S. HRG. 108–547

ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

TO RECEIVE TESTIMONY ON THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT

MARCH 30, 2004

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ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

TUESDAY, MARCH 30, 2004

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:58 a.m. in room SD–366, Dirksen Senate Office Building, Hon. Jim Bunning presiding.

OPENING STATEMENT OF HON. JIM BUNNING, U.S. SENATOR FROM KENTUCKY

Senator BUNNING. This hearing of the Energy and Natural Resources Committee on implementation of the Energy Employees Occupational Illness Compensation Program shall come to order. This is the second hearing on this act we've conducted within the last 5 months, which indicates the degree of concern this committee has with the effectiveness of current Department of Energy actions to compensate workers in our nuclear weapons program who suffered serious illnesses as a result of their employment.

In the first hearing, the committee focused on subtitle D of the act, administered by the Department of Energy. We learned of at least three major issues with subtitle D, slow processing of claims by the Department of Energy to prepare them for review by physician panels; two, slow processing of claims by the physician panels; and three, an uncertain process through which workers might be compensated through their state workers' compensation programs.

This last issue includes concern over the availability of an entity who can now serve as a willing payer for a claim resulting from illnesses suffered many years ago. While the Department of Energy has maintained a claim process rate exceeding 100 cases per week since the last hearing, the agency still is miserably behind its clearing its claims backlog. The DOE has completed processing only 8 percent of its cases and only one person out of more than 23,000 cases, one out of 23,000, has been filed—that has been filed has received compensation.

Even with the Department's current proposal to accelerate physician panels processing, DOE's plan will mean that claimants will have to wait at least 6 years after the act was enacted to have their cases completed, and its current proposal does not even address the willing payer issue. In contrast, the Department of Labor has completed, processed 57 percent of its cases under subtitle B of the act and has paid nearly $800 million in claims.

The Paducah gaseous diffusion plant in Paducah, Kentucky is third in the Nation for the most cases filed for compensation from

the DOE. Most of these workers sacrificed their health and safety and were placed unknowingly in harm's way to make nuclear weapons for our country. Over 2,600 Kentucky residents exposed to toxic substances still are waiting to have their DOE cases completed under subtitle D.

The Department of Energy has not even touched over a third of the cases, which means they are still waiting for someone to review them, and zero people in Kentucky have received any payments for the lost wages and medical benefits they incurred during the illnesses caused by work at the DOE plants. This is not what Congress envisioned when it passed the act in 2000.

I hope our hearing today will bring to light a way for us to end the backlog of thousands of cases that have not received compensation. In our hearing today, each witness was asked to provide specific suggestions for alleviating the roadblocks within their responsibilities for administration of this act. From this hearing, it is my hope that we can work in a bipartisan manner to develop improved legislation that will reasonably compensate injured workers on a more timely basis.

Testifying today are Senator Charles Grassley, who together with Senator Murkowski has introduced legislation in the 108th Congress to address their concerns with the act's implementation; the Honorable Robert Card, Under Secretary of the Department of Energy; Mr. Robert Robertson, Director for Education, Workforce, and Income Security issues with the GAO; Mr. Shelby Hallmark, Director of the Office of Workers' Compensation Programs in the Department of Labor; and Dr. John Howard, Director of the National Institute for Occupational Safety and Health. We look forward to your testimony today.

Senator Bingaman, do you have a statement?

[The prepared statements of Senators Campbell, Schumer and Talent follow:]

PREPARED STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO

Thank you, Mr. Chairman. I would like to thank you for holding this hearing and all of the witnesses here to testify today.

The Rocky Flats site, just sixteen miles from Denver, was one of our nation's most important contributors to maintaining the energy security of our country. The workers at Rocky Flats developed and built the nuclear weapons that helped give the U.S. the necessary edge to win the Cold War. Thankfully, that War is over, but the unfortunate legacy of nuclear weapons is still affecting the proud patriots who provided those tools to victory.

Many of those workers in my State and others across the U.S. have developed serious illnesses after years of exposure to nuclear weapons. In order to address their health needs, the government established the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) in 2000 to provide compensation to employees of the Department of Energy and its contractor who where exposed to radiation or other toxic substances and who subsequently developed illnesses. Since implementation of this act, only a small fraction of the claims have gone through the process out of thousands of applicants.

Granted, this program is incredibly complex, with numerous parties involved. Sorting this out is certainly a difficult job, but the people who are sick don't have the luxury of waiting for us to do so. I look forward to hearing from our witnesses as to how we can remedy this problem and get help for those who need it most.

PREPARED STATEMENT OF HON. CHARLES SCHUMER, U.S. SENATOR FROM NEW YORK

Good Afternoon Mr. Chairman, members of the Energy Committee. I would like to take this opportunity to bring to your attention several issues surrounding the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) that are of vital importance to New York's nuclear workers.

Last week, NIOSH publicly announced that they were revising their November 2003 report on residual contamination pertaining to Bethlehem Steel to indicate that there was little potential for significant residual contamination at the site after weapons-related operations ended in 1952.

I would like to say that I am extremely dismayed at this admission and find it incomprehensible how a mistake of this magnitude could have occurred.

Thousands of affected workers in New York have been waiting for years for their claims to be processed and many of these workers are paying the price with their lives.

Now NIOSH is indicating that they have made a major error in a report that was already a year late to Congress.

Currently, NIOSH has only provided my office with 10 surface sample surveys conducted in 1952 as proof that Bethlehem Steel, a facility of enormous size and proportion, does not have potential for significant residual radiation.

Congress needs to be provided with a clearer and more comprehensive explanation of what happened.

I would also like to urge your agencies to improve the effectiveness of outreach and claimant assistance to applicants of the Energy Employees Occupational Illness Compensation Program in the Western New York region by establishing a permanent resource center in this area.

Workers at these facilities handled high levels of radioactive materials and were responsible for helping to create the huge nuclear arsenal that served as a deterrent to the Soviet Union during the Cold War.

Yet despite having one of the greatest concentrations of facilities involved in nuclear weapons production-related activities in the nation, Western New York continues to be severely underserved by this program.

The establishment of a permanent resource center in Western New York would represent a substantial step toward improving services for workers in this region.

Western New York is home to 14 former Atomic Weapon Employers (AWE) sites and DOE clean up facilities. Yet, the only assistance applicants receive is from a traveling resource center that comes to the area too infrequently to effectively serve current and former nuclear workers.

EEOICPA Section 3631 requires DOL to provide outreach and claimant assistance. A permanent facility is needed in Western New York, not only to increase awareness of the program among area residents, but to help serve workers throughout the claimant process.

I thank you for your attention to these important matters and hope that we can work together to ensure that the thousands of nuclear workers from New York and across the country who labored tirelessly for years in hazardous conditions receive the recognition and compensation they deserve.

PREPARED STATEMENT OF HON. JAMES M. TALENT, U.S. SENATOR FROM MISSOURI

Mr. Chairman, thank you for holding this hearing today. I think some real progress was made during the November hearing and this is a good time to revisit EEOICPA. This is an issue of great importance to me—it affects so many Missourians. In Missouri, an estimated 3,500 people worked at these sites. So far, 520 claims have been filed. I am hopeful that you are making progress on these claimants.

These claimants are former workers at Mallinckrodt Chemical Co. in St. Louis, they received doses of radiation up to 2,400 times those considered acceptable today. These workers were exposed, in most instances unknowingly, to dangerous levels of radiation. Many of those who eventually developed cancer have already died, before they could be compensated for their illness.

When this legislation passed, it was a great victory for these workers; however, government bureaucracy and red tape are preventing these individuals from obtaining the compensation that, without question, they deserve. I think the suggested legislation that the Department of Energy has proposed is a good start and hopefully more physicians will be enticed to come and process these claims without the $60/hour pay cap. I still however think we should do more.

I cosponsored a bill with Sen. Bond to expedite the claimants' process at the Mallinckrodt facility in St. Louis. This legislation designates the Mallinckrodt facility as a Special Exposure Cohort (SEC) site. This will allow some of the more than 500 workers to bypass the long and cumbersome bureaucratic dose reconstruction process and qualify for expedited payments.

This legislation isn't technically necessary—but in reality it is. Congress gave the Secretary of HHS the authority to designate other classes of employees to be members of the SEC. For two years you have been promulgating regulations for this designation. This delay is unacceptable to me and Sen. Bond and the effected employees in Missouri.

Mr. Howard, in your testimony, you state: "Once the Cohort regulation is promulgated, HHS will solicit and begin considering petitions by classes of employees. The process of considering petitions will involve the review of such petitions by NIOSH and by the Board, which will advise HHS on each petition."

Knowing the little progress that has been made in simply promulgating the regulation, I am concerned that this petition process could prove to be as long and cumbersome as the standard process.

I know that this has proven to be a real trial for the administration—one program under the jurisdiction of so many departments and agencies. I understand why it could take so long to work out the "kinks." But it is time to re-evaluate this system and get this compensation out to the former employees.

I am hopeful that today, we will see some real progress and some movement toward reform that is clearly so desperately needed. This program is too important to people in Missouri to allow it to continue as it is.

Thank you again Mr. Chairman.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Yes, I do, Mr. Chairman. Thank you for having the hearing. This is the second hearing we've had to review this Energy Employees Occupation Illness Act. I share your frustration about the slowness with which people are actually having their claims processed. I do think we need to find a way to reinsert some urgency into this process. It seems to have been lost and the legislative fixes, as I understand DOE's testimony here, and we'll have a chance to hear from Mr. Card, but the legislative fixes proposed by the Department of Energy, which are to eliminate pay caps on physicians and enable their full-time employment, do not seem to me to go far enough.

The process as it's now described in the Federal Register runs a couple of hundred pages. I don't really know if it's realistic to have a sick person try to wade through 20 pages of Federal regulations entitled, "Guidelines for Determining the Probability of Causation and Methods for Radiation Dose Reconstruction." I think that was not the intent of Congress when we first talked about this.

This is particularly difficult when, in the first place, the worker in question was not issued a radiation badge to record the dose level, because they were transporting isotopes outside of Los Alamos, and the laboratory, of course, had a prohibition against wearing badges outside the lab. I have a constituent, Jill Scherer, who has breast cancer. She had a mastectomy in 2001 on Valentine's Day. I have another constituent who is our State Representative, Ray Reese, from Albuquerque, who has mesothelioma from the time he worked in Los Alamos helping mix lead using asbestos heat shields. Because he does not have one of the 22 cancers related to radiation, he does not qualify for one of the special cohort classes that the Department of Labor is administering for a relatively quick remedy. The result is that his claim goes through the Department of Energy process, which is a very slow remedy at

best, with the physicians panel involved and with the state compensation system involved.

I would like to enter into the record a joint memorial that our State legislature in New Mexico passed concerning reforms to the Energy Employees Occupational Illness Compensation Act.

Senator BUNNING. Without objection.

Senator BINGAMAN. Four years ago I worked with you, Mr. Chairman, with Senators Thompson, Frist, Voinovich and DeWine to see this legislation enacted. We did have a sense of urgency concerning the former cold war atomic workers who were sick and dying from cancer or illnesses related to exposure to toxic chemicals. I'm concerned that the intent of that legislation may be lost by our effort to create a very large bureaucracy to administer the program. I'm even more concerned that the program has become so complex that those who are sick and need relief through this act simply cannot wade through the complexity of it and appeal decisions that may be adverse to them.

