

AAPC ISSUE PAPER
Radiation Exposure Compensation Program (RECP) and
Energy Employees Occupational Illness Compensation Program
(EEOICP)

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Summary of Issue

The Department of Energy (DOE) contacted FASAB for guidance on the accounting and reporting for the Radiation Exposure Compensation Program (RECP) and the Energy Employees Occupational Illness Compensation Program (EEOICP). Both programs provide for compensation for certain illnesses suffered as a result of work performed related to nuclear weapons and exposure to radiation. (NOTE- RECP claimants do not necessarily have to be a former employee of the federal government--the Act also provided for payments to individuals who contracted illnesses from their presence in the testing areas and downwind areas. That is one small difference in the RECP and EEOICP. EEOICP is only for former federal government employees and contractors.) Both compensation programs are a direct result of nuclear programs conducted by DOE. The testing was done by contractors working for and at the direction of the AEC and ERDA, Energy's predecessor agencies. However, the RECP and EEOICP compensation awards do not come from DOE appropriations and DOE does not administer the programs. Instead, the RECP is administered by DOJ and the EEOICP is administered by DOL, with award amounts for the respective programs provided through permanent, indefinite appropriations. The two programs appear to be very similar, but they are currently accounted for in different ways.

For the EEOICP, DOL records a long-term estimated liability. The liability represents the expected lump sum and estimated medical payments for approved compensation cases and cases filed pending approval, as well as claims incurred but not yet filed. For the EEOICP, DOE records the change in the estimated liability as a cost on the Statement of Net Costs (costs not assigned) and an imputed financing source on the Statement of Changes in Net Position and the Statement of Financing.

For the RECP, DOJ records a liability only to the extent that an award has been accepted by a claimant but has not yet been paid. DOJ does NOT record a liability for approved claims that have not been accepted by the claimant or for estimated future claims/payments. DOJ-OIG's view is that although this is a government acknowledged event, it is also an exchange transaction because the claimant has to sacrifice value (other available benefits or lawsuits) in order to receive the award. As a result of DOJ's accounting position for RECP, DOE does not report anything for RECP.

DOE believes that the accounting for both programs should be consistent and requested FASAB's position on the issue. DOE believes that the accounting and reporting for the EEOICP is consistent with the accounting standards and provides for a fair presentation of costs and would prefer to account for the RECP in the same manner.

Staff Analysis¹

Statement of Federal Financial Accounting Standards Number 5, *Accounting for Liabilities of the Federal Government*

Does SFFAS 5 provide for the recognition of a RECP and EEOICA liability?

In accordance with the general principles of the liability standard (SFFAS 5) "A liability for federal accounting purposes is a probable future outflow or other sacrifice of resources as a result of past transactions or events. General purpose federal financial reports should recognize probable and measurable future outflows or other sacrifices of resources arising from (1) past exchange transactions, (2) government-related events, (3) government-acknowledged events, or (4) nonexchange transactions that, according to current law and applicable policy, are unpaid amounts due as of the reporting date."

Before one can answer whether SFFAS 5 provides for recognition, it must be determined whether RECP and EEOICP would be considered a government-related event, government-acknowledged event or a nonexchange transaction that according to current law and applicable policy, are unpaid amounts due as of the reporting date.

RECP and EEOICP would best be classified as costs resulting from government-related events because the activities (for instance atomic testing/above ground nuclear testing for RECP and the nuclear weapons program for EEOICP) were caused by or related to Government activities. SFFAS 5 par. 27 states, "Government-related events are non-transaction based events that involve interaction between the federal government and its environment. The event may be beyond the control of the federal entity. In general, a liability is recognized in connection with government-related events on the same basis as those that arise in exchange transactions."

The Summary to SFFAS 5 clearly establishes the nature of events that qualify as government-related versus those that qualify as government acknowledged. Specifically, it states, "Government-related events also include hazardous waste spills on federal property caused by federal operations or accidents and catastrophes that affect government-owned property."

¹ The staff prepares meeting materials to facilitate discussion of issues at the AAPC meeting. This material is presented for discussion purposes only; it is not intended to reflect authoritative views of the AAPC, FASAB or its staff. Official positions of the AAPC and FASAB are determined only after extensive due process and deliberation.

