

April 2003

**RADIATION
EXPOSURE
COMPENSATION**

**Funding to Pay Claims
May Be Inadequate to
Meet Projected Needs**



G A O

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Highlights of [GAO-03-481](#), a report to Congressional Committees

RADIATION EXPOSURE COMPENSATION

Funding to Pay Claims May Be Inadequate to Meet Projected Needs

Why GAO Did This Study

On October 15, 1990, the Radiation Exposure Compensation Act (RECA) was enacted providing for payments to individuals who contracted certain cancers and other serious diseases presumably as a result of their exposure to radiation released during aboveground nuclear weapons tests or as a result of their employment associated with the uranium mining industry during the Cold War era.

The RECA Amendments of 2000 required that GAO report to the Congress on the Department of Justice's administration of RECA not later than 18 months after the enactment of the amendments and every 18 months thereafter. GAO originally reported on the status of the program in September 2001. The objectives of this report are to update information on claims processing, payments from the Trust Fund, and administrative expenses.

What GAO Recommends

GAO recommends that the Attorney General consult with the congressional committees of jurisdiction to develop a strategy to address the gap between current funding levels and the amount of funding needed to pay claims projected to be approved over the 2003-2011 period.

www.gao.gov/cgi-bin/getrpt?GAO-03-481.

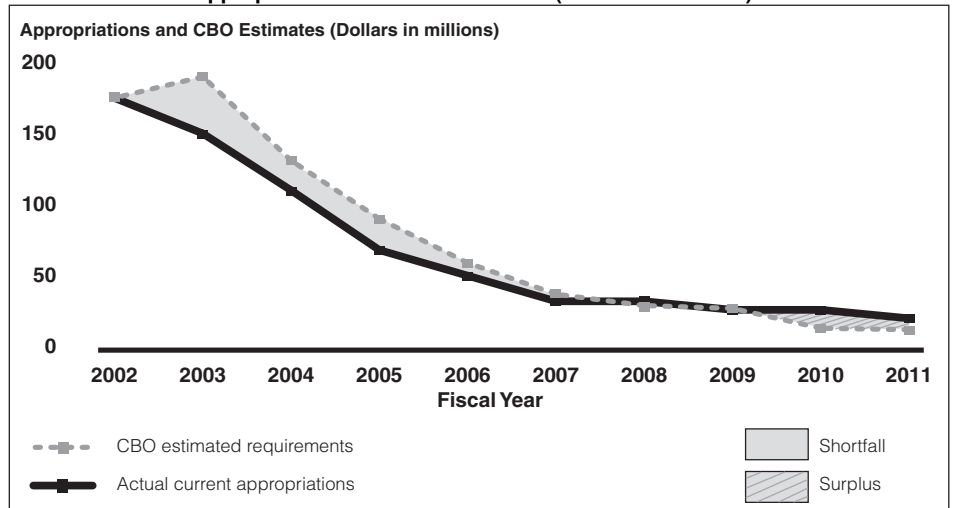
To view the full report, including the scope and methodology, click on the link above. For more information, contact, Paul L. Jones at (202) 512-8777 or jonesp@gao.gov.

What GAO Found

Since the enactment of the RECA Amendments of 2000, which expanded eligibility for benefits, the RECA program has experienced a significant increase in the number of claims filed. Claims also are taking longer to process, and the number of pending claims has grown sharply. Since we last reported in September 2001, claims have increased from 7,819 to 14,987. Pending claims have increased 300 percent, from 653 to 2,654. About 3,200 new claims are anticipated in fiscal year 2003. In addition, the average time to process claims increased for each category of claimant.

Given these circumstances, current funding for the RECA program to pay claims may be inadequate to meet projected needs. In fiscal year 2002, RECA was appropriated funds to cover a 10-year period—fiscal years 2002 through 2011 up to a specified amount per year—totaling \$655 million. The Congressional Budget Office (CBO) and the Department of Justice (DOJ) estimate that funding levels appropriated to the Trust Fund are insufficient to meet the projected claims. As a result, claims may be delayed, particularly through 2007. Since 1993, funding for DOJ administration of the program has been provided in a separate appropriation account for Radiation Exposure Compensation administrative expenses. For fiscal years 2001 and 2002, the RECA program may have exceeded its appropriation for administrative expenses. According to a program budget official, the RECA program spent about \$100,000 in fiscal year 2001 and about \$1 million for fiscal year 2002 in administrative expenses over the \$1.996 million appropriated to the RECA expenses account in those fiscal years. For fiscal year 2003, Congress authorized DOJ's Civil Division to absorb any additional funding required for administrative expenses above the amount appropriated. However, the availability of additional funds, if needed, for administrative expenses is contingent on the Civil Division's ability to absorb any additional costs.

RECA Trust Fund Appropriations and CBO Estimates (Dollars in millions)



Source: The Congressional Budget Office data.

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Abbreviations

CBO	Congressional Budget Office
DOJ	Department of Justice
FTE	full-time equivalent
OPB&E	Office of Planning, Budget and Evaluation
RECA	Radiation Exposure Compensation Act
RECP	Radiation Exposure Compensation Program
WLM	Working Level Months

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United States General Accounting Office
Washington, DC 20548

April 14, 2003

Congressional Committees

From 1945 through 1962, the United States conducted a series of aboveground atomic weapons tests as it built up its Cold War nuclear arsenal. Many people exposed to radiation resulting from the nuclear weapons development and testing program subsequently developed serious diseases, including various types of cancer. On October 15, 1990, in order to establish a procedure to make partial restitution to these victims for their suffering associated with the radiation exposure,¹ the Radiation Exposure Compensation Act (RECA) was enacted.² RECA provided that the Attorney General be responsible for processing and adjudicating claims under the act. The Department of Justice (DOJ) established the Radiation Exposure Compensation Program (RECP) within its Civil Division to administer its responsibilities under the act. RECP began processing claims in April 1992. RECA has been amended several times,³ including on July 10, 2000, when the RECA Amendments of 2000 were enacted.⁴ The amendments of 2000 broadened the scope of eligibility for benefits coverage to include new victim categories and modified the criteria for determining eligibility for compensation.

The 2000 amendments also included a mandate that we report to the Congress on DOJ's administration of RECA not later than 18 months after the enactment of the amendments and every 18 months thereafter. Our first report was issued in September 2001 and covered program performance from 1992 through fiscal year 2000.⁵ For this report, we are updating (1) information on claims processing, (2) information on the

¹RECA recognizes that the amount of money paid does not completely compensate for the burdens placed upon such individuals.

²P.L. 101-426, 104 Stat. 920 (1990).

³Early amendments included November 1990 amendments (P.L. 101-510, 104 Stat. 1835, 1837) that among other things expanded eligibility to include onsite participants and October 1992 amendments (P.L. 102-486, 106 Stat. 3131) that provided for the judicial review of denied claims.

⁴P.L. 106-245, 114 Stat. 501 (2000).

⁵U.S. General Accounting Office, *Radiation Exposure Compensation: Analysis of Justice's Program Administration*, [GAO-01-1043](#), (Washington, D.C: Sept. 17, 2001).

costs to administer the program, and (3) the status of Trust Fund expenditures.

