



**U.S. Department of
Justice**

Radiation Exposure Compensation Act Trust Fund

**FY 2017 Budget and
Performance Plan**

Submitted to the Congress of the United States
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* Not Applicable to RECA

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Overview

The Radiation Exposure Compensation Act (“the Act” or “RECA”) 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.

The Department of Justice established the Radiation Exposure Compensation Program (“the Program”) within the Civil Division to adjudicate claims under the Act. Since the Program commenced operations in April 1992, 43,804 claims have been filed and over \$2.07 billion has been awarded in connection with 31,415 approved claims (as of December 2015).

FY 2017 Estimate. For FY 2017, it is estimated that claim activity will be very similar to prior year activity. Therefore, at this time, Civil estimates that approximately \$70 million will be needed for the RECA Trust Fund in FY 2017.

Significant Achievements

\$2 Billion Program Award Benchmark. The Program saw a significant accomplishment in FY 2015. In March, the Program announced the obligation of over \$2 billion in claim awards since the beginning of the program. Compensation has been awarded to individuals residing in all 50 states, as well as several foreign countries. Residents of the so-called “Four Corners” region of the American southwest filed the majority of the claims and received awards valued at \$1.4 billion. Of the \$2 billion in awards, approximately \$264 million has been awarded to Native American claimants and distributed among members of 17 different tribes, and \$266 million has been awarded to veterans, civil servants, and contractors who participated onsite in atmospheric nuclear tests.

Reduction of Claim Processing Time. A second notable recent accomplishment has been the Program reducing significantly the average claim processing time in FY 2015. In FY 2014 the Program averaged 272 days to process an average claim. In FY 2015 the Program achieved an average processing time of 207 days, a 24% decrease and a reduction of 65 days.

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.

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. At the same time, other world powers also engaged in testing nuclear weapons. The mining and processing of uranium ore that was conducted by thousands of workers was essential to the development of nuclear weapons. Many workers filed class action lawsuits that appellate courts eventually dismissed. 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. On October 5, 1990, Congress passed the Act and later broadened the scope of its coverage on July 10, 2000.

The Act established monetary compensation for individuals who contracted specified diseases in three defined populations:

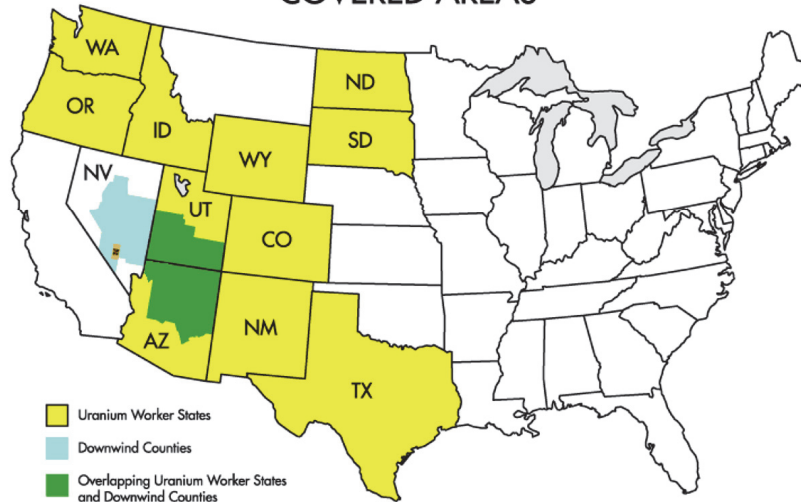
- Uranium workers (considered Section 5 claimants) – uranium miners, millers, and ore transporters receive \$100,000;
- On-site participants (considered Section 4 claimants) – individuals present at atmospheric nuclear test locations receive \$75,000; and
- Downwinders (considered Section 4 claimants) – individuals who lived downwind of the Nevada Test Site receive \$50,000.

Department of Justice-issued regulations 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 claimant.

"RECA claimants worked in hazardous occupations and were subjected to increased risk of disease to serve the national security interests of the United States. This extraordinary statute provides partial restitution to these individuals and their families for the sacrifices they made during a critical time in our nation's history."

*~ Civil Division Acting Assistant Attorney
General Benjamin C. Mizer,
March 2, 2015 Press Release*

MAP OF RADIATION EXPOSURE COMPENSATION ACT COVERED AREAS



The map above 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.

