

# U.S. Department of Labor

Office of Inspector General—Office of Audit

## OFFICE OF WORKERS' COMPENSATION PROGRAMS



## OWCP NEEDS TO IMPROVE ITS MONITORING AND MANAGING OF DEFENSE BASE ACT CLAIMS

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**U.S. Department of Labor  
Office of Inspector General  
Office of Audit**

## **BRIEFLY...**

Highlights of Report Number **03-11-001-04-430**, to the Acting Director of the Office of Workers' Compensation Programs.

### **WHY READ THE REPORT**

The Office of Inspector General (OIG) initiated an audit of the Defense Base Act of 1941, (DBA), Title 42, United States Code, Section 1651 et seq., which requires all federal government contractors (employers) and subcontractors to provide workers' compensation insurance for their employees (U.S. citizens and foreign nationals) who work outside of the United States. DBA insurance is provided by private insurers or through self insurance, and is intended to be a counterpart to domestic workers' compensation coverage. As such, it is the sole recourse for U.S. and foreign workers who suffer on-the-job injuries or death while engaged in work in foreign locations under a federal government contract. DBA is administered by the Department's Office of Workers' Compensation Programs (OWCP), Division of Longshore and Harbor Workers' Compensation (DLHWC), which is responsible for ensuring that workers' compensation benefits are provided for covered employees promptly and correctly. Benefit payments reported by insurers in Calendar Year 2009 totaled \$242 million.

### **WHY OIG CONDUCTED THE AUDIT**

The audit objective was to answer the following question:

To what extent does OWCP ensure that employers and insurers are adhering to DBA claims-processing requirements?

The audit covered OWCP's oversight of the DBA claims process as of May 2010, excluding OWCP's involvement in resolving disputes and contested cases. We reviewed a random statistical sample of 172 of 11,247 open cases where the claimant's date of injury occurred between January 1, 2004, and December 31, 2009.

### **READ THE FULL REPORT**

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2011/03-11-001-04-430.pdf>.

**March 2011**

## **OWCP NEEDS TO IMPROVE ITS MONITORING AND MANAGING OF DEFENSE BASE ACT CLAIMS**

### **WHAT OIG FOUND**

Although OWCP has been proactive in addressing DBA issues at the program level as well as active in resolving disputes, we found improvements need to be made in case-file management. Our testing results for the sampled DBA cases disclosed (1) employers did not always report claimant injuries in a timely manner; (2) insurers did not always provide timely initial compensation payments and OWCP did not ensure claimants received the statutory assessment for late payments; (3) insurers did not always report the notice of final payment or suspension of payment in a timely manner; (4) OWCP did not always notify claimants within the required timeframe when their claims were controverted (objected by the employer); (5) employers or insurers did not always respond in a timely manner to OWCP requests for information; and (6) OWCP assessed penalties in less than one percent of the instances in our sampled cases in which employers and insurers did not meet DBA reporting requirements.

These conditions can be attributed to the challenges OWCP faced in administering DBA, a program that was enacted during World War II but has not been modified or adequately staffed to take into consideration the increased use of contractors and foreign nationals in the recent wars. However, we concluded that OWCP can improve its monitoring of DBA case management so that problems are identified and appropriate corrective action promptly taken. As a result, OWCP could not ensure workers injured while employed in dangerous war zones and supporting the U.S. military overseas efforts, received proper and timely workers' compensation benefits under DBA.

### **WHAT OIG RECOMMENDED**

OIG recommended OWCP seek changes to the DBA legislation to reflect the current environment and implement changes to its case management information system to assist management and claims examiners in identifying the problems identified in this audit.

The OWCP Acting Director generally agreed with the recommendations to enhance the DBA data system and revise the DBA statute. While OWCP agreed that it did not always comply with existing regulations to enforce compliance with DBA requirements by using fines and penalties, OWCP believed that doing so would likely be counterproductive to the needs of the injured workers, the contractors, the insurance companies, and OWCP.

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**U.S. Department of Labor**

Office of Inspector General  
Washington, D.C. 20210



March 23, 2011

**Assistant Inspector General's Report**

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The Defense Base Act of 1941, (DBA), Title 42, United States Code (U.S.C.), Section 1651 et seq., requires all federal government contractors (employers) and subcontractors to provide workers' compensation insurance for their employees (U.S. citizens and foreign nationals) who work outside of the United States. Under the DBA provisions, overseas federal military and public works contractors are subject to the same workers' compensation rules, insurance requirements, and benefit schedules as maritime firms covered by the Longshore and Harbor Workers' Compensation Act (Longshore Act). It is intended to be a counterpart to domestic workers' compensation coverage, and as such, is the sole recourse for U.S. and foreign workers who suffer on-the-job injuries or death while engaged in work in foreign locations under government prime contracts and subcontracts. DBA insurance is provided by private insurers or through self-insurance. The DBA is administered by the U.S. Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), Division of Longshore and Harbor Workers' Compensation (DLHWC). DLHWC is responsible for ensuring that workers' compensation benefits are provided for covered employees promptly and correctly.

DOL reported a rapid increase in the number of DBA cases and benefits paid in connection with the wars in Afghanistan and Iraq. New DBA cases opened annually increased from 347 in Fiscal Year (FY) 2002 to 12,255 in FY 2009. Benefit payments reported by insurers increased from \$7.6 million in Calendar Year (CY) 2002 to \$242 million during CY 2009, which is the most recent data available. It is important that these injured workers, many of them U.S. citizens, employed in dangerous war zones, receive proper and timely workers' compensation benefits.

The audit objective was to answer the following question:

To what extent does OWCP ensure that employers and insurers are adhering to DBA claims-processing requirements?

The audit covered OWCP's oversight of the DBA claims process as of May 2010, but did not include OWCP's involvement in resolving disputes and contested cases. We reviewed a random statistical sample of 172 of 11,247 open cases where the claimant's date of injury occurred between January 1, 2004, and December 31, 2009. We analyzed whether OWCP monitored the claims to ensure employers and insurers complied with reporting and benefit payment requirements and assessed penalties for identified instances of non-compliance.

We conducted this performance audit in accordance with 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 on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective. Our objective, scope, methodology, and criteria are detailed in Appendix B.

## RESULTS IN BRIEF

We found that OWCP took action at the program level to address challenges associated with DBA but can make improvements in case-file management to ensure workers' benefits under the DBA were protected. In administering DBA, OWCP faced challenges with managing the rapid increase in DBA cases due to the wars in Iraq and Afghanistan but without an increase in staff resources. OWCP provided educational seminars on DBA requirements to insurers, contractors, contracting agencies, and attorneys; and posted forms and instructions, including ones in Arabic, on its website to make information available about DBA and its benefits to workers around the world. OWCP also worked with the insurance industry leadership to address major claim-processing issues, and it developed new Government Performance and Results Act (GPRA) goals in FY 2010 to measure the timeliness of reporting injuries and making the first benefit payments.

