Inc.	Cullman, AL	5
St. Louis Airport Storage Site	St. Louis, MO	2
Tennessee Valley Authority	Muscle Shoals, AL	2
Uranium Miners	Various Locations	7
Weldon Spring Plant	Weldon Spring, MO	1
Miscellaneous		116

Chapter 1 – Effectiveness of Outreach Efforts

A. Outreach to Individuals Who Are Unaware of the EEOICPA

Since the EEOICPA was passed in October 2000 and became effective on July 31, 2001, the agencies involved with administering and adjudicating the EEOICPA (also known as the Energy Program) have conducted outreach in order to inform potential claimants of the existence of the Energy Program. While it is clear that those efforts have informed many individuals of the existence of the Energy Program, it is likewise clear that there are still many individuals who are unaware of the EEOICPA, and for whom more should be done to address this lack of awareness.

I first learned of the EEOICPA Program by overhearing a conversation with a man and his wife in the lobby of the Hampton Inn, Denver, CO. The husband was a former worker of Hanford, WA, and was also being seen by NJH [National Jewish Hospital]. THIS IS HOW I WAS MADE AWARE OF THIS PROGRAM.

- Email from claimant who worked in Tennessee (January 25, 2019).

For years, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has conducted town hall meetings and outreach events in various locations across the United States. In calendar year 2019, DEEOIC held two teleconferences for medical providers and sponsored an Authorized Representative Workshop in Las Vegas, Nevada. The DEEOIC Resource Centers held outreach events called “DEEOIC Satellite Resource Centers” in 2019 in Largo, Florida; Albuquerque and Los Alamos, New Mexico; Pahrump, Nevada; Albany, Oregon; Erwin, Tennessee; and Central Falls, Rhode Island.³

Additional outreach efforts in 2019 were conducted by the Joint Outreach Task Group (JOTG) which is comprised of DEEOIC, Department of Energy (DOE), DOE Former Worker Programs, National Institute for Occupational Safety and Health (NIOSH), the Ombudsman for NIOSH, and our Office. These efforts included town hall meetings in Middle Island, New York; Paducah, Kentucky; Oak Ridge, Tennessee; Bolingbrook, Illinois; and Amarillo, Texas. DEEOIC representatives also attended the town hall meetings hosted by this Office in Ohio and Alabama in June and November of 2019, respectively.

A number of the town hall meetings, DEEOIC Satellite Resource Centers and the authorized representative workshop conducted by DEEOIC or the JOTG in 2019 were held very close to or in the same town as a larger covered facility.⁴ While this is logical from the perspective of attracting as many people as possible who worked at a particular facility, it does not address the fact that many former workers and/or families of former workers no longer live in or near these areas. We routinely found that since the inception of the Energy Program, since the closure of certain facilities, or prior to being diagnosed with an illness for which they wanted to file a claim, potential claimants had sometimes moved to other parts of the country. Thus, while there are still benefits to holding outreach events in areas where larger facilities are or have been located, the benefits have shifted from informing individuals of the

³ DEEOIC has since changed the name of these events, which are now called “Energy Outreach Events”.

⁴ It can be said that the majority of town hall meetings prior to 2019 were also held in towns where larger covered facilities were located. This is a point that has been consistently raised by this Office in prior Annual Reports in 2018, 2017, 2016, and 2015.

existence of the Energy Program, to allowing individuals who have already had dealings with the Energy Program an opportunity to meet face-to-face with representatives from the various agencies.

For example, a JOTG outreach event was held in Middle Island, NY, on May 2, 2019 near the Brookhaven National Laboratory, which has been a covered DOE facility since 1947. According to the agency representatives who hosted the event it was well attended, with approximately 95-100 people in attendance. There appeared to be agreement among the members of the JOTG that a direct mailing from the DOE facility played a significant role in increasing attendance at this event by individuals who possibly had not been previously contacted by the DEEOIC or other agency partners. In addition, the Stakeholder Relations Manager for Brookhaven National Laboratory had been helpful in mailing a letter to both current and former workers notifying them of this event. As a result, our Office interacted with a number of individuals who knew very little or nothing about the EEOICPA.

To be clear, this Office does not take issues with the efforts of the DEEOIC and the JOTG to hold events very close to or in the same town as larger facilities. As previously stated, there are benefits to holding such events. Rather, we believe that more effort needs to be undertaken to extend these benefits beyond the areas close to or in the same town as these large facilities. This Office had positive experiences in 2019 which demonstrated the benefits of conducting outreach events in areas of the United States that have not previously been visited by agencies involved with the EEOICPA or do not have large covered facilities. In November 2019, this Office held two town hall events in Cullman, Alabama. There are only three covered facilities in all of Alabama, two Atomic Weapons Employers (AWEs) and one Beryllium Vendor. Despite the fact that these were smaller facilities, both events were very well attended. We had 75 attendees on the first day and 55 at on the second day. We believe these events were well attended in large part due to the 752 invitation letters that we sent; the approximate 1400 notices mailed by the two DOE Former Worker Screening Programs; the notices placed in two local newspapers; and the DOL press release.

As a result of the invitation letters, the DOL press release, and the newspaper notices, even before these meetings were held individuals had begun to contact our Office with questions about the meetings, their claims, and the EEOICPA in general. Some of these individuals either lived too far away to travel to Cullman, did not have the ability to travel to the meetings, were unavailable on the days of the meeting, or were simply curious about the meetings. These inquiries also came from a mix of individuals. Some had worked at the covered facilities in Alabama; others had relocated to Alabama after working at other covered facilities; and still others had family members who had worked at covered facilities in or outside Alabama. Each of these contacts provided this Office a unique opportunity to conduct one-on-one outreach to answer questions and provide information to individuals whom we would have otherwise been very unlikely to encounter.

A good example in 2019 of the need for more outreach in areas that are not near large facilities involved efforts undertaken by this Office to explore opportunities for outreach in South Dakota, where a covered ore buying station operated in the town of Edgemont from November 1952 to July 12, 1956.⁵ We initiated this project because we were not aware of any previous EEOICPA related outreach efforts in South Dakota.⁶ While exploring options for disseminating information about the program, a story ran in one of

⁵ South Dakota is also home to 2 uranium mills and 156 uranium mines.

⁶ Section 5 of the Radiation Exposure Compensation Act establishes one-time, lump sum compensation awards for uranium miners, millers, and ore transporters (and their eligible survivors) who worked for at least one year between January 1, 1942 and

the newspapers about the ore buying station and the EEOICPA. The story included this Office's contact information. This story generated calls and emails to our Office regarding the facilities in South Dakota, and the majority of these contacts were from individuals who complained that they had never heard of the EEOICPA, and wanted to know more about the EEOICPA and RECA programs.

In talking to individuals from Alabama and South Dakota we were sometimes asked why no one had previously visited these areas to discuss the EEOICPA program. While we cannot speak for the other agencies involved with the EEOICPA, we explained that with over 386 facilities covered under the EEOICPA, not to mention hundreds of uranium mines, mills, and ore transporters covered under Section 5 of RECA and the EEOICPA, we have not yet been able to travel to each area of the country with covered facilities. And the reality is that there are many states and regions in the U.S. where people have yet to learn of the existence of the EEOICPA.

Consequently, this Office is always exploring new ways to expand our outreach in order to reach areas of the country where there has been little, or no outreach. In this regard, despite flagging circulation of some of the larger newspapers in the United States, our Office has found that there are still many areas of the country where people pay attention to local newspapers, radio stations and television news outlets. In fact in talking to some claimants about this matter, they suggested that we run notices in smaller newspapers, especially some of the local community and monthly newspapers.⁷ Response 2b found in DOL's Response To The Office Of The Ombudsman's 2018 Annual Report discussed OWCP's increased advertising in newspapers and magazines, including the 2019 ad placed in *Today's Senior Magazine* targeting readers in the greater Sacramento metro area, North Sacramento Valley, and North Coast.⁸ It is our recommendation that the Energy Program and the affiliated agencies continue to utilize and where possible, expand its outreach, with a particular focus on areas where, to date, there has not been outreach.

We also note that the 2018 FWP Annual Report stated that outreach is conducted to DOE workers while they are still employed and/or are in the process of separating from DOE employment. DOL and DOE should explore whether similar efforts can be made to inform potentially covered workers of the EEOICPA.

Yet, as claimants have suggested, we agree that one of the most effective ways to reach individuals who have not yet learned of the EEOICPA is to write to them directly. As this Office has written about in prior Annual Reports to Congress,⁹ the DOE Former Worker Medical Screening Program maintains rosters of individuals who worked at covered DOE facilities, and the DOE FWP keeps the contact information for former DOE works accurate by utilizing address-update services.¹⁰ According to the 2018 Former Worker Medical Screening Program Report, the FWPs utilize the available rosters as the primary outreach method to reach former DOE workers.¹¹

December 31, 1971, and who subsequently contracted certain specified diseases. Uranium miners, millers and ore transporters covered under Section 5 of RECA may also be eligible for monetary compensation and medical benefits under the EEOICPA.

⁷ In talking to claimants about this matter, they also suggested that we place notices in publications that more specifically target our intended audience, such as running notices in publications targeting retirees.

⁸ DOL's response also stated that OWCP had arranged newspaper/magazine advertising in California, Colorado, Hawaii, Idaho, Minnesota, Nevada, New York, Ohio, Oklahoma, Tennessee, and Washington.

⁹ See the 2013, 2014, 2015, 2016, 2017, and 2018 Office of the Ombudsman Annual Reports to Congress.

¹⁰ The DOE FWP mailing lists include former workers who have not filed EEOICPA claims, as well as those who might have filed may have filed a claim. The DEEOIC mailing list, on the other hand, only includes those who have already filed a claim.

¹¹ See 2018 Former Worker Screening Program Annual Report, page 5.

<https://www.energy.gov/sites/prod/files/2019/05/f63/2018-FW-Medical-Screening-Program-Report.pdf>

In response 2a of the Response to The Office Of The Ombudsman's 2018 Annual Report, DOL states that OWCP already relies on the FWP to distribute announcement/invitation letters (using their mailing lists) when it is appropriate.¹² We commend these efforts and hope to see ongoing, broader cooperation with the FWP to distribute announcement/invitations. Moreover, in order to expand outreach beyond the areas in and around larger facilities, we recommend that DOL and DOE FWP explore other projects aimed at disseminating information, such as mailing to everyone on these lists living in a particular area and conducting such mailings even though there is no outreach meeting planned for that area. The use of the DOE FWP list is an effective way to greatly expand the number of people who will receive these notices.

It is also worth mentioning that a frequent consideration when planning outreach events is the potential effectiveness of the outreach, and in these considerations the total number of expected attendees is often a critical consideration. The drawback to this approach is that it can result in outreach only being conducted in areas where there are, or were, large facilities. We acknowledge that legitimate concerns are raised when discussing whether to hold an outreach event in an area that does not have a large cluster of claimants or potential claimants. Yet, to address these concerns the agencies that administer this program should consider conducting some outreach beyond hosting in-person meetings.

Our recommendations are based upon the complaints claimants have presented to this Office over the past year, particularly those claimants who just learned of the EEOICPA and were upset to learn that, for example, any medical benefits awarded would only be available starting on the date they filed their claim for benefits. Other claimants complained about the difficulties they experienced obtaining copies of medical records and/or employment records that were no longer available due to the passage of time. As the Energy Program moves into its 20th year, claimants who have just recently learned of the program expressed sincere frustration at not having been contacted directly, and wanted an explanation as to why more efforts were not taken to provide them earlier notice about this program.

B. Outreach to Those Who Are Aware of the EEOICPA

Attendance at in-person outreach events in areas of the country near larger facilities continued to be relatively strong in 2019, and many of the individuals we encountered at these events were already aware of the EEOICPA.

For example, at the JOTG town hall events in New York, Kentucky, Tennessee, Illinois and Texas, the majority of the individuals this Office encountered were aware of or had already filed a claim for EEOICPA benefits. These individuals came to these events seeking information and assistance with obtaining benefits for their illness(es) or seeking information and assistance with an appeal of a denied claim. In some instances, the individuals who attended these JOTG events presented our staff with folders full of DEEOIC paperwork, medical records and bills, and were keenly interested in having an in-depth conversation in order to have their questions answered and/or to share their concerns.

Yet, the benefits of holding an outreach event were not limited to those who were able to attend these events. Here is one example involving a claimant who did not attend the outreach event hosted by this Office in Cullman, Alabama, who nevertheless benefited from having received the invitation letter to the event. In contacting this Office after receiving the invitation the surviving claimant shared that his/her

¹² The 2018 Former Worker Medical Screening Report indicates that hundreds of individuals have been screened in states such as Alaska, Michigan, Minnesota, Arkansas, and Montana. However, outreach events have not regularly been conducted in these states, and when events have been conducted, due to the geographic size of some states, it is difficult for individuals to attend.

father had worked at the Y-12 Plant and K-25 Plant in Oak Ridge, TN, and had been diagnosed with a rare bone cancer, polycythemia vera. Claimant also stated that he/she may have previously filed a survivor claim for leukemia. At the claimant's request, our Office obtained a copy of the 2007 Final Decision to deny his/her claim for survivor benefits under Part B of the EEOICPA. The Final Decision denied this individual's survivor claim for leukemia because the medical evidence did not establish the diagnosis of leukemia. However, the Final Decision also noted that the employee's death certificate included myelofibrosis and polycythemia vera as causes of death.¹³ Under Part B of the EEOICPA, both of these medical conditions are "specified cancers." Therefore, since the employee worked at designated Special Exposure Cohort (SEC) facilities for a total of at least 250 work days during the specified time periods, this Office informed the individual that he/she may wish to file to have his/her claim for survivor benefits reopened on the basis that the file contained evidence potentially establishing a claim for survivor benefits under Part B of the EEOICPA. It is the understanding of this Office that this claim for survivor benefits under Part B of the EEOICPA was eventually accepted in January 2020. As a result, this case is an excellent example of the benefits that can generally derive from holding outreach events, and specifically from holding outreach events away from larger facilities. Despite the number of meetings that have been held since the inception of the Energy Program, this individual, whose father had worked at Oak Ridge, was unaware of any outreach efforts regarding the Energy Program because he had been living in Alabama for years. Over the years it has been common to encounter potential claimants who were not aware of this program even though numerous outreach events had been held in the areas near to where they lived. Moreover, here is an example where the value of holding the outreach event cannot simply be measured by counting the number of attendees. Although this individual was unable to attend the meetings in Cullman, AL, the meeting notice prompted him/her to contact our Office regarding his/her claim. Finally, this is a good example of the benefits that can derive when claimants have the opportunity to discuss their claim with individuals who are familiar with this program. In this instance, even though his/her claim had previously been denied, this claimant was ultimately awarded benefits when it was recognized that conditions noted on the death certificate were specified cancers. Absent the opportunity to speak with an individual from one of the agencies involved with the EEOICPA, claims like this one that should be reopened may never be re-examined, while other claims for benefits may never be filed in the first place.

Based upon our interactions, it is apparent that a significant need exists among those who have already filed claims, and/or had a claimed illness accepted, to speak directly with agency representatives. In fact, this type of outreach is becoming more critical as more and more claimants who we encounter at these events have questions about current claims or about claims that have been denied.¹⁴ The benefit of interacting face-to-face with representatives from the agencies that administer the EEOICPA was further emphasized by those who attended these events after unsuccessful efforts to obtain assistance by telephone from DEEOIC, the Resource Center, or Conduent staff.¹⁵ These individuals often conveyed to this Office a distinct level of frustration with their inability to obtain assistance over the telephone. However, the format and resources at in-person outreach events has remained relatively the same over the

¹³ The claimant had not filed claims for the myelofibrosis and polycythemia vera.

¹⁴ Our Office encountered claimants with accepted EEOICPA claims who were still uncertain and had questions regarding whether they needed to file a new claim form for additional medical conditions and/or consequential conditions. Again, many of these claimants did not appreciate that medical benefits for any new claimed conditions would only be accepted as of the date the claim was filed, even if they previously had other illnesses accepted.

¹⁵ Conduent is the third-party bill-pay agent for the Office of Workers' Compensation Programs. Medical bills are submitted to Conduent for payment to the health care provider and/or reimbursement to the claimant.

past number of years and this has led to concerns. For instance, claimants have complained of sometimes having to endure long waits at outreach events to speak to a representative.¹⁶

Another concern is that the valuable information shared at these outreach events is oftentimes only available to those who attended these events. For example, beginning in December of 2017, the JOTG has conducted four multi-day Authorized Representative Workshops in Jacksonville, FL; Kennewick, WA; Cincinnati, OH, and Las Vegas, NV.¹⁷ Each session had the capacity for 25-30 attendees, and there was full participation from the AR community at each workshop. However, it is our understanding that in some instances hundreds of invitations were mailed to ARs, thus resulting in a waiting list that was used to allow for additional attendees when confirmed attendees cancelled. We are also aware that due to their own geographical limitations or caretaking responsibilities, some ARs were not able to attend these workshops. Thus, as of February 2020, the DEEOIC has offered in-person training for approximately 120 ARs since December 2017.

Those who attended these workshops provided valuable feedback, and that feedback has been overwhelmingly positive. ARs reported to this Office and to DEEOIC that they found the ability to interact with and pose questions to high-level agency personnel very helpful; that the hands-on training for the SEM database was informative; and that the explanations of the claims adjudication process was likewise very helpful. In fact, the two consistent concerns expressed to this Office following the AR Workshops were that the information shared at these workshops could benefit anyone assisting a claimant before the EEOICPA, and should be shared more broadly; and that there was a desire for question and answer time during each session of the workshop.

These are reasonable suggestions. The claimants and ARs, including those who for whatever reason are or were unable to attend one of the ARs workshops could benefit if some of the printed materials from the workshops could be posted online and also provided in hard copy at the Resource Centers for those interested in certain, or all, sessions of the workshops. Moreover, some of the sessions that have received particularly strong positive feedback could be incorporated, in whole or in part, into town hall meeting presentations. One particular area this Office is frequently asked about is DEEOIC's three online portals that permit claimants and ARs to: (1) access limited claim file status information (DEEOIC Claimant Status Page); (2) upload claim related documents (Energy Document Portal); and (3) access their medical bills and payment information (Web Bill Processing Portal). This information would be beneficial to the large number of individuals who are already familiar with the basics outlines of the EEOICPA.

Finally, as our Office has discovered and previously written about in prior Annual Reports to Congress, most people wish to speak with a person face-to-face, and wish to be shown how something works rather than just informed that further information is available for them to find online. Beginning a few years ago, the staff from this Office began bringing a tablet to every outreach event we attend. The decision to bring a tablet to outreach events was born of the frequency with which this Office encountered claimants and other individuals who did not know of the existence of DEEOIC resources, or how to access and use them.¹⁸ We had sometimes found it challenging to remotely walk claimants through the online resources,

¹⁶ In 2020, DEEOIC announced that the staff of the Resource Centers would have their computers with them at outreach events and thus would also be able to assist claimants.

¹⁷ The only AR Workshop in 2019 was held in Las Vegas, NV. However, another AR Workshop is planned for Santa Fe, NM in February 2020.

¹⁸ The majority of DEEOIC resources are only available online. See Office of the Ombudsman 2016 Annual Report to Congress, Appendix 3 – Tools and Resources.

and discovered that demonstrating these resources at outreach events to be efficient and quite helpful.¹⁹ Representatives from the District Offices usually have their computers with them at outreach events and thus can provide claimants with claim file information. More recently the staff of the Resource Centers have begun to bring their laptops to outreach events as well. However, because the District Offices and the Resource Centers are providing claim file information, they usually provide information on a one-on-one basis. In truth there is a general need by claimants for a better understanding of the resources available online and how to use these resources. Incorporating such information into the presentations given at outreach events, in addition to providing this information during one-on-one interactions would be an effective way to disseminate this information.²⁰

During 2019, we found that we spent as much time at outreach events explaining to claimants where they were in claims process as we did listening to their specific complaints and concerns. Most of the individuals who approached us requested information in a way that made clear they were uncertain about how to provide DEEOIC with the evidence it was requesting from them. Additionally, these claimants often wanted a better understanding of where their claim was in the overall claims adjudication process, and in particular, what the next steps were for their claim. This lack of understanding and clear expectations was brought to our attention at every type of outreach event we attended, as well as in our communications with claimants. And the problems were often exacerbated when the claimant did not live near a Resource Center or close to where outreach events are held. These claimants often complained that they were then limited to trying to speak to Resource Center and District Office staff over the telephone, and further complained that they were not always successful in doing so.²¹ A few of the claimants who contacted this Office did so after admitting they no longer felt confident they could reach anyone else who could help them.

¹⁹ The tablets have allowed us to sit with claimants and enlarge information on the screen for those with vision problems. Some claimants have also found it helpful to navigate through the website on their own with our assistance.

²⁰ DEEOIC town hall and outreach events have District Office staff present in order to discuss individual claims with claimants and their ARs. However, due to the demand for such interactions, we have witnessed claimants leave the event prior to discussing their claim with the District Office staff.

²¹ As of October 2019, the Resource Center staff located in the 11 Resource Centers around the country began answering 100% of all incoming phone calls to a DEEOIC centralized phone queue. The centralized phone queue includes all District and FAB general and toll free phone lines.

Chapter 2 - Lack of Understanding of the EEOICPA

As has been written about in previous Annual Reports to Congress, when claimants initially contact this Office they sometimes have seemingly straightforward questions or complaints. However, underlying such seemingly straightforward questions and complaints can be larger issues which become apparent as the conversation continues. Also frequently apparent during our conversations is some claimant's lack of understanding of the claims adjudication process as a whole, and exactly what actions they need to take in order to move their claim forward in a constructive way. After speaking with hundreds of claimants and authorized representatives in 2019, it is the assessment of this Office that the issues and complaints presented by claimants can be distilled into three concepts: expectations, roles, and resources. Within the following discussion we will address each of these areas of concern in a way that highlights the impact on claimants' ability to understand the claims process, gather the necessary evidence, and ultimately prove their claim. It is also important to note that we found it quite common to encounter claimants with all three areas of concern simultaneously present in their case. A good example involves a 90 year old claimant who contacted our Office in 2019 wanting to file a new claim, as well as seeking information and assistance regarding a number of issues such as, the denial of a request for durable medical equipment (home oxygen and a walker); difficulties having consequential conditions addressed by DEEOIC; unpaid medical bills; questions regarding impairment benefits; and rude behavior by his/her claims examiner. The claimant stated that he/she wrote a letter of complaint to the CE's supervisor over a year ago and had received no response. This claimant's AR stated to our Office, "You have to understand, I'm 76 years old and am having a hard time with all of this. I need all the help and understanding I can get." (Conversation with AR, February 1 and 27, 2019.) This claimant and AR's experience, involving a new claim and a claim that had been accepted for benefits, perfectly exemplifies the challenges faced by many claimants in 2019.

When they did not have a good understanding of the EEOICPA, we provided claimants with an overview of the claims process. Unfortunately, for some claimants, frustration and desperation resulted when we provided them an overview of the claims process and they learned the status of their particular claim within the overall claims adjudication process, and learned more about the evidence they needed to provide DEEOIC in order to prove their claim. Moreover, when we shared information with claimants, in some instances it was not the first time they had read or heard what we said, but was, according to them, the first time they read or heard it explained in a way they could understand and apply to their own claim. Thus, claimants frequently asked this Office why they were not previously provided a similar overview of the claims adjudication process in terms they could understand, and that would be relevant to the type of claim they filed. It is our hope that as DEEOIC continues to develop materials, tools, and resources for claimants the priority will be to produce practical, easily understood materials, as well as to afford claimants the ability to speak directly with knowledgeable claims staff.

