

April 2005

AGENT ORANGE

Limited Information Is Available on the Number of Civilians Exposed in Vietnam and Their Workers' Compensation Claims





Highlights of [GAO-05-371](#), a report to congressional requesters

Why GAO Did This Study

Concerns about difficulties civilian employees of the U.S. government may have in obtaining workers' compensation benefits for medical conditions they developed as a result of their exposure to Agent Orange in Vietnam led to GAO being asked to determine (1) what is known about the number of civilians who served in Vietnam, both those employed directly by the U.S. government and those employed by companies that contracted with the government; (2) what is known about the number, processing, and disposition of claims filed by these civilians; and (3) what options are available if Congress chooses to improve access to benefits for civilians exposed to Agent Orange in Vietnam who developed illnesses as a result of their exposure, and what are their cost implications?

What GAO Recommends

The Department of Labor (Labor) should enhance its processing and management of claims, including improving the information used to track claims, maintaining better information on the insurance carriers it licenses, and providing better information to claimants to use in filing claims.

Labor generally agreed with our recommendations, while the Department of Veterans Affairs (VA) expressed serious concerns about the cost and policy implications of the options for improving civilians' access to compensation.

www.gao.gov/cgi-bin/getrpt?GAO-05-371.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson at (202) 512-7215, robertsonr@gao.gov.

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Limited Information Is Available on the Number of Civilians Exposed in Vietnam and Their Workers' Compensation Claims

What GAO Found

While many federal agencies that were likely employers of civilian federal and contract workers during the Vietnam War had little information on these employees, a few provided us with limited information on federal employees and the amounts of contracts for companies that provided services to the military in Vietnam. We were unable to determine the reliability of the data provided. However, we used these data for the limited purpose of estimating that between 72,000 and 171,000 civilians may have worked for the U.S. government in Vietnam between 1964 and 1974. Our ability to provide more accurate information on the size of this workforce was limited because most agency records maintained during this period were not computerized, and because so much time has elapsed that many paper records have been destroyed and many agency personnel knowledgeable of the period are no longer working at these agencies.

For the 32 Agent Orange-related claims identified (12 from federal civilians and 20 from contract employees), we found that these claimants faced many difficulties and delays because of a lack of readily available information on how to file a claim, their Vietnam era employers, and their exposure to Agent Orange, as well as processing delays caused by employers, insurance carriers, and Labor. Both Labor and private insurance carriers had difficulty identifying the number of claims they had received, largely because they do not assign a unique code to Agent Orange claims that would enable easy identification. Most of the claims we identified were filed in the past 10 years, and most have been denied. Denials of the claims stemmed, in part, from the fact that under the laws governing these claims, claimants must demonstrate a causal link between their exposure to Agent Orange and their medical conditions, which is difficult to prove so many years later.

If Congress chooses to address this issue, several legislative options could be considered to attempt to improve access to compensation for civilians who were exposed to Agent Orange and developed medical conditions as a result, although they could have significant cost and policy implications. Congress could amend current law authorizing benefits for veterans to cover certain civilians or set up a separate program to cover them. Another option is for Congress to amend the GI Bill Improvement Act of 1977, which allows DOD to retroactively grant military status and authorize full VA benefits to certain civilian groups that support the military during armed conflicts. However, it is difficult to assess the potential costs of these options because of the limited data available on the number of civilians and their claims for compensation. Despite the difficulty of assessing the potential costs, before any of these options are pursued, their fiscal impact and the precedent-setting implications for individuals involved in other wars and conflicts since the Vietnam era should be carefully considered.

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Abbreviations

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| CIA | Central Intelligence Agency |
| DBA | Defense Base Act |
| DOD | Department of Defense |
| FECA | Federal Employees' Compensation Act |
| IOM | Institute of Medicine |
| OWCP | Office of Workers' Compensation Programs |
| VA | Department of Veterans Affairs |

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United States Government Accountability Office
Washington, DC 20548

April 22, 2005

The Honorable Bill Nelson
United States Senate

The Honorable Lane Evans
House of Representatives

The Honorable Mark Foley
House of Representatives

The Honorable Robert Wexler
House of Representatives

During the Vietnam War, U.S. civilians, along with military personnel, were in the country when Agent Orange, an herbicide containing dioxin, was used as a defoliant. Civilians—both federal and contract employees—performed a variety of jobs in support of the military, including helicopter maintenance, road building, and cargo handling. After many years of controversy, in 1991 Congress passed the Agent Orange Act to provide military veterans who developed medical conditions related to dioxin exposure in Vietnam with easier access to compensation, such as payments for medical expenses. The act associates dioxin exposure with latent illnesses, including several forms of cancer. The act also includes several presumptions, including the presumed exposure to Agent Orange of any military service member who was in Vietnam and developed a dioxin-related disease. While civilians who worked for the U.S. government in Vietnam are not covered under the Agent Orange Act, workers' compensation programs are available to restore lost wages and pay medical expenses of those who are disabled by an occupational illness. Federal employees file claims for workers' compensation with their employing agency, which refers the claims to the Department of Labor (Labor) under the Federal Employees' Compensation Act (FECA). Workers' compensation coverage for employees who work under contract to the U. S. government outside the United States is provided under the Defense Base Act (DBA), which extends the Longshore and Harbor Workers' Compensation Act. These individuals file claims through their employers with the employers' insurance carriers.

Concerned about difficulties civilian employees have had in obtaining workers' compensation benefits for diseases that may be related to their

exposure to Agent Orange in Vietnam, you asked us to determine (1) what is known about the number of civilians who served in Vietnam, both those employed directly by the U.S. government and those employed by companies that contracted with the government; (2) what is known about the number, processing, and disposition of claims filed by these civilians; and (3) what options are available to Congress if it chooses to improve access to workers' compensation and benefits for civilians exposed to Agent Orange in Vietnam who developed illnesses as a result of their exposure, and what are their cost implications?

To determine the number of civilian employees working in Vietnam during the war, we relied on interviews with and reports from the Departments of Defense (DOD), State, Agriculture, and Treasury as well as the Central Intelligence Agency (CIA), the Census Bureau, and the National Archives. To determine the number and disposition of workers' compensation claims filed by federal employees, we reviewed the policies and procedures of Labor's Office of Workers' Compensation Programs (OWCP), interviewed agency officials and claims examiners, and reviewed claim files. For claims filed by contract employees, we contacted employers and the insurance carriers that provided a majority of the workers' compensation coverage during the Vietnam War to obtain information on the number of claims filed and the disposition of these claims. We also interviewed Labor officials and examined files for claims filed by contract employees that were referred to Labor after being denied by the insurance carriers. To identify options for improving access to workers' compensation and other benefits for civilian employees, we reviewed relevant laws and policies and discussed possible options and estimates of the potential costs with Labor and Department of Veterans Affairs (VA) officials. We conducted our work in accordance with generally accepted government auditing standards between June 2004 and March 2005.

Results in Brief

While many federal agencies that were likely employers of civilian federal and contract workers during the Vietnam War had little information on these employees, a few provided us with limited information on federal employees and the amounts of contracts for companies that provided services to the military in Vietnam. Although we were unable to determine the reliability of this information, we used it for the limited purpose of estimating the number of civilians that may have worked for the U.S. government in Vietnam during the war. Using these data, we estimated that between 72,000 and 171,000 civilians may have worked for the U.S. government in Vietnam between 1964 and 1974. Our ability to more

accurately identify the size of this workforce was limited by the fact that at that time, most records were not computerized, and many of the paper records have either been destroyed or were not organized in a way that would facilitate the identification of such personnel. For many other agencies likely to have had federal civilian or contract workers in Vietnam, officials with knowledge of the period were no longer there because of retirements, reassignments, and other staff turnover. Nevertheless, using numbers provided by two agencies that were able to locate some records—the Department of State and DOD—we developed estimates of the number of federal and contract employees in five agencies who may have worked in Vietnam between 1964 and 1974.

For the 32 civilian workers' compensation claims for diseases associated with Agent Orange exposure identified, we found that claimants faced many obstacles and that to date, most of the claims have been denied. Neither Labor nor private insurance carriers could readily identify the number of claims they had received, largely because they did not have a unique code to identify Agent Orange claims, and because some claims were not accurately recorded in Labor's database. By asking claims examiners to recall information about claims that may have been related to Agent Orange exposure and conducting searches of their databases, Labor and the insurance carriers identified 12 claims from federal civilians and 20 claims from contract employees, most of which were filed in the past 10 years. However, because we were unable to determine whether additional claims that were not identified exist, the information we obtained about these claims does not necessarily represent the nature or disposition of all Agent Orange claims. Our review of these claims showed that claimants faced a number of difficulties and delays because of a lack of readily available information on how to file a claim, their Vietnam era employers, and their exposure to Agent Orange, as well as processing delays caused by employers, insurance carriers, and Labor. Labor's denial of 11 of the 12 claims filed by federal employees (1 claim was withdrawn by the claimant) stemmed, in all but 1 case, from the fact that the claimants were unable to establish a sufficient causal link between their employment-related injury (exposure) and their medical conditions, as required under FECA. This was the case even when the claimants established that they were exposed to Agent Orange in connection with their employment and suffered from a serious illness or disease. Establishing this causal link between exposure and an illness or disease is difficult in cases involving cancer and other illnesses that may have multiple causes and take many years to develop. Of the 20 claims filed by contract employees, 9 were initially denied by the insurance carriers and 1 was approved for payment. The disposition of the other 10 claims is

unknown, because although Labor officials initially told us they were not Agent Orange claims, with our assistance, they later discovered that they were Agent Orange claims, but it was too late for us to include them in our analysis. Of the 9 claims initially denied by the insurance carriers, the claimants have taken no further action on 4 of them, 3 of the claimants are awaiting hearings by an administrative law judge, and Labor upheld the insurance companies' denial for 2 of the claims—1 because it was not filed timely and the other because the claimant did not sufficiently prove his exposure to Agent Orange. The claim that was approved by Labor for payment involved a self-insured contractor to the CIA that was no longer in business. Absent an employer or insurance carrier, the CIA—acting in the role of the employer and the insurance carrier—stated that it “had no objections” to paying the claim. Labor reviewed the claim and accepted it for payment.