Although OWCP has been pro-active in addressing DBA issues at the program level as well as active in resolving disputes, we found improvements need to be made in case-file management. We found that 86 percent of the cases we reviewed did not meet one or more of the criteria used for ensuring that workers received DBA protection related to injury reporting, compensation payments, notification of controverted claims, and responses to OWCP information requests. Our testing results for the sampled DBA cases disclosed the following:

- Employers did not always report claimant injuries in a timely manner. Based on our statistical sample, we are 95 percent confident that at least 61 percent, and no more than 74 percent, of the 11,247 cases in our universe showed the employer did not report claimant injuries within the required 10 days of the date of employer knowledge of the incident. We determined that 38 percent of the employers in our sample were more than 60 days late in reporting claimant injuries to OWCP.

- Insurers did not always provide timely initial compensation payments, and OWCP did not ensure claimants received the statutory 10 percent assessment for late payments. Based on our statistical sample, we are 95 percent confident that at least 15 percent, and no more than 27 percent, of the cases in our universe of 11,247 cases showed that the first compensation payment was not paid within the required time frame. We determined that 44 percent of these payments in our sample were more than 60 days late.
- Insurers did not always report the notice of final payment or suspension of payment in a timely manner; OWCP did not always notify claimants within the required timeframe when their claims were controverted (objected by the employer); and employers or insurers did not always respond in a timely manner to OWCP requests for information. Finally, DLHWC assessed penalties in less than one percent of the instances in our sampled cases in which employers and insurers were late in meeting reporting requirements and DLHWC information requests.

These conditions can be attributed to the challenges OWCP faced in administering DBA, a program that was enacted during World War II but has not been modified or adequately staffed to take into consideration the current use of contractors and foreign nationals in the wars in Iraq and Afghanistan, and the rapid increase in DBA cases that have resulted from these wars. OWCP can improve its monitoring of DBA case management so that problems are identified and appropriate corrective action promptly taken. In the area of penalty assessments, we found a need for centralized guidance regarding when penalties should be assessed to assist with program compliance. As a result, OWCP cannot ensure that workers — many of them U.S. citizens — injured while employed in dangerous war zones and supporting the U.S. military overseas efforts, receive proper and timely workers' compensation benefits under DBA.

We recommended the Acting Director of OWCP seek changes to the DBA legislation to reflect the current environment and develop reports from its case management information system to assist management and claims examiners in identifying the problems identified in this audit. We also recommended that OWCP require insurers to report initial compensation payment within an established timeframe so that claims examiners can ensure it was paid timely and if not, ensure that the claimant received the proper late payment assessment. Finally, we recommended that OWCP establish a strategy that will provide the uniform use of penalty assessment at the DLHWC District Office level and improve employers' and insurers' compliance with DBA claims-processing requirements.

## **OWCP RESPONSE**

In response to our draft report, the Acting Director of OWCP stated that the claims processing requirements cited in the report were enacted during World War II. He

indicated that processing DBA claims in the current situation is completely different; noting that claims from American workers are complicated by various circumstances that did not exist previously, and information for foreign contract workers is simply not available to allow insurers to file reports or pay benefits within World War II era statutory requirements.

The OWCP Acting Director agreed that OWCP did not always comply with existing regulations to enforce compliance with DBA requirements. However, OWCP believed that doing so would likely be counterproductive to the needs of injured workers, the contractors, the insurance companies, and OWCP.

The OWCP Acting Director's response is included in its entirety as Appendix D.

## **OIG CONCLUSION**

Our report acknowledges that OWCP is operating DBA under an outdated statute that does not recognize the many changes that have occurred since its passage. Accordingly, we have included a recommendation that OWCP seek legislative changes to the DBA.

We also do not dispute OWCP's claim that enforcing compliance with existing DBA requirements may be counterproductive. However, regardless of the standard for timeliness that is used, OWCP needs to have controls in place to flag reports and payments that are not timely, and agency management needs to monitor the status of DBA claims and follow up on those judged to be untimely.

## **RESULTS AND FINDINGS**

### **Objective — To what extent does OWCP ensure that employers and insurers are adhering to DBA claims-processing requirements?**

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*OWCP needs to improve internal controls in monitoring and managing DBA cases because untimely payment of compensation may pose economic hardship to injured workers.*

We found that OWCP has taken action at the program level to address challenges associated with DBA but can make improvements in case-file management to ensure workers' benefits under DBA are protected. In administering DBA, OWCP faced challenges with managing the rapid increase in DBA cases due to the wars in Iraq and Afghanistan, but without an increase in staff resources. OWCP dealt with employers, insurers, and workers in war zones; communicated with war zone claimants in ways that would not cause them to be targeted and harmed by insurgents; and handled complex claims issues such as Post Traumatic Stress Disorder (PTSD) cases, which are complicated by the need for specialized evaluations, reports, and treatments all based

on symptoms that can arise years after a traumatic experience. To address these and other issues, OWCP provided educational seminars on DBA requirements to insurers, contractors, contracting agencies, and attorneys on DBA requirements; posted forms and instructions, including ones in Arabic, on its website to educate workers around the world about DBA and its benefits; worked with the insurance industry leadership to address major claim process issues such as PTSD claims; developed new GPRA goals in FY 2010 to measure the timeliness of injury reports and first payment of benefits; and created a website to post “industry report cards” showing the results of these measurements. We also observed that DLHWC staff at its District Offices spent their efforts to address claimant complaints and informally and formally resolve disputes between claimants, employers, and insurers.

Although OWCP has been proactive in addressing DBA issues at the program level and active in resolving disputes, we found improvements need to be made in case-file management to ensure workers’ benefits under DBA are protected.

**Finding — OWCP ensured to a limited extent that workers' DBA benefits were protected.**

OWCP ensured to a limited extent that workers’ benefits under DBA were protected. In our sample of 172 cases, we found that 86 percent (148 cases), did not meet one or more of the critical criteria used for ensuring that workers receive this protection. Our testing results for the sampled DBA cases disclosed the following:

- Employers did not always report claimant injuries in a timely manner.
- Insurers did not always provide timely initial compensation payments, and OWCP did not ensure claimants received the statutory 10 percent assessment for late payments.
- OWCP did not always have documentation of initial compensation payments.
- Insurers did not always report the notice of final payment or suspension of payment in a timely manner.
- OWCP did not always notify claimants within 10 days that their cases were controverted (objected by their employer or the insurer).
- Employers or insurers did not always respond in a timely manner to OWCP for requests for information.
- DLHWC assessed penalties in less than one percent of the instances in our sample, in which employers and insurers were late in meeting reporting requirements and DLHWC information requests.

Although these conditions can be attributed in part to the challenges OWCP faced in administering DBA — a program that was enacted during World War II but has not been modified or adequately staffed to take into consideration the current use of contractors and foreign nationals in the wars in Iraq and Afghanistan, and the rapid increase in DBA cases that have resulted from these wars — they can also be attributed to weaknesses in OWCP’s ongoing monitoring of DBA case management. OWCP’s monitoring process did not systemically identify problems at the case-file level so that appropriate action could be promptly taken. While OWCP did track case workload, case inventories, status of disputes and informal conferences, OWCP relied on claimant complaints to initiate additional oversight action in managing and monitoring DBA claims. In the area of penalty assessments, we found a need for centralized guidance regarding when penalties should be assessed to assist with program compliance. As a result, OWCP cannot ensure that workers — many of them U.S. citizens — injured while employed in dangerous war zones and supporting the U.S. military overseas efforts, receive proper and timely workers’ compensation benefits under DBA.

