

UNITED STATES DEPARTMENT OF ENERGY
WORKER ADVOCACY ADVISORY COMMITTEE
PUBLIC MEETING

Loews L'Enfant Plaza Hotel
Washington, D.C.

Tuesday, June 18, 2002
12:30 p.m.

Attendees

EMILY SPIELER, Chair
West Virginia University

RICKY BLEA
Department of Labor

JOHN F. BURTON, JR.
Rutgers University

JEANNE CISCO
Portsmouth Uranium Enrichment Plant

DONALD ELISBURG, ESQ.

KATHRYN MUELLER
State of Colorado

IRIS POST
State of Iowa

GREGORY WAGNER
National Institute for Occupational Safety
and Health

GLENN SHOR
State of California

LEN MARTINEZ
Kaiser-Hill Company, LLC

LESLIE I. BODEN
Boston University

BEVERLY COOK, Assistant Secretary
Environment, Safety and Health

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Attendees (Continued)

VIKKI HATFIELD
Community Representative

CLAUDIA GANGI
Department of Justice

STEVE CARY, Acting Director
Office of Worker Advocacy

JOSH SILVERMAN
Office of Worker Advocacy

KATE KIMPAN
Office of Worker Advocacy

CLAUDIA BEACH
Office of Worker Advocacy

JEFF EAGAN
Office of Worker Advocacy

JOHN ELLIS
Office of Worker Advocacy

ROGER ANDERS
Office of Worker Advocacy

KAROLINE ANDERS
Office of Worker Advocacy

RANDY RABINOWITZ
PACE International

MARY JO ZACCHERO
Department of Energy, EH

SARAH BARIAL
EEOC - Coordination

FRANK MORALES
Government Accountability Project

A G E N D A

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P R O C E E D I N G S

12:40 p.m.

Welcome/Introductions/Opening Remarks/

Adoption of Minutes

MS. SPIELER: I'd like to call the meeting to order, please.

I'm calling to order this meeting of the Workers Advocacy Advisory Committee that's a federal advisory committee set up to advise the Department of Energy on workers compensation and related policy matters regarding compensation for nuclear weapons industry employees and other matters related in DOE and particularly to advise DOE and the Office of Worker Advocacy with regard to the implementation of Subtitle D of the EEOICPA.

Before we get started, I'd like to go around the room and have everyone introduce themselves, first the committee members who are present and those who are present telephonically, and then others in the room.

My name is Emily Spieler. I'm the chairman of this committee.

MS. POST: Iris Post, formerly Workers Compensation Commissioner of the State of Iowa, now in private practice.

DR. WAGNER: Gregory Wagner. I'm a

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1 physician. I work for the National Institute for
2 Occupational Safety and Health, part of the Centers for
3 Disease Control, but I'm not here representing NIOSH.
4 Instead, I'm here as an individual.

5 MR. ELISBURG: Don Elisburg. I'm an attorney
6 in Washington, D.C.

7 MR. BLEA: Rick Blea, and I represent Labor.

8 MS. CISCO: Jeanne Cisco. I'm from the
9 Portsmouth Gaseous Diffusion Plant with PACE.

10 MR. BODEN: Les Boden. I'm a professor at
11 Boston University School of Public Health.

12 MS. HATFIELD: Vikki Hatfield. I'm from Oak
13 Ridge, Tennessee, and I'm a community representative.

14 MS. SPIELER: Let me just say before we
15 expand this out, in order for the people who are
16 listening in telephonically and there may be half a
17 dozen of them by the time everyone's signed in, people
18 have to be using a mike that's turned on in order to be
19 heard by them. So, there is a portable mike in the
20 room for use by the people who aren't sitting at the
21 table, and I would ask that everyone who is sitting at
22 the table when you're talking to turn your mike on and
23 when you're not talking to turn your mike off in order
24 to allow others to talk.

25 Would the members of the committee who are on

1 telephonically please identify yourselves?

2 MR. SHOR: This is Glenn Shor from the Policy
3 Unit of the State of California, Division of Workers
4 Compensation.

5 MS. MUELLER: I'm Kathryn Mueller, and I'm an
6 associate professor at the University of Colorado
7 Health Sciences Center, and also the Medical Director
8 at the Division of Workers Comp in Colorado.

9 MS. SPIELER: I know that we're still
10 expecting some committee members, and I'm not exactly
11 sure where things stand. John Burton was taking the
12 train here from New Jersey this morning, and I
13 understand that the trains are delayed, and I assume
14 he's in transit. I believe Dr. Laura Welch is also
15 expected, and I also believe Len Martinez is expected,
16 and we'll ask them to introduce themselves for the
17 record when they get here.

18 Assistant Secretary Cook, would you --

19 MS. COOK: Yes. My name is Beverly Cook, and
20 I'm the Assistant Secretary of Energy for Environment,
21 Safety and Health, and I don't know that everyone knows
22 all the staff that we have on board now, so let's go
23 ahead and do the introduction of those folks. We're
24 going to have to pass the mike around.

25 MS. ZACCHERO: Mary Jo Zacchero.

1 MS. SPIELER: Bev, you need to turn your mike
2 off for now.

3 MS. KIMPAN: Kate Kimpan.

4 MS. SPIELER: Would you identify what office
5 you're from?

6 MS. ZACCHERO: Office of Environment, Safety
7 and Health.

8 MS. KIMPAN: Office of Worker Advocacy in the
9 Office of Environment, Safety and Health.

10 DR. ELLIS: My name is John Ellis. I'm an
11 occupational physician, also with Office of Worker
12 Advocacy.

13 MS. BARIAL: My name is Sarah Barial. I'm an
14 intern at EEOC in the Coordination Department.

15 MR. EAGAN: Jeff Eagan, Office of Worker
16 Advocacy.

17 MR. SILVERMAN: I'm Josh Silverman with the
18 Office of Worker Advocacy.

19 MS. BEACH: Claudia Beach with the Office of
20 Worker Advocacy.

21 MS. KEATING: Judy Keating with the Office of
22 Worker Advocacy. I'm also the designated federal
23 official for this meeting.

24 MS. COAT: I'm Megan Coat with ASSE.

25 MS. SPIELER: Excuse me. But what is ASSE?

1 MS. COAT: American Society of Safety
2 Engineers.

3 MS. SPIELER: Thank you.

4 MS. BLY: Julie Bly. I'm an attorney from
5 Columbus, Ohio.

6 MS. GANGI: Claudia Gangi. I'm with the
7 Department of Justice, Radiation Exposure Compensation
8 Program.

9 MR. MORALES: I'm Frank Morales. I'm with
10 the Government Accountability Project.

11 MS. SPIELER: I think there's still some
12 people in the room who haven't identified themselves.

13 MS. RABINOWITZ: I'm Randy Rabinowitz with
14 PACE International.

15 MS. SPIELER: Okay. Before we move on, Bev,
16 I'd like to just take care of a few housekeeping
17 matters, if you don't mind.

18 First of all, I know that a number of
19 committee members have actually changed their day jobs
20 or are in the process of changing their day jobs, and I
21 just wanted to make sure that the other committee
22 members were familiar with the new positions that
23 people now hold, and I'll start with myself.

24 Mine isn't actually effective until July 1st,
25 but I'll be moving to be Dean at the Law School at

1 Northeastern University in Boston, and I'll be
2 providing everyone with new contact information as soon
3 as I have a new e-mail address.

4 I know that Jim Ellenburger, who has been on
5 this committee since the beginning, is now Commissioner
6 for, I believe, -- Deputy Commissioner for, I believe
7 it is, the Unemployment Insurance Program for the State
8 of Virginia, and if -- again, we need, I think, full
9 contact information for him in that position.

10 Bernie Meyers, who is a member of this
11 committee, has moved to the McLean, Virginia, Office of
12 Bechtel, and I think he has continued to request that
13 Mark Olson sit on this as a non-voting member, on this
14 committee, although I have not heard from Mark and
15 don't know if staff have with regard to his presence.

16 MS. COOK: And also, I mean, Bernie Meyers
17 actually has taken a job with Bechtel in England. So,
18 we definitely need to get that change in place so that
19 we have that representation.

20 MS. SPIELER: Yes, I think we all agree very
21 strongly that contractor representation on this
22 committee is key.

23 Iris, could you tell us a little bit more
24 about your change?

25 MS. POST: Sure, Emily. I formerly was the

1 Iowa Workers Compensation Commissioner, appointed in
2 January of 1996. I had one year left in my
3 appointment. I left my position in April, mid-April,
4 to join a law firm and now I'm involved in private
5 practice with the law firm of Bradshaw, Fowler -- gosh,
6 I can't even remember. Anyway, a bunch of names.

7 (Laughter)

8 MS. POST: None of which are mine, and it's
9 about a 45-50-member law firm in Des Moines, at the
10 tallest building in Des Moines, 801 Grand. If you're
11 ever in town, look me up.

12 MS. SPIELER: Iris, are you going to be
13 handling workers compensation matters in that position?

14 MS. POST: Yes, I will still be involved in
15 workers compensation law as well as perhaps doing a
16 little bit of lobbying and some other things, but I'm
17 involved in lots of organizations in the state
18 concerning workers compensation.

19 MS. SPIELER: Actually, this brings to mind,
20 and Judy, we may need in view of the sort of moving
21 target of the day jobs of the committee members, a
22 recharge on the ethics issues from the FACA person and
23 maybe you could arrange that tomorrow morning. I'm not
24 sure whether it matters or not, but it might be
25 appropriate.

1 Vikki also indicated that she has a change in
2 day job.

3 MS. HATFIELD: I work for Bechtel in Oak
4 Ridge, Tennessee, now, as opposed to my other day job,
5 and I like it very much. I'm not here as a
6 representative of Bechtel, but they are aware of my
7 participation in this.

8 MS. SPIELER: John, we've already gone around
9 the room and done introductions. We understand you
10 might have been on an endless trip by train, but if you
11 could just introduce yourself?

12 MR. BURTON: Endless trip. I taxied across
13 town which seemed to take longer than getting here from
14 New Jersey.

15 (Laughter)

16 MR. BURTON: I'm John Burton, a faculty
17 member at Rutgers University.

18 MS. SPIELER: Don?

19 MR. ELISBURG: Yes. I should have identified
20 my connection with this operation in terms of what I'm
21 doing as a day job here. I'm still here representing
22 the Center to Protect Workers Rights, in the Building
23 and Construction Trades Department, AFL-CIO, for
24 purposes of, you know, why I'm sitting in on this
25 committee, but the other day job that I did change is I

1 became a grandfather.

2 MS. SPIELER: Putting life in new
3 perspective, I'm sure.

4 This committee hasn't met since last August
5 when we met in Colorado, and I know the committee
6 members are eager to know what the current developments
7 are, and I think what I'm going to do at this point is
8 turn this over to Bev Cook for discussion.

9 I know that there's been a flurry of activity
10 in Washington that various committee members know more
11 or less about and that the Final Physician Panel Rule
12 which was the subject of some concern to the committee
13 last Summer and Fall is not yet out and may be
14 undergoing additional revisions before it comes out.

15 So, I think that probably the best thing to
16 do is to find out where we are. I asked Judy Keating
17 not to organize this committee meeting around
18 subcommittee reports since I didn't think the
19 subcommittees had new elements to report, but we may
20 organize our discussions around the subject matter that
21 we had previously assigned to subcommittees, and I may
22 ask, depending on how the day goes, if the subcommittee
23 chair who are here would lead those parts of our
24 discussions.

25 So, I'm going to turn this over to Bev and

1 then to the other reports from the staff members.

2 Opening Remarks on Issues of Interest

3 MS. COOK: Great. Thank you.

4 I have a little bit of notes here, but I'll
5 take off my watch so I make sure that I don't run on
6 endlessly. I have been very much looking forward to
7 this opportunity.

8 I will tell you that this is -- and some of
9 you have heard me say this before since I've talked to
10 some of you individually, being appointed as Assistant
11 Secretary for Environment, Safety and Health is
12 something that I perceive as a great honor for me
13 personally. I have been a worker within the Department
14 of Energy's complex since 1975. I'm an engineer. I
15 have worked all over the complex. I'm one of those
16 people you can't find records for probably, but having
17 said that, I will just let you know up front and the
18 only way I know how to say it is that, this is personal
19 for me.

20 These are my friends. These are my
21 colleagues. These are workforce that I was responsible
22 for. I worked in a lot of hazardous facilities. I had
23 people that looked out for me. I had people that I was
24 responsible in looking out for. I have said good-bye
25 to people who are sick, even very recently, and so this

1 statute and having it implemented in the best way
2 possible is extremely important to me, and like I said,
3 I don't know how else to say that.

4 If you have gone to any of the sites where I
5 have gone and talked to folks about workers comp and
6 about this legislation in particular, you will see that
7 there are many people there that I've known for a very
8 long time, and we talk a lot about the issues
9 associated with the work that we've done for me over
10 half of the life of the Department of Energy. Twenty-
11 seven of the 52 years that many of these sites have
12 been opened, I've been there.

13 So, we talk a lot about the practices in the
14 past and how we looked out for each other and how
15 things have changed and we talk a lot about the
16 practices in the future and how we can do things better
17 and differently and that's something else I want to
18 talk to you about today.

19 So, having said that, as you all are much
20 more familiar than I am, this is a very complicated
21 statute, and it's very complicated in implementing it,
22 and I want to talk to you a bit today about where we
23 are and where things stand so far, and I will probably
24 before the end of certainly this time I have to talk
25 but definitely before you leave tomorrow have a whole

1 list of things that I'm going to ask you to help me on
2 because implementation is going to be the hardest part
3 of this because it is very complicated.

4 I want to make sure that our workforce, and
5 this is the commitments that I've made to our
6 workforce, my workforce, people that have worked for
7 me, and I was a contractor for almost half of that
8 time, so I'm a contractor. I've worked for the
9 organization that does oversight, the Defense Nuclear
10 Facility Safety Board. I've been a manager of the
11 Idaho Field Office. So, I've played a lot of different
12 roles in the Department.

13 I want to make sure that those people that
14 I've worked with all these years understand what this
15 is and what it's not and understand so they can tell me
16 when things don't seem to be working correctly versus
17 the things that are just part of the legislation, and
18 I'll get into some of that and where the confusion is
19 from my opinion, where some of the confusion lies and
20 how maybe you can help me sort through how we might do
21 some of these things better.

22 Let me first talk about the rule, a never-
23 ending process. You all made comments. I've looked
24 through a lot of the comments that have come in. I
25 haven't -- I will tell you I haven't read every comment

1 that ever came in on the proposed rule, but I've
2 certainly looked through the comments that you've all
3 generated, and we are in the last throes of this.

4 As most of you know, we've even been back to
5 the Hill talking to some of the staffers because some
6 of our elected officials have sent letters about their
7 concerns about where things are coming out, and we've
8 talked to them more about getting to resolution.

9 I want to quote something that the Secretary
10 of Energy, Secretary Abraham, said to us in the last
11 few weeks as we've gone through many meetings with him
12 on the subject, also. He said that as we get to the
13 end of resolution of the issues and the questions that
14 people have, we want to move forward as forward-leaning
15 as the statute permits to help our workers. Okay. So,
16 that's what the Secretary said to us, said let's go as
17 far as we can to help our workers.

18 Of course, there are places we feel like we
19 can't do some things because of the way the statute is
20 written, and we have tried to be very clear with the
21 staff on the Hill on where we feel that is, and we'll
22 probably get into some of that in the next day or two.

23 Having said that, we're trying to get the
24 last words together. At this point, I can't tell you
25 exactly how the words are going to come out because, of

1 course, the other agencies get involved, OMB gets
2 involved, everybody in the world. So, I wished and
3 hoped actually that by today, we would have been there
4 but we're not but we're close. Of course, we've been
5 saying we're close for a long time.

6 I do believe that many of the issues and
7 looking at things even that you wrote last August, I
8 think many of those issues have been resolved in a very
9 favorable way.

10 Someone called in.

11 MS. SPIELER: Could whoever just called in,
12 joined the telephone hook-up to this meeting, identify
13 themselves?

14 MR. ANDERS: Yes, this is Roger Anders and
15 Karoline Anders. We work in Germantown for the Office
16 of Worker Advocacy.

17 MS. SPIELER: Thank you.

18 Go ahead, Bev.

19 MS. COOK: So, that's the first issue.
20 That's the paperwork part of the issue, getting that
21 rule out on the street, getting that framework in place
22 that we can move forward.

23 In the meantime, and you'll get an update
24 later from Steve Cary, we've been collecting
25 information. We've had people calling in. We're

1 collecting data from folks so that we can make sure
2 that we hit the ground running, and we'll talk more
3 about that in a minute, too, and how we need to move
4 forward to hit the ground running.

5 But the other thing I have done within the
6 last month, I had the opportunity to talk to all of our
7 field managers, the people who run the DOE offices in
8 the field, sat them down, gave them a full briefing on
9 the legislation, what it is, what it's not, what is the
10 framework around it, what questions they're going to
11 get, and where the complications will arise, because
12 they are, as Don and I were just talking about, he
13 asked if I was interested in going back to Idaho, when
14 you're the field manager at one of the DOE sites and
15 it's a small town and you got 8,000 people working
16 there, you are the face they know, and so you can't go
17 to the grocery store without somebody stopping you and
18 asking you a question about anything that happens
19 there, and I want to make sure that our field managers,
20 our senior federal official at those sites, really
21 fully understand what is and is not possible with this
22 legislation and how this statute gets implemented and
23 what they can and can't do and also where they should
24 be giving us feedback, which things are just part of
25 how the thing is set up and which things are part of us

1 maybe not implementing it in the most effective way, so
2 we can get that continuous feedback and make sure that
3 things happen more smoothly.

4 The subcommittees. I looked through the list
5 of subcommittees you have. These are all still very,
6 very relevant areas. For instance, as soon as this
7 rule gets done, we need to be moving very quickly on
8 the state agreements, and we're looking for assistance
9 from you all to make sure that we can get the best
10 agreements possible to make this as effective as
11 possible.

12 Subtitle D Section does say we roll into
13 state workers comp and that is the biggest difficulty
14 and confusion that we have with workers that I talk to,
15 is, you know, trying to understand what that means and
16 what we can and can't do within that context. Helping
17 them to be as successful as possible within state
18 workers comp is my goal. As I said, these are my
19 friends and many of them have tried before, and we need
20 to be able to make that as effective as possible.

21 I will just state it right now. We really
22 feel that we're at an impasse on the issue of no
23 payers, and it may be as high as 50 percent of the
24 people who get a favorable physicians panel ruling may
25 be in a situation for which there is no payer and for

1 which I can do certain things but there are certain
2 things I cannot do to force someone to pay, and we need
3 to make sure that we get processes in place within the
4 states that we're dealing with to facilitate that as
5 much as possible but there in fact may be places where
6 there is no payer, and we need to move forward and
7 figure out how to do something about that.

8 We have talked with the delegations about
9 that, and I know that that's some of the conversation
10 that's going on on the Hill about what to do about
11 that, but at this point, I have no authority or no
12 authorization of funding to step in the shoes of a
13 situation where there is no payer and that will be an
14 unfortunate situation and it seemed very unfair to a
15 lot of folks.

16 But that also means then when we get
17 information out of the physicians panel, I want to make
18 sure that that information is as rigorous as possible
19 so that it helps people who are in that position with
20 the state workers comp, to give them as much leverage
21 as possible in a situation where I can't force
22 something to happen. So, we'll get into talking about
23 that more.

24 Another issue that has -- is weighing on my
25 mind that I think that there are people here that could

1 help me with, and that is, we have a lot of data, I
2 have a lot of data on my doses throughout the complex,
3 a lot of raw data. If they went in to do a dose
4 reconstruction for me, there will be time where I may
5 have been told in the past that my overall dose was a
6 certain amount, that using new models and new tools,
7 that dose may be different at this point. Okay.
8 Taking that raw data, that's kind of what's happening.
9 If you look at the NIOSH's procedures, they talk about
10 using updated and new models, those sorts of things.
11 Explaining to our workforce, some of them who are
12 retired, some of them who have been retired for quite
13 some time, how you do technical modeling, how computer
14 modeling is done, and how the answer they have now may
15 not be the same as the answer before, and why is that
16 valid, is one of the biggest issues I see.

17 I want to make sure that people feel like
18 someone's giving them a fair shot at this and that
19 someone is doing the right thing by them, but
20 explaining modeling to construction workers is very
21 hard to do.

22 MS. SPIELER: Can I ask that the person who
23 just joined this meeting telephonically to identify
24 themselves?

25 MR. ELLIOTT: Good afternoon, Emily. This is

1 Larry Elliott at NIOSH.

2 MS. SPIELER: Hi, Larry.

3 MR. ELLIOTT: How are you?

4 MS. SPIELER: We're listening to Bev Cook's
5 report right now.

6 MR. ELLIOTT: Sorry I interrupted.

7 MS. COOK: Hi, Larry. Good to hear your
8 voice. Larry and I've been doing road shows together a
9 bit.

10 Anyway, those are the sorts of things in the
11 complication of this statute that are very technical
12 parts of this and trying to explain it to folks on how
13 that is looking out for their interests and how that
14 makes sense is a very, very difficult thing to do.

15 I certainly hope that there are members of
16 this committee that -- this advisory group that can
17 help me with that issue or at least help me get
18 connected up with people who understand how to explain
19 to the general public how that kind of analysis is done
20 and why that makes sense and why it changes.

21 The whole explaining of the legislation, of
22 course, is one of our biggest challenges. We have a
23 workforce that's very mobile and they're highly
24 specialized, even in the labor category, and they've
25 moved around the complex a lot and that's why I can go

1 just about anywhere in the complex and find people that
2 I've worked with for many years, and that means that
3 you may end up with a worker at Rocky Flats who has
4 already gotten compensated through the DOL program
5 because of their work at Portsmouth or Paducah, for
6 instance, not because of their work at Rocky Flats, and
7 yet there are people at Rocky Flats who would roll into
8 Subtitle D part of the program who don't understand why
9 someone get money and they didn't.

10 Okay. So, it's those sorts of complications
11 on what constitutes a special cohort group and what
12 doesn't, people who are looking at radiation-induced
13 cancers but they're part of the special cohort group,
14 and their doses may have been significantly less than
15 someone else, and yet they may get compensated and
16 someone else is waiting for a dose reconstruction and
17 may eventually not get compensated.

18 Special cohort groups or the DOL program
19 explaining that it's entitlement program and people are
20 getting paid as opposed to rolling into state workers
21 comp where people would get reimbursed for medical
22 expenses and lost wages. So, if they retired before
23 they got sick, in fact, they may not at the end of the
24 day be reimbursed for anything because they had good
25 medical programs and they in fact did not ever lose

1 wages. Those are very complicated issues for our
2 workforce to understand, and we're trying to sort
3 through how to explain that, and our help line gets
4 calls constantly. Some of the people in the room here
5 have been on the phone on these subjects all day long
6 for many months trying to explain that part of it,
7 regardless of how the rule comes out, just those sorts
8 of parts of it, what fits into where and how do you go
9 to where. Those things are getting very complicated.

