

GAO

Testimony
Before Congressional Subcommittees,
Committee on Judiciary, U.S. House of
Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, April 1, 2008

**FEDERAL
COMPENSATION
PROGRAMS**

**Perspectives on Four
Programs for Individuals
Injured by Exposure to
Harmful Substances**

Statement of Anne-Marie Lasowski, Acting Director,
Education, Workforce, and Income Security Issues





Highlights of [GAO-08-628T](#), a testimony to Congressional Subcommittees

Why GAO Did This Study

The U.S. federal government has played an ever-increasing role in providing benefits to individuals injured as a result of exposure to harmful substances. Over the years, it has established several key compensation programs, including the Black Lung Program, the Vaccine Injury Compensation Program (VICP), the Radiation Exposure Compensation Program (RECP), and the Energy Employees Occupational Illness Compensation Program (EEOICP), which GAO has reviewed in prior work.

Most recently, the Congress introduced legislation to expand the benefits provided by the September 11th Victim Compensation Fund of 2001. As these changes are considered, observations about other federal compensation programs may be useful. In that context, GAO's testimony today will focus on four federal compensation programs, including (1) the structure of the programs; (2) the cost of the programs through fiscal year 2004, including initial cost estimates and the actual costs of benefits paid, and administrative costs; and (3) the number of claims filed and factors that affect the length of time it takes to finalize claims and compensate eligible claimants.

To address these issues, GAO relied on its 2005 report on four federal compensation programs. As part of that work, GAO did not review the September 11th Victim Compensation Fund of 2001.

To view the full product, including the scope and methodology, click on [GAO-08-628T](#). For more information, contact Anne-Marie Lasowski at (202) 512-7215 or lasowskia@gao.gov.

FEDERAL COMPENSATION PROGRAMS

Perspectives on Four Programs for Individuals Injured by Exposure to Harmful Substances

What GAO Found

The four federal compensation programs GAO reviewed in 2005 were designed to compensate individuals injured by exposure to harmful substances. However, the structure of these programs differs significantly in key areas such as the agencies that administer them, their funding, benefits paid, and eligibility. For example, although initially funded through annual appropriations, the Black Lung Program is now funded by a trust fund established in 1978 financed by an excise tax on coal and supplemented with additional funds. In contrast, EEOICP and RECP are completely federally funded. Since the inception of the programs, the federal government's role has increased and all four programs have been expanded to provide eligibility to additional categories of claimants, cover more medical conditions, or provide additional benefits.

As the federal role for these four programs has grown and eligibility has expanded, so have the costs. Total benefits paid through fiscal year 2004 for two of the programs—the Black Lung Program and RECP—significantly exceeded their initial estimates for various reasons. The initial estimate of benefits for the Black Lung Program developed in 1969 was about \$3 billion. Actual benefits paid through 1976—the date when the program was initially to have ended—totaled over \$4.5 billion and, benefits paid through fiscal year 2004 totaled over \$41 billion. Actual costs for the Black Lung Program significantly exceeded the initial estimate for several reasons, including (1) the program was initially set up to end in 1976 when state workers' compensation programs were to have provided these benefits to coal miners and their dependents, and (2) the program has been expanded several times to increase benefits and add categories of claimants. For RECP, the costs of benefits paid through fiscal year 2004 exceeded the initial estimate by about \$247 million, in part because the original program was expanded to include additional categories of claimants. In addition, the annual administrative costs for the programs varied, from approximately \$3.0 million for RECP to about \$89.5 million for EEOICP for fiscal year 2004.

Finally, the number of claims filed for three of the programs significantly exceeded the initial estimates, and the structure of the programs affected the length of time it took to finalize claims and compensate eligible claimants. For the three programs for which initial estimates were available, the number of claims filed significantly exceeded the initial estimates. In addition, the way the programs were structured, including the approval process and the extent to which the programs allow claimants and payers to appeal claims decisions in the courts, affected how long it took to finalize the claims. Some of the claims have taken years to finalize. For example, it can take years to approve some EEOICP claims because of the lengthy process required for one of the agencies involved in the approval process to determine the levels of radiation to which claimants were exposed. In addition, claims for benefits provided by programs in which the claims can be appealed can take a long time to finalize.

Chairs, Ranking Members, and Members of the Subcommittees:

I am pleased to be here as you discuss important issues related to compensation for individuals injured as a result of the terrorist attack on the World Trade Center in 2001. After the collapse of the WTC buildings, nearly 3,000 people died, and an estimated 250,000 to 400,000 people who lived, worked, or attended school in the vicinity were affected.¹ An estimated 40,000 people responded to the attack, including New York City Fire Department personnel and other government and private-sector workers and volunteers from New York and other locations across the nation. These responders, as they took part in various rescue, recovery, and cleanup activities in the days, weeks, and months following the attack, were exposed to numerous physical hazards and environmental toxins.

