

March 2010

ENERGY EMPLOYEES COMPENSATION

Additional Independent Oversight and Transparency Would Improve Program's Credibility



GAO

Accountability * Integrity * Reliability



Highlights of [GAO-10-302](#), a report to congressional requesters

Why GAO Did This Study

Congress passed the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) in 2000 to compensate Department of Energy (Energy) workers for illnesses stemming from exposure to hazardous substances while working in the atomic weapons industry. Part B of the act provides a lump-sum payment and medical coverage for certain illnesses, while Part E compensates for impairments and lost wages resulting from exposure to toxins. The Department of Labor (Labor) adjudicates all claims and is assisted by the National Institute for Occupational Safety and Health (NIOSH) and Energy. GAO examined (1) claim-processing time, (2) costs of administering the program, (3) extent to which there are quality controls to ensure that claim determinations are supported with objective and scientific information, and (4) actions taken by agencies to promote program transparency for claimants. GAO obtained data on cost and claims processing from Labor and NIOSH, and interviewed agency officials, experts, and claimant advocates.

What GAO Recommends

To strengthen quality controls and improve program transparency, GAO recommends that Labor provide for more external review, respond publicly to reports by its Ombudsman, and increase public access to site exposure data it uses to adjudicate Part E claims. Meanwhile, Congress may wish to consider amending EEOICPA to create an independent review board for the Part E program.

[View GAO-10-302](#) or [key components](#). For more information, contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov.

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What GAO Found

Cases that do not require dose reconstruction can take about a year to adjudicate, but those that do can take a total of 3 or more years. Such cases require an extensive scientific process to “reconstruct” the historical evidence on exposure, and this has made dose reconstruction the primary reason for lengthier processing times. The availability of claimant data and the need to rework some cases in view of new claimant information or changes to scientific methodologies involved in determining exposures can also affect processing times. Meanwhile, Labor and NIOSH have each developed ways to expedite case processing.

The administrative cost of EEOICPA reflects the requirements of a complex, science-based adjudication process. In 2008 this cost amounted to \$106 million for the Part B program and almost \$57 million for Part E. Administrative costs have averaged about 20 percent of the total program cost for Part B and 14 percent for Part E. A substantial factor underlying the greater administrative cost of the Part B program is dose reconstruction, which was required for about a third of all Part B cases.

Quality controls in the form of multiple internal reviews are in place for both Part B and E programs. However, only the Part B program employs external expert reviews, required by statute, which provide independent verification of the work. EEOICPA does not specifically require external review of the Part E program. As a result, Labor’s processes related to the adjudication of Part E cases, in particular, are not informed by any independent expertise outside the agency’s purview. For example, though Labor employs a contractor and a small team of internal experts to update its Part E database of work sites, toxins, and their associated diseases, the composition of this database lacks external review to ensure that it is as comprehensive and scientifically sound as possible. In addition, there is no oversight or independent review to ensure the quality of consultant physicians’ work for Part E.

The agencies have taken various steps to assist claimants and make more program information public; however, program transparency remains somewhat limited, in part because of national security considerations. NIOSH has worked with Energy to clear information for publication in the site profiles developed for use in reconstructing doses for Part B cancer claims. However, Labor has not taken similar steps with Energy to release data in the site exposure matrix used to adjudicate Part E claims. Meanwhile, NIOSH has established an ombudsman to help Part B claimants with their claims. While the act established an ombudsman within the Department of Labor, GAO found that Labor does not respond publicly to his annual reports on claimant concerns. As a result, claimants have little knowledge that their concerns are heard or that they are being addressed.

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Abbreviations

AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
ANWAG	Alliance of Nuclear Worker Advocacy Groups
EEOICPA	Energy Employees Occupational Illness Compensation Program Act
FAB	Final Adjudication Branch
GPRA	Government Performance and Results Act
IG	inspector general
NIOSH	National Institute for Occupational Safety and Health
OMB	Office of Management and Budget
PART	Program Assessment Rating Tool

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United States Government Accountability Office
Washington, DC 20548

March 22, 2010

Congressional Requesters

For the last several decades, the Department of Energy (Energy) and its predecessor agencies¹ and contractors employed hundreds of thousands of individuals in secret and dangerous work in nuclear weapons production in over 350 facilities in almost every state in the United States, such as the Rocky Flats Plant in Colorado and the Los Alamos National Laboratory in New Mexico. Over the years, especially early on, many workers were unknowingly exposed to toxic substances, including radioactive and other hazardous materials, and subsequently developed serious illnesses, including cancer and lung disease. To provide compensation to these workers, Congress enacted the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). The Department of Labor (Labor) has the primary responsibility for administering this program, which provides for medical benefits, lost wage replacement, and/or onetime financial compensation. In addition, the Department of Health and Human Services, through its National Institute for Occupational Safety and Health (NIOSH), and Energy each have assigned duties under the act.² As of January 2010, Labor had awarded compensation for work-related illnesses for over 56,000 claims to workers or their survivors totaling over \$5 billion.

Within a few years of EEOICPA's enactment, claimants and Members of Congress began raising questions about implementation of the program. Instead of receiving timely compensation for their work-related illnesses, claimants have reported difficulty navigating the program, years of delay, and perceived inconsistencies in the adjudication process. Meanwhile, several articles critical of the program have appeared in the press. Following a highly critical series of articles in the Denver, Colorado, Rocky Mountain News in 2008, 17 Members of Congress asked GAO to review how EEOICPA is being implemented. We reviewed the (1) average claim-processing times and factors that affect these, (2) costs of administering the program, (3) extent to which quality controls are in

¹The Energy Research and Development Administration and the Atomic Energy Commission.

²NIOSH is part of the Centers for Disease Control and Prevention, which is an agency in the Department of Health and Human Services.

place to help ensure that claims determinations are supported with objective and scientific information, and (4) actions agencies have taken to make the program more transparent for claimants.

To determine the time it takes to process claims and associated costs, we obtained reports on processing times for different types of claims, administrative costs, and performance measurement from Labor, NIOSH, and Energy. To determine which factors affected processing times, we obtained claim-processing times by type of claim to ascertain whether there were significant and consistent differences between the processing times based on the type of claim. We interviewed relevant officials regarding the reliability of the data, checked for outliers and inconsistencies, and determined that their claims management data were sufficiently reliable for the purposes of this report. We did not independently verify the accuracy of the data from any agency. To assess the quality controls and transparency of the claims adjudication process for our third and fourth objectives, we reviewed EEOICPA, relevant regulations, and agency technical and procedural guidance for EEOICPA; interviewed officials from Labor, Energy, and NIOSH; and interviewed members of the Advisory Board on Radiation and Worker Health, the presidentially appointed board that oversees the scientific validity of NIOSH's work, and its contractor. We obtained additional expert opinion on technical issues and further insight on topics of concern by interviewing representatives of the occupational and environmental health and other medical professions; claimant ombudsmen with Labor, NIOSH, and the state of New Mexico; and claimant representatives from a nationwide coalition of grassroots advocacy groups.³

We conducted this performance audit from November 2008 to March 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For more information on our scope and methodology, see appendix I.

³Physicians we contacted included members of specialty societies such as the American College of Occupational and Environmental Medicine, two former Medical Directors for Part E, and occupational specialists who are actively involved in assisting claimants.

Background

EEOICPA, as amended, provides compensation and wage replacement for Energy workers employed over the last several decades in the production of U.S. nuclear weapons who developed illnesses related to their exposure to radiation and many other toxins.⁴ During and shortly after World War II, U.S.-sponsored nuclear weapons development and production included a small network of scattered, privately owned facilities. During the Cold War, this network expanded into a complex of as many as 365 industrial sites and research laboratories throughout the country that employed more than 600,000 workers in the production and testing of nuclear weapons.

Some of the production sites were owned by Energy and its predecessor agencies and operated by contractors; others were privately owned but operated under contract with Energy; still others provided Energy and its contractors with needed services and supplies. Workers in these facilities used manufacturing processes that involved handling very dangerous materials, and they often were provided inadequate protection from exposure to radioactive elements, although protective measures have increased over time. Because of national security concerns, they also worked under great secrecy, often facing severe criminal penalties for breaches of secrecy. Workers were also often given minimal information about the materials with which they worked and the potential health consequences of their exposure to the materials. Active production of nuclear weapons was halted at the end of the Cold War, and federally sponsored cleanup of some of these sites has been under way since that time. Other sites remain active for research, storage, uranium production, and weapons assembly and disassembly. As noted by Congress in EEOICPA, it had been Energy's long-standing policy to help its contractors litigate claims filed by their employees for state workers' compensation when they became ill.⁵ As a result of the many years of secrecy, the lack of information, and the years of denial that their conditions were related to exposure, many claimants find it difficult today to trust that the federal government is fairly evaluating their claims under the program established by EEOICPA.

⁴42 U.S.C. §§ 7384 – 7385s-15.

⁵42 U.S.C. § 7384(a)(4). See also Executive Order 13179, December 7, 2000.

Structure of the Compensation Programs

EEOICPA established two compensation programs: Part B and Part E.⁶ While both pay for future medical expenses, there are significant distinctions. Part B of the act provides for a onetime payment of \$150,000 to Energy employees or their survivors as well as certain contractor employees or their survivors, while Part E of the act covers Energy contractor employees or their spouses and dependent children and replaces lost wages and compensates for impairment up to \$250,000.⁷ Each program also covers different types of exposure: The Part B program covers those who have developed cancer as the result of exposure to radiation and lung diseases resulting from exposure to beryllium and silica. The Part E program compensates for illnesses, including cancer, that result from exposure to toxic substances. Table 1 summarizes covered workers and illnesses, and the benefits paid under each program.

Table 1: Comparison of EEOICPA Parts B and E Eligibility and Benefits

	Covered employees	Covered survivors	Covered illnesses	Compensation
Part B	Energy employees Energy contractor or subcontractor employees Employees of atomic weapons employers Employees of beryllium vendors Uranium miners, millers, and ore transporters awarded under Section 5 of the Radiation Exposure Compensation Act	Next of kin (in order of precedence) -Spouse -Children -Parents -Grandchildren -Grandparents	Cancer related to radiation Chronic beryllium disease ^a Chronic silicosis ^a Beryllium sensitivity ^b	\$150,000 lump sum (\$50,000 if awarded payment under Section 5 of the Radiation Exposure Compensation Act) Plus medical coverage for future medical expenses related to the illness

⁶Part E replaced Part D, which had authorized Energy to enter into agreements with states to assist Energy contractor employees in filing state workers' compensation claims. In our prior work, we had found that the structure of the Part D program could result in inconsistent benefit outcomes for claimants. See GAO, *Energy Employees Compensation: Even with Needed Improvements in Case Processing, Program Structure May Result in Inconsistent Benefit Outcomes*, GAO-04-516 (Washington, D.C.: May 28, 2004). Part E was created in 2004 with the goal of creating a fair and equitable alternative to state workers' compensation programs under which workers had encountered chronic delays and inefficiencies.

⁷Under Part B, compensation of \$50,000 and payment of medical expenses is also available for employees exposed to uranium who have previously been awarded benefits by the Department of Justice under Section 5 of the Radiation Exposure Compensation Act.

	Covered employees	Covered survivors	Covered illnesses	Compensation
Part E	Energy contractor employees Uranium miners, millers, and ore transporters covered under Section 5 of the Radiation Exposure Compensation Act	Spouse Children -Under 18 at time of death, -Under 23 and enrolled full-time in school, or -Incapable of self-support	Illnesses related to exposure to toxic substances at Energy weapons facilities	Wage loss and impairment up to \$250,000 Plus medical coverage for covered illnesses

Source: GAO analysis of the EEOICPA statute.

^aChronic beryllium disease primarily affects the lungs and is caused by people inhaling beryllium dust or fumes. Chronic silicosis is a lung disease caused by overexposure to crystalline silica, a major component of sand, rock, and mineral ores. Chronic silicosis is covered only for individuals who worked in nuclear test tunnels in Nevada and Alaska.

^bThere is no monetary compensation for beryllium sensitivity. Only medical monitoring is provided.

Agency Roles in Implementing EEOICPA

Labor adjudicates claims for compensation under the Part B and Part E programs. NIOSH conducts the technical and scientific research to support the adjudication of radiation-related cancer claims under Part B. Energy provides administering agencies and claimants with information relevant to worker exposures. EEOICPA required the President to establish the Advisory Board on Radiation and Worker Health and appoint members who reflect a balance of scientific, medical, and worker perspectives.⁸ The board advises the Department of Health and Human Services on the scientific quality and validity of NIOSH's work and has retained a contractor to provide technical expertise and support. In a prior report, we found that issues pertaining to the Part B Advisory Board's funding structure, appointment process, and staff support presented challenges to independence, leaving the board vulnerable to potential outside influence. We identified various options to enhance the board's independence in each area for congressional consideration.⁹

Labor's adjudication of claims entails first determining whether a claimant meets the eligibility requirements of the act, such as whether the claimant worked in a facility covered by the act or meets the definition of a covered survivor. Then Labor reviews evidence of the worker's employment history, exposure to radiation or other toxic substances, and medical records. To determine whether the claimed illness is compensable, Labor

⁸42 U.S.C. § 7384o.

⁹GAO, *Energy Employees Compensation: Actions to Promote Contract Oversight, Transparency of Labor's Involvement, and Independence of Advisory Board Could Strengthen Program*, GAO-08-4 (Washington, D.C.: Oct. 26, 2007).

must find that the illness is related to radiation or toxic exposure during employment at a covered facility.

For radiation-related cancer claims, Labor relies on NIOSH's estimates of the type and level of radiation exposure received by the worker and the associated radiation dose to each organ affected by cancer. This extensive process of estimating the radiation dose to each affected organ is referred to as dose reconstruction. The radiation dose associated with cancer risk depends on many variables: the type of radiation, dose pathway (for example, inhalation of particles, contact with skin, or ingestion of contaminated food or water), and the way radiation interacts with each organ or body system. Research to determine the radiation levels to which an individual worker was exposed requires gathering information such as the site's radiation level readings over time, readings from a worker's monitoring badge (if available), records of claimant interviews about working conditions, and work-required medical screenings. For cases in which NIOSH cannot fully characterize the likely level of radiation exposure, it estimates the level of exposure using reasonable scientific assumptions that give the claimant the benefit of the doubt.

Since nuclear weapons research and production occurred over several decades and at sites throughout the country, many of which are now defunct, Labor, with assistance from NIOSH and Energy, must research and inventory these sites for the evidence needed to review workers' claims. Much of this evidence is maintained at the individual facilities where the work took place. Energy maintains and catalogs records from these facilities and provides experts to assist Labor and NIOSH in collecting this information. NIOSH has prepared detailed facility-specific information in site profiles, which describe the buildings, manufacturing, and other processes used, and the types of radioactive elements at each major covered facility.