If Congress chooses to address this issue, several legislative options could be considered to attempt to improve access to workers' compensation or other benefits for civilian employees exposed to Agent Orange in Vietnam who developed medical conditions as a result of their exposure. Congress could amend the Agent Orange Act and related legislation authorizing benefits for veterans to include civilians who worked in Vietnam or authorize a separate program to specifically cover these individuals. Another option is for Congress to amend the GI Bill Improvement Act of 1977, which allows DOD retroactively to grant military status and authorize providing full VA benefits to certain civilian groups that support the military during armed conflicts. All of these options, however, have cost and policy implications, as illustrated by the payments VA makes for claims paid under the Agent Orange Act. Currently, for the four most common medical conditions covered under the act, VA pays, on average, \$8,500 annually for disability compensation and \$1,000 for medical costs for each claim. Any consideration of these options should include an assessment of their cost and policy implications, such as whether they would set a precedent that could prompt other federal and contract employees who have worked for the U. S. government in a war zone since the Vietnam era to seek similar benefits. Such a precedent could have significant cost implications because the U.S. military has employed a much larger number of contractor personnel in recent wars and conflicts than in Vietnam.

We are making several recommendations intended to improve Labor's processing and management of workers' compensation claims from individuals related to diseases associated with exposure to Agent Orange in Vietnam, including improving the information used to track claims,

maintaining better information on insurance carriers authorized by Labor to provide coverage to contract employees, and providing better information to claimants to use in filing their claims. In its written comments on a draft of this report, Labor generally agreed with our recommendations and provided details of actions it plans to take to improve its handling of claims. In its written comments, VA stated serious concerns about the policy and cost implications of the legislative options we included in the report for easing civilians' access to workers' compensation benefits. As noted in the report, we agree that the cost and policy implications of these options should be carefully considered. DOD provided only an informal technical comment on the report. Labor and VA also provided a few technical clarifications, which we incorporated as appropriate.

Background

Agent Orange is one of several herbicides sprayed by the U.S. government in Vietnam in the 1960s and 1970s as a defoliant. It contains tetrachlorodibenzo-para-dioxin (dioxin), a chemical that the Environmental Protection Agency and the Occupational Safety and Health Administration have classified as highly toxic and carcinogenic. DOD sprayed an estimated 11 million gallons of Agent Orange in Vietnam during the war. In the ensuing years, dioxin has been a focus of research and has been associated with a number of latent illnesses, including cancer and most recently diabetes, which have developed among people who have been exposed to the chemical. The use of Agent Orange has also spawned much litigation over the years, including suits against the manufacturers of the product and against the United States.¹

Until 1991, when Congress passed the Agent Orange Act, military veterans who believed their illnesses were caused by dioxin exposure had limited success in obtaining medical benefits and other compensation. Previously, the VA had denied benefits to most veterans who claimed adverse health effects from the herbicide because poor records made it difficult for many of them to demonstrate where and when they had come into contact with the chemical, and because VA had not accepted proof of a direct link between certain illnesses and dioxin. The Agent Orange Act subsequently authorized awards on the presumption that any veteran who served in Vietnam and who develops certain diseases identified by the National

¹See, e.g., *Hercules, Inc. v. U. S.*, 516 U.S. 417 (1996); *In Re: "Agent Orange" Product Liability Litigation*, 818 F. 2d 194 (2d Cir. 1987), and No. 04-CV-400, 2005 U.S. Dist. LEXIS, 3644 (E.D.N.Y. Mar. 10, 2005); and *Nehmer v. U. S. Veterans Admin.*, 712 F. Supp. 1404 (N.D. CA 1989).

Academy of Sciences' Institute of Medicine (IOM) and accepted by VA had been exposed to Agent Orange. The act also gave VA responsibility for providing information to veterans about health conditions related to Agent Orange exposure and assistance in preparing their claims.

Over time, the body of research on the health effects of dioxin exposure has grown, and in recent years, research organizations such as IOM have learned more about positive associations between exposure and certain medical conditions. Further, both the National Institutes of Health and the Environmental Protection Agency consider dioxin a carcinogen on the basis of studies showing associations between exposure and medical conditions such as lung cancer. Under the Agent Orange Act, IOM is required to review and analyze all medical research on dioxin exposure every 2 years and advise VA on the degree to which it believes Agent Orange is associated with certain health conditions. On the basis of this research, VA has accepted a number of medical conditions associated with Agent Orange exposure. Most of these conditions are types of cancers, such as non-Hodgkin's lymphoma and soft-tissue sarcomas, or skin disorders, such as chloracne. More recently, prostate cancer and diabetes were added to the list after research showed a higher than expected rate of these conditions among those exposed to dioxin. (See fig. 1.)

Figure 1: Conditions VA Recognizes as Related to Agent Orange Exposure

- Chloracne—a skin disorder resembling teenage acne
- Porphyria cutanea tarda—a skin disorder characterized by thinning and blistering of the skin in sun-exposed areas
- Acute or subacute transient peripheral neuropathy—a nerve disorder
- Type 2 diabetes
- Cancers, including non-Hodgkin's lymphoma, chronic lymphocytic leukemia, soft-tissue sarcoma, Hodgkin's disease, multiple myeloma, prostate cancer, and respiratory cancers—including cancers of the lung, larynx, trachea, and bronchus
- Spina bifida and other birth defects among Vietnam veterans' children

Source: VA.

Federal employees and employees who worked under contract to the U.S. government in Vietnam are not covered by the Agent Orange Act. Rather, federal employees who are injured or become ill as a result of their employment, including those who worked in Vietnam, may file a claim under FECA, a comprehensive workers' compensation law for federal employees. To obtain benefits under FECA, claimants must show that (1) they were employed by the U.S. government, (2) they were injured (exposed) in the workplace, (3) they have filed a claim in a timely manner,

(4) they have a disabling medical condition, and (5) there is a causal link between their medical condition and the injury or exposure. Unlike veterans, federal employees who file claims under FECA based on Agent Orange exposure must demonstrate that they were personally exposed to Agent Orange while in Vietnam and that their medical conditions were “proximately caused” by this exposure, (i.e., that there was a causal link between the exposure and their condition). Labor has primary responsibility for processing all FECA claims and has assigned the processing of special types of claims, such as those for Agent Orange exposure, to specific OWCP offices. Labor also processes all appeals from claimants regarding claims that were denied. Claimants have three levels of appeal: (1) reconsideration by an OWCP claims examiner, (2) a hearing or review of the written record by OWCP’s Branch of Hearings and Review, and (3) a review by the Employees’ Compensation Appeals Board. Either a request for reconsideration by a senior claims examiner not involved in the initial decision or a hearing request is generally the first level of appeal, followed by an appeal to the Employees’ Compensation Appeals Board. A decision of the Employees’ Compensation Appeals Board is final—claimants cannot appeal Labor’s decisions in federal court. However, if new evidence becomes available after the decision, the claimant can request the claim be reopened for reconsideration and further review by Employees’ Compensation Appeals Board.

Workers’ compensation coverage for employees who work under contract to the U. S. government outside the United States is provided by the employing contractor under DBA.² Under DBA, individuals who can show that they were harmed and that working conditions could have caused this harm are entitled to a presumption that their claims are work-related and valid. Claimants must also establish that their claim was filed timely and show proof of employment, exposure to Agent Orange, a disabling medical condition, and that their condition arose naturally out of employment (i.e., that their condition was related to their employment in Vietnam).³ Under DBA, Labor is required to license the insurance carriers that provide the

²DBA extends the provisions of the Longshore and Harbor Workers’ Compensation Act to certain contractor employees. In this report, when we discuss claims filed under DBA, we are referring to claims filed under the Longshore and Harbor Workers’ Compensation Act as extended by DBA.

³For an occupational disease, the time for filing is 2 years from the date the claimant became or should have become aware of the relationship between the employment and the disease, or if later, 1 year from the date of the last compensation.

employers' workers' compensation coverage.⁴ To prevent employers and insurance carriers from an undue financial burden for insuring employees during a time of armed conflict, Congress enacted the War Hazards Compensation Act, which allows insurance carriers to obtain reimbursement from Labor when a claim is paid for an injury or death caused by a "war-risk hazard."⁵ Contract employees who are injured file workers' compensation claims directly with their employers and their employers' private insurance carriers. The insurance carrier may either accept or "controvert" (deny) the claim.⁶ Claimants may request that OWCP review the insurance carrier's decision and may ask for a hearing with one of Labor's administrative law judges. The administrative law judge issues a decision and order awarding or denying benefits. Claimants may appeal an administrative law judge's decision to Labor's Benefits Review Board. Claimants may also obtain review of the Benefits Review Board's decisions in federal court.⁷

Because Information Is Limited, Our Estimate of the Number of Federal and Contract Employees in Vietnam during Wartime Is Imprecise

Many of the agencies we contacted were unable to locate records on federal and contract workers employed in Vietnam, but on the basis of the limited data available, we estimated that at least 72,000 civilian employees and as many as 171,000 may have worked in Vietnam between 1964 and 1974. We developed these estimates using data we obtained from the Department of State and DOD but were unable to determine the reliability of the data.

⁴Labor can allow employers to self-insure.

⁵As defined in the act, these hazards include "the discharge of any missile (including liquids or gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person in combating an attack or imagined attack by a hostile force or person." 42 U.S.C. § 1711(b)(1).

⁶In this report, we refer to DBA claims that were "controverted" by the insurance carriers as claims that were denied by the insurance carriers.

⁷Employers and insurance carriers have the same rights of review and appeal as the claimants throughout this process.