Does SFFAS 5 provide for the recognition of a liability for Government-related events? Yes

SFFAS 5 par. 27 states, "Government-related events are non-transaction based events that involve interaction between the federal government and its environment. The event may be beyond the control of the federal entity. In general, a liability is recognized in connection with government-related events on the same basis as those that arise in exchange transactions."

Does SFFAS 5 provide any additional guidance regarding whether the liability would be for the due and payable or if an amount should be estimated? Yes

SFFAS 5 par. 29 provides that "Government-related events resulting in a liability should be recognized in the period the event occurs if the future outflow or other sacrifice of resources is probable and the liability can be measured, or as soon thereafter as it becomes probable and measurable."

Issues

1. Is the Department of Labor properly recognizing the liability for the EEOICP? If not, should Department of Energy be recognizing the liability for the EEOICP?
2. Should the EEOICP and the RECP programs be recognized in the same manner?
3. Who should recognize the liability for the RECP and EEOICP?
4. Are the costs associated with the EEOICP being properly reported by DOE and DOL?
5. Are the costs associated with the RECP being properly reported by DOE and DOJ?

FY 2002 Accounting and Reporting

RECA Program

DOJ records a liability only to the extent that an award has been accepted by a claimant but has not yet been paid. Specifically, when the claim has been approved, an obligation is recorded and then once the acceptance letter is received from the claimant, the obligation is moved from undelivered to delivered and a payable is set up. DOJ does NOT record a liability for approved claims that have not been accepted by the claimant or for estimated future claims/payments. DOJ-OIG's view (see email below) is that although this is a government acknowledged event, it is also an exchange transaction because the claimant has to sacrifice value (other available benefits or lawsuits) in order to receive the award. Thus, they believe the transaction is not finalized until the claimant accepts the award and accordingly gives up rights to the other benefits. DOJ also cites OMB 01-09 and SFFAS 4 restrictions on recognizing other imputed costs.

As a result of DOJ's position on the accounting for the RECP, DOE does not account or report anything for RECA.

EEOICPA Program

DOL records a long-term estimated liability on its Balance Sheet and the related costs on the Statement of Net Costs. The liability represents the expected lump sum and estimated medical payments for approved compensation cases and cases filed pending approval, as well as claims incurred but not yet filed.

DOE records the change in estimated liability as an imputed cost on the Statement of Net Costs (costs not assigned) and an imputed financing source on the Statement of Changes in Net Position and the Statement of Financing.

Footnote from DOL 2002 Performance and Accountability Report

Energy Employees Occupational Illness Compensation Benefits

The Energy Employees Occupational Illness Compensation Fund, established under the authority of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), provides benefits to eligible current or former employees of the Department of Energy (DOE) and its contractors, or to certain survivors of those employees and contractors, as well as benefits to certain beneficiaries of the Radiation Exposure Compensation Act.

DOL is responsible for adjudicating and administering claims filed under the EEOICPA. Effective July 31, 2001, compensation of \$150,000 and payment of medical expenses from the date a claim is filed are available to covered individuals suffering from designated illnesses incurred as a result of their work with DOE. Compensation of \$50,000 and payment of medical expenses from the date a claim is filed are available to individuals eligible for compensation under of the Radiation Exposure Compensation Act.

DOL has recognized a \$2.8 billion and \$3.2 billion liability for estimated future benefits payable by DOL at September 30, 2002 and 2001, respectively, to eligible individuals under the EEOICPA. The September 30, 2002 estimated liability includes the expected lump sum and estimated medical payments for approved compensation cases and cases filed pending approval, as well as claims incurred but not yet filed. An undiscounted liability is projected over a sixteen-year period of \$3.8 billion with a discounted to present value liability of \$2.8 billion based on an interest rate of 4.43%. The actuarial projection methodology provided an estimate of the ultimate number of reported cases as a result of estimating future claims from the historical patterns of reported claims and subsequent claim approval rates. Medical payments were derived by estimating an average benefit award per living employee claimant. The September 30, 2001 estimated liability was derived from OMB and the Congressional Budget Office data that ranged from \$3.2 billion to \$4.0 billion. The liability was projected over a twenty-year period and discounted to present value based on OMB assumptions.

