

Department of Homeland Security **Office of Inspector General**

U.S. Immigration and Customs Enforcement's Management of the Federal Employees' Compensation Act Program





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

JUL 1 2014

MEMORANDUM FOR: Catherine Emerson
Chief Human Capital Officer
Department of Homeland Security

Susan G. Baker
Acting Human Capital Officer
U.S. Immigration and Customs Enforcement

FROM: Anne L. Richards 
Assistant Inspector General for Audits

SUBJECT: *U.S. Immigration and Customs Enforcement's Management of the Federal Employees' Compensation Act Program*

Attached for your information is our final report, *U.S. Immigration and Customs Enforcement's Management of the Federal Employees' Compensation Act Program*. We incorporated the formal comments from the U.S. Immigration and Customs Enforcement and the Department of Homeland Security (DHS) in the final report.

The final report was originally distributed internally to DHS on June 6, 2014. We have revised our final report based on the Department's request to provide a new, consolidated response to the report.

The report contains three recommendations aimed at improving the Workers' Compensation Program at the U.S. Immigration and Customs Enforcement and the Department of Homeland Security. Your offices concurred with all recommendations. The OIG considers recommendation #2 unresolved and open. As prescribed by the *Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for the recommendation. Also, please include contact information for responsible parties and any other supporting documentation necessary to inform us about the status of the recommendation. Until we receive and evaluate your response, we will consider the recommendation unresolved and open.

Based on information provided in your response to the draft report, we consider recommendations #1 and #3 resolved and open. Once your offices have fully implemented



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the recommendations, please submit a formal closeout request to us within 30 days so that we may close the recommendations. The request should be accompanied by evidence of completion of agreed-upon corrective actions.

Please email a signed PDF copy of all responses and closeout requests to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact John E. McCoy II, Deputy Assistant Inspector General for Audits, at (202) 254-4100.

Attachment



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Abbreviations

| | |
|------|--|
| DHS | Department of Homeland Security |
| DOL | U.S. Department of Labor |
| FECA | <i>Federal Employees’ Compensation Act</i> |
| FY | fiscal year |
| ICE | U.S. Immigration and Customs Enforcement |
| OIG | Office of Inspector General |



Executive Summary

We reviewed U.S. Immigration and Customs Enforcement's (ICE) management of its *Federal Employees' Compensation Act* program. The *Federal Employees' Compensation Act* provides wage loss compensation, medical care, and survivors' benefits to civilian employees for employment-related traumatic injuries and occupational diseases. In fiscal year 2012, ICE had 2,253 cases totaling approximately \$21 million in workers' compensation-related costs. Our audit objective was to determine whether ICE is effectively managing the program to minimize lost workdays and related compensation costs.

ICE has not effectively managed its *Federal Employees' Compensation Act* program to control costs. Specifically, it has not ensured correct processing of claims and monitoring of workers' compensation cases. In addition, ICE has not implemented management controls needed to manage the program. As a result, ICE has not minimized lost workdays and related compensation costs. For example, we identified five cases in which individuals received approximately \$1 million in compensation after they were cleared to return to work.

Additionally, the Department of Homeland Security (DHS) has not provided formal written guidance that establishes minimum standards for administering the *Federal Employees' Compensation Act* program in the Department and its Components.

We made two recommendations to the ICE Acting Human Capital Officer and one recommendation to the DHS Chief Human Capital Officer to improve management of the *Federal Employees' Compensation Act* program. ICE and DHS concurred with all recommendations.



Background

The *Federal Employees' Compensation Act* (FECA) (5 U.S.C. § 8101, et seq.) provides wage loss compensation, medical care, and survivors' benefits to civilian employees for employment-related traumatic injuries and occupational diseases. The United States Department of Labor (DOL) Publication CA-810, *Injury Compensation for Federal Employees* (guidance) defines a traumatic injury as a wound or other condition of the body caused by external force, stresses, or strain. The traumatic injury must be identifiable by time and place of occurrence and part of the body affected, and it must be caused by a specific event or series of events during a single day or work shift. An occupational disease is a physical condition produced in the work environment over a period longer than one workday. FECA also provides for payment of benefits to dependents if a work-related injury or disease causes an employee's death.

DOL's Office of Workers' Compensation Program administers the FECA program. DOL adjudicates all workers' compensation claims and determines workers' compensation eligibility based on the injured employees' medical and factual evidence. Under FECA, an employee's salary may continue for up to 45 days if the employee is absent from work due to disability or medical treatment for a work-related injury. The agency is responsible for the employee's pay while DOL adjudicates the claim. In the event that DOL denies the claim, the agency should recover the salary paid to the employee by adjusting leave balances or collecting the overpayment.