Many Agencies Were Unable to Locate Records on Civilians Employed in Vietnam, but a Few Provided Some Estimates

Most of the federal agencies we identified as likely to have had employees in Vietnam—DOD, CIA, and the Departments of State, Agriculture, and Treasury—were unable to provide us with the exact number of civilian employees they had working in Vietnam during the war. Agency officials told us they had difficulty identifying these workers because personnel records were kept solely on paper, as computers were not in common use at that time. Agency officials told us that these paper records may have been destroyed or, if such records still exist, were not indexed or organized in searchable formats. In addition, the location of some records was unknown because of the loss of institutional knowledge resulting from staff turnover over the years.

Both the State Department and DOD located some historical data that we used to develop estimates of the number of civilians who worked in Vietnam. Three of the five agencies we contacted—CIA and the Departments of Agriculture and Treasury—were unable to provide us with any data on the number of federal and contract employees they had working in Vietnam during the war. The Department of State was able to identify its federal employees who worked in Vietnam between January 1964 through November 1965 and January 1967 through November 1974 from published quarterly lists of employees, but the agency was unable to determine the number of employees working for the agency in Vietnam under contract. Although DOD officials were unable to locate data, we located historical reports of civilian personnel strength by year at DOD's Directorate for Information, Operations, and Reports but were not able to obtain an unduplicated count of civilians who were in Vietnam between 1964 and 1974. This office later located service contract amounts during the Vietnam War period published in historical reports, from which we were able to estimate the number of contract employees.

Using Limited Data, We Estimated That There May Have Been as Many as 171,000 Civilians Working in Vietnam during the War

Using data from the Department of State and DOD, we estimated that at least 72,000 and as many as 171,000 civilian employees may have worked in Vietnam during the war. From the quarterly lists of employees provided to us by the Department of State, we estimated that the agency had about 6,000 employees in Vietnam between 1964 and 1974.

To estimate the number of DOD federal employees, we used annual civilian personnel strength data from historical DOD reports and assumed a 2-year rotation similar to that of military personnel to develop an unduplicated count of about 4,600 employees. We obtained the personnel strength data from published DOD reports but were unable to determine

how the data were collected; therefore, we were unable to determine the reliability of these data.

To estimate the number of DOD contract employees, we obtained from DOD the dollar amount of DOD service contracts, by year from 1966 to 1974, where the workplace was Vietnam, and divided these annual amounts by a range of “burdened labor rate” estimates to calculate the number of employees represented by these contracts each year.⁸ However, DOD was unable to provide us with information on the range of salaries paid to contract employees in Vietnam. Therefore, for our analysis, we assumed annual salaries of \$7,500, \$15,000 and \$25,000—which represent a range of low, middle, and high salaries of federal employees during that time—to obtain burdened labor rates of \$15,000, \$30,000 and \$50,000 per person. As with the annual estimates of federal DOD employees, we assumed a 2-year rotation to obtain an unduplicated count, which ranged from about 43,000 to 142,000 contract workers.

To determine the number of federal and contract employees from the CIA and the Departments of Agriculture and Treasury, we used numbers from the Department of State as a proxy, assuming that these agencies all had roughly the same number of employees in Vietnam and would not have had as many employees in Vietnam as the much larger number of DOD contract employees needed to support military operations. On the basis of these assumptions, we estimated that these four agencies may have had about 24,000 employees in Vietnam during the war. See appendix I for additional information on the methods we used to develop these estimates.

⁸The “burdened labor rate” estimates include salary, subsistence, company overhead, profit, insurance, travel, and other costs that would have been included in the total contract amount. DOD advised us that doubling an employee’s annual salary would approximate this burdened labor cost.

For the Few Claims Identified, Claimants Faced Many Obstacles, and to Date, Most Claims Have Been Denied

Although Labor's claims examiners and the insurance carriers we interviewed had difficulty identifying claims, our review of the claims identified showed that civilians faced difficulty in pursuing them because of difficulty obtaining information about the claims process, their former employers, and their employers' insurance carriers, and because of processing delays. Labor denied 11 of the 12 claims filed by federal employees (1 was withdrawn), primarily because the claimants were not able to prove a direct relationship between exposure to Agent Orange and their medical conditions, as required by FECA. Of the 20 claims filed by contract employees, 9 were initially denied by the insurance carriers and 1 was approved for payment. We were unable to review the case files for the remaining 10 cases to determine whether or not they were paid because they were identified too late in our review to include them.

Labor and the Insurance Carriers Could Not Readily Identify Agent Orange Claims through Their Databases

Labor and the insurance carriers we contacted had difficulty identifying Agent Orange claims using their databases but were able to identify 12 claims from federal employees and 20 claims from contract employees. However, because we were unable to determine whether additional claims that were not identified exist, the information we obtained about these claims does not necessarily represent the nature of all Agent Orange claims or their disposition. Most of the claims they identified were filed in the past 10 years.

Claims from Federal Employees

Because Labor does not assign a unique code to identify Agent Orange claims in its database, the agency was unable to locate any of the claims filed by federal employees under FECA by querying its database. Although Labor has a code for injuries caused by exposure to chemicals and toxins, this code is used for many claims involving toxins other than dioxin and therefore was not useful in identifying Agent Orange claims. In addition, this code was not used for several of the Agent Orange claims identified. Unable to locate claims using Labor's database, we asked the claims examiners in OWCP assigned to review Agent Orange claims from federal employees if they could recollect how many of these claims they had processed. They identified 12 claims using information from e-mails, personal notes, and personal recollections of information about the claims.⁹ However, we were unable to confirm that they had identified all

⁹The claims examiners also identified 3 claims from federal employees who were exposed to Agent Orange while working at an Army depot in the United States that serviced helicopters that had sprayed Agent Orange in Vietnam. However, because these claimants were not exposed to Agent Orange in Vietnam, we did not include their claims in our analysis.

Agent Orange claims from federal employees. Of the 12 claims identified, most were filed in the past 10 years, although 2 were filed in 1988 and 1 in 1991.

In addition, inaccurately coded claims and inconsistent coding procedures prevented identification of Agent Orange claims. For example, for 9 of the 12 claims identified by the claims examiners, the “cause of injury” code recorded in Labor’s database was “99—cause unknown,” a catch-all code used to identify the type of injury when the cause of injury reported by the claimant on the claim form is not clear.¹⁰ Other fields in the database, such as the type of medical condition, were not useful in identifying Agent Orange claims because such exposure could cause more than one type of condition, and because most of the medical conditions associated with Agent Orange exposure could also have other causes. One clerk who codes the claims told us she was sometimes uncertain which codes should be used for Agent Orange claims and that she received limited guidance on how to code them. For example, two of the claims files showed that Labor coded the same condition, diabetes, with two different nature of injury codes, “cardiovascular disease—other” for one, and “blood disorder” for the second claim. In addition, the agency has no procedures for checking for data entry errors, and our review of Agent Orange claims identified errors. For example, one claim coded as “exposure to chemicals and toxins” was actually a heart condition. One Agent Orange claim for breast cancer was coded “sprain/strain of ligament, muscle, tendon, not back.” Claims examiners told us that although they can request that the clerks who entered the codes go back and correct coding errors, there is little incentive for them to request that errors be corrected because it does not affect their ability to process claims.

Claims from Contract Employees

Labor and representatives from insurance carriers had difficulty identifying Agent Orange claims filed by contract employees under DBA largely because they did not have a unique code to identify these claims. However, with our assistance, Labor was able to identify 20 claims. Ten of the claims were initially identified by Labor using its database and recollections of claims by Labor officials. Labor located 5 claims by—upon our request—querying its database for claims where the date of injury was during the Vietnam War (January 1, 1964, through December 31, 1975) and the nature of the injury was an occupational disease, and then reviewing

¹⁰Clerks enter information on each claim in Labor’s database when the claims are first received.

the list of claims produced to identify claims they remembered as being related to Agent Orange. In addition, Labor officials remembered the names of 3 claimants that were not identified in their query of the database. The insurance carriers we interviewed identified 2 additional Agent Orange claims. Labor located 1 of these claims but was not able to find the other claim because, according to Labor officials, it was not sent to the agency by the insurance carrier, as required.¹¹ All but 1 of these 10 claims was filed in the past 10 years.

In addition, we assisted Labor in identifying 10 more claims from contract employees. Although 7 of these claims appeared on the printout from their initial database query, Labor officials initially told us they were not Agent Orange claims. In addition, because the employer noted on the printout for some of these claims was the same as the employer for 1 of the Agent Orange claims we reviewed, we asked Labor to go back and review the other claims to make sure that they were not Agent Orange claims. From this second review, Labor identified 3 additional claims. However, because they were identified so late in our review, we were not able to include these 10 claims in our analysis of the disposition of the claims.