Footnote from DOE 2003 Performance and Accountability Report

21. Costs Not Assigned	(in millions)	
	<u>FY 2003</u>	<u>FY 2002</u>
Change in unfunded environmental liability estimates ^(Note 15)	\$ (19,035)	\$ (21,977)
Changes in contractor pension and PRB estimates ^(Notes 9 & 16)	1,224	1,147
Waste Incidental to Reprocessing Litigation ^(Note 17)	850	-
Change in unfunded safety and health liabilities ^(Note 14)	84	113
Change in compensation program for occupational illnesses	(267)	(42)
Other	95	36
Total	\$ (17,049)	\$ (20,723)

Compensation Program for Occupational Illnesses

Public Law 106-398, the Energy Employees Occupational Illness Compensation Program Act of 2000, authorized compensation for certain illnesses suffered by employees of the Department, its predecessor agencies, and contractors who performed work for the nuclear weapons program. Covered illnesses include cancers resulting from exposure to radiation; chronic beryllium disease; silicosis; and other illnesses arising from exposure to toxic substances during

employment at atomic weapons facilities. In general, each employee and survivors of deceased employees eligible for compensation will receive compensation for the costs of medical care related to covered illness(es) and a choice of either lost wages or a lump sum payment of \$200,000. The law makes future payments under this program the responsibility of the Department of Labor. Therefore, the remaining liability is not recorded by the Department. The amount of the change in total liability is recognized by the Department as an imputed cost and as an imputed financing source. During FY 2003 the remaining liability was reduced by \$267 million.

On October 15, 1990, the Radiation Exposure Compensation Act (RECA) was enacted providing for payments to individuals who contracted certain cancers and other serious diseases presumably as a result of their exposures to radiation released during above ground nuclear weapons tests or as a result of their employment associated with the uranium mining industry during the Cold War era. RECA provided that the Department of Justice administer the program. This program is similar to the Compensation Program for Occupational Illnesses noted above. The remaining liability under the RECA program is not recorded by, and is not the responsibility of, the Department. The amount of the change in the accrued liability from September 30, 2001, or from September 30, 2002, to 2003, is not available from the Department of Justice and is not considered material to the Department's imputed costs or imputed financing sources for FY 2002 or 2003.

NOTE-Nothing to display from DOJ's Performance and Accountability Report as there is no discussion of the RECP.

Program Fact Sheets

Radiation Exposure Compensation Program

Purpose

The Radiation Exposure Compensation Act (RECA) was enacted providing for payments to individuals who contracted certain cancers and other serious diseases presumably as a result of their exposure to radiation released during aboveground nuclear weapons tests or as a result of their employment associated with the uranium mining industry during the Cold War era.

RECA provided that the Attorney General would be responsible for processing and adjudicating claims under the act. The Department of Justice (DOJ) established the Radiation Exposure Compensation Program (RECP) within its Civil Division to administer its responsibilities under the act. RECP began processing claims in April 1992.

Eligibility

The Attorney General is responsible for reviewing applications to determine whether applicants qualify for compensation and establishing procedures for paying claims. To discharge these two responsibilities, the Attorney General has issued implementing regulations.²

The regulations established RECP within DOJ's Civil Division and charged it with administering claims adjudication and compensation under the act. To file for compensation, the claimant or eligible surviving beneficiary, either acting on his or her own behalf or represented by counsel, submits the appropriate claim forms along with corroborating documentation to RECP, whose claims examiners and legal staff review and adjudicate the claims. If the claim is approved, a letter is sent notifying the person of the approval and enclosing an "acceptance of payment" form for the claimant to return to RECP. Upon receipt of a signed acceptance of payment form, DOJ authorizes the Treasury Department to make payment from the Trust Fund.³

The RECA Amendments of 2000 require that the Attorney General pay claims within 6 weeks of approval. If the victim is deceased, compensation may be awarded to the victim's eligible survivors (e.g., the victim's spouse or children). The RECA Amendments of 2000 broadened the scope of eligibility for benefits coverage, including increasing the geographical areas covered, allowing more individuals to qualify, and establishing a prompt payment period.⁴

