

March 14, 2024

Honorable Ben Ray Lujan
498 Russell Senate Office Building
Washington, D.C. 20510

Subject: Energy Employees Occupational Illness Compensation Program Act (EEOICPA)

Dear Senator Lujan:

1. Request reengagement of your office concerning Department of Labor's (DoL) mishandling of administering the EEOICPA.
2. This is the same issue Former Secretary of Energy Governor/Ambassador Bill Richardson brought to your attention in early 2023. On March 15, 2023 your staff forwarded to DoL an Issue Paper titled, "Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Where Intent and Reality Fail to Meet" (Attachment A). Fifteen issues were presented in this, with discussions, and recommendations provided for each issue. DoL never responded to your letter, or even provided acknowledgement of receipt, taking advantage of the fact that it was provided as a courtesy document.
3. Senator Grassley previously fared slightly better in his letter of March 30, 2020 which identified eighteen issues that he asked Ms. Julia Hearthway to examine (Attachment B).
 - a. The response was what amounted to a form letter electronically signed by Ms. Rachael Pond, Director, Division of Energy Employees Occupation Illness Compensation (Attachment C). In closing this letter, Ms. Pond informed Senator Grassley, "In order to clarify these issues and provide a thorough understanding of the DEOICPA program, OWCP staff is happy to conduct a conference call with your office, if that is helpful for you and your staff. You may contact the Office of Intergovernmental and Congressional Affairs at (202) 693-4600 to arrange this call."
 - b. Aside from instructing Senator Grassley that if he wanted further information he would need to take the initiative and make contact through the Office of Intergovernmental and Congressional Affairs, no action was taken to address or resolve those identified issues within DoL
4. This last statement is validated by DoL's Annual Ombudsman Report to Congress. Every year problematic issues are documented by the Ombudsman and every year DoL responds to Congress with concurrence and proposed processes to fix the problems. Yet the following year, the procedure repeats itself. Provided is the January 10, 2023 DoL response to Speaker of the House Kevin McCarthy and President of the Senate Kamala Harris (Attachment D).

5. Governor Richardson personally told me of the importance you place in helping former employees of the Department of Energy (DOE) who are suffering as a result of their service to their country. We have now lost our dear friend, but the importance he placed in caring for former DOE employees lives on in the program he developed as Secretary of Energy continues to live – that being EEOICPA. Unfortunately, that program continually fails to be effectively administered by the DoL

6. Of administrative note, I do not suffer from the contamination effects of having worked at Sandia National Laboratories (SNL). My involvement is responding, without any form of compensation, to the numerous requests received from many of my peers who are suffering.

7. What is not needed is continual revisiting of problems noted by DoL's Ombudsman while ignoring and sidestepping problems addressed in letters from the United States Senate. What we are witnessing within DoL is a lack of proactive leadership. In its place is self-protecting management.

8. Request direct engagement of this problem with Secretary of Labor Julie Su. As evidenced in the attached documents, dealing with her subordinates has been totally counterproductive.

Thank you and very respectfully,

A handwritten signature in black ink that reads "Wes Martin". The signature is written in a cursive, slightly slanted style.

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Acting Secretary Julie A. Su
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Director Rachel D. Pond
Division of Energy Employees Occupational
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U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

March 15, 2023

Reference: EEOICPA FINAL REPORT FROM COLONEL WES MARTIN AND RUSTY
GILLEN

Dear Secretary Su and Director Pond,

I would like to bring to your attention a report compiled by two of my constituents on the Energy Workers Program, a federal program administered by the Division for Energy Employees Occupational Illness Compensation in the U.S. Department of Labor that is within your jurisdiction.

Enclosed you will find the report provided by Colonel Martin and Mr. Gillen on the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Should you have any questions, please feel free to contact my Legislative Assistant who handles labor policy, Alanna Purdy Montesinos, at Alanna_PurdyMontesinos@lujan.senate.gov.

Thank you in advance for your prompt attention to this matter, and I hope this report is informative for you and your staff. Please do not hesitate to reach out if you would like to discuss this issue further.

Sincerely,



Ben Ray Lujan

United States Senator

ATTACHMENT A: LTR TO SENATOR LUJAN, SUBJ: EEOICPA,
DATED MARCH 14, 2024

**Energy Employees Occupational Illness
Compensation Program Act (EEOICPA)
Where Intent and Reality Fail to Meet**

Feb 11, 2023

Acronyms Defined:

ANWAG:	Alliance of Nuclear Workers Advocacy Group
AMA:	American Medical Association
APA:	Administrative Procedure Act
CE:	Claims Examiner
CMC:	Contract Medical Consultant
CRS:	Congressional Research Service
DEEOIC:	Division of Energy Employees Occupational Illness Compensation
DOE:	Department of Energy
DOL:	Department of Labor
DQA:	Data Quality Act
EEOICPA:	Energy Employees Occupational Illness Compensation Program Act
FAB:	Final Adjudication Branch
FOIA:	Freedom of Information Act
GAO:	U.S. Government Accountability Office
NIOSH:	National Institute for Occupational Safety and Health
NNSA:	National Nuclear Security Administration
OWCP:	Office of Workers Compensation Programs
PM:	EEOICPA Procedure Manual
PRA:	Paperwork Reduction Act
RECA:	Radiation Exposure Compensation Act
SEC:	Special Exposure Cohort
SEM:	Site Exposure Matrix

Energy Employees Occupational Illness Compensation
Program Act
Where Intent and Reality Fail to Meet

