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The Energy Employees Occupational Illness Compensation Program Act (EEOICPA)

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SUMMARY

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The Energy Employees Occupational Illness Compensation Program Act (EEOICPA)

During the Cold War, thousands of Americans worked in the development and testing of the nation's nuclear weapons stockpile. Some of these workers were exposed to radiation, beryllium, silica, and other toxic substances that may have contributed to various medical conditions, including different types of cancer. Enacted in 2000, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA, Title XXXVI of P.L. 106-398) provides cash and medical benefits to former nuclear weapons arsenal workers with covered medical conditions and to their survivors.

Part B of EEOICPA provides a fixed amount of compensation and medical coverage to Department of Energy (DOE) employees and contractors, atomic weapons employees, and uranium workers with specified medical conditions, including cancer. Workers with certain radiogenic cancers can access EEOICPA Part B through one of two pathways: dose reconstruction and the Special Exposure Cohort (SEC). Under dose reconstruction, the worker's individual work history and radiation exposure is evaluated to determine the probability that the worker's cancer was caused by his or her exposure to ionizing radiation. Under the SEC, workers from the same worksite can petition to be included in the SEC based on the site's work and exposure history. All members of the SEC with covered cancers are eligible for Part B benefits. Approximately 70% of EEOICPA Part B cancer cases are awarded benefits via the SEC rather than dose reconstruction.

Part E of EEOICPA operates similar to a traditional workers' compensation program. It pays variable cash benefits based on impairment and wage loss and provides medical benefits to former DOE contractors and uranium workers exposed to toxic substances on the job.

In 2010, GAO raised oversight concerns about the lack of independent expert review of DOE's Site Exposure Matrices (SEM, a repository of information on the presence of toxic substances of covered sites). In 2014, Congress created the Advisory Board on Toxic Substances and Worker Health to advise DOL on Part E, including the SEM. The advisory board sunsets in 2024.

To date, Part B has paid $7.1 billion in compensation and Part E has paid $5.1 billion in compensation. Combined Parts B and E medical benefits exceed $5.9 billion. The Energy Employees Occupational Illness Compensation Fund pays EEOICPA benefits. The fund is financed through general revenues, and it is not subject to annual appropriations.

The EEOICPA Office of Ombudsman, which assists claimants and medical providers navigate the program, is scheduled to sunset on October 28, 2020. However, in the past, when the Office of Ombudsman's authority had expired before Congress could extend it, the Secretary of Labor used her authority to continue the office's operations. In the 116th Congress, H.R. 6009, the Nuclear Workers' Ombudsman Extension Act, would extend the sunset date to 2025.

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The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) provides cash benefits and medical coverage to civilians who worked in the development and testing of the nation's nuclear weapons stockpile.[1] Administered by the Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), with assistance from the Departments of Health and Human Services (HHS), Energy (DOE), and Justice (DOJ),[2] EEOICPA provides benefits under two parts of its statute: Part B and Part E. Part B provides a fixed rate of cash benefits and Part E pays variable benefits based on impairment and wage loss, operating similar to a traditional workers' compensation program. Medical coverage is available under both Parts B and E.

The Energy Employees Occupational Illness Compensation Fund, established by Part A of EEOICPA, pays EEOICPA.[3] This fund is financed, without further appropriations, by transfers of such sums as are necessary from the General Fund of the Treasury. The EEOICPA program's administrative costs are not paid from the Energy Employees Occupational Illness Compensation Fund but are annually appropriated to DOL.

The Energy Employees Occupational Illness Compensation Program was established in 2000 as Title XXXVI of the Floyd D. Spence National Defense Authorization Act for 2001 (P.L. 106-398). The program was amended to replace the original Part D with Part E in 2004 by Subtitle E of Division C of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108-375). EEOICPA is codified at 42 U.S.C. §§7384-7385s-16, with Part B codified at 42 U.S.C. §§7384l-7384w-1, and Part E codified at 42 U.S.C. §§7385s-7385s16.

EEOICPA Part B

Part B provides cash benefits and medical coverage for former nuclear weapons complex workers with certain radiogenic cancers, beryllium sensitivity or chronic beryllium disease, and chronic silicosis; and for uranium miners, millers, and ore transporters already receiving benefits under the Radiation Exposure Compensation Act (RECA; P.L. 101-426).[4]

Cancer Claims

Workers with certain radiogenic cancers are eligible for Part B based on their exposure to ionizing radiation at DOE facilities and atomic weapons employers.