One suggestion that I would like to make and hope will be followed up on is that both the Department of Energy and the Department of Labor establish ombudsman offices to help the sick workers through the pages of regulations as they appeal adverse decisions.

Mr. Chairman, I'll close by just submitting for the record the list of constituents in my State that are now having appeals made with NIOSH and under the radiation dose reconstruction program. I'd like to ask NIOSH as part of this hearing to evaluate those appeals and get back to my office as soon as possible and give us some indication as to the status of those. Again, thank you for having the hearing and I look forward to the testimony.

Senator BUNNING. Thank you.

Senator Murkowski.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate you calling the hearing this morning and the opportunity again to bring this up. As we'll recall, Senator Domenici had convened a hearing on the implementation of the Energy Employees Act back in November of last year. Senator Grassley, you had testified at that hearing as well and I think at that hearing we learned a lot about what was going on or perhaps what was not going on and the problems, but I know that your staff has been working just very, very hard, tirelessly on this issue, and I appreciate all of your efforts, look forward to your testimony this morning.

But I know that when we are able to resolve this issue, and we must do so, I think we agree on that, it will be because of your very, very tireless and relentless efforts on this and I appreciate that.

At the November 2003 hearing, I focused on two major failures with the implementation of the Energy Employees Act. First, that DOE had processed less than one-half of 1 percent of the total claims filed under the act while having spent over $15 million of taxpayers' money. Numerous claimants nationwide, including Alas-

kans, had been waiting an inexcusably long time to have their claims processed.

The second concern that I had was the lack of any meaningful process on resolving the willing payer issue and I'd like to briefly review what's occurred on these issues since that hearing in November. There has been some slight good news on the claims processing issue. DOE is now processing over 100 claims a week, but even at this rate they're not going to eliminate their backlog of around 20,000 applicants for years, years many of the elderly and sick claimants don't have.

DOE has issued a new rule reducing the number of doctors necessary on physicians panels and this may help avoid a bottleneck of applications at the physician panel stage of the claims process. Further, DOE has finally responded to, but not yet resolved, the concerns of some Alaskans about their claims under the Energy Employees Act.

But no progress has been made on the willing payer issue. This is very, very difficult and it needs to be repeated that no progress has been made on the willing payer issue. In fact, I would suggest, Mr. Chairman, that things have gotten worse, and we cannot let this get any worse.

So the good news, the modest good news that I have mentioned is far outweighed by the numerous fundamental problems that still remain with both the claims processing and the willing payer issues. Simply put, overall the implementation of subpart D of the act remains a catastrophic failure. I have no doubt that we're going to hear some of those problems this morning.

I want to conclude my remarks by explaining why the Energy Employees Act is so important to me and why I will not rest until we do right for these energy workers. As some of you may recall, at the November hearing I discussed one of my constituent's experiences, Sylvia Carlsson. Mrs. Carlsson is a widow of a worker at the Amchitka, Alaska nuclear test site. Mr. Carlsson worked in a mine shaft where the largest nuclear test explosion ever conducted in the United States took place in 1971. He was exposed to large amounts of radiation. He was 32 years old at the time of the exposure and he died before his 41st birthday of colon cancer. And though he didn't fight in any war, Mr. Carlsson and many workers at the nuclear research and weapons facilities throughout the United States are real heroes. They were put in harm's way by our government, yet they did what was necessary to help us win the cold war and give us the lives that we now enjoy.

So Mrs. Carlsson's husband is gone. She's one of the few individuals in the United States whose claim under subpart D of the Energy Employees Act has actually been processed through the physician panel. Her three-member physician panel issued a unanimous positive determination. She was found eligible for compensation, but her experience after receiving this positive physician panel determination serves as a mockery of that determination.

Further, and of particular importance to other Members of Congress, her experience should also serve as a warning to the many thousands of claimants throughout the country of what to expect if the willing payer issue is not resolved. So put yourself in Mrs. Carlsson's position. She's received unanimous positive physician

panel determination. Her husband's been gone now for 25 years. She expected she would now file the DOE physician panel determination with the Alaska Workers' Compensation Board and receive the appropriate compensation, but that didn't happen. After filing her claim, she was subject to months of physically exhausting and emotionally grueling litigation by insurance company counsel. She incurred the huge expense of hiring her own attorney to help her through the process.

Further, she received almost no assistance from the DOE. And what about the positive physician panel determination? It was of no use. The attorney for the insurance company fighting her claim asked to depose the physician panel members and question them at a hearing before the Alaska Workers' Compensation Board. DOE refused to let the panel members be deposed or appear at the hearing. Based on DOE's refusal, the Alaska Workers' Compensation Board determined that the positive physicians panel determination was hearsay evidence. They would not rely on it to support a finding that Mrs. Carlsson should receive workers' compensation.

I want to briefly quote the testimony that Mrs. Carlsson filed before the committee. She says, it was my understanding that the purpose of DOE's physician panel determination was to raise a presumption of compensability in State workers' compensation proceedings. DOE's physician panel determination, which was not only positive in my favor, but also unanimous, did not help my case, did not raise a presumption of compensability, and in fact may have actually caused serious damage to the outcome of my Alaska Workers' Compensation Board case, end of quote.

Mr. Chairman, this is not what Congress contemplated when it passed the Energy Employees Act in 2000. Congress recognized it owed a debt to these Americans. Congress did not intend that these elderly widows or seriously ill survivors be put through more suffering and then most likely not receive the compensation they have earned.

Mr. Chairman, I will not rest until we resolve this issue, and I look forward to working with you and the other members of the committee on this. Thank you.

Senator BUNNING. Senator Alexander.

STATEMENT OF HON. LAMAR ALEXANDER, U.S. SENATOR FROM TENNESSEE

Senator ALEXANDER. Thank you, Mr. Chairman. I look forward to the testimony. I salute the chairman, Senator Grassley, others who've worked hard on this. I hope we're making progress today. I think the proposal to reduce the physicians panel from three to one initially is a good step. The idea of increasing the pay for that physician seems like a good proposal. That's been a big bottleneck.

I'm looking forward to hearing more about what DOE, Department of Energy, plans to do on case development. I understand over 60 percent of the claims filed in Tennessee are still awaiting development. I would be interested in hearing the Department's opinion, the Department of Energy's opinion about whether it could work with the Department of Labor or help transfer the case development or some of the case development to the Department of Labor in order to improve it.

Our cold warriors deserve to be treated fairly. I look forward to hearing the progress that we're making on that and I thank the chairman for the hearing.

Senator BUNNING. Senator Cantwell, if you would just hold your opening statement. Senator Grassley has to be somewhere by 10:30 and I'm going to let him go first if it's all right with you.

Senator CANTWELL. More than happy to do that, Mr. Chairman.

Senator BUNNING. Senator Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY, U.S. SENATOR FROM IOWA

Senator GRASSLEY. I have to be on the floor on the Welfare Reform bill. Well, I think you folks have laid out this problem very clearly, and so my statement is in support with some specific examples of how we can get better use of the taxpayers' money, so obviously I thank you very much and I also appreciate Senator Murkowski working with me on this issue, and particularly getting some very sensitive information.

This is, of course, the second hearing in 4 months that I've had an opportunity to appear before you on the Occupational Illness Compensation Act. We all know how important this law is. Thousands of workers, some of whom have already died, and their survivors are depending on the Energy Department to process their compensation claims and to help them get payment that they feel they're entitled to and probably are entitled to.

I have a personal interest in this because hundreds of patriotic Iowans worked at the Army ammunition plant near Burlington, Iowa for decades. These patriots served on the Nation's home front during the cold war, putting themselves at risk in ultra hazardous work of building nuclear weapons. The least our government can do is to try to compensate them, compensate them quickly, and compensate them obviously before they die.

But that is the problem. This program is moving like molasses. Thousands of workers or their survivors are in limbo while their requests for help sit in offices here in Washington, D.C. Most of us are already familiar with how slowly the Energy Department has been moving. My statement, longer statement for the record, Mr. Chairman, will give considerable detail on that. In terms of performance, the winner's clear. The Labor Department is performing well, the Energy Department is not.

Now I'd like to talk about whether the taxpayers are getting the bang for a buck in the money spent on this program in the Energy Department, and I don't think that any of us like the answer. In short, sick workers are getting shortchanged. The taxpayers are getting gouged, and Congress is being taken for a ride.

I know the Energy Department is asking Congress to give it more money. I think Congress needs to be very careful about this. The Energy Department's problems are not going to be solved by throwing more money into a black hole. Senator Murkowski and I have been doing some oversight of the Energy Department's program and its contractor from New Orleans, the Science and Engineering Associates, and they're known as SEA. This company's employees are the ones processing the compensation claims for sick workers.

What we have found should make Congress think twice about forking over more money to the Energy Department, especially without any guarantees that things will get better. Mr. Chairman, I want to note that the Navy and the SEA don't want these numbers out. In fact, you can see here on some of our documents that it is stamped proprietary business sensitive, and that's obvious proof that the Navy and the SEA don't want this information out. Sometimes people in the Government and the contractors who feed from Uncle Sam's trough forget who they're working for, because in fact they're working for the taxpayers, not themselves, and they should not be trying to hide the way that they're using the taxpayers' money, as evidenced by public information not being public.

I don't see any accountability in the flow of funds on this program. So far, $16.7 million in taxpayers' money has flowed into the SEA coffers to process these claims and up to $18 million is authorized for the contracts that expire in December of this year. SEA is charging exorbitant amounts of money for questionable results. In fact, the Energy Department is paying SEA about twice as much as it costs for the same work in the Labor Department.

I've had a chance to analyze SEA and Energy Department documents, so I can compare job duties with the Labor Department. This is comparing apples with apples, I want to make clear, and these are the documents that we've looked at in order to draw the conclusions that we have, and these would be more specific examples within these binders of what we're talking about, plenty of figures to go through.

According to company invoices through the end of last year, the lowest paid position at SEA bills the Government at a rate of $36.09 an hour, and that would come out to $72,180 a year, and that's a lot of money for someone who makes copies, sends faxes, and puts files in filing cabinets. In my office, that's what interns do, and most of them do it for free.

At the Labor Department, the people who do these jobs would be GS-6 at the most. They make about $16.16 an hour, and if you count generous benefits at 40 percent, that's $22.62 an hour, $33,000 a year. And remember that the contractor is billing 72 grand a year for these same duties. The people who do the bulk of the case preparation work at SEA are the nurses who examine the compensation claims and get them ready for the doctors to make a decision. SEA is billing the Government $90.51 an hour for the nurses' work, or about $180,000 a year, but their counterparts at the Labor Department are GS-12s and cost less than half that amount, $44 an hour, or about $93,000 a year.

The highest paid SEA official on this project is Richard Cutshaw, the program manager. Now, I'm not sure Mr. Cutshaw is—I'm sure that he's a nice fellow, but SEA is billing $200.64 an hour for his time, and let me clarify that and emphasize it so there's no confusion. That's $200.64 an hour. That comes out to $401,280 a year. Mr. Cutshaw has cost the taxpayers more than the salaries of Energy Secretary Abraham and Labor Secretary Chao combined. He costs more money than the Vice President and the SEA charges just a bit more for his work than the salary of President Bush.