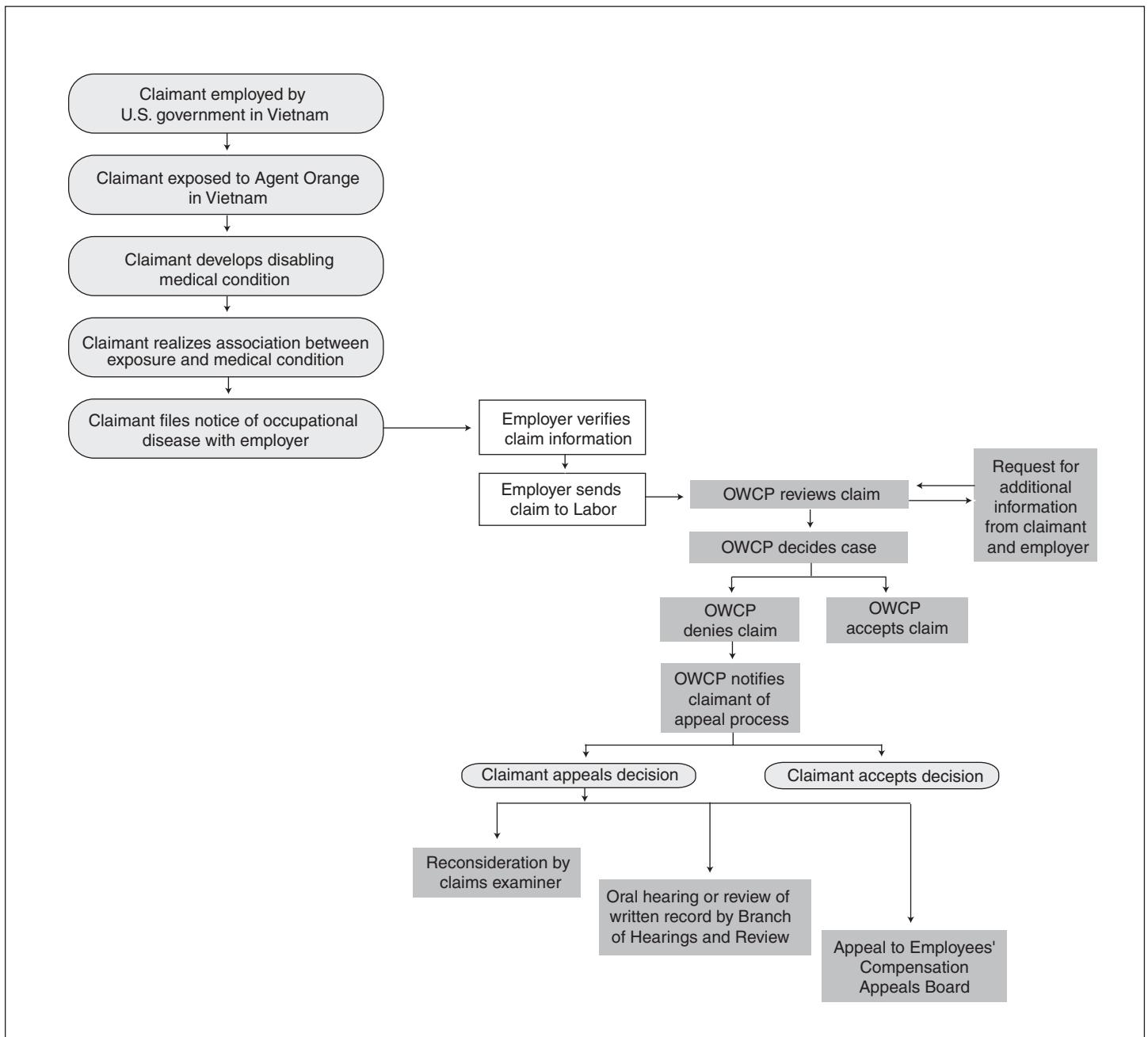
Civilians Faced Difficulty in Pursuing Claims, in Part, because of Difficulty Obtaining Information about the Claims Process and Poor Records

Both federal and contract employees faced difficulties pursuing claims for Agent Orange exposure because they lacked key information on the filing process, had difficulty identifying responsible parties and obtaining needed documentation, and experienced processing errors and delays. Our review of the files showed that several claimants had little information about the claims process because their first point of contact, their former employer, was difficult to locate.

Although claims processing for both federal and contract employees begins with their former employer, the process differs thereafter. As shown in figure 2, federal employees obtain the appropriate forms and documentation from their former employers and file claims with those agencies or departments, which then forward the claims to Labor for a decision. As shown in figure 3, contract employees also obtain the appropriate forms and documentation from their former employers but file their claims with their employer's insurance carriers.

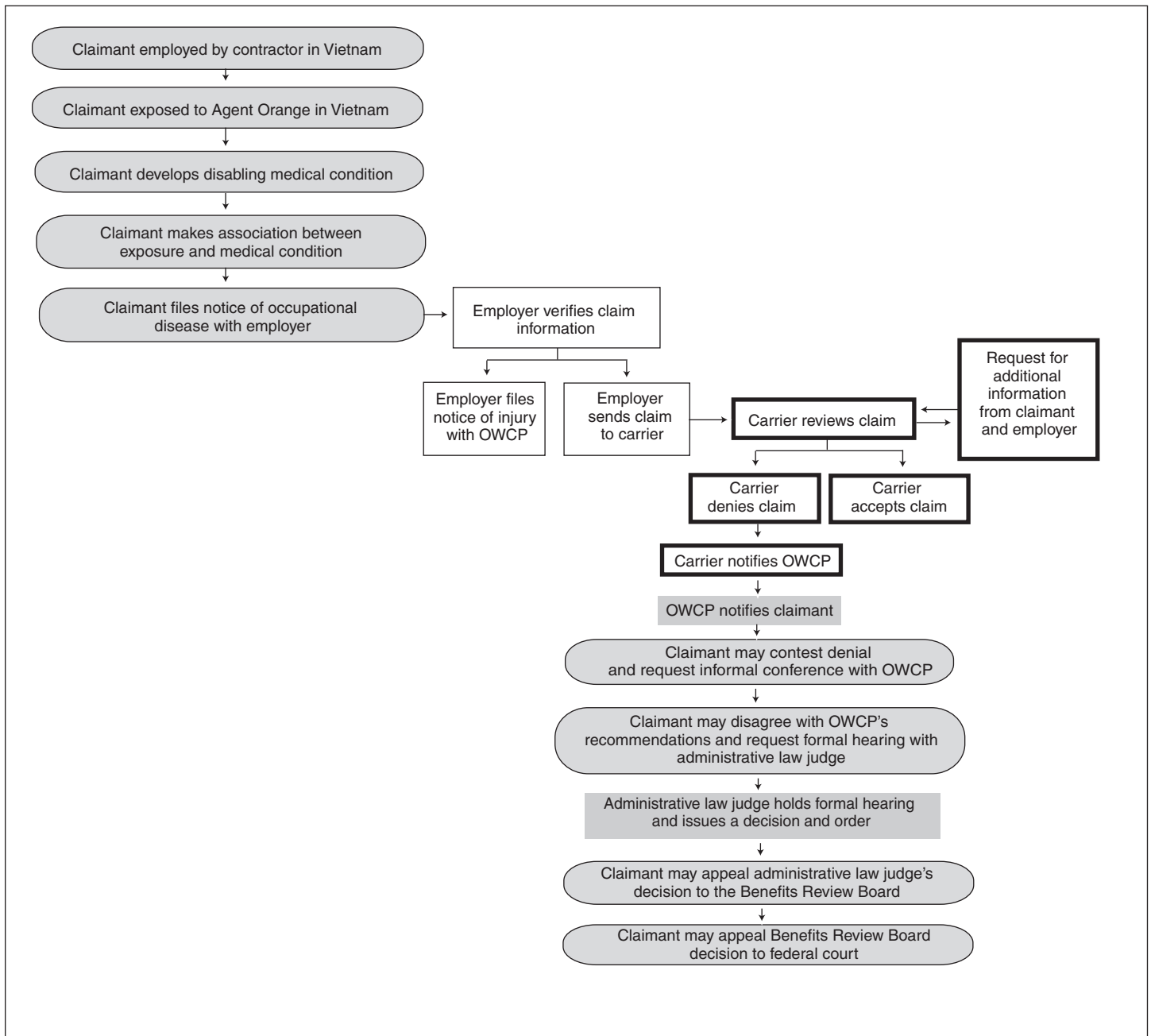
¹¹One carrier recalled 4 additional claims but, citing privacy concerns, would not provide identifying information that would allow us to ask Labor to locate the claims files. Therefore, we were unable to include these claims in our analysis or determine whether they were already included in the claims identified by Labor.

Figure 2: Overview of the Workers' Compensation Claims Process for Federal Employees



Source: GAO analysis.

Figure 3: Overview of the Workers' Compensation Claims Process for Contract Employees



Source: GAO analysis.

Our review of the claims files showed that federal and contract employees sometimes filed their claims incorrectly because they were unable to locate their former employers in order to obtain information about the filing process. Although the first source of information in filing workers' compensation claims is the employer, since the Vietnam War, some employers have reorganized or are no longer in business. Of the claims we reviewed, 6 claimants had difficulty locating their former employer. Even federal employees can have difficulties locating their employer because of the many government reorganizations over the 30 years since the end of the Vietnam War. For example, one claimant who worked for DOD in Vietnam had difficulty determining which office to send his claim to because the workers' compensation office of his former employer, the U.S. Army Audit Agency, had been renamed and relocated. He initially filed his claim with his current DOD employer, the Defense Finance and Accounting Service, which advised him to send the claim to the Department of the Army's Personnel and Employee Services, the office that now handles claims for former employees of the U.S. Army Audit Agency.

Our review of the claims files also showed that contract employees and Labor had difficulty locating the responsible insurance carriers because of industry mergers, changes in carriers over time, and lack of easily accessible records. Some employers changed insurance carriers over time, so their current carrier was not the one that had provided coverage during the Vietnam War. Although Labor licensed the insurance carriers that provided coverage for contract employees during the war, the agency does not track information about the carriers in a format that is easily researchable. Labor officials told us that they keep the information on the licensed insurance carriers on handwritten 3 x 5 cards that are filed by employer name in filing cabinets. Searching for a carrier is a time-consuming effort because there are hundreds of cards for multiple policies covering various periods of time. In addition, Labor does not track historical changes in the ownership of the insurance carriers over time, and companies may have been acquired by other companies—a common practice in the insurance industry, according to Labor officials. For example, an insurance company that provided coverage for contract employees for 3 of the claims we reviewed was purchased by another company, which could not locate claims for these individuals from the old company's records. Labor had no information about the company being purchased by another company and had difficulty locating the insurance carrier liable for payment.

Difficulties identifying insurance carriers can add up to extensive delays for claimants. Of the 10 claims we reviewed from contract employees, 4 claimants had difficulty locating their insurance carrier. For example, one contract employee's claim was delayed 13 months before the correct carrier was identified. Initially, the claimant mistakenly sent his claim directly to Labor instead of his employer and the employer's insurance carrier. Once notified by Labor of the claim, the employer requested Labor's assistance in locating the carrier. One of OWCP's district offices searched its paper records (the 3 x 5 cards it retains on the carriers it licenses) and identified the correct carrier. At the same time, however, the employer asserted that another carrier was the responsible party. The claim was filed with this carrier, who later denied the claim, asserting that it was not the employer's carrier during the period when the claimant worked for the employer. During the months that this carrier was deciding the claim, another of OWCP's district offices, apparently unaware of the other district office's efforts, identified yet a different carrier as the responsible party. When presented with the claim, this carrier also denied it because the carrier had not been the employer's carrier during that time. Over a year since the claim was first filed, the employer correctly identified the correct carrier. The claim was filed with the correct carrier and was ultimately denied (see table 1).