1. Background:

a. A memorial stone in Calkins Park, New London, Conn, well testifies to the dedication of, and risk to, employees working at what would become our national laboratories: *Though not in uniform, he died in service to his country.* That stone is dedicated to Harry Daghlán, who died in August 1945. Daghlán had come to Los Alamos, New Mexico to work on the Manhattan Project where in less than a minute he received a lethal dose of radiation poisoning. The following May, a teammate of Daghlán's, Louis Slotin, suffered a similar fate. As a result of the Daghlán and Slotin deaths, the United States Government initiated numerous enhancements to the handling of radioactive materials and equipment.

b. In almost all cases, employees lacked thorough understanding of exactly what they were dealing with, and the consequences of exposure. The extent of this was evident upon his return to Los Alamos from Oak Ridge when Manhattan Project Theoretical Physicist Richard Feynman debriefed Robert Oppenheimer. Feynman's warning were words to the effect: *You better tell them what they are handling or Tennessee is going to be missing a mountain.*

c. Nuclear safeguards were critical in preventing more quick and hideous deaths like Harry Daghlán and Louis Slotin suffered. Those safeguards were also critical in preventing nuclear contaminations as evidenced by the Soviet Union's Chernobyl disaster. However, the safeguards were not sufficient in preventing future long-term and fatal illnesses to be suffered by the people who have become known as "Cold War Patriots". There was still a major lack of knowledge of safety surrounding individual effects of Atomic Energy Commission and Department of Energy employees working with hazardous materials. Risk was minimized to a great degree, but never eliminated. It took decades for a thorough understanding of the contamination suffered by those employees.

d. While serving as Secretary of Energy Bill Richardson developed (and successfully passed through Congress) the Energy Employees Occupational Injury Compensation Program Act (EEOICPA). This Program was a federal adaptation of an initiative he started as Governor of New Mexico. This was borne out of his realization of constituents developing cancer and other serious occupational illnesses directly related to their employment within the Department of Energy (DOE) complex, specifically Los Alamos National Laboratory, Sandia National Laboratories, Waste Isolation Pilot Project, and uranium mining in western New Mexico.

e. Because EEOICPA is a labor issue, execution of the program became the responsibility of Department of Labor's (DOL) Division of Energy Employees Occupational Illness Compensation (DEEOIC). Introduction to DEEOIC's website is

the statement: [Energy Workers Program | U.S. Department of Labor \(dol.gov\)](#) is the statement: *As the Division of Energy Employees Occupational Illness Compensation (DEEOIC), our mission, under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), is to protect the interests of workers who were injured or became ill on the job, or their families, by making timely, appropriate, and accurate decisions on claims and providing prompt payment of benefits to eligible claimants.*

f. The “About DEEOICP” link [About Energy Program | U.S. Department of Labor \(dol.gov\)](#) states: *The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was enacted in October 2000. Part B of the EEOICPA, effective on July 31, 2001, compensates current or former employees (or their survivors) of the Department of Energy (DOE), its predecessor agencies, and certain of its vendors, contractors and subcontractors, who were diagnosed with a radiogenic cancer, chronic beryllium disease, beryllium sensitivity, or chronic silicosis, as a result of exposure to radiation, beryllium, or silica while employed at covered facilities. The EEOICPA also provides compensation to individuals (or their eligible survivors) awarded benefits by the Department of Justice under Section 5 of the Radiation Exposure Compensation Act (RECA). Part E of the EEOICPA (enacted October 28, 2004) compensates DOE contractor and subcontractor employees, eligible survivors of such employees, and uranium miners, millers, and ore transporters as defined by RECA Section 5, for any occupational illnesses that are causally linked to toxic exposures in the DOE or mining work environment.*

2. The issues addressed in this Issue Paper attest to the fact that the joint intent of DOE and DOL is not being achieved. The following are the major categories of concerns which are reported to be creating difficulties for these workers, or their survivors, and medical providers.

- a. Indefensible benefit denials
- b. Questionable data is being used in claim adjudications
- c. DEEOIC Impairment ratings may be ageist
- d. Ombudsman’s Annual Report to Congress
- e. Security Concerns and Potential Toxic Exposure
- f. Standards for DEEOIC Informal Adjudication Reasoning for Denials
- g. The ICD Code Conundrum
- h. Treatment Suite Database
- i. Cost of Living Adjustment
- j. Reimbursement Process Audit
- k. Create a Congressional Caucus
- l. Lack of Enrolled Providers
- m. Duty to Assist
- n. Survivor Benefits
- o. Basal Cell Carcinoma

3. Individuals and organized groups, most notably ANWAG, report having tried to work through the bureaucracy. It is further reported that any successes achieved have been limited, usually to individual claims filed by the victims who are already suffering and experiencing trauma resulting from their physical conditions. It is reported that dealing with what may be a dysfunctional system within DOL adds to their problems, both physically and emotionally.

4. Back-up documentation exists to support all concerns identified in this Issue Paper. These issues, with discussions and recommendations to achieve resolution, are as follows:

a. Issue: Failure to recognize certain medical conditions as compensable under the EEOICPA due to 1) the use of undefined terms, 2) the failure to use plain language definitions, 3) the failure to make logical connections between statutory, technical/trade, and common language definitions, and 4) problematic interpretations of several statutes and questionable attention to procedure and policy.

