



January 15, 2021

The Honorable Michael R. Pence
President, United States Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2019 Annual Report. Pursuant to 42 U.S.C. § 7385s-15(e)(2), the Ombudsman's report provides Congress with the number and types of complaints, grievances, and requests for assistance received by his office during each calendar year and an assessment of the most common difficulties encountered by claimants and potential claimants under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

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

The Secretary is required to provide a response to Congress regarding the Annual Report that includes a statement of whether he agrees or disagrees with the specific issues raised by the Ombudsman, and if he agrees, the response is to include a description of the corrective actions that will be taken. If he disagrees, he is required to respond with reasons for the non-concurrence. The Ombudsman made recommendations to address common difficulties brought to his attention in calendar year 2019; however, several recommendations are redundant of previous years' recommendations. Instead of responding to each one, we are focusing this response on Energy Program accomplishments and actions OWCP has taken to address the recommendations. The Secretary delegates to the Director of OWCP the authority to respond to the Ombudsman's report.

Sincerely,

JULIA
HEARTHWAY

Digitally signed by JULIA
HEARTHWAY
Date: 2021.01.15 17:57:44
-05'00'

JULIA K. HEARTHWAY
Director

Enclosure



January 15, 2021

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2019 Annual Report. Pursuant to 42 U.S.C. § 7385s-15(e)(2), the Ombudsman's report provides Congress with the number and types of complaints, grievances, and requests for assistance received by his office during each calendar year and an assessment of the most common difficulties encountered by claimants and potential claimants under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

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

The Secretary is required to provide a response to Congress regarding the Annual Report that includes a statement of whether he agrees or disagrees with the specific issues raised by the Ombudsman, and if he agrees, the response is to include a description of the corrective actions that will be taken. If he disagrees, he is required to respond with reasons for the non-concurrence. The Ombudsman made recommendations to address common difficulties brought to his attention in calendar year 2019; however, several recommendations are redundant of previous years' recommendations. Instead of responding to each one, we are focusing this response on Energy Program accomplishments and actions OWCP has taken to address the recommendations. The Secretary delegates to the Director of OWCP the authority to respond to the Ombudsman's report.

Sincerely,

JULIA
HEARTHWAY

Digitally signed by JULIA
HEARTHWAY
Date: 2021.01.15 17:58:54
-05'00'

JULIA K. HEARTHWAY
Director

Enclosure



RESPONSE TO THE OFFICE OF THE OMBUDSMAN'S 2019 ANNUAL REPORT

The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) remains fully committed to administering its responsibilities under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to provide compensation and medical benefits to eligible nuclear weapons workers (or to their survivors) who developed illnesses as a result of their exposure to toxic substances at a covered facility. From its inception to the end of fiscal year 2019, the Energy Program awarded approximately 122,000 claimants compensation and medical benefits totaling more than \$16.96 billion; this included \$11.71 billion in compensation and \$5.25 billion in medical expenses. Part B compensation accounted for approximately \$6.87 billion (since 2001) of the \$11.71 billion, and Part E accounted for approximately \$4.84 billion (since October 28, 2004).

In fiscal year 2019, the Energy Program provided benefits to 16,662 eligible claimants. Benefits included lump-sum compensation payments, impairment and wage-loss benefits, and medical/health care benefits.

In his 2019 Annual Report, the Ombudsman made a number of recommendations for improving the Energy Program. The following recommendations are repeated from previous years and have already been accepted and put into place:

- The use of Former Worker Program mailing lists;
- Assisting claimants with tools and resources;
- Providing guidance to claimants to help them effectively build a claim;
- Assisting physicians in developing "well-rationalized reports" and providing appropriate medical evidence to support a claim;
- Informing claimants of their right to request an extension of time during the adjudication of a claim;
- Informing claimants of their right to request a copy of their case file; and
- OWCP's handling of customer service complaints.

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) posts their responses to previous years' recommendations on its website in the Public Reading Room at https://www.dol.gov/agencies/owcp/energy/regs/compliance/dol_response_ombudsmanreport.

