

November 2005

**FEDERAL
COMPENSATION
PROGRAMS**

**Perspectives on Four
Programs**



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Abbreviations

DOE	Department of Energy
DOJ	Department of Justice
DOL	Department of Labor
EEOICP	Energy Employees Occupational Illness Compensation Program
HHS	Department of Health and Human Services
NIOSH	National Institute for Occupational Safety and Health
RECP	Radiation Exposure Compensation Program
SSA	Social Security Administration
VICP	Vaccine Injury Compensation Program

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United States Government Accountability Office
Washington, DC 20548

November 18, 2005

Congressional Requesters

Since 1969, when Congress established the Black Lung Program as a temporary federal program to provide benefits for coal miners disabled by pneumoconiosis (black lung disease), the federal government has played an ever-increasing role in providing benefits to individuals injured as result of exposure to harmful substances. 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, Congress has enacted several additional programs to provide benefits to individuals injured by exposure to such things as radiation and beryllium, a substance used in nuclear weapons production. In addition, the role of the federal government in many of these compensation programs has expanded over time. Most recently, legislative proposals have been introduced in the Senate and the House that would add asbestos to the list of substances for which federally administered compensation programs have been established.

As Congress considers legislation to establish a compensation program for those injured by asbestos exposure, you asked us to provide you with information on four existing 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). As requested, our objectives were to (1) provide information on the design of the programs, including their purpose, financing, administration, benefits, and eligibility criteria; (2) describe the length of time it took to establish the programs, the costs of establishing and administering them, and the initial estimates and actual costs of benefits paid to date; and (3) provide information on the claims histories of the programs, including the number of claims, approval rates, and the length of time it has taken to finalize claims and compensate eligible claimants. On October 28, 2005, we briefed you on the results of our study. This report formally conveys the information we presented at that briefing (see app. I).

To provide information on these programs, we reviewed previous GAO reports on these and other compensation programs;¹ interviewed officials with the Departments of Labor (DOL), Justice (DOJ), and Health and Human Services (HHS), the Congressional Budget Office, and other experts about the start-up and ongoing administration of the programs; obtained data from the agencies on funding, costs, claims processing, number of claims, and approval rates; examined the relevant laws and regulations governing the programs; and reviewed studies and other publicly available information.

We reviewed 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, the number of claims for the life of the programs, and the actual costs of benefits and claims from the date the programs were established through the end of fiscal year 2004. We also obtained information on the annual administrative costs for each program for 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 has taken the agencies to finalize claims and compensate eligible claimants. We did not obtain cost or claim information on the portion of EEOICP initially administered by the Department of Energy (DOE) that was moved to DOL as of fiscal year 2005.² We also did not consider the programmatic design of this portion of the program, except where noted. Although we did not independently assess the accuracy of the data obtained from the federal agencies, we determined the reliability of the data by interviewing knowledgeable agency officials regarding the completeness and accuracy of administrative data, reviewing related documentation, and obtaining assurances that the agencies conducted tests of the data for omissions and errors. We determined that the data were sufficiently reliable to meet the objectives of this engagement. Our work was conducted from June to October 2005 in accordance with generally accepted government auditing standards.

In summary, we found that all four programs were designed to compensate individuals injured by exposure to harmful substances. However, their design, the agencies that administer them, their financing

¹See the list of related GAO products at the end of appendix I.

²GAO is currently reviewing DOE's costs and administration of this portion of EEOICP, but the results of this work will not be available until 2006.

mechanisms, benefits paid, and eligibility criteria, including their standards of proof (the evidence claimants must provide to support their claims), differ significantly. For example, some programs, such as the Black Lung Program and EEOICP, were designed to compensate individuals for work-related injuries, while others, such as RECP and VICP, provide restitution to injured parties. Several federal agencies are responsible for the administration of the programs: DOL administers the Black Lung Program and EEOICP; DOJ administers the RECP program and shares administration of the VICP program with HHS and the Court of Federal Claims. Among the four programs, EEOICP and RECP are completely federally funded. The Black Lung Program is funded by a trust fund financed by an excise tax on coal, and VICP is funded by a trust fund financed by a per dose tax on each covered vaccine purchased. Benefits vary among the programs: They provide lump sum compensation and payments for lost wages, pain and suffering, medical and rehabilitation costs, and attorney's fees. Eligibility criteria among the programs 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; VICP covers individuals who show that they were injured by certain vaccines; 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; and EEOICP covers workers in nuclear weapons facilities during specific time periods who developed specific diseases.