10 One of the questions actually that Larry and
11 I have gotten in some of these meetings is questions
12 about why the legislation was written the way it was.
13 I didn't happen to be there at the time. Some of those
14 are from staffers who we told them to talk among
15 themselves and find that out, but at the end of the
16 day, it is in my opinion, and I've said this many
17 times, a really good first start. There may be changes
18 that are necessary in the future, but I do believe this
19 is a good first start. I do believe that it's headed
20 in the right direction, and I think that ultimately, it
21 is working -- looking out for the interests of our
22 workers who need to be compensated for the illnesses
23 that have been caused to them by their work.

24 Another sort of -- I'm sort of free-flowing
25 around all the different things that we've been dealing

1 with recently. Another issue that has to do with
2 implementation has to do with the fact that these are
3 sick people, and cancer, of course, is the one that
4 strikes me the most in the sense that when people first
5 come in and say that they are ill and they think it may
6 have been related to their work and you ask them, you
7 know, if they need to be fast-tracked through, and they
8 say no, because, of course, anybody that has cancer
9 thinks they're going to beat it. I've never met anyone
10 that didn't but that day comes when they find out that
11 they're losing and suddenly it's an issue, and the
12 staff here early on when I got into this job -- I have
13 a friend who worked at N Reactor at Hanford, plus many,
14 many other places in the complex, who has probably days
15 left at this point, and he got to that point, and I
16 called him up and they called NIOSH, and within a day,
17 they called him to get his information because he
18 realized he wasn't going to make it and he needed to
19 talk to someone now, not wait for his time in the cue.

20 It's that kind of triage situation that we
21 need to have in place so that we make sure that when
22 people -- when their situation changes, they aren't
23 caught up in the bureaucracy. There is some way to fit
24 back into the system to make sure that people's issues
25 are taken care of. So, there's a lot of practical

1 human sides of implementing this statute that are going
2 to be a serious learning curve for us.

3 Another one that I know a lot of you have
4 heard about it and we've seen a lot in the press and
5 that is, paperwork that people get. The standard form
6 letters, the things that come back to them, and the
7 misunderstandings that sometimes they lead to. When
8 people get asked for information on employment, it may
9 be that their employment history isn't readily
10 available. They get a request that says, gee, do you
11 have anything laying around that shows your employment
12 history? I've got many people tell them they think
13 that meant that they have been rejected, and we've had
14 a lot of conversations with folks about that. No, that
15 just means do you have something? If you don't have
16 something, then DOL will go to Social Security at the
17 end of the day and a written affidavit will work. It's
18 just moving through the different steps, but we still
19 don't seem to be communicating real well to people
20 about what those steps are.

21 So, these are all implementation issues and
22 all issues where we could use some assistance,
23 especially if you get feedback, if you're hearing
24 things from whatever sources, if you'd let us know what
25 those things are so that we could follow up on them to

1 try to implement better, to try to cut out any
2 unnecessary steps but make sure that we're not missing
3 anything in the process either.

4 Another one is trying to communicate with
5 folks that their information, their historical
6 information that they have about a site is extremely
7 important to others and not just them. There are
8 people for which we will not necessarily have a history
9 on them personally, but we may have a history on the
10 facility or the operation that was going on in that
11 facility.

12 My friend who has cancer is not necessarily
13 concerned about being compensated at this point, but he
14 is concerned that his information get into the database
15 so that other people who worked in that facility or
16 those many facilities that he worked in, that they can
17 utilize his information of the operation there and help
18 to reconstruct their work history, and I spend a lot of
19 time trying to encourage workers to make sure that they
20 can do that. That's one of our moving forward modes,
21 too, and that is, trying to reconstruct the history of
22 our facilities. In the 52 years this complex mostly
23 has been in place, we have facilities that have had six
24 or seven different lines. They've been used for so
25 many different things. To try to get that history down

1 on what it is was done in those facilities and at what
2 time frame is very important, and we're trying to tap
3 into our workforce to do that.

4 We also have a retirement crisis going on
5 right now where, I mean, even here in DOE, at
6 Headquarters, 50 percent of the folks are eligible to
7 retire in the next couple of years and the field is as
8 high as that for our contractors, for our federal
9 workforce, for everybody. Getting those people to
10 write down their histories before they leave is
11 extremely important, and we have some contractors who
12 are doing that very well, but we have others who are
13 not, and so I'm trying to work that issue through EH,
14 also, to get histories of facilities, histories of
15 operations, people who thought they would be there
16 forever.

17 I mean, we get people showing up with all the
18 boxes out of their garage from what they did in 1960.
19 It's time to gather all that up and make sure that we
20 can generate a facility history for those folks who
21 don't have an individual history.

22 I do know my radiation history. That was
23 fully documented. But I can't tell you which facility
24 I was in that used what kind of chemicals, for
25 instance. My chemical exposure, I know very little

1 about, and, you know, I can't even tell you what
2 buildings I was in that had asbestos in them, but I
3 know I was in some. It'll be an interesting time and
4 it'll be an interesting exercise for me to try to just
5 generate my history so I can add to that database, and
6 I will do that. That's one of those things that I've
7 thought about a lot recently. I was in the facilities,
8 I can help add to that database. I've just got to get
9 the rest of the DOE workforce and the contractor
10 workforce to also step up to bat so we can get a really
11 good history.

12 Now, one of the advantages we've had, though,
13 is that the 50-year history of many of the sites, many
14 of them have done a history, and they've put out some
15 very good history books, and if you are interested,
16 especially in any site in particular, if you go to the
17 DOE website and you link to that particular site, most
18 of them have those books on line, and they are very
19 well done and give you a sense of the kind of work that
20 was on-going, even in some of the weapons sites. They
21 are -- I think Nevada finished their book recently, and
22 there's some very good histories. So, that'll help us,
23 too.

24 Let's see. Fair versus unfair. I mean, fair
25 versus discrepancies, you know. I've already talked to

1 that. Certain doses at one place may get compensated,
2 the same or higher dose somewhere else may not just
3 because of what category they fall in. We've got to
4 work that. We've got to explain to people how this
5 works.

6 I think the only other thing, and as we move
7 through other issues today, a lot of these will come
8 up, but the only other thing I want to talk to you
9 about, to get you thinking about, too, is the future.
10 I don't ever, ever want the Department of Energy or any
11 federal agency to be in this position again where we're
12 trying to figure out what happened to people and where
13 it happened.

14 Therefore, we are trying to move forward in
15 EH to really put in place a good occupational medicine
16 program for the complex. We do hazardous work. We do
17 it now. We do it very well and people are very proud
18 of it, but there will be things that we do right now
19 that we think are safe that we may find out later are
20 not. We try to keep abreast of the changes, the things
21 that we learn about. I mean, stacking lead bricks was
22 something we did a lot of, I did a lot of, we don't do
23 that anymore. There are other materials that we used
24 that we probably will not be using in the future
25 because we find out that that is hazardous, and I want

1 to make sure that we properly document the history of
2 our workforce and what the situation is that they're
3 working in, so that in the future, if something comes
4 up that we become concerned about, that we know how to
5 find people, we know how to address maybe something
6 that has happened.

7 Being responsible for safety within the
8 entire complex, I will tell you our biggest issues
9 right now are not exposures to radiation or hazardous
10 chemicals, they are industrial accidents. They're, you
11 know, cranes and car accidents and those sorts of
12 things. Those are the kinds that we're having true
13 industrial accidents because we're doing a lot of heavy
14 industrial work in this complex and that is where our
15 biggest issues lie. It's everything from confined
16 spaces to electrical issues actually. Electrical
17 problems are our biggest issue in the complex. So,
18 those are the issues that -- those are the hazards that
19 are the driver for the accidents and the safety
20 concerns that we have in the Department right now.

21 We have to work harder at looking after that
22 because we've tended to get into a mode that said if it
23 wasn't radiation that was hurting you, it didn't count.
24 Well, getting electrocuted counts. Okay. So, we've
25 got to work on those. So, I want to get a future occ-

1 med program in place that is consistent around the
2 complex, that is consistent between our contractors,
3 that when people move from facility to facility, that
4 we have good records, that in fact is part of their
5 overall contract, so that when someone comes to work
6 for us, we put it in the contracts that these are the
7 kinds of records that they keep and also the kind of
8 records that they are insisting their subcontractors
9 keep, so we have a good traceability, and we know how
10 to find people, so we don't ever get in this position
11 again.

12 Also, we work very hard these days to keep up
13 on national standards. In many cases, the Department
14 of Energy standards are more stringent than, say, OSHA
15 standards, and we don't intend to change that. Our
16 beryllium standards, for instance. We want to make
17 sure that we are protective as best as possible.

18 This is not just because we're nice guys. We
19 have a highly-qualified, highly-trained workforce that
20 does amazing work, and we want them at work, and we
21 want them doing what they do best. It's good business.
22 It's not something that I see changing because of a
23 change in Administration or anything else. This is
24 good business, and it's obvious and our contractors who
25 have very good performance -- they have very good

1 health records, also they have very good statistics for
2 lost work days, all that sort of thing, because they do
3 make sure that they treat their workforce as an asset
4 and treat them well, and they get a lot of work done.

5 So, it's a good business practice and that
6 pleases me to see that that's being so obviously pushed
7 by the Department and its contractors. They know how
8 to get work done well and that is to best utilize your
9 people. So, that's what we're trying to do.

10 Let's see. I think what I would like to do
11 at this point is to stop here and answer some questions
12 because I know I sort of went all around the map. As I
13 said, where I would like to end up at the end of this
14 afternoon and tomorrow is a real list of -- and a
15 prioritized list, in my opinion, of the things that I
16 really need help from you all and advice on which
17 things are the most critical to either get moving
18 better, get implemented better, get communications
19 strategies out better, those sorts of things that are
20 most affecting how we implement the statute and how we
21 best deal with our workforce and make sure that they --
22 we are providing them with the best information and the
23 best service possible.

24 So, with that, I'll stop then and open it for
25 questions.

1 MS. SPIELER: Questions from the committee
2 members?

3 DR. WAGNER: Thanks. That was really a very
4 interesting introduction to the issues.

5 I wonder. You said that you've gone around
6 and briefed your field staff on, you know, what the
7 legislation does and what it doesn't do and what the
8 complexities and problems are. Do you go into more
9 detail than you've gone into with us?

10 MS. COOK: Yes. I assume you all know this
11 inside and out probably in your sleep, and I'm talking
12 about the legislation specifically, not the rule, but
13 the legislation. What are Parts A, B and C? What is
14 Part D? You know, when someone says who do I talk to,
15 you know, where the resource centers are, what does DOL
16 Do, what does NIOSH do, how the -- you know, what DOL -
17 - DOE is responsible for, and how do we get records,
18 that sort of thing, just the basics of what's in the
19 legislation.

20 DR. WAGNER: I wonder what you see as the
21 greatest constraint that the legislation poses to -- as
22 a barrier to what you would like to be doing in order
23 to achieve the goals that you've outlined.

24 MS. COOK: Interesting question. I'm sure
25 that the people who generated this legislation to begin

1 with and worked through it had an end goal in mind to
2 start with. There are people who truly need to be
3 compensated who are not dealt with through the normal
4 channels we have in place. There are people who were
5 dealt with very well. I mean, I won't kid you about
6 that.

7 As DOE and its predecessors as a workforce,
8 we had very, very good medical coverage, we did, and a
9 lot of these illnesses that we talk about are things
10 that don't develop for many, many years. So, when you
11 move into dealing with someone who has an illness that
12 shows up many years later and you roll it back into
13 state workers comp, state workers comp system is a
14 little out of line with dealing with that issue.

15 Do I have a better solution than that? I
16 don't at this point. I mean, you know, the other side
17 of that is everything is an entitlement program and
18 just anybody that ever got sick at a DOE site, it's an
19 entitlement program, and I don't think that's the right
20 way to go either, but I think that the state workers
21 comp system may not be completely fulfilling the
22 original goals of the people who put the legislation
23 together.

24 MR. SHOR: Bev, this is Glenn Shor, State of
25 California.

1 I think with Iris going into private
2 practice, I might be the only state representative left
3 on the advisory committee, and one of the areas of
4 concern I have is the state agreements. I might be
5 jumping the gun because you might be -- you might have
6 a place for this in the conversation later on, but I'm
7 also not there, and I'm unable to stay on the call very
8 long today.

9 So, I just wanted to get a little bit more of
10 an update of what's happened with the state agreements
11 because there was a flurry of activity for awhile. I
12 think a few states were done as prototypes, but then as
13 far as I understand it, there's really been nothing to
14 follow up on that. So, I'd like to get a sense of
15 where things are going and what timing the states can
16 expect.

17 There's also an October meeting of the state
18 workers comp representatives/administrators that I
19 would hope that there would be some DOE representatives
20 at that to brief the state representatives on.

21 MS. COOK: Yes, absolutely. I think that,
22 and Kate will correct me if I'm wrong, but I think
23 probably what happened is as we kept anticipating that
24 this rule would get out any day now, it's been any day
25 now for -- well, I've been here since February, and

1 it's been any day now.

2 I think that we would move forward in trying
3 to be positioned to move out on the state agreements
4 and then even try to couple moving out with the
5 dialogue with folks and then thinking it was going to
6 be any day now, so we could walk in with a rule in hand
7 and say okay, here's our framework, what are we going
8 to do, and we've been waiting for that to hit.

9 I really do think it's very soon now. We are
10 prepared to move out with every state and start working
11 the state agreements, and there are some meetings that
12 are coming up that will help facilitate that.

13 Kate, do you want to add anything to that?

14 MS. KIMPAN: Yes. This is Kate. Yes, just
15 what Bev said. Some of you, Glen, I know you and some
16 others know, Kathy Mueller, who's on this call, is also
17 still with the state agency, Colorado.

18 We withdrew our efforts to negotiate state
19 agreements because there were so many aspects of the
20 rule in the Notice of Proposed Rulemaking last
21 September that we have altered what the state agreement
22 might look like, depending on how the rule was issued.
23 So, prior to the rule being issued, we went forward
24 talking with states in open dialogues and all states
25 were very willing to enter into negotiations and indeed

1 some, like Iris's state and Colorado, were very willing
2 to sign this original template we had put out there.

3 We, DOE, withdrew it on the advice of our
4 general counsel. As I say, the reason being, if you'll
5 remember in the Notice of Proposed Rulemaking, there
6 were several different attributes of the claimant
7 operation in the state agreements about which we asked
8 for public comment. So, as soon as we have a rule
9 that's public, when it's published at OMB, via OMB and
10 the Federal Register, we'll begin immediately getting
11 those agreements in place. Our counsel believe those
12 agreements are a prerequisite to our empaneling
13 physicians, and we anticipate that the 30-day window
14 during which the rule does not take effect will allow
15 us to have those negotiations well underway in our
16 states where we have claimants ready to do.

17 MS. SPIELER: Let me just say, for those of
18 you who aren't in the room, that Len Martinez has
19 joined us, a member of our committee.

20 Did you have something you wanted to say?
21 Don, I think you had a question?

22 MR. ELISBURG: Yes. I guess, thank you for
23 your observations and appreciate the sincerity with
24 which you have explained this, your views on this.

25 The difficulty I have is that I can't put in

1 context where you are in this process. You had a
2 Notice of Proposed Rulemaking. We've had, you know,
3 extensive comments and discussion inside this
4 committee, basically saying that the approaches that
5 the agency was taking were crazy. There have been
6 extensive discussion about this in letters to the
7 Secretary of Energy, and I don't know that they've been
8 responded to. There have been extensive letters,
9 several significant letters from members of Congress to
10 the Department and some responses to them. There have
11 been negotiations, I'll put that in quotes, between the
12 Department and some members of Congress regarding what
13 the scope of this rule should be, at least recently, as
14 we understand it, and I frankly don't know how we can
15 help you unless we know what it is you think you're
16 planning to do.

17 There are, you know, seven or eight major
18 issues involving this statute, most of which surround
19 the physicians rule because that sort of brings your
20 Subpart D into operation, and I don't know how -- you
21 know, I guess I'm sort of grappling with what is it we
22 advise you if we don't know, you know, what it is to --
23 that you're planning to do.

24 I mean, you've obviously been making
25 representations up to the Hill, you know, we're not

1 living in a vacuum here, that you've turned around a
2 lot of where you were or you're planning to turn around
3 a lot of where you were, but we don't know exactly what
4 that means, and I think it might be helpful if we have
5 an idea of -- or how we can have some idea of where
6 you're going or how you would like us to help you with
7 that, if at all.

8 MS. COOK: Well, first off, I wouldn't be
9 here meeting with you all afternoon if I didn't want
10 you to help me. So, I'd just, you know, say that up
11 front. There's lot of things on my plate right now.
12 The help of this committee is very important to me.

13 Secondly, you know, I can tell you where we
14 are today, but that isn't a guarantee of where we're
15 going to be when the final rule comes out. What we met
16 with the folks with the Hill on, we got down to the
17 last four or five things that we couldn't come to a
18 resolution or we had a resolution that we thought we
19 were going in a certain direction, that we thought we
20 understood what their issues are that we meet with our
21 congressmen and their staff all the time on.

22 But as I mentioned earlier, there are a
23 couple of things that we can't get to resolution on and
24 that without some change in the statute. For instance,
25 stepping in the shoes of where there is no payer. We

1 need to be real up front with them and if that's what
2 they intended for us to do, then they needed to look at
3 changes in legislation, some kind of amendment,
4 something, but I have not been appropriated any money
5 to do that. So, having that be the case, they needed
6 to know up front where we were on that.

7 One of the things, as you probably heard,
8 we've talked around a lot and I don't know how much
9 that this -- we've talked with you and this committee
10 about, when you get into a situation where you have --
11 that's what I alluded to earlier. When you have maybe
12 half of the claims for which there is no payer, what
13 you want to do is give them the best possibility of
14 getting through state workers comp situation, make sure
15 that they're successful, so we can put in place a
16 uniform causation sort of standard for the panels and
17 we're okay with that, but if it looks too much
18 different or if it's way out of line with sort of the
19 average state workers comp world, it'll be great for
20 the people that I can insist that they pay. That's not
21 an issue. But for the folks that are on that other
22 end, it may not help them as much.

23 So, one of the things that we asked for,
24 especially the staff whose members had signed up some
25 of the letters that we have received, what did they

1 have in mind? That's what we're there to talk to them
2 about. You know, did they have some solution in mind?
3 We get a lot of can't you just fix it?

4 MR. ELISBURG: Well, when you say no payer,
5 are you talking about people that are out of business
6 or are you talking about subcontractors? What's the
7 range of this no payer? Because, you know, we're sort
8 of taking on a code word.

9 MS. COOK: Sure.

10 MR. ELISBURG: And we spent a good part of
11 the first year with this committee sort of sorting
12 through that with the agency --

13 MS. COOK: Right.

14 MR. ELISBURG: -- as to how at least we
15 thought you might do it.

16 MS. COOK: Right.

17 MR. ELISBURG: But I don't know where you
18 are.

19 MS. COOK: Okay. Remember, we're talking
20 about people who are employees of the contractor and it
21 is that contractor that pays them and the people that I
22 have an active contract with, I can say pay -- you
23 know, they've got a positive finding, pay them, and I
24 reimburse them to pay them. There's no reason for them
25 not to pay.

1 I can tell them, and if you fight it, I'm not
2 going to pay you, you know. That certainly is their
3 right to do that, but I don't have to reimburse them
4 for it nor do I intend to reimburse them for fighting
5 claims. Okay. So, that's off the table. That's not
6 an issue. We will -- for everybody that I can reach
7 out and touch and that I have an active contract with,
8 I can do that.

9 But for people that I have no contractual
10 arrangement with, some of my former employees, I don't
11 have a way to make one of those companies pay in.
12 There's, you know, exclusive state funds, people who
13 are out of business. There are ones who have bought
14 commercial insurance. For instance, a place like Rocky
15 Flats. We bid that contract, and it's a fixed price
16 contract, and when a company bids on a contract, they
17 talk about what their overhead costs are, how much it's
18 going to cost for them to do a job, and the Federal
19 Government selects the contractor.

20 Some of them are self-insured, but we have
21 some contractors who did not, who are fixed price sorts
22 of things, who are not self-insured, they bought an
23 insurance policy. They have a contractual arrangement
24 with their insurance holders on what they have to do.
25 We've got to figure out a way around that.

1 USEC is our biggest issue. We don't have a
2 way to reach out and touch USEC.

3 PARTICIPANT: What's USEC?

4 MS. COOK: USEC is the Enrichment Corporation
5 that was privatized a few years ago at Portsmouth and
6 Paducah, and they are now private companies there, and
7 we don't have a contractual arrangement with them. So,
8 I don't have a way to reach out and make them pay.

9 Having said that, I want to make sure,
10 though, that we do exactly what it says, assist our
11 workforce to apply for state workers comp, and for
12 places I can really make it happen, I'll make it
13 happen. For places that I just need to give them the
14 best possible way to be successful in the state workers
15 comp arena, I want to do that, also.

16 MR. MARTINEZ: For clarity purposes -- this
17 is Len Martinez. For clarity purposes, when you talk
18 about a contracting arrangement, you're talking about
19 not just the contractor in place now but that
20 contractor in fact could be a successor contractor to
21 previous contractors.

22 For instance, at Rocky Flats, the original
23 employer was Dow Chemical, and the current employer is
24 Kaiser Hill. There is a successor contract. So, a
25 former employee of Dow would be covered under this

1 program because you have an existing successor
2 contractor at Rocky Flats, correct?

3 MS. COOK: It varies. When these contracts
4 are put in place, there are arrangements around that
5 and that's why we have to look into every one of our
6 contracts, how much liability they picked up from the
7 successor contractor and how much they didn't, but it
8 varies.

9 MS. SPIELER: Let me just follow up for a
10 minute for clarity purposes and then take the questions
11 from the other people.

12 This is actually a very critical component
13 and new news for this committee with regard to how --
14 what position the Department is taking with regard to
15 its -- the payment of claims. Up until now, and
16 committee members can correct me if I'm wrong, we had
17 raised this repeatedly as a committee with the
18 Department for the year that we were meeting, you know,
19 ending last Fall, expressing concern about the
20 multiplicity of different contracting arrangements that
21 existed and therefore the potential differences that
22 might occur for the workers who were arguably covered
23 under Subtitle D and who might have had the same
24 exposures and the same illnesses and in fact be in the
25 same state as each other but who might have -- be

1 covered under different contracting arrangements, and
2 the subcommittee of this committee that addressed some
3 of those issues provided a number of suggestions to the
4 Department with regard to ways to think about this that
5 primarily focused on figuring out a way for the
6 Department to accept responsibility for all of the
7 claims of workers who might fit under Subtitle D,
8 irrespective of the contracting relationships.