[1] For background information on the development and testing of the nation's nuclear weapons stockpile and the health effects of this work, see Department of Energy (DOE), *Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It*, DOE/EM-0266, January 1996, https://www.energy.gov/sites/prod/files/2014/03/f8/Closing_the_Circle_Report.pdf; and DOE, *Linking Legacies: Connecting the Cold War Nuclear Weapons Production Processes to Their Environmental Consequences*, DOE/EM-0319, January 1997, https://www.osti.gov/servlets/purl/353361.

[2] Specific responsibilities for each agency are provided in Executive Order 13179, "Providing Compensation to America's Nuclear Weapons Workers," 65 *Federal Register* 77487, December 11, 2000.

[3] 42 U.S.C. §7384e.

[4] For additional information on RECA, see CRS Report R43956, *The Radiation Exposure Compensation Act (RECA): Compensation Related to Exposure to Radiation from Atomic Weapons Testing and Uranium Mining*.

Eligible Workers

The following groups of workers are eligible for Part B benefits based on developing a type of radiogenic cancer:

- DOE employees who worked at DOE facilities;[5]
- DOE contractor employees who worked at DOE facilities;
- employees who worked for an "atomic weapons employer" at an "atomic weapons employer facility."

An *atomic weapons employer* is defined in the statute as an employer that processed or produced material that emitted radiation and that was used in the production of nuclear weapons, and an *atomic weapons employer facility* is defined as a facility owned by an atomic weapons employer where such processing or production occurred. Atomic weapons employers' employees are eligible for Part B if they worked at an atomic weapons employer facility during a period when radiation-emitting material was being processed or produced. In addition, employees at atomic weapons employer facilities with residual contamination, as determined by the National Institute for Occupational Safety and Health (NIOSH), are eligible even if they worked at the site after material processing and production was completed.[6] DOE makes determinations of which facilities qualify as atomic weapons employer facilities under Part B.[7]

Disease Requirements

To be eligible for Part B benefits for a radiogenic cancer, a covered worker must have developed one of the types of cancers specified in statute after beginning employment as a DOE employee, DOE contractor, or atomic weapons employee. **Table 1** lists the specified cancers.

Table 1. Specified Cancers for Eligibility for EEOICPA Part B Benefits

Onset of the disease was any time after beginning covered employment	
Bone Cancer	
Renal Cancers	
Onset of the disease was at least two years after first exposure to radiation	
Leukemia (other than chronic lymphocytic leukemia)	
Onset of the disease was at least five years after first exposure to radiation	
Bile Duct Cancer	Multiple Myeloma
Brain Cancer	Ovarian Cancer
Breast Cancer (male or female)	Pancreatic Cancer
Colon Cancer	Pharynx Cancer
Esophageal Cancer	Salivary Gland Cancer

[5] For the purposes of Part B, DOE employees, contractors, and facilities include those of DOE predecessor agencies, such as the Atomic Energy Commission and the Manhattan Engineering District.

[6] These facilities are identified by the National Institute for Occupational Safety and Health (NIOSH) in its 2003 report *Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities*. NIOSH is an institute of the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC).

[7] A database of covered facilities is available on the DOE website at https://ehss.energy.gov/Search/Facility/findfacility.aspx.

Gall Bladder Cancer	Small Intestine Cancer
Liver Cancer (except if Cirrhosis or Hepatitis B is indicated)	Stomach Cancer
Lung Cancer (other than in situ Lung Cancer that is discovered during or after a post-mortem exam)	Thyroid Cancer
Lymphomas (other than Hodgkin's Disease)	Urinary Bladder Cancer

Source: 42 U.S.C. §7384l(17) and 20 C.F.R. §30.5(ff).

Notes: With the exception of bone cancer and renal cancers, the specified cancers for eligibility for Part B benefits are the same cancers specified for the eligibility of onsite participants (persons who were physically present at the site of an atmospheric test of a nuclear weapon) and downwinders (persons who lived in areas near the Nevada Test Site during atmospheric tests of nuclear weapons) under RECA and are incorporated by reference in the EEOICPA statute.

Pathways to Eligibility

The two pathways for eligibility for Part B benefits based on radiogenic cancer are dose reconstruction and the Special Exposure Cohort (SEC).

Radiation Dose Reconstruction

Under the dose reconstruction pathway, each individual's work history and exposure to ionizing radiation at a covered facility is independently evaluated to determine the probability that his or her cancer was caused by radiation exposure. Pursuant to federal regulations, NIOSH reconstructs, or estimates, the quantitative dose of radiation that a person received while working at a covered facility.[8]

To estimate a claimant's individual dose of radiation, NIOSH may use existing dose monitoring data, such as that obtained from the dosimetry readings or bioassay samples.[9] If monitoring data is not available or inadequate for dose reconstruction, NIOSH may use other sources, including data from the overall worksite and workers with comparable exposures. In the absence of data from the overall worksite or comparable populations of workers, NIOSH may develop a model of estimated exposure based on information about the claimant's work processes and work environment. In completing dose reconstructions, NIOSH interviews the claimant and may use any relevant information, including statements and records provided by the claimant or others, including labor unions, coworkers, and data from health research on workers.