Despite these research efforts, there are groups of workers for whom it is not feasible to estimate the radiation doses with sufficient accuracy. In such cases, the act provides that workers may be designated as part of the Special Exposure Cohort, qualifying them for compensation without dose reconstruction if they have 1 of 22 specified types of cancer and meet

certain other requirements.¹⁰ NIOSH may recommend additions to the Special Exposure Cohort when, in its research, it determines that site records are inadequate to support dose reconstruction with sufficient accuracy. Claimants or their representatives may petition to add classes of workers to the Special Exposure Cohort if they identify a class of workers for whom dose reconstruction is not feasible. If a petition includes all required information, NIOSH will evaluate the petition, assessing the sufficiency and quality of available information and either proposing methods of reconstructing the dose or agreeing that the workers should be treated as part of the Special Exposure Cohort. The Advisory Board reviews the petition and NIOSH's evaluation and advises the Secretary of Health and Human Services on whether another class of workers should be added.

To determine eligibility for Part E compensation for illnesses resulting from exposure to toxic substances, Labor relies heavily on a complex database of information that, with the help of a contractor, has been drawn from the facility records and toxicology research. Known as the site exposure matrix, it specifies a myriad of site-specific information, such as what toxins were present at each facility, job descriptions, and production processes.¹¹ Moreover, it cross-references the toxins known to be at each site with diseases for which there is an established link. This portion of the site exposure matrix was drawn from the National Library of Medicine's database of hazardous toxins and associated diseases—known as the Haz-Map. When records are unavailable or insufficient to determine whether workers were exposed to toxins (other than radiation), there is no process similar to the Special Exposure Cohort petition process for radiation-related cancer claims.

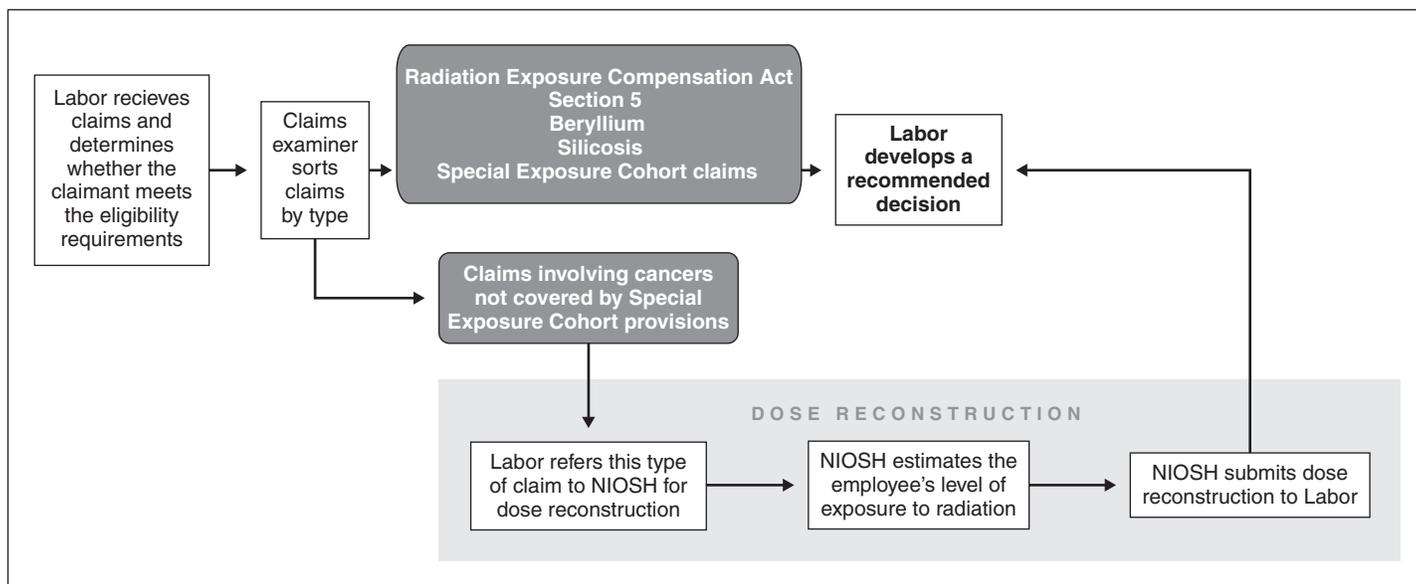
¹⁰ 42 U.S.C. § 7384q. The act initially designated workers from four specific sites as members of the Special Exposure Cohort. As of March 2010, 51 additional classes of workers had been added to the Special Exposure Cohort since that time. On March 5, 2010, the Advisory Board on Radiation and Worker Health recommended to the Secretary of HHS the addition of five additional classes of employees to the Special Exposure Cohort. These five classes are awaiting approval by the Secretary. According to NIOSH, if approved, the additional classes of employees will also become part of the Special Exposure Cohort in early May 2010.

¹¹ According to Labor officials, the site exposure matrix database does not include radioactive substances except those whose properties may have toxic effects independent of radiation. For example, inhalation of soluble forms of uranium may cause kidney disease.

Part B Claim Processing

Upon receipt of a claim, Labor first determines whether the Part B claimant meets the eligibility requirements for any one of the following types of claims: Radiation Exposure Compensation Act Section 5 supplement, chronic beryllium disease, chronic silicosis, or Special Exposure Cohort cancer claims. If so, these claims are adjudicated exclusively by Labor (see fig. 1). All radiation-related cancer claims not covered by the Special Exposure Cohort are referred to NIOSH for dose reconstruction.

Figure 1: Claims That Require Dose Reconstructions Are Processed Differently than Claims That Do Not



Source: GAO analysis of Labor and NIOSH claim processes.

Using scientific and other collected information, NIOSH performs a dose reconstruction and provides the results to Labor. NIOSH's dose reconstruction estimates the amount (dose) of radiation to the organ affected by the worker's cancer, erring on the side of higher exposure and greater cancer risk whenever specific exposure data are limited. Labor uses the dose reconstruction results to determine whether it is at least as likely as not that the worker's cancer is related to his or her employment at a covered Energy or contractor facility.¹² As required by EEOICPA, Labor uses regulatory guidelines developed by the Department of Health

¹² 42 U.S.C. § 7384n(b) and (c).

and Human Services to make that determination.¹³ Those guidelines provide that a cancer was at least as likely as not related to radiation exposure incurred by the worker in the performance of duty if the probability of causation is estimated to be 50 percent or more.¹⁴ See appendix II for detailed information about the claim-processing steps used by Labor and NIOSH.

Part E Claim-Processing

Part E claims are adjudicated by Labor using information it collects in the site exposure matrix on the types of toxic substances at Energy facilities.¹⁵ This information is analyzed by claims examiners, and sometimes with the assistance of medical consultants, to determine if it is at least as likely as not that exposure to a toxic substance at a covered Energy facility is considered a significant factor in the development of the illness.¹⁶ Labor's claims examiners refer to the site exposure matrix for a historical description of the types of industrial toxins present and the processes in which they were utilized, as well as information on known links between these toxins and occupational illness documented in peer-reviewed professional journals. When considering compensability under Part E for radiation-related cancers, Labor generally uses the dose reconstruction process and the NIOSH probability of causation regulatory guidelines it uses for Part B claims.

Cases versus Claims

Since the inception of the EEOICPA programs, over 188,000 claims have been filed by either workers or their survivors. These claims represent about 129,000 actual worker cases—because there is more than one survivor involved in some cases. Labor estimates that the claims it has handled to date represent closer to 75,000 individual workers. Therefore, we provide data for the numbers of cases processed, which refers to the individual workers represented by one or more claims.

¹³ 42 U.S.C. § 7384n(b).

¹⁴ The Department of Health and Human Services' NIOSH has issued the required guidelines at 42 C.F.R. Part 81 which state in § 81.2 that, as required by EEOICPA, the guidelines "produce a determination as to whether it is at least as likely as not (a 50 percent or greater probability) that the cancer of the covered employee was related to radiation doses incurred by the employee in the performance of duty."

¹⁵ Also at Radiation Exposure Compensation Act Section 5 facilities.

¹⁶ 42 U.S.C. § 7385s-4(c).

As shown in table 2, Labor had adjudicated approximately 89 percent of EEOICPA cases filed as of January 2010, of which just over 39 percent were approved. Approval rates excluding cases that did not meet initial eligibility requirements are over 56 percent.

Table 2: Approval Rates for EEOICPA Cases as of January 28, 2010

	Cases filed	Cases processed (percent)	Cases approved (percent)
Part B	69,039	62,526 (91%)	27,298 (40%)
		Includes 48,036 final decisions plus 14,490 noncovered ^a (21% of cases filed)	
Part E	60,364	52,553 (87%)	22,646 (38%)
		Includes 41,605 final decisions plus 10,948 noncovered ^a (18 % of cases filed)	

Source: GAO analysis of Labor data.

^aNoncovered cases are those for which the medical condition claimed is not one of the covered occupational illnesses (applies only to Part B cases), the employee's covered employment has not been established (Parts B and E), or a survivor did not meet eligibility requirements (Part E). Ineligible survivors constitute the majority of the noncovered cases under Part E. Claims that do not have a covered occupational illness constitute the majority of the noncovered cases under Part B.

As part of a November 2008 report, Labor's Office of Inspector General reviewed a sample of 140 claims that had received final decisions or were administratively closed from October 2005 through June 2007 and determined that Labor issued claim decisions that complied with applicable federal laws and regulations and were based appropriately on the evidence supplied by or obtained on behalf of claimants.¹⁷

¹⁷Department of Labor's Office of Inspector General, *Energy Employees Occupational Illness Compensation Program-DOL Could Do More to Assist Claimants and Further Improve Timeliness*, (Washington, D.C.: Nov. 12, 2008), 04-09-002-04-437.

Cases Can Require a Year to Adjudicate, but Dose Reconstruction Can Add 2 or More Years to the Process

Cases that do not require dose reconstruction can take about a year to adjudicate, but those that do can take a total of 3 or more years, and other factors can delay processing even further. Dose reconstruction is the primary factor affecting processing time, and changes to the information provided or the scientific methods used to determine compensability can lengthen the processing time for any case requiring dose reconstruction. The availability of claimant information and agency workload also affect the processing times. Labor and NIOSH have developed strategies to expedite case processing and performance measures to monitor timeliness. These efforts have helped reduce the case backlog and shorten processing times of certain steps in the claims cycle.

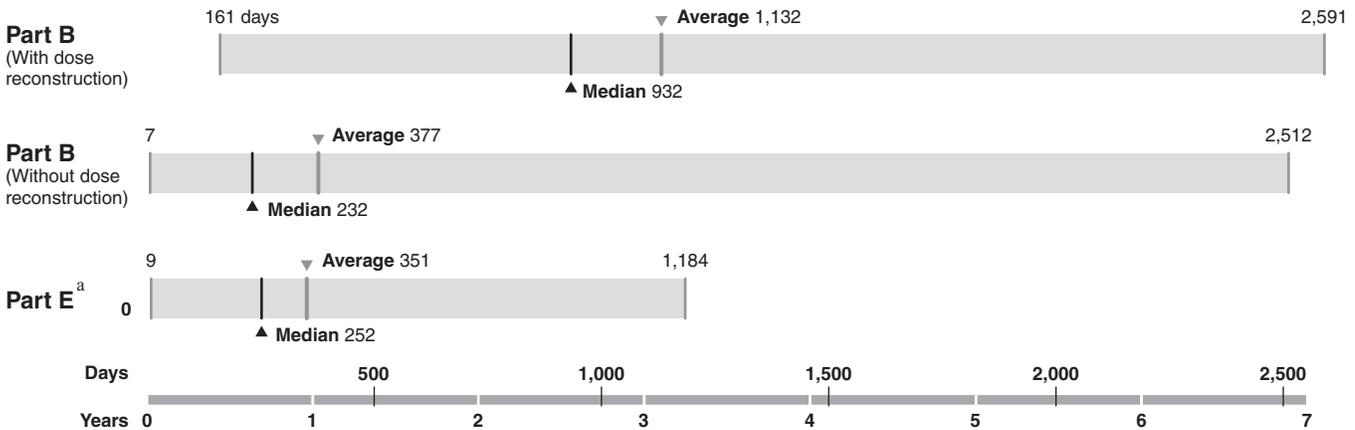
Dose Reconstruction Is a Key Determinant of Processing Time—Adding, on Average, 2 or More Years

Cases requiring dose reconstruction, which constitute a third of all Part B cases, have taken an average of 3 or more years to process.¹⁸ Since determining the causation of cancer requires extensive data collection and scientific estimates, dose reconstruction is a lengthy and meticulous scientific process. Dose reconstruction is not needed for Part B beryllium or silicosis cases or Part E cases that do not involve radiation-related cancers; therefore, the processing times for these cases are much shorter. According to data from Labor, Part B cases requiring dose reconstruction for which final decisions were issued in fiscal year 2008 took 1,132 days, on average—just over 3 years—to process, compared with 377 days for non-dose reconstruction Part B cases for which final decisions were issued in fiscal year 2008.¹⁹ By contrast, Part E cases for which final decisions were issued in 2008 averaged 351 days to process. Similarly, minimum and maximum processing times were also greater for those cases that underwent dose reconstruction compared with those that did not (see fig. 2).

¹⁸This and the following calculations are based on individual cases, which for some include more than one claim or claimant.

¹⁹Processing times are calculated from the date of filing to the date of the final decision. This time includes the average days spent preparing the case, performing dose reconstructions, preparing recommended decisions, and issuing final decisions.

Figure 2: Processing Times for Cases Decided in Fiscal Year 2008

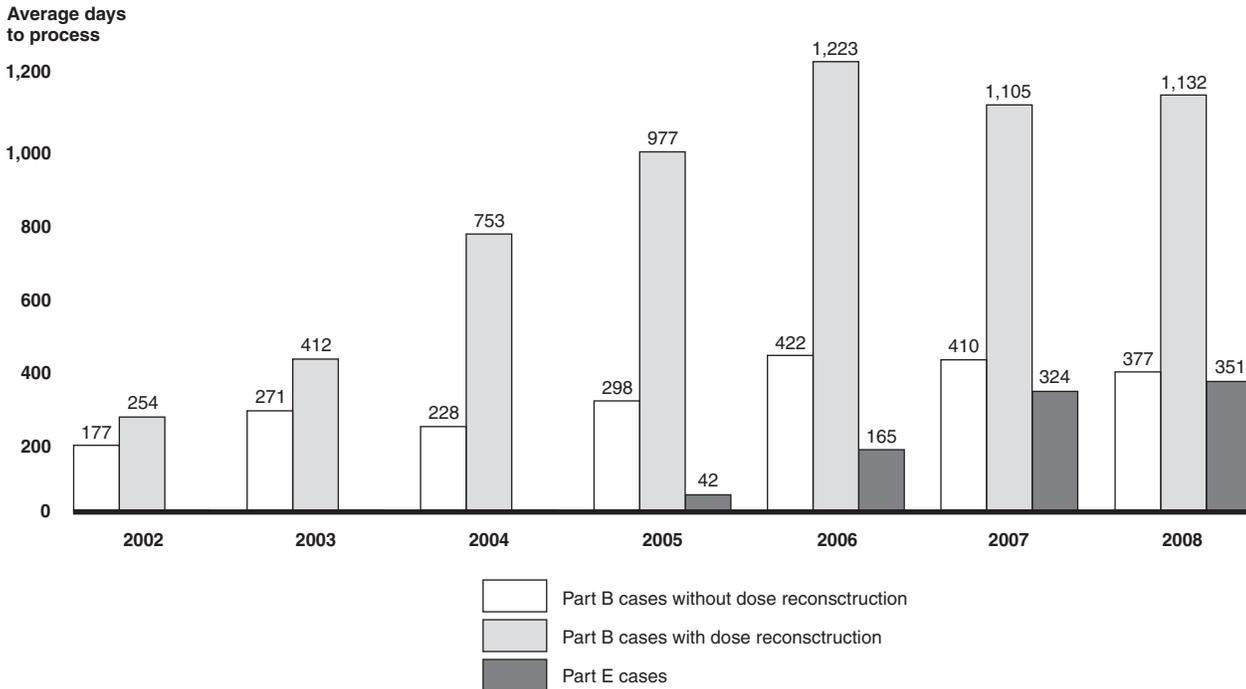


Source: GAO analysis of data from the Department of Labor's Energy Case Management System for claims receiving final decisions in fiscal year 2008.

