

U.S. Department of Justice



CIVIL DIVISION

RADIATION EXPOSURE COMPENSATION ACT TRUST FUND

FY 2016
Budget and Performance Plans

Submitted to the Congress of the United States
Civil Division
February 2015

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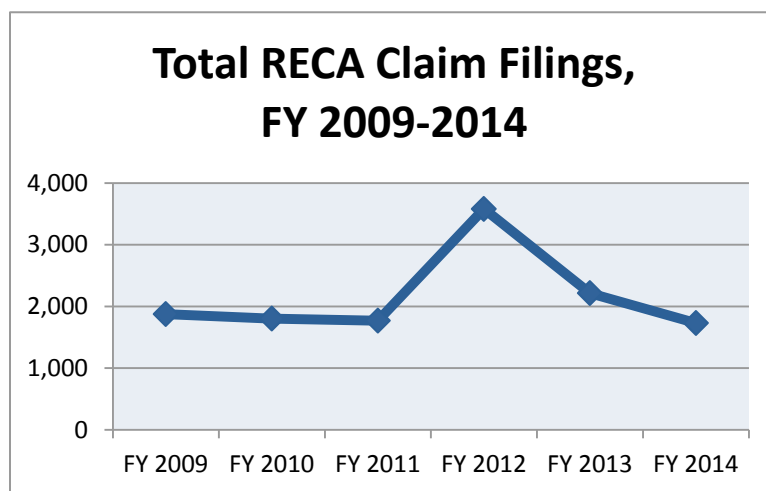
OVERVIEW

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, 42,272 claims have been filed and over \$1.97 billion has been awarded in connection with 29,846 approved claims (as of December 1, 2014).



Two Spikes in Claims Activity. Over the past few years, the Program has witnessed two dramatic increases in claims filings. First, in November 2011, the AARP published two articles discussing atomic veterans and exposure to radiation. This media exposure contributed to a near doubling of claim filings in FY 2012. Second, in June 2012, the AARP published a third article, contributing to a second wave of new filings. In FY 2012 and 2013, a significantly higher number of claims were filed compared with historic levels. Unfortunately, staffing levels have declined at the same time, challenging the Program’s ability to meet statutory deadlines.



FY 2016 Estimate. It is estimated that claims trends will decelerate to pre-FY 2012 levels in FY 2015 and FY 2016. Thus, Civil estimates that approximately \$75,000,000 will be needed for the RECA Trust Fund in FY 2016.

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 – uranium miners, millers, and ore transporters receive \$100,000;
- On-site participants – individuals present at atmospheric nuclear test locations receive \$75,000; and
- Downwinders – 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.

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 (HHS), 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 increase in the number of claims deemed eligible

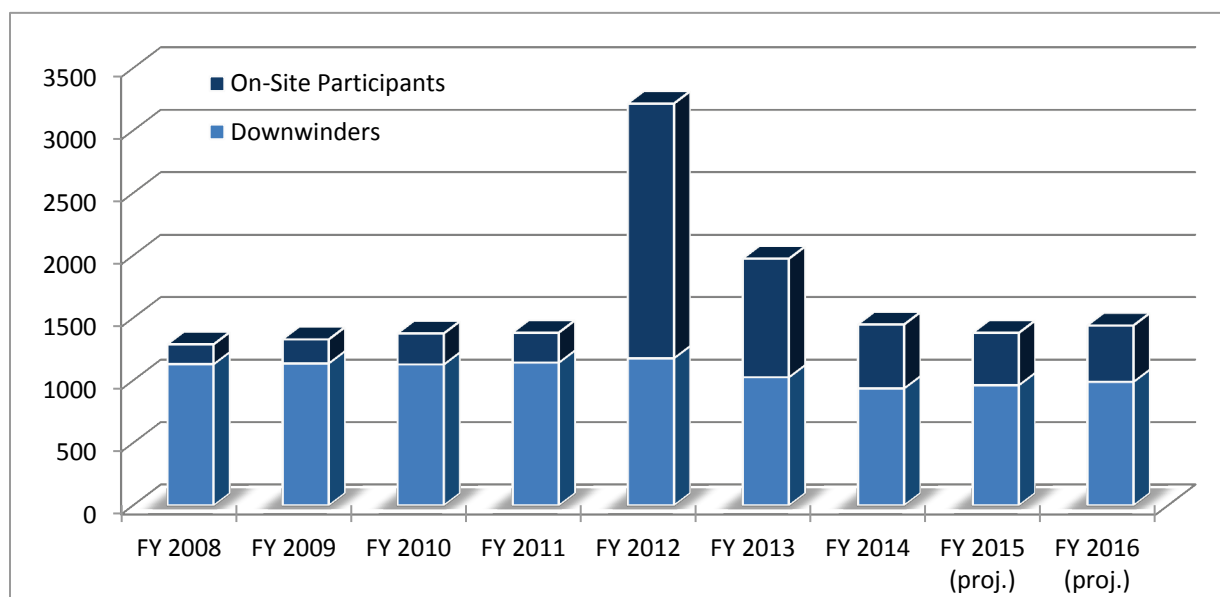
for compensation. In 2002, Congress addressed the problem within the Department of Defense Authorization Act for FY 2002, which established annual funding against mandatory spending caps. By 2003, however, the increased rate of new claim filings and approvals proved the caps to be inadequate, and a funding shortfall ensued. Working in close coordination, the appropriators and authorizers 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).