To determine the outcomes of the claims adjudication process, including the number of approved and denied claims, the timeliness of the claims adjudication process, and the amount of money awarded, we obtained RECA-related case information from DOJ's Civil Division's case histories database for fiscal years 1992 through 2002. To determine the cost of administering RECP, we obtained data from the Civil Division's Office of Planning, Budget and Evaluation (OPB&E) for the end of fiscal years 1992 through 2002. To determine the amount of expenditures from the Trust Fund, we evaluated annual Trust Fund activity from fiscal years 1992 through 2002 provided by OPB&E. Appendix I provides details on our scope and methodology.

Results in Brief

The enactment of the RECA Amendments of 2000 was followed by a significant increase in the number of claims filed and processed. The number of claims filed has increased 92 percent, from 7,819 through the end of fiscal year 2000 to 14,987 through the end of fiscal year 2002. Claims are taking longer to process, and the number of pending (in process) claims has grown sharply since we last reported in September 2001. The number of pending claims rose about 300 percent, from 653 at the end of fiscal year 2000 to 2,654 by the end of fiscal year 2002. The percentage of claims processed within 12 months has dropped from 89 percent at the end of fiscal year 2000 to 79 percent by the end of fiscal year 2002.

The National Defense Authorization Act for fiscal year 2002 provided funding for the RECA Trust Fund to cover a 10-year period—fiscal years 2002 through 2011 up to a specified maximum amount per year. According to DOJ officials, fiscal year 2002 funding was exhausted before the end of the fiscal year, and funding is likely to be exhausted before the close of fiscal year 2003. A total of \$655 million is appropriated for fiscal years 2002 through 2011. However, the Congressional Budget Office (CBO) and DOJ estimate that the funding levels will be insufficient to meet the projected claims. The greatest anticipated shortfall, between \$72 million and \$87 million, will occur over fiscal years 2003 through 2005. According to a budget official, there has also been upward pressure on the costs to administer the program in recent years. Since 1993, funding for DOJ to administer the program has been provided in a separate appropriation account for Radiation Exposure Compensation administrative expenses. There is an outstanding issue with respect to the program's administrative expenses for fiscal years 2001 and 2002 in that spending may have

exceeded its appropriations for those years. The Antideficiency Act provides that an officer or employee of the U.S. government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund, or enter into a contract or other obligation for payment of money before an appropriation is made. Total administrative expenses were \$2.1 million for fiscal year 2001 and \$3 million for fiscal year 2002, while the appropriation for Radiation Exposure Compensation administrative expenses was \$1.996 million for each of those fiscal years. The Consolidated Appropriation Resolution of 2003,⁶ contained several changes to the program's administrative expenses appropriation. For example, the language of the administrative expenses appropriation was changed from a specified amount of \$1,996,000 to a specified minimum amount of "not less than \$1,996,000." Accompanying conference report language provides that the conferees expect the Civil Division to absorb any additional requirements for processing RECA claims from other resources available to the Civil Division.

Background

RECA established a procedure to make partial restitution to individuals who contracted serious diseases, such as certain types of cancers, presumably resulting from their exposure to radiation from aboveground nuclear tests or as a result of their employment in the uranium industry. In addition to creating eligibility criteria for compensation, RECA created a Trust Fund to pay claims. The Attorney General is responsible for reviewing applications to determine whether applicants qualify for compensation and establishing procedures for paying claims. To discharge these two responsibilities, the Attorney General has issued implementing regulations.⁷

The regulations established RECP within DOJ's Civil Division and charged it with administering claims adjudication and compensation under the act. To file for compensation, the claimant or eligible surviving beneficiary, either acting on his or her own behalf or represented by counsel, submits the appropriate claim forms along with corroborating documentation to RECP, whose claims examiners and legal staff review and adjudicate the claims. If the claim is approved, a letter is sent notifying the person of the approval and enclosing an "acceptance of payment" form for the claimant

⁶P.L. 108-7, 117 Stat. 11 (2003).

⁷DOJ implementing regulations for the RECA program are found at Part 79 of Title 28 Code of Federal Regulations (28 C.F.R. Part 79).

to return to RECP. According to program officials, upon receipt of a signed acceptance of payment form, DOJ authorizes the Treasury Department to make payment from the Trust Fund. The RECA Amendments of 2000 require that the Attorney General pay claims within 6 weeks of approval. If the victim is deceased, compensation may be awarded to the victim's eligible survivors (e.g., the victim's spouse or children). Appendix III shows RECP's claims adjudication process, including the procedures for refiling and administratively appealing denied claims.

If a RECP claim does not satisfy the eligibility criteria, the claimant is notified of the deficiency in writing. The claimant is allowed 60 days in which to provide documentation correcting the deficiency. At the expiration of the 60-day period, if the claim remains deficient, DOJ issues a final denial decision explaining the reasons for the denial, and a copy is sent to the claimant. Claimants may refile a claim with new information to RECP up to two more times.

DOJ's decision denying the claim may be appealed administratively to a DOJ Appeals Officer, who can affirm or reverse the original decision or remand the claim back to RECP for further action. Claimants who are denied may also seek judicial review in a U.S. district court. Under DOJ implementing regulations, claimants must first exhaust their administrative remedies within DOJ prior to seeking judicial review. Program officials said that from program inception in 1992 through September 30, 2002, only eight claims denied by the RECP have been brought to district court.

The RECA Amendments of 2000 broadened the scope of eligibility for benefits coverage, including increasing the geographical areas covered, allowing more individuals to qualify, and establishing a prompt payment period. Figure 1 shows the affected areas under RECA.

Figure 1: Map of RECA-Covered Areas



Source: Department of Justice, Civil Division.

Some of the major changes resulting from the amendments include

- permitting eligible aboveground uranium mine employees, uranium mill workers, and uranium ore transporters to qualify for compensation;
- increasing the geographic areas included for eligibility and increasing the time period considered for radiation exposure for uranium mine employees;

-
- expanding the list of specified diseases that may qualify individuals for compensation to include other types of cancers and also noncancers;
 - decreasing the level of radiation exposure that is necessary to qualify for compensation for uranium mine employees;⁸
 - making certain medical documentation requirements are less stringent;
 - eliminating distinctions between smokers and nonsmokers pertaining to diseases such as lung cancer and nonmalignant respiratory diseases;
 - construing all reasonable doubts about the eligibility of a claimant in favor of the claimant;
 - allowing previously denied claimants to file up to three more times; and
 - requiring the Attorney General to ensure that a claim is paid within 6 weeks of approval.

On November 2, 2002, the 21st Century Department of Justice Appropriations Authorization Act⁹ was enacted. This law included several provisions that further amended RECA. The amendments affect eligibility criteria and revise claims adjudication procedures. These provisions were enacted near the end of our review, and we did not assess their potential impact on the program. Some of the major changes include

- re-insertion of a Downwinder area that was inadvertently eliminated when RECA was amended in July 2000;
- requiring that lung cancer must, like other compensable cancers, be “primary” (i.e., originate in the specified organ or tissue);
- allowing uranium miners to qualify by meeting either the 40 Working Level Months (WLM) exposure standard or the 1-year duration of employment standard; and
- striking the requirement that, in cases where the claimant is living, a claimant with lung cancer must submit the medical documentation required for proof of a “non-malignant respiratory disease.”
- Appendix II provides a more comprehensive summary of the key provisions of RECA by claimant category.

