

**ENERGY EMPLOYEES OCCUPATIONAL ILLNESS  
COMPENSATION PROGRAM: ARE WE FULFILL-  
ING THE PROMISE WE MADE TO THESE COLD  
WAR VETERANS WHEN WE CREATED THIS  
PROGRAM? (PART V)**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,  
BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

DECEMBER 5, 2006

**Serial No. 109-159**

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

31-312 PDF

WASHINGTON : 2007

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SIGNIFICANT DOCUMENTS AND COMMUNICATIONS RELATED TO THE SUBCOMMITTEE'S  
OVERSIGHT OF THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION  
PROGRAM ACT

The following documents and communications are significant items the Subcommittee has come across during its oversight investigation on EEOICPA. The Subcommittee found that there is a continuous stream of communications too numerous to include in the record dating from 2002-2006 that reflect a general mentality in the DOL hierarchy from the Assistant Secretary level down to the health physicists reviewing cases that --

- a. Costs are the primary consideration in DOL policy regarding the program.
- b. Any other opinion (executive and legislative) that conflicts with DOL policy and opinions is borne of ignorance, an attempt to defraud the American taxpayer, politics, or some vague personal agenda.
- c. Everyone except DOL is in the pocket of the worker advocates or pursuing an agenda for financial gain.
- d. Exaggeration of the impact of every action by the Advisory Board and the Secretary of HHS is required when reporting to the Secretary of Labor.

Additionally, the Subcommittee found numerous communications dating from 2002-2006 within the HHS offices involved with EEOICPA as well as between those HHS offices and DOL strategizing on minimizing payouts. The following communications are a small sampling of such communications. Relevant correspondence as well as historical and research documents have also been included.

March 3, 2005

**MEMORANDUM FOR THE SECRETARY**

**FROM:** SHELBY HALLMARK  
Director, OWCP

**SUBJECT:** Update on Status of EEOICPA Programs (Parts B and E)

This is to provide a brief update on progress and issues involved in the implementation of the New Part E program under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), enacted October 28, 2004.

The Department's roll-out of the new program is proceeding according to plan, and is on schedule. ESA/OWCP established a task force to lead the implementation, with heavy participation by SOL (the Federal Employees and Energy Workers Compensation Division) and support from OASAM, OCIA, and OPA. An FY 2005 budget of about \$48 million has been agreed upon with OMB to support administration of the new Part E.

The first major task was to accomplish a smooth transition of responsibilities between the Department of Energy (for the old Part D program) and DOL (for the new Part E). This has been done successfully, with full cooperation from DOE. A formal MOU is in place, DOL has taken full possession of all 25,000 old DOE Part D claims, and we are managing the residual Part D physician panel process. (The statute called for the old Part D panel process to continue until DOL issues its regulations, but in fact all the cases in that pipeline have now been acted upon by the panels.) We have also taken over full management of the contract RESOURCE CENTERS located in the ten major weapons sites, such as Paducah.

To get the new program off the ground and establish credibility with the thousands of claimants who have been waiting for years, OWCP/SOL devised a "Preliminary" Part E case processing approach, under which we are able to approve and pay straightforward cases even before our regulations are published. Special teams in our district offices were set up to make these early decisions. To date, more than 140 cash payments (\$125,000 each) have been made – a total of nearly \$18 million – and over 280 cases have been initially approved for payment. Our goal is to make over 1200 payments by the end of the fiscal year.

Work on the Interim Final Rule for Part E is well underway; we hope to get it to the PPB by early March so that we can beat our goal of publishing it by May 25, 2005. The rule will allow us to decide the whole range of cases under Part E.

Our publicity campaign for the new program is working well. A series of check events and public recognitions has been held at Ashland, Kentucky (Sen. Bunning – December 16); Knoxville (Sen. Alexander – January 10); and last week, in Anchorage, Alaska (Sen. Murkowski).

We have also launched a major series of town hall meetings to be held throughout the DOE weapons complex.

- Oak Ridge (January 25);
- Alaska (February 24);
- Rocky Flats (Denver) March 1
- Hanford, Savannah River, and Idaho the week of March 7
- Los Alamos the week of March 21
- Paducah – March 29-30 (Congressman Whitfield to attend on March 29)

Each of these meetings is well publicized in the local media and with the local Congressional delegation in advance, to maximize participation and ensure that stakeholders are able to participate. Many more meetings will be scheduled through the summer.

**In summary, the DOL start-up has been viewed favorably in the media and among the served population in the DOE weapons complex – so far.**

#### Part E Risks

While the program is off to an excellent start, any delay in getting our regulations cleared through PPB and OMB could slow our progress, and will likely cause an upsurge in public and Congressional criticism. It is imperative that we move the backlog of old cases through the system quickly to avert charges that claimants are being made to wait yet again. Our efforts in FY 2005 are likely to yield about 1200 payments as we ramp up, but most of the backlog must be cleared during FY 2006.

#### Part B Issues

DOL continues to perform steadily and effectively in adjudicating and paying Part B claims. Our only real vulnerability in Part B is the substantial delay in case processing caused by the HHS/NIOSH dose reconstruction process. Many claims have been awaiting dose reconstruction at NIOSH for three or more years.

In addition, there is growing controversy around the dose reconstruction process:

NIOSH and the Presidential Advisory Board recently initiated approval of two new "Special Exposure Cohorts" – similar to Paducah – for the Iowa plant and the Mallinckrodt plant in St. Louis.

In reaction to this action, similar SEC status will be sought for other sites throughout weapons complex. This could threaten the stability of the current Part 16 program, and would cause a \$7 billion increase over 10 years if all sites become SECs – a very real possibility.

HHS has in part acquiesced to claimant, Advisory Board, and political pressure in the SEC process, and has allowed the Advisory Board to operate as essentially a worker advocacy organization. The HHS unwillingness to take unpopular stances places DOL in an awkward position – we end up being the only strong defender of the logic of a scientifically based dose reconstruction process, as opposed to a presumptive (SEC) eligibility test. [Note that Senator Bond was said to be calling you or Deputy Secretary regarding what his staff considered to be a negative posture on the part of DOL with respect to the Mallinckrodt (St. Louis) SEC petition.]

Pressure for more SECs will only grow. You received a letter last week from the Denver Steelworkers' local seeking your support for their petition for an SEC for the Rocky Flats (Denver) facility.

We look forward to providing more information on the new program in the Friday briefing.

Cc: Lipnic