9 We never actually got a response back with
10 regard to those concerns and our proposals until right
11 now. So, let me make sure I understand what you're
12 saying. It sounds to me as if you're suggesting that
13 if there's a specific open contract that isn't a fixed
14 price contract with a contractor in which there is no
15 insurance and in which there has been acceptance of
16 liability of current or subcontractor or past
17 contractors and subs, that you will in fact treat them
18 as your responsibility, accept liability on the claims
19 and assuming that the physician panel has a single --
20 had a single standard for causation, you would accept
21 that and you would go ahead and pay those claims or
22 have your contractors pay those claims, and it sounds
23 to me at least at this point as if you're leaning
24 toward a position in which you would not reimburse
25 contractors for contesting those claims, but that for

1 anyone in another contracting situation, whether it be
2 insured or subcontractors that aren't clearly covered
3 by the contractor or predecessor contractor, employees
4 who clearly aren't covered by the current contractor or
5 privatized situations or situations in which the
6 contractor arguably had coverage under either a private
7 insurance policy or an exclusive state fund insurance
8 policy, that you would not accept responsibility and
9 that therefore those claimants would have to assert
10 their claims under -- within the state workers
11 compensation administrative structure, leaving them
12 presumably to have to deal with any defenses that could
13 be raised in the state, unless they're dealt with under
14 a memorandum of understanding that's reached between
15 DOE and the state.

16 Is that a fair summary of where you are?

17 MS. COOK: That pretty much lists all the
18 varieties. Yeah. I'm an engineer. Let me tell you,
19 this is about to make my head explode.

20 But it's not even that we don't accept
21 responsibility. We have no mechanism to give them
22 money to pay it. I mean, we don't have any way to give
23 them money for a contractor to pay it if these are
24 people -- either they're out of business or we have no
25 arrangement with them or anything else. What would be

1 required is something put in place probably through
2 legislation that says that we somehow become the third
3 party payer in absence, which means that there would
4 have to be some authority for that and there would have
5 to be appropriated funds for that and that's okay, and
6 I think that folks on the Hill are talking about that
7 and that's okay, too. But something like that has to
8 happen. I don't have any arrangement with them. I
9 don't pay them, the contractor pays.

10 MS. SPIELER: But you're including those
11 contracting situations where, for example, they might
12 be currently contracting with DOE but might have
13 insurance through, say, the exclusive state fund in the
14 state of Ohio, in the same basket of -- as the
15 privatized or completely defunct contractor situations.
16 So, my -- I just want to make sure I understand how
17 you're approaching this at this point.

18 MS. COOK: I'm hoping that we can sort
19 through some of that with some of our -- some of the
20 agreements with the states because if you looked at it
21 on the surface, when it's an exclusive fund in the
22 state, there are some things that the state has in
23 place. Maybe we can make some arrangements with them
24 so that we kind of move around that, but it's such a
25 variety from state to state. We've just got to deal

1 with each individual state and look at how it in fact
2 works and what the state is willing to go with. Where
3 a contractor in that state pays into a state fund and
4 then the state fund somehow has some policies that they
5 have in place on how they approach any claim, we've got
6 to see what we can do about that.

7 MS. SPIELER: Les?

8 MR. BODEN: I want to go back a step because
9 you're bringing the whole committee up to speed here
10 and some of us are really back in last August still,
11 myself included.

12 Let me actually go back to the people for
13 whom there is an available payer and make sure I
14 understand what you're saying for them. Let's say I
15 was one of those people, and I had a claim and the
16 claim was brought to a physician panel, and the
17 physician panel said yes, I had a work-related illness.
18 Is it -- am I correct in understanding that at that
19 point, 99 percent of the time, DOE would pay that
20 claim, that it wouldn't worry about whether they had
21 had a former claim that had been rejected or the
22 statute of limitations had passed or it wouldn't avail
23 itself of any of the available state laws that might,
24 if DOE wanted to, preclude the person from getting
25 paid?

1 MS. COOK: That -- there's always going to be
2 some exception, I'm sure. But that --

3 MR. BODEN: As a matter of principle rather
4 than --

5 MS. COOK: As a matter of principle, yes.
6 Let's just do that.

7 MR. BODEN: Yes.

8 MS. COOK: As a matter of principle, yes. I
9 mean, like I said, having been a contractor, you know,
10 they do what we pay them to do. If we tell them we'll
11 pay them to pay the claims versus we won't pay them to
12 fight it, they can take a chance and fight it, and you
13 know, we may or may not pay them. But we certainly
14 will -- when we get a positive physicians panel ruling,
15 and then we help get the paperwork into the states, so
16 it's got to come around that loop because it's got to
17 go into the state workers comp, we're telling our
18 contractors to pay it.

19 MR. BODEN: Okay. Because that is a change
20 from last August and a rather dramatic change, and I
21 just wanted to --

22 MS. COOK: Yes.

23 MR. BODEN: -- make sure that I understood
24 that.

25 MS. COOK: Yes.

1 MR. SHOR: Could I follow up on that
2 question? This is Glenn Shor again.

3 We've had discussions in the subcommittee
4 about those sorts of claims where there's a fixed price
5 contract and where the payment of a claim, such as
6 you've described, would basically mean that the
7 contractor under the same pot of money would be paying
8 the claim rather than doing something else, and the
9 question has always come up then and it's been
10 unanswered about will the Department then tell the
11 contractor to not do this other thing in order to be
12 able to have the available resources to pay the claim.

13 MS. COOK: Yeah. Let me just talk to that
14 from sort of my role as a senior manager, as a
15 contractor, and as a field office manager, that sort of
16 thing.

17 A contractor, when they come into a contract,
18 they evaluate what their workers comp claims of
19 payments might be, that's part of how they bid on their
20 jobs, and we, the Department, look at those sorts of
21 things to see if that's reasonable or not.

22 I will tell you, as I said earlier, the state
23 workers comp world is not -- it was set up for
24 accidents, not illnesses, okay, and certainly not
25 illnesses that take a long time to manifest themselves.

1 I don't see there being a huge number of people who
2 have lost wages or didn't get their medical expenses
3 paid, frankly, at this point.

4 I think that we are in the position with the
5 funding we have in place with our contractors right now
6 and our anticipated funding that we can do this within
7 the funding we have. If that situation changes, I will
8 just tell you, having said that, if that situation
9 changes, I have no hesitation at all to go back to
10 Congress and ask for more funding because the funds
11 needed to do that might be more.

12 But no. Do we intend to tell some contractor
13 quit doing clean up because, you know, you gotta pay
14 workers comp bills? No. That's not what we anticipate
15 happening.

16 MS. SPIELER: Let me just -- again, this is -
17 - I'm a little confused and not sure about the way the
18 permanent partial disability claims are being
19 characterized, and it's important just in terms, I
20 think, of the way the Department thinks about this, but
21 that it's quite possible that people who haven't
22 actively lost wages may have claims for impairment
23 benefits under permanent partial disability systems
24 that aren't technically wage replacement in the way
25 that you're referring to them and so people over -- who

1 have long latency diseases, who are diagnosed, say,
2 after retirement may have issues both with regard to
3 long-term medical care treatment of those diseases not
4 being covered by general health policies and may also
5 have impairment-related claims related to their medical
6 impairments that aren't directly keyed to lost wages
7 and there may also under some state systems be
8 surviving spouse or children benefits, and so the
9 notion -- the idea that because they're long-latency
10 diseases and people are diagnosed post-retirement and
11 have had good general health during their working lives
12 actually may not put to rest the cost of the potential
13 claims, depending on the state system, and I think it's
14 important to keep that kind of concern on the table and
15 not to underestimate the potential cost of a claim were
16 it to be actually compensable in a state system.

17 I'm just saying that for purposes of
18 clarification because it's come up before at our
19 committee meetings, and I'm not exactly sure why, but
20 there does seem to be some persistent characterization
21 of these claims as not involving permanent partial
22 disability benefits, and I just want to make sure that
23 you know that that may be incorrect.

24 MS. COOK: Yeah. And I agree. We've had a
25 lot of conversations recently. Kate took us through

1 excruciating hours about partial disability.

2 MS. SPIELER: My condolences on that.

3 MS. COOK: Including with the Secretary about
4 all the rules in Michigan. But in any case, he was
5 quite entertained.

6 I agree, and let me give you an example. A
7 worker for which -- she really did take us through.
8 Anyway, a worker for which maybe they switched jobs
9 partway through their career because, you know, for
10 instance, one of the things that we do is to have to go
11 into a radiation hazard facility or contaminated
12 facility and you have to get suited up and all that
13 kind of stuff and someone finds that they are not able
14 to do that, and they're not really sure why, but
15 they're having breathing problems or whatever, and so
16 they may have had to switch careers, for instance, and
17 they find out later that in fact there was some lung
18 issue, whether it was a lung cancer or, you know, some
19 other kind of an illness.

20 There may be in fact, I think, situations
21 like that that they find out after the fact that they
22 may have lost partial use and that again is going to be
23 a state-by-state, as she explained to us, it varies
24 from state-by-state, and we're going to sort through
25 that.

1 As I said, if the -- at this time, we don't
2 anticipate the funding to be an issue, but we certainly
3 will address that very quickly if that in fact ends up
4 being an issue.

5 Our goal right now, I will tell you this, the
6 goal of the Department of Energy, and if you've been
7 watching sort of what we're doing right now with our
8 clean-up work, for instance, and we're trying to
9 escalate the clean-up at every site, the goal right now
10 is to reduce the hazard at every site possible as
11 quickly as possible.

12 So, getting the clean-up done, which then
13 reduces the hazard that is at that site, as quickly as
14 possible is extremely important, and we're doing
15 everything possible to do that. That means less people
16 exposed to things they don't need to be exposed to or
17 communities or anything else, getting the hazards taken
18 care of and getting them done quickly, not in the next
19 50 years but in the next few years.

20 So, you know, we aren't going to waver from
21 that and we want to do all these things together, and
22 if it means asking for supplemental budgets, we'll do
23 that.

24 MS. SPIELER: Okay. And my guess is that the
25 members of this committee would be very supportive of

1 your seeking a supplemental if that would make it more
2 possible to roll out the payment on these claims
3 without any internal conflict in the Department.

4 Jeanne, did you have your -- go ahead.

5 MS. CISCO: There was something you didn't
6 touch on, and I wonder if DOE has talked about this, is
7 the statute of limitations within the states. How do
8 you plan to address that? And also, claimant
9 assistance.

10 MS. COOK: Statute of limitations. We've
11 pretty much taken that off the table. We need to have
12 our physicians panel make a ruling on whether there's
13 causation and that's it, and we're not dealing with
14 that. We're also telling our contractors, we intend to
15 tell them to pay and not bring up any of those issues.

16 Now, something -- again, we have to get to
17 the state agreements, and if there's something in the
18 state that just completely fights us on that, that's
19 something else, but we don't intend to play with that.
20 I guess that's the only way I can say that. That's not
21 an issue for us, statute of limitations. That's off
22 the table.

23 Assisting claimants. Is that clear or not
24 clear? Yeah. Okay. Assisting claimants. There's so
25 many varieties of assisting claimants here. Let me

1 give you an example. When I was in Espaniola talking
2 to the Los Alamos employees, one of the folks there,
3 one of the women was telling me that she was trying to
4 find her husband's medical records at the local
5 hospital, and it's a small hospital and it's, you know,
6 a company town. It's pretty limited staff at the
7 hospital and they're saying, you know, you want me to
8 go down in the basement and find 50-year records of
9 what? And so, we're going to try to reach out, for
10 instance, to the hospitals within the communities to
11 say, hey, look, what do we need to do to help you get
12 records to people who are looking for old records?

13 I mean, there's such a wide variety of ways
14 to assisting claimants, everything from helping them
15 find and search out their records to making sure they
16 understand about all the ways to get employment
17 verification to helping them contact co-workers to find
18 histories of facilities.

19 What my goal is, is to provide the DOE system
20 to get all that information as much as possible and so
21 that we get, as we build our database more and more,
22 and we are finding amazing amounts of records that were
23 taken for a variety of reasons, we're tapping into
24 those and pulling them in, so that a worker has less
25 and less to do on their own to try to dig up that

1 stuff, that we try to provide as much as we can and
2 share information between the agencies. So, you know,
3 someone walks in and gives their basic information,
4 then we can move from there.

5 What other kind of assistance are you talking
6 about? Well, let me tell you. I think maybe if that's
7 not answering it, medical assistance is another one.
8 We have a lot of former worker programs. We have the
9 current -- we have programs in place for current
10 workers. In fact, those programs are not being fully
11 utilized. We have workforce out there that we try to
12 call in. You know, we're getting less and less people
13 showing up.

14 So, trying to have people who feel like they
15 don't have a good diagnosis, for instance, to get them
16 tapped into all the resources that we have available
17 right now, you know. We still may end up with people
18 who haven't had a proper medical diagnosis, but -- and
19 we'll see what we can do to help them, but right now,
20 the most important thing to do is to make sure that
21 everybody is tapping into the resources that the
22 Department does have for its workers and former workers
23 to make sure that they have that medical assistance.

24 MS. SPIELER: Did someone just come on to the
25 call or leave the call?

1 MS. JOHNSON: I just came on. This is
2 Virginia Johnson, Oak Ridge.

3 MS. SPIELER: Hi, Virginia.

4 MS. JOHNSON: Hi.

5 MS. SPIELER: Okay. John, did you have a
6 question?

7 MR. BURTON: Yes, I do. I want to go back to
8 the category of workers who would fall into what you're
9 calling the non-payer situation, and if I understood
10 your comments before, that would roughly represent half
11 of the workers are likely to be in that category
12 because they worked for employers who had bought
13 insurance from a state fund or something like that. Is
14 that --

15 MS. COOK: No longer in business. We have no
16 relationship with.

17 MR. BURTON: Yes.

18 MS. COOK: Right.

19 MR. BURTON: Right.

20 MS. COOK: Varieties. All the things that
21 Emily listed, yeah.

22 MR. BURTON: Okay. Category X, we'll call
23 it, which has a whole bunch of X-1s and X-2s and X-Ns,
24 you know.

25 All right. If I understood what you're

1 saying was you're going to help them by getting them
2 the best possible outcome from the physicians panel and
3 then they will go to the state workers comp system
4 presumably without excellent evidence. I don't see how
5 that solves the problem for a lot of these cases
6 because even if you've got the causation issue pinned
7 down, if there's no payer, I don't see what the workers
8 comp agency is going to do, and if I understood what
9 you also said, some people have suggested that the DOE
10 perhaps needs authorization to be able to become a
11 third payer payer under those circumstances or be able
12 to reimburse the insurance company or somebody who's
13 around that otherwise wouldn't cooperate if they didn't
14 get the money.

15 Now, I guess the question is: are you
16 actively seeking that authority to be able to make
17 those kind of payments?

18 MS. COOK: It is the issue that we teed up
19 with the staffers in the last couple weeks and said
20 here's the situation. Have we gone any farther than
21 that? At this point right now, you know, I'm trying to
22 get my rule out, I'm trying to get implementation in
23 place and get moving, I know that they're thinking
24 about it. We said we'd be happy to sit down with them
25 and discuss details on it, but we haven't got to that

1 point yet.

2 So, when you say are we actively asking for
3 legislation, no, but we actively identified that as one
4 of those places that I can't fix alone. I think that
5 there are -- again, we've got to see the different
6 situations in different states. I mean, some of these
7 states have situations where even for companies that
8 are out of business, they have an ability to pay. Just
9 because there's not a business there, they have some
10 kind of a state fund, but they have to have good
11 evidence and they will, you know, fight that evidence
12 to make sure that it meets their criteria. So, it
13 doesn't mean that they're totally out of luck, but we
14 want to help them to have the best foot forward.

15 MR. BURTON: Well, let me just add as an
16 observation, if that decision were made that you're
17 going to seek that kind of authority, there's still an
18 awful lot of practical problems to work out how that
19 would be implemented, and I do think that that's one
20 place where this committee could be of some help to
21 you, and at some point, if you're willing to say -- at
22 least for the moment, let's assume we're going to
23 request that authority, what kind of detailed
24 information do we need to implement that? I think we
25 could fairly quickly start to help look up that

1 process, begin on that process.

2 MS. COOK: And as Kate reminded me, I
3 understand that you and Kate are going to have a
4 meeting with some of the insurance folks some time
5 soon, and that's going to be very helpful because
6 you're absolutely right. Not just with the people
7 above me in the Department and there aren't a lot of
8 those, but also the staffers in talking to them about
9 the complications around this and the implementation
10 and taking them through a scenario planning, if you
11 will, well, if this happens, then you head down this
12 trail, and if this happens, you head down this trail,
13 and that glazed-over look that they got like I get when
14 Kate talks to me.

15 You know, it's going to be very complicated.
16 We need people like you who are experts in this field
17 to help us sort through that because the last thing we
18 want is another complicated way to do this that really
19 isn't effective. We need something that might work.

20 MR. BURTON: You realize, of course, Kate got
21 this job because she's the most animated and
22 understandable of all the people in the world who
23 understand these issues.

24 (Laughter)

25 MS. COOK: And that's a scary thought, isn't

1 it?

2 MR. BURTON: Well, let me just add an
3 observation here because at our August meeting last
4 year, our subcommittee had met the day before and had
5 recommended to the full committee that this
6 subcommittee, called the Contractors and Insurers
7 Cooperation Subcommittee, meet as soon as possible
8 after that August meeting, and we were subsequently
9 told after that meeting to not proceed with that
10 meeting. So that, the signals you're now giving are
11 much different and much appreciated, but, you know, it
12 is a further reflection of the fact that this is a
13 different use of this committee and its subcommittees
14 than we have experienced over the last year.

15 MS. COOK: Well, I hope that's a pleasant
16 surprise for you.

17 MS. SPIELER: Iris?

18 MS. COOK: Because I'm telling you, I need
19 all the help I can get. I can write a safety analysis
20 for you, but, boy, if you want me to write a state
21 workers comp law, I'm in trouble. So, I very much need
22 the resources of this committee to really make this
23 work. That's where we are now, making it work.

24 MS. POST: Bev, I'm going to just call you
25 Bev, one of the issues or statements you made was that

1 most state workers compensation systems are built
2 around the idea of injuries versus illnesses, and I
3 think that's very accurately put.

4 One of the concerns that this committee has
5 had in the last 18 months or so has been the difference
6 in the state compensation systems across the nation.
7 While some states may compensate for one thing, another
8 state may not compensate for the same thing.

9 How, if in any manner, you thought about
10 addressing that potential issue where someone, say, in
11 one state is treated a lot differently from someone
12 else in the same state even for the same condition,
13 assuming there is a contractor, somebody that is able
14 to pay?

15 MS. COOK: Well, that's why I was trying to
16 be very careful about answering the earlier question
17 about, you know, if I wanted this to be -- what would I
18 want this to be?

19 I see, you know, in me talking to my friends
20 and colleagues and trying to explain to them what the
21 fairness is of this, it's very hard, okay, because,
22 yes, it varies state-to-state and it varies widely from
23 state-to-state, and talking to the folks in New Mexico
24 versus talking to people in Washington State or
25 California, you know, it's a tough thing to explain.

1 I don't have any ability to do anything about
2 that, except to provide again the best possible
3 information from a physicians panel that provides at
4 least that, you know, federal view about what makes
5 sense and then we need to work within the state
6 systems.

7 Now, having said that, I had no intention of
8 causing commotion and heartache in any individual
9 state, but the meeting in Espaniola was the first time
10 I've heard anyone start to talk about maybe they ought
11 to look at their state workers comp program. I would
12 hate to get blamed for that, but I think that that was
13 encouraging, too, for folks to better understand the
14 statute, better understand what's in place, and to try
15 to really address where their efforts ought to be
16 directed. If it is in their state program, they ought
17 to be directed there.

18 Let me just say one other complication around
19 this. Many of our states are very small population.
20 Okay. A state like Idaho, for instance, with some very
21 large employer, DOE is the third largest employer in
22 the state, Savannah River is the largest employer in
23 that state.

24 When you have one employer in the state that
25 is doing something drastically different than the other

1 large employers in the state, those other large
2 employers start to get real nervous, too, because the
3 workforce in that state now thinks this is what state
4 workers comp does for them, and so I, as a field
5 manager, started getting noise from, you know, other
6 businesses in the state saying, you know, what are you
7 doing to us? The governor's office started to get a
8 little nervous, you know. I mean, so there's all kinds
9 of implications around this.

10 But I think that an educated workforce that
11 understands the rules and regulations in their state,
12 in the world of workers comp, I think, is a good thing.

13 MS. SPIELER: Gregory?

14 DR. WAGNER: This is a somewhat different
15 topic. So, actually, I wanted to follow up on the
16 physician panel question. You had sort of stated an
17 implied dichotomy between -- well, you expressed a
18 commitment to rigorous reports and I'm not sure what
19 that means, but you talked about, you know, on the one
20 hand having a somewhat uniform standard that the
21 physician panels apply and seemed to contrast that with
22 what maybe I'm reading into it, a lowest common
23 denominator of something that would be acceptable to
24 most states and their comp systems.

25 I wonder if you'd talk a bit more about what

1 you meant.

2 MS. COOK: I didn't mean lowest common
3 denominator but something that might be recognizable.
4 Maybe it's an average or, you know, -- this is one of
5 those things where we asked staffers to help us, you
6 know, try to figure out, you know, what makes sense to
7 you? We want something that is uniform. I'll just
8 tell you that. But we want to be able to move forward
9 with the folks that I have some ability to say we're
10 just paying, but to give the other folks paperwork that
11 allows them to be successful.

12 So, if it was something drastically different
13 than what a state comp system was used to looking at,
14 it might not have as much weight. We're trying to sort
15 through that and that's where the final throes of this
16 rule are in those sorts of arenas. Where is that
17 middle ground that allows everybody to be successful?

18 MS. SPIELER: I'm wondering if someone who's
19 on the phone is somehow causing feedback and maybe if
20 you're just listening, if you'd put us on mute, it
21 might help. I'm not sure, but we're getting some odd
22 feedback in the room. Not helping so far. Okay.

23 MR. ELISBURG: Could I follow up on Greg's
24 question and your answer?

25 I thought that in the letter of August 31st

1 to Secretary Abraham that was written by and on behalf
2 of this committee, we actually did recommend a uniform
3 standard of causality that the collective wisdom of the
4 members of this committee thought would do the minimum
5 amount of violence to the process and would do a great
6 deal of assistance to the potential claimants and was
7 something that the physicians could well live with, so
8 forth.

