

WORKER ADVOCACY ADVISORY COMMITTEE

U.S. DEPARTMENT OF ENERGY

**PUBLIC MEETING
TRANSCRIPT**

**Loews L'Enfant Plaza Hotel - Washington, D.C.
April 26 & 27, 2001**

Committee Members

EMILY A. SPIELER, Chair
RICKY BLEA
LESLIE I. BODEN
JOHN F. BURTON, JR., Ph.D.
JEANNE CISCO
DONALD ELISBURG
JAMES N. ELLENBERGER
VIKKI HATFIELD
STEVEN MARKOWITZ, M.D.
MARK OLSEN
LEN MARTINEZ
IRIS J. POST
GLENN SHOR, Ph.D.
GREGORY R. WAGNER, M.D.

TABLE OF CONTENTS

Welcome/Introductions and Opening Remarks	5
Emily Spieler, Chair	
Approval of Meeting Agenda	8
Old Business:	
Adoption of Minutes	9
Emily Spieler, Chair	
Motion to Rescind the Motion to Send a Letter to the Secretary re Payment of Medical Expenses	10
Emily Spieler, Chair	
New Business:	
Status and Direction of DOE Worker Advocacy Program/Status of Interagency Work (Interagency Panel)	10
Paul Seligman Ted Katz, NIOSH Pete Turcic, DOL Claudia Gangi, DOL	
Subcommittee Reports and Recommendations	
Medical Panels and Causation Issues	51
Steve Markowitz	
Claims Submission/Worker Notification	106
Vikki Hatfield	
Claims Processing Issues	111
Don Elisburg	
Public Comment Period	114

Friday, April 27, 2001

Subcommittee Reports and Recommendations (Continued)

State Agency Relations Iris Post	140
Program Evaluation and Performance Measures Les Boden	151
Contractor and Insurer Cooperation	162
Consideration of Additional Recommendations and the Form in which WAAC would like to Communicate Recommendations to OWA and DOE	171
Next Meeting Date/Location	186
Public Comment Period	198

P R O C E E D I N G S

April 26, 2001

12:00 p.m.

Welcome/Introductions and Opening Remarks

MS. SPIELER: -- Office of Worker Advocacy, the Department of Energy.

This is a two-day meeting. The subcommittees -- meetings tomorrow -- go until approximately 6:30 tonight and reconvene at 9:00 tomorrow morning. There's a subcommittee meeting that will follow immediately after the full committee meeting this evening and will meet -- will occur in this room, and that's the Contractor Insurer Cooperation Subcommittee.

The Worker Advisory Committee provides advice to the Office of Work -- Worker Advocacy, DOE regarding its workers' compensation responsibilities and specifically with regard to the implementation of the Energy Employees Occupational Illness Compensation Program, the Act of 2000.

What I'd like to do -- a couple of reminders. First of all, you have to press your mike button when you want to be heard so -- in order to facilitate the taking of the transcript and the meeting minutes.

Second of all, I want to talk a little bit about this meeting, but before we do that I'd like to go around the room and have everyone introduce themselves, starting with Steve.

DR. MARKOWITZ: Steven Markowitz. I'm an occupational medicine physician with Queens College in New York. I also run the worker - - program, which is a -- worker medical screening program and -- plants -- National Lab -- operational base of the National Lab.

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

MR. ELLENBERGER: Jim Ellenberger. I'm with the AFL-CIO

MR. ELISBURG: Don Elisburg. I'm a lawyer from Maryland.

MS. CISCO: Jeanne Cisco. I'm from --

MR. BODEN: Les Boden. I'm from Boston University School of Public Health and also with the -- Worker Surveillance Program --

MR. BLEA: My name is Rick Blea. I'm from New Mexico. I'm a --

MR. KATZ: My name is Ted Katz and I represent NIOSH.

DR. SELIGMAN: Paul Seligman, acting director, Office of Worker Advocacy, Department of Energy.

MR. TURCIC: Pete Turcic. I'm the director of the Energy Employees Compensation Program at the Department of Labor.

MS. GANGI: Claudia Gangi. I'm an attorney with Department of Justice.

DR. WAGNER: Greg Wagner. I'm a physician working for NIOSH. I'm not here representing NIOSH, which is what Ted Katz is here for.

DR. SHOR: I'm Glenn Shor, California Division of Workers' Compensation Policy Program Evaluation and Training --

MS. POST: Iris Post, Iowa Workers' Compensation commissioner.

MR. OLSEN: My name is Mark Olsen. I'm -- the Iowa National Engineering Department of Laboratories sitting in for Bernie Meyers.

MR. MARTINEZ: I'm Len Martinez, the chief financial officer for Kaiser-Hill, which runs --

PARTICIPANT: I'm Joe Falco -- and I'm the staff of Office of Worker Advocacy.

PARTICIPANT: I'm -- Office of Worker Advocacy.

MS. ANDREWS: -- Andrews. I'm also Office of Worker Advocacy.

PARTICIPANT: -- national supporting the Office of Worker
Advocacy.

PARTICIPANT: -- I'm -- consultant for -- Department of
Justice.

MR. FISHER: Brian Fisher -- consultant.

PARTICIPANT: Joanne --

PARTICIPANT: -- rural labor and --

MR. FITZGERALD: -- Joe Fitzgerald --

MR. KLEMM: Jeff from SAIC.

PARTICIPANT: -- with the -- river --

MS. LANGE: Cynthia Lange with the Labor Energy --

PARTICIPANT: -- SAIC.

MS. KEATING: I'm Judy Keating. I'm with the Office of
Worker Advocacy and I'm also the Designated Federal Officer for this Federal
Advisory Committee.

MS. FRANK: -- Frank, and I support --

PARTICIPANT: I'm -- with DOE's Office of Worker
Advocacy.

MR. SILVERMAN: Doug Silverman, also with the Office of
Worker Ad.

PARTICIPANT: I'm Jeff -- with the Office.

PARTICIPANT: Kathy --

MS. HERMAN: Angela Herman, American Insurance
Association.

MS. SPIELER: Thank you. Those of you at the table should
all have a copy of the proposed agenda. I -- make a couple of comments about

it, and -- and suggest a revision and then just see whether other committee members have any other concerns about the agenda.

First of all, you'll note that on here is a motion to rescind the motion to send the letter to the Secretary. Apparently, after a number of e-mail back and forth it was determined that in fact by motion in our last meeting we agreed we would send a letter to the Secretary with regard to one specific issue, which was the -- the fact that the committee was to recommend that the -- that DOE -- examinations requested by the medical -- this motion to rescind the motion is on the agenda for housekeeping purposes only in order to leave the -- because we agreed as a committee by e-mail subsequent to our meeting that we would hold off on the sending of that letter.

The agenda has on it tomorrow a more general discussion about how we want to communicate any specific recommendations that we've developed at this meeting to the Department. And we can consider at that point whether we want to do it by letter to the Secretary and, if not, how we want to do it or in what additional ways we want to do it. So that's purely a housekeeping because we did not take the action in between these two meetings that that motion suggested that we would take. So, that's the first thing.

The second thing is that my hope was that we would discuss specific recommendations in the areas of the subcommittees as we go through the subcommittee reports and adopt them as we go through the subcommittee reports and then before we adjourn tomorrow we have a discussion about how those recommendations should be communicated. So, I -- I'm suggesting that we separate the -- the substance of the recommendations from the mechanism by which they will be communicated by the committee and that we discuss the mechanism as a whole after we've adopted any recommendations in the course of today and tomorrow morning.

Let's see. And there's -- several members of the committee have raised issues and concerns about the frequency of these meetings, and I think we should take up those concerns tomorrow when we see how far we've gotten and where -- when we think we should be meeting, although it is certainly my personal opinion that we don't need to continue meeting in the long term with the frequency that we have been meeting.

Approval of Meeting Agenda

MS. SPIELER: Finally, with regard to a sort of specific issues of concern on the agenda, it's been suggested to me by several people that the -- we really need to make the specific -- we need to reach closure in making the

recommendations that we want to be making with regard to the medical panels specifically. And so I'm going to suggest that we discuss those issues first today and resolve them and put the subsequent discussions after -- the other discussions after that. In other words, revise the order of the committee reports so that the Medical Panel subcommittee go first, followed by Worker Notification and then Claims Processing.

That was my first revision. The second thing is that several times now in the series of subcommittees there's been a discussion once again about the scope of the jurisdiction of both the Office of Worker Advocacy and this committee. And I would like to ask, Dr. Seligman, if you would address that during your general remarks and then perhaps the most appropriate time to discuss that, since it doesn't really impact the medical panel questions, the most appropriate time to discuss that would be in the context of discussing Worker Notification and Claims Processing and any recommendations that come out of those two subcommittee discussions.

Is that acceptable to committee members and do you have any other additions or revisions to the agenda that you would like to promote?

(No response)

MS. SPIELER: Can I assume that silence means it's acceptable?

(No response)

Adoption of Minutes

MS. SPIELER: Yes. Okay. I'll entertain a motion for adoption of the minutes of the prior meeting?

PARTICIPANT: So moved.

MS. SPIELER: Second?

PARTICIPANT: Second.

MS. SPIELER: Any discussion?

(No response)

MS. SPIELER: All those in favor, say "aye".

(There was a chorus of "ayes".)

MS. SPIELER: Opposed, "nay".

(No response)

MS. SPIELER: Motion carries.

**Motion to Rescind the Motion to Send a Letter
to the Secretary re Payment of Medical Expenses**

MS. SPIELER: And now I'll entertain a motion to rescind the motion with regard to the writing of the letter to the Secretary that was made at the last committee meeting.

(Pause)

MR. BLEA: I'll make that motion.

MS. SPIELER: Thank you, Rick.

I'll move to second it. Any discussion?

(No response)

MS. SPIELER: All those in favor?

(There was a chorus of "ayes".)

MS. SPIELER: Opposed?

(No response)

MS. SPIELER: Thank you.

I'm going to turn this over now to Dr. Seligman.

You're on. Status and direction of DOE Worker Advocacy Program.

Status and Direction of DOE Worker Advocacy Program

DR. SELIGMAN: Thank you very much. And thank you for all the panel members who once again have given of your time and energy not

only to be here at today's meeting but also who have supplied much needed advice and input in the interim between the -- our last meeting and the present one. I think both on my behalf and on the behalf of my staff, we certainly appreciate your continued and -- input and engagement on the important issues related to the implementation of this program.

I'm going to focus my remarks basically on providing you an outline as to what I've been doing with myself for the last six weeks or at least since the last committee meeting and focus primarily on seven issues. One is on issues related to outreach. The second is on intra-agency coordination inside the Department of Energy. The third is the development of physicians panels, regulation, interaction with that subcommittee. Fourth is our efforts to begin to engage state workers' compensation agencies in communication. The fifth is talking about how -- where we are and the process we've engaged in in developing an approach to our DOE contractors and insurers. Talk, number six, about the facilities lists and where we are on that process. And then finally, talking about the interagency coordination and our continued work with DOL and HHS and the Department of Justice. And then finally, at your request, we'll also talk about -- a little bit about some sort of -- tee up the issues related to scope of -- of the program in anticipation we'll have a more detailed discussion of that in the Worker Notification and Claims Processing portion of the agenda.

So let me just dive right in. And I guess, you know, I think one of my -- as I -- as I address each one of these topics, I think I want to just sum up at the end of each topic and ask if there are any questions or issues rather than this turning into a 20- or 30-minute monologue. And so I'm -- I -- I'll start with outreach, talk about where we are on outreach and field any questions regarding that and then move on to the next -- the next topic.

I've had now the pleasure in the last few weeks of visiting four of our sites: Hanford, Savannah River, Oak Ridge, and Nevada -- and Nevada Operations Office, and also having a -- a teleconference call with the folks at the Albuquerque office. Our conferences were focused primarily on the topic of how best to establish outreach efforts around our major facilities. We will continue to have these -- conversations and site visits over the next couple weeks so that we ultimately include Idaho, Portsmouth, Paducah, and the Rocky Flats field office.

Basically, what we have been focusing on is how best to establish a -- a place within -- in and around our -- our -- the communities adjacent to our major site facilities that offer a place where a potential claimant can come and get information about the program of the Department or that part of the program that will be managed by the Department of Labor

as well as that part of the program that Department of Energy will be assisting with in the state compensation area, a place where individuals can go and get direct assistance in filling out claims forms either for their prospective state or for the Department of Labor, and then finally, to be a -- the point where individuals can make the appropriate requests and serve as the liaison in gathering the needed records for that claim, again, irrespective of whether it's going to Department of Labor or -- or through the state so that, essentially, a potential claimant can go get all the information they need about the program, make a determination as to whether they wish to file on the Federal or state side or both, and then to have assistance in filling out those forms and filling out the -- the essential forms necessary to get their claim records, their exposure records, and whatever medical records are needed for that process.

In our field visits we've had an opportunity at all our sites to meet with the pertinent representatives of the labor unions at the sites, to meet our former worker programs at the sites, and to understand in -- all the work that they are currently doing not only in the way of their surveillance programs but also the assistance that they are currently providing many of their -- individuals that they are seeing in filing the state claims, and then finally, an opportunity to meet both who are DOE Federal staff as well as the contractor staff who manage records, privacy issues, Freedom of Information Act requests, industrial hygiene and health physics staff, and others necessary and -- and -- to the -- assuring that it's overall successful in -- the reputation of this program.

I think it's been a very useful set of -- of conversations and dialogue. There is clearly a high level of commitment on the part of Department of Energy staff and their contractors to see that this program work well. I think we've had some of our field managers office -- office -- field managers actually offer to take over the entire outreach program and run it themselves from -- from -- from the field. There's also, I think, a -- I think, a high level of -- of interest and -- and -- and -- and desire to make this a successful program as well on the part of both the worker programs and -- and from the -- from labor unions.

So, it's in many ways for me gratifying to see that at least everybody is sharing a common interest and a common goal to make this successful. And it falls upon our -- our shoulders to ensure that -- that implementing this outreach effort is -- is well coordinated and meets the needs and concerns of all the various parties.

So, that's basically where we are with outreach. It is our assumption that the compensation program will be up and running on July 31st. It is our desire at this point to have as many outreach offices as we can

open and running by the end of June, in at least a full month advance of the program so that people will have an opportunity prior to the -- the opening bell of this program to get information and start getting claims forms, et cetera. And so we're -- we're working sort of backing that process up so we can hopefully have facilities identified and -- and staff be hired during the month of May and June and, of course, trained to operate these outreach -- outreach facilities, if you will.

So, that's my report on outreach. I'm happy to take any questions or comments at this point before I move on to the second topic.

Yes?

MR. ELLENBERGER: I'm Jim Ellenberger with the AFL-CIO. Have -- have you made any determinations at all about the number of offices you're going to have and the specific locations for the outreach, how you're going to handle various sites in terms of smaller facilities and locations. Of course -- 37 states -- not all of them are major sites. Anything that you can share with us that will help us understand and, perhaps, provide some more input on this?

DR. SELIGMAN: Certainly. To date we are functioning under the presumption that we will at least have a five-day-a-week office, if you will, at -- around nine of our facilities. So, that would be Hanford, Savannah River, Oak Ridge, Las Vegas, something in the Los Alamos area, as well as Rocky Flats, Paducah, Portsmouth, and Idaho. So, those are the nine places where at least we're at present focusing on having, again, what I would call an "office".

We're also well aware that many potential claims don't -- even around our major facilities live some distance to those sites. That's true particularly in places like Savannah River where one sets up an office, for example, say in Augusta, Georgia that there's still many people who live in the Aiken, South Carolina area. Similarly, Hanford. There are many people who live out as far as 70 miles east of the site in Yakima, Washington.

We've talked and will make arrangements to have some form of -- not necessarily satellite offices but a provision whereby for at least one day a week or maybe one week a month we will have outreach people go out to these more distant sites and have a place where -- come and get information about the program, assistance in filling out the forms, et cetera. And again, how -- the number of these sort of satellites that we have, again, will depend very much on -- on -- on the site.

And similarly, we -- we -- we know for a fact that for the atomic weapons employers that there have been, based on our analysis of the Hotland data, you know, clusters of potential claimants. To give you an example, the northwest Washington -- excuse me. Northwest New York area around -- around Buffalo as well as along some of the major industrial areas in Michigan and -- and Ohio. And again, we've talked about having a -- setting up a mechanism whereby we go out and -- for a week at a time or some period of time setting up a place where people can, again, come and get information about the program.

The -- these outreach offices will -- will not be the only way that individuals can get information about the program, obtain claims forms, or get assistance in filing for -- forms. We will continue to maintain our hotline at the Office of Worker Advocacy and Department of Labor, as I understand it, will also be establishing mechanisms whereby individuals can -- can either write for or call in and have -- get assistance in -- in completing claims forms over the telephone.

So, I think that -- I hope that answers your question.

Steve?

DR. MARKOWITZ: So, Paul, the -- does the model that you're pursuing -- potentially expand local or regional DOE offices to take on this function of outreach, to hire personnel under DOE to perform outreach and claims assistance?

DR. SELIGMAN: It's not to expand the local DOE function, but it's basically out of -- out of our offices here at Headquarters to -- to, yes, create a -- a separate place where individuals can go and get information about the program and file -- file claims.

DR. MARKOWITZ: And that place will be a DOE office?

DR. SELIGMAN: It -- it's going to be paid -- paid for by the Department of Labor and Department of Energy, yes.

DR. MARKOWITZ: I understand it will be paid for. I'm wondering who will employ those people? Who will their employer be?

DR. SELIGMAN: They'll be -- employees, probably, of the DOE contractor.

DR. MARKOWITZ: The reason why I'm pursuing this is -- is in the entire -- programs this is probably the only place where DOE has a chance actually to develop autonomous, independent function of advocacy on behalf of workers and assistance. Not -- I'm not talking about claims development or documentation but outreach and advocacy. This would be -- just as with DOE setting up the former worker screening programs, it didn't hire the site medical personnel to conduct those medical evaluations because those medical personnel wouldn't have been trusted, I raise the issue whether there is residual distrust by many -- not all, but by many DOE workers, including former workers, who would still have a hard time believing that they can get advocacy and assistance from a DOE office.

And so, I raise the question now, as I did last time, by the time -- by the time we meet again these offices will be set up. So, I raise the issue not just with you but with the committee as well as whether this is the area where DOE might create an autonomous program to fund, essentially, workers, current and former workers, through whatever set-up network: unions, contractor, whatever. It would be, however, separate from DOE, which would take on specifically the outreach and advocacy function, recognizing there are going to need to be some national standards for that because you don't want sites -- site area -- recognizing there are some administrative awkwardness about that. Nonetheless, it represents the only opportunity in this entire program to involve workers directly on their own behalf, on behalf of their own fellow workers.

So, that's not a question for you necessarily, Paul. But I would like the other members of the committee, if they have opinions on this, to express them and take up this issue because I think after this it's -- it's done.

MS. SPIELER: Let me suggest that -- again, you're kind of proposing some kind of ombudsman model that would -- would have -- a kind of independent role from the DOE offices. And let -- let me suggest that we specifically take this up during our committee discussion of these issues and at this point address questions to Paul about what the Department is doing at this point.

And I -- and I think there were some other questions that at least people have talked to me about -- to me privately that, perhaps, could be raised at this point.

(Pause)

MS. HATFIELD: I'll go first.

MS. SPIELER: Okay.

MS. HATFIELD: I guess you sat in our subcommittee meeting this morning so you know I'm pretty outspoken about the outreach -- the part of this -- I guess that's to say it mildly. But I still -- not sure I agree with -- with what Dr. Paul said that it is important that we have that -- that trust and -- and that these workers don't feel like there -- there's going to be some repercussions from -- coming into file. And I know we've talked about this before, but I really think that I agree with Steve that we have to have a separate identity for these offices.

And I realize that we're -- we're in a crunch time, that we don't have a lot of time left, and that people are an issue and -- and all those things are issues. But this is the time. This is the time that Department of Energy has to make itself known and to make the workers know that they're concerned. And I think this is the time to do that, and I'm not sure that doing the offices the way that we've outlined -- that you've outlined to us today is -- is the right way. And we'll talk about that more as we move forward, but I do want to think about that.

MS. SPIELER: Other questions on this issue for Paul?

MS. CISCO: Okay. So, you're saying that in those outreach offices there are not going to be any workers, former workers working there at all? It's going to be Department of Energy and Department of Labor?

DR. SELIGMAN: No, that's not what I said.

MS. SPIELER: Maybe you could clarify --

DR. SELIGMAN: Oh, yeah. We will certainly in setting up these offices seek to employ and identify individuals who will be, you know, work well with potential claimants, and I think certainly if the pool of former workers at -- at our sites certainly represent individuals who probably would, you know, work well in such an environment.

So, there's -- there's no -- there's no prohibition against hiring former workers or any other individual who we think would, you know, work well and provide the kind of claims assistance to get this -- needs to be provided in such a -- such an environment.

MS. SPIELER: I think we can follow up on that during our discussion of this issue.

Jim? Yeah. Jim, go ahead.

(Pause)

MS. SPIELER: Oh, okay. I'm sorry. I didn't see you.

DR. SHOR: You talked about the -- the outreach, how the system would be set up at sites, the specific, I think, seven sites. What about in the other states? How will the outreach be handled there? Is there any ideas about any training programs for existing information and -- those programs in those other states?

DR. SELIGMAN: The simple answer to your question is yes, we've thought about it and we haven't really -- very far in terms of how we're going to do that. For example, the Oakland operations office or, you know, some of the other site other than my -- what I said in response to Jim Ellenberger's question, which is that we would certainly like to have, you know, periodic, you know, satellite offices that would be available for people in those other areas.

And we certainly -- as -- as part of this outreach effort will need to, of course -- of course, train the people who -- who staff these offices. We certainly want to, as well, train DOE operations and contractor folks and - - and -- and any individuals throughout the -- the DOE complex who will be engaged in this process what the law's about, what the claims process is about, et cetera.

MS. SPIELER: Did you -- did you have a --

MR. ELLENBERGER: We'll probably be getting into more of this in the Worker Notification piece -- second piece discussion, but I -- I just wanted to raise it now because there has been some, in my opinion, misunderstanding that exists about the potential of utilizing former worker programs in this process. There was an understanding by some that that has been -- ruled out, and I -- that's not my understanding. I just want your understanding.

DR. SELIGMAN: No. As -- as I said, the former worker programs already provide a very valuable service to many former workers in assisting them in filing state claims and we certainly don't want to interfere with that relationship. And we also feel it's very important to work at all sites where there are former worker programs to ensure that there's, you know, close coordination, you know, with these formal programs. But the actual extent of their involvement or the nature of the relationship of these outreach

offices is not yet determined. It may vary from site to site as to the degree to which the former worker programs would have responsibility for some of these outreach efforts.

MS. SPIELER: Other questions on this issue? Mark?

PARTICIPANT: Paul, the employees -- you alluded to the employees being contractor employees. Are you talking about the ML contractor or this is being an independent contractor that DOE would place?

DR. SELIGMAN: This would be an independent contract for the DOE --

PARTICIPANT: I think that's absolutely essential to avoid the occurrence of conflicts.

DR. SELIGMAN: I agree.

MS. SPIELER: Other questions on this issue?

(No response)

MS. SPIELER: Okay.

DR. SELIGMAN: The second thing I wanted to talk about was -- right on in.

(Laughter)

DR. SELIGMAN: -- was just to talk about what I -- I and my staff have been doing internally to the Department of Energy because, as you can imagine and as I actually am learning, there is -- this is a -- a -- a complicated organization, both in Headquarters and in the field.

The first thing I want you all to know is that in your packets is a -- is the latest notice 350.16. I believe that's in the packets. If not, I'll give it to you.

(Pause)

DR. SELIGMAN: There was a, unfortunately, an error in December and the wrong notice regarding acceptance for valid workers' compensation claims was forwarded to the field. We now -- that error has been rectified by our field manager and counsel for us, and so you should have

the latest draft. I believe that -- does it have -- somebody want to hold it up? I think that's -- right. Right.

You should also know that we -- we -- we are currently working with our -- our directives folks at the Department of Energy. What -- what happens, essentially, next with this -- this notice is that there are -- is a directive that goes out which basically defines in more specific language what is meant by a valid workers' compensation claim and that the directives process, which actually was initiated even before -- past is still working its way through the Department of Energy, and it's our hope that there will be sufficient guidance to our field -- our field contracting officers, in particular.

We have spent a fair amount of time talking to our record management folks here at Headquarters in the field and privacy and FOIA, or Freedom of Information Act, staff again both in Headquarters and in the field, so that we at least are now beginning to understand the -- the kinds of things that need to be done in order to ensure smooth processing of claims. And in particular, I've asked from all of our record managers estimates of the -- the cost for processing employment information, radiation record information, medical history information, medical records information so that we -- we can anticipate the -- the -- the costs related to those activities and we can -- so that -- because at present there are monies within the Office of Advocacy both in this fiscal year and next fiscal year to, you know, either pay for or offset many of those records managements costs.

I had an opportunity to meet the chief operating officers at -- counsel at Department of Energy, again, to talk about the program and also have the opportunity in the coming weeks to meet with our Federal contractors operating group, our -- manager and counsel and others in the Department of Energy to talk about our -- the plans for implementation of the program, their role in implementing this program, and the need for us to -- more cooperatively to ensure its success in its implementation.

Similarly, there are other groups at the Department of Energy, including the Radiation Control Coordinating Committee which we are just initiating contact which basically consists of all the health physicists throughout the Department of Energy, again, to ensure that we work with them to make sure that on the radiation side all the records that are within our control are -- are produced in a -- in a prompt and internal fashion to support the -- this program.

So, that's basically all I have to say in regards to intra-agency coordination other than -- than that's been a -- quite an education for my -- myself and my staff to appreciate the -- the complex web of -- of both Federal

and contractual staff and organizations that will be involved in assuring a successful and smooth implementation of this program.

The third thing I wanted to talk about was --

MS. SPIELER: Wait, wait, wait. You wanted to take questions on each area.

DR. SELIGMAN: Sure.

MS. SPIELER: So, just -- if there are any questions specifically with regard to intra-agency issues? Iris?

MS. POST: I just have one. Paul, in comparing the first -- and maybe this isn't too relevant. But you mentioned that a corrected version of the notice DOEN 350.6 had been sent out, and I've got both of 'em here. Could you just give us a thumbnail sketch about the differences between the two, if you know?

DR. SELIGMAN: No, I can't. No, I don't know.

MS. POST: In your mind, was there any substantial policy difference between the two?

DR. SELIGMAN: I -- I don't believe so, but again, this was brought to my attention upon my return from Las Vegas at 2 a.m. yesterday morning. I do apologize for not having had a chance to read the outdated one, so I'm not in a position to comment as to whether there is any substantial changes, although I would assure that there are not. But I can't vouchsafe for that.

MS. SPIELER: Well, I couldn't find them. So maybe if any of your -- the staff from OWA that's here knows where -- what the difference is between these two notices it would be helpful to have that explained.

DR. SELIGMAN: Does anyone want to step forward? Rebecca -- Rebecca Smith was -- basically handled that who's, unfortunately, not here. And she was the one who did the --

MS. KIMPAN: This is Kate Kimpan. I can say that the process was there were comments from the field that we at DOE had communicated back were accepted for change, which I believe are not substantive in our terms, and the revised version -- the version that went out in February -- the exceptions of some field comments.

MS. SPIELER: But you don't know what the changes were?

MS. KIMPAN: I -- I do not. I apologize.

MS. SPIELER: It would be nice to know that, by the way, before we leave tomorrow.

PARTICIPANT: We'll get you a copy of the original notice.

MS. SPIELER: Well, I actually tried comparing them.

(Simultaneous comments)

PARTICIPANT: The newer version is richer in terms of the details and giving folks in the field a higher level of confidence in terms of how to implement this for both contractor or -- field office. There's no substantive changes, but the first notice is pretty stark, and this one really, I think, raises the comfort level dramatically for contractors and field people in terms of giving them a better understanding as to how these things should be handled.

PARTICIPANT: I did bring mine if somebody wanted to make copies.

DR. SELIGMAN: I'm carrying both copies in my briefcase. Anyone wants to look at it. I apologize for my failure to be able to respond to that question. That's the way it is.

Any other questions?

(No response)

DR. SELIGMAN: Okay. In the area of developing physicians panels and panel regulations, we have had the opportunity to work closely with our general counsel staff here in the Department of Energy, have -- have a number of -- of very useful dialogue with our physicians panel subcommittee regarding those regulations and -- and some of the issues attending to that, and I think we're at least moving -- moving along on -- on -- on pace to -- to have something that, hopefully, this -- this committee can endorse through the -- in this -- or at least provide us some good recommendations regarding -- or good advice regarding some of the outstanding issues in those -- in those physicians panels regulations. I'm going to leave it to Steve Markowitz to report on that.

Other than that, I'm not -- you know, I'm not going to -- anything nor on that -- other than that as my colleague Ted Katz from CDC will point out, efforts have already been made to reach out to the medical community within -- throughout the country to assist in beginning to identify physicians who would be appropriate for -- for such a panel. I'll let Ted talk about more of that in greater detail in his -- his presentation.

Any questions about physicians panels since I can only say much?

(No response)

DR. SELIGMAN: All right. Communications with state workers' compensation agencies. You could -- should have in your packets a copy of the letter that we sent out to the compensation agencies around our major facilities, basically asking them to identify the point of contact and to engage with us in a discussion about any potential barriers or problems in implementing this legislation and to engage in discussion about whether there should or should not be a formal relationship or whether there's a need on a state-by-state basis to engage in anything -- any kind of formal relationship between the state workers' compensation bureaus and the Department of Energy to implement various aspects of this program.

I've had the opportunity to have three direct calls with the -- our contacts in Kentucky, South Carolina, and Ohio, and in the next couple of weeks hope to complete such conversations as well with the appropriate commissioners or directors or acting directors or vice directors or -- of all these various -- at the states to which we mailed this letter.

Any -- any questions in that regard? Again, I think it's part of the -- I just don't want to preempt any of the subsequent discussion, but I think Iris could probably talk to some degree in her report about some of the -- again, the outstanding issues that remain in our relationship with state workers' compensation agencies.

We'll move on, then. In regard to DOE contractors and insurers, there was a subcommittee meeting on I believe it was April the 13th here in Washington. That subcommittee has worked to develop an -- an approach to engage DOE contractors and insurers and -- and insure -- and to -- to ensure that there will be cooperation in implementing, again, the state-based portion of this program. And again, I think I will leave this to the -- that subcommittee to talk in greater detail about their recommendations and their -- approach.

Other than that, we certainly have, I think, a eager and willing and hungry audience out there in the field of contractors and insurers who are eager -- eager for guidance and are as anxious about this program as we -- I think maybe who are here at this table.

Regarding the facilities list, we are, again, continuing to move forward to expand that and have found additional companies to add to that list. We've found in some cases duplications on that list which are going to be clarified. We're also creating a -- the text -- a -- a text that will be published on our web site. It's basically a document that will describe for each of those facilities listed the work that was done at that facility, the time span when -- when -- when they did work for the Department of Energy, any alternate names for that site, since we've come to learn in many cases the names of these facilities and companies have changed. And it is, again, our hope that we will in June of this year publish -- publish this list of this -- these updates, clarifications, as well as the announcement of the availability of this additional text information on our web site.

We don't necessarily view this as the end of the process. We are authorized to continue to work, as we learn more information to update and -- and -- and expand that -- that effort. But it's our assumption that when we get to the -- to the end of the process of people actually filing claims, particularly amongst those who are beryllium vendors or atomic weapons and -- that a fair amount of our effort on the part of our Headquarters records people will be, you know, working with these employers to identify the pertinent records that are necessary to support that claim and, in particular, for individuals who file a claim or claim that their company's not on the list to do the necessary research to determine one way or another whether -- add that company and as a result that employee did do work on behalf of the Department of Energy and the -- and weapons -- production-related work.

So that's basically where we are on -- on the -- on the facilities list. We have actually sent staff out to look at as well and to go through some procurement records at some of our major facilities where we think there might be a potential wealth of information about other vendors and -- employers actually identified, again, additional sites as a result of that act of out -- active -- active research our sites. So, that's all I have to say about the facilities --

MS. SPIELER: I think there was a question.

DR. SHOR: Paul, the -- the list that was published in the "Federal Register" was of sites and facilities. Is there also going to be or is there a list of all of the known contractors and subcontractors who work --

those individual facilities and/or unions that had workers at those facilities so that it -- it helps to identify the employer of record or the -- or other pertinent information?

DR. SELIGMAN: We're certainly on -- on our web site we're going to try to list the major and -- text version of our document as to who -- what were the major contracts of those facilities and their contractors, whether they were managers in operation or managers in integration contractors.

We hadn't, to be honest with you, thought about your second suggestion, which is related to identifying the unions that were involved at the sites. I don't see any reason why we couldn't do that, but we -- we hadn't anticipated that as part of the publication of that facilities list.

The -- just sort of back to your first question, the one issue for us in identifying contractors who worked at our DOE sites is that there were lots of them. From people who came into install telephones to people who, you know, did janitorial services to people who painted buildings all the way to the, you know, the folks who did some substantive work relating to the actual weapons production. So there is the potential to -- some of our major facilities -- naming every, you know, company that ever did business and reaching 'em may have at some point or another actually done work at the -- at the -- at the -- site, particularly if it was providing services more of the nature that I just described. So it does present an interesting question to us as to what degree should we or can we identify contractors who ever performed work at -- at one of our sites.

I just raise that as a -- question for us, but that's all I'm going to have to say on that.

MS. SPIELER: Les?

MR. BODEN: Paul, have you begun to involve people from your -- the DOE Office of Contracts in these discussions?

DR. SELIGMAN: The answer is yes, we have. They -- we had a representative at -- both at the subcommittee meeting and had interaction with the individuals at the DOE responsible for directing the system, which is basically the way -- interacts and engages with its contractors in terms of setting up the requirements necessary for performance under that contract and for making any additional changes or adding additional responsibilities, you know, in that contractual agreement.

MS. SPIELER: Other questions?

(No response)

DR. SELIGMAN: Finally, I just wanted to say -- well, two -- two final remarks. One is to say that we will continue to work closely with our -- our colleagues here -- here at the table in terms of interagency coordination. Had the opportunity where we -- in our first outreach visit to have -- have a representative from the Department of Labor join us, and we will be working closely in the coming weeks on ensuring coordination on all aspects of the program -- outreach, claims filing, sharing of information, et cetera.

I think despite what was going on regarding issues of who's going to be handling the Federal side of the program, it has not deterred us in any way from continuing the dialogue or assuming the status quo was the status quo -- Department of Labor -- portion of the program, so we've, you know, continued to have those discussions -- move forward with this -- not -- not deterred us in any respect.

And finally, I just wanted to just talk a little bit about scope issues. One issue, which I know that this committee is going to address and which I look forward to their input on, which is the degree to which this program should be providing assistance to employees of beryllium vendors and atomic weapons employers, and that will be discussed.

There is another issue which I think we really -- we need -- we need to wrestle with, and that is the issue of noise-induced hearing loss and other illnesses, although noise-induced hearing loss, based on our current experience with our former worker program is clearly the one that's most outstanding simply by -- by its sheer numbers of -- of individuals who are being identified with such hearing loss and the potential for their filing claims. And again, I would like to discuss and work here with this committee in inviting and deciding on a path forward as to how you can best manage and deal with that -- that segment of claims, even though they are, in at least part of law, not part of that aspect of the -- of the program that refers to an illness related to the toxin exposure. On the other hand, there are clearly activities and aspects of the program that provide claims assistance and coordination with the Department where, you know, some level of activity and engagement by our office in assisting with those claims would certainly be appropriate, so.

MS. SPIELER: Let me just add one thing about that. I think I'm a contributor to the confusion here. We -- we had a discussion about scope at our very first meeting and -- as to whether or not we were limited to the issue of toxic substances. And it was pointed out to me subsequent to the meeting that the medical panel subsection of the law very clearly is limited to

toxic substances. You will note that, however, the rest of the language of the statute is not limited to toxic substances and that furthermore, the directive that, 350.6, that got sent out specifically talks about claims diagnosed in accordance with any applicable criteria by physicians associated with site occupational medicine, clinics, or current and former worker medical surveillance programs sponsored by DOE and refers to it more clearly -- "illnesses".

So, out of those former worker medical surveillance programs are coming a substantial number of non-toxic exposure diagnoses, most prominently noise-induced hearing loss or presumptive noise-induced hearing loss. And so, the question that become -- and -- and I believe the charter for this committee was broader than specifically the subsection of the law that deals -- that would define the medical panel scope.

So, the question then becomes whether -- is our advice to the Department with regard to the treatment of those claims that are not covered specifically by the medical panel subsection but which are coming out of these more general screening programs. And that I -- it's a -- it's a -- it's -- it's an issue on a number of different levels, both in terms of the extent to which the Department provides advocacy assistance on those programs. The -- and -- and if that is going to be done, I think that the Department probably needs to figure out how it's going to handle what's probably a very large number of claims that specifically deal with noise-induced hearing loss and ensure that they don't in some way paralyze the process for the other claims that deal -- which are probably less numerous but may be -- involve greater severity involving toxic substances.

So, I -- I -- that's where some of the confusion comes from and I think that some of it came from that exchange which I actually never got a response to where I said I think this is the reading of the law. Maybe we are limited to toxic substances and that -- but maybe somebody needs to look into this. And I think where we are now is that actually the scope of this committee is broader than toxic substances arguably and -- the scope of the OWA jurisdiction is broader than toxic substances but the medical panel jurisdiction is limited to toxic substance diseases.

So, that's the issue and I think we're going to need to talk about it when -- when we talk about Claims Processing and Worker Notification advocacy.

Other questions for Paul before we move on? Iris?

MS. POST: I just have a -- kind of a clarification question for myself. The -- I know that there's a Federal fund established for some of those claims that come within those four or five different classifications. Everything else is the state claim. Some of the discussion in the various subcommittees indicates that to -- to some extent at least the DO -- Department of Energy will be accepting compensation items and contractors or other ones. Where is that money coming from to pay those claims? Does that come directly out of your budget, the annual budget for Department of Energy?

DR. SELIGMAN: Yes.

MS. POST: And to what extent, if any, has that been provided for in the current budget year which ends, of course, September 30th and the -- and what extent has that been looked at to -- how much money is going to be needed to put into a fund to pay for that beginning October 1st of this year?

DR. SELIGMAN: For the actual payment of claims there is monies set aside generally in our contractual arrangements to pay for a certain level of occupational illness and injury claims by each contractor on a -- on a presumed annual basis or whatever period of time they use to -- to provide budgeting. So, one of the, you know, concerns that has been voiced not only by Headquarters staff as well by -- as well as by the -- contractors is to what degree existing reserves and monies that are ordinarily anticipated and allocated for such claims will be sufficient in the future.

So, the answer to your second question, we don't know. I don't know what the potential size of that -- will be, to what degree currently allocated and appropriate resources will be -- may be sufficient to cover those expenses or whether other mechanisms will be -- need to be identified within the Department to pay those claims.

MS. POST: Okay. And so, insofar as it might bear on the initial hearing loss claims, I guess I would just put forward that perhaps some kind of priority system or something needs to be looked at in terms of, you know, there's only so big of a pot of money, I'm assuming, and so what kind of priority do you put on what type of claims for paying those first.

MS. SPIELER: Glenn?

DR. SHOR: As a follow-up to that, because I'm not sure where else we would talk about it, if the contractors -- you're talking about it in terms of that there's money available in the existing contractors. What about the contractors that are no longer existing? If a state gets a claim that's -- then has

to be paid for by its uninsured employers fund or some other state special fund, is that money reimbursable to the state from Department of Energy?

DR. SELIGMAN: That was an issue that was taken up, I think, this morning as well -- state agency relationship. And I guess I'd prefer to defer that discussion until we have a chance to -- Iris to talk about it -- as well it's still an outstanding issue as to where -- be paid for those -- those claims where the contractor and/or an insurer is no longer there to, you know, to pay the claim.

MS. SPIELER: Other questions for Paul?

MR. MARTINEZ: Just a comment, clarification. There's no specific dollars set aside for worker comp claims -- there is dollars set aside for worker comp claims but it's part of fringe cost allocation at the contractor level and what happens is if the claims for the year exceed the budget that you have provided for, then your allocation for that cost increases, which then reduces the amount of funding that's available to perform mission work at that particular site. It's not a -- it's not a fund that has no limit.

MS. SPIELER: I -- I think we'll be taking that up in part when we talk about the contractor insurer issues and the subcommittee's going to continue discussing tonight and we'll be talking -- tomorrow morning. But clearly -- Paul, anything else?

DR. SELIGMAN: That's it. Thank you.

MS. SPIELER: Wait. Glenn?

DR. SHOR: I just have one question. We were handed a copy of 350.6, and my question is, is this the old version or the new version?

DR. SELIGMAN: The old one.

DR. SHOR: This is the old version?

DR. SELIGMAN: What -- what you have is the old version and what you had in your packets was the new version.

DR. SHOR: Okay.

MS. SPIELER: Unfortunately, they both have the same date on 'em. It may be a challenge to keep them straight.

Yeah, Les?

MR. BODEN: I'd like to follow up on Iris's question. And -- follow up which has to do with appropriations. Clearly, if this program is successful, then going forward in time there is going to be a lot more money to spend on worker compensation claims than has been spent previously. And unless there are additional budgetary funds allocated for those purposes over and above what otherwise would have been allocated, it's got to come from some place else. And I'm curious how -- how that's going to work, what -- what the plans are to influence allocation and whether there's any way that this committee can be useful as that goes forward?

DR. SELIGMAN: I share your same concern. I don't have much more else to say at this point in time other than that our Headquarters principal secretarial officers of environmental management and defense programs and NSA offices -- well aware of this issue and at -- at the present what Len Martinez is describing is -- is essentially the ways and -- and the fringe and when -- the exhaustion of that -- you know, those monies, when those monies are exhausted, it does again to be -- sources of funds -- mission-related work. And you know, this -- the subject is -- is being -- other offices within the Department of Energy as to how to manage this should -- should those resources -- should additional resources be necessary.