All four programs were established within 2 years of their enacting legislation, and for some programs, benefits paid have exceeded the initial estimates. As specified in its enacting legislation, the Black Lung Program was effective upon enactment. Two of the programs—VICP and RECP—were established within 23 months and 18 months, respectively, of their enacting legislation. The portion of EEOICP administered by DOL was established within 9 months of its enacting legislation, and the portion initially administered by DOE was established within 23 months.³ Total benefits paid for the Black Lung Program and RECP have far exceeded initial estimates. For example, the initial estimate of benefits for the Black Lung Program developed in 1969 was about \$3 billion, while actual benefits paid through 1976—when the program was initially to have

³One portion of EEOICP, Part B, has been administered by DOL since the inception of the program. Another portion, Part D, was initially administered by DOE. As of fiscal year 2005, that portion of the program was replaced with Part E, which will be administered by DOL. See appendix I for details.

ended—totaled over \$4.5 billion; actual benefits paid through fiscal year 2004 have totaled over \$41 billion. Actual costs have significantly exceeded the 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 since it was established in 1969, including several amendments that have increased benefits and added categories of claimants. In addition, although the costs of EEOICP benefits paid to date have been fairly close to the initial estimate, these costs are expected to rise substantially because of recent changes that were not anticipated at the time the estimate was developed—payments that were to have been made by state workers' compensation programs will now be paid by DOL.

The number of claims filed and approval rates vary, but for all four programs, it has taken the agencies years to finalize some claims and compensate eligible claimants. The number of claims filed for three of the programs through the end of fiscal year 2004 exceeded the initial estimates (no estimates were available for VICP). Among the four programs, the number of claims filed ranged from 10,900 for VICP to 960,800 for the Black Lung Program, and approval rates ranged from 31 percent for VICP to 68 percent for RECP. As we previously reported, 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. Factors that affect the amount of time it takes 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, the availability of funding, factors outside the agencies' control such as incomplete applications being filed by claimants and claimants' difficulties in obtaining the evidence needed to meet the programs' standards of proof, and whether claims decisions can be appealed in the courts.

In conclusion, the federal role in all four programs has expanded significantly over time. All four have expanded to provide eligibility to additional categories of claimants, cover more medical conditions, or provide additional benefits. As might be expected, as the federal role for these four programs has grown, so have their costs. Beyond the costs associated with expanded eligibility, increasing medical costs and new research on exposure levels and medical conditions associated with that exposure that could lead to expanded eligibility may further increase program costs. The difficulty in estimating the actual cost of these

programs may be due to the inherent difficulty of estimating the number of claimants and anticipating expansions of the programs. However, because these programs may expand significantly beyond the initial cost estimates, policymakers must carefully consider the cost and precedent-setting implications of establishing any new federal compensation programs, particularly in light of the current federal deficit. Finally, program design—including the extent to which programs allow claimants and payers to appeal claims decisions in the courts and the standards of proof for each program—can affect claims-processing time. Ultimately, these program design decisions reflect trade-offs between processing claims quickly and ensuring accuracy and fairness.

We provided DOL, DOJ, and HHS with a draft of this report for review and incorporated their technical comments as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of the report. At that time, we will send copies of this report to the Attorney General, the Secretary of HHS, the Secretary of Labor, appropriate congressional committees, and other interested parties. It also will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions about this report, please contact me at (202) 512-9889 or at robertsonr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.



Robert E. Robertson
Director, Education, Workforce,
and Income Security Issues

List of Congressional Requesters

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on Judiciary
House of Representatives

The Honorable William D. Delahunt
The Honorable Sheila Jackson Lee
The Honorable Zoe Lofgren
The Honorable Martin T. Meehan
The Honorable Jerrold Nadler
The Honorable Linda T. Sanchez
The Honorable Robert C. Scott
The Honorable Adam Smith
The Honorable Chris Van Hollen, Jr.
The Honorable Maxine Waters
The Honorable Melvin L. Watt
The Honorable Anthony D. Weiner
The Honorable Robert Wexler
House of Representatives

Appendix I: Briefing Slides



Selected Federal Compensation Programs

**Briefing for Congressional Requesters
October 28, 2005**

1



Introduction

As Congress considers legislative proposals for establishing a compensation program for those injured by asbestos exposure, we were asked to review four existing federal compensation programs:

- Black Lung Program
- Vaccine Injury Compensation Program (VICP)
- Radiation Exposure Compensation Program (RECP)
- Energy Employees Occupational Illness Compensation Program (EEOICP)



Objectives

1. Provide information on the design of the programs, including their
 - purpose,
 - financing,
 - administration,
 - benefits, and
 - eligibility criteria.

