



*U.S. Department of
Justice*

Radiation Exposure Compensation Act Trust Fund

FY 2022 Budget &
Performance Plan

May 2021

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I. Overview for the Radiation Exposure Compensation Act

The Radiation Exposure Compensation Act (“the Act” or “RECA”) offers an apology and monetary compensation to individuals who contracted certain cancers and other serious diseases as a result of their exposure to radiation released during above-ground nuclear weapons tests or as a result of their occupational exposure while employed in the uranium industry during the build-up to the Cold War.

The Department of Justice established the Radiation Exposure Compensation Program (“the Program”) within the Civil Division to adjudicate claims under the Act. Since the Program commenced operations in April 1992, over 50,700 claims have been filed and over \$2.4 billion has been awarded in connection with 37,481 approved claims through September 30, 2020. The deadline to file new claims under RECA is July 11, 2022; The Radiation Exposure Compensation Act Trust Fund terminates on that same date. Although RECA provides twelve months for the Department to determine entitlement to compensation, the statute does not specify that timely filed claims will be paid after the fund’s termination date. Unless action is taken to clarify the statute, some timely filed claims that are adjudicated after the fund’s termination date may not be able to be paid. This conflict creates risk of litigation against the United States. The Division looks forward to working with Congress to address the conflicts among these provisions of the Radiation Exposure Compensation Act to facilitate an orderly sunset, ensure compensation is provided to all eligible individuals who file a claim by the statutory deadline, and minimize the risk of litigation against the United States.

Electronic copies of the Department of Justice’s Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <https://www.justice.gov/CJ>.

FY 2022 Estimate

For Fiscal Year (FY) 2022, it is expected there will be a surge of claims as the program approaches the statute of limitations. As a result, the Program seeks to maintain a funding level of \$70.0 million in FY 2022, as carryforward funding from FY 2021 is anticipated to be minimal.

Significant Achievements

Broad Range of Award Recipients

Compensation has been awarded to individuals residing in all 50 states, as well as several foreign countries. Residents of the “Four Corners” region of the American southwest (Arizona, New Mexico, Utah, and Colorado) filed the majority of the claims and received awards valued at approximately \$1.7 billion during the life of the program. Of the more than \$2.4 billion awarded through FY 2020, approximately \$339.4 million has been awarded to Native American claimants and distributed among members of 23 different tribes, and approximately \$356.9 million has been awarded to veterans, civil servants, and contractors who participated onsite in atmospheric nuclear tests.

Reduction of Claim Processing Time

Another notable accomplishment is the continued reduction in the average claim processing time. In FY 2015, the Program averaged 207 days to process a claim. Each subsequent year, the program was able to reduce the processing time by an average of 24 days, or 14 percent. By FY 2020 the average processing time was 82 days, less than half the processing time of FY 2015.

II. Summary of Program Changes

No program changes.

III. Appropriations Language and Analysis of Appropriations Language

The FY 2022 budget request does not include proposed changes in the appropriations language.

IV. Program Activity Justification

Mission Statement: Fairly and expeditiously adjudicate claims, fully consistent with the Radiation Exposure Compensation Act, as amended; educate the public about the Act; and develop strategies for improving the Program.

RECA Program	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2020 Enacted	0	0	\$65,000
2021 Enacted	0	0	\$70,000
Adjustments to Base and Technical Adjustments	0	0	\$0
2022 Current Services	0	0	\$70,000
2022 Request	0	0	\$70,000
Total Change 2021-2022	0	0	\$0

Program Description

From 1945 through 1962, the United States conducted nearly 200 atmospheric nuclear weapons tests while building the arsenal that became the cornerstone of the Nation's Cold War security strategy. At the same time, other world powers also engaged in testing nuclear weapons. The mining and processing of uranium ore that was conducted by thousands of workers was essential to the development of nuclear weapons. Many workers filed class action lawsuits that appellate courts eventually dismissed. Congress then devised a program to make partial restitution to the individuals who developed serious illnesses after their exposure to radiation released during above-ground atmospheric nuclear tests or following their employment in the uranium industry. On October 5, 1990, Congress passed the Act and later broadened the scope of its coverage on July 10, 2000.