DEEOIC has addressed other recommendations made by the Ombudsman in 2019 through OWCP's work with the Advisory Board on Toxic Substances and Worker Health (the Board). The Board, established in 2015, reports to and advises the Secretary of Labor with respect to technical aspects of the Energy Program.¹ OWCP has worked with the Board on revisions to the

¹ The Advisory Board is charged with advising the Secretary on four statutorily-specified technical issues related to EEOICPA: DOL's Site Exposure Matrices; medical guidance for claims examiners with respect to the weighing of

Occupational History Questionnaire (OHQ) and OHQ interview process, for example. OWCP is also working with the Board to establish a process for the Industrial Hygienist (IH) to interview claimants. OWCP has also worked extensively with the Board on identifying presumptions for certain diseases and exposures. Additionally, in response to one of the Board's recommendations, OWCP plans to make case files available to claimants through a two-factor identification portal and is currently developing this capability for all of its programs. For more information, see the Board's website at <https://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm>.

In fiscal year 2019, OWCP continued its mission to provide compensation and medical benefits to eligible nuclear weapons workers or their families, focusing on the following initiatives:

- In October 2018, OWCP sponsored a Fall Stakeholder Meeting in Washington, D.C., to explain the roles, responsibilities, and various components of the Energy Program and encourage dialogue among OWCP National Office staff, program advocates, claimants, and authorized representatives. This event attracted 80 guests.
- Final Regulations (last revised in 2006) were updated and became effective on April 9, 2019. The new regulations incorporated programmatic determinations regarding the claims adjudication process, updated obsolete terms, codified current procedures, and allowed for greater consistency and control in how home health care benefits are approved under the program. Claimants now benefit from a streamlined approval process.
- The Energy Program enhanced its focus on personal accountability and performance management. Prior to fiscal year 2019, Energy Program supervisors reviewed an average of 20,000 case action samples per year to assess program and individual performance. Now, the program reviews a much more robust 62,500 samples measuring both individual and division performance.
- The Energy Program continues to focus its outreach on both nuclear weapons workers and healthcare providers. The purpose of the outreach is to educate potential claimants about the program and provide assistance in filing claims. In addition, the outreach provides an understanding of the adjudication process and informs health care providers (including physicians and home health care organizations) about EEOICPA benefits as well as their responsibilities in prescribing care and providing services. The Energy Program's network of resource centers near major Department of Energy (DOE) sites serves as an initial point of contact for workers interested in the program and individuals filing claims under the EEOICPA. The resource center staff assists with initial claim filing and Part E occupational history development, forwards all claims and associated

medical evidence of claimants; evidentiary requirements for claims under subtitle B related to lung disease; and the work of Industrial Hygienists, staff physicians, and consulting physicians to ensure quality, objectivity, and consistency. The Advisory Board also provides recommendations regarding the claims process generally, and sunsets on December 19, 2024 (Public Law 115-91). The Advisory Board Chair forwarded its fifth and sixth set of recommendations to the Secretary during fiscal year 2019.

documentation to the appropriate district office, and supports town hall meetings, traveling resource centers, and Joint Outreach Task Group (JOTG) events.² In fiscal year 2019, 61 contract employees at 11 resource center sites were available to assist claimants in completing necessary forms and gathering documentation to support their claims.³ In fiscal year 2019 the resource centers responded to 56,317 phone calls, conducted 3,971 occupational history interviews, performed 125,247 follow-up actions with claimants, and received 8,481 claims. The resource center staff provided exhibits and presentations at community health fairs, union meetings, Chambers of Commerce offices, Meals-on-Wheels sites, retiree and safety meetings associated with covered facilities, and Hazardous Waste Operations training sessions, which resulted in an additional 104,267 contacts and 4,620 claims.

In fiscal year 2020, during the coronavirus pandemic, the resource centers remained fully operational, utilizing telephone contact to answer questions, receive documents, and assist with claim filing.