Today, the Program is at the center of a broad inter-agency network that comprises the comprehensive federal radiation compensation system, working with the Departments of Health and Human Services, Labor, Energy, Veterans Affairs, and Defense to administer the Act.

Funding History

The RECA Trust Fund was funded out of discretionary appropriations from FY 1992 to FY 2001. Following enactment of the 2000 Amendments and a subsequent influx of new claims, the appropriation became insufficient to meet 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. By 2003, however, the increased rate of new claim filings and approvals proved the caps to be inadequate. Working in close coordination, the appropriators and authorizers devised effective legislative solutions to the funding problems. The following statutes ensure that all eligible RECA claims will be paid in a timely manner 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 on-site participants and downwinders (or Section 4 claimants).

- The National Defense Authorization Act for FY 2005 contained language requiring the Energy Employees Occupational Illness Compensation Fund to pay uranium workers – uranium miners, millers, and ore transporters (or Section 5 claimants).

In November 2011 and June 2012 the AARP published three articles related to atomic veterans and exposure to radiation. As a result, the media publicity led to an increase in claim filings, particularly by on-site participants, with an especially large spike in the second quarter of FY 2012 and another surge at the end of the third quarter. To quickly pay the eligible claims that were filed, the Program was apportioned additional funding of \$15 million in March 2012 for a total of \$87 million in FY 2012.

In FY 2012, the Program received 3,216 new Section 4 claims, of which 2,038 were from on-site participant claimants.¹ While the rate at which claims are filed has since decreased, the Program still faces a great amount of work to properly adjudicate all of these claims. The Program is focused intently on adjudicating claims in a timely manner and continues to monitor and forecast approval rates and award increases.

Claim Projections

Even as claim filings have gradually declined, award payments and total workload levels are projected to remain slightly higher than pre-spike levels in FY 2016, as the Program continues to process the increased claims. Claims are projected to taper off close to pre-spike levels near the end of FY 2016 and into FY 2017, based on historical patterns.

In the next several years, the Program may see additional increases in the number of downwinder and on-site participant claims filed. Several of the cancers covered under RECA, such as primary cancers of the lung, colon, and breast, have a rising incidence rate in populations 50 years of age and older.² In fact, the youngest individuals exposed to radiation from the fallout of atmospheric nuclear weapons testing turned 50 years old in 2012. Moreover, individuals exposed to ionizing radiation at younger ages have shown a greater risk of contracting these cancers. As cancers express themselves in the affected population, increases of the number of claims in both claimant categories are reasonable assumptions.

Historical Claim Statistics and Trends

Over the life of the Program, over 43,804 claims have been filed. This has resulted in 43,215 adjudications, including 31,415 approvals, which reflects a 73 percent approval rate. Of the denials, only 13 claimants have sought review in federal district court.

¹ By comparison, in all of FY 2011, the Program received 1,383 Section 4 claims, of which only 240 were on site participant claims. The last time the Program saw such a dramatic increase in new claims was in FY 2001 after enactment of the RECA Amendments of 2000.

² See U.S. Cancer Statistics Working Group, *United States Cancer Statistics: 1999–2007 Incidence and Mortality Web-based Report*, 2010, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention and National Cancer Institute.

Program Sunset

Under current law, all claims under RECA must be submitted on or before the Program sunset date of July 9, 2022. Any claims received after that date will be barred. As this date is towards the end of FY 2022, and the Program has 12 months to adjudicate a claim, the Program anticipates adjudicating claims received before the sunset date into FY 2023. Therefore, the Program anticipates funding required through FY 2023 to adjudicate and award those claims.

In FY 2015 the Program participated in nine outreach events:

- *Two inter-agency stakeholder conferences.*
- *Seven town hall events, four of which were held on Native American reservations.*

Proposed Legislation

In recent years, several proposals to expand RECA eligibility and increase award amounts have been introduced in Congress. Three legislative proposals introduced in the current session of Congress include the *"Radiation Exposure Compensation Act Amendments of 2015"* (S. 331/H.R. 994) that would increase the compensation amount, extend benefits to workers and drillers employed after 1971, and expand the downwind affected area; the *"Downwinders Compensation Act of 2015"* (S.1895) which also expands the downwind affected area; and the *"Downwinders Compensation Act of 2015"* (H.R.3345) which expands the downwind affected area, offsetting the cost of this expansion through prohibiting a tax deduction for the cost of tickets to a college sporting event. Current workload and funding projections do not account for the possible impact of any statutory changes.