 2. Describe the length of time it took to establish the programs, the costs of establishing and administering them, and the initial estimates and actual costs of benefits paid to date.

 3. Provide information on the claims histories of the programs, including the number of claims, approval rates, and the length of time it has taken to finalize claims and compensate eligible claimants.
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Scope

We

- reviewed information on the four programs from inception through the end of fiscal year 2004,
- compared initial estimates of the anticipated costs of benefits for each program with the actual costs through fiscal year 2004,
- obtained annual administrative costs for each program for fiscal year 2004,
- obtained initial estimates of the number of claims anticipated and the actual number of claims filed through fiscal year 2004, and
- reviewed information on the amount of time it took the agencies to finalize claims and compensate eligible claimants.

We did not obtain information on costs or number of claims for the portion of EEOICP initially administered by the Department of Energy (DOE).^a

^aGAO is currently reviewing this portion of the program, but the results of this work will not be available until 2006.



Methodology

For the four compensation programs, we

- reviewed published GAO reports on these and other compensation programs;
 - interviewed officials with the Departments of Labor (DOL), Justice (DOJ), and Health and Human Services (HHS); the Congressional Budget Office; and other experts about the start-up and ongoing administration of the programs;
 - obtained data from the agencies on funding, costs, claims processing, number of claims, and approval rates (we did not independently assess the accuracy of these data);
 - examined the relevant laws and regulations governing the programs; and
 - reviewed studies and other publicly available information.
-



Data Reliability

To determine the reliability of data obtained from federal agencies, we

- interviewed knowledgeable agency officials regarding the completeness and accuracy of administrative data,
- reviewed related documentation, and
- obtained assurances that agencies had conducted tests of the data for omissions and errors.

We determined that the data were sufficiently reliable to meet the objectives of this engagement.

Our work was conducted from June to October 2005 in accordance with generally accepted government auditing standards.



Summary of Results

Program Design

- All four programs were designed to compensate individuals injured by exposure to harmful substances. However, their structure; the agencies that administer them; their financing mechanisms; benefits paid; and eligibility criteria, including the standards of proof (the evidence claimants must provide to support their claims), differ significantly.

Program Costs and Administration

- The programs were all established within 2 years of their enacting legislation and within specified time frames (when time frames were statutorily mandated).
 - The number of claims and total benefits paid for the Black Lung Program and RECP have significantly exceeded the initial estimates. In addition, although the costs of EEOICP benefits have, to date, been fairly close to the initial estimates, these costs are expected to rise substantially in the future because payments that were to have been made under the portion of the program initially designed to be paid by state workers' compensation programs will now be paid by DOL.
-



Summary of Results (continued)

Claims Histories

- The number of claims filed ranges from 10,900 for VICP to 960,800 for the Black Lung Program, and approval rates range from 31 percent for VICP to 68 percent for RECP.
 - As we previously reported, for all four programs, the agencies responsible for processing claims have, at various times, taken years to finalize some claims. As a result, it has taken the agencies a long time to compensate some eligible claimants. Factors that affect the amount of time it takes 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,
 - the availability of funding,
 - factors outside the agencies' control such as incomplete applications being filed by claimants and claimants' difficulties in obtaining the evidence needed to meet the programs' standards of proof, and
 - whether claims decisions can be appealed in the courts.
-



Obj 1: Program Design

Black Lung Program

Purpose

- The 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—including the development of a trust fund to pay claims when a responsible mine operator cannot be located and making it an ongoing federal program.

Financing

- The program was initially funded through annual appropriations.
- In 1978, the Black Lung Disability Trust Fund was established.
 - The fund is financed by an excise tax on coal mined and sold in the United States, and supplemented with additional funds. However, the tax has not been adequate, resulting in large shortfalls. The fund has borrowed over \$8.7 billion from the federal treasury to date; interest payments have exceeded \$7 billion.