The implementing regulations for DBA are in Title 20, Code of Federal Regulations (20 CFR), Employee Benefits, Chapter VI, Subchapter A - Longshoremen’s and Harbor Workers’ Compensation Act and Related Statutes. Subpart B - Claims Procedures, Part 702 contains various requirements related to the claims process.

The DLHWC Procedures Manual contains the procedures DLHWC District Office claims examiners are to follow in case initiation, evaluation, adjudication, and medical care. It requires claims examiners to review recently opened cases within 30 days to ensure compensation payments are provided on a timely basis, appropriate medical care is being provided, and the injured worker is promptly informed when entitlement to compensation is controverted by the employer or insurer.

To determine to what extent workers’ benefits were protected under DBA, we statistically sampled 172 open DBA cases from a population of 11,247. The following provides the results for the sampled DBA cases (see Exhibits 1 and 2 for statistical results and the projections discussed below).

**Employers did not always report claimant injuries in a timely manner.**

We found that employers did not report claimant injuries in a timely manner for 117 of the 172 cases (68 percent) sampled. Based on our statistical sample results, we are 95 percent confident that at least 6,910 (61 percent) cases and no more than 8,408 cases (74 percent) in our universe of 11,247 cases showed the employer did not report claimant injuries within the required 10-day period. Of the 117 cases in our sample in which the employer did not report the claimant injury timely, 43 (38 percent) were more than 60 days late. Based on our statistical sample results, we are 95 percent confident that for at least 2,343 (21 percent) cases and no more than 3,330 (30 percent) cases in our universe of 11,247, employers were more than 60 days late in reporting claimant injury.

20 CFR, Part 702.201(a), requires employers to furnish the DLHWC District Director a report of an employee's injury or death within 10 days, or 10 days from the date an employer has knowledge of an employee's injury or death. The form normally used to report injuries or deaths is the LS-202, Employer's First Report of Injury or Occupational Illness.

Without timely notification of injury, OWCP is not aware of potential delays so it can take action necessary to ensure the injured workers receive benefits to which they are entitled. Additionally, untimely notification of injury to OWCP means that injured workers will not receive the basic information about their rights to benefits and how to file claims within the required time frames.

OWCP officials told us they recognized that delays in reporting injuries — especially for foreign workers arising from remote war zones — are endemic, and DBA employers have great difficulty in meeting the 10-day requirement to submit injury reports to OWCP. They stated this was especially true among subcontractors and foreign contractors, many of whom have no idea of the reporting requirements under DBA or even the concept of workers' compensation. OWCP officials explained they have implemented various strategies to improve employer and insurer compliance with timely injury reporting. OWCP management stated that they meet regularly with managers and executives of the major DBA insurers to show them their performance results, confront them in cases of extreme delays, and discuss ways to improve compliance. OWCP officials told us they are publishing insurer "industry report cards" online as an incentive for them to improve. Taking this into consideration, OWCP believed that a better measurement for timely reporting would be 30 days rather than the statutory 10 days. Therefore, for FY 2010, OWCP implemented a GPRA performance measure to focus on improving the percentage of injury reports submitted within 30 days. OWCP stated it made progress against this new GPRA goal, and by the end of June 2010, 73 percent of the first reports of injuries were received within 30 days.

Our analysis used reporting standards that exist within current federal regulations — 10 days. We do not disagree with OWCP that a better measurement for timely reporting would be 30 days considering the challenges that occurred in the recent wars with the increased use of foreign nationals and subcontractors. However, even with using a 30-day reporting requirement, our audit results still showed a problem with timely reporting in that for 47 percent of the sampled cases, the injury was not reported within 30 days. Our analysis did show a marked improvement for cases opened in FY 2009, which could be attributed to OWCP's strategies to address the problem with untimely reporting of injuries. The following table compares our sample results using the statutory 10-day reporting requirement to the 30-day reporting requirement preferred by OWCP, and the results for the years the cases were opened.

**Table 1 – Comparison of Statutory 10-Day Injury Reporting Requirement to OWCP’s 30-Day GPRA Measure for Injury Reporting**

Year Opened	Total Cases Sampled	Number of Cases in Which Report of Injury Exceeded 10 Days	Percent of Total	Number of Cases in Which Report of Injury Exceeded 30 Days	Percent of Total
2004	9	8	89%	5	56%
2005	10	5	50%	4	40%
2006	17	14	82%	13	76%
2007	20	17	85%	14	70%
2008	32	23	72%	18	56%
2009	84	50	60%	26	31%
Total	172	114	68%	80	47%

**Insurers did not always provide timely initial compensation payments, and OWCP did not ensure claimants received the statutory 10 percent assessment.**

Of the 172 cases sampled, with 65 involving compensation payments, we found that 36 (55 percent) contained an LS-206 that showed the first compensation payment was more than 28 days from the date of knowledge of the injury. We did not consider payments late if the case was controverted<sup>1</sup> in a timely manner. If the employer or insurer controverts the claim, it stops the time requirement until the controversion is resolved. We also did not consider a payment late if there was evidence that the insurer or employer provided the District Director an explanation of conditions causing the installment to not be paid timely. Based on our statistical sample, we are 95 percent confident that for at least 1,737 cases (15 percent) and no more than 3,001 cases (27 percent) in the universe, the insurers did not provide the initial compensation payment within 28 days from the date of knowledge. More than 44 percent of the 36 untimely payments in our sample were more than 60 days late. Based on our statistical sample results, we are 95 percent confident that for at least 602 (5 percent) cases and no more than 1,515 (13 percent) cases in our universe of 11,247, the untimely payments were more than 60 days late.

20 CFR, Part 702.232, requires that first compensation payment is due by the 14th day after the employer has been notified, or has actual knowledge of the injury or death. Part 702.233 provides for a penalty if any installment of compensation payable is not paid within 14 days after it becomes due in an amount equal to 10 percent of the unpaid installment unless the employer files a Notice of Controversion or the employer can demonstrate to the DD that it had no control over conditions causing the installment not

<sup>1</sup> Controverted means a formal denial of responsibility under DBA by an employer or insurer that has to be filed with the District Office within 14 days after the party gains knowledge of the alleged injury.

be paid within the period prescribed. Although called a “penalty” in 20 CFR, Part 702.233, this is actually an assessment that the insurer has to pay the claimant.

The DLHWC Procedures Manual, Chapter 8-202, defined late payments as those after 28 calendar days from the date the employer first obtains knowledge of the injury. The Procedures Manual explained that the regulations require that compensation be paid initially on the 14th day after the employer is notified or aware of the injury, and that all compensation then due shall be paid. Following the initial payment, compensation is to be paid bi-weekly unless the District Director determines otherwise. The usual practice is to pay compensation at 2-week intervals. Since the 10 percent assessment does not apply to the first installment until 14 days after the "due" date, this in effect allows 28 calendar days (from the date the employer first obtains knowledge of the injury) in which to pay the first installment. Compensation is paid when it reaches the claimant. If payment is not made within 28 days, 10 percent additional compensation must be paid. 20 CFR, Part 702.234 requires the employer to immediately report to the District Director the first compensation payment and the suspension of payments. The form normally used to notify OWCP of the first compensation payment to the claimant is the LS-206, Payment of Compensation Without Award.