Table 1: Timeline Showing Difficulties One Claimant Experienced Locating His Former Employer's Insurance Carrier

| Date | Activity |
|---------------|---|
| January 1996 | Claimant filed claim with OWCP's New York district office, and his former employer requested Labor's assistance in locating the insurance carrier. |
| February 1996 | OWCP's Seattle district office identified an insurance carrier (#1) as the responsible party. At the same time, the claimant's former employer asserted that another insurance carrier (#2) was the responsible party and sent the claim to them. |
| March 1996 | OWCP's New York district office identified another insurance carrier (#3) as the responsible party and notified the insurance carrier of the claim. |
| April 1996 | Insurance carrier #3 denied the claim, stating that although it provided coverage for this employer, it was not the responsible party during the period when the claimant's alleged exposure occurred. |
| May 1996 | Insurance carrier #2 also denied the claim, stating that it had not provided coverage during the period when the claimant's alleged exposure occurred. |
| January 1997 | Claimant's former employer identified the correct insurance carrier (#1) and sent the claim to it. |
| February 1997 | The correct insurance carrier (#1) denied the claim. |

Source: GAO analysis.

Employer and insurance carrier processing errors and difficulty locating records further delayed employees' claims. For the claims we reviewed, several employers had difficulty verifying the claimant's employment

because they were unable to locate personnel records for employees who had worked in Vietnam. For example, one employer denied that the claimant had been one of its employees, although the claimant provided copies of pay stubs, employee identification documents, and several letters of recommendation from the company. Eventually, Labor interceded on behalf of the employee and insisted that the employer recognize the claimant as an employee. Insurance carriers also had difficulty determining if they had provided coverage to employers and claimants because of difficulties locating old records. Even federal employees can experience difficulty finding their employers and locating records. For example, one federal employee's claim was delayed over 2 years while the Department of Agriculture determined that he was an employee during the Vietnam War but was on detail to the Department of State. In its reply to Labor regarding the delay, the Department of Agriculture noted that it no longer had records for the period in question. Another federal employee, who was unable to obtain relevant medical records from his employer or the National Personnel Records Center, eventually withdrew his claim stating "at this time, I am under Hospice care and have not the energy to fight you anymore."

Once claims were submitted to Labor, both federal and contract employees faced additional delays because of processing errors at Labor, including claims being sent to the wrong office and information on the claims forms being typed incorrectly. For example, for one claim from a federal employee, Labor incorrectly processed the claimant's request for reexamination of the written record by Labor's Branch of Hearings and Review (typically, a claimant's second level of appeal), instead sending it to the Employees' Compensation Appeals Board (a claimant's final level of appeal). This error created confusion and delayed processing of the claim for 11 months while the error was identified and the claim sent to the correct location. For the same claim, Labor continued to send notices to the claimant's former federal employer at the wrong address for over a year, even though the post office returned these letters stamped "undeliverable" and the employer notified Labor of the correct address.

Claims Filed under FECA Require Proof of a Causal Link, and to Date, Labor Has Denied All but One Claim

Of the 12 claims filed by federal employees for medical conditions related to Agent Orange exposure, Labor denied 11 of them for failure to meet at least one of FECA's five requirements, and 1 claim was withdrawn by the claimant. Of the 11 claims that were denied, Labor denied 10 of them because the claimant failed to prove a causal link between his medical condition and exposure to Agent Orange, and 1 claim was denied because it was not filed within the time limits prescribed by FECA.

Furthermore, 5 of the claims denied by Labor were appealed by the claimants. Of those that were appealed, Labor upheld the denial of 4 claims, and a decision is still pending on 1 claim. All of the claims that were appealed were initially denied because of the claimants' failure to prove a causal link between exposure and their medical conditions. Three of the 5 claimants requested reconsideration of their claims by a claims examiner. Labor upheld its initial denial after reconsidering 2 of these claims, and to date, neither claimant has sought a hearing by OWCP's Branch of Hearings and Review or a review by the Employees' Compensation Appeals Board. The third claim for which a reconsideration was requested is still pending. Of the 2 remaining claims that were appealed, one of the claimants requested an oral hearing; the denial was upheld. The other claimant sought redress through both a written review by the Branch of Hearings and Review and an appeal to the Employees' Compensation Appeals Board. The board upheld Labor's decision.

Almost all of these claims from federal employees—10 of the 11 claims—were denied because the claimants failed to prove a causal link between their medical conditions and exposure to dioxin. Under FECA, to prove causation, claimants must provide “medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that ... the diagnosed condition is causally related to the employment factors identified by the claimant.” To determine whether a claimant has shown proximate cause, Labor's claims examiners and hearings representatives told us that they examine the medical research and the “rationalized medical opinions” provided by the claimants' doctors to demonstrate an explicit cause and effect relationship between the medical conditions and alleged exposure. Claims examiners and hearing representatives told us that the claimants' doctors may use medical literature to support these rationalized opinions, but the doctors must apply this research to the claimants' specific circumstances.

Claimants, however, have faced three challenges to proving a causal link between their medical conditions and their exposure to dioxin. First, some of the claimants' doctors are not familiar with the link between dioxin exposure and the development of some illnesses. In one case file we reviewed, one of the claimant's doctors stated: “I have very little training in epidemiology and cannot tell you much about the coincidence of Agent Orange exposure with the development of prostate cancer,” and another said he was “certainly unable to provide any kind of expert opinion” on the relationship between Agent Orange and the development of prostate cancer.

Second, according to Labor, some of the claimants' doctors relied on general medical research to support their opinions without applying the research to the individual claimant. For example, in one case, the claimant's doctor stated that he had reviewed the research on Agent Orange, relying primarily on the IOM biennial report that showed an association between prostate cancer and exposure to dioxin to support his opinion that the claimant's prostate cancer was related to his exposure to Agent Orange. Labor denied the claim because the doctor failed to give his opinion but rather inferred a connection by presenting an excerpt from an article published by the National Academies Press.¹² The decision letter also stated that Labor has long established that causality cannot be inferred and publications are of no evidentiary value, as they are not case specific.

The third challenge the claimants faced is ruling out other factors that could have caused their medical conditions. For long-latency illnesses, such as the cancers associated with dioxin exposure, it is difficult for the claimants' doctors to definitively rule out other factors that could have caused the medical condition during the intervening years between Agent Orange exposure and the development of the medical condition. For example, in one case that was denied by Labor, five different doctors—including one doctor to whom the claimant was referred by Labor—asserted an association between the claimant's medical condition and his exposure to Agent Orange. The doctor to whom the claimant was referred by Labor stated that "it is reasonable to assume that his exposure to Agent Orange and to other herbicides are the causative agent for his transitional cell carcinoma [i.e., bladder cancer]." Another doctor provided his opinion that the claimant's bladder cancer was a consequence of his exposure to dioxin and other environmental toxins during his tenure in Vietnam. A third doctor stated in his written opinion that "chemical exposures in the course and scope of his duties as a federal employee are the cause of his bladder cancer." However, the claim was denied because Labor determined that the claimant failed to submit medical evidence that attributed his bladder cancer to his exposure to herbicides in Vietnam. The decision letter stated that although one of the doctors provided a medical opinion stating a cause and effect relationship between the claimant's medical conditions and his federal employment, the doctor "cannot state

¹²The National Academies Press publishes the IOM's biennial report on dioxin exposure. This is the report VA uses to establish the diseases it will recognize as associated with Agent Orange exposure under the Agent Orange Act.

with certainty that non-work related factors have no connection to the claimed conditions. Specifically, he admits that cigarette smoking and exposure to asbestos are also bladder carcinogens. Therefore, his opinion is considered speculative and equivocal in nature, and has little probative value.” The claimant requested four different reconsiderations by OWCP’s claims examiners, and after his death, his widow requested a fifth reconsideration; Labor’s decision was upheld each time.

Labor Identified Few Claims from Contract Employees, but Insurance Carriers Initially Denied Most of the Claims Identified

Although Labor and the insurance carriers identified a total of 20 claims from contractor employees, we were not able to include 10 of them in our analysis of the disposition of the claims because Labor identified them too late for us to include them. For the 10 claims we reviewed, 1 was accepted and 9 were initially denied by the insurance carriers. Of the 9 claims denied, 5 of the claimants asked Labor to review the insurance carriers’ decisions, and 4 claimants took no further action on the claims. Of the 5 claims that the claimants asked Labor to review, 3 claimants are waiting for a hearing by one of Labor’s administrative law judges. For the other 2 claims, Labor upheld the insurance carriers’ decisions—1 because the claim was not filed within the 2-year time period allowed under the law and the other because the claimant had not sufficiently proved that he had been exposed to Agent Orange in Vietnam.

For the one claim accepted for payment, the claimant asked Labor to intervene because his employer, a self-insured contractor for the CIA, was no longer in business. Absent an employer or insurance carrier, the CIA—acting in the role of the employer and the insurance carrier—stated that it “had no objections” to paying the claim. In accepting the claim, Labor referenced VA’s policy regarding Agent Orange claims and an Environmental Protection Agency report on the health effects of dioxin exposure to justify its approval of compensation. Noting VA’s presumption that any veteran who served in Vietnam and developed certain medical conditions associated with Agent Orange had been exposed, the claims examiner stated that it would be difficult for Labor to take a contrary position. This claim was also accepted for reimbursement under the War Hazards Compensation Act. Under the act, an insurer who pays a claim for an injury from a war risk may be reimbursed for the costs it bears in connection with the claim. However, according to Labor officials, some insurance carriers may not be aware that they can obtain reimbursement under the War Hazards Compensation Act.

