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U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

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

March 15, 2023

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


Dear Secretary Su and Director Pond,

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

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

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

Sincerely,



Ben Ray Lujan

United States Senator

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

Feb 11, 2023

Acronyms Defined:

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

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

1. Background:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Discussion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Recommendation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Discussion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Discussion: As written in 42 U.S. Code § 7384 - Findings; sense of Congress, *Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.*

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

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

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

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

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

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

5. Summary:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

//original signed//

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