The federal government has played an increasing role in providing benefits to individuals injured as result of exposure to harmful substances since 1969 when the Congress established the Black Lung Program as a temporary federal program to provide benefits for coal miners disabled by pneumoconiosis (black lung disease). Although the Black Lung Program was initially designed to end in 1976 when state workers' compensation programs were to provide these benefits, it was amended to make it an ongoing federal program. Since that time, the Congress has established several compensation programs to provide benefits to individuals injured by exposure to hazardous substances such as radiation, and the role of the federal government in many of these programs has expanded over time. Most recently, legislative proposals have been introduced in the House that would expand the benefits provided by the September 11th Victim Compensation Fund of 2001.

My testimony is based on work GAO reported in November 2005 on four federal compensation programs: the Black Lung Program, the Vaccine Injury Compensation Program (VICP), the Radiation Exposure Compensation Program (RECP), and the Energy Employees Occupational Illness Compensation Program (EEOICP).² My remarks will focus on (1) the structure of these programs; (2) the cost of the programs through

¹See GAO, *September 11: Monitoring of World Trade Center Health Effects Has Progressed, but Not for Federal Responders*, [GAO-05-1020T](#) (Washington, D.C. Sept. 10, 2005).

²See GAO, *Federal Compensation Programs: Perspectives on Four Programs*, [GAO-06-230](#), (Washington, D.C.: Nov. 18, 2005).

fiscal year 2004, including initial cost estimates and the actual costs of benefits paid, and administration costs; and (3) claims, including the number of claims filed and factors that affect the length of time it takes the agencies to finalize claims and compensate eligible claimants. We did not review the September 11th Victim Compensation Fund of 2001 as part of this testimony.

We examined information on the four programs from their inception through the end of fiscal year 2004. We obtained initial estimates of the anticipated costs of benefits, as available, and the actual costs of benefits paid from the date the programs were established through the end of fiscal year 2004. In addition, we obtained information on the total number of claims completed as of the end of fiscal year 2004 and reviewed information on the time it took the agencies to finalize claims and compensate eligible claimants. That work was completed in accordance with generally accepted government auditing standards.

In summary, in 2005 we reported that

- All four federal programs we reviewed were designed to compensate individuals injured by exposure to harmful substances. However, the structure of these programs differs significantly in key areas such as the agencies that administer them, their funding, benefits paid, and eligibility criteria. Since their inception, the federal role has increased and all four programs have expanded to provide eligibility to additional categories of claimants, cover more medical conditions, or provide additional benefits.
- As the federal role for these four programs has grown and eligibility has expanded, so have the costs. Actual costs for benefits paid through fiscal year 2004 significantly exceeded the initial estimates for two of the programs: the Black Lung Program and RECP. In addition, the annual administrative costs for the four programs for fiscal year 2004 ranged from approximately \$3.0 million for RECP to about \$89.5 million for EEOICP.
- Finally, the number of claims filed through 2004 for the three programs for which initial estimates were available significantly exceeded the initial estimates. In addition, the structure of the programs, including the approval process and the extent to which the programs allow claimants and payers to appeal claims decisions in the courts, affected how long it took to finalize claims and compensate eligible claimants. In some cases, it took years for some of the agencies responsible for processing them to finalize the claims.

Background

The four federal programs we examined were established from 1969 through 2000 for various purposes.

- The Black Lung Program was established in 1969 as a temporary federal program to provide benefits to coal miners disabled because of pneumoconiosis (black lung disease), and their dependents, until adequate state programs could be established. It has been amended several times, effectively restructuring all major aspects of the program and making it an ongoing federal program.
- VICP was authorized in 1986 to provide compensation to individuals for vaccine-related injury or death. According to the Department of Health and Human Services (HHS), the agency that administers the program, it was established to help stabilize manufacturers' costs and ensure an adequate supply of vaccines. Concerns expressed by various groups contributed to the program's establishment, including concerns from parents about harmful side effects of certain vaccines, from vaccine producers and health care providers about liability, and from the public about shortages of vaccines.
- RECP was established in 1990 to make partial restitution to on-site participants, uranium miners, and nearby populations who (1) were exposed to radiation from atmospheric nuclear testing or as a result of their employment in the uranium mining industry and (2) developed certain related illnesses.
- EEOICP was established in 2000 to provide payments to nuclear weapons plant workers injured from exposure to radiation or toxic substances, or their survivors. Initially, some qualifying workers were paid federal benefits and others were provided assistance in obtaining benefits from state workers' compensation programs. In 2004, the federal government assumed total responsibility for benefits paid under the program.