Under FECA, employees are compensated at a rate equal to 66.67 percent (without dependents) or 75 percent (with dependents) of their salary at the time of injury or illness for total disability. The Employees' Compensation Fund, which is replenished annually by charges to employing agencies through the "chargeback" process, finances FECA benefits. Each year, DOL provides agencies with four quarterly chargeback reports for the accounting period July 1 through June 30. Each quarterly report lists compensation and medical payments made to agencies' injured employees. Agencies can use the quarterly reports to identify and correct errors before they appear on the annual bill. Additionally, Federal agencies are responsible for administering the FECA program within their agency, which includes advising employees of their FECA rights and responsibilities, processing claims, and managing compensation cases.

Claims Processing and Case Management Duties

- Submitting FECA claims promptly
- Challenging questionable claims
- Assisting employees in returning to work
- Keeping in contact with injured employees
- Managing compensation costs



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DHS' Office of the Chief Human Capital Officer is responsible for the management, administration, and compliance of the Department's workers' compensation program. Within the Office of the Chief Human Capital Officer, the Workers' Compensation Program Manager provides technical advice, guidance, and program support to departmental supervisors, managers, and component workers' compensation program offices regarding program requirements and compliance with Federal laws and regulations.

U.S. Immigration and Customs Enforcement

ICE was created in 2003 through a merger of the investigative and interior enforcement elements of the United States Customs Service and the Immigration and Naturalization Service. ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration. In fiscal year (FY) 2012, ICE had 20,423 employees.

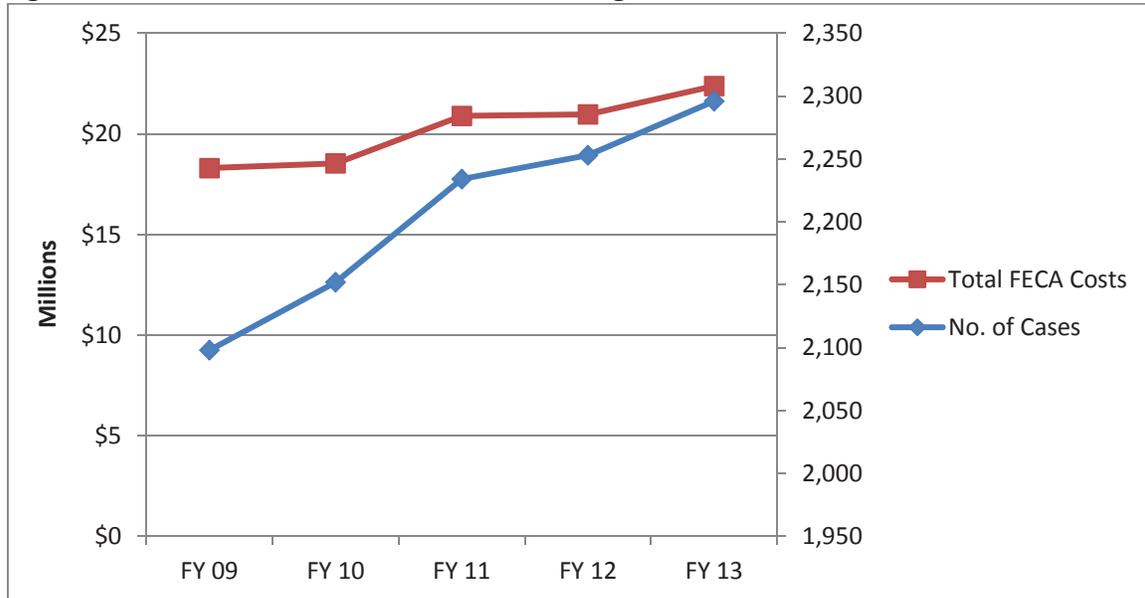
According to ICE, the Workers' Compensation Program office, within the Office of Human Capital, manages the component's FECA program and is responsible for providing policies, procedures, and training within ICE. Compensation specialists and supervisors in ICE offices throughout the United States process claims and manage cases. Supervisors review employee injury and occupational disease claim forms for completeness and accuracy, indicate their concurrence or non-concurrence with the circumstances of injuries, and assist employees with returning to work. Compensation specialists' responsibilities include submitting claim forms to DOL, monitoring injured employees' medical conditions to assess their ability to return to work, and communicating with DOL and employees on the status of employees' cases.

In FY 2012, ICE had 2,253 cases totaling approximately \$21 million in workers' compensation-related costs. Of the \$21 million, more than 50 percent is attributable to individuals with physically demanding law enforcement positions. Figure 1 depicts the increase in number of ICE workers' compensation cases and related costs from FYs 2009 through 2013.¹

¹ FY 2013 workers' compensation data is provided for comparison purposes. We did not use this data during our analysis of workers' compensation cases because it was not available when the audit began.