Once NIOSH has estimated a quantifiable radiation dose for the worker, NIOSH then determines a quantitative measure of the probability that the claimant's cancer was caused by this dose of radiation (probability of causation) using the following formula:

$$PC = \frac{RadRisk}{RadRisk + BasRisk} \times 100\%$$

[8] 42 C.F.R. §§82.0-82.33.

[9] *Dosimetry readings* measure the amount of radiation absorbed by a device, called a dosimeter, which is worn by a person. *Bioassay samples* are samples of human tissue used to detect radiation absorption.

in which *PC* is the quantitative probability of causation, *RadRisk* is the risk that the cancer was caused by the radiation dose, and *BasRisk* is the risk of this cancer in the total population.[10] Estimates are "based on the upper 99% confidence interval of the probability of causation."[11]

To calculate the probability of causation, NIOSH uses the agency's Interactive Radio Epidemiological Program (IREP), which is based on updates to the radio-epidemiological tables developed by the National Cancer Institute (NCI) in 1985.[12] The radio-epidemiological tables and IREP data for all cancers except thyroid cancer are taken from the morbidity studies of the survivors of the atomic bomb detonations in Japan in 1945. Thyroid cancer data are from a pooled analysis of several international cohorts.[13] All data are adjusted for the U.S. population, based on U.S. cancer rates and are used to calculate *RadRisk*, the risk that a given cancer was caused by a given radiation dose. Overall cancer rates for the U.S. population are used to calculate *BasRisk*, the risk of cancer in the total population.

Because the EEOICPA statute specifies that benefits are to be awarded if the worker's cancer "was at least as likely as not related" to his or her covered employment, a probability of causation of 50% or greater is required to qualify for benefits.[14]

Special Exposure Cohort

The Special Exposure Cohort pathway to Part B benefits is based on the presumptive eligibility of a group of workers, rather than the eligibility of an individual claimant. If a claimant is a member of the SEC and has one of the cancers specified for Part B eligibility, he or she is entitled to Part B benefits without having to go through the dose reconstruction process.

The EEOICPA statute grants SEC status to the following groups of workers:

- employees who worked a total of at least 250 days before February 1, 1993, at a gaseous diffusion plant[15] at Paducah, KY; Portsmouth, OH; or Oak Ridge, TN; and either
  - were monitored for radiation exposure via dosimetry badges or
  - had jobs with similar exposures to radiation as those who were monitored via dosimetry badges; and
- DOE employees and contractors on Amchitka Island, Alaska, before January 1, 1974, who were exposed to ionizing radiation on the job from the Long Shot, Milrow, or Cannikin underground atomic weapons tests.[16]

[10] For additional information on the calculation of probability of causation, see the NIOSH website at https://www.cdc.gov/niosh/ocas/pccalc.html.

[11] 42 U.S.C. §7384n(c)(3)(A).

[12] The creation of the National Cancer Institute (NCI) radio-epidemiological tables was mandated by Section 7(b) of the Orphan Drug Act (P.L. 97-414).

[13] 42 C.F.R. §81.10. For additional information on the Interactive Radio Epidemiological Program (IREP), see the NIOSH website at https://www.cdc.gov/niosh/ocas/faqsirep.html and the NCI website at https://radiationcalculators.cancer.gov/irep/.

[14] 42 U.S.C. §7384n(b).

[15] *Gaseous diffusion* is a method of enriching uranium for use in nuclear weapons.

[16] 42 U.S.C. §7384l(14).

Additional classes of workers may be added to the SEC through an official petitioning process. A worker, group of workers, survivors of deceased workers, or labor unions may petition to add a new class of workers. For a class of workers to be added to the SEC, it must be determined that

- it is not feasible to determine with sufficient accuracy the dose of radiation the class received; and
- there is a reasonable likelihood that such radiation dose may have endangered the health of the members of the class.[17]

An SEC petition is first reviewed by NIOSH, which has 180 days to evaluate the petition and make a recommendation on the inclusion of the class in the SEC. After NIOSH makes its recommendation, either for or against inclusion, the petition is forwarded to the Advisory Board on Radiation and Worker Health for action.