(1) Discussion: The document titled "Acquired Absence is a Compensable Medical Condition" describes how the *acquired absence* meets all common definitions used to determine a medical condition and how the DEEOIC uses undefined terms to deny the claim. The document also explains the logical relationships between the established terminology and the logical fallacies employed in the rejection of benefits. The DEEOIC reply to a FOIA request was misleading, the assistance required by the EEOICPA was not provided, the reasoning/grounds for the denial required by the APA was disregarded, and some of the general principles of the Basic Obligation of Public Service statute appear to have been overlooked. Considering the mission of the DEEOIC, "acquired absence" is a common treatment option and this denial of benefits is likely to have been experienced by a considerable number of claimants. It is also probable that the factors contributing to this denial span a significant number of other types of claims.

(2) Recommendation: The DEEOIC must cease the use of undefined terms and recognize commonly held meanings of words and terms.

(a) Logical associations must be accepted as fact. Statutes must be followed meaning assistance is required and the reasoning/grounds for denials are requisite.

(b) The failures described in "Acquired Absence is a Compensable Medical Condition" originate at the DEEOIC District Office, are then reinforced by the DEEOIC FAB, and are maintained by the DEEOIC Director. This contributes to no confidence in the DEEOIC or in the oversight by the OWCP and DOL. Congress should oversee, perhaps legislate, the procedural changes necessary to correct past benefit denials and prevent future erroneous adjudications.

(c) The DOJ, along with Congress, should investigate the potential statutory breaches and, if applicable, recommend modifications targeted at the prevention of further infractions and hold responsible anyone who knowingly disregarded statutory obligations.

b. Issue: Using the Site Exposure matrix as an example, the databases used by DEEOIC in the adjudication of claims fail to meet statutory quality standards, acknowledge that the information in the records is subpar, and were the subject of oversight concerns by the GAO. The faulty information may also be supplied to NIOSH in order to perform a dose reconstruction.

(1) Discussion:

(a) The document titled "Data Quality Lacking in DEEOIC Databases (SEM)" communicates how the SEM is described on the DOL web site as incomplete, provides the data quality standards required by the DQA and PRA, and despite the web site maintaining *it is not a method of claims adjudication* there are entries in the PM stating how the CE employs the SEM in the adjudication of claims. Plain language perspectives of data quality explain the term *data quality* as expected by claimants who are undergoing adjudication and expecting *data that satisfies the requirements of its intended use*. The FOIA filed requesting information concerning how the DQA influences the SEM was misinterpreted and after that was pointed out the DEEOIC claimed there were no responsive documents, knowing a FOIA appeal can take two years to be evaluated. Along with the DQA, the PRA covers data quality, assistance per the EEOICPA was not provided, benefit denials require provisions of the APA per the CRS, and the basic obligations of public service require ethical behavior.

(b) This issue also includes any other data source used to adjudicate claims or provide information to other government agencies, such as NIOSH, used in claim adjudication. Data quality constraints must also be placed on DEEOIC sources of data such as employment records, job descriptions, work locations, or any other information provided to DEEOIC that may be used in claim adjudication.

(2) Recommendation: The SEM, as well as all other databases used in DEEOIC adjudications, requires periodic inspection and evaluation by an agency outside of DOL to ensure the data is as reliable and current as required by statute.

(a) Congress should oversee, perhaps legislate, the procedural changes necessary to correct past benefit denials and prevent future erroneous adjudications.

(b) The DOJ, along with Congress, should investigate the potential statutory breaches and, if applicable, recommend modifications targeted at the

prevention of further infractions and hold responsible anyone who knowingly disregarded statutory obligations

c. Issue: As a result of adherence to the AMA Guides to Impairment, the DEEOIC may be reducing or denying benefits using age as the single factor in the evaluation of the medical condition.

(1) Discussion: The document titled "DEEOIC Impairment Ratings may be Ageist" provides common definitions of ageism in plain language, a law dictionary, and medical dictionaries. Also shown is how the DEEOIC allows the use of the term *childbearing age* to reduce benefits for some conditions but disallows the term to be used to reduce benefits in another case.

(a) Applied logic demonstrates that the same term cannot be both allowed and disallowed, it also establishes that there are discrimination laws that apply to the EEOICPA. Since the DEEOIC has, in the case of the term *childbearing age* overridden the AMA Guides to impairment a FOIA requested the process for changing the requirements in the AMA Guides (which are required to be used in impairment ratings by statute). There were no responsive documents to the FOIA request.

(b) Another use of age is revealed by another section of the AMA Guides that uses arbitrary age brackets to assign impairment ratings (benefits). The ombudsman considered this an interesting issue but the response to another FOIA request was disappointing.

(2) Recommendation: The age discrimination statutes, such as the Age Discrimination Act of 1975, should be cited as applicable or not applicable and the reasons provided to the claimant as required by the APA. Filing a claim is a request for assistance and should invoke both the EEOICPA and the PM sections regarding such requests. The basic obligations of public service require ethical behavior and adherence to the law.

(a) Congress should oversee, perhaps legislate, the procedural changes necessary to correct past benefit denials and prevent future erroneous adjudications.

(b) The DOJ, along with Congress, should investigate the potential statutory breaches and, if applicable, recommend modifications targeted at the prevention of further infractions and hold responsible anyone who knowingly disregarded statutory obligations.

d. Issue: The Office of the Ombudsman issues an annual report to Congress, copies are sent to the Vice President as the President of the Senate and to the Speaker of the House. This report aggregates the problems reported to the Office of the Ombudsman by Energy Employees describing topics of concern within the DEEOIC

and the EEOICPA, many of these matters are conveyed year after year without resolution.

(1) Discussion: The DOL response to the Ombudsman's Annual Report to Congress is a sterile, bureaucratic recitation of policy, procedure, and statute devoid of any reasoning or grounds, and lacking even a basic attempt to understand the difficulties, complications, and obstacles encountered by Energy Employees already challenged by a variety of occupational illnesses in addition to the struggles of everyday life.