Figure 1: ICE FECA Trends from FYs 2009 through 2013



Source: OIG analysis of annual chargeback reports

FECA and Employee Retirement

Under FECA, a beneficiary who becomes eligible for Federal retirement may elect to receive those benefits or continue to receive workers' compensation for the duration of the disability. Federal employees may receive greater monetary benefits under FECA than they would if they elected retirement benefits.

There has been recent Congressional interest in reducing the amount of workers' compensation that retirement-age Federal employees can receive. For example, U.S. Senate bill 261 in 2011 called for terminating workers' compensation when an employee reached the Social Security retirement age of 62. Additionally, U.S. Senate bill 1789 in 2012 would have reduced benefit levels for beneficiaries over retirement age and require claimants to choose between compensation under FECA or under the Federal retirement system. These Senate bills were not enacted. In 2013, DOL proposed that Congress amend FECA to allow it to reduce the compensation rate for retirement-age claimants to 50 percent of wages. We identified 46 retirement-age individuals in ICE's FY 2012 chargeback report who received \$3,126,560 in compensation in FY 2012.²

² The 46 retirement-age individuals do not include individuals who are working and are receiving compensation due to loss of wage-earning capacity.



Results of Audit

ICE has not effectively managed its FECA program to control costs. Specifically, it has not ensured correct processing of claims and monitoring of workers' compensation cases. In addition, ICE has not implemented management controls needed to manage the program. As a result, ICE has not minimized lost workdays and related compensation costs. For example, we identified five cases in which individuals received approximately \$1 million in compensation after they were cleared to return to work.

Additionally, DHS has not provided formal written guidance that establishes minimum standards for administering the FECA program in the Department and its Components.

ICE Workers' Compensation Program Management

ICE has neither ensured effective claims processing oversight and case management nor returned employees to work at the earliest opportunity. According to DOL guidance, "In the interests of providing good service to employees while containing costs, [Office of Workers' Compensation Programs] encourages active management of workers' compensation programs by agency personnel." However, ICE does not have the policies, procedures, and training necessary to ensure effective management of its FECA program. As a result, ICE has not minimized lost workdays and related compensation costs and may have been billed for inappropriate costs.

Key Management Controls

ICE has not provided guidance to personnel responsible for processing workers' compensation claims and managing cases. ICE's Office of Human Capital has drafted a management directive and a standard operating procedure, which include program guidance and training requirements. However, according to ICE, these program documents have been in draft since 2010 and its employees who administer the FECA program have not used them. According to Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Control*, internal controls such as policies, procedures, and training help ensure agencies achieve their objectives. The absence of these internal controls has resulted in the claims processing and case management issues discussed in this report.



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Claims Processing

ICE supervisors did not process FECA claim forms correctly to ensure accuracy, completeness, and validity of the claims. They did not ensure claim forms contained complete descriptions of injuries, challenge questionable claims, or identify responsible third parties. According to DOL guidance, supervisors should:

- Review claim forms for completeness and accuracy;
- Investigate the circumstances and report the results to DOL for claims that may not be covered under FECA;
- Investigate the third-party aspect of claims and submit all information gathered; and
- Submit supporting documentation to DOL for claims involving a traffic accident.

In our review of 132 cases tested for claims processing, we identified 25 (approximately 19 percent) that were not processed correctly. For example, the cases did not contain complete descriptions of the circumstances that caused the injuries to determine whether (1) the injuries were sustained in the performance of duty or (2) third parties may be financially liable for the injuries. As a result, DOL may have approved these claims without considering all the information surrounding the case. FECA benefits paid on these 25 claims totaled approximately \$222,027 in FY 2012.

Claims Processing Examples

- A claimant was injured while eating lunch off the work premises. The supervisor did not verify the circumstances surrounding the injury and report the results to DOL. According to DOL guidance, injuries occurring off premises during lunch are normally not covered, except under certain circumstances.¹
- A claimant was injured when a vehicle struck the claimant's car, but the claim form did not identify the third party. DOL guidance encourages supervisors to investigate third-party involvement and submit supporting documentation to DOL.²

¹ DOL Publication CA-810, *Injury Compensation for Federal Employees*, 3-4.B. (2)

² DOL Publication CA-810, *Injury Compensation for Federal Employees*, 4-1.E.

Injury Claims Involving Government-owned Vehicles

Supervisors did not properly investigate injury claims resulting from motor vehicle accidents involving government-owned vehicles. We identified 17 claims of injuries sustained while driving or riding in a government-owned vehicle. Of



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the 17 claims, 12 (71 percent) warranted further investigation to determine whether the claimants were in the performance of duty. The remaining five claims of injury either included an investigation or did not need an investigation. Title 31 U.S.C. § 1344 permits use of government-owned vehicles for transportation between home and work when it is essential for the safe and efficient performance of intelligence and law enforcement duties. However, also according to 31 U.S.C. § 1344, an individual is not automatically considered to be in the performance of duty or acting within the scope of employment simply because the employee is authorized to drive a government-owned vehicle. For example, injuries involving a government-owned vehicle that occur off-premises during the lunch hour or when the employee has deviated from the most direct route to and from work for personal reasons may not be covered. For the 12 claims needing further investigation, claimants received \$23,773 in workers' compensation in FY 2012.