^aWhile some Part E cases require dose reconstruction, those cases are not included in the figure. Labor does not report on Part E cases requiring dose reconstruction because there is no consistent calculation available.

Processing times were shorter earlier in the program and subsequently became longer. This was due, in part, to the fact that NIOSH chose to process simpler cases first in order to expedite them, which effectively postponed the handling of cases that were likely to be more difficult. As a result, the processing time for all Part B cases was greatest in 2006 and has only slightly decreased since then (see fig. 3). On the other hand, processing time for cases under Part E has gradually increased since the program was implemented in 2005.

Figure 3: Average Processing Times for Part B and Part E Cases by Year Decided, Fiscal Years 2002-2008



Source: Department of Labor's Energy Case Management System for Part B claims receiving final decisions from fiscal years 2002 through 2008, and Part E claims receiving final decisions from fiscal years 2005 through 2008.

Note: Labor calculated the average processing times from the date the case was filed to the date Labor issued its final decision for the case. If there was more than one filing date for a given worker, Labor used the first final decision. These times were calculated based on the year in which a final decision was reached, rather than the year the case was filed. While some Part E cases require dose reconstruction, those cases are not included in the table. Labor does not report on Part E cases requiring dose reconstruction because there is no consistent calculation available.

Though Special Exposure Cohort cases are not subject to dose reconstruction, cases processed in fiscal year 2008 nonetheless took almost 2½ years to process, on average. Moreover, total processing times for cases identified for inclusion in the Special Exposure Cohort in 2008 varied widely, from a minimum of 3 days to as much as 2,584 days—just over 7 years. One reason that cases were in process for several years may have been that they were filed before the case became a part of the Special Exposure Cohort. As such, the case would have been sent to NIOSH to undergo dose reconstruction before it could be determined that site or other data needed to complete a dose reconstruction were insufficient. This determination could have taken years before the case was designated to the Special Exposure Cohort and then fast-tracked for adjudication.

Dose Reconstruction Can Be Delayed by the Receipt of New Information or the Availability of Site Profiles

Within the scientific process underlying dose reconstruction, there are several factors that can delay dose reconstruction. For any one dose reconstruction, NIOSH may complete many steps to gather information before issuing a final dose reconstruction.²⁰ While NIOSH tracks time spent on major steps of its process, the agency does not track time spent on every specific step of the process. However, NIOSH does track the additional time it takes to rework dose reconstructions to take into account new information added to the case in the form of an amendment. Processing amendments adds, on average, 25 percent more time to the dose reconstruction process, according to NIOSH.²¹ Amendments are filed most often when Labor or claimants identify new information, for example, about additional cancers, personal data such as a correction in date of birth or death, or employment information that may affect the estimated dose. Amendments are filed for about one-third of all cases requiring dose reconstruction, and about one-fourth of all amended cases have been amended multiple times, according to NIOSH. Each subsequent amendment adds more time to the process. For example, according to data provided by Labor, sending a case to NIOSH a second time adds, on average, 235 days to the dose reconstruction process, as shown in table 3.

Table 3: Average Days Added to Processing Times for Cases Labor Returned to NIOSH for Rework

Number of times Labor sends case to NIOSH	Number of cases	Average cumulative days at NIOSH	Average days added to processing time
1	19,112	701	Not applicable
2	4,634	936	235
3	615	1,109	408
4	60	1,253	552
5	6	1,317	616

Source: Data from the Department of Labor's Energy Case Management System for cases returned to NIOSH for rework for fiscal years 2002 through 2008.

²⁰ NIOSH requests records, compiles data, evaluates exposure records, interviews the claimant, develops detailed information, identifies coworkers, reports to the claimant summarizing information from the interview, incorporates additional claimant information, requests additional records from Energy, reviews the adequacy of monitoring data and completeness of the records, characterizes internal and external exposure environments, and conducts a final dose reconstruction calculation.

²¹ This is the average time added to the process and includes cases with single and multiple amendments.

Even after a case is determined to be noncompensable, new information—from the claimant, NIOSH, or Labor—may prompt Labor to send the case back to NIOSH to perform a new dose reconstruction. These reworks incorporate new information specific to a single worker, such as an additional cancer diagnosis or a newly discovered record of employment, or reflect revisions to either the site profile or the dose reconstruction method that was used.²² NIOSH was not able to report on the additional time needed for reworks resulting from revisions to its technical documents.²³ However, these revisions often result in the reconsideration of cases that were previously denied. When NIOSH revises dose reconstruction methods, it publishes program evaluation reports describing the change so that completed cases that may be affected by the changes may be identified. According to NIOSH, it selects cases for rework based on technical revisions only if those cases had been previously denied. Thus, while performing new dose reconstructions on such cases may lengthen overall processing time, it might also result in a favorable outcome for the claimant if his or her previously denied claim is reconsidered for compensation.

Another factor that affects the timeliness of completing dose reconstructions is the time it initially took NIOSH to research and develop the site profiles and dose reconstruction guidance for the more than 300 covered facilities.²⁴ From the program's outset, NIOSH has given the highest priority to developing site profiles and dose reconstruction

²²The vast majority (97 percent) of cases returned to NIOSH for rework because of new information about the individual worker were cases that had been previously denied or recommended for denial based on NIOSH's initial dose reconstruction. That is, they did not initially meet the 50 percent probability of causation threshold. Of the 3 percent of cases returned for rework that initially met the 50 percent probability of causation threshold, 15 percent were later found not to meet the threshold. Of the 97 percent of cases returned for rework that did not initially meet the causation threshold, only 10 percent were later found to have met the threshold. Almost half of the 97 percent of cases that did not initially meet the threshold that were sent to NIOSH for rework have not been returned from NIOSH to Labor. Another 10 percent had been returned, but Labor had not yet issued a final decision. Fifteen percent of cases that had initially met the threshold for approval and were sent to NIOSH for rework had not been returned from NIOSH to Labor, while another 7 percent that were returned were still awaiting a final decision from Labor.

²³NIOSH does not track how much more time is added to the process as a result of these revisions to site profiles or dose reconstruction methods, because claims are returned to NIOSH for many different reasons—including amendments.

²⁴Site profiles contain information about the work site necessary to establish exposure parameters—namely historical information on radioactive materials at sites, activities at sites, worker monitoring programs, and detection limits.

guidance for sites with the largest numbers of prospective claimants. For example, according to NIOSH, there are nine sites where 0 percent of dose reconstructions have been completed by NIOSH, affecting only nine claimants. NIOSH officials stated that the number of these sites with 0 percent of completed dose reconstructions is expected to decrease.

Availability of Claimant Data and Fluctuating Agency Workloads Can Also Delay Processing Time

Irrespective of dose reconstruction, processing time for EEOICPA cases can be affected by the availability of claimant data, such as personal exposure and employment data, as well as by the agencies' workloads. Since many facilities employed workers several decades ago—before the advent of electronic data—some records are difficult for Energy to locate and obtain. Some older sites do not have well-organized or computerized methods of locating documents, so locating records requires a more time-consuming search. For example, at the Hanford site, older records must be searched by hand. According to Energy, the search is especially difficult when records are needed for claimants who worked for subcontractors many years ago because in most cases, employee records remained with the subcontractors who worked on Energy facilities and oftentimes, these companies no longer exist or have been bought and sold multiple times.²⁵ Also, Labor may ask claimants to provide additional employment, exposure, or causation evidence that is not always readily available or no longer exists from their work site. Labor has contracted with the Center for Construction Research and Training to help research and document the information needed by workers in the construction trades to file claims, but it is often difficult to obtain the needed data.²⁶

In addition, Labor reported that claims examiners' workloads—which range from 25 to 45 cases—may surge when new Special Exposure Cohort classes are designated and Labor must identify affected cases to review. In 2009, for example, when a class created for the Hanford Site was added to

²⁵ Even after information is found, Energy must review the information to determine if it is classified, which can delay the information gathering process. Energy has procedures in place that allow NIOSH scientists access to the classified documents.

²⁶ The Center for Construction Research and Training (formerly known as the Center to Protect Workers' Rights) is a nonprofit organization created by the Building and Construction Trades Department of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). Since 1990, it has conducted applied research and provided training and service to the construction industry. When Labor is unable to find a claimant's employment information from Energy or his or her employer, the center researches and provides information for construction and trade worker claims.

the Special Exposure Cohort, Labor's district office in Seattle reported that it expected to be required to review an additional 1,600 cases for this new class without receiving additional staff to handle the work.

Staff turnover may also delay claim-processing time, although Labor reported that it has processes in place to limit the additional time that staff turnover adds to adjudication. Labor stated that turnover rates vary among district offices, depending on local job markets. According to Labor officials, some turnover occurs because of term-limited positions—some claims examiners are appointed to 4-year terms and seek more permanent employment elsewhere when the term is complete.²⁷ These positions constitute 31 percent of Labor's claims examiners. Labor officials reported that these term-limited positions were instituted in 2002, when the program was new and the number of claims that would be filed was not known. A 2008 report by Labor's Ombudsman noted claimants' concerns that changing the claims examiner while claims were still being processed had resulted in processing delays.²⁸ The Deputy Director of Labor's Division of Energy Employees Occupational Illness Compensation program acknowledged that delay can occur when claims examiners leave and claims are transferred to others, but explained that district office managers mitigate delays by effectively monitoring the transfer of claims after one examiner leaves and ensuring that the new claims examiner is quickly brought up to speed.

Delays may also occur when new claims examiners are hired by Labor, because training and educating new claims examiners can be time-consuming given the complexity of the program. According to the Deputy Director, it usually takes, on average, 1 year for new claims examiners to confidently handle and adjudicate claims.

²⁷Labor reported that several claims examiners left for other government compensation programs.

²⁸Department of Labor, Office of the Ombudsman for Part E, *2008 Annual Report of the Ombudsman for Part E to Congress*, (Washington, D.C.: Feb. 13, 2009). The Ombudsman's office and the annual report to Congress are required under EEOICPA. 42 U.S.C. § 7385s-15. Although the Ombudsman's authority was initially limited to Part E, in October 2009, the EEOICPA was amended to expand the Ombudsman's authority to Part B. Pub. L. No. 111-84, Div. C, Title XXXI, Subtitle D, § 3142(a).

NIOSH and Labor Have Procedures to Expedite Certain Cases

To help shorten processing times, both NIOSH and Labor have developed strategies to use in expediting certain cases. Because dose reconstruction is a complex process that requires considerable time, NIOSH has developed strategies to more efficiently complete dose reconstructions. First, NIOSH regularly reviews cases that were filed at the beginning of the program that have not yet been processed because of case complexity to determine the source of the delay. As a result, of the first 5,000 Part B cases sent to NIOSH for dose reconstruction, by 2008, NIOSH had completed dose reconstructions on all but 9.²⁹ NIOSH is currently targeting the next 10,000 cases filed to determine which of these are still awaiting final dose reconstructions from NIOSH and will subsequently complete these cases.³⁰ This strategy of targeting older cases, including legacy cases—those that have been at NIOSH for 2 or more years—has contributed to NIOSH reducing its backlog from a high of 6,546 cases in fiscal year 2004 to 826 cases in fiscal year 2008.³¹

Another strategy to reduce processing times is NIOSH's use of rough dose estimations to expedite cases that would be clearly above or below the 50 percent threshold of probability of causation.³² Figure 4 provides an overview of this process. NIOSH stated that this efficiency measure has minimized time spent reconstructing doses while maintaining the

²⁹These 5,000 cases are the oldest Part B cases sent to NIOSH in the beginning of the program; 4,991 have received final dose reconstructions or were withdrawn by Labor, administratively closed, qualified for a Special Exposure Cohort, sent with draft dose reconstruction reports to the claimant for review, or returned to NIOSH by Labor for rework.

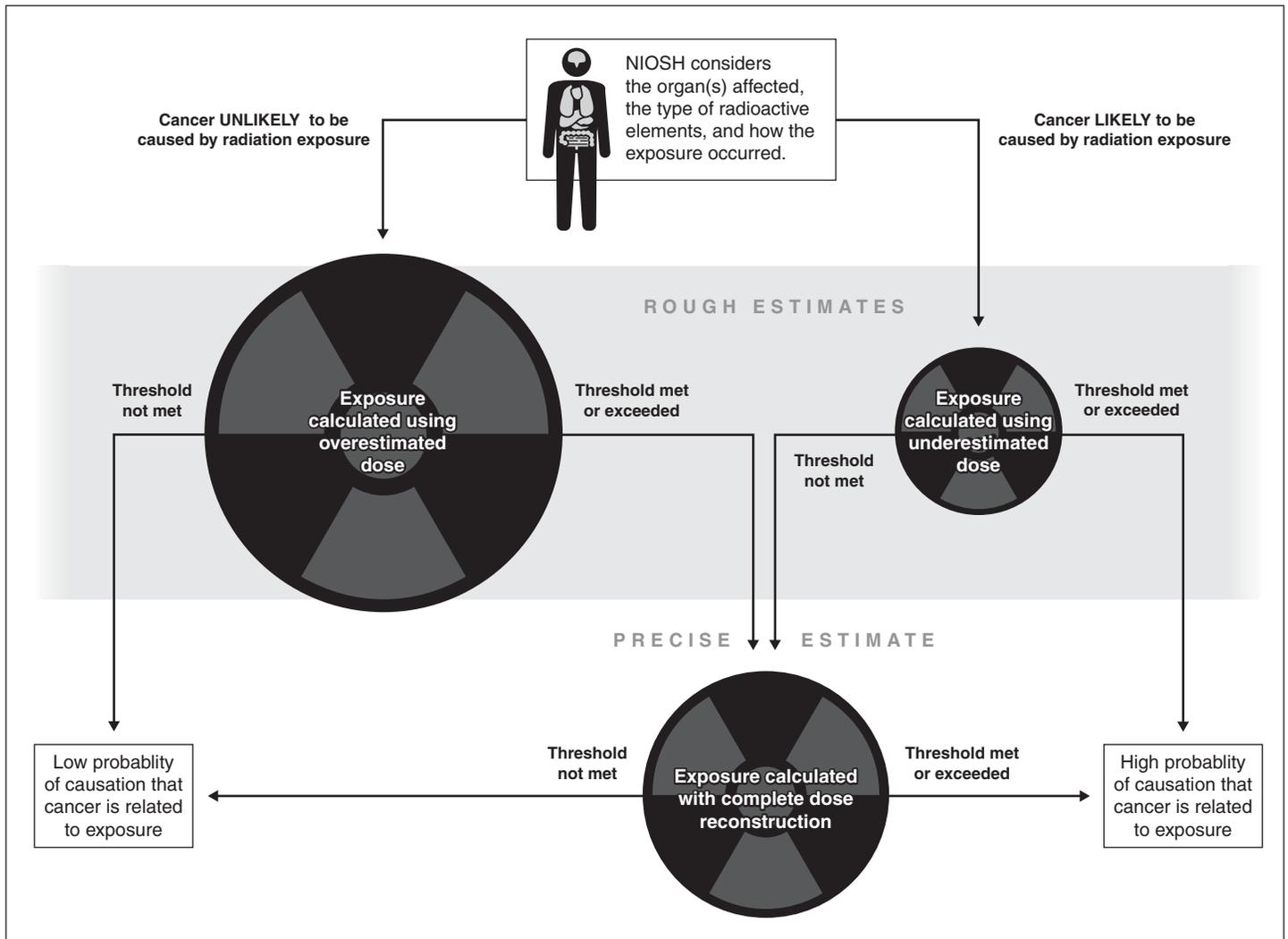
³⁰NIOSH has identified approaches to moving forward on the remaining 9 cases.

