



November 2018

# ENERGY EMPLOYEES COMPENSATION

## Labor Could Better Assist Claimants through Clearer Communication

# GAO Highlights

Highlights of [GAO-19-90](#), a report to congressional requesters

## Why GAO Did This Study

For decades, Energy, its predecessor agencies, and contractors employed thousands of employees in hazardous work in nuclear weapons production, exposing many employees to toxic substances. The Energy Employees Occupational Illness Compensation Program, administered by DOL, provides compensation for illnesses linked to exposures. Since 2004, DOL has provided about \$4.4 billion to eligible employees and their survivors.

GAO was asked to review aspects of the claims process for contracted employees. GAO examined (1) the number and outcome of compensation claims for illnesses resulting from exposure to toxins that DOL has reopened since 2012, and (2) the Advisory Board's advice to DOL on the scientific soundness of its database on toxins and illnesses, and DOL's responses. GAO analyzed DOL claims data for 2012—when a new data system was introduced—through 2017 and assessed their reliability. GAO reviewed relevant federal laws and DOL procedures, and Advisory Board documents and interviewed DOL officials, Advisory Board members, experts, and a claimant advocate.

## What GAO Recommends

GAO recommends that DOL ensure any assessment of its staff training efforts considers claimants' challenges with understanding DOL's communications on evidence for claims. DOL neither agreed nor disagreed with the recommendation except to note that it plans to focus its training on such topics as quality of written communications and assess its training efforts.

View [GAO-19-90](#). For more information, contact Chelsa Gurkin at (202) 512-7215 or [gurkinc@gao.gov](mailto:gurkinc@gao.gov).

November 2018

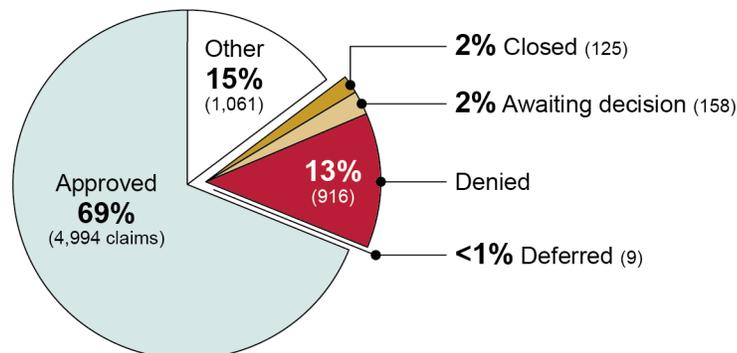
## ENERGY EMPLOYEES COMPENSATION:

### Labor Could Better Assist Claimants through Clearer Communication

## What GAO Found

The Department of Labor (DOL), from 2012 through 2017, reopened more than 7,000 compensation claims by contracted workers with illnesses resulting from exposure to toxins at Department of Energy (Energy) worksites. Of these reopened claims, 69 percent were approved for compensation (see figure). Claims can be reopened for various reasons, including new information on toxic substances and associated illnesses or new evidence provided by a claimant. According to DOL's Office of the Ombudsman officials, some claims may have been denied as a result of claimants not understanding the evidence required to support their claim. Moreover, the Ombudsman's two most recent reports in 2015 and 2016 found DOL's letters to claimants requesting additional evidence or informing them of the final decision did not clearly explain the specific evidence needed or why previously submitted evidence was deemed insufficient. GAO's previous work also found deficiencies in the quality of a sample of DOL's written communication with claimants. DOL has provided training to claims examiners on how to write clearly in correspondence and plans to assess the training. The assessment is an opportunity for DOL to better understand why some claimants remain confused about needed evidence and could help DOL target its training resources more effectively.

**Outcome of Most Recently Reopened Compensation Claims by Energy Contracted Employees, 2012 through 2017**



Source: Department of Labor (DOL) data. | GAO-19-90

Note: "Closed" claims are no longer active and "other" includes those with approvals for at least one claimed illness combined with other outcomes. Percentages may not sum to 100 because of rounding.

The Advisory Board on Toxic Substances and Worker Health (Advisory Board) recommended in 2016 and 2018 that DOL incorporate additional sources of information on toxic substances and associated illnesses into the database it uses to help determine eligibility for claims compensation. While DOL noted that certain additional data sources might be useful, it has not added all of the recommended data sources. The Advisory Board was created to provide technical advice to DOL on its database, among other things.

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### **Abbreviations**

Advisory Board	Advisory Board on Toxic Substances and Worker Health
DOL	Department of Labor
EEOICPA	Energy Employees Occupational Illness Compensation Program Act of 2000
Energy	Department of Energy
SEM	Site Exposure Matrices

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November 7, 2018

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Joe Wilson  
Vice Chairman  
Committee on Education and the Workforce  
House of Representatives

For many decades, and as recently as the 1960s, the Department of Energy (Energy), its predecessor agencies, and its contractors have employed thousands of individuals in secretive and potentially dangerous work associated with nuclear weapons production. Many workers were unknowingly exposed to toxic substances, including radioactive and hazardous materials, and subsequently developed serious illnesses. To provide compensation to these workers, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) was enacted.<sup>1</sup> The Department of Labor's (DOL) Division of Energy Employees Occupational Illness Compensation, within the Office of Workers' Compensation Programs, has primary responsibility for administering Parts B and E of this legislation, as amended, with assistance from several other federal agencies. The Part E program, which is the focus of this review, provides financial compensation to employees of Energy contractors and subcontractors, as well as their survivors, for wage loss, impairments, and medical expenses resulting from work-related illnesses linked to exposure to toxic substances.<sup>2</sup> Since the creation of Part E in 2004, over 135,000 claims have been filed and DOL has paid about \$4.4 billion on over 54,000 claims.

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<sup>1</sup>Energy Employees Occupational Illness Compensation Program Act of 2000, Pub. L. No. 106-398, Title XXXVI, Subtitle A, § 3611, 114 Stat. 1654, 1654A-494.

<sup>2</sup>Radioactive substances may have toxic effects independent of radiation. For example, inhalation of soluble forms of uranium may cause kidney disease. Under the program, toxic substances are not limited to radioactive substances but include any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature. 20 C.F.R. § 30.5(ii). In addition to other differences, Part B provides benefits to federal employees, DOE contractors and subcontractors, beryllium vendor employees, and atomic weapon employer employees. Part B also provides partial benefits to uranium miners, millers and ore transporters who have received benefits under the Radiation Exposure Compensation Act. Part E provides benefits to DOE contractor employees and subcontractor employees.

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Contracted workers who believe they may have been exposed to a toxic substance related to their employment at an Energy worksite and have become ill may submit a claim and supporting documentation, thereby initiating an adjudication process resulting in the claim's approval or denial. However, even after this decision has been reached, a claimant may request that DOL reopen his or her claim under Part E, if the claimant can submit new evidence or identify a change in a relevant program policy.<sup>3</sup> For example, new evidence can emerge related to a claimant's exposure to a toxic substance, or to the relationship of a particular toxic substance to a particular illness. If a claim is reopened, the available evidence is reviewed through the adjudication process and results in an approval or denial of the reopened claim. Little is known about the outcomes of reopened claims.

To assist the claims adjudication process, DOL has developed an online database, known as the Site Exposure Matrices (SEM), which is used as one of several resources in adjudicating claims. The SEM is a repository of information on worksites, toxic substances, and associated illnesses. The SEM has come under scrutiny by claimant advocates and others concerned about its role in supporting claims adjudication. In addition, we have previously reported on concerns about the scientific soundness of the SEM's data linking toxic substances with occupational illnesses.<sup>4</sup> In 2010, we suggested Congress consider establishing an independent board to review and report on the scientific soundness of the SEM. Federal law established the Advisory Board on Toxic Substances and Worker Health (Advisory Board) in 2014.<sup>5</sup>

You asked us to review aspects of Part E claims for contracted Energy workers and their survivors. In this review, we examined:

1. How many compensation claims for illnesses resulting from exposure to toxins did DOL reopen and what was their final outcome?

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<sup>3</sup>See 20 C.F.R. § 30.320.

<sup>4</sup>GAO, *Energy Employees Compensation: Additional Independent Oversight and Transparency Would Improve Program's Credibility*, [GAO-10-302](#) (Washington, D.C.: March 22, 2010).

<sup>5</sup>Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, Div. C, Title XXXI, Subtitle D, § 3141(a), 128 Stat. 3292, 3897.

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2. To what extent has an advisory board on toxic substances and worker health reviewed and advised DOL on the scientific soundness of DOL's database on toxins and their potential links to occupational diseases, and how has DOL responded?

There is no generally accepted definition of the term "scientific soundness." For the purposes of this review, we define scientific soundness in terms of the quality of the evidence on the health effects of specified toxic substances, as determined by a systematic and independent process to review and validate that evidence. We arrived at this definition after consulting members of the Advisory Board and officials of the National Academies of Sciences, Engineering, and Medicine who reviewed the SEM. Additionally, we consulted with DOL officials, who agreed that scientific soundness is related to the information in the SEM on linkages between toxins and illnesses.

To answer our research questions, we reviewed DOL guidance and procedures, including relevant bulletins and circulars, and the Federal EEOICPA Procedure Manual. We also reviewed an internal DOL analysis of reopened claims conducted in 2017; annual reports of the Office of the Ombudsman; an independent review of the SEM conducted by the Institute of Medicine in 2013; and the charter, minutes, and related documents of the Advisory Board from April 2016 to January 2018. We reviewed all recommendations of the Advisory Board and DOL's responses to those recommendations. We also reviewed federal laws, regulations, and executive orders. In addition, we interviewed officials from DOL and the Office of the Ombudsman, an office within DOL that compiles and reports on claimants' concerns; officials of the National Academies of Sciences, Engineering, and Medicine; members of the Advisory Board on Toxic Substances and Worker Health (Advisory Board); and a claimant advocate.