A. Expectations

When a claimant files a claim for benefits as an employee (Form EE-1) or as a survivor of an employee (Form EE-2), they may do so in-person or over the telephone with one of the 11 Resource Centers. A claimant may also file their claim by mail with one of the Resource Centers or with the Central Mailroom for the four District Offices. Upon receipt of a new claim, the Resource Center is responsible for conducting Occupational Health Questionnaire (OHQ) interviews with the claimant or survivor, where indicated. The claim is then forwarded to one of the District Offices, which is then responsible for sending the claimant (or survivor) a letter acknowledging receipt of the new claim and providing the claimant (or survivor) with a Case ID number and DEEOIC contact information should the claimant have questions. *See Federal PM Chapter 7.6(b) Version 4.0 (November 14, 2019).* The acknowledgment letter sent to claimants and survivors informs them, in a general way, that their claim will be assigned to a

claims examiner (CE) and provides their unique claim identification numbers. However, it does not provide an overview of the claim process or road map of the steps this particular claimant may need to take as they proceed with their claim for benefits.²² In other words, it has been our experience that at the earliest stages of the claims process, claimants were not provided clear expectations regarding what to expect from DEEOIC, or what will be expected of them. Instead, DEEOIC will collect evidence on its own, and will seek evidence from claimants, as needed, without providing claimants the information to fully comprehend, in a practical way, the process they have engaged in with DEEOIC.

For instance, in most cases, very early in the claims process a new claimant receives a letter from their CE in the District Office informing them that additional documentation is needed, and advising the claimant that they have thirty (30) calendar days to produce the requested records. *See* Federal PM Chapter 11.4 Version 4.0 (November 14, 2019). These letters from DEEOIC to claimants are often referred to as “development letters”.²³ Based upon our communications with claimants in 2019 (and prior to 2019) at this early stage in the claims process they often do not have and are not provided clear expectations as to what will happen as they move forward through the claims adjudication process. Moreover, while in a general way claimants are informed by DEEOIC that they will be provided assistance, little to no specific information is provided to them regarding what that assistance will specifically entail, who will provide it, and just how far that assistance will go in helping them prove their claim.²⁴ Thus, lacking an understanding of the claims process, claimants blindly proceed to try to develop relevant evidence for their claim.²⁵

As a result, in 2019 (and prior to 2019) claimants who received a development letter from the District Office frequently complained to us that 30 calendar days was not sufficient time to obtain and send the requested documentation to their CE. They argued that they were unable to make an appointment to see their doctor within the timeframe afforded them by DEEOIC to submit the additional medical evidence, let alone obtain the documentation from their physician and then provide it to DEEOIC prior the deadline’s expiration. The claimants who contacted our office within the designated time period to submit such evidence usually expressed relief upon learning they could seek an extension of time to submit their evidence, although they also expressed frustration that the development letter had not informed them of this right. On the other hand, claimants who contacted us after the expiration of the time to submit evidence often became upset when they realized that no one had previously advised them of their right to request an extension of time. Thus, in not informing claimants of their right to seek an extension of time to submit evidence, claimants’ expectations were that they must produce the evidence within 30 days or face an unspecified, potentially negative consequence. Moreover, most claimants were not informed in these initial development letters that they would likely receive a second development letter, affording them another 30 calendar days to submit evidence. Again, the expectation of claimants who contacted our Office within the first 30 day time period was that they had to respond in a timely fashion or suffer a potentially negative consequence.

²² A sample acknowledgment letter can be found in Exhibit 7-1 of the Procedure Manual. *See* EEOICPA (Federal) PM, Exhibit 7-1, Version 4.0 (November 14, 2019).

²³ These letters typically gives the claimant 30 days to provide the requested documentation. However, at the discretion of the claims examiner, extensions of time can be granted as long as the request is made to the claims examiner in writing.

²⁴ This is an issue that we see whether the claim is for a new medical condition, a new consequential condition, or a new claim for home health care, impairment and/or wage-loss benefits.

²⁵ Some claimants have asked family members to serve as their Authorized Representative or have hired a lawyer to represent them. However, the majority of the claimants who contacted our Office in 2019 were not represented by a lawyer, and many of those with family members serving as their AR were proceeding with an AR because their health limited their ability to represent themselves. Thus, the family member stepped in to help the claimant despite the fact that they did not have any more knowledge of the EEOICPA or the claims process than the claimant.

Following the issuance of version 4.0 of the PM we received complaints asserting that the development letters addressing requests for ancillary medical services or durable medical equipment only provided claimant 15 calendar days to submit additional information to DEEOIC. *See* PM Exhibits 29-1 and 29-2, Version 4.0 (November 14, 2019). These development letters, likewise, did not inform the claimant that he/she could request an extension of time, but instead stated that “Your lack of a response or submission of insufficient evidence will result in a denial of the request.” These letters also stated, “In the interest of expediting approval of your request for [service], please fax the requested information to the DEEOIC Bill Processing Agent at (800) 882-6147, within 30 days, or contact me if you have questions regarding this request.” In response to receiving such development letters, claimants contacted our office expressing confusion regarding the deadline by which they had to submit evidence to DEEOIC, as well as frustration that they received the letter well into the 15 or 30 calendar day period by which they were to submit medical evidence to DEEOIC. Here, claimants’ expectations were that they had 15 days to produce the requested evidence, which appeared to conflict with the 30 day deadline referenced later in the same letter. The lack of clear expectations regarding the deadline to submit evidence, coupled with the shorter 15 day deadline, was another source of confusion and frustration for claimants.

Another area of complaint that demonstrated claimants’ lack of clear expectations involved cases where proof of employment at a covered facility or proof of exposure to a toxic substance(s) at a covered facility was at issue. When a new claim for benefits is filed under the EEOICPA, CEs take various steps to verify the claimant’s employment and/or to identify toxic substances the claimant would have likely been exposed to while employed. One action taken by the CE is to forward the claimant’s Employment History (Form EE-3) to the DOE in an effort to verify the individual’s claimed employment.²⁶ The problem for claimants often becomes apparent when they contact our Office to complain that they are experiencing difficulties proving where or when they worked, and/or what toxins they were exposed to at a covered facility. Claimants are often surprised when informed for the first time by our Office that DEEOIC will undertake to obtain, and in some cases may have already obtained, copies of their employment records, site medical records, job descriptions, radiological dose records, incident or accident reports, and/or industrial hygiene records; and that when these records are obtained by DOL they will become part of their claim file. When advised of DEEOIC’s search for records, claimants immediately question why they were not informed that DEEOIC would perform this search and/or why DEEOIC did not share these records with them.²⁷ Claimants’ expectations had been that they must provide DEEOIC evidence to establish their covered employment, and yet they were not aware of the specific efforts being undertaken by DEEOIC to do so as well. This has resulted in three consistent outcomes (1) claimants have expressed relief to our Office upon learning that DEEOIC had undertaken efforts to obtain their employment and exposure records; (2) claimants have expressed frustration at having not been informed this action was being taken by DEEOIC; and (3) claimants wanted to know whether they would have an opportunity to review any/all records obtained by DEEOIC, and if so, how and when.

In the event claimants did find evidence on their own, they trusted that such evidence would be reviewed, analyzed, weighed, and discussed in any decisions determining the outcome of their claim. However, a common reason some claimants contacted our Office in 2019 was because they were unable to confirm that DEEOIC had received their evidence; whether the evidence was shared with any DEEOIC experts

²⁶ Document Acquisition Request (DAR) records are requested by the CE, “...predominately in the adjudication of the toxic exposure component of Part E cases, [but] can also contribute to the evidence of covered employment, especially in cases involving DOE subcontractor employment or employees who are on official travel from one DOE facility to another and considered by DOE to be ‘visiting’ on site.” *See* PM Chapter 13.8(i), Version 4.0 (November 14, 2019). The CE will also submit the DAR request to the DOE in order to obtain any employment, medical, and/or exposure records related to the claimant’s employment at a covered DOE facility.

²⁷ For some claimants who worked at more than one facility or worked at a facility decades ago, having a copy of their employment records could assist them as they attempt to recall all of their job descriptions, assignments, and dates of employment.

who reviewed their claim; or they had questions regarding why the evidence they submitted had not been discussed in the decision they received from DEEOIC. In March 2019, a claimant's family member contacted our Office inquiring about the evidence the claimant had submitted to the District Office and the Final Adjudication Branch. The inquiry was made because claimant's Request for Reconsideration had been denied without any indication in the Denial of the Request for Reconsideration, or in the Recommended and Final Decisions, as to whether claimant's evidence had been received and weighed by the various claims adjudicators. Without an acknowledgement, discussion, or explanation provided to claimant in the various decisions received denying the claim, claimant was left without an understanding as to why their evidence was deemed insufficient, and therefore had no clue where to start in identifying additional evidence that would assist in proving his/her claim.

Another example of the need for claimants to be given accurate, realistic expectations regarding the adjudication process involved a claimant who contacted our Office in 2019 after having his/her Request for Reconsideration denied. Claimant then inquired with our Office about any other potential avenues of appeal available to him/her for his/her Part E claim, and we provided the information that a Final Decision or Denial of Request for Reconsideration can be appealed to U.S. District Court within 60 days after the date on which the final decision was issued. *See* 42 U.S.C. § 7385s-6(a). This claimant adamantly stated that he/she was unaware of this avenue of appeal, and became upset when he/she realized that the 60 day period to file an appeal had lapsed. In particular, this claimant complained that the letter from DEEOIC advising him/her of his/her rights following a Final Decision did not mention the right to file an appeal in U.S. District Court.²⁸

In response to our 2018 Annual Report to Congress, DEEOIC stated that previous and current versions of the Procedure Manual, EEOICPA Transmittals, and EEOICPA Bulletins and Circulars, in addition to other online materials, provide claimants with the information they need to navigate the adjudication process. *See* DOL Response to the Office of the Ombudsman's 2018 Annual Report to Congress, Answer No. 6 and No. 13, (January 17, 2020). However, it must be emphasized that some information, such as the information regarding how to obtain copies of claim file documents/records and informing claimants that an extension of time to submit evidence can be requested from a District Office²⁹ can only be found in the EEOICPA Procedure Manual or the Act itself. While we have seen instances where the decision issued by DEEOIC quoted the provision of the statute, regulation, or PM provision being applied, or discussed the provision in question, we still encounter claimants who struggle to understand the references to the statute, regulation, or Procedure Manual sometimes found in their decisions. For example, the Procedure Manual (PM) is a publication that communicates the functions of the DEEOIC in making decisions regarding claim compensability and is approximately 770 pages in length. Claimants are often stymied when the decision contains a statement or a finding accompanied by a mere citation to the PM. When they contact us to complain that they do not understand the decision, we frequently find that these claimants did not understand what the PM was, or appreciate the significance it could have in the claims process. Likewise, we find that many claimants and ARs do not appreciate the value of going to the Act or the PM for helpful information regarding how to navigate and prove their claim. As a result, we encounter claimants who proceed through the claims process never knowing of their right to copies of documents from their claim file, their right to seek additional time beyond 15 or 30 days to submit evidence, or the other valuable information that can be found in these documents.³⁰

²⁸ There are also two (2) references to claimants' right to file an appeal in district court under links to Frequently Asked Questions and the Role(s) of the Resource Centers, District Office, Final Adjudication Branch & National Office.

²⁹ While the PM states an extension of time may be sought by a claimant, it does not include the information that any such request for an extension of time must be made to the District Office in writing. Thus, when we hear from claimant's that they asked their CE for an extension of time, we have to inform them that such requests must be in writing.

³⁰ The latest version of the PM available in November of 2019 was the third version of the PM published in 2019 and is 770 pages long. Since April 2017, nine versions of the PM have been published.

Without clear expectations about the specific assistance DEEOIC will or will not provide, and a practical explanation of how to obtain the evidence needed to satisfy their burden of proof, claimants approach us at virtually every stage of the adjudication process, regardless of whether their claim has been accepted or denied, for information regarding where their claim is in the adjudication process and for information regarding who, if anyone, can assist them.

B. Roles

When they contact our Office, most claimants simply want to tell us about their problem and get an answer.³¹ Yet, because we only have limited access to claim file information, it is often necessary for them to lay out their case history, as well as their complaints and/or issues, in order for us to begin to understand their case. It is under these circumstances, listening to claimants lay out their case history as well as their complaints that we frequently recognize that claimants, ARs, and other DEEOIC stakeholders do not have a working understanding of the roles of the various individuals they may encounter in the adjudication of their claim.³² For instance, it is quite common to talk to claimants who believe that the person who assisted them with filing their claim (usually a staff member with one of the Resource Centers) is the same person who is sending them letters asking for additional evidence (usually the claims examiner).³³ Or to hear of instances where claimants called the District Office to speak to their CE and instead spoke with someone else who tried to assist them, only for that claimant to later learn that the person they had spoken to was not their CE.³⁴ In other instances, claimants emphatically asserted to our Office that they spoke to someone in DEEOIC when, in fact, they had been speaking to someone with another agency also involved with the adjudication of their claim.³⁵ And finally, claimants routinely complained that they cannot keep track of whether the person they spoke to about an unpaid medical bill was their CE, a Medical Benefits Examiner (MBE), someone from the RC, or someone from Conduent, the bill-pay contractor. As their claim moves through the EEOICPA adjudication process claimants may communicate with a number of people associated with DEEOIC. And in addition to speaking to multiple staff in a variety of roles, it is also not uncommon for DEEOIC to reassign a claimant's case to another CE without communicating this change to the claimant. In 2019, claimants who did not understand that their claim had been assigned to a new CE continued to contact our Office and complain about not being notified of such changes.

³¹ In cases where our Office must request information or documentation from DEEOIC on behalf of a claimant, the claimant must complete and sign a Privacy Act Waiver that gives DEEOIC permission to provide such information to our Office. For claimants who do not have a computer or fax machine, the process of obtaining a signed waiver involves mailing the waiver to the claimant and waiting for them to receive the signed waiver back in the mail.

³² We have limited our discussion here to the roles of those who work for DEEOIC or DEEOIC contractors. However, it is worth noting that individuals from other agencies are also in contact with claimants during the adjudication process. For claimants, these interactions sometimes lead to greater confusion because they do not always understand the roles of those outside of DEEOIC who are also directly involved with the adjudication of their claim.

³³ Most new claims are filed through a Resource Center and then the claim is transferred to a District Office for development and the issuance of a Recommended Decision. It is the District Office that sends the claimant development letters seeking additional information and evidence.

³⁴ Claimants who had been working with a CE in the District Office from the time they filed their claim through to the issuance of their Recommended Decision sometimes express confusion at not fully understanding that their claim has now been assigned to a hearing representative in the FAB in order for a Final Decision to be issued, and that after the issuance of their Final Decision, their claim will be returned to the District Office, but may not go back to the CE they had previously been working with. Claimants also express appreciation when our Office explains to them that each time a Recommended Decision is issued in their claim, their case will go to the FAB for a Final Decision or Remand Order, and that each time they file a new claim, it too will go through the same decision process.

³⁵ The most common scenario involved instances where claimants complained about the interview performed during the dose reconstruction process. We sometimes found that claimants were not aware that this interview was conducted by NIOSH, not by DOL. Moreover, when the dose reconstruction report issued by NIOSH contained what they felt were inaccuracies, claimants complained of a lack of clear guidance outlining what to do, and who to talk to, in order to resolve these concerns.

As 2019 progressed and DEEOIC implemented changes to the roles of certain DEEOIC and contractor personnel, it became readily apparent from the claimants who contacted our Office that they were not always aware of the personnel changes, or the impact that these changes had on their ability to communicate with claim staff. For example, in October 2019, the Resource Center staff located in the 11 offices around the country began answering 100% of all incoming phone calls to a DEEOIC centralized phone queue. The centralized phone queue includes all District Office and FAB general and toll free phone lines. This represented a change from the claimant's ability to directly call a District Office or FAB to speak to their CE, to a procedure where a RC staff member answered calls or, if necessary transferred the call to a CE. Based upon the complaints and questions received from claimants, it was apparent to us that claimants and ARs had not been notified of this change either before or after it was implemented. Because of instances where the RC staff could not answer their questions claimants began to argue that this new procedure merely meant that it now took longer for them to be put in contact with their CE. We also talked to claimants who noted that the information that the RC had shared with them was not consistent with the information later provided by their CE or HR. Other claimants were confused as to who they should contact and listen to when it came to specific claim-related questions, i.e., should they proceed with the information they learned from the RC, or request to be transferred to their CE.³⁶ The DEEOIC homepage contains the link, "Role(s) of the Resource Center, District Office, Final Adjudication Branch & National Office" that provides an overview of each type of DEEOIC office. However, there does not appear to be a similar link explaining the role of the various individuals a claimant will likely encounter as they proceed through the adjudication process.

Another frequent complaint in 2019 involved claimants not knowing who to contact to resolve issues surrounding the payment of a medical bill. Claimants complained of contacting one office for assistance, only to be referred to another office without any understanding or expectation as to who they were being referred to, or why they were being referred. And in many of the situations brought to our attention, the claimant further complained that the person to whom they were referred had been unable to assist them. In most instances our Office was unable to directly answer claimants' bill-pay questions, however, with their permission we forwarded any bills, debt collection notices, or correspondence from the claimant to DEEOIC in order to seek more coordinated assistance for claimants. In these circumstances we found DEEOIC National Office to be quite responsive and helpful in identifying the billing issue and undertaking the effort to coordinate resolution of the issue with the various parties.

Within the last few years, DEEOIC transitioned to having all claims related mail sent to a central mail processing facility in London, Kentucky, instead of being sent to each of the District and FAB office addresses around the country. We talked to claimants who mistakenly believed that their claim was being handled in London, KY, or would mention having spoken to someone in London, KY. Even after we explained that there are no DEEOIC offices in London, KY, and that they were possibly referring to someone from Conduent, which is also located in London, KY, some claimants were still uncertain as to which office they had contacted. This confusion was likely caused by the fact that the District Offices, FAB offices, and Conduent all have P.O. Box addresses in London, KY. At first glance, some may think this is a somewhat trivial matter to complain about, but based upon the sheer frequency of this coming up during our conversations with claimants in 2019, it is obvious that this was a source of concern for claimants. In this regard, we observed that for some claimants, the lack of opportunities for face-to-face interactions during the EEOICPA adjudication process was already a source of frustration. It appeared to

³⁶ Where a current claimant contacts the RC for guidance about the claims process (e.g., confirmation that a claim exists, questions about submitting new evidence or a new claim for benefits), the RC can provide guidance to the claimant as needed without referral to the DO or FAB. The telephone conversation is memorialized in ECS. Also, RC staff may assist claimants in understanding the information being sought in DO development letters, explain the means by which such information may be obtained, and assist claimants in obtaining evidence. The RCs also assist claimants with medical bills/documentation and enroll/educate medical providers to join and navigate the automated medical bill pay system. PM Chapter 10.2(c), Version 4.0 (November 14, 2019).

only add to this frustration when they encountered situations where the person they talked to was not physically situated where they thought that person was located, or they discovered that they did not know with whom they had been talking. An earlier understanding or working knowledge of the roles of DEEOIC and contract staff members would have been beneficial to many of the claimants we spoke to in 2019.

C. Resources

In the 2018 Annual Report to Congress, our Office made four recommendations regarding resources for claimants and their ARs. The first was that DEEOIC should provide new claimants a document that describes some of the more common resources available, and provide information on where to find these resources, including the web address, where relevant. The Department of Labor responded that it had developed a “rack card” that lists nearly all of the resources available on its public facing website, and the card was available at RC offices and distributed at outreach events and in some mailings. *See* DOL Response to the Office of the Ombudsman’s 2018 Annual Report to Congress, No. 3 (January 17, 2020).

Second, we recommended that claimants be provided the opportunity to witness and/or participate in a demonstration of some of the available resources so that they could better understand and navigate them, or be provided a tutorial that could be accessed on DEEOIC’s homepage. In response to the recommendation for demonstrations and tutorials DOL stated,

In June 2019, OWCP added a self-guided video demonstration of the Site Exposure Matrices (SEM) database to our website. In this tutorial, viewers learn about the background and history of the SEM and how to navigate the SEM database. The tutorial shows the data contained within the SEM and the search categories. It presents a video demonstration of a SEM search. *See* DOL Response to the Office of the Ombudsman’s 2018 Annual Report to Congress, No. 4 (January 17, 2020).

Third, we recommended that DEEOIC clarify the role of the RC, and that this information about the RCs should be widely disseminated so that it reaches those who do not live close to one of the 11 RCs. DOL responded that in Fiscal Year 2019 it added a “rack card” to its repertoire of printed materials. The rack card explains the services of the RC and is available at the RC offices and on the OWCP website. Further, OWCP distributes this card at outreach events and in some of its mailings. *See* DOL Response to the Office of the Ombudsman’s 2018 Annual Report to Congress, No. 12a (January 17, 2020).

And fourth, we recommended claimants be provided step-by-step instructions regarding certain steps in the claims adjudication process. DOL’s response, in part, was that since no two claims are identical, OWCP relies upon its claims examiners and hearing representatives to guide claimants through the adjudication process. OWCP also stated that it provides How-To-Guides on its website that include step-by-step overviews of the adjudication process and guide claimants and medical providers toward the resources they can utilize. *See* DOL Response to the Office of the Ombudsman’s 2018 Annual Report to Congress, No. 13 (January 17, 2020).

Our Office recognizes DEEOIC’s efforts to provide the assistance to claimants, including those outlined above. However, when claimants contacted our office in 2019 seeking information and assistance, four frequently asked questions were, 1) What resources are available?; 2) Where can resources be found?; 3) How do claimants use these resources?; and, 4) When do claimants use the resources?

1. **What resources are available?** In hearing this question, and the various ways in which it was asked, it was clear that on a day-to-day basis some claimants were unaware of the resources available to them. Our interactions with claimants indicated a variety of possible reasons for claimants' lack of awareness of DEEOIC resources, and we encountered some claimants for whom more than one of these reasons were applicable. For instance, we frequently found that no one had ever taken the time to advise claimants of these resources. In addition, most of the claimants we encountered were ill, often diagnosed with an illness or illnesses that made it difficult, if not impossible, to dedicate much time to learning about what is admittedly a complex program.³⁷ A large segment of the claimant population is also of an advanced age, and many do not own a computer or use one if it is in their home.³⁸ Likewise, the overwhelming majority of claimants we encountered did not have representation, and if they did, their AR was most often a family member who had no more experience with EEOICPA than they did. It has been our experience that, to the extent they sought help, claimants were likely to first call the RC or their CE/HR when they had questions or concerns, and in doing so were sensitive to "taking up the time" of those who answered their calls.³⁹ It was generally after claimants had been unsuccessful in having their questions answered, or had not received what they thought was an adequate response from the RC or DEEOIC, that they contacted our Office. In most instances, when we first encountered claimants, they were not aware of or were unfamiliar with the DEEOIC website. Those who were aware of this website usually had not spent the time online to search through the website to identify the resources that could have been helpful.

In such circumstances, we found that when claimants contacted our Office they were not seeking brochures, flyers or website links. Instead, they wished to speak to someone about where they were in the claims process, what they could expect going forward, what was expected of them at that time, and who they could turn to when they had additional question(s). Our Office recognizes that RC and claims staff do their best to answer claimants' questions, but we found that most claimants who contacted our Office did not have a good understanding of the EEOICPA claims process or of what had happened/was happening with their claim. Thus, an effective resource for DEEOIC claimants was to engage in conversations with individuals who had the knowledge and understanding of EEOICPA to assist them, and who could highlight any/all relevant print or online resources for claimants' future reference. And for some claimants, this type of conversation was needed more than once.⁴⁰ It was not unusual to have the same claimant contact us multiple times to ensure that he/she fully understood the information that we had shared. Similarly, after speaking to a claimant we sometimes received a call from the claimant's AR or a family member seeking the same information. It appeared that some claimants found it a challenge to pass

³⁷ Attendees at outreach events, training events or advisory board meetings will likely observe one, if not all of the agencies involved with the EEOICPA, refer to it as a complex or complicated program. See DOL Response to The Office of the Ombudsman's 2017 Annual Report, Response, No. 3 (March 26, 2019).