Untimely payment of compensation obviously poses economic hardship to injured workers who are unable to earn wages due to their work injuries.

OWCP acknowledged that insurers in many cases failed to pay compensation within the statutorily-required timeframe. OWCP stated that delays in payment of benefits, especially to foreign workers in remote third world countries or in war zones, are generally unavoidable. The complexities of war-zone claim adjusting, including lack of worker identity or documentation of employment and payroll, unobtainable medical evidence, and lack of banking infrastructure, result in the insurers simply being unable to establish eligibility for benefits within 28 days. OWCP stated that, since FY 2008, it developed a new GPRA measure to improve the timeliness of first payment of benefits. The performance measure was to improve the percentage of first benefit payments made within 30 days of the day disability (or death benefits) begins. OWCP stated it made progress against this new GPRA goal, and by the end of June 2010, the program result was that 54 percent of the first payments were made within 30 days.

We recognize the challenges insurers have in providing timely compensation payments to foreign workers; however, our audit found problems with timely payments made to workers living in the U.S. Of 36 untimely compensation payments identified in our sample, 19 (53 percent) were to workers living in the United States.

Our analysis did show a marked improvement for cases opened in FY 2009, which could be attributed to OWCP’s strategies to address the timeliness of the initial compensation payment. The following table shows that the percent of case files with compensation payments in our sample that were not timely decreased from a high of 83 percent in 2007 to 35 percent by 2009.

**Table 2 – Percent of Sampled Case files With Untimely Initial Compensation Payments for the Period 2004 to 2009**

Year	Total Number of Cases in Sample	Number of Case files With Compensation Payments	Number of Case files With Untimely Initial Compensation Payments	Percent of Case files With Untimely Initial Compensation Payments to Total Case files With Compensation Payments
2004	9	5	2	40%
2005	10	5	3	60%
2006	17	9	7	78%
2007	20	12	10	83%
2008	32	11	8	73%
2009	84	17	6	35%
Total	172	59	36	40%

OWCP disagreed that it failed to ensure that an additional 10 percent of compensation was assessed in all but 1 of the 36 sampled cases. OWCP stated that the DBA does not provide it the authority to assess an additional 10 percent compensation (erroneously called a “penalty”) for late payment without a controversion. OWCP stated the District Director may recommend payment of the additional compensation, but it does not have statutory authority to require payment. Only an Administrative Law Judge may order such payment. OWCP added that DBA permits the District Director to excuse the payment of the additional compensation upon showing that “owing to conditions over which the insurer has no control,” such installment could not be paid within the prescribed period. OWCP explained that when delays in payment are clearly due to war-zone conditions — inaccessibility to claimants, absence of medical and identity documents, and other obstacles — the Longshore Act permits District Directors to excuse the delay by not requesting that the carrier pay the additional 10 percent compensation.

According to OWCP management, the New York District Director in fact made a blanket waiver to reduce unproductive workload early in the Iraq conflict. The New York District Director decided to consider all claims as controverted so the insurers would not have to meet the statutory timeframe for paying first benefits, which the District Director felt was impossible to meet because of circumstances beyond the insurers’ control. The New York District Director took this action because the majority of DBA claims from foreign workers (and many from U.S. citizens) were not immediately perfected in terms of needed documentation, and insurers routinely contested DBA claims, which overburdened the New York District Office with paperwork.

We agree that the 10 percent compensation payment is not a penalty assessed by OWCP; however, OWCP does have the responsibility to make certain the insurers comply with DBA requirements, unless excused by the District Director. As previously stated, when assessing the timeliness of initial compensation payment, the audit did not

categorize as late converted cases or cases in which evidence showed the District Director excused the assessment payment owing to conditions over which the insurer had no control. Regarding the actions taken by the New York District Director, OWCP implied that the audit should not have taken exception to any of the cases from this District Office. However, during audit field work, neither OWCP officials at the National Office nor the New York District Office provided us with information on the District Director's actions. Therefore, the results of our analysis did not reflect an evaluation of the appropriateness and affect of the District Director's actions. At face value, we question whether the New York District Director's action was reasonable and fair from the claimants' perspective.

**Case files did not always contain evidence of initial compensation payments.**

OWCP did not have documentation of initial compensation payments for 6 (9 percent) of the 65 compensation cases<sup>2</sup> in our sample. These cases did not contain an LS-206 or any other documentation to support the first compensation payment. OWCP did not establish a required timeframe for insurers to report to OWCP the initiation of compensation payments. This conflicts with Title 33, U.S.C., Chapter 18, Section 914(c), which requires immediate notification to OWCP upon the first payment of compensation using the form prescribed by OWCP, the LS-206.

OWCP management told us that not every payment requires an LS-206, and neither DBA nor regulations impose a mandatory requirement or a time frame to file the "Notice of Compensation Without Award" - Form LS-206. OWCP provided the following situations in which the notice is not required:

- Only the LS-208 is required if the compensation is paid for a short period and in one check;
- Some insurers routinely use the LS-208 to report continuing payments in lieu of the LS-206 because the LS-208 allows multiple entries at different compensation rates; or,
- The LS-208 is required in lieu of the LS-206 when a case is settled or first payment on a continuing award is made pursuant to a compensation order.

OWCP stated that it never adopted a time requirement for filing the LS-206. It relied instead on voluntary compliance and insurer education.

We believe that reporting the initial payment is required by Title 33, U.S.C., Chapter 18, Section 914(c). We acknowledge that it can be filed using either the LS-206 or other documentation. Obtaining documentation of first payment would assist OWCP in ensuring that insurers either pay claimants timely or pay the 10 percent compensation

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<sup>2</sup> We determined these were compensation cases because the case files contained an LS-208, Notice of Final Payment or Suspension of Payments.

assessment, unless the reason for the late payment is justified. We considered all forms to be documentation of first payment in our audit.

**Insurers did not always report the notice of final payment or suspension of payment in a timely manner**

Of the 172 cases sampled, 57 had a Notice of Final Payment or Suspension of Payments (LS-208), we found 21 (37 percent) were not reported to OWCP within 16 days from date of last payment. Based on our statistical sample results, we are 95 percent confident that for at least 839 cases (7 percent) and no more than 1,919 cases (17 percent) in our universe of 11,247, the notice of final payment was not provided to OWCP within 16 days after the payment. Of the 21 notices in our sample that were not timely, 48 percent were more than 60 days late. Based on our statistical sample results, we are 95 percent confident that for at least 295 (3 percent) cases and no more than 1,013 (9 percent) cases in our universe of 11,247, the notification of last payment was more than 60 days late.

20 CFR, Part 702.235, requires the employer, insurer, or self-insured employer to report the final compensation payment within 16 days after it is made. The final payment is any of the following: (1) The last payment of compensation made in accordance with a compensation order awarding disability or death benefits; (2) The payment of an agreed settlement; (3) The last payment made pursuant to an agreement reached by the parties through informal proceedings; and (4) Any other payment of compensation which anticipates no further payments under the Act. 20 CFR, Part 702.236, provides that the DLHWC District Director shall assess a civil penalty in the amount of \$110 to any employer failing to provide the final payment notification.