In addition to RECP, other programs are authorized to provide compensation to persons who have presumably become ill as a result of working for the federal government in producing or testing nuclear

⁸The minimum radiation exposure level for uranium mine employees was reduced from a range of 200 to 500 WLMs to 40 WLMs. A WLM is a measure of radiation exposure. WLMs are calculated by multiplying the number of months an individual worked in a particular mine by the radon level in the mine during the time of employment.

⁹P.L. 107-273, 116 Stat. 1758 (2002).

weapons. For example, the Radiation-Exposed Veterans Compensation Act of 1988¹⁰ provides, in general, monthly compensation for specific diseases to veterans who were present at certain atomic bomb exercises, served at Hiroshima and Nagasaki during specific periods of the post World War II occupation of Japan, or were prisoners of war in Japan. In addition, Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001¹¹ establishes the “Energy Employees Occupational Illness Compensation Program” to compensate covered employees or their survivors who contracted certain illnesses resulting from exposure to certain ultra-hazardous materials during employment in Department of Energy facilities that processed or produced radioactive materials used in the production of atomic weapons. Certain uranium employees who are eligible for compensation under RECA may also be eligible for additional compensation and medical benefits under title XXXVI. Specifically, uranium miners, uranium mill workers, and uranium ore transporters, approved under Section 5 of RECA, are eligible to receive under title XXXVI an additional \$50,000 lump-sum payment plus medical benefits.

Since Fiscal Year 2000, RECA Claims Increased Significantly, Processing Time Has Slowed, and the Number of Pending Claims Has Grown

The enactment of the RECA Amendments of 2000 was followed by a significant increase in the number of claims. Although RECP received and processed record numbers of claims in fiscal years 2001 and 2002, claims are taking longer to process. In addition, the percentage of claims that are adjudicated within 12 months has dropped, and the number of pending claims has grown sharply.

RECA Claims Increased Significantly

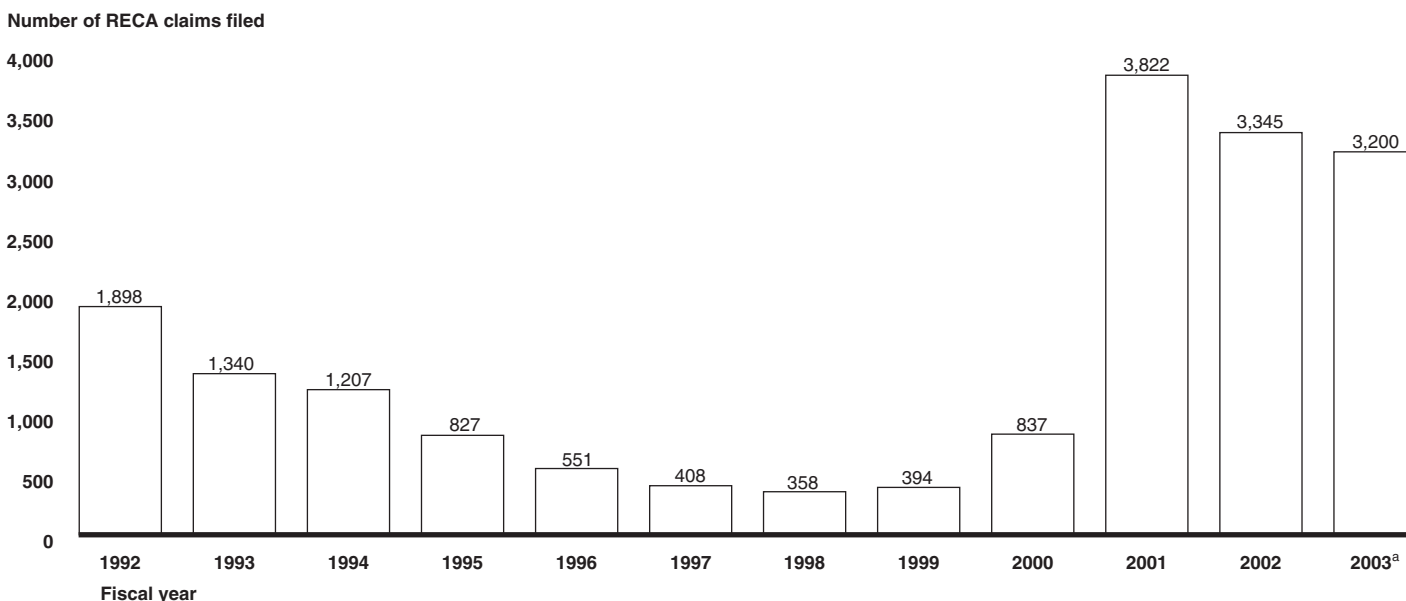
Since its inception in April 1992 through the end of fiscal year 2002, RECP has received 14,987 claims for compensation. The total number of RECA claims filed has increased 92 percent, from 7,819 at the end of fiscal year 2000 to 14,987 by the end of fiscal year 2002. In fiscal year 2001, the year

¹⁰P.L. 100-321, 102 Stat. 485 (1988).

¹¹P.L. 106-398, 114 Stat. 1654 (2000).

following the enactment of the RECA 2000 Amendments, RECP received over 3,800 claims—more claims than were filed in the prior 6 fiscal years combined. There were over 3,300 claims filed in fiscal year 2002. At the end of fiscal year 2002, there were 2,654 claims pending adjudication. In fiscal year 2003, about 3,200 new filings are anticipated. Figure 2 shows the number of claims filed each fiscal year.

Figure 2: Number of RECA Claims Filed from Fiscal Years 1992 through 2002 and Fiscal Year 2003 Estimate



Source: GAO's analysis of RECA claims data from DOJ's Civil Division's case histories database.

^aEstimate.

Numbers of Claims Approved, Denied, and Pending

When RECP reviews a claim, the review process ends in one of two possible outcomes—approval or denial of the claim. If approved, the claim is forwarded to Treasury for payment. If denied, applicants may refile their claims or pursue other avenues of appeal. Of the total 14,987 claims filed, RECP reached a disposition on 12,333. The remaining 2,654, or about 18 percent of claims, were pending, as of September 30, 2002. Of the claims that were adjudicated, 7,915, or about 64 percent, were approved and 4,418, or about 36 percent, were denied. Excluding pending claims, RECP approved about 56 percent of the uranium mine employee claims, about 75 percent of the downwinder claims, about 34 percent of the onsite participant claims, about 82 percent of the uranium mill claims,

and about 81 percent of the ore transporter claims. Table 1 shows the number of claims approved, denied, and pending as of September 30, 2002.

Table 1: Number of RECA Claims Approved, Denied, and Pending through Fiscal Year 2002

	Category of claim					Total
	Uranium mine employees	Downwinders	Onsite participants	Uranium mill employees	Ore transporter employees	
Approved	2,311	4,945	465	156	38	7,915
Denied	1,786	1,688	901	34	9	4,418
Pending	553	1,677	247	138	39	2,654
Total	4,650	8,310	1,613	328	86	14,987

Source: DOJ's Civil Division's case histories database.

Note: Approved, denied, and pending data at the time of our review.

Through the end of fiscal year 2002, RECP approved about \$530.5 million to claimants.¹² RECP approved \$230.5 million to eligible individuals based on uranium mine employee applications (or about 43 percent of the total); \$247.2 million based on Downwinder applications (or about 47 percent of the total); \$33.4 million based on onsite participant applications (or about 6 percent of the total); \$15.6 million based on uranium miller participant applications (or about 3 percent of the total); and \$3.8 million based on ore transporter participant applications (or about 1 percent of the total).