³⁸ "I don't have a computer and at 83 years old I'm not going to buy one." Statement by claimant on April 8, 2019, in response to being asked if he has used the Electronic Document Portal (EDP) to upload records for his claim.

³⁹ This statement is based upon claimants' sharing with our Office that they do not want to take up the time of the RC and District Office staff because they know the staff is also adjudicating claims and performing other duties. In many instances claimants' also expressed a concern with being viewed as too demanding.

⁴⁰ When asked, many claimants indicated that they had not been informed of the specific DEEOIC resources available to them. For example, claimants did not know what the SEM database was or that it was something they had access to; or that they could look on the subcontractor database (www.BTComp.org) to determine if a particular subcontractor had a contract with a covered facility; or even that they could contact a Resource Center for assistance beyond filing a claim for benefits.

information along to those helping them, while others lacked the confidence to pass the information along accurately. We especially saw this when claimants needed to pass information to their physicians. We encountered claimants who were leery to speak to their physicians because they did not believe they could accurately relay information, as well as others who admitted that they did not understand the information well enough to pass it along.

Finally, our Office was contacted by individuals who worked in the Armed Forces or for other employers, and who were exposed to radiation and/or toxic substances in the course of their employment. These individuals often turned to our Office for assistance when they did not receive adequate information from DEEOIC. When we informed these individuals that they did not qualify for benefits under the EEOICPA, they often responded by seeking information regarding where they could turn for assistance. These individuals often turned to our Office because no one else seemed willing to offer assistance. In an effort to at least direct these individuals in the right direction we discovered that on the homepage for the Radiation Exposure Compensation Act (RECA), administered by the Department of Justice (DOJ), there are resources for those who did not qualify for RECA, and who also are unlikely to qualify for EEOICPA. The resources included the Nuclear Test Personnel Review (“NTPR”) program, which is a Department of Defense office that works to confirm veteran participation in U.S. nuclear tests; and the U.S. Department of Veterans Affairs (“VA”). See <https://www.justice.gov/civil/common/reca>.

- 2. Where can resources be found?** The primary source for learning of DEEOIC resources is the DEEOIC program itself, and the overwhelming majority of DEEOIC resources are only available online.⁴¹ As discussed above, given the health and demographics of the claimant population, a claimant’s awareness of the DEEOIC resources was often dependent upon whom they encountered along the way. For example, in our experience claimants who lived near one of the 11 RCs and were healthy enough to contact the RC offices were usually more likely to have contacted the RC for information and assistance.⁴² On the other hand, those who did not live near a RC, or whose health limited their capabilities were more likely to be unaware of the scope of information and assistance available from the RCs, and thus, from DEEOIC.

Many of the claimants we encountered either were not aware of the various online resources, or if they were aware of them, did not appreciate the value of these resources and thus had never visited or used these resources. And we found this to be true even when the claimant had been involved with the EEOICPA program for a period of time. For example, our Office heard from claimants such as the gentleman who lived in California for 45 years who had his cancer claim accepted in 2015, and was now relocating to Texas. This claimant contacted us because he wanted to know where he could find information about which doctors and hospitals in Texas were enrolled with DEEOIC. Despite having his claim accepted in 2015 and being the recipient of various forms of benefits, in 2019 when the issue arose, this

⁴¹ The 2016 Office of the Ombudsman’s Annual Report to Congress included a list of 27 Tools and Resources, of which 19 could only be found online. See 2016 Annual Report to Congress, Appendix 3, pg. 72 (August 24, 2018).

⁴² On behalf of claimants, RCs will assist claimants in completing the necessary forms, submit documents to DEEOIC, provide claim status information, and conduct the Occupational History Interview, among other duties. See PM Federal (EEOICPA) PM Chapter 10.2 (November 14, 2019).

claimant did not know where to turn for help locating enrolled providers, a resource found on DEEOIC's webpage.

- 3. How do claimants use these resources?** A common complaint involves the difficulties claimants encounter navigating through DEEOIC's resources in a way that yielded helpful information for their claim. And as DEEOIC has created more online tools and resources for claimants, the challenge has been to provide accessibility for such claimants. We also talked to claimants who described the difficulty of figuring out which guidance was the most recent, and therefore applicable to their claim.⁴³ And these problems are exacerbated when the claimant does not have access to a computer or the internet and thus is unable to directly access the majority of DEEOIC resources. Our Office has had success showing claimants where the resources exist and how to use them at in-person outreach events where we utilize computer tablets to sit down with claimants and provide a demonstration.⁴⁴ This year, DEEOIC included on its website a tutorial for using SEM, and at outreach events DEEOIC has expanded its discussion of some of the available tools. However, claimants and ARs could benefit from training and/or assistance with accessing and utilizing many of the other tools available online, as well.⁴⁵

Where they do not have access to the internet, our Office communicates with claimants over the telephone, describing the resource and walking them through the process of finding it online and explaining how to use it. There are other instances where we mail claimants who do not have access to the internet printed copies of the resources or search results from resources that may be helpful to their claim.

However, it is not just a lack of access to resources such as SEM that trouble claimants. The DEEOIC website also provides access to the statute, regulations, and the DEEOIC Procedure Manual. Access to these documents can greatly enhance a claimant's understanding of his/her claim, as well as his/her ability to develop the evidence needed to successfully pursue a claim. For instance, there is an exhibit in the DEEOIC Procedure Manual that outlines the exposure and causation presumptions for 19 illnesses under Part E of the EEOICPA. *See Federal (EEOICPA) Procedure Manual, Appendix 1, Exhibit 15-4 Exposure and Causation Presumptions with Development Guidance for Certain Conditions (November 14, 2019)*. We found that claimants were either unaware of these presumptions, or if they were aware of these presumptions because they were referenced in a recommended or final decision, the claimant did not know where to find them. When claimants were aware of the presumptions, a remaining hurdle, and usually the reason they reached out to our Office, was because they did not understand the acronyms and language used in the PM and/or the exhibit. Nonetheless, when informed by DEEOIC and/or our Office that their illness was one of the 19 listed in the exhibit, most claimants wanted to see the exhibit in order to better understand what was being asked of them, and in order to understand the evidence needed to meet the

⁴³ As of December 31, 2019, there were 157 active Bulletins and Circulars on the DEEOIC homepage, as well as three versions of the PM published in 2019. This information was in addition to the other databases, tools and links on the homepage.

⁴⁴ ARs are provided more expansive information and demonstrations at the 2 day AR trainings held since 2017.

⁴⁵ We are aware that District Office staff brings laptop computers to outreach events in order to provide claimants with claim status updates, and that RC staff assist claimants with the filing of new claims.

presumption.⁴⁶ Time and again, claimants complained that seeing something in a brochure or a link online was not adequate, and that further explanation was needed in order for them to feel that they understood the information; and then were confident enough to use the resource.

Throughout the claims process, the claimant's claim file information can be a very relevant resource. Yet, in our experience claimants rarely appreciate the value of the information in their claim file or know how to use this information to further their claim. A claimant's claim file contains the evidence that has been developed by DEEOIC, working in conjunction with DOE and NIOSH. When claimants request and receive a copy of their claim file information, they can then see for themselves what employment, exposure, medical, and/or DEEOIC generated evidence (i.e., SEM search results, SSA earnings records, etc.) is or is not in their claim file. When we advise claimants of their right to receive copies of their claim file information, a common response is for them to complain that if they had the information earlier in their claim process, it would have been easier to develop additional evidence and/or correct factual errors in their case file. In other instances we found that the ability to see what is or is not in their claim file was helpful in understanding why their claim for benefits was not accepted.

Moreover, beyond not knowing that they could obtain information from their claim file, we also found that many claimants did not know how to effectively use this information to enhance their claims. Therefore, we frequently found it helpful to suggest to claimants that they review their employment records (that the DEEOIC likely received in response to its DAR request) in order to do a more targeted search of the SEM database. Using the DAR records to identify how long a claimant worked in certain job titles, or in certain areas of a facility, can yield relevant toxic substance information for the claimant. We also often found it necessary to advise claimants to take their medical records, employment records, and exposure records, including the SEM search results, to their doctor for an opinion regarding whether it is at least as likely as not that their exposures to toxic substances were a significant factor in causing, contributing to, or aggravating their claimed illness. This is similar to the process DEEOIC goes through as it gathers relevant evidence to provide to a Contract Medical Consultant for a causation opinion. However, we found that when claimants received a development letter from DEEOIC informing them to request a similar opinion on causation from their doctor, many claimants walked into their doctor's office with nothing from their claim file, and without first reviewing to see if a DEEOIC resource could provide helpful information. Invariably, these claimants are often informed by DEEOIC that their doctor's opinion was not "well-rationalized" and therefore, was not sufficient to support their claim. This is one example of the ways having timely access to their own claim file information and receiving helpful advice on how to utilize the information they receive can be a valuable resource for claimants.

Lastly, most of the claimants we encountered in 2019 did not have representation. Some of the claimants we heard from shared with us that they had not felt the need to obtain representation because they had been told that, unlike other workers' compensation programs,

⁴⁶ The same can be said of claimants who contacted our Office wishing to understand how to find and understand DEEOIC Bulletins, Circulars, and other online resources or tools.

the EEOICPA was not an adversarial process. They understood that their former employer or current employer would not challenge their claim, and they had been told that the RC staff and CEs were there to assist them as they moved through the adjudication process. What was unclear to many claimants was the actual limits to this assistance. As a result some claimants did not obtain an authorized representative, or did not immediately seek out other assistance, because they assumed that the RC or CE would provide all of the assistance that they needed. In the end, some claimants expressed the feeling of being misled or abandoned when they were not provided the assistance needed to develop and submit the evidence necessary to establish entitlement to compensation and/or benefits.

4. **When do claimants use the resources?** As they move through the various stages in the adjudication process, claimants were often unaware of the specific resources or tools that could have been helpful to them as they endeavored to prove their claim. Thus, for most claimants, timing is important as it relates to both their awareness of resources and knowledge of when to use them. In 2019, claimants repeatedly complained to our Office of learning of DEEOIC resources well after the point in the claim process when the resource would have been useful for them.⁴⁷ Thus, we were told of instances where claimants first learned about a relevant tool or resource when they read the recommended or final decision to deny their claim, or in conversations held well after the tool or resource could have been helpful. In other instances, claimants who had access to a computer complained that they did not know how to find what they were looking for on DEEOIC's website.⁴⁸ And finally, in other cases, claimants complained that the last time they looked online at DEEOIC's website or at a DEEOIC resource/tool it said one thing, and when they went back later, the information they had previously found had been removed, replaced, or had been moved to another part of the website and they had been unable to find it. For example, this complaint was raised with respect to toxic substances and labor categories being removed from the SEM database; as well as changes in the presumptions for certain illnesses under Part E of the EEOICPA. A claimant's confidence in the EEOICPA being a claimant-friendly program was diminished when they learned of relevant tools and resources, or changes in the information contained in these resources, long after the point in which it would have been helpful to them.

Overall, our conversations with claimants in 2019 demonstrated that as they moved through the adjudication process, it was imperative for them to have real-time information about the tools and their options in order to make informed decisions regarding how to proceed with their case. The different stages in adjudication process require awareness of different resources. A good example of this involves a claimant who contacted us with an accepted claim. After years of pursuing a claim for Parkinson's disease and contacting our Office for assistance, the claimant and his AR were relieved when the claim for benefits was accepted. When they contacted our Office to share this information, the AR mentioned in passing the

⁴⁷ We found this to be the case for claimants who were unaware they could have asked for copies of their claim file information; for those who were unaware they could have accessed the SEM database; for those who were unaware they could have looked up subcontractor employment information online; as well as those who did not know the RC could assist them with outstanding medical bills or seeking pre-authorization for medical treatment.

⁴⁸ Claimants who contacted our Office were uncertain as to whether they should look for certain information in the Bulletins or Circulars posted online, or in an online brochure, or in the How to Guide section of the DEEOIC homepage. One claimant was confused as to why a link to the SEM database was not included under the Claimant/ AR How to Guide if it is one of the ways to identify toxic substances a claimant could have been exposed to at a covered facility. The same was said about the brochures that are found on the website.

relief she had at the prospect of receiving home health care benefits. When we followed up, it quickly became clear that while this AR was aware of the availability of home health care, he/she had no idea of the process for requesting this care. When we informed her of the process for requesting home health care benefits, she immediately asked where she could find resources to assist her, and upon being informed that the resources were primarily online, she stated she was too old and tired to go back to the website. Thus, even after having a claim approved, some claimants and their ARs are overwhelmed at the realization they will continue to be required to participate in the adjudication process for additional medical benefits. Here, being provided information regarding how to navigate this stage of the process and how to utilize available resources is critical for claimants and their ARs. Similar concerns were raised by claimants who had filed for home modification that were related to their covered illnesses. In pursuing these home modifications these claimants encountered problems because they had not followed the proper procedures for securing approval. They complained to our Office that it would have been helpful to have been timely informed of how to find and use DEEOIC resources to gather the documentation required, particularly before they began soliciting bids from contractors.

Chapter 3 – Difficulties Developing Evidence and Responding to DEEOIC Requests for Evidence

In this chapter we report the nature of the complaints and concerns claimants had with developing evidence and with responding to DEEOIC's requests for evidence in 2019. Some of the issues are not new in this year's annual report, but the complaints are new and highlight the pervasiveness of some of these issues.

A. General difficulties developing evidence and responding to requests for evidence

Building a successful claim for benefits requires evidence. In EEOICPA claims, evidence can come in the form of, among other things, testimony, medical records, employment records, toxic exposure records, scientific evidence, affidavits, and expert opinions. Thus, locating relevant evidence is essential in developing a successful claim. Ideally, the claimant and DEEOIC work in concert to collect any/all relevant evidence. Unfortunately, many claimants complained to our Office of embarking on efforts to collect evidence without a clear understanding of what they were looking for, and/or without a clear idea of what DEEOIC was doing to collect evidence or assist them.

In 2019, our Office heard from claimants who struggled to develop evidence because they were unaware of evidence that could have been useful in proving their claim. Thus, we heard from claimants who were unaware of evidence because they never knew the names of the toxic substances they worked with on a daily basis⁴⁹; and others who did not know about the tools and resources that could have helped them identify and obtain evidence⁵⁰. When a claimant was unaware of potential evidence, it could have a negative impact on their claim.

For example, when claimants received development letters from their CE requesting additional evidence, oftentimes within 30 days, they hurriedly attempted to identify, obtain and submit relevant evidence to satisfy these requests. However, claimants frequently complained that these development letters did not discuss where to find and how to access the DEEOIC tools and resources; and did not explain the types of evidence that could be found using these tools and resources.

Our interactions with claimants also revealed that they sometimes struggled to locate evidence because they did not understand the EEOICPA claims process. For example as we earlier discussed, we found that claimants were not aware that DEEOIC would collect some evidence, and thus were not aware of the specific evidence DEEOIC had already collected or that they could request copies of any/all of this evidence.⁵¹ This was often significant because in our experience, claim file information could be one of the most relevant resources available for claimants. A claimant's claim file contains the evidence that has

⁴⁹ A claimant's DAR records and the SEM database are among the resources and tools that can assist in developing the names of specific, unclassified, toxic substances a claimant potentially encountered while working at a covered DOE facility. CEs are instructed to review a claimant's DAR records and analyze the SEM database in an effort to identify specific toxic substances a claimant may have encountered, and whether any of those toxic substances are known to cause the claimant's claimed medical condition. However, neither the DAR records themselves, nor the SEM database printouts (which the CE is required to incorporate into the claim file) are shared with the claimant. Most claimants we encountered were unaware that this evidence was in their file, or that they could have requested copies of it.

⁵⁰ Such tools and resources include the SEM database, BTComp.org subcontractor database, the DOE Covered Facility database, and PM Exhibit 15-4, Exposure and Causation Presumptions With Development Guidance for Certain Conditions.

⁵¹ In the course of a claim, DEEOIC may routinely obtain evidence from DOE, NIOSH, the Social Security Administration, employers, unions, and health care providers, not to mention evidence from DEEOIC's own tools and resources.

been developed by DEEOIC, working in conjunction with DOE and NIOSH. When claimants request and receive a copy of their claim file information, they can then see for themselves what employment, exposure, medical and/or DEEOIC generated evidence (i.e., SEM search results, SSA records, etc.) is or is not in their claim file. When we advise claimants of their right to receive copies of their claim file information, a common response is for them to complain that had they received this information earlier in the claims process, it would have been easier to develop additional evidence and/or correct errors in their case file.

Moreover, the impact of not knowing what was in their claim file or that they could request a copy of their claim file was not limited to the initial development of evidence. We also heard from claimants in 2019 whose claims were denied years ago, who were now interested in finding out if there were any other actions they could take to prove their claim. Many of these conversations arose after claimants received letters informing them of outreach events scheduled in their area of the country. It was not uncommon for these claimants to have an incomplete understanding of why their claim was denied, and in response to their questions about the evidence in their claim file, many were surprised when informed for the first time that they could have obtained a copy of particular evidence, or their entire file. Claimants struggled to make sense of how they were supposed to build the evidence in their claim without being informed or having access to the materials that had been collected by DEEOIC or generated from DEEOIC resources/tools.

In Recommendation 6 of The Office of the Ombudsman's 2018 Annual Report to Congress stated, in part, "Claimants need to be informed that they can request their claim file or documents from their claim file." DOL's response to this recommendation was,

OWCP informs both claimants and ARs of their right to receive a copy of his or her case file, and in Chapter 6.5(d)(3) of the Federal (EEOICPA) Procedure Manual, we outline the steps CEs are to follow in handling a document request from a claimant, AR, or authorized third party. OWCP agrees that we need to inform claimants of this right as early in the claims process as possible. The agency tries to repeat this message to claimants and conveys it in training sessions for ARs. In an effort to provide proactive disclosures of case information, along with the recommended decision, OWCP provides copies of CMC and IH reports that were relied on to make a decision. *See* DOL's Response to The Office of the Ombudsman's 2018 Annual Report to Congress, No. 6 (January 17, 2020) (Emphasis added).

In spite of this response, we continue to encounter claimants who are not aware that DEEOIC has collected evidence or that they have the right to request copies of their claim file. Moreover, there are times when information is only found online in the PM or in other documents, and this can pose problems for claimants. Take for instance Chapter 6 of the PM, the section referenced by DEEOIC in its response to our discussion of claims files. Chapter 6 addresses the processing of mail, and subsection 5 addresses the handling of mail in DEEOIC offices. It is true that this section informs CEs how to provide copies of claim file information to claimants and ARs. However, we found that most claimants did not appreciate the significance of the PM, and thus rarely if ever, turned to the PM for guidance. And, even where they were aware of the PM, our experiences suggest that there is little likelihood that in seeking additional

evidence to support his/her claim a claimant would turn to the chapter entitled “Processing Mail.”⁵² In addition, while this chapter informs the CE how to provide copies of the claim file, it does not explain to claimants the procedures for requesting the claim file nor does it inform them of their right to request the claim file. Therefore, although Chapter 6 informs CEs how to provide copies of claim file information to claimants and ARs, in 2019 many of the claimants who approached us with questions and concerns about locating evidence had not reviewed their claim file, and were unaware of their right to request a copy of their claim file.

During the year there were also claimants for whom evidence no longer existed due to the destruction of records over time, and in these cases, claimants complained when their testimony, or the testimony of others with personal knowledge, was deemed insufficient by DEEOIC. Other claimants complained that their detailed written and/or verbal descriptions of when, where or how they worked, as well as the substances they worked with at covered facilities was given less weight than the information found in DEEOIC’s online database (SEM). This usually became apparent when claimants were provided a copy of an Industrial Hygiene report with their Recommended Decision, and neither the IH report, nor the Recommended Decision, discussed and weighed the toxic substance evidence claimant submitted to DEEOIC, but the SEM database evidence developed by the CE was discussed in both.

Claimants often first became aware that the evidence they submitted to DEEOIC was insufficient when they received a second development letter informing them that their evidence was insufficient and requesting the claimant submit additional evidence. The second development letter informed claimants of the need to submit additional evidence, but sometimes did not acknowledge the evidence submitted by claimant thus far, or explain the specific deficiencies in claimant’s evidence. These development letters also required a response within 30 days. For claimants who had submitted evidence they believed was sufficient, it was frustrating to receive another development letter informing them their evidence was insufficient, but not specifying why or what the deficiencies were, or the resources they could utilize to develop sufficient evidence.

In response to our 2016 Annual Report to Congress, wherein our Office raised similar issues as those brought to our attention on this topic in 2019, DOL responded, in part,

OWCP understands that claimants may be frustrated by the complexity of the EEOICPA and the process required to prove a claim. While OWCP staff seeks to aid claimants in establishing their entitlement to an award of benefits under the law, it is the claimant who bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category. The agency agrees that it is helpful when claimants understand their role in the process versus the supportive role of OWCP staff in collecting evidence, verifying employment, documenting exposure(s), proving causation, and determining an award or denial of benefits under EEOICPA. It is beneficial when OWCP can help claimants understand OWCP’s policies and procedures and provide copies of specialist reports.

OWCP is committed to clear, transparent administration of EEOICPA. As part of this commitment, we maintain the Federal (EEOICPA) Procedure Manual (PM), bulletins,

⁵² The PM does have a word search function. Claimants have complained there are times when in order to successfully use this word search function, one has to know the specific jargon used by the program.

and circulars online for public access. The duties of the Claims Examiner (CE), as well as the steps in the adjudication of a claim, are clearly outlined in the PM. During the development of a claim, CEs communicate with claimants primarily by phone and through written development letters to guide them through the claims process. This is when the CE provides specific information regarding what is required to adjudicate the claim, as well as what information the CE will obtain (e.g., the employment and exposure records). OWCP continually works with claims staff to ensure that the development letters are specific in requesting what is needed and advising of actions the CE will take or has taken already. In addition, in 2018, OWCP leadership provided specific guidance to all staff at each district and Final Adjudication Branch (FAB) office, advising that exposure and medical evidence (as appropriate) should be shared with treating physicians prior to adjudication whenever possible. Finally, over the last three years, the DEEOIC nurses have assisted the CEs by calling physicians' offices directly in an effort to assist claimants in obtaining what is needed.

In addition, during all general outreach events DEEOIC staff provide a detailed review of the information that the CEs obtain automatically, and that which is requested from the employee, including a discussion of employment and medical records, and the Site Exposure Matrix (SEM). The authorized representative workshops also include two days' worth of information in small settings, in which claims staff provide very specific information regarding the evidence required during each phase of adjudication.

See Secretary of Labor's Response to the Office of the Ombudsman's 2016 Annual Report, No.4 (January 9, 2019). (Emphasis added).

Claimants appreciated OWCP's statement of commitment to clear and transparent administration of the EEOICPA. Yet, claimants have continued to express the desire to be better informed regarding the specific types of evidence that CEs automatically obtain when developing a claim, as well as what specific evidence is obtained by the CE in their case. In fact, claimants and ARs have raised the question of why DEEOIC would write to the claimant's doctor for their opinion without sending the doctor the same Statement of Accepted Facts (SOAF), employment, medical, industrial hygiene, and/or exposure records that CEs are required to provide a DEEOIC contract medical consultant when asking for the same opinion.⁵³

Likewise, ARs who are unable to travel to the AR training workshops miss out on the specific information and guidance shared during these events. Some of these ARs asked if it were possible to mail some of the valuable information shared during AR training workshops directly to all ARs, or to post this information online for anyone seeking such guidance to review.

Some of the complaints concerning the difficulties that arise when trying to locate and develop evidence are unique to the type of evidence the claimant needs to develop. Below we discuss these complaints.

⁵³ Reference to providing this information to the treating physician can be found in PM Chapter 16.10(a)(1) Version 4.0 (November 14, 2019). However, claimants have not reported receiving confirmation that this evidence is being provided to their treating doctors, nor have they reported being provided with copies of the SOAF and evidence if it has been sent to their treating doctor.