² Regulations for the RECA program are found at Part 79 of Title 28 Code of Federal Regulations

³ GAO-03-481, *Radiation Exposure Compensation—Funding to Pay Claimants May Be Inadequate to Meet Projected Needs*

⁴ RECA Amendments of 2000 P.L. 106-245 Stat. 501

Benefits

Summary of Key Radiation Exposure Compensation Program Provisions by Claimant Category⁵:

<u>Claimant Category</u>	<u>Amount of Compensation</u>
Uranium Mine Employees	\$100,000
Uranium Mill Employees	\$100,000
Ore Transporter Employees	\$100,000
Downwinders	\$ 50,000
Onsite Participants	\$ 75,000

Funding

In addition to creating eligibility criteria for compensation, RECA created a Trust Fund to pay claims. RECA program funding is provided from two sources. The RECA Trust Fund receives appropriated funds from which compensation is paid to eligible claimants. Funding for DOJ to administer the program is provided in a separate appropriation account for radiation exposure compensation administrative expenses.

From 1992 to the end of fiscal year 2002, RECP approved about \$530.5 million to claimants. The National Defense Authorization Act for fiscal year 2002 provided funding for the RECA Trust Fund to cover a 10-year period—fiscal years 2002 through 2011 up to a specified maximum amount per year. According to DOJ officials, fiscal year 2002 funding was exhausted before the end of the fiscal year, and funding is likely to be exhausted before the close of fiscal year 2003. A total of \$655 million is appropriated for fiscal years 2002 through 2011. However, the Congressional Budget Office (CBO) and DOJ estimate that the funding levels will be insufficient to meet the projected claims. The greatest anticipated shortfall, between \$72 million and \$87 million, will occur over fiscal years 2003 through 2005.⁶

Employees Occupational Illness Compensation Program

Purpose

The Energy Employees Occupational Illness Compensation Program provides benefits authorized by the Energy Employees Occupational Illness Compensation Program Act. The Program went into effect on July 31, 2001. The Department of Labor's Office of

⁵ GAO-03-481, *Radiation Exposure Compensation—Funding to Pay Claimants May Be Inadequate to Meet Projected Needs*

⁶ GAO-03-481, *Radiation Exposure Compensation—Funding to Pay Claimants May Be Inadequate to Meet Projected Needs*

Workers' Compensation Programs is responsible for adjudicating and administering claims filed by employees or former employees or certain qualified survivors under the Act.

The mission of the Energy Employees Occupational Illness Compensation Program is to deliver benefits to eligible employees and former employees of the Department of Energy, its contractors and subcontractors or to certain survivors of such individuals, as provided in the Energy Employees Occupational Illness Compensation Program Act. The mission also includes delivering benefits to certain beneficiaries of Section five of the Radiation Exposure Compensation Act.

Eligibility⁷

Compensation of \$150,000 and payment of medical expenses from the date a claim is filed is available to:

- Employees of the Department of Energy, its contractors or subcontractors with radiation-related cancer if:
 - the employee developed cancer after working at a facility of the Department of Energy, its contractors and subcontractors; and
 - the employee's cancer is determined at least as likely as not related to that employment in accordance with guidelines issued by the Department of Health and Human Services, or
 - the employee is determined to be a member of the Special Exposure Cohort (employees who worked at least 250 days before February 1, 1992, for the Department of Energy or its contractors or subcontractors at one or more of the three Gaseous Diffusion Plants located at Oak Ridge, TN, Paducah, KY or Portsmouth, OH or who were exposed to radiation related to certain underground nuclear tests at Amchitka, AK) and developed one of certain listed cancers;
- Employees of the Department of Energy or its contractors and subcontractors at facilities where they were exposed to beryllium produced or processed for the Department of Energy who developed Chronic Beryllium Disease; and
- Employees of the Department of Energy or its contractors and subcontractors who worked at least 250 days during the mining of tunnels at underground nuclear weapons test sites in Nevada or Alaska and who developed Chronic Silicosis.