Legislative Options Could Ease Access to Benefits for Civilians

If Congress chooses to address this issue, several legislative options could provide more similar consideration of civilian claims as compared with the claims of their veteran counterparts and improve civilian access to workers' compensation or other benefits. However, these options have cost implications, although the lack of data on the number of civilians in Vietnam and the difficulty potential claimants have in locating the information needed to file claims make it difficult to accurately assess their potential costs. In addition, these options should be carefully considered in the context of the current federal fiscal environment, as well as the significant policy and cost implications any changes could have for civilian employees involved in wars and conflicts since the Vietnam era.

Congress Could Amend the Agent Orange Act to Include Civilians or Set Up a Separate Program for Civilians Exposed to Agent Orange in Vietnam

Congress could amend the Agent Orange Act and related legislation that authorizes benefits for veterans to include civilians. However, including civilians under these laws may raise concerns for those who feel that civilians should not be entitled to the same benefits as military veterans.

Alternatively, Congress could create a separate program to cover claims for medical conditions that civilians develop as a result of their exposure to Agent Orange. In addition to the Agent Orange Act for veterans, Congress has established programs for some special populations exposed to toxic substances in the workplace that develop into serious medical conditions after long latency periods. For example, Congress passed the Radiation Exposure Compensation Act in 1990¹³ to provide payments to individuals who contracted certain cancers and other serious diseases as a result of their exposure to radiation released during nuclear weapons tests or as a result of their employment in the uranium mining industry. More recently, Congress passed the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended,¹⁴ which provides payments to contract employees working in Department of Energy facilities who were exposed to radioactive and hazardous materials and subsequently developed illnesses such as cancer and lung disease.

¹³42 U.S.C. § 2210, note.

¹⁴42 U.S.C. § 7384-85.

Some key components of these special programs are

- **Providing restitution:** The Radiation Exposure Compensation Act was enacted to establish a procedure for making partial restitution to individuals who became ill because of radiation exposure from aboveground nuclear tests or uranium mining. Restitution payments range from \$50,000 for testing victims to \$100,000 for uranium miners. The Energy Employees Occupational Illness Compensation Program Act also makes payments to eligible claimants and provides medical coverage for specific illnesses.
- **Creating eligibility criteria based on a less stringent standard of proof for the causal link between exposure and medical conditions:** Because of the inherent difficulties of proving a link between exposure to radiation or toxic substances and occupational diseases that occur after long latency periods, other compensation programs rely on a less stringent burden of proof than FECA or DBA. For example, the Energy Employees Occupational Illness Compensation Program Act allows payments if employment at an energy facility was “as likely as not” to have caused, contributed to, or aggravated the claimed medical condition.
- **Using ongoing research on conditions associated with exposure to determine eligibility:** On the basis of recent research findings, the Radiation Exposure Compensation Act Amendments of 2000 expanded the list of diseases that may qualify individuals for compensation and decreased the level of radiation exposure that is necessary to qualify for compensation. Under the Agent Orange Act, VA uses IOM’s biennial review of research on dioxin exposure and recommendations to add to its list of accepted medical conditions related to Agent Orange exposure.
- **Assisting claimants in processing their claims:** The Energy Employees Occupational Illness Compensation Program Act, as amended, created an ombudsman position to provide information to claimants. According to the Director of Labor’s Energy Employees Occupational Illness Compensation Division, the agency provides information and assistance to claimants in a variety of ways, including resource centers located throughout the country that assist claimants in completing claim forms and obtaining the documentation needed to support their claims. He also stated that Labor has provided pamphlets, public service announcements, and direct mailings to potential claimants that explain the program, benefits available, procedures for filing claims, and where they can obtain assistance. The Radiation Exposure

Compensation Act also provides for outreach and information to potential claimants. The Department of Justice administers this program and has established an Internet Web site, conducts on-site visits to groups and organizations to promote the program, and operates a toll-free telephone line for program queries.

Congress Could Amend an Existing Statute to Grant Military Status to Certain Civilians

Congress could amend the GI Bill Improvement Act of 1977,¹⁵ which allows DOD to retroactively grant military status and authorize full VA benefits to certain civilian groups that support the military during armed conflicts. Women who served in the Women's Air Forces Service Pilots during World War II are the model for the statute, because they comprised a quasi-military group that rendered service to the United States during wartime, but at the time, were excluded from joining the armed forces because of their gender. In 1977, Congress specifically recognized the service of that group as active military duty and directed DOD to issue regulations under which similarly situated groups could be recognized. In 1987, a federal court determined that DOD had failed to clarify the factors and criteria used in implementing this statute. As a result, DOD clarified the rules for accepting groups and issued DOD Directive 1000.20. Under this directive, a group must submit an application showing that it meets the criteria, including the criterion that it provided service to the U. S. government during a period of armed conflict, was subject to military control, and was integrated into the military organization (see table 2). Groups do not, however, have to meet all of the criteria in order to be accepted, but it remains unclear how many of the criteria must be met for a group to be accepted.

¹⁵38 U.S.C. § 106, note.

Table 2: Criteria for Acceptance under DOD Directive 1000.20

| Criteria for application | Criteria for acceptance |
|---|--|
| 1. Have been similarly situated to the Women's Air Forces Service Pilots of World War II (a group of federal civilian employees attached to the U.S. Army Air Force in World War II). | 1. Uniqueness of service. Civilian service during a period of armed conflict is not necessarily equivalent to active military service, even when performed in a combat zone. Service must be beyond that generally performed by civilian employees and must be occasioned by unique circumstances. |
| 2. Have rendered service to the United States in what was considered civilian employment with the U.S. armed forces either through formal civil service hiring or less formal hiring if the engagement was created under the exigencies of war, or as the result of a contract with the U.S. government to provide direct support to the U.S. armed forces. | 2. Organizational authority over the group. The concept of military control is reinforced if the military command authority determines such things as the structure of the civilian organization, the location of the group, the mission and activities of the group, and the staffing requirements to include the length of employment and pay grades of the members of the group. |
| 3. Have rendered that service during a period of armed conflict. | 3. Integration into the military organization. Integrated civilian groups are subject to the regulations, standards, and control of the military command authority. |
| 4. Consist of living persons to whom VA benefits can accrue. | 4. Subjection to military discipline. During past armed conflicts, U.S. military commanders sometimes restricted the rights or liberties of civilian members as if they were military members. |
| 5. Not have already received benefits from the federal government for the service in question. | 5. Subjection to military justice. Military members are subject to the military criminal justice system. During times of war, "persons serving with or accompanying an Armed Force in the field" are subject to the military criminal justice code. Those who were serving with the U.S. armed forces may have been treated as if they were military and subjected to court-martial jurisdiction to maintain discipline. |
| | 6. Prohibition against members of the group joining the armed forces. Some organizations may have been formed to serve in a military capacity to overcome the operation of existing laws or treaty or because of a governmentally established policy to retain individuals in the group as part of a civilian force. |
| | 7. Receipt of military training and/or achievement of military capability. If a group employed skills or resources that were enhanced as the result of military training or equipment designed or issued for that purpose, this acts toward recognition. |

Source: 32 C.F.R. Part 47, DOD Directive 1000.20.

Although five groups of civilians who worked in Vietnam during the war have applied for consideration under DOD Directive 1000.20, none has been accepted. To date, Slick Airways, a division of Airlift International; U.S. civil servants on temporary duty at Long Binh, Vietnam; U.S. and foreign civilian employees of CAT, Inc.; U.S. civilian crewmembers of the Flotilla Alaska Barge and Transport Company; and Vietnamese citizens who served in Vietnam as commandos under contract with the U.S. armed forces have applied for consideration under the directive. In its application, one of these groups claimed to have met all seven criteria for acceptance. In its decision, the DOD Civilian/Military Service Review

Board¹⁶ stated that the group met the “organizational authority over the group” criterion, and that board members disagreed over whether the group met the “uniqueness of service” criterion. In addition, the board acknowledged that there was evidence of military command authority over the group but asserted that the group was not integrated into the military organization and was not subject to military discipline or military justice. The application was denied.

Easing Access to Benefits for Civilians Has Cost and Policy Implications

The options presented above could have significant cost and policy implications. However, with little data available on the actual number of civilians in Vietnam, their exposure levels, and the number of claims that would be filed, it is difficult to estimate the costs of these options.

According to information provided to us by VA officials, of the 2.3 million living military veterans who were in Vietnam during the war approximately 160,000 (less than 10 percent) are receiving disability compensation benefits from VA for the four most common medical conditions associated with Agent Orange exposure.¹⁷ VA’s average annual cost of providing workers’ compensation and medical expenses to veterans receiving benefits under the act for the four most common medical conditions is about \$8,500 for disability compensation and \$1,000 for medical expenses. Although these costs do not include the costs of administering the claims, when VA added diabetes as a condition related to Agent Orange exposure, it estimated that the administrative costs for each claim processed would be about \$350.¹⁸

Including civilian employees who worked in Vietnam under these options also has policy implications. It could set a precedent that might prompt other federal and contract employees who have worked for the U. S. government in war zones since the Vietnam War—such as the Gulf War and the current conflict in Iraq—to seek similar benefits. Such a precedent

¹⁶The Civilian/Military Service Review Board reviews and makes recommendations concerning applications for veteran’s status and consists of representative from the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force and, when relevant, the Coast Guard.

¹⁷DOD provided VA with a list of the names of military personnel who worked in Vietnam during the war.

¹⁸VA estimated that the general operating expenses for the expected 179,000 claims for Agent Orange-related diabetes would be about \$62 million for a 5-year period.

could prove costly because the U.S. military has employed a much larger number of contractor personnel in recent wars and conflicts than in Vietnam.