The EEOIPCA established the advisory board, and the President appoints its members and chair.[18] There is no Senate confirmation requirement or member term length or term limit provisions. The statute does, however, require that the board membership "reflect a balance of scientific, medical, and worker perspectives."[19] Pursuant to Executive Order 13179, the board consists of up to 20 members.[20]

The advisory board investigates the petition and holds public meetings before making a recommendation on an SEC class inclusion. If the advisory board recommends a class be included, then the recommendation must be acted on by the HHS Secretary within 30 days of receiving the board's recommendation.[21] If the Secretary does not act within 30 days, the class is deemed to have been added to the SEC.

If the Secretary adds a class to the SEC, Congress has 30 days to change or modify this action. If Congress does not act within 30 days, the class is officially added to the SEC.[22]

To date, 128 classes of workers have been added to the SEC through the petitioning process.[23]

Pathway Data

Although the original EEOICPA legislation included only four SEC sites, the SEC pathway has become the predominant method of entry into the EEOICPA program. The SEC pathway currently accounts for 70% of paid Part B cases and 70% of total Part B cancer benefits.[24] Thus, presumptive eligibility, similar to that used to pay benefits in the RECA program, rather than specific dose reconstruction based on the individual exposure histories of workers, has become

[17] 42 U.S.C. §7384q(b).

[18] For additional information on the advisory board, see the NIOSH website at https://www.cdc.gov/niosh/ocas/ocasadv.html.

[19] 42 U.S.C. §7384o(a)(2).

[20] Executive Order 13179, "Providing Compensation to America's Nuclear Weapons Workers," 65 *Federal Register* 77487, December 11, 2000.

[21] Per 42 C.F.R. §83.16, the Secretary must provide a written report of decision, including a decision-based summary to the petitioners and a published summary in the *Federal Register*. If the Secretary decides not to add a class to the SEC, a notice with the rationale for this decision must be provided to Congress.

[22] 42 U.S.C. §7384l(14)(C)(ii).

[23] Information on the status of all SEC petitions can be found on the NIOSH website at https://www.cdc.gov/niosh/ocas/secstatusTable.html.

[24] Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), *EEOICP Program Statistics*, June 6, 2020, https://www.dol.gov/owcp/energy/regs/compliance/weeklystats.htm.

the primary means of providing benefits to DOE employees, contractors, and atomic weapons employees with covered cancers.

Benefits

Part B pays the following benefits for claims of DOE employees, contractors, and atomic weapons employees, based on radiogenic cancer:

- $150,000, payable to the claimant, or if deceased, to an eligible survivor;[25] and
- medical coverage for the covered cancer.

Part B claimants are entitled to full medical coverage and pay no deductibles, coinsurance, or copayments for their covered medical conditions. Medical services must be provided by enrolled providers that agree to the OWCP medical fee schedules.[26] Covered medical services include doctors' visits; outpatient and inpatient care; laboratory testing; physical, occupational, and speech therapy; home and residential medical care; prescriptions; durable medical equipment; and travel expenses related to medical services.[27] Although EEOICPA is the primary payer for covered medical costs, it does not pay for medical care for conditions unrelated to the claim.

Beryllium Claims

In addition to workers with radiogenic cancers, certain workers are eligible for Part B based on their exposure to beryllium.[28]

Eligible Workers

The following groups of workers are eligible for Part B benefits based on exposure to beryllium:

- DOE employees exposed to beryllium at a DOE facility or at a facility owned, operated, or occupied by a beryllium vendor;[29]
- DOE contractors who worked at a DOE facility; and
- beryllium vendors' employees and contractors who were engaged in the production or processing of beryllium for sale to the DOE or who were engaged in environmental remediation of a beryllium vendor facility under contract with DOE.

[25] The order of payment to survivors is provided at 42 U.S.C. §7384s(e).

[26] A database of enrolled providers can be accessed at https://owcpmed.dol.gov/portal/provider/search. The OWCP medical fee schedules can be accessed at https://www.dol.gov/OWCP/regs/feeschedule/fee.htm.

[27] Additional medical services, such as travel costs for a companion to accompany a claimant to a medical appointment or home or vehicle modifications may be approved by OWCP based on necessity. For additional information on EEOICPA medical coverage, see DOL, OWCP, *DEEOIC Medical Benefits*, https://www.dol.gov/owcp/energy/regs/compliance/brochure/medical_benefits.pdf.

[28] Beryllium is a lightweight metal that was used in the production of components of nuclear weapons and has other current industrial applications. Beryllium is not radioactive, but inhalation of beryllium dust or fumes can cause an immune response called beryllium sensitivity, which can lead to chronic beryllium disease. The Occupational Safety and Health Administration (OSHA) regulates beryllium exposure in the workplace. For additional information on beryllium, see the DOE website at https://www.energy.gov/ehss/about-beryllium. For additional information on the health effects of beryllium, see the NIOSH website at https://www.cdc.gov/niosh/topics/beryllium/.