Claims Taking Longer to Process

The RECA legislation requires that applications be processed within 1 year. However, the law permits applicants' additional time to submit more documentation to support their claims.¹³ About 89 percent of the RECA applications were processed within 12 months over the period fiscal years 1992 through 2000. By the end of fiscal year 2002, the percentage of claims processed within 12 months was 79 percent. Table 2 shows the processing times in months for applicants over the course of RECP. We could not readily determine to what extent the 2,559 applications that were not processed within 1 year were due entirely to the granting of additional time.

¹²In certain cases, awarded compensation may not actually be paid. For example, an eligible individual may refuse to accept payment or the victim may pass away before the money is disbursed and an eligible beneficiary cannot be located.

¹³RECA Section 6 (d) (3) excludes this time from the 12-month period. Processing time begins when a claim is received by RECP and ends at case disposition.

Table 2: Processing Time in Months for Approved and Denied Claims for Fiscal Years 1992 through 2002

Processing time in months ^a	Applicant type					Total	Percent of total
	Uranium mine employees	Downwinders	Onsite participants	Uranium mill employees	Ore transporter employees		
12 months or less	2,808	5,773	1,039	105	25	9,750	79.2
13 months	302	260	78	18	4	662	5.4
14 months	196	158	45	14	6	419	3.4
15 months	146	135	46	10	3	340	2.8
16 months	113	88	26	10	3	240	1.9
17 months	59	63	20	12	1	155	1.3
18 to 24 months	318	126	64	19	5	532	4.3
More than 24 months	148	19	42	2	0	211	1.7
Subtotal over 12 months						2,559	
Total	4,090	6,622	1,360	190	47	12,309	100

Source: DOJ's Civil Division's case histories database.

^aAppealed and pending cases have been excluded.

As shown in table 3, the average number of days to process a claim has increased in each category since our previous review. According to data provided by DOJ officials, for fiscal years 1992 through 2002, the overall average processing time from the date an application is filed until its disposition was 327 days for uranium miner employee claims. This is up from 269 days when we last reported. The average processing time for Downwinder claims is 244 days. This is up from 190 days when we last reported. The average processing time for onsite participant claims is 263 days. This is up from 245 days when we last reported. Uranium mill employee claims and ore transporter employee claims are new categories since we last reported. However, each of these claimant categories, on average, took well over a year to process, 459 days and 392 days, respectively. Table 3 shows the average number of days to process a claim for fiscal years 1992 through 2002 and the increase in processing time by claimant category since we last reported.

Table 3: Average Number of Days to Process a Claim for Fiscal Years 1992 through 2002

	Applicant type				
	Uranium mine employees	Downwinders	Onsite participants	Uranium mill employee	Ore transporter employee
Average days to process claims					
End of fiscal year 2000	269	190	245	^a	^a
End of fiscal year 2002	327	244	263	459	392
Increase in days	58	54	18	^a	^a

Source: GAO's analysis of information from DOJ's Civil Division's Case Histories Database.

^aData not available.

RECP officials attributed the increase in average time required to process claims to differing characteristics associated with each claim and the different factors involved in the review and application of the RECA legislation, as amended, for the five claims categories. RECP officials told us that since the inception of the program, its policy has been to assist claimants in any way that it can. For example, rather than denying a claim for a lack of documentation, program officials said that they allow claimants additional time to provide corroborating documentation. In many cases, claimants in the uranium industry were employed as millers, miners, and ore transporters over the course of their career. RECP officials said that if a claimant filed a uranium miner claim, but could not provide sufficient documentation to satisfy RECA's uranium miner requirements, RECP would work with the claimant to obtain additional documentation in order to satisfy the uranium miller or transporter requirements where appropriate.

RECP officials cited other reasons for delays in processing claims, including RECP's need, in certain cases, to gather medical records to address RECA's statutory requirements for certain compensable diseases. RECP said that in these instances, staff would conduct additional research on behalf of the claimant or allow the claimant more time to provide the proof necessary to meet the eligibility criteria. In addition to the increase in the volume of claims, program officials said that the adjudication of the newly added claimant categories (uranium millers and ore transporters) presented challenges in terms of deciding the types of employment records that existed and which records should be required and, therefore, required additional processing time in some instances. Similarly, RECP had to determine the medical evidence that would be sufficient to

establish proof of the new compensable diseases and illnesses added to RECA.

Number of Pending Claims Is Growing

Since the amendments of 2000, RECA claims are coming in more rapidly, and the processing of these claims is taking longer. As a result, the number of pending claims has grown sharply, from 653 at the end of fiscal year 2000 to 2,654 by the end of fiscal year 2002, about a 300-percent increase. In fiscal year 2003, RECP program officials estimate that 3,185 new claims will be filed. It is likely that the number of pending claims will grow further. According to DOJ budget justification documents for fiscal year 2003, because the 2000 amendments eased eligibility requirements, many of the claims submitted in 2002 were re-filings from previously denied claimants. According to program officials, the resolution of refiled claims is more straightforward. Therefore, these claims were processed first to speed payments to deserving claimants. But, program officials anticipate that the pace of claims processing will be slower in fiscal year 2003 than in fiscal year 2002, because the adjudications of the remaining claims in process will be more time-consuming and difficult.

Funding to Pay Claims May Be Inadequate to Meet Projected Needs

RECA program funding is provided from two sources. The RECA Trust Fund receives appropriated funds from which compensation is paid to eligible claimants. Funding for DOJ to administer the program is provided in a separate appropriation account for radiation exposure compensation administrative expenses. Table 4 shows the RECA Trust Fund activity from fiscal years 1992 through 2002, including the amounts appropriated each year and the balance at the end of each fiscal year. Money remaining in the Trust Fund at the end of any given fiscal year is generally carried forward to the next fiscal year. The RECA Trust Fund received over \$200 million in the first 2 years of the program. Between fiscal years 1994 and 1996, the program was funded entirely by funds carried over from prior year appropriations. Beginning in fiscal year 1997, Congress resumed making annual appropriations to the RECA Trust Fund with the exception of fiscal year 1999 when no funds were appropriated to the Trust Fund. For fiscal year 2000, \$11.6 million was available in the Trust Fund. This amount included \$8.4 million carried forward from the prior year and a fiscal year 2000 appropriation of \$3.2 million. For fiscal year 2001, \$10.8 million was appropriated and \$431,000 was carried over from fiscal year 2000. Later, in fiscal year 2001, the RECA program received a supplemental appropriation for “such sums as may be necessary” to pay claims only through the end of that fiscal year. This resulted in payments

of \$107.9 million for fiscal year 2001. Table 4 shows the Radiation Exposure Compensation Trust Fund Activity.