To identify reopened Part E claims and their outcomes, we analyzed DOL program data for calendar years 2012 through 2017. We selected data beginning in 2012 to avoid any potential irregularities resulting from a transition to a new data system in 2012. Because a claim may be reopened at any time after it has been adjudicated with no limit to the number of reopenings, we reviewed the most recently reopened claims and their outcomes after reopening. To assess the outcomes of these claims, using data that DOL provided, we examined both the initial decision and subsequent final decision following reopening. We assessed the reliability of the program data by (1) reviewing existing information about the data and the system that produced them, and (2) interviewing

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agency officials knowledgeable about the data. We determined the data to be sufficiently reliable for the purposes of this report. See appendix I for more information on our scope and methodology.

We conducted this performance audit from September 2017 to November 2018 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.

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## Background

EEOICPA, as amended, generally provides compensation to employees of Energy under Part B, and under Part E, to its contractors, involved in the production of U.S. nuclear weapons and who developed illnesses related to their exposure to radiation and other toxins at Energy facilities. During and shortly after World War II, the United States sponsored the development, production, and testing of nuclear weapons. It used a network of facilities which eventually expanded into a complex of as many as 365 industrial sites and research laboratories throughout the country that employed more than 600,000 workers. Some of the production sites were owned by Energy or its predecessor agencies, and in many instances contractors managed operations at the facilities.<sup>6</sup> Workers used manufacturing processes that involved handling dangerous materials and were often provided inadequate protection from exposure, although protective measures have increased over time. Because of national security concerns, they also worked under great secrecy, were unknowingly exposed to toxic materials, and often given minimal information about the materials they handled and the potential health consequences of exposure to them. In some cases, the extent of the potential negative effects of the toxins may not have been fully understood at the time of workers' exposure.

EEOICPA, as amended, consists of two compensation programs, Part B and Part E. The Part B program generally provides for \$150,000 to eligible current or former employees or their survivors, as well as coverage of future medical expenses associated with certain radiogenic

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<sup>6</sup>For more information on the Department of Energy's predecessor agencies see <https://www.energy.gov/management/office-management/operational-management/history/doe-history-timeline>.

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cancer, chronic beryllium disease, and chronic silicosis.<sup>7</sup> Part E provides compensation to current or former contractors, subcontractors, or eligible survivors of up to \$250,000 for wage loss and impairment, as well as coverage of medical expenses.<sup>8</sup> Under certain circumstances, eligible claimants may receive compensation under both Part B and Part E.

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## Claims Adjudication and Reopening Claims

Under Part E, a contracted Energy employee or survivor can file a compensation claim, typically with a DOL district office (see fig. 1). Once a claim is filed, a DOL claims examiner develops the claim<sup>9</sup> and ultimately recommends its approval or denial. To recommend an approval, the claims examiner must determine that the claimant was a current or former employee of an Energy contractor at a given Energy facility and that they were exposed to a toxic substance at that facility. Additionally, the examiner must find that it is at least as likely as not that the exposure was a significant factor in aggravating, contributing to, or causing a covered illness, and that the exposure was related to employment at an Energy facility. One of the resources used by the claims examiner is the Site Exposure Matrices (SEM), an online database of information on worksites, toxic substances, and associated illnesses. If the claims examiner determines that a claim meets all conditions, he or she recommends that DOL's Final Adjudication Branch approve the claim.<sup>10</sup> The Final Adjudication Branch then reviews the recommendation and issues a final decision.<sup>11</sup> If the claimant provides new evidence before a

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<sup>7</sup>Part B of the Act also provides smaller uniform lump-sum payments and medical benefits to individuals found eligible by the Department of Justice for benefits under section 5 of the Radiation Exposure Compensation Act (RECA) and, where applicable, to their survivors. RECA makes partial restitution to individuals, or their eligible surviving beneficiaries, who were exposed to radiation resulting from the nuclear weapons development and testing program. Pub. L. No. 101-426, 104 Stat. 920 (1990).

<sup>8</sup>Part E of the Act also provides these same payments and benefits to uranium miners, millers and ore transporters covered by section 5 of RECA and, where applicable, to survivors of such employees.

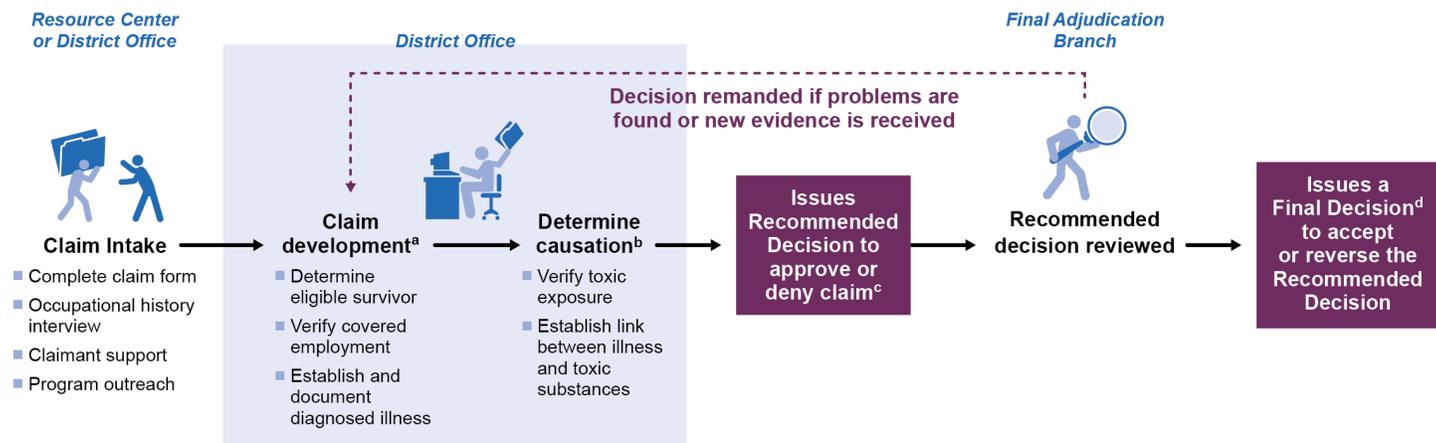
<sup>9</sup>To develop a claim, claims examiners may gather information to verify employment, document a diagnosed claimed illness, and determine survivor eligibility, as applicable. Claims development refers to steps such as documenting and establishing the claimant's covered employment, establishing toxic substance exposure, determining the claimant's medical condition, determining causation, and writing recommendations for approving or denying the claim.

<sup>10</sup>20 C.F.R. §§ 30.306, 30.307.

<sup>11</sup>20 C.F.R. § 30.316.

final decision is reached, the Final Adjudication Branch may return the claim to the district office for additional development or issue a reversal. DOL provides some assistance to claimants as claims are adjudicated, such as assistance that may be required to develop facts pertinent to the claim, customer service activities, and information available in hard copy and on DOL's website. However, it is generally the claimant's responsibility to establish entitlement to compensation under the law.<sup>12</sup>

**Figure 1: Overview of Key Steps in the Claims Process for New Claims of Contractor Employees under the Energy Employees Occupational Illness Program**



Source: GAO analysis of Department of Labor's claims adjudication process. | GAO-19-90

Note: This figure does not show all steps in the adjudication process.

<sup>a</sup>In the course of developing the claim, correspondence may be sent to claimant to request additional evidence.

<sup>b</sup>Several sources can be used to determine if an employee was potentially exposed to a toxic substance and if it was a significant factor in aggravating, contributing to, or causing the employee's illness or death. These include facility records, Department of Labor's database of facilities and toxic substances (the Site Exposure Matrices), medical records, National Institute for Occupational Safety and Health reports, and expert testimony.

<sup>c</sup>The claimant has 60 days from the date of the Recommended Decision to object to the decision.

<sup>d</sup>The claimant has 30 days from the date of the Final Decision to file a request for reconsideration.

<sup>12</sup>Under Part B of the Energy Employees Occupational Illness Compensation Program Act of 2000, the government must provide assistance to claimants or potential claimants in connection with their claim. 42 U.S.C. § 7384v. According to DOL officials, DOL also applies this provision to Part E claims. Regarding claimants' responsibility to establish entitlement, see 20 C.F.R. §§ 30.110, 30.111(a).

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If a claim is denied, claimants are informed of several options, one of which is requesting that DOL reopen the claim.<sup>13</sup> Claims can be reopened any time after the Final Adjudication Branch has issued a final decision, either as a result of a claimant request or agency action (see fig. 2).<sup>14</sup> There is no limit to the number of times a claimant may request a reopening, though the claimant must either submit new evidence or identify a change in a relevant program policy when submitting such a request.<sup>15</sup> Reasons for reopening can include an update to the SEM, new medical evidence, or new evidence of covered employment, among others.<sup>16</sup> Moreover, a claimant may request reopening for each of multiple illnesses or conditions.<sup>17</sup> When a claimant requests a reopening, DOL will review the request and either grant or deny the reopening, depending on DOL's assessment as to whether there is sufficient evidence to warrant reopening. When a reopening request is granted, DOL vacates the previous final decision and submits the claim for readjudication.<sup>18</sup>

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<sup>13</sup>Alternatively, claimants may request a reconsideration of their claim by the Final Adjudication Branch within 30 days, or appeal the decision in a federal district court. 20 C.F.R. § 30.319.

<sup>14</sup>20 C.F.R. § 30.320.

