

**Civil Division**  
**United States Department of Justice**

**Radiation Exposure**  
**Compensation Act Trust Fund**

**FY 2010 PERFORMANCE BUDGET**  
**Congressional Submission**

**May 2009**

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# Radiation Exposure Compensation Act Trust Fund

## Overview

On October 5, 1990, Congress passed the Radiation Exposure Compensation Act (RECA or the Act). The Act offers an apology and monetary compensation to individuals who contracted certain cancers and other serious diseases as a result of their exposure to radiation released during above-ground atmospheric nuclear weapons tests or as a result of their occupational exposure while employed in the uranium industry during the build-up to the Cold War. This unique program was designed as an alternative to litigation in that the statutory criteria do not require claimants to establish causality. Specifically, if the claimant can satisfy the requirements outlined in the statute, which include demonstrating that he or she contracted a compensable disease after working or residing in a designated location for a specified period of time, he or she qualifies for compensation. The amount of the award is statutorily prescribed and ranges from \$50,000 to \$100,000, depending on claimant category. Congress charged the Attorney General with responsibility for adjudicating claims under the Act.

“It is the purpose of this Act to establish a procedure to make partial restitution to the individuals... for the burdens they have borne for the Nation as a whole. ...The Congress apologizes on behalf of the Nation to the individuals... and their families for the hardships they have endured.”

*Radiation Exposure Compensation Act*

The Department of Justice (DOJ) established the Radiation Exposure Compensation Program (the Program) within the Civil Division. The Program commenced operations in April 1992. Since its inception, 29,760 claims have been filed and nearly \$1.4 billion has been awarded to claimants (as of March 5, 2009).

Electronic copies of DOJ’s Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.usdoj.gov/jmd/2010justification/>.

## Program Description

**Mission Statement:** Fairly and expeditiously adjudicate claims, fully consistent with the Radiation Exposure Compensation Act, as amended; educate the public about the Act; and develop strategies for improving the Program.

The Program office is located in Washington, D.C. and is administered by a staff of four attorneys, 12 claims examiners, and two contractor employees within the Civil Division’s Torts Branch. The support staff reviews claims packages, assists claimants with their applications, and manages physical case files. The Civil Division strives to process and resolve claims fairly and efficiently.