But I don't -- I don't have a specific answer beyond that other than I think everyone is aware of the problem and --

MR. BODEN: Well, presumably, when the next budgetary cycle goes on that the DOE would put into its -- the budget that the president would propose or try to put into that budget adequate funding to pay for these additional claims so that you wouldn't have that. Is that wrong?

DR. SELIGMAN: No. That's certainly a mechanism that could be tried. At present you will find I think in the -- and maybe Len Martinez could correct me -- I don't think you will find within the DOE budget a -- a place that specifies how much money is allocated to the fringe -- to expenditures and how much of that ultimately goes to paying for, you know, compensation claims or other -- other accounts -- management of that benefit. You know, Environmental Management gets a large budget and you've got to allocate it to the various sites based on the work that they want to try to accomplish at that site. And I -- the fact that in that overall budget number there's a certain, I guess, percentage of that, again probably on a contract-by-contract basis, that serves to pay for fringe benefit-related issues.

But you know, again, Len, maybe you could, you know, expand on that although I'm pretty confident that there's nowhere in the -- in the DOE budget where you will -- actually see a -- a -- a number or mention of -- of funds that are specifically set aside to pay for these kinds of claims or activities.

MR. BODEN: Yeah. I'm just trying to understand a little better what -- even if that's not the case, if you have additional costs that weren't foreseen in the past, presumably you would attempt to build those costs into this year's budget even if there's not a line item for the compensation. I guess part of my question, not necessarily -- ask it now but if you thought about this, whether there's any constructive function that this committee as an advisory committee can play in that?

DR. SELIGMAN: On the first question, I can't think of one.

MS. SPIELER: Steve?

DR. MARKOWITZ: I -- so, has the Office attempted to make any estimate of the costs by looking at the profile of expected claims -- experiences what those claims might cost so that you could come up with -- prospectively with some ideas of what the cost would be? Again, I understand -- why you might not, but in terms of rational planning, it's one of the questions I would have of your office from the other part of DOE and the contractors as to what this is likely to cost and how much we should plan for.

DR. SELIGMAN: We actually engaged in such an exercise a year ago and -- and actually, it was a little more than a year ago. It was -- it was in the April-May time frame of 2000 when the legislation was -- was passed and met at Headquarters -- the principal secretarial officers and talked about how they -- the management. It was their impression at that time that the -- they could probably manage the additional expenses out of their current allocations, but we -- we have not updated that estimate in light of the new legislation.

It was interesting. At that time the estimate -- provided was based on the assumption that, actually, the Department of Energy would be paying for beryllium claims and most other claims, so -- those are now being paid for out of a special trust fund established.

So, the simple answer to your question is that that -- that aspect of the activity has not -- has not been updated.

MS. SPIELER: Yeah. Go ahead, Glenn.

DR. SHOR: As a -- a -- maybe this will come up during Pete's discussion. This trust fund that's been set up in the Department of Labor budget, I think, has some kind of order -- authorizing something on the order of \$700 million. Is -- is -- in that same range or what do you think the Department of Energy cost would be?

DR. SELIGMAN: No. It would be higher or lower.

(Laughter)

DR. SELIGMAN: We had actually initially estimated back in May of 2000 that we were probably talking about 15 to 17 million dollars a year additional claims throughout the complex. But again, those were based on a whole host of very different assumptions. It was based on -- different piece of legislation than we got. And as -- again, we -- we would really have to update the -- update those numbers.

MS. SPIELER: Les?

MR. BODEN: Just one. It's not just the cost of the claims, it's the cost of the outreach, it's the cost of getting the records, it's the cost of the whole process which might be substantially more --

DR. SELIGMAN: Yeah. I was just talking about payment of claims. There's a separate appropriation just for the management of the Office of Worker Advocacy that deals with outreach, payment -- issues panels -- the intended work relating to updating facilities lists, providing resources to offset costs for records research, radiation records, and to basically do all the, you know, support functions that an employer were to provide for, you know, claimants to DOL or for requests of records for information, tests for radiation exposure. Those have been separately budgeted.

The -- the item that has not been separately budgeted for is the actual payment of -- of claims, and that's not part of our budget nor is it specifically part of, you know, DOE's overall budget.

MS. POST: And I would just add that, of course, the biggest piece of all that's going to be the medical coverage necessary for some of these workers. And -- and those -- you know, \$250,000, it's not unreasonable.

Also, an occupational hearing loss case, in Iowa a normal one, as I say in the John Deere plan, some expected random pickups. So, however -- you know, 20-, 30,000 dollars per worker. And that seems to be a fairly common claim, occupational hearing loss.

(Pause)

MS. SPIELER: If there are no more questions for Paul, I know a number of committee members never got lunch and there are some sandwiches here now. So, why don't you take five minutes? And I want you just to know that because of the vagaries of the way the Federal government works, you each have to pay for your sandwich and then you can put it in for reimbursement later because this has actually been -- by staff. So, you can either take care of that now or during break later. Let's take five minutes now just so that those people who didn't get lunch -- sandwich.

(Brief recess)

MS. SPIELER: We were going to move on in the agenda to a report from the other agencies who were involved in the implementation of the act.

Ted, I assume you're wearing the Larry Elliott hat on the agenda? And you're first on the agenda. Do you want to get started after --

(Pause)

MR. KATZ: We are -- a lot of things have -- since we -- since we met last. We -- our Office of Compensation Analysis and Support up and running since then. Has a -- epidemiologist, health physicist, industrial hygienist, risk assessor, and -- eight of us. It's a very skeleton crew at this point. But -- but it's -- we're working hard to -- to meet these deadlines we're under, which is a tall order.

And our biggest piece of business is developing the regulations and policies that we've been assigned as per establishing the probability of causation and for desert construction, the methods that would be used for that, and for responding to the petitions to be added to the special exposure -- and right now we're in the process of outreach, as -- from DOE. We're doing outreach as well in this arena. We have such a short time for rulemaking, you know, an incredibly short time, that we are going out to experts all over the place to get their input, experts to take over on the front end before we split -- paper and draft the rules so we can get an understanding of -- expertise in the field and where the differences lie as we can.

So -- and that includes the agencies that are already -- worked in this area: Department of Veteran Affairs and its contractors, the National Cancer Institute -- causation and its contractors that work on the probability causation tables -- tables that are a part of this process.

We also -- and this is good news, I think. We -- we've met with OMB to develop a relationship there and how we're going to work, and they're -- they're very supportive. They're looking to have a very expeditious process for rulemaking, which is great, which means they consider this a high priority.

And the third piece of good news related to this is, as you know, there's a presidentially-appointed advisory board that is integral to the decision-making that we have to do in reference to these rules as well as to our desert construction program down the -- down the road. And -- and that -- last time we spoke, it was still at CDC, and now it's -- it's at the White House, so that's progress.

Then, secondly, the desert construction project is going to be an enormous job, as we discussed in the last meeting. And we're, again, doing outreach there to learn -- technical issues that we need to learn and to get our thinking straight on how to operate this program.

And in the meanwhile, we're developing the record systems that we need to handle this program and do -- work in the Department to be able to operate it.

And the third piece, then -- this is going to be very brief, all this. There's medical panels. We have this little piece of appointing physicians to the medical panels. And -- and this might seem hasty but it was necessary. We've already gone out to -- to various groups for nominations to the panels, to the American College of Occupational and Environmental Medicine, which is the main sort of professional society for people working in occupational medicine, physicians; the Association of Occupational and Environmental Clinicians. Network across the country of -- as well as many excellent clinics mostly associated with universities. Went to the directors of residency programs in occupational medicine across the country as well as to NIOSH, Occupational Physicians. Seeking nominations from all these sources.

We had to basically do that. There's really not a lot of time. DOE wants these panels up and running by the end of July at the latest, and it was sort of opportune. The American College of Occupational and Environmental Medicine is meeting -- was meeting this -- this week, I think, in Chicago, so it was a good time to get them. And they've agreed, as well as the clinics, to -- you know, to do a considerable amount of work for us identifying physicians. And then we went out to start the selection process internally -- receive those nominations.

So, we're hoping to be able to -- we can make the point -- end of June to these panels.

And then I don't know whether it's appropriate, really, here or when you get into the medical panel discussion to discuss issues that reflect on the criteria and so on. I'll let -- lead on that.

MS. SPIELER: It might be -- make the most sense to consolidate that discussion with the discussions Steve -- line.

So, general questions for Ted about the work NIOSH is doing? Yeah, Len?

MR. MARTINEZ: When you talk about an expedited or accelerated version for rulemaking, what is the time frame?

MR. KATZ: So, we're hoping to have drafted rules by the end of May. Drafted them internally. But our time frame, the -- the deadline we're working against is having regulations out there by the last day in July because that's when the program --

MS. SPIELER: Just for clarification, you're drafting rules so they can go through the full process: proposal, comment, review --

MR. KATZ: That's a good question.

MS. SPIELER: -- final promulgation?

MR. KATZ: That's a good question. And -- and what we're considering doing, which I believe Department of Labor is also doing -- considering doing, is -- is actually putting them out as interim final rules, which means they would go out effective but they could be commented on and -- and comments could be addressed subsequently. And the -- I mean the reason for doing that, if we do that, that decision has to be made to do that, although there are -- we're being urged to consider that -- is because if you just count up the days between now and then, with the notice and comment process there will not be rules out.

MS. SPIELER: Yeah. That -- that's precisely what I asked.

Rick?

MR. BLEA: Has there been a final decision as far as are they going to be regional?

MS. SPIELER: We're going to discuss that in the context of the medical panel report because I think they have recommendations with regard to that.

MR. BLEA: Ted, does a physician have to be nominated by one of the organizations in order to be considered by NIOSH?

MR. KATZ: That's what we're -- that's the process we've put in place, yes, so that's one of these four different -- well, it's really being one of the four organizations, but that means a lot of sources for nominations. So, you don't have any provision for, I guess, for write-ins, self-nominations, or anything like that.

MR. BLEA: I heard ATRON is one. AOEC is two. Occupational Medicine and Residencies is three.

MR. KATZ: Residency directors. So each of those programs as well as NIOSH occupational physicians. So, all those -- courses.

MR. BLEA: Did you consider -- Public Health Association, the Occupational Health Section, or the Society for Occupational and Environmental Health?

MR. KATZ: We -- we did. We did. And -- as well as several other sources. And we just thought that this would pass what "sufficiently broad" meant and be expeditious.

(Pause)

MS. SPIELER: Jim?

MR. ELLENBERGER: To go back to the issue of rulemaking, I don't know much about it but I understand there's a process called direct final rules. Have you considered that?

MR. KATZ: Yeah --

MR. ELLENBERGER: -- direct rules on --

MR. KATZ: There is -- I mean it's -- they're all sort of bastardizations of -- of -- of what you really intended to be under the Administrative Procedures Act. There are clever ways agencies have figured out to move the process on. The -- the big -- I mean -- and frankly, we're -- you know, we're nervous about interim final rule process because if there is

real contention about the rules that we put out, then that -- that's going to set us back terribly. So -- so, doing that direct final rule, there is something called -- I mean these are all -- agencies that -- you know, these other sort of processes.

But we would certainly want comment. So, even though we're doing as much as we can to get individual comment before we even draft the rules, we certainly want to have the door open for people to come and want to be included out there.

MS. SPIELER: Other questions for Ted?

(No response)

MS. SPIELER: And clearly, this committee, as well as all the agencies, were really interested in seeing the subject running and -- and I think the time table's really presented an amazing and formidable obstacle. I'm delighted to hear that OMB is eager to see this up and running as well and hope that's shared all the way up through the agency there.

In any event, we really appreciate NIOSH's work on this and hope you'll be able to stay for the rest of our discussion because I think there will be sort of over -- there's some overlap issues that are important. And personally, I hope that you're figuring out ways to get -- to get through the dull sort of construction piece of this without having it be a 10-year process for each person.

MR. KATZ: Absolutely. We're not -- we're not going to take -

-

MS. SPIELER: Anything additional for Ted other than the medical panel issues, which we'll be talking about soon?

Yeah, Jeanne?

MS. CISCO: On -- on the people that you've selected and you would accept nominations from, is that part of the rules that you could accept comment from the people that you could use as those concessions?

MR. KATZ: The rules are -- are dealing with different matters. For a Federal compensation program, the rules relate to what the person's dose was, figuring out what kind of dose was, reconstructing that dose, and -- and then determining whether their cancer was as likely as not caused by that. So they -- it's completely separate, those rules from a nomination for physician --

Is that -- did I understand you correctly or --

MS. CISCO: I'm trying to figure out how we could open up to more organizations that are allowed to -- with physician's training.

MR. KATZ: You could make recommendations to me and I'll pursue it.

MS. SPIELER: We could take that up as part of our discussion on the medical panels.

Les?

MR. BODEN: I think, also, when we move to talk about that, if there is a potential interaction between geographic issues and who's selecting, and I don't know what the medical panel -- just decided about sort of geography, whether that's important or not, but when we come to that maybe we can discuss that.

MS. SPIELER: Anything else for Ted?

(No response)

MS. SPIELER: Pete?

MR. TURCIC: Thank you. Just a couple of -- few areas of regulations on the systems we're developing and outreach.

In the area of regulations, our regulations are in the Department clearance system and we expect those to clear within the next few days. And the time scheme is that we would be coming out with a interim final rule on May 31st. And then the interim final rule would be effective on July 31st. And the way the process would then work is that we would then take comments for, you know, a 90-day period and -- and then address those comments, and -- and we're looking at coming out with a final rule, then, probably in May of 2002. In the -- with an interim final rule, the agency would process and operate under the interim final rule until, you know, a final rule was -- is completed.

One of the benefits of using the interim final rule approach is it should either get an -- you learn something either when you start processing under the interim final rule or you should get some comments that, you know, point something out that has changed rapidly. Then it's merely an issue of

addressing that issue through another interim, you know, final rule to address that specific issue.

We -- we also considered, you know, the direct and, like Ted said, it's called different things in different agencies, and it's my understanding that the -- the downside to that on a direct final rule is that there would be no comment period. The down side is that the way that works is you come out with a direct final rule and the direct final rule is intended for things that there's not going to be any controversy at all over. You know, updating from one -- you know, maybe you have one consensus standard that's referred to in a regulation and you want to update to another. And the down side is if you get one negative comment, you're back to square one. You have to come out with a proposed rule.

So, that's why we chose to go with interim final rule. That way we can process claims under -- under that rule.

In some of the systems that we're working on, we're -- we have underway -- we're developing a -- you know, our ADP systems. We're developing our case management system. And then from a -- a medical bill pay system, what we've done is we're going to adopt our -- the medical bill pay system that -- that is used under the Black Lung Program. And we have a contract for -- to revise that system in order to add, you know, the other parameters for the increased number of diseases that -- that would be paid for and -- and covered.

We also have all of our systems in place with the Treasury Department in order to, you know, make payments once -- once we can process claims.

In the area of outreach, as you've heard, we're working closely with the Energy Department. Intend to -- for the intake centers to jointly develop these intake centers and have -- that way there would be one place for people to get assistance in filing claims, either with the Labor Department program or with the -- the state programs.

So, the other things that -- that we have on line and working on in the -- in the area of outreach is that we'll be having our web site up in early May to start providing, you know, information.

And we have a call center that is under developed -- development right now. And our -- the approach that we're taking there is the -- the call center is -- we're looking at it in a three-phase system, the first phase being during the time period from when the -- the interim final rule is

published until the -- you know, it'd be effective in that phase. The call center would be providing information relative to the regulations, what's in 'em, how you make comments, you know, and so forth and so on.

Then the second phase, which would then kick off when the rules become effective or shortly before they become effective, then the call center will be adding -- get, you know, more specific information relative to the, you know, how the system would work and -- and eligibility requirements and so forth.

And the third phase would be once claims get into the system and then we would add on -- there are people who would be able to call in and get information relative to their claims and the standards relative -- and so forth.

That's -- and then, we also intend to have a series of town meetings beginning as soon as the regulations are available, to go to as many sites as we can and hold meetings to explain to the public what -- what is in the regulations and how the system would work under those -- under the regulations.

MS. SPIELER: Len?

MR. MARTINEZ: Just a question associated with payment plans under the interim rule that in fact may be considered differently under final rule. How would you handle the difference?

MR. TURCIC: The -- if there was a claim -- let's say that there was -- you know, someone had filed a claim and it was denied, and there was some change that would make that individual eligible. Then, that -- that claim would be reprocessed.

MR. MARTINEZ: On -- on whose urgency? The individual or the Department?

MR. TURCIC: The Department.

MS. SPIELER: Les?

MR. BODEN: Pete, I'm a little confused about in terms of average to potential beneficiaries of the program. You've talked about a call-in line. DOL currently has a call-in line. What would be the relationship between those?

MR. TURCIC: The DOL call-in line initially would have and provide information specifically relative to the Department of Labor regulations as opposed to, you know, the DOE call -- call-in is providing, taking, gathering information and providing information relative to programs offered by DOE.

MR. BODEN: All right. I just -- I'm trying to picture myself as a potential applicant to the program. I don't really know if I have a state claim or a Federal claim or what the story is. I call up the DOL phone line to get information. Do I get passed on at some point to the DOE people or something? Might I end up calling 'em in two places and getting confused about what, you know, what I was supposed to do?

I guess what I'm -- where my thinking is leading me is that I think you have the idea of having the outreach centers that would be sort of jointly managed. Might it also not make sense to have a single place where people would call in that would have some sort of coordinated approach to the -- to the caller, particularly since, as I understand the DOE process, somebody calls in and actually gets put into potentially both the state and the Federal systems together. But yours would have --

MR. TURCIC: But that's --

MR. BODEN: -- case system?

MR. TURCIC: That -- that's correct. And that's a good point, especially during the initial phase. But that gets less and less relevant as the program operates and the -- the real use of the DOL call-in program then would be focused on someone calling in to check on the status of their claim, you know, and so forth.

MS. SPIELER: Can I just ask a follow-up?

MR. TURCIC: Sure.

MS. SPIELER: My -- can you turn this off?

Would it be possible, for example, to have your call-in number -- if someone calls, it would -- sort of general questions, that the first question would be do you have a claim pending at the Department of Labor, and if the answer is not "yay" refer them over to the DOE call-in line, that yours be more specifically focused on the status of pending claims because otherwise you are going to get a -- into this situation that Les is worried about.

MR. TURCIC: Yeah. That's -- that's always -- that kind of approach has always been intended and that's in the details that are being worked out. You know, probably first come into a IDR and, you know, a number of questions would be asked. "Are you asking for forms?" You know, and if they hit a certain number it would be pulled over to someone who could get the information to mail them the forms. Or "do you -- do you have a claim filed?" "Yes." You know, and then you would go to that -- that system.

MR. BODEN: I -- my impulse is to encourage you to have a single call-in number and choices for people that might lead them to a DOL or DOE person in specific.

MR. TURCIC: That is -- that is hard -- that is a very difficult thing to do.

MR. BODEN: Because?

MR. TURCIC: We'd run into all kind of problems when we get up the call-in center and the -- the customer service reps that have an access to certain information and access to different computer systems, that's just a very, very difficult thing to work with.

MR. BODEN: I -- let me just make sure that we're both on the same page here because I'm picturing something where you call in and it says, you know, "Is this your first call-in to find out what you're supposed to be doing? Press 1." And that goes to --

MR. TURCIC: Yeah --

MR. BODEN: -- the DOE person. "Are -- do you have a currently active claim with the Department of Labor? Press 2."

MR. TURCIC: Yeah. We could -- we could look at that very easily.

MR. BODEN: That's -- okay. Good. I was wondering what was so complicated about that.

(Simultaneous comments)

MR. TURCIC: Yeah. That's -- that's -- that's been intended all along and that could automatically --

MR. BODEN: Right. I think from a user's point of view that would be a much preferable system because I don't have to decide which number to call and get confused about calling -- whatever.

MS. SPIELER: Greg, did you have a -- Jim?

MR. ELLENBERGER: Yeah. I really don't want to put you on the spot, but I'm sure --

(Laughter)

MR. ELLENBERGER: I'm sure the last six weeks have been - been interesting for you and I don't imagine there's anyone in this room that doesn't know that up until last week the secretary of labor was proposing the administration of this program be shifted from the Department of Labor to the Department of Justice. This after -- during her confirmation hearings that she expressed full confidence in the ability of Department of Labor to administer this program.

She allowed in -- in a number of statements as to how she was being advised by career professionals of the Department that they couldn't do this program. They -- they were not technically capable of doing those Reconstruction -- actually, it's hard to believe it wasn't being asked to do -- construction.

That her -- her staff was advising her that it was -- there were a number of difficulties, as -- as -- as these reports had it, that the program would be administered by the Department of Justice. So, my -- I feel concerned in asking you this because you've been in the last six months charged with continuing to work with this program. But I -- I'm a little concerned because the -- what we're hearing are two different things. We're hearing from career professionals on one hand some confidence that they can do the job or we're able to do it. There was testimony to that effect before the House Judiciary Subcommittee who claims that -- what they -- the subcommittee is Mr. Smith's -- Smith's subcommittee where the Department clearly said that they were capable of doing it and the Department of Justice said, we're clearly not prepared to do this. And now, the Department has in fact agreed to do it but the secretary has also announced that he will be seeking a legislative extension.

Could you fill us in on the details of that and how this might come about?

MR. TURCIC: You know, as -- as the -- you know, you heard the other day and -- and the briefing that we gave that we are working under the assumption that we will be ready to have a program up and running on July 31st. And you know, that's -- that's what we've been working under, and naturally, you know, some of the systems they're going to need polished after that and -- and improved, but we have every intention of doing everything we possibly can to meet that deadline.

MR. ELLENBERGER: And do you have any indication what the -- what the process will be or the specifics will be in terms of the secretary's desire to have a legislative extension?

MR. TURCIC: I don't know where that -- you know, where that has gone on Capital Hill.

MS. SPIELER: Steve?

DR. MARKOWITZ: Six weeks ago when we met Mr. Hallmark was here. The idea arose about an advisory process for Department of Labor to get input. And Department of Labor's had a lot of -- gotten a lot of advice in the last few weeks, but I'm wondering whether --

(Laughter)

DR. MARKOWITZ: -- the progress of solicited advice is going to -- whether there's any progress or what DOL's thinking about that?

MR. TURCIC: We had a meeting. Naturally, the -- the time constraints relative to -- that it would take to establish an advisory committee would not fit into getting early input, you know, into the rulemaking process, and so we've initiated a -- an informal process to, you know, get some input and, you know, that -- that is an ongoing effort.

The issue relative to the advisory committee is -- is still under consideration and, you know, would be -- would be taken up as time goes on or if these informal processes will seem to -- to work in our -- in our benefit.

MS. SPIELER: Would you describe a little more this informal process by which you're soliciting comment on -- for your interim final?

MR. TURCIC: Sure. We had a -- we had a request from -- from Jim that -- and we had a meeting basically where we were -- in that meeting we were seeking the experiences of individuals, their individual experiences, to help us, you know, factor that into the development of -- of the

rule. Since then we -- we've had an additional request and we're in the process of trying to work something out for -- for that.

MS. SPIELER: I -- I don't know and I -- perhaps this requires committee discussion, but my guess is that this committee would be delighted to have its charter extended so that we could provide the guidance to the Department of Labor that's too cumbersome to appoint another advisory committee. And if it would be appropriate for us to discuss that or if committee members would like to discuss that, that we could also discuss whether we wanted to make that offer formally and publicly to the secretary of Labor.

Secondly, with regard -- I -- I actually have a couple of follow-on questions about both the outreach and the rulemaking process. If you are -- I gather you are in fact at least informally involved in people outside the agency in the development of your interim final rule and if I -- I think it would be appropriate to -- for, perhaps, for this sub -- for this committee to also have the opportunity to take a look at drafts and order it.

MR. TURCIC: They did not see the draft. We cannot provide a draft of this -- until the -- like I said, -- departmental clearance. And there are still, you know, some policy issues that have to be decided. So, until --

MS. SPIELER: So, are you seeking suggestions with regard to rulemaking? And to what extent are you being specific with regard to the areas from which you're seeking suggestions?

MR. TURCIC: We gave an explanation of what the system and some of the issues that we were looking at as, you know, as you went through the system and sought input from -- from the individuals that requested --

MS. SPIELER: Just a second and somewhat unrelated question. On the town meetings I had kind of the same reaction that I think Les had to the separate phone numbers. Are these town meetings in which there will also be DOE representatives present so that there isn't any confusion about what it is that's going on? Because I -- so, you expect these to be kind of jointly held meetings?

MR. TURCIC: Right.

MS. SPIELER: Good. Additional, Jim?

MR. ELLENBERGER: In -- I don't remember exactly the date, but in late January or early February a letter was transmitted to the secretary of Labor requesting the appointment of a Federal advisory committee, and it was signed by labor representatives at a broad range of DOE facilities. Some of 'em were -- are present on this committee. We have not received a response although the Department has told us that that continues to be under consideration. In the interest of folks -- I have already extended the services of this Federal advisory committee to the Department of Labor and we did not receive a response to that, but we did have a meeting between the AFL-CIO and its affected affiliates with the Department, with OWCP, Shelly Hallmark and Pete Turcic and a number of their staff and the assistant secretary for policy Chris Spear.

And we -- we told them at that time that this committee is providing important advice and consultation to the Department of Energy. The Department of Labor is informally involved in the process, but we would be delighted -- and here's my disclosure to you. I -- I've indicated your delight --

(Laughter)

MR. ELLENBERGER: -- in that extension of your services.

MR. TURCIC: And -- and Jim, that -- that response because it was such a short period of time after the Department of Labor was identified as the agency to operate from -- it -- it has said that Mr. Hallmark would set up such a meeting. By the time it got through the system we had such a meeting. So, that small revision is being made and you'll get the response shortly.

MS. SPIELER: Additional questions for Pete?

(No response)

MS. SPIELER: Any specific concerns from the Claims Processing Committee that should be asked and answered at this point with regard to the DOL process?

MR. BLEA: I've got a quick -- and I -- I didn't ask you this this morning. Someone brought it to me to think about. If in fact let's say I work all my years at DOE in Los Alamos and I move to Oklahoma to retire and now that I can put in a claim and my nearest -- that I can put a claim, my case worker's supposed to be -- going to be in Oklahoma or does it go back to the region where I worked, you know, since we're talking about the district or --

not regions, but district office? Is -- is my paperwork going to be actually in Oklahoma or -- the district in Texas -- is it going to be there? And if --

MR. TURCIC: Our -- our thinking and -- on that issue, at least -- point in time, was that the -- the actual processing, you know, not the intake center -- you can file at any intake center. The actual processing would be done -- each -- each site would be covered by a certain regional office. So, it would be whatever site you worked at 'cause it goes to the region that you lived in.

MR. BLEA: What you're saying is -- were retired --

MR. TURCIC: That's --

MR. BLEA: -- that'd be relevant --

MR. TURCIC: It's irrelevant.

MR. BLEA: Wherever I worked, my claim will go to that district --

MR. TURCIC: Yes. And -- and the thinking behind that is that if we did it the other way, it adds no -- it doesn't reduce anything or make it easier for the claimant and what you gain by going and having, you know, the -- the site tied to a certain regional office, those people -- claims examiners are developing an expertise relative to that site.

MS. SPIELER: I'm still back on the rules and the rulemaking process, maybe because I'm someone who moved to West Virginia during the times that the -- rules seem to be in a regular process of revision and -- and in substantial ways, in ways that -- certainly, Len's question about what happens to a person who was denied last time and might be eligible this time certainly has resonance for me.

It seems to me that it would make a lot of sense for DOL to have a fair amount of input in the development of this -- final rule in order to avoid precisely what you're concerned about, which is a lot of changes which would involve later reevaluation or in some way re-looking at claims that have previously been processed. Is there any way that we could provide -- there's some very good expertise on this committee and some -- several of us have the history of the Black Lung Program indelibly marked in our memories. Is there any way we could provide some real assistance in thinking about the draft of these rules?

MR. TURCIC: The -- receiving the draft comment on it?

MS. SPIELER: You suggested that that's not possible. I don't really know the process, probably, as well as Don does, but if that's not possible, how might we provide assistance that would be, I think, valuable in the process?

Don -- Don, do you want to address it?

MR. ELISBURG: Yeah. We had a very extensive, I think, pointed discussion about that and so -- I think it's clear that the Department of Labor is on a somewhat different track than the Department of Energy with respect to -- the scope of -- of the scope -- I think, frankly, the issue of -- of whether or not this kind of -- see or help respond to what might be her final regulations in some draft form that the Department's -- has taken an extraordinarily restrictive view, which it seems to me -- taken up last summer but -- because he's simply following some directives that are coming from other places.

I think it is inappropriate. I think it is unwarranted. I think it's going to cause the Department of Labor far more -- than it would benefit it. Yet, I would say that -- public record for everybody to know that -- but obviously, the -- of whether or not that is an issue. I think it is a very critical concern that a program and scope of this size that the first time you see these regulations in the "Federal Register" -- for a year or two or three or four or five until they get around to the next set of -- is a problem.

MR. TURCIC: With one exception, Don, and this may be useful, and that would be, you know, if after the Federal rules were published if you addressed them. And as I -- as I mentioned, there's always the opportunity to, you know, to fix an issue through another -- rule before -- wait for a year and a half until another rule's final.

MS. SPIELER: Jim, did you have a -- some follow-up to that?

MR. ELLENBERGER: The follow-up I had on this is that we made a very pointed recommendation that it would be -- when we met earlier this week with the Department of Labor, we'd be far better to make sure that they -- they explore all of the negatives and positives of various proposals from people who can offer input. It's in everyone's interest to have a program that is going to function as -- as best as we can design it to certain people we're trying to serve. And for example, on my point definition of disability we had an extensive discussion. It seems clear to us that it's -- that it was the intent of congress not to require a person be disabled in order to be eligible for

benefits under the Act, that they merely meet the requirement of being a covered employee having a covered illness as -- as defined in the Act. And -- and you know, we -- we made the plea, and unfortunately, Don's right. And the point I'm getting to is that it's -- it's a political decision at the Department and it's -- it's one that I believe can be made and be made fairly quickly.

One of the -- the reasons that -- I don't want to be presumptive. One of the factors that was in play when the secretary issued her determination to administer the program was that a prominent senator from New Mexico who was one of the leaders in this legislation found a hole in -- on appointments in the Department of Labor. And as a resolution to that he publicly said not only would -- would it be advisable for Department of Labor to accept the responsibility for -- for administering this program but they should have a transparent public process in drawing rules and regulations. And some of us believe the secretary heard that and we're hoping that that filters down and, you know, Pete and -- and his colleagues would be able to disclose to us what it is they're working on.

MS. SPIELER: Len?

MR. MARTINEZ: So, is there anything that this committee can do to apply some pressure to DOL leadership to make that happen?

MR. ELISBURG: I think there is. I think there -- there are a lot of members of congress on both sides of the denial who've been very active in this who've made entreaties to the Department of Labor about the process and it would not hurt for those -- to hear from people in this --

MS. SPIELER: Why don't we take that up specifically with regard to the advisory committee actions in the context of the claims issues and -- because I think that we understand the Department of Labor's position at this point and the ball is -- is in our court. And are there additional questions for Pete?

(No response)

MS. SPIELER: Claudia?

MS. GANGI: Thank you. Thanks for having us here again today and to see everybody again.

I'll be very brief. We're -- now that the decision has been made -- Labor will be --

(Laughter)

MS. GANGI: -- we're working on polishing the -- the tasks that are set forth in the executive order, which is specifically to identify and notify those -- claimants who are eligible for additional benefits and compensation through the Energy program. And we're working internally on developing lists of people who -- who -- we're certainly trying to -- to -- them in terms of those that are sort of the slam dunk cases that we need to contact immediately and there's no question that they qualify. And we have some concerns about contacting survivors of those who were self-claimants in the early, mid '90s -- so we don't have a record of -- of all the impact -- so we'll see happens when the -- goes out. But we're making efforts toward contacting those miners and getting them lined up so we can launch them right away as soon as this program gets off its feet.

And we are not given specific deadlines in the executive order but we're working on a parallel track with the Department of Energy through the Department of Labor on the deadlines that have been imposed on them so that we're all sort of on -- on the same page. We are meeting regularly and -- and have very open lines of communication between the Department of Justice and Department of Energy and Department of Labor so that we can do our part to make sure that these -- that the claimants are -- are given whatever assistance they require to bring successful claims.

MS. SPIELER: Glen?

DR. SHOR: Is -- would there be any effort by Department of Justice to identify people who were denied claims under RECA to -- if they find out claims that would be eligible under this program?

MS. GANGI: Yes. And we're specifically tasked with identifying and notifying those who have received money from RECA. So technically, that does not include previously denied claimants. But as a general matter, the Department of Justice is going to be contacting all previously denied RECA claimants because of changes to our own statute. We're going to try and avoid any duplication effort and we'll include information about the Energy program when we do that outreach.

MS. SPIELER: Jim?

MR. ELLENBERGER: We've talked a lot about public opportunity to comment on agency actions, and one agency we haven't done that with is the Department of Justice. I'm just wondering if you have heard

from or have you made any efforts to contact representative groups, for example the Navajo nation?

MS. GANGI: We have not heard from them directly and -- and at this point we haven't contacted them directly. We haven't had any outreach visits yet.

I -- one -- one limitation that the RECA program has that the Department of Energy and -- and the Department of Labor don't suffer from is that we have severe budget restrictions. RECA has -- has had budget trouble for years and we simply have a very limited amount of money for outreach efforts. So, we want to make sure that when Department of Energy or Department of Labor conduct their outreach efforts that we can afford to send me with them to answer questions about the RECA claimants. So, we're -- we're very limited in -- in what I can do and what the Department of Justice can do in terms of sending people into the field to talk to the various cohorts that are going to be affected by this new statute.

MS. SPIELER: Other questions for Claudia?

(No response)

MS. SPIELER: The next issue on our agenda is the beginning of the subcommittee discussions and recommendations. We originally were intending to take a break, I think, around -- but we just took one, so my -- my suggestion is that we put the break off if that's acceptable to people. No? Some people are -- okay. 10-minute break. We will reconvene --

(Laughter)

(Brief recess)

MS. SPIELER: We're now going to move on to a report from the Medical Panel subcommittee and any recommendations that the Subcommittee would like to put before the full committee.

And Vikki, I -- I know that the issue of when DOE should pick up the cost of medical examinations was referred to your -- the Worker Notification subcommittee and the Medical Panel subcommittee. Would you like us to not discuss that issue until after your subcommittee reports or should we take it up as part of the discussion of Medical Panel subcommittee?

MS. HATFIELD: I think the Medical Panel is probably better. We decided --

MS. SPIELER: Okay. So, we'll -- we'll leave that as part of the agenda with the Medical Panel report and recommendations.

DR. MARKOWITZ: Vikki, you'll be happy to learn that we did not decide to turn it back to you.

(Laughter)

Medical Panels and Causation Issues

DR. MARKOWITZ: First, let me just praise Paul and Joe Falco working with our subcommittee. Paul's not even here this -- Paul --

PARTICIPANT: You were just praised.

DR. MARKOWITZ: You were praised.

(Laughter)

DR. MARKOWITZ: It happens so rarely --

(Laughter)

DR. MARKOWITZ: We didn't say -- we said Paul.

(Laughter)

DR. MARKOWITZ: Anyway, I just wanted to praise Paul and Joe Falco for working with us over the last six weeks. Conference calls and constant e-mails going back and forth asking us questions, being very open, giving us draft guidelines, carrying out -- draft letter -- NIOSH. And so, what I'll report today is really the result of extensive interaction with -- within the subcommittee and also between us at the -- in the Office of Worker Advocacy.

I'm not going to necessarily go in order. I'm not going to repeat what -- the issues that we covered six weeks ago at the meeting, so if there are some missing things, it could well be because we already covered them or -- we didn't want to deal with them.

NIOSH wanted our advice on how many doctors we think that they should locate -- recruit for the program, and they suggested some estimates of how many claims there were likely to be initially over the first year or two and how many doctors were likely to be needed, and we -- we agreed with them that the number of 30 sounded like a good number to start with -- to have available for the complex divided into smaller subpanels which would deal with specific sites.

But as a starting point, 30 physicians were likely to be needed without too much concern about under-utilization. And if more were needed, they could add more to our physicians.

We weighed in on the qualifications of the members of the physician panels. We thought they should be experts in occupational medicine, whether board-certified or not. They need to be asked for -- experience. Above and beyond that, they should have experience and expertise in epidemiology and toxicology and, in particular, dealing with the application of epidemiology to the issues of causation on clinical cases. In fact, that's what the panel -- physician panels are going to have to do, so the physicians should have that as part of their established background.

For whatever reason, we also wrote that the physicians should express a willingness to adhere to the guidelines established for the panels.

One of the -- the items that the Office did not initially put in, really, was on conflict of interest. We recommended that there be specific language for these physicians about either not -- either be excluded the entire process of serving on the panel or excluded from consideration for individual cases if there is a conflict of interest. The Office needed a specific conflict of interest policy for the physicians serving on the panels.

Do you want me to just go through these various issues and recommendations and the comments -- okay.

In addition to the 30 physicians needed for the panels, there would be a number of physician specialists needed, either primary reviewers or as special resources for the panels. For instance, home -- oncology and pathology and all that, so that the panels have access to expertise when they need it. It's not that they'll need it very frequently; nonetheless, there should be a designated set of these specialists that the panel can turn to rather than seeking advice from their colleagues down the hall.

The issue of causal standard. We thought that there should be a single, rational standard applied across the complex. Despite some -- issue of causality, despite some variation among the states, it only makes sense that the DOE, being the entity that it is, that a single standard be applied. And that is that more likely than not the occupational exposure contributed to or caused or aggravated or exacerbated the health problem that the claimant has. The Office then developed some language -- involved in that, but that was basically the gist of it and we agreed to that language.

We raised the issue of exposure assessment. One of the most difficult points, really, for the physician panels would be judging how important exposure was in -- in causing this person's illness. The physicians won't have this background per se within the complex. And so what's needed as part of the process is that the Office of Worker Advocacy identify contract -

- engage industrial hygienists who will get to know particular facilities well, that they will be responsible for reviewing whatever is known, published data, unpublished data, not for -- research that would take five years but in a matter of four or six or eight months, whatever is really going to be needed for the physician panels to establish that these industrial hygienists know specific sites and the DOE contract would then be part of this process.

Part of the process will be providing physicians with an overview of the facility but also, certainly, as an ongoing resource to the physicians on individual cases. So, for instance, a case one makes -- whether emphysema comes up and the physician's not clear as to what kind of exposures a maintenance work in that -- in Savannah River or whatever is likely to have encountered, even with an occupational -- basing occupational history on that individual, that those -- the physician panel can turn to an industrial hygienist that knows that facility well and they can provide advice on the likely intensity of -- exposures for that job title.

It's -- everyone agrees that the exposure data within the complex is not necessarily uniformly of the highest quality. That's not really a criticism. It's no better -- but that having industrial hygiene expertise on tap for the physician panels is really essential.

And that needs to be -- that kind of knowledge about the -- of the site needs to be complemented by a process whereby the claimant provides information about what -- their individual exposures and what jobs they had over the years. So, we recommended that as part of the claims process that there not just be a written occupational history but that there be on every person a personal interview to obtain occupational historical information.

And this will do -- serve two purposes. One is better quality, more detailed information will be received. And secondly, some workers that may be reluctant to speak because of issues of confidentiality relating to the complex and what information they're not supposed to share and therefore won't come forward with that information on the RECA report and in the interview format they would be assured that the procedures of the DOE are changed in certain ways and that certain information has become declassified and that now they can talk about what kind of exposures that they had in their history if it conflicts.

Issue arose about whether these physician panels should take on disability impairment judgements envisioned through the -- the issue of causality. We were not very positive on that. We thought that, actually, that - that the Office did not have to issue guidelines or regulations about that

specific issue. In fact, that was related to operations that we didn't necessarily have to provide advice on.

Setting that aside, we looked at -- discussed that at a later point that comes up that the issue of impairment and disability was really a whole different set of data needed -- there were additional data needed and the physician panels in the context of an impersonal paper review would -- were not the best people to decide about impairment and disability as part of this physician review, at least routinely.

A specific issue arose about whether construction workers across the complex should be treated by certain subpanels that deal only with construction workers, the idea being -- this was raised by an outside person -- that construction workers were somehow unique enough in their exposures or exposure circumstances that they shouldn't be -- their claims shouldn't be -- by the same subpanels that are reviewing specific sites. So, for instance, at Savannah River, production workers might be reviewed by a specific subpanel and a different subpanel would review construction workers at Savannah River and that same subpanel would review claims by construction workers at Hanford and Los Alamos, et cetera.

We didn't really think that was necessary. We thought that good occupational medicine physicians with -- working with industrial hygienists should be able to review claims adequately, taking into account different kinds of exposure circumstances of construction workers -- their exposures are intermittent, that they may be -- but short, that they cross sites, which is true of -- go from site to site within DOE. But that these weren't sufficient -- their -- their problems weren't sufficiently unique that they required separate subpanels of physicians to be formed.

The issue of consistency among the subpanels. And related, the issue of validity. How do we know that -- how do we assure the subpanels bring the same judgement to similar kinds of cases? A panel that might not -- for Savannah River as opposed to Rocky Flats or Los Alamos -- and we encouraged the Office to work out some ways of dealing with issues of consistency. It's not easy, but there are various mechanisms. One will be to bring the entire national panel together to discuss the guidelines, to discuss how to make these judgements so everybody hears the same things, to have certain -- certain cases, either standardized cases or individual real cases and then run them through several different subpanels and see what they decide at the end of that process and to look at the consistency across the panels.

It's an important issue and never -- of this method of assuring consistency or at least measuring consistency. We're sure that the Office will - we're convinced that the Office will take the issue seriously.