[29] A list of covered beryllium vendors is provided at 42 U.S.C. §7384l(6) and can be expanded by DOE by publishing a notice in the *Federal Register*. A listing of all sites covered by Part B, including beryllium vendors, is available on the DOE website at https://ehss.energy.gov/Search/Facility/findfacility.aspx.

Disease Requirements

To be eligible for Part B benefits based on exposure to beryllium, a worker must have either chronic beryllium disease or beryllium sensitivity.

Benefits

Under Part B, covered workers with chronic beryllium disease are eligible for the following benefits:

- $150,000, payable to the claimant, or if deceased, to an eligible survivor; and
- medical coverage for the disease in the same manner as medical coverage is provided for Part B cancer claims.

Covered workers with beryllium sensitivity are entitled only to medical monitoring, including regular medical examinations to determine if they have developed chronic beryllium disease. There are no cash or other medical benefits based on beryllium sensitivity.

Chronic Silicosis Claims

Workers are eligible for Part B based on their exposure to crystalline silica in which they developed chronic silicosis. [30]

Eligible Workers

To be eligible for Part B benefits based on chronic silicosis, a worker must have worked as a DOE employee or contractor for at least 250 total work days during the mining of tunnels for underground testing at the atomic weapons testing sites in Nevada or Alaska.

Disease Requirements

To be eligible for Part B benefits for chronic silicosis, a worker must have a nonmalignant lung disease that meets the following conditions:

- the onset of the silicosis was at least 10 years after initial exposure to silica dust; and
- a written diagnosis of silicosis made by a physician and accompanied by
  - a chest x-ray, interpreted by a NIOSH-certified B reader to have pneumoconioses of category 1/0 or higher;[31]

[30] Chronic silicosis is an irreversible interstitial lung disease that develops after prolonged inhalation exposure to crystalline silica. Crystalline silica in dust commonly occurs when workers cut, saw, grind, drill, or crush materials such as glass, stone, rock, concrete, brick, or industrial sand. Exposure also occurs when industrial sand is used in abrasive operations, such as sandblasting, and in the hydraulic fracturing process. Exposure to crystalline silica in the workplace is regulated by the Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA). For additional information on the health effects of crystalline silica, see National Institute for Occupational Safety and Health, *Health Effects of Occupational Exposure to Respirable Crystalline Silica*, NIOSH Hazard Review, April 2002, https://www.cdc.gov/niosh/docs/2002-129/pdfs/2002-129.pdf.

[31] A B reader is a physician who is NIOSH certified after passing an examination to read x-rays to detect pneumoconioses, diseases caused by the inhalation of dust into the lungs. A category of 1/0 is based on the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses.

- results of a computer assisted tomography scan (CAT scan) or other imaging tests that are consistent with silicosis; or
- lung biopsy consistent with silicosis.

Benefits

Under Part B, covered workers with chronic silicosis are eligible for the following benefits:

- $150,000, payable to the claimant, or if deceased, to an eligible survivor; and
- medical coverage for the chronic silicosis in the same manner as medical benefits are provided for Part B cancer claims.