**Government-owned Vehicle Claim
Processing Example**

An employee was involved in an accident three hours prior to the start of his or her workday. There was no evidence of an investigation to determine what the employee was doing at that time that was work-related.

See appendix C for additional examples of claims processing issues identified during this audit.

Case Management

ICE workers' compensation specialists did not monitor the medical and return-to-work status of claimants, retain documentation associated with cases, return employees to work, or recover salaries for denied claims. DOL guidance encourages agencies to manage cases actively, which includes:

- Establishing a record-keeping system to maintain copies of documentation associated with the case;
- Obtaining medical information from DOL or injured employees to assess potential to return to work and advise physicians of any light duty assignments and their specific requirements;
- Communicating with injured employees while they are receiving compensation; and
- Identifying jobs suitable for injured employees and taking steps to reemploy recovered or recovering employees as soon as the medical evidence shows it is possible.



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We identified missing case files and case files that did not include key documentation necessary for the effective management of the cases. Ninety-six percent of the 184 cases selected for case management testing had case files. Of the 176 case files reviewed, 54 (approximately 31 percent) did not have DOL-required documentation such as claim forms and supporting medical documentation. For example, one claimant received \$43,225 in FY 2012, although the case file did not include the claim form and medical documentation to justify compensation.

Light Duty Accommodations

ICE did not consistently provide light duty assignments to employees medically cleared to return to work with restrictions. Work restrictions include limits on sitting, standing, or lifting, among others. For 5 (approximately 3 percent) of the 176 cases reviewed, individuals were cleared to return to work in some capacity, but ICE did not provide light duty accommodations to these claimants.

As of June 2013, these five individuals had received approximately \$1 million in workers' compensation since they were cleared to return to work. Furthermore, according to ICE, light duty assignments were not offered in at least 2 of 18 field offices visited.

Light Duty Accommodation Example

One claimant was medically cleared to return to work in a light duty capacity; however, the office to which the individual was assigned did not provide light duty positions. The claimant has received more than \$233,000 in workers' compensation since being medically cleared to work several years ago.

Of the 2,253 workers' compensation cases in FY 2012, 257 individuals had multiple cases. Of the 1,996 individuals with workers' compensation cases, we identified 990 (approximately 50 percent) who were in law enforcement positions that required moderate to arduous physical exertion, including running, climbing, using firearms, and physically subduing and lifting uncooperative individuals. The physical demands of these positions could increase the difficulty of quickly returning these injured employees to regular duty. However, FECA provides services, such as vocational rehabilitation, reemployment with a former agency, assisted reemployment with a new agency, and payment of relocation expenses, to assist claimants with returning to work consistent with their physical abilities.



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Salaries for Denied Claims

ICE did not recover salaries paid to employees whose workers' compensation claims were denied. Under FECA, an employee's salary may continue for up to 45 days if the employee is absent from work due to disability or medical treatment for a work-related injury. According to DOL guidance, agencies should adjust leave balances or recover payments made to employees who missed work, but subsequently had their injury claim denied by DOL. Our review of case files and subsequent interviews indicated that ICE did not adjust leave balances or recover payments totaling approximately \$19,293 for five individuals with denied claims, as of November 2013.

See appendix C for additional examples of case management issues identified during this audit.

DHS Workers' Compensation Program Management

DHS has not provided the necessary support and guidance to Components' workers' compensation program offices. According to the DHS Workers' Compensation Program Manager, his office provides technical advice, guidance, and program support to departmental supervisors and managers, and to Component workers' compensation program offices. However, DHS has not developed and issued department-wide policy for management and administration of the FECA program. For example, according to the Program Manager, a draft management directive establishing policies and requirements for DHS and its Components has been awaiting approval since spring 2012. If DHS had provided formal guidance and oversight to its Components' workers' compensation program offices, it may have prevented the issues identified in this report.

In our December 2013 report, *Major Management and Performance Challenges Facing the Department of Homeland Security*, we noted that DHS continues to face challenges in its efforts to combine legacy agencies into one cohesive organization capable of fulfilling its mission.³ Our previous audits of two DHS components' FECA programs identified issues similar to those in this report.⁴

³ DHS OIG, *Major Management and Performance Challenges Facing the Department of Homeland Security*, DHS OIG-14-17, December 2013.

⁴ DHS OIG, *The Transportation Security Administration's Management of its Federal Employees' Compensation Act Program*, OIG-07-45, May 2007; and DHS OIG, *United States Customs and Border Protection's Management of the Federal Employees' Compensation Act Program*, DHS OIG-12-63, March 2012. All recommendations in OIG-07-45 are closed. All recommendations in OIG-12-63 are open.