³¹In addition, NIOSH's start-up process of developing most site profiles, establishing procedures, and hiring staff is now complete and does not affect processing time for cases reviewed by NIOSH, as we previously reported in September 2004: GAO, *Energy Employees Compensation: Many Claims Have Been Processed, but Action Is Needed to Expedite Processing of Claims Requiring Radiation Exposure Estimates*, [GAO-04-958](#) (Washington, D.C.: Sept. 10, 2004).

³²The practice of rough estimation, described in NIOSH's regulations at 42 CFR 82.10(k), allows NIOSH to more quickly complete dose reconstructions for certain kinds of claims. According to NIOSH, this process of rough estimation prioritizes cases based on their likelihood of compensation. It allows for the reconstruction of doses only so far as to provide an unambiguous compensation decision to Labor. NIOSH may substantially overestimate the potential dose received by an employee when compensation seems unlikely based on the type of cancer and length of employment. In this instance, if the probability of causation still does not reach or exceed 50 percent, despite the overestimation of the exposure dose, NIOSH can easily determine that the case will not be compensated.

reliability of the outcome. In 2005, NIOSH invested in new software technology that allows for faster calculations for some dose reconstructions. According to the agency, this technology has reduced the time it takes to calculate certain types of dose estimates from months to hours. In fact, the average processing times for dose reconstructions began to decrease in 2006. Finally, NIOSH created several staff positions to assist claimants through the Special Exposure Cohort and dose reconstruction processes, because the completeness of the information submitted by claimants can directly affect the time it takes to process their claims. Two of these positions, NIOSH's Special Exposure Cohort Petition Counselor and the Ombudsman, help ensure that petitioners include all of the required and appropriate information when filing petitions. Similarly, NIOSH designated its Ombudsman to inform claimants of the information required for dose reconstructions.

Figure 4: NIOSH Efficiency Process Using Rough Estimates for Dose Reconstructions



Source: GAO analysis of The NIOSH Radiation Dose Reconstruction Program.

Labor prioritizes claims for terminally ill claimants in an effort to issue final decisions as quickly as possible for these claimants. Under Part E, about 98 percent of workers who filed claims survived long enough to receive Labor’s final decision. Part B had similar results, where 97 percent of Part B eligible workers who filed claims survived to receive a final decision from Labor.

NIOSH and Labor Have Established Performance Measures and Goals to Monitor Timeliness

In 2007, NIOSH established performance targets for fiscal year 2008 for its processes in response to the results of the Office of Management and Budget's (OMB) Program Assessment Reporting Tool (PART) evaluation. The agency now has five measures it uses to track its performance in completing dose reconstructions and evaluating Special Exposure Cohort petitions. NIOSH uses these to track its progress toward completing a percentage of certain types of cases and petitions within specified time frames. See appendix III for a list of the performance measures and results. In 2008, NIOSH set baselines for two of the five measures. Program officials reported that NIOSH has not established timeliness measures for specific steps of the dose reconstruction process because its data system does not track specific job activities.

Labor's annual operational plan for the program includes program workload and timeliness targets. Labor has established separate performance measures that correspond to 18 discrete steps of its adjudication process (excluding the activities of NIOSH). At the end of fiscal year 2008, Labor met 14 of the goals but did not meet the other 4 (see app. III for more detailed information). Labor's performance in 2008 surpassed that in 2007, during which the agency met just over half of its goals. Moreover, Labor has adjusted its measures over time to target higher levels of performance. In 2008, the agency adjusted targets for one-third of its measures.

In addition, Labor received a rating of "adequate" for its administration of the program in OMB's 2007 PART evaluation. This rating calls for more ambitious goals for monitoring agency performance.³³ Nevertheless, the program has improved efficiency over time by increasing the average number of decisions per full-time claims examiner from about 117 decisions per full-time employee in fiscal year 2005 to 161 decisions in fiscal year 2008.

In its 2008 report that, in part, reviewed the timeliness of Labor's claim processing, Labor's Inspector General (IG) noted that while the agency had many performance measures that target specific steps in the process, it did not report the overall processing time for claims from start to finish.³⁴ The IG therefore recommended that Labor track and report

³³Office of Management and Budget, *Detailed Information on the Energy Employees Occupational Illness Compensation Program Assessment*, Assessment Year 2007.

³⁴Department of Labor's Office of Inspector General, *Energy Employees Occupational Illness Compensation Program-DOL Could Do More to Assist Claimants and Further Improve Timeliness* (Washington, D.C.: Nov. 12, 2008), 04-09-002-04-437.

overall claim-processing time, including time spent at NIOSH for dose reconstruction. Labor responded that it does not track overall timeliness because it does not have control over the activities of the other agencies involved.³⁵ Labor added that such a measure would not be an accurate representation of its adjudication process and would render its performance measures useless. Nevertheless, Labor has begun posting information on overall claim-processing time on its Web site. The IG also recommended that Labor create interim milestones for the initial claim-processing phase since Labor did not meet its timeliness goals for this part of the process. Labor did not concur with this recommendation.³⁶

Administrative Costs Reflect Requirements of Science-Based Adjudication

In 2008, EEOICPA's administrative costs were over \$106 million for Part B and almost \$57 million for Part E claims. That same year, over \$484 million dollars in benefits was paid for Part B, and \$456 million was paid for Part E claims.³⁷ (See tables 4 and 5 for direct administrative costs and benefits paid over the life of the programs.) The administrative costs in any given year are not necessarily related to the benefits paid because paid claims do not reflect the number of claims processed in that same year. Payments represent only claims paid out in that year. The administrative costs reflect the costs of processing all claims, including those that were denied and those that have not yet been decided.

Over the life of the program, direct administrative costs have averaged about 20 percent of the total program cost for Part B and 14 percent for Part E. Yearly ratios, however, are affected by factors unrelated to efficiency, namely the approval rate and the amounts paid. A higher approval rate or higher benefit or both would result in a lower ratio of administrative costs to benefits paid.

³⁵ While Labor is the designated agency responsible for administering the program, the Department of Health and Human Services is responsible for administering the dose reconstruction process, as established in Executive Order 13179.

³⁶ In addition to these recommendations to improve timeliness measures, the IG also recommended that Labor expand the responsibility of Resource Centers to include assisting claimants by providing them more information about the claims process, improve the methods through which Labor obtains claimant information, improve interagency agreements to more clearly outline data-gathering methods, institute a comprehensive workload tracking system to monitor the status of claims at other agencies and to monitor the caseload of claims examiners, and increase communication with claimants. Labor agreed with these recommendations in part.

³⁷ These amounts do not include medical benefits paid.

Table 4: Part B Benefits Paid and Direct Administrative Costs

(Actual obligations in thousands of dollars)

	2001	2002	2003	2004	2005	2006	2007	2008	Total
Benefits paid ^a	\$3,450	\$350,970	\$305,236	\$251,051	\$325,792	\$461,385	\$463,889	\$484,380	\$2,646,153
Administrative costs	18,429	68,299	66,058	81,195	115,703	107,629	108,362	106,046	671,721
NIOSH ^b	2,403	33,161	26,006	44,857	55,235	63,606	55,270	55,519	
LABOR	\$16,026	\$35,138	\$40,052	\$36,338	\$60,468	\$44,023	\$53,092	\$50,527	
Total program cost									\$3,317,874
Percentage of cost that is administrative									20

Source: GAO presentation of unaudited NIOSH and Labor data.

Note: Energy's costs average about \$6 million per year. Energy did not report cost data prior to 2006. Additionally, Energy does not separate costs by Part B and Part E.

^aBenefits paid do not include medical benefits paid. Medical benefits for illnesses covered under Part B averaged \$62 million per year for 2005-2008.^bNIOSH's costs reflect both direct and indirect administrative costs.**Table 5: Part E Benefits Paid and Direct Administrative Costs**

(Actual obligations in thousands of dollars)

	2005	2006	2007	2008	Total
Benefits paid ^a	\$194,522	\$280,130	\$360,867	\$456,734	\$1,292,254
Administrative costs	34,939	52,361	63,268	56,878	207,446
Total program cost					\$1,499,700
Percentage of cost that is administrative					14

Source: GAO presentation of unaudited NIOSH and Labor data.

Note: Energy's costs average about \$6 million per year. Energy did not report cost data prior to 2006. Additionally, Energy does not separate costs by Part B and Part E.

^aBenefits paid do not include medical benefits paid. Medical benefits for illnesses that were covered only under Part E averaged \$1 million per year for 2005-2008. Medical benefits for illnesses covered under both Parts B and E are recognized under Part B, not Part E.

The cost of administering EEOICPA reflects its science-based adjudication process and the highly technical nature of the claims. About 60 percent of Labor's direct costs for Part B are for personnel and benefits. Eighty-seven percent of NIOSH's direct costs are for contracts, primarily for dose reconstruction and the development of site profiles. Unlike other workers' compensation programs, EEOICPA compensates for diseases caused by exposure to radiation and toxic substances that are not generally found in most workplaces. Confirmation that these conditions are the result of exposure to radiation or toxic substances requires the skills of many specialists, including health physicists, industrial hygienists, occupational

medicine physicians, and claims examiners. Dose reconstructions for cancer claims conducted by NIOSH health physicists are often the most technically complex part of the adjudication process. They require gathering and analyzing extensive data about working conditions and exposures for the entire facility before individual exposures can be estimated. Labor's adjudication process for claims of beryllium disease, silicosis, and illnesses related to exposure to toxic substances is also labor intensive because it requires expert review at several levels.

While some claims require more time to adjudicate than other claims and can therefore be more costly to process, Labor does not collect and analyze data on administrative costs by individual claim or claim type. Therefore, we could not determine how much Labor spends on adjudicating approved claims compared with adjudicating claims that were denied. We also could not determine how costly each phase of the process is—other than dose reconstruction—because Labor does not break out costs in detail.

On the basis of the number of total Part B dose reconstruction cases that NIOSH processed and its costs over the lifetime of the program, NIOSH estimates its direct administrative costs for each case to be about \$12,000.³⁸ Using the same method, we calculated Labor's direct cost per case to be about \$8,000 for all Part B cases (about one-third of which require dose reconstruction) and about \$6,000 for Part E cases. We were not able to calculate the administrative costs for each case by year and compare trends over time because NIOSH had significant start-up costs, which were relatively recent, and because Labor and NIOSH may spend more than a year processing each case.³⁹

³⁸ NIOSH counts initial dose reconstructions and reworks as separate cases. Counting them as one case would result in a cost per case of about \$15,000 rather than \$12,000.

³⁹ We could not calculate the administrative costs for each case for Energy because Energy does not have data going back to the inception of the program and because Energy tracks requests for its services but does not track them by case, so one case may generate multiple requests, such as a request from Labor and a request from NIOSH.

Part B Quality Controls Generally Include Internal and Independent Reviews, while Part E Processes Lack Independent and Expert Review

Both Parts B and E of the Energy Employees Occupational Illness Compensation Program have quality controls in place in the form of multiple reviews within the agencies; there is also an extensive independent review process for NIOSH's work on radiation-related cancer claims under Part B, provided for by the act. While there is no statutory requirement for an independent review of Labor's policies regarding occupational lung disease claims under Part B or claims regarding illnesses resulting from exposure to toxic substances under Part E, those policies have not undergone outside review, and the policy development process is mostly done internally. For example, Labor employs a contractor and a small team of internal experts to continuously update its site exposure matrix. However, this effort is not supported by public, expert outside review to provide assurance that the matrix is comprehensive and scientifically sound. Independent expert review can help provide assurance of scientific or technical quality and can provide decision makers with independent perspectives and judgments of experts who are knowledgeable in the subject area being reviewed. Experts we interviewed expressed concerns about the scientific soundness, completeness, and consistency of Labor's guidance used for Part E adjudications.

NIOSH's Work for Part B Cancer Adjudication Undergoes Independent Expert Review

NIOSH's work to support Labor's adjudication of Part B cancer claims is independently reviewed by the Advisory Board required by EEOICPA. The board reviews the scientific validity and quality of NIOSH's dose reconstruction efforts, and it recommends whether to add new classes of workers to the Special Exposure Cohort—those for whom dose reconstruction is not feasible because of inadequate site data. Aided by its contractor, Sanford Cohen & Associates, the Advisory Board reviews NIOSH's technical documents including its site profiles, sample dose reconstructions, and NIOSH evaluations of petitions to add classes to the Special Exposure Cohort. When the board's contractor reports concerns or questions about any of these documents to NIOSH through the Advisory Board, NIOSH responds through an established resolution process, revising its documents and methods as needed. If warranted, NIOSH identifies and reconsiders all denied claims potentially affected by the revision, documenting the process in reports posted on its Web site. NIOSH issues these reports more often in response to changes in site profiles than to dose reconstruction audits, and does so on its own initiative as well as in response to a finding by the board.