The related issue of validity, how do we know that a physician panel decision is actually right or not is much more difficult because there is no gold standard. We didn't have any great advice -- the Office of the issue of validity.

Consistency across panels partially gets at the issue of validity. If you don't have this sort of gold standard, at least if different subpanels consistently make the same decision, that's some assurance that -- that -- but it really doesn't necessarily address the heart of the issue. There's no -- you know, there's no easy answer to that.

You could consider a -- a special reference panel that somehow you will trust a greater level of confidence in to arbitrate or to review selected cases that will be considered your gold -- gold standard for validity, but it's not clear how you really select that particular subpanel to -- for review and why you can trust that as opposed to the panels doing the initial primary review.

So, good luck with the issue. And if we have any ideas --

(Laughter)

DR. MARKOWITZ: The issue of -- for medical evaluations paid for by DOE was given to us by Vikki. One option is for DOE to pay for medical evaluations by physicians for every claimant. We did not like that option. We thought that probably was a waste of money and probably unnecessary, that the trigger for a claimant to file a claim should be that the worker -- the potential claimant suspects that he or she has an illness that's work-related and that that would be the person advancing the claim. They would need some evidence -- medical evidence that they have had the condition but it needn't be occupational medicine evidence that they have the condition. In other words, they don't have to go to a physician that says, this is due to your work place, due to DOE's function. Same thing if they have a condition and a suspicion. And that that was a reasonable trigger.

Now, when that -- with no set of data exposure information -- information, and -- claim form come to the review panel, the physician review panel, it may well be incomplete. They may well not have had sufficient testing in order really to delineate what their problem is. We thought those people deserved a medical evaluation probably paid for by DOE, that it would

be at least awkward, if not worse, that DOE says that, no, you need to have more tests -- pay for those tests, and then we'll decide and then, you know, -- the claim because there's no guarantee the claim will be accepted.

So, there are actually two triggers, two points in which a claimant could get the medical evaluation or at least elements of an evaluation paid for by DOE. One was after submitting the claim but before it gets to the review -- physician review panel if there could be some -- some screening mechanism and some triage mechanism within the Office of Worker Advocacy or some centralized function in which it is clear, very clear from the beginning that the physicians are not going to have enough medical data to make a determination and therefore they shouldn't even see the case. In that case -- in that instance, the claimant should be requested to have medical testing.

Alternatively, for claimants in which they would appear to have sufficient medical data for a reasonable claim, there may -- there'll be instances in which the physician panel will decide, no, there -- we just -- we don't have enough testing here in order to make a decision, in which case the physician panel can ask for additional medical tests.

So, I -- there are two points. One of -- prior to physician panel review and one in the course of a physician panel review, which a claimant could be asked for additional medical information which probably ought to be paid for by the Department of Energy. And you know, there is -- there's -- you know, we will be paying for some medical workup for non-work-related claims, but that's -- that's par for the --

(Pause)

DR. MARKOWITZ: The other, I think, final issue was that appeals process if the claimant's presented new -- had been turned down by the panel -- that is to say, the panel thought they did not have a work-related condition and DOE did not veto that panel's -- that the claimant ought to have some access to appeal but should be required to present new information such that the panel -- subsequent panel review might be -- would have something different to consider in addition to what they already considered. Otherwise, it's just repeating the same type of appeal with the same result.

So, let me ask the other members of the subcommittee if there are other important issues?

DR. WAGNER: You did a great job in summarizing. And I just -- in listening to it and wondering in terms of the issue of DOE payment

for medical evaluation, I have some difficulty in listening understanding what the line of demarcation was. That in order to be able to have the claim that passes the first review, there has to be a diagnosed condition and a suspicion on the part of the claimant to get it in the door. And then, if the DOE review level putting together the case, they felt that more medical information was needed in order to what?

DR. MARKOWITZ: In order to have a reasonably complete -- complete file for the physician panel to review. If someone claims they have asbestosis and -- and there is no X-ray report in the file, they may have asbestosis, they may have been to a physician, they may have a renologist's determination of that, but if it's not available, then the physician panel is going to reject it out of hand. There ought to be a person or function prior to the official panel review which picks out and says, hey, you have to have an X-ray first and then we'll -- we'll pass that along to the panel.

DR. SELIGMAN: Just a quick question. Did the panel give any consideration to the -- who will select the physician for this additional review and -- and -- and who will make the determination as to what further testing should be done or, in this case, paid for by Department of Energy?

DR. MARKOWITZ: There are two points at which a person might be recommended for some further testing. The easier point in my mind is after the physician panel has looked at the record and says, we can't make a decision now because this test or that test is missing. They would then testify what's missing and they would, you know, be able to provide that advice of -- however that'll work about what test is needed.

DR. SELIGMAN: And we would -- OWA would -- would then send that individual to a physician of our choosing to have that test performed or -- provider perform -- figure out an appropriate provider to have that test performed?

DR. MARKOWITZ: Not -- I -- to the claimant that -- which provider they can go to. But my understanding is this is a way for the -- medical panel works, which is -- and it's not frequent, by the way, that this comes up, to have to ask for -- although for all -- all the claimants go through an initial medical evaluation before it gets to the physician panel. We were trying to make -- the system a little bit more efficient in that.

DR. WAGNER: Actually recall our subcommittee's -- sent this around, if the decision panel says we need additional clarifying medical information to have DOE committed to pay for that and actually, less clear in remembering consensus around this prior step, the review step, because it's not

clear to me how -- it's a -- it, to me, is a almost undefinable spectrum. We were clear in saying somebody on the basis of their own sort of interest in filing a claim that doesn't appear to have any particular justification should not be given a free medical examination at the course -- at the -- at the expense of DOE as one end of the spectrum. They shouldn't be paid to have an examination to get in the door. And the other end of the spectrum, if the physician panel says they need additional information, that should be paid by DOE.

I'm having trouble in describing anything in the middle once somebody files a claim.

MR. ELISBURG: Well, let's suppose there is a claim pending and Kate says you need to have some more medical information before we send this to the panel. She's the claims person for DOE.

DR. WAGNER: How does that differ from somebody walking in the door and filling out a piece of paper and saying I want to file a claim?

MR. ELISBURG: They may have walked in with a medical, with something -- may say, I know I have this cancer --

DR. WAGNER: So, the difference is that somebody in order to be able to even have -- be giving you a file has to have some medical record that they were provided -- provides justification --

MR. ELISBURG: I don't know --

MS. SPIELER: Can I interrupt this for --

MR. ELISBURG: But I'm assuming --

MS. SPIELER: -- procedure. I -- I wanted to see if we could get Steve to finish his report before we got into a substantive discussion by the committee and -- ah. Okay. And then decide which of -- sort of how to proceed with regard to the report in its entirety. I understand this is a specific issue that we need to resolve. There are other issues of contention or in which the Department would benefit from a more structured recommendation from the committee.

Steve, do you have any sense about that? And Paul?

DR. MARKOWITZ: Well, I'd like to get back to the presentation by NIOSH before about the nominations for the physician panels,

but that isn't something that's been discussed within the subcommittee. But I think we've had knowledge of it.

MS. SPIELER: Okay. So -- so --

DR. SELIGMAN: But in response to your question, Emily, the -- because we've worked so closely with the subcommittee, they have indeed addressed all the questions that we have proposed to them and, you know, I think given us sufficient specificity for us to, you know, proceed forward with drafting our regulations.

MS. SPIELER: Is -- are you going to be -- I won't hesitate to ask this question due to the prior discussion, but are you going to be sharing drafts with the subcommittee or the committee?

DR. SELIGMAN: We -- we did receive -- we -- we --

DR. MARKOWITZ: -- rest of the guidelines.

DR. SELIGMAN: Yeah. We shared -- we shared it with the subcommittee.

MS. SPIELER: No, that -- that's fine. I -- I just -- I mean let -- let me just ask. I understand there were two issues at least that require committee discussion. One is the trigger for the DOE medical evaluations and the other, probably a less contentious issue, the question of seeking nominations from a broader group by NIOSH. Are there other specific issues within the report of the committee that we should be discussing as a full committee?

Les?

MR. BODEN: I see two possible issues. One is -- was -- they just need to clarify this. Who and what -- who recommended that occupational histories be taken from everybody? It wasn't clear to me what -- when that was going to happen and who was going to do it and -- the interview, right. That was one.

And the other, which our subcommittee has -- whatever it's called, subcommittee talked about which was the issue of whether -- of the uniform causality standard and whether -- whether that would work for contested claims that went into the state system. Would they postpone the --

MS. SPIELER: Let me just say I -- I think we should postpone the second one together with the problem -- the related problem being admissibility of the medical panel findings in state proceedings and in contested claims, which I'm not sure we're ready to figure out yet, quite frankly. But with regard -- so -- but you -- your first one is that -- the question of when and whom is going to do the occupational histories? Is that -

MR. BODEN: Right.

MS. SPIELER: And first, just for clarification, do -- has that been figured out by the Department or by the panel -- the committee?

DR. WAGNER: No, we didn't discuss -- we -- we only discussed that it was one of the three critical elements, again, being able to have the complete file go to the panel for review, one point being the medical history, including, you know, the history of current illness and past medical history, the second being the environmental/exposure history, and the third being a occupational history.

MS. SPIELER: So, would it be fair to suggest that this is presumptively a function of OWA and the outreach offices and the people who develop the files -- part of the claims processing and claim notification piece of the puzzle? Is that -- do you think that's right, Paul? Steve?

DR. SELIGMAN: No. I -- the former worker programs, for instance, would be fairly incapable of doing this. They've got --

MS. SPIELER: No, I'm sorry. I didn't mean to exclude the former worker program. I just meant that it wasn't necessarily a medical panel issue. But we all want to know how do we process the claims in order to get them to the medical panels?

DR. SELIGMAN: Well, I don't know whose issue it is, exactly, but the -- it is important for the physician panel to work properly that those accurate informations can be obtained from the claimant is obtained through a personal interview in, you know, in addition to simply having a written -- fill out part of the claims process.

In the former worker program when we have people that -- they don't do a good job. They don't remember. It's going back years and years and years. And it's -- it frequently gets too complicated to do in a self-administered form.

We talk about variety of approaches including, you know, and this will run as a self-report or self-contained report with a personal interview, follow-up, and confirmation and expansion that there are a variety of successful ways that people -- and that we didn't think that this was an operational issue for the Department to be able to ensure the complete files to be put together --

MS. SPIELER: Mark?

MR. OLSEN: On the personal interviews, how do you assure completeness and accuracy of the information you gather?

DR. MARKOWITZ: Accuracy, there is no assurance. Part of the claim will be employment records from -- from the plant, so you can double check -- double check the job titles and count all the years. And to the extent to which the Department billing information will be available on a routine basis, the employer -- the contractor's records. But the part -- job title will be available, so that can be double checked. Certainly, years -- counting years of employment and duration of employment can be double checked. I think using the industrial hygienist who goes to that facility and is able to find broad job title and area of work to provide, you know, a profile of what kinds of exposures people can be expected to have there is probably the most important check on the accuracy.

Completeness, I -- you know -- if a maintenance worker from a certain building or area claims exposure to certain -- agent, then the industrial hygienist -- thorough review of the -- there's no other claimant that -- that claims that, then it's not likely to be an accurate result.

MR. OLSEN: Yeah. My concern is if the -- if the person -- suggest data that's different from the radiological data how -- the official radiological data -- toxicological data on -- on -- on -- on file.

DR. MARKOWITZ: I think it's really a strength to do these complementary -- to exposure. There's no other way of -- of getting -- a lot of the historical records will be incomplete, so the industrial hygienist can only go so far. But then you have the -- collective memory of the claimants, not one by one but as a vast group -- group experience. And the site specific subpanels of physicians will -- will understand.

MS. SPIELER: Len?

MR. MARTINEZ: I think the Department needs to consider the impact of a site that's closed and the lack of fiscal year knowledge

available. I mean many of these sites are still operating, but there's -- you know, I know three that will be closed within the next five or six years. And the historical memory drain happens real fast, so there's got to be a way the Department gets in front of that now through, you know, industrial hygienists, et cetera who are familiar with the plant and then do some profiling now because a lot of these are latencies and they're not going to show up for another 10 or 15 years.

MS. SPIELER: Yeah, Mark?

MR. OLSEN: Another question. The panelists will be -- consist of three docs?

DR. MARKOWITZ: Yes, that's what we thought.

MR. OLSEN: Differences of opinion -- is it going to be --

MR. KATZ: We suggested, actually, consensus. But then it'll be majority. Ultimately, it will be majority of votes. Interestingly, the Fernald medical panel, which was existing for two or three years and has had several hundred that -- that they -- and the three of them represent some diverse experiences. They have never had a single solution they could not reach consensus. So, it could occur. There was some question about whether the minority -- the physician who disagrees should write their opinion. We thought that was basically undue work for that person. They could, but there's no requirement that they -- that they write their opinion.

MS. SPIELER: Is there any consideration to the question of what would happen if the beryllium vendor and atomic --

DR. MARKOWITZ: Weapons.

MS. SPIELER: -- weapons, I'm sorry, employers' employees were thrown into the mix to the medical panels?

DR. MARKOWITZ: If the -- when the atomic weapons employees go out there for non -- non-radiological cancer, non-beryllium -- at the Nevada test site -- so that -- that would be appropriate. Beryllium wouldn't be, but, you know, there is a triage function -- played by the Office of Worker Advocacy before it gets to the official panel. That triage can be in occupational health and illness to determine whether there's sufficient medical data. One of 'em will be, you know, issues like -- like you raised.

MS. SPIELER: When you say it's not appropriate, is that because you're assuming it's a DOL -- I'm sorry.

DR. MARKOWITZ: Well, I mean to the extent it is a DOL claim, then it wouldn't be appropriate.

MS. SPIELER: Well, are we then -- I mean there might also be state claims for the same people. Are we assuming that the medical panels will not be looking at the claims that -- filed state and DOL?

DR. MARKOWITZ: We haven't discussed it, but it would only make sense that if there's a, you know, legitimate state claim that the physician panel mechanism would come into play, so.

MS. SPIELER: So, the beryllium cases could end up in front of the medical panels, then?

DR. MARKOWITZ: Right.

MS. SPIELER: Okay. I -- question.

Yeah, Iris?

MS. POST: One of the things the subcommittee appeared -- talked about was the disability impairment ratings for -- for analysis. And was there -- maybe you can explain what your thinking about that was and -- and as a state administrator, you know, there's a difference between impairment and disability. Now, an impairment judgement would certainly be one that I think any state administrator would welcome from the medical panel and that it would be whoever can -- that disability rating. But is there some reason that you don't want to touch that area?

DR. MARKOWITZ: If the other people who were at the subcommittee meeting can help me here. When we became convinced that the Office didn't have to deal with it as an issue for their regulations, we decided that was an opportunity where we didn't have to deal with this issue. I personally think that the physician panel should not be reviewed -- should not be a wealth of disability determination. That should not be the result of a paper review by a bunch of physicians sitting wherever -- face-to-face and counsel with the physician.

Impairment's probably a little easier to deal with -- it's based on pulmonary function or whatever. But we really didn't get to that level of detail.

MS. POST: And frankly, Steve, you know, the only thing that -- that -- for instance, in most states you would be interested in -- functional impairment rating and a disability determination would be left for -- left up to parties to agree to. I know that.

MR. BODEN: I would support the position that the committee came up with for another set of reasons, namely that the physician panels, first of all, would not be chosen for either their familiarity with the specific state law regarding either impairment or disability or indeed with the admissibility in a specific state of their opinion on that issue. So, as a consequence, in addition to the point that Steve made, I think there are strong reasons to have disability impairment determination go on as part of the regular functioning of the state system.

MS. POST: If I might just add, if it is an accepted claim, though, that the medical panel is recommending that that be paid and it's a state claim, it seems to me then it's up to the Department of Energy and the contractors to agree about the functional impairment of the disability. And at that point in time, a determination from the medical panel or a recommendation from the medical panel would be extremely -- for I think that Department of Energy and the contractors to utilize then in their agreement as to how much should be paid to the injured worker.

DR. WAGNER: We didn't -- I think we took that in consideration. As Steve said, we didn't feel that we needed to reach closure on that issue now. There's certainly discussion from our California colleague about the nature of the impairment determination process in California and the lack of expectation that member -- you know, that all members of the medical panel would necessarily be familiar with and be able to contribute to that -- specific knowledge -- less -- variability from what the requirements were and a feeling that, you know, ultimately if there are specific needs for impairment determination by the physicians employed by the Department of Energy, that that was a second order issue that the Department would get to in functioning with the panels as opposed to the submission level of establishing that.

MS. SPIELER: It might make sense just to -- to take that up in the sort of next round because the -- the -- in our discussions in the State Agency Relations subcommittee this morning this whole question -- the contractor issues as well, but in those accepted claims any way that we can figure out a system that makes it easier to get the -- the -- the claim sort of processed by the contractor, the better. And so, we might want to take a look at that again and not assume that we've put it to rest but look at it as a -- a follow-on issue to the initial -- the drafting of the rules that have to be out the end of May.

Vikki?

MS. HATFIELD: I really think as far as the state process goes that I think it would be very helpful if the medical panels did look at the disability because I believe that -- that in all states that they have the ability to measure even after -- from your doctor that they give the correct look because they don't understand -- they don't understand where this worker's been and what they've been through, so they don't really know what the disability is. I mean, yeah, they're disabled but what percentage? I don't think that they have a good feel for that.

MS. SPIELER: Jeanne?

MS. CISCO: And Steve mentioned that, you know, the panel -
- or you thought that the panel did not feel comfortable with just looking at a -
- at the file to determine the impairment. That is what the Bureau does. So, I
--

MS. SPIELER: Rick?

MR. BLEA: Just a real quick -- Steve, I don't know if you had thought of it, but did you answer the question that Mark asked? What if the panel does three-to-two or four-to -- four-to-one, whatever the case may be, is there going to be a process for a second opinion to go to another panel?

DR. MARKOWITZ: Well, --

MR. BLEA: Or have you -- have you gave that consideration?

MR. BLEA: If -- we thought the simple majority should suffice to make a decision. If the claimant doesn't like the decision that's made, then that -- it should be on the claimant to provide new information and resubmit the claim as if -- as a revised claim. We considered the alternative where it's just that there will be an appeal process in which, basically, the claimant doesn't like the -- redetermination requests, second review, and it's given to a second subpanel with identical information. And we thought that wasn't necessary, that actually that the second review is -- was likely to come out the same as the first and without new information, that was going to create a lot of work because many claimants -- and they want -- they ask for that appeal.

MR. BLEA: I'm just wondering because, you know, if they may -- may get an opinion for or against to deny a claim or approve a claim that -- they're not going to have the information 'cause I believe they're going

to give the medical panel their latest medical records. But in a lot of cases in any type of business you will see a trend of for or against, pro or con, and what I'm afraid of is if a -- this particular panel from this region is getting all the medical records for these claimants and they're just going by no, no, yes, yes, I think that you -- you know, you look at it and you'll see that there's all these -- no matter what it is, it's a pro or a con type mentality, and I -- and I firmly believe it doesn't cost that much more.

Rather than having the individual say, gee, I wonder if that's a second opinion, then it -- why didn't you send it out to another panel -- get it over with and then that way that claim can be -- can be assured that two panels looked at this and they both came up with the same result rather than having it go back and then they'd have to resubmit again and go through all that. I think that's more time consuming than just a panel sending it to another panel and saying this is what we're going to recommend, you take a look at it. I -- I don't -- I think if you look in a lot of the medical examinations that are going on around the country at the different DOE sites, a lot of 'em are saying, no, you don't have this, this is -- and you go to other sites and you say, yeah, there is a possibility that this is related to your -- your job or the job that you did have. They're more open and more -- have a little bit more leniency toward it. And -- in my opinion, all we're trying to say is the -- borderline, we want to give you the compensation because you did do a job for your country. And I still feel that the medical panels should look at the fact that maybe the second opinion should be automatic and not -- less cumbersome and less paperwork for all of us.

And besides that, a lot of this stuff, medical opinions or second opinions or brother's opinions deals with that paperwork, ideally.

MS. SPIELER: Rick, can I just ask for clarification? Are you suggesting that all of those denials be reviewed or those in which there's a split vote on the panel?

MR. BLEA: Well, if I had my -- I would say all denials. That way the claimant can know that it was fair, it wasn't just a group of people saying no. The people at this area were going to deny 'em. I think if it went to the second opinion automatically, that claimant would feel, okay, we'll have two separate medical panels look at that -- look at the -- maybe I ought to take the other route.

MS. SPIELER: I mean 'cause an alternative would be, perhaps, an automatic review where there's a non-consensus on the medical panel and a review with new -- with additional evidence for those who wish there is consensus on it.

MR. BLEA: Okay. So, what you're saying is if it's three to two, like Mark was saying, or whatever --

MS. SPIELER: Probably two-to-ones would be what we're saying.

MR. BLEA: Right. Okay. Well, I would -- I would entertain that, but like -- like I say, I -- I would like to have the claimant reassured that if they're denied that they were given a second opinion right off the bat, right away. They were given an opportunity -- come back to them to let them know that the first panel denied them and that it went to another panel. That would be my rather, I guess, but everyone who is -- who is denied a claim, that they go through a second panel right away before it even comes back to the -- to the individual saying that they were denied the claim.

I don't know -- because what they're going to do is they're going to come right back and they're going to request it, and whatever procedure we set in place, they're going to request a second opinion because they're going to say, look, I worked here for 30 years, how can you say this is not job-related? Well, these are medical doctors saying that it's not. Well, I want a second opinion. Your insurance company a lot of times will want you to get a second opinion.

That's all I'm saying. I -- I'm not a medical doctor. I'm looking at it as a person who's worked on the site for 30 years and you're going to say this is not job-related. You know what I'm going to tell you. I want a second opinion.

DR. MARKOWITZ: I think that's an entirely legitimate point of view. It has nothing to do with being a medical doctor or not. It has -- it has to do with level of confidence potential claimants will have in the process.

MR. BLEA: Right.

DR. MARKOWITZ: And if that's really what it takes, then, you know, the Office should probably do it. You know, for all -- two-thirds of the claims were denied and -- which means that if they were automatically, you know, reviewed by a second panel, it's -- it's a lot of extra work. It's not a little extra work. And you'd have to find some way of blinding the process so that the second panel isn't prejudiced and knows the first panel turned it down. But I think it's an entirely legitimate point of view.

MR. BLEA: And that's exactly what I'm trying to say, that when it goes from the first panel to the second panel, the second panel is not

their -- it is not their business to know that this claimant was already denied. That -- they should not even know that. They should just take it on its merit. Okay. We're the ones who will be looking at this. They don't need to know that it's the second opinion or first opinion. They just need to give a fair opinion of it, and then when both panels look at it, they will -- we'll see what we have. I agree that the second panel shouldn't know that the first panel already denied it because maybe they might have a tendency to say, well, my fellow doctor here, a physician, I'm not going to disagree with what he said.

MS. SPIELER: Glenn, did you want to leap in here?

DR. SHOR: Yeah. I guess I'm trying to understand how the -- how the panels are set up. I have sort of two questions.

One is, if the panels are set up where this -- it's got the same plan, they're always the same three doctors that are doing it, then I would have that concern about that, you know, it's going two-one, two-one, two-one every time. If it was something where it was more of a rotating system, I would have less of that concern unless you were -- you could -- you could then be looking almost at the individuals who are on the panel about whether they're saying yes or no each time.

The second thing that I had heard before, I think here, was that there had been some discussion about there only being -- efficiency for the amount of work that has to be done, there would only be two doctors doing the initial review and only if they disagreed would there be a third one on. I don't know if this -- maybe I just heard that from Dr. Rudolph.

DR. MARKOWITZ: I -- I don't recall we ever narrowed it down to two. But there are all kinds of combinations.

MR. BLEA: But then -- but then again, Glenn, I don't know that, in my opinion, that it's been answered are we going to do site doctors, are we going to do regional doctors? I guess this is up to you to say how many doctors and where are they going to be positioned at and which sites are going to go to this panel and which sites are going to go to this panel. Those are some of the questions still -- I mean -- be with -- with Colorado, with Rocky Flats, and -- and the like.

I'm just saying is, you know, we have an obligation to these individuals and I don't think it's out of line to automatically give them a second opinion because I think we've -- given a lot of cases, whether Supreme Court or -- you'll see a trend either pro or negative, you know, and -- and -- and if certain physicians on this particular panel and, say, in New Mexico

have a view that this should be the guideline, that's what they're going to rule it every time.

DR. WAGNER: I think --

MS. SPIELER: Go ahead.

DR. WAGNER: I think that there are actually two different issues here. One's that Steve was talking about in terms of trying to assure some consistency from one panel to another, which is sort of fundamental to the fairness issue, that you want the persons in New Mexico being treated, you know, with the same condition, the same level of evidence treated the same as, you know, somebody from Ohio throughout -- and there are some things that you talked about fairly -- you know, in a very preliminary way, how to assure the quality, how to assure some consistency from one panel to the other so that no matter where you are, you ought to be treated the same.

I think the second issue is appeal rights for people who are denied. And it seems as though there are a number of options, one not happening without new evidence; two, have an automatic appeal whenever there's a split opinion; or three, have an automatic appeal whenever there's a denial. And this to me is somewhat separate from the issue of how you assure consistency and fairness across all panels.

MR. BLEA: Well, if you -- if I may answer. If you have an automatic appeals system in place, then isn't it fair to say -- let's -- let's take -- let's look at the picture. If -- if -- if I am a widow and my husband just passed away, there is no new documents or medical evidence to -- to present. All I'm asking you is, hey -- hey, my husband worked here for 40 years, I won't have a second opinion. So, that's what I'm saying, is that -- that it has to be a part of the system to go through it.

Now, grant you or maybe I'm wrong here, but if we were to do 40 cases or one reviewed 40 cases, another reviews -- and switched 'em, and I'm not -- and I'm not -- and questioning the -- of the doctors, that's now what I'm saying. How many of those cases would be different from the opinion that was written originally? And that's what I'm trying to get at, and that's why I feel that this second opinion should be automatic.

DR. MARKOWITZ: The Office of Worker Advocacy absolutely has to track, you know, that kind of variation in the panels and develop a mechanism for ensuring consistency by having panels review a subset of similar cases. But even if the Office develops the right and effective procedures for that, you're raising the issue of whether the claimants are going

to perceive the process as being fair. They won't know about the Office of Worker Advocacy consistency standards and all that. The question is whether they'll perceive that they got a fair shake out of this review process.

And so, the question then is even if the Office does a perfect job, as well as it can be done, it may well be that a significant number of claimants will, as you say, demand a second opinion and won't be happy till they get it. Maybe a certain number will demand a third opinion or a second - - even a second opinion won't make 'em happy. But there's some who will accept after the second opinion.

It's separate from the issue. The perception, though, of fairness is separate from the issue of procedures actually put in place, which will be okay for the claimant.

MR. BLEA: So Madam Chairman --

MS. SPIELER: So, I don't know.

(Laughter)

MS. SPIELER: I was -- I was actually going to do something that I -- this is a very difficult issue, as are a number of the ones that we have before us now with regard to the medical panels. Now, here's what I've got down as the issues around which we are having some disagreement, okay, or from which we need to reach -- from which we need to reach some resolution. And I kind of have them listed in the way I tend to think, which is from the beginning, chronologically forward.

So, the first thing is getting the right doctor -- nominations for doctors to NIOSH since that's sort of a sine qua non here for getting this done right. And the second is sort of development of evidence for the medical panel and -- and the question of this personal interview and the question of medical examinations that pre-date the point of its actually going to the medical panel. I assume there's no disagreement that once it reaches the medical panel and the medical panel requests additional medical evidence that we all agree that DOE should pay for that and that's part of the committee's recommendation.

But there is, in addition, the issue that has been discussed somewhat as to whether or not the panel should be -- doing disability or impairment evaluations in addition to causality determinations, and I suggested that we postpone that for the moment, but that needs to be ratified

or not, as the case may be. And then this question of what you do with a negative determination by the panel.

Les?

MR. BODEN: I -- I may have short circuited at some point and missed this but I'm sort of trying to be in my mind concrete about the panels. And I'm wondering about not just that there are three people on the panel but are there panels that specialize in sites; do the compositions of the panels change over time; if so, how do they change; and a number of -- a number of issues involved in how the panels are selected and maintained I think are important substantively and may also be important when it comes to perceptions of fairness.

I think that, if I understand correctly, the way that the Fernald panels were chosen I think in part had to do with perception of fairness. So, I think it's not -- issue, and I don't know what -- I'm not suggesting necessarily that the Fernald model be used but just that the question of -- of how the panels actually get formed and distributed wasn't clear to me and I didn't know if that was addressed by the subcommittee.

DR. MARKOWITZ: Well, at least the one issue you raised is, the spectrum of opinion about a national bank of physicians on the one hand, 30 physicians assigned willy-nilly a case from any old site.

MR. BODEN: I detected you may not approve of that alternative by the way you --

(Laughter)

MS. SPIELER: And that is the exact words of the proposal.

(Laughter)

DR. MARKOWITZ: And the opposite, which is that three physicians are assigned to a specific site; they never go to any other site. And the advantage of the national bank, the willy-nilly approach was that --

(Laughter)

DR. MARKOWITZ: -- it maximizes efficiency in that you -- if there's a heavy demand at one site that you can move the physician resources to that site, that they can deal with it efficiently and -- and timely, and it reduces the problem of consistency, the channels to consistency, because

people -- if you're mixing different doctors, different cases at different sites, then one particular site won't go off on -- you know, with one subpanel in one direction and another site go off -- so it addresses the issue of consistency and efficiency.

The other approach, which was, you know, a panel of three physicians assigned to Savannah River forever, the advantage to that was that they really get to know the site. The -- the -- the intelligent part of the, you know, causality equation is that they will know that particular site and get very familiar with the job titles and departments and all that that influences the opinion of causality, and that will be difficult to do if they're going to Savannah River on one case and Hanford another case and Rocky Flats another case, et cetera.

So, we couldn't -- we didn't come up with a real recommendation because there are actually advantages to both approaches. There's sort of a hybrid approach, which is that you have a primary panel for a given site, that if suddenly there's a crush of cases for Savannah River there might be a second panel of three who will take those cases from Savannah River so that every doctor -- isn't assigned a case at any particular site but that you have a smaller subset of sites that that physician is assigned to. So, that's sort of a hybrid approach there.

MS. SPIELER: Rick?

MR. BLEA: I'm sorry, Steve, but I had to ask this question. So, what we're -- when you say physicians for a particular site or for different sites will be assigned to -- so, are we saying we're not only looking at their medical history, you know, what their finding is and their X-rays and diagnoses and stuff, but you're also saying we're going to look at where they work and the -- right?

DR. MARKOWITZ: Right.

MR. BLEA: So -- so, even if -- from one region to another, they would just be looking at the medical records -- this to be caused by working -- it wouldn't work, right?

DR. MARKOWITZ: No, they wouldn't just look at medical records 'cause they wouldn't -- that wouldn't -- they couldn't do their job. They'd have to look at the exposure records, --

MR. BLEA: Well, I think --

DR. MARKOWITZ: -- occupational history, and the like. But the -- the quality of that information -- the extent to which they really know the facility would necessarily be less if they had to cover multiple sites as opposed to just one or two sites.

MS. SPIELER: Greg?

DR. WAGNER: I think that it was -- at least my perception or merging consensus that the -- that the synthesis approach would work with primary assignments and secondary assignments so that each physician would have a limited number of sites and be part of a pool to draw on for that limited number of sites, that there wouldn't be exclusively a single site physician but perhaps there would be a pool of six or maybe ten physicians who would either, as their primary or secondary assignment, have to get to know Hanford and another pool that would know, you know, each of the sites and that this would be a workable administered process that might be able to take advantage of both efficiency, trying to get consistency, trying to be able to provide a pool for the kind of appeal review process that you've suggested, and a number of other advantages.

MS. SPIELER: Okay. There's another issue, I think, on the table for resolution, then.

Jeanne?

MS. CISCO: I have to probably ask a dumb question here, but we're talking about the panels and whether or not there's an appeal process and -- partial -- In the bill, if you are filing a state claim, you've told me that the laws in the state apply. How does this fit with a state claim in the particular state? I mean you do have two levels of -- of appeal and permanent partial and then one for permanent total. Is this a little separate section of the physician panel?

MS. SPIELER: Actually, it is. But in addition and as we'll be talking about as we go forward, the hope is that for those -- for those claims in which the panel comes back with a causation finding the contractors or DOE will -- will pay the claim, it will not go to litigation in the state system. And so, the notion is that you kind of avoid having all of the litigation problems, at least for those claims in which the medical panel has -- has found positively on a claim that it goes into a kind of acceptance payment mode instead of a you-have-to-prove-something-to-the-state mode and that therefore -- that this doesn't answer the problem when this case ends up in litigation where it's contested, but at least for those cases which are not contested by the contractor or for which -- and this is an issue that we'll be talking about later -- DOE

accepts responsibility and therefore they don't end up in litigation, then a national standard of causality will work because DOE is the ultimate payer on -- on those. Of course, there are these financial issues -- budgetary issues that are also out there.

So, I -- I think that that's the notion that -- but the medical panels really do have a kind of separate life under the law. And one of the questions that I think has come up in the state agency issues is, well, if the claim isn't accepted, what do you do with these medical panels? Because their -- their opinion may not even be admissible medical evidence in court in some state proceedings, and that's -- that's a separate problem that we need to address.

I'm a little flummoxed, quite frankly, but I -- I would suggest that we now -- we move through these issues that I've -- that we've delineated and see if we can reach closure on them or if we want to put motions before the committee with regard to specific recommendations. My preference is that we have a consensus, but if we don't, I -- I think we need to give -- give DOE some guidance on some of these questions since this rule drafting is going to be going forward before -- before we meet again.

So, first, with regard to NIOSH's delineation of organizations from which they are soliciting nominations, there were several concerns expressed about the -- the fact that some organizations had been excluded from that list. And I gather from talking to Ted Katz during the break that NIOSH is not opposed to going -- casting the net wider. And so, I think if this committee has some specific recommendations that we can quickly put out there and see if they're acceptable, at least to Ted personally, then maybe we can get that letter sent out by NIOSH quickly.

So, Steve, I know you had some concerns, and somebody else did.

DR. MARKOWITZ: Well, there were two suggestions from Society for Occupational and Environmental Health and American Health Association, the Occupational Health section. And we already discussed this and Ted agreed to that.

The second issue that I would -- in relation to this is that -- accept self-nominations, that people ought to be allowed to submit their -- or application without going through or being nominated by an organization 'cause there may be some physicians who don't, you know, relate primarily to those professional organizations that might be interested in doing this. And I don't really see any harm in accepting self-nominations.

MR. KATZ: I think that's fine. I mean as those come in -- if those come in, add those to the pile.

MS. SPIELER: Les?

MR. BODEN: Just a quick question. Are you also at the same time accepting nominations for these specialists who might be called on by the panel?

MR. KATZ: Right.

MR. BLEA: And just in fairness, well, how do you do this? Do you publicize that we are taking recommendations --

DR. MARKOWITZ: We don't have time to -- which is why -- and really, these groups we're going to have two functions, both to nominate but also to get the word out. And that -- that's why we chose these groups that have -- have fairly far reach.

MS. SPIELER: You're not responsible for finding the backup people for industrial hygiene and so on, are you?

MR. KATZ: No, no. We just send out the message that --

MS. SPIELER: Okay. So just the medical people for the panels?

MR. KATZ: That's right.

MS. SPIELER: And -- and you're going to go ahead with these suggestions from this committee?

MR. KATZ: Absolutely.

(Laughter)

MS. SPIELER: Okay. I'm -- again, I'm just on this sort of how do you chronologically think about claims kind of issue. Did -- evidence for the medical panels. There were two issues that came up. One was the sort of personal interview development of the occupational history and exposure data. The other was who pays for medical exams if the file isn't -- at what point does DOE step in to start paying for medical exams. Let's talk about this personal interview.

And this is actually in some ways outside the medical -- the Medical Panel subcommittee has suggested, and I think the Department has said, well, there are these three elements that essentially need to be complete in order for a medical panel to review the claim, and the question was asked but not really answered, well, how are we going to make sure they're complete? So, first was the sort of occupational history and the necessity for doing a personal interview and how that's going to get done. And I was very unclear from -- from the -- it seemed to me that there -- there -- it sounded to me, but I could be wrong, since we -- some people didn't speak, that there was some consensus that some personal interview was probably necessary. Is that -- is it necessary for this committee to suggest to the Department that that be a component of the work that's done in the compiling of these claims?

DR. SELIGMAN: I think it's an essential piece of information that these panels are going to need in order to make their judgement.

MS. SPIELER: And who are you assuming would do it?

DR. SELIGMAN: We haven't really addressed the -- the process of how that will be done, although at present the former worker programs do do such job histories and ask a fairly -- a -- reasonably good experience in conducting a set of -- such job histories.

MS. SPIELER: So, at the large job sites could that continue to be done by the former worker programs?

DR. SELIGMAN: I don't see -- I don't see any reason why not.

MS. SPIELER: Rick?

MR. BLEA: So, a hypothetical situation would be as I come in and apply for a claim, I fill out the paperwork, and then DOE or Department of Labor is going to -- from the site. And then you're going to call me back -- it would be in that order -- and then give me an oral interview and say, okay, where did you work at, where did you handle this, and then they're -- it goes to the district panel? Would that be an order that it would be best done?

DR. SELIGMAN: Yeah. You need that job list before it goes to the physician panel. And whether -- whether it will be done in the context of our outreach office at that particular time, whether we would ask that individual at the moment of filing to go to the former worker program and have such an interview performed, whether there's some other mechanism to get that -- that history -- is yet to be determined. But if -- if -- it should be as close to the front end of the process as -- as possible.

MS. SPIELER: I --

DR. SELIGMAN: I can't give you more detail because, to be honest with you, we really haven't fully developed that -- that -- that aspect of this.

MS. POST: To me, it sounds like just -- it's when a -- any kind of claim goes through and the claim adjustor -- claim management does. When a claim comes in, you take an interview, do a telephone interview with the injured worker, you require medicals, any other occupational list, disease, or information you can, and then it makes perfect sense to do that in original intake or do it subsequently on the telephone in the telephone interview.

DR. SELIGMAN: The only advantage, having had the privilege of witnessing such an interview, is that because of the complexity of DOE sites and operations, what the -- some of our former worker programs do in the way of having, you know, conducted a needs assessment of the site, understanding the various process of where at various times in various buildings and having actually in their -- in their facilities maps on the wall of what buildings, you know, certain operations were conducted in and what the kinds of exposures were does go a long way in assisting the worker in reconstructing their job history. That may -- may not be able to be done via telephone, but again -- via telephone interview.

On the other hand, again, I'm perfectly willing to consider all avenues and options to develop that -- that job history.

MS. SPIELER: Rick?

MR. BLEA: The reason I say after the claimant has come in and put in his claim for -- for compensation in DOE or DOL, -- he's going to go -- and get their medical records, the person who's going to do the interview should say, oh, by the way, back in 1963 you were exposed to -- oh, I forgot about that. I didn't put that on my original application. That's why I don't think the -- the verbal interview should be done after whoever's going to do -- whoever's going to be conduct the interview has that person's medical records because they could just go through the medical records real quickly and -- and the applicant could say -- yes, let me elaborate. And that -- exposed, but ten other people or two other people.

What brought this to mind was I remember worked in a plutonium plant. I cut my finger, my -- my hand -- piece of copper through it -- just a little half-inch circle, cut the skin -- there was nothing. But you know, I forgot about that, just like what we were talking about, you know, the

interviews. But on my medical records there, it'll have that on there. And so, I think if we would do the interview -- after they were going to do the interview have the medical records, I think that would be -- serve everybody's best interest, not only DOL and DOE but the individual who's applying for compensation because there might be some of his medical records or her medical records that -- oh, yeah, I can tell you a little bit more. And how come this is not in there?

Because I think we had cases back in the '50s -- Jim, I think you were there -- when certain individuals have gone to get their medical records and when they were exposed and several other people were exposed with heavy dosages, it's not even there. And we know that it's not. I mean, you know, that's not uncommon, but I think if we could -- the person's medical records before you give 'em the personal interview. I think it's best to do it that way.

MS. SPIELER: It does sound as if the -- a final review may -- may be needed. Again, some of these -- there are a number of, as we know, subsets of -- of workers who were interviewed -- part of this and some people will have a single -- you know, a long work history at a single site. But once we start collapsing in, assuming we do, those other more peripheral groups of workers, the employment history stuff is going to be fairly complex and you might want, for example, when they initially come in say, well, you know, you should try to put together as much as you can find around the house that shows where you worked when and come back in with it. And so, I -- I think it would be probably difficult to do the -- the full employment history interview at the initial --

There was somebody else who had a hand up -- but I don't --

Let me see if I can summarize where we are on this question. That -- that quite clearly, we anticipate that Office of -- the Office of Worker Advocacy is going to take responsibility for the development of the file so that it's adequate for medical panel review and that a component of that with regard to the occupational history and exposure data will be a personal interview in which there's an attempt to get as full an employment history as possible -- probably not at the initial take point. Is that a reasonable summation of where we are on that? And I gather, all the -- the Department has no problem?

DR. SELIGMAN: That's fine.

MS. SPIELER: Okay. Moving on to the somewhat more contentious -- oh. Wait.

MR. OLSEN: I wasn't clear on the -- Office of Worker Advocacy is -- going to pay for all costs of developing the record?

MS. SPIELER: I was assuming that, yes, the answer to that is yes, that to the extent that there are costs associated with the development of the record.

Okay. Paul, is that -- well, I'm -- I'm holding the medical examination question off to the side for the moment as the next piece. But as to the -- I -- I was assuming that it was primarily staff time that would be involved in the accomplishment of -- and when I say Office of Worker Advocacy, I'm throwing in that broadly to include the former worker programs where that's appropriate, the joint outreach office -- DOL-DOE outreach offices where that's appropriate. They're just essentially under the auspices of this Office that there would be a mechanism for us to do that.