Mr. Cutshaw's counterpart at the Labor Department would be a GS-14 district director who costs about $135,000 including fringes.

Only in a government contract can people make so much money and perform so poorly, as evidenced by the testimony of four of you on this committee thus far. If this were the private sector, these people would be fired and be out in the street, yet SEA hires lobbyists to influence Congress to let the company keep this lucrative contract.

Now we know how much that the Labor Department folks are getting paid, but we don't know how much SEA employees are getting paid. We only know how much the company is billing the taxpayers for their work. Now, Senator Murkowski and I asked SEA for information on how much it is paying the employees for this program. We want to figure out the margins to see how much SEA is profiting from this arrangement.

Well, last week, the CEO of the company wrote me in saying that he would not tell, and this is after about a month ago I had a private meeting with him and he said he—he offered, not my asking, he offered to work with us because he thought that we were doing legitimate work. The excuse is from the CEO that it would hurt SEA's competition with other companies. The fact is that SEA, which has annual revenue of $200 million a year didn't have to compete for this contract. This contract was handed to the company in the sole-source variety. I've seen this kind of cover-up and stonewalling over and over again in my years of conducting investigations in the Senate, whether it be at the Pentagon in the 1980's or the FBI more recently or a lot of what I've been doing on big business or charitable arrangements over the last two or 3 years. It's the same problem down in New Orleans where the SEA is based.

So I'm going to ask the General Accounting Office to conduct a broader investigation into how SEA got this contract. I will also ask GAO to analyze the mysterious way that the SEA, the Energy Department, and the Navy are managing this contract. Now, the Energy Department has a new plan called Path Forward.

Is this a claim that we believe? If past performance is any indicator, I don't believe so. I don't think that the Energy Department's Path Forward plan is going to take us anywhere but in circles. It's a blind alley for workers in Iowa and states that you have already commented on, my fellow colleagues. I think the Energy Department has tried to pretend this willing payer problem is looming somewhere out there in the horizon. Well, the problem is right here on top of us, and sticking your head in the sand only means the problem is going to hit you eventually in the backside.

Mr. Chairman, we need legislation to fix this problem. The Energy Department needs to be a cooperative partner with Congress and the Labor Department to come up with an immediate solution to this problem. The Department of Energy has to stop thinking about protecting its turf or its contractor's pocketbook and think about what really is important, and what's really important in this instance is helping these workers before they die, not after they die, because these are the workers that put their life on the line.

I'm also going to put the Office of Management and Budget on notice that the administration needs to work with us to come up with a plan very quickly to address all the problems in this program, because as Senator Murkowski and I was working last year,

they were quite an impediment, and they have a lot of clout up here on the Hill particularly among Republican Congressmen because it's a Republican administration in OMB and they helped kill our efforts to move forward on this last year.

So if we don't ask them to help get this program changed, I think that we in Congress are getting fed up and that we'll have to just move forward on our own, and I'd like to do it in cooperation with the administration. We can't afford to wait any longer. This problem is not going to go away, but the patriots who served on the home front of the cold war are dying off. We need to do what we can to help as many as we can before it's too late.

So Mr. Chairman and all of you on this committee, thank you for this opportunity, and I have—I really appreciate your looking into it is the best way to say it. Thank you very much.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY, U.S. SENATOR FROM IOWA

Mr. Chairman, members of the committee, thank you for the opportunity to testify. Sen. Murkowski, I appreciate our partnership in working on this issue.

This is the second hearing in four months on the Energy Department's implementation of the Energy Employees Occupational Illness Compensation Program Act of 2000. We all know how important this law is.

Thousands of workers, some of whom have already died, and their survivors are depending on the Energy Department to process their compensation claim and help them get payments.

I have a personal interest in this because hundreds of patriotic Iowans worked at the Army Ammunition Plant in near Burlington for decades.

Nothing can make up for the illnesses these workers developed because they were exposed to toxic substances without their knowledge or consent. Today they wear their battle scars in the form of illness and disease.

These patriots served on the nation's home-front during the Cold War, putting themselves at risk in the ultra-hazardous work of building nuclear weapons. The least our government can do is try to compensate them, compensate them quickly, and compensate them before they die

But that is the problem. This program is moving like molasses. Thousands of workers, or their survivors, are in limbo while their requests for help sit in an office here in Washington.

The Energy Department has processed 8.3 percent[1] of the twenty-three thousand claims that have been filed. But even that figure is a bit inflated because of a bureaucratic sleight-of-hand.

You need to count the applications that have actually been processed through the physicians panels, which is a mere 372, out of 23,000. Leave out withdrawn and ineligible applications, and the Energy Department has processed only 1.6 percent of the claims.[2]

That is a rate of four claims per week moving through the physicians panel, since the Energy Department got rolling in August of 2002.[3]

The department's own documents show it is facing a three-and-a-half year backlog in claims processing.[4] The same documents show a seven year backlog at the physicians panels, who make the final decision on claims for sick workers.[5]

And as far as I know, only one claim has been paid out.

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[1] *http://tis.eh.doe.gov/advocacy/prog stats/index.html* (Monday, March 29, 2004)
1,948 "completed" claims is 8.29 percent, or 8.3 percent, of 23,474 claims filed.

[2] *http://tis.eh.doe.gov/advocacy/prog stats/index.html* (Monday, March 29, 2004)
372 processed claims, or "final decisions sent to applicants," is 1.58 percent, or 1.6 percent, of 23,474 claims filed.

[3] The Energy Department commenced claims processing after publishing a final rule on August 14, 2002, 19½ months ago, or 84 weeks. 372 processed claims divided by 84 weeks equals 4.42 claims, or 4 claims, per week.

[4] Page 5 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006" (attached).

[5] Page 6 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006" (attached).

In contrast, the Labor Department has received more than 50,000 claims, and it has made final decisions on more than 27,000, which is over half.[6] And more than $750 million have been paid out.[7] The Labor Department evaluates compensation claims and pays a lump sum amount of $150,000 to workers with radiation related cancers and certain illnesses.

So in terms of performance, the winner is clear. The Labor Department is performing well, and the Energy Department is not.

Now .I'd like to talk about whether the tax-payers are getting the bang for our buck at the Energy Department.

I don't think you're going to like the answer.

In short, sick workers are getting short-changed, the tax-payers are getting gouged, and Congress is being taken for a ride.

I know the Energy Department is asking Congress to give it more money. I think Congress needs to be very careful about this—the Energy Department's problems are not going to be solved by throwing more money into a black hole.

The Energy Department is asking for $76 million for a program that still does not work well.[8]

If we hand over this money, the Energy Department estimates it will work the claims through the physicians panels in about three years or so.[9] That's a big assumption, but even if it's right, there is no guarantee of payment to the sick workers.

In my state of Iowa, almost no one will be paid.[10]

We can't string these people along and wait for disaster. We have to do something now.

Proposing more money alone to fix a problem is the easy and lazy way out. It sounds nice, and it may appear to be doing something, but it just doesn't work that way. We need reform, with accountability and results.

We have to fix claims processing and the payment system so Cold War veterans near Burlington, Iowa, and the rest of the country, aren't left out in the cold.

Sen. Murkowski and I have been doing some oversight of the Energy Department's program, and its contractor from New Orleans, Science and Engineering Associates, known as SEA. This company's employees are the ones processing the compensation claims of sick workers.

What we've found should make Congress think twice about forking over more money to the Energy Department, especially without any guarantees that things will get better.

Mr. Chairman, I want to note that the Navy and SEA don't want these numbers to come out. They stamped the words "Business Confidential" and "Proprietary" in big red letters all over these invoices.

Sometimes people in government, and the contractors who feed from Uncle Sam's trough, forget who they are working for. They're working for the tax-payers, not themselves. And they should not be trying to hide the way they're using tax-payer money.

First, even the way this contract was granted is suspicious. The Energy Department circumvented competitive contracting and went straight to the Navy, where SEA was already working.

I don't see any accountability in the flow of funds on this program. So far, $16.7 million[11] in tax-payer money has flowed into SEA coffers to process these claims, and up to $18 million is authorized for the contract that expires in December of this year.[12]

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[6] *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/WeeklyStats.htm*
52,625 claims filed, with a final decision for 27,564 (11,769 approved plus 15,795 denied).

[7] *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/WeeklyStats.htm*
$782,306,005 in compensation paid for 10,503 payments (some payments split between survivors).

[8] Page 18 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006," commonly referred to as the Path Forward plan. The Energy Department is seeking $33.3 million in FY04 appropriations transfer plus $43 million for its FY05 request, totaling $77.3 million, or $77 million.

[9] Page 8 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006," commonly referred to as the Path Forward plan.

[10] Page 4 of attachment accompanying April 7, 2003 letter from Energy Department in response to March 31, 2003 letter from Sen. Grassley (attached).

[11] Page 4 of attachment accompanying April 7, 2003 letter from Energy Department in response to March 31, 2003 letter from Sen. Grassley (attached).

[12] Determination and Findings for Interagency Agreement between the Energy Department and the Navy's Error! Main Document Only.Space and Naval Warfare, Information Technology

And there's no end in sight to blowing this money—the Energy Department and the Navy can fork over more money at any time, like they have been doing for two years.

SEA is charging exorbitant amounts of money for questionable results. In fact, the Energy Department is paying SEA about twice as much as it costs for the same work at the Labor Department.

I've analyzed SEA and Energy Department documents so I can compare job duties with the Labor Department. This is comparing apples to apples.

According to company invoices through the end of last year, the lowest paid position at SEA bills the government at a rate of $36.09 an hour—that comes out to $72,180 a year.[13]

That's a lot of money for someone who makes copies, sends faxes and puts files in filing cabinets.

In my office, that's what interns do, and most of them do it for free.

SEA uses the title "Records Analyst" or "Mail Room" for these duties.

At the Labor Department, the people who do these jobs would be GS-6, at the most. They make about $16.16 an hour, and if you count generous benefits at 40 percent, that's $22.62 an hour, or $33,000 a year.[14]

Remember, the contractor is billing $72,000 a year for the same duties.

The people who do the bulk of the case preparation work at SEA are the nurses who examine the compensation claims and get them ready for the physicians to make a decision.

SEA is billing the government $90.51 an hour for nurse's work, or about $181,000 a year.[15]

But their counterparts at the Labor Department are GS-12, and cost less than half that amount: $44 an hour, or about $93,000 a year.[16]

The highest-paid SEA official on this project is Richard Cutshaw, the program manager. Now I'm sure Mr. Cutshaw is a nice fellow, but SEA is billing $200.64 an hour for his time.[17]

Let me be clear so there's no confusion—I said $200.64 per hour.

That comes out to $401,280 a year![18]

Mr. Cutshaw costs the tax-payers more than the salaries of Energy Secretary Abraham and Labor Secretary Chao combined. He costs more money than the Vice President, and SEA charges just a bit more for his work than the salary of President George W. Bush.