The Act established monetary compensation for individuals who contracted specified diseases in three defined populations:

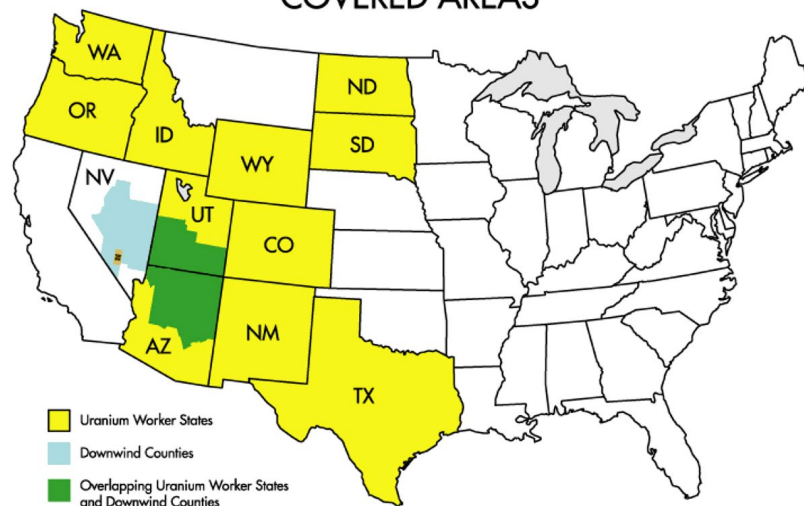
- Uranium workers (considered Section 5 claimants) – uranium miners, millers, and ore transporters receive \$100,000;
- Onsite participants (considered Section 4 claimants) – individuals present at atmospheric nuclear test locations receive \$75,000; and
- Downwinders (considered Section 4 claimants) – individuals who lived downwind of the Nevada Test Site receive \$50,000.

Department of Justice-issued regulations were designed to utilize existing records so that claims could be resolved in a reliable, objective, and non-adversarial manner, with little administrative cost to the United States or to the claimant.

“RECA claimants worked in hazardous occupations and were subjected to increased risk of disease to serve the national security interests of the United States. This extraordinary statute provides partial restitution to these individuals and their families for the sacrifices they made during a critical time in our nation’s history.”

*~ Civil Division,
March 2, 2015 Press Release*

MAP OF RADIATION EXPOSURE COMPENSATION ACT COVERED AREAS



The map above shows the geographic areas covered by the Act. Although the vast majority of claims are filed by people living in the “Four Corners” region (Arizona, New Mexico, Utah, and Colorado), the Program has awarded compensation to individuals residing in every state as well as several foreign countries. The claimant population also includes several Native American tribes.

Today, the Program is part of a broad inter-agency network that comprises the comprehensive federal radiation compensation system, working with the Departments of Health and Human Services, Labor, Energy, Veterans Affairs, and Defense to administer the Act.

Funding History

The RECA Trust Fund was funded out of discretionary appropriations from FY 1992 to FY 2001. Following enactment of the 2000 Amendments and a subsequent influx of new claims, the appropriation became insufficient to meet the number of claims deemed eligible for compensation. In 2002, Congress addressed the problem within the Department of Defense Authorization Act for FY 2002, which established annual funding against mandatory spending caps. By 2003, however, the increased rate of new claim filings and approvals proved the caps to be inadequate. Working in close coordination, the appropriators and authorizers devised effective legislative solutions to the funding problems. The following statutes ensure that all eligible RECA claims will be paid in a timely manner throughout the life of the Program:

- The Consolidated Appropriations Act for 2005 contained language that made funding for the RECA Trust Fund mandatory and indefinite beginning in FY 2006. Henceforth, the Fund has exclusively paid onsite participants and downwinders (or Section 4 claimants). By statute, this fund will terminate on July 11, 2022.
- The National Defense Authorization Act for FY 2005 contained language requiring the Energy Employees Occupational Illness Compensation Fund to pay uranium workers – uranium miners, millers, and ore transporters (or Section 5 claimants). This trust fund does not terminate.