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Department-wide FECA guidance and oversight would help standardize the workers' compensation programs within DHS.

Conclusion

DHS and ICE can take proactive steps toward management and oversight of their workers' compensation programs to control costs. ICE may be able to reduce employee lost workdays and workers' compensation-related costs by developing and implementing policies and procedures that promote consistent and effective claims processing and case management. Additionally, department-wide policy for management and administration of FECA may help standardize the workers' compensation programs within DHS and reduce FECA-related costs across the Department.

Recommendations

We recommend that the Acting Human Capital Officer, U.S. Immigration and Customs Enforcement:

Recommendation #1:

Develop and implement policies and procedures for the effective management of workers compensation cases. The policies and procedures should address:

- Reviewing claims for completeness, accuracy, and sufficient evidence;
- Identifying third party liability;
- Challenging questionable claims;
- Recovering salaries for denied cases;
- Managing cases;
- Maintaining records; and
- Training personnel with workers' compensation responsibilities.

Recommendation #2:

Develop and implement a policy for providing light duty assignments to claimants cleared to return to work with restrictions.



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We recommend that the Chief Human Capital Officer, Department of Homeland Security:

Recommendation #3:

Develop and implement policies and procedures that establish Department of Homeland Security and Component requirements for the effective management and administration of *Federal Employees' Compensation Act* programs within the Department.

Management Comments and OIG Analysis

DHS and ICE provided comments to the draft report and copies of their responses in their entirety are included in appendix B. ICE also provided technical comments, which we incorporated as appropriate.

DHS and ICE agreed with our recommendations for improvements to the management and oversight of their workers' compensation programs. According to ICE, it started using the Employees' Compensation Operation and Management Portal in June 2013 and began deployment of a second phase of the portal in February 2014. This system will reportedly enable ICE staff to download case files to aid in case management. Additionally, ICE indicated that it had received approval to obtain a medical case management services contract, which will reduce challenges associated with returning injured employees to work. The following are DHS's and ICE's responses to the report recommendations and our analysis.

ICE Response to Recommendation #1: ICE concurred with the recommendation that it develop and implement policies and procedures for the effective management of workers' compensation cases. According to ICE, its draft workers' compensation program directive and standard operating procedure are proceeding through its internal review and approval process. The Office of Human Capital will begin implementing the policies and procedures once the documents are approved. ICE intends to complete its planned corrective actions by June 30, 2015.

OIG Analysis: The actions ICE proposes satisfy the intent of the recommendation. This recommendation is resolved, but will remain open until ICE provides support that the directive and standard operating procedures are approved and planned implementation actions are completed.



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ICE Response to Recommendation #2: ICE concurred with the recommendation that it develop and implement a policy for providing light duty assignments to claimants cleared to return to work with restrictions. According to ICE, the Office of Human Capital will draft and disseminate a memorandum from agency leadership to program heads, notifying them of the need to provide limited/light duty to work-related injured employees, examples of such options, and the associated cost savings to ICE. ICE intends to complete its planned corrective actions by September 30, 2014.

OIG Analysis: Although ICE concurred with this recommendation, its corrective action plan does not fully satisfy the intent of the recommendation. The intent of the recommendation was for ICE to institute a component-wide limited/light duty policy enforceable at each ICE location. It is not clear from ICE's response if the proposed memorandum would require individual field offices to provide limited/light duty positions or establish a component-wide program to return employees to work. We visited 18 ICE field offices, some of which provided light duty, while others did not have or had recently established a policy. A limited/light duty policy should provide guidance and timelines for returning injured employees to work within physicians' restrictions and be enforceable at each ICE location. This recommendation is unresolved and open until ICE provides additional information that demonstrates its proposed corrective actions satisfy the intent of the recommendation.

DHS Response to Recommendation #3: DHS concurred with the recommendation to develop and implement policies and procedures that establish DHS and component requirements for management and administration of FECA at DHS. According to DHS, a revised draft management directive was cleared by the Office of the Chief Human Capital Officer and was forwarded for clearance through the Office of the Under Secretary for Management in May 2014. The directive will establish a department-wide policy governing the workers' compensation program, to include ensuring components pursue efficiencies in controlling FECA claim costs and limiting unnecessary program costs by aggressively providing work to all injured employees as soon as possible after an injury or illness, within physicians' restrictions. DHS intends to complete its planned corrective actions by September 30, 2014.

OIG Analysis: The DHS response satisfies the intent of the recommendation. This recommendation is resolved, but will remain open until the DHS management directive for the workers' compensation program is approved and issued.



Appendix A

Objectives, Scope, and Methodology

DHS OIG was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

Our audit objective was to determine whether ICE is effectively managing the FECA program to minimize lost workdays and FECA-related compensation costs.