Obj 1: Program Design

Black Lung Program (continued)

Administration

- The Social Security Administration (SSA) processed and paid the first claims starting in 1969. As designed, DOL began processing claims in 1973, while SSA maintained the existing claims. In a 1997 inter-agency agreement, DOL took over processing all claims. In 2002, Congress officially transferred full legal responsibility and funding for Black Lung Program claims to DOL.

Benefits

The program provides

- diagnostic testing for miners;
- monthly payments based on the federal General Schedule-2 salary scale ranging from about \$550 to \$1,100 for eligible miners or their survivors;
- medical treatment for eligible miners; and
- in certain cases, payment of claimants' attorney fees. Attorney fees are paid only if the claim is awarded.



Obj 1: Program Design

Black Lung Program (continued)

Eligibility criteria

- The program initially covered only underground coal miners totally disabled by black lung disease and their widows.
- Eligibility was later expanded to include surface mine workers and additional categories of surviving dependents.

Claimants must show that

1. the miner has or had black lung disease,^a
2. the disease arose out of coal mine employment, and
3. the disease is totally disabling or caused the miner's death.

^aThe definition of "pneumoconiosis" under the regulations includes "a chronic dust disease of the lungs... arising out of coal mine employment." (20 CFR 718.201).



Obj 1: Program Design

VICP

Purpose

The program was authorized in 1986 to provide compensation to individuals for vaccine-related injury or death. According to HHS, it also was established to help stabilize manufacturers' costs and ensure an adequate supply of vaccines. Concerns expressed by various groups contributed to the passage of the legislation, including concerns from

1. parents about harmful side effects of certain vaccines,
2. vaccine companies and health care providers about liability, and
3. the public about vaccine shortages.

Financing

- 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 covered vaccine purchased. For example, the excise tax on the measles, mumps, and rubella (MMR) vaccine is \$0.75 x 3 doses, or \$2.25.



Obj 1: Program Design

VICP (continued)

Administration: HHS, DOJ, and the Court of Federal Claims.
Eligibility for compensation is by judicial decision of the court.

Benefits

- For injury: medical and related costs, lost earnings, legal expenses, and up to \$250,000 for pain and suffering.
- For death: up to \$250,000 for the deceased's estate, plus legal expenses.
- Reasonable attorney's fees for all claims brought in good faith and with a reasonable basis for the claim.



Obj 1: Program Design

VICP (continued)

Eligibility criteria

- Claimants must show that they received a vaccine listed on the Vaccine Injury Table (the Table) and that
 1. they developed a medical condition listed on the Table that occurred within specified time frames, or
 2. they developed a medical condition not listed on the Table that they can prove was caused by a vaccine listed on the table, or
 3. one of the listed vaccines significantly aggravated a medical condition not listed.

In addition, the Court of Federal Claims must determine that the injury or death did not result from any other possible causes.

- Medical conditions listed on the Table are presumed to have been caused by the vaccine if they occur within the time frames specified in the Table and no other cause is found.
- New vaccines are added to the Table after the Centers for Disease Control has recommended the vaccine for routine administration to children and an excise tax has been imposed on the vaccine by Congress. Through rule making, HHS makes changes in the types of medical conditions and time frames listed on the Table based on recommendations of an advisory commission composed of health officials, attorneys (including those who represent persons with vaccine-related injuries and who represent vaccine manufacturers), and parents.



Obj 1: Program Design

RECP

Purpose

The program was established in 1990 to make partial restitution to on-site participants, uranium miners, and nearby populations (“downwinders”) 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.

Financing

- Initially, the program was funded through an annual appropriation.^a
- In fiscal year 2000, DOJ adjudicated claims as required under the act but was unable to pay all approved claims until the following fiscal year because funds appropriated for fiscal year 2000 were not sufficient to pay them.
- In fiscal year 2002, Congress made funding for RECP mandatory and provided \$655 million to the trust fund for fiscal years 2002 through 2011. However, DOJ’s and the Congressional Budget Office’s estimates indicated that the program would still fall short of funds.
- In 2005, Congress made the funding for downwinders and on-site participants mandatory and indefinite beginning in fiscal year 2006. In addition, payments for uranium industry workers will be paid from the EEOICP fund.

^a Although this is funded as an annual appropriation, it is designated a trust fund.



Obj 1: Program Design

RECP (continued)

Administration: DOJ

Benefits

The program provides a lump sum compensation of

- \$50,000 to downwinders,
- \$75,000 to on-site participants, and
- \$100,000 to uranium mine and mill workers and ore transporters.