B. Medical Evidence

At various points in a given claim, claimants are requested to submit medical evidence. When a claim is filed, claimants are requested to submit medical evidence to establish they were diagnosed with the illness(es) they are claiming. Later, if a claimant develops a new illness as a result of an accepted illness, medical evidence diagnosing the new illness and how it is was caused by the accepted illness (or treatment for the accepted illness) is requested. In cases where priority processing of a claim is sought because the claimant is terminally ill, evidence establishing that the claimant has weeks or days to live is necessary.

1. **Diagnostic Evidence** – developing evidence that diagnoses an illness can present a challenge. Thus, a common scenario that we encounter arises with survivor claims where the employee passed away years ago. In many such instances medical evidence diagnosing all of the illnesses suffered by the worker may not have been developed, or if developed was destroyed years ago.

A very interesting encounter involved a case where our involvement actually began in 2017 when the AR for a claimant contacted our Office seeking information to assist the claimant (his/her parent) with his/her claim for benefits. In discussing the issues with developing Hanford employment evidence, the AR shared that the claimant's father had also worked at Hanford many years ago, beginning in 1943, and that he/she believed that the father had passed away from cancer while on the job in 1953. The AR stated that he/she had inquired with the Resource Center about filing a claim for survivor benefits on behalf of the claimant, but had been dissuaded because he/she did not have medical records diagnosing the father with cancer. Our Office informed the AR that the claimant could file a claim for benefits without medical evidence of a diagnosis in hand, and that when the CE later requested employment and DAR records from Hanford, it was possible those records would contain information regarding the employee's illness, particularly if he sought medical treatment at work or passed away while on the job. In addition, since the father had worked at Hanford during a designated Special Exposure Cohort time period, we explained that should the employee's records from Hanford contain evidence to establish the diagnosis of one of the 22 specified cancers, there was a greater chance the survivor claim would be accepted under Part B.⁵⁴

Upon receiving the information from our office that he/she could request a copy of the claim file records, and in particular, the DAR records, the AR did so. Subsequently, the AR complained that the CE issued a Recommended Decision to deny the claim for stomach cancer prior to his/her receipt of the DAR records. While awaiting the claim file records from DEEOIC, the AR also directly contacted the DOE Richland Operations Office for copies of any records regarding the employee, and was informed that documentation had been found referencing an autopsy report for the employee. After further investigation, in May 2019, the DOE Richland Operation Office found the employee's autopsy report which diagnosed colon cancer, one of the 22 specified cancers. In October 2019 the claimant's survivor claim for colon cancer was accepted under Part B of the EEOICPA. This case serves as an example of

⁵⁴ The SEC period included all employees of the DOE, its predecessor agencies, and its contractors and subcontractors who worked at the Hanford site in Richland, Washington, from October 1, 1943 through December 31, 1983. There is an additional period from January 1, 1984 through December 31, 1990, that contains certain exclusions.

how a claimant can benefit when he/she understands the evidence that is required of him/her, and of their right to information as they pursue their claim.

Our Office also heard from claimants in 2019 who were experiencing difficulties obtaining medical records because their doctor was no longer practicing, and/or the hospital/doctor's office had destroyed the records after a period of time.⁵⁵ These claimants often approached us seeking suggestions on where else to search for records when physician and/or hospital records were not available. One potential source that we are aware of is that beginning in 1997, the Former Worker Medical Screening Program (FWP), supported by the DOE's Office of Environment, Health, Safety and Security, began providing free medical screenings for former DOE Federal, contractor and subcontractor workers from DOE sites who may be at risk for occupational diseases.⁵⁶ When appropriate, the FWP physician who writes the results letters includes language regarding the possible work-relatedness of a condition, especially if the condition is known to be a potential occupational disease.⁵⁷

According to the PM if the worker participated in the FWP, the CE is to request a copy of the FWP screening records. *See* Federal (EEOICPA) PM Chapter 11.7, Version 4.0 (November 14, 2019). However, some claimants may not mention to the CE that there was a FWP screening. This is especially true when the claimant is a surviving family member. Surviving family members may have no way of knowing if the worker ever had a FWP screening. Thus, rather than placing the onus on the claimant to alert the CE to a FWP screening, it would be helpful if in the requesting information from DOE, DOL included in this request a request for the results of any FWP screening.

Likewise, for uranium miners, millers and ore transporters who may be covered under RECA and/or the EEOICPA, the Radiation Exposure Screening and Education Program (RESEP) was created in 2000, and is administered by the Department of Health and Human Services (HHS). The purpose of RESEP is to aid those individuals who may have been adversely affected by the mining, transporting and processing of uranium, and the testing of nuclear weapons for the Nation's weapons arsenal by screening for cancer and other related diseases. *See* RESEP FY 2006 Report to Congress. Although the DEEOIC PM does not specifically state the CE is to request a copy of RESEP screening reports, as it does with FWP reports, it would be helpful for claimants to be informed that any/all health screenings may be submitted into evidence in furtherance of their claim for benefits.

2. **Consequential Illness Evidence** – unfortunately, some claimants develop a new illness(es) (or injury) as a result of their accepted illness, or as a result of the medical treatment they

⁵⁵ Health care providers are only required to maintain medical records for a certain period of time, usually established by each state.

⁵⁶ Since medical screening activities began in 1997, the FWP has examined 91,793 DOE workers, provided 145,871 examinations, and screened 15,325 DOE workers for early detection of lung cancer. *See* 2018 Former Medical Screening Program Report. <https://www.energy.gov/sites/prod/files/2019/05/f63/2018-FW-Medical-Screening-Program-Report.pdf>

⁵⁷ Based upon the individual's occupational exposure history, the screenings may include a physical exam, chest x-ray with B reading, low-dose chest CT scan, breathing tests, Beryllium Lymphocyte Proliferation Test, blood chemistry test, urinalysis, and hearing test. The FWP also offers free re-screening every 3 years after the initial examination, and provides each participant a summary of all the findings, both occupational and non-occupational related.

received for their accepted illness(es).⁵⁸ For the claimants who contacted our Office in 2019 about consequential conditions their primary complaints were, a) they did not know they needed to file a claim form for consequential illnesses, and did not know how to do so; and, b) they did not understand why DEEOIC identified some of their health problems as consequential conditions, and others as part of the accepted illnesses disease-process or “treatment suite”.

A common first step in assisting these claimants is to inform them that there is no separate claim form to file for consequential illnesses, and there is no place or data field on the Claim for Benefits (Form EE-1/2) designated for indicating that one is filing a claim for a consequential condition. Instead, to file a claim for a consequential condition a document containing written words of a claim for a consequential condition(s) is acceptable, although the CE will ultimately obtain from the claimant a completed and signed Form EE-1/2 associated with the consequential claim before issuing a decision. Oftentimes underlying the complaints by claimants asserting that they did not understand why their CE was asking them to file a claim for a consequential illness was the fact that these claimants did not understand the concept of a consequential condition. Thus, we frequently encountered complaints about consequential illnesses when claimants encountered problems with the payment of, or authorization for medical treatment. Having been told that they were entitled to medical benefits, claimants did not understand the need to file an additional claim to receive medical benefits, especially since the medical benefits were for a condition related to their covered condition. And even after they were informed of the need to file a claim for a consequential condition, some claimants continued to struggle because they were unable to distinguish between the medical benefits to which they became entitled when their primary claim was accepted and the medical benefits for which they first had to file a claim for a consequential condition. We also found that because they did not understand the concept of a consequential condition claimants did not always appreciate the need to specifically identify their claim as a claim for a “consequential condition.”

In one example, a claimant with an accepted CBD case filed a claim and supporting medical evidence for medical conditions resulting from his/her CBD and/or the treatment for CBD. The claimant’s treating doctor submitted more than one letter addressing some of the claimant’s consequential conditions and the link to CBD. In September 2019 the District Office issued a Recommended Decision to deny the claim, and according to the claimant issued the Recommended Decision without writing to the physician or referring the claim to a CMC. Thus, the claimant filed objections to the Recommended Decision and requested a hearing. Prior to the hearing, the claimant reached out to our Office for information. However, upon review of the Recommended Decision, we, like the claimant could not determine why the claim was denied. In our efforts to assist this claimant our Office also recognized that the Recommended Decision did not address the Sample Listing of Medical

⁵⁸ Consequential conditions can arise for any reason established as being medically linked to a previously accepted work-related illness. In some instances, a “chain of causation” can result in a series of injuries, illnesses, impairments, or diseases, which are a direct consequence of an accepted work-related illness. When medical evidence is present to establish such a scenario, the resulting consequential condition(s) in the causal chain are all compensable under the EEOICPA. The acceptance of a consequential condition(s) results in medical coverage for that condition(s) under Part B and/or Part E as appropriate. Additionally, under Part E, any diagnosed illness, injury, impairment, or disease shown by medical evidence to be a consequence of a covered Part E condition may affect the calculation of an impairment rating and/or wage-loss. See Federal (EEOICPA) PM Chapter 23.2, Version 4.0 (November 14, 2019).

Conditions with Likely Secondary Disorders in PM Exhibit 23-1, Version 4.0 (November 14, 2019). As a result, the claimant was unaware of this Exhibit, which lists 25 disorders secondary to (or as a consequence of) CBD or its treatment due to steroid use (such as Prednisone), on which his claimed consequential conditions were included. As of the writing of this report, the claimant had attended a hearing and was awaiting a decision from the Final Adjudication Branch.

- 3. Terminal Illness Evidence** – the PM states, “DEEOIC strives to process claims fairly and expeditiously for all claimants. However, claimants who are end-stage terminally ill must have priority processing.” Federal (EEOICPA) PM Chapter 11.8, Version 4.0 (November 14, 2019). DEEOIC has demonstrated the ability to detect and designate such claims for priority processing. However, in 2019, our Office was contacted by family members and ARs who complained that DEEOIC was now requiring a terminally ill claimant’s physician to provide a more specific opinion regarding the estimated time period the claimant had to live before a terminal designation would be granted and the claim expedited. Here is an example that highlights the concerns brought to our attention. In November 2019 an AR contacted our Office to complain that he/she had been informed by DEEOIC that in order for a terminal claim to be given priority processing, the claimant or AR had to first submit a medical report stating that the claimant had weeks or days to live. This AR assured us that in the prior terminal cases he/she had handled, evidence establishing that the claimant had six months or less to live, such as evidence establishing that the claimant was in hospice care, had been sufficient to initiate priority processing. Thus, this AR was shocked to receive a request from DEEOIC asking for an opinion stating that the claimant had weeks or days to live. Adding to this AR’s shock was the fact while the PM referred to “claimants who are end-stage terminally ill”, the PM did not define this term and nowhere in the PM or in any other document could this AR find a statement informing claimants or ARs that to initiate priority processing they first had to submit a medical report stating that the claimant had weeks or days to live. In the end, while this AR was troubled with this new definition of “claimants who are end-stage terminally ill,” it concerned this AR even more that he/she had not received prior notice of this change and that this new definition could not be found in the PM or in other documents online.

Citing to the timing and circumstances surrounding a request for terminal designation, claimants and ARs characterized this requirement as extremely insensitive. In fact some ARs expressed reluctance to share DEEOIC’s request with the claimant’s family, particularly when families were already struggling with the decline in their loved ones health. ARs also shared that when they tried to obtain a medical statement stating that the patient had weeks or days to live, treating physicians often responded by reminding the AR that they had already prescribed hospice care, and thus questioned the need for additional evidence to verify that the claimant was end-stage terminally ill.

At a 2019 outreach event in South Carolina, we discussed this issue with representatives from two hospice facilities. These representatives echoed the concerns raised by claimants and ARs. They asserted that in order to enter hospice a medical determination had already been made that the patient had six months or less to live. Thus, they questioned the need for more information to establish that the patient was “end-stage terminally ill.” Moreover, not only did they view it as insensitive to ask someone to try to guess when another person would die,

they stressed that when patients entered their facilities, their focus was on the quality of care. Accordingly, they winced at the thought of being asked to state that someone only had weeks or days to live. They expressed fear that such a statement would mistakenly be equated as giving up. Lastly, these representatives noted that upon entering their facilities, most patients were no longer seen by their treating specialists. Rather medical care was generally aimed at managing symptoms and pain. Thus, they seemed uncertain as to whether they were in a position to state that a patient only had days or weeks to live.

An unfortunate possible outcome in any claim involving a terminally ill claimant is that the claimant may pass away before the claim is finalized and payment is received. When this occurs the result may be less monetary compensation or no monetary compensation for the eligible surviving family members. This explains the frustrations that we hear when the claim of a terminally ill claimant is delayed, or family members and ARs feel that the claim is not receiving priority processing. This also explains why some claimants and ARs became so troubled when DEEOIC began to define “claimants who are end-stage terminally ill” as only having weeks or days to live. Priority processing means that the processing of the claim is expedited, it does not mean that the claim goes through an abbreviated claims process. Unfortunately, in 2019 as in previous year, we were advised of instances where the terminally ill claimant passed away before all of the necessary steps in the claims process were completed. As a result, claimants and ARs expressed fear that defining “claimants who are end-stage terminally ill” as claimants who only have weeks or days to live would simply increase the likelihood that some claimants passed away before compensation was paid. Depending upon where the claim is in the claims process, claimants and ARs are concerned that weeks or days will not be sufficient time to process some claims. And while claimants and ARs acknowledged that the death of the worker before payment of compensation sometimes resulted in less money or no money for eligible survivors, they further stressed that the biggest tragedy of a claimant passing away before compensation was paid was that the worker did not get the satisfaction of knowing that his/her claim had been accepted, and would not have the opportunity to take advantage of the compensation and medical benefits to which he/she was entitled. Based upon the complaints and documentation shared with our Office in 2019, ARs and the family members of claimants expressed the urgent need for clarification of the medical evidence needed to qualify for terminal status.

C. Employment Evidence

In the Findings of Congress establishing the EEOICPA, it states,

Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect

to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation. See 42 U.S.C. § 7384(a)(2) and (3). (Emphasis added).

Since the implementation of the Act, DEEOIC has pursued a variety of avenues to assist claimants (and their survivors) in proving when and where they worked in a process known as “employment verification”.⁵⁹ However, for some, their employment records have been destroyed; for others, their employment records had never been kept; and on occasion we hear of instances where records may be in a storage facility or warehouse somewhere in the United States, waiting to be found and indexed.

Over the years our Office received complaints from claimants who worked in almost every type of employment scenario covered under the EEOICPA. In 2019, we were contacted by those who were frustrated that some, but not all, of their claimed employment was verified; by those struggling to find evidence to substantiate their employment with DOE subcontractors and/or AWE employers; and by those who were trying to identify someone at DOL or DOE with the proper security clearance in order to discuss classified employment information.

When claimants contacted our Office with complaints and questions regarding how they could prove their covered employment, we found that they were usually unaware of the documents that may have already been collected or generated by DEEOIC. The universe of documents that the DEEOIC may have access to or request in order to verify claimed employment includes,

- DOE Response to Employment History for Claim under the EEOICPA (Form EE-5)
- Employment Pathways Overview Document (EDOP)⁶⁰
- ORISE database
- Occupational History Questionnaire
- DAR records
- Dosimetry records
- Corporate verifier records
- Social Security Administration earnings records
- BTComp.org subcontractor database
- Center for the Protection of Worker Rights (CPWR) records
- Union records
- Other Federal records
- DEEOIC internal resources

⁵⁹ The process of employment verification is a difficult and challenging hurdle in many cases. Because the atomic weapons program dates back to the early 1940s, and involves a large number of public and private organizations, locating pertinent individual employment records can be difficult. Moreover, records may be missing, degraded, lost, or destroyed. As the statute allows latitude in the assessment of evidence, it is not necessary for the CE to collect evidence that establishes that the claimed employment is proven beyond a reasonable doubt, but merely that a reasoned basis exists to conclude that the employment occurred as alleged. This ensures that the claimant receives favorable treatment during the employment verification process. Once the CE has conducted an examination of the available factual evidence in support of the claimed employment, he or she must decide whether a sufficient basis exists to verify that each of the three elements of covered employment is satisfied. See Federal (EEOICPA) PM Chapter 13.5, Version 4.0 (November 14, 2019). (Emphasis added).

⁶⁰ CEs are instructed to utilize the EPOD, which is an internal document that the National Office Policy Branch created to assist CEs in identifying facility-specific contact persons and resources to use in obtaining employment verification. See Federal (EEOICPA) PM Chapter 11.3(j), Version 4.0 (November 14, 2019).

Unfortunately, most claimants proceed with efforts to prove their employment without being informed that these records exist, or that they could have requested copies of any/all employment information received or generated by DEEOIC. To date, we are not aware of a procedure in which claimants are routinely advised of the evidence collected or generated by DEEOIC, or advised that they can request a copy of any/all such evidence by sending a written request to their CE.

In cases where employment verification was challenging, DEEOIC has sent claimants an Employment History Affidavit (Form EE-4) in order for the claimant to collect statements from individuals knowledgeable of their work history. However, claimants who submitted employment history affidavits in 2019 complained that the affidavits they submitted were not credited unless they precisely matched other employment documentation in the file. Claimants described feeling that their evidence had to prove beyond any reasonable doubt each and every element of their claimed employment. This is not a new complaint. In an all too common scenario, claimants who had successfully proved some of their claimed employment found it particularly confounding when, in spite of the detailed description of their employment that had been accepted by DEEOIC, their testimony and co-worker affidavits addressing other employment was deemed insufficient. These claimants expressed to our Office the frustration of attempting to convince CEs of their employment, especially when in talking to the CE it quickly became apparent to the claimant that the CE had no personal knowledge of the work done at such facilities.

Complaints regarding difficulties proving subcontractor employment continued as well. Efforts to prove subcontractor employment were often plagued by the fact that DOE did not have records of this employment, and Social Security earning records could not verify that the worker had worked onsite at a covered facility.⁶¹ The following is just one example of the problems encountered by claimants trying to verify subcontractor employment. In this instance the claimant worked at Hanford during the first few years it was operational.⁶² The claimant worked for two different subcontractors during the covered time period but only had sufficient evidence to establish employment with one. After DEEOIC obtained copies of the claimant's SSA earnings records, the claimant was still missing evidence establishing a contract between the subcontractor and a DOE contractor.⁶³ The claimant's AR contacted our Office seeking assistance with a different issue, but also inquired about information to prove subcontractor employment. Based upon the details the AR shared with our Office, we searched the BTComp.org subcontractor database online and as a result of this search informed the AR that the subcontractor the claimant worked for was, in fact, listed as a covered subcontractor at Hanford during the time period the claimant claimed to have worked. When the AR contacted us to report the positive outcome for the claimant, the AR pointed out that had he/she not contacted our Office regarding a separate complaint, it was unclear whether the evidence in BTComp.org would have been utilized to prove the claim.

When it comes to assisting claimants who are having difficulties proving subcontractor employment, success stories like the one above are rare. It is far more common to encounter instances, where after

⁶¹ In many instances while Social Security earning records identified the claimant's employer, these records did not identify where the work for this employer had been performed.

⁶² Hanford was established in 1942 and remains operational today. See DOE Covered Facility Database. <https://ehss.energy.gov/Search/Facility/ViewByName.aspx>.

⁶³ In order to establish covered employment, a claimant needs to establish, (1) The claimed period of employment occurred during the covered time frame as alleged; and (2) A contract to provide "covered services" existed between the claimed subcontractor and a DOE contractor at the facility or the identified vendor (during the covered time frame); (3) The employment activities (work or labor) took place on the premises of the covered facility. Federal (EEOICPA) PM Chapter 13.13(b), Version 4.0 (November 14, 2019).

being informed that DEEOIC could not verify subcontractor employment, the claimant was at a total loss as to where to turn, or who to approach, to locate the records needed to verify this employment.

D. Toxic substance exposure evidence

Submitting evidence of toxic substance exposure(s) has consistently been a challenging aspect of pursuing Part E claims for benefits. Under Part E of the EEOICPA, which compensates DOE contractor and subcontractors, the evidence must establish that it is at least as likely as not that exposure to a toxic substance at a DOE facility was a significant factor in causing, contributing to, or aggravating the claimed illness; and it is at least as likely as not that the exposure to such toxic substance was related to employment at a DOE facility. *See* 42 U.S.C. § 7385s-4(c)(1)(A) and (B). A toxic substance is any material that has the potential to aggravate, contribute to, or cause an illness or death because of its radiological, chemical, or biological nature. *See* Federal (EEOICPA) PM Chapter 15.2, Version 4.0 (November 14, 2019).

1. **Records Obtained and Generated by DEEOIC** - After filing a claim for benefits, a claimant then participates in an occupational history interview with the RC. The claimant's answers are recorded by the RC in the Occupational History Questionnaire (OHQ). The OHQ is an important document because it is used to record information supplied by an employee or a survivor concerning first-hand knowledge of the employee's occupational exposure to toxic substances. *See* Federal (PM) Chapter 15.5(e), Version 4.0 (November 14, 2019). The OHQ is then forwarded to the District Office, but the claimant is not provided a copy of the OHQ to review, or for future reference. Claimants complained that they did not fully understand the purpose of the OHQ until they later saw it referenced in a decision, at which point they believed it was too late to make corrections or updates. In other instances, claimants struggling to remember the specific toxic substances they were exposed to, sometimes over a lengthy career, complained that because they had not been provided a copy of their OHQ to review, they were unable to correct or amend it as they remembered more information.

Furthermore, when it came to developing evidence of exposure, this was another instance where claimants were often hampered by the fact that they were not aware they could request a copy of their claim file, which often contained medical and/or industrial hygiene records.

For example, the AR of a claimant diagnosed with chronic toxic encephalopathy in 2008 contacted our Office and stated,

I received a letter from [CE]. I am unsure how to proceed. The questions [the CE] is asking have already been answered in the attached claim...I sent a letter from doctor and matrix showing how chemicals in the KRYLON product my [spouse] used are recognized by [the facility] as being toxic...I have asked for documentation from [the facility] that would indicate this product was/is used in the art department.

- Email from AR, April 10, 2018

In a subsequent conversation with the AR it was apparent that despite the AR's efforts to provide DEEOIC with toxic substance exposure documentation and a medical causation opinion, there was still a lack of understanding regarding what type of evidence DEEOIC was requesting.

2. **The SEM Database** - In 2019, our Office heard from claimants who did not understand what the SEM database was, and who had never attempted to access it. We found that this tool simply was not on some claimants' radar as they attempted to gather evidence to establish the toxic substances they were exposed to in the course of their job duties. Nevertheless, in 2019 the majority of complaints regarding the SEM database were from those who had accessed the database and either experienced difficulties using it and/or were frustrated by the amount of information they thought was missing from it. Claimants questioned the usefulness of a tool that in their opinion, had so much information missing. They also expressed concern that the absence of data in SEM was erroneously interpreted by CEs to mean that workers were not potentially exposed to as many, or any, toxic substances.

A claimant who had worked at the Paducah Gaseous Diffusion Plant (GDP) complained that many toxic substances were missing from the labor category of "firefighter" in the SEM database. At the time, there were only 17 or 18 toxic substances in the SEM database associated with the "firefighter" labor category, which the claimant asserted was far below the actual number of toxic substances a firefighter would encounter at the Paducah GDP. In addition, while the claimant had been informed that affidavits regarding toxic exposures could be submitted from current firefighters or retirees, the claimant complained that the people he/she knew would not put anything in writing due to security concerns. Lastly, this claimant expressed frustration at not being able to find a point of contact to speak with about a DOE document that had not been cleared for public release, but he/she believed would be helpful in identifying additional information to be added to SEM.

When they knew that they had been exposed to a large number of toxic substances, yet the development letters they received from DEEOIC only identified a few toxic substances, some claimants complained that the SEM database must have underrepresented the toxic substances to which they were exposed.⁶⁴ In many instances, although we could not say with certainty, it appeared the CE had followed the PM guidance which stated,

If the CE produces a list of toxins that is greater than seven (7) based on the facts surrounding the case, utilizing the necessary filtering functions, and recognizing any limitations of SEM, the CE should consult with the NO IH to identify which toxins on the list of substances were most likely to have been encountered and which would likely have the greatest impact on the claimant's claim, and include as many of those as is necessary. Federal (EEOICPA) PM Chapter 15.8(e)(1), Version 4.0 (November 14, 2019).