Mr. Cutshaw's counterpart at the Labor Department would be a GS-14 District Director, who costs about $135,000, including fringes.[19]

Only in a government contract can people make so much money and perform so poorly. If this were the private sector, these people would get canned and be out on the street.

Yet SEA hires lobbyists to influence Congress to let the company keep this lucrative contract.

Now SEA says that the average hourly wage is $60 an hour, but that's misleading.[20]

That is not comparing apples and apples. That figure overlooks the employees at the Labor Department who are doing the same work, with equivalent knowledge skills and ability. When analyzing costs, you have to compare apples and apples, not apples with every kind of possible fruit.[21]

Now we know how much the Labor Department folks are getting paid, but we don't know how much SEA employees are getting paid. We only know how much the company is billing the taxpayers for their work.

Sen. Murkowski and I asked SEA for information on how much it is paying the employees in this program. We want to figure out the margins to see how much SEA is profiting from this arrangement.

Well, last week, the CEO of the company wrote me a letter saying he won't tell.

Center (SITC) provided in Energy Department response, dated February 10, 2004, to December 22, 2003 letter from Senators Grassley and Murkowski (attached).

[13] See "Navy SITC chart for SEA billing" spreadsheet (attached).

[14] See attached spreadsheet comparison by Sen. Grassley's staff.

[15] See "Navy SITC chart for SEA billing" spreadsheet (attached).

[16] See attached spreadsheet comparison by Sen. Grassley's staff.

[17] See "Navy SITC chart for SEA billing" spreadsheet (attached).

[18] See attached spreadsheet comparison by Sen. Grassley's staff.

[19] See attached spreadsheet comparison by Sen. Grassley's staff.

[20] See "Navy SITC chart for SEA billing" spreadsheet (attached).

[21] Job description of SEA employees available upon request.

The excuse is that it will hurt the SEA's competition with other companies. The fact is that SEA, which has annual revenues of $200,000,000, didn't have to compete for this contract. This contract was handed to the company.

I've seen this kind of cover-up and stonewalling over and over in my years of conducting investigations in the Senate, whether it's at the Pentagon, the FBI or with Big Business. It's the same problem down in New Orleans where SEA is based.

I will be asking the General Accounting Office (GAO) to conduct a broad investigation into how SEA got this contract. I will also ask GAO to analyze the mysterious way that SEA, the Energy Department and the Navy are managing this contract.

That's not all.

SEA has spent almost $5 million on a computer system.[22] When this system went operational, it did not do what it needed to do, according to the GAO and an Energy Department consultant.

This consultant, the Hays Group, said the department could have bought off-the-shelf software for $50,000.[23] So it looks like they built a system with a square wheel, and when they found out it doesn't roll, they spent millions to customize it.

I just don't buy the excuse that it had to reinvent the wheel by building a software system from the ground up.

To the Energy Department's credit, there is some progress. After ramping up for several years, The Energy Department is now moving cases up to the door-step of the physicians panels for a final decision at a pretty good rate of about 110 per week.[24]

But that just doesn't cut it. The department admits that this rate only keeps up with the influx of new claims coming in the door.[25] And now the bottle-neck looks like it will move from claims processing to the panels of physicians.

Even here, the Department is changing its own report card. In March of 2003, the Department told Congress it could move 100 claims per week through the physicians panels by August of 2003. Now, the department says it is moving at least 100 claims a week up to the physicians panel.[26]

That's a huge difference. For a nuclear weapons plant worker, it means you have a decision on your claim, or you're still waiting for a decision.

To explain this discrepancy, the department wrote me a letter that says, quote, "DOE has refined the framework it uses to measure performance."[27]

Well, the only performance measure that counts is helping sick workers, and the Energy Department just can't measure up.

Now the Energy Department has a new plan called "The Path Forward." The plan assumes that if Congress gives the Department another $76 million, then 15,000 claims will move through the physicians panels in one year. That's about 310 claims per week.[28]

Is this a claim we can believe? If past performance is any indicator, I just don't buy it.

The department has moved claims through the physicians panels at a rate of four claims a week over the past 18 months.[29] And they have not requested medical

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[22] Attached chart accompanying March 24, 2004 letter from the Energy Department in response to December 22, 2003 letter of Senators Grassley and Murkowski.

[23] *http://tis.eh.doe.gov/advocacy/haysReport_eeoicpa_111403.pdf*
Page 16 (18 of 30 in pdf format) of "EEOICPA Program Process Enhancements and Efficiency Improvements," commonly known as the Hays Report, November 14, 2003.

[24] Page 5 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006," commonly referred to as the Path Forward plan.

[25] Page 7 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006," commonly referred to as the Path Forward plan.

[26] Pages 7 and 8 of Energy Department response, dated February 10, 2004, to December 22, 2003 letter from Senators Grassley and Murkowski.

[27] Pages 7 and 8 of Energy Department response, dated February 10, 2004, to December 22, 2003 letter from Senators Grassley and Murkowski.

[28] Page 9 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006," commonly referred to as the Path Forward plan.

[29] The Energy Department commenced claims processing after publishing a final rule on August 14, 2002, 19 and a half months ago, or 84 weeks. 372 processed claims divided by 84 weeks equals 4.42 claims, or 4 claims, per week.

records for almost two-thirds of the claims: only 8,950 request have been made for more than 22,000 claims.[30]

But let's pretend for a moment that the Energy Department gets the money it wants, and then all of a sudden figures out what it's doing and really starts moving these claims.

I'll be the first to congratulate them, but there's one problem—there is no one to pay valid claims to the workers at an unknown number of sites. A substantial number of claims will not be paid, and the Energy Department can't give Congress a good estimate.

In my state of Iowa, no one who worked at the Army Ammunition Plant will have a valid claim paid. That's right, Zero. Because there is no willing payer.[31] I don't think the Energy Department's Path Forward plan is going to take us anywhere but in circles. It's a blind alley for workers in Iowa and many other states.

I think the Energy Department has tried to pretend this willing payer problem is not looming on the horizon. Well, the problem is almost on top of us, and sticking your head in the sand only means the problem going to hit you in the back-side.

The Energy Department's plan says the solution to the willing payer problem is to hire someone to do a study. This is kicking the can down the road, not a path forward.

Mr. Chairman, we need legislation to fix this program.

We also need to decide if we want to pay twice as much money as we need to. Should we be patient and let the Energy Department and its contractor continue to learn on the job, while sick workers die off?

Or do we turn this program over to experienced professionals at the Labor Department and charge them with the responsibility to pay the claims?

The Energy Department needs to be a cooperative partner with Congress and the Labor Department to come up with an immediate solution to this problem.

Last year, the Energy Department fought against a proposal to send this program to the Labor Department. And it's still hiding internal documents about its efforts, refusing to turn them over.

The Energy Department has to stop thinking about protecting its turf, or its contractor's pocketbook, and think about what's really important—the workers who put their lives on the line.

I'm also going to put the Office of Management and Budget on notice that the administration needs to work with us to come up with a plan very quickly to address all the problems in this program.

If not, I think that we in Congress are getting so fed up that we will just have to move forward with our own plan.

The Senate has already put the administration on notice that these problems need to be fixed soon.

Along with 15 other co-sponsors, I authored a bipartisan Senate resolution on this issue. During the budget debate this month, the Senate unanimously passed the resolution, which called for improvements in the program in four areas.

First, claims should be promptly, equitably, and efficiently compensated. Second, Changes should be made to the Energy Employees Occupational Illness Compensation Program Act to improve claims processing and review by physicians panels to ensure cost-effective and efficient consideration and determination of workers' claims. Third, Changes should be made to the program to provide for membership in additional special exposure cohorts. Fourth, a plan must be made at the earliest opportunity to effectively resolve the issues dealing with a lack of a willing payer.

We can't afford to wait around any longer. This problem is not going to go away, but the patriots who served on the home-front of the Cold War are dying off. We need to do what we can to help as many as we can before it's too late.

One more point, Mr. Chairman.

As members of this committee may or may not know, the Department of Energy decided to send up proposed legislation to amend Part D of the act last night at 6:05 p.m.

This proposal focuses on the problems at the physicians panels. I'm not going to get into the merits of this proposal, except that some of this is common sense, so you have to wonder why it's taken so long for the Energy Department to figure this out.

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[30] Page 2 of "EEOICPA Part D Path Forward: The Department of Energy's Plan to Eliminate the Entire Backlog of Applications by the end of 2006," commonly referred to as the Path Forward plan.

[31] Page 4 of attachment accompanying April 7, 2003 letter from Energy Department in response to March 31, 2003 letter from Sen. Grassley (attached).

Specifically, the Energy Department has been telling me since last summer that the physicians panels were the root of the 20,000 case backlog.

This is a bit disingenuous, since the department had not even processed enough claims to keep a small number of doctors busy. There was no backlog at the physicians panels. But that's what they told me over 8 months ago. Eight months ago, they recognized this problem, and last night at the 11th hour before this hearing, the department somehow comes up with detailed, proposed legislation to address this issue.

The timing is highly suspicious.

Rest assured, I'm not going to wait another eight months for a solution that resolves the issues with regard to a lack of a willing payer.

Mr. Chairman, members of the committee, thank you very much for an opportunity to testify.

Mr. Chairman, I have Finance Committee duties to attend to, so I cannot stay for questions. And I thank you for holding this hearing.

Senator BUNNING. Thank you, Senator Grassley. I appreciate your participation and couldn't agree with you more. Senator Cantwell, would you like an opening statement at this time?

OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. I see the ranking member is here.

Senator BUNNING. He's already given his.

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for holding this important hearing and I want to personally thank you for the leadership that you as an individual have shown on this issue and your willingness to tackle the tough issues associated with the Employee Occupation Illness Compensation Program. I would also like to recognize the efforts of other members of the committee, Senator Bingaman, and obviously Senator Grassley, who just spoke, who were instrumental in putting this program into place as part of the fiscal year 2001 Defense budget authorization.

At the time, Congress recognized that the Federal Government must play a long overdue role in its debt to those citizens who have been made sick and many of them fatally ill from the work at the Nation's nuclear weapons complex. For too long we failed to recognize the contributions of these workers and the service that they did on the cold war and the work that they did on my state at the Hanford Nuclear Reservation.

The workers at the Hanford site and other sites, as many of my colleagues have said, are patriotic Americans. They're proud of their service and they were proud to defend our freedoms and our way of life. However, many nuclear weapons workers were unaware of the hazards they faced. For many decades, the Federal Government had endeavored to keep these hazards a secret and the Energy Employees Occupation Illness Act was an effort to make sure that many decades of wrong efforts were actually put in the right direction by passing those programs, and I think it was an incredible achievement.

But the bottom line is that 3½ years later we are left with the question of whether the intent of this act is being fulfilled and why the program is failing in the minds of many of the terminally ill workers and their families who need our help. Mr. Chairman, today we're going to talk about a lot of the intricacies associated with the program's administrations and its bottlenecks, but we can-

not forget that this problem has a human face, and I have met with many of those people from Richland, Washington who are the survivors or the families of those individuals, and these are people who cannot wait any longer. They are people who are sick and in need of expensive medical treatment. They are dying, and others in their family have seen them waste away from the illnesses that were caused during this.

