

**U.S. Department of Labor  
Office of Workers' Compensation Programs  
Advisory Board on Toxic Substances and Worker Health  
Membership Balance Plan**

**1. Name**

Advisory Board on Toxic Substances and Worker Health (Advisory Board or Committee)

**2. Authority**

The authority to establish the Advisory Board comes from Section 3687 of Pub. L. 106-398, which was added to the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 USC 7384 *et seq.*, by Section 3141(a) of the National Defense Authorization Act of 2015 (NDAA), Pub. L. 113-291, and Executive Order (EO) 13699 (June 26, 2015), as updated by the National Defense Authorization Act of 2020, Pub. L. 116-92. The Advisory Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (5 U.S.C. App. 2), and its implementing regulations, which set forth standards for the formation and use of advisory committees.

**3. Mission/Function**

EEOICPA was enacted to provide fair and timely benefits to workers who contracted illnesses related to exposure to radiation or other toxic substances while employed by the Department of Energy (DOE) or its contractors. The statute specifically provides lump-sum compensation and medical benefits to eligible DOE nuclear weapons workers (including employees, former employees, contractors, and subcontractors) and lump-sum compensation to certain survivors if the worker is deceased.

Pursuant to EO 13179, 65 Fed. Reg. 77487 (Dec. 11, 2000) and § 7385s-10(a) of EEOICPA, 42, U.S.C. § 7385s-10(a), the Secretary of Labor (Secretary) is primarily responsible for administering the compensation program established under EEOICPA. New Section 3687(a) of EEOICPA mandates that the President establish and appoint an Advisory Board on Toxic Substances and Worker Health, and by EO 13699, the President delegated that responsibility to the Secretary.

Section 3687(b) and EO 13699 mandate that the Advisory Board provide advice to the Secretary on, (1) the Site Exposure Matrices of the Department of Labor (DOL); (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under EEOICPA subtitle B related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of DOL and reports of such hygienists and physician to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally; and (6) such other matters as assigned by the Secretary.

The Advisory Board is also tasked with, when necessary, coordinating exchanges of data and findings with the existing Advisory Board on Radiation and Worker Health.

#### 4. Points of View

- a. **Balance.** The Advisory Board will be composed of 12 to 15 members appointed by the Secretary. Pursuant to Section 3687(a)(2), membership must reflect a balance of perspectives from the scientific, medical, and claimant communities. All input received will be considered and decisions will be made based solely on how the Advisory Board may best accomplish its mission, as well as help the Department fulfill its statutory obligations under both Section 3687(a) of EEOICPA and FACA.
- b. **Relative Distribution.** The Advisory Board will reflect a reasonable balance of scientific, medical, and claimant representatives, to address the tasks assigned to the Advisory Board. DOL intends that one-third of the membership will be from the scientific community, one-third from the medical community, and one-third from the claimant community.
- c. **Special Government Employees (SGEs).** Members are SGEs unless they are *ex officio* federal members. It is important that the Advisory Board exhibit a high degree of independence, both to maintain public trust, and to fulfill its statutory responsibility to evaluate and offer opinions independently of the Secretary's administration of EEOICPA.

#### 5. Other Balance Factors

The agency considers representation on the Advisory Board to balance expertise spanning the operationally and geographically diverse employees of the nuclear weapons facilities covered by the EEOICPA program.

Except as otherwise required by law, Advisory Board membership will be consistent with the applicable FACA regulations, as follows. Membership will be fairly balanced. Members will come from a cross-section of those directly affected, interested, and qualified as appropriate to the nature and functions of the Advisory Board and as specified by Section 3687(a)(2). The Advisory Board's composition will therefore depend on several factors, including, (i) the Advisory Board's mission; (ii) the geographic, ethnic, economic, or scientific impact of the Advisory Board's recommendations; (iii) the types of specific perspectives required, as previously outlined; (iv) the need to obtain divergent points of view on the issues before the Advisory Board; and (v) the relevance of State, local or tribal governments to the development of the Advisory Board's recommendations.

To the extent permitted by FACA and other laws, Advisory Board membership should also be consistent with achieving the greatest impact, scope, and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, age, race, gender, disability, sexual orientation, and gender identity.

Pursuant to Section 3687(d), no member, employee or contractor can have any financial interest, employment, or contractual relationship (other than a routine consumer transaction) with any person who has provided or sought to provide, within two years of their

appointment or during their appointment, goods or services for medical benefits under the EEOICPA.

Members will serve for two years, as specified in the members' appointment letters from the Secretary. At the discretion of the Secretary, members may be appointed to successive terms and removed at any time. Appointments to vacancies occurring during the terms of such appointments will be for the unexpired portions of the terms.

## **6. Candidate Identification Process**

The agency will submit for publication a notice in the *Federal Register* announcing the number of vacancies, the nomination submission requirements, and the period for submitting nominations. The agency will also utilize existing outreach tools, such as email groups and social media tools, to publicize vacancies and identify as many potential candidates as possible. The agency will consider the demonstrated qualifications of the nominee as they relate to the specified category of membership for which that nominee is being considered (scientific, medical or claimant community), the professional experience of the nominee, and the demonstrated knowledge of the nominee on the issues as they relate to the Advisory Board's purpose and scope as defined in section 3687(b)(1). The agency will report on its efforts to the Secretary.

To promote widespread notification of the vacancies, OWCP will work with others in DOL, other federal government agencies, including the DOE and Health and Human Services, advocacy groups with a history with or knowledge of the EEOICPA program, and diverse stakeholder groups throughout the country such as scientific, medical, academic, and research institutions, as well as professional organizations, academia, and other qualified individuals in underserved communities, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. OWCP will make every effort to ensure that its outreach includes individuals in underserved communities as well as organizations serving these underserved communities. To the extent that particular points of view are needed to meet this balance plan, the agency's outreach may include notification to those who have had limited awareness of and participation in the EEOICPA program, the Advisory Board, and related activities but whose interest may be implicated or affected by the Advisory Board's work or recommendations.

## **7. Subcommittee Balance**

This section is not applicable.

## **8. Date Updated**

June 2021