Iris?

MS. POST: I would just note that obtaining records from 50 years ago, 25 years ago, 10 years ago is very expensive. And if the individual's seen a lot of physicians, don't -- us to make the cost of -- records 'cause it's extremely high.

MS. SPIELER: Rick?

MR. BLEA: I would like -- I don't disagree with you, but I guess I would just -- tunnel vision was that these people working in these sites at the medical facility would have all their medical records and that's -- given what you're just saying. And I have to apologize because that was my frame of mind is, okay, I worked in this facility for 20 years. Anything that happened to me, my yearly physicals and so forth would be there. And being as that sometimes they're not, okay, I understand what you're saying and I can look at it differently.

MS. SPIELER: Okay. So -- so, there is this subset of costs that we should acknowledge up front in the development of medical records for people -- medical records. And for those people who didn't work at the larger facilities, it will be a challenging task, I'm sure, to put together the medical histories.

Okay. Then, the -- the other piece of evidence that needs to be put together before the medical panels get these files is the medical evidence. And the question is still out there and we were discussing it at some length as to at -- the trigger point for DOE payment for medical evaluations.

And at one end of the spectrum it's been suggested that there would -- the claimant would come in -- the individual would come in with some form of diagnosis and a -- suspicion of work-relatedness and if they didn't have at least that that it would be their responsibility to come up with that.

At the other end, once the file is sent to the medical panel, it's very clearly the consensus on this committee that the -- that DOE should be picking up the cost of any additional medical development that is done at the request of the medical panel.

And that's -- that leaves a middle ground of people who have enough to get in the door but then the staff at some point, and it could be -- I don't know exactly whether there's going to be different staff for the medical panels than there is -- the people who develop the claim -- claims. It's not set and clear to me whether there's any line that can be drawn here. But at some point, a staff person, who is presumably a DOE employee, says -- before we send it to the medical panel we need to get an X-ray or we need to get -- I actually don't know what. But -- and that there's a cost involved in -- in obtaining that.

I have an initial question, which is to what extent does the former worker medical surveillance program sort of fill in part of that gap?

DR. MARKOWITZ: Well, the former worker program has to fill in a lot of that gap because, you know, the -- they only come up with likely diagnoses based on medical evidence -- whether it's the X-ray, pulmonary function test, or the like. So that would be easy.

And for the medical panel, again, the -- every claimant goes through a medical evaluation hands-on, not by the medical panel but by a bunch of doctors which we're not recognizing here.

If, on the one hand, you said that the only trigger for a medical evaluation is the physician panel in reviewing a claim says we don't see enough tests here, we need -- more to proceed, then what's going to happen, I think, is the physician panel are going to have a fair number of claims that aren't properly worked up in which -- and it's going to be a waste of their time and resources of the DOE and it's going to produce untimely delays because then they'll have to go back to the claimant, request applicable tests, and then resubmit the claim.

So, we thought that there ought to then be a trigger before the package goes to the physician panel in which the screening function, triage, or

what have you within the Office of Worker Advocacy where it's perfectly obvious for this condition if the person doesn't have an X-ray or breathing test or whatever, the physician panel isn't going to be able to make a determination. Let's not send it along, then. Let's just ask the person to have that test. And DOE should pay for that because even acknowledging it may not be occupational, it's part of the process. It can be an occupational health nurse or a physician that does that triage or screening function. And in practice, I don't think it's going to be that complicated.

MS. SPIELER: Les?

MR. BODEN: I was wondering if there wouldn't be a way to do it actually but not necessarily after somebody -- by simply having a checklist of if somebody's claiming compensation for -- then you need to have the following X things. And you could have a -- somebody who's a clerical -- looking at -- list go over it.

DR. MARKOWITZ: Yeah. I think, you know, for obvious things that you do that. A problem is I think people will come up with all kinds of health conditions -- might be occupational and submit claims. They won't be so easy; you won't be able to work up a checklist.

MS. SPIELER: Don?

MR. ELISBURG: I think Emily said a few minutes ago something that may in fact be what in my mind is -- you said they walk in with some kind of a diagnosis of a condition -- work-relatedness?

MS. SPIELER: No, a suspicion.

MR. ELISBURG: A suspicion. It's one thing to come in with a condition. I have this illness, I have this disease, I have this condition that has been diagnosed by a doctor. You have no idea -- the question then is, is there a preliminary kind of evaluation, some other medical examination related to work-relatedness before you send it up the line to the panel? And it seems to me that that point -- if you come with the condition, you, the agencies, ought to know about work-relatedness -- cost of the specialists or the -- we can look at that condition and -- the fact that -- agencies not requiring somebody to have some additional -- medical evaluation that's -- the individual.

DR. MARKOWITZ: -- disagree with what we -- what we were formulating, that there would be a pre-panel trigger for --

MR. ELISBURG: Not -- not --

DR. MARKOWITZ: -- medical evaluation paid for by DOE?

MR. ELISBURG: Probably not. Probably not. It's really the question of one level as opposed -- the pre-panel package being put together. I'm only concerned that a claimant comes into one of these friendly intake offices, somebody cuts 'em a little cheat sheet and starts to say, well, you've got to go get this and this before we can move you on your way, and the next thing you know, there are several thousand dollars more of medical exams warranted or not that this person is fronting. That's where we -- start with the -- claimant. The mechanism of the process, the pre-packaging or how you do that, I -- I -- I don't know that -- that's obviously something for the -- the two agencies to figure out -- DOE because, as Pete said, any medical thing that anybody needs to have processed through their system they're going to pay for. That was his statement in our subcommittee meeting this morning, so he's out of the loop -- the DOE case.

MS. SPIELER: Greg?

DR. WAGNER: Yeah. I think that, actually, what you said and what Steve said are quite consistent with one another and that the critical issue is what constitutes a diagnosis of suspicion is somebody feels that their work may have caused their problem, therefore they're bothering to file a claim. That's all I would think a suspicion -- is needed.

The question is what constitutes a diagnosis, and I think it's fair to say that the group of people -- our subcommittee who met felt that there needed to be a credible medical diagnosis of a specific health condition that could be related to work.

DR. SELIGMAN: Just a brief comment. It's certainly -- we would never, ever discourage anybody from filing a claim, so there would be no cheat sheet at the outreach office to indicate whether one should or should not file a claim. That's, of course, an individual matter.

I think what I just want to make sure I understand is that an individual who comes in and says I have numbness and tingling in my -- in my left arm and I think it's work-related and -- and applies for compensation through this program because of that clearly would then need the DOE, since that certainly is probably not sufficient because it lacks a diagnosis, would then require us to pay for either evaluation or the peripheral neuropathy or the coronary artery disease or the nerve entrapment syndrome in their shoulder or

whatever might be related to the -- the numbness and tingling they're experiencing in the left arm.

I'm -- I'm presuming that's what the recommendation of the panel is, is to provide whatever medical testing is necessary at that point in time for -- for the claim related to the -- the -- the numbness that the individual is experiencing.

MS. SPIELER: That actually isn't what I've been hearing. I -- what I've been hearing is that when an individual comes in and says I have tingling, the response would be, have you ever been to a doctor about it and what does the doctor say is the diagnosis. And --

DR. SELIGMAN: But he says I don't know.

MS. SPIELER: Well, what I'm hearing, and I guess we need clarification, is that -- that would be not enough to trigger the DOE --

DR. SELIGMAN: But now we're sort of getting into grilling people about whether or not they've had appropriate medical workup and whether this is appropriate to file a claim. And I -- I just walked in here and I said I want to file a claim because I think that's related to my work and I want to proceed with it. I -- I don't want some claims person at this friendly outreach office grilling me about whether I've seen a doctor or not.

MS. SPIELER: Rick?

MR. BLEA: Okay. In -- at the table, just like a lot you -- you know, out -- or that person getting what they deserve as far as their claim being processed and their -- their money being collected. But I feel that if the person comes to the claims office and hasn't even attempted to have gone to the doctor for their illness or their numbness, then it's not a legitimate claim because if they haven't gone to a physician to seek medical advice whether -- how to cure this numbness or this problem because I would think that the vast majority of 'em have gone to the doctor and said, hey, yeah, your -- or this numbness -- this causes this, we're going to -- what kind of occupations did you have, where'd you work at, and then they say, yeah, well, I got it from work. That's why you're coming to file a claim.

I have a real hard time -- and I -- and I maybe -- let's take 'em all and just give 'em a medical examination. But I feel that anybody who's coming to -- to make a claim, they're coming to make a claim because they've already seeked medical help and they have a condition of some sort.

MS. SPIELER: Vikki?

MS. HATFIELD: Well, I agree with Ricky that I -- I don't doubt there are going to be some people filing claims that -- that perhaps really shouldn't be there if they haven't been to the doctor already. But there are a lot of people who have been to a lot of doctors and they don't have any diagnosis. And when they hit the door and we say, well, no diagnosis, have you been to the doctor -- well, yes, I've been to the doctor many times but they don't know what's wrong with me.

So, then that's where we have to fall in. If they've been -- if I've been sick for 20 years and for 20 years I've been going to 15 or 20 doctors -- and still don't have a diagnosis, then -- then where do we go and then what do we do?

DR. WAGNER: I think that in itself should be a sufficient threshold diagnosis. The, quote, "diagnosis" at the end of the visit is either pain or numbness or these findings of undetermined cause. That in itself should be a sufficient threshold diagnosis.

It's -- I think what Ricky was saying that I agree with is that you have to have seen somebody who says that you've got something in order to be able to get in the door.

MR. ELISBURG: That's probably the real world that -- yeah. Yeah. You've been to the doctors, they've given you lots of Tylenol. And -- and hot tea. And this has been going on for a long time and they can't -- they -- you know, they're not saying -- you may have something, I don't know what it is. And that's the kind of thing where you're going to perhaps need something more sooner rather than later, and that's at least where I think you really need to -- to be prepared to foot the -- the cost of figuring out, you know, where you go after that.

MS. SPIELER: Iris?

MS. POST: In -- a question with that medical appointment or medical evaluation with the DOE case work, are we also paying for the related costs -- reimbursement, lost time from work, transportation, you know, whatever?

PARTICIPANT: -- medical panel --

MS. POST: But I'm just asking because that is also a benefit that most people get under the Workers' Compensation Act. And if we're

going to pay for the medical I think we need to make sure we're providing all those related expenses. Oftentimes these people are elderly or really sick; they can't drive themselves. So then, you've got to -- you're going to have to, you know, find the money for a hotel, meals, expenses, and that -- that's, you know -- I think that's great.

MS. HATFIELD: To that extent, a lot of 'em are not able to drive themselves and we need to understand that an ambulance in my area going -- Tennessee to Oak Ridge, Tennessee costs \$615. That's the cost. I know 'cause we had to do it. That's how come I know.

So, you know, those are really high costs. We're talking about -- really, really -- what we're saying we think it's appropriate because a lot of these workers aren't going to be able to go in cars.

MS. SPIELER: Les?

MR. BODEN: I must admit some confusion. And I guess -- I guess what I'm not understanding is -- how many people I can see coming in the door. There are a lot of people who are, let's say, elderly who are sick, probably only a small proportion of whom are sick because they -- I mean people -- even people who worked at DOE sites. Only a small proportion of those are sick because they worked at the sites. And I think at the risk of sort of being kind of right wing about this, I worry that we have a whole lot of sick people who are not sick because of the DOE sites overwhelming our capacity to serve the people who were sick. And I just -- again, I just get confused and fussy because of that.

(Laughter)

MR. BODEN: I'd be interested in -- now, maybe this is a total fantasy on my part and it wouldn't happen, but I think we don't know what's going to happen when the program opens up and who's going to come to the door. I think we probably can guess that, you know, if we paid for medical exams for everybody who walked through the door that you'd have more people walking through the door than if you didn't. And then the next question is whether that's good or bad --

DR. MARKOWITZ: Again, I would --

MS. SPIELER: I just want to -- taking my chair hat off for just a second, I'm having some anxiety here about the -- the way this will actually play out in part because what I actually think is going on in some places or is

going to go on, if it hasn't already, is that lawyers are going to start clustering around these sites. And not to say anything nasty about my colleagues, but --

MR. BODEN: Well, is that another one --

(Laughter)

MS. SPIELER: -- but some of the smartest people I know -- I'm just a dumb coal miner, but --

I -- I actually don't think we want to necessarily finance the development of claims unless it's really appropriate because I do think that there are ultimately not going to be unlimited financial resources available. And the -- so, I do think we need to think about this carefully. I'm not taking a position one way or another, but I -- I -- I do think that thinking this through is important.

Greg was -- had his hand up before?

DR. WAGNER: First, Les, I agree with you and Emily that there needs to be thought for this. The other thing is that I don't think that we should make an assumption that in fact the people who've been to lots of doctors and couldn't come up with a diagnosis, that they may well have within their medical records once they're accumulated sufficient medical testing to be able to reach a judgement by the panel. In fact, this process is intended to help assist having the best exposure information, the most knowledgeable occupational physicians who are able to associate exposure and health effects with an understanding of whether or not there is causality here.

I think that the -- it's really the other end of the spectrum and somebody who's rarely, if ever, been to a doctor that's more of a -- an issue of the potential for DOE to be requesting medical examinations in the course of claims development.

MS. SPIELER: Don't?

MR. ELISBURG: Along the lines of what you were stating, Emily, it seems to me the other side of this is we need to be careful not to set up a system that drives legitimate claimants to the hands of lawyers --

MS. SPIELER: I agree.

MR. ELISBURG: -- to finance their cases and take a huge hunk of a sum that they're going to get because the system didn't permit

someone to go in the door and say I need help and get taken care of. And that's really where I'm coming from --

I -- I -- I mean the lawyers are always going to be out there to finance those costs. We're trying to set up a program that does not require you to retain counsel to get your -- get your rights.

MS. SPIELER: I absolutely agree. I think there's some question about who's going to get there first.

(Laughter)

MR. MARTINEZ: The thought that comes to my mind is perhaps as part of the interview process a determination can be made as to whether or not the individual employee has other medical coverage that in fact will pay for at least partially or perhaps all of the medical -- further medical investigation, exam, or whatever that needs to be done, tests that need to be done, that would help facilitate the claim being pushed through or processed so a determination can be made.

We have to remember, at least based on the knowledge that I have, most of the sites -- excluding subcontractor personnel, most of the sites have retiree medical coverage. So, at least to some extent.

MS. SPIELER: Yeah, Vikki?

MS. HATFIELD: Today you run a problem. If -- if you use your other medical insurance for this process, then you wind up get -- and you get a diagnosis and the diagnosis is work-related, then you have to go through the whole process of trying to get that claim paid because they won't pay it readily. So, that -- that's another issue.

MS. SPIELER: I have a question for the experts on this kind of fringe benefit question -- is there a way to designate DOE as a secondary payer for the initial workup on claims so that the general health payer is sort of -- pays it up until the point that it gets sent to the medical -- medical panel? Because without -- without a diagnosis and without a work-relatedness component, presumably the primary health carrier has liability for that claim.

Yeah, Iris?

MS. POST: At least in our state we have a specific statute that will not allow an occupational health program to turn down a claim because it's allegedly work-related. So, they are the first payer.

MS. SPIELER: The general health?

MS. POST: In the state. Right. The general contractor's insurance or medical plan or whoever's medical plan. And they can't turn it down.

Now, that's not to say they'll not have subrogation rights later on, but insofar as some of the people -- these benefits are elderly people, certainly any -- that a carrier, you know, part of this -- I have no idea if that would pay for all or part or none --

MS. SPIELER: -- may pay for part.

MS. HATFIELD: Yeah. What they do is, like, I know with our payment the primary insurance pays, which is the retirement insurance from the Department of Energy and then Medicare kicks in. So, if one doesn't pay, the other one doesn't pay. So, if -- if -- if -- if the retirement benefit insurance is holding and not paying for 90 or 120 days or whatever, Medicare doesn't pay either. So you're just stuck; you're in a Catch-22.

MS. SPIELER: Jeanne?

MS. CISCO: We're having all this discussion. Some -- I can't imagine someone just walking in there and -- and -- without a doctor telling them something's wrong with them. They're not going to even know to go there. I thought we already talked about when people come in, they've already been to their personal physicians and they think something's wrong with them and that it's work-related. I mean, you know, like he says, -- and they're itching or tingling and they have never been to a doctor, they're -- we're not talking about those people right here, right?

So they've already been to a doctor and they have an illness.

MS. SPIELER: I think that the consensus around that has emerged, yes.

Rick?

MR. BLEA: Also, you know, Les, you were talking about the coverage that's still -- I've seen -- union members as well as -- employees who are disabled and work -- state workmen's comp hasn't given 'em anything. The government hasn't given any -- them anything. -- some of those people don't have insurance or it's lapsed. They don't have a job. Their spouse might be the one holding down any bills because that individual can't. And if she or

he -- the spouse doesn't have medical insurance, they're -- they're without medical insurance.

I'm not saying that that would be the vast majority of people, but there are some that don't have an alternative to go get Medicare or even a union agreement. When you retire -- you still have to pay for your own insurance.

So, the -- not to say that you weren't, but you know, we have to look at the big picture -- there's going to be quite a few people who -- who don't have no means of paying for a medical examination, who do not have insurance to do so, and a lot of times the last time they had an examination was when they were covered. And -- and I know people say, well, I would go to the doctor if I had insurance but there's no way I can afford it. I guess I'll just die and not be a burden on my family anymore. I mean I've heard it. Because I can't afford to go to the doctor.

MS. SPIELER: Okay. Let me -- I -- I'm getting a little anxious, actually, about time here, so Steve's going to take a stab at stating what we hope is the consensus that's emerging.

DR. MARKOWITZ: Well, we seem to generally agree that the DOE not routinely provide a medical workup for a claimant and that's -- process DOE pay for a medical evaluation that is triggered by review by a health professional within the claims process. It can be at the level of the physician review or -- or -- earlier, but nonetheless, not by a claims examiner, not on the basis of a cheat sheet, but based on a review by a health professional can trigger, request, or -- medical test which DOE will pay for which will serve to complete the claim.

Does that make sense? We agree on that?

MS. SPIELER: There's at least one head going the wrong direction.

Mark, do you --

DR. MARKOWITZ: The proposal or the recommendations that DOE pay for a medical evaluation -- the claims process when a health professional as part of the claims review process requests or requires or recommends a certain medical test be done for that claimant.

MS. SPIELER: What does the claimant need to have to get to that point, I guess, would be the question because the obverse of what you're saying is that the -- anything else the claimant will have to provide their own.

DR. MARKOWITZ: Well, when the medical records are available, they should be collected so they can review or -- the physician panel or -- prior to that -- health professional, not a claims examiner looks at whatever records are available and makes that determination.

There may be instances, by the way, in which people present with symptoms without medical records in which it may be legitimate to pay for those. But that should be on the basis of a review by a health professional, whether it's a physician panel or not, within the claims process about what is medically needed to make the determination.

MS. SPIELER: Mark and then Greg.

MR. OLSEN: Not to create another standard, but I'm wondering -- go back to the statute and -- I guess I could go along with that, Steve, if -- if the medical or the health care provider said that it was at least as likely as not that the -- the condition in question was related to employment. Then I could go along with it.

The reason I say that is we're defending a case right now in which a fellow was exposed to a little bit of PCP. It was very, very limited in dose and concentration. During his deposition it came out that in the last 15 years he's had a daily drink of two fingers of Jack Daniels and Coke. Now he's claiming problems with liver dysfunction and he's blaming it on the PCP.

DR. MARKOWITZ: The system would only make sense if the only valid determination of causality is provided by the physician panel review, which actually is in -- is in the Act. That would be the function. So, we can't really require outside separate physicians to make that determination.

As a prerequisite to submitting a claim, first of all, -- but even if they did, this system is about relegating or delegating the issue of determination of causality to this physician panel alone. And so, that person gets in the door if they present medical records that are plausibly related to some condition or related to the exposure. But the issue of whether additional medical tests ought to be paid for by DOE would be done by a health professional as part of the review process, whether it's a physician or the physician panel or somebody else.

MS. SPIELER: Greg?

DR. WAGNER: The physician panel's going to be making the determination of work-relatedness. The claimant can come in in one of three states: either having adequate medical evidence of an illness that's possibly work-related and can go to the panel for determination, having some medical evidence that's determined by, as Steve suggests, a health professional to be insufficient evidence but something is there suggestive of a possible work-related condition, or third is to have no evidence.

And I think that what we're pushing for consensus on is if someone is in the intermediate stage, having some evidence of a health condition, a health problem, that the DOE will assist them in selective development of additional medical evidence in order to be able to get to the point of having adequate medical evidence in their file to make the determination.

MR. BODEN: But the clue is that -- that somebody has to make a decision -- that somebody has to make a decision that the medical evidence that's currently in the file could be consistent with a work-related condition. And if it's -- and if somebody decides that it's not, then DOE would not then pay for additional medical testing.

So, if I came in with the flu, you know, and claim that it was related to my --

DR. WAGNER: -- there are two points of pickup. One is you have no medical evidence, which is -- talked about before. You've got nothing. Then you don't get to the point of having that review or, as you're suggesting, the level of plausibility or, even in the best of all worlds, you know, as long as you have the flu, no matter what the exposure information is at the site other than the influenza bug is that you're -- that that condition -- that there is no additional medical testing that would be helpful. So that, actually, would constitute my category of adequate medical evidence. So, adequate to make a determination.

MR. BODEN: Okay. But what you just said is that it would have to be a fairly low threshold because you wouldn't want the person who was making the decision before it got to the medical panel to be able to decide on cases that might -- you know, even though it's unlikely be work-related, so that those cases never got to the medical panel.

DR. WAGNER: Again, I mean I think that it's a low threshold of a -- but -- but you're at the point of not having a sufficiently developed file.

MS. SPIELER: People can have an implausible claim but have the claim adequately developed for the medical panel to make that determination, and I think that it's important that we be clear about that and that OWA be clear about that because the -- you don't want some intermediate person in the process to say, well, this clearly isn't work-related so we're not sending it to the medical panel. All the files should go to the medical panel. Let the medical panel say flu doesn't have anything to do with X.

Don?

MR. ELISBURG: I -- I think that that's probably as far as we should go here because we already have spent a considerable amount of time helping Paul in writing his -- I think, really, we've said all I think we can say about -- I think they can take that from there and package it the way they would need to for an operating process.

MS. SPIELER: Paul, do you need any -- I mean this was one of the issues that you brought to us at our last meeting with the suggestion that you might need some clear sort of recommendation back from the committee. Does this fall in that category or do you think that this can be handled through the development of your rules? I don't know if they belong to medical panel or simply in the claims handling manual.

DR. SELIGMAN: I think I've got plenty of information at this point. I think -- actually good to go. I don't think -- specifically what you're asking. Do I need a vote or a resolution? No, I think I'm fine at this point.

MS. SPIELER: Great. Then we can move on.

All right. We had on -- on the list of issues for the Medical Panel, then, this question of not only causality but also the disability and impairment discussion. The -- I -- let me -- Iris has stepped out, I guess, and we didn't really get fully to that issue in our discussions on the State Agency Relations committee and in fact have already scheduled our next telephone conference call to discuss some of these remaining issues. With the full committee's forbearance, I -- I actually -- and given the lateness of the hour, I would like to postpone that discussion until whenever our next full committee meeting is, which as this -- is as yet undetermined, if that's acceptable?

(No response)

MS. SPIELER: Hearing no disagreement, I will move on to the question which I think does probably relate to the May 31 deadline for a

rule, and that is the question of the review of a negative determination by a -- by the --

Oh, wait. There's one other issue. Sorry. The organization of the -- of the panels as to whether or not they're going to be site-specific and if not, how they would be organized. Is that going to be an issue that's addressed in the rulemaking process? Or is that an implementation question?

DR. MARKOWITZ: That's an implementation question. That's not --

MS. SPIELER: If it's an implementation question, is it -- again, could we postpone it to -- for specific discussion at a later date?

Yes. Okay. I think that probably within those guidelines there -- maybe not.

MR. ELISBURG: Yeah, but I'd like to reserve the option that - - to talk some more about the construction issues that Steve talked about. I think there's construction issues -- I think there's some pieces there in terms of site-specific or how you divide -- that I'd like to pursue. I don't have to pursue that today or this afternoon.

MS. SPIELER: Okay. I would ask, Judy, you or whoever else -- reviewing the transcript, if you could pull out of the transcript the specific issues that we've postponed so we can be sure to have them on the agenda at the next meeting. I would appreciate it.

And finally, the appeal of the negative review, which I think probably is a rulemaking question, or it should be. Am I right? And we clearly do need to reach some kind of agreement or we're going to be -- and -- and give advice to DOE on this issue or we're going to be giving it to DOE to resolve.

And I -- I think that there are essentially three models that we've discussed. One is that -- the initially proposed model, the decision of a three-person panel, whether it's unanimous or not, is final unless the claimant - - the applicant has additional evidence to submit for essentially a kind of reconsideration by a different panel.

The second was a -- any time there was a negative decision by the three-person panel, whether it's unanimous or partial, that it would be automatically reviewed by another panel and that that would be a blind

review, in other words with no notification that there had been a previous negative determination.

And the third is my cut-the-baby-in-half proposal, which was that if there's a split decision by the initial panel that there be an automatic review, and if there's a unanimous decision by the -- negative decision by the first panel that the claimant be asked to submit additional evidence if they would like additional review. And I -- I think it would be good if we could give DOE some guidance as to what we think on this issue.

Greg?

DR. WAGNER: The only -- in Ricky's absence, the one question that he raised was of a dead claimant where there's no possibility of having additional medical evidence. And I would suggest a modification to your cut-the-baby that would say automatic review of split decisions and where the claimant was no longer available to develop additional medical evidence.

MS. SPIELER: Other thoughts on this issue? Suggestions for DOE?

(Pause)

DR. MARKOWITZ: There's a certain appeal to the compromise position. One of the three physicians disagrees that -- that they will -- the claim will be eligible for appeal does, however, have a side effect, I think, of how that particular -- three-person panel will operate, which may make it more difficult. I'm not sure; it may make it more difficult for that panel to operate because if the third person -- it matters now whether the third person is brought into the consensus. It may make their determination more difficult. I'm not sure that's a real concern, but -- but I am worried about the side effect -- which would not just influence the appeal process but actually the prior review.

DR. WAGNER: Could I ask you, do you think that that makes it more likely to not get the consensus or less likely to not get the consensus?

DR. MARKOWITZ: I think it will lead to longer arguments about the merits of the case. The -- the two-person majority may feel strongly enough that they would feel obliged to try to convince the third party of their position to bring a unanimous decision and vice versa. The -- the other person may feel obliged -- that is, the minority may feel obliged to defend their position more vociferously.

I'm not sure it's going to really work that way, but I -- that's one point -- that compromise position was without any -- whatsoever.

MS. SPIELER: Len?

MR. MARTINEZ: My question is whether this would be -- I thought that was a yes or no question, which I didn't hear an answer yes or no.

The question I have is was it the intent that it would be an automatic review if it wasn't unanimous?

DR. MARKOWITZ: No.

MR. MARTINEZ: So that -- so that the claimant would have to request an appeal and then it would be reviewed?

DR. MARKOWITZ: I think that's what makes most sense.

MR. MARTINEZ: Okay. I'm comfortable with your answer.

MR. OLSEN: Is -- is there a different burden of proof? In a two -- two-one decision he doesn't have to present new evidence. In a three-zip position, he does have to present new evidence.

DR. MARKOWITZ: Well, it's open for discussion. I mean those are -- that's the compromise position. If -- if people feel strongly that there ought to be some, you know, appeal process, then, you know, that's a reasonable compromise.

MR. OLSEN: Is the appeal process on the record or does a new panel do the full-blown interview with the panel?

MS. SPIELER: The -- the interview's -- done prior to the submission. The panel reviews it only on the paper. And -- and with a presumably complete paper or they have a mechanism for completing that, but they don't do it themselves. And they don't see the -- the applicant, either. It's -- it's a paper review to make a determination of causation, and so the second review would presumably be exactly the same as the first, and the second review would not involve saying, well, this is a -- an appeal. So, it would be more like a reconsideration, I think, is what we're talking about than an appeal in which you review the prior consideration.

MR. ELISBURG: I think you're getting into an area here that we tried to deal with a little bit this morning in terms of the Labor

Department. I don't know whether the DOE's procedure is for the appeal before the case is signed off by the secretary or afterwards. Department of Labor has an internal review. They're proposing that will lead to the final -- Federal district court -- there's nothing in the statute about an appeals procedure on either side of it.

And so, I think -- again, I'm not sure you can do this today, but it behooves us to understand what kind of appeals procedure the DOE contemplates for this system, internal. What they would expect when somebody says no, the case might go to -- planning any type of internal appeals board or anything. You know, what's the -- what's the due process? Due process, fair play system they intend to or don't intend to put in -- because that in fact has a bearing on what's likely to show up in the Federal district courts both for the secretary of energy and/or the secretary of labor.

And we kicked this around a little bit with the people this morning, and I said, you know, I think you're getting into some very difficult areas here if you don't show some kind of a fairness of process before you have these cases go right to the Federal district courts.

MS. SPIELER: There is a --

MR. ELISBURG: And this is a whole area that's -- that I guess is left silent --

MS. SPIELER: In the statute.

MR. ELISBURG: -- in the statute. And it was one of the principal reasons for the last administration's proposals to congress to fix this with an appeal procedure.

MS. SPIELER: I -- I -- I don't think I ever saw the final -- or I don't remember reading the final recommendation with regard to appeals process, but I -- and this is a separate conversation. But I -- I do think that the -- the DOE -- DOL process in which a determination of benefits is made is somewhat different from the DOE process in which there's a determination being made that's useful in a state comp proceeding and is internal guidance to -- on contracts with the DOE contractors and -- and the -- at least from a legal and constitutional standpoint, the question of due process would be different, I think.

But as to the perception of fairness, I do think that there has to be a mechanism for review. And I think what's being proposed here is an appropriate one, but we can go -- I mean we can go farther on the whole

administer-the-process question at a later date, but I -- but as to the medical panel component of it, I think we do need to reach closure if we have consensus here about what's been said in terms of the compromise position.

MR. ELISBURG: Is there a document floating around that explains all this?

MS. SPIELER: What --

MR. ELISBURG: -- the appeals procedures for the medical panel?

MS. SPIELER: No. We're working on one right now.

MR. ELISBURG: Oh, okay. Okay. Because you were going by -- paper review that's going to do this, going to do that. This is just our talk?

MS. SPIELER: Well, I -- I guess not everybody maybe has seen the minutes from the various meetings and the suggestions that have been made. But I -- I -- and I have because I'm one of the -- I get the benefit of everyone's e-mail. But -- it might not be looked at as a benefit sometimes on a daily basis.

But I was -- I was basing this on the -- essentially, on the presentation that Steve was making about how the process would work and -- and that's my understanding of the process. And that's why we had the discussion about whether or not there should be a disability or an impairment rating based on the fact that this is a purely paper review or this is appropriate to do that purely on a paper review without seeing the level of impairment of the individual face-to-face.

DR. MARKOWITZ: You know, I think this -- in our subcommittee, sure, we discussed the appeals process. But the issues of appeals -- it's not a physician issue and it's not -- I mean it's an issue that really needs to be addressed by this full committee here and -- which we're doing and need to do further.

MR. ELISBURG: Emily, just to go back to the statute?

MS. SPIELER: Yeah.

MR. ELISBURG: The reason I -- it triggered me was as the -- after the panel does whatever the panel does, it sends it on to the secretary.

Then it says the secretary shall review a panel's determination made under this subsection. Information the panel considered in reaching its determination, any relevant new information not reasonably available at the time of the panel's deliberations, and the basis for the panel's determination. As a result of the review, Paragraph 1 that I just read, the secretary shall accept the panel's determination in the absence of significant evidence to the contrary. And so forth and so on.

So, there's a -- there's a setup here for the Department to get itself into an awful lot of litigation if it isn't careful. It will probably have a lot of litigation if it is careful, but -- but I'm -- I'm only suggesting that -- that everybody ought to understand how this thing's going to work so that you -- you don't get caught up of -- of people feeling that they somehow didn't get their -- their day in the right place. Litigation --

MS. SPIELER: Not -- not to -- not -- not to sort of press this too much, but I -- but I think Steve is right that this isn't a medical panel issue, it's a claims process issue as to what happens to the claim as it proceeds beyond the medical panel. And what I'd like to do is reach closure on our discussion of medical panels, take a break, and then move into the notification and processing issues. And I have, actually, a growing list of issues that I think come up that we need to talk about in addition to whatever the subcommittees specifically are going to bring to us.

So, the question, I think, on the table which I think we've reached consensus on but maybe I'm getting tired and I'm not 100 percent sure, is that if there's a negative decision by a medical panel in a situation where it's a split decision, the claimant has a right to a subsequent review of that -- that evidence without having to submit any additional evidence, that -- that if the -- or if the claimant is unavailable or it's impossible for some other reason for the claimant to have any -- I'm sorry. I am getting tired. Let me back up.

There -- there is -- where there's a split decision there's an automatic right to a reconsideration by a different panel blind. Where there's a unanimous decision, unless the claimant is -- is deceased or for some other reason is unable to provide additional evidence, that the expectation will be that the claimant will provide additional evidence in order to seek a second-round reconsideration by a separate panel. And I think that that sort of balances the -- the concerns about efficiency against the concerns about fairness, but I guess the question is is there sufficient consensus on that for us to move on or not.

Rick?

MR. BLEA: I think -- I hear what you're saying, but again, a while ago I stated that I thought it should be automatic, that when it's a negative or a ruling against the claimant and -- we think as a committee right now then that's not the direction we're going to take? Are we saying or --

MS. SPIELER: I -- yeah, I -- I guess -- I mean you were out of the room for some portion of this conversation, but that seemed to be where the committee was moving. And so, I'm sort of posing that. Is -- is that a correct reading of the way the committee is moving to?

Les?

MR. BODEN: I think that's good. I think that if we go that way and we have something -- and we have a situation where it's not easy to get a -- a review if it's unanimous that that probably means that the committees should not be fixed. That is, maybe this intermediate position where the committees -- where there's a group of people that's larger than three that rotates through for a specific site. And the reason I say that is that committees that are fixed sort of socially are more likely over time to be unanimous than committees that rotate. And I think these two things are related.

MS. SPIELER: There is, actually, a model for how to do this today. I -- I hesitate to say this, but the Federal circuits -- courts of appeals have a model for setting up three panel members -- three-member panels to hear cases drawn out of a pool of people who are applicant -- applicable to a region. And it actually works quite well in terms of balancing those issues. Some people --

(Pause)

MS. SPIELER: Where are we on this issue? I need some guidance here from the committee.

Glenn, did you have a --

DR. SHOR: I'm a little reluctant to raise it, but I think Don --

(Laughter)

DR. SHOR: -- Don's distinction, if I'm reading the legislation correctly, and I think what I heard Don say, it looks like there's no right to an appeal in the legislation except to the secretary. That the panel makes the -- a determination. A panel makes a determination. And then that determination

is then transmitted to the secretary for action. The secretary can reverse or -- or have another review of that decision, but there's nothing that I can see that even allows for another panel to take over that determination.

DR. MARKOWITZ: So, there's no requirement in the Act that there be an appeals process outside of the secretary?

DR. SHOR: Once a panel has made a determination, under Paragraph 3, it shall report to the secretary its determination and the basis for the determination. If -- the secretary shall review a panel's determination, and as the result of the review the secretary shall accept the panel's determination in the absence of significant evidence to the contrary. So if the secretary feels that there's other evidence that the panel has not dealt with, then there's some way to go into the panel decisions. I don't see any other --

MS. SPIELER: I think you can actually -- I mean I think that's actually a narrow reading of the statutory language because you could define a panel as including this double panel -- right. So, I think that's a regulatory drafting problem personally, but I tend to be somewhat on the creative end of this.

I -- and my guess is that the secretary would -- who is going to delegate this, presumably, back to someone -- certainly, it's not going to be the secretary's office. You think it's going to be -- oh.

(Laughter)

MS. SPIELER: Who's going to delegate this back would probably prefer to have had a re-review in those claims in which there's an argument. And so I -- it's hard -- and it's hard for me to imagine that the claimants would object to having a second review by the medical panel. So, sort of being careful in the drafting of the rule in order to protect claimants' rights, who are the most likely people to object, seems to me -- erring that direction probably would decrease the likelihood of challenge to the regulations in terms of their compliance with the statute.

DR. MARKOWITZ: Can I suggest that we table this particular issue since we're not really arriving at a consensus and we have a lot of other things to deal with and move on?

MR. BLEA: I'd -- I'd agree to that -- I'd agree to that, Steve, if we can address this tomorrow -- before we adjourn. That sometime before we --

MS. SPIELER: We have a very full agenda and my -- my feeling is that we should complete our discussion of the medical panel issues now to the extent that it's possible because we really have a lot to do and we're not going to have time to come back to these issues.

MR. BLEA: I agree with you there, Emily. We're not going to be able to come back -- Steve, I think -- continue because we need to make some clear recommendation for the committee -- how we think things are going to work.

MS. SPIELER: Don't?

MR. ELISBURG: I -- I personally am supportive of some kind of review mechanism within the panel confidence before it gets to the secretary. And I think you can read the statute that way, that you can -- the panel is in fact a panel -- as one panel. I -- I -- it might well make sense, but that moves us off the dime. I just think that that -- that -- if we say that's a consensus that there needs to be a review mechanism along the lines of what's been spelled out inside that panel process, then that leaves the -- the -- the next part of what do you do after that -- gets in the claim system is all that's missing.

But -- but I think this is --

MS. SPIELER: I -- the question, though, was do we have -- assuming that we all agree that this should be and we're going to put aside and let Paul consult the GC on the -- the legality of this, do -- would the trigger for the automatic or -- or review by a second medical panel without additional evidence is the issue I think around which there was some disagreement. And I had thought we had developed some consensus on it and now I'm not certain.

And so, I guess the question is to restate it. Is it the recommendation of this committee to the Department that when there's a negative decision by a medical panel, if that's a split decision, that the claimant automatically have a right to reconsideration by -- a blind reconsideration by a second medical panel? I assume we all agree that that should occur.

So, the question is when there's a unanimous three-person decision by a medical panel against a claimant on the issue of causation and the claimant is alive and able -- in a position to be able to acquire additional evidence, should we require that additional evidence be submitted in order for them to get a second blind reconsideration? The argument in favor of doing that is that there will be -- and I've hesitated to say this, but there will be a

substantial number of claims that there will be essentially unanimity that this is not work-related. And for those claims there is an efficiency argument to not put them before a second panel.

On the other side, there is an argument of the perception of fairness in the claimant population because people don't trust DOE, and perhaps for good reason. And so, the -- we have this one limited question before the -- around which there appears to be some disagreement, and the question is can we reach a sufficient consensus or do we want to put it to a vote or do we want to leave it to DOE?

Iris?

MS. POST: And the specific decision is -- the specific decision that's in front of us right now is whether or not if it's been denied by the entire panel whether or not to submit that again to a second panel or is it providing we only send it to a second panel if there's additional information?

MS. SPIELER: Exactly. Well, actually, it would be the claimant would be requesting it in either event, but the question is whether they have an automatic right for review by a second panel without additional evidence or whether -- with the except -- let's assume that for those people who are deceased or in which they are really not in a position to provide any additional evidence that we will allow for an automatic review. And now we're on only the people who presumably could be in a position to provide additional evidence. Should they have a right to automatic review or should there -- they have to provide additional evidence in order to have a review by the second medical panel?

I think that one of the reasons this is contentious and difficult is that there -- some people think that there may be a large number of claims in this category. And the question is what do you do about it?

Len?

MR. MARTINEZ: Just for a point of clarification, in either case the claimant has to request the review?

MS. SPIELER: I think -- you asked that question before and Steve answered affirmatively, and I'm assuming that we're operating under that.

MR. MARTINEZ: Okay. You just didn't say that on --

MS. SPIELER: I thought I did. Okay.

MR. ELISBURG: I think there's one additional problem that we really haven't addressed yet, and I would certainly -- on this particularly narrow issue. And -- this what the secretary does? This is an automatic review by the secretary's office.

MS. SPIELER: Yeah, but we're not -- we're only on whether or not there's a second medical panel review. We're not on the issue of how the secretary deals with a subsequent review --

MR. ELISBURG: No, I know that. What I'm saying to you is recognizing -- recognizing that there is in effect a second-level review of both positive and negative interpretations at this office of the secretary under the statute, it seems to me that you can justify putting very little burden on the -- on the -- the claimant for this -- wherever the second review is of the panel.

MS. SPIELER: I don't see the logic of that.

Greg?

DR. WAGNER: I thought, actually, you were going to say just the opposite, that there is going to be a second-level review to assure fairness and consistency anyway at the secretary's level, that we shouldn't really worry too much only a limited number of automatic rights of reconsideration at the panel level.

MR. ELISBURG: Actually, that's what I meant to say.

MS. SPIELER: Okay.

(Laughter)

MS. SPIELER: We're all getting tired.

(Laughter)

DR. WAGNER: Let me try and -- and restate what I think the consensus is. Given that there is a review at the secretary level, that there would be an automatic right to request a reconsideration if there's a split decision.

MS. SPIELER: There would be an automatic reconsideration upon request.

DR. WAGNER: An automatic reconsideration upon request. If there is a split decision of the panel --

MR. BODEN: Negative.

DR. WAGNER: Somebody could, of course, request that they be turned down.

(Laughter)

DR. WAGNER: Or if the claimant were not in a position by virtue of no longer being living or some other extreme situation where they were truly unable to provide additional support -- to their case, that would trigger a -- a automatic reconsideration.

And I think that the third possibility of supplying additional evidence is always there in that they could do that at the -- level so we don't need to deal with that.