Conclusions

The fact that Labor does not collect data on Agent Orange claims that allow it to identify the claims using its database makes it difficult to identify trends in the number and disposition of claims. The coding errors in Labor's database also make it difficult to identify and track these claims. In addition, while Labor is the licensor of insurance carriers for government contract employees, it is difficult, without proper records, to help claimants identify the insurance carriers or determine how well insurers are following through on their obligations. Both Labor and claimants are burdened by the difficulties the agency has in providing information to claimants—particularly contract employees filing claims under DBA—on how to file claims, locate their former employers, and identify the employers' insurance carriers, difficulties that leave room for delays and errors in processing claims.

Federal and contract employees who may have been exposed to Agent Orange while working for the United States during the Vietnam War have clearly had a different experience than their military counterparts in requesting compensation under the Agent Orange Act. In short, these employees must meet more stringent standards in pursuing claims under FECA and DBA. The cost implications of options designed to increase access to compensation for civilians exposed to Agent Orange should be carefully considered in the context of the current and projected fiscal environment. The lack of information available about the number of possible civilian Agent Orange claims, however, makes it difficult for us to estimate the potential costs were such options to be adopted. In addition, any consideration of these options should include an assessment of the policy and cost implications the changes could have for other civilian employees involved in wars and conflicts since the Vietnam War, such as the war in Iraq. Setting a precedent for expanding benefits to civilian employees could have a much larger impact in the future as the U.S. military increases its reliance on contract employees.

Recommendations for Executive Action

To improve the handling of civilian Agent Orange claims, the Secretary of Labor should

- direct OWCP to assign a unique identifying code to Agent Orange claims and develop procedures to ensure that these claims are coded correctly;
- provide better oversight of licensed DBA insurance carriers by requiring the Office of Longshore and Harbor Workers to track the information it retains on licensed insurance carriers for Vietnam era employers in an easily searchable format, such as in an automated file, and track changes in ownership for each licensed carrier in order to be able to determine liability for payments; and
- direct the appropriate offices to provide contract employees with the information needed to file Agent Orange claims by taking such measures as posting information on Labor's Web sites or developing informational brochures that include information on how to file a claim under DBA, such as which forms to use, and information on Vietnam era contractors with the names of their insurance carriers licensed by Labor.

Agency Comments

We provided a draft of this report to Labor, DOD, and VA for comment. Labor and VA provided written comments on the draft, which are reproduced in appendixes II and III.

Labor generally agreed with our recommendations. The agency agreed to improve its handling of civilian Agent Orange claims by developing a unique code to use in identifying these claims, improving its oversight of licensed DBA insurance carriers, and assisting contract employees in obtaining information on filing claims by enhancing the information on its Web site. Regarding our recommendation to develop a better system for tracking information on licensed DBA insurance carriers, Labor stated that it does not have the funding needed to create a relational database or the resources to enter these data into such a database. However, it also stated that a current evaluation of its processes may provide some recommendations for enhancing its data capability in this area. Given the availability of easy to use, off-the-shelf database packages, we continue to believe that Labor could implement this recommendation with relatively little expense and that data entry could be phased in over time or contracted out.

VA expressed serious concerns about the legislative options for easing civilians' access to workers' compensation benefits. It highlighted the additional costs and administrative burdens associated with the options. VA also expressed concern about the precedent-setting implications these options could have for civilian employees involved in other wars and conflicts since the Vietnam War. As noted in the report, we agree that the cost and policy implications of these options should be carefully considered.

DOD provided only an informal technical comment on the report. Labor and VA also provided a few technical clarifications, which we incorporated as appropriate.

We will send copies of this report to the Secretaries of Labor, Defense, Veterans Affairs, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

Please contact me or Revae Moran on (202) 512-7215 if you or your staff have any questions about this report. Other contacts and staff acknowledgments are listed in appendix IV.



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

Appendix I: Technical Appendix

Estimating the Number of Civilian Employees

Many of the agencies we contacted were unable to locate records on federal and contract workers employed in Vietnam, primarily because of the age of the records and the fact that they were not automated. However, using the limited historical data provided to us by the Department of State and the Department of Defense (DOD), we developed estimates of the number of civilian employees who worked in Vietnam during the war.

The Department of State was not able to provide the total number of contract employees who had worked in Vietnam but was able to identify the names of federal employees who had worked there between January 1964 through November 1965 and January 1967 through November 1974 from its quarterly Foreign Service reports. As these are historical reports, we were unable to assess the reliability of these data for several reasons: Most records were not computerized in the 1960s or 1970s, most paper records have either been destroyed or were not organized in a way that would facilitate the identification of personnel, and most officials who were knowledgeable about employees in Vietnam are no longer with the agency. We entered the names from these quarterly lists into an automated file, sorted out likely duplicates, and counted the remainder. On the basis of our analysis, we estimated that about 6,000 employees of the Department of State worked in Vietnam during the war.

In the absence of information from the Central Intelligence Agency (CIA) and the Departments of Agriculture and Treasury, we used the Department of State estimate as a proxy for the number of federal and contract employees each agency employed in Vietnam. We also assumed that these agencies did not have as many employees in Vietnam as the much larger number of DOD contract employees needed to support the military operations. On the basis of these assumptions, we estimated that these four agencies employed about 24,000 workers in Vietnam during the war.

Although DOD officials were unable to locate information on the number of federal employees who had worked for the agency during the Vietnam War, we located historical reports of civilian personnel strength by year at DOD's Directorate for Information, Operations, and Reports and used these data to develop estimates of the number of federal civilian employees who worked for DOD in Vietnam. These data provide a count of the number of employees for one point in time during the year. However, DOD officials told us that civilians likely stayed in Vietnam for a 2-year rotation before returning to the United States, so totaling these annual counts would overestimate the total number of employees. To obtain an unduplicated count, we used the annual civilian personnel

strength data and assumed a 2-year rotation. For example, in 1964 DOD had 44 federal employees in Vietnam, but in 1965 had 51 employees—an addition of 7 new employees. In 1966, DOD had a total of 444 federal employees. However, assuming the 44 employees from 1964 had completed their 2-year rotation and returned home, they would not be included in this count. Therefore, the 444 is composed of the 7 employees who arrived in 1965 and 437 new employees who arrived in 1966. Using this methodology, we estimated that about 4,600 DOD employees were in Vietnam during the war (see table 3). We obtained the personnel strength data from published DOD reports but were unable to assess the reliability of the data for several reasons: Most records were not computerized in the 1960s and 1970s, most paper records have either been destroyed or were not organized in a way that would facilitate the identification of personnel, and most officials who were knowledgeable about employees in Vietnam are no longer with the agency.

Table 3: Estimated Number of DOD Federal Employees in Vietnam, 1964 to 1974

| Year | Annual federal employee personnel strength data provided by DOD | Estimated number of DOD federal employees entering Vietnam each year, assuming a 2-year rotation |
|--------------|--|---|
| 1964 | 44 | 44 |
| 1965 | 51 | 7 |
| 1966 | 444 | 437 |
| 1967 | 1,240 | 803 |
| 1968 | 1,427 | 624 |
| 1969 | 1,522 | 898 |
| 1970 | 1,133 | 235 |
| 1971 | 868 | 633 |
| 1972 | 646 | 13 |
| 1973 | 811 | 798 |
| 1974 | 919 | 121 |
| 1975 | Not available | Not available |
| Total | | 4,613 |

Source: DOD and GAO analysis.

DOD was unable to provide information on the number of contract employees it had working in Vietnam during the war. However, from DOD’s Directorate for Information, Operations, and Reports we were able to obtain the annual dollar amount of DOD service contracts provided to companies between 1966 and 1974 for work in Vietnam, and we used these

data to develop estimates of the number of contract workers. DOD officials told us that service contracts were the most likely type of contract to be used to pay salaries to contract workers, as opposed to other types of contracts that would have been used to purchase items such as equipment and supplies. We were unable to assess the reliability of these data for reasons similar to those noted for the data we obtained for federal employees. In addition, the data are further limited because we were unable to determine if the service contracts would have been for salaries to U.S. citizens or foreign nationals and because 3 years of data (1964, 1965, and 1975) were not available.

Using the limited data available, we divided these annual amounts by a range of “burdened labor rates” to estimate the number of employees represented by these contracts each year. DOD officials told us the burdened labor rate—salary, subsistence expenses, company overhead, profit, insurance, travel, and other costs that would have been included in the total contract amount—could vary among contracts. However, a DOD official with experience administering contracts advised us that doubling an employee’s annual salary would approximate this burdened labor rate.

However, DOD was unable to provide us with information on the range of salaries paid to contract employees in Vietnam. Therefore, to estimate annual salaries for contract employees, we obtained available salary scales for federal employees from 1964 to 1975 and selected a range of low, middle, and high salaries. For our analysis, we assumed annual salaries of \$7,500, \$15,000, and \$25,000 and doubled them to obtain burdened labor rates of \$15,000, \$30,000, and \$50,000 per person. We divided these burdened labor rates into the annual contract amounts to get an estimated number of contract employees employed in Vietnam each year. As with the annual estimates of federal DOD employees, we assumed a 2-year rotation to obtain an unduplicated count, which ranged from about 43,000 to 142,000 contract employees (see table 4).

Table 4: Estimated Number of DOD Contract Employees in Vietnam, 1966-1974

| Year | Estimated number of DOD contract employees entering Vietnam each year, assuming a 2-year rotation | | |
|--------------|---|---|---|
| | Assuming a burdened labor rate of \$15,000 per person | Assuming a burdened labor rate of \$30,000 per person | Assuming a burdened labor rate of \$50,000 per person |
| 1964 | Not available | Not available | Not available |
| 1965 | Not available | Not available | Not available |
| 1966 | 47,253 | 23,627 | 14,176 |
| 1967 | 4,123 | 2,062 | 1,237 |
| 1968 | 29,823 | 14,912 | 8,947 |
| 1969 | 11,667 | 5,833 | 3,500 |
| 1970 | 27,203 | 13,602 | 8,161 |
| 1971 | 14,287 | 7,143 | 4,286 |
| 1972 | 2,060 | 1,030 | 618 |
| 1973 | 8,233 | 4,117 | 2,470 |
| 1974 | -2,460 ^a | -1,230 ^a | -738 ^a |
| 1975 | Not available | Not available | Not available |
| Total | 142,190 | 71,095 | 42,657 |

Source: DOD and GAO analysis.