(2) Recommendation:

(a) Form a bipartisan, bicameral, Congressional caucus, or Labor subcommittees, to represent the Energy Employees since the EEOICPA covered facilities and covered employees are nationwide. This caucus could act as a clearinghouse for all EEOICPA/DEEOIC related concerns.

(b) Initiate a critical review of the Ombudsman's Annual Report to Congress by an independent, neutral third party or consortium (perhaps the Congressional Research Service and/or a former ombudsman and/or advocacy group) to:

- Pinpoint and rank areas of concern, challenges, obstacles, etc.
- Suggest solutions to remedy each item noted above
- Identify DEEOIC employees responsible for each problem area
- Advocate for the implementation of an ongoing improvement process

(c) Work with the Secretary of Labor to expand the authority of the Office of the Ombudsman to include the creation of a direct reporting line between the Office of the Ombudsman and the Congress.

e. Issue: Congress cannot allow Energy Employees to talk about their work in a classified setting but there needs to be an avenue that recognizes that ongoing security concerns must strike a balance with the health issues faced by Energy Workers. Since security cannot be compromised, the toxic exposure documentation requirements for Energy employees meeting certain conditions must be eased to account for the security matters prohibiting disclosure of possible exposure.

(1) Discussion: The document titled "Security Concerns and Potential Toxic Exposure" exposes how little the DEEOIC knows about the world of classification, security, proprietary information, trade secrets, and "need to know." Although there are avenues for employees who do such work to be recognized as potentially exposed without compromising the work, such as exposure presumptions or adding a class to the SEC these employees are currently asked to provide "alternate evidence" which is not defined per a FOIA and the requested examples were not provided. NIOSH dose reconstructions also cannot account for work done under certain conditions.

(2) Recommendation: The assistance section of the EEOICPA and the guidance in the Basic Obligations of Public Service Act requiring employees to *put forth honest effort in the performance of their duties* need to be taken as more than suggestions.

(a) There are means to recognize this class of energy worker available that are not being used. Congress should oversee, perhaps legislate, the procedural changes necessary to correct past benefit denials and prevent future erroneous adjudications.

(b) DOJ, along with Congress, should investigate the potential statutory breaches and, if applicable, recommend modifications targeted at the prevention of further infractions and hold responsible anyone who knowingly disregarded statutory obligations.

f. Issue: The Ombudsman stated in an email dated May 11, 2020: *One of the consistent issues raised in the annual reports issued by my Office has been the need for better decisions. In particular, we have repeatedly stressed the need for decisions to fully explain rationale behind the decision. We have also talked to DOL about the need to do more than just cite to a PM provision or regulation – that they need to explain how the PM provision or regulation led to the result. And as I said, because we still encounter these problems, we will continue to raise these issues.*

(1) Discussion: This is addressed in the document titled, “Standards for DEEOIC Informal Adjudication Reasoning for Denials.” If this is an ongoing issue with the ombudsman office there must be a substantial number of claimants disappointed with the process.

(a) According to the CRS the section of the APA requiring the reasoning for denials applies to informal adjudications such as those done by the DEEOIC. The response to a FOIA requesting to know if the APA was overruled by EEOICPA statute returned no responsive documents.

(b) Cornell Law claims Due Process also relates to informal adjudication. Cornell Law likewise states that Congress can require agencies *to provide additional safeguards* to informal adjudications. How has a problem covered by statute been allowed to persist?

(2) Recommendation: The Congress should oversee, perhaps legislate, the procedural changes necessary to correct past benefit denials and prevent future erroneous adjudications. The DOJ, along with Congress, should investigate the potential statutory breaches and, if applicable, recommend modifications targeted at the prevention of further infractions and hold responsible anyone who knowingly disregarded statutory obligations.

g. Issue: DEEOIC still uses obsolete ICD-9 coding for medical conditions which results in providers, and the billing contractors employed by the providers, having to convert the ICD-9 codes used by DEEOIC to the current ICD-10 codes which are then converted by DEEOIC back to ICD-9 codes when submitted by the providers for payment. Each conversion amplifies the opportunity for errors which result in delayed payments, increased time and effort for providers, claimants, and the DEEOIC, and bills incorrectly sent to the claimant's commercial insurance after being incorrectly denied by DEEOIC.

(1) Discussion:

(a) Per CDC "International Classification of Diseases, Tenth Revision (ICD-10" (<https://www.cdc.gov/nchs/icd/icd10.htm>): *The ICD has been revised periodically to incorporate changes in the medical field. The Tenth Revision (ICD-10) differs from the Ninth Revision (ICD-9) in several ways...*

(b) Per International Classification of Diseases, (ICD-10-CM/PCS) Transition – Background (https://www.cdc.gov/nchs/icd/icd10cm_pcs_background.htm): *The Department of Health and Human Services (HHS) has mandated that all entities covered by the Health Insurance Portability and Accountability Act (HIPAA) must all transition to a new set of codes for electronic health care transactions on October 1, 2015...Why change? The periodic revisions of ICD-9-CM mirror changes in the medical and health care field. The U.S. has been using ICD-9-CM since 1979, and it is not sufficiently robust to serve the health care needs of the future. The content is no longer clinically accurate and has limited data about patients' medical conditions and hospital inpatient procedures, the number of available codes is limited, and the coding structure is too restrictive.*

(c) Why does DEEOIC refuse to upgrade to ICD-10 when tools from HHS are available to perform the conversions?