DR. MARKOWITZ: I don't think a claimant who is suspicious about the fairness of the physician panel review is going to be largely comforted by a secondary review by the secretary. So, I actually don't think, you know, it will serve the -- the purpose or the worry that -- that -- I mean I -- to squander the resources of the physician panel on the second -- secondary reviews which will bolster the -- the, you know, identical initial review. On the other hand, this is, you know, this is barely -- the claims only -- system and if that's what it takes for, you know, for them to feel that they got a fair -- automatic reconsideration.

MS. SPIELER: Len?

MR. MARTINEZ: And I would require that they have to provide additional information if they are available, if they are able to do so simply because why would you then kick it upstairs for somebody else to go through the same review? I mean let's -- let's not burden the -- whoever's going to get delegated this beyond the medical environment to take care of.

MS. SPIELER: There seems to be a circularity in the conversation that we're having and I'm -- without a motion and the fact that we don't have -- we aren't reaching a consensus on this subgroup, I'm going to have to ask that we move on unless someone wants to make a motion and bring it to a closure.

MR. BODEN: I don't have one, but we do all agree about the first case, right? The split case?

MS. SPIELER: We're all -- I think that we --

MR. BODEN: I just want to make sure --

MS. SPIELER: -- let -- let -- let me -- let me -- let's again try to summarize where we are and suggest that we move on unless someone has a motion to make beyond this.

We have consensus that in those situations in which there is a split decision in opposition to the claimant that the claimant have a right to request reconsideration of a -- by a medical -- a second medical panel that will not be a -- the appeal will be -- will be a reconsideration.

Second, that we -- we are agreed that there if there is a unanimous decision against a claimant who is -- where the -- the actual person or worker is deceased or in some other way completely unable to produce additional evidence that that -- that they would also be able to request a reconsideration and have it without additional evidence.

That the issue which we seem to be split on is the question of what happens where there's a unanimous decision and a person capable of providing additional evidence, and we are -- we seem to be unable to reach a -- agreement, having discussed it for some time. So, I would suggest that we -- that the -- the Department consider the arguments that have been made on both sides of that and make its decision as to how to deal with -- the medical panel rules based upon this discussion.

DR. SELIGMAN: I will not object -- discussion.

MS. SPIELER: Now, I hesitate to say this, but we may meet later than we had said initially because I really think we need to get through some additional issues tonight if we're going to be able to get people out of here tomorrow, and since a lot of us came a long way for this meeting I think it's appropriate to ask people to stay. Why don't we take a 10-minute break? And we're going to come back and discuss worker notification and claims processing issues after the break.

We will have the public comment period at the time it said on the initial agenda, so we'll break for that because I think that it's appropriate if there are any members of the public who have been waiting for that that we give them the opportunity to speak.

PARTICIPANT: Can we meet later --

MS. SPIELER: Yes, I've been advised that we are not bound by the, quote, "adjournment time" in the "Federal Register".

(Brief recess)

MS. SPIELER: It is now about 25 to 6. We have a public hearing -- public comment period set for 6:00. And -- which can last up to half an hour. And what I propose to do -- and I -- I've been asked to try to set a closing time for our meeting tonight in part because the person who's responsible for the recording of the meeting actually needs to know. And so -- and it did -- does appear to me that people are growing tired.

So, here's my suggestion. Both Vikki and Don do not feel that the reports from their committees and discussion of those issues is that -- is going to be nearly as difficult as the discussion we just had. I would propose that we try to get through those two committees, that we break as briefly but as long as necessary for the public comment period, and then our aim be to get out of here by 7:00 at the latest.

Is that -- the subcommittee that was going to meet, and Mark, this includes you and Len, Glenn, Iris, me, Don. The subcommittee that was going to meet after the meeting tonight has rescheduled its meeting to 7:30 tomorrow morning. We will meet in the restaurant here in the hotel for breakfast. That, I think, is 3:30 or 4:30 California time, so I'm sure Glenn is just delighted to hear this.

(Laughter)

MS. SPIELER: So, if that's acceptable to the committee, I'm going to turn this over to Vikki for a report.

Claims Submission/Worker Notification

MS. HATFIELD: I think ours will be fairly short, although it wasn't said in the subcommittee meeting this morning. We had a lot of -- a lot of discussion and a lot of need for clarification. We appreciate the fact that -- that -- was there and -- and helped us a lot with what we were trying to -- trying to understand.

We were really concerned about consideration and decision-making that was being done for the intake. We wanted to understand what

was going on because we -- we saw it another way and when they explained it to us it wasn't the way that we saw it, so we had a lot of questions to ask.

The understanding that we -- that we have gotten is that the intake and outreach -- and I have to say that I -- I consider it to be just in the intake at this point because we're not really going to outreach out of that office the way I understand it. It's just intake and fill out the forms and then the forms move on. And so, you're really not in the intake outreach at that point, I don't think. And you can clarify that if you think -- if you think that I'm -- I'm wrong on that.

So, we -- we were concerned about that because we felt like that -- that when the workers come into that office they -- that it's important that they have the trust that they have had before and that they can feel like that their needs are going to be met and they're going to be taken care of and they don't have to worry about some of the issues that we discussed with the physicians panel about feeling like they got a fair shake in what was going on, so we don't want 'em to feel that way because by the time you hit intake, that's the way they're going to feel through the whole process. It's not -- you know, it's not going to change. If they don't feel warm and fuzzy about how they're treated in intake, they're not going to feel warm and fuzzy when they get the decision that comes down from the panel. They're not going to feel any better about that.

So, we are concerned about that. We're concerned about where that's going and how -- how the workers are going to receive the information, the status of their claim, according to what we were told. The claim is filed through the intake and then those records go to a district office of DOL, and they in turn become the contact that the worker has with -- about their whole process. It's -- it's done through the district office, wherever that may be. That was not our initial understanding. We kind of thought that everything was going to be done through the outreach, so I guess -- not that the decision was going to make the -- be made there but that the -- the forms and the contacts were going to be made there, so that was -- that was one of the concerns that we had this morning about how things were going.

We're -- not sure -- we wanted -- one of the things that we talked about was the ability to -- to take care of workers who could not -- who were too sick or too ill to come in and didn't have anybody to look after them, didn't have anybody to fill out an -- form, to fill out their papers, so we asked about whether or not there would be someone allowed to go out to into the community to take care of those needs, and -- and we were told that they were working on that and that was going -- and so that was -- that was good news that we -- we felt like we could adequately take care of their needs.

We -- we wanted to -- to clarify that we thought that when they -- the contractor says they're going to hire -- and again, I had a real tough time with that -- as I think, Rick, you did, too -- that the word "contractor" has kind of got a hard form to it, you know. And when you say, you know, DOE's had a lot of contractors, so it's hard for us to use that term "contractor" in the -- in the text of someone coming in to take care of somebody. We're going to contract that out and they're going to go, well, hmm, what kind of care do you think we're going to get? So, we're -- we're hoping that that word will kind of go away and we'll find a better way of saying who's going to take care of 'em and -- and what's going to happen.

We wanted to make sure they were recognizing that there were going to be a lot of different levels of workers to take care of, that some of them were probably not going to be as educated and not have ability to understand of what's going on, and so we wanted to make sure that -- that there was someone there that could give them that level without them feeling like someone was kind of overlooking and they're not really taking care of their needs or listening to what they were trying to say. So that -- that was important.

And the -- we wanted an understanding of how they were going to handle the high volume of clients, and we didn't -- we didn't come to that. We didn't really expect that we -- we don't know yet how that's going to -- how that's going to play out because I'm sure that on July the 31st there's going to be lots of people standing in line trying to file their claims. And so we're -- we're trying to work through that about how we can do that, whether it's through an affidavit signed that they were in the office and then set up another date for them to come, you know, within the next couple of days but the July the 31st date will be the date that their claim is -- that's when they'll -- back to when they're -- if they're granted, whatever they bring. It'll go back to that July the 31st date if that's when they're in the office.

So, that -- that was a good -- you know, that was a good thing. But I still think it's going to be a -- a long process of trying to figure out, you know, how to deal with the workers and -- and that they're really -- they're really being taken care of because I can think of workers in our area -- that I've talked to that I know they're going to have a hard time and I know they're going to have a hard time getting compensation because it is 20 or 25 years ago and -- and their family member is dead -- long since dead. So, it's -- it is going to be hard, so we have to look at that 'cause -- some consideration as we're moving forward in making plans for the outreach or intake or how everyone -- those terms.

We -- we really had a hard time understanding the district office concept. I mean I realize that and Ricky realized that we can't keep all the files -- files in the outreach office. But we kind of -- we kind of thought that -- that when the workers come in to file that whoever they contacted at the outreach was going to be their contact and that way they would have a -- you know, a real connection and a real understanding and they could go to that person and set a trust and, you know, really realize that that person's going to take care of them.

So, with that not happening and going out to the district offices, I do have some concerns, but then I -- I don't know that there's going to be anything that we can sell one way or the other. But there -- there are concerns about that because I know that it's sometimes hard for people in different areas to make a connection with people in -- in another geographic area. So, I think that's going to be a concern, that it's going to be a real concern that -- that when these -- these people call in that they -- they get the attention that they feel like they need or they want and -- and not, you know, just -- we talked about it this morning. The -- the attitude will be, you know, well, we'll have to get back to you. Well, that's not necessarily what they want to hear and that's going to be tough. That's going to be tough to get around and you're going to have to broach it in the right way or you're really going to have a lot more distrust going on than you have now.

So, we really have to work -- move forward with that and be careful how we handle these workers because the distrust is -- I can't -- if you haven't been out in the community, then -- then you have absolutely no idea of the level of distrust that's going on where DOE's concerned and where the contractors are concerned, not just with DOE but with the contractors that have been involved up to this point. So, there's a lot of -- of mistrust and if we don't right at the beginning, July the 31st, if we don't establish that trust right then, then it's over and we've lost the whole ball game. Because we're going to have a multitude of lawsuits, the workers are going to lose what they need, which is the total benefits that's going to be coming to them. Not -- in our area -- attorneys trying to -- to grab into this before it goes into effect. So that -- that's the type of issues where I'm concerned because I know that these workers are going to need all of the benefits they can possibly get to survive for the next years of their life if they're -- if they -- if they are, you know, sick.

So, we don't want that to happen. We want to stop that. So, it's important that we come to the forefront and give them that warm, fuzzy feeling that they feel like that they're -- they can trust whoever's there and that they're actually going to take care of their needs. That's important.

We -- we need to talk about and we do encourage the need for town meetings. And we talked about having 'em, and I think it's a really good thing. I had worried before now because I -- I think it's really hard to move forward and know what we need in these communities without talking to the employees themselves and their families. It's real hard -- I mean I've sat in on town meetings and I hope that -- do that, too. And it's tough. It's tough to sit there; it's tough to hear. And sometimes -- and sometimes you don't really think you're getting any -- but you really are.

And so, it's important to -- to have the town meetings and -- and to know what kind of problems these workers are having, whether it's that they don't know -- they don't have dates, they don't know if they're going to need dates, they're just going crazy trying to pull things in and -- and they're really scrambling to get things that they're really not going to need because the Department's going to take care of it for them, and they need to understand that.

And so, hopefully, in the next -- by May -- May, you know, we'll -- we'll have these town meetings scheduled and -- and we'll have some press going on that people will understand and won't run to attorneys and they won't -- you know, they won't have that feeling that they need some outside help to try to get what's rightfully theirs to begin with. So, that's -- that was one of the things that we were concerned with.

We also talked about the workers that were not Department of Energy workers and we feel like that all the workers have to be treated the same. We had to give 'em the same -- the same opportunities. I don't think that we can draw a line and say these workers are, you know, DOE contract workers and these workers are asbestos workers or -- or I don't think we can draw a line there. I think we just treat 'em all the same and try to -- try to hit what we need when we can. So, we -- we thought that that was -- that was an important issue for us to -- to follow through.

MS. SPIELER: Are there any specific concerns or recommendations that you would like this full committee to discuss?

MS. HATFIELD: Well, I think our concerns were -- we talked about a lot of concerns this morning, but I think that -- that the DOL and DOE are probably to the point with their outreach and their intake programs that I don't think that we can inject or interject, you know, our wishes. We did that this morning in subcommittee. We told 'em what we thought and how we felt things should go. But I think we're to the point now that -- that perhaps we're just going to have to see in the real world how it works because it looks really good on paper and things like really good when you look at the -- the little

graphs and -- on paper, but in the real world with a real person, we're going to have to see how it's going to work.

MS. SPIELER: Don?

Claims Processing Issues Report

MR. ELISBURG: First, I'm just a little -- because of the time that -- but having said, that I think we've covered what you have asked that we cover, which is we -- we did agree that with the -- the Worker Notification committee that the -- the DOE -- former employees and beryllium vendors in -- employees should be -- can't have -- that the process by which they take care of the claims and the details of trying to track down employment records needs -- social security records and stuff may be tougher. They may have to -- lots of stuff, but that they should be treated the same.

The second issue, which -- was we thought that the DOE should -- contractor or subcontractor process --

The third issue I think we covered, which was the -- the issue of medical examinations --

(Laughter)

MR. ELISBURG: That is a -- issue that I -- I -- I think -- I don't know if -- we did have some conversation about it and I think it's been -- I thought we had a little bit today, and that is the question of why the item of -- recommendation that the Department should -- should consider using the existing former worker programs where appropriate to do the claims and to process the records -- instead of hiring or contracting out to a whole bunch of -- people.

I don't know really where that stands. I do know that that was a suggestion in the minutes of the last meeting -- and that has -- not only --

MS. HATFIELD: And we -- we did talk about that, and we did think it's a good idea that -- that people can know -- the area that -- involved with -- think it's a really good idea -- I think it is a good idea.

MS. SPIELER: Well, what is the status of the -- sort of the relationship between the outreach offices that -- these joint DOL-DOE outreach offices and the former worker program offices and to what extent is -- are the former worker program offices and people being utilized?

DR. SELIGMAN: We have the contracts in place and offices in place, so it's hard to report on the status other than that --

MS. SPIELER: Status of your -- the status of your thinking.

(Laughter)

DR. SELIGMAN: We -- we have actually in the course of my visits to the field actually posed this very question not only to the various labor unions and trades counsels and former worker programs as to exactly what role that they would like, and it's interesting. We've gotten a whole range of -- of -- of responses that basically go on one side from this should be a role for the former worker programs, we'll run the outreach efforts for you, to responses from labor union folks as well who say the former worker programs is a screening program that should be -- it should remain as -- as such and that -- and that the compensation claims and intake for this claims process really should be a distinct entity.

So, that's basically the status of my thinking, which is I think there's a wide range. Clearly, since many of the former worker programs at this point in time are providing information and assistance to potential claimants, we certainly don't want to perturb that relationship, particularly where they're doing a good job. And we'd certainly like to work with those former worker programs to educate them and -- and -- and -- and ensure that the kind of information that they're delivering to claimants is -- is equal to and comparable to what an outreach office would deliver.

We certainly, you know, have talked about it in other -- other contexts in this -- in this discussion about utilizing the former worker programs in developing job histories for claimants and using them as -- as a potential place to get additional screening examinations should an individual so desire.

I'll give you my -- my personal opinion, which is that I -- I -- again, it's based on what I've heard from the field and an emergence of opinion, and I think it -- in most of our sites we will probably set up a outreach/intake office that's distinct from our former worker programs and that we will look to our colleagues in -- at the former worker programs and labor unions and others to help us staff these offices and provide individuals, particularly many of the former workers who work at the former worker programs who have been so successful in building that trust and -- and -- and working with the claimants.

So, that's basically my -- my thinking at that -- at the present time. I know that there are some sites where it may not, for example, make sense to have an outreach office where we might be able to utilize the former worker program in that capacity, but around many of our larger facilities our current thinking is that we would like to have a distinct place where it is devoted solely to educating individuals about the compensation program,

assisting them in actually filing a claim, coordinating -- and coordinating not only with the DOE and its contractors in obtaining records but also coordinating with the former worker programs in obtaining whatever records and information they may have to file such a claim.

So, does that meet your status?

MS. SPIELER: It answers the question and I think frames the issue for our discussion.

In the three minutes before six that we have, let me just suggest that I have several issues that I wrote down in the course of the afternoon that I think have some relationship to our -- this discussion, and I want the committee to think while we break for the public comment period about whether we want to discuss these issues this evening.

First of all, there is this question of the role of the former worker program and the outreach efforts.

Second of all, Steve, I think, raised earlier today the -- questions -- the question of some kind of -- what I -- I have sort of thought of in my head as an ombudsman program that would employ perhaps former workers and family members that -- that would be somewhat independent of the DOE offices and whether or not that was feasible and should -- we should recommend it.

Third, and I think we had consensus on this, the issue of how the beryllium vendor and atomic energy -- atomic worker weapons employee -- employers should be treated within the program.

Third of all, the question of how the non-toxic substance occupational work-related illnesses that are within the scope of 350.6 but not within the scope of the medical panel subsection of the statute should be treated.

Let's see. One, two, three, four. Fifth, the recommendation, and this is a simple one, of adding unions to the list of the sort of people who would be in the facilities with -- and sort of contact question that Glenn brought up this morning.

Sixth, the issue of the joint call-in line which we talked about during the presentation --

(Laughter)

MS. SPIELER: And lastly, but I'm not sure we can do anything about this, this question of the development of the DOE -- DOL rules in what appears to be the most opaque manner possible.

Public Comment Period

MS. SPIELER: So, those are the issues that I had that sort of related to claims processing. I'm going to call a halt to our committee deliberations and open the meeting up for public comment for anyone who's not at the table and who would like to offer comments.

I think we need to get you to a microphone. And --

MS. HERMAN: -- turn yours on, I think that'll be enough --

MS. SPIELER: Okay. And you should identify yourself.

MS. HERMAN: My name is Angela Herman. I'm with the American Insurance Association. And I'm more involved -- contractor -- but I did have a question that came to mind before we were talking about this review, the second review. And I just started to think about my father, who's a hard case and refuses to go to the doctor for any reason -- who are not sure -- but these things may be late in developing.

Suppose you haven't been insured for the last five or six years. You just decided you don't want to pay health insurance; you want to pay for food instead, whatever it is. And your last medical record indicates that you were healthy. Now 10 years later and 20 years of employment at Hanford or someplace like that, you develop -- you develop a cough or something. You know something's wrong with you. But you haven't been to the doctor. Where does that person stand as far as the medical examination? And there's not going to be a lot of those people, but where would those people stand?

(Pause)

MS. SPIELER: I'm not sure we -- I mean arguably, I think within our discussions those people would be not included, but I think that certainly the Department could consider making exceptions in certain circumstances for people with -- with complaints that -- who are unable --

MS. HERMAN: I'm just thinking of --

MS. SPIELER: But -- but -- yeah.

MS. HERMAN: -- non-insured person that comes to you that has no medical record of -- of illness.

MS. HATFIELD: Don't you think we could look at those on a case-by-case basis? You can't say -- you can't rule out everybody and say, well, you know, because they haven't been to the doctor we're not going to -- they're not viable. We can't --

MS. HERMAN: And they can't pay for insurance, so how are they going to pay for the medical exam?

MS. HATFIELD: Yeah. I don't think we can rule out everybody. I think we'll have to look at it case-by-case.

MS. SPIELER: We're in a public comment period right now. And Angela, did you have other issues you wanted to raise -- yeah, I'm sure.

Before we -- we come back to the question that's been raised, are there other people here who want to make comments with regard to what we've discussed today or any other issue that's before this committee that you would like to have on the record?

Yes? Can you come to a mike and --

MR. KLEMM: I'm Jeff Klemm from SAIC. I am -- hear some diverse viewpoint on the -- on the question I will pose, and a diverse viewpoint, perhaps Ms. Hatfield -- and some of the Federal representatives.

How do you expect an M & O contractor to contribute to this program and what do you think the perceptions of the workers thereto would be?

MS. SPIELER: Again, this is a public comment period and we'll wait until additional public comments are taken before -- and then if people at the table would like to respond, that would be fine.

Don, I'm asking for public comments right now.

MR. ELISBURG: I'm asking whether or not Vina Colley's statement has been introduced and is part of the public record.

MS. SPIELER: I assume it is, but thank you for calling that to my attention, and -- and it should definitely be made a part of the record of

this -- of this committee meeting and I want to make sure that all of the committee members make sure that they read it.

Other public comments?

MR. BLEA: Can I just ask what SAIC is? What is SAIC?

MR. KLEMM: Stands for Science Applications International Corporation.

MS. SPIELER: Additional public comments that should be made a part of the record of today's meeting?

(No response)

MS. SPIELER: Then, I'm going to declare the public comment period closed. If members of the committee would like to respond to the comments that have been made, we can spend a few minutes doing that.

(Pause)

MR. BLEA: Well, the comment that you made, if people don't have insurance -- we just talked a little bit a little while ago -- Mr. Martinez. I think we've got to look at -- or have a mechanism in place. But I think we should take it case by case, but I think we should have a mechanism in place for the fact they don't have insurance -- have insurance, have been out of work due to an illness. We should look at them and be able to have them take an exam and to be prepared -- and evaluate the --

(Pause)

MS. SPIELER: Other comments on the comments that have been made?

MR. BODEN: I just think that the -- the second comment we'd like to address tomorrow when we talk about the contractor-insurer relations.

MS. SPIELER: That's fine.

MS. POST: Could we -- are you going to be here tomorrow?

MR. KLEMM: Wasn't planning on it.

(Laughter)

(Pause)

PARTICIPANT: I'm not sure I understood the question.

MS. SPIELER: Maybe it would be helpful for our deliberations, whether it occurred today or tomorrow, if you could elaborate on your question so that we can understand your concerns?

MR. KLEMM: In simple terms, organizations that have been part of the DOE complex and one of the attributes of being knowledgeable about certain things and being suspect about certain things. What role should they be playing in this program given that situation?

MS. SPIELER: I -- I think you're going to have to elaborate further if you want an adequate response.

MR. KLEMM: For example, the M & O contractor's going to be requested or required to provide information under this program, and what are the expectations as to the credibility of that information? And there's -- is there anything to approve that situation?

(Pause)

MS. SPIELER: Okay. I think that's a fair question -- given that there will be reliance on the information that's provided. And I think that the subcommittee that's talking about that should probably take it up in the subcommittee meeting tomorrow morning.

MS. HATFIELD: Can I just ask one question? I mean I understand what SAIC is. I'm -- I'm very familiar with that. But are your records part of the Department of Energy also? I mean do you have dual records or are you -- are you telling me that they belong or are you just asking as -- as part of SAIC -- you have a responsibility?

MR. KLEMM: No, we're not an M & O contractor. But -- question.

MS. HATFIELD: Okay.

(Laughter)

MS. HATFIELD: I was just trying to verify. Thank you.

MR. ELISBURG: You know, I think I can address a part of the question in the sense that in the very first meeting of this advisory committee there was a discussion that has led to the addition of Glenn and -- and Mark to this committee because of the feeling that the contractor community could not be left in a vacuum table. They were a part of this process one way or another, either processing claims or finding information or developing records or whatever and that there needed to be a dialogue with the contractor community as part of the process that this advisory committee -- DOE and DOL were doing.

So, to that extent, it seems to me that the committee has to recognize that it has a role here. When we actually had the meeting of the subcommittee that we're going to talk about tomorrow on contractor issues, it became very clear that there is an enormous procurement problem involved in dealing with all of this -- these claims and payments and state -- and what else that is going to require -- the contracting system and that it is going to take the -- the affirmative, proactive assistance of the contractor community to blast through the system to get anywhere that we need to get to to get some results here, which I think they -- come forward and said they would like to help.

So, I think to that extent there is a -- an interest in the contractor community not being a -- add this to the list -- cooperation and anticipation.

Again, this is my perspective. I don't -- anybody else.

MS. SPIELER: Okay. We -- we will continue this discussion tomorrow morning. I'm going to direct us back to my however many items -- I had a long list -- to see if we can resolve them all by 7:00.

First, the question that was raised this morning with regard to whether or not DOE should in some form have independent ombudspeople to assist claimants in the -- in the development of claims. And I -- I just want to make the observation that it -- on some level, of course, it sounds kind of redundant to say that you have an office and then you're going to pay someone else to help them do their job. My experience as a state administrator for -- it was actually something that needs to be done. And so, I -- I view -- I personally come at this issue with a -- with a feeling that it would make some sense but I don't know what the barriers to it would be and I don't know what the people who didn't speak about this this morning feel about it, so I'm going to throw that open for discussion for a couple of minutes and see where we are, whether we want to suggest to the Department that they look at this or not.

MR. ELISBURG: Isn't that part and parcel of the whole issue of using the forward-looking program of using other contractors to deal with some of these kinds of assistance under development? Because the whole point of their argument was and has been that they need other people who are going to be waiting day in and day out, the former workers out there, provide that kind of -- of typical kind of assistance. How you work that out, I don't know. -- you know, that's part of the issue.

MS. SPIELER: Greg?

DR. WAGNER: It seems to me that it would benefit us not to confuse the two as to what functionally should happen in terms of outreach support development, the kinds of things that we would like to see happen for everyone and who should be doing it that I, for one -- at least, I understand that not every DOE facility has a former worker program associated with it.

And secondly, I don't think, at least from my experience with Federal contracting, that if a former worker program has a contract with DOE, it probably has contract specifications. Now, defining a role -- and I would be strongly supportive of encouraging the Department of Energy to both develop strong outreach and strong support through an ombudsman setup or whatever you want. Defining that role, that's going to be a new effort that's going to require a new contract. I would think that the former worker programs would be highly competitive on the basis of their experience and -- in the community for bidding on those contracts.

But I don't think that we as a committee should get in the business of saying this is who the DOE should be contracting with. I think that we should encourage a, you know, clear and embracing -- you said warm and fuzzy, but a process that encourages the solicitation of claims, their development, dissemination of information to all who are in a position to want to have that information. That's where I think we should be at, and I would just take the issue of the former worker program off the table.

MS. SPIELER: Other thoughts on this?

Jim?

MR. ELLENBERGER: I think the ombudsman idea is a very important one and particularly in terms of trying to help claimants get what they're entitled to without having to share it with an attorney and without the system being a -- for attorney involvement. It's not an easy process, but I haven't really heard from -- from the Department any -- any of their thoughts or ideas about an ombudsman. I don't want to lengthen this -- this discussion,

but perhaps very briefly if you could indicate whether there's some consideration, some openness to that approach, I'd appreciate it.

DR. SELIGMAN: Always openness. There's been no consideration of that today.

MS. SPIELER: Vikki?

MS. HATFIELD: I -- the idea that you have is probably, maybe what I -- what Ricky and I have been looking for because it seems like it might be that person that we've been searching for that could interact a little bit more instead of the contract -- the contract -- that's going to fill out the forms and -- and, you know, -- maybe that is what we're looking for. I'm not sure of that. I certainly don't need to talk about that. I --

MS. SPIELER: Steve's been wanting to get in here.

DR. MARKOWITZ: I don't really believe in warm and fuzzy. If there were a way of teaching a culture of empathy, we would have discovered it in medical schools and we haven't, so --

(Laughter)

DR. MARKOWITZ: I -- I assume that whatever offices the government sets up may not be warm and fuzzy.

I think there is a logical division of labor between, on the one hand, outreach and advocacy, which can and should be done apart from DOE. On the other hand, claims development, which is quintessentially a government function and ought to be done by DOE and DOL, which, you know, would in any sense be legitimately farmed out. And the reason why I think the advocacy and outreach out to be separate is reasons, really, of credibility. And DOE has -- in the former worker program -- and I agree with Greg. We're not talking about this being a former worker program function. But gaining that credibility because the former worker programs are autonomous and independent of DOE and other --

And that seemed -- to this program. And it would be easy enough to do by simply making it a requirement of the DOE -- contractor that takes on this function of outreach and advocacy that they have demonstrated experience of advocacy for workers and certain other requirements and that it be independent of DOE. And then you do it and you continue on the same track you're going in building those criteria. And if you want to call it ombudsman, that's fine. But the functions -- the split is one -- claims

development, intake development, which is government and the other hand, advocacy and outreach, which can and should be non-government.

MS. SPIELER: Iris?

MS. POST: I guess I'm in the group that finds this kind of redundant because isn't this office called the Office of Worker Advocacy? So, I for one would hate to see a separate post created in the office -- It's almost an admission that you're -- you're failing. If you have to have another office to help this office actually be an advocate for workers, then something's not working.

MS. SPIELER: Rick?

MR. BLEA: I don't disagree with what you said, but one thing in -- well, I guess I -- I need to step back.

Paul, how do you envision this when -- when we have the intake office? When I come in as a claimant, do I go see an individual and that individual works -- me only? Or the former worker comes in and we schedule or we have 500 people the first day, okay, so we take the first 50 in. We take them into a room, give 'em the application. The former worker says, okay, now, if you worked at -- plutonium site, you worked here, be sure to write this here and here and here. But this is the way -- this is how they -- and then when you've got that complete, go see the individual from DOE to process your application. Maybe that -- that would be a help because that's an outreach. And it's also somebody who's familiar with the site and has worked there as a former worker and particularly what we're talking about is the union work who has been in -- sites.

So, I need to ask you how you envision that? Are we bringing 50 people into a room and saying, okay, this is how to fill out the claim for -- for workmen's comp or -- to see if you have a claim. Bring 'em in 50 at a time or have 'em wait out the door and individually go? Or come and pick up your form and then go home and then bring it back? What I -- what I hear, I think, we need to be worker-friendly, so to speak. So, if you had a -- a rule -- and if I'm all wet tell me so -- I just want to know.

It would be in our best interest to have a room with 50 people and have somebody explain how you go about doing this process and filling it out. What can you -- what's your better half? Your better -- rather than going to the window and you have 50 people or 100 people waiting because we have five people and they have 100 people in line. Would it make more sense to bring 50 in at a time or 100 -- it all depends on the facility that we have -- and

have 'em do it all at one time? And they're on the same wavelength. They walk away with a positive attitude. They're warm and fuzzy saying -- we all -- we all heard the same thing.

So, for clarity, I'm asking you what -- how do you envision this happening? I don't know.

DR. SELIGMAN: I think there are -- I think you've suggested a variety of approaches not only in terms of getting information in the hands of potential claimants as to how the system is, you know, going to work and -- and what they're -- you know, what the legislation means, et cetera. I -- I -- to be -- and as you know, different individuals will require different levels of attention. We certainly want to make sure that any individual who wants to -- potential claimant who wants to talk to somebody about the program and have them explain to them personally and needs personal assistance in submitting a claim will get that -- that personal attention. -- always, to be honest with you, envisioned this in my own mind as -- as a more of a one-on-one kind of relationship where a potential claimant feels like they have engaged with a person who's giving them some information as well as assisting them in filling out the claim form as well as the necessary paperwork to request their records, et cetera.

We're also mindful of the fact that early on in this program there may need to be efforts to engage and educate and work with larger groups of individuals because we may be faced with dealing with larger groups of individuals early on where a one-on-one approach simply won't be practical.

So, I guess the answer to your question is, you know, we're -- we're going to do our -- our -- our level best to get all the information into the hands of the people who want to make claims using whatever mechanisms we can to do so, and we'll try to have sufficient staff and our offices organized in a way to ensure that individuals can also get whatever personal attention that they -- they may feel they need and -- and deserve in this process.

So, how's that for not answering your question?

MS. SPIELER: Greg?

DR. WAGNER: I actually think that what we're talking about -- as I look at the draft claims process form, one is a staffing issue and how you're going to deal with the bolus of -- you know, a big number of claimants up front. And I think that Ricky's question was a great one and one that you're

going to have to figure out because for a while you're going to have to deal with this.

There's also the -- what goes on before you hit here, and that's why I really like Steve's distinction of the outreach and the advocacy effort that can credibly be done independently. And I just -- it doesn't bother me at all that this is a worker advocacy office that chooses to implement its advocacy function in part through the assignment of an independent role for people who have credibility within the communities to assist -- provide direct assistance. I mean you don't have to -- to -- it's a function.

There's another advocacy function that has to do with proper staffing, assistance for the government function of credible claims development and getting things done in a timely way, getting 'em to the panels, getting the adjudication, getting the coordination among the government agencies that are all the different things that are, you know, within this process.

Now, so I think that what I heard Vikki's group suggesting was let's start a step earlier and I would again encourage the Department to figure out is there an earlier step that we're involved in outreach and, you know, a variety of advocacy functions. Secondly, staffing it appropriately to be able to move claims through --

DR. SELIGMAN: Shouldn't -- have already talked earlier about going out and doing these field meetings. I think, certainly, that's one mechanism to reach out to large audiences of workers, field lots of questions, educate workers and families and survivors about this particular program. Similarly, we -- you know, our -- our goal is to have these offices open a full month in advance of that program, again, with the hope that individuals can have the opportunity to, you know, avail themselves of whatever information that's in these offices or to speak to individuals about it.

We certainly want to work with the labor unions at all of our sites. We talked about developing, maybe, a video that describes the program and can be distributed to all of -- all the unions, all of our contractors, all of our records people that basically explains the program. So, using as -- as -- as -- as many means as is possible as well as distributing the former workers' programs -- show this information.

So, we will use as -- as many avenues as possible to reach out and to educate folks about -- about the program and what it, you know, does and doesn't do and, you know, try to ensure that there's, you know, a consistent message and consistent materials.

And I think the second point to be made, Greg, is it is a great concern to us that we have -- have the appropriate staff to meet the demands of the office as individuals come in asking to fill out claims and -- and we'll, you know, work -- work -- work to try to do that and do what we can even prior to July the 31st to try to offset that -- you know, that -- what will happen on the opening bell, but working with claims prior to that time to start getting their information together and doing what's -- what's -- what's -- what's -- what's -- what's needed to help them in that -- in that process.

Beyond that, I don't know if I can be more specific.

MS. SPIELER: Jim, did you --

MR. ELLENBERGER: I'm not sure I can -- I can offer a solution, but I think the -- the outreach program has to be the advocacy office at the site or at the location, that they -- they sort of -- where the -- the former worker or the potentially covered employee actually gets their first, you know, face-to-face interaction with this program. The outreach folks become their advocate, become their ombudsman. I mean not advocates in the sense that they're attorneys representing them, but advocates in terms of helping them navigate or negotiate the initial steps that they have to take to determine, you know, am I a potentially covered employee or a potentially covered illness? What forms do I need? You know, when can I come in for counseling? All those -- those issues.

So, I don't think we need a pre-step before that step. I think that's got to be the step and -- and that's got to be your -- your task. And it's -- it's going to be tough to get that up and running in a timely fashion.

MS. SPIELER: Glenn?

DR. SELIGMAN: That's essentially what we've had in mind.

MS. SPIELER: Glenn?

DR. SHOR: It seems to me that we've got -- you've got a couple functions on that. You've got an information function, an assistance function, and an advocacy function. And advocacy may be -- to me, that -- that talks about, you know, if there's a dispute how you get beyond the dispute. I'm not sure that's what's coming in in this case.

To me, it doesn't -- it -- it doesn't really matter where it occurs and who it occurs to, but I think that the important one is Vikki's point about you're trying to build trust in this office early on. You know, if you've got

people who are working in this office as part of, you know, there's government employees maybe and there's contractors and there's some people who represent former workers or who have had other connections to the former workers, I think that's the way you're going to build the trust in this office as a place to go to get help on getting through this process.

It's the trust piece that's the really important thing to build up from the get-go. And then you can -- you can get that whether it's a government office or non-government office. You still have to get the right people in there to -- to have that trust.

MS. SPIELER: I -- Les, and then I -- I think I'm going to try to wrap this conversation up.

MR. BODEN: Okay. I'm just trying to clarify. I believe we've talked about so many different things here. We started talking about an ombudsman, and I'm not sure where we came back to that. And I -- throw the word out and just talk about the function for a second, and that's, I think, the function Glenn talked about. That is, people are having problems some place in the system and they want somebody who's not in the system because they're having problems with the system to be able to talk to.

And it's -- there are essentially two kinds of choices there. There's a kind of ombudsman, which is a person who -- who's not an attorney and who's got a sort of independent role, and there's an attorney. And the question is do we want to have people have the option of this other person who's supposed to be their advocate who's not a part of the process? And I thought that was where we started. And then there were all these other issues.

And I just want to make one other point about the other issues, and that is -- there is a point where people have these face-to-face or group meetings near the plant, and that is the people have to be aware that there's that possibility. And there I think the issue is how do you reach people who are current and former workers, and there are lots of ways of doing that that -- some of which do not need to go outside the DOE: union mailing lists, current retired workers, lists -- contact lists that are being developed by the former worker projects, and others as they seem plausible where you'd like to involve those people. So, there's that -- you know, what you talked about outreach.

But I think maybe we can get back to the issue of -- I think, actually, everybody who talked about this ombudsman function or this person function seemed to agree that that was a useful function to have as a kind of

release valve for people to be able to go to somebody and talk about their problems without necessarily having to go to an attorney.

Except maybe --

MS. SPIELER: I mean I actually -- what -- you're implying more consensus than I was hearing.

MR. BODEN: Well, I'm asking whether --

MS. SPIELER: And -- and what I heard was everybody agrees that these -- that outreach has to be aggressive, that the offices had to be responsive, that there have to be people who are trusted by the community who are involved in the process, and there seems to be a fair amount of difference of opinion as to what form that should take, or at least that's what I was hearing.

You know, I don't -- I don't know what to do with that other than to say to the Department that you should think about the different models that have been -- unless you think that there really is more consensus than I'm hearing.

MR. BODEN: I thought I heard at least some degree of consensus about this so-called ombudsman function, which is -- which is different from outreach, but maybe not, but I was --

MS. SPIELER: I -- I saw it as different from outreach. I saw it as -- as you were --

MR. BODEN: Right.

MS. SPIELER: -- describing it, as someone who can talk to people in the community and when people feel like nobody's -- you know, somehow there's something wrong with the way their situation is being handled, that they've got someone to go to who will then call -- who has a relationship with the people at the offices and can call 'em and say what's the story here and can't you fix it or explain to the person why it can't be fixed, and it would come from someone who was trusted. That -- that was the image I had in my mind.

Len?

MR. MARTINEZ: If the Department chooses not to use the former workers -- I have not heard Paul say that he's not going to use former

workers. I can't speak for all the sites, but I can certainly speak for Rocky Flats. There is an organized group at Rocky Flats that is made up of former workers, and if you don't think that they're vocal, you're wrong because they are. If you don't think that they have influence, you're wrong because they do. They not only have influence with their former work force and current work force, they have influence with the Department of Energy both locally and in Headquarters, and they also have influence with the current contractor.

So, my suggestion is that there should be an ombudsman person program that tap the former worker associations that are in fact in place, be they formal or informal, and if they use that program and those people, they'll probably have 'em in their office as an extension to the Department of Energy's contractor, whoever that might be, who's processing the claims to assist those folks because they will be able to talk to them in their own language, use their own acronyms, all those kinds of things, and help draw up claims and push claims through the process that gets stuck for one reason or another.

PARTICIPANT: Paul, if you need that in the form of a resolution, I'll go ahead --

(Laughter)

DR. SELIGMAN: Again, I don't see that as any -- which basically -- but we haven't thought of the intake individuals who would be former workers as maybe we should call 'em the --

MS. SPIELER: No, I think we're talking about something different. I do think we're talking about something different because it's not the intake worker we're talking about. We're talking about someone who doesn't have a defined role in this process, who stands somewhat separate from it, and who can be an intermediary for concerns.

DR. SELIGMAN: So, in other words, have another person high in that office whose role is that of an ombudsman? That's not a problem -- work on staffing -- in these offices other than we feel very strongly that the people who do the intake could be, you know, individuals who've had experience at DOE sites -- more than likely be former workers. But if you wanted an additional individual who won't be assisting in actually educating individuals and helping them with the claim forms but basically being the ombudsman serving in a sort of troubleshooting role, I don't see any problem with that.

MS. SPIELER: I would call it problem-solving role.

(Laughter)

DR. SELIGMAN: Troubleshooting, problem-solving, whatever --

(Laughter)

MS. SPIELER: Okay. I -- I do think that that is the -- at least that's the emerging kind of sense of the committee that you should do that and we would like to see that included in the --

DR. SELIGMAN: Yeah.

MS. SPIELER: -- staffing plan for the offices. And that -- and to the extent that former workers can be utilized in that capacity, that would make sense, and to the extent that it makes sense from a contracting point of view to make -- utilize the former worker programs. I think at least from what I was hearing there was some disagreement about that, but that the committee is leaving that to you at this point to make reasonable decisions about how best to use the existing resources.

MS. POST: I would just have one comment. Normally, an ombudsperson is not in the same office. And I think part of this discussion -- and boy, I don't want to belabor this point, believe me, at 6:37. But the whole issue is the independence of this person. And so, if the person is actually housed in DOE offices, if they're paid by DOE budget, I question the independence of that person. And if we want to just say, okay, we're going to have somebody there to problem-solve, that's fine with me but I'm not sure this is what everybody was talking about earlier.

MS. SPIELER: Len?

MR. MARTINEZ: My vision was this person was not on the staff. I don't think that you would need them to be on the staff. I think you would get volunteers who would volunteer to be the ombudsman person from the former worker associations.

MS. SPIELER: You mean in an unpaid capacity?

MR. MARTINEZ: In an unpaid capacity. Trust me. There are people out there who will do this to help their former workers. They're their buddies. They worked with them for 20, 30 years.

MS. SPIELER: Don?

MR. ELISBURG: I think a close analogy to what you may be talking about is what they have developed to try to deal with the local communication with the sites about everything, which is to equip the sites with specific advisory groups. And this is -- that kind of a -- the equivalent -- but it's a local advisory group or not necessarily a formal advisory committee, but some group of people out there who are part of the community who are part of the work force who would benefit by this program to be able to work on the local level and alert you and be able to comment on what's happening, you know, locally out in Rocky Flats, what's happening out in Hanford, who are people who have credibility and trust within the community.

MS. SPIELER: Just as a sort of follow-on to what I said before, I -- it probably does -- I think the sense of the body, as Iris suggested, was that there would be an independence from the office. I -- now, how that's done, I was assuming when you said staffing that you would include this in the budgetary sort of piece, but I think it's important that an ombudsman, for example, not have -- not -- that the person who's in charge of the local outreach office not have blind authority over an ombudsman who's troubleshooting or problem-solving issues that are coming up with regard to that office.