Technical documents and site profiles. The board, in conjunction with its contractor, audits NIOSH's technical documents and site profiles for

adequacy and completeness of data sources, scientific validity, accuracy of data, and consistency among site profiles. Because the site profiles are used to support dose reconstructions, the audits also assess whether the site profile instructions are clear, accurate, complete, and auditable and whether NIOSH's methods and assumptions are scientifically valid and favorable to the claimant. Like NIOSH, the board's contractor traveled to many of the sites for its own independent research, including meeting with site experts and former workers to hear testimony about facility conditions and practices. NIOSH characterizes its technical documents and site profiles as living documents, subject to revision as new information and methods become available. For example, in 2006, NIOSH revised its site profile and dose reconstruction methods for Bethlehem Steel in response to findings from the Advisory Board contractor's audit that assessed the dose reconstruction data, assumptions, and methods.

Dose reconstruction reports. To carry out its responsibility to review the scientific validity and quality of NIOSH's dose reconstructions, the Advisory Board, in conjunction with its contractor, periodically audits sampled dose reconstructions. These audits address whether sampled dose reconstructions (1) are consistent with records provided by Energy and the claimant interview; (2) comply with applicable procedures, both general and specific to the relevant facility; and (3) are supported by scientifically defensible and/or claimant-favorable assumptions. For a portion of sampled dose reconstructions, the board's contractor performs its own dose reconstructions to determine if it can validate the results and evaluates the information and methods NIOSH applied. Using a detailed checklist, the contractor identifies areas of concern and their potential significance to the estimated dose. The contractor also notes whether it found similar problems in more than one dose reconstruction audit and identifies opportunities for NIOSH to revise ambiguous instructions or overly complex procedures. Following each audit, the Advisory Board and NIOSH engage in a resolution process to address the audit findings. In cases where comment resolution requires changes to the method used for the reconstruction, NIOSH publishes a Program Evaluation Report describing the change and identifying all claims that may have been denied under the earlier method to assess whether they should be reconsidered. NIOSH reported that, as of March 2009, the board's contractor had completed audits of its first sample of 100 NIOSH dose reconstructions, and as a result, one claim that had previously been denied was approved.

Special Exposure Cohort petition evaluations. Under EEOICPA, the Advisory Board advises the Secretary of Health and Human Services on the addition of new classes of workers to the Special Exposure Cohort.

The Advisory Board's deliberations address whether it is feasible to estimate workers' radiation dose with sufficient accuracy and whether there is a reasonable likelihood that the radiation dose endangered the workers' health.⁴⁰ When a claimant or other authorized party petitions to add a new class to the cohort and the petition contains all required information, NIOSH prepares an evaluation report, which may agree that a new class is warranted or, alternatively, describe the basis for its position that dose reconstruction is feasible for those workers.⁴¹ To support the Advisory Board's deliberations, the board's contractor reviews and reports on all such NIOSH petition evaluations. When the contractor identifies shortcomings in NIOSH's proposed dose reconstruction methods, or when new information about a site is discovered, the Advisory Board considers the implications on the feasibility of dose reconstruction. In some cases, NIOSH responds to the board's concern with revised dose reconstruction methods, which the contractor reviews in turn. This ongoing revision and review process can be protracted: NIOSH's initial evaluation is subject to statutory time limits but its revisions are not because they take place during the Advisory Board's deliberation process.⁴²

As of April 2009, NIOSH reported that 42 new classes of workers had been added to the Special Exposure Cohort on the basis of the Advisory Board's recommendation. The Advisory Board had not recommended adding 3 new classes for which petitions had been filed, and 12 petitions were still under consideration. Twenty of the 42 new classes had been proposed by NIOSH and 22 by petition from claimants or their representatives. In 4 of the 22 claimant-initiated petitions for which the Advisory Board recommended adding a class, NIOSH's evaluation concluded that dose reconstruction was feasible, but the Advisory Board did not concur and recommended the addition of the class. Since April 2009, 9 additional

⁴⁰42 U.S.C. § 7384q(b).

⁴¹New Special Exposure Cohort classes are initiated either by NIOSH or by petition from claimants or their representatives. NIOSH prepares evaluation reports for all petitions that qualify for evaluation. NIOSH may agree with the petitioners that facility data are too limited for dose reconstruction to be feasible, propose revisions to the time period or workers covered by the proposed petition, or propose methods of remedying the effect of limited data on dose reconstructions. Such dose reconstruction methods may rely on general knowledge about production processes and radioactive elements and/or incorporate radiation-monitoring data from facilities NIOSH considers comparable.

⁴²The act requires that NIOSH complete its evaluation within 180 days. 42 U.S.C. § 7384q(c)(1). This requirement was added in 2004 by Pub. L. No. 108-375, Div. C, Title XXXI, Subtitle E, § 3166(b)(1)(B).

classes have been added, bringing the total up to 51 classes as of March 2010.

Use of surrogate data. NIOSH uses surrogate data—basically, information from facilities other than the site where the worker was employed—to perform dose reconstruction when records on the worker’s own exposure or work site are insufficient for estimating the worker’s radiation dose.⁴³ This practice has been criticized by claimant advocates as inappropriate, given that EEOICPA provides for expansion of the Special Exposure Cohort when it is not feasible to estimate with sufficient accuracy the radiation dose received. Amidst this criticism, NIOSH has developed protocols that specify the criteria for when such information might be employed, and the Advisory Board is in the process of reviewing these protocols. NIOSH’s protocols supplement its regulations by addressing in detail the information sources and methods used in dose reconstruction and the types of information and research needed to use surrogate data. On behalf of the board, its contractor reviewed the NIOSH protocols on surrogate data use and compared them with existing draft protocols developed to guide the Advisory Board’s review of NIOSH’s dose reconstructions that use surrogate data. The Advisory Board’s draft protocols specify that surrogate data may be appropriate under certain conditions, subject to a case-by-case determination of scientific soundness, stipulating that the more central the surrogate data are to the dose reconstruction method, the more carefully they should be justified and validated. While the draft protocols are the contractor’s current standards for reviewing NIOSH’s dose reconstruction methods that rely on surrogate data and are currently under consideration by the board, they have not as yet been formally adopted. The board’s work group on surrogate data, which developed the current draft protocols with the contractor, is planning to submit them to the full board for its consideration. In addition, NIOSH plans to review its approach to surrogate data as part of a planned internal evaluation of its EEOICPA-related work.

⁴³ NIOSH’s dose reconstruction methods give the highest priority to individual worker radiation-monitoring records, but recognize that such records are not available for all workers. Its dose reconstruction regulation provides that when complete, accurate individual workplace monitoring records are not available, NIOSH may use a combination of other information sources to estimate radiation exposure (and dose to the affected organ). These other sources include radiation-monitoring records of coworkers with comparable exposure risks, facility monitoring records, and supplemental information about radioactive elements and production processes. See 42 C.F.R. § 82.2.

Although the Advisory Board and its contractor have taken steps to weigh in on when the use of surrogate data is scientifically sound, some advocates question whether it is possible to adequately adjust for differences among facilities, accounting for both physical features such as size, layout, and ventilation, and human factors such as compliance with safety and reporting requirements. NIOSH maintains that dose reconstruction with surrogate data is reasonable when enough is known about the type and quantity of radioactive elements on site and the fabrication processes used, and it can identify monitoring or production records from other facilities, covering the same time frame, that are sufficiently comparable to estimate radiation exposure risks to workers. Further, NIOSH officials note that when using surrogate data or in any case where actual exposure records are incomplete, their practice is to overestimate radiation exposure, which generally results in higher estimates of exposure than workers were likely to have had.⁴⁴

Throughout the dose reconstruction process, NIOSH incorporates claimant-favorable exposure assumptions that maximize estimated radiation dose and cancer risk. In addition, EEOICPA specifies that the probability that the worker's cancer was related to covered radiation exposure be calculated at the 99 percent confidence interval.⁴⁵ These approaches, along with the Special Exposure Cohort provisions for situations in which dose reconstruction is not feasible, were intended to help ensure that claimants are not disadvantaged by their employers' lack of records.

⁴⁴ NIOSH officials described this overestimation process as follows: When faced with equally plausible radiation exposure scenarios during dose reconstruction, the agency will always incorporate the scenario that results in the highest exposure to the worker. It may do this, for example, when a worker's cancer is not in an organ for which NIOSH, in collaboration with the National Cancer Institute, has developed risk models: NIOSH will select among comparable "substitute" organs the one that is most susceptible to cancer risk from the type of radiation exposure the worker was likely to have had. Such organ substitution models are reviewed both internally and externally.

⁴⁵ 42 U.S.C. § 7384n(c)(3)(A). The technical documents use the term "credibility limit" to indicate the maximum acceptable level of risk of estimating an exposure that is too low. If a "best estimate" of the dose were to be made, a 50 percent credibility limit, which means that in 50 cases out of 100, the actual probability of causation would be lower than the estimated probability of causation. Instead, the 99 percent credibility limit is a more generous estimate, assigning increased cancer risk at far lower actual levels of radiation exposure than the best estimate. In addition, it means that in 1 case out of 100, the actual probability of causation would be higher than the estimated probability. Conversely, in 99 cases out of 100, the actual probability of causation received would be lower than the estimated probability.

Labor's Requirements for Part B Occupational Lung Disease Claims Have Not Undergone External Expert Review

Unlike claims for radiation-related cancer, EEOICPA does not require independent review of Labor's requirements for occupational lung disease claims under Part B, despite the fact that these diagnoses can be challenging, and the disease may not manifest until years after exposure. Currently, these requirements do not undergo a review process by independent experts to ensure that they reflect current medical consensus, are clear, and result in consistent adjudication decisions. This can create unnecessary rework for the agency as well as frustration for claimants.

For example, although occupational exposure is the recognized cause of lung diseases such as chronic beryllium disease, some of the diagnostic tests for this condition have been found to be unreliable when performed on patients taking certain medications. Labor has changed its approach to beryllium claims more than once, without the benefit of expert medical or scientific review. First, in 2007, Labor tightened its requirements for diagnostic evidence for Part B beryllium illness claims, requiring that living workers substantiate their claims with results from these tests or undergo more invasive testing. Then, in 2009, Labor once again relaxed its requirements and instructed claims examiners to consider a broader array of diagnostic evidence for living workers. As a result, Labor now plans to review beryllium claims that were denied when the more restrictive 2007 policy was in effect.

Labor's Processes for Certain Part E Claims Provide for Internal Review but Not Independent Outside Expert Review

Labor's decisions on Part E claims for diseases related to nonradioactive toxic exposure undergo multiple internal reviews. First, the adjudication process itself provides multiple opportunities for claimants to supplement the evidentiary record and object to Labor's adjudication decisions, both recommended and final, and request a hearing. All recommended decisions also undergo supervisory review within the district office and final adjudication branch before they are issued as final decisions. In addition to the levels of review built into the adjudication process, Labor's quality control process includes random audits. These audits include annual accountability reviews performed by staff from other district offices or final adjudication branches. The accountability reviews include audits of sampled claims and address, among other things, regulatory and procedural compliance, the sufficiency of claim development, and the appropriateness of the recommended decision.

However, unlike Part B's provisions for oversight of NIOSH's work on radiation-related cancer claims, Part E of EEOICPA does not provide for independent review of Labor's scientific or technical guidance on nonradioactive toxic exposure claims. As a result, there is no systematic

independent expert review of Labor's Part E technical documents and guidance. This includes development and use of its site exposure matrix, its guidance for claims examiners, and the advice examiners receive from consulting physicians.

Site exposure matrix. While Labor has, with the assistance of a contractor, developed an extensive and growing exposure and work site database for use by its claims examiners—the site exposure matrix—there is no independent expert review process in place to validate or augment this work. According to Labor, the site exposure matrix was created specifically because Labor recognized that it would be difficult for employees or their survivors to provide information concerning the toxic substances that may have been present at the facilities where the employees worked and the medical conditions that may relate to exposure to such substances. The site exposure matrix includes site-specific information, such as what toxins were present at each facility;⁴⁶ building characteristics; job descriptions and activities; production processes; and incidents drawn from research, interviews, information from Energy, and submissions from the public.⁴⁷ It also includes information about established links between specific toxins and diseases. Developing a comprehensive site exposure matrix is challenging for various reasons. Historically, employers tended to place less emphasis on documenting and monitoring exposure to toxic substances that were not radioactive. Consequently, the records are not as complete, especially for the earlier years of nuclear weapons production. In addition, research on the health effects of toxic exposure is evolving, and research into the health effects of some of the toxins used in the nuclear weapons industry is limited.

Labor acknowledges that it would be impossible to compile a completely comprehensive database, but notes that it is constantly updating the matrix. In addition, Labor officials told us that the agency does not rely solely on this database for its determinations and added that their procedures and training both emphasize that the site exposure matrix is

⁴⁶ According to Labor officials, the site exposure matrix does not include radioactive substances except those whose properties may have toxic effects independent of radiation. For example, inhalation of soluble forms of uranium particles may cause kidney disease.

⁴⁷ The site exposure matrix has many features to help claims examiners perform their research: For example, information about chemicals may be found through searches of the official scientific name, trade or commercial names, or informal terms, and the matrix contains links to documentation about uses, properties, and acute and chronic health effects.

not a stand-alone decision-making tool. Labor stated that while it places strong weight on claims supported by information in the site exposure matrix, the absence of information is not by itself sufficient reason for denying a claim. For conditions without an established link in the matrix, Labor officials said they consider other evidence of causation, including information submitted by claimants, district medical consultants, industrial hygienists, health physicists, and toxicologists. Labor's guidance to its claims examiners specifies that this evidence must be compelling and probative—a well-rationalized medical opinion—in order to support compensation.

Labor officials maintain that because the site exposure matrix's inventory of illnesses and associated toxins is drawn from the National Library of Medicine's Haz-Map, a database of peer-reviewed scientific articles, a formal review is not necessary and would create unnecessary delays for Part E claims. They also said that in addition to tracking changes in this database, the National Library of Medicine researcher who developed the database is working under contract with Labor to continually update the site exposure matrix to reflect ongoing research into the relationship between toxins and disease. The researcher works with Labor's ad hoc internal site exposure matrix review committee.⁴⁸

Occupational health physicians we interviewed criticized the scientific soundness of the site exposure matrix, noting that the absence of published research linking certain chemicals to diseases does not constitute evidence that such links do not exist. Labor officials countered that the lack of a causal link in the matrix does not in itself constitute the basis for denying claims. They cited an example of an approved claim for a condition that was not linked to occupational exposure in the matrix but resulted from unique sensitivities to substances not toxic to the general population.

Occupational health physicians and claimant advocates we interviewed also expressed concern that the site-specific information in the matrix, such as the location of toxins, building characteristics, and job descriptions, does not account for the exposure of roving workers such as maintenance mechanics, security guards, firemen, and electricians, who

⁴⁸The committee reviews the results of the contractor's research and determines both the research priorities and the additions and modifications to the site exposure matrix. The contractor reports weekly to the committee on changes to the matrix.

were likely to spend time in multiple buildings. The physicians also noted that even jobs not considered hazardous could be risky, depending on where the offices were located. Labor explained that the site exposure matrix is set up to allow claims examiners to review potential exposure risks. Search capabilities are not limited by superficial job titles but allow claims examiners to review potential exposures in work areas where workers were located.⁴⁹ Claims examiners are also encouraged to discuss potential exposure with claimants. Claims examiners use the matrix as one component of their review—and may consult its data on buildings, work areas, location of toxic substances, production processes, and incidents along with information from claimant interviews, affidavits, and other evidence. Nevertheless, Labor officials noted that ultimately, claimants must submit evidence that is sufficient to support a well-reasoned compensation decision.