In November 2011 and June 2012, the American Association of Retired Persons (AARP) published three articles related to atomic veterans and exposure to radiation. As a result, the media publicity led to an increase in claim filings, particularly by onsite participants, with an especially large spike in the second quarter of FY 2012 and another surge at the end of the third quarter. To quickly pay the eligible claims that were filed, the Program was apportioned additional funding of \$15.0 million in March 2012.

In FY 2012, the Program received 3,216 new Section 4 claims, of which 2,038 were from onsite participant claimants.¹ Onsite participant receipts and adjudications did not return to prior trends until FY 2015.

In contrast, the COVID-19 pandemic was announced during March 2020. Stay-at-home orders, closures of medical facilities, and reduced public access to government offices resulted in a 25 percent reduction in RECA claims received by the Department during the last six months of FY

¹ By comparison, in all of FY 2011, the Program received 1,383 Section 4 claims, of which only 240 were onsite participant claims. The last time the Program saw such a dramatic increase in new claims was in FY 2001 after enactment of the RECA Amendments of 2000.

2020. Adjudications also declined 25 percent during the same period. While receipts and adjudications remain depressed during FY 2021, successful public health measures and improved access to records may result in increased claims during the last six months of FY 2021. The Program is focused intently on adjudicating claims efficiently and in a timely manner and continues to monitor and forecast approval rates and projected claim filings.

Historical Claim Statistics and Trends

Over the life of the Program, over 50,700 claims have been filed through September 30, 2020. This has resulted in 50,571 adjudications, including 37,481 approvals, which reflects a 74 percent approval rate. Of the denials, only 16 claimants have sought review in Federal District Court.

Program Sunset

By statute, the RECA Trust Fund “shall terminate 22 years after [July 10, 2000,] the date of enactment of the RECA Amendments of 2000.” The RECA statute of limitations states that “claims not filed within 22 years of [July 10, 2000] shall be barred.” These conflicting provisions create an ambiguous operational environment as the Program sunsets. Because of the limitations on the RECA Trust Fund, some claims that are timely filed on the last day may not be paid.

RECA affords the Department 12 months in which to decide entitlement to compensation. On December 9, 2020, the Department published a notice of procedures for RECA claims filed at the statutory deadline (the “Sunset Notice”). The Sunset Notice communicated that claims postmarked by Monday, July 11, 2022, would be deemed timely filed when received by the Department. Claims filed by uranium miners, millers, and ore transporters are paid from the Energy Employees Occupational Illness Compensation Fund, which does not terminate. Accordingly, only claims filed by Downwind and Onsite Participant claimants, which are paid from the RECA Trust Fund, may be subject to a limitation of funds.

Proposed Legislation

The Program closely tracks legislation pending before Congress which would amend the current statute. Moreover, the Program strives to be responsive to congressional inquiries and works with the Department’s Office of Legislative Affairs to provide useful information to members and their staffs. The current workload estimates and funding projections, however, are based on the current law and do not account for the possible impact of any statutory changes. Obviously, any such changes could dramatically change the Program as well as the amount requested from the Trust Fund.

The following bills have been introduced in the 117th Congress:

- H.R. 538, The Downwinders Parity Act of 2021, would expand the downwind affected area to include the entire areas of Clark County, Nevada, and Mohave County, Arizona. Additionally, the bill extends the termination date of the RECA Trust Fund to July 10, 2027, without altering the deadline for filing claims. Because the bills would extend coverage to the metropolitan areas of Las Vegas, Nevada, and Kingman, Arizona, they would have significant impact on RECA workload and cost estimates.

- H.R. 612, also titled The Downwinders Parity Act of 2021, would expand the downwind affected area to include the entire areas of Clark County, Nevada, and Mohave County, Arizona, and require the Department to report to Congress on efforts to conduct outreach to communities made newly eligible for benefits. Unlike H.R. 538, H.R. 612 does not extend the RECA Trust Fund. Because the bill would extend coverage to the metropolitan areas of Las Vegas, Nevada, and Kingman, Arizona, it would have significant impact on RECA workload and cost estimates.