9 So, I don't know what is it that is causing
10 you, once you go back to the notion of the uniform
11 standard, such grief in examining this. I mean, we
12 could obviously work with you again, but, you know, we
13 spent a fair amount of time, the various subcommittees
14 and the doctors and everybody else on this committee,
15 trying to suggest to the Department here's a way to do
16 it with a uniform standard, and I don't know that --
17 and I would at least urge you to go back and look at
18 that as a place to start from if that's -- if you want
19 to go back to that notion.

20 MS. COOK: No. I appreciate that, and I
21 looked at it again even this morning, and let me put it
22 this way. Maybe what we did is that is a place to end
23 at and made sure that everybody else that understood
24 what that meant. Okay.

25 MR. BODEN: We've had, as we all agree now,

1 some time while the physician panel rule has been
2 moving to completion, and which has one potentially
3 good feature actually, which is, that it's given DOE
4 lots of opportunity to gather the background
5 information that people are going to need to get in --
6 when they go to the physician panels, so maybe not all
7 that time will end up being lost, and I wonder if you
8 or maybe somebody else who's going to be talking later
9 can give us some information on the number of people
10 who have been taken into the process, awaiting the
11 completion of the panel, and to what extent you've been
12 able to pull together the kinds of information that
13 they're going to need so that when the panels open up
14 their doors, that the customers standing outside will
15 be able to go directly to the cashier or whatever the
16 analogy might be?

17 MS. COOK: Yeah. Thanks. We have how many?

18 MS. KIMPAN: More than 11,000.

19 MS. COOK: More than 11,000 submittals,
20 people, you know, waiting in line, got their
21 information together, that we can move forward on.

22 There are nuances --

23 MR. BODEN: Worse than Disney Land, right?

24 MS. COOK: Yeah. Whereas there are nuances
25 around the kind of information and all that that's sort

1 of in the final rule, but, you know, they aren't
2 completely done but very quickly ready to go. I'm not
3 sure these physicians have any idea what they're up
4 against.

5 MS. SPIELER: I'm actually delighted to hear
6 that because there were substantial concerns expressed
7 in our -- at our Colorado meeting last August about
8 what exactly was happening when people were contacting
9 DOE or the field offices with regard to the Subtitle D
10 claims as opposed to the DOL claims, and at that time,
11 it sounded from the staff people of those offices and
12 from people in the community who came and spoke at the
13 public hearing with the committee that essentially very
14 little was being done on the development of information
15 that would be useful for their Subtitle D state comp
16 claims.

17 So, I gather that has advanced substantially
18 since last August?

19 MS. COOK: Yes, we've had substantial changes
20 and our office up here is up and running. We've got
21 files in place. As I said, the resource centers are up
22 and running, assisting people. I have visited several
23 of the resource centers, and I'm extremely pleased.
24 They're joint DOL/DOE resource centers, and I've met
25 with those folks a couple of times now and talked about

1 what they can do to help and so I just really feel like
2 we're going to hit the ground running here, and it will
3 be not for lack of effort. It'll be probably
4 overwhelming numbers and also a lot of feedback and
5 improvement loop to make sure people understand sort of
6 what box they fit in and how this moves forward, what
7 the questions are that they're getting asked and how
8 those questions are getting answered and what those
9 answers mean. We do a lot of that.

10 MR. BODEN: Just to clarify again, imagine
11 now that I'm a person who came to a resource center
12 three months ago, and they helped me pull together what
13 I needed to, and I was going to need things that had to
14 do with employment verification, and I was going to
15 need medical records and exposure records presumably
16 and diagnoses from whomever was appropriate.

17 Presumably that package will be ready next
18 week when the rule is promulgated or whatever week the
19 rule is promulgated, so that they can actually --
20 they'll actually have all those things to go to the
21 physician panel?

22 MS. COOK: I don't want to speak for clarity
23 completely, but there's -- like I said, there are
24 nuances around that that we can't completely pull
25 together yet, but things like when people apply and say

1 here, you know, here's my paystubs, I've been employed
2 here and all that kind of stuff, that's all there
3 sitting with the paperwork, and we can move forward.
4 There's obviously things that you'd have to do at the
5 end.

6 MS. KIMPAN: Kate again. As this group
7 knows, there are different types of claimants that are
8 eligible for Labor that are also eligible for our
9 program. Keep in mind atomic weapons employers are not
10 covered by Subtitle D. So, we're dealing with DOE's
11 contractors and subs, not Feds and not AWEs. So, that
12 population is different, but for everyone who's gone
13 through the Labor process, Les, we are both formally
14 and informally expecting to use all of the research
15 that has gone into those claimants.

16 So, for many claimants, for instance, those
17 with beryllium disease who go through Labor for the
18 medical care and the financial \$150,000, if some of
19 those workers and we have some around the complex then
20 become too ill to work and need wage replacement,
21 they'd submit themselves to the physicians panel. We
22 wouldn't reseek any of those records. We'd take
23 directly from Labor's finding or from the worker those.

24 So, there's some workers for whom their only
25 submission is to DOE, and we'll do employment

1 verification for those workers, but for many of these
2 workers, those, for instance, that have gone through
3 the dose reconstruction or through a claim for cancer,
4 employment verification and some other information will
5 have been gathered and we'll make use of that.

6 MR. BODEN: Right. Now, there's another
7 group that isn't eligible for the DOL program who would
8 need to have not only employment verification but if
9 they were claiming some exposure, some whatever
10 exposure records were available and medical records and
11 so on, those people also would have had those things
12 gathered, let's say, if they filed three months ago in
13 preparation for their being submitted to the physician
14 panels?

15 MS. KIMPAN: Yes. I mean, that's not
16 completed yet, if that's your question. We're
17 certainly not complete with that. What we're doing is
18 prioritizing the claims we've received and identifying
19 those workers that we need new information on distinct
20 from those we can tag on with and that is in process,
21 and I think that Steve and Claudia and others are going
22 to give you some additional detail on that.

23 MR. BODEN: Okay. And -- but the one --

24 MS. KIMPAN: But they're being cued up there.

25 MR. BODEN: -- where they need new

1 information, something's being done to gather that
2 information, not waiting for the physician panels to be
3 up and running?

4 MS. KIMPAN: Yes.

5 MS. COOK: Let me just say, some of it is,
6 too, is, getting the procedures in place to do that.
7 We want to make sure that it is a standard procedure.
8 We ask the same thing for everybody, so that we can,
9 you know, people understand what they're being asked
10 versus what their neighbor got asked, you know, that
11 kind of thing. So, there's still some procedures
12 underway, too. We certainly have a lot of cases,
13 especially the prioritized ones, that we really need to
14 move ahead on if we're going to hit the ground running
15 here, after the 30-day waiting period. After it's
16 filed, there's 30 days.

17 MS. SPIELER: Rick?

18 MR. BLEA: Just real quickly. What are we
19 doing about some of the lost records or incomplete
20 records from back in the '50s and the late '40s?

21 MS. COOK: That's what I talked about
22 earlier, about co-workers and facility records and
23 those sorts of things. There will be records for which
24 you don't know about that specific person, especially
25 the radiation-induced cancers, okay, and the stuff that

1 go into the NIOSH dose reconstruction. We may have to
2 go to a facility record room and the personnel records,
3 that sort of thing.

4 We're trying to do that as best as possible
5 and that's why I, as I said, have talked to a lot of
6 workers. I've talked to a lot of union folks about
7 assisting in doing that, so that we can get a bigger
8 picture. But I've also talked to folks about what
9 constitutes a need for a special cohort group. If you
10 really are in a situation where, for instance, that
11 hazard was never recorded or monitored for, okay, in a
12 facility, so that nobody has any record at that
13 facility for that, that's when you think about, well,
14 look, there's no way to really characterize what the
15 exposure was in that facility and maybe that's what you
16 talk about if you want to -- a new special cohort
17 group. But we're pulling together the widest base of
18 not only individuals and co-workers but facility
19 information that we can use.

20 MS. SPIELER: Don?

21 MR. ELISBURG: Just a quick one back to the
22 payer issue, in terms of this, John, and whatever else
23 the subcommittee might help you.

24 Is it my understanding that you're trying to
25 put this -- what you need for payer assistance so that

1 perhaps Congress can act on it this session? We're now
2 at the end of -- you know, the middle of June. If
3 something's going to happen so that this doesn't take
4 another year, it's got to be done, you know, in the
5 next couple months.

6 MS. COOK: Again, outside of my area of
7 expertise, but I can't guarantee that. However, I will
8 tell you that the last I've heard is this session isn't
9 going to end any time soon, like Christmas, after the
10 whole Department of Homeland Security thing came up,
11 you know. They're going to be there for a long time.
12 So, I think we have a large window of opportunity to
13 get at these guys.

14 What really has to happen is to put together
15 that matrix that says -- that lists what Emily just
16 did, all of the variations.

17 MS. SPIELER: I can't do that again.

18 MS. COOK: Yeah. All the variations and
19 possibilities to be able to get something that makes
20 sense.

21 MR. ELISBURG: I only raised it to alert my
22 colleagues here that there is time sensitivity in terms
23 of if there's a legislative fix needed, it needs to be
24 sooner rather than later.

25 MS. SPIELER: Yeah. I actually -- let me

1 just follow up on that because I'm sort of sitting here
2 musing about this, and it seems to me that you have a
3 kind of circular problem here, that how you draft,
4 ultimately draft the physician panel rule, and I'm
5 assuming the physician panel rule hasn't gone to OMB
6 yet, which means that it's not going to be out next
7 week, if it's still being redrafted, that the physician
8 panel rule could be written one of a number of
9 different ways, depending upon whether DOE is going to
10 be the responsible payer on a hundred percent of the
11 claims or whether DOE is the responsible payer on 50
12 percent and the facilitator and state compensation
13 systems are 50 percent, that those two different
14 scenarios create incredibly different needs in terms of
15 what needs to happen both in terms of the memoranda of
16 understanding with states and also in terms of what the
17 physician panels would have to say on claims in order
18 for it to be useful for people.

19 Now, maybe I'm wrong about that. So, I'm
20 sort of putting that out as a first premise here
21 because you said to Jeanne's question with regard to
22 statute of limitations, that it was off the table, and
23 I took that to mean that it was off the table for those
24 claims in which you would pay directly, but in 50
25 percent of the claims, if they're going to be defended

1 within state compensation systems by insurance
2 carriers, non-contracted employers or state funds that
3 cover uncovered claims that are recognized within state
4 systems, then you're going to have a very hard time
5 persuading those payers to relinquish available
6 defenses based on memoranda of understanding with
7 states since the payer's actually going to be the
8 holder of the liability.

9 So, if there's legislation that authorizes
10 and supplements your appropriations in order to make
11 you the payer on all the claims, then the way in which
12 you would design a program to function easily would be
13 one model, and if that's not true, it would be quite a
14 different model, I think. Am I missing something here?
15 I actually ask that question of committee members as
16 well.

17 MS. COOK: And maybe that's one of the things
18 that you can all help with, too. I mean, first off, I
19 think we have to be clear about how we talk about it,
20 too. DOE is never the responsible -- at this point,
21 DOE's not the responsible payer. The contractor is the
22 responsible payer for which we reimburse those that we
23 can reach out and touch. So, what we're talking about
24 is DOE being the third payer payer for which -- for
25 when there is no payer, right. So, it's kind of --

1 because that's one of the --

2 MS. SPIELER: We're really not a payer in
3 which there's -- what's the contract word for being in
4 -- where you have a direct contract with a contractor,
5 you're assigning the responsibility to someone, an
6 entity, that you can reimburse, but where you don't
7 have that direct contractual relationship and therefore
8 can't order payment, reimbursable payment, then those
9 are the other categories, right? Okay.

10 MR. ELISBURG: And the other thing, though,
11 is in terms of what Len said earlier, much earlier,
12 which was back to last year's conversation, it really
13 was our impression that at virtually all of these
14 sites, as all of these various subcontractors and
15 contractors came and went, that each successor
16 contractor in effect had some relationship with the
17 Department of Energy to take care of all of the old
18 kinds of problems that might come up. Forget about
19 workers comp, that, you know, whatever else was hanging
20 out there in terms of residual issues that prior
21 contractors had, that the Department had some kind of
22 an indemnification agreement with each of these new
23 successor contractors. That was the gist of what we
24 were talking about last year.

25 Now, obviously I'm hearing something

1 different now.

2 MS. SPIELER: Len, do you want to leap in
3 here for a second? Having been at the center of these
4 conversations last year.

5 MR. MARTINEZ: Gosh, let's see. There was
6 probably four issues whirling around, and I had my mind
7 on one.

8 It seems to me, albeit as naive as I may be,
9 that it is pretty simple for the Department to hire a
10 contractor to pay all of those, if you're going to use
11 a physicians panel that's going to have a standard
12 determination of causation, that the Department could
13 hire a contractor to be the payor and to fund that
14 payor from appropriated funds, be they out of the
15 current funding or some special appropriation for this
16 Act, and process all those payments in an expeditious
17 fashion versus dealing with the myriad of contracts
18 that are out there, the fact that you may agree that an
19 employee in fact worked for an employer that no longer
20 exists but that employee is eligible for the benefit
21 and you have no vehicle in which form to pay that
22 employee or former employee, that you could have a
23 contract that would pay that employee in whatever state
24 it is.

25 Now, I realize that I may be naive on the

1 subject, and I'm sure there's more complexities to it
2 than what I've just alluded to, but there's got to be
3 that kind of a solution that is directly in front of us
4 and able to solve.

5 MS. COOK: And maybe it's just me, but
6 they've made it real clear to me in the 27 years I've
7 worked for the Department that I'm not allowed to spend
8 money they didn't tell me I could spend.

9 MR. MARTINEZ: I'm not asking or proposing
10 that money that you have, you're not allowed to spend.
11 What I'm proposing --

12 MS. COOK: No, I understand what you're
13 proposing, and I think that you're right. Right now, I
14 don't have a mechanism to do that that says, you know,
15 I would need Congress to appropriate funds and to
16 identify that, you know, I should have a contractor
17 that just does that and that seems like a simple
18 solution to me. I understand what you're saying.

19 But I need -- I have to ask my parents for
20 the money, and I need Congress to do that and that's
21 okay and maybe that's -- at the end of the day, after
22 we've talked to all these folks and all the myriad of
23 ways we might do this, that that's the way to do it,
24 but right now, the Federal Government doesn't pay state
25 workers comp. I mean, you know, that circle sort of

1 isn't the loop. It's contractors. It's just so
2 complicated, that that may be in fact end up being the
3 most logical solution. We just gotta sort through it.

4 MS. SPIELER: Let Vikki talk, and then who is
5 that? Glenn?

6 MR. SHOR: It's Glenn, yes.

7 MS. SPIELER: Okay. Hold on one second.

8 MS. HATFIELD: What bothers me the most about
9 everything that we've talked about today and we talked
10 about a year ago is time. Time. Time is of the
11 essence, and we are not moving forward in an expedient
12 manner. That bothers me. Speaking as a committee
13 member, speaking as a representative of my community,
14 when I see what's going on, we need help. I mean, is
15 it going to be another year before we get things in
16 place for workmans compensation? Is that what we're
17 talking about?

18 MS. COOK: Absolutely not. When I say any
19 day now, I mean, I'm frankly frustrated that we have to
20 let it sit 30 days.

21 When we sat down and went through these sort
22 of, you know, four-five last issues with staffers two
23 weeks ago, we got into a long -- well, let us think
24 about it a couple of days. Gee, we aren't sure what we
25 meant, you know. Let's talk about this, let's talk

1 about that and that is exactly the issue I told them.
2 Can I get an answer from you in 24 hours? You know, we
3 just are talking in circles, and the fact of the matter
4 is, there's no way to make this perfect right now.
5 Let's just move on it, and we can all sit in this room
6 for the next, you know, this afternoon and tomorrow
7 morning and talk in circles about how we might make it
8 perfect.

9 I'll just tell you, I'm beyond perfect at
10 this point. I want it to get it done because I've got
11 the same concerns. I've got friends sitting there
12 waiting, also.

13 MS. SPIELER: Glenn?

14 MR. SHOR: This follows up a little bit on
15 what Len was saying, and it's a question that we
16 discussed at a previous meeting about whether the
17 Department or any subcontractor's looking into who
18 insured who over time in these contractors, so that
19 there would at least be a sense of who you had to get
20 to to discuss the nature of the liability for these
21 claims that are occurring because it seems like that's
22 the step.

23 I mean, with Len's idea, I can see going to
24 having a single payer pay out all those claims. You
25 might want to then subrogate those payments and try to

1 go back against the responsible parties, but you have
2 to know who those responsible parties are in order to
3 start making that transition, and we've discussed this
4 in the past, and I don't know what work has gone on to
5 try to identify who were the private insurers or the
6 self-insured employers over time. It's basically a
7 matrix you're trying to put together about who insured
8 who for the times that they were under the complex
9 responsibility.

10 MS. COOK: I'll tell you probably my most
11 recent experience on that subject alone is being out at
12 Hanford and having the manager at Hanford hand me the
13 flow chart of who worked at Hanford when. Trust me,
14 it's a nightmare, because Hanford's one of those sites
15 that they started with a major contract and they split
16 up, and they ended up with, you know, half a dozen or
17 more contracts and then they consolidated them all back
18 together into one or two and then they started farming
19 them out again.

20 If you've been to Oak Ridge lately, Vikki's
21 nodding, you know, we went to major contractors to now
22 let's split it up and you got, you know, I mean, it's a
23 manager's nightmare who's on first there. We have gone
24 through various versions of that. Yes, every site is
25 pulling together that sort of information to try to

1 regenerate, you know, who was here, what time frame,
2 and what their arrangements were and who their insurers
3 were and all that kind of stuff. We can get that
4 together and figure that out, but it is very
5 complicated at every given site.

6 MS. SPIELER: John, did you want to say
7 something?

8 MR. BURTON: Yes. I think I want to go back
9 and make sure I understand Len's proposal and see if it
10 plays off against what Glenn Shor was just raising.

11 If you had a single entity that was a
12 contractor of a DOE that was going to reimburse --
13 well, there's no other obvious current contractor. It
14 seems to me there's no need to go back and try to
15 subrogate because the arrangements in any case would be
16 you're going to reimburse these various insurance
17 companies that are out there. So, ultimately, it's
18 going to come back to the DOE anyhow.

19 It seems to me your proposal's a much more
20 efficient way of doing this thing rather than having 10
21 or 20 or 50 different insurance companies, state funds,
22 etc., etc., all of them coming back to DOE for
23 reimbursement. If there is this single contractor,
24 that expedites things quite a bit, and maybe we ought
25 to go up to Congress and get this thing resolved and

1 come back this afternoon and we're in business, right?

2 (Laughter)

3 MS. COOK: Give me a check, that'll be fine.

4 You know, and that's why when I -- you need to turn
5 your mike off. Thank you.

6 And that was one of my questions to them
7 about, you know, original intent of the legislation,
8 you know. What was the intent when it was stated to
9 turn this to state workers comp? You know, that
10 implies a whole set of things that have to do with
11 businesses doing business. I mean, all of those things
12 had to be obvious when this legislation got put in
13 place, right? Okay.

14 Well, it's like trying to get four kids to a
15 different ball game all on the same night, you know.
16 I'm trying to sort through how can I actually make this
17 work. It's very complicated, and I think there was
18 some reasoning behind why they wanted to go this way.
19 That's why -- well, I will truly say, though, I think
20 that this is a good first start. I really do. I mean,
21 you know, a lot of effort went into getting this to
22 what it is. It's a nightmare for me, but it's a good
23 first start, and I do think that it's starting down the
24 track of what we want to do which is to make sure that
25 people get compensated appropriately.

1 MS. SPIELER: Just to sort of bring us back
2 to where that starting point that Bev's suggesting, I
3 think that the concern is really that the workers who
4 worked in this industry that was a dangerous industry
5 not only in terms of acute injuries but also in terms
6 of long-term health effects, that there be some
7 attention paid by the Department and the Federal
8 Government to the illnesses that resulted from their
9 exposures at this work, and the reason I asked the
10 question or posed the issue the way I did a few minutes
11 ago, that is, that it really does matter in terms of
12 how the Department goes forward, whether Congress acts
13 to provide the answer to this 50 percent of claims that
14 aren't cleared -- that you regard as not clearly within
15 your control in terms of accepting payment
16 responsibility because I think in fact the physician
17 panel rule would look different if you can create some
18 efficient system on the order that Len is suggesting
19 versus knowing that 50 percent of the claims are going
20 to be adjudicated in the different state workers
21 compensation systems with the allowance of the raising
22 of all defenses, both regard -- as to causality and
23 technical defenses that may ultimately defeat claims,
24 as for example, in those states in which the statute of
25 limitations will bar claims if raised by a defending

1 party, although it's a waivable defense in those states
2 in those situations in which the defense is simply not
3 raised.

4 So, I think that's of critical importance,
5 and I know John said it joshingly, but if the committee
6 can be of assistance in trying to explain these issues
7 and why they are of critical concern to the program to
8 either members of Congress or their staffers, I think
9 that members of this committee would be more than
10 willing to do that because I know, having been a state
11 compensation administrator, that not only people in the
12 executive agencies but people in the Congress also
13 glaze over when you try to explain to them the
14 differences among state programs and why, how this all
15 fits together ultimately.

16 So, I think that you can take, you know, home
17 our willingness to assist you in that endeavor, if you
18 want to pursue it.

19 Iris?

20 MS. POST: Has there been any thought -- when
21 you were discussing generally -- and I know those are
22 approximations on the 50-percent payer and the 50-
23 percent non-payer categories.

24 Is there any thought to prioritizing claims
25 as they come in? I think somebody mentioned 11,000, to

1 sorting those we've got payers for, those we don't,
2 we'll send the first batch to the physician panel, so
3 these are the ones with payers, the rest we're going to
4 set aside for this point of time, because obviously it
5 seems to me that at least from 18 months of talking
6 about this issue and for today, we don't have a
7 solution for those payers, and I don't think we're
8 going to get one real shortly, but where there is
9 payers, those folks, to be able to show progress and to
10 be able to show that the promise has been kept, to make
11 sure that those folks are going to be the first ones
12 that are going to be paid.

13 MS. COOK: I appreciate that comment very
14 much, and that is one of the things we're going to sort
15 through here now.

16 We definitely want to get moving as quickly
17 as possible, especially for those things that are easy
18 to do, and so I've got to work with Claudia and her
19 staff in making sure that we get going on those things
20 just as soon as possible.

21 I would hate to, on the other hand, have, you
22 know, a sense of need and set aside all of those for
23 which -- that are hard to do and just set them aside
24 and say you're too hard to mess with, I'm not bothering
25 with you, you know. I don't want to do that either.