Without receiving timely notification of final payment or suspension of payments, OWCP cannot ensure that the reason for stopping or suspending the payment was proper. Our determination of the number of instances in which insurers were late in meeting reporting requirements excluded LS-208s that were not a notice for final payment, as the LS-208 can be used for reasons other than reporting final payment.

**OWCP did not always notify claimants in a timely manner that their claims were controverted.**

Of the 172 cases sampled, 75 contained a formal denial of responsibility under DBA by an employer or insurer (controverted). For 58 of the 75 cases (77 percent), OWCP did not notify claimants (with an LS-209) within 10 days that their cases were controverted. Based on our statistical sample results, we are 95 percent confident that for at least 3,039 cases (27 percent) and no more than 4,578 cases (41 percent) OWCP did not notify claimants in a timely manner that their cases were controverted. Notifying claimants that their cases were controverted is important so claimants can take timely action to address the dispute.

The DLHWC Procedures Manual, Chapter 2-201.3d, requires that within 10 days after the receipt of the employer's Notice of Controversion, the District Office claims examiner to notify the claimant of the Controversion using the LS-209, Request for Employee's Reply to Employer's Objections.

OWCP management stated there is no statutory requirement for OWCP to serve the Notice of Controversion on the claimant but rather it is the DLHWC Procedures Manual that imposes such a requirement on the District Director. OWCP officials told us the lack of timely notification could be attributed to their efforts to protect the identity of foreign nationals who may be harmed if they were found working for U.S. contractors in war zones. Sending Controversion notifications to these claimants could compromise their safety. Additionally, OWCP stated that when new DBA cases began increasing, almost all the insurers routinely filed a Notice of Controversion in order to provide more time for them to investigate the claim. This increased the workload at the New York District Office, which handles all foreign work claims. Therefore, the NY District Director instructed the insurers to stop filing the Controversion forms (LS-207). We noted that DLHWC did not provide us any documentation to support the New York District Director's instructions to the insurers to stop filing the LS-207s. OWCP explained that for DBA cases served by all other District Offices, the LS-209 was sent to claimants in the regular course of claims processing. OWCP stated that one point to take into consideration is that it may take 2 to 4 weeks for cases to be transferred from the New York District Office<sup>3</sup> to other District Offices because of the volume of cases involved. Sending the LS-209 to claimants within 10 days of receiving the case file from the New York District Office would be considered timely by DLHWC Procedures Manual standards. Likewise, an LS-207 submitted to the wrong District Office by the insurer is sent to the office handling the file, causing delays.

We understand OWCP's efforts to protect the identity of foreign nationals; however, our analysis showed a problem with timely notifying workers in the U.S. that their case was controverted. More than 46 percent of the cases (27 of 58) in our sample represented U.S workers who had an untimely notice that their case was controverted. Additionally, most of these cases were assigned to a District Office other than New York.

**Employers or insurers did not respond in a timely manner to OWCP requests for information.**

Of the 172 cases sampled, 91 contained requests for information from OWCP to the employer or insurer. We found that in 45 of 91 (49 percent) of these cases, the employers or insurers did not respond or did not respond in a timely manner to OWCP. Based on our statistical sample results, we are 95 percent confident that for at least 2,204 cases (20 percent) and no more than 3,664 cases (33 percent) in our universe of 11,247 cases, the employers or insurers did not respond or did not respond timely to OWCP's request for information. Untimely responses to requests for information

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<sup>3</sup> All DBA cases are initiated in the New York District Office and then sent to the DLHWC District Office that has jurisdiction over the area in which the claimant resides. All claimants with foreign residence remain at the New York District Office.

concerning medical or compensation records hamper OWCP's ability to ensure injured employees are treated fairly.

When additional information is needed for a case, the claims examiner sends an LS-216, Requests for Additional Reports, to employers and/or insurers; and responses are due within 30 days.

OWCP stated that there is not a standard time requirement for responses to the LS-216. The standard procedure is for District Office staff to enter a follow up (OWCP refers to this as a "call-up") of anywhere from 30 to 90 days for a response, depending on the information, documents, or actions requested. OWCP explained that when the call-up is due and the employer or insurer has not responded, the District Office staff will send a second request and a renewed call-up. OWCP believes this is an effective tool, and for the most part, non-DBA employers and insurers respond within a reasonable time to the Form LS-216. However, OWCP said it recognizes that DBA insurers are less responsive and often the District Office staff has to issue second and third requests. OWCP stated this is one of the biggest complaints the District Offices have against the insurers. OWCP believes there are several reasons for this problem, such as insurance claims adjusters are overwhelmed with DBA caseload and are slow to respond; some DBA adjusters are new to the DBA claims arena and are not aware of the need to respond; and others have difficulty securing the documents or information requested, and therefore simply do not respond.

To address this problem, OWCP stated it consulted with the Solicitor of Labor (SOL) and received its endorsement that OWCP may assess a civil penalty under Section 30(e) of the Longshore Act for "knowing and willful" failure to respond to requests for additional information as requested, via the LS-216 or by other correspondence. This practice was implemented in FY 2010. Previously, the Section 30(e) penalty had been construed to only apply to the delay or failure to file the Employer's First Report of Injury. OWCP also stated that at industry conferences and seminars, employer and insurer training and workshops, and National Office meetings with the insurers DLHWC management in the National Office and District Offices have emphasized the need to respond to LS-216 requests.

Our audit results show the call-up procedure has not been effective. Furthermore, the audit results indicate that OWCP's outreach efforts with employers and insurers were not effective. Our trend analysis of the cases sampled that contained an LS-216 showed there was still a problem in FY 2009, in that 60 percent of the requests were not responded timely by employers or insurers. We were not able to evaluate the effectiveness of OWCP's practice to assess penalties for "knowing and willful" failure to respond to requests since the practice was implemented in 2010 and the scope of our audit was for DBA cases through 2009.

**In most cases OWCP did not assess penalties for late reporting.**

DLHWC District Offices assessed penalties in less than 1 percent (2 of 211) of the instances in our sampled cases in which employers and insurers were late in meeting reporting requirements and DLHWC information requests.

Federal laws and regulations provide authority to OWCP to assess penalties to employers and insurers for late reports, late payments, and lack of notification for suspension of payments and final payments. The following are the penalty provisions for DBA claims:

Report of Injury or Death – 20 CFR, Part 702.204, provides that any employer, insurer, or self-insured employer who knowingly and willfully fails or refuses to send any report required by 20 CFR, Part 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed \$10,000 for each such failure, refusal, false statement, or misrepresentation. This was raised to \$11,000 for any violations occurring on or after November 17, 1997. The District Director has the authority and responsibility for assessing a civil penalty under this section.

Penalty for Late Payment – 20 CFR, Part 702.233, provides for a penalty if any installment of compensation payable is not paid within 14 days after it becomes due an amount equal to 10 percent of the unpaid installment shall be added to the payment unless the employer files a Notice of Controversion or the penalty is excused by the District Director after a showing by the employer that, owing to conditions over which it had no control, the installment could not be paid within the period prescribed.