(2) Recommendation: Determine if EEOICPA claimants are covered by HIPAA and if so require the upgrade. If the claimants are not covered that reasoning must be transmitted to the claimant community.

(a) Congress should oversee, perhaps legislate, the procedural changes necessary to correct past coding errors and prevent future erroneous claim denials.

(b) The DOJ, along with Congress, should investigate the potential statutory breaches and, if applicable, recommend modifications targeted at the prevention of further infractions and hold responsible anyone who knowingly disregarded statutory obligations.

h. Issue: The complement of medical diagnoses and services allowed by DEEOIC for each of the accepted occupational illnesses and consequential conditions is contained within the treatment suite database. This database is not made available to providers or claimants. Since this database already exists, making it available to claimants and providers should be relatively easy and inexpensive. Releasing or publishing the database online would improve the accuracy by increasing the scrutiny.

(1) Discussion: As a database that is not publicly available, the question of scrutiny of the existing entries and updating arises. There are sections of the PRA as well as the DQA that may apply, especially if the database is placed online and available as a resource to the public. When dealing with people, errors will and have happened. Reducing the occurrence of mistakes and implementing a method to quickly identify and correct those mistakes should be a top priority of any organization tasked with health care considerations.

(2) Recommendation: Congress should oversee, perhaps legislate, the procedural changes necessary to publish this database online and prevent future erroneous claim denials. The DOJ, along with Congress, should investigate the potential statutory breaches and, if applicable, recommend modifications targeted at the prevention of further infractions and hold responsible anyone who knowingly disregarded statutory obligations.

i. Issue: The DEEOICPA appears to be based on the FECA, in some cases the language is nearly identical. Why do federal employees receive COLA regarding compensation paid as a result of occupational illness while those who work for contractors to the U.S. government do not benefit from COLA increases. In many cases these federal employees and contractors work in close proximity.

(1) Discussion: Although the EEOICPA was modeled after FECA, one major difference is the lack of a COLA for the government contractors who are covered by the EEOICPA. In many cases the contractors worked in close quarters with government employees but receive disproportionately lower benefits due to occupational illness.

(2) Recommendation: If the omission of a COLA in the EEOICPA was in error then amend the legislation to correct the mistake and compensate all EEOICPA claimants at the current rate increased by the COLA. If the omission was a decision based on reasoning and/or grounds then make the reasoning and/or grounds available for discussion.

j. Issue: The time between submitting a claim and receiving payment is one reason providers won't enroll or reenroll with the DEEOIC. This is also a frustrating and time consuming endeavor for claimants paying out of pocket for services and supplies. Although there may be several contributing factors, an independent audit of the processes including the user friendliness of the OWCP portal, the ease of use

of the required forms and instructions, and the customer service/employee knowledge provided during phone conversations needs to occur.

(1) Discussion: Customer service is a bedrock of the private sector, the public sector, especially in matters of health, should require agencies to provide claimant service at the highest level possible. There is no reason that bureaucracies that place policy over people should control organizations tasked with the care and compensation of employees with occupational illnesses.

(2) Recommendation: Request an independent audit, locate the problem areas, and implement industry best practices to correct the troubled areas. Continue this process until the annual report from the office of the ombudsman report declares victory.

k. Issue: Energy Employees who have occupational illnesses reside across the U.S.A. Since many of the problems involving DEEOIC and the EEOICPA seem to affect multiple claimants it would reduce the efforts of the Congress and their staffs and increase the impact of the inquiries if several members were to sign on to multiple claimants similar issues rather than individual members solving individual issues. A congressional caucus could coordinate, categorize and assign issues while saving time and effort of members and staffers.

(1) Discussion: A congressional caucus is a group of members of the United States Congress that meet to pursue common legislative objectives. Formally, caucuses are formed as congressional member organizations (CMOs) through the United States House of Representatives and the United States Senate and governed under the rules of these chambers. In addition to the term "caucus", they are sometimes called conferences (especially Republican ones), coalitions, study groups, task forces, or working groups.

(a) The most common caucuses consist of members united as an interest group. These are often bipartisan (comprising both Democrats and Republicans) and bicameral (comprising both Representatives and Senators). Rules to organize a congressional caucus are simple. Each legislative session, a prospective caucus must register as a Congressional Member Organization through the House of Representatives by providing its name and purpose, along with a list of the caucus officers.

(b) Both House and Senate members may belong to a Congressional Member Organization, and these organizations must follow specific rules of conduct, such a rule which disallows the use of government funds to support the operating expenses of the caucus.

(2) Recommendation: The creation of a Congressional Caucus to act as a clearinghouse for constituent inquiries from energy employees regarding problems with the DEEOIC and EEOICPA would be an efficient and effective measure to

save time and effort while getting the maximum impact for those suffering from occupational illnesses. The ability to combine multiple, similar, constituent issues into a single inquiry from several Senators and Representatives or having the caucus recommend changes to the Act would have a greater influence on the body as a whole to help with passage.

l. The lack of enrolled providers and the poor quality of the online database claimants use to find enrolled providers is unsatisfactory for a program that has been in existence for over twenty years. Use of non-enrolled providers has an upfront cost that may not be fully reimbursed due to the fee schedule. Claimants who cannot travel due to medical issues have few options when it comes to medical care especially specialized care.

(1) Discussion: Given that there are many provider specialties that are not available as enrolled providers within a reasonable distance from the participants there needs to be a way for participants to request a waiver to use a non-enrolled provider at the option of the participant.