Medical guidance and consultation for claims examiners. Labor offers detailed guidance to its claims examiners on how to weigh a claimant’s medical evidence and provides a cadre of physician consultants for examiners to consult. However, this guidance is not reviewed by outside experts to ensure it is scientifically sound and reflects current research.

Labor’s claims examiners are not required to have medical expertise or training, but they are required to reach decisions about causation of diseases on the basis of medical evidence. Labor has developed a claims examiners’ manual that specifies how to request, review, supplement, and clarify employment and medical records. Interpreting evidence of the health effects of toxic exposure for Part E claims adjudication is a complex, sophisticated task, yet this guidance is not reviewed by outside experts. Several occupational health experts we interviewed, as well as both former Labor medical directors for Part E, expressed concerns about this guidance. For example, some physicians we interviewed objected to Labor’s instructions that exposure to each toxic substance be evaluated independently. They disagreed with Labor’s position that current science does not support the assertion that exposure to multiple toxins has a

⁴⁹ At our request, Labor arranged for GAO staff to view the site exposure matrix’s search capabilities for one site. While our observations are consistent with Labor’s description of the site exposure matrix’s search capabilities, we remain aware that limited public availability contributes to doubts about the site exposure matrix.

combined effect on health.⁵⁰ Because nuclear weapons facilities typically exposed workers to multiple hazardous substances, these physicians assert that it is not realistic to consider the health effects of each toxin in isolation. Because the matrix includes only single causal linkages and does not address combinations of toxins, these physicians are concerned that the site exposure matrix is not sufficiently sophisticated to include the nuances of toxic exposure research, and that some claims examiners will deny claims automatically if they don't find a causal link in the matrix even if Labor discourages this practice.

Oversight of consulting physicians. Although adjudication decisions are subject to multiple levels of internal review, Labor does not have an oversight process in place to ensure quality, objectivity, and consistency of its consultant physicians' work.⁵¹ Of the 78 physicians retained by Labor to help claims examiners interpret medical evidence on diagnosis, causation, and impairment, 61 reported specializing in occupational medicine. These physician consultants review medical records and provide advice about causation on an as-needed basis at the request of claims examiners. Occupational physicians and the former medical directors for EEOICPA programs expressed concerns to us about the consistency of the consultant physicians' reports and suggested the need for quality control measures such as peer review of sampled reports and trend analyses of multiple reports. Labor officials acknowledged the program does not have a system for quality review of its contractor physicians' reports.

Probability of causation for Part E cancer claims. Although the statutory language regarding eligibility for compensation is different in Part B and Part E, Labor has decided to use the same procedures it uses to adjudicate Part B radiation-related cancer claims when it adjudicates radiation-related cancer claims under Part E.⁵² As a result, Labor applies

⁵⁰The terms used are "additive" or "synergistic," referring to the concept that toxic substances may act in combination in ways that magnify their adverse effects on health, doubling or even multiplying the degree of potential harm.

⁵¹The physicians' role is limited to helping interpret medical evidence and responding to questions from the claims examiners, who are responsible for making all legal determinations.

⁵²20 C.F.R. § 30.213. For Part B claims, Labor is required to use the guidelines issued by the Department of Health and Human Services' NIOSH at 42 C.F.R. Part 81, which state at § 81.2 that, as required by EEOICPA, the guidelines "produce a determination as to whether it is at least as likely as not (a 50 percent or greater probability) that the cancer of the covered employee was related to the radiation doses incurred by the employee in the performance of duty."

the same 50 percent probability of causation standard to determine the compensability of radiation-related cancer claims under Part B and Part E, which has raised concerns for claimant advocates about the agency's implementation of Part E. The disagreement centers on the appropriate interpretation of the differing language in Part B and Part E. Part B requires a determination that the cancer is "at least as likely as not related to employment at the [Department of Energy or Atomic Weapons Employer] facility."⁵³ In contrast, Part E specifies that for a claim to be compensable, Labor must find that "it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness."⁵⁴

Claimant advocates maintain that a 50 percent probability of causation is inappropriately high and not consistent with Part E. This position is grounded in the concept that the Part E language regarding compensation for illnesses that were caused, contributed to, or aggravated by exposure to toxic substances merits a lower threshold of probability than Part B. While Labor acknowledges that the statutory language is different for the two programs, the agency asserts that it is clear from the scientific literature that it is not possible to definitively attribute any individual's cancer to any particular cause and that scientific analysis does not distinguish between cancers that are caused or contributed to by radiation. Labor further asserts that its approach provides the only reasonable factual basis to support a determination under Part E.⁵⁵ Labor officials also told us that the agency relies on the probability of causation based on NIOSH's dose reconstruction for Part E cancer claims only when it is unable to support compensation based on exposure to a nonradioactive toxic substance.

NIOSH scientists noted that NIOSH was only informally involved in developing Labor's regulation on how to interpret dose reconstruction results under Part E despite that document's discussion of sophisticated legal, scientific, and statistical concepts. Although Labor adopted its

⁵³ 42 U.S.C. § 7384n(b).

⁵⁴ 42 U.S.C. § 7385s-4(c). Labor must also find that it is at least as likely as not that the exposure to the toxic substance was related to employment at a Department of Energy facility.

⁵⁵ See preamble to Department of Labor's Final Rule "Performance of Functions; Claims for Compensation under Energy Employees Occupational Illness Compensation Program Act of 2000, as amended," 71 Fed. Reg. 78520, December 29, 2006.

regulation through the public notice and comment rulemaking process, Labor did not fully engage NIOSH experts on the more technical aspects of the issues during this process. Meanwhile, Labor maintains that the claimant-favorable nature of dose reconstruction more than compensates for differences between causal or contributory effects of radiation exposure (even if the probability models could make such distinctions, which Labor maintains they cannot). In particular, as noted above, use of the 99 percent confidence interval to estimate the probability of an exposure-cancer link attributes cancer risk, and compensates claimants, for cancers when radiation doses were very low.

Despite Agencies' Actions, EEOICPA Program Transparency Remains Somewhat Limited

The implementing agencies have taken various steps to make information public, but national security considerations and the complex, science-based methods underlying EEOICPA claims adjudication pose challenges to information sharing. While NIOSH has worked with Energy to clear some sensitive and classified information for publication in the site profiles developed for Part B cancer claims, Labor has not as yet done so for the site exposure matrix used for Part E. Also, NIOSH has established an ombudsman to help claimants whose cases are undergoing dose reconstruction, but Labor has not publicly responded to its Ombudsman's annual reports on claimant concerns.

Agencies Have Taken Steps to Help Claimants and Make Complex Information about Claims and Methods Accessible

The sheer complexity of the information NIOSH generates to assist Labor with its adjudication of cancer claims has led to concerns that the process is incomprehensible to claimants. According to agency officials and the Ombudsman, both the dose reconstruction process and the results of individual decisions are often difficult for claimants to grasp. NIOSH has taken a number of steps to assist claimants and communicate with them and the public about its work. Both Labor and NIOSH have also posted a great deal of information about program implementation and data on their respective Web sites. Agency measures to enhance public and claimant knowledge of the adjudication process include the following:

Establishment of two claimant liaison positions at NIOSH. To help claimants and petitioners understand the dose reconstruction process and navigate the requirements for seeking Special Exposure Cohort status, NIOSH established a Special Exposure Cohort Petition Counselor position and a consultant/ombudsman position. These officials are available to provide specialized one-on-one consultations about NIOSH's programs, documents, and the results of dose reconstruction. The Special Exposure Cohort Petition Counselor is responsible for ensuring that petitioners are

fully informed about the requirements for a successful petition, helping them prepare their petitions, and keeping them informed throughout the petition review process. The NIOSH Ombudsman is also available to help petitioners compile the information they need to support their petitions and to help resolve claimants' questions about the dose reconstruction process.

The officials in both of these positions told us how confusing it is for claimants to navigate the program and keep track of all the various agencies and processes involved. In addition to clarifying complex program and regulatory requirements, both liaisons told us they take an active role to resolve concerns. For example, the Special Exposure Cohort Petition Counselor described her response to a petitioner's concern that NIOSH had not reviewed a classified document important to the petition's success. She first arranged for Energy to review the document and respond to specific questions to determine whether it might affect the petition, then arranged for NIOSH scientists with the appropriate clearance to see the document. Finally, she arranged a conference call between the petitioner and NIOSH health physicists to discuss NIOSH's interpretation of the classified information and its decision that its contents would not change the petition's outcome. The petitioner in question disagrees with that decision, but the NIOSH petition counselor ensured that the decision was reached only after NIOSH could demonstrate that it had not overlooked pertinent information. The Ombudsman told us she is able to facilitate access to information for claimants and arrange conference calls with the health physicists who prepare dose reconstructions to discuss individual dose reconstruction results.

Revision of standards for written and oral communication with claimants by NIOSH. NIOSH officials have described the challenge of creating reports and letters that provide the degree of specificity needed for legal and technical accuracy without being so complex they are not understandable to a layperson. According to agency officials, the agency is working with its contractor and public health communications specialists to revise the descriptions of the results of dose reconstructions it sends to claimants. The new format will include a section with legal information, another section with enough technical specificity to describe the dose reconstruction process and results, and a third interpretive section that will convey the findings in terms designed to be accessible to readers with an eighth grade education.

The Advisory Board has also recommended that NIOSH revise the information it provides to claimants when they receive the results of a dose reconstruction for claims in which the agency has employed an overestimation measure. The information provided to claimants would need to explain that the probability of causation could decrease later if NIOSH has to provide a more precise estimate because more detailed information has become available or the claimant develops a new cancer. This recommendation was made in response to complaints that claimants whose original dose reconstruction was overestimated were confused and dismayed when they developed additional cancers, and subsequent, more precise estimates resulted in lower doses.

Publication of a variety of informational resources. NIOSH's publicly available information includes an overview of EEOICPA, a detailed frequently asked questions section on its Web site about its activities, a video describing dose reconstruction, and a number of pamphlets that explain NIOSH's activities in various levels of detail. These materials are designed for a variety of claimants with diverse educational backgrounds, ages, and health status. Labor has also developed a variety of brochures about the application and adjudication process and publishes its internal bulletins and claims examiners' manuals on its Web site.

Open Advisory Board meetings. Since the Advisory Board is subject to the Federal Advisory Committee Act, most of its meetings must be open to the public and announced in advance in the Federal Register. The board also announces its meetings on NIOSH's Web site. Members of the public can attend in person or by calling a toll-free telephone number. In addition, transcripts of all meetings are published on the Web site, although according to the board's designated federal official, the complex subject matter makes proofreading and rapid publication a challenge. To address this problem, the board Chairman decided in late 2009 to expedite the public availability of meeting transcripts by posting a preliminary version, reviewed only for Privacy Act compliance and subject to correction.

Labor's information and assistance to claimants. For its part, Labor manages contractor-run resource centers around the country to provide information about EEOICPA and to assist the public in filing claims. Staff at the Richland, Washington (Hanford), resource center told us they travel to regional events to do outreach for potential claimants. Labor has also established a "traveling" resource center that visits various communities to provide one-on-one assistance. In addition, the program director at Labor has participated in conference calls with claimant advocates.

Public Access to Site Exposure Matrix for Part E Is Limited, but Labor and Energy Are Planning to Release More Information

Public access to facility information about other types of toxins compiled in Labor's site exposure matrix for Part E adjudication is far more limited than it is for the documents NIOSH has published about radiation exposure. This means that one of Labor's key resources for Part E claims adjudication has not had the benefit of being reviewed by claimants and others who worked in those facilities. While there are detailed search capabilities for claims examiners, the publicly available information in the matrix for each site consists of a list of substances confirmed to have been present. Searches by disease yield either a list of toxic substances with established links or a statement that no toxic substances in the site exposure matrix database show an established link to the occupational disease at this time. As noted above, the matrix is a key resource for Part E adjudication, used to inform claims examiners' research on the link between exposure to toxins and illness. However, because claimants do not have access to the full informational resources in the site exposure matrix, they cannot review the totality of the evidence that Labor considered when adjudicating their claims and thus may not be able to understand the basis for, or potentially challenge, a denial. In addition, to the extent that the information in the database is not available to be reviewed, there are few opportunities for claimants and scientists to discover and remedy any areas where information is missing or inaccurate.

Because the information about toxic chemicals and site characteristics is sensitive, agency officials told us that Labor's access to site data from Energy for its site exposure matrix has been based on an interagency agreement that the information would be used internally by Labor and kept secure. Labor lacks the authority to publish more of the site exposure matrix content before it has been cleared by Energy. The agencies have only recently begun to formally discuss a process for making these data public, and they do not yet have a schedule in place for this clearance process. Labor's practice has been to release only limited excerpts in response to claimant requests for a copy of their claim file under the Privacy Act.⁵⁶ Whereas NIOSH worked with Energy at the outset of the Part B program to, as much as possible, make the information it has acquired for its site profiles public, Labor only recently approached

⁵⁶ According to Labor officials, the contents of the site exposure matrix are not classified and excerpts may be safely disclosed to individual claimants, but all of the data together could be considered sensitive. If a printout of the matrix search result is in the file, Labor sends it along with the rest of the claim file in response to a claimant's Privacy Act request for his or her own records. However, claims examiners are not consistent about printing out their matrix search results.

Energy about undertaking a similar process for Part E.⁵⁷ Although Energy officials maintain that full public access could pose a national security risk, they are willing to work with Labor on a clearance process to determine what additional information may be safely made available.

Lack of Response by Labor to Ombudsman's Reports Hampers Effective Resolution of Claimant Concerns

The Labor Ombudsman responds to claimant queries and reports annually to Congress on their concerns, but his role is relatively limited. Although the act provides that the Secretary of Labor may assign additional responsibilities, the Ombudsman's activities have been limited to date to those specified in the act—to provide information to claimants regarding the available benefits and the relevant requirements and procedures involved in a claim, and to submit an annual report to Congress regarding the number and types of claimant requests for assistance and an assessment of the most common difficulties faced by claimants.⁵⁸ For example, according to the Ombudsman, the Ombudsman's office does not have access to Labor's claims files or databases, so it cannot respond to questions about a claim without seeking information or access to documents from other Labor officials. Until late 2009, Labor required the Ombudsman's office to request official decision letters from claimants rather than providing the Ombudsman with direct access. This is changing gradually: The Ombudsman reported in January 2010 that program officials have gradually and informally granted the Ombudsman more access to information and been more supportive of his activities. For example, the agency has begun providing more direct lines of communication with program staff. The activities and access are still not comparable to those of the NIOSH Ombudsman, who is authorized to review claimant files and facilitate discussions with the scientists who performed dose reconstructions to help address questions related to individual claims. Also, while the Labor Ombudsman's reports to Congress can offer insights on aspects of the program that have presented problems for claimants, Labor is not required to respond formally to those reports,

⁵⁷ NIOSH's work preparing site profiles and dose reconstruction methods involves research into radioactive materials, production, building conditions, incidents, and worker monitoring and safety practices at Energy and Atomic Weapons Employer sites throughout the country from World War II through the present. To facilitate this research while protecting national security, Energy has entered into agreements with NIOSH regarding access to documents cleared for review and granted security clearances to allow NIOSH direct access to classified documents.