The DLHWC Procedures Manual, Chapter 8-202, provides the guidelines, procedures, and instructions for computing and applying the 10 percent additional compensation due for installment payments. The DLHWC Procedures Manual defined late payments as those after 28 calendar days from the date the employer first obtains knowledge of the injury. The Procedures Manual explained that the regulations require that compensation be paid initially on the 14th after the employer is notified or aware of the injury, and that all compensation then due shall be paid. Following the initial payment, compensation is to be paid bi-weekly unless the District Director determines otherwise. The usual practice is to pay compensation at 2-week intervals. Since the 10 percent penalty does not apply to the first installment until 14 days after the "due" date, this in effect allows 28 calendar days (from the date the employer first obtains knowledge of the injury) in which to pay the first installment. Compensation is paid when it reaches the claimant. If payment is not made within 28 days, 10 percent additional compensation must be paid.

Final Payment – 20 CFR, Part 702.236, provides that the DLHWC District Director shall assess a civil penalty in the amount of \$110 to any employer failing to provide the final payment notification.

OWCP management told us that the longstanding practice among District Offices had been to educate employers of the required timeframes, sending warning letters to repeated late filers (employers) and waiving penalties unless it identified an established pattern of knowing and willful failure to comply. OWCP stated that in October 2009, it adopted a strategy to improve timeliness of first reports of injury and first payments. OWCP stated that the DLHWC began to enforce penalties for late filings in a more systematic and aggressive manner. OWCP explained that it must still show that the late filing or failure to file was knowing and willful. For example, OWCP stated it cannot assess a penalty against a foreign DBA subcontractor with no prior experience with Federal contracting for its failure to file injury reports. If the employer still refuses to comply after OWCP sends repeated requests and explanations, it could establish the “knowing and willful” requirement. OWCP said it has recently increased penalties both for late reports of injury and for failure to provide documents when requested. Additionally, OWCP explained that it added the capability to track penalties in the Longshore Case Management System (LCMS) in early 2010. OWCP stated that insurers said the timeliness of injury reporting has greatly improved in this fiscal year due largely to OWCP’s enforcement strategies.

We concluded that OWCP needs effective monitoring controls at the management level to ensure reports and compensation payments are timely. OWCP does track case workload, case inventories, status of disputes, and informal conferences; and it recently implemented an initiative to track report of injury and initial payments. However, OWCP monitoring controls did not include identifying and tracking case files in which reports and payments were not timely so that OWCP and District Office management could monitor to ensure appropriate corrective action was taken. Increased monitoring by management at the case-file level can assist management and claims examiners to carry out their duties and responsibilities and proactively manage DBA claims.

OWCP did not agree that it lacked effective controls to ensure reports and compensation payments were timely. OWCP stated that the District Office claims examiners use automated call-ups in LCMS to track claim status. After a new case is created, the staff reviews the case for disability and medical status. If no medical or payment reports are in the file, the staff submits a 60-day call-up for this information. If lost time by the employee is expected based on the LS-202 and other documents, the staff may elect to issue a form letter (LS-216) to request the necessary documents immediately. Staff tracks the progress of the case until no further disability is expected and then they close the case. OWCP explained that at the case level, District Office staffs have increased penalty assessments, especially for carriers who routinely ignore requests for missing forms, current medical reports, and other information. OWCP believed that while timeliness of first payments remains a huge challenge in foreign claims, most insurers now submit the LS-206/208 more promptly, allowing the District Offices to better monitor compensation and medical status. OWCP disagreed that

controls are needed to ensure that DLHWC claims examiners send claimants a Request for Employee's Reply to Employer's Objections, (LS-209) when the claims examiners receive a formal Notice of Controversion (LS-207) from an employer or insurer. OWCP stated that, except for the New York District Office, almost all District Offices are set up to handle this by which clerical staff send the form to the claimant with the cover letter (LS-209) automatically and immediately on receipt of the Notice of Controversion (LS-207).

OWCP agreed that enhanced claims management capabilities in the LCMS would improve District Office effectiveness. However, it is concerned that automated case management tools such as diaries and system-generated form letters will create clerical backlogs for its limited District Office staff, so that instead of time being spent on dispute resolution and claim adjudication services, the claims staff will be required to spend time managing an added system-generated workload.

We believe additional management reports from OWCP's LCMS are needed to improve the effectiveness of DBA case management. OWCP did not have management reports from the LCMS that identified DBA cases that had late reports and payments. DLHWC District Office management would benefit from such management reports to monitor the claim examiner's progress in working with employers and insurers to ensure required information is obtained and payments are made timely. Identifying and taking corrective actions on specific cases that are significantly late in complying with reporting and payment requirements can assist OWCP in achieving its goal to improve the timeliness in filing first reports of injury and reducing the elapsed time from the first date of injury. We attributed OWCP's minimal use of penalty assessments to employers and insurers for their noncompliance with reporting and payment requirements to a lack of centralized guidance for assessing penalties. The uniform use of penalties could be an incentive for employers and insurers to comply with DBA claims requirements.

Without more effective case management, OWCP cannot ensure that workers, many of them U.S. citizens, injured while employed in dangerous war zones and supporting the U.S. military efforts overseas, receive proper and timely workers' compensation benefits under the DBA.

## RECOMMENDATIONS

We recommend the Acting Director of OWCP:

1. Seek legislative changes to the DBA reporting and payment requirement to reflect DBA claims processing in the current environment with the increased use of contractors and foreign nationals in the war conditions.
2. Identify LCMS data fields that could be used to generate reports that would assist management and claims examiners in identifying the problems found by this audit, and require that they be used and verified for accuracy.

3. Establish a quality control process by improving the management reporting capabilities in LCMS that would lead to enhanced DBA program oversight so management can monitor DBA case activity and identify problems and take appropriate corrective action.
4. Notify the insurance industry of OWCP's expectations for the submission of the LS-206, especially in claims involving a previously submitted Notice of Controversion.
5. Standardize within each District Office the use of penalty assessments when dealing with noncompliant employers and insurers.