Table 4: Radiation Exposure Compensation Trust Fund Activity, Fiscal Years 1992 through 2002

Dollars in thousands

Fiscal year	Carry forward from prior year	Appropriated funds	Interest earned from government securities	Total available	Payments	Balance at end of fiscal year
1992	0	\$30,000	0	\$30,000	\$22,454	\$7,546
1993	\$7,546	\$170,750	\$2,493	\$180,789	\$57,390	\$123,399
1994	\$123,399	0	\$2,300	\$125,699	\$60,651	\$65,048
1995	\$65,048	0	\$1,365	\$66,413	\$31,242	\$35,171
1996	\$35,171	0	\$464	\$35,635	\$21,133	\$14,502
1997	\$14,502	\$30,000	\$332	\$44,834	\$15,882	\$28,952
1998	\$28,952	\$4,381	0	\$33,333	\$12,339	\$20,994
1999	\$20,994	0	\$259	\$21,253	\$12,822	\$8,431
2000	\$8,431	\$3,200	0	\$11,631	\$11,200	\$431
2001	\$431	\$107,483 ^a	0	\$107,914	\$107,914	0
2002	0	\$172,000	0	\$172,000	\$171,551	\$449

Source: DOJ's Civil Division's Office of Planning, Budget and Evaluation.

^aConsists of an initial appropriation of \$10.8 million and supplemental funding of \$96.683 million.

Funds Appropriated to the RECA Trust Fund for the Next 10 Fiscal Years

The National Defense Authorization Act for fiscal year 2002¹⁴ provided funding for the RECA Trust Fund to cover a 10-year period—fiscal years 2002 through 2011 up to a specified maximum amount per fiscal year. In past years, Congress appropriated money each fiscal year. This act, instead, provided specified amounts for subsequent fiscal years 2002 through 2011, obviating the need for new congressional action in each of those fiscal years unless the Congress determined that additional funding was necessary. Table 5 shows the Trust Fund appropriations established in law.

¹⁴P.L. 107-107, 115 Stat. 1012 (2001).

Table 5: Appropriations to Radiation Exposure Compensation Trust Fund, Fiscal Years 2002 through 2011

Dollars in millions

Appropriations (fiscal year)										
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
\$172	\$143	\$107	\$65	\$47	\$29	\$29	\$23	\$23	\$17	\$655

Source: National Defense Authorization Act for Fiscal Year 2002.

Funds Appropriated for Fiscal Years 2003 through 2011 May Be Inadequate

According to estimates by CBO and RECA program officials, beginning in fiscal year 2003, higher funding levels will be necessary or millions of dollars in claims may be delayed. As shown in table 6, CBO estimates that there will be a shortfall of \$101 million in the Trust Fund through fiscal year 2007, of which about \$44 million will occur in fiscal year 2003. Overall, CBO estimates a net shortage of \$78 million through 2011. Table 7 shows the RECA program estimate, which is similar to, but slightly higher than CBO's estimate. Overall, RECA estimates a shortage of \$107 million through 2011. Both organizations agree that most of the funding shortfall will occur over the next 3 years.

Table 6: CBO Estimate of the Funding Shortfall for the Radiation Exposure Compensation Trust Fund for Fiscal Years 2002 through 2011

Dollars in millions

Fiscal year	CBO estimates by fiscal year										
	2002 (actual)	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Estimated requirement	\$172	\$187	\$128	\$87	\$56	\$34	\$26	\$24	\$10	\$9	\$733
Current appropriations	\$172	\$143	\$107	\$65	\$47	\$29	\$29	\$23	\$23	\$17	\$655
Shortfall amount	0	\$44	\$21	\$22	\$9	\$5	-\$3	\$1	-\$13	-\$8	\$78

Source: The Congressional Budget Office.

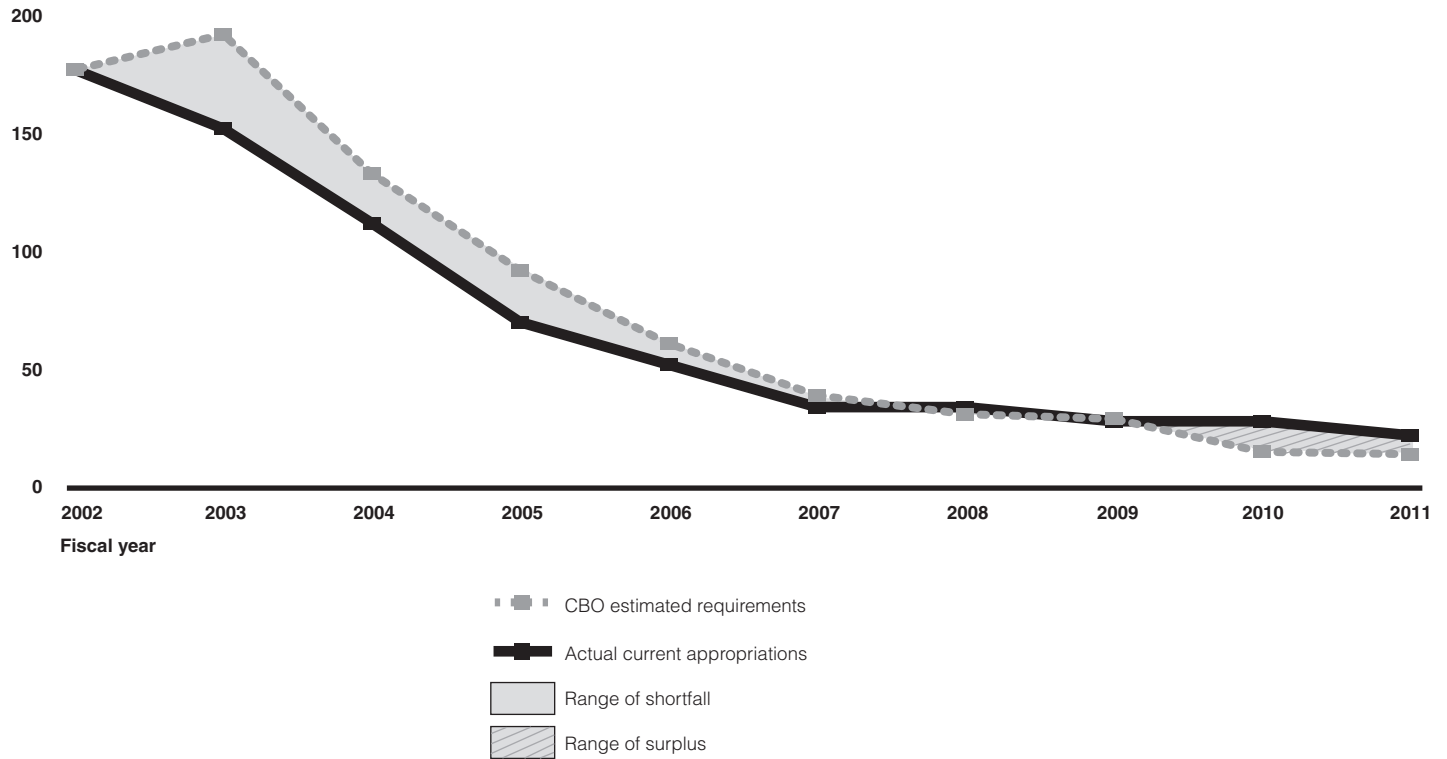
Notes: CBO estimates there will be additional unfunded requirements after fiscal year 2011 and beyond that are not mentioned here. While the National Defense Authorization Act for fiscal year 2002 provided funding through fiscal year 2011, Section 3(d) of the RECA statute, as amended, provides that the Trust Fund is to terminate in fiscal year 2022.

According to CBO, in the absence of new legislative language, CBO's estimates should be considered preliminary. Final CBO estimates would reflect actual legislative language and CBO's then current baseline assumptions.