The Structure of the Programs Varies Significantly

The purpose of the four federal compensation programs we examined is similar in that they all were designed to compensate individuals injured by exposure to harmful substances. However, how the programs are structured varies significantly, including who administers the program, how they are funded, the benefits provided, and who is eligible for benefits. For example:

Administration

Several federal agencies are responsible for the administration of the programs: the Department of Labor (DOL) administers the Black Lung Program and EEOICP; the Department of Justice (DOJ) administers RECP and shares administration of VICP with HHS and the Court of Federal Claims. In addition, the National Institute for Occupational Safety and Health and DOJ provide support to DOL in administering EEOICP.

Responsibility for administering two of the programs has changed since their inception. Specifically, claims for the Black Lung Program were initially processed and paid by the Social Security Administration but, as designed, DOL began processing claims in 1973 and took over all Black Lung Program claims processing in 1997. In 2002, the Congress officially transferred all legal responsibility and funding for the program to DOL. In addition, administration of EEOICP was initially shared between the Departments of Energy and DOL but, in 2004, DOL was given full responsibility for administering the program and paying benefits.

Funding

Funding of the four programs varies. Although initially funded through annual appropriations, the Black Lung Program is now funded by a trust fund established in 1978 that is financed by an excise tax on coal and supplemented with additional funds. The tax, however, has not been adequate to fund the program; at the time of our review, the fund had borrowed over \$8.7 billion from the federal treasury. For the VICP, claims involving vaccines administered before October 1, 1988, were paid with funds appropriated annually through fiscal year 1999. Claims involving vaccines administered on or after October 1, 1988, are paid from a trust fund financed by a per dose excise tax on each vaccine. For example, the excise tax on the measles, mumps, and rubella vaccine at the time of our review was \$2.25.³ EEOICP and RECP are completely federally funded. Although RECP was initially funded through an annual appropriation, in 2002 the Congress made funding for RECP mandatory and provided \$655 million for fiscal years 2002 through 2011. EEOICP is funded through annual appropriations.

³Three doses were required and the excise tax on each dose was \$0.75.

Benefits

Benefits also vary among the four programs. Some of the benefits they provide include lump sum compensation payments and payments for lost wages, medical and rehabilitation costs, and attorney's fees. For example, at the time of our review, when claims were approved, VICP paid medical and related costs, lost earnings, legal expenses, and up to \$250,000 for pain and suffering for claims involving injuries, and up to \$250,000 for the deceased's estate, plus legal expenses, for claims involving death. The Black Lung Program, in contrast, provided diagnostic testing for miners; monthly payments based on the federal salary scale for eligible miners or their survivors; medical treatment for eligible miners; and, in some cases, payment of claimants' attorney fees.

Eligibility

The groups who are eligible for benefits under the four federal programs and the proof of eligibility required for each program vary widely. The Black Lung Program covers coal miners who show that they developed black lung disease and are totally disabled as a result of their employment in coal mines, and their survivors. Claimants must show that the miner has or had black lung disease, the disease arose out of coal mine employment, and the disease is totally disabling or caused the miner's death. VICP covers individuals who show that they were injured by certain vaccines and claimants must show, among other things, that they received a qualifying vaccine. RECP covers some workers in the uranium mining industry and others exposed to radiation during the government's atmospheric nuclear testing who developed certain diseases. Claimants must show that they were physically present in certain geographic locations during specified time periods or that they participated on-site during an atmospheric nuclear detonation and developed certain medical conditions. Finally, EEOICP covers workers in nuclear weapons facilities during specified time periods who developed specific diseases.

Actual Costs of Benefits Paid Exceeded Initial Cost Estimates for Two Programs and Annual Administrative Costs Varied

At the time of our review, total benefits paid for two of the programs—the Black Lung Program and RECP—significantly exceeded their initial estimates. An initial cost estimate was not available for VICP. The initial estimate of benefits for the Black Lung Program developed in 1969 was about \$3 billion. Actual benefits paid through 1976—the date when the program was initially to have ended—totaled over \$4.5 billion and benefits paid through fiscal year 2004 totaled over \$41 billion. For RECP, the costs of benefits paid through fiscal year 2004 exceeded the initial estimate by about \$247 million.

Table 1 shows the initial program estimates and actual costs of benefits paid through fiscal year 2004 for the four programs.

Table 1: Initial Estimates and Actual Benefits Paid as of September 30, 2004

Program	Initial Estimate (billion)	Actual Benefits Paid as of September 30, 2004 (billion)
Black Lung	\$2.980	\$41.039
VICP ^a	Not available	\$1.440
RECP	\$0.540	\$0.787
EEOICP (Part B only)	\$0.951	\$0.952

Source: Initial estimates: DOL Black Lung) and Congressional Budget Office (RECP and EEOICP). Actual benefits paid: DOL (Black Lung and EEOICP), HHS (VICP), and DOJ (RECP).

^aAn initial estimate for VICP was not available.