We appreciate the cooperation and courtesies that OWCP personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis  
Assistant Inspector General  
for Audit

## Exhibits

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**Exhibit 1****Statistical Results and Projections for Reports, Payments, and Penalties**

Condition	Number of Occurrences from Sample of 172 DBA Cases	Point Estimate	Standard Error	95 Percent Confidence Limit Projected to a Universe of 11,247 DBA Cases			
				Lower Limit	Number of Cases	Upper Limit	Number of Cases
Employer did not report claimant injuries in a timely manner (LS-202).	117	68.10%	3.40%	61.44%	6,910	74.76%	8,408
OWCP did not assess a penalty for late reporting of injury.	116	67.55%	3.33%	61.02%	6,863	74.08%	8,332
Insurer did not provide initial compensation payment in a timely manner (LS-206).	36	21.06%	2.87%	15.44%	1,737	26.68%	3,001
Insurer did not report notice of final payment or suspension of payment in a timely manner LS-208).	21	12.26%	2.45%	7.46%	839	17.06%	1,919
OWCP did not notify claimant in a timely manner that their claim was controverted (LS-209).	58	33.86%	3.49%	27.02%	3,039	40.70%	4,578
Employer or insurer did not respond in a timely manner to OWCP request for information (LS-216).	45	26.09%	3.31%	19.6%	2,204	32.58%	3,664
OWCP did not assess a penalty for late, or no response, to request for information.	42	24.31%	3.25%	17.49%	1,967	30.68%	3,451

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**Exhibit 2**

**Statistical Results and Projections for Days Late**

Condition	Number of Occurrences from Sample of 172 DBA Cases	Point Estimate	Standard Error	95 Percent Confidence Limit Projected to a Universe of 11,247 DBA Cases			
				Lower Limit	Number of Cases	Upper Limit	Number of Cases
First Report of Injury More Than 60 Days Late (LS-202).	43	25.22%	2.24%	20.83%	2,343	29.61%	3,330
First Compensation Payment More Than 60 Days Late (LS-206).	16	9.41%	2.07%	5.35%	602	13.47%	1,515
Report of Last Payment or Suspension of Payment More Than 60 Days Late (LS-208).	10	5.82%	1.63%	2.62%	295	9.01%	1,013

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# Appendices

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**Appendix A****Background**

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The DBA, Title 42, U.S.C., Section 1651, et seq., requires all Federal government contractors (employers) and subcontractors to provide workers' compensation insurance for their employees who work outside of the United States. Under provisions of DBA, overseas federal military and public works contractors are subject to the same workers' compensation rules, insurance requirements and benefit schedules as maritime firms covered by the Longshore Act. It is intended to be a counterpart to domestic workers' compensation coverage and, as such, is the sole recourse for U.S. and foreign workers who suffer on-the-job injuries or death while engaged in work in foreign locations under government prime contracts and subcontracts. It is important that these injured workers, many of them U.S. citizens, employed in dangerous war zones, receive proper and timely workers' compensation benefits.

DBA insurance is provided by private insurers or through self-insurance. DOL reported in its FY 2009 Performance and Accountability Report that DBA injury and death cases in connection with the wars in Iraq and Afghanistan have rapidly increased from 347 cases opened in FY 2002 to 12,255 cases opened in FY 2009. DBA benefit payments reported by insurers increased from \$7.6 million in CY 2002 to \$242 million in CY 2009.

DBA is administered by DOL, OWCP, DLHWC. DLHWC's mission is to minimize the impact of employment injuries and deaths on employees and their families by ensuring that workers' compensation benefits provided under the Longshore Act and its extensions (including DBA) are paid promptly and properly, and providing information, technical and compliance assistance, support, and informal dispute resolution services to workers, employers, and insurers. Specifically, DLHWC's objectives are to ensure that the provisions of the Longshore Act regarding benefits for injured employees are properly applied, to promptly and impartially assist in the resolution of any disputes which may arise, and to refer cases for a formal hearing in a timely manner when a dispute subject to hearing cannot be informally resolved. DOL approves insurers for participation in DBA, but has no authority over other business aspects of the program, such as, purchasing arrangements between government contractors and insurance companies, premium rates, or contract terms. The Federal agencies executing the contracts are responsible for ensuring the provisions of DBA are included in their contract terms and reimbursing their contractors for the cost of insurance premiums.

OWCP uses the LCMS to maintain and manage DBA claims. The following are the primary reporting forms OWCP uses to manage DBA claims:

- LS-202, Employer's First Report of Injury or Occupational Illness – due to OWCP within 10 days from date of employer knowledge of incident.
- LS-206, Payment of Compensation Without Award – notifies OWCP of the first compensation payment to the claimant which is due 28 days or less from date of employer knowledge of incident.

- LS-207, Notice of Controversion of Right to Compensation – filed by the employer or insurer to OWCP to dispute a claim.
- LS-208, Notice of Final Payment or Suspension of Compensation Payments – notifies OWCP of the final payment or suspension of compensation and due 16 days from date of last payment.
- LS-209, Request for Employee’s Reply to Employer’s Objections – OWCP notifies the claimant within 10 days from receipt of LS-207, Notice of Controversion of Right to Compensation.
- LS-216, Requests for Additional Reports – sent by OWCP to employers and insurers and response is due within 30 days.

The implementing regulations for DBA are in 20 CFR, Employee Benefits, Chapter VI, Subchapter A - Longshoremen’s and Harbor Workers’ Compensation Act and Related Statutes. Subpart B - Claims Procedures, Part 702 contains various requirements related to the claims process. Federal regulations provide authority to OWCP to assess penalties to insurers and employers for late reports, late payments<sup>4</sup>, lack of notification for suspension of payments, and unreasonable delays for information requests.

DLHWC has 12 District Offices headed by District Directors and 1 Sub-District Office. The District Director reports to the OWCP Regional Director, for the Region in which the office is located. The role of the District Offices is to ensure that the provisions of the Longshore Act are carried out, to monitor and mediate claims made under the Act's provisions, and to provide outreach and educational services to program participants.

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<sup>4</sup> For late payment of initial compensation, insurers pay the assessment to the claimant.

**Appendix B****Objective, Scope, Methodology, and Criteria**

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**Objective**

The audit objective was to answer the following question:

To what extent does OWCP ensure that employers and insurers are adhering to DBA claims-processing requirements?

**Scope**

The audit covered OWCP's oversight of DBA claims process as of May 2010 but did not include OWCP's involvement in resolving disputes and contested cases. Using a stratified random sample, we reviewed 172 of 11,247 open cases where the claimants' date of injury occurred between January 1, 2004, and December 31, 2009. We conducted interviews with OWCP - DLHWC officials at its National Office in Washington, D.C. and at the following DLHWC District Offices: Houston, Texas; Jacksonville, Florida; New Orleans, Louisiana; and New York, New York.

We conducted this audit in accordance with generally accepted government auditing standards for performance audits. 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 on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

**Methodology**

We reviewed DBA, implementing regulations, and DLHWC's policies and procedures to determine the Federal requirements for DBA claims process. To gain further understanding of DLHWC's policies and procedures, and case management process, we interviewed DLHWC officials at its National Office and selected District Offices.

To answer the audit objective, we extracted DBA case data from the LCMS. Specifically, we identified 11,247 open cases (i.e. the claim was still active) where the claimants' date of injury occurred between January 1, 2004, and December 31, 2009, which was the most recent data available when we started the audit field work in May 2010. We selected the start date of January 1, 2004, because it was the year when the caseload started to significantly increase because of the wars in Iraq and Afghanistan. There were 441 open cases that we did not include in the universe. We stratified the universe by calendar year and created two sub-strata within each year using low and high-risk rating categories. We ranked the risk based on an average number of days from the date of knowledge compared to the receipt of the LS-202 by OWCP. The average number of days was 94. We assigned "high risk" to any case received more than 94 days from the Date of Knowledge and to any case that had insufficient

information to determine the Date of Knowledge and/or when it was received. The following table provides the number and percentage of cases from the universe for each year.