(a) Another example could be an enrolled provider and a claimant who are not compatible. As an illustration, there is not an enrolled ophthalmologist or gastroenterologist in Albuquerque and the only enrolled dermatologist practice does not meet the claimant's expectations. This means travel, pay out of pocket for expenses above the fee schedule, or do not receive medical services.

(b) If a participant cannot travel, or prefers to not to travel due to the degree of difficulty, the remaining options should be unacceptable to the agency charged with providing medical care.

(2) Recommendation: The EEOICP should be responsible for actively enrolling providers and ensuring all participants have access to the healthcare necessary to treat every accepted condition.

(a) This task should not be the responsibility of the claimant. It should not be difficult to provide participants with the treatments required for the occupational illnesses sustained but many providers seem reluctant to enroll in, or remain in, the program.

(b) The provider lookup provided by EEOICP is poorly maintained and often incorrect. Allowing the use of non-enrolled providers will close the coverage gap for many claimants.

m. The EEOICPA and the downstream documents implementing the Act describe various assistance to claimants, potential claimants, authorized representatives, and survivors. There seems to be difficulty putting the words outlining the various means of assistance into actual, functioning help for those accessing the program.

(1) Discussion: Assistance must be more proactive than providing forms and directions, online guidance, and poorly maintained databases. While the ombudsman office can try to assist, the office has no authority. Resource Centers are helpful, but their scope is limited. Claimants need an advocate, preferably outside of the DEEOIC that can actively help claimants and require DEEOIC staff to do the same.

(2) Recommendation: The DEEOIC must place a priority on assistance to claimants and providers. This includes defining what a request for assistance is, how to request assistance, the personnel responsible for providing the assistance, and how to report a failure to assist. If the DEEOIC fails to adequately perform this duty, the Congress should mandate the DOL to perform the statutory and agency obligations to provide assistance.

n. Governmental control over the assignment of the benefits of deceased energy workers potentially discriminates against some workers such as LGBTQ+ workers who passed prior to having the ability to marry or were concerned about a stigma associated with same sex marriage, couples unable to have children, and those who, for any number of reasons, wish to assign their benefits outside of the legislated survivors. The eligible survivors need to be expanded in fairness to all employees.

(1) Discussion: As written in 42 U.S. Code § 7384 - Findings; sense of Congress, *Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. 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.*

(a) These employees deserve the right to designate the recipient of survivor benefits, the following survivorship restrictions discriminate against the LGBTQ community, the childless, and others who may wish to designate their benefits go to someone or some entity other than allowed by the DEEOICPA.

(b) In the case of those who have already passed, expanding those who are eligible to file for survivor benefits to siblings, LGBTQ+ partners, nieces/nephews, or as designated in a will/trust, etc. should be considered.

(2) Recommendation: 42 U.S. Code § 7384s - Compensation and benefits to be provided, needs to be assessed and modified by Congress to allow Energy Employees who have accepted EEOICPA occupational illnesses to designate survivors other than those specified by the statute for Part B and Part E. The entity responsible for the illness should not mandate how the survivor benefits are distributed.

o. Issue: HHS, CDC, and NIOSH have determined, as stated in report titled, "Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Report to the Senate Appropriations Committee on The Radiogenicity of Specific Cancers Under the Energy Employees Occupational Illness Compensation Program Act of 2000 as Amended, December 2009," Basal Cell Carcinoma (BCC) to be a radiogenic cancer.

(1) Discussion: There appears to be no indication that basil cell carcinoma (BCC) was considered by the Senate Appropriations committee, or by the Senate or House of Representatives for inclusion as a new radiogenic cancer in the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 as Amended. It is understood that the membership of the committee has evolved since the report was submitted and it is hoped this will prompt the current members to reexamine this report and the evidence supporting the addition of BCC as an SEC cancer.

(2) Recommendation: The Congress needs to act on the report, which is supported by many other research papers on the NIH web site, to add BCC to the list of Part B specified SEC cancers that do not require NIOSH dose reconstruction.

5. Summary:

a. As addressed in paragraph 1, the quick and hideous deaths of Daghlán and Slotin created the realization for safety enhancements. Through lack of knowledge and work expediency a lot of enhancements we now identify as necessary, did not occur. Colorado's Rocky Flats' contamination of land and personnel stand as testimony to that fact. Although Rocky Flats is an extreme case, it was not an isolated situation within the Atomic Energy Commission and Department of Energy sites. Sandia National Laboratories buried their low-level chemical and radiation contaminates in 55-gallon drums on the southwest corner at Area III at Points 12 and 13. Sandia could not even figure out whether its Dense Pack Storage was Category 4 or Category 1 roll-up and lost track of all its dosimeter records. Response to Feynman's warning prevented a mountain from being blown up but did not prevent employees from suffering radiological contamination.

b. EEOICPA has brought a lot of relief to the financial burden endured by victims of toxic exposures and allowed for medical treatment that otherwise would not have been possible. It is a good program, but like the safety upgrades that continue over the years, the methodologies of EEOICPA need refinement.

c. Earlier attempts to engage DEEOIC through Senator Grassley's office was met first with "need more specifics." When specifics were provided the DEEOIC response was to the effect, "Because of staffing problems caused by COVID we will not be able to address the issues at this time." When COVID no longer effected staffing, DEEOIC never went back to resolve the presented concerns.

d. This issue paper was developed to identify concerns, details of those concerns, and present proposed solutions. Recommendations presented involve actions by DOL, Congress, and sometimes both organizations. Contributors to the issues presented in this paper do have documents and records to support their statements.

e. Throughout the consolidation of this document, and a previous more detailed attempt to document issues, a common denominator existed among people providing input. That common denominator was reluctance to mention names and specific instances due to fear of future difficulties in working with DEEOIC. This does not reflect an environment which supports healthy dialog and teamwork. That too is an issue of concern requiring resolution, whether the concern is real or perceived.

f. Along with this, there were several common experiences reported by EEOICPA participant concerning DOL. These experiences do not require "issue/discussion/recommendation" analysis. All that is needed is for top DOL management to do an honest evaluation of its program in executing EEOICPA and make corrective actions. The term "management" was intentional because pro-active leadership would already have identified and fixed the shortfalls – especially considering DEEOICPA Ombudsman has already long-since been reporting the vast majority of the following:

(1) The lack of consistency among DOL claims examiners produces inconsistent interpretations of administrative policies and procedures.