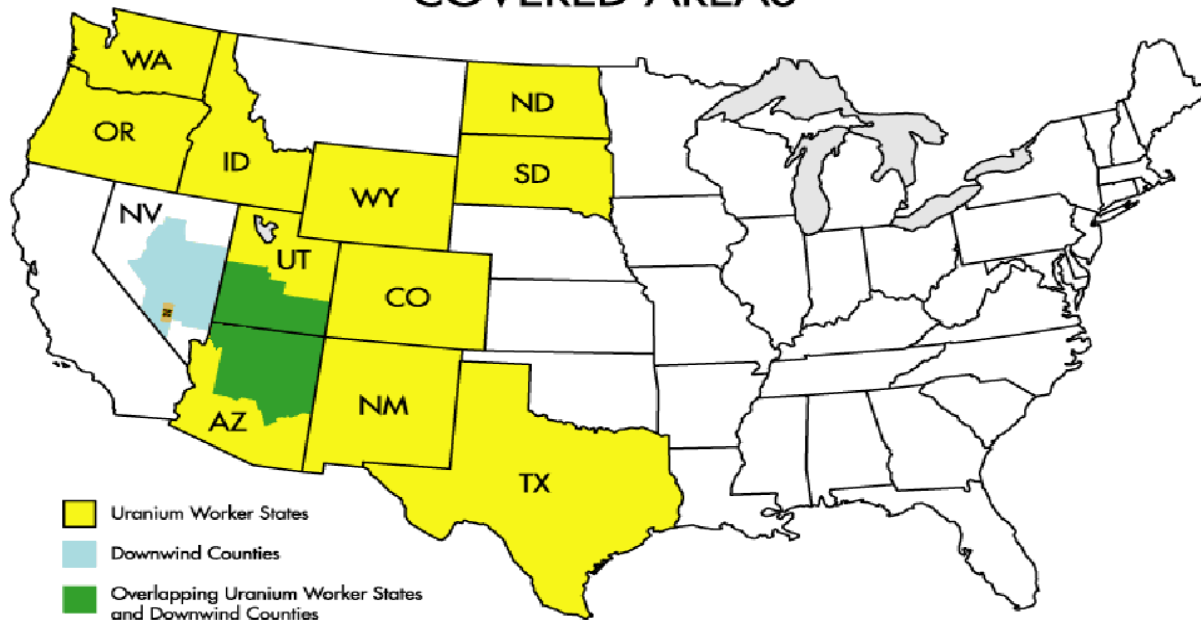
## Background

From 1945 through 1962, the United States conducted nearly 200 atmospheric nuclear weapons tests while building the arsenal that became the cornerstone of the nation's Cold War security strategy. Essential to the development of nuclear weapons was the mining and processing of uranium ore that was conducted by tens of thousands of workers. Many workers filed class action lawsuits that were eventually dismissed by the appellate courts. Congress then devised a program to make partial restitution to the individuals who developed serious illnesses after their exposure to radiation released during above-ground atmospheric nuclear tests or following their employment in the uranium industry. Congress passed the Radiation Exposure Compensation Act on October 5, 1990, and later broadened the scope of the Act's coverage on July 10, 2000.

Implementing regulations issued by the Department were designed to utilize existing records so that claims could be resolved in a reliable, objective, and non-adversarial manner, with little administrative cost to the United States or to the person filing the claim.

The Act established monetary compensation for specified diseases in three defined populations: uranium miners, millers, and ore transporters, who receive \$100,000; individuals present at test site locations, who receive \$75,000 (on-site participants); and individuals who lived downwind of the Nevada Test Site, who receive \$50,000 (downwinders). The map below shows the geographic areas covered by the Act. Although the vast majority of claims are filed by people living in the Four Corners Region (Utah, Colorado, New Mexico, and Arizona), the Program has awarded compensation to individuals residing in every state as well as several foreign countries. The claimant population also includes several Native American tribes.

## MAP OF RADIATION EXPOSURE COMPENSATION ACT COVERED AREAS



The Program regularly engages in outreach activities on the Navajo, Hopi, and Yavapai Apache Indian reservations to meet with tribal leaders, conduct town hall meetings, and assist members in filing claims. Today, the RECA Program is at the center of a broad inter-agency network that comprises the comprehensive federal radiation compensation system. The RECA Program works in concert with the Departments of Health and Human Services, Labor, Veterans Affairs, and Defense to administer the Act.

### **Proposed Legislation**

Legislation to amend RECA has been introduced in the current session of Congress. On March 19, 2009, Congresswoman Bordallo introduced a bill (H.R. 1630) to include the Territory of Guam as a “downwind” area. On February 24, 2009, the *Idaho Statesman* and the *Salt Lake Tribune* reported that Congressmen Jim Matheson (D-Utah), Mike Simpson (R-Idaho), and Walt Minnick (D-Idaho) wrote a letter to House Judiciary Committee Chairman John Conyers (D-Mich) and Republican Ranking Member Lamar Smith (R-Texas), requesting a congressional hearing to consider the expansion of RECA’s “downwind” area to include additional counties in Utah and Idaho. Current workload and funding projections do not account for the possible impact of any scientific studies or substantive statutory changes.

### **Funding History**

The RECA Trust Fund was subject to discretionary appropriations from FY 1992 to FY 2001. Following enactment of the 2000 Amendments, the appropriation became insufficient to meet the increase in the number of claims deemed eligible for compensation. In 2002, Congress addressed the problem within the Department of Defense Authorization Act for FY 2002, which established annual funding against mandatory spending caps. However, by 2003 the increased rate of new claim filings and approvals proved the caps to be inadequate, and a funding shortfall ensued. Working in close coordination, the appropriators and authorizers effectively devised legislative solutions to the funding problems. The following statutes ensure that all compensable RECA claims will be fully funded throughout the life of the Program.

- The Consolidated Appropriations Act for 2005 contained language that made funding for the RECA Trust Fund mandatory and indefinite beginning in FY 2006. Henceforth, the Fund has exclusively paid Section 4 claimants (downwinders and on-site participants).
- The National Defense Authorization Act for FY 2005 requires that RECA Section 5 claimants (uranium miners, millers, and ore transporters) be paid out of the Energy Employees Occupational Illness Compensation Fund.

### **Claim Statistics**

Over the past 17 years, nearly 30,000 claims have been filed with the Program, including 8,497 denials and 20,694 approvals. Approximately 71 percent of adjudicated claims have been approved. Total RECA awards over the life of the Program exceed \$1.35 billion (as of March 5, 2009). Approximately 150 new claims are filed each month. Of those claims that have been denied since 1992, only 12 claimants have sought review in federal district court.

The Civil Division’s projections for claim filings, adjudications, and awards have been reviewed by the Department of Justice’s independent auditor since FY 2005. Using historic data, a model

has been developed to estimate the contingent liability associated with RECA awards through the sunset of the program in FY 2022.