So I want to make sure that today while we talk about this, that we also talk about what we're going to do to immediately help these individuals. Take, for example, the case of Shirley Mattheny. Shirley worked at the Hanford site for 20 years as a secretary. She began her job in a building that was subsequently closed down due to contamination and then later reopened and then later closed again. DOE did not tell her and any of the other workers in that building of the potential hazard that they faced working in that facility. Today, Shirley has eight tumors and lung cancer. She filed her claim almost 2 years ago through the Department of Labor. Her case was referred to NIOSH, and while she has medical and work history records, most of the information that has been included was redacted and she told me that she checks in with NIOSH once a month, but every time she is told that her case will take more time to process.

There are other individuals that—their stories I'm sure, Mr. Chairman, could baffle this committee, and it's unfortunate that we have not had an opportunity to hear from some of those individuals, because they are spending their time proving that they worked at Hanford, proving that they actually did the basis of the work at Hanford; they actually had to prove their exposure. And, Mr. Chairman, I would like to submit for the record copies of some of the information that various constituents of mine have gotten from DOE and the various contractors in their record files. Some of them are just calendars with circles on them. Some of them have information with big letters, withdrawn written across it. Some of them are copies of documents that say, no information.

And when you look through these, I said to my staff, I can't understand what this means, there's no information here, and that's the point. That's what many of these individuals get back is no information, and that is the basis by which they are supposed to prove their case.

Now, I'd ask my colleagues to think about this. We have another Federal program that didn't work this way. Under the Agent Orange Act of 1991 and related legislation, the Federal Government acknowledged that about 20 million gallons of toxic herbicides were used in Vietnam conflict between 1962 and 1971. And under that law, veterans who served in Vietnam between 1962 and 1975 or visited Vietnam even briefly and have illnesses associated with Agent Orange are presumed to have been exposed. These individuals are thus qualified to receive health care services and disabilities compensation through the Veterans Administration.

Are these workers of the nuclear complex any less patriotic? Are they any less deserving that they have to prove their case? We did not make the veterans of the Vietnam War reconstruct flight patterns of military aircraft, tell us where the herbicides were deployed. We did not make them provide the certain vicinity that

they were at at the time that those herbicides were used. We recognized that they had an impossible task and we created a program to compensate these individuals.

Yet the way the current Energy Employee Program is constructed and implemented, that is exactly what we are asking the cold warriors to do, to go to some enormous task where documents don't exist and determine what their exposure to radiation and toxic chemicals were at DOE's sites is just a task that is almost impossible to complete.

And let's not forget that this challenge is being made more complicated by careers that in my cases span decades of an employment at the Hanford Nuclear Reservation, which I'm sure some of my colleagues don't even realize is about the size of the State of Rhode Island. People don't even know in some of these facilities, the various contractors and their records and their process and their patterns, and that is why I think it is critically important that members of this committee join together to work on new legislation that is so important to help these individuals get the compensation that they deserve.

In my view, new legislation should reflect a number of key priorities. First, none of the proposals that I have seen to date suggest that DOE is equipped to handle a workers' compensation program or assist in program as outlined in the original act. For that reason, I have supported Senator Grassley and Senator Murkowski's proposal to shift the entirety of this program to the Department of Labor.

Second, we need to identify a solution to the fact that there are about 35 to 40 percent of the compensation claims where there are no willing payers, and even after doctors have examined the workers and their illnesses caused by them within the nuclear complex, there are little resources to help them in their medical needs.

And third, we need to create a viable program for creating an additional special exposure cohort or assume as we did with Vietnam, the presumption that these individuals were affected. The fact that we created this act in 2000/2001 and yet we have not really seen the continuation of these special exposure cohorts to make it easier for people to show what their exposure has been, has been the biggest disappointment of this program.

So all this information is crucial to establishing the backlog and the backlog that NIOSH really never came up with when it was charged with saying, okay, go back and look at the individual exposures in these areas and come up with a framework. We failed to do that, and I know some of my colleagues have been critical of that as well.

So, Mr. Chairman, while we're here today to discuss the changes to the program, I want to emphasize how urgent it is that we come up with a solution now, that these workers and ex-workers can no longer continue. I want to make additional comments about the IG's investigation into some of the mishandling and misreporting of data that is just prolonging this issue, but I will submit that to the record, and thank you and my colleagues for paying such important attention to an issue that does matter to the lives of individuals in Washington State.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Thank you, Mr. Chairman, for holding this important hearing today. I would like to thank you for your leadership on this issue, and your willingness to tackle the difficulties associated with the Energy Employees Occupational Illness Compensation Program.

I would also like to recognize the efforts of other members of this Committee, notably Senators Bingaman and Bunning, who were instrumental in putting this program in place, as part of the Fiscal Year 2001 Defense Authorization bill. At that time, Congress recognized that the federal government must pay a long-overdue debt to those citizens made sick—many of them fatally—from their work within our nation's nuclear weapons complex. For too long, we failed to recognize the contributions of these workers and their service on the front lines of the Cold War, here on our nation's own shores-at sites such as the Hanford Nuclear Reservation in my home State of Washington.

The workers at Hanford and other production sites are patriotic Americans. They are proud of their service to defend our freedoms and way of life.

However, many nuclear weapons workers were unaware of the hazards they faced. For many decades, the federal government had endeavored to keep these hazards secret. The Energy Employees Occupational Illness Compensation Program Act was an effort to right many decades' worth of wrongs, and its passage—the first such program in about 30 years—was an outstanding achievement.

Three and a half years later, however, we are left to question whether the intent of the Act is being fulfilled—and why the program is failing in the minds of many of the terminally ill workers and families who need this help.

Mr. Chairman, today we're going to talk about a lot of the intricacies associated with the program's administration and its bureaucratic bottlenecks. But we cannot forget this problem's human face. This past Saturday, I went to Richland, Washington, and I met with more than 30 former Hanford workers or in some cases, their survivors. These people cannot wait any longer. These people are sick and in need of expensive medical treatment; some of them are dying; others have seen their family members waste away from illnesses they believe were caused by their contributions to this nation's Cold War efforts.

Many of the people I spoke with were in their 70s and 80s, are being treated for cancer, and filed claims two or three years ago. None of the claims have been answered. The people I spoke with haven't received a dime. Meanwhile, they are overburdened with expensive medical bills, excessive paperwork, and little hope.

Back in 1999, when then-Energy Secretary Bill Richardson announced that the government would cease challenging the compensation claims of former employees who got sick from exposure to radioactive and toxic materials, he said that DOE would no longer stand for "Department of Excuses." Unfortunately, excuses are the only thing many of these former Hanford workers have received. And I don't believe we have time for any more.

Take, for example, the cases of Shirley and Jack Mattheny. Shirley worked at the Hanford site for 20 years, as a Secretary. She began her job in a building that was subsequently closed due to contamination—the building was re-opened, then later closed yet again. DOE did not tell her or any of the other workers there of the potential hazards they faced. Today, Shirley has eight tumors and lung cancer. She filed her claim almost two years ago, through the Department of Labor. Her case was referred to NIOSH, and while she has medical and work history records, most of the information included has been redacted. She told me she checks in with NIOSH once a month, but every time she's told her case will take about another two months to process.

Her husband Jack faces a similar situation. He was a sheet metal man at the Hanford site for forty years—he has cancer and asbestosis and is awaiting an answer on his case. Jack has been given copies of DOE records that supposedly track his dosage exposures dating back to the late 1940s. I have copies of some of them right here. As my colleagues and today's witnesses can see, some of these are marked "best available copy." Yet they are illegible, and obviously incomplete. Perhaps it's the quality of these reproductions. Perhaps these records were kept in pencil. But for the $74 million of taxpayer money we have poured into the Department of Energy's program, I would like to think that DOE could purchase a high-quality photocopier to help these people out because in the meantime, Jack and Shirley are trying to cobble together their dosage exposures to support their claims and their medical bills continue to pile up.

Yet another woman I met with last weekend reported that she has been trying to file a claim for her deceased husband. For months, DOE refused to acknowledge

that her husband had been employed at the Hanford site—until she finally unearthed some pay stubs to prove it.

And just yesterday, my office heard from a gentleman who is trying to help his now-deceased brother's family file a claim through this program. He filed with the Department of Labor, and the case was subsequently referred to NIOSH. He called recently to check in on the claim's status, and it became obvious that something was horribly awry. Possibly due to a spelling error in the name of the contractor, he discovered that—based on information from DOE—NIOSH was trying to reconstruct his brother's dosage exposures at Hanford for a period of time when his brother was actually working in Alaska. And as it turns out, the supposed-Hanford contractor had never even operated in the State of Washington.

I listen to these stories and I have to wonder about why it is the federal government is placing the burden of proof on these sick workers and their families. Based on what I know about DOE's record-keeping—and the records I have seen from these constituents, which contain more black ink than actual information—these people face an impossible task.

We have other federal programs that don't work this way. For example, under the Agent Orange Act of 1991 and related legislation, the federal government has acknowledged that about 20 million gallons of toxic herbicides were used in the Vietnam conflict between 1962 and 1971. Under the law, veterans who served in Vietnam between 1962 and 1975—or visited Vietnam even briefly—and have illnesses associated with Agent Orange are presumed to have been exposed. These individuals are thus qualified to receive health care services and disability compensation through the Veterans Administration.

We do not make these veterans reconstruct flight patterns of the military aircraft that deployed these herbicides to defoliate trees and remove cover for our foes. We do not made them prove that they were in a certain vicinity on a given day when these herbicides were used. And that is right and that is fair—because we have recognized that would be an impossible task for any individual veteran, and that these men and women deserve medical care and compensation for their service to this nation.

Yet, with the way the current energy employees program is structured and implemented, this is exactly what we are asking our Cold Warriors to do. The task they confront in documenting exposures to radiation and toxic chemicals at DOE sites is equivalent to asking them to reconstitute flight patterns and combat deployments. And let's not forget that this challenge is made more complicated by careers that in many cases spanned decades, in the employment of multiple DOE contractors, on sites as sprawling as Hanford—which, for my colleagues reference, is about the size of the State of Rhode Island.

Our Cold War veterans are not being treated fairly. And that's why I'm pleased that there seems to be the will among a number of members of this committee to work on legislation to help get these workers the compensation they need and so richly deserve. In my view, this legislation should reflect a number of key priority items:

- First, none of the proposals I've seen to date suggest that DOE is equipped to handle a workers compensation or assistance program, as outlined in the original act. For that reason, I have supported—and continue to support—Sen. Grassley and Sen. Murkowski's proposal to shift the entirety of this program to the Department of Labor.
- Next, we need to identify a solution to the fact that there is no willing payer for perhaps as many as 35 percent to 40 percent of the compensation claims filed under this program, even after doctors have determined that a worker's illness was caused by work within the nuclear weapons complex.
- Third, we need to create a viable policy for creating additional Special Exposure Cohorts (SECs). There are far fewer barriers to compensation for individuals who are included in these SECs, but we have yet to see the agencies involved take the steps necessary to put in place a fair process. For example, the Department of Health and Human Services has failed to finalize the rules by which additional classes of employees could petition for inclusion in Special Exposure Cohorts. Likewise, it appears that the state of DOE's own records—on which NIOSH's subsequent dosage reconstructions must rely—are in a state of complete disarray. It seems to me that one of the first steps the Department of Energy should have taken when this program began was to complete profiles of each of the sites, to catalogue the hazards and critical incidents that these workers may have faced depending on the type and timeframe of their employment. In addition, these profiles would give us a better idea of what data no longer exist.