We reviewed applicable laws, regulations, and guidance concerning workers' compensation. In addition, we reviewed prior OIG audit reports and U.S. Government Accountability Office reports on the Federal workers' compensation program.

We interviewed DHS' Workers' Compensation Program Manager and officials from ICE's Office of Human Capital, including ICE's Workers' Compensation Program Assistant Director and Program Manager. Additionally, we interviewed workers' compensation specialists and other ICE staff assigned to selected field offices and reviewed case files maintained in those offices.

We conducted site visits at 18 ICE office locations in 9 cities: Washington, DC; Fairfax, Virginia; Houston and San Antonio, Texas; Plantation and Miami, Florida; and Los Angeles, Long Beach, and San Diego, California.

To determine whether ICE is effectively managing its workers' compensation program, we assessed ICE's claims processing, case management and process for reviewing the DOL quarterly chargeback reports. We selected a judgmental sample of 184 cases to determine whether ICE properly processed claims and managed workers' compensation cases. We did not evaluate 52 of the 184 cases for claims processing because either the injury occurred prior to the creation of ICE or the claim form was missing. We evaluated the 184 cases for case management. We used DOL's FY 2012 annual chargeback report as the universe of FECA cases for our sample selection. The FY 2013 annual chargeback report was not available when we started the audit. We determined that data in DOL's FY 2012 annual chargeback report was sufficiently reliable for selecting our sample.

Our judgmental sample consisted of periodic roll, daily roll, and medical payments only cases. These cases represented the greatest number of cases and highest dollar amounts on the FY 2012 chargeback report. Periodic roll cases represent claimants not working and on long-term disability. Daily roll cases are short-term cases in which the



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claimant is expected to return to work in a relatively short period or the claimant may be working and receiving pay for time lost because of medical treatment. Medical payments only cases represent claimants who have returned to work or retired but continue to have medical bills. In addition, we selected cases that were closed because benefits had been denied to test whether ICE was adjusting leave balances of or recovering overpayments from claimants with denied claims. Table 1 shows the breakdown of our sample by case type.

Table 1: Sample of FECA Cases by Case Type

| Case Type | Number of cases | FY 2012 FECA Benefits |
|-----------------------|------------------------|------------------------------|
| Periodic Roll | 50 | \$3,789,801 |
| Daily Roll | 40 | \$501,817 |
| Medical Payments Only | 66 | \$1,104,826 |
| Case Closed/Denied | 28 | \$15,020 |
| Total | 184 | \$5,411,464 |

We conducted this performance audit between June 2013 and January 2014 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
Management Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 19, 2014

MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General for Audits
Office of Inspector General

FROM: Jim H. Crumacker, CIA, CFE 
Director
Departmental GAO-OIG Liaison Office

SUBJECT: Management Response to OIG Draft Report, "U.S. Immigration and Customs Enforcement's Management of the Federal Employees' Compensation Act Program" (Project No. OIG-13-068-AUD-ICE)

Thank you for the opportunity to review and comment on this draft report. We appreciate the Office of Inspector General's (OIG's) work in planning and conducting its review and issuing this report.

The draft report contained three recommendations, two for the U.S. Immigration and Customs Enforcement (ICE) Acting Human Capital Officer and one for the U.S. Department of Homeland Security (DHS) Chief Human Capital Officer (CHCO), which is part of the Directorate of Management (MGMT). Both ICE and MGMT concur with their respective recommendations and have already begun taking actions to implement the recommendations.

ICE is dedicated to ensuring the initiatives, programs, policies, and actions taken in support of the U.S. Department of Labor (DOL) Office of Workers' Compensation Programs (OWCP) are having the intended positive effect in contributing to the successful administration of the Workers' Compensation Program. As a result, ICE began using the Employees' Compensation Operation and Management Portal (ECOMP) in June 2013. In February 2014, the ICE Office of Human Capital (OHC) began deployment of Phase II of ECOMP – Agency Reviewer Imaging (ARI). This enables points of contacts (POCs) to download case files at their desk to aid in case management. When using ECOMP, there are mandatory fields that must be completed by both the employee and supervisor prior to completing the application process, and electronically submitting the form to DOL, OWCP, which should eliminate incomplete forms. It also should be noted, that an agency supervisor and/or Workers' Compensation Program POC cannot withhold forms from submission to DOL, OWCP because of limited information (See 20 CFR 10.110 (c)).

Recently, ICE OHC received approval for a medical case management services contract. Services provided by the contract will reduce challenges associated with bringing injured



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employees back to work in an expeditious manner by using medical professionals familiar with technical language found in medical documentation. Previously, ICE OHC tried to obtain medical case management services, but had been unsuccessful due to budget constraints.