⁵⁸ The Ombudsman is also authorized to recommend that Labor establish additional claimant resource center sites. 42 U.S.C. § 7385s-15(c).

or take remedial actions. Labor officials reported that they do confer with the Ombudsman regarding his findings, and the Ombudsman related to us that the agency has recently become more receptive to his suggestions.

By comparison, some federal statutes provide a more robust role for various ombudsmen within their respective agencies. For example, the National Taxpayer Advocate of the Internal Revenue Service and the Ombudsman for Citizenship and Immigration Services are authorized by statute to make recommendations to their respective agencies, which must then report on actions they have taken in response. In contrast, Labor is not statutorily required to respond to its Ombudsman's reports. For example, the Ombudsman has reported since 2005 that complaints about customer service consistently rank high among claimant concerns, but Labor has not publicly responded to these concerns or developed formal plans for addressing the issues.⁵⁹ After years of raising this as a general issue, the Ombudsman's office has begun sending every complaint to the director of the district office involved. Although the Ombudsman's office receives a copy of the director's response, the Ombudsman told us that no noticeable improvements have yet resulted.

Although EEOICPA requires only one ombudsman—the Ombudsman at Labor—other claimant liaison positions have been separately created.⁶⁰ As noted above, NIOSH established two claimant liaison positions to help individuals interpret complex program requirements and documents.⁶¹ The NIOSH Ombudsman's role extends to helping petitioners complete forms and prepare an effective, complete Special Exposure Cohort petition. In 2007, New Mexico established an office of Nuclear Workers' Advocacy for EEOICPA claimants. The New Mexico Advocate works on behalf of individual claimants, and in July 2008, the state of New Mexico reported that the office had assisted 220 workers and survivors to obtain EEOICPA

⁵⁹Labor requires claims examiners to take customer service training annually and instituted a program in 2007 to monitor calls between claimants and customer service representatives—agency representatives who can answer basic questions about the status of the claim. This program, however, does not monitor calls between claimants and claims examiners, and agency officials could not tell us whether the monitoring program had any effect on customer complaints.

⁶⁰The amendment to EEOICPA expanding the Labor Ombudsman's authority to Part B also directed the Labor Ombudsman to work with the NIOSH Ombudsman. Pub.L.No. 111-84, Div. C, Title XXXI, Subtitle D, § 3142(a), (42 U.S.C. §7385s-15(g)).

⁶¹For convenience we refer to these two positions as claimant liaisons, although each has a unique title.

compensation of more than \$4.9 million. The Advocate acts as a liaison among claimants who have filed EEOICPA claims, their former employers, Energy, and Labor—and assists claimants throughout the process, including appeals. The Advocate explained that because lack of employment records is one of the biggest barriers to obtaining benefits, her office has been especially effective at helping claimants obtain documentation from Energy contractors, even after Energy was not able to obtain the records. She attributed her office's success at finding these records to a thorough interview process, in-depth research on behalf of claimants, and the relationships the office has established with local Energy officials. The Advocate and another New Mexico official noted that state funds for this work are limited and that they might not be able to keep up with the growing demand for these services.

Conclusions

EEOICPA was established to provide compensation to nuclear weapons production workers performing work vital to the nation's interests, often under extremely hazardous conditions, who developed cancer or other diseases related to on-the-job exposure. As Congress stated in the act, government agencies and contractors had a history of placing workers at risk without informing them about the hazards and deterring compensation claims. In light of this history, it is critical that policies and procedures are in place to promote program credibility and transparency. This is especially important in cases where Energy or its predecessor agencies failed to maintain records of employment, accidents, and exposure to radiation and other hazards.

Meanwhile, it is inevitable that there will be differences of opinion about the program, particularly since issues of national security are still a concern when it comes to full public disclosure of all nuclear site data. It may be, as well, that no amount of information about dose reconstruction will be enough to satisfy those who question its validity. Nonetheless, independent review is an important method of validating findings and enhancing the credibility of the scientific basis of claims decisions, and the Advisory Board serves this purpose for the aspects of the Part B program that it oversees. In contrast, there is no outside independent review of the scientific soundness of important aspects of Labor's implementation of the Part E program. Moreover, while Labor has various quality control measures in place for the Part E program, there are some gaps, such as no oversight process to ensure the quality, objectivity, and consistency of its consultant physicians' work and no independent expert review of the scientific soundness of the detailed information in the site exposure matrix.

Labor and Energy have expressed a willingness to work together to determine what additional information from the Part E site exposure matrix may be cleared for public release. This could facilitate opportunities for claimants to better understand the basis for decisions on their claims and for claimants and others to help improve the accuracy and comprehensiveness of the matrix. However, a formal agreement and action plan for this clearance process would provide greater assurance that it will be carried out in an efficient and effective manner.

Labor, NIOSH, and Energy have taken steps to assist claimants in navigating a program that is scientifically complex and requires an extensive investment of resources. In addition, the Labor Ombudsman has issued annual reports to Congress highlighting the most common difficulties claimants have faced, including persistent complaints about customer service. However, Labor does not respond publicly to the Ombudsman's reports. As a result, claimants have little knowledge that their concerns are heard or that they are being addressed.

Recommendations for Executive Action

To enhance oversight and transparency of EEOICP, we recommend that the Secretary of Labor take the following three actions:

1. Strengthen the quality control measures in place for Part B lung disease claims and Part E processes with independent reviews. Such measures should include, for example, instituting periodic peer reviews of sampled reports by Part E consulting physicians, arranging for technical review of detailed information in the site exposure matrix, and obtaining periodic expert review of medical evidentiary requirements for the Part B claims related to lung diseases.
2. Establish a formal agreement and action plan with the Secretary of Energy to release more information, where appropriate, in the site exposure matrix database in order to allow greater public access and input. In doing so, Labor should actively seek additional information from worker representatives and site experts about job descriptions, processes, and potential exposure.
3. Develop formal action plans, within Labor's scope of authority, in response to the Labor Ombudsman's reports regarding major claimant concerns and make the plans and updates on their subsequent status publicly available. One such plan should offer Labor's response to the Ombudsman's reports about consistent problems with customer service.

Matter for Congressional Consideration

To enhance oversight of claims adjudication under Part E of EEOICPA, Congress may wish to consider amending the act to establish an independent review board for Part E, similar to the Advisory Board on Radiation and Worker Health established under Part B of the program. Such an independent board could review and report on the scientific soundness of Labor's implementation of Part E, including the site exposure matrix, guidance provided to claims examiners on medical evidence, and Part E probability of causation standards for radiation-related cancers. In creating such an independent board, it would be critical to develop appropriate provisions regarding its funding structure, appointment of members, and staff support. Our 2007 report on the Part B Advisory Board highlighted challenges that these three areas had presented to the board's independence and identified various options to enhance board independence in each area.

Agency Comments and our Evaluation

We provided a draft of this report to the Secretaries of Labor, Energy, and Health and Human Services for review. Health and Human Services provided technical comments, which we have incorporated in the report where appropriate.

In its comments, Energy said that with regard to our second recommendation, it has requested from Labor a static copy of the site exposure matrix database, and will screen the database and redact information that would pose a national security risk if released, so the database can be made available to the public. Comments from Energy are reproduced in full in appendix IV.

In its comments on the draft, Labor said that it is always looking to improve the program and will be planning ways to implement changes in light of our recommendations. In addition, Labor provided clarification of the nature and uses of the site exposure matrix. With regard to making more of the site exposure matrix publicly available, Labor stated that the site exposure matrix is available on its Web site but is not in the format that is used by claims staff during the claims process. As we noted in our report, the information available to the public is much more limited than that available to the claims examiners. It added that Energy owns and controls dissemination of the information regarding toxic substances, locations, and processes in the nuclear complex, and that making a detailed version of the site exposure matrix available to the public could pose a threat to national security. Labor said, however, that it recognizes that this creates a transparency issue and stated that it has been working with Energy on this issue and will continue to do so.

With regard to the use of the site exposure matrix, Labor clarified that the database was created specifically to assist claimants in making their case by providing information on toxic substances that may have been present at the facilities and any medical conditions resulting from exposure. Labor noted that the site exposure matrix is not used to deny claims and that its procedures and training reiterate that the database is not a stand-alone decision-making tool, and that all avenues must be pursued when developing a claim, even if the database does not contain a link between exposure and illness. We clarified our characterization of the site exposure matrix and how Labor uses it to adjudicate claims. Comments from Labor are reproduced in full in appendix V.

In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov/>.

If you or your staff have any questions about this report, please contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.



Andrew Sherrill
Director, Education, Workforce,
and Income Security Issues

List of Requesters

The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
United States Senate

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Patty Murray
Chairman
Subcommittee on Employment and Workplace Safety
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
Committee on Education and Labor
House of Representatives

The Honorable Lamar Alexander
United States Senate

The Honorable Michael F. Bennet
United States Senate

The Honorable Sherrod Brown
United States Senate

The Honorable Jim Bunning
United States Senate

The Honorable Maria Cantwell
United States Senate

The Honorable Mitch McConnell
United States Senate

The Honorable Bill Nelson
United States Senate

The Honorable Harry Reid
United States Senate

The Honorable Charles E. Schumer
United States Senate

The Honorable Mark Udall
United States Senate

The Honorable George V. Voinovich
United States Senate

The Honorable Ed Perlmutter
House of Representatives

The Honorable Jared Polis
House of Representatives

Appendix I: Objective, Scope, and Methodology

To determine the length of time Labor, the National Institute for Occupational Safety and Health (NIOSH), and Energy each spent processing claims, and the factors affecting processing times, we obtained data from Labor and NIOSH from their case management systems for claims filed from fiscal year 2002 for Part B and fiscal year 2005 for Part E through September 2008. We assessed the data's reliability and found the data reliable for the purposes of this study by checking for outliers and inconsistencies and by interviewing Labor officials. We analyzed trends in minimum, maximum, median, and average processing times from fiscal year 2002 for Part B and fiscal year 2005 for Part E through September 2008. To determine which steps in the process are most time-consuming, we examined time spent by each agency and time spent between the milestones tracked by the agencies. To determine which factors affected processing times, we examined claim-processing times by type of claim (e.g., Parts B and E or with and without dose reconstruction cases), and by district offices to determine if there were significant and consistent differences among the processing times based on these characteristics. We also reviewed NIOSH's analysis of how frequently claims move back and forth between NIOSH and Labor,¹ reasons for and effects of major NIOSH revisions to dose reconstruction methods and site profiles,² and how long it took Energy to respond to Labor and NIOSH requests for information. We also interviewed agency officials to obtain their views on what aspects of the program they believe affect processing times. We interviewed officials and reviewed relevant documentation to identify efforts to expedite claim processing. To evaluate agencies' performance in the area of timeliness, we examined timeliness measures established by Labor and NIOSH and whether they had met their established goals. For additional context, we reviewed external evaluations of Labor's implementation of the program such as the Program Assessment Rating Tool review and a report on the program by Labor's Office of Inspector General.

To determine the direct cost of claim processing, we obtained administrative cost data from program inception (fiscal year 2001 for Part B and fiscal year 2005 for Part E) through fiscal year 2008 from Labor and NIOSH and from fiscal year 2006 through fiscal year 2008 from Energy.

¹Cases may move back and forth between NIOSH and Labor because NIOSH, Labor, or claimants may identify new information, such as new types of cancer or a change in employment information.

²Dose reconstruction methods and site profiles are revised on an as-needed basis, frequently triggered by new information or modified scientific approaches.

These data have not been audited. We assessed the data's reliability by checking for outliers and inconsistencies and found the data reliable for the purposes of this study. We also interviewed agency officials and reviewed relevant documentation to identify possible reasons behind the trends in costs (e.g., number of claims processed, complexity of claims processed, whether greater efficiencies have been introduced, and so forth). Because the same administrative resources were used for various parts of the process, we were not able to disaggregate costs for discrete steps in the claims process. Consequently, we could not determine the costliest parts of the process within an individual agency.

To assess the quality controls and transparency of the claims adjudication process, we reviewed relevant statutes, regulations, and agency technical and procedural guidance for the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA); interviewed officials from Labor, Energy, and NIOSH; and interviewed members of the Advisory Board on Radiation and Worker Health and its technical contractor. To obtain additional expert opinion on the technical and medical aspects of EEOICPA claims adjudication, we identified occupational and environmental health organizations and specialty societies, such as the American College of Occupational and Environmental Medicine. We contacted all such organizations we could identify through referrals, Internet searches, and review of Advisory Board meeting minutes and interviewed those physicians and scientists that made themselves available. We also interviewed the two former Medical Directors of Labor's Division of Energy Employees Occupational Illness Compensation and occupational medicine specialists who are actively involved in assisting claimants.

To obtain claimant perspectives on the quality controls and transparency of the claims adjudication process, we interviewed claimant ombudsmen with Labor, NIOSH, and the state of New Mexico, and claimant representatives from a nationwide coalition of grassroots advocacy groups, known as the Alliance of Nuclear Worker Advocacy Groups (ANWAG). Largely through the assistance of ANWAG, we were in touch with individual claimants as well as physicians and representatives of labor unions with experience at sites including Hanford, Santa Susana, Oak Ridge, Rocky Flats, Linde Ceramics, and the Portsmouth Gaseous Diffusion Plant.