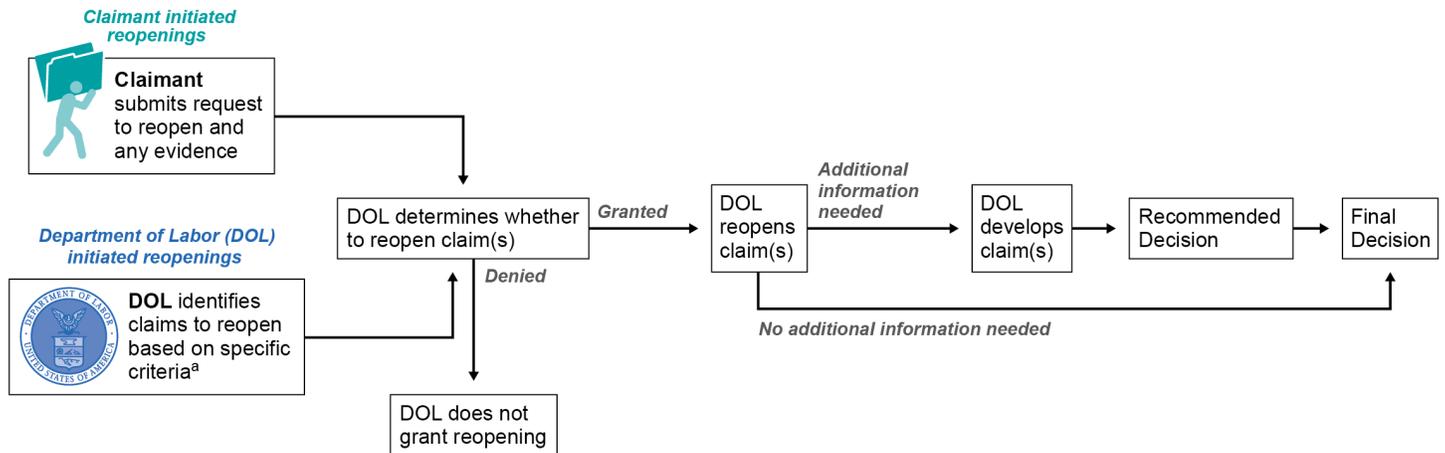
<sup>15</sup>In contrast, DOL—specifically, the Director of the Division of Energy Employees Occupational Illness Compensation—has the discretion to reopen claims without regard to whether new evidence or information is presented or obtained. 20 C.F.R. § 30.320.

<sup>16</sup>Other acceptable justifications for reopening include new evidence of a qualifying relationship for survivors, or changes in law, regulations, or policies.

<sup>17</sup>Furthermore, claimants' conditions may manifest at different points in their lives.

<sup>18</sup>DOL may submit the reopened claim to the Final Adjudication Branch for a new final decision, or to the district office for further development and a new recommended decision. See 20 C.F.R. § 30.320.

**Figure 2: Overview of Key Steps in the Process for Reopening Claims of Contractor Employees**



Source: GAO analysis of *Federal Energy Employees Occupational Illness Compensation Program Act Procedure Manual v. 2.0*, DOL Office Of Workers' Compensation Programs, Division Of Energy Employees Occupational Illness Compensation, December 2017, and interviews with DOL officials. | GAO-19-90

Note: This figure does not show all steps in the reopening process. In addition, although most DOL-initiated reopenings reflect groups of related claims, according to DOL officials, DOL may also reopen individual claims referred by DOL's claims examiners.

<sup>a</sup>Criteria including exposure to specific substances or involving specific worksites may be announced in a DOL bulletin or circular.

In addition, DOL may also reopen groups of related claims. When DOL announces new evidence linking toxins to illnesses, it can also announce plans to reopen groups of claims potentially affected by the new evidence. In these instances, DOL announces the criteria for reopening, which may involve specific substances or worksites, and provides reopening instructions for claims examiners. For example, Circular 15-04, issued in 2014 (now superseded) informed claims examiners that the substance trichloroethylene had been linked to kidney cancer and that previously denied Part E kidney cancer claims could be reopened. DOL officials previously told us that such steps are limited to instances in which a relatively large number of claims are potentially affected.

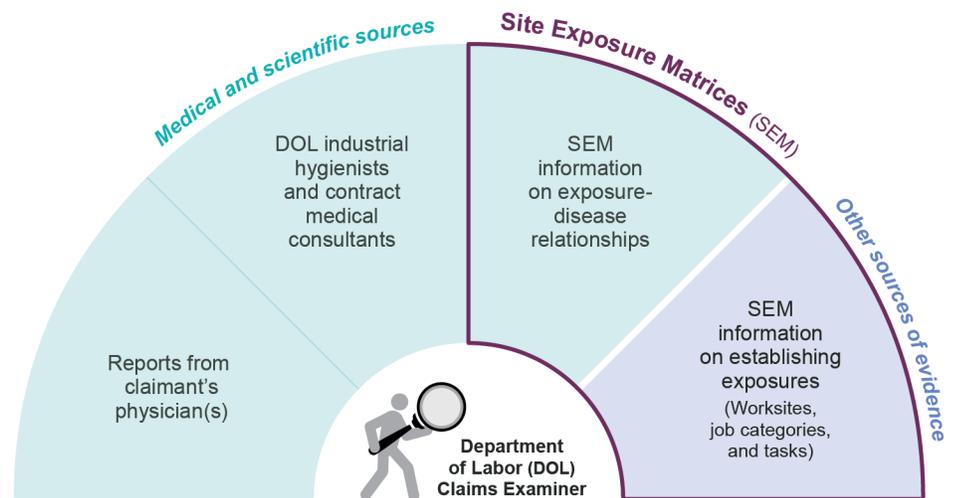
## Site Exposure Matrices (SEM)

DOL claims examiners use the SEM to help determine workers' eligibility for Part E compensation.<sup>19</sup> DOL created this web-based database which organizes and communicates information on the toxic substances workers were potentially exposed to at specific Energy worksites, certain

<sup>19</sup>The SEM can be accessed at <https://www.sem.dol.gov/>.

buildings at the worksites, and while doing specific jobs at the worksites. As of May 2018, the SEM included information on 16,461 toxic substances and 129 former and current sites. It also cross-references the toxic substances with diseases for which there is an established link. In general, the SEM contains only causal links that are based on epidemiological studies, and for which there is medical and scientific consensus. The SEM provides a basis for exposure information, but is not the sole source of information considered by claims examiners during adjudication (see fig. 3).

**Figure 3: Sources of Information Used by Claims Examiners on Compensation Claims of Energy Contractor Employees**



Source: GAO analysis of *Federal Energy Employees Occupational Illness Compensation Program Act Procedure Manual v. 2.0*, Department of Labor (DOL), Office Of Workers' Compensation Programs, Division Of Energy Employees Occupational Illness Compensation, December 2017, and interviews with DOL officials. | GAO-19-90

The SEM is publicly available online and continually updated as new exposure data are obtained. According to a 2016 DOL document, there have been at least 656 revisions to the SEM since 2013. New links are primarily drawn from a database of hazardous toxins and associated diseases—known as Haz-Map—formerly maintained by the National Library of Medicine. According to DOL officials, as new links are added to Haz-Map, they are also added to the SEM.

In 2010, we reported that DOL's efforts to update the SEM were not subjected to independent outside review to provide assurance that the

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SEM is comprehensive and scientifically sound.<sup>20</sup> In 2013, the Institute of Medicine evaluated the scientific rigor of the SEM in response to a request from DOL.<sup>21</sup> Its report noted that some examples of causal links to diseases were missing from the SEM and questioned the SEM's exclusive dependence on Haz-Map as its source for disease and causal information. The report also identified Haz-Map's lack of peer review as a key limitation. Specifically, the report noted that Haz-Map lacked adequate oversight or content review by external, independent experts; relied heavily on sources that were not peer-reviewed, such as textbooks; and included references that were not easily accessible and were difficult to check, making quality assurance and technical review difficult. In addition, the report suggested that other sources be considered for inclusion in the SEM.

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## Advisory Board on Toxic Substances and Worker Health

By law, the Advisory Board is tasked with providing specific categories of technical advice to the Secretary of Labor regarding Part E of EEOICPA.<sup>22</sup> These categories are: (1) the SEM; (2) medical guidance for claims examiners on weighing the medical evidence of claimants; (3) evidentiary requirements for certain claims related to lung disease; and (4) the work of certain experts, namely, industrial hygienists and consulting physicians and their reports. The Advisory Board has subcommittees aligned with these categories (see fig. 4).

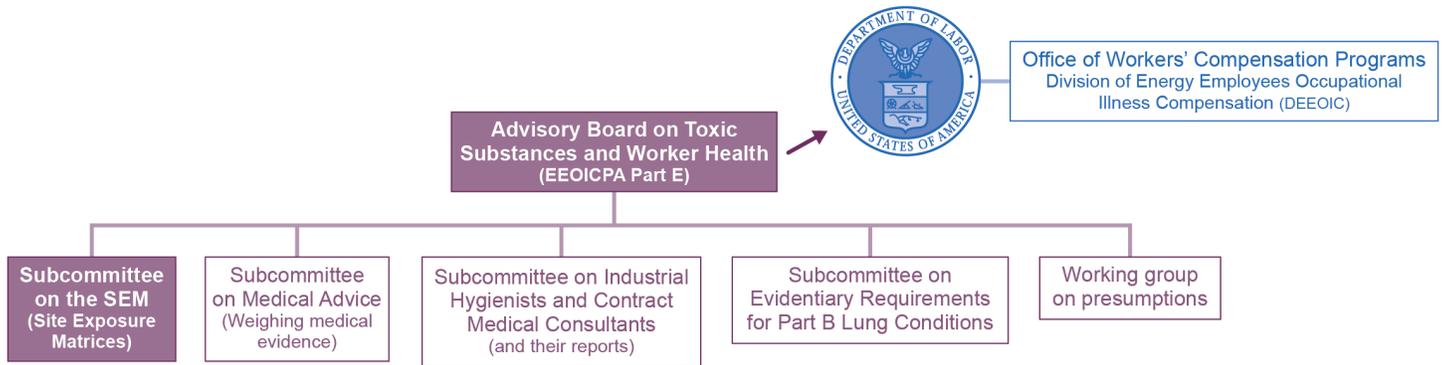
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<sup>20</sup>GAO, *Energy Employees Compensation: Additional Independent Oversight and Transparency Would Improve Program's Credibility*, [GAO-10-302](#) (Washington, D.C.: March 22, 2010).

<sup>21</sup>In 2016, the Institute of Medicine was renamed the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine. For the 2013 report, see Institute of Medicine, *Review of the Department of Labor's Site Exposure Matrix Database* (Washington, D.C.: The National Academies Press, 2013).

<sup>22</sup>Another advisory board, the Advisory Board on Radiation and Worker Health, provides expertise on Part B of the program and advises the Secretary of Health and Human Services. 42 U.S.C. § 7385s-16.