Some categories of uranium industry workers are also eligible for EEOICP benefits.



Obj 1: Program Design

RECP (continued)

Eligibility criteria

- Claimants must show that they
 1. were physically present in certain geographic locations during specified time periods or participated on-site during an atmospheric nuclear detonation, and
 2. have developed certain medical conditions.
- Causation is established for individuals present in the locations and time periods specified in the statute, meaning that the claimant is not required to present additional evidence of causation.
- Eligibility has been expanded over time to include additional categories of workers and geographic locations and illnesses for downwinders and on-site participants. For example, the 2000 amendments expanded the eligibility criteria to include aboveground uranium miners, uranium mill workers, ore transporters, and additional downwind locations in Utah and Arizona.
- A recent study by the National Academy of Sciences concluded that eligibility for RECP should be based on a scientific probability model that estimates the amount of radiation dose and the risk of developing an illness associated with that dose.
- Legislative proposals have been introduced that would expand downwinder eligibility to Idaho, Montana, and the Territory of Guam.



Obj 1: Program Design

EEOICP

Purpose

- The program was established in 2000 to provide payments to nuclear weapons plant workers injured from exposure to radiation or toxic substances, or their survivors. Initially, under Part B, DOL provided federal benefits to workers, and under Part D, DOE assisted workers in obtaining state workers' compensation benefits. In 2004, Part D was replaced by Part E of the program and transferred to DOL. At that time, the federal government assumed total responsibility for benefits paid under EEOICP.

Financing

- Annual appropriations, with supplemental transfers as needed.
-



Obj 1: Program Design

EEOICP (continued)

Administration

Initially, DOL administered Part B of the program and DOE administered Part D. In 2004, DOL was given full responsibility for administering the program and paying benefits. The National Institute for Occupational Safety and Health (NIOSH) and DOJ provide support to DOL.

Benefits

Part B of the program provides

- a lump sum payment of \$150,000 to the workers or their survivors, and
- medical benefits.

Part E of the program provides

- payment based on level of impairment,
- payment for lost wages,
- medical benefits, and
- a lump sum survivor payment of \$125,000, \$150,000, or \$175,000.

Maximum benefits other than medical expenses paid under Part E are capped at \$250,000.



Obj 1: Program Design

EEOICP (continued)

Eligibility criteria

Part B covers

- employees of DOE, its contractors and subcontractors, and atomic weapons employers who developed radiation-induced cancer after working at a covered facility and whose cancer is determined at least as likely as not related to that employment in accordance with guidelines developed by HHS;
- employees of DOE, its contractors and subcontractors, and designated beryllium vendors and their subcontractors who worked at covered facilities where they were exposed to beryllium produced or processed for DOE and who developed chronic beryllium disease;
- employees of DOE or its contractors or subcontractors who worked at least 250 days during the mining of tunnels at underground nuclear weapons tests sites in Nevada or Alaska and who developed chronic silicosis.

Part E covers

- DOE contractor and subcontractor employees who developed an occupational illness as a result of exposure to a toxic substance at a DOE facility, or have been approved for a Part B claim.

Under both Parts B and E

Eligibility of some cancer claimants is based on radiation exposure levels as determined by NIOSH.



Obj 2: Timing and Program Costs

Start-up Time and Costs

- All four programs were established within 2 years of enactment, within the time frames specified in the legislation (when time frames were specified). As specified in its enacting legislation, the Black Lung Program was effective upon enactment. Two of the programs—VICP and RECP—were established within 23 months and 18 months, respectively, of their enacting legislation. Part B of EEOICP was established by DOL within 9 months of its enacting legislation, and Part D was established by DOE within 23 months.
- As shown in the table below, initial program costs ranged from \$14 million for the Black Lung Program to \$388 million for EEOICP Part B.

Start-up Costs (in millions of dollars)

Costs	Black Lung^a	VICP^b	RECP^c	EEOICP^d
Administrative costs	\$ 4	\$ 3	\$ 1	\$ 40
Compensation	\$10	\$ 55	\$92	\$348
Total	\$14	\$ 58	\$93	\$388

^aSource: Actual expenditures for the first year of the program—fiscal year 1970—obtained from DOL.

^bSource: Actual expenditures obtained from HHS for the first 2 years funds were appropriated—fiscal years 1989 and 1990.