<b>Year</b>	<b>Number of Cases</b>	<b>Percent to Total</b>
2004	572	5%
2005	719	6%
2006	1,076	10%
2007	1,352	12%
2008	2,059	18%
2009	5,469	49%
<b>Total</b>	<b>11,247</b>	<b>100%</b>

We selected random samples from each sub-stratum. From the universe of 11,247 DBA cases, we used a single stage stratified sample design to select 172 cases. This sample was estimated using 95 percent confidence level with a precision of plus or minus 7 percent. We projected the sample results to the universe of 11,247 cases. We presented our results with a 95 percent confidence level as shown in the report Exhibits 1 and 2. An explanation of the audit test results and relevance of the tests to the audit's objective is provided in the body of the audit report.

For each sampled case, we analyzed whether OWCP monitored the claims to ensure employers and insurers complied with reporting and benefit payment requirements and assessed penalties for identified instances of non-compliance.

In planning and performing our audit, we considered whether internal controls significant to the audit were properly designed and placed in operation. This included reviewing OWCP's policies and procedures related to DBA claims. We confirmed our understanding of these controls and procedures through interviews and documentation review and analysis. We evaluated internal controls used by OWCP for reasonable assurance that DBA claims were managed according to Federal requirements and guidance. Our consideration of OWCP's internal controls for administering DBA claims would not necessarily disclose all matters that might be significant deficiencies. Because of inherent limitations in internal controls, misstatements or noncompliance may nevertheless occur and not be detected.

In planning and performing the audit, we relied on computer-generated data. OWCP provided a data file of DBA cases in the LCMS and we compared the number of cases to OWCP management reports to ensure the data was complete. We determined the data to be sufficient and appropriate for the purpose of our audit, which was to establish the population of cases where the claimants' date of injury occurred between January 1, 2004, and December 31, 2009.

## Criteria

We used the following criteria to perform the audit:

Defense Base Act, 42 U.S.C., Sections 1651-54

Longshore and Harbor Workers' Compensation Act, 33 U.S.C., Chapter 18, Sections 901-50

20 CFR, Employee Benefits, Chapter VI, Subchapter A – Longshoremen's and Harbor Workers' Compensation Act and Related Statutes

Part 701 – General; Administering Agency; Definition and Use of Terms;  
September 26, 1973, unless otherwise noted.

Part 702 – Administration and Procedure; September 26, 1973, unless otherwise  
noted.

DLHWC Procedures Manual

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**Appendix C**

**Acronyms and Abbreviations**

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CFR	Code of Federal Regulations
CY	Calendar Year
DBA	Defense Base Act of 1941
DLHWC	Division of Longshore and Harbor Workers' Compensation
DOL	U.S. Department of Labor
FY	Fiscal Year
GPRA	Government Performance and Results Act
LCMS	Longshore Case Management System
Longshore Act	Longshore and Harbor Workers' Compensation Act
OIG	Office of Inspector General
OWCP	Office of Workers' Compensation Program
PTSD	Post Traumatic Stress Disorder
SOL	Office of the Solicitor of Labor
U.S.C	United States Code

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OWCP Response to Draft Report

U.S. Department of Labor

Employment Standards Administration  
Office of Workers' Compensation Programs  
Washington, D.C. 20210



File Number:

FEB - 9 2011

MEMORANDUM FOR: ELLIOT P. LEWIS,  
ASSISTANT INSPECTOR GENERAL

FROM: GARY STEINBERG, ACTING DIRECTOR  
Office of Workers' Compensation Programs

A handwritten signature in black ink, appearing to read "Gary Steinberg".

SUBJECT: Defense Base Act Investigation Report

The OIG study of the Defense Base Act was conducted with the objective of answering the following question: To what extent does OWCP ensure that employers and insurers are adhering to DBA claims processing requirements? OWCP has reviewed several versions of the draft study report and continues to have concerns with the study findings as well as the overall context in which this question was addressed.

The claim processing requirements in question were enacted during World War II, intended to regulate claims from American workers employed by American companies returning to America to recover from their injuries. The information, documentation, medical evidence, and other information needed to support a claim were readily available from American sources. Complying with the timelines and reporting requirements under those conditions was relatively simple, comparable to a workers' compensation claim from any U.S. citizen in this country.

The current situation is completely different. Today, federal contractors employ a significant number of workers from around the world under various layers of subcontracting to foreign companies. The claims arise from distant war zones, filed by foreign workers from small remote villages with little, if any, infrastructure and very limited access to medical reports, employment or payroll documents, and other information necessary for filing and adjusting a claim under the Defense Base Act. Although information for American workers is generally available to enable timely filing of claims, even these are complicated, and the information for foreign workers is simply not available to allow the insurers to file reports or pay benefits within the World War II era statutory requirements.

For American workers the situation is better, but not perfect. Although the information needed to adjust a claim is more readily available for American workers than for foreign, the nature and extent of the types of injury and the availability of some types of information from the war zones makes even domestic claims a challenge to adjust quickly. For example, if an insurer questions the work-relatedness of an injury, witnesses or incident reports from remote work sites may take time to locate. The onset of complex PTSD symptoms months or years after an incident overseas create medical issues that are difficult to evaluate and diagnose, and time consuming to

document. The nature of the injuries occurring in war zones are far different than common industrial types of strains and fractures and require more complicated treatment, evaluation, and documentation. Therefore, even for American workers employed in the distant war zones, perfecting a claim under the Defense Base Act is not a simple matter.

The conclusion of the OIG Study is that OWCP is not doing a sufficient job to enforce the (outdated) requirements. OWCP's experience overseeing claims from foreign workers over the past several years indicates that enforcing the outdated requirements will likely result in highly undesirable consequences. Rather than face fines for failure to file reports or pay benefits within the antiquated and impossible timelines, insurers will deny benefits within the 10 day requirement in nearly all claims to gain the time needed to obtain the documentation necessary to perfect the claim. The result of further enforcement of antiquated requirements will be that many more claims under the DBA will be denied and delayed, the litigation rate will increase, costs will escalate, and claimant dissatisfaction levels will increase greatly.

OWCP believes that the focus of the study might have been: To what extent is OWCP simultaneously supporting the timely payment of benefits while protecting all parties' rights in a system with requirements that have been surpassed by time? The answer to that question is found in the current report. OWCP has undertaken major steps and initiatives to assure the reporting and payment of claims as timely as the reality of the overseas war zones and foreign claimants allows.

With regards to the report's recommendations, OWCP agrees that the data system needs to be enhanced and is working toward that goal. OWCP agrees that the DBA statute needs to be revised and is working toward that goal. OWCP also agrees that not every instance of failure to comply with existing, outdated regulations and statute is enforced with fines and penalties – however, the OIG report does not reflect the fact that doing so will most likely be counterproductive to the needs of the injured workers, the contractors, the insurance companies, and OWCP.

At this point, OWCP would like to work with the OIG to address the context of the study in the current environment and develop additional improvements that will help enhance the effectiveness of the program to meet the needs of American and foreign works that become injured or ill while performing work for the US Government overseas.

FEB -9 2011

**Appendix E**

**Acknowledgements**

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Key contributors to this report were Michael Hill (Audit Director), Daniel Pompili (Audit Manager), Joseph Pomianek, Eric Rann, Lawrence Alli, Christine Allen, and Ajit Buttar.

**TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:**

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