Claims Data

On the following page is data concerning Section 4 and Section 5 claims. Actual data for the last five years, as well as claim estimates for FY 2016 and FY 2017, are provided.

Radiation Exposure Compensation Act Workload Claims Filed and Approved (Dollars in Thousands)							
	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Section 4 Claims – Downwinders and On-Site Participants							
Downwinders							
Pending, Beginning of Year	213	224	440	582	636	313	250
Claims Filed	1,143	1,178	1,026	933	966	993	1,021
Claims Approved	1,018	832	775	777	1,171	893	869
Total Value of Approvals	\$50,900	\$41,600	\$38,750	\$38,850	\$58,550	\$44,650	\$43,450
On-Site Participants							
Pending, Beginning of Year	79	63	1,289	909	284	158	133
Claims Filed	240	2,039	948	515	369	398	429
Claims Approved	143	589	660	688	311	238	240
Total Value of Approvals	\$10,397	\$43,351	\$48,557	\$50,506	\$22,791	\$17,087	\$17,222
Subtotal Section 4 Claims							
Pending, Beginning of Year	292	287	1,729	1,491	920	471	383
Claims Filed	1,383	3,217	1,974	1,448	1,335	1,391	1,450
Claims Approved	1,161	1,421	1,435	1,465	1,482	1,131	1,109
Total Value of Approvals	\$61,297	\$84,951	\$87,307	\$89,356	\$81,341	\$61,728	\$60,672
Section 5 Claims – Uranium Miners, Millers, and Ore Transporters							
Pending, Beginning of Year	172	152	145	129	163	145	147
Claims Filed	408	394	302	327	254	337	323
Claims Approved	302	271	222	196	192	241	235
Total Value of Approvals	\$30,200	\$27,100	\$22,200	\$19,600	\$19,200	\$24,100	\$23,500

Radiation Exposure Compensation Act Workload Claims Filed and Approved (Dollars in Thousands)							
	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
TOTAL (Section 4 Claims and Section 5 Claims)							
Pending, Beginning of Year	464	439	1,874	1,620	1,083	616	530
Claims Filed	1,791	3,611	2,276	1,775	1,589	1,728	1,773
Claims Approved	1,463	1,692	1,657	1,661	1,674	1,372	1,344
Claims Denied	353	484	873	651	382	442	438
Total Adjudications	1,816	2,176	2,530	2,312	2,056	1,814	1,782
Approval Rate	81%	78%	65%	72%	81%	76%	75%
Total Value of Approvals	\$91,497	\$112,051	\$109,507	\$108,806	\$100,541	\$85,837	\$84,172

Performance, Resources, and Strategies

The Program office is located in Washington, D.C. and is currently administered by a staff of five attorneys, eight claims examiners, and seven contractor employees within the Constitutional and Specialized Torts Section of the Civil Division's Torts Branch. The support staff reviews claim packages, assists claimants with their applications, and manages physical case files. RECA Program attorneys strive to fairly and efficiently process and resolve claims. Since its inception, the Program has generally far surpassed its goals for the timely processing and adjudication of claims.

Performance Plan and Report for Outcomes

The Program supports Goal 2 of the Department of Justice's Strategic Plan, specifically Objective 2.6: "Protect the federal fisc and defend the interests of the United States."

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.

The Program has drafted a number of performance measures that are included in the Civil Division's Performance Tables.

Strategies to Accomplish Outcomes

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

- Utilize skilled claims examiners to conduct the initial review of claims, freeing the Program attorneys to maximize efficiency by concluding 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 to support their claims to reduce the burden on claimants.
- Coordinate with the Department of Labor's Energy Employees Occupational Illness Compensation Program to ensure that eligible Section 5 RECA claimants receive compensation in a timely manner. This includes the review of claimant files to decide eligibility pursuant to the Energy Employees Occupational Illness Compensation Program Act.
- Coordinate with HHS' Radiation Exposure Screening and Education Program to assist grantees in providing relevant information to individuals screened for disease in the affected geographic regions.
- Brief Members of Congress and their staffs as requested. Provide information to Members of Congress and the public in an open, timely, and complete manner.
- 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 2016.
- Use a toll-free telephone line and website to communicate with claimants and publish regularly updated statistical information on www.data.gov.
- Timely response to all media inquiries to ensure accurate information is disseminated to the public about the Program.