Regarding quality control, we also reviewed EEOICPA, the agencies' regulations, and policies and procedures to determine whether there was adequate oversight of claim processing and oversight to ensure that decisions were reached using complete and accurate information. In

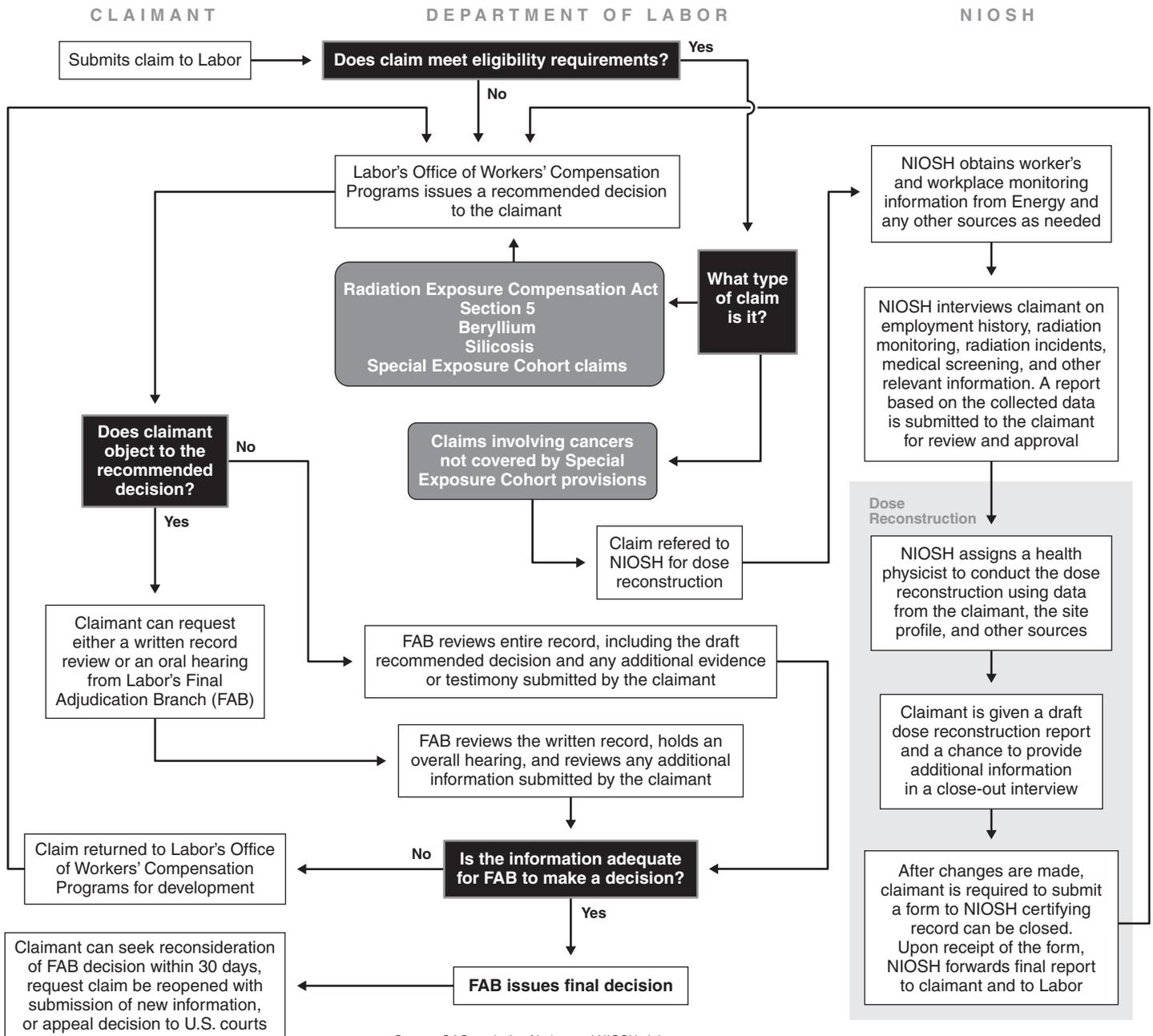
addition to speaking with officials in Labor's national office, we visited the Seattle District Office to interview officials about quality control processes in place at the regional level. We did not assess the scientific validity of technical methodologies (for example, NIOSH dose reconstruction) or the accuracy of individual claims determinations or site profiles. In addition, we did not attempt to resolve disputes regarding individual claims or Special Exposure Cohort petitions.

To examine agencies' efforts to promote program transparency for claimants, we also reviewed the agencies' policies and procedures for providing pertinent information to claimants, including agency ombudsman reports. We reviewed Freedom of Information Act and security review procedures, including Energy's security plan for providing classified and controlled information to NIOSH and Labor, and interviewed agency officials about their practices. We interviewed claimant advocacy groups and obtained documentation about their experiences with requesting and obtaining documents. We interviewed Labor and NIOSH officials about whether the agencies were able to obtain the information that they need to adjudicate claims. To determine the kind of assistance the agencies provide to claimants, we interviewed agency officials about the various types of assistance available (e.g., Former Worker Medical Screening Program, resource centers, and ombudsman's offices) and visited Labor's Hanford Resource Center and the Hanford Nuclear Reservation. We also reviewed relevant agency policies and procedures and interviewed Labor's Ombudsman and NIOSH's Ombudsman and Special Exposure Cohort Petition Counselor about their claimant assistance activities. We discussed claimant concerns about information and assistance with agency officials. We reviewed the Labor Ombudsman's reports and followed up with Labor to determine its response to the documented claimant concerns. We also reviewed statutes creating ombudsman positions in connection with other federal programs.

Because Labor's Office of Inspector General recently reviewed and made recommendations on the role of the resource centers, we designed our study to avoid duplicating its efforts.

We conducted this performance audit from November 2008 to March 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Labor and NIOSH's Claim-Processing Steps



Source: GAO analysis of Labor and NIOSH claim processes.

Appendix III: NIOSH and Labor's Performance Measures

Table 6: NIOSH Performance Measures for Fiscal Year 2009

Goal 1: Provide a dose reconstruction to all claimants in a timely manner			
Measure	Target	Baseline performance^a	Target achieved
Complete a percentage of initial cases within 6 months of receipt ^b	35%	31%	N/A
Complete a percentage of legacy cases during fiscal year 2009 ^c	50%	54%	N/A
Complete a percentage of returns from Labor within 6 months of being sent back to NIOSH ^d	40%	Baseline not set	N/A
Goal 2: Deliver an evaluation report within 180 days for §83.13 petitions^e			
Complete a percentage of evaluation reports within 180 days	60%	Baseline not set	N/A
Provide to the board and petitioners a schedule to complete those evaluation reports that were not completed within 180 days	No target	Baseline not set	N/A

Source: NIOSH.

^aA baseline is a starting point for measuring performance, while a target is the level of performance an agency wishes to achieve. Actual performance for fiscal year 2009 was not available (N/A).

^bNIOSH defines "initial cases" as cases that have been sent to NIOSH for a dose reconstruction for the first time.

^cNIOSH defines "legacy cases" as cases that have been at NIOSH for 2 years or more without a completed dose reconstruction.

^dNIOSH defines a "rework" as a case that has been returned to NIOSH by Labor to perform a dose reconstruction again using all currently approved methodologies applicable to that case.

^eThese are Special Exposure Cohort petitions submitted to NIOSH from petitioners. NIOSH then develops an evaluation report that describes NIOSH's determination of the petition.

Table 7: Department of Labor Performance Measures in 2008

Measure	Target	Actual, Part B	Actual, Part E	Target achieved
1 Create claims within 5 calendar days of receipt	95%	96.8%	97.0%	Yes
2 Take initial action within 14 calendar days of creating claim	90%	96.0%	95.7%	Yes
Take initial action within 25 calendar days of creating claim	95%	97.7%	97.5%	Yes
3 Complete initial processing on claims within 180 days of receipt	65%	77.6%	54.9%	No
Complete initial processing on claims within 300 days of receipt	85%	89.1%	69.1%	No
4 Average number of days to complete initial processing (Government Performance and Results Act [GPRA] goal)	Part B: 226 Part E: 290	164.6	283.7	Yes
5 Complete probability of causation calculations and issue recommended decisions after claims are returned from NIOSH within 45 days receipt	90%	89.8%	N/A ^a	No
6 Actions taken on claims affected by Special Exposure Cohorts and Program Evaluation Plans and Program Evaluation Reports within 45 days	50%	45.0%	N/A ^a	No

**Appendix III: NIOSH and Labor's
Performance Measures**

Measure	Target	Actual, Part B	Actual, Part E	Target achieved
Actions taken on claims affected by Special Exposure Cohorts and Program Evaluation Plans and Program Evaluation Reports within 90 days	95%	77.8%	N/A ^a	No
7 Issue final decisions within 30 days of receipt of claimant's waiver of the right to a hearing or a review of record	87%	91.0%	91.0%	Yes
Issue final decisions within 75 days of receipt of claimant's waiver of the right to a hearing or a review of record	87%	96.2%	95.3%	Yes
8 Issue final decisions on all other approved or no-contest claims within 75 days of the recommended decision (GPRA goal)	87%	92.1%	89.7%	Yes
9 Issue final decisions for review of the written record within 75 days of receipt of the request for review of the written record (GPRA goal)	87%	89.7%	89.2%	Yes
10 Issue final hearing decisions within 180 days of the receipt of the request for hearing (GPRA goal)	87%	90.2%	87.5%	Yes
11 Take initial action on remands or the director's order within 30 days of receipt of the case	90%	95.5%	91.0%	Yes
12 Make recommended decision after remand or director's order within 120 days	75%	92.9%	80.8%	Yes
13 Process lump-sum payments within 15 days of receiving claimant's EN-20 form	90%	99.0%	99.4%	Yes
14 Complete reopening requests in district office within 90 days	75%	88.9%	86.6%	Yes
15 District office responds to phone inquiries for both Parts B and E within 2 work days	90%	94.8%	94.8%	Yes
16 Final Adjudication Branch responds to phone inquiries for both Parts B and E within 2 work days	90%	94.8%	94.8%	Yes
17 Respond to requests for medical authorization within 5 calendar days of thread opening	75%	86%	86%	Yes
18 Complete wage loss recommended decisions within 240 days	75%	N/A ^b	32.3%	No
Complete impairment recommended decisions within 180 days	75%	N/A ^b	40.2%	No

Source: Department of Labor data.

Note: Two of these measures were not met because of performance on Part B claims and two were not met because of performance on Part E claims. However, one missed target for Part E was established in 2007.

^aThis is not applicable to all Part E cases, because only Part B cases are considered for special exposure cohorts.

^bThis is not applicable to Part B, because only Part E cases qualify for compensation for wage loss and impairment.

Appendix IV: Comments from the Department of Energy

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Department of Energy

Washington, DC 20585

March 9, 2010

Mr. Andrew Sherrill
Director
Education, Workforce and Income Security Issues
U.S. Government Accountability Office
Room 5928
441 G Street, NW
Washington, DC 20548

Dear Mr. Sherrill:

In response to your February 2, 2010, request for comments from the Department of Energy (DOE) on *Energy Employees Compensation: Additional Independent Oversight and Transparency Would Improve Program's Credibility (GAO-10-302)*, the Office of Health, Safety and Security provides the following comment:

With regard to page 45 of the report, Recommendation 2 states: "Establish a formal agreement and action plan with the Secretary of Energy to release more information, where appropriate, in the site exposure matrix database in order to allow greater public access and input. In doing so, actively seek additional information from worker representatives and site experts about job descriptions, processes, and potential exposure."

DOE has requested from the Department of Labor a static copy of the site exposure matrix database, and will screen the database and redact information that would pose a national security risk if released so the database can be made available to the public.

If you have any questions, please contact me at (202) 287-6071, or your staff my contact Dr. Andrew Weston-Dawkes at (301) 903-3526.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Podonsky".

Glenn S. Podonsky
Chief Health, Safety and Security Officer
Office of Health, Safety and Security



Printed with soy ink on recycled paper

Appendix V: Comments from the Department of Labor

U.S. Department of Labor

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



FEB 26 2010

File Number:

Andrew Sherrill
Director
Education, Workforce, and Income Security Issues
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Sherrill:

I am writing in response to the draft of your report on the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Thank you for allowing us the opportunity to comment on the report prior to its publication.

First, we appreciate the report's findings that DOL has developed strategies to expedite case processing and performance measures to monitor timeliness, as well as the acknowledgement that these efforts have helped reduce the case backlog and shorten processing times. In addition, we are pleased with the finding that administrative costs appropriately reflect EEOICPA's science-based adjudication process and the highly technical nature of the claims.

There is one area (concerning our Site Exposure Matrices – SEM) for which we would like to provide some clarification. First, one recommendation in the report is that the Department of Labor (DOL) should increase transparency by making the SEM available to the public. Currently, the SEM is on DOL's web site, however it is not in the format that is used by the claims staff during the claims process. The SEM was developed in close coordination with the Department of Energy (DOE), and they own and control dissemination of the information regarding toxic substances, locations, and processes in the nuclear complex. They have indicated that the detailed version of SEM that the claims staff use could potentially pose a threat to national security if it were made public. We recognize that this creates a transparency issue and have been working with DOE for some time to determine whether and how we could place more of the detailed version of the SEM on our web site. DOE has indicated they are developing a plan for consideration of inclusion of more information on the SEM webpage, and we will continue to work closely with them on this issue.

In addition, the report does not clearly describe how the SEM is used during the claims process. On the one hand, it underestimates SEM as a tool in the development of a claim by leaving the impression that it is used to hinder, rather than help, the claimants. SEM was created specifically because DOL recognized that it would be difficult for employees or their survivors to provide us with information concerning the toxic substances that may have been present at the facilities where the employees worked and the medical

Working for America's Workforce

conditions that may relate to exposure to such substances. The database was created to assist the claimants with this information in order to make a case towards acceptance.

At the same time, the report tends to overestimate the importance of SEM in the adjudication process by leaving the impression that DOL relies on SEM to render compensation decisions. The SEM is not used to deny a claim, and DOL procedures and training reiterate that SEM is not a stand alone decision tool and that all development avenues must be pursued. DEEOIC places strong weight on claims that are supported by the information contained in SEM; however, the inverse is not true. Claims staff continues to develop claims even if no link or exposure is contained in SEM (through the use of district medical consultants, industrial hygienists, health physicists, and toxicologists, as appropriate).

We appreciate your team's thorough analysis of the program and their work with our policy and claims staff throughout this last year. We are always looking to improve the program and will be planning ways to implement changes in light of your recommendations.

Sincerely,



Shelby Hallmark
Director

Appendix VI: GAO Contact and Staff Acknowledgments

Contact

Andrew Sherrill, Director, Education, Workforce, and Income Security
(202) 512-7215, sherrilla@gao.gov

Acknowledgments

Meeta Engle, Assistant Director, managed this assignment. Other staff who made key contributions to this assignment were Emily Gunn, Lara Laufer, and Suzanne Rubins. In addition, Jessica Botsford provided legal assistance; Luann Moy assisted with the methodology; Susan Bernstein provided writing assistance; and James Bennett produced the graphics.

Related GAO Products

Energy Employees Compensation: Actions to Promote Contract Oversight, Transparency of Labor's Involvement, and Independence of Advisory Board Could Strengthen Program. [GAO-08-4](#). Washington, D.C.: October 26, 2007.

Energy Employees Compensation: Adjustments Made to Contracted Review Process, but Additional Oversight and Planning Would Aid the Advisory Board in Meeting Its Statutory Responsibilities. [GAO-06-177](#). Washington, D.C.: February 10, 2006.

Federal Compensation Programs: Perspectives on Four Programs. [GAO-06-230](#). Washington, D.C.: November 18, 2005.

Energy Employees Compensation: Many Claims Have Been Processed, but Action Is Needed to Expedite Processing of Claims Requiring Radiation Exposure Estimates. [GAO-04-958](#). Washington, D.C.: September 10, 2004.

Energy Employees Compensation: Even with Needed Improvements in Case Processing, Program Structure May Result in Inconsistent Benefit Outcomes. [GAO-04-515](#). Washington, D.C.: May 28, 2004.

Veterans' Benefits: Independent Review Could Improve Credibility of Radiation Exposure. [GAO/HEHS-00-32](#). Washington, D.C.: January 8, 2000.

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