1 So, we've got to do something that's sensible and that
2 works.

3 I would like to get back, though, to what
4 Emily just said, and that is, I'll go back to what the
5 Secretary said, which he wants us to be as forward-
6 leaning as the statute permits to help workers. That
7 means all the issues about not just the medical
8 causation but all of the other things associated with
9 maybe a particular state workers comp. Those issues
10 are off the table for us, like I said earlier, which
11 takes me back to what Vikki and I just talked about.

12 At this point, I think if we set those things
13 aside and say we're just going to look at causation and
14 we're trying to be as forward-leaning as possible and
15 get to a physicians panel decision, that we can move
16 forward now, regardless of how we deal with the payer
17 issue. I don't know that it'll change a whole lot, but
18 the bottom line is we can always make adjustments. If
19 something changes, we can make adjustments. I just
20 want to get this rule out now and start moving with
21 people.

22 MR. BODEN: It just occurred to me that I'd
23 been thinking about this as if I'm a worker, I get a
24 positive ruling from the physician panel, and I get
25 paid, but then, of course, the story doesn't really end

1 there. It's maybe a little bit easier in most states
2 as far as my medical care goes, but to the extent that
3 there might be disability payments involved, then the
4 question of how disabled I am and what that means for
5 payment hasn't been resolved and that's an issue that
6 can't be resolved in a uniform way by the physician
7 panels, even if that was their role, because this
8 disability means different things in different states.

9 So, I'm wondering -- so, there are really two
10 questions in my mind about that. One is, how is the
11 issue of disability going to be handled, and what does
12 that mean in terms of payments going out to people,
13 people getting positive rulings, and feeling like their
14 cases are -- you know, have been taken care of
15 appropriately? Because, you know, a lot of states, if
16 there's some disagreement about permanent disability,
17 let's tack on another two years to the case.

18 MS. COOK: I've had that explained to me by
19 Kate, too.

20 MR. BODEN: Okay. So, we don't need to talk
21 about that.

22 MS. COOK: Well, no. What's going to have to
23 happen is this. We, of course, want to make sure --
24 and she explained to me that that actually was what
25 happens in some states, where an employer will drag it

1 out and, you know, all kinds of reasons for doing that.

2 What I want to make sure is that for the
3 contractors that we have on board, that we get them to
4 the table to help them deal with that and help with
5 those negotiations with the state workers comp on how
6 much disability and what this person's job was and
7 whether they, you know, stayed in that job, went to
8 another job, all that kind of stuff, to get those
9 things resolved quickly.

10 I will tell you, having been a contractor,
11 they will do what you pay them to do. So, if we're not
12 paying them to drag it out, we are paying them to get
13 to the table and get these things resolved quickly,
14 that's what they're going to do, and I can effect that
15 and that's what I want to do, make sure that they've
16 got the resources to make sure that we get that going
17 quickly.

18 MS. SPIELER: Bev, let me ask you, because
19 we're way over time on your initial hour-- no. I
20 agree, but I also know that there were more specific
21 reports that we're expecting from Steve and Claudia and
22 no, I'm not asking you -- actually, there were still
23 hands up. So, I'm kind of asking for advice here.

24 Are you going to be staying with us for the
25 rest of the afternoon and returning tomorrow or will

1 you be leaving? Because I think it's very important to
2 the committee members to get their questions answered,
3 and in fact, it might be useful if you were part of the
4 discussion going forward, but if you're going to be
5 leaving, I think it's important to extend this portion
6 of the meeting until the members of the committee are
7 satisfied.

8 MS. COOK: They give me this little card
9 every day and it tells me where I have to be. I am
10 with you until 3:30. I have to go to a meeting at
11 3:30, and then I intended to be back in the morning,
12 and so, I think there's some things that, for instance,
13 Steve was going to talk about really how the layout of
14 the office is and some of those sorts of things, and
15 Josh was going to talk, I think, also, right? No? No.
16 DOL, HHS, DOJ, all those sorts of things. Some of the
17 reports that you have from the other agencies.

18 I think it's real important for you to do
19 them this afternoon, but I can stay for a little bit
20 longer and then I will definitely be back tomorrow.

21 MS. SPIELER: Okay. Why don't we then
22 continue with our discussion with you for the next,
23 say, 20-25-30 minutes, and then we'll move -- we'll
24 take our break and move forward with the other --
25 actually, if people who are giving the reports need to

1 be leaving, we'll have the reports before the break and
2 if not, we'll take a break and then hear them.

3 So, let's go back to Glenn.

4 MR. SHOR: Emily, I have to check out now.

5 MS. SPIELER: Okay, Glenn.

6 MR. SHOR: I look forward to working with you
7 all.

8 MS. SPIELER: Okay. Will you be joining us
9 tomorrow morning, Glenn?

10 MR. SHOR: I don't expect to, no.

11 MS. SPIELER: Okay. Thank you.

12 MR. SHOR: But I will try to check in with
13 you afterwards.

14 MS. SPIELER: Okay.

15 MR. SHOR: Okay. Thank you.

16 MR. ELLIOTT: Emily, this is Larry Elliott at
17 NIOSH.

18 MS. SPIELER: Yes?

19 MR. ELLIOTT: I, too, am going to have to beg
20 off at about 3:30.

21 MS. SPIELER: Okay. Why don't we do this?
22 Why don't we move directly from Bev to you, Larry, and
23 then we'll take our break? Is that okay?

24 MR. ELLIOTT: That's fine by me, if it's fine
25 with the committee.

1 MS. SPIELER: Steve, is that okay with you?
2 Yeah. That's fine.

3 There were hands up when I stopped this
4 process a minute ago. Greg?

5 DR. WAGNER: Just a quick question. You're
6 intending to publish a final rule or another proposed
7 rule?

8 MS. COOK: Final rule.

9 MS. SPIELER: I actually had something that
10 is somewhat off. There have been various discussions
11 over the last year and a half about whether it would be
12 useful to have the Institute of Medicine take a look at
13 issues of toxicity and disease that might not have been
14 previously reviewed, and I know IOM has done those
15 kinds of -- that kind of work. I know they did it
16 around the Gulf War, and I wondered if you've been in
17 discussions at all about the possibility of having the
18 Institute of Medicine look at issues that might be
19 useful to the physician panel.

20 This isn't in regulatory mode now but more in
21 sort of thinking forward about how to look at diseases
22 and what kinds of records you might want to be looking
23 at and so on.

24 MS. COOK: Not the Institute of Medicine
25 specifically but as Steve will tell you, I mean, the

1 Department of Energy has paid for a lot of different
2 kinds of medical studies over the years, and right now,
3 of course, it's a lot of radiation studies still, both
4 in Japan and in Russia, and when the folks here will
5 tell you the first meeting I had with some of those
6 folks, I said, "Do you have deliverables? You know,
7 tell me what you guys do and what's happening with
8 that." They said, "Oh, yeah. We measure our success
9 by how many peer-reviewed journal articles we have." I
10 said, "Well, I want to know what people do with that
11 information."

12 So, we are regrouping a bit and looking at
13 not only the work that the Department of Energy is
14 doing but other information that's out there because
15 we're somewhat disjointed, you know. People are doing
16 medical research and toxicity studies and all that and
17 they do it in their little world and then we've got
18 people over here trying to figure out how to
19 appropriately protect workers in a workforce and get
20 the best work out of them, and we are working very hard
21 with the people on my staff to figure out that
22 connection.

23 I think that's a very good suggestion. I
24 want to make sure whether it's DOE money or somebody
25 else's money that -- if we can tee up to folks what are

1 the -- if everything from the chemicals to the
2 situations of concern to really make sure that the
3 Federal Government is best utilizing their resources to
4 focus on the things that are most important, I think
5 that's critically important.

6 Again, from a personal note, my father's a
7 sheetmetal worker, and he's ill with a neurological
8 disease and terminal, and I actually talked to the
9 sheetmetal workers union folks, and they checked out
10 the plant that he worked in and said, "Oh, you know,
11 it's a very clean plant and all that", and he probably
12 was not -- I was thinking metal vapor sorts of things,
13 that might be the problem. Okay. Actually, it was a
14 woman in Oak Ridge that came up to me and she said, "It
15 was probably the cleaning solutions that were used."
16 I'd never thought of that. I'm a person that does
17 safety stuff, and I had never thought about that might
18 have been the item that most affected him in his work
19 life in 40 years in an automotive plant.

20 So, for me, chemical toxicity is something
21 that's very important to me, and I'm not sure who's
22 doing work on that, and I'm not sure that we have a
23 full handle on the kinds of chemicals that we use in
24 just normal cleaning solutions within our complex and
25 the latest information on that.

1 So, Institute of Medicine might be -- you
2 know, we just need to look at all of the kinds of
3 workers that really try to leverage all the money
4 that's needed on medical research to make sure it's
5 focused on the things that are most important.

6 MS. SPIELER: I think IOM usually does not
7 necessarily new work but may be useful in pulling
8 together the existing work and then giving a real
9 scientifically kind of well-respected opinion to the
10 Department with regard to what exposures and what
11 diseases and what their relationships may be and it's
12 just a thought that you might want to explore.

13 Les?

14 MR. BODEN: Yes, I had sort of a narrow
15 question.

16 Back in last, I think, October or so, this
17 was before your arrival at the Department, I had made a
18 request as the chair of the Subcommittee on Performance
19 Evaluation and -- Program Evaluation and Performance
20 Measurement that I knew that the DOE was collecting
21 information on Subpart D and what was happening at the
22 intake centers and what was going on after that, and I
23 thought it would be useful for our subcommittee to get
24 this information, to be able to look at it, to see what
25 the DOE was collecting, to make suggestions about how

1 to -- both to improve the information collection system
2 and to use those data to -- for an on-going evaluation
3 of the program.

4 At that time, I was unable to get any data
5 and since other things have changed since last August,
6 I wanted to check to see if it would be possible for
7 our committee to have appropriate access to that kind
8 of data.

9 MS. COOK: Two things. I was going to talk
10 about that.

11 I really do want to have performance
12 measures, and I want to know that we're focusing on the
13 right things, and there are many aspects to that. So,
14 I would like assistance from your group on that. I
15 don't have it in front of me. We've -- when we go to a
16 site to do a public meeting, we talk to them about, you
17 know, how long it was taking before versus how long it
18 does now for things like employment verification and
19 all that kind of stuff and how we're doing more
20 efficiently, but frankly, it's not just the efficiency,
21 the number of days it takes to get something through,
22 it's also the cost-effectiveness of that, and so I want
23 several different kinds of measures of efficiency and
24 cost-effectiveness to make sure that we're utilizing
25 the money that we do in the most effective way possible

1 and getting the end goal in the most efficient way
2 possible.

3 The other thing that I talked to both DOL and
4 NIOSH about is giving us feedback, especially NIOSH, on
5 what information is important. Right now, we're just
6 kind of emptying desk drawers, you know, and if that's
7 not the stuff they need, I need to know that now so
8 that we can tell our field offices what they need and
9 what they don't need to make sure that they aren't
10 sifting through things they don't need and we aren't
11 looking for records that actually don't input to the
12 process.

13 So, there's a lot of areas around performance
14 evaluation and efficiencies that I think your group can
15 be very useful to us. So, we'll work on seeing how
16 best to work that.

17 MS. SPIELER: Don?

18 MR. ELISBURG: I had two questions and one
19 observation.

20 First, the observation is, no one ever knows
21 what the legislative intent was, particularly on a
22 concoction such as this. However, I think when you do
23 get through reading the construct and the legislative
24 history, I do believe that it was intended that the
25 state workers comp agencies would be extraordinarily

1 passive in this process and would kind of be simply
2 facilitators of seeing that workers were paid
3 essentially using the state benefit system benefit
4 levels as opposed to some uniform benefits.

5 I do not believe it was contemplated that the
6 states would, once the Department of Energy made its
7 determination, that the states would have second and
8 third bites at the apple there to interpose reasons why
9 the claims should be complicated. That's not to say
10 there aren't some issues that once you get into the
11 state systems, such as this permanent partial or some
12 of these other issues, wouldn't be there, but I think
13 it was essentially to use the state benefit system once
14 the Department made its uniform determination.

15 Second observation or question really is:
16 early in your comments to us, you mentioned that the
17 way you were going to tell these contractors they were
18 going to pay, that they had to pay and they couldn't
19 use any DOE money to defend but they could do what they
20 wanted themselves, I think that is an extraordinarily
21 dangerous approach to suggest to some contractors that
22 for whatever the reasons they might use their own funds
23 to defend against a claim that DOE has already said to
24 pay.

25 I think that has a potential of creating a

1 nightmare for everybody, particularly claimants, and I
2 don't know where -- why you would want to make a
3 separate determination. It seems to me DOE should say
4 to the contractor, we've made this determination, you
5 owe it, we're going to pay you back, you pay it, and
6 that's the end of it under your contractual
7 arrangements.

8 MS. COOK: And that is the case. I mean, I
9 didn't mean to imply we would tell them you can do
10 whatever you want on your own end, but the fact of the
11 matter is they can do whatever they want on their own
12 end. What we will -- the only thing we'll tell them
13 is, you know, we intend to reimburse you. You should
14 pay this, period. I cannot prevent any private company
15 doing whatever they want. I guess I could pull their
16 contract and terminate them for cause.

17 MR. ELISBURG: Well, I'm just suggesting you
18 might want to look at how strong you make the statement
19 that we don't expect this to be a game here.

20 MS. COOK: And you know, I mean, it's pretty
21 hard to pull a contract on, you know, a week's notice
22 on a place that has 8,000 employees and are running
23 nuclear reactors, you know.

24 MR. ELISBURG: I mean, there are --

25 MS. COOK: Have someone else come in and take

1 over.

2 MR. ELISBURG: Yeah. There are other
3 procurement remedies.

4 MS. COOK: Right.

5 MR. ELISBURG: However, the other -- the
6 final point was, on this 50 percent that we've been
7 throwing around here, -- well, that's my question. Is
8 there some data that surrounds those guesstimates that
9 you might be able to share with us, so that we would
10 have a better idea of what the cut is as between
11 companies out of business, companies you never heard
12 of, companies that have some kind of insurance, you
13 know, that whole range of potential? Because that may
14 in fact bear on perhaps how we can look at how serious
15 that 50 percent really is when you break it down. It's
16 a request, I guess.

17 MS. COOK: I think Kate made it up.

18 (Laughter)

19 MR. ELISBURG: Actually, that's what I'm
20 worried about.

21 MS. COOK: You know, it really truly is a
22 guess. I will just tell you that. You know, how many
23 of these companies I worked for before, I don't know,
24 maybe that was what we used for the standard. How many
25 companies I worked for still in business? Maybe that

1 was it.

2 You know, I don't know. I mean, I think that
3 you're right. It will affect how we move forward a bit
4 to know how serious this is or not, but I think it's
5 fairly reasonable, but why don't you go ahead, Kate?

6 MS. KIMPAN: In spite of that 50 percent
7 being soundly attributed to me, including here, as a
8 statistician, I'm very nervous about saying how many.

9 I think there are two really big variables
10 here. One are the empirical ones on the table and that
11 is Ohio, Washington State, Nevada through 1999, were
12 exclusive state funds. So, all insurance was purchased
13 one way or another through those. Some were self-
14 insurance within those.

15 Rocky is with a commercial policy. USEC,
16 which is Portsmouth and Paducah, is a private company.
17 If you -- that's a snapshot of where we are currently.
18 This is a 50-year observation of claimants going
19 backwards. So, I think without hesitation, even, you
20 know, with statistical gods looking at me, we can say a
21 significant number of these claimants. Fifty percent
22 might be actually a conservative estimate.

23 The big issue is, of course, claiming
24 behavior because we could make an empirical assessment
25 as to the empirical coverage opportunities and say what

1 percent of our workers were covered in certain ways,
2 and we could count every one of the 400,000 workers and
3 give you an answer. That may have no relationship to
4 the 11,000 people who have come forward, and so I think
5 we'll know better how many we have payers for, to be
6 perfectly honest, when those that have come forward get
7 findings.

8 MR. ELISBURG: The reason I'm asking and why
9 I think we'd like to explore it more, I think there's a
10 distinct difference, for example, between the situation
11 where one of our claimants may have worked for a
12 subcontractor who disappeared in 1963 or 1953 and you
13 just -- you know they were there but you have no idea
14 how to reach them. That may be different than someone
15 who is working for a clearly-identifiable contractor
16 where there is the issue of the insurance contractors,
17 the issue of the state fund. There's the issue of the
18 relationship with USEC.

19 I mean, those are where you know who the
20 bodies are, but you're trying to figure out how to
21 reach it as opposed to we can't find the company and
22 who's responsible as the successor for that. I think
23 those are different kinds of issues and that's why I
24 wanted to raise the question of what -- you know, where
25 do all these fall out, and how do -- you know, that may

1 be a way in which approaching a resolution for you.

2 MS. KIMPAN: That's a very good observation,
3 Don, and I think that Bev referred to it in earlier
4 comments, that we know that throughout history, even
5 workers for whom there's no standing current
6 contractor, there may still be a relationship with DOE,
7 and we believe these workers were covered for work
8 comp. So, you're right, there are situations where, if
9 we could identify the right entity, there might be some
10 inroads distinct from those like people with commercial
11 insurance, where there's a particular legal barrier
12 that they're perceiving or state funds where defenses
13 are going to get raised independent of our opinion.

14 MS. COOK: Let me just talk with the staff.
15 We'll talk about that over the next week or so and see
16 what we can do to kind of sort through this because I
17 do think it directs how much energy goes to looking at
18 what kind of solution, and it goes back to things like
19 is there enough funding to pay or not? I mean, you
20 know, it's kind of -- it's one of those things, we just
21 gotta keep working through it to see where the big
22 issues lie.

23 MS. SPIELER: Do you have any idea of the
24 11,000 claims that might be Subtitle D claims, how they
25 sort out along these issue?

1 MS. COOK: These are 11,000 Subtitle D
2 claims. That is what these are.

3 MS. SPIELER: Right.

4 MS. COOK: Do we have a sort on those? No.
5 Well, the other thing is, you know, there's 11,000
6 claims. How many of those claims then would have a
7 positive physicians panel? Then how do they sort and
8 that's hard and all that, but we'll talk about that
9 this week and see if we can figure out a way to just
10 get an initial feeling for that.

11 MR. BLEA: I guess you asked my question.
12 This status report is from the Department of Labor. I
13 was wondering if DOE is going to have a status report
14 from you all.

15 MS. COOK: Just as soon as you all get done
16 with me here. Maybe we should get Larry up.

17 MS. SPIELER: Right. We're going to see what
18 OWA has for us after we take a break after Bev is done
19 and after Larry Elliott's done and for you as well.

20 Other questions for Bev that can't be held
21 till tomorrow morning?

22 MS. COOK: You've run out of the limit of
23 what I know, you know. You've sucked my brain dry.
24 This is it, guys. Okay.

25 MS. SPIELER: I'm assuming, Bev, that

1 tomorrow morning, that we will really try to start
2 exploring with you where we can be most helpful, and
3 we, quite frankly, are eager to do that, as you and
4 I've discussed in the past. We really appreciate your
5 taking so much time with us this afternoon, and we'll
6 be coming back tomorrow morning so that we can have the
7 really fruitful discussion of how we go forward.

8 Thank you very much.

9 Larry, are you there?

10 MR. ELLIOTT: I am here.

11 MS. SPIELER: Okay. Sorry that we've run so
12 far behind on the agenda but do appreciate your hanging
13 in there, and if you could just bring us up to date on
14 the NIOSH component of this, it would be very helpful.

15 Status of Program Implementation:

16 HHS Rules and Advisory Committee

17 MR. ELLIOTT: Surely. I appreciate the
18 opportunity to speak to the committee today. Sorry
19 that I can't be there in person. I'll be very brief
20 because I'm sure many of you are like I am, you're
21 fidgeting in your seats waiting for the break.

22 So, essentially, the HHS responsibilities,
23 I've presented to the committee before, include the
24 fact that we had to promulgate two new rules, one on
25 probability of causation which the Department of Labor

1 will use for cancer-related claims, and the other one
2 on dose reconstruction methodology that we here at
3 NIOSH will use to estimate individual doses for those
4 cancer-related claims.

5 We've published both of those rules on May
6 1st. They are available on our website which, if you
7 don't have that, if the audience does not have that, it
8 is www.cdc.gov/niosh. You'll also find a variety of
9 information on that website that might be informative
10 to the committee.

11 We are using the dose reconstruction
12 methodology rule and some implementation guidelines
13 that we have developed to support that rule, to conduct
14 individual dose reconstructions. We're working on, as
15 of last Thursday, we have 4,914 claims in our hands
16 here at NIOSH for dose reconstruction. We have
17 finished, completely finished one of those and turned
18 it back over to the Department of Labor week before
19 last for a recommended decision which they determined
20 to award.

21 We have another estimated around 14 dose
22 reconstructions almost complete and there are several
23 of them on my desk, and I was multitasking while I was
24 listening to the discussions this afternoon, reviewing
25 several of those so that we can get them in the hands

1 of the claimants.

2 We are moving as expeditiously as we can, but
3 as we feel we need to be cautious and careful and
4 deliberative in this process at the front end here to
5 develop very carefully-crafted reconstructions of dose
6 that will be used for adjudication of these claims.

7 So, the Department of Labor, as I said, has
8 used the probability of causation rule for one claim
9 and they are awaiting the receipt of additional dose
10 reconstructions from us to finish up other claims.

11 With regard to another responsibility that we
12 have, we have a responsibility in HHS to prepare
13 guidelines on how petitions for additions to the
14 special exposure cohort will be handled. We have
15 prepared a Notice of Proposed Rulemaking in that
16 regard, and it should be available for -- should be
17 published for public review and comment some time later
18 this week. I'm hoping by Thursday, it'll be out and
19 available, hope it goes on display tomorrow. That's
20 currently the plan as of today. There will be a 60-day
21 comment period associated with that proposed rulemaking
22 on the additions to the special exposure cohort.

23 Additionally, we, as you know, as your
24 committee knows, we were charged with providing
25 appointments of physicians to the physician panels,

1 and, of course, we have already completed that. We
2 have over the course of anticipating DOE's rule to
3 implement these panels, we've made a couple of
4 reappointments of people that decided that they wanted
5 to withdraw their participation. So, we have made new
6 appointments. We stand at the ready with a list of
7 qualified physicians who have expressed their interest
8 to participate that will serve us in making
9 appointments in the future.

10 Another responsibility that we have is to
11 provide staff support to the Advisory Board on
12 Radiation and Worker Health. They are well underway in
13 their -- the board's responsibilities. They've
14 provided review and comments on both of the rules that
15 were promulgated. They are anxiously awaiting to see
16 this new rule or new proposed rulemaking on special
17 exposure cohort petitioning guideline, and they are
18 working on developing a plan of how to conduct review
19 of completed dose reconstructions which is another
20 responsibility that the board specifically has as
21 stated in the Act.