And so, clearly, thought needs to be given to how this is structured, but I think the sense of the body is that there should be someone who does this, that they should have -- they should have independence to some extent. I -- I understood the sense of the body to be that, however, that they not be unpaid. I'm sure there will be many unpaid people who will want to assist but that this should actually be a formally recognized role in the sense that it's someone who's paid to do this.

Is that a fair --

PARTICIPANT: Agreed.

MS. SPIELER: Sufficiently fair so we can move on? Okay.

(Laughter)

MS. SPIELER: Now I hear -- but I can count on you to talk about them really fast, right?

(Laughter)

MS. POST: Maybe we can -- Don's suggestion -- the advisory group, I think, is a good one. Many of those groups are unpaid and

volunteers, and I would say they can do the same role as an ombudsperson, and that could be a very informal group that's organized to problem-solve. Don't have to pay 'em, but you listen to what they say. They're very well connected in the community. And it would operate outside the Department of Energy. I mean it solves a lot of issues and problems that I think -- you know, and you could call 'em the police because, basically, they'd be the claim police watching over, you know, what's happening in the -- with the DOE local office.

MR. BODEN: I think we should leave this issue now and move on.

MS. SPIELER: Okay.

MR. BODEN: Even though it may not be 100 percent.

MS. SPIELER: Okay. On the issue of the treatment of the beryllium vendor and atomic weapon employers, is there -- is it the consensus of this group that the employees of those employers, although there will be additional challenges, certainly, to the development of those claims, that the employees who come forward who worked for those employers be treated in the same manner as the employees of the contractors and that would include not only outreach but also development and referral in appropriate instances to the medical panels?

PARTICIPANT: Yes.

PARTICIPANT: Yes.

MS. SPIELER: Okay. If you -- again, we will be talking about the form in which some of this should be communicated to the Department again tomorrow, but, Paul, you might want to think about whether there are some of these issues where you need a more formal recommendation from the committee than a consensus nodding around the table.

DR. SELIGMAN: Just the budget.

MS. SPIELER: Just the budget.

(Laughter)

MS. SPIELER: Okay. Moving on to the next scope issue, which is the constant confusing one that usually comes up in the context of hearing loss claims. The 360 -- is it 360.5? Is that what it is? 350.6.

Notice that went out to the contractors appears and -- well, on its face suggests that all work-related illnesses that are diagnosed by the medical surveillance program or local occupational clinics would be treated in the same manner for the -- by the Department as those that we've been specifically talking about. There's been a substantial number of diagnosed hearing loss claims, although there is some issue in those claims about whether the, for example, exit audiograms that were done by the contractors were included for consideration in making the -- the causation determination.

But leaving that issue aside, it -- it does appear to me, at least, that the -- the scope of this committee would include any workers' compensation-related issues that are within the scope of the jurisdiction of OWA and it does appear that the notice is -- goes far beyond the medical panel jurisdiction over toxic substances.

So, the question then becomes do we want to address the way the Department is going to handle the non-toxic substance exposure claims? Do we want to -- I'm assuming for the -- although we can discuss this in the morning, that for the contractor-insurer subcommittee that we are assuming that whatever we do would encompass the full breadth of that notice. But we should probably talk about that.

So, -- as Glenn looks at me quizzically.

So, the question's on the table what it was -- what the committees -- what are the members of the committee's thoughts on this issue of the non-toxic substance claims. It's clear that they're outside the jurisdiction of the medical panels. Any thoughts on this question?

Don?

MR. ELISBURG: It is very clear that this committee should deal with Energy -- any issue that is due to a -- as far as its charter -- the charter encompasses everything within the scope of 350.6 and the notion that the Advocacy Office is one way or another going to be shooting claims into the state comp system of some kind, et cetera, et cetera, I think we have an obligation to help them any way we can to the fullest extent possible. That is, I don't think we should be limiting our jurisdiction at all. We should be operating under the jurisdiction of the charter.

MS. SPIELER: I'm looking for the charter, but I'm pretty sure -- I'm pretty sure it said advise OWA on matters related to workers' compensation.

PARTICIPANT: Yes, it does.

MS. SPIELER: Which I think, and quietly, encompasses this thorny -- "advice on worker compensation policy issues of concern to DOE" is what it says. And so, clearly, I think it would encompass the -- the notice. And so, the question is how do we take up those issues and does the Claims Processing committee want to take up as a subcommittee the issues relating to how to deal with -- and state agency relations, how to deal with this question of the non-toxic substance cases?

Jim?

MR. ELLENBERGER: I would argue strongly that we -- we have to take up these issues. This is -- this is something we can't dodge. It -- regardless of -- of how it is dealt with by the Department of Energy, whether it is not our concern -- part of our charge and we need to do it. And it underlines a very serious issue that was a point of considerable discussion and attention in the legislation, and that is what do you do about other conditions that aren't covered by the legislation. We can't dodge that. We have to face it.

So, you know, without predicting what the outcome is going to be, I think we -- it's our responsibility to do what we can to address this issue.

MS. SPIELER: Rick?

MR. BLEA: I agree. I think either Vikki's or Don's committee have -- we should take it on the subcommittee role and then bring our ideas back to the full committee. But yes, I agree 100 percent with Jim we need to address this. But I think it should go to subcommittees first and then come to full -- full committee for discussion thereafter.

MS. SPIELER: Les?

MR. BODEN: I have a little bit of concern with time about this. I know there are a fair number of those -- of hearing loss claims that have already been submitted to state systems from some of the former and current worker screening projects. And I think it would be hard to deal with that if we waited a really long time, at least to have advice for DOE about what to do with them.

MS. SPIELER: And on the other hand, we are in agreement with the position to give that --

MR. BODEN: I wasn't suggesting --

MS. SPIELER: I don't mean --

MR. BODEN: -- necessarily to do it today, but I was thinking that probably September would not be appropriate.

MS. SPIELER: Okay. So, the timeliness of our next meeting, maybe, is partly -- the question of the timing of our next meeting may in part be related to this issue.

Greg?

DR. WAGNER: Could someone clarify the question as to, you know, where the advice needs to be given?

MS. SPIELER: Yeah, let me try. These noise-induced -- particularly with regard to these noise-induced hearing loss claims that are being filed in states based upon the surveillance program on -- in the former worker program, there are a whole variety of issues with regard to claims development and the extent to which DOE should assist claimants in the development of claims and how they should be dealt with. And moreover, if the DOE is going to be assembling files and assisting claimants in these claims, that may affect staffing concerns because there are going to be a lot of these, for example.

It will -- there are also issues about -- that were brought to our attention this morning that, for example, the -- when the medical surveillance is being done, people are having audiograms and that an occupational history is being taken but -- but exit audiograms that were being done by contractors are not being provided as part of the package. And so, there are situations in which people are now being advised that they have work-related noise-induced hearing loss as a result of their occupational exposure at a DOE facility that may be inappropriate.

And so, there are certainly a long line of processing issues in terms of DOE's assistance on these claims and state programs and the extent to which the claim is -- considered a valid workers' compensation claim within the meaning of the notice that's been sent to the contractors on which they're expected to pay.

MR. BODEN: I just had a couple -- I -- question #1 is whether these noise-induced hearing loss claims are treated the same as the toxic substances thing? And that's the -- that's the critical question. In other words, if they're considered as claims that there would be the -- both the assistance to workers and that would be covered under 350.6. And made -- I think the main

practical issue about that is that noise-induced hearing loss is essentially a quarter of magnitude, larger in number than, you know, than #2. Five to ten times as many, probably, claims for noise-induced hearing loss as for your second occupational illness, asbestos or silicosis or whatever it might be.

So, I think that that sort of brings the issue, I think.

MS. SPIELER: Just as clarification, the same as toxic substances with the exception of their vote to the medical panel because the medical panel jurisdiction is specific as to toxic substances --

Well, I think that it needs to be referred to subcommittees. I'm sorry -- and I think probably the State Agency Relations subcommittee should consider it, the Claims Processing subcommittee should consider it, and the Contractor-Insurers subcommittee needs to consider it. Does that -- and that's a lot, but do -- each subcommittee should just decide the extent to which they think it's really their -- scope of their expertise and want to weigh in on it, and we should put this on the agenda for the next meeting. Is that reasonable?

Let me move on in the next eight minutes. I think there was consensus this morning that I thought it might be appropriate to reiterate, that -- that we believe as a committee that there needs to be a single call-in line, not a DOL line and a DOE line. With a branch after the call is made based on whether there is a DOL claim that's been -- that's being processed or whether somebody needs information. And I just -- I wondered if we needed to reiterate that and -- or whether it needed any further clarification?

(Pause)

MS. SPIELER: And can I take silence as consensus on this? Yes? Okay.

PARTICIPANT: The -- silence.

(Laughter)

MS. SPIELER: And I assume that everyone thought that Glenn's suggestion that unions be added on -- in the terms of the facility listing and outreach process, that that was also one that -- a suggestion that the whole committee -- and would make to the Department in terms of thinking about the beryllium vendor and atomic weapon employee notices? To the -- to the extent that that can be done.

DR. SELIGMAN: You have to -- the purpose of developing this list was to determine which employees would potentially be eligible to apply for benefits under the Department of Labor's program. And I assume that the thought was to publish a facilities list now that implies that membership in a particular union confers this same status as an --

MS. SPIELER: No.

DR. SELIGMAN: -- employee of atomic weapons employees. So, in that respect, I just want to be a little bit careful --

MS. SPIELER: Of course not, and I think Glenn wants to clarify.

DR. SELIGMAN: Okay.

(Laughter)

DR. SHOR: I think I should give a little history of this. It -- it just comes out of the discussion with my boss, who is an operating engineer by trade. And he indicated that he said almost everybody who comes out of the Southern California local of the operating engineers got their start on the Nevada test site because that's where the jobs were. And so, everybody broke into the union by working at -- at that -- that test site.

So, the outreach -- and even if there have been no contact with that union of the people who may have -- nobody has heard through the union about this program. And so, it was just trying to find another way to get people who might have had -- have had those jobs intermittently or full-time and moved on to other things, to give them access to information about the program.

DR. SELIGMAN: I think in that context, then, it would certainly be appropriate to develop such a list of unions for the purpose of our outreach program rather than for the purposes of publication on the facilities list that determines eligibility for -- for, you know, applying for --

MS. SPIELER: I think that's fine. And I see all the heads going up and down.

(Laughter)

MS. SPIELER: Okay. I have two very important issues left on my list, and I --

(Laughter)

MS. SPIELER: -- I -- I suggest -- I'm not sure we can do anything about them. And they are the issue of the budgetary constraints within DOE and the problem of the relationship with DOL in finding out what's going on with regard to their development of their program. Does anyone on the committee have any suggestions about any ways that this committee could be useful in regard to either of those two fairly serious problems?

Greg?

DR. WAGNER: On the second, I suggest that we don't have any advisory responsibility for the Department of Labor except insofar as we're advising Department of Energy to coordinate well with Department of Labor.

Having said that, I think that Pete Turcic's presence here indicates a desire by Department of Labor to learn from and take advantage of this committee, and I would suggest that we do provide Pete a very strong suggestion that it's much better to have public engagement during developmental stage of an -- processes, rules, and regulations related to this program in order to be able to follow good management practices and try to identify and solve problems before they occur, recognizing that inevitably they will occur and it's going to be a better and more smoothly implemented program with better public involvement and more transparency.

MS. SPIELER: Len?

MR. MARTINEZ: I might suggest that this committee might suggest to the secretary of energy to have some conversation with the secretary of labor about sharing their information with us before they go public with an interim rule so that they have the opportunity to take the -- take advantage of what has happened and what can be derived from using this committee.

MS. SPIELER: Pete?

MR. TURCIC: I just want to point one thing out. Unless you have a meeting before next month, the plans -- go out.

MS. SPIELER: But there's always the possibility that we could

--

(Laughter)

MS. POST: We all have e-mail.

(Pause)

MS. SPIELER: I certainly personally feel and I think the rest of the committee feels as strongly on this issue and -- and I think Greg said it very well. In terms of what we think should be going on and -- and if -- again, I think we should consider tomorrow whether we want to put something in writing on this particular issue that we sent -- we sent to the -- well, to the secretaries of both departments or others, if that would be appropriate.

MR. TURCIC: We've been -- we've been advised we can have meetings similar to -- where we are asking for individual experiences. If you just go out and ask people what they think, what they -- give advice, then you do in fact constitute a Federal advisory committee, which has to go through the process of establishing a Federal advisory committee.

MS. SPIELER: Actually -- okay. Len, go ahead.

MR. MARTINEZ: I would suggest to you that that is informal and therefore the Department of Labor, not that they would, would be able to completely ignore anything that was said.

MR. TURCIC: I'm just repeating what the solicitor of waivers office said. I mean --

MS. SPIELER: My -- I mean my understanding is that many agencies have pre-decisional meetings with stakeholders that explore issues fairly deeply. And I think that the Department of Labor is missing an opportunity to avoid some serious problems in the future by not having those meetings and perhaps including either representative -- people from this group who represent stakeholder groups in those discussions. And further, I think the Department of Labor knows this from their prior experiences with some of these programs which have been difficult, time-consuming, and inefficient. And so, I -- again, I think we should come back to this tomorrow at the end of the day to discuss whether we would like to take some more formal approach to this.

And I assume silence on the budgetary questions means that we are -- other than that we feel strongly that the program needs to be funded, that we're not in a position at least at this point to go farther than that. Is that a -- is that fair?

And given that I promised that we would end at 7:00, I'll entertain a motion to adjourn.

PARTICIPANT: So moved.

MS. SPIELER: Adjourned.

(Whereupon, at 7:00 p.m., on April 26, 2001, the meeting was adjourned, to reconvene at 9:00 a.m., on April 27, 2001.)

P R O C E E D I N G S

April 27, 2001

9:00 a.m.

MS. SPIELER: -- Federal advisory committee to DOE, the Worker Advocacy Advisory Committee.

And Kathryn Mueller has joined us today. She was not present yesterday. I think everyone else is still here. Am I missing anyone? No, I don't think so.

We adjourned yesterday having not completed the agenda for the afternoon. We have three remaining subcommittees to hear reports and discuss their recommendations: the State Agency Relations subcommittee, Contractor and Insurer Cooperation, and Program Evaluation and Performance Measures.

We also after that will consider the -- how -- if we need to make any -- the form of our recommendations that we've discussed over the course of this meeting in any different form than simply the verbal form we've made as -- as part of our deliberations. And finally, we need to decide about meeting frequency, when our next meeting will be, and -- and where it should be.

A number of people have indicated to me that they actually have flights that are set that mean that they cannot stay until the initial closing time of 2:00. I actually -- it is my hope that we will complete this meeting substantially before 2:00, and so I'm -- I -- with the exception of Les, who has a flight this morning, I think everyone shouldn't have any problem at all.

Les, we won't, however, make you miss your flight.

At his request, I'd like to ask the committee's consent to have the report of the Performance and Evaluation committee first this morning so that he doesn't have to sit and be anxious about whether he's going to miss his flight.

MR. BODEN: Actually, how about second because Kate is supposed to -- I gave Kate something to reproduce --

MS. SPIELER: Ah.

MR. BODEN: -- and bring that I want to distribute. So, I -- I think I'll be okay second.

MS. SPIELER: Okay. Fine. Then, if there's no objection, I'd like to just turn this over to Iris for a discussion of state agency relation issues.

MS. POST: Thank you, Madam Chair.

State Agency Relations

MS. POST: The State Agency subcommittee met yesterday morning for a couple hours on various issues that we started to discuss at our last meeting in March.

We started off with the report by Kate Kimpan about what progress has been made to date about notification of the various sites or the various states and jurisdictions about this program and what may be necessary or what agreements need to be worked out with the various states. And letters were sent on April 3rd by Paul to the -- what I call and I think we all call the Site 2 states. They included New Mexico, Nevada, South Carolina, Ohio, California, Tennessee, Washington, Iowa, Texas, Kentucky, and Colorado.

And what the information -- contained -- and I -- I brought my packet if anybody wants to look at it, coming from Iowa. It was basically a cover sheet indicating some basic information about the Energy Employees Occupational Illness Comp Program Act asking for cooperation with the state. Also included in the packet was a copy of the Act itself and some other general information about the Act. It requested at a minimum a point of contact in that state, additional information, or more cooperation was needed so that the DOE would know who to contact in that various jurisdiction to work closely with them.

It also raised some issues to the various jurisdictions about statute of limitations, establishment of causation, and indicated that DOE was working with its contractors to try to avoid or waive those affirmative defenses to make sure that these particular claims were paid.

As Paul reported yesterday to the entire committee, there's been a lot of cooperation from these states. Some of the state fund states have also indicated cooperation, Ohio and Washington to name two. And I think the letters, from what Paul indicated, have been fairly well received.

There was an indication, I think Kate said, next week there'll be a draft of the letter that's going to the second tier states, and that should go out

then in the next few weeks to -- to the rest or the remaining in the jurisdictions.

Is there anything you wanted to add, Paul? Okay.

The major issue or the major recommendation that the State Agency Relations subcommittee talked about yesterday was the one that's written in the agenda. We considered the issue or question about in those situations in which there's no current carrier or DOE contractor to be named the employer in state work comp proceedings, should DOE directly be the employer for the handling of these claims? And the answer to that question is yes, and there was unanimous consensus in the committee that DOE should step into the shoes of the -- of the situation where there is no carrier or contractor.

And we also discussed what barriers there might be to accomplish this, and we didn't think there would be any barriers at the state level because states will not care who the employer is -- is so long as the claim is paid. We did indicate that the employer would have to be named probably in the records of the state agency as the former employer and not the Department of Energy because Department of Energy, obviously, is a Federal agency.

But I think in the judgement of the committee, we didn't feel that that was a major barrier, at least at the state level to get all of those claims paid and managed.

We talked a little bit about that we thought there would be basically three kinds of claims in these situations. There would be the accepted claims in total, there would be accepted claims with limited issues, and there, of course, would be denied claims. So, a state agency would be handling any one of those three possibilities through its normal procedures. If DER denied claims and there's a significant statute of limitations issues, obviously no benefits will probably be awarded to the individual worker.

The cases with limited issues, we thought that even if there is an accepted claim by DOE or one of its contractors that there's still going to be some issues about permanency, et cetera that are going to arise and we talked about some ways that that might be handled on a state level or through some kind of side agreement with the contractor and the worker, perhaps to go through an informal dispute resolution process or whatever to keep it out of the agency.

And I think that about concludes all we got discussed in two hours. We are going to have another phone meeting in a couple weeks where we're going to cover some of the issues that we did not get discussed.

MS. SPIELER: Thank you, Iris.

Other members of the subcommittee have anything to add?

Les?

MR. BODEN: Another issue related to the case in which there's no longer a viable identified employer was the issue of where there was an insurance contract that was not retrospectively rated, in which case it was likely in most circumstances that the insurer would not be following the guidance that has been issued by the Department of Energy to its contractors. And I think there was also a question raised there about whether the DOE in those cases should step into the shoes of the former employer. Is that --

MS. SPIELER: And the subcommittee concluded --

MR. BODEN: And I'm trying to -- did we conclude that it should?

MS. POST: I believe we did, that if there was no current contractor or willing payer, that DOE should step into the shoes of that former carrier or -- or contractor or even possibly a subcontractor.

MS. SPIELER: Other subcommittee members? Jeanne, you had another example of a situation, I think, that needed to be covered and that was included in the discussions of the subcommittee and I think we should get that on the record of the -- in the transcript of this meeting.

MS. CISCO: At Portsmouth we worked for a contractor under DOE and then the company -- USAC took over. They went private and they went self-insured. But I thought that would cover what he just -- since they are saying that they are not going to accept the claims in the state of Ohio we have to file with the self-insured with the present company. So -- but I thought that would be taken care of by what we had decided to do, have DOE step into the shoes.

MS. SPIELER: I -- I just wanted to make sure that that was one of the sort of permutations of -- of the sort of factual issues in which the subcommittee is recommending to the full committee that we -- we strongly recommend to DOE that you step into the shoes of every situation, essentially,

where there is not a current contractual agreement in which you can leverage payment on a claim.

Is that fair, Iris?

MS. POST: Yes. And the -- yes, absolutely. I think we did discuss that and came up with that conclusion.

There was one more item that I forgot to report on. When we talked about the cases that are accepted but which there won't be complete agreement, say as to the amount of entitlement a worker is entitled to, we talked about an alternative dispute resolution process where you have either mandatory mediation or arbitration group or board or person and that that would have to be worked out probably with each individual worker.

We also talked about how in these claims that there should be a development of some kind of criteria or standards for a contractor to look at and they should be rolled out nationwide to basically cover a situation so that a contractor or a TPA who's working for the contractor to look at these claims can look at in determination as to what should be awarded or -- or -- or given to the injured worker for loss of wages or permanency case or disability case and that it would be more uniform and we thought that that would be fair.

MS. SPIELER: Les?

MR. BODEN: Let me just add a little bit to that. We talked about a potential problem if a case is contested, namely that it would not necessarily be the case that medical panel evidence would be admissible in any particular state, which made it, I think, particularly valuable if there was some kind of procedure in cases where there was a question about permanency or some other related issued that there could be a procedure that didn't necessarily go through the normal state system.

And it actually occurs to me now we talked about the fact that several of the states, but not all of them, in some form or another use the AMA guidelines as a way of -- as an input into the disability determination process. And it might be possible, and this is something that maybe the Medical Panel group would like to discuss -- well, actually, no, they -- they can't do an AMA Guides rating 'cause they're not going to be seeing the person, but there is a question about how that might be done. I think that remains unresolved.

MS. SPIELER: And that -- and that -- those questions were left for the discussion at the next meeting, is that right?

MS. POST: Yes. Thank you.

MS. SPIELER: Anything addition from committee members?
Discussion by the full committee?

Vikki?

MS. HATFIELD: I'd like to understand if -- when the workers' comp is filed with the state agencies, are those agencies receiving special training of any kind to handle these workmen's comp issues?

MS. POST: I think there -- and that's what's been started by Paul and the Office of Worker Advocacy is an education effort through the -- the correspondence and information given to states. The -- the -- the Task 2 states, many of them are ready, the agencies have a lot of knowledge about these cases already and through Kate Kimpan's contacts, but, you know, nothing specific that our committee discussed. And what you're talking about is kind of like a cheat sheet or some kind of information so everybody knows what to do with these particular cases at a state level.

MS. HATFIELD: I think at the state level they don't have a real -- I know in our state. I can't speak for all states, but I can speak for our state because having gone through workmen's comp issue that it has been very difficult. They do not have an understanding of what they're supposed to do. They don't understand the AMA Guide. I had to send them a copy of it. And so, they don't understand that and they don't understand that the -- the medicine -- it's a fight. It's a fight every single time. It's a fight. And who's going -- who's going to be into that? I mean they need to understand the medicines and -- and the people who need the medicines and -- and they can't wait for two months for them to make a decision, and I think that's what's going to happen because that's what I see. And so, they need to have some understanding about what kind of medication these employees are actually going to take and what kind of disability they actually have because they -- what they're basing it on is -- is not really what they need to be looking at.

MS. POST: I think your point is well taken, Vikki. The -- the way, I guess -- I think the committee assumed this was going to happen is that these claims are going to be accepted by the contractor. So, they will not get into the litigation process in the agency. And the contractor or the DOE will control how much is paid on each one of these claims.

Now, if there is a limited issue, as a state administrator, my best advice is to keep it out of the state contested case system for the very reasons you just expressed. And if you go through an informal dispute

resolution process on your own through a mediator or arbitrator or mutually agreed on decision-maker with those few issues that you might still have disagreement on, you're keeping it out of the system, you're getting people knowledgeable about the particular problem, and, you know, it's just going to be a better result for everybody, in my opinion.

But certainly, our hope is that these cases don't get into litigation, that they are -- that folks are able to reach an agreement about, number one, that they're compensable and, number two, how much the worker gets. And so, hopefully, what you're saying won't happen. We know it will in limited circumstances. I find it hard to believe the agency doesn't know about AMA Guides, but --

MS. HATFIELD: Trust me. We did have to do that.

MS. POST: I'm sure there -- there's some out there. But yeah, you know, I don't know anything -- all the jurisdictions could do, I suppose, is to try to educate their own people about these particular cases and their special needs or information that's required.

MS. SPIELER: Les?

MR. BODEN: I think Tennessee has a specific problem because they're a court-administered system. They don't have an agency. And that's -- well, that's tough.

MS. SPIELER: I was going to say, and in addition, they clearly have no clue how to deal with occupational illness cases at all and that's why you're getting some of this. And I -- I don't know -- it's kind of an interesting question that you're raising that may go beyond what we can do here about the fact that agencies that have not -- or states that have historically never paid occupational disease claims are now going to be seeing occupational disease claims really for the first time as a result of this program.

And -- and -- and, you know, it's not that it's an expansion of the law. The law provides for -- for occupational disease compensation, but it's not been the habit to pay them.

Greg?

DR. WAGNER: I just wanted to ask Iris for clarification. Were you suggesting or was the subcommittee suggesting that a national alternate dispute resolution group that -- that DOE set this up or that this be done state by state?

MS. POST: I don't think our discussion got that far. It was just discussed, and I think that we put that off till our next meeting. But whenever you talk about any national or Federal program, states get really nervous.

(Laughter)

MS. POST: So I would definitely try to stay away from that and just -- my personal opinion is state by state is a better idea.

MS. SPIELER: Other general comments or specific questions for Iris or members of the subcommittee?

Jim?

MR. ELLENBERGER: Iris, has the committee discussed at all the very real possibility that people who apply under the three diseases -- to the Department of Labor for compensation for one of the three diseases covered by the Act will also seek compensation under state workers' compensation and what -- and if the committee has addressed that, what -- what's the feeling of the committee?

MS. POST: The only manner I think we -- we might have discussed it either at our first meeting or second meeting was that we know that's a possibility and that we think it's fairly likely. We were concerned this morning at the Insurers-Contractors meeting about the time frame and the time line to figure out how this is all going to happen and where these cases are going to stay or sit or are they going to go through one process or the other first and what about issue preclusion, claim preclusion, and all those kind of sticky issues and -- and, no. I mean we -- I think we started addressing it, but we've not reached any conclusion.

MS. SPIELER: There were concerns expressed at both of the subcommittees about how this would work in terms of timing and whether it - - exactly what the effect of a parallel DOL claim should or shouldn't be. And I think that that does need to be addressed more in -- in a number of the subcommittees because -- and -- and by the Office of Worker Advocacy.

Other comments? Kathryn?

DR. MUELLER: Just a minor comment. Since it seems like we were talking about the guides and impairment ratings and things, it seems to me that the physician panels the way we have them set up is really just doing the causation part and so the states really would end up -- because I'll

say it's different systems -- would end up assigning it to a physician. Once they have it set, they'd assign it to a physician to get that impairment rating. So, you know, I would think that's how that would work. In other words, you can get a physician once you establish the claim, and that physician in the state would be how you'd go through that. I mean I can't see how we could set up a separate system than what's already in most states.

MS. SPIELER: Iris?

MS. POST: You mean a separate -- and that's not exactly what I was talking about. I think we were just talking about criteria to look at. And that was not a recommendation of the committee. We just discussed it.

And even to come up with a range for carriers or for the Department of Energy or its contractors to look at in terms of what -- or considerations that should be looked at when making those decisions as to the entitlement of an injured worker, I think that might be helpful even at that extent. But I agree. You know, the -- the -- a physician is -- some physician's going to have to make a determination of the AMA functional impairment rating.

MS. SPIELER: Les?

MR. BODEN: I think we do worry about what typically happens in some states, which is that there isn't willing payment of -- there isn't a system set up where workers feel comfortable that they're going to be treated fairly in the process, that disputes arise and then you -- you're talking about years before a pay-out is finally made on the claim so that anything that -- that -- that the -- the DOE could do with its contractors to provide a system that provides payments that are acceptable to workers and come more quickly than they would if they got into the litigation system would probably be good to think about, and that's what we're going to try to think about in our next meeting.

MS. SPIELER: Other general issues?

Glenn?

DR. SHOR: We -- we talked about this a little bit at this morning's contractor meeting, but I'd like to raise it here. It's also just encouragement that the program try to get on the agendas of all the meetings of the state workers' comp administrators' sort of regional meetings as well as the national meetings just to -- 'cause I don't think there's very much understanding about this program out in the field and the state people do have

a lot of questions about how it affects them and -- and what cooperation they would -- be expected to get.

MR. BODEN: I think the western meetings are in June. Is that right?

DR. SHOR: Yes.

MR. BODEN: So that's --

DR. SHOR: There are -- there will be --

MR. BODEN: -- the states, you know, involved in this would be -- could be at those meetings.

DR. SHOR: We're hosting the western meeting and we have invited the program to be there.

MS. SPIELER: There's a specific recommendation that comes from this subcommittee and also from Claims Processing, I think, with regard to this committee's recommendation to the Department that the Department stand in the place of -- of the employer in whatever mechanism is appropriate in each state in those claims where there is not a current contractor with whom an arrangement can be worked out directly with DOE for the payment -- for the handling and payment of the claims. And I would like to suggest that we discuss that specific recommendation now and decide as a committee whether that's a recommendation that we want to make to the Department.

MR. ELLENBERGER: I --

(There was a problem with the sound system and the meeting was interrupted.)

PARTICIPANT: Mine's okay. You could just walk over here.

MR. ELLENBERGER: I thought there was a general consensus already that the committee was in favor of that approach and unless there's feeling that we should approach this in a different manner, I think that strong -- we ought to make a strong recommendation to the -- the Department that this be the case.

MS. SPIELER: Does anyone disagree? I mean it's our understanding from the conversations we've had in the subcommittees that one way or another that DOE is -- has to pick up the cost of these claims and the

complexity that follows if DOE doesn't do it directly is actually remarkable. I say that based on a -- on several subcommittee meetings that I've been at, and the -- both in terms of the insurance relationships, the subcontracting relationships, and the questions about who has liability and doesn't have liability could probably take most of the energy that this program has available.

So, I -- I think it makes sense and hearing -- if there's no objection, I think that it should be made clear to the Department that unanimously this committee feels very strongly that a mechanism be identified by which the -- the DOE can stand in that place and that that be done as quickly as possible so that as claims come in that they not be subject to lengthy litigation prior to the time that DOE alerts the agency that they have responsibility for a claim.

Any other issues relating to the State Agency Relations committee?

Paul?

MR. SELIGMAN: I actually just have a -- a question for my own information, which is if the DOE in the -- in the case we've just described comes forward to make such payment -- I guess this is actually a question probably for Iris and Kathryn -- would -- would there be an opportunity -- 'cause I suppose at some point I'll be asked this question -- for the Department to go back to the state uninsured funds that have been established to essentially cover these claims to essentially recover or recoup the monies that the Department of Energy paid out for -- for these particular claims? Or Glenn. Sorry.

DR. SHOR: We had actually been talking about this in the total opposite direction, that if the uninsured employers fund had picked up one of these claims that we would want to go back to the Department of Energy for payment. We have not -- we're not expecting that the uninsured employers fund would be asked to pay for these.

MR. SELIGMAN: What is the purpose of an uninsured employers fund?

MS. POST: When the current employer has no insurance -- we call them bad actors in Iowa -- and they have a mom-and-pop operation, somebody falls off a roof, they're not insured, the -- the uninsured employers fund picks it -- picks up the claim.

DR. SHOR: And it should be pointed out the uninsured employers fund --

(The meeting was interrupted again by problems with the sound system.)

MR. SELIGMAN: Or if the company no longer exists, as the case we're describing? Again, this is just for my own education more than anything.

DR. SHOR: If the company no longer exists and had an insurance policy, there's an insurance policy of record for the date of the injury, that generally would be tapped for -- for that claim.

MS. SPIELER: Let me just interject. Part of the problem with going to the uninsured fund is that the uninsured fund is a representative entity that has the right to defend claims. So, the -- if the DOE accepts the -- were to accept the claim and then turn to the uninsured fund for acceptance, they would not want to accept it based on the fact that they had not -- been not -- not been given the opportunity to defend it. If it's turned over to the uninsured funds prior to the time that the DOE accepts it, then the claim will be litigated. It will be contested in the way -- in the manner that occupational disease cases are traditionally contested in the states.

And so, as a practical matter, it's a nice idea to think that the uninsured funds are out there to protect DOE from this liability, but I think it wouldn't work as a practical matter even if they had some liability.

MR. SELIGMAN: It's not a matter of protection. You know, again, we've all been very sensitive about the Federal role here and -- and the Federal is not imposing on states any requirements, and I just don't want to -- I want to make sure that if the Department's accepting this that we are not stepping on a, you know, fiduciary relationship and -- and a -- and a legal process that already exists within a state to cover such circumstances. That's the extent of my legal training. I just --

MS. SPIELER: I actually think -- Paul, I actually think it's the obverse, that if you expected the uninsured funds to pick up these claims that you would in fact be stepping on the toes of the states if you didn't allow them to defend them. So -- and -- and I -- the nodding heads from the state -- the current state agency people clearly agree.

Anything else on this issue? Or on State Agency Relations? There are a number of important issues that remain to be discussed by the

committee and we'll -- I'm sure Iris will be coming back with additional recommendations or suggestions in the future.

Are you ready, Les? Okay. We're going to take up Performance Evaluation now and then Contractor and Insurer Cooperation after that.

Program Evaluation and Performance Measures

MR. BODEN: You should all have in front of you a copy of the minutes of our meeting yesterday morning. In that meeting our committee focused on trying to develop a list of performance indicators that would be the most important to develop early, namely to develop a list of information that would be collected by DOE in the process of outreach, intake, and claims processing, which is supposed to start soon.

There are other performance indicators that might be used. For example, interviews of workers who had gone through the process. But developing those measures could happen at a somewhat later date.

So, what you have in front of you is a list of potential performance indicators grouped essentially by the source that would be developing the information. But the idea would be that DOE would have an integrated database and that much of this data would be linked together by the name or an identifier of a particular worker who had made contact with the program and possibly had a claim and had the claim processed.

So, let me just take you through the list. The first is outreach and intake, and the idea here is that you've got a person with a record and we'd like to know -- this is a kind of outreach measure -- how the person found out about the program. How -- and then there's a question of convenience of the intake office. How long did it take this person to get to the intake office where their information was being -- was being gathered, whether actually a claim was filed, and whether the claim was state or Federal or both, what the condition was that was alleged, who the contractor was and what the location was -- contractor, subcontractor, whoever that was.

And then there are questions about record requests, the types of records that were requested, and the dates that the requests were sent out for those records, the dates that each of those kinds of records were then received back, so that's a kind of performance measure of how well the record retrieval system is doing, and the dates that the -- the -- those records were sent to the medical panel.

And then, as a measure of how good a job the intake was doing on the record development, there's a question about whether the medical panel then asked for additional information because the information wasn't complete and then the date that those -- that additional information was sent to the panel. I guess you could have several of those if it didn't do well. You could have several additional requests, potentially, but hopefully there will only be one.

And then there are some measures that might not be tied to the specific individuals that might nevertheless be useful, and they have to do with some waiting times in the -- in the outreach or intake process. If it's a -- if it's a phone contact, you might actually in an automated way be able to measure the time that people are on hold before they actually reach a person, which is something I would love to have measured on a lot of my phone contacts with all sorts of people. Then there's -- for people who go to the intake locations, how long does it take them to get the service that they're -- that they're looking for.

And then, finally, there's another outreach measure that didn't quite fit into this, and that is if there are, for example, outreach measures that are done by mail, you'd like to know how many people were actually contacted by the mailing and how many people responded by mail or phone to those outreach efforts to see how effective they were.

And -- sort of list the performance measures that are based on A through L, and I won't go through them again, but they're the key performance measures and mostly have to do with either time or the adequacy of the records that are developed by the intake process. So that's number one.

Number two has to do with state workers' comp systems, and we basically thought that the most important thing that we could get for state workers' compensation systems again had to do with -- with timing, how long did it take to get a hearing and how long after -- after the -- the hearing date did it take to get -- to get resolution of the claim.

Then there are medical panels, and some of these things I think actually were discussed by Steve when he presented the Medical Panel subcommittee report. One of them is consistency of recommendations, and I think we both have the same -- both subcommittees have the same idea here, which is essentially a blind re-reading of a -- of a portion of a subcommittee -- sorry, of panel reports by another panel for consistency. We also, I think, both agreed that validity would be nice to measure but not so easy and we don't have a specific recommendation on that.

C refers back in a way to the -- to the first group of recommendations about intake and that is questions about the adequacy of the medical exposure and employment evidence that is given to the medical panel and on which it's supposed to base its decisions. The date of receipt of the -- of the sort of complete information on which they base their decision and then from that date we want to know when the recommendation is forwarded to the contractor and insurer, how long is the process taking from when the panel system gets the information it needs to make a decision until when that decision goes on to the contractor or insurer who then evaluates the claim and makes a decision. And again, that's sort of a summary of A through E.

And then, finally, where I think in a way the most important part of the system is going to be and where -- and this is a personal opinion, not necessarily the other members of the subcommittee -- and where the development of good measures and good feedback mechanisms is going to be particularly important is with the potential payers of the state workers' comp claims. And here we have a list of possible performance measures.

After a positive panel evaluation is received or a positive evaluation from a worker screening program is received, is the claim paid or is it not paid? Is it paid -- is there -- is there a contest which denies liability and then payment or is there no contest denying liability? If there are payments, what are the payment amounts? What's the time to approval of payment after the receipt of a positive panel evaluation? What's the time to actual delivery of payment after the approval of payment? And I think F is a little duplicate of some things that I've said before as is G -- F and G are the percentages overall and the other things are for individual claims whether or not they were paid.

And I think we'd also like information if there's a limited dispute on, for example, apportionment or disability. We'd like to know for every claim whether there is such a dispute whether a worker has to get -- whether a worker has an attorney, and I said -- I paused on the "has to get" because apparently there are some cases already where attorneys are looking for clients before the program has gotten off the ground.

And then I think we want to know about the costs of delivering the benefits. And the costs that -- that I have here, and there may be others to the contractors, would have to be -- would ideally collect -- be collected on a claim-by-claim basis but that might not be feasible, in which case we'd certainly want the overall cost. What are the costs of gathering the medical exposure and employment information? What are the costs of processing the claims? And what are the costs of legal services in resolving disputes? With

the idea that we'd like to have a low level of cost per dollar of benefits delivered in the system.

There's one final point about this, sort of going back to the beginning of the handout. There are really two main functions for performance measures. One is to evaluate overall effectiveness, and the second is to provide feedback to the outreach, the intake, the contractors, the state systems that would help them improve their effectiveness. Sometimes where there seem to be problems, identifying that there's a problem and then maybe working your way back to try to figure out why the problem exists so that it can be corrected.

And a couple of points that Glenn raised that I think are important to measure -- to mention is that in the performance measure program evaluation component, there should be processes built in to look at refine, replace, throw away, the individual measures that we've developed now because when you actually implement a performance evaluation system you find that some of the things that you thought were going to work don't work, you find other things that you're going to need, and secondly, to disseminate the lessons learned perhaps by meetings of outreach people, of contractors, and so on in which performance is discussed and lessons that people have learned are shared with each other.

MS. SPIELER: Thank you.

Comments, suggestions, questions?

Mark -- Steve?

DR. MARKOWITZ: Mark -- Les, did the committee discuss at all the -- looking at the effectiveness of outreach, finding out how many of the former or current workers know about the program, understand where to go if they have a potential claim? In other words, is this before they walk in the door or before they make a phone call?

MR. BODEN: I don't -- did we discuss that? In a -- I guess in a previous meeting we had talked about that and that we had thought that the way to get at that was through some sort of survey mechanism and that this particular meeting, I guess, focused on the data system. So, if you'll -- if you'll look at the last set of minutes I think you'll see that that was also on the list and that this list is really for timeliness to try to help the Department in thinking about how it's setting up its data system and what data elements it wants to collect.

DR. MARKOWITZ: How about the issue of the secretary -- the potential that the secretary will review claims that come out of the physician panel and perhaps alter the decision of the panel?

MR. BODEN: That's good. I don't think we discussed that in our meetings although we talked about that at some length yesterday. And I think it would be easy to -- to add that to the list, and in that case we'd be talking essentially about an evaluation of the process between the time that the medical panel made its decision and the time that the contractor received, I guess, a package from the DOE which would include not only the medical panel decision but any contrary decision on the part of the secretary of energy. Is that -- that your --

DR. WAGNER: There would be two issues. One is the timing issue, the other is the -- the success of the medical panel in reaching a judgement that was upheld by the secretary that you'd want to know.

MR. BODEN: Although I would suggest that it isn't clear whether the measure that you had would be a measure of success of the medical panel or a measure of the success of the DOE review process, but it would certainly be a measure of the consistency of judgement between the two.

MS. SPIELER: Paul?

MR. SELIGMAN: Although it is -- is my hope that by regulation that performance measure will be 100 percent, that basically we do -- in establishing the -- the regulations by the panel is avoid -- and indicated there will be essentially no -- no second guessing by the secretary or his designee regarding the -- the determination of the panel.

DR. WAGNER: Except I think that the legislation points out that there -- if there's been substantial evidence that's been overlooked by the panel, perhaps it was unavailable to them, you know, got lost in the mail, that it -- that -- at the secretarial review that there would be an opportunity to right wrongs.

MR. SELIGMAN: That's correct, and again, by regulation, it was my hope that we would ask then for -- with that new substantial evidence a -- essentially, a second panel review. I would rather not, again, have the secretary or his designee, again, re-reviewing that case based on new information but would rather have that resubmitted either to the original panel or to a second panel to -- to look at that case. I -- again, this is my own personal opinion, but I just really think it's important that -- that the secretary

or his designee not be in the position of overturning or second guessing determinations made by the physician panels.

MS. SPIELER: Les?