Below, find the formal management response for each recommendation in the draft report. The responses include actions taken, a continued action plan for remediation, and an estimated completion date (ECD), as appropriate.

Recommendation 1: That the ICE Acting Human Capital Officer develop and implement policies and procedures for the effective management of workers' compensation cases. The policies and procedures should address:

- Reviewing claims for completeness, accuracy, and sufficient evidence;
- Identifying third party liability;
- Challenging questionable claims;
- Recovering salaries for denied cases;
- Managing cases;
- Maintaining records; and
- Training for personnel with workers' compensation responsibilities.

Response: Concur. A Workers' Compensation Program Directive and Standard Operating Procedure (SOP) are currently with the Principal Deputy Assistant Secretary for approval. In lieu of a signed formal directive and SOP, to ensure program consistency and effectiveness, OHC has:

- Developed quick reference sheets for Compensation Act (CA) Forms 1, 2, 2a, and 7. (Located at https://insight.ice.dhs.gov/mgt/hc/Pages/workers_compensation/index.aspx)
- Developed a Workers' Compensation Business Process Flow to provide guidance to employees, supervisors, and workers' compensation program POCs. The process flow includes activity and decision boxes discussing how to check forms for completeness and accuracy and what to do if the documents are incomplete. (Located at <https://insight.ice.dhs.gov/mgt/hc/Documents/pdf/workers-comp-process-flow.pdf>)
- Partnered with the Office of Training and Development to develop a chapter for the Supervisory Desk Reference Guide devoted specifically to workers' compensation. This chapter provides detailed guidance to supervisors and managers. (Located at <https://spapps.ice.dhs.gov/sites/tec/sdr/Pages/Welcome.aspx>)

Action Plan

1. Once the directive and SOP are signed, the implementation phase will begin with OHC conducting webinars on the following topics:
 - a. Workers' Compensation - Supervisor's Responsibilities/Third-Party Claims/Challenging Claims
 - b. Recovering Continuation of Pay for Denied Cases and Recordkeeping
 - c. Workers' Compensation Case Management



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- d. Limited Duty and Job Offers under the Federal Employees' Compensation Act (FECA)
2. ICE will notify DOL, OWCP in writing when third-party liability is detected in a claim, so the appropriate development action can take place to potentially recoup funds from the third-party entity.
3. Continuation of Pay (COP) reports are routinely received from DHS and distributed to the field for review and reconciliation. OHC will develop a follow-up mechanism to ensure corrective actions are taken for overpayments during the COP period and/or termination from employment. OHC disseminates quarterly workers' compensation chargeback reports to POCs for review and reconciliation. Moving forward, POCs will be required to provide written confirmation that the report has been reviewed and reconciled.
4. OHC will emphasize the need for POCs to use the newly deployed ARI (Phase II of ECOMP) to specifically review:
 - a. Cases for overpayments
 - b. Dual benefits
 - c. Return-to-work capacity
 - d. Annual forms for long-term cases
5. OHC will highlight the necessity of timely reporting to managers when an injured employee has regained a degree of return to work capacity, and then periodically follow up on the outcome; including documenting each step in the process.
6. OHC will lead the effort in creating template letters to DOL, OWCP addressing workers' compensation problem areas related to performance of duty (e.g., injuries occurring in parking lots, during "working" hours, during lunch, etc.).
7. OHC will institute an orientation program for newly assigned collateral duty Workers' Compensation Program POCs, as well as ensuring that annual workers' compensation training is provided to POCs related to maintaining and documenting FECA records.

In addition, continuing education webinars will be created to remind the POCs of specific duties pertaining to workers' compensation case management such as:

- a. COP (all aspects)
- b. Challenging Claims
- c. FECA Records Management
- d. Limited-Duty Job Offers/Permanent Job Offers
- e. Roles and Responsibilities
- f. Wage Loss
- g. DOL's Electronic Systems
- h. Program Changes



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ECD: June 30, 2015. We request that the OIG consider this recommendation resolved.

Recommendation 2: That the ICE Acting Human Capital Officer would develop and implement a policy for providing light duty assignments to claimants cleared to return to work with restrictions.

Response: Concur. In lieu of formal ICE policies (Workers' Compensation Program Directive and SOP) concerning light-duty assignments, the ICE quick reference sheets mentioned above (for Forms CA-1 and CA-2) include an action item for workers' compensation POCs to undertake to ensure that limited/light duty has been discussed with the employee.

In addition, the ICE Workers' Compensation Business Process Flow includes instructions to POCs about contacting the employee concerning immediate limited/light duty work possibilities, monitoring claim status to consider opportunities for limited/light-duty, and discussing denial of claims and recouping COP.

Action Plan

ICE OHC will draft and disseminate a memorandum from agency leadership to program heads notifying them of the need to provide limited/light duty to work-related injured employees, examples of such options, and the associated cost savings to ICE.