**Figure 4: Organization of the Advisory Board on Toxic Substances and Worker Health**



Source: GAO analysis of information from the Department of Labor. | GAO-19-90

The Advisory Board charter provides for 12 to 15 members and for 2-year terms for these members.<sup>23</sup> Furthermore, applicable provisions of the Federal Advisory Committee Act’s implementing regulations require that Advisory Board membership be fairly balanced.<sup>24</sup> Accordingly, its members have included representatives of the medical, scientific, and claimant communities. The Advisory Board is authorized until 2024.

## Office of the Ombudsman for EEOICPA

The Office of the Ombudsman for EEOICPA is an independent office within DOL. It was established by the National Defense Authorization Act of 2005, to provide information to address the concerns of claimants and potential claimants relating to EEOICPA, among other responsibilities.<sup>25</sup> The Office of the Ombudsman submits an annual report to Congress that summarizes the number and types of complaints, grievances, and requests for assistance that it has received during the year. The report also includes an assessment of the most common difficulties encountered by claimants and potential claimants each year. The Secretary of Labor is required to provide a written response and must agree or disagree with specific issues raised in the report. In addition, the Office of the

<sup>23</sup>By contrast, the members of the Advisory Board on Radiation and Worker Health, who advise the Secretary of Health and Human Services on issues related to Part B of the program, serve without fixed terms.

<sup>24</sup>41 C.F.R. § 102-3.30.

<sup>25</sup>Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, Title XXXI, Subtitle E, § 3686, 118 Stat. 1811, 2185.

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Ombudsman hosts and attends outreach events to assist claimants. The Office of the Ombudsman may not make decisions on claims nor act as an advocate for claimants.

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## DOL Reopened Thousands of Claims Since 2012 and Approved Almost 70 Percent, but Some Claimants Faced Evidentiary Challenges

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DOL Reopened More Than 7,000 Claims by Contracted Employees for Exposure to Toxins at Energy Worksites and Approved Most

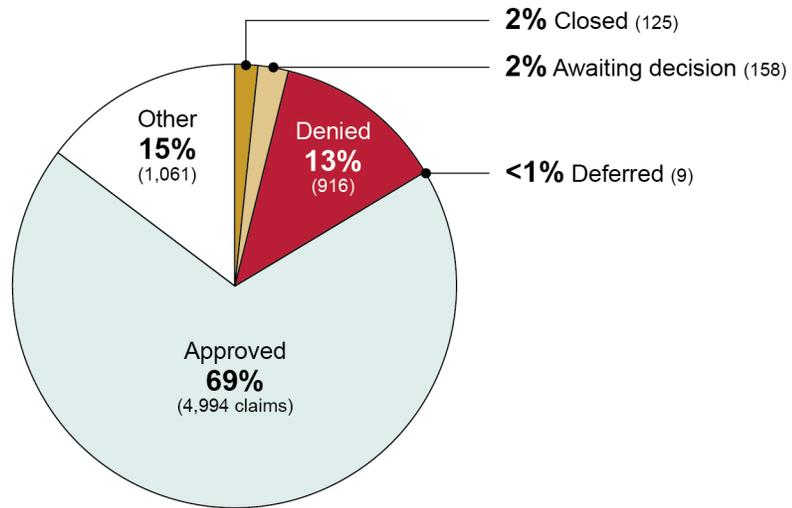
Based on the most recently reopened claims from calendar years 2012 through 2017, DOL reopened more than 7,000 claims filed by contracted Energy employees.<sup>26</sup> DOL subsequently approved compensation for 69 percent. The remaining claims were denied (13 percent), still awaiting a final decision (2 percent), closed (2 percent), deferred (less than 1 percent) or had some other outcome (15 percent).<sup>27</sup> (See fig. 5). Claims with other outcomes refer to claims for which at least one claimed illness was approved while the others were denied or deferred.

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<sup>26</sup>For the purposes of this report, we did not distinguish between employees' and survivors' claims, and included both as claimants.

<sup>27</sup>For the purposes of this report, approved claims include claims with a final decision of "approved only" and "approved and deferred only." Denied claims include "denied only" and "denied and deferred only." Closed claims include claims that were withdrawn by the claimant or closed by DOL in instances in which the claimant had passed away. Other claims include claims with approvals for at least one claimed illness combined with other outcomes: "approved and denied only" and "approved, denied, and deferred." For example, a claim could include multiple medical conditions, with some being approved and others being deferred. For additional information on how we classified claims' outcomes, see appendix I.

**Figure 5: Outcome of Most Recently Reopened Compensation Claims by Energy Contracted Employees, 2012 through 2017**



Source: Department of Labor (DOL) data. | GAO-19-90

Note: Percentages may not sum to 100 because of rounding. For the purposes of this report, approved claims include claims with a final decision of “approved only” and “approved and deferred only”. Denied claims include “denied only” and “denied and deferred only.” Closed claims include claims that were withdrawn by the claimant or closed by DOL in instances where the claimant had passed away. Other claims include claims with approvals for at least one claimed illness combined with other outcomes: “approved and denied only” and “approved, denied, and deferred”. In addition, the data do not allow a particular final decision to be linked to a particular reopened claim given that claims may be reopened multiple times and may be filed for multiple conditions.

Among those more than 7,000 claims, DOL initiated most of the reopenings (80 percent) itself, with fewer reopenings initiated by claimants. Regardless of a claim’s previous status of approved or denied, outcomes after reopening varied by who initiated the reopening. A higher percentage of reopenings initiated by DOL were approved (73 percent, or 4,236 of 5,831 claims) than reopenings initiated by claimants (53 percent, or 758 of 1,432 claims). (See table 1.)

**Table 1: Outcome of Most Recently Reopened Contractor Claims, by Initiator, 2012 through 2017**

Final decision subsequent to reopening	Who initiated reopening	Year in which claim was reopened						Total for 6-year period
		2012	2013	2014	2015	2016	2017	
Approved	Claimant	93	91	99	129	161	185	758
	DOL	1,811	616	566	358	586	299	4,236
	Subtotal							4,994
Denied	Claimant	39	58	66	80	75	72	390
	DOL	241	107	39	68	43	28	526
	Subtotal							916
Closed	Claimant	1	4	3	6	9	13	36
	DOL	41	9	26	1	10	2	89
	Subtotal							125
Awaiting decision	Claimant	0	1	1	1	14	101	118
	DOL	0	9	1	0	3	27	40
	Subtotal							158
Deferred	Claimant	0	0	0	1	2	2	5
	DOL	2	0	0	0	2	0	4
	Subtotal							9
Other <sup>a</sup>	Claimant	20	19	18	17	29	22	125
	DOL	349	224	94	101	78	90	936
	Subtotal							1,061
<b>Total</b>	<b>Claimant</b>	<b>153</b>	<b>173</b>	<b>187</b>	<b>234</b>	<b>290</b>	<b>395</b>	<b>1,432</b>
	<b>DOL</b>	<b>2,444</b>	<b>965</b>	<b>726</b>	<b>528</b>	<b>722</b>	<b>446</b>	<b>5,831</b>
	<b>Total</b>	<b>2,597</b>	<b>1,138</b>	<b>913</b>	<b>762</b>	<b>1,012</b>	<b>841</b>	<b>7,263</b>

Source: Department of Labor (DOL) data. | GAO-19-90

Note: For the purposes of this report, approved claims include claims with a Final Decision of “approved only” and “approved and deferred only.” Denied claims include “denied only” and “denied and deferred only.” Closed claims include claims that were withdrawn by the claimant or closed by DOL in instances where the claimant had passed away. The data reflect most recently reopened claims regardless of their previous decision status before reopening; they include claims that had been previously denied and previously approved. In addition, the data do not allow a particular final decision to be linked to a particular reopened claim given that claims may be reopened multiple times and may be filed for multiple conditions.

<sup>a</sup>Other claims include claims with approvals for at least one claimed illness combined with other outcomes: “approved and denied only” and “approved, denied and deferred.”

Officials at DOL and the Office of the Ombudsman said that DOL-initiated reopenings are more likely to be approved because, in deciding to reopen claims, DOL had already determined there was sufficient evidence to warrant reopening. In addition, DOL-initiated reopenings primarily involve

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large groups of claims, according to DOL officials. They said that many DOL-initiated reopenings are triggered by the establishment of cohorts of claims for radiation-related cancer or by DOL bulletins or circulars about new evidence linking toxins and specific illnesses at Energy worksites. (For a list of DOL bulletins and circulars associated with reopenings, see app. II.)<sup>28</sup> In these situations, DOL officials said claims examiners manually review all previously denied claims that could be affected.<sup>29</sup>

Of the more than 7,000 reopened claims for contracted Energy employees from 2012 through 2017, more than 6,000 had been previously denied versus receiving another outcome. When reopened, whether initiated by DOL or claimants, most (70 percent, or 4,307) were approved (see table 2).<sup>30</sup> In addition, as with all claims, a higher percentage of previously denied claims were approved (75 percent) if reopened at DOL's initiative compared to those reopened at claimants' initiative (52 percent).

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<sup>28</sup>The EEOICPA provides for specific groups, or cohorts, of claims, to compensate eligible members of the cohort. An employee who meets the necessary employment criteria to be included in a designated cohort and is diagnosed with a specified cancer is presumed to have developed the cancer due to employment-related radiation exposure. EEOICPA regulations also allow for the addition of new cohorts based on analysis and determination by the Department of Health and Human Services. 42 C.F.R. pt. 83. According to DOL officials, the role of these cohorts is unique compared to similar federal compensation programs, and represents a major reason for the DOL role in reopenings. In addition, DOL may also reopen sets of claims administratively through bulletins or circulars, specifying the criteria for reopening, which may involve specific substances or worksites. For example, in EEOICPA Bulletin 08-15, issued May 30, 2008, now superseded, DOL clarified procedures for claims examiners regarding Part E claims involving substances with a known link to Parkinson's disease, specifying the evidence required to support worksite exposure, and provided for the reopening of affected claims.

<sup>29</sup>DOL reopened almost all (99 percent) of the claims that it initiated reviews for potential reopening from 2012 through 2017. By contrast, 40 percent of claimant-initiated reopenings were subsequently granted by DOL.