## **Performance, Resources, and Strategies**

### **Performance Plan and Report for Outcomes**

The Radiation Exposure Compensation Program supports Goal 2 of the Department of Justice's Strategic Plan, specifically Objective 2.7: "Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction."

The Program's primary objective is to implement civil justice reform initiatives to resolve categories of claims for which traditional litigation has proven ineffective and to administer compensation programs enacted by Congress that offer non-litigation solutions for radiation exposure claimants.

### **Strategies to Accomplish Outcomes**

The Program will employ the following strategies to accomplish this mission:

- Hire skilled claims examiners to conduct the initial review of claims, freeing the Program attorneys to conclude the adjudication and render the final determination.
- Access external data sources, such as the Social Security Administration, the National Institute for Occupational Safety and Health, the Public Health Service, and state cancer and tumor registries to assist claimants in securing the necessary documentation in support of their claims.
- Coordinate with the Department of Labor's (DOL) Energy Employees Occupational Illness Compensation Program to ensure that eligible Section 5 RECA claimants receive compensation in a timely manner. This includes review of RECA claimant files to determine eligibility pursuant to the Energy Employees Occupational Illness Compensation Program Act.
- Brief Members of Congress and their staffs as requested; provide information to Members and the public in an open, timely, and complete manner.
- Coordinate with the Department of Health and Human Services' Radiation Exposure Screening and Education Program to assist grantees in providing relevant information on the RECA Program to individuals screened for disease in the affected geographic regions.
- Use a toll-free phone line and website to communicate with claimants.
- Conduct outreach by traveling to areas with populations of potential claimants and participating in roundtable discussions held by congressional delegations for their constituents. In FY 2008, Program staff traveled to the Navajo, Hopi, San Carlos Apache, Yavapai Apache, and Spokane Indian Reservations to meet with tribal leaders, respond to questions about the Program, and conduct town hall meetings to assist tribal members with filing successful claims. The Program has also participated in public outreach in conjunction

with DOL representatives at events held in Shiprock and Grants, New Mexico; Grand Junction, Colorado; Moab, Utah; Flagstaff, Kayenta, and Tuba City, Arizona; Riverton, Wyoming; and Spokane, Washington. During FY 2009, Program staff traveled to Shiprock, New Mexico, to train the Navajo Office of Uranium Workers in assisting tribal members with filing RECA claims.

<b>Radiation Exposure Compensation Act Workload</b>							
<b>Claims Filed and Approved</b>							
<b>(Dollars in Thousands)</b>							
	<b>FY 2004 Actual</b>	<b>FY 2005 Actual</b>	<b>FY 2006 Actual</b>	<b>FY 2007 Actual</b>	<b>FY 2008 Actual</b>	<b>FY 2009 Estimate</b>	<b>FY 2010 Estimate</b>
<b>Section 4 Claims:</b>							
<b>Downwinders</b>							
Pending, Beginning of Year	1,582	1,537	1,139	1,093	423	680	521
Claims Filed	1,517	1,367	999	1,038	1,128	1,925	915
Claims Approved	1,163	1,457	902	1,361	996	1,288	730
Value of Approvals	\$58,150	\$72,850	\$45,100	\$68,050	\$49,800	\$64,450	\$36,500
<b>On-Site Participants</b>							
Pending, Beginning of Year	260	268	247	208	91	136	92
Claims Filed	231	268	174	148	159	278	135
Claims Approved	99	181	80	156	91	128	71
Value of Approvals	\$7,053	\$12,666	\$5,548	\$11,280	\$6,438	\$9,550	\$5,500
<b>Subtotal Section 4 Claims</b>							
Pending, Beginning of Year	1,842	1,805	1,386	1,301	514	816	613
Claims Filed	1,748	1,635	1,173	1,186	1,287	2,203	1,050
Claims Approved	1,262	1,638	982	1,517	1,087	1,416	801
Value of Approvals	\$65,203	\$85,516	\$50,648	\$79,330	\$56,238	\$74,000	\$42,000
<b>Section 5 Claims (Uranium Miners, Millers, and Ore Transporters)</b>							
Pending, Beginning of Year	971	813	644	761	294	204	0
Claims Filed	715	943	1,087	659	700	665	632
Claims Approved	539	845	786	749	487	609	443
Value of Approvals	\$53,900	\$84,507	\$78,600	\$74,876	\$48,700	\$60,900	\$44,300
<b>TOTAL</b>							
Pending, Beginning of Yr	2,813	2,618	2,030	2,062	808	1,020	613
Claims Filed	2,463	2,578	2,260	1,845	1,987	2,868	1,682
Claims Approved	1,801	2,483	1,768	2,266	1,574	2,025	1,244
Claims Denied	857	683	460	833	597	765	446
<i>Total Adjudications (Approved + Denied)</i>	2,658	3,166	2,228	3,099	2,171	2,790	1,690
Approval Rate	68%	78%	79%	73%	73%	73%	74%
Value of Approvals	\$119,103	\$170,023	\$129,248	\$154,206	\$104,938	\$134,900	\$86,300