I understand that Sen. Clinton inserted a provision in the Fiscal Year 2004 Defense Authorization bill, requesting a study from NIOSH on the state of these data and records. I will be interested to hear today how that report is progressing.

All of this information is crucial to establishing additional SECs, which would cut down on the obvious backlog that is accumulating in the NIOSH dose reconstruction process and break down the barriers for these sick workers. We can and must do this more efficiently. Yet, if DOE and HHS are unwilling to take these steps on their own, Congress should direct them to do so.

- Fourth, we should—based on sound science—take a hard look at adding additional illnesses to the list of those covered in the original legislation, such as beryllium-induced lung cancer.
- And lastly, I believe we must establish an ombudsman to help advocate for these workers, oversee the complicated multi-agency process this program requires, and be held accountable to Congress.

These are steps on which I think we can come to a bipartisan consensus—and steps that will help these Cold War veterans get the help they deserve. So I look forward to working with my colleagues on development of this legislation.

But Mr. Chairman, while we are here today to discuss compensation for those who in decade's past were put in harm's way at our nuclear weapons production sites, we cannot forget about today's workers, who are cleaning up the Cold War's legacy. I will not for one second minimize the unprecedented science and engineering challenges associated with cleanup of DOE sites such as Hanford. But I also have to believe—actually, I must insist—that we will heed the lessons we've learned over the past 50 years about worker health and safety.

As most of my colleagues are aware, *The Washington Post* this weekend reported on a draft audit conducted by the Department of Energy's Inspector General, which suggests that DOE has maintained "inaccurate and incomplete accident and injury data" at nuclear cleanup sites including Hanford. Further, the audit concluded that "some of the department's safety-performance statistics were overstated—that is, performance had been reported to be better than it actually was."

Now, I understand that this audit is still in its draft form, and DOE has yet to conclude its official review of the findings. However, I have to say that I find these conclusions very troubling. I am especially troubled, because this is a time of great concern about an intensifying pattern of worker exposures to vapors emanating from Hanford's 177 underground tanks. These tanks hold a witches' brew of high-level radioactive and chemical wastes—possibly the most hazardous combination of substances in the DOE complex. Over just the past two weeks, eleven workers have reported exposures to vapors or odors and much of the work at the tank farms was shut down last Thursday.

I am glad that DOE and the contractor at the tank farm announced on Friday some interim precautions and a safety evaluation of expanded scope. But as far as I know, no is sure why these vapor exposures are happening. What's more, there does not seem to be general agreement regarding their seriousness, medical consequences or the long-term precautionary steps that should be taken to protect these workers.

At this moment, there are also at least three different investigations going on at the Hanford site. The DOE Office of Independent Oversight and Safety Assurance, DOE Inspector General and the Washington state Attorney General are reviewing a number of issues related to these tank vapor exposures, as well as the way workers' medical records have been treated at Hanford. Similarly, I understand that representatives of NIOSH were on site earlier this month to evaluate worker hazards at the Hanford tank farm.

Mr. Chairman, late last month—when Secretary Abraham instituted the DOE investigations into these matters—I requested that this Committee hold hearings on the current state of worker safety at these cleanup sites. I would like to thank Sens. Bingaman and Smith for also supporting this request, and ask that you consider scheduling such a hearing as soon as possible.

I would say to my colleagues—as well as Under Secretary Card, who is here today—that I was dismayed by the Department's response to this weekend's *Washington Post* story regarding the IG's audit, when a DOE spokesman dismissed concerns about some of these issues as "political potshots." Nothing could be further from the truth.

Ensuring that the systems are in place to protect those who are today hard at work at DOE cleanup sites is not about politics. Rather, this is about making sure that, 20 or 30 years from now, our successors are not sitting at a hearing similar

to this one, trying to figure out how to compensate workers injured or made sick during the cleanup process.

This is about learning the lessons of the past—that these workers are not an expendable commodity; that it's in the federal government's best interest to look out for their health and safety. Out of respect for the last generation of workers put in harm's way, the federal government must not make the same mistakes again.

Again, Mr. Chairman, I thank you for holding this important hearing and look forward to the testimony of our witnesses.

Senator BUNNING. Your whole statement will be submitted for the record. Now we will have the second panel, Mr. Robert Card, Under Secretary of Energy. Mr. Card, you can begin at any time you're ready.

STATEMENT OF ROBERT G. CARD, UNDER SECRETARY, DEPARTMENT OF ENERGY

Mr. CARD. Mr. Chairman, thank you. I'm going to call your attention just to briefly summarize my testimony to the charts that are displayed here and I'll be brief. You can see from the first chart on case processing that our case preparation for the physician panels has——

Senator BUNNING. Sir, we cannot see the charts.

Mr. CARD. Okay.

Senator BUNNING. So you better put them out so we can see what they're talking about.

Mr. CARD. We have handouts, don't we?

Senator BUNNING. That's better. At least I can see it now.

Mr. CARD. Can you see it now?

Senator BUNNING. Okay.

Mr. Card. Okay. And we will get you copies of these. Sorry. I thought you had them already. So you can see from this first chart on case processing that our case preparation for the physician panels has dramatically improved. This was enabled principally by the funding boost we received last fall just before the November hearing, and you can see a note there in the line representing when that happened.

Note that in the last 6 months we've processed nearly five times as many cases as in the previous 13 months. But as I said in the last hearing, this was not good enough, and you'll see that we have a plan to do more with your help by relieving funding constraints.

The next chart on physicians panel throughput shows that we've made significant improvements to the processing in processing cases through the physician panels as well. This was achieved by bringing physicians together full time during temporary leave, often vacation, from their jobs. As I noted in the last hearing, the physicians only work part-time as part of the legislative fix we're going to be proposing.

This took us from 2.6 physician FTEs, full-time equivalents, to 9.8 FTEs, which is all we've managed to obtain from the 160 physician pool provided by NIOSH. Current statutory constraints make significantly increasing physician availability from this point nearly impossible, although we've recently revised our rule to gain substantially more productivity from these limited physician hours available and NIOSH, as you'll hear later, has significantly stepped up their recruiting efforts.

Next chart. While not nearly fast enough, this increase gives us confidence that we know how to process an adequate number of cases if we're able to reduce constraints on physician availability.

This last chart on our backlog elimination plan shows our plan to eliminate the entire backlog through the physician panels by the end of 2006. This includes working off more than 10,000 additional cases that we expect to receive between now and then. We're confident that we can achieve this plan provided that, first, Congress approves both the January funds reprogramming request for fiscal year 2004 and the President's February request for fiscal year 2005, and second, Congress enacts the legislation for the physicians panels that we sent to them yesterday.

We are pleased that the American College of Occupational and Environmental Medicine has endorsed our proposal. And with that, I look forward to your comments and questions.

Thank you.

[The prepared statement of Mr. Card follows:]

PREPARED STATEMENT OF ROBERT G. CARD, UNDER SECRETARY, DEPARTMENT OF ENERGY

Mr. Chairman and distinguished members of the Committee, thank you for the opportunity to testify about the Department of Energy's (DOE) refocused effort and progress made towards carrying out Part D of the Energy Employees Occupation Illness Compensation Program Act of 2000 (EEOICPA).

Since my last appearance in front of this committee on November 21, 2003, the Department of Energy has made substantial improvements in processing Part D applications. In just the last six months, application development increased from 130 per month to 475 per month, more than a 350% improvement, and DOE has maintained an average development rate of more than 100 per week since November 2003; average final Physician Panel determinations increased from seven per month to almost 120 per month, more than a 1,700% improvement; the number of backlogged cases that were still awaiting initial processing has been slashed by more than 3,500 applications, a 25% reduction. I would also like to draw particular attention to OMB Director Bolten's letter of November 6th, 2003, where he stated that the Department had committed to developing to the Physicians Panels 25% of the then 15,000 application backlog within six months of receiving the full FY04 appropriations, including approval of DOE's appropriations transfer request. That equates to 3,750 applications developed for the Physicians Panel. To date, although we still have not received Congressional concurrence on the FY04 appropriations transfer request, we have developed over 1,800 applications for the Physicians Panel. Regardless of this short-term goal, we want to eliminate the entire backlog, through the Physicians Panels, by the end of 2006.

Even though we have made these improvements and are moving forward to entirely eliminate the backlog of applications, we know much more needs to be done. Mr. Chairman, we have shown we can improve our performance, and we have the plan to improve it even more. But we need your help.

Since my last appearance, the Department executed a top-to-bottom review of the Part D process, and developed a comprehensive plan to eliminate the backlog of applications by the end of 2006. To achieve that, we recently issued an Interim Final Rule revising our Physicians Panels processes that we believe will double the production of our determinations, reprioritized our application processing and determination order, and implemented scores of process improvements recommended by the Department of Labor, the National Institute of Occupational Safety and Health, the General Accounting Office, the Hays Group, the Workers Advocacy Advisory Committee, outside organizations, and Members of Congress. But we need legislation and more resources in order to fully execute this plan.

The Department's plan is aggressive, and is based upon the fastest possible hiring of physicians to review applications and render determinations. We believe that will be the biggest challenge in this plan, but also believe it is achievable with your help. As I stated earlier, it is a four part plan that includes legislative, regulatory, procedural and budgetary changes.

Legislative Changes. Yesterday the Secretary transmitted to Congress a legislative proposal to remove impediments to our ability to process applications. First, it

would eliminate the statutory pay cap. The pay level set in EEOICPA Part D only allows the Department to pay Panel physicians $69 per hour, when the average consulting rate for occupational medicine physicians is $130 to $150 per hour. Because of the pay cap, the 167 part-time physicians work an average of three hours per month, and are the equivalent of fewer than three full-time physicians. When we are able to establish temporary full-time panels, we are able to raise that FTE rate to almost 10, but maintaining those full-time panels is very difficult given the relatively low-pay. In fact, almost 20 physicians have refused to participate further in the process because it does not make financial sense for them to do so.

Second, the legislative proposal would expand the hiring authority for these Panel physicians. EEOICPA currently limits the Department to hiring Panel Physicians as intermittent or temporary experts, a status which limits them to six months of work in any year. Considering the heavy case-load ahead of us, we must have the authority to hire them as federal or contract employees, be able to pay them a market rate, and be able to utilize them for the next two-and-half years to eliminate the backlog.

Third, the legislative proposal would eliminate the requirement that DOE and a State enter in an agreement before a worker's application can be processed. We have no intention of terminating the agreements already in place, but because of changes in State governments and other considerations, approximately 6% of our applications are from workers in States that have not entered into an agreement with DOE. We hope to conclude agreements with those States, but in the meantime this requirement means that more than 1,200 workers have to wait for DOE-State agreements to be signed before their applications can proceed to a Physicians Panel for a determination, an impediment we believe should be removed.