<sup>30</sup>In addition, previously approved claims may be reopened. According to DOL officials, typically, such reopenings occur when a previously unknown survivor is identified and meets eligibility requirements, and compensation must be reallocated among all eligible survivors.

**Table 2: Outcome of Previously Denied Compensation Claims after Most Recent Reopening, for Contracted Employees, 2012 through 2017**

<b>Final decision subsequent to reopening</b>	<b>Number of claims</b>	<b>Percent of claims</b>
All claims		
Approved	4,307	70
Denied	828	14
Closed	112	2
Awaiting Decision	143	2
Deferred	8	<1
Other <sup>a</sup>	721	12
<b>Total</b>	<b>6,119</b>	<b>100</b>
Claimant-initiated		
Approved	688	52
Denied	371	28
Closed	29	2
Awaiting Decision	115	9
Deferred	5	<1
Other <sup>a</sup>	110	8
<b>Subtotal</b>	<b>1,318</b>	<b>100</b>
DOL-initiated		
Approved	3,619	75
Denied	457	10
Closed	83	2
Awaiting Decision	28	1
Deferred	3	<1
Other <sup>a</sup>	611	13
<b>Subtotal</b>	<b>4,801</b>	<b>100</b>

Source: GAO analysis of Department of Labor (DOL) data. | GAO-19-90

Note: Percentages may not sum to 100 because of rounding. For the purposes of this report, approved claims include claims with a final decision of “approved only” and “approved and deferred only”. Denied claims include “denied only” and “denied and deferred only. Closed claims include claims that were withdrawn by the claimant or closed by DOL in instances where the claimant has passed away. In addition, the data do not allow a particular final decision to be linked to a particular reopened claim.

<sup>a</sup>Other claims include claims with approvals for at least one claimed illness combined with other outcomes: “approved and denied only” and “approved, denied and deferred.”

**Reasons Reopened Claims Were Denied Included Missing Linkage between Toxin and Illness and Insufficient Medical Evidence**

DOL officials provided data showing that most of the claims reopened from 2012 through 2017 that were subsequently denied compensation had common reasons, including insufficient medical evidence, ineligible survivors, or maximum benefits already met (see table 3).

**Table 3: Most Frequently Cited Reasons for Department of Labor (DOL) To Deny Reopened Claims, 2012 through 2017**

<b>Reason for denial</b>	<b>Description</b>	<b>Claimant or DOL-initiated reopening</b>
Causal link between exposure and illness could not be established	Evidence is lacking that the claimed condition was caused by work-related exposure to a toxic substance at an approved Department of Energy (Energy) facility. For example, an employee submits a narrative report from his or her treating physician confirming a diagnosis of liver disease. The employee also submits a printout of toxic substances known to be present at the Energy facility where he or she worked. However, records obtained from Energy reveal no evidence of actual exposure to any of those toxic substances during work performed. Further, the employee does not respond to requests for documentary evidence specifically linking their illness to a toxin they encountered at the facility.	Both claimant- and DOL-initiated
Medical information was not sufficient	Medical evidence may not establish a compensable illness, for example, when the information provided does not support a diagnosis for the claimed illness. For example, the employee submits a letter from his or her physician in which the physician opines that the individual has cancer but the accompanying pathology report shows no malignancy.	Claimant-initiated
Survivor not eligible for benefits	One or more of an employee’s survivors may file a claim for compensation under the Energy Employees Occupational Illness Compensation Program Act. Eligible survivors include the employee’s spouse and children within specified age limits. However, other survivors are not eligible for compensation under Part E, such as adult children (with the exception of those determined to be incapable of self-support at the time of the covered employee’s death), parents, grandchildren, and grandparents.	Both claimant and DOL-initiated
Maximum payable compensation had been met	The maximum aggregate monetary compensation, other than for medical benefits, under Part E is \$250,000. Once this maximum has been reached, claimants are no longer eligible for additional payments. <sup>a</sup>	DOL-initiated

Source: DOL data, interviews with DOL officials, and Federal Energy Employees Occupational Illness Compensation Program Act Procedure Manual v. 2.0, Department of Labor, Office Of Workers’ Compensation Programs, Division Of Energy Employees Occupational Illness Compensation, December 2017. | GAO-19-90

<sup>a</sup>42 U.S.C. § 7385s-12.

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## Some Claimants Faced Challenges in Understanding What Evidence Was Required to Reopen Their Claim

According to Office of the Ombudsman officials, some claims may have been denied as a result of claimants not understanding the evidence required for a reopening. These officials also said that claimants experience ongoing challenges at different stages of the adjudication process, including reopening, with regard to evidence required to support their claim. In the *2015 Annual Report to Congress*, the Ombudsman noted claimants' concerns about the reopening process.<sup>31</sup> In particular, the Ombudsman found that DOL's written communication with claimants requesting additional evidence or informing them of the final decision did not clearly explain what specific evidence was needed or why previously submitted evidence was deemed insufficient. In its 2016 annual report, while the Office of the Ombudsman acknowledged DOL's efforts to ensure that decisions on claims are adequately reasoned and documented, and found that some recently issued decisions show improvement, it also found some variation in decision quality among claims examiners.<sup>32</sup> Furthermore, consistent with its 2015 report, it also found that some claimants encounter challenges during the reopening process with written communication that is not clear on the evidence needed to reopen a claim. Our prior work also found deficiencies in the quality of a sample of DOL's written communication with claimants and recommended that all claimant correspondence for Recommended and Final Decisions receive supervisory review.<sup>33</sup> In that report, we noted that DOL's own monitoring also indicated that some of the letters were not always clear about the evidence needed. Moreover, a recent review by DOL's Office of the Solicitor of 77 denied reopening requests found

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<sup>31</sup>Department of Labor, Office of the Ombudsman, *2015 Annual Report to Congress*, (Washington, D.C.: Dec. 21, 2016). The Ombudsman's annual report to Congress is required under EEOICPA. 42 U.S.C. § 7385s-15.

<sup>32</sup>Department of Labor, Office of the Ombudsman, *2016 Annual Report to Congress*, (Washington, D.C.: Aug. 24, 2018). This is the most recent annual report.

<sup>33</sup>GAO, *Energy Employees Compensation: DOL Generally Followed Its Procedures to Process Claims but Could Strengthen Some Internal Controls*, [GAO-16-74](#) (Washington, D.C.: March 10, 2016). DOL agreed with our recommendation and said it would review 10 percent of the decision letters. DOL also said that in fiscal year 2018, it will implement an internal reporting process to monitor the performance of these reviews across the program.

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shortcomings in the quality of some decision letters.<sup>34</sup> These included the lack of a clear explanation for the denial, discussion of medical evidence submitted by the claimant, and discussion of why evidence submitted by the claimant was considered insufficient to warrant a reopening. Office of the Ombudsman officials told us that some claimants resubmit the same evidence they provided previously. This is due, in part, to claims examiners not acknowledging that they received and reviewed evidence when it was initially submitted, or to decision letters not explaining why the evidence submitted was not sufficient, according to Ombudsman officials. Consequently, claimants do not know what specific additional evidence may be needed and their claims may not be reopened and/or approved for compensation, these officials said. Failure to establish causation between exposure and illness and insufficient medical evidence are the two most common reasons why claimant-initiated reopenings are denied.

In its written response to the 2015 report by the Office of the Ombudsman, DOL stated it was undertaking a review of its website and printed material to improve communication with claimants. DOL also stated that in 2015 it began providing training to claims examiners to improve the quality of written letters to claimants, including better explanation of what additional evidence would be needed to reopen a claim. DOL stated that improved communication would address claimants' confusion and would allow staff to serve claimants on specific issues.

As of July 2018, DOL officials said they have taken a number of steps to assist claimants and improve communication with them. For example, DOL conducts workshops for claimants' Authorized Representatives covering such topics as the evidence needed to support a claim and how to request a reopening.<sup>35</sup> DOL officials also said, in 2016, program officials visited all district offices to provide training on topics such as

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<sup>34</sup>According to DOL officials, in 2017, the DOL Office of the Solicitor conducted a one-time review which they said was conducted to examine denials with an emphasis on how new evidence were being considered. Accordingly, 77 case files were selected from all four District Offices, representing denied claims where a reopening request was made based on new evidence that were denied during the second half of calendar year 2016.

<sup>35</sup>An Authorized Representative is a person who represents the interests of claimants during the adjudication process. Their activities on behalf of claimants may include, among other things, communicating with claims staff, accessing case file documentation, and receiving copies of decisions. According to DOL officials, Authorized Representatives may represent multiple claimants.

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writing effective letters using reader-friendly language. Officials said that they continually review printed material and are currently updating the website to provide more concise information on the claims process, including how to request reopening of a claim.

In addition, DOL officials stated that they recently hired a training analyst to update claimant resources posted to the website and to develop additional training for claims examiners. Officials said that the analyst will also develop a methodology for assessing the effectiveness of the training. Assessing the effectiveness of training represents an opportunity for DOL to address claimants' concerns about the clarity of written correspondence they receive on claim evidence. According to *Standards for Internal Control in the Federal Government*, management should conduct ongoing monitoring and externally communicate the necessary quality information to achieve the entity's objectives.<sup>36</sup> These standards also require management to periodically evaluate its methods of communication so that it has the appropriate tools to communicate quality information. In addition, the EEOICPA Procedure Manual states that claims examiners must ensure that written decisions are clear, concise, and well-written with language that clearly communicates the necessary information.<sup>37</sup> An assessment of DOL's training which considers claimant concerns could help DOL better understand why some claimants remain confused about the reopening process and do not submit evidence key to supporting their claim. Until then, the agency will be unable to determine whether its training has resulted in improving communication with claimants and to target future training resources effectively.

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<sup>36</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>37</sup>*Federal Energy Employees Occupational Illness Compensation Program Act Procedure Manual v. 2.0*, Department of Labor, Office Of Workers' Compensation Programs, Division Of Energy Employees Occupational Illness Compensation, December 2017.