^aThe negative numbers near the end of the war indicate departures from Vietnam that were dictated by the conclusion of the war rather than the completion of average time of service there.

Appendix II: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210



APR - 4 2005

Mr. Robert E. Robertson
Director, Education, Workforce,
and Income Security Issues
United States Government Accountability Office
Washington, D.C. 20548

Dear Mr. Robertson:

This responds to a request for comments from the U.S. Department of Labor on the draft report, *Agent Orange: Limited Information Is Available on the Number of Civilians Exposed in Vietnam and Their Claims for Compensation*. We have reviewed the report and our comments are as follows:

In response to the concern that certain kinds of exposure, such as Agent Orange, are not adequately tracked in its information systems, OWCP will develop claim codes in each program so that Agent Orange claims can be separately distinguished upon receipt, which will improve identification and retrieval. Agent Orange claims are administered in a single office for each program (Cleveland for FEC and San Francisco for Longshore).

The Longshore program will more closely enforce the coverage card submission requirement by making compliance a condition of ongoing authorization to participate in the Longshore automated system. It should be noted that the number of insurance coverage cards stored in the Longshore district offices is in the tens of thousands—one card for each insurance policy for each employer for each district office where it has policies for each policy period. Although Longshore does not have funding to create a relational data base or resources to enter this data, an evaluation is being conducted in support of the OMB Performance Assessment Rating Tool process that may make some useful recommendations about enhancing Longshore's data capacity.

To help contractor employees with the information needed to file Agent Orange claims, OWCP will also enhance its website to direct potential claimants to the existing DBA Question and Answer web page, where the information and forms for submitting claims are already available at www/dol.gov/esa/owcp/dlhwc/DBAFaqs.htm.

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GAO should note that the flow chart for the Longshore program on page 15 of the draft is misleading. The Longshore program issues recommendations to the parties, not approvals or denials. Following the box "Labor notifies claimant," the next steps should be:

- Claimant contests denial and requests informal conference
- Labor holds informal conference and issues recommendations on the contested claim
- Claimant disagrees with Labor's recommendations and requests formal hearing
- Administrative law judge (ALJ) holds hearing and issues binding decision
- Claimant appeals ALJ decision to the Benefits Review Board (BRB)
- BRB decision may be appealed to the federal court of appeals and to the U.S. Supreme Court

GAO should also note that several references in the report to the Energy Employees Occupational Illness Compensation Program Act of 2000 do not reflect the major amendments to that Act enacted in October 2004.

The Department appreciates the opportunity to provide comments on this report.

Sincerely,

A handwritten signature in black ink, appearing to read "DKM. A. Lipnic" with a stylized flourish at the end.

Victoria A. Lipnic

Appendix III: Comments from the Department of Veterans Affairs



THE DEPUTY SECRETARY OF VETERANS AFFAIRS
WASHINGTON

April 12, 2005

Mr. Robert E. Robertson
Director
Education, Workforce, and Income Security Issues
U. S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Robertson:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office's (GAO) draft report, ***AGENT ORANGE: Limited Information Is Available on the Number of Civilians Exposed in Vietnam and Their Claims for Workers' Compensation*** (GAO-05-371). Although GAO makes no recommendations to VA, in responding to the requesters, GAO submits several options for further exploration. The Department agrees with GAO that should legislation be proposed that would cause VA to absorb claims for civilians exposed to Agent Orange, further intensive study and cost-benefit analysis would be required. The impact of such precedent-setting legislation on VA could be severe. While the actual magnitude of potential Agent Orange claims from civilian and contract employees may be limited, the potential for similar claims related to recent Persian Gulf conflicts is severe indeed. The Federal government is still working to identify and establish etiology for myriad illnesses related to exposures in that region.

"To care for him who shall have borne the battle and for his widow and his orphan" remains VA's mission. VA's highest obligation for provision of health care is to the men and women who have sustained disabling illnesses or injuries as a result of their military service. The potential increase in workload and in required financial resources resulting from enactment of these options would significantly affect VA's mission and how it is fulfilled.

VA agrees with GAO that illnesses sustained while in service to our Nation should be treated equitably for those in uniform as well as those not in uniform. As GAO observes, although the Department of Labor (DOL) already has a procedure in place to address such civilian claims, claimants face difficulties and delays due to problems obtaining evidence from civilian employers and other administrative problems. VA submits that it, or any other agency, would encounter many of the same problems facing DOL. Accordingly, VA suggests that improvements to the in-place procedures be evaluated as an alternative to imposing potentially significant new responsibilities on VA.

**Appendix III: Comments from the Department
of Veterans Affairs**

Page 2.

Mr. Robert Robertson

The enclosure discusses further the Department's concerns with GAO's suggested options to the congressional requesters. VA appreciates the opportunity to comment on your draft report.

Sincerely yours,



Gordon H. Mansfield

Enclosure

Enclosure

DEPARTMENT OF VETERANS AFFAIRS (VA)
COMMENTS TO
GOVERNMENT ACCOUNTABILITY OFFICE (GAO) DRAFT REPORT,
*AGENT ORANGE: Limited Information Is Available on
the Number of Civilians Exposed in Vietnam and
Their Claims for Workers' Compensation*
(GAO-05-371)

Comments:

GAO discusses legislative proposals which might make it easier for civilian employees to receive benefits related to illnesses caused by exposure to Agent Orange. Two of these proposals would raise significant cost and policy issues for VA.

Proposal to Amend the Agent Orange Act:

GAO suggests that Congress could amend the Agent Orange Act to cover civilians. VA notes that the Agent Orange Act does not itself authorize VA to provide compensation and treatment to veterans, but merely establishes evidentiary rules that apply to existing benefit programs.

GAO recognizes that an amendment authorizing VA to provide benefits to civilian employees might cause negative public opinion about civilian employees receiving the same benefits as military veterans. To avoid such a reaction, GAO suggests that Congress create a separate program to cover civilian herbicide exposure claims. This program would be similar to the special programs that Congress established for individuals exposed to toxic substances in the workplace, such as the Radiation Exposure Compensation Act (RECA) for individuals exposed to radiation released during nuclear weapons tests or in uranium mines, or the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 for Department of Energy employees who were exposed to radioactive or otherwise hazardous materials in the course of their employment. The report did not specify what department or agency would be responsible for creating and maintaining this special program. It should be noted, however, that creation of a separate, stand-alone program similar to RECA or EEOICPA would also have significant cost and precedent implications, whether administered by VA or any other agency.

Enclosure

DEPARTMENT OF VETERANS AFFAIRS (VA)
COMMENTS TO
GOVERNMENT ACCOUNTABILITY OFFICE (GAO) DRAFT REPORT,
***AGENT ORANGE: Limited Information Is Available on
the Number of Civilians Exposed in Vietnam and
Their Claims for Workers' Compensation***
(GAO-05-371)

Proposal to Amend the GI Bill Improvement Act of 1977

The second legislative proposal in the report would amend the GI Bill Improvement Act of 1977, which allows the Department of Defense to retroactively grant military status to certain civilian groups that support the military during armed conflicts. This amendment would authorize full VA benefits to specific civilian groups that supported the military in Vietnam, and would allow civilians to apply for and obtain benefits in the same manner as veterans. VA notes that groups given such recognition are considered to have performed active military, naval, and air service, and, therefore, are eligible for a wide variety of benefits not limited to benefits for disability due to herbicide exposure. See 38 C.F.R. § 3.7.

VA Policy Concerns

Citing the sparse data available on the actual number of civilians supporting the military in Vietnam, the level of their exposures, and the number of claims that would be filed, the report does not estimate the cost of either legislative proposal. However, both legislative proposals could potentially result in VA processing and paying compensation claims and providing medical care to the civilians who were exposed to Agent Orange while supporting the military in Vietnam. If VA were required by law to process the claims of civilians who worked for the military in Vietnam, VA would have to somehow verify the claimant's status as a Federal employee or contractor. This would be a costly, difficult, and time-intensive task, given that the Vietnam War took place over three decades ago, and many of the contracting companies may no longer exist. VA would have the burden of processing both valid and meritless claims.

VA is also concerned that a precedent could be set that may prompt other Federal civilian and contract employees who work for the government during periods of war to seek similar benefits. Currently, the U.S. military employs a significantly larger population of contract personnel than it did in Vietnam.

VA's core mission is to provide services and benefits to the men and women who have sustained injuries or illnesses based on military service. For

**Appendix III: Comments from the Department
of Veterans Affairs**

Enclosure

DEPARTMENT OF VETERANS AFFAIRS (VA)
COMMENTS TO
GOVERNMENT ACCOUNTABILITY OFFICE (GAO) DRAFT REPORT,
***AGENT ORANGE: Limited Information Is Available on
the Number of Civilians Exposed in Vietnam and
Their Claims for Workers' Compensation***
(GAO-05-371)

instance, restriction of new enrollment for Priority Group 8 veterans has allowed VA to continue providing the high quality health care that veterans deserve. It has reduced waiting times for current users and for newly enrolled veterans in higher statutory priority groups. Such policies allow VA to refocus on its core mission of caring for service-connected, low income, and special needs veterans, including veterans who may suffer significant combat disabilities in the future. Adding civilians to VA's already stretched system would mean that civilians would receive health care services instead of veterans. Such a condition would be unacceptable to VA and its stakeholders. VA's costs and workload would be greatly increased if civilians were included in our mission, potentially impairing VA's ability to serve the needs of deserving veterans.

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

Reva E. Moran, (202) 512-3863
Karen A. Brown (202) 512-7240

Staff Acknowledgments

Nina E. Horowitz made significant contributions to this report. In addition, Margaret L. Armen, Susan C. Bernstein, Benjamin A. Bolitzer, Christina Cromley, and Jean L. McSween provided key technical and legal assistance throughout the engagement.

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