It is our understanding pursuant to this guidance CEs are encouraged to limit their consideration to seven toxic substances.⁶⁵ None of the claimants our Office heard from in 2019 were aware of this guidance which limited the number of toxic substances the CE, and by extension an IH, could consider when adjudicating a claim without consulting with a National Office Industrial Hygienist. *See* Federal (EEOICPA) PM Exhibit 15-5, Version 4.0 (November 14, 2019). We are

⁶⁴ The DAR records can be instrumental in obtaining factual information (job titles, buildings, work processes, incidents and accidents, etc.) regarding the claimant when conducting a thorough search of the SEM database.

⁶⁵ During their public meeting on April 24, 2019, various members of the Advisory Board on Toxic Substances and Worker Health also discussed their understanding that CEs were encouraged to limit their consideration to seven toxic substances. *See* Advisory Board on Toxic Substances and Worker Health – Full Board Meeting, April 24, 2019, pages 189 – 190.

not in a position to discuss how DEEOIC implements Chapter 15.8(e)(1) of the PM. Yet, claimants who had been exposed to a large number of toxic substances have complained to us when it appeared, from the decisions they received, that DEEOIC had limited its discussion to only some of these toxic substances. In these instances, limiting the number of toxic exposures considered, instead of considering the cumulative effect of a large number of toxins, has not instilled confidence in claimants that the exposure evidence in their claim is fully developed and adjudicated.

E. Classified Evidence

Again in 2019, claimants who worked with classified materials or involving classified processes reported being unable to provide this information to their CE. One claimant, an electrician, would not divulge any of the materials he worked with based upon his/her belief that this information was classified. This was just one of the instances where because a claimant was reluctant to share what he/she deemed to be classified information we had to coax the claimant to concede that there was information that he/she was not sharing. Another claimant, who had worked at Hanford for over 46 years and been diagnosed with chronic solvent encephalopathy, was unable to provide DEEOIC information about the specific toxic substances to which he/she had been exposed because this information was still classified.⁶⁶ This claimant asserted to us that it took the involvement of a NIOSH health physicist who had previously conducted a classified interview with the claimant, the DOE Richland Operations Office, the Hanford Atomic Metal Trades Council, and the claimant's AR to assist in arranging with DEEOIC to provide a way for the claimant to share this classified information. It is our understanding that in the end this matter was resolved to the claimant's satisfaction. Yet, while there were instances where we were able to advise claimants of their right to request a means to share classified information, we encountered other instances where claims had been denied, sometimes years ago, without an opportunity for the claimant to securely share classified information. These claimants almost always felt that the inability to share this classified information had been detrimental to their claim. One has to wonder how many claimants did not disclose evidence that could have been relevant to their claim because the claimant deemed the evidence to be classified and no one advised them that there was a means available to share such information.

F. Causation Evidence

Once a claimant has proven they were diagnosed with the claimed illness, and that they were exposed to a toxic substance(s) at a DOE facility with a known link to their claimed illness, they are then requested to provide DEEOIC with a well-rationalized medical report. Most claimants who contacted our Office in 2019 did not have a good understanding of what was meant by a "well-rationalized medical report."

As has been previously mentioned, when a CE seeks a causation opinion from a CMC, the CMC is to produce a well-rationalized medical opinion that the evidence either has or has not satisfied the causation standard under Part E. The CE is required to send the CMC a statement of accepted facts (SOAF) and all relevant medical, employment and exposure evidence in order for the CMC to produce such a report.

⁶⁶ In many instances, while claimants fear sharing classified information, in reality the information in question is no longer classified. However, in this example, the claimant was well aware that the information in question was still classified.

As we discuss throughout this report, the failure to know what is in their claim file and thus, what is available to them, as well as how to effectively use these documents plagues claimants throughout the claims process. Yet, we frequently find that this problem is often most significant when it comes to the problems encountered by claimants when attempting to develop evidence addressing causation. It has been our experience that the claimants who seek causation reports from their treating physician almost always walked into the appointment without any employment or toxic substance exposure documentation to provide the doctor, let alone a clear understanding of what they needed to ask their doctor to provide. If the claimant was fortunate enough to have a physician willing to write a causation letter on their behalf, there were many instances where these letters did not contain a detailed, accurate account of the claimant's toxic substance exposure history, medical history and pertinent diagnostic evidence, or the application of creditable medical health science information as to how the exposures at least as likely as not were a significant factor in causing, contributing to, or aggravating the claimant's claimed condition. Thus, many claimants would invariably receive a second development letter stating that the doctor's letter was insufficient, and again requesting the claimant submit a well-rationalized medical report to support their claim, within 30 days. After having already asked their doctor to write a causation report, it was at this stage that claimants would usually complain to our Office about the second development letter they received. Believing that they had already submitted sufficient evidence and not understanding why this evidence had been deemed insufficient, some claimants would describe the development letters as having the effect of making the Part E causation standard feel like a constantly moving target. Moreover, having already obtained one report from their doctor, claimants often expressed reluctance to go back and "bother" their doctor for another report. Timely knowledge of what was in their claim file and, more importantly, a timely understanding of how to effectively use this information would have been a tremendous help to these claimants.

Much of the information and guidance that we are talking about can be found in the PM and/or other documents. Yet, the vast majority of the claimants we encounter do not and will not routinely refer to the PM for assistance. Rather, they need to be able to work with someone who can provide them with relevant information and guidance, and who can provide this information and guidance at a time that it is most relevant and helpful to the claimant. And to be most effective, the person providing this information and guidance needs to be familiar with the EEOICPA and the EEOICPA claims process and needs real time access to the claimant's claim file. DEEOIC recently announced an expanded role for the Resource Centers in assisting claimants. We hope that this will provide claimants with much of, if not all of, the assistance that they need in processing their claim. This is an issue that we will certainly monitor in the coming year.

Chapter 4 - Concerns with Policies and Procedures

Some claimants struggle with their claim because they do not understand the policies or procedures used in adjudicating their claims. Others become frustrated with the processing of their claim because they question the basis or the accuracy of the policies and procedures used in the adjudication of their claims. As a starting point, claimants would benefit if the policies and procedures used in the adjudication of their claim were fully discussed in the decisions and letters issued by DEEOIC. As stated earlier, we frequently find that when the decision merely cites to the policy or procedure, claimants rarely appreciate the value of accessing and reading the entire policy or procedure. And even when they are able to review the procedure or policy, the application of the policy or procedure can sometimes confuse and/or frustrate claimants. Throughout the year, claimants approached us with concerns involving a variety of DEEOIC policies and procedures. As already discussed in the report, one area of concern involved the use of the toxic substance exposure and causation presumptions under Part E found in the PM. Some claimants were not aware of these presumptions, while others questioned the application of these presumptions to their claim. Two other policies that continued to generate a lot of concern in 2019 involved DEEOIC's policy regarding hearing loss and the continued use by IH's of the language once found in Circular 15-06.

A. Hearing Loss

Claimants continued to contact our Office in 2019 with complaints regarding the hearing loss criteria outlined in Exhibit 15-4 of the PM, as well as other toxic substance exposure policy presumptions. A frequent underlying complaint that many claimants found difficult to articulate was their lack of understanding of the difference between a law and a policy presumption.

Claimants with hearing loss claims complained that the standard for hearing loss in PM Exhibit 15-4 has been implemented as law rather than a policy. In particular, they argued that if they did not have the evidence to meet the standard outlined in Exhibit 15-4, their claim was denied. They further noted that although the hearing loss standard permits claimants to challenge the scientific basis of the individual components of the standard (medical, employment, and exposure), it does not permit claimants, when they do not meet the standards outlined in Exhibit 15-4 to prove their case under the Part E causation standard as other Part E claimants are allowed to do.

These concerns often prompted claimants to contact us when their hearing loss claims were denied. For example, a 2019 Final Decision denying hearing loss was shared with our Office which concluded that based upon the claimant's employment at the Idaho National Laboratory he/she did not qualify for hearing loss because he/she did not meet the labor category and toxic substance exposure requirements set forth in DEEOIC policy.⁶⁷ The decision included the language from PM Exhibit 15-4 which states,

⁶⁷ The Part E causation standard for hearing loss can be satisfied if the three following criteria (a, b and c) are satisfied: a. Medical: The file contains a diagnosis of bilateral sensorineural hearing loss (conductive hearing loss is not known to be linked to toxic substance exposure). b. Employment: The verified covered employment must be within at least one specified job category listed below (or any combination thereof) for a period of 10 consecutive years, completed prior to 1990. The labor categories are the following: • Boilermaker • Chemical Operator • Chemist • Electrician/Electrical Maintenance/Lineman • Electroplater/Electroplating Technician • Garage/Auto/Equipment Mechanic • Guard/Security Officer/Security Patrol Officer (i.e., firearm cleaning activities) • Instrument Mechanic/ Instrument Technician • Janitor • Laboratory Analyst/Aide • Laboratory Technician/Technologist • Lubricator • Machinist • Maintenance Mechanic • Millwright • Operator (most any industrial kind, the test being whether the operator position is one in which there is potential for solvent exposure) • Painter • Pipefitter • Printer/Reproduction clerk • Refrigeration Mechanic/HVAC Mechanic • Sheet Metal Worker • Utility Operator. c. Exposure:

This policy guidance sets forth the sole evidentiary basis for determining whether it is “at least as likely as not” that an occupational exposure to a toxic substance was a significant factor in causing, contributing to, or aggravating hearing loss. Claims filed for hearing loss that do not satisfy the conditions of acceptance outlined in this procedure cannot be accepted, because these standards represent the only scientific basis for establishing work-related hearing loss due to exposure to a toxic substance.

In filing a request to have the final decision reconsidered, the claimant argued that although DEEOIC has identified certain labor categories to help evaluate claims, it should be understood that additional labor categories had been exposed to the organic solvents that are known to cause bilateral sensorineural hearing loss. The claimant stated, “The DEEOIC is using its ‘policies and procedures’ as though they were established law or regulations when in fact they are not...In denying my claim, the DEEOIC did not recognize my actual work processes/activities, routes of exposure for the chemicals listed for hearing loss, and the exposure I received.” (Request for Reconsideration by claimant, 2019.)

Citing to the requirement that the employee must have been exposed to at least one of the nine organic solvents listed in the hearing loss standard for 10 consecutive years prior to 1990, a potential claimant asked our Office to advise what, if any, changes were made between 1990 and 1992 to eliminate toxic solvents in the work environment. This potential claimant stated that his/her exposure to the same toxic solvents continued after 1990, and continued with no change in the health risks involved in working with this solvent. Thus, having met all of the other elements of the hearing loss standard with the exception of 10 consecutive years of employment in one of the listed labor categories prior to 1990, this claimant argued that since there were no changes to the frequency and level of his/her exposure between 1990 and 1992 that eliminated or reduced the health risks caused by these exposures, a waiver or exception to the 10 year rule should be granted. Other claimants similarly stressed that it is difficult to imagine that exposures to organic solvents across the DOE weapons complex achieved safe limits as of January 1, 1990. To emphasize this point, claimants routinely provided us with news articles discussing the safety concerns that continued to arise with various facilities associated with this program.

Moreover, there were instances where in endeavoring to develop their hearing loss claim, claimants became troubled when they realized that there had been changes to SEM. One such instance involved a claimant with hearing loss who had worked as a custodian at the Los Alamos National Laboratory. This claimant contacted our Office after his AR noticed a change in the SEM database. The claimant explained that when his AR had previously searched the SEM, it contained a list of toxic substances to which a custodian would have been potentially exposed, including organic solvents linked to hearing loss. However, when the claimant’s AR accessed the SEM again, all of the organic solvents had been removed, and instead, a number of what the claimant characterized as generic cleaners had been added. The claimant further stated that the substances added to SEM did not have a CAS registry number, so he/she was unable to identify the substances contained in the generic cleaners. The claimant complained that no notice or explanation was provided for why the organic solvents and other toxic substances were removed from SEM, and expressed concern that the removal of the substances would make it more difficult for custodians to prove a link between their workplace exposures and other claimed illnesses.

Evidence in the file must not only establish that the employee worked within a certain job category listed above, but that the employee was concurrently exposed to at least one of the specified organic solvents listed below: • Carbon Disulfide • Ethyl Benzene • Methyl Ethyl Ketone • Methyl Isobutyl Ketone • N-hexane • Styrene • Toluene • Trichloroethylene • Xylene. Federal (EEOICPA) PM Exhibit 15-5, Version 4.0 (November 14, 2019).

In fact, when the SEM database was updated in 2019, DEEOIC posted general information regarding the facilities that had significant increases in data. However, this notice did not identify the specific additions or deletions from the database.⁶⁸ Two additional facts not mentioned on the SEM homepage that claimants were also usually unaware of as they attempted to develop evidence in their claim were (1) the SEM database only includes links between toxic substances and diseases caused by those substances, but does not contain any information on toxic substances that are known to contribute to or aggravate any illnesses; and (2) there is a 6 month lag time between the public version of the SEM database and the internal version used by DEEOIC.

On June 19, 2017, the Advisory Board for Toxic Substances and Worker Health (ABTSWH) set out a number of recommendations for changes to the DEEOIC's existing hearing loss standard. The Board's recommendations outlined a somewhat broader path for claimants to prove their hearing loss claims were related to their toxic exposure, as well as created a broader presumption in that if the evidence did not meet the requirements set forth by the Board, but the claimant did have reported exposure to organic solvents for at least 5 years cumulatively, the claim should be sent for IH review.⁶⁹ Thus, the Board's recommendations addressed many of the issues that we have heard over the years concerning DEEOIC's standard for hearing loss claims. OWCP, on approval of the Secretary, provided a response to the Board's recommendations by agreeing to add two toxic substances to the existing list of presumptive toxic substances, setting out questions to the Board in order to clarify certain recommendations, and explaining why other recommendations were not accepted.⁷⁰ In 2019, claimants who were aware of the Board's recommendations complained that the DEEOIC had not gone far enough in accepting the recommendations of the Board on this matter.

In the end, claimants do not object to the criteria that presumes that, under certain circumstances, claims for hearing loss are covered. Rather, claimants believe that since each case should be adjudicated on its own merits, they should have the opportunity to establish that, based on the facts of their specific case, their hearing loss was caused, aggravated, or contributed by their specific exposures to those toxic substances known to be linked to bilateral sensorineural hearing loss.

⁶⁸ SEM data for 25 DOE sites changed since the last update on May 10, 2019. Several DOE sites including Idaho National Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, and the Rocky Flats Plant, had significant data increases.

⁶⁹ Pursuant to the recommendation of the ABTSWH, a claim would meet the presumption for solvent-related hearing loss if there is: (1) A diagnosis of sensorineural hearing loss, and (2) Significant solvent exposure. Significant solvent exposure is defined as having any one of the following exposures: (1) Work for at least a total of (7) years (or equivalent) in any of the job titles on the job title list in current presumption, or in any construction or maintenance job, OR (2) Reported exposure to one or more of the following: styrene toluene, MEK, MIBK, N-hexane, xylene, ethylbenzene TCE, or carbon disulfide on the OHQ, or evidence of exposure to organic solvents in the SEM, for at least a total of 7 years (or equivalent), OR (3) Reported exposures to organic solvent mixtures on the OHQ, or evidence of exposure to organic solvent mixtures in the SEM, for at least a total of 7 years (or equivalent), OR (4) Solvent exposures for at least a total of 7 years (or equivalent) established through work history and DDWLP. Additionally, CEs should not routinely deny claims for solvent induced hearing loss if the claimant has had fewer than 7 years of exposure, does not have a Direct Disease Linked Work Processes (DDLWP) for task, or is not in a labor category on [the] list. Claims that do not meet the requirements set forth here but do have reported exposure to organic solvents for at least 5 years cumulative should be sent for IH review. ABTSWH Recommendation #1, June 19, 2017.

https://www.dol.gov/owcp/energy/regs/compliance/advboard/abswh_recommendations061917.pdf

⁷⁰ DEEOIC's response to the Board's recommendation can be found online at:

https://www.dol.gov/owcp/energy/regs/compliance/advboard/dol_response061917.pdf

B. Industrial Hygiene Reports and Circular 15-06

A significant number of Part E cases undergoing causation development are sent to a contractor IH for an exposure assessment to determine the nature, frequency, and duration of an employee's exposure. This assessment will then likely be forwarded to a Contract Medical Consultant, or sometimes a treating physician, for an opinion on causation. Physicians who are provided the IH report from DEEOIC are instructed to accept the findings of the IH as probative and reliable evidence. *See* Federal (EEOICPA) PM Chapter 15.11, Version 4.0 (November 14, 2019).

DEEOIC published Circular 15-06, which stated that for employees diagnosed with an illness with a known link to a toxic substance present at a DOE facility after 1995, it was accepted that any potential exposures they might have received would have been maintained within existing regulatory standards and/or guidelines. *See* EEOICPA Circular 15-06, Post-1995 Occupational Exposure Guidance (December 17, 2014). Immediately, claimants and ARs complained about the assumptions this circular relied upon, and our Office was contacted with a steady stream of complaints. *See* Office of the Ombudsman 2015 Annual Report to Congress, pgs. 54-56 (December 21, 2016); 2016 Annual Report to Congress, pgs. 43-44 (August 24, 2018).

Consequently, the first recommendation by the newly constituted ABTSWH was for DEEOIC to rescind Circular 15-06. The Board provided the following rationale,

[A] policy that uses a single time period, 1995, to demarcate a moment after which DOE employees would be assumed that a) they would be unlikely to be significantly exposed to toxic materials, and b) potential exposures would be within regulatory standards, is faulty in several respects. First, an empirical basis for this policy is not provided. It is furthermore highly unlikely that an empirical support could be provided. It is doubtful that sufficient industrial hygiene monitoring was performed throughout the DOE complex from 1995 to present to substantiate a broad claim that all exposures were routinely kept below existing standards. Even if such monitoring was performed periodically, it would be unlikely to accurately capture intermittent and variable work processes, including accidental exposures.

We note, as well, there are no OSHA or DOE regulations for many workplace exposures, and existing workplace standards unfortunately do not entirely protect against illness and injury. Most OSHA standards, for example, have not been updated since the 1970s. Prominent OSHA standards that have been updated, such the asbestos standard and the recently promulgated silica standard, are explicit in declaring that working at the designated permissible exposure levels will reduce but not eliminate consequential diseases. This consensus finding would appear to be acknowledged in the last paragraph of the DEEOICP Circular, which states that “even minimal exposure” to some toxins may lead to illness. If so, then this opinion of the Circular mitigates and even contradicts its own principal conclusion, i.e., that post-1995 exposures can be considered, as a rule, insignificant. *See* ABTSWH Recommendation #1 – Adopted at October 17-19, 2016 Meeting, (Emphasis added).

Subsequently, at the Board's recommendation, DEEOIC rescinded Circular No. 15-06, stating, “[T]he potential for toxic substance exposure in all claims must be evaluated based upon established program procedure and the evidence presented in support of a claim.” *See* Federal (EEOICPA) Circular 17-04

(February 2, 2017). Despite Circular 15-06 being rescinded, our Office was almost immediately presented with complaints that the substance and language of Circular 15-06 was still being relied upon in contractor IH reports. *See* Office of the Ombudsman 2017 Annual Report to Congress, pgs. 44-45 (December 14, 2018). At first, it was thought that perhaps the contractor IHs had not been updated regarding the fact that Circular 15-06 had been rescinded. However, on March 26, 2019, the Secretary of Labor responded to the our 2017 Annual Report to Congress, and with respect to rescinded Circular 15-06, the response stated,

The fact that the Circular was rescinded does not mean that the use of 1995 as a threshold to indicate generally exposures would have been within regulatory limits was not factual. In fact, in April 2017, the Board agreed to the use of 1995 as a threshold date. The Circular was rescinded so that cases with exposures only after 1995 will still be evaluated on a case-by-case basis through a referral to an industrial hygienist, as appropriate. *See* Secretary of Labor's Response to the Office of the Ombudsman's 2017 Annual Report to Congress, pgs. 11-12 (March 26, 2019).

One AR who contacted our Office in 2019 to complain about the continued use of the Circular 15-06 language noted the significant impact it had on the claimant's case. The claimant was employed at the Portsmouth GDP for 20 years, with his/her employment continuing to 1999. The IH report discussed the nature, frequency and exposure levels of the claimant's exposures to five toxic substances, but found there was no available evidence (i.e., personal and/or area industrial hygiene monitoring data) to support that, after the mid-1990's, claimant's exposures to these agents would have exceeded existing regulatory standards. The IH report was provided to a CMC for a causation opinion, and according to the list of documents reviewed by the CMC, the IH report was the only toxic exposure evidence provided to the CMC. The CMC's opinion explicitly relied upon the IH's exposure assessment "prior to the mid-1990s" and concluded that the evidence did not satisfy the Part E causation standard.

The AR wrote to our Office,

It is 2019, and you have CEs, contractor IHs, DEEOIC IHs, and CMCs [who] all apparently did not receive, read, or care about EEOICPA Circular 17-04 and are STILL using the language and assumptions of EEOICPA Circular 15-06. There is something very broken in the DEEOICPA training program. How many claimants did not know about Circular 17-04 and have not appealed their RD?

Why has DEEOICPA not had a stand-down on this issue with CEs and Contractors who are making decisions based upon the assumptions of Circular 15-06 that was rescinded in 2016 AND was problematic enough to make it into your Ombudsman Report? This is further infuriating and frustrating to claimants because now WE have to go through an appeal hearing...and present this information to the hearing officer.

– Letter from AR, 2019. (Emphasis supplied).

In the eyes of the claimants and ARs who continue to complain about the use of Circular 15-06 language to exclude their post-1995 toxic substances exposures, the problem has simply shifted from having DEEOIC implement the language of a circular that was determined by the ABTSWH to lack scientific support, to allowing an IH to use the exact same language, likewise without any references or scientific support.

Chapter 5 – Difficulties Obtaining Medical Treatment and Payment of Medical Bills

The DEEOIC medical benefits card, colloquially known as the “white card”, represents the statute’s commitment to furnish the services, appliances, and supplies prescribed or recommended by a qualified physician for a covered illness that DEEOIC considers are likely to give cure, relief, or reduce the degree or period of that illness.⁷¹ *See* 42 U.S.C. § 7384t(a). Upon receipt, the medical benefits card also provides many claimants a sense of relief that they will be able to receive medical treatment and services for their accepted covered illness, and that all reasonable and necessary treatment and services will be paid by DEEOIC without them having to incur out-of-pocket costs. In 2019, as in years past, a broad range of complaints and concerns were brought to our attention regarding such problems as how claimants could find out exactly which illnesses were associated with their medical benefits cards; to difficulties getting medical treatment, home health care, or transportation pre-approved and/or re-authorized. Claimants also contacted us seeking assistance in responding to a collection notice received for a bill they thought was being paid by DEEOIC, or in obtaining emergency home health care services. In other instances, health care providers contacted us seeking assistance beyond the CE, MBE, and/or Conduent for weeks and/or months of unpaid medical bills. The year closed with an announcement from DEEOIC that a new bill-pay contractor would take over for the current one in 2020, and that some of the issues previously reported by claimants and health care providers would be addressed or resolved by the new bill-pay contractor. Over time, our Office has seen the impact these issues have had on claimants. In fact, in some cases the stress from their health problems, combined with the problems encountered trying to resolve these medical bills and the resulting fear of the financial impact that could arise from unpaid medical bills, led some claimants to assert that they wish they had not filed an EEOICPA claim in the first place. It is hoped that this change to a new bill-pay contractor will resolve many, if not all, such problems for claimants and health care providers.