^cSource: Actual expenditures obtained from DOJ for the first 2 years funds were appropriated—fiscal years 1992 and 1993.

^dSource: Actual expenditures obtained from the Office of Management and Budget for the first 2 years funds were appropriated—fiscal years 2001 and 2002. Costs for DOE, which did not begin processing Part D claims until September 2002, are not included.



Obj 2: Timing and Program Costs

Start-up Time and Costs (continued)

- Administrative costs for VICP and RECP were not initially appropriated for these programs, which eventually posed problems for the administering agencies. For example, HHS, DOJ, and the Court of Federal Claims initially absorbed the costs of administering VICP. However, without having these costs covered, by 1988, DOJ was unable to fund enough attorneys to represent HHS in adjudicating claims before the Court of Federal Claims. As a result, Congress passed legislation in 1990 that allowed the agencies' administrative costs (up to a specified maximum) to be paid from the Vaccine Injury Compensation Trust Fund. From fiscal year 1996, when DOJ received an increase in appropriations for administrative costs, through 2004, total administrative costs for HHS, DOJ and the Court of Federal Claims combined have averaged about \$9.7 million per year.



Obj 2: Timing and Program Costs

Annual Administrative Costs for Fiscal Year 2004

Black Lung Program	\$55,803,000
VICP	\$10,511,000 ^a
RECP	\$ 3,049,000
EEOICP	\$89,500,000 ^b

Source: DOL for the Black Lung Program and EEOICP; HHS for VICP; and DOJ for RECP. We did not independently assess the accuracy of the data obtained from these agencies.

^aIncludes administrative costs for HHS (\$3,190,000); DOJ (\$4,028,000); and the Court of Federal Claims (\$3,293,000).

^bIncludes only DOL's administrative costs for Part B of the program; DOE's costs to administer Part D are not included.

Obj 2: Timing and Program Costs



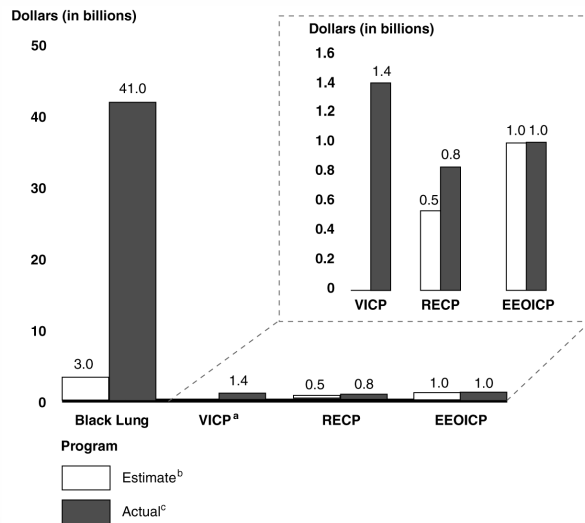
Initial Estimates and Actual Benefit Costs through Fiscal Year 2004

- The actual costs of providing benefits for two of the programs—the Black Lung Program and RECP—have been much higher than the initial estimates.
 - For the Black Lung Program, the initial estimate of benefits developed in 1969 was about \$3 billion, while actual benefits paid through 1976—when the program was initially to have ended—totaled over \$4.5 billion. Actual benefits paid through fiscal year 2004 have totaled over \$41 billion. Actual costs have significantly exceeded the estimates for several reasons, including the following:
 1. the program was initially set up to end in 1976—state workers' compensation programs were to have provided these benefits to coal miners and their dependents; and
 2. the program has been changed numerous times since it was established in 1969, and several amendments have increased benefits and added additional categories of claimants.
 - For EEOICP, although actual costs have matched the initial estimates to date, these costs are expected to increase substantially because, under a recent amendment to the program, payments that were to have been made by state workers' compensation programs will now be paid by DOL.



Obj 2: Timing and Program Costs

Initial Estimates and Actual Benefit Costs through Fiscal Year 2004



^aAn initial estimate of benefit costs for VICP was not available.

^bSource: The estimate for the Black Lung Program is from DOL; those for RECP and EEOICP are from the Congressional Budget Office.

^cSource: The actual benefit costs were provided by the agency that administers each program.