## B: Summary of Requirements

**Summary of Requirements**  
 Radiation Exposure Compensation  
 Payments to the Radiation Compensation Trust Fund  
 (Dollars in Thousands)

	Perm. Pos.	FTE	Amount
<b>2008 Enacted (with Recissions, direct only)</b>	0	0	<b>\$52,518</b>
<b>2009 Enacted (with Recissions, direct only)</b>	<b>0</b>	<b>0</b>	<b>74,000</b>
Adjustments to Base:			
Program Decrease	0	0	(32,000)
<b>2010 Current Services</b>	<b>0</b>	<b>0</b>	<b>42,000</b>
<b>2010 Total Request</b>	<b>0</b>	<b>0</b>	<b>42,000</b>
2009-2010 Total Change	0	0	(32,000)

Estimates by budget activity	2008 Enacted (with Recissions)			2009 Enacted			2009 Adjustments to Base			2010 Current Services			2010 Request			2009-2010 Total Change		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	0	0	\$52,518	0	0	\$74,000	0	0	(\$32,000)	0	0	\$42,000	0	0	\$42,000	0	0	(\$32,000)



**D: Resources by DOJ Strategic Goal and Objective**

**Resources by Department of Justice Strategic Goal and Objective**  
 Radiation Exposure Compensation  
 Payments to the Radiation Compensation Trust Fund  
 (Dollars in Thousands)

Strategic Goal and Objective	2008 Appropriation Enacted w/Rescissions and Supplementals		2009 Enacted		2010 Current Services		2010 Request	
	Amount		Amount		Amount		Amount	
	FTE	\$000s	FTE	\$000s	FTE	\$000s	FTE	\$000s
<b>Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People</b>								
2.5: Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.								
<b>Subtotal, Goal 2</b>	<b>0</b>	<b>\$52,518</b>	<b>0</b>	<b>\$74,000</b>	<b>0</b>	<b>\$42,000</b>	<b>0</b>	<b>\$42,000</b>
<b>GRAND TOTAL</b>	<b>0</b>	<b>\$ 52,518</b>	<b>0</b>	<b>\$ 74,000</b>	<b>0</b>	<b>\$ 42,000</b>	<b>0</b>	<b>\$ 42,000</b>

**E. Justification for Base Adjustments**

**Justification for Base Adjustments**  
Radiation Exposure Compensation  
Payments to the Radiation Compensation Trust Fund

Decreases

Program Decrease. Based on out-year statistical projections for downwinders and on-site participants, the Division requests an adjustment to base reduction of (\$32,000,000) for FY 2010.

**F: Crosswalk of 2008 Availability**

**Crosswalk of 2008 Availability**  
 Radiation Exposure Compensation  
 Payments to the Radiation Compensation Trust Fund  
 (Dollars in Thousands)

Activity/Program	2008 Enacted Without Rescissions			Carryover/ Recoveries			2008 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	0	0	\$45,200	0	0	\$8,443	0	0	\$53,643

**G: Crosswalk of 2009 Availability**

**Crosswalk of 2009 Availability**  
 Radiation Exposure Compensation  
 Payments to the Radiation Compensation Trust Fund  
 (Dollars in Thousands)

Activity/Program	2009 Enacted Without Rescissions			Carryover/ Estimated Recoveries			2009 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Radiation Exposure Compensation Trust Fund	0	0	\$74,000	0	0	\$0	0	0	\$74,000

**L: Summary of Requirements by Object Class**

**Summary of Requirements by Object Class**  
 Radiation Exposure Compensation  
 Payments to the Radiation Compensation Trust Fund  
 (Dollars in Thousands)

Object Classes	2008 Actual Obligations		2009 Enacted		2010 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
41.0 Grants, Subsidies and Contributions	0	\$52,518	0	\$74,000	0	\$42,000	0	(\$32,000)
Total obligations	0	52,518	0	74,000	0	42,000	0	(32,000)
Unobligated balance, start of year		8,343		8,343		0		
Unobligated balance, end of year		(1,126)		0		0		
Recoveries of prior year obligations		0		0		0		
Total Requirements		52,518		74,000		42,000		