A. Finding and Keeping a Doctor

The 2016 and 2017 Annual Reports to Congress discussed claimants’ complaints regarding their difficulties finding health care providers in their locality who were enrolled with DEEOIC, and who accepted the medical benefits card from DEEOIC for payment. The 2017, our office noted three reasons why some physicians refused to treat EEOICPA claimants: (1) prior problems receiving payment; (2) not wanting to be second-guessed by DEEOIC claims staff or nurses; or (3) too many requests to provide narrative reports and complete forms. *See* Office of the Ombudsman, 2017 Annual Report to Congress, pg.30 (December 14, 2018). Thus, claimants have complained not only about being unable to find physicians who were enrolled with DEEOIC, but also about physicians who announced that they would not, or no longer treat EEOICPA patients and/or accept the DEEOIC medical benefits card. In 2019, a claimant, living in an area of the country with a high number of DEEOIC claimants, shared a letter he received from his health care provider, a practice with 11 physicians, which announced that it would no longer treat DOL patients, stating,

You are receiving this letter because we have identified you as having Department of Labor benefits. We would like to inform you effective July 31, 2019 we will no longer be billing your Department of Labor

⁷¹ The EEOICPA also provides for necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. *See* 42 U.S.C. § 7384t(c).

claims. We will also not complete any paperwork specific to Department of Labor.

- July 1, 2019 letter to claimant from physician's practice.

The claimant who received this letter from his physician's practice contacted our Office again in 2019 due to his/her ongoing inability to find a physician in the area willing to accept the DEEOIC medical benefits card. As a result of his/her difficulties locating a physician who treated EEOICPA patients, the claimant stated that not only would he/she be unable to continue getting medical treatment for his/her accepted covered illness, but that the need to change physicians would also impact his/her ability to continue getting the additional medical treatment that his/her physician had been prescribing. This was a common concern expressed by claimants. In circumstances such as this, claimants expressed fear and panic at the prospect of losing both their treating doctor and all of the ongoing treatment that these physicians had been prescribing. They also expressed discomfort at the thought of no longer being treated by a physician with whom they were familiar and who was familiar with them, and complained when the decision by their physician not to treat EEOICPA patients resulted in having to travel long distances to see another physician who would accept the medical benefits card.

DOL's response regarding the issue raised in the 2017 Annual Report to Congress of claimants' difficulties finding physicians to treat them stated that DEEOIC would provide a list of enrolled medical providers to claimants, and that claimants could utilize the provider search function in the Web Bill Processing Portal to find enrolled physicians.⁷² Over the course of the year, we encountered instances where DEEOIC, and particularly the Resource Centers, provided claimants experiencing difficulties locating an enrolled provider with a list of enrolled providers. Yet, in spite of these actions we continued to receive complaints in response to announcements by physicians that they would no longer treat EEOICPA patients and/or accept the medical benefits card.⁷³ Claimants argue that more needs to be done to stem this tide of doctor's no longer providing treatment to DEEOIC patients.

One instance where this concern was raised involved a claimant who complained that after months of submitting medical documentation to DEEOIC, his/her two-part medical procedure had been authorized. However, after the first procedure had been completed, and more specifically on the day before the second procedure was to be performed, the claimant received a letter from DEEOIC informing him/her that the authorization for this procedure was no longer valid. The claimant contacted us very upset and confused as to why the second part of a two-part procedure had been denied. Consistent with our suggestion, the physician's practice engaged in working with DEEOIC to clarify the outstanding issues, and our understanding was that the problem(s) had been resolved for the claimant by the end of January 2019. Still, in October 2019, claimant provided our Office a letter from a law firm hired by the same physician's practice to DEEOIC seeking payment of over \$100,000 in outstanding medical bills related to the claimant's two-part medical procedure that had previously been approved, yet remained unpaid. The law firm wrote,

⁷² The provider search contains information on health care providers who have enrolled with DEEOIC and thus receive electronic payment of medical bills. Claimants have complained that providers who no longer treat DEEOIC patients are not removed from the provider list, further complicating the search for providers who are currently accepting DEEOIC patients.

⁷³ DEEOIC has indicated that providers who are having trouble enrolling in the program or are other problems with the program can contact them. We usually relay this information to claimants who tell us that their providers are still having problems with the program.

As I am sure you are aware, OWCP is *required*, under the applicable regulations, to ‘pay providers and reimburse employees *promptly* for all bills received on an approved form and in a timely manner.’ 20 C.F.R. § 30.703 (emphasis added). [Provider] has submitted all claims on the correct forms, has updated all diagnosis codes, and submitted all claims in a timely manner. *See* 20 C.F.R. § 30.421. Moreover, [provider] has obtained prior authorization for all required procedures. *See* 20 C.F.R. § 30.700(b). In return, OWCP has failed to pay [provider] promptly, and has provided no explanation as to why such payment is not forthcoming.”

To date, we do not know the outcome of this claim, but it highlights the frustrations that can arise when medical bills are not paid and providers and/or claimants feel that they do not receive adequate assistance in resolving these problems. Claimants, such as the one above, who find themselves in this position express the fear that, in response to unpaid medical bills, their doctor will announce that they no longer accept the DEEOIC medical benefits card.

B. Authorization for Medical Treatment and Services

Claimants with medical benefits cards must obtain pre-authorization to bill for certain types of medical treatment or services. Other medical treatment and services are capped at a certain number of treatments per year, or at a certain monetary amount. For example, acupuncture and massage therapy are capped at 60 visits per year; sun-protective clothing is capped at \$400 per year; and reimbursement for medical related travel over 200 miles per roundtrip is reimbursed to claimant in accordance with Government Services Administration (GSA) travel guidelines and reimbursement rates. *See* EEOICPA (Federal) PM Chapter 29, Version 4.0 (November 14, 2019). Claimants in 2019 complained of difficulties obtaining approval for medical treatment and services from DEEOIC, as well as having their treatment denied before hitting the cap. In many of these complaints, it further concerned claimants that the treatment was denied without first having the opportunity to submit medical evidence to substantiate the need for additional treatment beyond the caps.

Pursuant to the statute, those entitled to medical benefits shall be furnished the services, appliances and supplies prescribed or recommended by a qualified physician which DEEOIC considers likely to cure, give relief, or reduce the degree or period of the illness. *See* 42 U.S.C. § 7384t(a). A common complaint asserts that in evaluating requests for authorization for medical treatment and services, DEEOIC often appears to focus on whether the requested treatment will cure or improve the illness, and does not appear to recognize that medical benefits are also warranted if the treatment or services gives relief. Other claimants complained that DEEOIC appeared to demand that the treatment provide permanent relief. For example, a development sent to a claimant seeking re-authorization for therapeutic services in 2019 noted that previous massage therapy notes had not provided any short term or long term goals that included measurable outcomes; and that claimant’s doctor was required to provide a detailed evaluation of massage therapy’s effectiveness as a treatment option as well as the results of objective test studies supporting the need for ongoing treatment. For claimants who have been diagnosed with a progressive illness from which there is no cure, the prospect of having to obtain this level and depth of analysis from their physician in order to continue receiving the therapy that has allowed them to experience a relief in symptoms and/or reduce the degree of their illness, can be a tall order.

Many such claimants have described the seemingly ever growing list of information and documentation required to maintain the medical benefits they have been receiving as engendering suspicions that the DEEOIC is attempting to reduce the scope and availability of benefits to claimants.

C. Authorization for Durable Medical Equipment (DME)

Claimants reached out to our Office each year over the past several years to report increased difficulties in finding DME providers willing to bill and receive payment from DEEOIC. There are far fewer DME providers than health care providers in many areas of the country where DEEOIC claimants reside, and so when one of the DME providers decides to no longer accept the DEEOIC medical benefits card, it can have far reaching impact on claimant communities. One claimant who lived alone reached out to our Office when after an extensive period of hospitalization he/she found that the DME provider was no longer providing the supplement oxygen he/she required. When informed of the online resources available to find a new DME provider, or that the RC could supply information on potential providers, the claimant shared that it had become too much for him/her to handle. Our Office printed and mailed as much information as we could find from the DEEOIC website to the claimant in the hope that he/she could begin the process of finding a new DME provider. Other claimants have also reported difficulties obtaining home oxygen supplies. Beyond obtaining the basic supplemental oxygen equipment, obtaining the ongoing supply of oxygen and the supplies to keep the equipment clean and operational has been and remains an ongoing issue as well.

One particular claimant wrote to our Office in March 2019 to complain that his/her treating physician had prescribed a cleaning device for the Bi Pap breathing machine the claimant used each night to treat sleep apnea. The claimant provided copies of the detailed letter of medical necessity and Physician Order Request for the Bi Pap machine and the relevant supplies and accessories, which specifically included the cleaning device by name. When the claimant followed up with his/her CE regarding the purchase of the cleaning device, the claimant reported being told by the CE that because he/she was not bed bound, either he/she or her home health aide could clean the machine. When the claimant stated that his/her treating physician had written a prescription and order for the cleaning device in order to reduce the chance of infection, as the device reduces bacteria more than 99.9 percent, the CE suggested that Dawn dishwashing liquid could be used instead. The claimant contacted our Office seeking assistance with obtaining a new CE after the CE reportedly made the comment that having the cleaning device would be like having a luxury Cadillac. According to the claimant,

[The CE] stated that I don't need the machine and continued to demean me by stating that DOL has done a lot for me already. Her suggestion that I don't need the machine deviates from my physician's recommendation and prescription for the [machine]...I am trying not to let my health deteriorate further by not obtaining the proper medical equipment that my doctor requested that I should have. I feel like DOL should make sure that my medical necessities are taken care of.

- Correspondence from claimant, March 2019.

D. Lack of Awareness and Difficulties Obtaining Authorizations for Emergency Home Health Care

According to the PM, in certain circumstances, claimants may require home and residential health care (HRHC) on an emergency basis, for a limited time period, while a claimant's condition stabilizes. Emergency requests can arise from a number of situations, including hospital discharge, where the claimant needs immediate care in the home; or, a sudden change in the claimant's condition necessitating an urgent change in the level and/or frequency of currently authorized services. To obtain approval for an emergency authorization, the requesting party (hospital discharge staff, the claimant's AR, or a treating physician), must contact a DEEOIC enrolled provider of HRHC services. Alternatively, a currently authorized provider of HRHC services can initiate a request for an emergency increase in an existing authorization. In either circumstance, the designated or current HRHC provider contacts DEEOIC's Bill Processing Agent (BPA), also known as the bill-processing contractor, and provides (by fax or letter) an emergency care order from either the claimant's treating physician, or a hospital discharge order signed by a physician. See Federal (EEOICPA) PM Chapter 30.11, Version 4.0 (November 14, 2019).

DEEOIC is to be commended for having a procedure for the authorization of emergency home health care. Yet, this is another instance where because they were not aware of it, some claimants never took advantage of this resource. And because they were not aware of the procedures for obtaining emergency home health care, it was almost inevitable that claimants would encounter difficulties trying to obtain the needed authorization. In one instance, a family-member AR contacted our Office in 2019 when a claimant diagnosed with terminal cancer was discharged home from the hospital with a chest catheter that required a kit to vacuum and drain the catheter, as well as gloves and proper wound dressing to do so in a sterile way. The AR was seeking emergency in home health care in order to receive assistance with the claimant's medical needs and activities of daily living. When the AR contacted the RC to seek assistance with finding a home health care (HHC) provider, a list of doctors was instead provided. The AR then searched and found a HHC provider, as well as a DME provider, on his/her own, and had the HHC claim forms (Forms EE-17A & EE-17B) submitted to DEEOIC. The AR complained that he/she was unable to get a call back from the CE, and that in his/her conversations with the RC no one mentioned that the bill-pay contractor had triage nurses who could potentially assist with expediting requests for emergency home health care. (Conversation with AR, July 5, 2019). When the AR attempted to speak to a triage nurse, the AR stated he/she was informed that triage nurses could not speak to ARs, and instead, instructed the AR to have the HHC provider and DME contractor each contact the triage nurse. Upon hearing this, the AR stated, "How many more ways are they going to keep people waiting to get benefits?" The AR described feeling stuck between the HHC provider, the DME provider, and the bill-pay contractor. The AR asserted that he/she was also informed that only terminal claimants with less than 30 days to live are eligible to receive emergency home health care services. Hearing this requirement, the AR again contacted our Office and questioned the availability of emergency home health care. With the ARs consent, our Office contacted DEEOIC for clarification. We were informed that the claimant did not have to be terminal in order to qualify for emergency HHC benefits. And we were also informed,

The HHC provider, doctor, claimant, or AR can initiate the emergency request process through our Bill Processing Agent, Conduent, by contacting them at 866-272-2682 and requesting to speak to the Triage Nurse. The Triage Nurse will review the documentation and contact the DEEOIC, as appropriate, to notify us of the emergency request. Once our office receives it, we will make the request a top

priority and adjudicate it as quickly as possible. If appropriate, we can authorize care for a period of 30 days, while we develop for any period following that.
– Email from DEEOIC, July 12, 2019.

This AR described feeling stuck between the HHC provider, the DME provider, and the bill-pay contractor, while at the same time trying to teach himself/herself how to best care for the claimant. When time is of the essence and the claimant needs emergency home health care, ARs and claimants find it would be helpful if the various agency offices and contractors communicated correct, consistent policies and procedures to them. According to this AR, “If the problem is resolved 10 days later, it’s still a significant problem.”

E. Coding and Billing Issues

When claimants come to us with coding issues this can potentially refer to the various forms of medical condition codes, medical billing codes, and medical treatment suites utilized by health care providers, health care institutions billing departments, DEEOIC, and/or the bill-pay contractor. Claimants cannot be expected to even begin to understand the intricacies of the problems and issues involving these codes, and, in most instances, do not have access to these codes. Nevertheless, when an error occurs or a problem arises, the impact is felt by the claimant who may receive an outstanding bill in the mail, or worse, a collection notice. Unfortunately, it does not appear that claimants are copied on letters sent from the bill-pay contractor to the health care provider when a bill is rejected. Although claimants would not necessarily understand the technical basis for the rejection of the bill, it would put claimant on notice that a medical bill had been rejected. We are commonly contacted by claimants after the bill has been unpaid and they learned of the problem much farther along in the process than they would have preferred.

For example, a claimant whose claims for two separate cancers had been accepted in 2012 and 2013 contacted our Office in 2019 because his/her bills for follow-up medical treatment had stopped being paid. During the initial conversation with this claimant, he/she stated,

It is impossible to get a hold of anyone in charge. Words can’t begin to express how frustrated I am with DOL health coverage. In my opinion, it doesn’t exist. It took me forever to figure out the right question to ask.

The claimant reported that he/she had been unsuccessful in obtaining payment of medical bills from one health care provider, and complained that his/her efforts to obtain payment were hampered because no documentation was ever provided explaining why the bills were unpaid. The claimant explained that while the billing department for the health care provider could not identify the problem, it was suggested that the issue could likely involve a billing code, an ICD-10 code, and/or was a treatment suite issue. The claimant did not know what any of this meant, and after being unable to get assistance from his/her CE, as well as being unable to get in touch with any supervisors at DEEOIC, he/she contacted our Office.⁷⁴ With the claimant’s consent, our Office obtained information from DEEOIC regarding the claimant’s accepted covered illnesses and saw that the claimant’s second cancer had been entered into the DEEOIC computer system as a consequential illness instead of a primary cancer, with an ICD code that did not correspond to the cancer. Thus, if the health care provider was submitting bills to the DEEOIC bill-pay contractor

⁷⁴ When asked about using the online medical portal available to claimants, this claimant responded that he/she had never been able to access the online portal and gave up.

(Conduent) with codes for a primary cancer, and the illness had been entered into the DEEOIC computer system as a consequential illness (had given the bill-pay contractor codes for a consequential illness), the bills would likely be rejected.⁷⁵ It was apparent that this issue was not something the claimant could identify or resolve as it took access to the DEEOIC online case management system, and understanding of medical bill coding, and the ability to coordinate the resolution between three parties, (1) DEEOIC; (2) Conduent; and (3) the billing department for the health care provider. Based upon the claimants who contacted our Office in 2019, it was not uncommon for what seemed like a simple “coding error” to result in significant confusion and frustration for claimants. The added difficulty of finding someone to speak with who could offer assistance led this particular claimant, and others, to express a high level of dissatisfaction with DEEOIC to our Office.

Another claimant we spoke to during a JOTG outreach event in Texas complained about unpaid medical bills for which he had no idea who to contact. With his/her consent, we contacted DEEOIC for assistance and learned that the outstanding medical bills were for two health care providers. With respect to the first health care provider, the provider had been using the wrong ICD code for one of the claimant’s accepted conditions, and the wrong ICD code had been entered into DEEOIC’s system for another medical condition. A CE spoke to the billing department for the health care provider and resolved these coding issues. With respect to the second health care provider, it had not signed up correctly as an enrolled pharmacy services provider and professional services provider. Thus, when the bills were submitted, the bill-pay agent did not have the ability to issue payments to the provider. The provider had been entirely unaware of this particular aspect of the enrollment process, and it was only after DEEOIC reached out to the provider directly that the issues were identified and resolved. This is a perfect example of a claimant being entirely unaware as to why his/her medical bills were not being paid, and having no idea who to contact in order to have the issues looked into on the level needed for them to be resolved.

Some claimants complained about the assistance that they received with issues involving authorization for medical treatment, or payment of outstanding medical bills. We have been informed that some ARs do not want to get involved with such issues because they can be very time-consuming and the EEOICPA does not provide for payment to ARs for time spent working on such issues. Additionally, a family-member AR mentioned having attempted to assist a claimant with a billing problem, and upon contacting the bill-pay contractor, was told he/she could not inquire about the claim because the bill-pay contractor did not have information to identify the claimant’s ARs, and therefore could not discuss privacy protected information. Therefore, unlike when communicating with DEEOIC, the AR was prohibited from assisting the claimant seemingly due to the lack of information sharing between DEEOIC and its bill-pay contractor.⁷⁶ So even when the AR was willing to assist a claimant with these issues, the AR was unable to communicate with the bill-pay contractor for what was primarily a technical reason.

In another instance, a DME provider reported to our Office in 2019 that after over 50 telephone calls, and numerous resubmittals of bills and summary letters, it still amazed the provider when informed by DEEOIC or its bill-pay processor that its bills and summary letters had not been received. The provider shared with our office 62 pages of documentation, including prior authorization requests that had gone unanswered for up to a year, and claims that had been submitted over the course of three years that had

⁷⁵ There may have been additional billing issues as well, but the DEEOIC’s Assistant Payment Systems Manager ultimately stepped in to assist the claimant and hopefully resolve the issues.

⁷⁶ At the AR Training held on June 4, 2019, DEEOIC acknowledged the fact that its bill-pay contractor did not have claimants’ AR information, and suggested that when DEEOIC transitioned to a new-bill pay contractor in 2020, the AR information would be available, and ARs could communicate with the bill-pay contractor regarding specific claims.

gone unpaid or been denied, according to the provider, for invalid reasons. After referring the DME's documentation to DEEOIC's Medical Bill Processing Unit, it was referred to the District Office for resolution. The DME provider subsequently informed our Office that some of the bills had been paid, but others were still pending, with authorization and billing issues still prevalent.

F. Need for Continuity and Consistency

In 2018, DEEOIC created a new Branch of Medical Benefits Adjudication and Bill Processing Unit, staffed by medical benefits examiners who, according to DEEOIC, are experts in medical authorizations and billing. *See* DOL's Response to The Office of the Ombudsman's 2017 Annual Report to Congress, No. 4, (March 26, 2019).

This new structure has allowed for the greater specialization among those who work for DEEOIC, and the intent clearly is to provide, in part, more focused attention on particular aspects of the adjudication process and delivery of benefits to claimants. However, as evidenced by the complaints and concerns expressed to our Office in 2019, problems can arise when claimants are asked to interact with a number of different individuals. As noted earlier in this report, many of the claimants we encounter do not understand the roles and functions of the various people they encounter during the claims process. When you add to this the fact that many claimants also do not have a good understanding of this program, it is easy to understand why it can be confusing for some claimants to keep track of each person they talked to and what they were told by each person. As a result, when problems arise, some claimants do not know who to contact. Another common complaint came from claimants who asserted that in seeking answers to their medical benefit questions, they were passed from person to person, with each person assuring them that the matter in question was someone else's responsibility.

As we discussed, in many instances the claimant or AR had already exhausted all of the options they were aware of prior to seeking information or assistance from our Office. And yet we still frequently found that claimants and ARs were not aware of all of the potential resources available to them. For example, during a presentation at an outreach event for medical providers in Paducah, Kentucky, the email address DEEOICBILLINQUIRIES@DOL.GOV was shared with the providers as a way to contact DEEOIC with inquiries about billing issues related directly to the Medical Bill Processing Contractor (Conduit). Providers we encountered after this meeting indicated that they were not familiar with this email address. Our Office was unfamiliar with this email address as well and in a later conversation with a claimant when we tried to find a reference to this email address, we could not find any such reference online.⁷⁷ This resource should be more broadly shared with claimants and ARs, as they are the ones who frequently initiate efforts to address medical authorization or bill-pay issues.

Claimants are often prompted to contact our Office when they cannot get through to their CE with their questions and concerns, and this is true with medical benefits issues as well. The claimant and AR community are increasingly aware that DEEOIC has given its CEs and MBEs 48 hours to return telephone calls. Our Office continues to receive complaints from claimants and ARs who call their CE and cannot get through, or leave messages and the message is not returned. In fact, some claimants have shared with our Office that due to the frequency of not getting through or not having their messages returned, they have given up calling their CE, and wish they could send their CE an email instead.

⁷⁷ Reference was made to this email address in DOL's Response to the Office of the Ombudsman's 2018 Annual Report to Congress, No. 11 (January 17, 2020).

Woven through DOL's responses to past Annual Reports to Congress are statements highlighting the various resources available to claimants who have questions, or are in need of assistance, including assistance with issues related to medical benefits. However, even with these varied resources, claimants continue to encounter problems and many of these problems are caused, or are prolonged, because claimants do not know that these resources exist or how to use these resources. Thus, while there are resources available to assist claimants and providers with medical benefits issues, all too often claimants struggle for prolonged periods of time with these problems while the help needed to resolve these problems alludes them.

Chapter 6 – Customer Service, Delays and Other Administrative Difficulties

As we have discussed throughout this report, an overwhelming majority of our conversations with claimants involved explaining the fundamentals of claims adjudication. All too often, underlying the complaints, grievances, and requests for assistance brought to our attention was a lack of understanding of the EEOICPA and the EEOICPA claims process. The better informed and the more resources that are available and understood by claimants, the less complaints claimants will likely have. As part of our assessment of customer service complaints, delays, and other administrative difficulties, our Office recommends that DEEOIC provide claimants with timely information, resources, and context for where they are in the claims process. Such assistance could possibly prevent future complaints along this vein. However, until action is taken to directly resolve such issues, claimants and ARs have expressed the ongoing concern that DEEOIC has not committed to fulfilling its obligation under the EEOICPA to provide assistance to the claimant in connection with the claim, including, such other assistance as may be required to develop facts pertinent to the claim. *See* 42 U.S.C. § 7384v.

A. Communication Problems

The inability to speak to their CE or to get an answer to their question was one of the primary reasons claimants and ARs initially contacted our Office. While some claimants specifically contacted our Office to report problems communicating with RC and/or DEEOIC staff, there were many other instances where claimants chose to focus their conversation with our Office on obtaining the answers and the information that they had been seeking.⁷⁸ Yet, regardless of how and why the issue was raised, the two most common complaints in this regard were that the claimant was unable to speak to their CE when they called the District Office, or that when they left a message for their CE, they did not get a return call. DOL's response to this concern has been, "If a claimant is frustrated by 'phone tag' or other concerns, he or she may call the District Office and ask to speak with a unit manager." *See* DOL's Response to the Office of the Ombudsman's 2018 Annual Report to Congress, No. 5 (January 17, 2020); DOL's Response to the Office of the Ombudsman's 2017 Annual Report to Congress, No. 9 (March 26, 2019). Unfortunately, many claimants do not see this as a solution to their problems. First they note that part of their problem is that whenever they call the District Office it is impossible to get beyond the person who answers the telephone. In light of the fact that the CE is too busy to talk to them, claimants find it hard to believe that talking to the supervisor is going to be easier. Second, claimants fear that complaining to the CE's manager will open them up to be the target of retaliation.