22 The next Advisory Board on Radiation Worker
23 Health Meeting is scheduled for July 1st and 2nd out in
24 Denver, and we would welcome and encourage anybody that
25 wishes to participate to participate in that meeting.

1 It will be a meeting which primarily focuses on the
2 presentation in the Notice of Proposed Rulemaking on
3 the Special Exposure Cohort petitioning process.

4 Additionally, in that meeting, we will be
5 discussing some of the technical documentation for our
6 interactive radioepidemiologic program, our computer-
7 based program, which is also on our website. That's
8 the software program that the Department of Labor uses
9 to make a determination on probability of causation.
10 So, we'll be discussing with the board the technical
11 documentation that supports that program and how that
12 differs or how it's similar to the National Cancer
13 Institute's interactive radioepi program which was
14 developed in concert with ours.

15 And I think I'll just leave it at that and
16 take any questions that you might have.

17 MS. SPIELER: Questions for Larry?

18 (No response)

19 MS. SPIELER: Larry, I think there is no one.

20 MR. BURTON: Let me ask a question just to
21 make sure I understand the situation on the claims that
22 you're doing the dose reconstruction on.

23 You said you've done one of the backlog of
24 4,000?

25 MR. ELLIOTT: Yes.

1 MR. BURTON: I'm not quite sure. Is this --
2 could you give us an estimated rate? Is it one per
3 week that we're --

4 MR. ELLIOTT: It certainly has taken a huge
5 amount of time, effort and wherewithal just to get to
6 that one. We had to develop the -- we couldn't really
7 finalize a dose reconstruction until we had the rule in
8 place, but that's still with the interim final rule on
9 dose reconstruction. We were allowed to work on
10 developing the implementation guidelines and assemble
11 all of the information necessary to do a dose
12 reconstruction on a given claim.

13 To look at the number 4,915, you might think
14 that all those have been sitting here on our plate from
15 when the Act was passed, and that is not the case. The
16 number of total claims we have in hand grows by about,
17 oh, a 100 to a 150 each week. So, it's just been in --
18 you know, this first claim that we turned the dose
19 reconstruction around on was Number 61 that we had
20 received back in November of last Fall.

21 There is a huge amount of work to assemble
22 the information necessary for doing a dose
23 reconstruction as well as we have in this process an
24 interaction with each claimant and there can be
25 multiple claimants on -- as survivors of an Energy

1 employee, and so we have to talk to each one of those
2 individuals.

3 In some cases, we also conduct interviews
4 with co-workers and accept an affidavit within that
5 interview from a co-worker to establish, you know, what
6 really was going on perhaps in the work environment
7 that might not have been captured in the dosimetry
8 record or in the process record.

9 So, all of that takes a goodly bit of time,
10 and I'm limited on staff here, but we're moving as
11 quickly as we can on these and being as thorough as we
12 can. We have a dose reconstruction contract that we're
13 looking to award very soon which will enable us to
14 process more claims quicker and see the throughput
15 increase.

16 MS. SPIELER: You know, I'm musing about
17 Bev's response around needing to move forward and the
18 adage that the best can be the enemy of the good.

19 It does seem to me that each of the agencies
20 involved in this are going to need to figure out a way
21 to start processing claims in a somewhat more
22 expeditious way, and I think, I'm sure that NIOSH is
23 trying to figure that out as is DOE and DOL, but,
24 Larry, as you can imagine, there's substantial concern
25 on the committee about the sort of rate of progress

1 since this legislation was passed a year and a half
2 ago, and I'm sure there's a fair amount of frustration
3 out in the communities about this stuff.

4 So, obviously we would join with others in
5 encouraging you and the other agencies involved to see
6 if you can figure out a way to move forward efficiently
7 with these kinds of processes, and those of us who've
8 been involved in workers comp for a long time know that
9 each time you step up the pace, you may lose a little
10 bit of information and that there's a loss there, we're
11 not unaware of that, and obviously we rely on you and
12 whoever you contract with to figure out the optimum
13 solution there, just as DOE and DOL have to.

14 MR. ELLIOTT: I certainly receive and welcome
15 your encouragement, and believe me, we are -- we have --
16 -- we take around a 150 phone calls a day here from
17 claimants. So, we're fully cognizant of the interest
18 and the concern about being timely here. We're doing
19 our level best to try to accommodate that as best we
20 can.

21 MS. SPIELER: This is certainly a new role
22 for NIOSH to be getting a 150 calls from worried
23 people.

24 Other questions for Larry? Don?

25 MR. ELISBURG: Just one, Larry, on the

1 special exposure cohort guideline, I guess.

2 MR. ELLIOTT: Yes.

3 MR. ELISBURG: When might a copy of that be
4 available for our committee to peruse?

5 MR. ELLIOTT: We're hoping that it will go on
6 display at the Federal Register on tomorrow, the 19th.
7 I will hear later today. That's where I've got to rush
8 off to, to determine the status of this, but it's
9 supposed to go on display tomorrow and be published on
10 Thursday.

11 MR. ELISBURG: I guess I was asking if it
12 became reasonably public, is there a way for somebody
13 from NIOSH in Washington to give it to us tomorrow
14 morning, so that the members here would have a chance
15 to look at it before we adjourn?

16 MR. ELLIOTT: Unfortunately, when it goes on
17 display at the Federal Register, it does not mean that
18 you have a hard copy of it. You can only see it at the
19 Federal Register and then the following day is actually
20 when it is published and available in hard copy form.

21 MR. ELISBURG: Okay. I surrender.

22 MR. ELLIOTT: I'm sorry. I'm sure that my
23 advisory board would like to see it before you all get
24 a chance to hack at it.

25 MS. SPIELER: We won't hack.

1 MR. ELLIOTT: But as soon as it is available
2 in hard copy, you can go to our website and see it and
3 download it yourself or call in and we'll mail you a
4 hard copy.

5 MS. SPIELER: Jeanne?

6 MS. CISCO: Larry, is there anything that
7 NIOSH needs from the individual plants as far as this
8 stuff that's at each plant or incidents or I know
9 you're probably dealing with a lot of widows. I'm
10 wondering how you're doing the interviews there because
11 they really don't know that much about what happened at
12 our plants.

13 Is there anything we could provide NIOSH to
14 help there?

15 MR. ELLIOTT: Well, I appreciate the
16 question. We are working with the Department of Energy
17 very closely on the information necessary for each
18 individual claim, and we have a fairly, I think, well-
19 designed and devised scope of requests that we send to
20 the Department of Energy point of contact at a given
21 site.

22 Additionally, to individual claim
23 information, we are working with the sites to build
24 site profile information that would serve and benefit
25 each and every claimant from that site. So, I think

1 that's going -- we have good experience at some sites
2 and we're not having as good experience at other sites,
3 but we're working with DOE to improve that response
4 rate at those sites.

5 I don't know what to say other than that in
6 response to your question. Yes, we do talk to spouses
7 of the Energy employees, and you're absolutely correct.
8 Many times, they don't have a lot of information to
9 provide, but the type of information that we do find
10 beneficial in those conversations with them are who
11 were the co-workers that your spouse, you know, served
12 with that we might talk to who are still around that
13 can give us some insight into activities and exposure
14 situations that happened during their employment there
15 and that's been very beneficial.

16 So, your comment's well taken, though.

17 MS. SPIELER: Anything else for Larry?

18 (No response)

19 MS. SPIELER: It sounds as though maybe NIOSH
20 should be -- you probably are, but if you're not, maybe
21 you should be in touch with the unions at the local
22 sites to see if they can be of assistance in trying to
23 reconstruct this.

24 Anything else?

25 (No response)

1 MS. SPIELER: Larry, thank you very much.
2 Sorry to keep you waiting so long.

3 Claudia? Can you wait till after the break?
4 Are you sure? Okay. We'll take a 10-minute break and
5 come back and hear from Claudia and from Steve Cary
6 about OWA.

7 MR. ELLIOTT: Thank you.

8 (Whereupon, a recess was taken.)

9 MS. SPIELER: Okay. Reconvening now after an
10 excessively long break.

11 Claudia, I'm sorry to have kept you so long,
12 and we appreciate your coming, and if you could just
13 forge ahead now and give us your report, we'd
14 appreciate it.

15 DOJ Program Status

16 MS. GANGI: Thank you. It's good to be with
17 you this afternoon. Thank everybody again.

18 As you know, the Department of Justice has
19 the smallest role in the Energy Program, and I'm not
20 sure anything I have to offer today pertains to your
21 discussion, but it's nice to see the big picture, I
22 think. So, for what it's worth, I will tell you that
23 we have been actively assisting the Department of Labor
24 with claims involving former RECA claimants since
25 August of last year.

1 You can see from the statistics provided by
2 the Department of Labor that they received 3,512 claims
3 from RECA Section 5 claimants. Those are folks who
4 were engaged in uranium mining. They were millworkers
5 processing the uranium ore and they were ore
6 transporters. That's what Section 5 of our statute
7 covers.

8 Of those 3,500+ claims, 2,363 of them have
9 been forwarded to me, to the Department of Justice, for
10 verification of their RECA award. That is what
11 triggers their eligibility to the additional \$50,000
12 and that's a benefit they have to have been approved
13 under our statute. We have processed 2,334 of them.
14 These are statistics current as of last Wednesday.

15 So, we have a good system in place that we've
16 developed that seems to be operating fairly smoothly, a
17 very good working relationship with the Department of
18 Labor and their Denver office which handles all of the
19 former RECA claims under the Energy Programs.

20 I don't have a lot of additional information
21 to offer. I know that the Department of Labor does
22 provide to us copies of final decisions under their
23 program. We've received about 311 of those decisions
24 reflecting payments to former RECA workers of \$60.6
25 million. So, the claims are going through, they're

1 being processed, and they're being paid. So, this is
2 one slice of the pie that I think again is operating
3 smoothly and is effective and the money is making its
4 way to these workers.

5 If anyone has any questions?

6 MS. SPIELER: Questions for Claudia?

7 MR. BURTON: This should be part of this
8 legislation.

9 MS. SPIELER: It is a relief to hear that
10 there are a set of claims that are progressing through
11 the system.

12 Don?

13 MR. ELISBURG: Did I hear you that
14 effectively, you don't have a backlog?

15 MS. GANGI: We have about 50 sitting on my
16 desk. That's about it. But you have to understand
17 that our involvement is so incredibly simple compared
18 to the task the Department of Energy and NIOSH and the
19 Department of Labor face. Our process entails looking
20 up a RECA claim, verifying that that claimant indeed
21 was approved under our statute and then drafting a
22 letter to the Department of Labor conveying that
23 information. It's very rote, and once we got the
24 system built and in place, we have a database and went
25 through all the hoops at Justice that you have to go

1 through in terms of recordkeeping and we have all that
2 in place since last -- late July/early August, and it
3 really has functioned rather smoothly.

4 So, we do not have a backlog effectively, and
5 we have an internal turnaround time that I set of 30
6 days. From the date on which we received the requested
7 verification, within 30 days we turn that around and
8 get back to the Department of Labor, and we've had a
9 few that slipped through the cracks, and we have had a
10 couple cases that are more complicated in terms of
11 survivorship issues and things like that, but again the
12 work itself is very straightforward, and our task under
13 the statute is rather simplistic, but it's gotta be
14 done, and it's getting done, and the result is that the
15 folks are getting paid. So, that's where we're happy
16 with the results.

17 MR. ELISBURG: Do you know Larry Elliott?

18 MS. SPIELER: Other questions, comments for
19 Claudia?

20 MR. BODEN: Just a quick question to make
21 sure. You had 2,300 claims roughly that you've
22 processed, and of those, 300 and something have been
23 paid, that you've submitted to the Department of Labor,
24 but out of those, not all those have been paid, only
25 about 3 or 400 have been paid, is that right? Is that

1 what you said?

2 MS. GANGI: I think that there's definitely a
3 lag in time from -- in terms of the information you
4 might be able to obtain from the Department of Labor
5 and how many claims they've approved and paid and the
6 information that I have. Mine is extrapolated from
7 final decisions that we receive ultimately.

8 I think that that takes time. So, just in
9 terms of, you know, based on the decisions that I have
10 in hand, 311 of the 2,300 have been approved and paid.

11 MS. SPIELER: Other questions or comments?

12 (No response)

13 MS. SPIELER: I really do regret having made
14 you sit here for so long in order to give this report,
15 but on the other hand, I think it comes at a good time
16 for committee member spirits.

17 (Laughter)

18 MS. SPIELER: So, we thank you on many
19 levels.

20 Ricky?

21 MR. BLEA: Again, what was the pay-off? 61
22 million, you said?

23 MS. GANGI: 60.6, 60,600,000 for the 311 that
24 have been approved, and I think some of those represent
25 multiple surviving beneficiaries. So, if the numbers

1 don't quite jive, that's the factor, and I'm happy to
2 oblige. It's interesting to see the big picture. So,
3 it's important, I think, for me to have been here and
4 good luck to all of you.

5 (Laughter)

6 MS. SPIELER: Well, you're welcome to stay,
7 Claudia, if you like, but if not, we certainly
8 appreciate your staying so long.

9 Thank you very much.

10 For the committee members, I actually forgot
11 to tell you earlier, there is no one here from the
12 Department of Labor to join us for this meeting, and so
13 to the extent that we have a report from DOL, it's the
14 handout that you have in your hand, and there isn't
15 going to be anyone here to respond to any questions
16 about it, but I would suggest that perhaps you could
17 review that tonight, and if there are issues that you
18 would like DOL to clarify for us, perhaps we could
19 raise those tomorrow morning and ask that they be
20 communicated to DOL and ask for information back.

21 MR. ELISBURG: Are they not going to be
22 available to talk to us tomorrow either?

23 MS. SPIELER: My understanding is they will
24 not be joining us for this meeting at all. I just
25 found that out when I got here today.

1 So, again, if -- I gather Pete Turcic was
2 otherwise engaged. I don't know if anyone -- Steve, do
3 you know anything about -- okay. So, again, if we want
4 further information from them, we would have to make
5 that request, I believe, through the DOE as we have no
6 direct relationship with the DOL program.

7 Judy, Don just asked whether anyone could be
8 here from DOL tomorrow morning.

9 MS. KEATING: I'll check.

10 MS. SPIELER: Okay. That would be great.

11 I've asked the committee members to review
12 the DOL information, and if there are issues that they
13 would like to follow up on, to let us know tomorrow,
14 and we'll move on to our conversation and report from
15 Steve Cary about what's going on with the Office of
16 Worker Advocacy.

17 DOE Worker Advocacy Program

18 MR. CARY: Earlier today, I missed the
19 introduction, your introductory remarks because I was
20 at a meeting of the Radiation Effects Research
21 Foundation. I'm the Deputy Assistant Secretary for
22 Health Studies and so that was occupying some of my
23 time. I'm spending a lot of time with the Japanese,
24 the Russians, and the Marshallese, and in that vein,
25 I'm pleased to announce that the position for the

1 Director of the Office of Worker Advocacy has been
2 posted. I think I've been the acting director for some
3 time, but with the posting of that, I think we're
4 really on a course to start running this program really
5 full time, something I haven't been able to do.

6 Obviously Bev's addition here has been a
7 great one. If you look at the posting, you notice that
8 it emphasizes expertise in occupational health,
9 environmental exposure monitoring and worker comp. So,
10 I think that should generate some excellent candidates
11 and hopefully within 60 or 90 days, we'll have some
12 which would be great.

13 What I wanted to talk about was Subtitle D,
14 the stuff that the Department of Energy is specifically
15 tasked to do, and I sort of want to give you a big
16 picture instead of getting into some of the more minute
17 details.

18 The two things that have changed since we met
19 last in August was the need for an electronic data
20 system for the Department of Energy for the transfer of
21 information. About a third of our budget is being
22 spent on data needs now, and I know Larry and Pete
23 recognize the issues we've dealt with in employment
24 verification, medical records and now exposure
25 information.

1 We are working with a contractor called SEA
2 through the Federal Technical Information Center which
3 is in New Orleans, Louisiana, that does medical records
4 for the Department of Navy, and we've got some really
5 good people working on this, and we're working out a
6 system of electronic data transfer that's really going
7 to speed things up, that's going to help shortcut and
8 streamline the process, so we can help our workers
9 sooner.

10 Originally, we were going to use a single
11 site this fiscal year to pilot the electronic data
12 transmission and when Bev got here, she insisted that
13 we do this at all the sites. So, SEA's been working,
14 going from one site to the next, seeing who needs what
15 staffing, equipment, that's hardware and software, so
16 we can work this thing out very quickly, and we're
17 expecting a report from our Information Technology
18 Management contractor on July 1st that will tell us
19 what the needs and the expenses are going to be, so we
20 can proceed to implement that quickly.

21 Unfortunately, all of the data that's been
22 sent back and forth, all the records so far have been
23 paper, but with the scanning capability, we're hoping
24 to -- and the creation of a web-based data system,
25 we're hoping to cut down on the time that it takes to

1 get the records, to move the records around and to
2 review them as well.

3 The one thing that we have done is we've come
4 up with an excellent tracking system that helps us find
5 where the applications are from, and we can query
6 different information about the applicants and that's
7 been -- and we've been happy with that. That's
8 something maybe if you're interested in or one of your
9 subcommittees is, we can probably give you a
10 presentation, a briefing, and even a demo on it, so you
11 can see the types of things that we're concerned about
12 and that we're addressing.

13 So, in addition to electronic data transfer,
14 the other issue has been developing the staffing for
15 the Office of Worker Advocacy, and what I've been
16 focusing on is getting good people in and giving them
17 responsibility to bring in other good folks to help put
18 the program together. So, we will be in good shape
19 when the rule comes out, and I'd like to ask Claudia
20 Beach to come up and if you could talk a little about
21 yourself and your background and what we're doing.

22 MS. BEACH: My name's Claudia Beach. I'm a
23 board-certified occupational health nurse. I've worked
24 with the Department of Energy since 1995 in the Office
25 of Health Studies. Most recently before I came down to

1 work on this project, I was the program manager for the
2 U.S.-Russian Health Studies Program.

3 I have a background in occupational medicine
4 or health nursing at Chrysler Corporation for 10 years,
5 at Consolidated Diesel, a Joint JIK Thomas Engine
6 Company facility, a new one that they put in in North
7 Carolina. I established their health unit and their
8 workers compensation plan that they use there.

9 In all the work I've done, I've worked in
10 workers compensation, initiating the claims primarily
11 and in working with the applicant to get back to work
12 in a reasonable time if that was appropriate or to help
13 the worker find reasonable accommodation to come back
14 to work if they were still not 100 percent well.

15 I've also worked in the government in the
16 Office of Management and Budget. I was their nurse for
17 five years, and I've worked a long, long time for the
18 Washington Post, both full- and part-time, where they
19 also have a workers compensation system that we were
20 intimately involved with, the nurses were, and it's
21 been a great pleasure and a real, real challenge to
22 come down here and help Steve get this up and running,
23 but it's been very instructive, and I think we do have
24 a good group, a good core organization ready to start
25 processing the claims when the rule is out.

1 MR. CARY: Do you want to talk a little bit
2 about the --

3 MS. BEACH: Sure. Are you able to hear me
4 even though there's static? Okay.

5 We have several -- I'm the only federal
6 person up on the -- I call it up on the Hill. It's up
7 in L'Enfant Plaza. The processing, the case management
8 processing system is all separated from DOE physically
9 and we're using all contractors to do this work. It
10 was Steve's notion that that would make it more
11 objective to not have DOE people involved in it, and my
12 primary role is to facilitate those folks getting
13 records, getting people on board that we need to have
14 on board, coordinating and liaising with Kate as she
15 does her policies and procedures and Josh and Jeff as
16 they help us pull together the records from the field,
17 and it's quite a complicated process and takes a lot of
18 time.

19 The organization -- we have three
20 organizations. The primary contractor is SEA, Science
21 and Engineering Associates. The doctor who we've hired
22 to work on the claims is John Ellis. He's back here,
23 and he's available to talk to you about his background
24 as well. He has worked in occupational medicine for
25 many years.

1 We have three nurses who'll be helping us
2 process the claims. We have a number, I can't remember
3 the exact number right now, of people who are helping
4 us pull these records together, organizing the
5 information as it comes in from the resource centers,
6 putting it in files, getting it ready. We have the
7 cases organized right now according to state-only
8 claims which are the claims that are not beryllium,
9 chronic beryllium disease, not radiation-induced
10 cancers or not silicosis. All the other diseases or
11 diagnoses and the universe can come to us for a state
12 claim, as well, the beryllium, silicosis and radiation
13 cancer cases can come to us as a state claim and we
14 wait for the processing of the federal side of that,
15 the Labor side and the HHS side, to work on those
16 claims.

17 Right now, we have a little more than 700
18 state-only claim cases that will not -- have no
19 eligibility as far as I understand it to go before the
20 Department of Labor to request the \$150,000. In those
21 claims, as Dr. Ellis can tell you because we've been
22 going through these claims for a long time trying to
23 figure out which ones are the most important to pull
24 forward and how we're going to process some of these
25 because many of these applicants have multiple

1 diagnoses that they're bringing to us, and there are
2 some really unique diagnoses as well.

3 Some of the claimants are saying they've been
4 exposed but they have no medical condition right now.
5 Some are claiming that they have something like
6 shortness of breath or they just don't feel good and
7 they don't have a diagnosis, but those cases we've
8 decided we'll call the worker or that survivor and
9 we'll find out if they have a diagnosis now and see if
10 we can bring that case forward as well.

11 We think it's fair to organize the cases by
12 the first applicant, the people who sent their
13 applications in first should be the people who get
14 their applications processed first. However, we are
15 searching diligently to find the folks who have the
16 greatest need as well, the same as the Department of
17 Labor is trying to do. If you know of cases that are
18 especially urgent that we need to process, we would
19 like to know that as well.

20 On the -- we know exactly how many people in
21 the Department of Energy have beryllium disease. So,
22 we can work directly with those claimants as well if
23 they want to file. Now, everybody who has a disease
24 doesn't want to file and so we're sensitive to that as
25 well. Even though we know who all these people are,

1 they may not want to come before the state for state
2 application.

3 Anything else I can tell them that you can
4 think of? Oh, we have the hotline. The hotline folks
5 are up there. They're still taking calls on the toll-
6 free number, and we do get calls and we send
7 application packages out for the state benefits and as
8 well we send them out information about the Labor and
9 HHS portions of the legislation.

10 DR. WAGNER: I probably missed something in
11 the different numbers. Bev earlier today talked about,
12 I think, 11,000 claims that were in a kind of cue
13 somewhere. You've talked about 700 state-only claims
14 that you're in the midst of gathering information.

15 Can you kind of break down those 11,000 and
16 tell me how many you're involved with actively
17 collecting information, how many are actually ready to
18 go to physician panels, if the rule were out and the
19 30-day waiting period was done? How many are actually
20 ripe and ready to go right now?