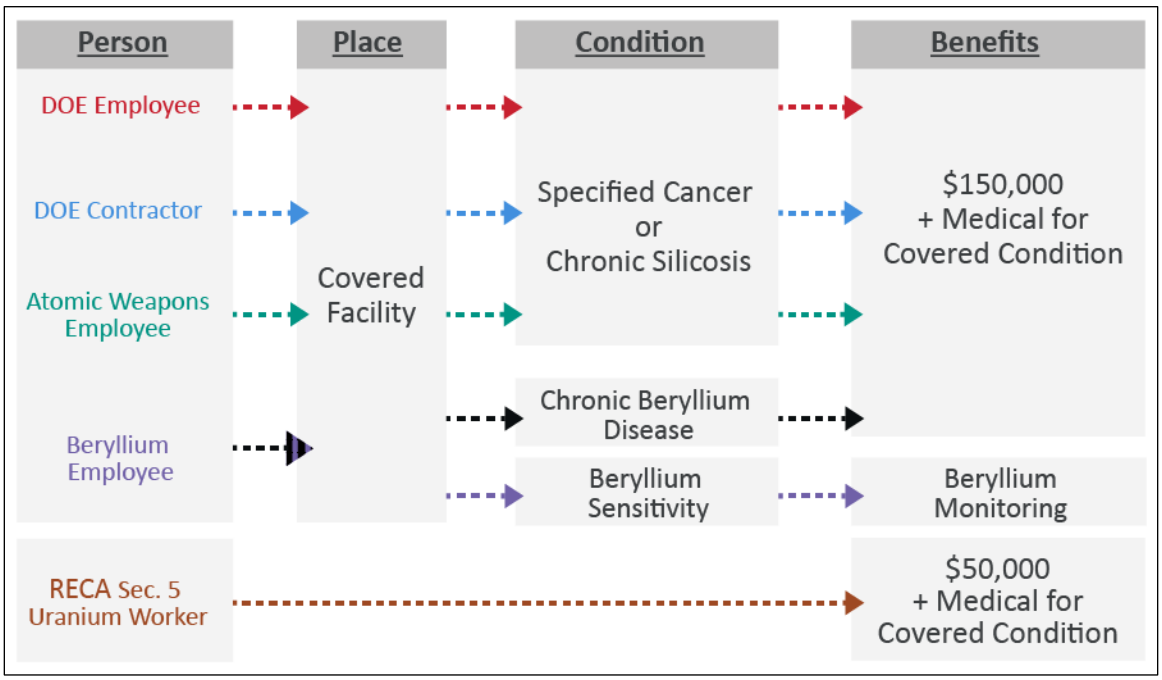
Uranium Worker Claims

Any uranium miner, miller, or ore transporter who has received a $100,000 payment pursuant to Section 5 of the Radiation Exposure Compensation Act (RECA)[32] is automatically eligible for the following Part B benefits:

- $50,000, payable to the claimant, or, if deceased, to an eligible survivor; and
- medical coverage for the disease covered by Section 5 of RECA in the same manner as medical coverage is provided for Part B cancer claims.

Figure 1 summarizes EEOICPA Part B eligibility and benefits.

Figure 1. EEOICPA Part B Eligibility and Benefits



Source: Congressional Research Service (CRS).

Note: RECA is the Radiation Exposure Compensation Act.

[32] Section 5 of RECA provides $100,000 in compensation to certain uranium miners, millers, and ore transporters with diseases specified in the RECA statute. RECA does not provide medical coverage.

EEOICPA Part E

Part E provides variable cash and medical benefits to former DOE contractors who contracted illnesses or to their survivors as a result of the worker's exposure to any toxic substance while working at a DOE facility, and to uranium miners, millers, and ore transporters receiving benefits under Section 5 of RECA.[33] Similar to workers' compensation programs, the amount of cash benefits is based on the worker's level of impairment and wage loss suffered due to his or her covered illness.[34]

Part E was not part of the original EEOICPA legislation. Rather, the original EEOICPA legislation included Part D, which permitted DOE to enter into agreements with states to assist DOE contractors in applying for state workers' compensation benefits for illnesses and deaths related to exposures to toxic substances at DOE facilities, but did not provide any federal benefits to these contractors. Part E replaced Part D when EEOICPA was amended in 2004.[35]

Eligible Workers

The following groups of workers are eligible for Part E benefits:

- DOE contractors who worked at DOE facilities; and
- uranium miners, millers, and ore transporters who have received benefits under Section 5 of RECA.

Disease Requirements

DOE contractors are eligible for Part E benefits if it is "at least as likely as not" that exposure to a toxic substance at a DOE facility caused, contributed to, or aggravated the worker's illness or death. Uranium miners, millers, and ore transporters are eligible for Part E benefits if they contracted an illness or died due to exposure to toxic substances at a facility covered by Section 5 of RECA.

DOL maintains the Site Exposure Matrices (SEM), a database of covered sites and the toxic substances that were present at those sites.[36] Under EEOICPA regulations, the SEM may be used to provide "probative factual evidence" that a toxic substance was present at a DOE facility or a facility covered by Section 5 of RECA.[37]

In 2010, the Government Accountability Office (GAO) raised concerns about the lack of independent expert review of the SEM and cited the concerns of occupational physicians that criticized the "scientific soundness" of the SEM.[38] In its report, GAO recommended that an

[33] DOE and other federal employees are not eligible for EEOICPA Part E benefits, but may be eligible for workers' compensation for employment-related exposures to toxic substances under the Federal Employees' Compensation Act (FECA). For additional information on FECA, see CRS Report R42107, *The Federal Employees' Compensation Act (FECA): Workers' Compensation for Federal Employees*.

[34] For additional information on workers' compensation programs, see CRS Report R44580, *Workers' Compensation: Overview and Issues*.

[35] Subtitle E of Division C of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108-375).

[36] The Site Exposure Matrices are available at https://www.sem.dol.gov/expanded/index.cfm.

[37] 20 C.F.R. §30.231(b).