In addition, we are working on an additional legislative proposal that will be forwarded independently that refines the definition of what is actually a Department of Energy facility under EEOICPA. Although the findings and Conference Report for the statute clearly state that the Part D program was established to compensate DOE and contractor employees who worked in Department of Energy facilities as part of the nuclear weapons production and testing process, the statute as currently drafted defines a DOE facility as almost any DOE facility, regardless of any nexus to nuclear weapons production or testing. Under such a definition, I would be eligible to apply for benefits under EEOICPA having worked in the Department of Energy's Forrestal headquarters building on Independence Avenue. This legislation will refine the definition of DOE facilities to limit it to those involved in nuclear weapons testing or production, and those in which employees were exposed to a significant radiological hazards, such as those facilities in our current Federal Register list. We will specifically draft it so that no facility currently listed on the Facilities List will have to be taken off the list.

Regulatory Changes. On March 17th, 2004, I signed an Interim Final Rule allowing DOE to use Physician Panels with only one physician instead of three. The original rule, based upon the Fernald Physician Panel model, was based on a program with 200 applicants. With more than 23,000 applicants to date, the Department needs to utilize its Physician Panels more productively. Considering other federal compensation programs such as the Department of Veterans Affairs use single physicians to make their medical determinations, we determined that a single physician would be suitable here as well. This change will substantially speed up the Physicians Panel review process, delivering determinations to applicants weeks, if not months, sooner.

Under this Interim Final Rule, if the first physician makes a positive determination, that is sent forward as a positive determination. If, however, the physician makes a negative determination, the application is automatically sent to a second physician for review. If that second physician also makes a negative determination, then it is sent forward in the process as a negative determination. If that second physician makes a positive determination, it is sent to a third physician for review. The sum of the three physicians' determinations is used as the positive or negative determination sent forward in the process. No changes are made in this Interim Final Rule to the Secretary's review of determinations or to the applicant's appeal rights.

DOE's experience to date is that there have been very few split panel decisions. As a result, we believe this new process will speed up the processing of applications without prejudicing applicants. Moreover, this new procedure will reduce the average number of total physician hours expended on each determination by almost 60%, and the Department will save more than $37 million in physician's pay between now and the end of 2006. Without this Rule revision, the Department would require almost 50% more physicians to process the same number of applications.

It is because of these productivity improvements that the applicants will also benefit. Given the previous Rule's requirement that three physicians coordinate their determinations in person, by phone, or other communications, we believe the new Rule will reduce to total time an application will spend in the Physician Panel process from weeks, even months, to days. This will mean the applicant gets their determination that much sooner. And just like under the original Rule, every negative determination requires the concurrence of two physicians.

This Interim Final Rule became effective on March 24, 2004. It could have been issued as a Direct Final Rule, but given the interest in all aspects of this program, we decided to invite public comment through an Interim Final Rule process. If members of the Committee have additional ideas on how to best operate the Physicians Panel, I would invite them to comment.

Procedural Changes. When DOE started processing Part D applications, it adopted a first-in, first-worked prioritization. We now have moved to the front of our queue those applications where the per-panel deliberation time will be minimal and there is a strong relationship between activities performed and the associated ailments.

We've specifically done that with claims for exposure to beryllium, silica and asbestos, given the strong relationship between these substances, their associated ailments, and their specific use in nuclear weapons production. Similarly, given the higher standard of causation used in the Part B benefit determination process (given that Part B actually provides a direct cash benefit), we are moving those Part D applications where a positive Part B determination has already been made to the front of the queue as well. Additionally, given that medical benefits are available in most State workers compensation systems for living applicants; we are moving applications filed by living applicants ahead of those filed by survivors. Finally, given that the statute requires us to provide all available information, including dose reconstructions from relevant Part B applications, we are setting aside those Part D applications where Part B dose reconstructions are pending. All together, this reprioritization of the applications should maximize the number of determinations in the immediate timeframe, for the applicants most likely to directly benefit from a Physician Panels determination.

Finally, we are planning to competitively bid the additional application processing requirements eliminating the backlog will require. In doing so, the Department will be able to standardize procedures across the spectrum of operations, integrate the application development process with the Physician's Panels, and maximize the flexibility available to the Department in executing this program as quickly as possible. Given the corporate knowledge possessed by our current contractor, we anticipate their continuing operations at current production rates. Further, given the substantial improvements implemented in the Case Management System (CMS), we anticipate maintaining that system as well.

Budgetary Changes. On January 30th, 2004, the Secretary requested Congressional approval to transfer $33.3 million of FY04 appropriations to the EEOICPA program. If approved, these funds will allow the Department to capitalize on the legislative, regulatory, and procedural changes I've just detailed, as well as to provide the Department the resources necessary to hire the additional field data collection workers, application processors, and Panel physicians necessary to eliminate the backlog by the end of 2006. However, unless these funds are received by the end of April 2004, the Department will not be able to meet that end of 2006 goal. In addition, the President requested $43 million in the Administration's FY05 budget to continue this backlog elimination plan.

I know some of you have raised concerns with these budget requests and the apparent lack of production to date, and the lack of Part D applicants receiving State workers compensation benefits. But as I discussed in my last appearance before this Committee, significantly more Part D applications have been filed than originally anticipated and significant effort and investment has been required to cope with that larger volume. As a result, the program development costs, akin to initial capital investment costs, were also substantially greater than DOE originally thought.

As for the operating expenses necessary to execute Part D, and DOE's plan to eliminate the backlog of applications by the end of 2006, the major variable is the National Institute of Occupational Safety and Health's (NIOSH) ability to recruit sufficient physicians in time to meet the determination case load required in this plan. We have been working closely with NIOSH and professional medical organizations such as the American College of Occupational and Environmental Medicine (ACOEM) to develop a plan that provides for a credible physician hiring rate, and as stated in the letter from ACOEM, the number of physicians we are seeking is credible, especially at a more competitive pay rate we have proposed.

But assuming our original physician supply assumptions hold true, we believe it is wise to take advantage of our ability to significantly ramp up the processing of applications to the Physicians Panel, even if those Panels cannot immediately accept them. It makes little sense to not complete this work while we have the opportunity. It would be unfortunate to have physicians sitting idle because of a lack of applications ready for review—a situation for which the Department was roundly criticized at last November's hearing.

But now we need Congress' help. We need Congress' concurrence to the appropriations transfer soon. Every month's delay in receiving that concurrence is a month's delay in achieving our goal of totally eliminating the application backlog. And if we don't receive that concurrence by this summer, we will have to stop our field data collection programs, with layoffs required at the participating DOE sites. If we don't receive that concurrence in April, we may have to stop processing Part B employment verification and NIOSH dose reconstruction data requests in order to devote our remaining resources to Part D application development. These funds are needed regardless of any changes Congress may make to the Part D program.

At this point I have discussed our plan to minimize the remaining time for each applicant to receive a physician's panel determination and to maximize the willing payers for those that receive a positive determination. Additionally, we have reexamined our ability to support applicants in filing the state workers compensation claim and have increased our assistance in supporting them completing the claim submittal. These items together will maximize the benefits of the state workers compensation process that Part D was intended to address. We are gratified that the first state benefit has now been paid and we expect to see an increasing number of payments as the applicant pipeline into the state programs fills up.

However, it needs to be clear that it appears that no causality will be found by the physician's panels for many of the applicants and an as yet undetermined percentage of the applicants may end up without a willing payer or other solution in the State program. Further, for those with a willing payer, the causality determination by the State program and the level of benefit are still not certain.

To provide information on the scope of these issues, DOE has proposed a study by the National Academies that would commence when sufficient cases have been through the state program to provide meaningful data regarding the finding of willing payers, the causality determinations and the benefit received. Given the probable several month time period required for a state program determination from the date of application submittal, we anticipate that it will be the end of the year before sufficient data are available for this study. While we are aware that many workers want and deserve answers now, we believe that there is simply not enough information available at this time to underpin sound policy decisions.

Many of you have stated your desire a more robust benefit for Part D applicants. However, regardless of what benefit is provided, or which agency executes the process, more medical determinations need to be made, and more data needs to be collected. Regardless of the process used, more money and legislative relief are needed.

The Department of Energy has accelerated application processing considerably since I last appeared before this Committee. We have conducted a top-to-bottom review of the program and the numerous recommendations provided, implemented what we can immediately, taken what steps we can in the short term to further accelerate the process, developed a plan to implement additional improvements as the resources become available, proposed legislation to eliminate impediments to that plan, and requested the resources to fund it. Although there will invariably be additional improvements we can and will make, we believe we have a credible plan in place that can accelerate the process now, and allow for us to accelerate it further in future. But there's only so much the Department can do independently. Ultimately, we will need additional resources and statutory changes to the statute to achieve our goal of eliminating the entire backlog by the end of 2006. And that additional help can only come from Congress.

I am available to answer the Committee's questions.

DEPARTMENT OF ENERGY,
Washington, DC, March 29, 2004

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives, Washington, DC.

Hon. RICHARD B. CHENEY,
President of the Senate, Washington, DC.

DEAR MR. SPEAKER: The purpose of this letter is to submit proposed legislation to amend Part D of the Energy Employees Occupational Illness Compensation Pro-

gram Act of 2000 (EEOICPA). The amendments would remove impediments to the Department of Energy's (DOE) timely processing of applications submitted to DOE under Part D. Specifically, the proposed legislation would eliminate the pay cap on physicians serving on Part D physician panels, eliminate the requirement that these physicians work on only a temporary or intermittent basis, and eliminate the requirement for agreements between DOE and States.

Part D authorizes DOE to provide assistance to DOE contractor employees in applying for State workers' compensation benefits. DOE provides this assistance by helping workers develop their case files and obtain a determination from a physician panel as to whether it is at least as likely as not that exposure to a toxic substance at a DOE facility ,was a significant factor in aggravating, contributing to, or causing the illness or death of the worker. The preparation of these case files is a multifaceted effort that involves gathering employment records, establishing relevant occupational histories, and collecting medical records.

The current backlog of Part D applications pending at DOE is over 20,000 applications and growing. A significant factor contributing to this backlog is the inadequate supply of physicians willing to review applications and make determinations at the compensation rate allowed by EEOICPA, which limits the physicians pay to approximately $69 per hour. Physicians with the requisite skills to make EEOICPA determinations normally are paid at a market rate of at least $130 per hour. Further, the statutory requirement that physicians be retained as temporary or intermittent consultants or experts limits the availability of physicians who otherwise are capable and willing to serve on physician panels.

In order to eliminate the backlog of Part D applications and transition to a lower rate of processing applications, DOE needs a high degree of flexibility. The proposed legislation provides this flexibility, and would allow DOE to pay physicians at a rate high enough to attract sufficient numbers of them to do physician panel work.

DOE also is being hindered in the processing of Part D applications by the statutory requirement that DOE enter into an agreement with a State before DOE processes Part D applications from individuals in the State. We believe these agreements are unnecessary. Nothing in EEOICPA requires a State to be bound by a physician panel determination nor authorizes DOE to participate in State workers' compensation proceedings. There is no conflict of interest between DOE and a State that requires an agreement. Despite this fact, in some instances, because of changes in State administrations and for other reasons, it has proven difficult to negotiate agreements with States. In these instances, the requirement for an agreement is preventing DOE from processing applications from hundreds of applicants.