Obj 3: Claims Histories

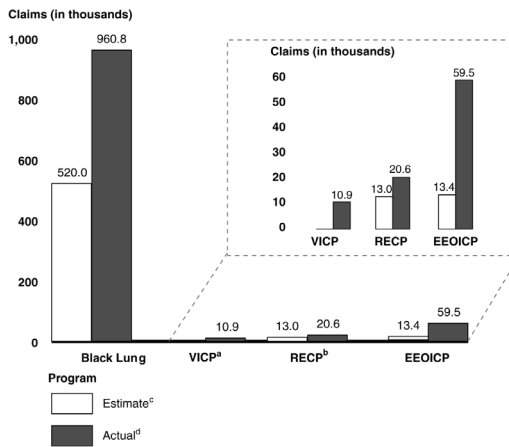
Initial Estimates and Actual Number of Claims Filed through Fiscal Year 2004

- For the three programs for which we were able to obtain initial estimates of the number of claims—the Black Lung Program, RECP, and EEOICP—the actual number of claims filed through the end of fiscal year 2004 significantly exceeded the estimates of the number of anticipated claims.
- For EEOICP, although the number of claims filed through the end of fiscal year 2004 was much greater than the estimate, actual benefit costs have not exceeded the estimate because of the large number of claims filed that either had not been finalized or were denied. Of the 59,474 EEOICP Part B claims filed through the end of fiscal year 2004, 26,947 claims had not been finalized and 19,273 were denied.



Obj 3: Claims Histories

Initial Estimates and Actual Number of Claims Filed through Fiscal Year 2004



^a An initial estimate of the number of claims for VICP was not available.
^b Source: The Congressional Budget Office estimated 500 claims for the program, much lower than DOJ's estimate.
^c Source: The estimate of the Black Lung Program is from DOL; the estimate for RECP is from DOJ and covers the number of claims expected through 2012; the estimate for EEOICP is from the Congressional Budget Office and covers the number of claims expected through 2010.
^d Source: The actual number of claims was provided by the agency that administers each program.



Obj 3: Claims Histories

Approval Rates for All Finalized Claims through Fiscal Year 2004

Black Lung Program

- 38% (190,833 of 498,790 claims)^a

VICP

- 31% (1,884 of 6,025 claims)

RECP

- 68% (12,060 of 17,834 claims)

EEOICP–Part B only

- 41% (13,254 of 32,527)^b

Source: DOL for the Black Lung Program and EEOICP, HHS for VICP, and DOJ for RECP. We did not independently assess the accuracy of the data obtained from these agencies.

^aIncludes decisions on claims for monthly benefits only and does not include claims adjudicated by the Social Security Administration.

^bDoes not include claims filed under Part D of the program that were processed by DOE.



Obj 3: Claims Histories

Some Claims Have Taken Years to Finalize

As GAO previously reported, all four programs have, at various times, taken years to process some claims, resulting in some claimants waiting a long time to receive compensation, some as long as several years.

- Statutory and regulatory requirements for determining eligibility— including the standards of proof required for each program—affect claims processing time. For example, for EEOICP, some individuals who file claims must have part of their eligibility determined based on NIOSH’s findings of their level of radiation exposure. For claimants not needing this determination by NIOSH, Labor has taken about 7 months, on average, to process their claims. However, for claimants requiring this determination by NIOSH, it has taken much longer for them to have their claims finalized and obtain compensation. Although DOL and NIOSH have improved this process, according to DOL it still can take as long as 4 years for NIOSH to complete its determinations.



Obj 3: Claims Histories

Some Claims Have Taken Years to Finalize (continued)

- Changes in eligibility criteria have increased claims volume, resulting in backlogs in processing claims. For example, the 1977 amendments to the Black Lung Program expanded eligibility to a large number of miners who had previously been denied benefits, resulting in large backlogs as new claims were filed and previously denied claims were refiled.
- Inexperienced agencies have taken longer to establish programs and process claims. For example, during the first 2½ years of EEOICP (as of December 31, 2003), DOE—which had little experience in processing compensation claims—had completely processed only 6 percent of the 23,000 Part D claims filed and had not yet begun processing nearly 60 percent of the claims.



Obj 3: Claims Histories

Some Claims Have Taken Years to Finalize (continued)

- Lack of funding has resulted in payment delays for some programs. For example, in fiscal year 2000, when funds appropriated for RECP claims were not sufficient to pay all approved claims, DOJ ceased making payments until the following fiscal year, when funds became available.
- The time it takes agencies to finalize claims may be affected by factors outside their control, including incomplete applications being filed by claimants and claimants' difficulties in obtaining the evidence needed to meet the programs' standards of proof. For example, according to DOL officials, some claimants have waited months to get appointments with specialized pulmonary doctors, as required by the Black Lung Program, in order to obtain the medical evidence required to support their claims. According to DOL, some of this difficulty in obtaining appointments occurs because of a general shortage of doctors with the necessary medical specialization.