[38] U.S. Government Accountability Office (GAO), *Energy Employees Compensation: Additional Independent*

independent review board for Part E of EEOICPA be created. In 2014, Part E was amended to create the Advisory Board on Toxic Substances and Worker Health to advise DOL on Part E, including on the SEM.[39] The advisory board is scheduled to sunset on December 19, 2024, 10 years after the date of its enactment.[40]

Benefits

Part E benefits include medical coverage and variable cash benefits based on a worker's wage loss and level of impairment due to a covered illness. Survivors of a deceased worker may also receive benefits based on the worker's wage loss and death.

Workers' Benefits

Part E workers' benefits are based on a combination of wage loss and impairment caused by a covered illness. Wage loss benefits are calculated using the following formulas:

- $10,000 for each year before Social Security full retirement age (FRA) that the worker's wages were between 25% and 50% lower than the worker's average wage during the three years prior to the first quarter of wage loss;[41] and
- $15,000 for each year before FRA that the worker's wages were at least 50% lower than the worker's average wage during the three years prior to the first quarter of wage loss.

Impairment benefits are in addition to any wage loss benefits and are calculated using the following formula:

- $2,500 for each percentage point of whole body impairment as determined using the current edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (commonly referred to as the AMA's *Guides*).[42]

The maximum amount of Part E cash benefits that a worker may receive is $250,000. Workers may receive both Parts B and E benefits for the same medical condition. A worker's Part E benefit amount is reduced by the amount of any other workers' compensation benefits that the worker has received for the same illness caused by the same exposure.

Oversight and Transparency Would Improve Program's Credibility, GAO-10-302, March 22, 2010, p. 32, https://www.gao.gov/assets/310/302183.pdf.

[39] Section 3141(a) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291); codified at 42 U.S.C. §7385s-16. The National Defense Authorization Act for Fiscal Year 2014 (P.L. 113-66) included a provision at Section 3148 expressing the sense of Congress that the President should establish an Advisory Board on Toxic Substances and Worker Health, citing GAO-10-302.

[40] The Advisory Board on Toxic Substances and Worker Health was originally scheduled to sunset on December 19, 2019, five years after the date of its enactment. Section 3120 of National Defense Authorization Act for Fiscal Year 2018 (P.L. 115-91) extended the sunset date to December 19, 2024.

[41] The full retirement age (FRA) ranges from 65 to 67 based on the person's date of birth. For additional information on the FRA, see CRS Report R44670, *The Social Security Retirement Age*.

[42] The use of the current edition is specified at 20 C.F.R. §30.901(b). The sixth edition is the current edition of the AMA's *Guides.*

Survivors Benefits

Survivors of a deceased DOE contractor or uranium miner, miller, or ore transporter may receive one of the following levels of cash benefits under Part E if it is "at least as likely as not" that exposure to a toxic substance at a DOE facility or a facility covered by Section 5 of RECA caused, contributed to, or aggravated the worker's death:

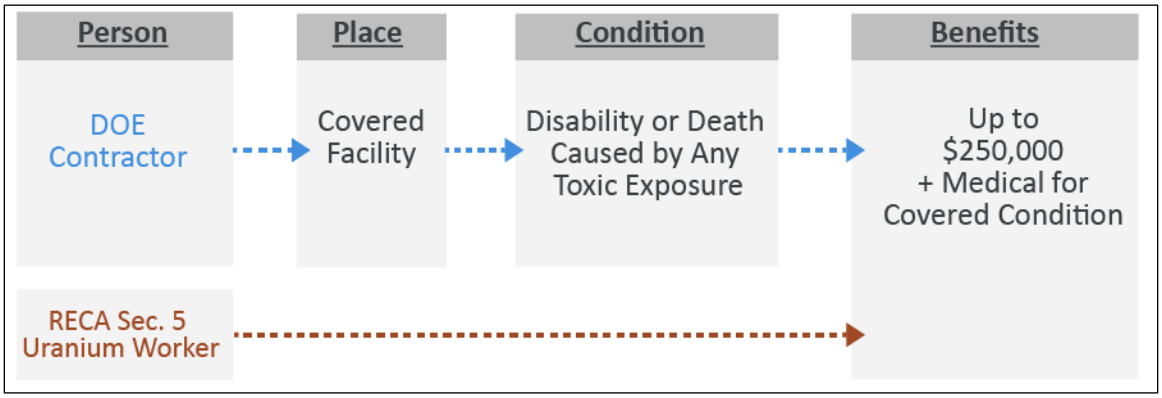
- $125,000 if the worker had no covered wage loss;
- $150,000 if the worker's wages were at least 50% lower than the worker's average wage during the three years prior to the first quarter of wage loss for at least 10 years before FRA; or
- $175,000 if the worker's wages were at least 50% lower than the worker's average wage during the three years prior to the first quarter of wage loss for at least 20 years before FRA.