(2) Constant requirements to produce yet another document not previously mentioned in earlier communications.

(3) Coverage of consequential conditions resulting from either the cancer or the treatments are difficult to process through DOL staff.

(4) History of underpayments and overpayments for reimbursements of submitted medical bills.

(5) Submissions for reimbursements of same day multiple prescriptions issued by doctors have been challenged as being fraudulent claims.

(6) Service providers are reluctant to become involved with EEOICPA due to difficulty in getting paid. In one known case in New Mexico a company ("Eye Associates") removed themselves as a provider due to reimbursement problems. New Mexico only had one optician who would accept the EEOICPA insurance card and he retired.

(7) Lack of providers require cancer victims to travel to another state. In western states this involves hundreds of miles.

(8) Medical companies which provide oxygen and associated equipment are now refusing to accept the EEOICPA insurance card because of the delay or non-payments of bills. Some claimants must now pay for the life-saving oxygen therapy out of their own pockets and hope that DOL reimburses them in a timely manner.

(9) No example documentation is made available for doctors to understand the formatting and specifically what DOL expects in the medical necessary letters. Multiple submissions, without having an example to proceed from, results in wasted time and frustration for medical professionals with many other urgent matters requiring their attention.

6. POC The work of America's Cold War Patriots was critical. America's nuclear superiority kept the Soviet Union in check from the days of Stalin to Chernenko. Even today, the only thing giving Putin pause from using nuclear weapons is the arsenals of the United States and its allies. As Cold War Patriots, they did not directly engage our nation's enemies in combat operations, but they were certainly critical in preventing an escalation of war. Cold War Patriots who incurred injuries and illnesses in service of their country deserve the best support and assistance our nation can provide. This issue paper is developed with that goal in mind.

//original signed//

James Gillen
Authorized Representative for EEOICPA Participant

Wes Martin
Colonel, U.S. Army Military Police (Retired)
Former Chief of Protective Force Operations, Sandia National Laboratories
www.colonelwesmartin.com

Reply To:

- 135 Hart Senate Office Building
Washington, DC 20510-1501
(202) 224-3744
www.grassley.senate.gov
- 721 Federal Building
210 Walnut Street
Des Moines, IA 50309-2106
(515) 288-1145
- 111 7th Avenue SE, Box 13
Suite 6800
Cedar Rapids, IA 52401-2101
(319) 363-6832

United States Senate

CHARLES E. GRASSLEY
PRESIDENT PRO TEMPORE
WASHINGTON, DC 20510-1501

March 30, 2020

Reply To:

- 120 Federal Building
320 6th Street
Sioux City, IA 51101-1244
(712) 233-1860
- 210 Waterloo Building
531 Commercial Street
Waterloo, IA 50701-5497
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- 201 West 2nd Street
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- 307 Federal Building
8 South 6th Street
Council Bluffs, IA 51501-4204
(712) 322-7103

Ms. Julia Hearthway
Director, Office of Workers Compensation Programs
Department of Labor
200 Constitution Ave
Washington, DC 20024

Dear Ms. Hearthway,

I am writing regarding information that I have received about the administration of the Energy Employees Occupational Illness Compensation Program (EEOICPA).

The program was developed in 2000 to provide government assistance to current and former Department of Energy employees, contractors, and subcontractors who developed certain cancers and diseases consistent with exposure to radiation and toxic substances.

I have received concerns about the execution of the program, enclosed. I would appreciate any assistance you could provide pertaining to this matter.

Please mark your return correspondence to the attention of Liesel Crocker when responding to my office.

Thank you for your attention to my request.

Sincerely,



Charles E. Grassley
U.S. Senator

ATTACHMENT B: LTR TO SENATOR LUJAN, SUBJ: EEOICPA,
DATED MARCH 14, 2024

EEOICPA Problems

- a. Biggest complaint is arrogance of many DOL employees.
- b. Lack of assigning specific caseworkers. Working with various DOL employees is like a rollercoaster of highs and lows, usually lows.
- c. Lack of consistency among DOL claims examiners, including inconsistent interpretations of administrative policies and procedures.
- d. Constant requirements to produce yet another document, not previously mentioned in earlier communications.
- e. DOL's slow and initially negative responses to progressively developing medical conditions have to be worked through by sick claimants. Payment for medical treatment is constantly being challenged.
- f. DOL has history of underpayments and overpayments for reimbursements of submitted medical bills.
- g. Coverage of consequential conditions resulting from either the cancer or the treatments. The existence of consequential conditions is recognized in written operation procedures, just not by DOL employees.
- h. Patients submitting reimbursements of same day multiple prescriptions issued by doctors are being challenged by DOL as fraudulent claims.
- i. Difference of expenses between government actual medical bill and government reimbursement has to be covered a sick claimant or that person's insurance company.
- j. Taxes on medications and treatment not reimbursed. If the EEOICPA insurance card is used by the sick claimant, then it is not difficult to imbed an advisement that the service or prescription is tax exempt.
- k. Lack of providers. In example, New Mexico only has one optician who will accept the EEOICPA insurance card and provide services for a state with two national laboratories.