21 MS. BEACH: I can't give you an exact number,
22 and the breakdown to your question, I can't tell you
23 exactly how many are ready to go.

24 We have to -- on the state cases, we will
25 have to gather the employment verification, the medical

1 records, and exposure information to the extent that
2 it's available to us, and as you know, exposure
3 information for toxic chemicals on the state side, it's
4 toxic chemical-based diagnoses or biologicals. It can
5 also be radiation, but the Department of Labor does not
6 have to take into consideration anything related to
7 conditions except beryllium, radiation or silicosis.
8 We have everything else that they could have been
9 exposed to.

10 The 700 cases that are state-only are folks
11 who we believe have no chance of going before the --
12 for a federal claim. The other 10,000 cases are cases
13 that are either beryllium, chronic beryllium disease,
14 berylliosis, radiation-induced cancers, or silicosis.
15 All those cases need to be processed through the
16 Department of Labor. Once they're processed through
17 Labor, we're working out a system where Labor will
18 provide us the information they've gathered to make
19 their determination, so that we can use the same
20 information to send forward to the physician panels
21 without having to duplicate the work.

22 Now, I know that they have several thousand
23 cases that they've worked on, and when we get the
24 information about their cases, we'll be able to process
25 those pretty expeditiously.

1 MR. CARY: But that's a link we've yet to
2 make.

3 MS. BEACH: Right.

4 MR. CARY: We're working on that as we speak.

5 MS. BEACH: Right.

6 DR. WAGNER: Steve, the subcommittee that Les
7 has chaired that hasn't met much was trying to get a
8 grasp of what your flow was going to be for these
9 cases, and it's interesting certainly reasonable choice
10 to make to decide that DOL works them up first to take
11 advantage of the DOL, then you work there.

12 Have you worked out a flow for your normal
13 operations of how you're dealing with claims so that we
14 might get some sense of, you know, soup to nuts really
15 where somebody walks in to a center, what happens, and,
16 you know, all the way through?

17 MS. BEACH: The applicants can provide us
18 information multiple ways. One way is to go to the
19 resource centers directly.

20 DR. WAGNER: Actually, I don't want to hear
21 the entire process which might take us the rest of the
22 afternoon. But if it is possible for you to give us
23 the flow.

24 MR. CARY: Give you the procedure.

25 DR. WAGNER: Yeah. An annotated procedure,

1 so that we would be able to figure out, that'd be
2 great. Yeah.

3 MR. CARY: Interestingly, when -- if you get
4 a chance to visit our office here, it sort of like
5 flows right down the hallway, you know, with the mail
6 room up front and then the hotline next and then the
7 file room and then the case workers.

8 MS. SPIELER: Don?

9 MR. ELISBURG: Two things. Emily, it seems
10 to me that with this set-up they have, at some point,
11 if we can -- we might want our Claims Subcommittee to
12 have an opportunity to perhaps do a little bit more in-
13 depth, spending some time and figuring out who
14 everybody is and what they're doing for purposes of
15 being able to advise the committee here.

16 MS. SPIELER: I wonder, and this is -- Don,
17 you need to turn these off because I think the -- if we
18 could set up something even tomorrow where there's an
19 hour when the Claims Subcommittee or those people who
20 can stay could sit down with you and just figure out
21 what's going on and begin to formulate where -- you
22 know, of what use this committee might be to you.

23 MS. BEACH: We'd be very pleased to have you
24 come up to our unit. We'll show everybody through, and
25 we'll work with any committee members who want to stay

1 and work with us, and I would suggest maybe after you
2 finish your meeting here, if you don't have to rush
3 right out of town, and we can sit down and talk all
4 afternoon, if you want to.

5 MS. SPIELER: Why don't we figure out about
6 that and we'll get back to you because I think it might
7 be useful?

8 MR. ELISBURG: The other question was for
9 Steve. We have this paper from the Labor Department
10 that shows that they've received 29,600 and some odd
11 claims. Is that also -- do those numbers include the
12 11,000 claims that you have or are there 11,000
13 additional claims?

14 MS. BEACH: Well, they would not have the 700
15 state claims necessarily, although we know some folks
16 are filing for federal benefits for conditions that are
17 not covered under the Department of Labor's -- their
18 rules.

19 MR. CARY: The 11 includes folks who --

20 MS. BEACH: Right.

21 MR. CARY: -- have filed for the DOL program
22 and for the state program, so the 11 is included in
23 that, in the 29. The 11,000.

24 MR. ELISBURG: Okay. So, when you say you
25 got 11,000 claims wandering around and forget about the

1 state-only in your system, that that's part of the
2 29,651 that the Department of Labor lists as claims
3 filed?

4 MR. CARY: Yes.

5 MR. ELISBURG: Thank you.

6 MS. SPIELER: Jeanne?

7 MS. CISCO: If someone filed through DOE --
8 I'm from Portsmouth and very few of our people have
9 filed with you yet. We wanted to see what happened
10 with the physicians panel rule. So, they would need to
11 submit the paperwork for the physicians panel. I know
12 Rosemount went ahead and did some of them, but like the
13 ones that came through the union hall, we didn't do
14 yet. So, that may be the difference, some of the
15 differences in the numbers. People haven't requested
16 the physicians panel rule.

17 Do they automatically go through once DOL
18 pays? You said you waited for DOL to go ahead before
19 you guys do anything.

20 MR. CARY: We wait for their determination,
21 yes.

22 MS. BEACH: Well, for people who have not
23 filed for a state claim, have not filed for us to
24 process something, so the physician panel can review
25 their case, they will need to fill out a form. We have

1 a form they need to complete so that we can process the
2 information because if we don't know who they are, we
3 don't know which files to ask Labor for, and they can
4 get that by calling the toll-free number. You can get
5 it off the website.

6 MR. CARY: Also, when the rule is released,
7 there's going to be another round of notifications.
8 So, folks will realize the state program -- the
9 Subtitle D Program is accepting claims and folks can do
10 that.

11 Have you been working with Virginia Johnson
12 at any of the sites? She's not still on the line, is
13 she?

14 MS. BEACH: No, but the resource center --

15 MS. JOHNSON: I'm still on the line.

16 MR. CARY: Virginia?

17 MS. JOHNSON: Yeah?

18 MS. BEACH: Go, Virginia.

19 MS. JOHNSON: I only hear like bits and
20 pieces. So, if you could repeat the question.

21 MS. CISCO: I'm sorry. I'm from Portsmouth,
22 and I work out of a union hall, and we have several DOL
23 claims that we put together, gave them to Rosemount.
24 Many of our people have not requested the physicians
25 panel to look at it yet. They were waiting to see what

1 kind of rules they came up with, and my question was --
2 and many of those have been paid.

3 Does it automatically go from DOL to DOE or
4 would we need to complete those forms?

5 MS. JOHNSON: You'll need to complete the
6 forms for Claudia's group. To come in front of the
7 physicians panel, you'll have to complete the DOE
8 forms. DOL will not automatically be sending anything
9 over. They don't even see the state claim part.

10 Claudia, isn't that correct?

11 MS. BEACH: Yes, ma'am, that's correct.

12 MR. CARY: Yeah. And I think that's
13 something we can be -- we can pay special attention to
14 once the rule is published.

15 MS. SPIELER: So, we have the 10,300 about
16 claims that are dual-filed claims, but we actually
17 don't know how many of the 18,000 additional claims
18 that are at DOL might actually carry a potential state
19 claim where it hasn't yet been asserted because they
20 didn't know to do that or they chose not to.

21 MS. JOHNSON: Well, yeah. That could be it.
22 They chose not to, but if they file their claim through
23 the resource centers, they are always advised of both
24 programs, and it's their choice to file at the same
25 time or not. Sometimes they come back and do it later

1 and sometimes they choose not to do it at all. It's
2 strictly their choice.

3 MS. SPIELER: And how many of the claims are
4 coming in through the resource centers where people
5 would be getting that advice?

6 MS. JOHNSON: Almost all the claims that
7 Claudia has would probably have come through the
8 resource centers.

9 MS. SPIELER: No, but I'm actually wondering
10 about the other 18,000 that have gone to DOL that
11 Claudia doesn't have, whether those people have
12 actually been advised.

13 MS. JOHNSON: Anybody that comes through the
14 resource center is advised of both programs at the same
15 time.

16 MS. SPIELER: Right. And I'm asking how many
17 wouldn't have come through the resource center who
18 might not have been advised about the state programs.

19 MS. JOHNSON: Oh, I'm sorry. I have no way
20 to know that.

21 MR. CARY: It's probably 20 percent, 20-25
22 percent.

23 MS. KIMPAN: DOL is also formally notifying
24 workers who fail the test to be covered by Subtitles A,
25 B, and C. They're claiming a condition that's covered

1 by Subtitle D, they are so informed, and we worked with
2 them to include language in their letter. So, if I
3 filed for an asbestosis claims with the Department of
4 Labor and they say sorry, your claim isn't going to be
5 worked up, they include language saying but you may
6 have an opportunity to submit to go before a physicians
7 panel at DOE.

8 Just in sort of a broad answer to what Jeanne
9 was saying, they spoke quite accurately, there's no
10 part of this program that's automatic or condition-
11 based. So, the worker has to submit to DOL for that
12 finding and then additionally submit to DOE for a
13 physicians panel finding.

14 One of the most important aspects is that
15 once there's a positive physician panel finding, that
16 worker then must make another choice and that's whether
17 to claim in the state for benefits. Okay. There's
18 nothing between a positive physician panel finding as
19 it looks currently and any automatic state filing. So,
20 each of these are decision points for the claimant, and
21 I think us in Labor would all say that that's how the
22 statute is set up.

23 MS. SPIELER: Let me just ask a follow-up
24 question. Could you turn your -- so that we can all be
25 clear about this.

1 The claimant may be turned down by DOL and
2 get these letters, but the form, the DOE form is not
3 included in the letter. So, they would then have to
4 contact DOE?

5 MS. KIMPAN: The many ways that they might
6 contact DOE are discussed. Resource center which they
7 may have already applied through. The web address is
8 given and our toll-free number is given. It's made as
9 easy as it can be, but it does require an active
10 behavior on the part of the claimant at every juncture,
11 including those that could be very confusing for
12 claimants. I have cancer, my claim is accepted as
13 work-related after my dose reconstruction, and I have a
14 wage loss. That wage loss does not automatically flow.
15 I must then submit myself to the physician panel
16 determination, and then I must make a decision and go
17 to my employer and have a first report of injury claim
18 submitted in the state.

19 MS. SPIELER: Let me actually follow up on
20 that last piece before you go on, because -- and I'm --
21 this may be something we need to come back up to
22 tomorrow morning with Bev.

23 But if someone is going to be in this 50
24 percent where claims are paid by contractor group and
25 those claims are going to be paid without adjudication

1 in the state system and somebody gets a positive
2 finding from the physician panel, are you suggesting
3 they nevertheless have to then file whatever -- whether
4 it's a first report of injury or an occupational
5 disease claim with the state in order to trigger the
6 contractor's obligation to pay the claim?

7 MS. KIMPAN: Yes.

8 MS. SPIELER: Les?

9 MR. BODEN: Can I follow up with that one?
10 My understanding, and correct me here, I may be missing
11 something, is that, the sole reason for going to a
12 physician panel is to get your medical status clarified
13 for purposes of getting a state workers compensation
14 payment. There's no other reason that I can think of
15 why I, if I was a worker, would want to do that.

16 So, the question then is: why can't they
17 fill out one piece of paper that does both things? For
18 example, have them fill out a first report of injury
19 which then triggers going to the panel rather than a
20 two-stage process which then gives two places where
21 people can fall off the map rather than one place.

22 MS. KIMPAN: Two different reasons or
23 answers, Les. Same answer, two different reasons. For
24 instance, Subtitles A, B, and C define survivor in a
25 particular way, and as you know, the survivorship

1 provision was amended already. So, FICA has two
2 different kinds of survivor benefits. The statute
3 initially said survivors equaled certain things, and it
4 has been amended already so that survivors include
5 things like grandchildren and grandparents.

6 As the people around this table that know
7 state comp know, non-dependent grandparents and
8 grandchildren have absolutely no standing to go forward
9 and get benefits in state work comp. Subtitle D did
10 not tell us we could provide causation findings for
11 likely viable claimants. It said DOE contractors and
12 subs who believe they have been made ill by exposure to
13 a toxic substance at a DOE facility have a right to go
14 for this causation finding.

15 So, I have a right in the statute to fill out
16 a piece of paper and get a causation finding on grandpa
17 who died 40 years ago, even though I have no standing.
18 I may not have been born. I may have -- well, I was
19 born 40 years ago -- no standing to pursue benefits
20 within the state. So, it is wholly separate. This
21 causation finding is certainly something with which
22 some workers will arm themselves and make a claim.

23 The other reason that DOE will not have first
24 reports of injury is twofold. One is, if a worker
25 filled that out in advance of the panel, all the state

1 statutes of limitations and other administrative
2 requirements kick into play when that form is filled.
3 That is a real claim form. The forms that come before
4 our panels are real forms as well, but they don't
5 inspire a litany of legal behaviors.

6 If I fill out a first report of injury in the
7 state of X, I can't do it myself. My employer usually
8 has to do it. It starts a whole bunch of things in
9 that state. DOE is asked to facilitate workers entry
10 into a state work comp system. We are not a state work
11 comp system under Subtitle D and won't be.

12 So, there is in our rule, which you haven't
13 seen, but it was in the NOPR as well, there is a --
14 Notice of Proposed Rulemaking, there is a separation
15 between the finding of causation and then a worker's
16 decision. As you folks at this table know, there will
17 be workers for whom there are findings of causation and
18 no available benefits. My onset was wholesale after I
19 retired. I have no permanent loss, and my medical care
20 was covered because I had cancer. I may want to know
21 very deeply that DOE caused my illness through chemical
22 soup or radiation exposure. It doesn't necessarily, as
23 you folks know, entitle me to any money in a state.

24 So, those are definitely separate. One of
25 the things we hope to accomplish in the state

1 agreements is to have the states identify the proper
2 entity or individual. States like Minnesota, there's a
3 whole room full of people that do nothing but sit and
4 assist claimants on the telephone, and so one of the
5 things we hope to accomplish is some good sound advice
6 for these workers to make a determination whether they
7 should claim, but I don't think that we see ourselves
8 as OWA as being that ombuds person, if you will, or
9 that benefits advisor. These are decisions the
10 worker's going to have to make.

11 MR. BODEN: I'm imagining somebody getting a
12 positive determination and sitting around and waiting
13 for their check. That's my concern. So, I don't think
14 we need to go into detail now, but it seems to me that
15 some way of addressing that issue is quite important if
16 this is going to work the way I think we all hope it
17 will.

18 MS. SPIELER: Let me just add. There are a
19 whole series actually of complexities to this process,
20 and since we don't have actually a flow chart that
21 tells us how this is being done, this is actually a bit
22 different from the way this was described last year
23 when we asked for a flow chart and, I think, did get an
24 interim flow chart when Paul Sullivan was still in
25 this, I think that this -- if the Department would like

1 assistance and advice on thinking through this process
2 from the people on this committee, it would probably be
3 very helpful to have a flow chart and have the Claims
4 Processing and Administration Subcommittee of this
5 committee really give some thought to this because I
6 think we might actually be able to be helpful.

7 Let me just also say that the statute of
8 limitations problem can be triggered by someone saying
9 they know that there may be a causation and then
10 failing to file within a period of time after that
11 assertion is made which means that cuing up these cases
12 without a claim form may actually in some states lead
13 to denial of those claims and DOE will have been
14 responsible for that.

15 So, I think the statute of limitations issue
16 can cut both ways and that some additional thought,
17 unless we can move all of these claims into the payer
18 as opposed to the non-payer categories that we were
19 talking about before, if they're all in the payer
20 category, DOE can waive the statute of limitations as
21 the responsible payer, but otherwise, I actually can
22 see some very serious problems arising from the current
23 way that the claims are being handled that I find
24 somewhat troubling.

25 MS. KIMPAN: There's a chicken/egg issue

1 there, too, Emily. If the contractor doesn't have --
2 if DOE/OWA doesn't have a finding from the panel, we
3 have no mechanism currently to compel a contractor to
4 accept a claim. So, if a first report of injury -- and
5 this is going on in different states. I know there are
6 many states, Nevada and some others, that claims are
7 being filed. The contractor's dealing with claims that
8 are filed right now in advance of findings by the
9 panels. Those claims are going to be dealt with the
10 way they've been dealt with throughout history, and
11 claims where there is a reasonable defense by the
12 contractor, those defenses may be raised.

13 The single way that we have via Subtitle D to
14 audit compliance or primary acceptance of liability for
15 one of these claims is for those claims for which
16 there's been a positive finding by the panel. DOE will
17 obviously not support claims for which there's a
18 negative panel finding.

19 MS. SPIELER: We do understand --

20 MS. KIMPAN: So, there has to be a connection
21 in that timing, yeah.

22 MS. SPIELER: We do understand that, but we
23 also talked a year ago about the fact that there would
24 be these claims caught in the process and suggested
25 strongly to DOE that you make arrangements with the

1 state systems and the contractors for these claims to
2 be held while the Department worked out these details.
3 I gather that hasn't been done.

4 MS. KIMPAN: You know, maybe Steve knows
5 Paul's number, I don't, but we've had a series of
6 acting interim people since then. I can't say what
7 Paul did with the recommendations. I can say that the
8 states that I was at the negotiations with at that time
9 to a person said absolutely not, that there was nothing
10 in the state agreement or anything else that would
11 allow them to break their law. I hold these claims in
12 abeyance.

13 So, if DOE's OWA were holding claims, it
14 would be in violation of the filing requirements in
15 those states, and a commissioner was not in a position,
16 no commissioners at that point were in a position to
17 handle differently than the way the law describes their
18 first reports of injury. So, I think even as far back
19 as four acting directors ago, we were clear that these
20 state agreements were not to molest the current state
21 statutes, and so there's nothing we can do in these
22 state agreements to alter, make more broad, open up or
23 change the state statutory requirements.

24 MS. SPIELER: Most of the state statutes
25 actually don't set time limits that are adhered to on

1 the processing of claims, just to be clear about this,
2 and that would be the only issue as to whether or not
3 they were being processed timely, which, as we all know
4 with some frustration, that most state systems do not
5 process occupational disease claims in a timely manner,
6 and so this would not be a standout if they failed to
7 do that in these claims.

8 MS. KIMPAN: They may fail to do so. I'm
9 just saying that we're not permitted in the state
10 agreement to request any statutory abeyance.

11 DR. WAGNER: Just to clarify, I don't think
12 that our advice on the interactions with this committee
13 were with Paul. I think that they're with the
14 Department and that it's the Department that's
15 responsible for the program and it's theoretically
16 responsible for not the recommendations that we make.

17 MR. CARY: Virginia, are you still there?

18 MS. JOHNSON: Yes.

19 MR. CARY: In terms of that would be the
20 place that we would talk to the workers. We would
21 advise them through the resource centers to go through
22 our process and not file with the state.

23 Have you any examples of that that you can
24 tell us about, Virginia?

25 MS. JOHNSON: In some cases, a lot of the

1 people are older people, and they have already been
2 through the state and that's one of the reasons they
3 don't file with us. Some of them have already been
4 through and had their claims denied, especially a lot
5 of the toxic illness people, and they're hoping --
6 that's one of the things that they're hoping for, that
7 if they can get in front of the physicians panel and
8 get a causation finding, that then they'll have, you
9 know, a better chance of getting something, but a lot
10 of these claims are so old, that even after they go
11 through the state, there's really not going to be a
12 great benefit to them as far as lost wages and things
13 like that.

14 MS. CISCO: This is to go back about a half
15 hour here. I was trying to make a point. The 29,000
16 that DOL says that they have received, people filed
17 claims, and if you remember in a conference call, I was
18 concerned that the forms that DOE came out with to
19 request the physicians panel, those people had already
20 been to the resource centers. They'd filed their DOL
21 claims. Was anything done there to go back track those
22 people before the forms became available and tell them
23 they -- to submit to DOE?

24 MS. JOHNSON: They come back to the resource
25 center all the time, even to work on their DOL claims,

1 and they have a lot of questions, and they come back
2 all the time, and we always talk to them again and ask
3 them if there's anything that changed, if there's
4 anything they want us to do, and they tell us all about
5 their medical conditions and the changes, and at that
6 time, we remind them that we also have -- or if they're
7 denied, and they say, look, we got this letter, and
8 we're denied. We always say to them, do you want to
9 file the state forms and see if you can go to the
10 physicians panel and go through that way? We always
11 ask them when they come back, and they do come back a
12 lot. That's one good thing.

13 Having the resource centers in the local
14 areas, any time they get any kind of forms, even when
15 it's their form to get their money, they'll come back
16 and they'll ask us, what does this mean? You know,
17 what am I supposed to do with this? We help them with
18 that. So, they're back and forth a lot, and so we do
19 see them and remind them of both programs.

20 MR. CARY: I think the bottom line is we
21 actually have pretty good counseling at our resource
22 centers, but there's that fraction of folks who will
23 apply directly to DOL and they would have to rely on
24 websites and other information.

25 MS. JOHNSON: Like I said, DOL's letter does

1 tell them perhaps you have a claim and you can go
2 through the DOE with their state programs, Subtitle D.
3 That is language in one of their letters.

4 MS. BEACH: Can I ask you a question, Ms.
5 Cisco?

6 MS. CISCO: Yes.

7 MS. BEACH: You said that you were helping
8 folks file through your union hall. Are you using the
9 resource center to do that or are you filing direct
10 with Labor?

11 MS. CISCO: We always use the resource
12 center. We just put the claims together and job
13 descriptions and then we take them to the resource
14 center.

15 MS. JOHNSON: That's a good idea because the
16 date that they're stamped from the resource center is
17 the date that DOL considers them.

18 MS. SPIELER: Iris?

19 MS. POST: I'm just going to have a point of
20 clarification as a former work comp commissioner and
21 administrative hat. When we talk about claims versus
22 contested claims before the state system, there are
23 actually two things.

24 The first report of injury being filed by an
25 employer is what triggers a claim being made in the

1 state system and basically that does trigger lots and
2 lots of time constraints, meaning that usually
3 employers have a certain period of time to either deny
4 or accept a claim.

5 Then, at that point, you know, different data
6 is collected and usually it's done by a computer and
7 different letters are sent out to both the employer and
8 to the claimant. Once their claim is either accepted
9 or denied, it will be in the state system, but actually
10 nothing further will generally happen unless or until
11 one of the claimants or the injured worker files a
12 contested claim and at that point, I think that's what
13 you're referring to, Emily, where there really is no
14 time constraints, that lots of times those cases can
15 take sometimes years to get through a state system.