Survivors benefits are payable in accordance with the following schedule:

- if there is a living spouse who was married to the worker for at least one year before the worker's death—100% to the spouse;
- if there is no eligible spouse—100% in equal shares to any children who are under the age of 18, or under the age of 23 if a full-time student, or of any age if incapable of self-support; and
- if there is an eligible spouse and any eligible children of the worker who are not legal children of the spouse—50% to the spouse and 50% to the eligible children in equal shares.

If there is no eligible spouse or eligible children, then no survivors benefits are paid. **Figure 2** summarizes EEOICPA Part E eligibility and benefits.

Figure 2. EEOICPA Part E Eligibility and Benefits



Source: Congressional Research Service (CRS).

Note: RECA is the Radiation Exposure Compensation Act.

Ombudsman

Part E of EEOICPA and the Office of Ombudsman were created in 2004 under the same legislation. Congress created the Office of the Ombudsman—as an independent office within the

DOL, headed by a Secretary of Labor-designated ombudsman[43]—to assist Part E claimants and medical providers and to address concerns related to available EEOICPA benefits. In 2009, the Office of Ombudsman's authority was extended to Part B of EEOICPA.[44] As required by statute, the office must be independent from other DOL offices and employees who have responsibilities for Part B or E of EEOICPA.[45]

Responsibilities of the Ombudsman

The EEOICPA Office of Ombudsman has the following responsibilities related to EEOICPA's Parts B and E:

- provide information on Part B and E benefits and the procedures applicable to the provision of these benefits;
- provide guidance and assistance to Part B and E claimants;
- make recommendations to the Labor Secretary on the location of EEOICPA Resource Centers;[46]
- other duties as assigned by the Labor Secretary.[47]

The ombudsman must provide an annual report to Congress on the office's activities. The Labor Secretary is required to provide to Congress an annual response to the ombudsman's annual report.

Ombudsman Sunset Date

The EEOICPA statute provides an October 28, 2020, sunset date for the Office of Ombudsman.[48] The initial legislation authorizing the office provided an October 28, 2007, sunset date. However, legislation has extended the sunset date several times, most recently in 2019.[49] Twice the extension occurred after the current authorization period had expired. In both cases, the 2007 and 2012 expirations, the Office of Ombudsman continued to operate pursuant to decisions of the Labor Secretary.[50] In the 116th Congress, H.R. 6009, the Nuclear Workers' Ombudsman Extension Act, would extend the Office of Ombudsman's sunset date to October 28, 2025.

[43] The ombudsman may be an existing DOL employee or a private-sector individual.

[44] Section 3142 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84).

[45] 42 U.S.C. §7385s-15(d).

[46] Resource centers provide EEOICPA outreach, assist claimants with their claims, accept claims, and assist claimants and medical providers with EEOICPA medical benefits. A list of EEOICPA resources centers is available at https://www.dol.gov/owcp/energy/regs/compliance/ResourceMeetings/ResourceCenters.htm.

[47] 42 U.S.C. §7385s-15(c).

[48] 42 U.S.C. §7385s-15(h).

[49] Section 3134(a)(2) of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92).

[50] Memorandum from Elaine L. Chao, Secretary of Labor, to Malcolm Nelson, ombudsman for Part E of the Energy Employees Occupational Illness Compensation Program, October 22, 2007; and Memorandum from Malcolm L. Nelson, ombudsman, Energy Employees Occupational Illness Compensation Program, to Hilda L. Solis, Secretary of Labor, October 24, 2012.

Appendix. EEOICPA Program Statistical Data

Table 2. EEOICPA Statistics

(from program inception in 2000 through July 6, 2020)

	Part B		Part E	
	Claims	**Cases**	**Claims**	**Cases**
Applications	175,579	111,521	144,941	103,129
Decisions	160,993	105,973	130,146	95,579
Approved	*87,395*	*56,375*	*60,636*	*49,779*
Denied	*73,598*	*49,598*	*69,510*	*45,800*
Compensation Payments	81,647	53,185	44,510	39,501
Compensation Paid	$7,095,120,428		$5,136,850,479	
Medical Bills Paid, Parts B and E Combined	$5,973,228,340			

Source: Department of Labor, Office of Workers' Compensation Programs, *EEOICP Program Statistics*, June 6, 2020, https://www.dol.gov/owcp/energy/regs/compliance/weeklystats.htm.

Notes: "Cases" represent covered employees for whom a claim is filed. "Claims" represent the employee and any survivors that file a claim based on an employee. There can be multiple claims per case. The difference between "Approved" cases and claims and "Compensation Payments" is due to cases and claims that have been approved but have not yet been paid compensation by DOL.

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