In one 2019 case, a claimant wrote to our Office,

...I have documented calls, where I never received a return call from [CE]. It is my understanding [CE] has 48 business hours to return calls to Claimants. In one instance, I waited several days for a return call. When my [a]ttorney did not receive a call back, I then called DOL in Jacksonville, and was advised [CE] was to return a call to [attorney], which he did not. Ten days later, I called the DOL in Jacksonville office, and someone else answered my questions...I have found [CE] to be condescending, unprofessional, untimely, and frankly incompetent.

– Email from claimant, January 2019.

⁷⁸ There were many instances where claimants did not start their conversation with us by discussing the problems they had trying to communicate with their CE. Rather, the problems communicating with the CE came to light in the course of the conversation with the claimant.

In April 2019 another claimant stated to our Office, “My CE is never in the office. I’m tired of talking to 3 other people.” This claimant was attempting to confirm that his/her CE had received the medical records he/she had submitted for the second time, and to speak with the CE regarding his/her evidence and the additional steps in the adjudication of the claim. The claimant indicated that he/she had given up trying to speak to his/her CE and had instead contacted our Office for information and assistance.

In 2018, DOL reported that 97% of the return calls by the District Offices were made within one work day, and 99% within two days; and 93.5% of return calls by the FAB were made within one work day, and 97.8% within two work days. Yet, in spite of these statistics we continue to encounter claimants who are adamant that their telephone calls were not returned. As a result, in trying to assess these complaints two questions arise. One question asks, what constitutes a returned call? In the past further inquiry into similar complaints revealed that in some instances while DEEOIC returned the claimant’s message, because the claimant was unavailable when the telephone call was returned, DEEOIC simply left a message indicating that it had returned the claimant’s call. This put the onus back on the claimant to again call the CE, who again in most instances was unable to immediately talk to the claimant, resulting in a game of “telephone tag.” The second question is whether the return telephone call answered the claimant’s question and/or resolved the problem that prompted them to call in the first place. In 2019, as in previous years, when we had occasion to inquire closely into some of the complaints alleging that claimants could not get answers to their questions we discovered that while the claimant may have talked to someone associated with DEEOIC, this person could not answer the claimant’s question, or that someone had promised to get back to the claimant with the answer and did not do so. The inability of claimants to timely interact with their CE and the other individuals involved in the administration of their claim continues to be one of the main reasons claimants ultimately decide to approach our Office. And this continues to be true in spite of DOL’s very impressive statistics. Further inquiry into this matter will be needed to fully resolve this problem.

Finally, in response to the 2018 Annual Report to Congress DOL stated the following on this topic,

In addition, in 2018 OWCP gave RC contractor staff were given access to the Government’s Interactive Voice Response computer-based phone system in order for them to answer all calls placed to DEEOIC’s National Office and the District Office’s toll-free numbers. OWCP will work with RC management to collect data regarding the number of phone calls answered by contractor staff, the type of assistance provided to callers, and the amount of time needed to assist callers, in order to determine future contract standards and measurements. *See DOL’s Response to the Office of the Ombudsman’s 2018 Annual Report to Congress, No. 5 (January 17, 2020).*

DEEOIC has, therefore, added the RCs as the primary contact for all claimants and ARs when they are attempting to speak to their CE or HR, and it will be up to the RC staff to determine whether the claimant’s call should be forwarded to the CE or HR. In spite of this action by OWCP, complaints continue. Claimants and ARs have questioned whether the RC staff have sufficient familiarity with their particular claim in order to provide accurate information and assistance. In addition, claimants who initially spoke to the RC staff and had to be referred to a CE complained that talking to the RC had simply delayed their ability to talk to the CE. Oftentimes, with only 30 days to respond to District Office requests for evidence, claimants expressed the need to be able to promptly speak to the CE who was familiar with their claim.

B. Rude behavior and poor customer service

In 2019, there were claimants who contacted us to complain about, as well as others who in the course of their discussion with us mentioned, rude or insensitive behavior, as well as poor customer services. For example, in 2019, a claimant complained to our Office on more than one occasion of his/her CE's behavior, stating, "[CE's] laughing at me was humiliating." The claimant also reported that the CE spoke to him/her in a condescending manner and felt his/her speech impediment was mocked. This claimant asked our Office if there was a way for him/her to request a different CE, and we informed the claimant that, based on the information available to us, in the past most requests by claimants for a different CE had not been granted.⁷⁹

In our 2018 Annual Report to Congress, this Office recommended that DEEOIC establish a single point of contact to receive complaints in order to ease some of the concerns claimants have had with reporting complaints directly to DEEOIC. As part of this recommendation we also added that would further ease claimants concerns if this single point of contact was not directly involved with the adjudication of the claimant's claim. We acknowledged that DEEOIC had previously stated it could not provide a single point of contact, but nevertheless recommended DEEOIC continue to explore opportunities to provide such a person. In response to this recommendation in our 2018 Annual Report, DOL stated,

OWCP has a process that allows claimants to submit comments and/or customer service complaints to the agency. Claimants may submit complaints to the National Office by phone, through written correspondence, and by public email at Deeoic-public@dol.gov. Additionally, claimants may provide feedback via our customer satisfaction survey. OWCP believes it is important to have multiple feedback channels rather than direct claimants to a single point-of-contact. OWCP promptly responds to all complaints.

DOL's Response to the Office of the Ombudsman's 2018 Annual Report to Congress, No. 9 (January 17, 2020).

Unfortunately, for the claimants who contact our Office to complain about rude/insensitive behavior or poor customer service, the fear of retaliation is very real. Claimants, even those who do not fully understand the EEOICPA program, appreciate the significant role that the CE and the FAB hearing representative has in the adjudication of claims. Therefore, without real assurances that care will be taken to protect them from retaliation, claimants are reluctant to share their complaints, and especially reluctant to share their complaints with those who they believe, or fear, may be in a position to impact their claim. Our Office has repeatedly addressed the issue of complaints regarding inappropriate and/or rude, insensitive behavior in our Annual Reports to Congress. See Office of the Ombudsman Annual Reports to Congress, 2009 – 2018, <https://www.dol.gov/agencies/ombudsman/reports>. However, the complaints continue. We believe that this is an issue that deserves more attention.

In this regard, it was with interest that we observed that on April 16, 2018, DEEOIC published EEOICPA Bulletin No. 18-02, Complaint Process for Licensed Medical Care Providers. This Bulletin outlines the process a District Office or FAB staff member follows when a written complaint is received from an employee, claimant, or AR about a licensed medical care provider. The DEEOIC staff member is to

⁷⁹ Claimants who wanted to request a change of CEs were often reluctant to make this request unless there was a chance the request would be granted. Thus, claimants would frequently ask if we thought their request would be granted. We never discourage a claimant from requesting a new CE, however, when asked, we share that we are not aware of many instances where such requests have been granted.

complete a complaint form and email it to DEEOIC Program Integrity, where a Program Integrity staff member will review it, and if necessary, prepare a written notification to the appropriate local/state entity responsible for compliance enforcement. We hope that DEEOIC's experience with a Program Integrity staff member to review complaints about licensed medical providers will lead them to give further consideration to having a single point of contact for complaints alleging rude/insensitive behavior, as well as poor customer service.

Lastly, given the advancements of technology and DEEOIC's continued adoption of such advancements, claimants, including one who contacted our Office in July 2019, have asked why DEEOIC does not record telephone calls between claimants and DEEOIC staff. Citing how frequently the use of such recording technology is by other large organizations that are customer service oriented, claimants believe that recording their conversations with CEs would, (1) encourage those who speak on the telephone to be more conscious of behaving professionally; and, (2) provide DEEOIC with the ability to monitor the interactions between staff and the public, as well as the ability to fully evaluate allegations of rude or insensitive behavior.

C. Delays

As with other issues, while some claimants contacted our Office to directly complain of delays in the processing of their claims, in other instances, the delays they had experienced in the processing of their claim came up as they claimant discussed other matters. The delays brought to our Office's attention in 2019 arose at practically every stage of the DEEOIC claims adjudication process. For instance, a number of claimants, ARs and even some health care providers complained that claimants were experiencing significant delays in receiving their medical benefits cards after their claims had been accepted under the EEOICPA. There were also instances where claimants complained of DEEOIC not responding, or not timely responding to their requests for copies of documents from their claim file, and in one instance, a claimant complained that his/her request for his/her claim file was rejected by the RC, which stated that it did not keep claim file records. This claimant asserts that in order to get the claim file he/she had to point out to the RC that he/she understood the RC would forward the request to the District Office. Other claimants who requested copies of their claim file records complained that they were sent a CD, which because they did not have a computer with a CD drive to open the CD severely delayed, or effectively prevented them from seeing their claim file information.

Another claimant shared information with our Office indicating that she had filed a claim for survivor benefits in 2011, and after not receiving any response for some time, a family member called DEEOIC and was informed the claim file had been lost. The claimant had to reconstruct the documents that had been submitted to DEEOIC and was able to resubmit the documents in 2014. After that, the claimant stated that DEEOIC subsequently requested additional evidence in 2016, 2017, 2018, and 2019. When claimant contacted our Office, he/she had been paid one half of the survivor benefit (\$62,500) in early 2019, and was informed that the other \$62,500 was being withheld pending resolution of the eligibility of other potentially eligible survivors. The claimant asserts that in July 2019, he/she was informed by DEEOIC that the eligibility of the remaining survivors had been resolved, and he/she was entitled to the balance of \$62,500. The claimant later contacted us when he/she still had not received the remaining \$62,500. A day after our Office inquired on behalf of the claimant's remaining benefits in October 2019, the claimant was mailed a form that must be completed prior to receiving payment from DEEOIC, and was informed the Recommended Decision was being drafted. Ultimately, it took approximately 8 years

for this claim to be adjudicated, and it concerns the claimant that no one has explained to him/her why it took this amount of time to adjudicate this claim.

In another instance, a claimant who had filed a claim for asbestosis in November 2018 contacted our Office in November 2019 seeking a status update on his claim. He indicated he had not heard from DEEOIC since he filed his claim for benefits. In response to an inquiry from our Office, DEEOIC responded indicating that the CE had forwarded to the claimant a development letter. Given that the claims processing had been significantly delayed, the CE indicated he/she would contact the claimant to discuss his/her claim.

Delays in the processing of claims for impairment benefits generated considerable concern in 2019. Multiple claimants complained that it took an inordinate amount of time to process their claim for impairment benefits. One claimant who encountered a delay processing his/her impairment claim wrote,

How does one get timely status updates on a claim? This claim seems dragging on with little or no feedback or indication of the time any future steps require.

After contacting the advocates center in January 2019 requesting aid on filing for an impairment claim, I received my first reply from the dol in XXX 2019 and promptly sent it back...

My last receipt from the dol was yet another request with form EN-16 that was signed and dated XX June, with all answers...

This is unacceptable and I need some help to get this completed...

I have promptly answered, filed all requested information in timely fashion and still no results...

- Email from a claimant, August 2019

During the course of the year we talked to claimants who complained that the delay in processing their impairment rating had resulted in a longer wait to file for increased impairment. Chapter 21.16(a) of the PM provides that employees may not submit a claim form for an increased impairment rating earlier than two years from the date of the last final decision on impairment. See EEOICP Procedure Manual, Chapter 21.16(a) Version 4.0 (November 14, 2019). Claimants who had filed for increased impairment benefits complained that due to delays in the processing of their impairment claim, by the time they were finally awarded their increased impairment benefits, the wait between impairment evaluations had been much longer than two years. One claimant, in fact, had to wait over a year for DEEOIC to determine the appropriate amount of surplus in his/her case before his impairment award could be deducted from it. According to the District Office's calculations, the claimant's impairment award would have been completely absorbed the surplus, and the claimant would have been immediately eligible to use his/her DEEOIC medical benefits card for medical treatment and prescriptions. However, because the claims adjudication stretched out for over a year while DEEOIC determined the amount of the surplus, the claimant's impairment evaluation had to be performed again. DEEOIC requires impairment evaluations to be performed within a year of the claim being adjudicated. Unfortunately, the results of claimant's impairment reevaluations were not as favorable. Therefore, instead of the claimant having his/her surplus completely absorbed, the claimant ended up receiving no impairment compensation, and was left with a surplus which prevented him/her from receiving medical benefits under DEEOIC until it was absorbed.

It took another claimant over one and a half years for his/her impairment claim to be adjudicated, and the claimant's impairment claim was ultimately denied. The claimant complained that he/she felt penalized by the slow pace with which his/her impairment claim had been processed. Our Office is hopeful some action is being taken to address the concerns raised by claimants about delays in the processing of claims.

D. Counseled to withdraw claim for benefits

In the Office of the Ombudsman's 2018 Annual Report to Congress, we noted that claimants had complained after their CE had suggested that they withdraw their claim for benefits, and yet did not explain the impact taking such action would have on their claim, or how to later reactivate their claim. For example, in February of 2019, our Office was contacted by a claimant who explained that he/she had been counseled by his/her CE to withdraw the claim because the CE had not received the claimant's medical records, and rather than issue a recommended decision to deny the claim, the CE suggested that the claimant file to withdraw the claim. When the CE made this recommendation, the claimant's AR was in the process of obtaining medical records, and according to the claimant the AR was not aware that his client had been instructed to withdraw the claim. During the conversation with our Office, the claimant was surprised to learn of the right to request for an extension to submit the medical evidence. According to the claimant, he/she had not been notified of his right to seek an extension, and since the AR was in the process of obtaining medical evidence, this claimant indicated that he/she would have preferred to seek an extension as opposed to withdrawing the claim. This claimant also stated that he/she was unaware of how to reopen the claim, because despite receiving a letter confirming that the claim had been withdrawn, there were no instructions for how to reopen it.

Claimants also complained of instances where CEs had informed them that it was necessary to withdraw one claim in order to proceed with another claim, and that this was suggested without an explanation as to why it was necessary to withdraw one of the claims. In one instance, a claimant complained that the CE was suggesting he/she withdraw their claims for consequential conditions in order to have the claim for impairment benefits processed. The claimant, who originally contacted our Office for another issue, had no idea why he/she was being asked to withdraw one of his/her claims, and in the course of the conversation with this claimant it became abundantly clear that this claimant preferred not to withdraw any of his/her claims. As with other claimants who do not have an AR, or who are represented by an AR who is a family member, this claimant was in position where he/her relied even more heavily on the instructions and guidance offered by CEs and/or other DEEOIC staff. Thus, when told they should take certain actions in their claim, most take those actions and do not question the instructions. It is unclear if this claimant would have questioned the counsel of the CE in his/her case had they not contacted our Office on another matter. If a situation should arise where it would be beneficial for a claimant to withdraw their claim, at a minimum, such guidance should be provided to them in writing, and should provide an explanation as to why such action would be beneficial, and if taken, how to later reopen the claim. And if the suggestion to withdraw a claim is being offered to avoid a decision recommending the denial of a claim, claimants should also be informed of their right to seek an extension of time to submit additional evidence. Either way the claimant is required to write a letter to the CE, and the claimant should be aware of all of their options prior to proceeding. And it should go without saying that if a claimant is represented by an AR, any suggestion to withdraw a claim or notify the claimant of the right to seek an extension should be in writing and a copy provided to the AR.

E. Not Informed of Right to Appeal to U.S. District Court

The cover letter that accompanies Final Decisions to deny a claim for benefits, informs claimants that they have 30 days from the date of the Final Decision to file a Request for Reconsideration, and explains the circumstances under which claimants can file a Reopening Request. However, these letters do not inform claimants of their right to file an appeal in U.S. District Court.⁸⁰

Thus, we have very rarely encountered claimants who were aware of this appeal option. In the 2014 Annual Report to Congress, this Office wrote that there were claimants who believed it would be helpful if there was an independent review of the decisions of DEEOIC beyond the FAB. In its response, DOL stated,

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

Yet in spite of this response, the current letters that claimants receive accompanying a Final Decision denying a claim does not mention the right to seek judicial review in the United States District Court. Moreover, it has been our observation that most claimants are unaware of their right to seek judicial review in U.S. District Court. Thus, even when the claimant wants to appeal the Final Decision issued by DEEOIC, they usually do not know how to proceed. A few added sentences to the standard cover letter that accompanies all Final Decisions denying benefits would remedy this lack of important information.

⁸⁰ Final decisions of FAB that deny claims made under either Part B or Part E of the EEOICPA are reviewable in United States District Courts. Statement found on DEEOIC's Significant Decisions and Orders; Topic: Final Adjudication Branch; Subsection: Effect of court rulings.

RECOMMENDATIONS

1. We commend DOL for its efforts to increase outreach and we hope that these efforts continue. However, there is no one method that can assure that all potential claimants are aware of this program. Thus, DOL should explore and use a variety of approaches. Therefore, we recommend that DOL continue to coordinate with the DOE FWP to utilize former worker rosters to disseminate information about the EEOICPA, and in particular coordinate with the DOE FWP to utilize these rosters for the purpose of direct mailings to former workers who reside in areas of the country where Energy Program outreach events have not taken place to date. As stated in earlier Annual Reports, we continue to believe that utilizing the DOE FWP rosters for direct mailings offers one of the most effective and cost-effective ways to contact those who are not already aware of this program. In addition, we hope that DOL continues, and where possible increase its efforts to expand outreach by placing notices in local publications and/or newspapers, as well as utilizing social media.
2. There are benefits to also holding outreach events in areas of the country near covered facilities, as well as near areas where previous outreach events have been held. As a result, we hope and recommend that DOL continues to hold such events. However, since many of the attendees at these events are already aware of this program, we recommend that at the events there should be more focus on identifying and explaining significant updates to the program; providing demonstrations of resources for those who may be interested; and explaining concepts such as a “well-rationalized report.”
3. The AR training sessions provide attendees with valuable information. Unfortunately, not everyone is able to attend these training sessions. DEEOIC limits the number of participants, and there are those who, for a variety of reasons, are unable to attend these sessions. Those who are unable to attend these training sessions could greatly benefit from access to the information shared at these sessions. Therefore, to broaden access to this information, we recommend that DEEOIC explore posting the training materials provided at AR workshops online, or posting it in a downloadable format. DEEOIC should also explore the possibility of utilizing the AR training materials to create FAQ discussing tips for effectively building an EEOICPA claim. Another way to expand the access to these materials would be to explore livestreaming the AR training sessions. In addition, while DEEOIC has undertaken to provide claimants with more information, it is unclear if new claimants receive a packet outlining the available resources, where to find these resources, and providing basic instructions on how to use these resources. If this information is not already provided, we recommend that this information be provided to new claimants. We believe that taking the initiative to provide this information to claimants is the most effective way to ensure that claimants are aware of this information. The alternative is waiting for claimants to ask for this information, and in our experience if claimants are not aware that these resources exist, they oftentimes never think to ask for the information.
4. In light of the importance of the OHQ, there are four (4) recommendations that we believe would enhance claimant’s understanding, as well as the relevance of, this document:
 - a. Because they often worked at these facilities for many years or worked at these facilities many years ago, claimants would benefit from the opportunity to collect their thoughts before engaging in the OHQ interview. Thus, we recommend that prior to the OHQ interview,

- claimants be given the opportunity to review the OHQ or be provided with a general idea of what to expect at the interview.
- b. We recommend that claimants be given the opportunity to review the OHQ after it is completed. This would give claimants the opportunity to correct errors. Having the opportunity to review the OHQ could also prompt claimants to think of additional relevant information that they would want to include in the OHQ. In this regard, we note that during the dose reconstruction process NIOSH engages in an interview with the claimant. NIOSH gives claimants the opportunity to review the notes of this interview. Likewise, it would be helpful if claimants were given the opportunity to review their OHQ interview.
 - c. We recommend that claimants be informed on their right to update the OHQ. We have found that as the claim process proceeds and the claimant remembers additional facts about his/her employment or exposure, it rarely occurs to them to update the OHQ. In light of the importance of the OHQ in the claims process, claimants need to know that they can update their OHQ. And in light of the importance of the OHQ, the right to update this document should be directly communicated to claimants.
 - d. Lastly, there should be a specific procedure for updating the OHQ. After the completion of the OHQ, when claimants remember additional information, they sometimes contact their CE and provide this information to the CE. Claimants assume that this additional information will become part of their claim file. It is not clear of the extent to which this evidence is included in the claim file, and if included, the extent to which it is included in the OHQ or otherwise shared with the specialists who review evidence and prepare reports. A specific procedure for updating the OHQ would increase the chances that the additional information that claimants remember after the OHQ is included in the claim file.
5. In order to locate and develop evidence, claimants need to know what has already been collected. We recommend that DEEOIC create a procedure whereby claimants (1) are advised of the evidence that DEEOIC has or will collect, and (2) advised of their right and how to obtain copies of this evidence. Providing this information to claimants will ensure that they do not invest time trying to collect information already in their claim file. Moreover, a review of the evidence in the claim file is often a tremendous help in enabling claimants to focus the target of their search for evidence. Yet, we frequently find that not only are claimants unaware of what is in their claim file, they also do not know that they have the right to request copies of their claim file. Informing them of this right would be very helpful.
 6. We recommend that DEEOIC explore ways to better assist claimants and family members who are serving as ARs in understanding how to effectively identify and obtain evidence to present in their claim. Thus, beyond informing claimants and ARs of the evidence in the claim file and of their right to request copies of the claim file, steps should be taken to ensure that claimants have a better understanding of how to assist their doctors in developing evidence. When DEEOIC seeks a report from one of its specialists, as a general rule it provides the specialist with a Statement of Accepted Facts (SOAF) and any/all relevant evidence, to include employment, medical, industrial hygiene, and/or exposure evidence. Efforts should be undertaken to provide the claimant's treating doctor with a similar opportunity to review this same evidence. This can be achieved by suggesting to claimants the information that they might want to provide their doctors, or by having DEEOIC directly provide this information to the treating doctors. It was our observation that in seeking a medical report from a treating doctor, claimants rarely supplied that doctor with relevant documents. Thus, it was not surprising that in many instances, the reports prepared by

these treating physicians were deemed insufficient. Treating doctors would be in a better position to prepare an acceptable report if they had access to, or at least were made aware of the availability of relevant evidence and documents.