Figure 3 shows the gap between the amount of funding currently appropriated to the Trust Fund and CBO's estimate through fiscal year 2011.

Figure 3: Funding Shortfall between the Amount of Funding Currently Appropriated to the Trust Fund and CBO's Estimate through Fiscal Year 2011

RECA Trust Fund appropriations and CBO estimates (dollars in millions)



Source: GAO analysis of Congressional Budget Office data.

RECP officials' estimates through fiscal year 2011 are similar to, but slightly higher than, that of CBO's. According to program officials, recent trends indicate that projected claims will total about \$762 million for fiscal years 2002 through 2011. This would exceed the current total of annual Trust Fund appropriations by a total of about \$107 million and CBO's overall estimate by \$29 million. DOJ's estimate agrees with that of CBO, in that most of the funding shortfall, about \$72 million, will occur over the next 3 years. According to RECP officials, a shortfall of funding available in the Trust Fund in any given year can result in the claims going unpaid until funds become available the following year. For example, RECA officials said that in fiscal year 2002, funding was exhausted 3 weeks before the close of the fiscal year, and based on the shortfalls projected, funding is likely to be exhausted before the close of fiscal years 2003 through 2005. Table 7 shows RECP's estimate of unfunded

requirements for Radiation Exposure Compensation compared with the current Trust Fund appropriations as established in law.¹⁵

Table 7: DOJ Estimate of the Funding Shortfall for the Radiation Exposure Compensation Trust Fund, Fiscal Years 2002 through 2011

Dollars in millions											
Fiscal year	DOJ estimates by fiscal year										Total
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
Estimated requirement	\$172	\$176	\$135	\$76			\$203				\$762
Current appropriation	\$172	\$143	\$107	\$65	\$47	\$29	\$29	\$23	\$23	\$17	\$655
Shortfall amount	0	\$33	\$28	\$11			\$35				\$107

Source: Department of Justice, Civil Division.

Spending on Program Administration Has Increased

RECP officials told us that in addition to the significant increase in the number of claims submitted, RECP received an unprecedented number of telephone and written inquiries for forms and information, a development that has further stretched the program's operational resources. According to a budget official, this has led to upward pressure on the overall costs to administer the program. In an effort to keep up with the demand, program officials began adding additional staff in fiscal year 2000. Table 8, shows that RECP's full-time equivalent (FTE) staff levels and spending on program administration have increased in fiscal years 2001 and 2002 commensurate with a resurgence of claims.

¹⁵Table 7 assumes RECA program resources consistent with the President's fiscal year 2004 budget request.

Table 8: Average Full-Time Equivalent Staff Levels and Administrative Costs for Processing RECA Claims for Fiscal Years 1992 through 2002

Dollars in millions

	Fiscal year										
	1992 ^a	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total administrative costs	\$1.0	\$2.1	\$2.0	\$1.5	\$1.5	\$1.2	\$1.1	\$1.1	\$1.3	\$2.1	\$3.0
Government FTE staff	7.6	13.8	15.4	11.8	11.2	11.8	10.9	10.4	11.1	17.6	20.3
Contractor FTE staff	0	0	0	0	0	0	0	0	<1.0	10.0	19.0
Contractor portion of costs	0	0	0	0	0	0	0	0	<\$.1	\$.5	\$1.0

Source: Information provided by the DOJ's Office of Program, Budget and Evaluation.

^aBecause RECP was implemented in April 1992, the government FTE staff levels and administrative costs for fiscal year 1992 only reflect the April 1992 to September 30, 1993, time frame.

Administrative Expenses May Have Exceeded Its Appropriations for Fiscal Years 2001 and 2002

Since fiscal year 1993, funding for DOJ administration of the program has been provided in a separate appropriation account for Radiation Exposure Compensation administrative expenses. The administrative expense appropriation for the program was \$1.996 million each for fiscal years 2001 and 2002.

There is an outstanding issue with respect to the program's administrative expenses for fiscal years 2001 and 2002 in that spending may have exceeded its appropriations for those years. The Antideficiency Act provides that an officer or employee of the U.S. government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund, or enter into a contract or other obligation for payment of money before an appropriation is made.¹⁶

It is our understanding, on the basis of information provided to us during our review, that total administrative expenses were \$2.1 million for fiscal year 2001 and \$3 million for fiscal year 2002, while the appropriation for Radiation Exposure Compensation administrative expenses was \$1.996 million for each of those fiscal years. Regarding fiscal year 2001, it is our understanding that following an increase in the number of RECA claims filed, around July 2001, the increase in spending arose from a task order that was issued for \$1 million to hire contract staff during fiscal years 2001 and 2002. These expenses were paid with funds from DOJ's Legal Activities, Salaries and Expenses, General Legal Activities account. The additional staff was reportedly used to assist in processing claims.

¹⁶31 U.S.C. 1341(a)(1).

According to DOJ, an investigation has been initiated to ascertain if possible Antideficiency Act violations occurred with respect to the Radiation Exposure Compensation administrative expenses account.

Whenever an agency discovers evidence of a possible over obligation or over expenditure, it must investigate that evidence. If the investigation shows that the appropriation, in fact, is over obligated or over expended, the Antideficiency Act requires reporting the over obligation or over expenditure to the President and the Congress. OMB guidance on budget execution, including requirements contained in the Antideficiency Act, is included in OMB Circular A-11, Part 4 which requires, among other things, that agencies include in such reports the primary reason for the violation, a statement of any circumstances the agency believes to be extenuating, a statement of the adequacy of the agency's funds control system, and a statement of whether any additional action need be taken to prevent recurrence of the same type of violation. Given that DOJ has initiated an investigation, we will monitor DOJ's investigation of possible Antideficiency Act violations in fiscal years 2001 and 2002 relating to the Radiation Exposure Compensation administrative expenses account and take appropriate actions, if necessary, at the conclusion of DOJ's investigation.

Fiscal year 2003 appropriations contained several changes to the program's administrative expenses appropriation. First, the Consolidated Appropriations Resolution, 2003,¹⁷ appropriated funds for the program's administrative expenses in DOJ's Legal Activities, Salaries and Expenses, General Legal Activities account rather than in a separate appropriation. Second, the language of the administrative expenses appropriation was changed from a specified amount to a specified minimum amount. Specifically, whereas fiscal year 2002 appropriations provided for "necessary administrative expenses in accordance with the Radiation Exposure Compensation Act, \$1,996,000," the fiscal year 2003 appropriation provides, in part, that "not less than \$1,996,000 shall be available for necessary administrative expenses in accordance with the Radiation Exposure Compensation Act." In accompanying Conference Report language, the conferees said that they "expect the Civil Division to

¹⁷P.L. 108-7, 117 Stat. 11 (2003).

absorb any additional requirements for processing RECA claims from other resources available to the Civil Division.”¹⁸

Agency Comments

We provided a draft of this report to the Attorney General for review and comment. The Justice Department advised us they had no formal comments. The Civil Division and the Justice Management Division reviewed the report for accuracy and provided technical comments which have been incorporated in this report where appropriate.