Compensation of \$50,000 and payment of medical expenses from the date a claim is filed is available for:

⁷ DOL, Division of Energy Employees Occupational Illness Compensation (<http://www.dol.gov/esa/aboutesa/mission/owcp/eeoicpmiss.htm>)

- Uranium Employees previously awarded benefits by the Department of Justice under Section 5 of the Radiation Exposure Compensation Act.

Benefits

A compensation of \$150,000 and payment of medical expenses is available to employees of the Department of Energy, its contractors or subcontractors with radiation-related cancer if the employee developed cancer after working at a facility of the Department of Energy.

The Act provides lump-sum payments and medical benefits to covered employees and, where applicable, to survivors of such employees, of the Department of Energy (DOE), its predecessor agencies and certain of its vendors, contractors and subcontractors. The Act also provides smaller lump-sum payments and medical benefits to individuals found to be eligible for an award under section 5 of the Radiation Exposure Compensation Act, as amended (RECA), and where applicable, to their survivors.⁸

Funding

Funding for the EEOICPA is provided to DOL through permanent, indefinite appropriations.

⁸DOL, Office of Workers' Compensation Programs, EEOCIP Regulations (20 CFR Parts 1 and 30)

Relevant FASAB Excerpts

Statement of Federal Financial Accounting Standards Number 5, Accounting for Liabilities of the Federal Government

19. A liability for federal accounting purposes is a probable future outflow or other sacrifice of resources as a result of past transactions or events. General purpose federal financial reports should recognize [FN 16: Recognition means reporting a dollar amount on the face of the basic financial statements.] probable and measurable future outflows or other sacrifices of resources arising from (1) past exchange transactions, (2) government-related events, (3) government-acknowledged events, or (4) nonexchange transactions that, according to current law and applicable policy, are unpaid amounts due as of the reporting date.[FN 17: This document uses the term "nonexchange transaction" in a way similar to FASB's "nonreciprocal transfer." That is, it implies a one-way flow of resources, services, or promises between two parties. "Transaction" in the phrase "nonexchange transaction" does not include reclassification, closing, and similar "internal" entries to the accounting records, though some accountants use the term in that broader sense. "Probable" means more likely than not. "Measurable" means reasonably estimable.]

Events and Transactions

20. The existence of a past event (which includes transactions) is essential for liability recognition. An event is a happening of financial consequence to an entity.[FN 18: "Consequence" is defined as something of importance or significance.] An event may be an internal event that occurs within an entity, such as transforming raw materials into a product. An event may also be an external event that involves interaction between an entity and its environment, such as a transaction with another entity, an act of nature, a theft, vandalism, an injury caused by negligence, or an accident.

21. As the term is used in this Statement, a transaction involves the transfer of something of value. Transactions may be either exchange transactions or nonexchange transactions. The distinction between exchange and nonexchange transactions is important in determining the point of liability recognition in federal accounting.

22. An exchange transaction arises when each party to the transaction sacrifices value and receives value in return. There is a two-way flow of resources or of promises to provide resources. In an exchange transaction, a liability is recognized when one party receives goods or services in return for a promise to provide money or other resources in the future.[FN 19: Executory contracts where goods and services have not been

received are not generally recognized as liabilities in financial accounting, although they are generally recognized as obligations in governmental budgetary accounting.]

23. An example of an exchange transaction occurs when a federal employee performs services in exchange for compensation. The compensation includes current salary and future retirement benefits. An exchange transaction occurs because both parties (the employee and the employer) receive and sacrifice value. The expense is recognized in the period that the exchange occurs. The compensation liability includes unpaid salary amounts earned and the cost of future retirement benefits related to current period services.

24. A nonexchange transaction arises when one party to a transaction receives value without directly giving or promising value in return. There is a one-way flow of resources or promises. For federal nonexchange transactions, a liability should be recognized for any unpaid amounts due as of the reporting date. This includes amounts due from the federal entity to pay for benefits, goods, or services [FN 20: Goods or services may be provided under the terms of the program in the form of, for example, contractors providing a service for the government on the behalf of the disaster relief beneficiaries.] provided under the terms of the program, as of the federal entity's reporting date, whether or not such amounts have been reported to the federal entity (for example, estimated Medicaid payments due to health providers for service that has been rendered and that will be financed by the federal entity but have not yet been reported to the federal entity).