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## DOL Has Not Fully Implemented Advisory Board Recommendation to Enhance Database Used to Support Claims

The Advisory Board in 2016 and 2018 recommended DOL incorporate additional, peer-reviewed data sources on the links between toxic substances and illnesses catalogued in the SEM, but while DOL previously agreed that doing so would be useful, it has not yet added all the sources recommended by the Advisory Board. According to Advisory Board members, incorporating these additional sources would enhance the SEM by making it more comprehensive and scientifically sound.

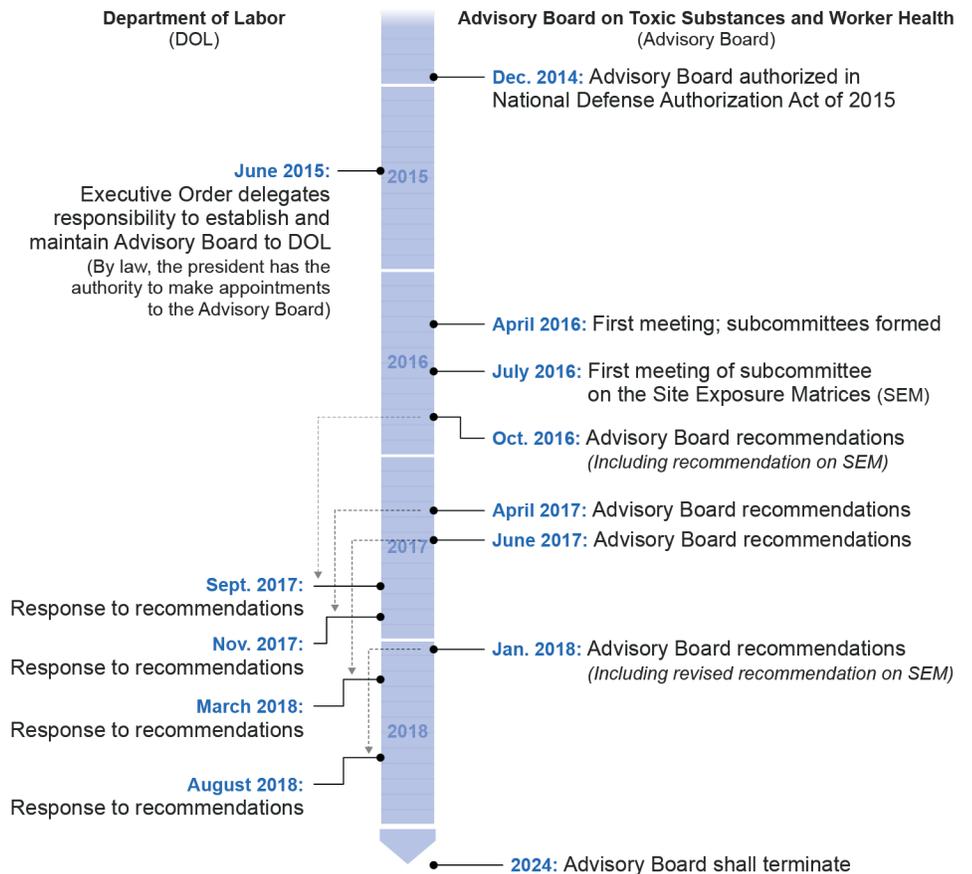
The Advisory Board's work on the SEM began at its first meeting in April 2016 with the creation of a subcommittee on the SEM (see fig. 6).<sup>38</sup> The subcommittee reviewed the scientific soundness of the SEM and in October 2016 the Advisory Board provided one of two related recommendations to DOL that addressed the scientific soundness of the SEM's data on toxic substances and diseases.<sup>39</sup>

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<sup>38</sup>The Advisory Board also formed other subcommittees, including the Subcommittee on Medical Advice for Claims Examiners Regarding Weighing Medical Evidence, the Subcommittee on Industrial Hygienists and Contract Medical Consultants and Their Reports, and the Subcommittee on Evidentiary Requirements for Part B Lung Conditions. The Advisory Board also formed a Working Group on Presumptions.

<sup>39</sup>In addition, in April 2017, the Advisory Board recommended that DOL enhance its internal scientific and technical expertise, in part to support assessments of disease/exposure links in the SEM. In November 2017, DOL responded to this recommendation, noting that while additional scientific and technical capacity would be useful, DOL already had several sources of such expertise, such as an in-house toxicologist and medical director and contracted industrial hygienists and physicians. In its response, DOL noted that it would look forward to additional assistance from the Advisory Board. In January 2018, the Advisory Board reiterated this recommendation acknowledging DOL's existing access to expertise, but noting that DOL needs additional organizational expertise in disease causation, epidemiology, and occupational medicine on a sustained and regular basis. In August 2018, DOL informed the Advisory Board that it declined this recommendation, citing its primary mandate under EEOICPA as claims adjudication, rather than scientific research. The Advisory Board's other recommendations have addressed a range of issues, such as the role of medical expertise, data related to claimants' work history, claimants' access to records, and the use of presumptions. Overall, the Advisory Board has made recommendations to DOL on four occasions: October 2016, April 2017, June 2017, and January 2018. Under Advisory Board procedures, its subcommittees draft recommendations and send them to the full board for a vote. These dates are when the full board voted on recommendations drafted by various subcommittees.

**Figure 6: Key Dates for Advisory Board on Toxic Substances and Worker Health**



Source: GAO analysis of Minutes and related documents of the Advisory Board on Toxic Substances and Worker Health, DOL documents and website, and interviews with DOL officials. | GAO-19-90

At its October 2016 meeting, the Advisory Board recommended DOL incorporate 13 additional information sources created by other agencies or entities into the SEM. This recommendation was consistent with the Institute of Medicine’s recommendation to DOL in its 2013 report on the SEM.<sup>40</sup> In September 2017, DOL responded to this recommendation, noting that certain additional sources identified by the Institute of Medicine might be useful. In its response, DOL asked the Advisory Board to narrow its list of 13 databases to those that would be most relevant, noting that DOL found that some of these sources were not relevant to

<sup>40</sup>The Institute of Medicine recommended inclusion of these 13 databases in SEM in its review in 2013.

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occupational exposure, were redundant, or contradicted other sources. DOL also requested the Advisory Board's advice on how the recommended sources could be used in the SEM. In January 2018, the Advisory Board made its second recommendation regarding the scientific soundness of the SEM's data on toxic substances and specific diseases by identifying three priority information sources from the 13 originally recommended in October 2016 (see table 4). According to DOL, the Haz-Map has included one of these three sources—the monographs on human carcinogens of the International Agency for Research on Cancer—since the Haz-Map was first published in 2002, and included in the SEM since approximately 2006. According to DOL, the International Agency for Research on Cancer is recognized as the world's most authoritative resource for information on human carcinogens and an important source of information for populating health effect data in SEM, given its assembled expertise and the scientific veracity of its publications. Its incorporation in the SEM has prompted reopenings of affected claims. DOL officials said Advisory Board members may have been unaware of this earlier incorporation of data in the SEM. In its response to DOL, however, the Advisory Board stated that it continued to believe that incorporation of all of the information sources originally recommended by the Institute of Medicine would be useful.<sup>41</sup>

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<sup>41</sup>According to DOL, in addition to the International Agency for Research on Cancer, the Haz-Map, and therefore the SEM, incorporates other information sources on health effects identified in the Institute of Medicine report. These include the results of on-going reviews of the American Conference of Governmental Industrial Hygienists, the National Institute for Occupational Safety and Health's *Pocket Guide to Chemical Hazards*, and the Department of Health and Human Services' Agency for Toxic Substances and Disease Registry's Toxicological and Interaction Profiles.

**Table 4: Sources of Information Recommended by the Advisory Board on Toxic Substances and Worker Health for Inclusion in the Site Exposure Matrices Used for Energy Compensation Claims**

Sponsoring entity	Name of information source	Description
Environmental Protection Agency, National Center for Environmental Assessment	Integrated Risk Information System assessments	Provides fundamental scientific information needed to develop human health assessments
U.S. Department of Health and Human Services, National Institutes of Health, Food and Drug Administration, and Centers for Disease Control, National Toxicology Program	Report on Carcinogens	Provides the scientific basis for programs, activities, and policies that promote health or lead to the prevention of disease
World Health Organization, International Agency for Research on Cancer	Monographs on the Evaluation of Carcinogenic Risks to Humans	Evaluates the evidence of the carcinogenicity of specific exposures, through international expert working groups

Source: Review of the Department of Labor’s Site Exposure Matrix (Washington, D.C.: Institute of Medicine, 2013); agency websites. | GAO-19-90

The Advisory Board’s recommendations on incorporating additional peer-reviewed information sources in the SEM were consistent with the earlier report of the Institute of Medicine, which found that these additional data sources generally follow a systematic methodology, reflect peer review, provide more information on linkages between toxic substances and specific diseases, and could enhance the scientific soundness of the SEM.<sup>42</sup>

The three information sources that the Advisory Board recommended for inclusion in the SEM in January 2018 provide information on toxic substances and their health effects, and all are peer-reviewed. The Environmental Protection Agency’s Integrated Risk Information System contains information on 511 chemicals and provides fundamental scientific information used to develop human health risk assessments. The National Toxicology Program’s Report on Carcinogens currently lists 248 substances, agents, and mixtures that are known or reasonably

<sup>42</sup>Although the additional information sources identified in the Institute of Medicine report address toxic substances’ health effects and reflect peer review, the report’s authors noted that they were not aware of any information sources that include information on causal relationships between substances and diseases, like the Haz-Map, and therefore, the SEM. They also noted that all of the information sources would require some interpretation to analyze their data and develop causal substance-disease links.

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anticipated to cause cancer in humans. The International Agency for Research on Cancer, part of the World Health Organization, is considered the authoritative source for information on cancer, according to officials of the National Academies of Sciences, Engineering, and Medicine.