Actual costs for the Black Lung Program have significantly exceeded the initial estimate for several reasons, including (1) the program was initially set up to end in 1976 when state workers' compensation programs were to have provided these benefits to coal miners and their dependents, and (2) the program has been expanded several times to increase benefits and add categories of claimants. The reasons the actual costs of RECP have exceeded the initial estimate include the fact that the original program was expanded to provide benefits to additional categories of claimants, including uranium miners who worked above ground, ore transporters, and mill workers.

Although the costs of EEOICP benefits paid through fiscal year 2004 were close to the initial estimate, these costs were expected to rise substantially because of changes that were not anticipated at the time the estimate was developed. For example, payments that were originally supposed to have been made by state workers' compensation programs are now paid by the

federal government. In addition, at the time of our review, a large proportion of the claims filed (45 percent) had not been finalized.⁴

At the time of our review, the annual administrative costs of the four programs varied. For fiscal year 2004, they ranged from approximately \$3.0 million for RECP to about \$89.5 million for EEOICP (see table 2).

Table 2: Annual Administrative Costs for Fiscal Year 2004

Program	Annual Costs (million)
Black Lung	\$55.8
VICP	\$10.5
RECP	\$3.0
EEOICP (Part B only)	\$89.5

Source: DOL (Black Lung Program and EEOICP), HHS (VICP) and DOJ (RECP).

The Number of Claims Filed Generally Exceeded Initial Estimates and Program Structure Affected the Time It Took to Finalize Claims

The number of claims filed for the three programs for which initial estimates were available significantly exceeded the initial estimates and the structure of the programs, including the approval process and the extent to which the programs allow claimants and payers to appeal claims decisions in the courts, affected the amount of time it took to finalize claims and compensate eligible claimants. The number of claims filed through fiscal year 2004 ranged from about 10,900 for VICP to about 960,800 for the Black Lung Program. The agencies responsible for processing claims have, at various times, taken years to finalize some claims, resulting in some claimants waiting a long time to obtain compensation.

Table 3 shows the initial estimates of the number of claims anticipated and the actual number of claims filed for each program through fiscal year 2004.

⁴This figure includes only claims filed under Part B of EEOICP.

Table 3: Initial Estimates and Actual Number of Claims Filed as of September 30, 2004

Program	Initial Estimate of Number of Claims Anticipated (thousand)	Actual Number of Claims Filed as of September 30, 2004 (thousand)
Black Lung	520.0	960.8
VICP ^a	Not available	10.9
RECP	13.0	20.6
EEOICP (Part B only)	13.4	59.5

Source: The initial estimate for the Black Lung Program is from DOL, the estimate for RECP is from DOJ and includes claims expected through 2012, and the estimate for EEOICP is from the Congressional Budget Office and included claims expected through 2010. The actual numbers of claims filed are from DOL (Black Lung Program and EEOICP), HHS (VICP), and DOJ (RECP).

^aAn initial estimate for VICP was not available.

Factors that affected the amount of time it took the agencies to finalize claims include statutory and regulatory requirements for determining eligibility, changes in eligibility criteria that increase the volume of claims, the agency’s level of experience in handling compensation claims, and the availability of funding. For example, in fiscal year 2000, when funds appropriated for RECP were not sufficient to pay all approved claims, DOJ ceased making payments until the following fiscal year when funds became available.

The approval process and the extent to which programs allow claimants and payers to appeal claims decisions also affected the time it took to process claims. For example, it can take years to approve some EEOICP claims because of the lengthy process required for one of the agencies involved in the approval process to determine the levels of radiation to which claimants were exposed. In addition, claims for benefits provided by programs in which the claims can be appealed can take a long time to finalize. For example, claimants whose Black Lung Program claims are denied may appeal their claims in the courts. At the time of our review, a Department of Labor official told us that it took about 9 months to make an initial decision on a claim and at least 3 years to finalize claims that were appealed.

Conclusions

The federal government has played an important and growing role in providing benefits to individuals injured by exposure to harmful substances. All four programs we reviewed have been expanded to provide eligibility to additional categories of claimants, cover more medical conditions, or provide additional benefits. As the programs

changed and grew, so did their costs. Initial estimates for these programs were difficult to make for various reasons, including the difficulty of anticipating how they would change over time and likely increases in costs such as medical expenses. Decisions about how to structure compensation programs are critical because they ultimately affect the costs of the programs and how quickly and fairly claims are processed and paid.

This concludes my prepared statement. I would be pleased to respond to any questions that you or the Members of the Subcommittees may have.

**GAO Contact and
Staff
Acknowledgments**

For further information, please contact Anne-Marie Lasowski at (202) 512-7215. Individuals making key contributions to this testimony include Revae Moran, Cady Panetta, Lise Levie, and Roger Thomas.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support the Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help the Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "E-mail Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, DC 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548