25. Many grant and certain entitlement programs are nonexchange transactions. When the federal government creates an entitlement program or gives a grant to state or local governments, the provision of the payments is determined by federal law rather than through an exchange transaction.

26. An event is defined as a happening of financial consequence to an entity. For federal financial reporting, some events may be other than transaction based and these events may be classified in one of two categories: (1) government-related events or (2) governmentacknowledged events.

27. Government-related events are non-transaction based events that involve interaction between the federal government and its environment. The event may be beyond the control of the federal entity. In general, a liability is recognized in connection with government-related events on the same basis as those that arise in exchange transactions. Events, such as a federal entity accidentally causing damage to private property, would create a liability when the event occurred, to the extent that existing law and policy made it probable that the federal government would pay for the damages and to the extent that the amount of the payment could be estimated reliably. [FN 21: The vast majority of claims against the United States Government stemming from tortuous government conduct are adjudicated under the Federal Tort Claims Act

(FTCA), which provides for both administrative and judicial resolution. Administrative awards under the established threshold are paid from agency appropriations. Administrative awards in excess of the established threshold are paid from the judgment appropriation. Court judgments and compromise settlements by the Department of Justice are paid from the judgment appropriation regardless of amount. This Act means that, for certain types of events it is not necessary for the government to acknowledge financial responsibility separately for each individual event as is the case for events described in paragraph 30.]

28. Government-related events include: (1) cleanup from federal operations resulting in hazardous waste that the federal government is required by statutes and/or regulations, that are in effect as of the Balance Sheet date, to clean up (i.e., remove, contain, or dispose of); [FN 22: See SFFAS No. 6, "Accounting for Property, Plant, and Equipment" for a detailed discussion of cleanup cost.] (2) accidental damage to nonfederal property caused by federal operations; and (3) other damage to federal property caused by such factors as federal operations or natural forces.[FN 23: The subjects of valuing assets and of measuring asset impairments—thus measuring the loss to be recognized—are beyond the scope of this Statement. See SFFAS No. 6, Accounting for Property, Plant, and Equipment for a discussion on the impairment or loss of federal property.]

29. Government-related events resulting in a liability should be recognized in the period the event occurs if the future outflow or other sacrifice of resources is probable and the liability can be measured, or as soon thereafter as it becomes probable and measurable.

30. Government-acknowledged events are those nontransaction-based events that are of financial consequence to the federal government because it chooses to respond to the event. The federal government has broad responsibility to provide for the public's general welfare. The federal government has established programs to fulfill many of the general needs of the public and often assumes responsibilities for which it has no prior legal obligation.

31. Consequently, costs from many events, such as toxic waste damage caused by nonfederal entities and natural disasters, may ultimately become the responsibility of the federal government. But these costs do not meet the definition of a "liability" until, and to the extent that, the government formally acknowledges financial responsibility for the cost from the event and an exchange or nonexchange transaction has occurred. In other words, the federal entity should recognize the liability and expense when both of the following two criteria have been met (1) the Congress has appropriated or authorized (i.e., through authorization legislation) resources and (2) an exchange occurs (e.g., when a contractor performs repairs) or nonexchange amounts are unpaid as of the reporting date (e.g., direct payments to disaster victims), whichever applies.

32. The following example illustrates the liability recognition of government-acknowledged events. A tornado damages a U.S. town and the Congress appropriates funds in response to the disaster. This event is of financial consequence to the federal government because the federal government chooses to provide disaster relief to the town. Transactions resulting from this appropriation, including disaster loans, outright grants to individuals, and work performed by contractors paid by the federal entities, are recognized as exchange or nonexchange transactions. In the case of exchange transactions, amounts payable for goods and services provided to federal entities are recognized when the goods are delivered or the work is done. In the case of nonexchange transactions, a liability should be recognized for any unpaid amounts due as of the reporting date. The liability includes amounts due from the federal entity to pay for benefits, goods, or services provided under the terms of the program, as of the federal entity's reporting date, whether or not such amounts have been reported to the federal entity.