Historical Claim Statistics and Trends

Over the life of the Program, over 42,000 claims have been filed. This has resulted in 41,313 adjudications, including 29,846 approvals, which reflects a 72 percent approval rate. Of the denials, only 13 claimants have sought review in federal district court. Total awards over the life of the Program exceed \$1.97 billion (as of December 1, 2014). The following chart illustrates Section 4 historical claims activity.

FY 2008 – FY 2016
Section 4 Claims (On-Site Participants and Downwinders) Filed



As mentioned above, events occurred in November 2011 and June 2012 that sparked an increase of claims through which the Program is still actively working. 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 tremendous amount of work to properly adjudicate all of these claims. The high number of claims currently pending with the Program will impact award amounts paid out in the next few years. The Program is focused intently on adjudicating claims in a timely manner and continues to monitor and forecast approval rates and award increases.

Even as claim filings gradually decline, no significant reduction to previous award levels is expected before FY 2015. The increase in award payments that began in FY 2012 will continue through FY 2015. 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, but are projected to taper off to close to pre-spike levels near the end of FY 2016 and into FY 2017 based on historical patterns.

In the next ten 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.

¹By 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, available at: <http://apps.nccd.cdc.gov/uscs/>.

PERFORMANCE, RESOURCES, AND STRATEGIES

The Program office is located in Washington, D.C. and is currently administered by a staff of five attorneys, eight full-time claims examiners, and ten 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.

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 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 to support their claims.
- 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.
- 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.
- 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.

- Conduct outreach by traveling to areas with populations of potential claimants and participating in roundtable discussions held by congressional delegations for their constituents.
- Use a toll-free telephone line and website to communicate with claimants and publish regularly updated statistical information on www.data.gov.

Radiation Exposure Compensation Act Workload							
Claims Filed and Approved							
(Dollars in Thousands)							
	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Estimate	FY 2016 Estimate
Section 4 Claims – Downwinders and On-Site Participants							
Downwinders							
Pending, Beginning of Year	297	213	224	440	582	637	420
Claims Filed	1,128	1,143	1,178	1,026	936	962	989
Claims Approved	1,035	1,018	832	775	779	1,012	958
Total Value of Approvals	\$51,750	\$50,900	\$41,600	\$38,750	\$38,950	\$50,600	\$47,900
On-Site Participants							
Pending, Beginning of Year	53	79	63	1,288	909	280	181
Claims Filed	248	240	2,038	948	512	418	451
Claims Approved	132	143	589	660	689	288	270
Total Value of Approvals	\$9,581	\$10,397	\$43,351	\$48,557	\$50,581	\$20,901	\$19,385
Subtotal Section 4 Claims							
Pending, Beginning of Year	350	292	287	1,728	1,491	917	601
Claims Filed	1,376	1,383	3,216	1,974	1,448	1,380	1,440
Claims Approved	1,167	1,161	1,421	1,435	1,468	1,300	1,228
Total Value of Approvals	\$61,331	\$61,297	\$84,951	\$87,307	\$89,531	\$71,501	\$67,285
Section 5 Claims – Uranium Miners, Millers, and Ore Transporters							
Pending, Beginning of Year	216	172	152	145	129	163	155
Claims Filed	452	408	394	302	327	377	377
Claims Approved	296	302	271	222	196	277	273
Total Value of Approvals	\$29,600	\$30,200	\$27,100	\$22,200	\$19,600	\$27,720	\$27,288

Radiation Exposure Compensation Act Workload Claims Filed and Approved (Dollars in Thousands)							
	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Estimate	FY 2016 Estimate
TOTAL (Section 4 Claims and Section 5 Claims)							
Pending, Beginning of Year	566	464	439	1,873	1,620	1,080	756
Claims Filed	1,828	1,791	3,610	2,276	1,775	1,757	1,817
Claims Approved	1,463	1,463	1,692	1,657	1,664	1,577	1,501
Claims Denied	467	353	484	872	651	504	491
Total Adjudications (Approved + Denied)	1,930	1,816	2,176	2,529	2,315	2,081	1,992
Approval Rate	76%	81%	78%	66%	72%	76%	75%
Total Value of Approvals	\$90,931	\$91,497	\$112,051	\$109,507	\$109,131	\$99,221	\$94,573