Conclusions

Funding available to pay claims under the RECA may be inadequate to meet projected needs. Since the end of fiscal year 2000, the number of unadjudicated claims has grown 300 percent from 653 to 2,654, and nearly 3,200 new claims are anticipated during fiscal year 2003. Both CBO and DOJ estimate that money in the Trust Fund will be insufficient to pay all the claims that are projected to be approved over the 2003-2011 period. For fiscal years 2001 and 2002, RECP officials spent more for administrative expenses than was appropriated. For fiscal year 2003, Congress authorized DOJ’s Civil Division to absorb any additional funding required for administrative expenses above the amount appropriated. However, the availability of additional funds, if needed, for administrative expenses is contingent on the Civil Division’s ability to absorb any additional costs.

Recommendation

We recommend that the Attorney General consult with the congressional committees of jurisdiction to develop a strategy to address the gap between current funding levels and the amount of funding needed to pay claims projected to be approved over the 2003-2011 period.

Copies of this report are being sent to the Attorney General; the Director, Office Management and Budget; and any other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO’s Web site at <http://www.gao.gov>.

¹⁸H.R. Conf. Rep. No. 108-10, at 607 (2003).

If you or your staffs have any questions about this report, please contact William Crocker or me at (202) 512-8777 or jonesp@gao.gov. R. Rochelle Burns, Geoffrey R. Hamilton, and Leo M. Barbour made key contributions to this report.

A handwritten signature in black ink that reads "Paul L. Jones". The signature is written in a cursive style with a long, sweeping underline.

Paul L. Jones
Director, Justice Issues

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House of Representatives

Appendix I: Scope and Methodology

To determine the outcomes of the claims adjudication process, including the number of approved and denied claims, the timeliness of the claims adjudication process, and the amount of money awarded, we interviewed Radiation Exposure Compensation Program (RECP) officials and obtained RECA-related case information from the Department of Justice's (DOJ) Civil Division's case histories database for fiscal years 1992 through 2002. The Civil Division's Office of Planning, Budget and Evaluation (OPB&E) provided financial information. We discussed the basis for any major fluctuations with RECP officials. We did not independently verify the accuracy of the RECA data extracted from the database.

To determine the cost of administering RECP, we obtained data from OPB&E by object class for the end of fiscal years 1992 through 2002. The cost provided includes items such as personnel compensation and benefits, travel and transportation of persons, and printing and reproduction costs. To determine full-time equivalent (FTE) staffing levels, the office provided us with FTE staff levels for RECP at the end of fiscal years 1992 through 2002.

To determine the nature of expenditures from the Trust Fund, we evaluated annual Trust Fund activity from fiscal years 1992 through 2002 provided by OPB&E. During our initial review of the RECP in 2001, we verified that payments made were consistent with data contained in DOJ's Civil Divisions case histories database. We did not revalidate the information from the database during this review.

To validate the estimates of future Trust Fund requirements, we met with Congressional Budget Office (CBO) officials and examined their source data, methodology, assumptions, calculations, and results. On the basis of our examination, we found that CBO's estimates were sound and reasonable. RECA program officials said that they are confident in the data necessary to support improved estimates for the next 3 years (fiscal years 2003 through 2005); however, beyond that, their best educated guess is to extend the slope of the funding curve out another 5 or more years for RECP. We focused on DOJ's administration of RECA from its inception in fiscal year 1992 through the end of fiscal year 2002.

We conducted our review from August 2002 through February 2003, in accordance with generally accepted government auditing standards.

Appendix II: Summary of Key Radiation Exposure Compensation Program Provisions by Claimant Category

Claimant category ^a	Time periods	Location	Amount of compensation	Examples of diseases covered	Other
Uranium mine employees	Any time from January 1, 1942-December 31, 1971.	Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas.	\$100,000	Lung cancer and nonmalignant respiratory disease.	Victims must have been exposed to at least 40 working level months of radiation or determine employment in a mine for 1 full year. ^b Aboveground miners are included. Additional states may apply for inclusion as a covered state.
Downwinders	A period of at least 2 years from January 21, 1951-October 31, 1958, or for the period between June 30 and July 31, 1962.	Certain Utah, Nevada, and Arizona counties downwind from the Nevada test site.	\$50,000	Certain types of leukemia, lung cancer, multiple myeloma, lymphomas, and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, or liver.	For those exposed prior to age 21, and subsequently contract any medically recognized form of acute or chronic leukemia, other than chronic lymphocytic leukemia, a period of only 1 year, from January 21, 1951 to October 31, 1958, is required. ^c
Onsite participants	Designated atmospheric nuclear tests from July 16, 1945-December 31, 1962.	Onsite testing areas include the Nevada, Pacific, Trinity, and the South Atlantic test sites. ^d	\$75,000	Certain types of leukemia, lung cancer, and lymphomas, multiple myeloma, and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, or liver (certain types).	The payment to the victim may be offset by payments received by the victim from the Department of Veterans Affairs based on the same radiation-related illness.

**Appendix II: Summary of Key Radiation
Exposure Compensation Program Provisions
by Claimant Category**

Claimant category^a	Time periods	Location	Amount of compensation	Examples of diseases covered	Other
Uranium mill employees	Any time from January 1, 1942-December 31, 1971.	Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas.	\$100,000	Lung cancer, nonmalignant respiratory diseases, renal cancer, and other chronic renal disease, including nephritis and kidney tubal tissue injury.	Victims must have worked for at least 1 year during the relevant time period.
Ore transporter employees	Any time from January 1, 1942-December 31, 1971.	Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon, and Texas.	\$100,000	Lung cancer, nonmalignant respiratory diseases, renal cancer, and other chronic renal disease, including nephritis and kidney tubal tissue injury.	Victims must have worked for at least 1 year during the relevant time period.

Source: RECA and related regulations.

^aAlso includes victim's survivors.