- Resource center staff also stocked printed materials (brochures, rack cards, flyers, inserts, etc.) at senior centers, libraries, city hall offices, physicians' offices, hospitals, nursing homes, assisted living facilities, and other locations. In addition, the resource centers distributed these materials in residential mailings, medical mailings, utility mailings, postcard mailings, and newsletters, targeting 86,886 contacts resulting in 3,773 claims. The program posted information, technical assistance, and downloadable materials on the OWCP website, and encouraged community organizations and unions to post the same information on their websites, bulletin boards, and in their newsletters. In fiscal year 2019, OWCP began utilizing a "Do You Know" referral sheet, which OWCP distributed at outreach events, in invitation letters, and in all claims packets provided to individuals filing claims. "Do You Know" referrals totaled 6,962 and resulted in 479 new claims. OWCP also continued its email subscription service to provide program/policy/medical updates. As of September 2020, more than 18,000 individuals subscribe to this service.
- OWCP continues to utilize the DOE's Former Worker Program's mailing lists as a way to distribute information about the program. In fiscal year 2019, OWCP used the lists to send more than 54,300 invitations, letters, and postcards.
- The resource centers reported 2,174 contacts as a result of newspaper/magazine advertising in fiscal year 2019; from these contacts, 152 claims were filed. DOL and DOE's Former Worker Program also featured numerous events on social media. DOL issued press releases for all in-person outreach events; this led to media focus during the events, and in some cases, local media highlighted the event via newspaper articles and television news segments.

² The JOTG consists of representatives from DOL's Energy Program, DOL's Office of the Ombudsman for EEOICPA, the National Institute for Occupational Safety and Health (NIOSH), and the Ombudsman to NIOSH for the EEOICPA-Part B, DOE, and DOE's Former Worker Program.

³ The Division of Energy Employees Occupational Illness Compensation's 11 resource centers are located in Dublin, California; Denver, Colorado; Idaho Falls, Idaho; Paducah, Kentucky; Portsmouth, Ohio; Las Vegas, Nevada; Espanola, New Mexico; Amherst, New York; North Augusta, South Carolina; Oak Ridge, Tennessee; and Hanford, Washington.

- In fiscal year 2019, OWCP conducted face-to-face outreach events across the country with nuclear weapons workers and their families, to provide information about the Energy Program and assist people in filing claims. The JOTG conducted town hall meetings in Oak Ridge, Tennessee; Middle Island, New York; Paducah, Kentucky; and Bolingbrook, Illinois, with attendance at these meetings totaling 433 people. The JOTG also provided in-person training to authorized representatives, hosting 30 participants in Cincinnati, Ohio, and 51 participants in Las Vegas, Nevada. In fiscal year 2019, OWCP sponsored a town hall meeting in Lynchburg, Virginia, for approximately 100 current and former nuclear weapons workers and their survivors, and held other meetings in Largo, Florida; Pahrump, Nevada; Albany, Oregon; and Erwin, Tennessee. The program also conducted two medical teleconferences, focusing on the roles of physicians and home health care providers in providing medical benefits under the program, and another medical teleconference in fiscal year 2020 to explain the launch of the new Workers' Compensation Medical Bill Processing System.

In fiscal year 2020, the program conducted seven in-person outreach events across the country. This outreach resulted in 582 contacts and 52 claims.

In March 2020, in response to the coronavirus pandemic, OWCP cancelled face-to-face outreach events and quickly transitioned to online monthly webinars. The webinars, which will continue into fiscal year 2021, cover many of the same topics presented in the authorized representative workshops and include a Question and Answer component where participants can submit questions in a chat room and receive answers during the webinar. The slides from each webinar are available on the OWCP website.

- In fiscal year 2020, OWCP launched a new and enhanced website for all of its programs. DOL's Office of the Chief Information Officer and Office of Public Affairs worked with all agencies to consolidate DOL's disparate systems and manage all public facing content. This resulted in a single content management platform across all DOL agencies. OWCP underwent a comprehensive review of site management to better understand stakeholders' needs when visiting the site. This included the use of card sorting to gain insights from users about how to organize content in an intuitive way. At the conclusion of the review, OWCP made enhancements to primary navigation, homepage design, landing page design, site map, and URL lists. The new website is user-friendly with improved navigation.
- OWCP provides the public with access to a searchable database that contains both final decisions and various types of non-final orders issued by the Final Adjudication Branch (FAB) on claims arising under the EEOICPA. In fiscal year 2019, the Solicitor's office selected 10 new decisions to add to the database; these decisions were added to the Significant Decisions and Orders database on March 10, 2020. The final decisions included in this database are of precedential value, as they contain significant statements that constitute the working law of DEEOIC regarding EEOICPA benefit claims. Thus, DEEOIC may rely upon these decisions when it decides future claims that involve similar factual and legal issues. As of September 30, 2020, DEEOIC's Significant Decisions and Orders database contained final decisions categorized within 24 topic areas. OWCP

routinely updates the database and makes it available on the DEEOIC website (along with directions on how to conduct a search) at <https://www.dol.gov/agencies/owcp/energy/regs/compliance/Decisions/introDecision>.