In August 2018, DOL responded to the Advisory Board's recommendation regarding these three potential additional data sources. DOL's response noted that it uses relevant data from the International Agency for Research on Cancer in claims adjudication, including updates to these data. Regarding the other two data sources, however, DOL declined the recommendation. While noting that these two sources include voluminous and complex data, DOL also noted that the Advisory Board did not offer its own analyses of either the credibility or the scientific reliability of the materials in these databases, and DOL did not think it appropriate to add the databases' information on health effects to the SEM in the absence of any rigorous and comprehensive investigations by the Advisory Board. DOL's response also noted that it would consider additional input should the Advisory Board be in a position to offer more specific guidance regarding the content of data sources that would be applicable and appropriate to the administration of the program.

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## Conclusions

Contracted Energy employees who carried out the nation's nuclear weapons production were often unaware of the extreme personal hazards they faced while serving their nation and learned of the risk only when they were later stricken by illness caused by exposure to toxins. It is imperative their claims for compensation be given the attention and care needed to fairly administer this compensation program. The most scientifically up-to-date information should be used to determine the health effects of various toxic substances, and claimants should be assisted in their efforts to meet statutory requirements for claims. Despite DOL efforts to improve the quality of written communication to claimants, some claimants continue to be confused about the evidence needed to successfully reopen and support their claim. DOL letters that clearly communicate what evidence is needed to support a claim could provide claimants with the opportunity to better understand the reopening process while minimizing the frustration of having their claim repeatedly denied and assuring a fair consideration of such claims.

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## Recommendation for Executive Action

We are making one recommendation:

The Secretary of Labor, in conducting any assessment of its staff training designed to improve clarity of communication with claimants, should ensure that the assessment considers claimants' challenges with understanding DOL's written communications on the evidence needed to successfully reopen or otherwise support a claim.

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## Agency Comments

We provided a draft of this product to the Department of Labor (DOL) for comment. In its comments, reproduced in appendix III, DOL neither agreed nor disagreed with our recommendation to ensure that the assessment of staff training considers claimants' challenges regarding the evidence needed to successfully reopen or otherwise support a claim. However, DOL acknowledged that it plans to focus its staff training efforts on a variety of needed training topics, including improving the quality of written communications. DOL further noted that its recently hired training analyst will be responsible for, among other things, designing assessment measures to gauge the quality of training and the effect it has improving the overall quality of claim outcomes. We continue to encourage DOL to design its assessment so that it considers claimants' challenges in understanding the evidence needed.

DOL also provided technical comments, which we incorporated as appropriate. In addition, we provided relevant report sections to the Office of the Ombudsman, members of the Subcommittee on the Site Exposure Matrices of the Advisory Board on Toxic Substances and Worker Health, and officials of the National Academies of Sciences, Engineering, and Medicine for their technical comments and incorporated them, as appropriate.

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the appropriate congressional committees; the Secretary of Labor; and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [gurkinc@gao.gov](mailto:gurkinc@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Chelsea Gurkin". The signature is written in a cursive, flowing style.

Chelsea Gurkin,  
Acting Director  
Education, Workforce, and Income Security Issues

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# Appendix I: Objectives, Scope, and Methodology

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We examined (1) the number of compensation claims for illnesses resulting from exposure to toxins that were reopened by the Department of Labor (DOL) and their final outcome; (2) the extent to which an advisory board on toxic substances and worker health reviewed and advised DOL on the scientific soundness of DOL's database on toxins and their potential links to occupational diseases, and DOL's response.

To address our objectives, we:

1. Reviewed relevant federal laws, regulations and guidance;
2. Requested summary data from 2012 to 2017 from DOL related to the reopening process, including claims assessed for reopening, claims actually reopened, and outcomes for reopened claims and, for claims denied after being reopened, the reasons for denial;
3. Reviewed DOL program documents;
4. Reviewed recommendations of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) submitted to DOL from October 2016 to January 2018, and DOL's responses to those recommendations, as well as Advisory Board minutes and other documentation;
5. Interviewed DOL officials; members of the Advisory Board on Toxic Substances and Worker Health; officials of the National Academies of Sciences, Engineering, and Medicine; and a representative of an advocacy group.

We conducted this performance audit from September 2017 to November 2018 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.

## **Review of Federal Laws, Regulations, and Guidance**

We reviewed relevant federal laws, including the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA),<sup>1</sup>

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<sup>1</sup>Codified at 42 U.S.C. § 7384 et seq.

the National Defense Authorization Act of 2015,<sup>2</sup> National Defense Authorization Act for Fiscal Year 2005,<sup>3</sup> and the Federal Advisory Committee Act,<sup>4</sup> as well as relevant federal regulations. In addition, we reviewed relevant guidance, including the *Federal Energy Employees Occupational Illness Compensation Program Act Procedure Manual*,<sup>5</sup> as well as relevant Energy Employees Occupational Illness Compensation Program Act Bulletins and Circulars.<sup>6</sup>

### Analysis of DOL Data on Reopened Claims and Subsequent Decisions

To address our first objective, we obtained and analyzed data from DOL's Energy Compensation System from January 1, 2012 through December 31, 2017. We selected 2012 as the first year of our review period because the program transitioned to a new data system that year, and 2017 as the last year to obtain the most recent data available at the time of our review. We obtained and analyzed data for the following types of claims:

- **Claims reviewed for reopening.** We analyzed the data DOL provided on claims that it reviewed for reopening, that is, claimant requests for reopening (claimant-initiated reopenings), and claims identified by DOL for potential reopening (DOL-initiated reopenings). The total claims DOL reviewed for reopening was 10,652.
- **All claims actually reopened:** We obtained the aggregate number of all claims that were reopened. These claims totaled 8,234. We also

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<sup>2</sup>Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292.

<sup>3</sup>Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811.

<sup>4</sup>Pub. L. No. 92-463, 86 Stat. 770.

<sup>5</sup>*Federal Energy Employees Occupational Illness Compensation Program Act Procedure Manual v. 2.0*, Department of Labor, Office Of Workers' Compensation Programs, Division Of Energy Employees Occupational Illness Compensation, December 2017.

<sup>6</sup>See, for example, *Energy Employees Occupational Illness Compensation Program Act Bulletin 08-15*, Department of Labor, May 30, 2008; *Energy Employees Occupational Illness Compensation Program Act Bulletin 12-01*, Department of Labor, March 7, 2012; *Energy Employees Occupational Illness Compensation Program Act Circular 13-06*, Department of Labor, February 21, 2013; *Energy Employees Occupational Illness Compensation Program Act Circular 13-12*, Department of Labor, August 29, 2013; and *Energy Employees Occupational Illness Compensation Program Act Circular 15-04*, Department of Labor, November 1, 2014.

obtained data for each individual claim, including reopening request date, reopening request type, reopening date, original final decision type, and outcome type. The reopening request type indicates whether the claim was claimant- or agency-initiated. The original final decision type refers to the final decision when the claim was originally adjudicated. The outcome type refers to the subsequent final decision following reopening.

- **Most recently reopened claims:** As we did for all reopened claims, we obtained aggregate data on all the most recently reopened claims. These claims totaled 7,263. By using the most recently reopened claims, we were able to examine one claim for each claimant, to provide a consistent unit of analysis, given that claimants can have multiple claims at one time, and there is no limit on the number of times they can request reopening of their claims. We also obtained data on each individual claim that included the same categories as those listed above for all reopened claims.

We assessed the reliability of the data obtained by (1) reviewing existing information about the data and the system that produced them, and (2) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for purposes of providing information on the number of claims for illnesses resulting from exposure to toxins that DOL reopened since 2012 and the outcome. However, there was one limitation to the data obtained: according to DOL officials, the Energy Compensation System does not allow a particular final decision to be linked to a particular reopened claim, given that claims may be reopened multiple times and may be filed for multiple conditions. As a result, DOL officials queried the system to match the final decision issued most recently after the reopening as the basis of the provided data. DOL officials explained that the data system's codes used to record final decisions do not reflect the full complexity of a case, and reflect the fact that claims may be filed for multiple conditions. To illustrate this, figure 7 depicts a hypothetical example of a claimant requesting reopening of claims for three conditions (emphysema, hearing loss, and bladder cancer) that had been denied previously. The code assigned to the final decision, although appropriate, does not reflect the full complexity of the claims' history. In the example below, given that there were three initial reopening requests for different conditions, a new reopening request for one of these conditions (hearing loss), and two subsequent final decisions, it is unclear from the coding in DOL's system which final decision corresponds to which reopening request.

**Figure 7: Coding of Final Decision for Hypothetical Case Involving Contractor Claimant Requesting Reopening of Claim for Three Different Conditions**



Source: GAO analysis of *Federal Energy Employees Occupational Illness Compensation Program Act Procedure Manual v. 2.0*, Department of Labor (DOL), Office Of Workers' Compensation Programs, Division Of Energy Employees Occupational Illness Compensation, December 2017, and interviews with DOL officials. | GAO-19-90

Note: This figure represents a hypothetical situation and does not show all steps in the adjudication process. In this instance, the code “approved and deferred” is used when a claim for one condition is approved, while a claim for another condition for the same claimant is resubmitted just as the first claim is approaching a final decision. In such situations, DOL officials said they do not delay adjudication on the first claim until the second claim completes the adjudication process, but instead issue the final decision on the first claim and “defer” a decision on the second claim while it is readjudicated. In addition, the code “approved and deferred” does not record which condition was approved and which was deferred; that information is available in a separate imaging system which stores documents used for claims adjudication. Furthermore, DOL officials explained that the data system used for claims information was designed for case management and payment processing, not for analytical purposes.

We reviewed DOL summary tables on claims data to analyze the most recently reopened claims from January 1, 2012 through December 31, 2017. To assess the outcomes of these claims, we examined both the initial and subsequent final decisions. We first grouped DOL final decisions into categories (see table 4). We decided to develop an “Other” category so that claims with both approvals and denials would be grouped together. Claimants can have multiple medical conditions and when they receive a final decision, some medical conditions may be approved while others are denied. Claims with such mixed outcomes are coded in the Energy Compensation System as “Approved and Denied Only” or “Approved, Denied and Deferred Only.” The code “Approved, Denied and Deferred Only” refers to claims where a final decision has been rendered on claims for some illnesses—approving at least one and denying at least one—while a decision for at least one other claimed illness is deferred for further development until it is ready for a final decision. We then analyzed the initial and the subsequent final decisions.