7. We recommend that DEEOIC explore opportunities to expand its Significant Decision Database. While each case is based on its own unique set of facts, claimants can gain insights from seeing how basic issues were addressed in other claims. Moreover, the Significant Decision database can provide an additional way to disseminate information about new policies, procedures, and/or other changes in the law.
8. We recommend that claimants be provided an opportunity to review the SOAF. We encounter claimants who, after reviewing their SOAF, complain that the SOAF is not accurate or omits relevant information. The discovery late in the claims process of information that the claimant believes is inaccurate is part of an underlying theme we hear in many of the complaints brought to our attention. Claimants frequently express the feeling that throughout the EEOICPA claims process they find themselves at a disadvantage. Their encounters with the SOAF illustrate this concern. In many instances, it is an unfavorable report by a specialist or a decision denying benefits that causes the claimant to ask the questions that leads him/her to finally become aware of his/her right to review the SOAF. When they finally review the SOAF and identify what they believe are inaccuracies, claimants find themselves trying to prove that the report already written by the specialist or the decision already issued by DEEOIC is not based on accurate information. Claimants feel that they would be on more equal footing if they could review the SOAF before these reports are prepared and before decisions are issued.
9. There needs to be assurances that the IH has access to accurate information concerning a worker's employment and exposure. As cases proceed through the claims process and more evidence is obtained and developed, the issues in the case often begin to narrow. And this often allows claimants to focus and remember more detailed information. Unfortunately, by this time the OHQ has been completed, and as they start to remember more information, claimants rarely think to update the OHQ. Rather, according to what they tell us, claimants often contact their CEs and try to provide the CE with the information that has just come to mind. In providing this information to the CE, claimants assume that this information will become part of the claim file and will be shared with those, such as the IH, who provide input into their claim. However, we cannot determine how much of this information is placed in the case file, and if it is in the claim file, if it is shared with the IH, as well as the level of detail with which it is shared with the IH. Thus, we recommend that DEEOIC develop a procedure to ensure that relevant information that claimants provide, or want to provide, after the OHQ has been completed, is made part of the record and as appropriate, shared with the IH. Ideally, this procedure would permit the claimant to directly communicate with the IH who is preparing the IH report. *See* ABTSWH Recommendation No. 4 (October 2016). However, even if directly communicating with the IH is not feasible, it is important that in addition to the opportunity to update the OHQ, there needs to be a procedure to ensure that relevant information that claimants provides to the CE is thereafter shared with the IH.
10. Claimants should be informed of their right to seek an extension of time to respond to requests from DEEOIC, and how to do so. Many of the claimants we encounter are not familiar with the adjudication process in general, or the EEOICPA claims process in particular. And while

information addressing claimants' right to seek an extension of time to respond to requests from DEEOIC is found in the PM, we routinely find that because they have not reviewed the PM, claimants are unaware of this right. Moreover, because of their lack of familiarity with the adjudication process, many claimants never think to inquire about their right to seek an extension of time to respond to requests from DEEOIC. Directly informing claimants of this right would ensure that as they proceed through the claims process, they are aware of this right.

11. Provide the email address for claimants and providers to submit billing inquiries to DEEOIC, DEEOICBillinquiries@dol.gov, prominently on the DEEOIC homepage for both claimants and providers to access. DEEOIC has disseminated this information at some of its outreach events. Yet, this is the kind of valuable information that should be disseminated as broadly as possible.
12. We recommend that DEEOIC continue to evaluate establishing a single point of contact or point of contact to receive complaints of inappropriate customer service. This single point of contact should at a minimum acknowledge receipt of complaints and provide the claimant with a response to the complaint. It is also our opinion that the effectiveness of this single point of contact would be greatly enhanced if this point of contact was not involved in the adjudication of claims. When they report instances of rude and insensitive comments to our Office, some claimants tell us they are concerned with retaliation, while others simply impress upon us their desire to have what they say to us kept in confidence. Assuring these claimants that DEEOIC is committed to hearing their concerns is almost never enough to ease these concerns. What we hear over and over is the fear of reporting a complaint to someone while the subject of their complaint sits next door, or that their concerns will be immediately shared with the subject of their complaint. A single point of contact would give claimants some level of confidence that their complaints will be made and kept in confidence.
13. Claimants should be notified who is handling specific components of their claim, and the role of that person in the claims process. Because various individuals could be involved in various components of a claim, claimants need to be kept informed of who is handling each component of the claim. We frequently find that when problems arise, claimants do not always know who to contact and/or who to contact to resolve the various problems they may be encountering. We have also found that a source of ongoing frustration for claimants has been difficulties being able to speak to the same person with respect to their claim. And while some may not see it as significant, we find that claimants are often very troubled when they do not know who they are talking to; why they are talking to a particular person; and/or what to expect from that person.
14. When the CE determines that a claimant's claim may fall under one of the presumptions outlined in the Act or DEEOIC policies, we recommend that a copy of the presumption should accompany the development letters sent to the claimant in order for them to understand the presumption, as well as the evidence necessary for them to satisfy the presumption. Even if the development letters mention the presumption, claimants usually do not know how to find this information, or even appreciate that is something they would need to look up on their own. As they work to develop the evidence in their claim, claimants would benefit from seeing the entire presumption when asked to submit evidence to potentially satisfy it.

15. DEEOIC has established the Medical Benefits Unit. When we refer claimants or an issue to this unit, the medical billing issue is almost always resolved. Unfortunately, as part of their complaint, the claimants and home health providers who came to us with medical billing issues usually asserted that their efforts to resolve the matter by working with DEEOIC had been unsuccessful. DEEOIC needs to review the work of the Medical Benefits Unit to ensure that medical billing issues are resolved as quickly as possible. Claimants often only learn of a problem with the payment of a medical bill when they receive a collection notice from the provider, or the provider demands payment directly from the claimant. Thus, when these problems arise, claimants are anxious to avoid a collection action, or having the problem impact their relationship with their provider. In addition, claimants have increasingly expressed a concern with what could happen if the provider who is owed money uses one of the claimant's other health insurance carriers to pay the bill and the other health insurance carrier later learns that the payment could/should have been covered under EEOICPA.

APPENDIX 1 - ACRONYMS (ABBREVIATIONS) USED IN THIS REPORT

ABTSWH	Advisory Board on Toxic Substances and Worker Health
AEC	Atomic Energy Commission
AR	Authorized Representative
AWE	Atomic Weapons Employer
BeLPT	Beryllium Lymphocyte Proliferation Test
CBD	Chronic Beryllium Disease
CE	Claims Examiner
CMC	Contract Medical Consultant (formerly known as District Medical Consultant)
CPWR	Center for Construction Research and Training
DCMWC	Division of Coal Mine Workers' Compensation
DEEOIC	Division of Energy Employees Occupational Illness Compensation
DFEC	Division of Federal Employees' Compensation
DLHWC	Division of Longshore and Harbor Workers' Compensation
DME	Durable Medical Equipment
DOD	Department of Defense
DOE	Department of Energy
DOJ	Department of Justice
DOL	Department of Labor
EEOICPA	Energy Employees Occupational Illness Compensation Program Act
FAB	Final Adjudication Branch
FECA	Federal Employees Compensation Act
FOIA	Freedom of Information Act
FWP	Former Worker Medical Screening Program
HHS	Department of Health and Human Services
HR	Hearing Representative
ICD-10	International Classification of Diseases, 10 th Edition
IH	Industrial Hygienist
IOM	Institute of Medicine of the National Academies
JOTG	Joint Outreach Task Group
MBE	Medical Benefits Examiner
MED	U.S. Army Corps of Engineers Manhattan Engineer District
NDAA	National Defense Authorization Act
NIOSH	National Institute for Occupational Safety and Health
NO	National Office
OWCP	Office of Workers' Compensation Programs
PM	Procedure Manual
PoC	Probability of Causation
RECA	Radiation Exposure Compensation Act
RESEP	Radiation Employees Screening and Education Program
RC	Resource Center
SEC	Special Exposure Cohort
SEM	Site Exposure Matrices
SSA	Social Security Administration
The Act	Energy Employees Occupational Illness Compensation Program Act
The Office	Office of the Ombudsman, U.S. Department of Labor

**APPENDIX 2 – DOL’S RESPONSE TO THE OFFICE OF THE
OMBUDSMAN’S 2018 ANNUAL REPORT TO CONGRESS**

RESPONSE TO THE OFFICE OF THE OMBUDSMAN'S 2018 ANNUAL REPORT

The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) administers its responsibilities under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) with the intent of following the will of Congress in enacting the EEOICPA: to pay compensation and medical benefits to all eligible nuclear weapons workers (or their eligible survivors) who incurred illnesses in the performance of duty at a covered facility. In Fiscal Year (FY) 2018, the Energy Employees Occupational Illness Compensation Program (Energy program) provided benefits to 16,491 claimants, including lump sum, impairment, wage-loss, and/or medical benefits. OWCP remains fully committed to serving its claimants and their families.

1. The Ombudsman recommends that the Division of Energy Employees Occupational Illness Compensation (DEEOIC) continue to hold, and if possible, increase the number of outreach events that it sponsors each year. The Ombudsman states that claimants prefer to speak face-to-face with program representatives and will willingly attend the program's outreach events.

Response: OWCP agrees that direct communication and interaction with claimants, potential claimants, and stakeholders helps increase claimants' understanding of EEOICPA. We agree that OWCP should increase the number of outreach events it conducts annually.

In FY 2018, OWCP hosted seven outreach events, including a town hall meeting in Iowa, a meeting of the Joint Outreach Task Group (JOTG)¹ in New Mexico, and five traveling resource centers in Colorado, Missouri, New Mexico, Pennsylvania, and Utah. In FY 2019, OWCP hosted ten outreach events, including town hall meetings in Illinois and Tennessee, JOTG events in New York and Kentucky, five traveling resource centers in Florida, Nevada, Oregon, Tennessee, and Virginia, and a meeting in Washington, D.C., for its stakeholders. OWCP staff also attended the Ombudsman's outreach events in Ohio. In FY 2018 and FY 2019, the Energy program also held four training workshops in Florida, Nevada, Ohio, and Washington for authorized representatives.

The Resource Centers (RCs) also conduct activities that involve face-to-face contact with claimants. For example, RC staff attend community events, union meetings, retiree luncheons, health fairs, health and safety expos, Hazwoper classes, and farmers' markets. They provide information tables/exhibits and conduct presentations. They make covered facility site visits and arrange inserts into facility newsletters. They also support the outreach events sponsored by the National Office and the JOTG. The RCs reported that in FY 2018, they targeted 95,247 potential contacts through outreach events and another 2,902 potential contacts via public meetings. Additionally in FY 2018, the RCs, as the initial point-of-contact for new claimants, responded to 28,969 phone calls, conducted 7,126 walk-in/scheduled/telephone appointments, handled 40,483 medical billing concerns, conducted 4,071 occupational history interviews, performed 118,999 follow-up actions with claimants, and received a total of 8,825 claims.

¹ Members of the Joint Outreach Task Group (JOTG) include the Department of Labor, the Department of Energy (DOE), DOE's Former Worker Program, the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH), the Office of the Ombudsman for EEOICPA, and the Office of the Ombudsman for NIOSH. The mission of the JOTG is to encourage communication among departments and coordinate joint efforts to reach potential and existing claimants.

In FY 2020, OWCP will essentially double its outreach efforts. OWCP plans to conduct between 12 and 15 satellite resource centers in different locations; host five town hall meetings in Alabama, Massachusetts, Ohio, South Carolina, and Texas; and provide two workshops in New Mexico and Tennessee for authorized representatives. In addition to these events, the RCs will strive to increase the number of outreach activities held within their regions.

2a. The Ombudsman recommends that OWCP utilize mailing lists compiled by the Department of Energy (DOE) Former Worker Program to disseminate information about the EEOICPA to potential claimants.

Response: OWCP already relies on the Former Worker Program (FWP) to distribute announcements/ invitation letters (using their mailing lists) when it is appropriate for an event. In FY 2019, the FWP sent out approximately 1,300 letters for the town hall meeting held in Middle Island, New York, and 6,300 letters for the town hall meeting in Bolingbrook, Illinois. OWCP will continue to seek DOE's assistance in reaching claimants and potential claimants. In addition to conducting targeted mailings, OWCP announces its events via its website, news releases, email subscription services, and local newspaper advertisements.

2b. The Ombudsman recommends that OWCP give greater consideration to using regional and national media, and other outlets, to disseminate information about the Energy program.

Response: In FY 2019, OWCP increased its newspaper/magazine advertising in California by placing ads in *Today's Senior Magazine*, targeting readers in the greater Sacramento metro area, North Sacramento Valley, and North Coast. OWCP also arranged newspaper/magazine advertising in California, Colorado, Hawaii, Idaho, Minnesota, Nevada, New York, Ohio, Oklahoma, Tennessee, and Washington, with ads in *The Mercury News*, *The Garden Island*, *West Hawaii Today*, *San Juan Record Newspaper*, *Miami News Record*, *Sequim Gazette*, *The Salt Lake Tribune*, *Norwalk Reflector*, *Idaho Press*, *St. Cloud Times*, *The Link Magazine*, *Niagara Falls Gazette*, *Niagara Falls Reporter*, *Nutley Sun*, *Cullman Times*, and 10 newspapers associated with *Coeur d'Alene Press*, with circulation to approximately 440,000 homes.

The RC staff distributed brochures and program materials to churches, libraries, senior centers, physicians' offices, hospitals, drug stores, pharmacies, assisted living facilities, residential care facilities, hospice centers, beryllium support groups, senior ride services, the Red Cross, the Veterans Administration, Departments on Aging, the Elks Lodge, and Chambers of Commerce. The RCs also conducted residential mailings, utility mailings, and medical mailings and actively pursued referrals from existing claimants. The RCs reported that in FY 2018, they targeted 129,603 potential contacts through written materials to newspapers, newsletters, and mailings. Claimant referrals, on average, resulted in more than 130 claims filed quarterly.

In FY 2018 and FY 2019, the Energy program also conducted eight medical teleconferences, reaching 370 callers. The quarterly teleconferences addressed various topics of concern to medical providers. OWCP also utilized two email subscription services, which in August 2019 provided medical updates to 730 subscribers and policy updates to another 8,396 subscribers.

Going forward, OWCP will continue to utilize the above-mentioned strategies and will also seek new ways to disseminate information about the Energy program.

3. The Ombudsman recommends that new claimants be given information on common resources available to them and how to find these resources. The Ombudsman also recommends that OWCP should provide a document that describes some of the common resources available to claimants and the web address for each resource.

Response: In FY 2019 OWCP developed an informational “rack card” that lists nearly all of the resources available on our public facing website, as well as a link to the website (<http://www.dol.gov/owcp/energy>). The rack card is available at the RC offices. OWCP also distributes this card at outreach events and in some of our mailings.

4. The Ombudsman suggests that it would be easier for claimants to utilize the Energy program’s resources if they could see tutorials/demonstrations of those resources on the OWCP website.

Response: OWCP strives to provide tutorials/demonstrations of its resources whenever possible. In July 2019, OWCP added a self-guided video demonstration of the Site Exposure Matrices (SEM) database to our website. In this tutorial, viewers learn about the background and history of the SEM and how to navigate the SEM database. The tutorial shows the data contained within the SEM and the search categories. It presents a video demonstration of a SEM search. OWCP is currently exploring other ways to make tutorials/demonstrations available to stakeholders. Additionally, the agency is making changes to its medical provider contract and will work with the contractor to provide tutorials, demonstrations, and guidance regarding the medical billing process.

5. The Ombudsman recommends that claimants be able to talk to their claims examiners and hearing representatives and that their messages be promptly returned.

Response: In OWCP we expect a high level of customer service in all interactions with individuals conducting business with our agency. OWCP trains all staff to be prompt, courteous, professional, flexible, and helpful. Management teams at the National Office, District Offices, and Final Adjudication Branch (FAB) strive to work with claimants and staff to resolve all matters of concern. If a claimant is frustrated by “phone tag” or other concerns, he or she may call the District Office and ask to speak with a unit manager. If the case is at FAB, the claimant may contact the FAB branch chief or a supervisory claims examiner. Claimants may also call the RC office manager for assistance. Toll-free telephone numbers are available for each of these offices.

In addition, in 2018 OWCP gave RC contractor staff access to the Government’s Interactive Voice Response computer-based phone system in order for them to answer (and then transfer to examiners) all calls placed to DEEOIC’s National Office and the District Office’s toll-free phone numbers. OWCP will work with RC management to collect data regarding the number of phone calls answered by contractor staff, the type of assistance provided to callers, and the amount of time needed to assist callers, in order to determine future contract standards and measurements.

The program's Operational Plan includes standards for the performance, responsiveness, and timeliness of customer service. Our records show that in FY 2018, the District Offices received 84,786 phone calls; 97 percent of return calls were completed in one work day and 99 percent within two days. In FY 2018, the FAB received 4,780 calls; 93.5 percent of calls were returned within one work day and 97.8 percent within two days. OWCP continually strives to improve its performance and timeliness in responding to claimants' questions and concerns.

6. The Ombudsman stated that claimants need to be informed that they can request copies of their claim files and/or documents from their claim files. This information needs to be relayed as early in the claims process as possible.

Response: OWCP informs both claimants and authorized representatives of their right to receive a copy of his or her case file, and in Chapter 6.5(d)(3) of the Federal (EEOICPA) Procedure Manual, we outline the steps claims examiners are to follow in handling a document request from a claimant, authorized representative, or authorized third party. OWCP agrees that we need to inform claimants of this right as early in the claims process as possible. The agency tries to repeat this message to claimants and conveys it in training sessions for authorized representatives. In an effort to provide proactive disclosures of case information, along with the recommended decision, OWCP provides copies of Contract Medical Consultant and Industrial Hygienist reports that were relied on to make a decision.

7. The Ombudsman said that in instances where medical reports prepared by the claimant's treating physician are deemed inadequate, OWCP needs to clearly explain its policies and procedures for resolving this concern.

Response: In FY 2019, OWCP conducted training in causation under Part E. Claims examiners were reminded to work with the treating physician first when requesting, receiving, and weighing medical evidence. They were also reminded to clearly explain any denials, including the review of medical evidence.

8. The Ombudsman recommends that OWCP assure claimants that the agency values their input and wants to hear their comments and complaints. The Ombudsman suggests that OWCP post a statement on its website encouraging the submission of comments and customer complaints.

Response: OWCP's website provides contact information for all of its offices, including the DEEOIC National Office, DEEOIC Field Operations, Final Adjudication Branch, District Offices, and Resource Centers. We encourage claimants who need assistance to contact any one of these offices through their main and toll-free phone numbers, facsimile, teletypewriter (TTY), or with a visit to the Resource Center physical address. Claimants have several options if they wish to submit a comment or complaint. A claimant may contact his or her claims examiner or hearing representative (or a unit supervisor or branch chief) if he or she has case-related concerns. A claimant may also submit questions or complaints by phone, public email, through written correspondence to the National Office, or through the DOL's Executive Secretariat. OWCP promptly responds to all comments and complaints.

9. The Ombudsman recommends that the Energy program provide a single point-of-contact for complaints. The Omsbudsman suggests that the person receiving complaints should not be involved in the adjudication of claims under the energy program.

Response: OWCP has a process that allows claimants to submit comments and/or customer service complaints to the agency. Claimants may submit complaints to the National Office by phone, through written correspondence, and by public email at Deeoic-public@dol.gov. Additionally, claimants may provide feedback via our customer satisfaction survey. OWCP believes it is important to provide multiple feedback channels rather than direct claimants to a single point-of-contact. OWCP promptly responds to all complaints.

10. The Ombudsman recommends that when OWCP suggests that a claimant withdraw his or her claim, OWCP should explain the reasons for the withdrawal and the implications should the claimant seek to reactivate the claim in the future.

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

In some circumstances, claims examiners may suggest that a claimant withdraw his or her claim. For example, a claims examiner will let a claimant know that the case needs to be adjudicated. If, however, no medical evidence has been submitted, the claims examiner will alert the claimant that the district office will need to issue a recommended decision to deny under those circumstances. A claimant may want to withdraw the claim until he or she has the medical evidence, instead of receiving a recommended decision to deny. If that is the case, the claims examiner will explain that the claim can be withdrawn and development later resumed once the medical information is obtained.

If there has been an instance in which a claimant misunderstood or opposed a withdrawal action, OWCP requests that the Ombudsman provide more information.

11. The Ombudsman recommends that when medical billing issues arise, OWCP should immediately work with the provider to resolve these matters.

Response: In April 2018, OWCP added a Branch of Medical Benefits Adjudication and Bill Processing (Medical Benefits Branch) within DEEOIC, which now has three units responsible for medical benefits adjudication, medical bill processing, and program integrity. Claimants in need of information about medical benefits under EEOICPA and/or the medical bill pay process may contact the Medical Benefits Branch for assistance. When OWCP is made aware of medical bill pay issues, the Medical Benefits Branch does everything possible to assist in the resolution of such issues, including outreach to the claimant and provider.

If the issue stems from bill processing, OWCP also intervenes by corresponding with its central bill processing agent to ensure appropriate bill processing and reimbursement. The central bill processing agent is required to process bills within 30 days of submission of a properly completed bill. Services must be related to an accepted work-related condition and preauthorization requirements, if applicable, must be met. Claimants and providers can verify work-related accepted medical conditions by accessing <https://owcpmed.dol.gov/portal/main.do> or by calling the central bill processing agent directly at: 1 (866) 272-2682. In addition, claimants and providers may also contact the District Office claims examiner assigned to the case. Contact information for our District Offices is accessible at: <https://www.dol.gov/owcp/energy/regs/compliance/law/JurisdictionMap.htm>.

In addition, claimants and providers may send medical billing inquiries to OWCP via email at: DEEOICBillinquiries@dol.gov or contact the examiner assigned to the case.

The RCs also provide guidance to help claimants: resolve medical billing issues; complete medical and travel reimbursement forms for out-of-pocket expenses; or, obtain prior authorizations for medical treatment, home health care, durable medical equipment, and non-local travel associated with covered conditions. If a claimant is hospitalized or unable to travel for medical reasons, RC staff can make home/hospital/nursing home visits to obtain signatures on forms so that the claims or payment processes are not delayed. The RCs also guide medical providers on program enrollment.

12a. The Ombudsman recommends that OWCP clarify the role of the RCs. The Ombudsman says information about the RCs should be widely disseminated so that it reaches those who do not live close to one of the 11 RCs.

Response: OWCP agrees that claimants need to have greater awareness of the services provided by the RCs. In FY 2019, OWCP added a “rack card” to its repertoire of printed materials. The card explains the services of the RCs and is available at the RC offices and on the OWCP website. OWCP distributes this card at outreach events and in some of our mailings. We encourage RC staff to verbally explain their services whenever possible.

12b. The Ombudsman recommends that when an online resource is referenced in a letter or decision, OWCP should include the web address for that resource.

Response: A decision by OWCP to include a web address in a letter or written decision can depend on various factors. If a web address is not included, we generally provide a description of the resource or reference to where it can be found.

12c. The Ombudsman recommends that OWCP explain its policies regarding its review of evidence submitted by claimants. The Ombudsman says claimants need to understand how self-reported evidence is reviewed, considered, and credited.

Response: In FY 2019, OWCP provided training for its claims examiners. Part of the training focused on the relevance of evidence submitted by claimants. The training included guidance on how to review, consider, and credit evidence submitted by claimants. OWCP responds to each

claimant individually, through development letters and phone conversations, regarding the evidence he or she submits. OWCP weighs claimant-submitted evidence in conjunction with other records in the case file to make an informed decision on each claim. The analysis of all evidence is included in both the recommended and final decisions.

13. The Ombudsman recommends that OWCP create a more effective way of providing claimants with the step-by-step instructions they need during the claims adjudication process. The Ombudsman suggests that claims examiners and hearing representatives may not have adequate time to devote to claimants' questions and concerns, stating claimants need additional assistance.

Response: We understand that claimants need a great deal of assistance during the claims adjudication process. Since no claim under EEOICPA is identical to another claim, OWCP relies on its claims examiners and hearing representatives to guide claimants through the adjudication process. These staff members are the ones most familiar with the case. They communicate via phone, development letters, written decisions, and cover letters, advising claimants on deadlines, next steps, claim status, hearings, post-hearing actions, final decisions, remands, and requests for reconsideration and/or reopening.

OWCP also provides How-To Guides on its website that include step-by-step overviews of the adjudication process and guide claimants and medical providers toward resources they can utilize. Claimants may also access our printed brochures, Frequently-Asked-Questions, current and previous versions of the Federal (EEOICPA) Procedure Manual, EEOICPA Transmittals, EEOICPA Bulletins and Circulars, our list of acronyms, and (when requested) a copy of their case file. In all communication to claimants throughout the claims process, OWCP provides instructions (including phone numbers, fax numbers, and mailing addresses) regarding who to contact for questions and assistance. Claimants in need of information about medical benefits under the EEOICPA and/or the medical bill pay processes may contact OWCP's medical bill contractor or the Branch of Medical Benefits Adjudication and Bill Processing.

CONCLUSION

From its inception to the end of FY 2019, the Energy program awarded approximately 124,800 claimants compensation and medical benefits totaling more than \$16.8 billion. This included \$11.6 billion in compensation and just over \$5.2 billion in medical expenses.

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