Hearings

On March 24, 2021, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Judiciary Committee held a hearing entitled “Examining the Need to Expand Eligibility Under the Radiation Exposure Compensation Act.” Testimony was heard from members of Congress and from advocates for an expansion of the RECA eligibility criteria. Several members of Congress, in roles as witnesses and as members of the committee, noted that RECA’s upcoming filing deadline in July 2022 presented an issue of concern.

RECA Reports to Congress

In its report for the National Defense Authorization Act for FY 2020, the House Armed Services Committee directed the Secretary of Defense, in consultation with the Attorney General, to provide a report assessing the extent to which those groups affected by government nuclear testing are prevented from receiving compensation under RECA. The Nuclear Test Personnel Review (NTPR), a component of the Department of Defense’s Defense Threat Reduction Agency (DTRA), was assigned responsibility for this report. The RECA Program worked with the NTPR to develop a comprehensive and coordinated response and the Department of Defense forwarded their report to the House Armed Services Committee on April 7, 2021. The report, which focuses on the downwinder groups not currently eligible for compensation under RECA, notes that 35 states contain counties that received fallout at levels equal to the fallout received by the counties currently covered under RECA’s downwind provisions. It does not take a position on whether Congress should expand the groups eligible for RECA compensation.

Claims Data

On the following page is data concerning Section 4 and Section 5 claims. Actual data for the last four years, as well as claim estimates for FY 2021 and FY 2022 are provided.

Radiation Exposure Compensation Act Workload							
Claims Filed and Approved							
(Dollars in Thousands)							
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
	Actual	Actual	Actual	Actual	Actual	Estimate	Estimate
Section 4 Claims – Downwinders and Onsite Participants							
Downwinders							
Pending, Beginning of Year	318	309	236	282	218	107	120
Claims Filed	1,009	894	1,052	1,020	842	740	1,037
Claims Approved	920	863	904	1,000	858	676	903
Total Value of Approvals	\$46,200	\$43,200	\$45,200	\$50,000	\$42,900	\$33,800	\$45,150
Onsite Participants							
Pending, Beginning of Year	159	170	131	116	84	58	55
Claims Filed	316	299	299	263	230	220	244
Claims Approved	192	232	203	189	197	182	150
Total Value of Approvals	\$14,055	\$17,104	\$15,020	\$13,936	\$14,667	\$13,650	\$10,938
Subtotal Section 4 Claims							
Pending, Beginning of Year	477	479	367	398	302	165	175
Claims Filed	1,325	1,193	1,351	1,283	1,072	960	1,281
Claims Approved	1,112	1,095	1,107	1,189	1,055	858	1,053
Total Value of Approvals	\$60,255	\$60,304	\$60,220	\$63,936	\$57,567	\$47,450	\$56,088
Section 5 Claims – Uranium Miners, Millers, and Ore Transporters							
Pending, Beginning of Year	145	141	134	93	46	43	25
Claims Filed	227	207	191	221	159	148	168
Claims Approved	141	129	146	191	109	62	130
Total Value of Approvals	\$14,200	\$12,900	\$14,600	\$19,100	\$10,900	\$6,200	\$13,000

**Radiation Exposure Compensation Act Workload
Claims Filed and Approved**

(Dollars in Thousands)

	FY 2016 Actual	FY 2017 Actual	FY 2018 Actual	FY 2019 Actual	FY 2020 Actual	FY 2021 Estimate	FY 2022 Estimate
TOTAL (Section 4 Claims and Section 5 Claims)							
Pending, Beginning of Year	622	620	501	491	348	208	200
Claims Filed	1,552	1,400	1,542	1,504	1,231	1,108	1,449
Claims Approved	1,253	1,224	1,253	1,380	1,164	920	1,183
Claims Denied	300	295	299	267	218	304	226
Total Adjudications	1,553	1,519	1,552	1,647	1,382	1,224	1,409
Approval Rate	81%	81%	81%	84%	84%	75%	84%
Total Value of Approvals	\$74,455	\$73,204	\$74,820	\$83,036	\$68,467	\$53,650	\$69,088