Obj 3: Claims Histories

Some Claims Have Taken Years to Finalize (continued)

- Programs, such as the Black Lung Program, in which claims can be appealed in the courts, can take a long time to finalize. Claimants may appeal claims denied by DOL, and mine operators may appeal claims approved. There are three levels of appeal, with the courts being the last level of appeal. A DOL official told us it takes the agency about 9 months to make an initial decision on a claim. However, if a claimant or a mine operator appeals a claim, the process takes longer. Claims that are appealed in the courts generally take at least 3 years to finalize, although they may take longer. According to DOL, about 20 percent of claims are appealed.



Concluding Observations

Federal Role Has Expanded over Time

- All four programs have been expanded to provide eligibility to additional categories of claimants, cover more medical conditions, or provide additional benefits. For example, RECP originally covered only underground uranium miners, on-site participants, and downwinders. It was later expanded to cover aboveground miners, ore transporters, and mill workers, and additional downwind areas.
- Some programs have been extended beyond their initial time periods. For example, the Black Lung Program did not end in 1976 as initially planned.
- The Black Lung Program and EEOICP both provide some benefits that were initially to be paid by state workers' compensation programs.
- When enacted, all four programs provided new federal benefits. Previously, benefits were available, if at all, only through state workers' compensation programs or the tort system. For example, prior to the establishment of VICP, families could seek compensation for damages only through the civil tort systems, where they bore the burden of proving that the vaccine was defective or administered negligently.



Concluding Observations

Program Costs Have Also Expanded over Time

- Legislative changes that have expanded eligibility and provided additional benefits have increased program costs. For example, eligibility for the Black Lung Program has been expanded to include additional categories of mine workers and their survivors. In addition, recent legislative changes to EEOICP that transferred responsibility for costs previously paid by state workers' compensation systems to the federal government and transferred some RECP costs to EEOICP will significantly increase costs for this program.
- Medical costs for illnesses have risen substantially over time.
- Research has led to additional categories of claimants being added. For example, the 2000 amendments to RECP that added coverage for aboveground uranium miners, millers, and ore transporters referred to research—including reports from the Atomic Energy Commission and NIOSH—that supported adding these additional categories of claimants.



Concluding Observations

Program Costs Have Also Expanded over Time (continued)

- Program costs were difficult to estimate because the initial numbers of claimants were unknown and it was difficult to anticipate future expansions of the programs. Actual benefits paid as of the end of fiscal year 2004 for the Black Lung Program and RECP have significantly exceeded initial estimates.
- Because these programs may expand significantly beyond the initial costs anticipated when they were enacted, policymakers must carefully consider the cost and precedent-setting implications of establishing any new federal compensation program, particularly in light of the current federal deficit.



Concluding Observations

Program Design Can Hinder or Facilitate the Claims Process

- As with any benefit program, there is a trade-off between processing claims quickly and ensuring accuracy and fairness. For example, some EEOICP claims can take years to approve because of the lengthy process required for NIOSH to determine the levels of radiation exposure for some claimants.
- The extent to which programs allow the industry to be involved in the claims process and requires them to be more directly financially responsible for paying claims can extend the time it takes to finalize claims. For example, because mine operators must pay some Black Lung claims and often challenge DOL's decisions to approve these claims in court, final approval of claims is often delayed for years. Conversely, for VICP, vaccine manufacturers are not involved in the claims process or required to pay claims, therefore they do not contribute to delays in compensating eligible claimants.



Concluding Observations

Program Design Can Hinder or Facilitate the Claims Process (continued)

- The standards of proof (the evidence claimants must provide to support their claims) specified in the law or regulations affect the difficulty for claimants of proving their claims and the speed of the claims process. For example, under RECP, causation (the link between radiation exposure and certain medical conditions) is established in the statute for individuals who can show that they (1) developed a medical condition specified in the law and (2) worked or lived in the areas specified in the law during the periods of time specified. Therefore, claimants are not required to provide additional evidence of causation to support their claims.



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Appendix II: GAO Contact and Staff Acknowledgments

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