ECD: September 30, 2014. We request that the OIG consider this recommendation resolved.

Recommendation 3: That the DHS Chief Human Capital Officer develop and implement policies and procedures that establish Department of Homeland Security and Component requirements for the effective management and administration of Federal Employees' Compensation Act (FECA) programs within the Department.

Response: Concur. A Management Directive for the Worker's Compensation Program was in Departmental routing when the Office of the Chief Human Capital Officer requested that it be returned in October 2012. This action was taken in order to update the contents in anticipation of a more robust medical case management approach. The revised draft Management Directive was cleared through the Office of the Chief Human Capital Officer and forwarded for clearance through the Office of the Under Secretary for Management in May 2014. The new Directive will establish the Department-wide policy governing the Worker's Compensation Program under the FECA, including:

- Establishing and maintaining an effective and comprehensive Worker's Compensation Program that is consistent with the FECA and the DOL's regulations;
- Ensuring components pursue efficiencies in controlling FECA claim costs, such as implementing a proactive medical case management program/system;
- Establishing and maintaining an internal organizational structure to effectively manage the number of FECA compensation cases;
- Establishing and maintaining an efficient claims intake process and system of records to effectively manage worker's compensation cases;



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- Reviewing, investigating and addressing accident and/or injury information to ensure program efficiency;
- Ensuring a systematic and timely process is in place to review, verify, and correct data contained in the DOL quarterly chargeback reports and annual chargeback bills;
- Limiting unnecessary program costs by aggressively providing work to all injured employees as soon as possible after an injury or illness, within physicians' restrictions; and
- Investigating and/or appropriately forwarding to DHS or DOL investigative authorities, those claims, information, and concern that do not foster an efficient worker's compensation program.

ECD: September 30, 2014. We request that the OIG consider this recommendation resolved.

Again, thank you for the opportunity to review and provide comments on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.



Appendix C

Case Studies on ICE's Workers' Compensation Cases

| Case Studies |
|--|
| Claims Processing |
| <p>A claimant was injured while exercising off work premises during lunchtime. The employee was not participating in a Federal fitness program and the supervisor did not make note of this fact or explain why the injury should be covered. Benefits received in FY 2012 totaled approximately \$9,000.</p> |
| <p>A claimant was injured while exercising off work premises and outside of working hours. The supervisor did not provide information on why the employee was considered in the performance of duty. Furthermore, in the medical documentation provided, the physician did not answer whether he believed that employment activity caused or aggravated the injury. Benefits received in FY 2012 totaled more than \$1,000.</p> |
| <p>A claimant was injured while driving a government vehicle. The claim did not provide sufficient detail about the circumstances of the injury, and the supervisor did not provide information to clarify whether the injury occurred in the performance of duty. In addition, the supervisor did not include applicable third-party information. Benefits received in FY 2012 totaled more than \$3,000.</p> |
| Case Management |
| <p>A claimant submitted a claim for an occupational disease; however, no documentation of the claim was on file. Soon after submitting the claim, the claimant left ICE to work in another Federal agency and subsequently filed additional claims. The workers' compensation specialist was not aware of the claimant's medical status and her responsibilities regarding management of the case. Benefits received in FY 2012 totaled more than \$66,000.</p> |
| <p>A claimant injured more than 40 years ago has received compensation on the periodic roll since September 1982. ICE has not requested or obtained case documentation from DOL to determine whether the medical status of the claimant justifies continued compensation. Benefits received in FY 2012 totaled approximately \$66,000. There is evidence that this individual has earned income from self-employment while receiving workers' compensation. Claimants are required to report all employment to DOL for determination of changes in wage-earning capacity. However, there is no evidence that the income was reported to DOL.</p> |



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Case Studies

Case file documentation indicated a claimant could not perform his previous job. However, the claimant was not medically restricted from working in another position. There was no documentation showing that the agency made efforts to return the claimant to work in a light duty or another position. As of June 2013, the claimant had received more than \$256,000 after being cleared to return to work.

The claimant had a work-related injury that did not prevent her from working, with restrictions. DOL instructed ICE to offer the claimant light duty, but there is no evidence that ICE did so. According to the claimant's doctor, the claimant also suffered from a serious non-work-related disease, which prevented her from working. Years later, DOL sought confirmation from the claimant's doctor that the claimant's work-related injury continued to prevent her from returning to work. There is no evidence that ICE periodically reviewed the claimant's condition to see if she still suffered from the initial work-related injury that entitled her to workers' compensation. As of June 2013, the claimant had received more than \$231,000 after being cleared to return to work.

Case file documentation indicated a claimant could work in a limited duty capacity, but the claimant continued to receive compensation. However, there is no documentation to support entitlement to continued compensation. As of June 2013, the claimant had received more than \$179,000 after being cleared to return to work.



Appendix D

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Appendix E

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