Performance and Resources Tables

Decision Unit: Radiation Exposure Compensation Act

RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		2020		2020		2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
(reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		0	65,000	0	65,000	0	70,000	0	0	0	70,000
Type	Performance	FY 2020		FY 2020		FY 2021		Current Services Adjustments		FY 2022 Request	
Radiation Exposure Compensation Program Performance											
Performance Measure	1. Maintain an average claim processing time of 200 days	200		82		200		N/A		200	
Performance Measure	2. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%		97%		90%		N/A		90%	
Performance Measure	3. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	95%		100%		95%		N/A		95%	
Performance Measure	4. Percentage of claims adjudicated within 12 months or less.	80%		99%		80%		N/A		80%	

History of Performance

Decision Unit: Radiation Exposure Compensation Act

Type	Measure	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2020	FY 2021	FY 2022	FY 2023
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target	Target
Radiation Exposure Compensation Program Performance										
Performance Measure	1. Maintain an average claim processing time of 200 days	151	153	130	108	200	82	200	200	200
Performance Measure	2. Percentage of claims paid within six weeks of Program receipt of acceptance form	95%	95%	96%	97%	90%	97%	90%	90%	90%
Performance Measure	3. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	92%	100%	100%	100%	95%	100%	95%	95%	95%
Performance Measure	4. Percentage of claims adjudicated within 12 months or less	88%	89%	94%	97%	80%	99%	80%	80%	80%

Performance, Resources, and Strategies

The Program office is located in Washington, D.C. and is currently administered by a staff of four attorneys, five claims examiners, and seven contractors within the Constitutional and Specialized Torts Litigation Section of the Civil Division's Torts Branch. The support staff reviews claim packages, assists claimants with their applications, and manages physical case files. RECA Program attorneys strive to fairly and efficiently process and resolve claims. Since its inception, the Program has generally far surpassed its goals for the timely processing and adjudication of claims.

a. Performance Plan and Report for Outcomes

The Civil Division is committed to upholding the rule of law and integrity in the proper administration of justice. The RECA Program directly supports the Civil Division in this goal. The Program's primary objective is to implement civil justice reform initiatives to resolve categories of claims for which traditional litigation has proven ineffective and to administer compensation programs enacted by Congress that offer non-litigation solutions for radiation exposure claimants.

The Program has a number of performance measures that are included in the Civil Division's Performance Tables.

b. Strategies to Accomplish Outcomes

The Program will employ the following strategies to accomplish this mission:

- Utilize skilled claims examiners to conduct the initial review of claims, freeing the Program attorneys to maximize efficiency by concluding the adjudication and render the final determination.
- Access external data sources, such as the Social Security Administration, the National Institute for Occupational Safety and Health, the Public Health Service, and state cancer and tumor registries to assist claimants in securing the necessary documentation to support their claims and reduce the burden on claimants.
- Coordinate with the Department of Labor's Energy Employees Occupational Illness Compensation Program to ensure that eligible Section 5 RECA claimants receive compensation in a timely manner. This includes the review of claimant files to decide eligibility pursuant to the Energy Employees Occupational Illness Compensation Program Act.
- Coordinate with the U.S. Department of Health and Human Services' Radiation Exposure Screening and Education Program to assist grantees in providing relevant information to individuals screened for disease in the affected geographic regions.
- Brief Members of Congress and their staffs as requested. Provide information to Members of Congress and the public in an open, timely, and complete manner.

- Conduct outreach by traveling to areas with populations of potential claimants and participating in roundtable discussions held by congressional delegations for their constituents. RECA has no upcoming travel plans due to the COVID-19 pandemic, but will leverage technology to continue outreach efforts. Once pandemic restrictions are lifted, RECA will reconsider travel as the Program approaches cessation.
- Use a toll-free telephone line and website to communicate with claimants and publish regularly updated statistical information on www.data.gov.
- Respond timely to all media inquiries to ensure accurate information is disseminated to the public about the Program.

V. Program Increase:

Not Applicable.

VI. Program Decrease: Radiation Exposure Compensation Act (RECA) Claims

Not Applicable.