MR. BODEN: I think -- two thoughts. One is it's always good to have a measure that you're pretty sure to score 100 percent on.

And the second is that that suggests that we need another measure which somehow talks about whether a medical panel decision is sent directly or is returned to the medical panels for reconsideration. Or -- I think that would be --

DR. SHOR: I mean the -- the complexity we introduced yesterday about the appeal process and that a claimant could have a second review would need to be addressed in the measures.

MS. SPIELER: Jim?

MR. ELLENBERGER: Did the committee -- this list is -- is a list of very objective measures that you can -- you can be fairly confident of reporting on whatever the results that you find. Had -- have you considered subjective factors, particularly satisfaction, satisfaction by claimants, by contractors, perhaps even by state agency people that have to deal with the system?

MR. BODEN: We think that a process of getting information - - I'm not sure I totally agree with the subjective-objective dichotomy there since I've had to work with supposedly objective data in much of my research career. But that aside, we certainly think it is important for the Department to get feedback on -- on what the -- on the perceptions and experiences of everybody who's involved in the system to under -- to -- at the minimum because there could be things that are going very well or very poorly that we had not thought about beforehand and -- but also because there are some important parameters of the system that really can't be fully captured by these numerical measures.

And again, if you look at our first set of minutes, a number of items in those minutes include the kinds of things you discuss, Jim.

MS. SPIELER: Ted?

MR. KATZ: Would you entertain -- I raised this at the Medical Panel subcommittee as well. Would you entertain giving some thought to

evaluating not just the panels as a whole but the individuals on the panels, their performance?

MR. BODEN: That's interesting. I think, again, that's not something that we had discussed but certainly, it would be a very easy matter to do two things. One is we could have in the records the members of each panel identified along at least with -- with their -- I mean these are just sort of zero-one recommendations, right. It's "accept" or "not accept" is the bottom line.

And we -- and -- and the DOE could in that case in -- in the -- look at two things. One is whether somebody was consistently on the other side of two-to-one panel decisions. But they could also look at the cases that were being given a second read for purposes of evaluating consistency of panel decisions and see whether the second -- whether there were individuals whose first read was not consistent with the second read on a regular basis. That would be quite simple, I think, to build into the system.

MR. KATZ: And then I just would raise I mean whether -- it seems like there might be a role as well for subjective judgement by co-panelists or -- I'm not sure how you do that and I know that raises difficult issues, but -- but -- but competency. I mean it's not just the yes-no but their role in the panel's decision-making. And maybe that's something that's just too difficult to address but it's something you would address if it were your employee. You would -- you would go beyond the sort of cold facts, but --

MR. BODEN: I -- I'd be interested in what other people think about that.

MS. SPIELER: Don't?

MR. ELISBURG: I think you're headed into a snake pit, Ted. I -- I don't know what where else NIOSH or anybody else does that kind of judgement on doctors. If so, you can perhaps draw the matrix or the template from what you do on judging other doctors that way. But boy, I don't think you want to get in there in terms of that kind of professional judgement without some very careful eggshell-walking. I'm not suggesting it, but I think this is not -- when you get into second guessing the medical profession just like any other professional, I think you're getting into peer review, you're getting into all kinds of crap, and I think you've got to be careful.

MS. SPIELER: Greg?

DR. WAGNER: Without having, you know, specific individual peer review, I think that there have been mechanisms with panels of X-ray classifiers, for example, where there have been efforts to determine consistent -- a central warming tendency, whether there are outliers, whether the panel -- the kinds of measures that Les was suggesting would give both feedback that could help create consistency in panelists as well as the identification of people who are not operating in a way that's consistent with the main body of panelists where consideration could be given to non-renewal after, you know, an initial term. Basically, the measures that Les talked about that would be quite simple, namely tracking non-concordance and also using the kind of feedback that Steve mentioned yesterday that would involve review, blind review of some set cases by multiple panels in order to be able to get consistency among panels would be various ways to do this.

DR. SHOR: And in fact, you know, the panels have multiple physicians, so there's a built-in check on any outlier. So, I -- I don't really worry so much about the individual person who's -- who's not quite on -- on track.

In fact, if you think about it, it may not be bad for the system to have some variation, you know, within a range, but some variation that would make the process dynamic. But I think having three-person panels is an automatic check on any particular outliers.

MS. SPIELER: Len?

MR. MARTINEZ: I don't necessarily agree with that.

(Laughter)

MR. MARTINEZ: But I think there ought to be some kind of assessment process on the performance of the panels on a -- on a broader basis and perhaps some measurement -- some -- some statistical measurement can target things that -- that are panels that you would then go look at more thoroughly or in-depth.

But I certainly think that the -- that the program ought to be able to have a way to assess the overall performance of the program and consistency of the program on a larger scale that also provides you with enough information to be able to zero in on any particular panel that seems to be an outlier or an individual on the panel that seems to be an outlier because humans are humans and human dynamics occur. And someone who is not perhaps implementing the program appropriately could outlast those who are simply because they have a different kind of personality.

MS. SPIELER: Greg?

DR. WAGNER: Yeah. Steve, I'd agree that people are hopefully going to be selected for their excellent independent judgement and that should add a dynamic quality to the process. But someone who is a consistent outlier might also create substantial inefficiencies in the process by creating decisions that would beg for continual review. I'm not sure that we're going to get the inherent benefits just by -- by having three-person panels. I would really agree with Len that there needs to be a -- a statistical and human process of oversight review and assessment of the panels.

MR. BODEN: I think also that there can be and generally are even if they're not formally built into these systems, you know, informal feedback if somebody -- I mean, you know, I can imagine situations that wouldn't be picked up by the kind of process that I talked about. You know, for example, somebody who basically just says, you know, yes to the other panel members and doesn't really add anything to the panel in that way. That person wouldn't -- would be, you know, would be 100 percent on the measure that I talked about but might not be a valuable panel member. You know, or somebody who eventually reached agreement but who, you know, dragged the process out in some way or made it difficult for the other panel members. And presumably, there would be some at least informal mechanism for -- for that to be picked up.

Steve, a question. Are these panels going to have -- will each panel have a leader, a person who's responsible for putting together the panel's decision, conducting the panel meetings and so on? Because if there were leaders, part of their responsibility might be if they, you know, saw something that they thought wasn't working well to forward it on.

DR. SHOR: We never discussed that. I know in the draft guidelines the Office recommended a person designated as a point of contact but differentiation within the panel we never discussed.

MS. POST: Can I ask a question? These medical panels are the Department of Labor medical panels? No, I'm wrong.

MS. SPIELER: Just for clarification, these are the medical panels that review claims that will be going to state compensation systems for toxic exposure work-related illnesses. The DOL process is a separate process from this for review of claims.

MS. POST: It -- I just had one other follow-up question. I had a concern about the physicians on these panels. The compensation, then, that

these physicians receive is what? 'Cause I've heard somebody laughingly say 60 -- \$6 an hour.

MS. SPIELER: Not -- that's a NIOSH question, I think, isn't it?

MR. KATZ: And that's correct -- that's a correct figures. It's \$133,000 annually, but of course, it's prorated by the number of hours you work. So, that's what that comes out to. It's not a lot, that's true. But that's --

MS. POST: Okay. I'm changing my mind about the performance evaluations because --

(Laughter)

MS. POST: You know, do you expect physicians to sign up for this? Because that's incredibly low and -- which I'm sure you're aware of. And are you assured you can get quality folks for these physician panels?

MR. KATZ: That's an empirical question. But it's what's written into the law as far as providing so -- pay, so it's not -- I don't think we have flexibility there.

MS. SPIELER: Les?

MR. BODEN: Actually, there was a study done a number of years ago comparing the British system of blood donation with the American system and paid donors with unpaid donors, and it turned out that paid donors were -- gave much lower quality blood than unpaid donors.

(Laughter)

MS. SPIELER: And look -- and look at the advisory committee, right?

(Laughter)

MR. BODEN: So, I rest my case.

MS. SPIELER: Don?

MR. ELISBURG: In a way I'm following up on -- on what Iris maybe was saying. I think that it is very important -- I'm not disputing you wanting to be able to evaluate how these panels decide things and I -- I

think there's obviously some merit in the kind of stuff that Greg was talking about. But I -- I think you have to be very careful here not to discourage the doctors that you want to recruit on these panels and you have to be very careful not to be setting up a construct that says to the very experts that you need to have who know this stuff I don't want to be involved in this if somebody's going to be giving me a grade every time I decide a case.

I think there is a certain amount of sensitivity when you begin to deal with the kind of world-class or at least reasonable class experts that you need for some of these things, and I think you need to be very sensitive to that, certainly at the outset of the program, that you don't put so many potential barriers or hurdles in a way that people say, you know, I'd really like that \$133,000 prorated but I don't want to -- no, thank you. I just, you know, suggest that you be careful about too many -- too many rules for -- for the kind of people for what you want to be done here.

MS. SPIELER: I have a question. This -- this set -- this set of data proposals essentially assumes that it would be built into -- captured by the data management system that will be set up for claims at the outset, and I would be interested in hearing from Paul or anyone else in the office as to whether this -- you regard this as a feasible proposal.

MR. SELIGMAN: I do regard it as feasible.

MS. SPIELER: We're all delighted to hear that.

Other -- I mean I -- I assume that -- I mean we have our data collection experts on this subcommittee and I would assume that this comes essentially as a recommendation from the full committee to the Department that these -- as you set up the data systems that you attempt to capture these variables.

Glenn, did you want to add something?

DR. SHOR: Yeah. Just -- just that we don't see this as the only data collection that the Department would be doing. I think Les -- Les mentioned that at the beginning. This is sort of at the outset what we think should be a minimal -- at minimal -- what would be in the data collection. But --

MS. SPIELER: And that it would be built into the system from --

DR. SHOR: It would be built into the system but there would be the ability to add on and -- and to also do other types of research on performance evaluation later on in terms of interviews and other types of important information-gathering.

MS. SPIELER: Anything else on performance evaluation issues? Anything that other committee members want the subcommittee to take up other than things that have already been mentioned?

Les?

MR. BODEN: I would actually request -- based on the additional feedback that we got I'm going to revise this list. I would ask people to look at this and particularly to look at the parts of this that you're directly concerned with and give us any feedback, including things that you think we've left out, things that you think would be really difficult or infeasible to do and what you think the problems are and try to do that within - - well, I will plan next Friday to send the revised report on to the DOE. So, if you could look at the plane on the way back home or whatever and get something to me by Thursday at the latest, that would be good.

MS. SPIELER: Okay. Thank you.

Anything else on performance evaluation? I'm going to suggest that we take a break now. The next discussion, which will be Contractor and Insurer Cooperation, I think, is going to take a little while. And after that we'll go directly into a discussion about what the staff labels on the agenda the path forward and discuss a number of issues with that.

(Brief recess)

Contractor and Insurer Cooperation

MS. SPIELER: John Burton, the Chair of this subcommittee could not be with us for this meeting and he asked me to sit in as his substitute as chair of the subcommittee, so I'm going to give the report from the subcommittee with, I hope, a lot of help from Len and Mark.

And let me just say at the outset that it's been a delight to have Len and Mark added to both this committee and to the subcommittee and they have provided an incredible amount of helpful guidance to the subcommittee, both on DOE processes and on how to really figure out how to solve some of these problems. So, I -- I think we all owe them a huge amount of thanks and

-- and I'm particularly delighted that they are joining us at the full committee meeting as well.

And we need to make sure, by the way, that we add Mark to all the e-mail lists as he will be sitting in for Bernie and we hadn't done that, so he hasn't been as fully informed as it might have made sense for him to be.

The committee -- the subcommittee met on April 13th here in Washington for most of the day to explore the -- what the problems were with getting contractor and insurer cooperation on the payment of claims and then reconvened this morning at 7:30 for further discussion of the issues. And I actually think we've made a lot of progress, assuming that DOE thinks that what our recommendations are going to be are doable.

We started out with an identification of a long list of barriers and problems in terms of the possibility of getting contractor compliance, that first of all, there -- the -- the normal processes of DOE of orders and rule-making, which would be the way we had originally talked about doing this, are cumbersome and slow. Really slow. And that by relying on those we would be placing, and this is the language of the draft we're working on, an undue burden on the eligible affected workers, that we really can't wait for the procurement office and the various offices at DOE to go through this lengthy rule-making process in order to create blanket language that would affect all contractors and that furthermore, we aren't at all sure that one size fits all in terms of the approach to this.

Therefore, we -- we -- and furthermore, there are a variety of complex implementation issues that have to do with multiple contract structures around DOE complexes with prime contractors, including, oh, M & O cost reimbursable issues, firm fixed-price deliverables, closure contracts, and a variety of things that the contractors are far more familiar with than I am. And furthermore, there are multiple insurance programs, ranging from retrospective insurance programs to a true commercial insurance program or an insurance program with limits, obviously providing an additional layer of complexity in getting cooperation. Although if DOE can stand in the stead of some of those insurers in some of those claims, as we discussed previously, that might solve -- solve the problem of -- some of that.

Subcontractors present a huge problem, not so much the current ones but the past ones. They require an approach that captures them. There are differences about fund sources, multiplicity of insurance carriers, and so on.

Given all those problems, we were trying to come up with a solution that we thought would work and would work to the benefit of both DOE, the affected workers, and also the contractors. As a sort of general scope for this solution, we thought that there had to be a mechanism that would enable current primary contractors to handle and pay valid workers' compensation claims as defined by 350.6 that arise from employment and that this arrangement or mechanism should cover that contractor, the current primary contractor, predecessor contractors, and subcontractors, both of current and predecessor contractors, and presumably subcontractors themselves.

Payment should be made by the primary contractor directly and not through any risk-bearing insurance arrangement. In other words, it should not be sent to the carrier for -- for -- in terms of the risk-bearing component of it, although it might make sense, and we didn't really discuss this, for contractors to use their carriers as third-party administrators of claims in certain circumstances.

We thought the DOE reimbursement to these DOE contractors for compliance had to be assumed and that the contractor had to be assured that there -- they would not be penalized for compliance with the directive to pay the workers' compensation claims of not only their own employees but all these others for whom they might or might not have actual direct responsibility now.

Now, given that, Len proposed that there actually was a mechanism to accomplish this and that that -- that it could be done through the use of what are called acquisition letters that allow for an expeditious renegotiation of parts of the contract or contracts with DOE that I believe are in Section H? So far so good. I'm being educated in what someone called this morning "DOE speak".

So, Section H. And that the acquisition letter must state -- must tie the requirement for the payment of claims to the legal statutory requirement to pay claims under the statute in order to prevent any argument that might be raised later that the agreement to pay these claims has some presidential value outside this program.

The -- we -- we also discussed the fact that the DOE Office of Worker Advocacy should use the procurement counsel to implement this, working with Richard Hoff, that the -- Len -- Len and Mark believe that in direct invitation and discussion with the procurement counsel might result in all of the sites involved, or as many as all of them, getting involved in a pilot project that we're recommending be adopted under this acquisition letter

process whereby there would be direct negotiations with each site with regard to how this general recommendation would be implemented.

That the -- in a parallel track, that there be an order developed that is essentially the follow-on to the acquisition letter -- Paul is nodding his head. That's reassuring -- that would essentially codify this process so that the requirement that each contractor -- current contractor enter into negotiations over -- with these parameters with DOE be required in the future and ultimately that order would replace the acquisition letter. An acquisition letter is a "temporary" mechanism for requiring this kind of negotiation, temporary in quotes, sort of like a final interim rule would be temporary until replaced.

So, we are -- our subcommittee is recommending that DOE follow this process. And furthermore, and we have several other specific recommendations that go along with it, we think that there needs to be outreach to contractors separate and apart from the other outreach process, that the -- the contractors have actually not yet been clearly informed that there is an expectation that they are going to pay claims under this program according to our contractor members, and that there was a suggestion that this could be also, perhaps, expedited through the procurement counsel but that it's very important that the program be explained to contractors and that the -- that outreach be done fairly soon as a specific task.

We're asking the full committee delegate to the subcommittee the drafting of some more specific sort of fleshing out of these recommendations and providing them to the DOE directly as opposed to having that go -- await the next committee meeting. And we have a draft but we're still working on it. We would of course circulate it to the rest of the committee.

Two sort of side issues that we discussed. Clearly, if DOE's going to figure out which claims they're responsible for and which claims these prime, current, still-existing contractors are responsible for, somebody needs to get to work on developing a list of all of the various subs, predecessors, and so on. We -- we understand this to be a large, not a small task, but we are essentially -- we talked about -- I don't know that we actually came to closure on this -- some kind of mechanism by which a data set would be put together that included that -- and that out -- that in order to complete it that you might be -- have to be in touch with union -- the unions and -- and other organizations in order to put together as full a set of who the -- who the nominal employer is and then who the payer on a claim is going to be.

And that when Mark suggested that would fill a truck, I suggested that maybe we're talking about a CD that could be distributed to --

ultimately to the outreach offices where you could type in the name of a subcontractor and find out who the appropriate payer was on a claim so that the state agency would know that before the claim hit. Now, we understand that -- that this would not be ready to be rolled out by July of this summer, but it's certainly some kind of aspirational notion.

And finally, we're discussing adding some additional people to our subcommittee. We have not yet had the insurance representatives join us and we think that that's really critical in terms -- and we've discussed the possibility of one more additional contractor of a different type who could sit at our table.

We identified some problems and barriers, some of which we actually have been unable to come up with a recommendation or a solution for and some of which we're still working on.

We think that there are probably barriers and problems with working with the insurance carriers that we haven't fully explored and they are -- haven't been at the table and we hope to pursue that once we have representation at the table from major insurers and from WASA.

We think that the identification and negotiation of this with many of the contractors may not be in place at the point at which this program is rolled out this summer and that we're very worried that what is going to happen is that there will be claims that will go to the state agencies for which the negotiations -- in which the negotiations have not gone on with the contractor and those claims will be contested in the interim period. And we have not come up with a solution for that and we are quite concerned about it because the -- I mean if the claim actually gets fully adjudicated, it's going to end up closed and the person isn't going to be able to refile, and we have not come up with a solution. We would like any ideas about that and we will be continuing to discuss it.

We -- we also identified -- hmm. My notes get a little difficult to read -- an issue -- a problem with the sort of figuring out about these prior subcontractors and their identification. That kind of relates to the suggestion I made a little while ago, but we think this is a big problem in terms of figuring out who even with -- where there is a currently existing primary contractor who's going to pick this up. They need to know who they're responsible for and it isn't clear, according to our contractor members, that they even know. And so, that's a fairly -- a problem that needs to be solved.

We discussed very briefly at the end the issues of, well, okay, I accept this claim. What about the post-acceptance, sort of figuring out about

the permanent partial and other components of the claim, and we postponed finishing that discussion till our next meeting.

And finally, we are all worried about the issue of money. And that came up in a number of different ways, both with regard to the availability of -- of money to pay -- to give the claimants or contractors but also in terms of how this will play out at sites because the members of the subcommittee believe that if there -- some of these sites will have substantial claims and that -- that this will in fact affect their ability to comply with other components of their contractual duties unless there is additional money added to the contract.

And that -- that is part of the reason that the general recommendation of the committee is that it has to be that this is going to be paid without penalty to the contractor and that would include penalty in terms of noncompliance with time limitations on any other component of the contract. And that clearly has repercussions outside of this part of DOE and we certainly would be interested in how DOE is going to manage this.

So, that's my summary of our conversations.

PARTICIPANT: Perfect.

MS. SPIELER: Ah. Anyone else? I miss anything, Mark?
Iris?

So, discussion?

MR. BODEN: A small suggestion, and that is I think the outreach to the contractor community is an excellent idea, and I would personally recommend that if they had the time that the contractor members of this advisory committee be involved in that for two obvious reasons. Number one is you're going to be very knowledgeable compared with other members of your community, and number two, that I think you have a different level of rapport with other contractors than DOE or other people who might be involved in outreach.

Second, I -- I guess the other question that I had from -- from our committee's perspective, the Program Evaluation committee, is -- and I think this is not something that could be done immediately, but that it would be a good idea -- you've talked about removing road blocks to contractor payment of claims -- that it would be a good idea as well as the process goes on to consider implementing incentives, either incentives to paying claims, paying valid claims, or disincentives for not paying valid claims. And I think

there was an attempt to do that a little bit, if I remember correctly, in the -- in the order that went out in terms of not paying for the costs of defending valid claims. Is that correct? Am I remembering that correctly?

MR. SELIGMAN: There's actually language in the legislation

--

MR. BODEN: Oh, it's in the legislation. Okay. And that's certainly a move in the right direction. But there might be consideration given to other things like possibly not -- not full reimbursement to a claim that proves to be valid but is -- but whose compensability is contested and maybe also some positive incentives in terms of good performance.

But any rate, those are -- those are general ideas. I don't think that's something that should be done now because of the timing issue that you recommended. I think the most important thing to do is to try to remove the existing barriers, disincentives for contractors to make payment.

MS. SPIELER: I didn't mention that Len mentioned in his time line, that was in some ways delightfully short but in some ways depressingly long, that the pilot sites should be on board by August 1st of this year and that if this is done effectively through the performance -- through the procurement counsel that the -- that this is actually something that can be done and -- and that if the major sites who are involved in the procurement counsel come on board, that's eight or nine major sites, which is a big piece of the program. Not everything, but it may be the piece where the most claims are going to come in earliest because the outreach is focused at the main sites. Somewhat reassuring.

On the other hand, the feeling of rolling this out to everyone else, and I'm not sure who that is and -- and others in the room know a lot more about that, could take some substantial amount of time. And it's for those people and also presumably for anyone -- well, the -- my guess is there will be some ambiguous situations about whether there's a prime contractor now or whether DOE should be picking up the claims, and there's the implementation of DOE's willingness to pick up claims, which we have recommended but we have not pressed for response on. So, we do nevertheless have this thorny problem of these interim claims.

MR. SELIGMAN: This in my mind is the critical piece to the implementation of this program, and in that regard, I would very much like to engage the members of the subcommittee in -- in discussions with procurement people and Richard Hoff's staff at the soonest possible date so that we can, you know, begin to not only get their response and reaction to this

proposal but also to, you know, figure out ways to implement many of these suggestions. And I -- I do agree that in the -- in the short term this seems, based on my limited knowledge of procurement and contractual relationships within the Department of Energy, seems like the best path forward.

MS. SPIELER: We actually discussed having some -- having the subcommittee have a sort of more formal relationship with someone that Richard Hoff designates from his shop and -- and perhaps that that person could participate in subcommittee meetings in order to make sure that we aren't coming up with fantasies. And we're fairly certain we're not and we're prepared to, I think, make this as a unanimous recommendation from the subcommittee in terms of how we go forward. But I think that all of us would be delighted to help in any way that we can in making this happen because it does seem to us also to be a critical piece of the program that kind of wasn't on the screen in quite the same way when we started implementation in January.

MR. SELIGMAN: Will you have something that I can give Richard Hoff this afternoon, next week? Basically, the earliest possible date that I can engage the -- our procurement folks with some of the information you have, the sooner we can engage in, I think, a meaningful discussion and -- and planning for a, you know, path forward.

MR. MARTINEZ: I would be more than happy to finish the draft early next week. I would be more than happy to participate in a conference call with you and Richard Hoff or whoever he designates or even fly back to Washington and meet with him if that would be more expeditious.

MR. SELIGMAN: Thank you.

MS. SPIELER: And my guess is the subcommittee would be delighted to have Len represent us in these discussions. But --

(Laughter)

MS. SPIELER: If -- if you want other members of the subcommittee to participate, and I certainly can't speak for our chair, so we would -- you should certainly be in touch with us.

We would, however, like sort of endorsement from the full committee on -- on the recommendation that this is the path that we would like to see DOE go down and ratification of the delegation to the subcommittee with -- in terms of the working out the details.

DR. WAGNER: Yeah, I'd like to endorse that but suggest that the subcommittee reports or interaction with the Department be seen as interim final activity until review and re-endorsement at our next full meeting.

MS. SPIELER: I don't have any problem with that as long as it's understood that we will go forward and not await full committee endorsement of each act because we really think this needs to be done now.

DR. WAGNER: Absolutely.

MS. SPIELER: Les?

MR. BODEN: I think that the -- from what I've heard, the most sensitive part of what you discussed was the issue of releasing contractors from commitments to time frames. I may be wrong about that, but it was the part that made my eyelids twitch a little bit and I -- I thought would probably make procurement's eyelids twitch a little bit, too.

And I just thought that -- I had a question, which is, is there a trade-off between additional resources and time frames that's implicit in what you were saying?

MS. SPIELER: Yes. And --

MR. BODEN: Okay.

MS. SPIELER: -- Mark, I don't know if you want to address this, but the notion was either there has to be more money or there has to be acknowledgement that this may play off against other obligations.

Mark?

MR. OLSEN: Sure. There's only so much money. And this is a new -- this is a new legislative requirement in addition to dozens of others in a shrinking, particularly for contractors that derive the bulk of their money or a fair amount of their money from the EM program, which is a shrinking pot of money. You can only get so much done, particularly as subcontractors and other costs go up.

MR. BODEN: Right. I'm just sort of -- I'm just thinking that that's the part that is likely -- to be the most difficult to negotiate a clearer agreement on. But maybe I'm wrong about that.

I do endorse the general. I think it's -- it's essential and a wonderful idea.

MR. MARTINEZ: You're correct in your assumption. It is a difficult part of this.

MS. SPIELER: Other discussion?

(No response)

MS. SPIELER: Then, I will assume again that silence means consensus and unanimity on both components of this, that you endorse the specific recommendations -- the general recommendations that we're making and -- and the delegation to the subcommittee with the understanding that we will of course bring back to you the work that's being done by the subcommittee and that -- look to you for guidance, suggestions, and whatever input is necessary at that time. Thank you.

I thought that was going to take longer than it did, so forging right ahead here to my -- to the path forward.

Oh, actually, that's -- well, a component of that is the -- the -- and maybe I should -- we should discuss this first. It's specifically on the agenda.

**Consideration of Additional Recommendations
and the Form in which WAAC would like to
Communicate Recommendations to OWA and DOE**

MS. SPIELER: We've made quite a few recommendations, some of them non-controversial, some of them somewhat more controversial, some of them not controversial but very difficult to implement at this meeting. And the question is, and I -- I ask this both of committee members and Paul and anyone else, what is the most effective way for us to be communicating our recommendations to the Department? Are there any components of these recommendations that you feel need to be communicated beyond the minutes of the meeting? And I guess the last part of that would be are there things that we haven't covered that you think ought to be coming as recommendations from this full committee that should be on the table? And I open this up for anyone.

MR. MARTINEZ: Certainly, I think if we're making recommendations as part of the -- the meetings and the Department is reacting or acting on those recommendations, then it may not be necessary for us to

write anything or -- or deliver something to the Department in a formal way. And the reason I say that is if we deliver something to the Department in a formal way and they're already acting on it, they're going to have to expend resources to respond to the formal written notification, and I would prefer not to see the Department spend resources to answer us when they're already doing it anyway.

MR. ELLENBERGER: I would agree with Len that we -- we should really approach this in -- in the most practical fashion possible and only go beyond, you know, this -- this format and the minutes when we think it's necessary to achieve some other recognition of our -- our -- or someone who responds to our -- our recommendations.

MS. POST: I was just going to say the big policy decisions that were discussed yesterday and today, such as Department of Energy should stand on issues of defunct contractors or subs or -- or carriers, I would like to see that in writing, I think, as -- and -- and the way I would approach this is the big -- big issues like that, perhaps. But I agree wholeheartedly with -- with what has been said, that there's no reason to put some of this in writing at all. But I think those kinds of positions may or may not help, and maybe Paul would have insight on this, with the Department of Energy's willingness to undertake some of these applications in the future.

MR. ELISBURG: Actually, I would normally concur with that view, but I think I've concluded that the better way for us to proceed is that all of this stuff is documented in our minutes anyway, which would be available so someone can say this is what the advisory committee was saying we want done, and I think unless and until Paul says one way or another that it would be appropriate for us to go, you know, do something different than communicate through him at this point, I -- I think I agree with Len and Jim that -- that we're better off not creating the need for people to answer.

MS. SPIELER: Greg?

DR. WAGNER: Yeah. I'd like to concur with that but specifically request that if this is the route that we're going that there be a pulling out of each recommendation and that Paul at our next meeting give an update on the response of the Department to each of the specific recommendations that we've come up with at this meeting.

MS. POST: My only -- the reason I said what I did was I was thinking that this committee could provide some cover for some of these decisions and path forward that Paul and others are taking and that the

recommendations of this committee if written down and given to Paul and the Office may provide the necessary cover in case it was needed.

MR. SELIGMAN: Well, thank you, Iris. I'm going to need more cover, I'm afraid, than this committee can provide.

(Laughter)

MR. SELIGMAN: But I -- I do appreciate the offer.

No, I -- I actually like Greg Wagner's suggestion, which I think it's -- it's important that we simply articulate, you know, on a page or two, you know, the major recommendations. As -- as Don points out, the recommendations are now part of the public record. They'll be up on our web site. There -- you know, there will be formal minutes of these proceedings. And if there's ever any question in terms of the individuals I interact with in the Department as to what those recommendations are, you know, such a record exists. So, an additional formal letter is just another piece of paper that requires a response that I'm going to have to write.

(Laughter)

MR. SELIGMAN: So, in that respect, I think it would just be much more -- more efficient and useful if we just simply document those major recommendations and that I work both with -- with my staff and my colleagues in the other agencies as well as within the Department to, you know, respond to -- respond to those recommendations.

DR. MUELLER: My only concern would be the other agencies -- the comments we have about other agency issues and should those particular comments be represented differently or so that they could have more impact? And I'm really putting that to you.

MR. SELIGMAN: Again, this is, you know -- although we've had the other agency, you know, representatives here, clearly the -- the -- this -- this committee is -- is -- is chartered to report to the, you know, assistant secretary for environment, safety, and health, and in that regard a letter, you know, to him at this point regarding some of the concerns you may share about the other agencies I guess for me would -- I'm not exactly sure how I would have him or me respond to that letter.

Again, your comments are -- are again part of the public record. The agencies have been here to hear those comments just as your

advice is advisory to the Department of Energy. It is, you know, in that regard treated as advise, I'm sure, to others as well.

DR. MARKOWITZ: The other aspect that, you know, to formalizing the process at all is any likelihood that you, Paul, as the acting director, that there would be a different permanent director any time in the near future. So, if that were to happen, you know, within a matter of months, then it might make sense for us to put some -- some of this in writing.

DR. WAGNER: I think that it is in writing. It's in a transcript. It'll be distilled into minutes. It'll be pulled out by the staff as a series of specific recommendations and confirmed, you know, at our next meeting or potentially circulated to us in advance to make sure that, you know, as a draft that there weren't other things that we felt ought to be there. So, I really think that the continuity of the expected response is assured.

MS. SPIELER: So you're suggesting that we put as a separate agenda item or as a component of the report from Paul or whoever is sitting in that seat let's look at all of the recommendations that this committee has made, not only in the prior meeting but in a -- on a collective basis and let's have a report back on where DOE is in consideration of this and that there could be follow-ups subsequent to that if we're concerned about the way the recommendations are being treated?

MR. BODEN: That's exactly what I'm suggesting.

MR. OLSEN: Last week my lab director, who's got a Ph.D. and a very intelligent guy, came into my office because he's the star witness in some litigation arising out of some downsizing at the Pacific Northwest National Laboratory. And he was shocked at the verbiage and -- and the grammar that he used during his deposition. Very educated guy. Any -- any of you who have participated in depositions, you'll understand that.

A lot of the -- a lot of the dialogue going around the table is very, very informal, that if we just relied on the -- the printed transcript, it may not communicate succinctly exactly what it is we -- what -- what it is we're proposing and the recommendations. And being a contractor who is very much attuned to performance criteria, and I don't know if there are going to be any performance criteria by which this advisory committee is going to be judged, but I would sure suggest that there be a separate section in the minutes that -- that succinctly culls out and perhaps rephrases in a fashion with the benefit of 20/20 hindsight exactly what it is we're recommending rather than try to piece together over a 40-page span of discussion exactly what our recommendation is.

MS. SPIELER: Yeah. I think that makes a lot of sense. I -- I have tried periodically to summarize the recommendations in order to -- thinking that we might want to go back and do this, although not for all committees, like certainly not on the Performance Measures. I would rely on the -- the written document that we were provided. But I absolutely agree. And I -- I would suggest that that list be culled from the transcript and then circulated prior to the meeting so that we can be sure that there isn't any real concern about the framing of the recommendation, looking at it with 20/20 hindsight.

MR. OLSEN: Yeah. Much like I'm preparing for a board meeting in -- in May and much like you do with meetings -- corporate -- minutes of a board of directors, the minutes are prepared, they're reviewed, and if -- they're voted on adoption at the next board meeting or changes as appropriate.

MR. SELIGMAN: I think what I'd like to do, then, in that regard is -- it takes us about a week to basically get the transcripts back and -- and the executive summary. What I'd like to then do is work with my staff and then circulate to all the members of the advisory panel the following week, which I guess would be the week of May 7, 8 what we believe are the recommendations that came out of this panel so that -- and give us -- give all the panel members, you know, a few days to, you know, comment on it and make sure we've gotten it right. And then that will be the -- the -- the -- the piece of paper from which we are basically working from between now and the subsequent meeting of this panel. Does that -- does that sound like a reasonable --

MS. SPIELER: It sounds fine --

MR. SELIGMAN: -- approach?

MS. SPIELER: -- to me. Any other -- any concerns?

(No response)

MS. SPIELER: Great. I -- let me say -- Rick, do --

MR. BLEA: I just have a question on a different matter, if I may?

MS. SPIELER: What -- what's -- what -- what category does it go in?

MR. BLEA: Well, I guess I could wait for the transcript, but I was just curious in -- 'cause I don't quite remember exactly what took place, but did we ever come up with a final opinion or -- or suggestion from this committee on the second -- automatic second opinion on the medical panel or not?

MS. SPIELER: We were left with a disagreement about what would occur when there was a unanimous rejection. And we therefore did not incorporate a specific recommendation in the -- in our recommendation to the Department on that issue.

MR. BLEA: Is that where we're going to leave it?

MS. SPIELER: That's where we agreed to leave it.

MR. BLEA: Okay.

(Pause)

MS. SPIELER: I actually forgot, and I apologize. During the break a couple of people raised some questions that were follow-on questions to the Performance Measures subcommittee report that I meant when we came back from break to address. And as we've been having this conversation I did a -- I forgot. So, my apologies to Vikki, and I'd like to -- with your permission, I'd like to go back to that agenda item and have these couple of issues raised.

Yes, Len?

MR. MARTINEZ: Just a point of order. I think we did not -- you did not finish your comment with respect to accepting Paul's suggestion on how they would deal with the minutes --

MS. SPIELER: I thought I --

MR. MARTINEZ: -- and the -- and the list. So, you probably want to summarize that.

MS. SPIELER: Okay. Before we go back, let me go back to the -- my understanding of the process that we will follow with regard to this is that as soon as the staff get the transcript back, they will work on both the minutes and culling specifically all of the recommendations that have been specifically made by the committee and putting -- pulling those out as a separate document. And in particular, that component will be circulated to all

of the members of the committee, hopefully during the week of May 7th, and the -- if there are any particular concerns about that document, they will be mediated at that point by e-mail and telephone calls so that it can be in its interim final form for the Department to work with.

Obviously, if there are particular concerns that then come up, they can be re-discussed at our next meeting, but that will give the Department our specific guidance with regard to the issues that we've made specific recommendations about.

Is that a fair summary? Okay.

Now, I'm going to ask Vikki to talk a little bit about the -- one of the concerns she had about the performance measures.

MS. HATFIELD: I just wanted to make sure that when we looked at the outreach-intake part that all of the things listed in that area were going to be done in the outreach-intake offices because I'm not sure that I got that impression yesterday when we were in subcommittee meeting. So, I want to -- I just want verification that -- that everything that's listed under one is actually going to be done in the outtake office and they're -- or outreach and they're going to have the ability to -- to know when these things actually happen because I -- I kind of got the impression that when these records came through that they were going to be going to the district office and not to the outreach office. So I need -- I need clarification of that to make sure that we're all on the same page.

MR. SELIGMAN: It was -- it was our hope specific to your last point that when those records go forward to Department of Labor that the outreach office would also receive notice that such records were sent so that they -- a note could be made on that individual's electronic file or whatever -- whatever filing mechanism we have in the outreach office that such records were indeed sent and the date on which they were sent. So, I think we will have the opportunity to be able to track that aspect of the -- of the process.

MS. HATFIELD: So, when the information is taken by the intake office, they'll go ahead and apply for the records then? Is that -- is that the understanding that we have?

MR. SELIGMAN: Yes.

MS. HATFIELD: And then will -- when the records go, will they go to the district office or will they come back to the intake office?

MR. SELIGMAN: Our hope is that they would go directly to the Department of Labor's district office. My -- my -- my view of paperwork is essentially unidirectional in that regard, and again, it's my hope that, you know, employment records, the medical records that Department of Labor needs for -- for their claims using the forms that they have created will go to the appropriate people, either -- either in the Department of Energy records or for our contract records -- contractor records' managers for -- for completion and forwarding directly to the Department of Labor.

MS. HATFIELD: So, I'm not sure then that we can actually give a rating to the outreach or out -- intake offices on these specific items because they're not going to be in control of it.

MR. SELIGMAN: No, it's not -- it's not necessarily a rating to the office. It's a rating to the process. It is -- it is -- it is -- it is our hope that records will be managed in a timely fashion. And if we are -- you know, if we find that, you know, whatever -- whatever the metric that we've established, a significant portion of claims are outside of that metric -- for example, if we believe that, you know, within 30 days, for example, just -- this is an example that, you know, from the time of initial request for employment record, that that record, you know, be received and -- and -- and verified and sent to the Department of Labor.

If it's taking longer than that, we've got a process problem. It may not be the outreach office's problem or it may be. Maybe it -- maybe it actually sat in the "out" box at the outreach office for three weeks before we sent it over to the contractor. It will -- it will be a -- it will be an opportunity for us if we find, you know, problems in any of these steps in the process, to basically go back and ask where is the problem and why is -- why is it a problem? What's causing, you know, delays or, you know, a certain proportion of claims to exceed the standard that we have set for -- for timeliness?

But -- but -- but you're right. There are multiple pieces of this puzzle that are not directly in the control of any particular organization. But it is -- it is, I think, important to track all of that and then -- and to know at what -- where the process is having problems. I mean if -- if our, you know, records management people are -- are overwhelmed by requests and -- and the delay is because they simply don't have enough staff or resources to process these things, we need to know about that and -- and work to try to address that.

MS. HATFIELD: To that end, I know that there have been some records that have been sent for and it's taken up to 60 or 65 days to get

those records back. So, I guess maybe I'm asking if DOE is thinking ahead to when the onset of all these people start to apply and have they made arrangements for more staff in those areas 'cause they -- they -- what they said was that they had to go to the archives and that takes, like, 30 days or 40 days or something like that. So, I -- I'm just curious if ya'll have made arrangements so that that can be expedited.

MR. SELIGMAN: We're thinking about how to -- how to expedite it. We've yet -- yet to make those specific arrangements. We -- we know already that there has been a large burden of -- of, you know, Freedom of Information Act requests to our sites, in many cases for records that ultimately may not be necessary in the context of filing a claim. So, our hope is that by having a -- a process that's clear to all and a clear understanding of exactly what records are needed for a particular type of claim that we in some instances may actually be able to reduce or streamline the burden on -- on some of our records people.

Similarly, a -- just to clarify, when -- when a request for a record is made in the context of a compensation claim, that's not a -- that's not a FOIA request. That's a specific request that's handled by our records management folks and it's usually -- it may -- it may be for, in the case of a medical file, you know, the -- the -- the page that shows the -- the B-reading for the chest X-ray in silicosis or the, you know, page that provides the pathologist's report for the -- for the, you know, bronchial -- biopsy for the -- for the berylliosis claim. Having that specific guide we hope will reduce what is now at present a FOIA request for one's medical record which may be huge in some cases and in many cases requires declassification review before that record is -- is -- is sent out to the individual. Hence, the -- the -- you know, the -- the time frame that you -- that you quoted, which I know to be a fact. It takes that long, in some cases even longer if there is a significant amount of -- of classified material which needs to be redacted from the -- from the record.

MS. HATFIELD: Thank you.

MS. SPIELER: Jeanne?

MS. CISCO: The records of the intake office, the employee will see the records, right? Or do you guys -- would you guys be sending for them and forward -- forward them to DOL?

MR. SELIGMAN: That's a -- that's a good question. We had initially anticipated that these records would be forwarded directly to the Department of Labor. I guess we could certainly make a provision to have an additional copy sent to the claimant as well so that they know that -- what --

what information or records were kept. I -- what records were -- were sent -- sent on.

MS. SPIELER: I think you have to do that, actually, as part of the process.

MR. SELIGMAN: Part of the process, okay.

MS. SPIELER: Yeah.

MR. BLEA: My question is, Paul, is we talked about interviewing the -- the applicant or claimant, and -- and I think what we had had discussion on and dialogue on was after the intake office receives the medical records back they could refresh the -- the claimant's memory by saying, you know, you did this, you did this, and you did that.

So, when Vikki asked you is the intake office going to get back the medical records or is it going to be sent to DOL, we were under the impression, I believe, that the intake office was going to go over to the medical facility, pick up the records, come back, have the interview -- oral interview with the applicant, and try to fill in the gaps in their application, initial application, and then forward it where it needs to go.

Now, that may be doing steps that don't need to be done as far as medical records, but like we stated yesterday, a lot of times in -- once they receive their medical records and then they are reviewed in an oral interview, that'll refresh their memory but not only that, they'll be able to tell you that -- Paul -- oh, Paul worked there in that site, too. He should be -- he was exposed at that same time as I was, and so forth. So, I think that's where our concern is.