**Table 5: Categories Used for the Outcomes of Recently Reopened Energy Employee Occupational Illness Compensation Claims by Contracted Employees and Survivors, 2012 through 2017**

<b>GAO Categories</b>	<b>DOL original categories</b>
Approved	Approved Only; Approved and Deferred Only
Denied	Denied Only; Denied and Deferred Only
Closed	Closed
Awaiting decision	Awaiting
Deferred	Deferred Only
Other	Approved and Denied Only; Approved, Denied and Deferred

Source: GAO analysis of Department of Labor (DOL) data. | GAO-19-90

### **Review of Program Documents**

To address our first objective, we reviewed certain program documents. Specifically, we reviewed selected Accountability Reviews, which are conducted by the Division of Energy Employees Occupational Illness Compensation to monitor the quality of claims adjudication. According to program officials, these reviews serve as a quality control tool and regularly examine whether decisions on claims were supported as well as issues such as payment accuracy. They may also occasionally include other issues, including issues related to the reopening process. In addition, we reviewed a review of reopening requests that were denied conducted by the DOL Office of the Solicitor in 2017.

Additionally, we reviewed information related to reopened claims in the annual reports of the Office of the Ombudsman for calendar years 2012 through 2015, and DOL’s responses to the reports for calendar years 2013 through 2015.

### **Review of Advisory Board Recommendations, DOL Responses, and Other Documents**

To address our second objective, we reviewed all recommendations that the Advisory Board made to DOL about the Energy Employees Occupational Illness Compensation Program Act of 2000, in order to identify those recommendations related to the scientific soundness of the Site Exposure Matrices (SEM), and DOL’s responses to these recommendations. Specifically, we reviewed the eight recommendations made by the Advisory Board in October 2016, and DOL’s response in November 2017; the three recommendations made by the Advisory Board

in June 2017, and DOL's response in March 2018; the seven overarching recommendations made by the Advisory Board in April 2017,<sup>7</sup> and DOL's response in September 2017; and the ten recommendations made by the Advisory Board in January 2018, all of which referred back to previous recommendations, in some cases revising the previous recommendation. We also reviewed DOL's responses to these recommendations in August 2018. In addition, we reviewed the Advisory Board's charter and minutes from selected meetings of the full Advisory Board and from the Subcommittee on the Site Exposure Matrices.<sup>8</sup>

In addition, in order to understand the Advisory Board's recommendations about the Site Exposure Matrices, we reviewed a report on the scientific rigor of the SEM, *Review of the Department of Labor's Site Exposure Matrix Database* (Washington, D.C.: The National Academies Press, 2013). DOL asked the Institute of Medicine to review the SEM database and its underlying source of toxic substance–occupational disease links. To review the SEM, the Institute of Medicine formed an ad hoc committee of experts in occupational medicine, toxicology, epidemiology, industrial hygiene, public health, and biostatistics, who conducted an 18-month study to review the scientific rigor of the SEM.

### Interviews

To address both objectives, we interviewed DOL officials and others with relevant knowledge or experience of the Energy Employees Occupational Illness Compensation Program Act of 2000. Specifically, we interviewed officials of DOL's Division of Energy Employees Occupational Illness Compensation about topics including the reopening process, how data about reopened claims are stored in the information system, reviews of specific reopened claims, and DOL's response to recommendations of the Advisory Board. We also interviewed officials of DOL's Office of the Ombudsman for EEOICPA about topics such as claimants' concerns about the reopening process and about the SEM.

In addition, we interviewed officials of the National Academies of Sciences, Engineering, and Medicine, who facilitated the work of the

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<sup>7</sup>Some of the recommendations made in April 2017 included several discrete actions under a single recommendation. For example, a recommendation on work-related asthma included four separate actions.

<sup>8</sup>U.S. Department of Labor, *Advisory Board Charter: Advisory Board on Toxic Substances and Worker Health*, June 29, 2017.

committee that produced the report, *Review of the Department of Labor's Site Exposure Matrix*. We asked the officials about topics such as the process used to recruit experts for the review, the report's methodology, the report's approach to scientific rigor, and the report's recommendations.

Additionally, we interviewed members of the Advisory Board on Toxic Substances and Worker Health's Subcommittee on the Site Exposure Matrices, who represent the medical, scientific, and claimant communities. We asked the Advisory Board members about topics such as their review of the SEM and the priorities, if any, that they considered in doing so; their approach to scientific rigor and scientific soundness; and their recommendations to DOL. Finally, we interviewed a representative of the Alliance of Nuclear Workers Advocacy Groups about topics that included the challenges, if any, that claimants experience regarding reopened claims and use of the SEM, and the Advisory Board's recommendations to DOL.

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# Appendix II: List of Department of Labor Bulletins and Circulars About Reopenings of Energy Employees Part E Claims

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## **Energy Employees Occupational Illness Compensation Program Act Bulletins Associated with Part E Reopenings**

1. Department of Labor, EEOICPA Bulletin 12-01, Chronic Lymphocytic Leukemia (CLL) as Radiogenic Cancer under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), March 7, 2012.
2. Department of Labor, EEOICPA Bulletin 13-02, Systematic Review of Denied Part E Cases, February 21, 2013.
3. Department of Labor, EEOICPA Bulletin 16-01, Criteria for Establishing Causation for Asthma Claims Under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), s, October 26, 2015.
4. Department of Labor, EEOICPA Bulletin 16-02, Presumptions Available for Accepting Chronic Obstructive Pulmonary Disease (COPD) Under Part E of the Energy Employees Occupational Illness Compensation Program Act, December 28, 2015.
5. Department of Labor, EEOICPA Bulletin 16-03, Instructions for Use of the Direct Disease Linked Work Processes (DDLWP) in the Site Exposure Matrices (SEM) under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), July 11, 2016.

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**Energy Employees Occupational Illness Compensation Program Act  
Circulars Associated with Part E Reopenings**

1. Department of Labor, EEOICPA Circular 13-06, Review of Denied Bladder Cancer Cases under Part E. (Superseded by Procedure Manual Chapter 15), February 21, 2013.
2. Department of Labor, EEOICPA Circular 13-12, Review of Denied Ovarian Cancer Cases under Part E. (Superseded by Procedure Manual Chapter 15), August 29, 2013.
3. Department of Labor, EEOICPA Circular 15-04, Review of Cases Involving Exposure to TCE and the Development of Kidney Cancer. (Superseded by Procedure Manual Chapter 15), November 1, 2014.
4. Department of Labor, EEOICPA Circular 15-05, Occupational Exposure Guidance Relating to Asbestos. (Superseded by Procedure Manual Chapter 15), December 17, 2014.
5. Department of Labor, EEOICPA Circular 17-04, Rescind Post 1995 Toxic Exposure Guidance, February 2, 2017.
6. Department of Labor, EEOICPA Circular 18-01, Idiopathic Disease Diagnosis, December 6, 2017.

Source: Department of Labor. | GAO 19 90

# Appendix III: Comments from the Department of Labor

U.S. Department of Labor

Office of Workers' Compensation Programs  
Washington, DC 20210



Chelsa Gurkin  
Acting Director  
Education, Workforce, and Income Security

Dear Ms. Gurkin:

Thank you for sharing the proposed report entitled "[ENERGY EMPLOYEES COMPENSATION: Labor Could Further Assist Claimants with Clearer Communication](#) (GAO-19-90)."

You indicated that GAO completed this study to evaluate 1) the number and outcome of compensation claims for illnesses resulting from exposure to toxins that DOL has reopened since 2012, and 2) the Advisory Board's advice to DOL on the scientific soundness of its database on toxins and illnesses, and DOL's responses. I appreciate the effort of your team to engage with the staff of the Division of Energy Employees Occupational Illness (DEEOIC). I understand that numerous interviews occurred throughout the process between your team and DEEOIC staff to make certain that the GAO had a clear understanding of the complexities of the claim adjudication process.

We have reviewed the draft report and would like to make one comment regarding the Recommendations for Executive Action as discussed in the report. Upon completion of the review, you concluded that despite our efforts to improve the quality of written communication to claimants, some claimants continue to be confused about the evidence needed to successfully reopen and support their claims. You therefore made one recommendation: in conducting any assessment of staff training designed to improve communication with claimants, we should ensure that the assessment considers claimants' challenges with understanding DOL's written communications on the evidence needed to successfully reopen or otherwise support a claim.

The DEEOIC has a renewed focus on training and it recently hired a new training analyst. As we prepare and conduct new training to claims staff, our plan is to focus on a variety of needed training topics, including improving the quality of written communications. The intent of our training program is to work towards improved claimant engagement, along with enhancing the understandability of our decision making process. Part of the role of the new analyst position is to design assessment measures to gauge the quality of training and the effect it has improving the overall quality of claim outcomes.

Again, thank you for allowing the Department the opportunity to comment on the GAO's proposed report. I appreciate your efforts to offer guidance on improving the efficacy of our efforts to ensure that nuclear weapons workers made sick because of their work receive proper consideration of claims filed under the EEOICPA.

Sincerely,

Julia Hearthway  
Director  
Office of Workers' Compensation Programs

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Chelsa Gurkin, (202) 512-7215, [gurkinc@gao.gov](mailto:gurkinc@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Meeta Engle (Assistant Director), Chris Morehouse (Analyst-In-Charge), and LaToya King made key contributions to this report. Also contributing to this report were Susan Aschoff, James Bennett, Joseph Cook, Sheila R. McCoy, Jean McSween, Alex Galuten, David Perkins, Tim Persons, Benjamin Sinoff, Almeta Spencer, and Jerome Sandau.

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# Related GAO Products

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*Energy Employees Compensation: DOL Generally Followed Its Procedures to Process Claims but Could Strengthen Some Internal Controls.* [GAO-16-74](#). Washington, D.C.: March 10, 2016.

*Energy Employees Compensation: Additional Independent Oversight and Transparency Would Improve Program's Credibility.* [GAO-10-302](#). Washington, D.C.: March 22, 2010.

*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.

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