- In fiscal year 2019, in order to focus on and improve customer service, the Energy Program implemented a national phone queue, in which the resource center staff answer all calls that come into the queue. This change resulted in an increase in the number of calls answered by a live representative, efficiency in answering basic questions, and decreased hold times. Resource center staff are able to provide one-on-one assistance needed to guide claimants toward the solution of problems. They also direct calls to the appropriate person and document the calls correctly. Claimants may also submit questions or comments by phone, by public email at DEEOIC-public@dol.gov, through our customer satisfaction survey, or through written correspondence to the DEEOIC Director, OWCP Director, or DOL's Executive Secretariat. OWCP responds promptly to all comments and concerns.

The Energy Program's Operational Plan includes standards for the performance, responsiveness, and timeliness of customer service. In fiscal year 2019, the District Offices received 86,900 phone calls; of these calls, 96.44 percent of return calls were completed in one work day and 99.12 percent within two days. In fiscal year 2019, the FAB received 4,728 calls; of these calls, 92.04 percent were returned within one work day and 97.47 percent within two days. OWCP continually strives to improve its performance and timeliness in responding to claimants' questions and concerns.

- OWCP recognized the benefit of providing claimants with ample time to prepare for the Occupational History Questionnaire (OHQ) interview, and in fiscal year 2020 implemented policy that benefits the claimant and the claims adjudication process. On September 14, 2020, OWCP issued EEOICPA Transmittal No. 20-04, publishing Federal (EEOICPA) Procedure Manual version 4.3 that includes a revision to Chapter 10, *Resource Centers*, wherein the OHQ interview process is discussed. The revision provides that resource center staff advise claimants of the OHQ's process, purpose, and its function in the adjudication of their claim. Specifically, the resource center staff is responsible for advising claimants that the OHQ interview seeks to obtain information related to the employee's work locations, job titles, work processes, and contact with specific toxic substances. After being provided an overview of the OHQ process, the claimant has the option to proceed immediately with the OHQ interview or to schedule the interview at their convenience. This process allows sufficient time for claimants to gather information in preparation for the interview. It has always been DEEOIC's practice to provide claimants with a copy of the completed OHQ to allow claimants time to correct errors and/or provide additional information. Upon completion of the interview, the resource center staff provides claimants with a copy of the completed interview. Claimants are advised to review the interview document, provide corrections to information in the interview summary if necessary, and to submit any additional information they may have missed during the interview. Resource center staff informs claimants that additional information can be submitted in support of their claim.