And -- and I'll be quite frank, and I know that I'll probably get a little laughs here, but my -- my conception or -- or reasoning or thinking was that we -- we have an -- an agreement with the medical facility for that reason or that laboratory or whatever. Say, on Monday, I will fax you a list of names. And if we need to send somebody over there to -- to look in the archives for you, we will do that because these people have already signed a waiver to say go get my medical records, and we'll have somebody pick 'em up. I'd like to see 'em fax the names on Monday and pick 'em up by Friday.

The 30 days or 60 days, I know it's -- it seems, well, we can't do it. But we can do it because the time is really crucial here and -- and I think that's what Vikki and I were -- were thinking. Because if the intake office is not receiving these records back, then, yeah, we can -- we can track

when it gets to DOL or when it comes back to the intake or -- or when the applicant says, hey, where are my records. But we don't have no control of it. But if the intake office -- I think what we're thinking is get some medical records, we have control, we received the medical records on such and such a date and we sent 'em up to DOL on such and such a date. We are keeping track of it there. Plus, we've also done the oral interviews as well.

So, I think what we're thinking, and unless we're missing something here, we're serving the dual purpose by having them come back to the -- the medical records come back to the -- to the intake office. Now, if we're thinking wrong, please fill us in. I don't have a problem learning where I'm not thinking correctly, but that's our reasoning for wanting the records to come back to the intake.

MR. SELIGMAN: I don't think that's -- I don't think there's any right or wrong answer to this. Our only concern in having records coming back to the intake office is that it just adds yet another step in the -- in the process and another potential delay in the processing of a claim and requires that the office then -- you know, a record-keeping system that is secure, that is -- that is, you know, locked, you know, a room where you keep medical records and you have, you know, I guess certain people who have access to those records.

We -- we -- we have not, you know, because of -- this meeting was the first time we had the recommendation before us about producing a detailed job history, so I haven't really thought to what degree records would need to come back to a place to help an individual in completing that detailed job history. I guess my answer to you is that these are, you know, still details to -- to be worked out. Again, it may in large measure also depend on the -- the type and nature of -- of the claim. It's not clear to me that there is any necessarily essential value in having the chest X-ray reading, you know, come back to the intake office to again be put in another envelope and sent to the Department of Labor as opposed to having it go directly, but I -- you know, these -- these are all processing kinds of questions that I don't have any, to be honest with you, very strong feelings about other than that I certainly want to create simplicity and -- and -- and directness, if I can, and --

MS. SPIELER: Let me make a suggestion --

MR. SELIGMAN: -- and accountability.

MS. SPIELER: Yeah. Let me make a suggestion that the Claims Processing committee or -- I'm not sure where this falls between the two committees, the one on worker notification and the one on claims

processing. But it seems to me those two subcommittees really need to sit down and look at these sort of processing issues. I -- I -- and -- and come in with some of the issues and recommendations with regard to how the claims process should work because I was sitting here thinking, well, but what about this and what about that? And I just don't think that this is -- I mean, really, we need the subcommittees to function to provide -- to do the thinking and provide recommendations to the full committee or -- or I mean we could probably spend another five hours on this right now. And it clearly -- ultimately, it is just a processing issue, but it also -- each decisional point in the process has certain ramifications for how the claimant sees what's going on, what information the claimant is entitled to have, efficiency versus transparency questions, and -- and I really think those need to be discussed by the subcommittees in some pretty good detail.

MS. HATFIELD: Maybe we might -- as the two subcommittees, maybe we might have a conference call and -- and discuss these issues as a joint subcommittee 'cause I think they overlap. I don't think this subcommittee or this committee can really respond because they do overlap. They're all connected.

MS. SPIELER: Yeah. I -- I think you should discuss the logistics of doing this with staff, whether you want to have a meeting, whether you want to have conference calls, or -- I mean that -- that -- that's up to the subcommittees and -- and the logistical planning with staff.

The second issue that came up and -- in several conversations during the break with regard to the prior conversation isn't so much a performance evaluation -- evaluation issue as it is concern about the level of compensation to the physicians that -- and the question as to whether or not it really is going to be practically the kind of quality people we want coming forward to work for this amount of money given the volume that we expect that they will -- that we will be asking them to do.

And the suggestion was made to me that in looking at the statute was to think about whether this really -- and I don't know the answer to this and Ted's gone, but is there any way to, for example, include in this pay grade calculation the non-direct wage components of the pay that physicians receive that -- because I think it -- in the Federal arena that's substantial and to figure out if it -- if there's any way to increase this hourly rate based upon a more flexible understanding of what that statutory language means.

And we -- I guess we would ask, Paul, for you to talk to the people at NIOSH about that and try to figure that out because we -- we, in our private conversations during the break, all concurred that we can see a lot of

roadblocks to this program and this was one that wasn't even on our list as a problem. So, it would be, I think, useful if you could let us know if there's any way to create some flexibility here.

MR. SELIGMAN: I will do -- certainly do so. Thanks.

MS. SPIELER: Thank you.

Here's what I have left on my list of things we need to talk about. I wanted to ask -- at our very first meeting we set up this subcommittee structure. It was done -- I mean I had sort of written down what I thought the key areas were, grouped them, and came up with this proposal for these six sort of core issues that it seemed that we should refer out to subcommittees. And at the time we did it we agreed it was kind of a quick and dirty take on what we thought the issues were and set up the subcommittees with an understanding that we would revisit whether we had come up with the right answer for how we should deliberate. And it occurred to me that we did not put that on the agenda but it was appropriate, at least, to revisit this on some kind of regular basis and either endorse our current process or amend it if that seems appropriate.

So, I look to the committee members for input on this.

(Pause)

MR. SELIGMAN: May I provide some input?

At this point in the process, I think that there are really subcommittees that we really need to sort of hone our -- our efforts on, and those are the -- the Contractor and Insurer subcommittee, the Physicians Panel subcommittee where I think -- again, there's some still outstanding issues that we need to discuss and regulation, and then some subcommittee that -- that -- that puts together the claims processing, outreach, claims submission piece. To me, those are the -- at -- at -- in my way of thinking, sort of the three critical areas that can -- you know, continue to need -- on which we continue to need some advice in implementing this program.

And so, I would suggest trying to reconfigure the -- you know, the six subcommittees, maybe, along those three topics or themes.

MS. SPIELER: That -- the -- for those of you who don't keep this list in your head, that -- that's essentially a suggestion of some kind of merger between Vikki and Don and then leaves out from the key list at this

point the State Relations subcommittee and the Performance Evaluation subcommittee.

MR. SELIGMAN: Right. Unless we feel that there are still -- you know, I think it's valuable, probably, to keep those committees, but at the moment, at least on the performance measures side, for example, I think we've got a pretty good template and path forward as to where to go.

On -- on the state side there have been, you know, some important issues and recommendations that have been identified that we need, clearly, to work to address. I'm just not sure at this point in time whether there are additional issues that we need to have that committee address, but I -- I know for a fact based on discussion here that, you know, the Contractor Insurers, the Physicians panels, and the outreach-claims submission issues are still alive, if you will, with many, many areas that's continued to need our -- for which we continue to need advice and guidance.

MS. SPIELER: I'm a little bit -- let me just say before I turn it over to the subcommittees, I would be inclined to assume that we're going to continue those other two subcommittees because I think that they both raise ongoing programmatic issues and that the State Relations subcommittee is one that needs to address barriers as they appear and come up with -- help you figure out how to overcome them. So, even if that isn't a critical piece in your next sort of eight to twelve weeks of work, I think it may turn out to be as we move forward.

And the Performance Evaluation, you know, I think that front-end advice is really good but sort of keeping it there as a potential source of advice is -- also makes sense. So, I think that the -- the question, really, on the table is how to prioritize the work of the committees and -- and how to deal with -- I think if you put together everyone on Claims Processing and everyone on Worker Notification, you have almost everyone on this committee. Is -- I don't -- I don't have the list in front of me right -- and -- and so, if we wanted to -- I mean does it -- I guess, one of the questions, just to ride this out, one of the questions would be does it make sense to merge these two committees, and if so, does it make sense to keep everybody on them?

Rick?

MR. BLEA: If you're talking about the Claims Submission and the Claims Processing issue, two committees?

MS. SPIELER: Yeah.

MR. BLEA: I -- I -- I find that they're similar in nature and a lot of the discussion we have in one we have in the other, sort of cross reference. I have no problem -- I would like to stay on -- on the committee. I would just suggest to the chair that -- that you can make one of the chairman or chairwoman of one of the committee -- incorporate one as chairman and one as co-chairman, so to speak, and incorporate both of 'em together.

MS. SPIELER: Okay. We actually -- Steve just said take me off the merged committee. That leaves it one, two, three, four, five, six, actually. Laura Welch is -- oh, seven, eight. I'm sorry. And Laura Welch was a duplicate. Seven. One, two, three, four, five, six, eight. Eight. I'm sorry. That leaves eight people.

I would suggest that Don and Vikki talk about who's -- who wants to be chair and who wants to be vice-chair, if you feel like you need a vice-chair. I -- I'll leave that to you and to the members of the committee to decide if they want to stay on the merged committee or not.

I think it makes sense to -- we will assume you're on unless you notify Don and Vikki that you want to move to a different place or withdraw from the committee and leave it to them to go forward with a sort of joint charge of looking at the entire pathway from outreach all the way through the claims processing process. Is that acceptable to everyone here?

(No response)

MS. SPIELER: Okay. Any other issues with regard to structure?

(No response)

MS. SPIELER: All right. Then, I'm sure staff will be perfectly happy. Josh and Jeff can fight over ownership of that committee. And that -- are there any -- I'm -- I'm going to move now to sort of meeting scheduling issues, so before I do that, I'd just like to ask if there are any other issues that members of this committee feel that we've overlooked or need to take up?

Laura?

DR. WELCH: Since I missed most of the meeting, was there anything that was waiting for my particular input? Or otherwise, I'll look over and comment with what comes back, but I don't know if there any questions that came up that in particular --

MS. SPIELER: I think we ultimately reached -- unanimous consensus on everything except this one issue that I think we would continue to have a split down the middle on. So, I mean other members of the committee should feel free to suggest that I'm wrong about that, but that -- that's my recollection. So, thank you for the offer. And I'm sure you would have been with us in unanimity.

DR. MARKOWITZ: But, Laura, the Physician Panel subcommittee will feel free to mine your knowledge very soon on some issues.

DR. WELCH: Good, because in my trip out to -- from the West Coast I was thinking about this meeting and how I wanted to be here yesterday so I could put in all my 10 cents.

MS. SPIELER: There were, actually, a number of physician panel issues that got deferred because there -- they needed further discussion, and I am sure your input will be useful.

(Pause)

Next Meeting Date/Location

MS. SPIELER: Then, moving ahead to scheduling questions. Both Laura and Kathryn have -- and some other -- somebody, too. Andrea -- have raised questions about meeting frequency and my response to them has primarily been, well, it seems to me that we're meeting really frequently just because this is -- the program has to be up and running by August 1st, and so it's certainly not my anticipation that -- that we would continue to meet with the frequency with which we have been meeting since I -- my guess is none of us really have the time to do that.

But the question, really, before us -- and -- and so I'm assuming at some point we move to a three- or four-a-year meeting schedule. The question is at what point do we do that? What is the committee's sense about when -- how soon we need to meet again? And I -- I'm actually fairly confused on this issue, so guidance would be really not only useful but essential.

MR. BLEA: Madam Chair, I would -- I would just say that between now and let's say the 31st of July, whatever it takes to meet, that's what we should meet. And then anytime after that, then I would go along with the suggestion that we meet three times, four times a year, but if we have to meet two or three times between now and then in order to make this happen --

of course, you know, DOE and Department of Labor and Department of Justice and NIOSH are -- are working really hard, but with out input, you know, whatever it takes.

I suggest whatever it takes between now and then that we meet as often as we -- we need to because we -- we're going to walk away from here today with a lot of unresolved issues that still have to go back to committee and -- and still -- we still want to come back to our recommendations to DOE and say this is what we would like to see happen. And the sooner we get it to DOE to try and implement these -- these issues, the better off it is for them.

I certainly -- I know we're all busy. We all have jobs that we have to take care of and -- and all that. I understand that. But also, we accepted appointment to this committee in order to do a job for those people who need this compensation. So, I just say that whatever is needed between now and July 31st, whether it's one meeting or two or three, that we look at that very strongly in order to get accomplished what we need to get accomplished by then.

Because I think it's essential that we -- I mean we haven't even looked at the forms that are going to be used. I'm sure we're going to have input on that or -- or we're going to have to look at those. But like I say, I know we're all busy. I know I have to go out of the country several times between now and then. But I will -- would want to make any meetings that we are going to have, whether it's here in Washington and -- or someplace else at one of the sites.

I -- I do commend you that we have moved these meetings to a two-day meeting versus a one-day meeting. I think we're more productive in -- in the people who are going to be claiming or filing for claims for workmen's comp are better off for that.

So, that's just my -- my opinion. I -- I think of those people out there that are in dire strait of this -- this money and this medical coverage and that's why I accepted to be on this committee, because that's what we're working for is to help those people. We're -- we're sitting here. We're in pretty good health. We're not worried. But they are. And they're needing our help in order to get their claim processed as quickly as possible.

So, again, I reiterate that whatever it takes between now and July 31st I'll be willing to meet.

MS. SPIELER: We should just remember that our meetings trade off for staff, against time they can be doing for other things, and it's

actually incredibly time-consuming -- staff time-consuming for them to put these meetings on. I'm not saying one way or another, Rick, about your suggestion. I'm just -- I think it's important to remember that.

Laura?

DR. WELCH: I also think -- I mean my thought was that we could probably meet again in about six weeks because I think that the subcommittees have a lot to do. We don't want to -- partly, it was my schedule during the month of whatever month we're in, I forget. April. You know, I didn't have -- I couldn't get -- find the time to participate in the subcommittee. Steve had a lot of trouble scheduling a conference call to get us together and talk about things. And if we're -- there's no point in coming back until the subcommittees have really hashed out all the issues because we want to be able then as a committee work on it, and my sense would be that would take us six weeks. And then that would basically be one meeting between now and the sort of implementation deadline.

MS. HATFIELD: I think it's going to be really hard from the point of -- of our subcommittee, the outreach and whatever we're calling that subcommittee now. I think it's going to be really hard for us to give any recommendations if we're not going to meet again for six weeks. I mean by the time we meet again, they're going to have everything in place, you think?

MS. SPIELER: I think -- I think that the notion is that the subcommittees will actually do a substantial amount of this work without a full committee meeting and that that's -- so the issue is sort of balancing letting the subcommittees really get down to the work that needs to be done.

Vikki?

MS. HATFIELD: And then submit -- we submit before the six weeks our recommendations? Or -- or no?

MS. SPIELER: Well, I'm -- I think we should take up the issue of delegation to subcommittees some of the specific issues that are appropriate -- most appropriate for those subcommittees to consider. For example, my guess is that if the Claims subcommittee goes over forms and thinks they're okay that, you know, people may have additional comments but that we would be willing to have your input go directly to DOE with -- you know, with our endorsement. So, maybe we need to talk about a structure that allows us to do that in a way that the Contractor-Insurer subcommittee has requested that you allow us to do that.

MR. ELISBURG: I think I'd like to hear from Paul on this subject in the sense that -- to what extent are these meetings use -- I'm sure they're all useful and valuable to the Department but we're serving as kind of a committee, a group of experts to help them sort through a lot of problems that they otherwise would -- might have trouble sorting through. And so, the value of meeting more frequently is to be able to work through some of these problems that they can then sort of deal with and say, great, we got the -- we got what we needed, we can now move on. And if that's valuable, then it's worthwhile meeting more frequently. If we've reached a point where they have -- they need the time to just put together all the stuff we told 'em to do, then obviously I don't think we should stand in the way of their getting that stuff done.

And I know there's something of a trade-off there, but I -- I think it would be helpful to get a sense from you as to, you know, which part of this is -- is more helpful. And that's -- and I understand that the subcommittees either way can -- can meet either by phone or in person with whatever they need to do with the staff to -- to help move that process along.

MS. KEATING: I just wanted to point out that the subcommittees, if they start making recommendations directly to the Department, they will become subject to FACA and will have to notice meetings and the whole thing.

MS. SPIELER: Thank you. So we need to -- any recommendations from the subcommittees need to be routed through the entire committee. Now, does that -- and that has to be done through a public and transparent process, right?

MS. KEATING: (Nods affirmatively)

MS. SPIELER: Can we -- let me ask you then with regard specifically to the sub -- the Contractor-Insurer committee where we did some delegation. The delegation is completely within the specific recommendations that have been endorsed by the committee. It's kind of an implementation component, not a -- you know, not a policy issue, not a development of any new recommendations. Is that allowable under the FACA rules?

MS. KEATING: I believe it would be, but I think I should get clarification from our FACA people.

MS. SPIELER: 'Cause the -- that -- that is going to affect the rapidity with which we have to meet because if, for example, what the Contractor-Subcontractor -- I keep wanting to say that. The Contractor-

Insurer subcommittee recommends needs to go through the transparent FACA process, then we're going to have to convene this committee a lot sooner than I think any of us were thinking.

So, I guess let -- let's -- but for the purposes of this discussion and subject to your convening us, let's figure out what we really need to do in terms of -- you know, getting subcommittee work done and getting useful things back to the Department, and -- and that leaves Don's question to Paul on the table. What -- what's actually useful to you?

MR. SELIGMAN: Could always use more staff time. And you're right. These -- these -- these do take -- these are staff labor intensive.

To be honest with you, I don't really have a good answer to the question at this point. I -- there are, as we pointed out, some outstanding issues that are still on the table that are going to be important for us to resolve in -- in the coming, you know, four to eight weeks as we move forward with regulations and opening up outreach offices and engaging in the acquisition letter process and our -- our discussions with the procurement counsel and contractors.

Other than that, I don't really, to be honest with you, have a -- have a good sense because I haven't really thought -- thought it through very carefully. I probably would have a better sense of that when I actually sit down and look at all the recommendations that have come out of this -- this meeting and all of the outstanding issues and things that need to be done in order to address those recommendations.

So, I -- I apologize but I -- I don't really have a good -- good feeling -- other than that I think it would be very valuable to meet prior to July 31st since there are outstanding issues. And whether that's -- we're talking now about four weeks then from now or six weeks or eight weeks is really a matter of timing for you all. Other -- I think something should be done in -- in the -- in the -- during the next three months.

MS. SPIELER: Let me make a -- just throw out a suggestion to -- and I'm not wedded to it in any way. I think we need to have another meeting in Washington where we're totally focused on process issues with enough time before the July 31st deadline in order to give you time, you know, to deal with any things that we bring up that, you know, have merit and you want to implement.

So, working within kind of Laurie's frame work that we should meet probably mid June at the latest to -- and that in between that

subcommittees should really work on the -- on the specifics of the -- their concerns. Maybe mid to -- I would say the second or third week in June to give the subcommittees, really, time to work and to work closely with the Department on any issues, not as formal recommendations but to -- so that you can use the subcommittees as a sounding board for concerns, particularly around the development of the claims processing issues.

That we schedule our next meeting immediately after the roll-out of the program in August at a site so that we can get -- have a public -- what?

PARTICIPANT: Get hammered.

MS. SPIELER: Yeah.

(Laughter)

MS. SPIELER: Yeah. Hear what people have to say about what's -- what's going on out there and set it up so that the -- we would devote a specific amount of time to having essentially a public meeting and hearing from people and then the rest of the time convening a meeting which people can observe. And I think that would give us some -- and that would be, then, some time in August, so we would meet in mid June -- mid to sort of in the second half of mid June and then toward the beginning of August at a site. What do you think about that as a proposal?

Rick?

MR. BLEA: I'm not disagreeing with that. I just have a question. Is it my understanding, Paul, that -- that we are actually going to try and -- and open up the intake offices first part of June?

MR. SELIGMAN: I think we're going to open 'em up the latter part of June.

MR. BLEA: The latter part of June?

MR. SELIGMAN: Yes. We -- we -- our current schedule calls for having some of these offices up and running by, you know, one -- one month prior to implementation of the program, which would be June 29th, June 30th. If we can -- if we can do it.

MR. BLEA: And -- and all -- all I'm saying is my concern was if we meet in mid June and they open up June 1st, the processing, you know,

just goes out the window what we were going to recommend. But no, that's fine. I just wanted an understanding there, clearly.

MR. SELIGMAN: Even when we open up these offices, you know, processing will always be a -- an evolving process, if you will.

The only thing I wanted to mention, Emily, is I think that the -- the, you know, mid to late June time frame is a good one because it -- at that point both the Department of Labor will have issued their interim final regulations as -- as well as -- as HHS, and so various aspects of the program that many around the table have been concerned about regarding its lack of transparency should be more transparent.

MS. SPIELER: Probably we should ask staff to send those regs out to people 'cause not everyone has easy access to the "Federal Register" and they should go out to the members of this committee as soon as they are available.

MR. SELIGMAN: Yeah, we certainly can do that.

MS. SPIELER: Thank you.

Okay. I'm back to scheduling, which is always the hardest item on any agenda that I deal with. Are we kind of in consensus here about some kind of a -- kind of looking at mid June as -- Laurie?

DR. WELCH: I guess I didn't realize that the -- the offices would open up that early, so I might sort of think it -- move it, like, the first week in June, maybe. Although -- although if there are issues that deal with the offices themselves, by then that would be too late, you know, in terms of staff or -- seems like you kind of have to have a concept of how the process is going to go before you can figure out how to open the office. Maybe that's just my linear approach to things.

MS. SPIELER: Maybe for brainstorming and discussion purposes there needs to be a Washington meeting of the subcommittee on claims in -- sometime in the next few weeks, Paul. A face-to-face meeting to the -- to the extent that people can make it to it so that you can really sit down for -- for a day and work your way through the claims process and get -- and brainstorm about the concerns that people might have about that process that -- so that you can incorporate those concerns into your thinking. Does that -- would that make sense? Vikki, Paul, others?

Because I -- I'm -- my concern is that I don't see us having a full committee meeting soon enough even to -- to get that kind of dialogue about the claims process. Even if we met, you know, the last week in May or the first week in June, it's going to -- it may be -- I mean I think that there needs to be a separate pathway for discussion, at least.

MR. SELIGMAN: I think, unless I'm wrong, that we've already had a fair amount of discussion regarding the claims process. We have a flow chart that we've developed regarding that and would certainly look, you know, for comments on that. And I think we've, in the context of this meeting, articulated what at least we think the specific functions of such an -- an office would be. You know, clearly, there are some thoughts about, you know, to what degree these outreach intake offices should essentially be managing records, if you will, in terms of getting employment records back and medical records back and assembling files and taking on the responsibility of -- of that -- that work. And clearly, there's also been a lot of discussion -- and again, I think that's certainly an outstanding issue.

There's also been the discussion about the identification of an ombudsman type role and where that should sit in this entire process either in the outreach intake office or distinct from that. And again, I don't really have a clear notion, at least in my own mind, as to where that should go.

The only reason I hesitated in terms of having a full day on this subject is that I'm just not at this point in time convinced that there's a full day's worth of things to discuss and that we might be able to handle a lot of these issues via a one- or two-hour teleconference --

MS. SPIELER: Well, I -- I would leave to you and the committee figuring out about the specifics of that. And I actually, having done claims work, am always astonished at the number of issues there actually are once you go from a flow chart into a well, how are we going to handle this piece of paper kind of conversation. And -- and so, that's why I said that I -- I -- I could already see it evolving into a much longer conversation than I think that maybe you -- you envisioned. But I -- I -- again, I would leave that for you and Don and -- and Vikki to work out what the best logistical approach would be. All I was suggesting was that I wasn't sure the full committee would get back in time to really have enough input into that process and that I think that there's expertise that you really ought to draw on in terms of those nitty-gritty, how do you keep a file and how do you keep it moving issues that you should take advantage of on the -- on the subcommittee 'cause I -- I think you don't have that -- you know, with the exception of one person, you don't really have that on your staff.

MR. SELIGMAN: Happy to have that discussion.

MS. SPIELER: So, back to the -- when should the full committee meet. And are we essentially in agreement that we should look at about a six-week time frame for our next meeting and then subsequently a kind of 'nother six-week time frame and that then we should reassess and decide if we -- we're at -- at the point where we can go to a more -- more paced -- and -- you know, typical Federal process? Is that acceptable?

I think I'm going to -- just with the caveat that I know at least two of us are not available the week of June 4th, that would include me, leave it to staff to figure out about the timing of this.

Now, what about this day versus -- and let -- let me just say I really think for the three subcommittees that -- that Paul talked about, the Claims, the Contractor-Insurer, and the Physician Panel subcommittees, that really work needs to be going on in between these meetings, not waiting for the meeting to convene a discussion.

Now, having said that, there is still the question 'cause I think these subcommittee meetings around our full meetings have been very productive. But on the other hand, particularly for the Contractor-Insurer committee, we are going to be adding non-advisory committee members to the subcommittee. And so, it may make sense for us to function not on the full committee schedule. I'm not sure. Does it make sense to have these two-day meetings or is there any way to go to a one-day process? 'Cause I know some people have expressed concern about the two days, so we need to discuss that.

DR. WELCH: Well, it seem -- there seemed to be two -- two reasons that people -- we went to this sort of start at noon and then necessarily continue the next day, one of which so the subcommittees could meet that morning. Also, in terms of travel. But I think that now we need -- as you just said, we need to move the subcommittee work further ahead so we could actually have written recommendations that the committee could look at and -- and sign off on.

So, I -- I don't think we should plan for subcommittee meetings the morning of the meeting. Personally, I think we should get it done before. So -- and probably the travel issues is -- certainly, it's not an issue for me, so I would -- I think we could go to a one-day meeting if we planned to have subcommittee reports available and even circulated to the entire committee a week before the meeting.

MS. SPIELER: Let -- let me just suggest that one option there is, of course, that we have a one-day committee meeting. And for those subcommittees that need to meet, they can meet the prior afternoon, which, you know, for the people who can do it creates the same two-day stretch except for the people who need a one-day meeting it would make a possibility. For -- for example, for you that -- for people in Washington or can come on a one-day, you know, early morning, flight out in the evening, it would create a better situation in terms of travel.

Some -- Don or Jim or somebody, you had your hand up? You did.

So, is that -- does that -- is that acceptable to people?

Rick, you had indicated -- you're not concerned about that?

MR. BLEA: No. I understand where she's coming from and I agree with her. In the beginning, you know, in the first meeting we had I expressed that we needed a two-day meeting because we were getting started and I didn't think we were getting enough done in one meeting, especially because of the travel arrangements. People were coming in late, people were leaving early, and you don't have a full consensus of the committee.

I think we've moved along and progressed well. The thought that subcommittees will be working well in the interim between meetings, I -- I have no problem with that. I think that's -- that's a good deal. Flying in here on the night before and having the full-day meeting and flying out that day, I have no problem with that. 'Cause I think we are at that stage, but I think we're at the stage now where the subcommittees are going to be working more in between the meetings. And when we do come to the meetings we can conduct business and get a general consensus of what people want and don't want. I don't have a problem with that.

MS. SPIELER: Don?

MR. ELISBURG: The only thing I think you need to pull in some fashion, when you -- if you decide to go back to the one-day deal is the West Coast people in terms of their logistics because it -- you know, in a sense it becomes a three-day trip. 'Cause I think it's foolish for us to have a meeting, we're saying it's a one-day meeting, and everybody on the West Coast is bailing out of here at 1:30 in the afternoon 'cause then you've effectively turned it into a half-day meeting. So, I think you have to have some understanding. If it's going to be a one-day meeting, then people will be here

for the day. And that requires a lot of them perhaps to then stay overnight, given the fact that, you know, it's hard to get flights out, you know, of here.

But I -- and I'm not trying to put that burden on 'em. I'm trying to just be realistic. If we need the time to meet, the idea of -- of having -- you know, going to the two days was that it at least by -- you know, adjourning by 12 or 1:00 in the afternoon, it then left the West Coast people free to -- to bail out in comfort.

MS. SPIELER: Okay. You Mountain State and West Coast people.

DR. MUELLER: For me, I really need a one-day meeting because -- and I'm in Denver. I mean because I can work on Thursday and I can leave that night and I'm happy to stay until the end and there's lots of flights out at night, so it's no problem for me. Otherwise, it is a problem. I can't -- I just can't do these two-day meetings. So -- but I can certainly stay for an entire day and come the night before.

MR. OLSEN: Well, from Idaho it takes me a full day to get here. I leave at 6:40 a.m. and I arrive at 4 p.m. Leaving, there's -- I'm taking tonight a 6:05 flight out of Dulles, and so --

PARTICIPANT: Which means you have to leave here at 3:30.

MS. SPIELER: Right.

(Laughter)

MR. OLSEN: Yeah.

MR. BLEA: Coming from New Mexico, I'm leaving at 6:00 tonight and I'll get back at 10:00 tonight. But I left there at 2:00 and I got here at 10:00, right? We got -- we got here at 10:00. So, I mean I can -- I can work it if the schedule --

MS. SPIELER: Okay. I think Don's caveat is important, though. That if we're going to have a full-day meeting -- I mean yesterday we went from noon till seven. We started at nine this morning and it's 10 after 12 now. And I actually -- I mean I know there were some discussions that maybe we could have wrapped up a little quicker, but I -- I -- I actually think we've been working hard the whole time and -- which means that if we're going to have a full-day meeting we're going to need a full day. And that does mean

that, you know, people may not be able to make a flight out of Dulles at five or six.

You know, and -- and so I guess Don's caveat is important that I do think that we need a full day for meeting and -- and the -- the more well-formulated the subcommittee recommendations are, the better off we'll be. But we still need the time to hear the reports from the agencies and to find out what's going on before we can really engage in a serious conversation. And so, there are elements of these meetings that I think really can't be more efficient and still be useful.

Iris?

MS. POST: Emily, coming just from Iowa, because we suffer from no big airlines want to come in to Des Moines and take us to the West -- to the East or West Coast, so it -- what -- if you go past 5:00, I can't get out till the next day. So, now I've got a three days that I have to be here because I have to come in the day before. I can't be here at a reasonable hour in the morning otherwise.

So, my suggestion, if we go to a full-day meeting, let's start earlier in the morning. I mean 7:30 and so we can get out at 5 or whatever so we all can make our flights that same day and get home by midnight. So, you know, if -- that's fine but we need to start early in the morning. I don't want to see starting at 9:00 in the morning.

MS. SPIELER: Laurie?

DR. WELCH: That's fine, but, you know, really, if you have a 6:00 flight out of Dulles, you have to leave here at three because the traffic is horrendous. Unless you're going by helicopter. And you really don't want to get a 6:00 flight out of Dulles. It's the only planes I've ever missed in my life are 6:00 flights out of Dulles, so --

MS. POST: I've been able to get on National, so it's not --

DR. WELCH: Right. And it's --

MS. POST: But --

DR. WELCH: -- it's not quite as bad. So, you know, I think it -- I -- I hear the logistics for going to this -- 'cause the format that we had now didn't require any more time away for you, did it? Of having a -- a day that

starts at noon 'cause you could come in that morning. Or did you have to come in --

MS. POST: -- subcommittee meeting, so --

DR. WELCH: So you had to come in the night before?

MS. POST: -- still had to come in the night before.

MS. SPIELER: Let me suggest, having heard all these permutations and combinations of concerns, that we now delegate this to staff to figure it out with the understanding that there is a fair amount for -- there are some people on this committee for whom a two-day meeting really is a problem. And -- but that there is also concern that a full day -- that a two-day meeting is a problem but that we need -- if we're going to have a full-day meeting, we really need a big day to make sure that we can complete the business. And so, you work on it and figure out what the best way to solve this problem is and we will accept your guidance on it. Is that fair?

Don't pack up yet.

I think that does conclude the business that we have. I -- but there are two things. One is that we have a public comment period, which we -- and -- and I know there's at least one person who wants to offer comments. And second, I wanted on behalf of the committee to thank the staff. I didn't do that at the beginning of our meeting and I think that the hard work of the staff on -- in the initiation of a very complicated program is -- is to be commended as well as the work that the staff has done doing support for the subcommittees and the full committee and that we all owe them a huge amount of thanks.

I personally regard this process as a collaborative one. I don't think it's the way FACAs usually function but that this is a new program and many of us were asked to serve on it because Dr. Michaels thought that we had expertise in these areas that would be useful, not in the sense of sort of being confrontational but in the sense that we could add value to the program. And I think that the committee members have all really kind of stepped up to the plate on this, as have the staff members, and that the collaborative relationship that's evolving is really a wonderful one. And so, I -- I thank everyone for that.

Paul, did you want to say something?

MR. SELIGMAN: I just wanted to second what you had to say and thank the -- members of the committee as well.

Public Comment Period

MS. SPIELER: So, we have a public comment period now. And -- I -- I wanted to ask if there was anyone in the audience who would like to offer comments with regard to the committee's deliberations or with regard to any other issue that is within our charter?

Angela?

MS. HERMAN: Angela Herman, American Insurance Association.

I just wanted to commend the Contractor-Insurer committee for encouraging more insurance participation. I'd like to see that get done. I'm not sure how far along your outreach is done. I'd love to offer the assistance of the American Insurance Association in that effort.

MS. SPIELER: Thank you very much, and we're going to be discussing with the chair of the subcommittee how to expand -- you know, to make sure that our next meeting includes insurance representatives.

I've also had a request from Vikki Hatfield, who's a member of the advisory committee but would like to take her advisory committee hat off and offer some comments as a community member to the committee.

Vikki?

MS. HATFIELD: I know that everyone's anxious to get out and I'm not going to take but a minute of your time. But I think I would be remiss as the community representative to not speak on behalf of the people that I know would like to have been here for this meeting but for some reason or the other they -- they were not able to come, whether it was a monetary reason or a time reason or whatever the reason was.

I -- I think that -- that we -- that this committee does do a lot of good work and I think that -- that the people in the community probably don't realize how hard it is. But I think that as the community we need -- they would like for you to take another look at -- from a staff point of view or from the committee point of view, having -- having gone through -- and I'll have to make this personal, and I don't intend to but I don't know how else to explain it.

Having gone through a workmen's comp issue, the -- the issues that we have discussed here are very important. And in the real world, the issues that we've discussed are probably not going to be easy to make happen. The -- the workmen's comp issues in Tennessee are very broad and they're not easy and they don't understand, and I think when we -- when we put people in Tennessee in the workmen's comp program that the ombudsman is a wonderful idea because they're going to have to have someone to look after 'em because they can't do it themselves.

You -- you -- I started in January making phone calls to workmen's comp on behalf of my father and I have not gotten any response. They aren't paying for his medicine. They aren't paying for anything. Or they paid for it one time and they won't pay for it again, and so I'm in hock \$600 to the drugstore and they're going where's my money. That's the way these things are working in the real world. That's real world problems.

And on paper, everything that we've talked about is wonderful. But I really think that when we get down to brass tacks and we start filling out these forms and we start sending people through this process, the problems that we see are going to be huge. And I think that the people out in the community are looking to us as a problem-solver because they've had so many problems as they've gone through these illnesses. And they want us to be their problem-solver, and I'm not sure that these suggestions and the recommendations that we're making are really going to work in the real world. I mean we're not going to know that until we -- till we follow through and do one the whole way.

But I know that there are a lot of people out there that need some real, genuine help, and I think it's going to be a long time coming, not -- not through any -- not meaning any disrespect to the Department of Energy or the Department of Labor, whichever way these programs are going to go.

But it's going to be hard. It's going to be real hard. And -- and some of these people don't have the education or the understanding of what they need to do and how they need to do it, and we need to remember that when we're trying to set up these offices and we're trying to move forward with recommendations, just like with the physicians panel.

The -- the paper and stuff that they're going to be looking at, those are really important things, but can you make a determination about someone who's turning blue from their -- from their waist down? Can you tell what that is? I don't know. Maybe the doctors here can -- can answer that question for me.

But I mean can we -- can we bring someone in who's on four liters of oxygen and still can't walk? Can we ask them for more medical information because they really don't have a diagnosis that's a true diagnosis? They have a little diagnosis, but not a whole diagnosis. These questions are questions that the community's going to ask and we need to be able to give the answers. And I don't know the answers.

So, I would only ask that the committee as a whole give some serious thought. Not that we aren't making good recommendations 'cause we are, but we have to look at it in the real world and the way these people are going to see things and the problems that they're going through and -- and how -- how to help them find -- just because we're going to offer 'em this money is not the end or not the resolution to their problems because they have a -- a whole lot of other problems that interact with this. And it's important that we understand that.

And it -- I'm sorry. I didn't mean to take up everyone's time. I know everybody's anxious to get out. But we need to think about these problems. They're -- they're oh so important.

I have one little lady -- I guess because my name appears on everything in the world, I get a lot of phone calls at home. I've had phone calls from California, I've had phone calls from Colorado, I've had phone calls from Arizona. And I -- I sit there and go, oh my God, how can I help this person? What can I do? And the answer is I can't do anything. I mean I can't do anything. But I want to. I really want to.

But if -- if you have someone whose husband died 25 years ago of an undisclosed lung problem and now the mother is in a nursing home and they don't have enough money to keep her in the nursing home because she lost all of her benefits, she lost her house, she lost everything that she owns due to the death of her husband. Those are hard questions to answer. And I -- you know, it's hard for me to be put in that position because, personally, I'm going to be going through the same thing. And it is hard to answer. It's very, very tough.

So, we need -- we need to really think a little bit about the questions that I presented. And I know sometimes when I ask questions ya'll kind of look at me and go, aah, what's she saying? Because when I first got appointed to this committee, I thought what are they asking? When I looked at all the people that were sitting on this committee, I was in awe of even being asked to sit on it because I thought what can I offer? What can I possibly offer to this committee that they would want to hear? And I -- and I'm still sometimes I'm in awe because I'm -- I think my Tennessee gets in

there sometimes and I -- I don't always say the things that I need to say and I don't mean it that way.

But it's -- this is so important. I can't -- having seen it firsthand, I can't tell you how important that the decisions we're making are. And I know that it takes up a lot of time and it's -- it's really hard sometimes. You know, when I have to go to my boss and say, hey, I need to be off for two days, and I've just started a new job because I don't know how many of you know that I was in an accident in September and I was burnt very bad doing work on my dad's farm because he wasn't able to.

These things are tough. But I believe so strongly in what we're trying to do, I'm going to do everything in my power -- one way or the other. And here I am getting teary-eyed, and I don't mean to. But it's -- it's a tough -- it's a tough road to go when you watch your dad and -- and there's nothing you can do. And I talk to people every day. Every single day my phone rings off the hook. And I return calls and I talk to people and I forward 'em to Jeff. I say let -- let -- let me have someone call you and let me see what we can do.

I don't know if we can do anything, but I know it's tough. And I want to make sure that when we make these decisions, we're making the correct decision that's really going to give these people what they need. Thanks.

MS. SPIELER: Thank you, and I think it's actually useful for the committee to be reminded regularly what this is really about.

There's someone else who wants -- why don't you come forward and turn on one of the mikes and identify yourself?

MS. TIWARI: Hi. I'm Jaya Tiwari for -- I work with Physicians for Social Responsibility. It's a public interest group with members and activists living near communities of nuclear weapons complex.

I would really encourage the committee to entertain the idea of having a meeting on site around a major site after the plan has been in implementation because this committee's probably only place where public and workers could bring their grievances and that can be channeled more productively to Department of Labor or Department of Energy. And that would be very useful time spent of the committee and also workers and people who will be affected by this.

MS. SPIELER: I think we are in fact planning to do that and probably -- may do it more than the one time that we already are planning to

do that because I -- I agree and I think the Department agrees that it's important for the committee members to understand the issues that are facing people in the community so that we can have that as a motivator as well as -- as a -- help clarify what the real issues are.

And we really appreciate your coming to these meetings and sitting in. Thank you.

Anyone else? Oh, go --

(Pause)

MS. SPIELER: Is there anything else that the committee members have? I'll -- Jim?

MR. ELLENBERGER: I'm just as anxious to get out of here as everyone else, but I wanted to thank Vikki for her comments. And I -- and I want to underscore the seriousness with which she has attempted to address this issue of workers' compensation.

I work with all of our state organizations on workers' compensation and I hear from injured workers around the country. And we have a very serious problem in this country with people who have lost faith with the system of workers' compensation that we are going to be depending on to handle a large part of the problem in the nuclear weapons complex. And that problem is exacerbated by the fact that a lot of these workers who are quite ill and sick don't look ill and sick, and they fall into a category that -- that, unfortunately, has been created that is pervasive, and that is that, gee, you don't look sick so you must not be sick, hence you are a cheater or a malingerer or you're a fraud.

And we're going to have to work hard. I don't want to cast blame or anything else around, but -- but this is -- it's really important that -- that all of us do what we can to -- to try and change this.

"20/20" last summer, almost a year ago, started to interview people -- injured workers around the country. They're going to do an expose about how injured workers are actually treated. And it's a tremendous source of disappointment that that has not been aired, but to give you an example of how injured workers view this system, Tom Jarrell from "20/20" told me that he interviewed the wife of a worker in Ohio who took his two sons into the William Green Building with guns and took hostages because he was so much at the end of his tether about the problems he was having with workers' compensation. Fortunately, no one was hurt. But he was arrested and he's

still in jail. That story was a big story in Ohio. It wasn't a big story in the rest of the country.

That man's wife got over \$20,000 in unsolicited contributions of five and 10 dollars from injured workers and other people in Ohio who heard about it. And I was just dying to see "20/20" publish this, run this story, and they haven't. But I wanted to make sure I shared it with you.

If you want to get a sense -- for those of you who have access to computers, you want to get a sense of some of the frustration injured workers feel, there's a web site that an injured worker in Massachusetts has put together. It's called workerscompensationinsurance.com. Check it out.

MS. SPIELER: Thank you.

Any other comments?

(No response)

MS. SPIELER: Going to declare the public hearing portion closed, and now, unless there are other issues that the committee wants to take up, I will entertain a motion for adjournment.

PARTICIPANT: So moved.

MS. SPIELER: Hearing no objection, the committee is adjourned.

(Whereupon, at 12:30 p.m., the meeting was adjourned.)