- l. Lack of providers require cancer victims to travel to another state. In western states this involves hundreds of miles.
- m. Service providers are reluctant to become involved with EEOICPA due to difficulty in getting paid. In one known case in New Mexico a company ("Eye Associates") removed themselves as a provider due to reimbursement problems. Another case involves a clinic which used to care for sick workers from Y-12 in Tennessee also having themselves removed provider list.
- n. Medical providers enrolled in EEOICPA may not accept EEOICPA insurance card.
- o. Some medical companies which provide oxygen and associated equipment are now refusing to accept the EEOICPA insurance card because of the delay or non-payments of bills. Some claimants must now pay for the life-saving oxygen therapy out of their own pockets and hope that DOL reimburses them in a timely manner.
- p. DOL has placed an unnecessary burden on the personal physicians by requiring them to provide a letter of medical necessity in addition to the medical records when prescribing oxygen.
- q. No example documentation is made available for doctors to understand the formatting and specifically what DOL expects in the medical necessary letters.
- r. Both the Advisory Board on Toxic Substances and DOL itself has performed limited audits and, in some cases, deficiencies have been found which could have resulted in a compensable claim. Yet, it is unclear if the claimants affected have had their claims reopened and re-adjudicated.

U.S. Department of Labor

Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington, D.C. 20210



June 22, 2020

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

The Department of Labor's Office of Workers' Compensation Programs (OWCP) received your letter regarding the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Attached to your letter were concerns regarding OWCP's administration of the EEOICPA. I welcome this opportunity to address your letter and its attachment.

OWCP has made adjustments to the Division of Energy Employees Occupational Illness Compensation (DEEOIC) program in response to the COVID-19 pandemic. Please see our Frequently Asked Questions document at <https://www.dol.gov/owcp/energy/coronavirusfaqs.htm> for more information. We have also made several improvements to the program in recent years. In FY 2020, for example, DEEOIC modified the duties of our Resource Center contractor staff (11 locations nationwide) to answer calls and provide greater assistance to claimants. In addition, the Division has taken other actions to increase transparency and improve communication to its stakeholders, such as, enhanced its website to improve accessibility and clarity; increased staff training; expanded its outreach strategies (to include many new town hall meetings for the medical community nationwide); and added staff within the Branch of Medical Benefits Adjudication and Bill Processing, responsible for medical benefits adjudication, medical bill processing, and program integrity.

OWCP continues to work with the Advisory Board on Toxic Substances and Worker Health (the Board), actively seeking the Board's recommendations. All recommendations made by the Board, and the Division's responses, can be found online at https://www.dol.gov/owcp/energy/regs/compliance/advboard/advboard_recommendations.htm. As of May 31, 2020, the Energy program has awarded 127,486 claimants compensation and medical benefits totaling more than \$18 billion. This included \$12.16 billion in compensation and more than \$5.85 billion in medical expenses.

The attachment titled "EEOICPA Problems" lists many general issues; however, it does not include detailed examples that would allow us to conduct specific research into the matters. I would be more than willing to address any specific issue as long as we have sufficient details or case-related examples to respond to.

*ATTACHMENT C: LTR TO SENATOR LUJAN, SUBJ: EEOICPA,
DATED MARCH 14, 2024*

In order to clarify these issues and provide a thorough understanding of the DEEOIC program, OWCP staff is happy to conduct a conference call with your office, if that is helpful for you and your staff. You may contact the Office of Intergovernmental and Congressional Affairs at (202) 693-4600 to arrange this call.

Sincerely,

RACHEL
POND

Digitally signed by
RACHEL POND
Date: 2020.06.22 10:55:07
-0400

Rachel D. Pond
Director
Division of Energy Employees Occupational Illness Compensation

U.S. Department of Labor

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



January 10, 2023

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

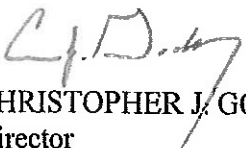
Dear Mister Speaker:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2021 Annual Report. Pursuant to 42 U.S.C. § 7385s-15(e)(2), the Ombudsman's report provides Congress with the number and types of complaints, grievances, and requests for assistance received by that office during each calendar year and an assessment of the most common challenges encountered by claimants and potential claimants under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

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

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

Sincerely,


CHRISTOPHER J. GODFREY
Director

Enclosure

ATTACHMENT D: LTR TO SENATOR LUJAN, SUBJ: EEOICPA,
DATED MARCH 14, 2024

U.S. Department of Labor

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



January 5, 2023

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

Dear Madam President:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2021 Annual Report. Pursuant to 42 U.S.C. § 7385s-15(e)(2), the Ombudsman's report provides Congress with the number and types of complaints, grievances, and requests for assistance received by that office during each calendar year and an assessment of the most common challenges encountered by claimants and potential claimants under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

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

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

Sincerely,

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

CHRISTOPHER J. GODFREY
Director

Enclosure

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

Introduction

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

Chapter 1 - EEOICPA Awareness and Outreach Efforts

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

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

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

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

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

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

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

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

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

Chapter 2 -- Medical Billing and Treatment Authorization Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 3 – Difficulties with Part E Claims

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

actions and included information about filing for consequential conditions.

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

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

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

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

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

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

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

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

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

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

5 – Issues Related to Impairment Claims

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

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

Conclusion

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

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