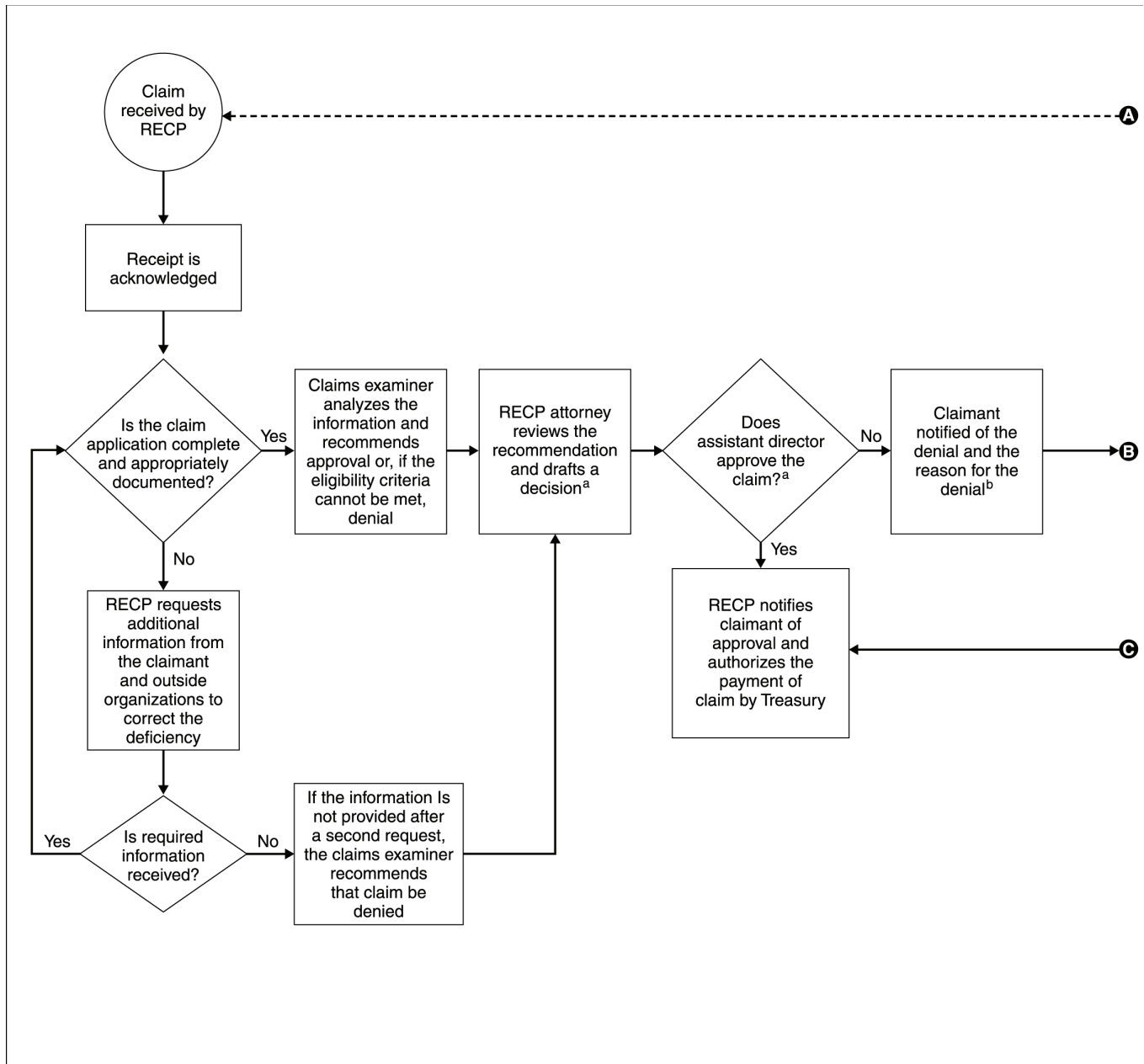
^bLevels of exposure to radiation are referred to as working level months and are calculated by multiplying the number of months an individual worked in a particular uranium mine and the radon level in the mine during the period of employment.

^cPrior to the enactment of the RECA Amendments, a separate claimant category existed for these victims. The category was called "Childhood Leukemia."

^dDOJ lists the dates and locations of the atmospheric tests conducted by the federal government in regulations codified at 28 C.F.R. Part 79. For claimant eligibility, Justice adds 6 months to the end of the designated time span for each of the listed test periods.

**Appendix II: Summary of Key Radiation
Exposure Compensation Program Provisions
by Claimant Category**

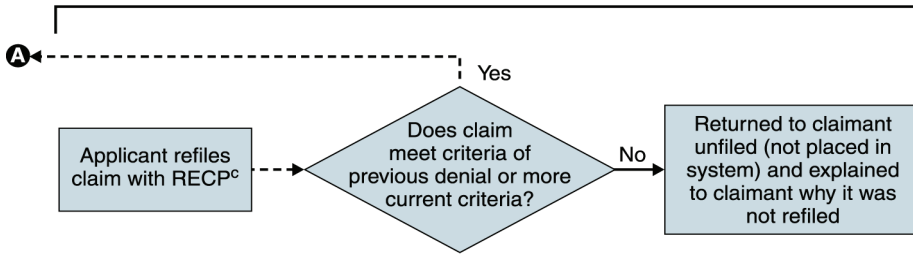
Appendix III: RECP's Claims Adjudication Process



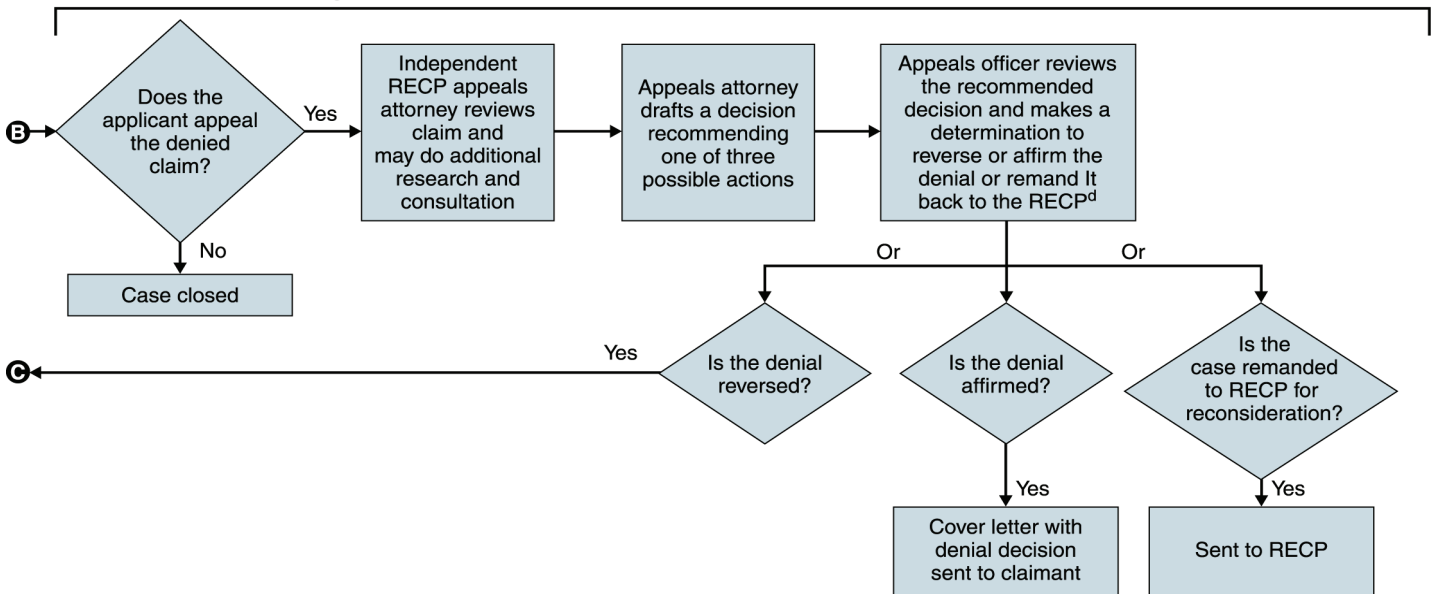
Source: Prepared by GAO based on RECP's data.

Appendix III: RECP's Claims Adjudication Process

Process for Refiling Denied RECP Claims



Process for Appealing Denied RECP Claims



Process for refiling and appealing denied claims

^aThe RECP attorney may request additional supporting information before making a recommendation (for approval or denial) to the Assistant Director.

^bAs of July 10, 2000, based on the 2000 amendments, an applicant can file a claim for consideration up to three times.

**Appendix III: RECP's Claims Adjudication
Process**

^eApplicants whose claims have been denied are permitted to refile their claims if (1) they provide information to correct the deficiency that was the basis for the last denial under the original RECA legislation or (2) they believe that they are now eligible as a result of the 1999 regulatory changes and/or the 2000 amendments.

^dThe Appeals Officer may (1) reverse the denial (award compensation to the claimant), (2) affirm the denial (deny compensation to the claimant), or (3) remand the case to RECP. The decision is equivalent to a negative determination for the other two options.

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