16 MS. SPIELER: Yes, that's a welcome
17 clarification.

18 Other questions specifically for OWA about
19 the current status and processing?

20 MR. BURTON: Just reacting to the numbers
21 here, we got 29,000+ claims that have been filed with
22 the Department of Labor which is about 10,000 overlap,
23 and then there's only -- there's 700 that apparently
24 are DOE-only.

25 Now, I guess I'm very surprised at how low

1 that number is, and is it that we are missing a lot of
2 people? Is there something -- or is it just a small
3 universe? I mean, because it seems to me that given
4 the current conditions we're talking about, I'm
5 surprised that this number isn't a whole lot more.

6 Now, part of it may be what you suggested,
7 there's some people waiting for these physician rules
8 to come in, but just in kind of thinking about planning
9 your case work and so on, if it's 700, that's one
10 thing. If it's 17,000 or whatever or 70,000, then you
11 got a whole different magnitude.

12 Do you have a sense of what it is that's
13 going to be possible DOE-only filings?

14 MS. JOHNSON: I think that DOE number might
15 be a little bit higher. I'm going to check the
16 reports, and I'll get back with you guys tomorrow on
17 that.

18 MR. CARY: It's very evident when I've been
19 at public meetings, and you're talking to folks, that
20 they see the difference between the pay-out in the two
21 programs. The DOL program is a 150,000 and that's very
22 attractive and that's why I think there's a lot of
23 folks in the overlap because they figure, well, you
24 know, I'll try something, but when people look just at
25 Subtitle D, it's not, you know, the 150,000 pay-out,

1 and it's a longer process and maybe people are being
2 more realistic about, you know, what their expectations
3 are, and we're only getting the claims that are, you
4 know, the cancers that are non-radiogenic, the real --
5 so, to me, you know, it's good because it's really
6 winnowed down the folks who really need the help, and
7 when I look across the DOE complex, even in terms of
8 the folks who are compensated by accidents, it's only
9 in the hundreds, you know. We're not talking about
10 thousands of people across the whole DOE complex that
11 are already in work comp because of accidents and
12 injuries. So, it's a small universe.

13 MS. SPIELER: I wonder, though, given the
14 long history of inability to get compensation through
15 state systems for occupational diseases and the
16 historical defense of those claims in DOE facilities,
17 whether in part what's going on is a reluctance to
18 believe that occupational diseases will be treated
19 differently in the future.

20 The DOL programs don't cover a wide variety
21 of issues around chronic respiratory disease, for
22 example, and certainly historically knowing what went
23 on in the Black Lung Programs, which is something I am
24 familiar with, I know that as compensation became
25 available and was viewed as potentially available, the

1 number of claimants really rose, and so it's entirely
2 possible that once the physician panel rule is in place
3 and that it does begin to -- the word seeps out that
4 DOE is not mounting the kind of defense on these OD
5 claims that they did historically, that the patterns
6 may change somewhat, and it's difficult to know, I
7 think, why the numbers might be small now.

8 Although I do think that the cancers may be
9 the primary concern and have been the primary concern
10 historically in DOE, there are some other occupational
11 disease kinds of issues that I think are lurking in the
12 sidelines that could easily come to the attention of
13 DOE over time if the physician panels look at causality
14 honestly and the people in the communities learn that
15 there may be the possibility, particularly in those
16 cases where the current contractors will be paying the
17 claims without raising potential technical and other
18 defenses that, you know, the picture could change, I
19 think, over the next couple of years.

20 Yes, go ahead.

21 MR. EAGAN: If I could add some anecdotal
22 evidence that I think supports your contention? I want
23 to just give you a couple of cases from the field.
24 This is Jeff Eagan.

25 First case was actually a federal example.

1 We saw with a number of our workers who were suffering
2 from beryllium disease actually a reluctance to reply
3 -- to participate in and apply to the federal program
4 initially, and for a variety of reasons, a variety of
5 concerns. Frankly, areas like Hanford, for example,
6 people who are clearly diagnosed absolutely eligible
7 were just very reluctant to apply.

8 Once the first claims came through and the
9 first awards were made, we saw a significant increase
10 in the applications from people who clearly were
11 eligible, and I think that wait and see attitude is
12 something that I've heard from our resource center
13 workers across the country, that folks are saying,
14 well, let me find out what happens first with the
15 federal and then maybe I'll apply for the DOE, and in
16 other cases, I'm going to wait and see how these first
17 DOE cases with the doctors work out and then I'll
18 decide whether or not I'm going to take it on.

19 So, I do think there is, yes, some
20 reluctance. I do think that that can be overcome once
21 the program is up and running and, you know, some
22 claims do successfully begin to progress through the
23 system.

24 MS. SPIELER: Let me just interrupt where we
25 are right now and ask. The Public Comment period for

1 today was actually supposed to be at 4:00, and it's now
2 25 to 5, and I'd just like to know if there's anyone
3 here who's interested in offering public comment to the
4 committee because I think we have an obligation to open
5 for public comment during the Public Comment period as
6 it appeared in the Federal Register.

7 Is there anyone in the room who was
8 interested in doing that? Anyone on the phone who's
9 interested?

10 (No response)

11 MS. SPIELER: Okay. It sounds to me as if
12 there are a number of sort of big policy concerns that
13 have come up in our conversations with Bev that we will
14 probably want to pursue with her tomorrow morning, and
15 then there's a separate set of issues that are emerging
16 in this conversation that are much more kind of nitty-
17 gritty about how claims processing is being handled.

18 As to those, I actually do think that it
19 would be very useful for the people on this committee
20 who have expertise in the sort of claims nitty-gritty
21 issues to see what's going on, Claudia, in your office
22 and maybe get to meet with your staff, and I would ask,
23 Don and Vikki, you're co-chairs of that subcommittee.

24 Would you be available tomorrow after the
25 close of our meeting to go over --

1 MS. HATFIELD: I don't fly till 3.

2 MS. SPIELER: You don't fly till 3. Okay.
3 The public. Does the public -- the public has interest
4 in offering comment? Yes, okay. Just hold on a
5 second.

6 Okay. It sounds to me as though it might
7 make some for us to plan for the subcommittee chairs
8 and whoever else on the committee would like to do
9 that, when we close, which will probably be in the
10 neighborhood of noon tomorrow, to perhaps go with you.

11 Now, Vikki, if you have a 3:00 plane, you may
12 not have all that much time, but Don probably has more,
13 and we can figure out after we close our meeting today
14 who else is available to do that, but if you could kind
15 of block off some time, I think it would be quite
16 useful for the committee in going forward.

17 Okay. Now, I had asked about public comment,
18 and Kate went and found a public commenter. So, if
19 you'd like to take a seat and identify -- hit the speak
20 button and identify yourself and offer comment, we
21 would appreciate it.

22 Public Comment

23 MR. MILLER: Turn this off so I don't
24 interfere. I'm Richard Miller with Government
25 Accountability Project.

1 I guess two things. One, by way of public
2 announcement, my colleague Frank Morales is going to go
3 down to the Federal Register Room tomorrow morning
4 first thing and will try to bring and deliver copies on
5 the Proposed Special Exposure Cohort Rule which will
6 appear in the Federal Register on Thursday. So, you
7 will at least have an opportunity to review that.

8 Knowing that the advisory committee's going
9 to meet in Denver on the 1st and 2nd of July, it'd be
10 terrific if this committee had anything they wanted to
11 add to those deliberations.

12 Having had sort of the benefit of doing kind
13 of pretty much full-time oversight on this program from
14 the auspices now of the Government Accountability
15 Project, a couple observations. I think, first, the
16 negotiations that have been undertaken between the
17 Energy Department and the Hill largely, I think,
18 spawned by a number of Senators weighing in personally
19 with their former colleague and friend Spence Abraham
20 really got him focused on this in a very important way,
21 and these are people who were lead sponsors of this
22 legislation two years ago, and the outcome of it is,
23 you know, and I appreciate the constraints the
24 Assistant Secretary had on what she can and can't say,
25 but at least for those of us who are watching the

1 theater play out, here's the shape of the deal as I
2 understand it.

3 The deal is that based on a letter that
4 Congressman Whitfield Strickland, the two Udalls and
5 Mr. Gibbons sent up on May 9th, and a letter from seven
6 Senators, dated May 10th, raising concerns about the
7 physicians panel rule, dated May 8th, and its
8 predecessor, February 27th, both of those, there was a
9 concern that contractors had the right to bring
10 appeals, notwithstanding what the statute said, appeals
11 to DOE Headquarters through the Office of Hearings and
12 Appeals, OHA. There was -- and there was a sense that
13 wait a minute, why are contractors able to appeal these
14 determinations when the statutes seem to indicate
15 otherwise?

16 Two. Why -- secondly, it was going to
17 authorize the reimbursement of contractor legal costs
18 for everything other than the causation determination.
19 So that, if there was a dispute over the extent of
20 injury, if there was a dispute over the amount of
21 payment, the degree of disability, and any number of
22 other determinations, in fact, all matters, all matters
23 other than the causation determination, would be
24 reimbursed by DOE under its May 8th rule that went to
25 the Office of Management and Budget.

1 Again, there was some concern that that
2 deviated from the statute.

3 Thirdly, there was a concern, based largely
4 on folks on the Hill had seen your letter that you had
5 sent to the Department with a set of recommendations
6 that (a) there was an absence of a payer. It was a
7 very helpful letter. It did get around and keep
8 generating them. Two. There was a real concern there
9 was an absence of a uniform federal standard of
10 causation, and lastly, that there was any claimant --
11 there was very deep concern there was no claim
12 assistance.

13 In addition, there were some other concerns
14 articulated in the Senate letter which were that it was
15 purely discretionary whether or not the program office
16 had to direct its contractors whether or not to go
17 ahead and pay the claims. In other words, it was not
18 mandatory, it was permissive. Moreover, there were
19 concerns raised on the Hill about the fact that it
20 required a unanimous three to nothing opinion of the
21 physicians panel rather than a simple majority which is
22 what was required under the Fernault settlement, and
23 there was a concern also raised about the fact that
24 claimants would file their claim, the contractor would
25 be able to respond and provide information to the

1 panel, but the claimants would never get to see it
2 before it went to the panel, and so they were left
3 without the ability to supplement or rebut, and in this
4 non-adversarial process, people had no idea, frankly,
5 whether the records wouldn't be spiked.

6 As one of my dear friends from New Mexico
7 pointed out, that one of the questions he was asked
8 when he was hurt on the job was whether he -- and he
9 filed a worker comp claim under state law through Los
10 Alamos National Labs, and when the employer interviewed
11 him, he asked him if he practiced witchcraft. So, it
12 was clear that, you know, the employer in that case at
13 least was on the look-out for whatever they could get
14 to try to discredit the claim.

15 Having said that, there was also a concern
16 that there was an absence of claimant assistance, and
17 the claimant assistance concern was that if a
18 physicians panel needed additional medical or exposure
19 information, that burden of the cost was going to go to
20 the claimant, and so again, Congress raised concerns.

21 DOE's response was encouraging, though,
22 inasmuch as once, I think, Secretary Abraham really
23 kind of put his shoulder to the wheel on this and got
24 his senior folks and the General Counsel engaged on
25 this, the good news is, it seems like they're prepared

1 to concede on the appeals issues and on the
2 reimbursement of contractors, although I must say I was
3 puzzled today to hear the Assistant Secretary say if
4 contractors want to go ahead and fight these claims,
5 they're free to do so with their own money. That's not
6 what the statute says. The statute says they'll be
7 directed not to contest the claim.

8 So, there's some deviation there about what
9 the final language will look like in the rule, and it's
10 an area of concern and ambiguity from having heard the
11 comments today, that if contractors are free to fight
12 these claims with their own money, that's a far cry
13 from the statute saying you shall not contest them.

14 Meanwhile, the absence of a payer issue has
15 really taken on sort of a refreshing turn, as you heard
16 today, and I've been encouraged by people on the House
17 and Senate side really wanting to do something about
18 assuring a payer and here's the policy debate, as I
19 understand it, and I would just welcome, you know, you
20 all weighing in to the extent you all want to do that.

21 Right now, the Defense bill could come up as
22 soon as tomorrow or perhaps on Thursday, and there are
23 amendments being prepared to be attached to the Defense
24 Authorization Act. The shape of the amendments may
25 become clearer by the close of business today since

1 there's supposed to be a revised draft coming back from
2 Leg Counsel, but basically the shape of the deal is
3 they're prepared to concede that maybe the Labor
4 Department needs to play a role. The Labor Department
5 has not been rushing to embrace this new
6 responsibility. I believe that their first reaction
7 was it will cost a billion dollars and there are no
8 federal employees to implement it.

9 But I think, you know, cooler heads are
10 prevailing, and we'll see how it plays out, but I think
11 there's an openness to use the Labor Department and now
12 here are the policy choice points. One of them is
13 whether or not the Department of Labor will adjudicate
14 all of the claims for which there are no payer or only
15 those claims for which there is no payer, and then the
16 question is who will decide whether there's a payer or
17 not, and lastly, to the extent that there is a payer
18 and it's the Labor Department, at what level of
19 benefits? Will it be, say for example, the FICA level
20 of benefit or will it be each state's level of benefits
21 or will it be an amalgamation of the highest, whatever
22 that means, of the aggregate of the states where DOE
23 does business? All of which have drawn various
24 perspectives, but overwhelmingly seems to be the
25 biggest concern the people seem to be raising as well.

1 We'd be happy to maybe get the Labor Department to do
2 it all, but how much is it going to cost?

3 So, that's kind of the status of the
4 deliberations on the Hill. I think there's some
5 interest in trying to deal with the claimant assistance
6 piece. We'll see how close they get to actually
7 putting that in the bill. DOE's position is that they
8 are not going to pay for claimant assistance, contrary
9 to what the Assistant Secretary said today. The
10 position that's been taken on the Hill is that they're
11 not going to, when the physicians panel asks for
12 medical tests or medical exams, at least they've told
13 Congress, you need to go authorize and appropriate
14 funds for that and until you do that, we're not
15 prepared to provide claimant assistance to that extent,
16 meaning responding to a physicians panel request for
17 information.

18 So, that's kind of the status of the
19 discussions, and I just thought I'd offer it to fill in
20 any blanks that hadn't been on the record.

21 MS. SPIELER: Any questions for Mr. Miller?

22 (No response)

23 MS. SPIELER: Thank you very much for --
24 wait, wait, wait.

25 MR. ELISBURG: Actually, I do have one

1 question. I think I do have one, and that is, since
2 you were so kind to enlighten us as to where this
3 process is going, do you have any insights as to how
4 the physicians panel rule process is likely to play
5 itself out that you would care to comment on?

6 MR. MILLER: In my opinion, I have no way of
7 knowing what's going to happen with the physicians
8 panel rule that's pulled back into DOE, and the reason
9 is, is that, I fully expect that the commitments that
10 the Secretary has made have a permissive standard of
11 causation to eliminate the rights of appeal and the
12 other changes going to a simple majority, for example,
13 or, for example, giving claimants the opportunity to
14 review claims. All of these -- I mean, employer-
15 supplied information. All of these matters may come
16 back, DOE may put them in a rule that they revise, and
17 it may go back to OMB and that's sort of way above my
18 pay grade to speculate what they'll do with it.

19 But I wouldn't hold my breath for OMB
20 necessarily to honor, you know, what's been negotiated
21 because I'm sure that it's all been conditioned on the
22 caveat that it's subject to, you know, final
23 interagency and OMB review.

24 Having said that, I think the wise path to go
25 is that if the changes are made and suggested by DOE

1 that they're prepared to agree to, coupled with any
2 additional improvements that people believe need to be
3 made to do the physicians panel rule itself, those
4 ought to be legislated as part of the Defense bill.
5 There's no reason to leave ambiguity there. If people
6 are in agreement, let's make it law. That's sort of my
7 thoughts on it.

8 MS. SPIELER: Other questions? John?

9 MR. BURTON: Can you tell me about the
10 Government Accountability Project? What are you? Who
11 are you?

12 MR. MILLER: Actually, I'm a relatively
13 recent employee. GAP was started actually as a spin-
14 off from another organization doing whistleblower
15 claims, and they specialized predominantly in doing
16 whistleblower litigation mostly for federal but some
17 private sector employees and do a lot of advocacy work,
18 I would say, around representing whistleblower
19 interests.

20 It has had a project working on the nuclear
21 weapons side, mostly focused on Hanford, and so this
22 was sort of a unique separate but related kind of idea
23 for them to take on, but given there was a vacuum where
24 nobody was kind of birdogging this issue kind of from
25 an advocacy point of view, it seemed like there was

1 sort of a role to be filled at least for the time being
2 until this thing gets on a steady state course.

3 MS. SPIELER: Anything else?

4 (No response)

5 MS. SPIELER: Thank you very much.

6 MR. MILLER: Sure.

7 Subcommittee Reports/Issues

8 MS. SPIELER: Okay. We're hours behind
9 schedule on our agenda in terms of moving forward with
10 the committee's discussions, and my intention had been
11 for us to kind of begin our conversation that would be
12 organized around our subcommittee kind of issues in
13 terms of where we can be helpful to the Department.

14 I actually look for committee guidance here.
15 It seems to me that that's a conversation perhaps best
16 had with the Assistant Secretary in the room, that
17 perhaps we know where each other stand on these issues
18 since we went there at great length last year.

19 So, I just got a note from Judy Keating as
20 well that Pete Turcic will be available by conference
21 call tomorrow at 10:00 to discuss the DOL/DOE Relations
22 and what's going on in the DOL Program.

23 My suggestion would actually be that we
24 adjourn and reconvene at 8:30 tomorrow morning with the
25 intention not of sort of wallowing around in

1 generalities but to begin a serious discussion on each
2 of these issues about how we can be useful to DOE with
3 regard to moving forward on any number of issues that
4 have come up today, but if there are additional things
5 that we should be doing today, I'd certainly welcome
6 committee guidance on how to proceed.

7 MR. BODEN: I'd like to make one suggestion,
8 and I don't know that it should be done in the next 10
9 minutes or at another time, but I think it would be
10 very helpful for people to try to pull together the
11 issues that were raised today and the other critical
12 issues, so that we'd have sort of a list for tomorrow,
13 and that perhaps we not organize it necessarily around
14 subcommittee but around topic.

15 MS. SPIELER: Well, I was assuming we would
16 do it as a whole committee. I actually wasn't
17 necessarily suggesting subcommittee but I think there
18 are some groupings of topics that fall -- and that that
19 would be how we would do it.

20 What are the issues around claims processing?
21 What are the issues around payment? What are the
22 issues around performance evaluation and so on? What
23 are the issues around state relations that we think are
24 kind of critical and where we might be of assistance to
25 the Assistant Secretary in going forward?

1 MR. BODEN: I guess my suggestion was, if
2 people had thoughts that they might forward to you so
3 that you'd sort of have a list to start the meeting
4 with tomorrow morning, it might help make it more --

5 MS. SPIELER: That would be good, but I don't
6 have a laptop to forward them to with me this trip.
7 So, if --

8 MR. BODEN: By voice.

9 MS. SPIELER: By voice would be --

10 MR. BODEN: Paper.

11 MS. SPIELER: -- fine. Right.

12 MR. ELISBURG: Emily, I have two documents
13 that I guess I can get copied that might be helpful in
14 our deliberations. One is the response that the
15 Department of Energy gave to the congressional people
16 when they wrote all these letters.

17 There's a June 7th response that goes
18 section-by-section of what they're talking about in the
19 point that Richard Miller was making about these
20 letters that went from the Hill asking what's going on
21 with the program, and the second is a document that
22 came to me that is Recommendations for the Guidelines
23 for Physicians Panel Determination on Worker Requests
24 for Assistance in Filing for State Workers Compensation
25 Benefits that came from the congressional staff to the

1 Department of Energy and lists the eight different
2 items that they were talking about in terms of the
3 rule.

4 Neither of these are secret documents, but
5 they give, I think, a frame of reference as to what
6 obviously the issues are that are being discussed.
7 They're not any issues that we don't know about, but
8 I'm more than happy to get copies for everybody if that
9 would be useful.

10 MS. SPIELER: Actually, I do think it would
11 be useful. I see a lot of heads going up and down
12 around the room.

13 Judy, is it possible to get them copied right
14 now, so that people could have them this evening?

15 MS. KEATING: Sure.

16 MS. SPIELER: You will also note that I
17 didn't have you approve the minutes from the last
18 meeting because I actually didn't have them, I don't
19 think. Did I?

20 MS. KEATING: I sent them to you a day or two
21 ago.

22 MS. SPIELER: Okay. They weren't on my e-
23 mail when I left my office yesterday at about 1.

24 MS. KEATING: They're in the packets.

25 MS. SPIELER: They're in the packets. So, I

1 would ask the committee to review the minutes so we can
2 take care of that housekeeping tomorrow morning, and
3 here's what I would suggest. Les, I do agree with you,
4 and I will sit down before 8:30 in the morning and have
5 a list of what I think are the topics, and if -- well,
6 I don't have a typewriter or -- what? I'll get --
7 you'll have them here at 8:30 tomorrow morning, either
8 copies of handwritten ones or verbally, and we'll
9 approve -- we'll sort of go through the list first and
10 quickly and make sure that it's inclusive and then go
11 back through it and work through it. At 10:00, we'll
12 talk to Pete Turcic on the phone specifically around
13 DOL and we will adjourn by noon, having decided with
14 the Assistant Secretary how she would like to go
15 forward with us.

16 Does that seem -- everyone's approval, and
17 then those on the Claims Administration Subcommittee
18 can then go and meet with the people who are handling
19 the OWA claims and see whether they can figure out how
20 they could be helpful and what they can learn.

21 Ricky?

22 MR. BLEA: I'm just curious. In the original
23 proposal, the money put in was \$250 million, correct,
24 for this program?

25 MS. SPIELER: That was, I think, the trust

1 fund for the DOL claims, Ricky. It didn't cover the
2 Subtitle D claims. There was never an appropriation to
3 cover the claims costs for the Subtitle D workers
4 compensation claims. I think those were always
5 intended to be covered under the regular DOE
6 appropriation, and it was never addressed.

7 MR. BLEA: So, I'm just saying are we running
8 out of money or do we still have plenty of money there?
9 I'm just curious about that.

10 MS. SPIELER: Josh?

11 MR. SILVERMAN: This is Josh Silverman.

12 The initial appropriation -- the initial
13 amount put into the trust fund was 250 million.
14 However, it's designated as an entitlement and that
15 money is replenished. It will not run out of money at
16 any point.

17 MS. SPIELER: Thank you.

18 Anything else?

19 (No response)

20 MS. SPIELER: Okay. Then we're adjourned
21 until 8:30 tomorrow morning.

22 (Whereupon, at 5:00 p.m., the meeting was
23 adjourned, to reconvene tomorrow morning, Wednesday,
24 June 19th, 2002, at 8:30 a.m.)

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