- Adjudication under Part E of the EEOICPA involves collecting, developing, and evaluating data to determine exposure and causation. This includes assessing health effects, utilizing the Site Exposure Matrices (SEM), and assessing exposure evidence to make findings that the claims examiners (CEs) can use in making determinations on causation.⁴ As part of the adjudication, DEEOIC often refers cases to an industrial hygienist who utilizes expertise and knowledge to make well-rationalized and unbiased opinions on the nature, frequency, and duration of exposure. In fiscal year 2019, DEEOIC made 1,795 referrals to an industrial hygienist. In an effort to assist claimants in meeting their burden of proof, the DEEOIC also uses, under certain circumstances, the services of a contractor to coordinate referrals of cases to qualified medical specialists. A Certified Medical Consultant (CMC) is a contracted physician who conducts a review of case records to render opinions on medical questions. The function of a CMC is to provide clarity to claims situations in the absence of pertinent or relevant medical evidence from other sources that support the claim. In fiscal year 2019, DEEOIC made 2,634 referrals to a CMC.
- We understand that claimants need a great deal of assistance during the adjudication process. CEs and hearing representatives (HRs) communicate with claimants by phone, development letters, written decisions, and cover letters, advising claimants on claim status, deadlines, next steps, hearing and post-hearing actions, final decisions, remands, requests for reconsideration, or requests for reopening of a claim. Medical benefit examiners (MBEs) communicate with claimants in the same way concerning medical authorizations, medical billing, and bill payments. During each step, we provide the name and contact information of the CE, HR, or MBE handling the claim, specific directions to the claimant to ensure proper adjudication or processing of the claim, and a toll-free number to call for more information. OWCP strives to make each claimant aware of the adjudication process, the current location of his or her claim, any deficiency in building the claim, and ways in which claimants themselves can assist the process. OWCP also provides How-To Guides on its website that provide a step-by-step overview of the adjudication process. Claimants can also access our Frequently Asked Questions, the Federal (EEOICPA) Procedure Manual, EEOICPA Bulletins and Circulars, brochures, and other helpful resources on the OWCP website.
- The volume of requests for medical benefits continues to increase under the Energy Program due to the growing home health care industry and the program's elderly claimant population. Given instances of fraud previously seen in the home health care and medical bill sectors, it is important that the program verify the services provided to claimants. The Energy Program centralized the processes for these requests in the Branch of Medical Benefits in the National Office in FY 2018. Staff is comprised of bill payment and coding analysts, MBEs, and program integrity analysts for audits and data analysis. The staff specializes in supporting medical benefits billing, adjudicating home health care requests, and analyzing data to reduce potential waste, fraud, and abuse. OWCP strives to ensure that EEOICPA beneficiaries receive prompt authorization for

⁴ The Energy Program built the SEM with the intent of easing claimants' evidentiary burdens and expediting the claims process. As of September 30, 2019, the SEM housed information on more than 16,400 toxic substances or chemicals used at 139 DOE sites and approximately 4,000 additional RECA sites (including uranium mines, mills, and ore buying stations covered under the EEOICPA).

medical treatment and that OWCP pays medical providers quickly and correctly. In fiscal year 2019, OWCP processed 97.9 percent of bills within 28 days.

- While the Ombudsman mentioned an email address for billing inquiries, this is an internal mailbox only and is not intended for public use. There are several other options when a claimant has a medical billing inquiry. A claimant may call OWCP's toll-free number, call a resource center, send an inquiry via public email, call his or her MBE, or go directly to the medical bill processing contractor.
- OWCP explains the concept of a "well-rationalized report" in Chapter 15(13)(b) of the Federal (EEOICPA) Procedure Manual, *Establishing Toxic Substance Exposure and Causation*, and in Chapter 16, *Developing and Weighing Medical Evidence* (v.4.3, published September 14, 2020). The Federal (EEOICPA) Procedure Manual provides the definition of a "rationalized" opinion and outlines the steps CEs follow in evaluating medical evidence. The chapter explains the contrast between a well-rationalized medical report and one that is not considered well-rationalized. CEs and MBEs work directly with treating physicians to provide information (equivalent to the Statement of Accepted Facts) about each claimant's claimed condition, work environment, and exposures. They advise physicians on what is required in a medical report or letter of medical necessity and help them understand deficiencies in medical reports.
- OWCP has also focused on developing, modernizing, and centralizing training material for its staff. Through the hiring of a training analyst, DEEOIC created a central location for training development that led to consistent and uniform distribution of training materials. In fiscal year 2019, DEEOIC identified areas of potential deficiencies that required training and worked with subject matter experts in the National Office and the field to develop and deliver numerous trainings for the division. The division also worked with a training contractor on re-engineering legacy CE training and delivered soft skills courses aimed at improving customer service and teamwork. Using different types of media, the trainings included video demonstrations, self-paced learning exercises, certain scenarios, and knowledge checks.

OWCP appreciates the work of the Office of the Ombudsman in assisting stakeholders. We will continue to work toward improving this program and to ensuring quality assistance and proper payment of benefits to eligible employees of the nuclear weapons industry and their families. Additional information about the Energy Program is available in the OWCP Annual Reports to Congress, available online at <https://www.dol.gov/agencies/owcp/AnnualReport>.