For these reasons, we urge prompt passage of the enclosed legislative proposal.

The Office of Management and Budget has advised the Department that enactment of this proposal is in accord with the program of the President.

The Administration is working on legislation to refine the definition of the DOE facility and will provide legislative language in the near future.

Should you have any questions or need additional information concerning this proposed legislation, please contact Mr. Rick Dearborn, Assistant Secretary, Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

SPENCER ABRAHAM,
Secretary of Energy,

[Enclosures.]

A BILL

To improve the efficiency of the Department of Energy's Energy Employee Occupational Illness

Compensation Program, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STATE AGREEMENTS.

Section 3661 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o) is amended by

(1) in subsection (b), striking "Pursuant to agreements under subsection (a), the" and inserting "The";

(2) in subsection (c), striking "provided in an agreement under subsection (a), and if"; and

(3) in subsection (e), striking "if provided in an agreement under subsection (a)" and inserting "if a panel has reported a determination under subsection (d)(5)".

SEC. 2. PHYSICIANS PANELS.

Section 3661 (d) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385o(d)) is amended by amending paragraph (2) to read as follows:

"(2) The Secretary of Health and Human Services shall select the individuals to serve as panel members based on experience and competency in diagnosing occupational illnesses. The Secretary shall appoint the individuals so selected as panel members or shall obtain by contract the services of such individuals as panel members.".

Senator BUNNING. Thank you, Mr. Card. As of March 18, the Department of Energy has completed only 4.5 percent of over 2,700 Kentucky workers' requests for assistance. Eighty-eight percent of those completed cases were found to be ineligible cases or were withdrawn. Zero Kentuckians have received any payment for their claims, zero, out of 2,700.

What is even more troubling than the overall numbers is that fully 36 percent of Kentuckians claimants, and 44 percent of all claimants nationwide, have not even yet had work begun on their claims. After 4 years and over approximately $18 million being spent on this program, how is this possible?

Mr. CARD. Well, first of all, let me say that in Kentucky I do note, while we're not thrilled with the progress in any case, but we do have a tenfold increase in cases currently in the physicians panel process compared to the hearing 4 months ago. As I explained at the hearing last time, there were a number of issues which hindered in effect the start-up of this program.

One was the—it took us more time than it should have to get the rule out, which instituted nearly a 2-year delay in the process. And second, the number and complexity of the applicants far exceeded our original estimates.

I think if there is good news in that I think we understand the problem now and have demonstrated that we can connect with it if we have the right resources and processes.

Senator BUNNING. How can we believe the claims that DOE makes in its Path Forward documents when the DOE has failed to meet prior commitments to Congress, and more importantly to the workers around the country who have been made ill by their DOE work?

Mr. CARD. I would just say that every commitment that I made in the November hearing has been exceeded. We committed that we would try to average 100 cases a week. We've exceed that. We've exceeded our physicians panel estimates.

Senator BUNNING. This law was made in 2000.

Mr. CARD. I understand that, but——

Senator BUNNING. Did you just take over this program?

Mr. CARD. I took over this program approximately 12 months ago.

Senator BUNNING. Twelve months ago. Who was your predecessor?

Mr. CARD. Predecessor was Assistant Secretary for Environmental Health and Safety, who reports to me.

Senator BUNNING. And is that a she or a he?

Mr. CARD. That's a she.

Senator BUNNING. She should be here then to answer the questions that we would like to ask in relation to the failure of DOE to fulfill the law.

Mr. CARD. I would be glad to answer questions from that time because I am familiar with those if you'd like.

Senator BUNNING. Then tell me and explain to me how it took 3 years to get this program up and running.

Mr. CARD. Well, as I said——

Senator BUNNING. It took us about 6 months to get the program through the Congress of the United States with an awful lot of people working very hard. It seems to me that the DOE could have at least in 6 months got a program up and running so that these people are not dying before they collect their benefits.

Mr. CARD. I understand, Senator, and I certainly understand your concerns. I would just say this is a case of changing expectations, as I testified in November. The documents we have from the origin of this process as we came into office suggested this was a 10-year program. In fact, we will beat that. It suggested that the applicant expectation might be less than 10,000. It's now clearly going to be over 30,000. It took more time than it should have to come to grips with the changing dynamics of the program, and frankly the expectations of the constituents.

Senator BUNNING. Mr. Card, in your statement you said that DOE could just do this job right if it had more time and more money. Where have we heard that before? From every agency of the Federal Government. DOE has already squandered the past 4 years and up to $16.7 million. That's documented. And when the program director makes more than the President of the United States of America something is definitely wrong with the program and the non-bid contract that has been passed out by DOE. Maybe you can explain that.

Mr. CARD. Yes, I'd like to respond that. First of all, recognizing the late start and the urgency of getting started, we used what contracting mechanisms were available to us for a quick start. It typically takes a year or more to procure a full-blown contract, which would have instituted yet another delay in our program to do that.

So through the Navy we acquired the service of this contractor. Could you find the chart showing there labor rates? We have analyzed the labor rates for this contract and think that on an hourly basis the taxpayer is getting a good deal. It's yet to be said whether we're getting a good deal overall because we're pushing them very hard once we receive the resources to achieve this new level of performance, by the way, which we expect to bid an additional contract to obtain.

We've analyzed three different support service contractors doing similar kinds of work for DOE and SEA's labor, fully loaded labor rates are less than all of them. We've also analyzed a composite Federal workforce using the A-76 process, a full-burdened Federal labor rate just like you would have to do the President of the United States, because Senator Grassley was talking about cost of the person's salary, not cost of providing the labor, which doesn't include real estate and a whole bunch of other things that's common practice in the consulting industry.

So while I'm not here to defend whether SEA's rates are proper, they certainly are within the competitive range and soon we'll find out when we bid for the extra capacity contract.

Senator BUNNING. If in fact the Congress of the United States continues to allow you to operate this contract.

Mr. CARD. That would be of course your choice.

Senator BUNNING. You bet it will.

Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman. Mr. Card, we have a flowchart that tries to describe this process, this claims process, and I'd like to just have a copy given to you and to each member of the panel here so that you, if you have any disagreement with it you could tell us, but otherwise it would help explain my question.

As I understand the broad outline of the law that you're trying to administer, you're trying to administer part of it, if a worker has an injury or a disease that's caused by exposure to radiation, then they go through this process. They file a claim with the Department of Labor, and the Department of Labor verifies their employment, and then if they go into one of these special cohorts for cancer, then the Department of Labor decides whether the medical criteria have been met. If they have been met, they pay them $150,000 and that's the end of that.

Now, that system has worked reasonably well. That's the left-hand side of this chart. The right-hand side is the part that DOE has been directed to administer and it doesn't work as well. Everything you put up here relates to what you're doing at the Department of Energy to try to get these cases through are halfway down the right-hand side through the physicians panel.

Now, what Senator Murkowski is referring to is the fact that once you get through the physicians panel you're nowhere, except you have the right then to go to your State workmen's comp plan and they may or may not give any deference to this and in many cases don't, and even if they do, you're probably not going to get any real compensation in a lot of States.

Wouldn't it make a lot of sense for us in Congress, now that we've seen how ineffective the program is on the right-hand side, and this right-hand side applies to people who have been injured from toxic substances rather than from radiation exposure, if we just said, okay, anybody who's been injured by a toxic substance and can demonstrate that they were injured as a result of their employment with the Department of Energy. They would then also go into some kind of a special cohort, if they fit into a special cohort, where there would be a determination by someone, DOL or you or somebody, that the medical criteria are met and they'd get $150,000.

Wouldn't that simplify things dramatically and we would then be actually getting some of the money that we're appropriating to the people who've been injured and not dissipating so darn much of it in this processing effort that we're going through here? It just seems to me that we are essentially supporting an amazing bureaucracy, and everyone's in good faith. I'm not saying that the people working in the bureaucratic system we have laid out aren't

trying to do what we told them to do, but we told them to do so much that the system is clogged up. What's your response to that?

Mr. CARD. First of all, I think that's a fantastic explanation of the problem that we have in front of us here. Obviously it would be simpler. I would just refer the committee, because I know they're going to hear from GAO later, I thought the GAO testimony actually contained an excellent overview of I think it was four different choices if one didn't like the path that we're on. I also thought GAO did quite a good job of highlighting some of the uncertainty in each of those paths, and I don't think——

Senator BINGAMAN. Well, let me just cut to the quick there and say their option number 3, which is expanding subtitle B program that does not use a workers' comp model. It says the subtitle D program would be eliminated as a separate program, and if found eligible, a claimant would receive a lump sum payment and coverage of future medical expenses related to workers' illnesses, assuming that they had not already benefited under subtitle B. The Department of Labor would need to expand its regulations to specify which illnesses would be covered.

Why don't we just adopt that? It would put a lot of the people that you've hired out of work, but it would get the funds to the people who've been injured and that was our purpose originally.

Mr. CARD. Well, Senator, I'm not sure I can answer you why not. I just know that this topic was debated, I understand, in 2000 when the bill was passed, and Congress at that time decided to go on the path they've gone on. As I think is discussed in the GAO testimony, there's a number of issues. How would you determine what a fair payment was? What would be the equities between this class of workers and other classes of workers? And the causation is much more difficult to get a handle on with these illnesses than in radiation, which is the Department of Labor half of the chart that you've handed out.

So to us, there doesn't appear to be any simple answers. There certainly is plenty of concern and agony and we'd like to find an answer. But it's elusive to us because there's a lot of complex issues as illustrated in the GAO testimony.

Senator BUNNING. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I guess I'm going back to the hearing that we had in November. My question basically is the same question that I had then, and listening to your testimony this morning, I suppose that I'm somewhat encouraged that we're processing more people, that in fact we're seeing more people, we're getting them through this process. Your chart shows that we're actually able to get more people through the physician review panel.

But yet, we still have only one claim in the entire country that has ever been paid under subpart D. The chairman here has indicated that there are zero in Kentucky, there are zero in Alaska. And my question to you in November was, how does this benefit the Mrs. Carlssons of the world if we can say, ta-da, we've put you through the process, but there is nothing at the other end. Where is the results-based focus of this program? Are we just patting ourselves on the back because we're saying we've improved the proc-

essing, we're improving moving people through a system, but the system doesn't allow for any result?

The question that I asked in November was, let's talk about this willing payer issue, how are we going to resolve that. I asked if there was any specific proposal that DOE had, and where we are in that process. But again, we're talking about a process where we're moving real people through a system, real people who have lost their loved ones, real people that are dying, and we as a government are saying, well, we're satisfied because we're processing you. This is absolutely not acceptable until we resolve claims. What are we doing to resolve the claims?

Mr. CARD. Well, I certainly share your concern about that and I want to thank you for the suggestions at the November hearing. We've done our best to implement several of them, and in fact, one specific suggestion you had of mine was expectations management. We've begun that process and will be having a significant communication exercise with the constituents in April to try to do a better job with that.

Regarding again on the willing payer issue, the problem comes down to the fact that the law wasn't a results-based law. The left-side of Senator—actually it's our chart, I think—Bingaman's chart, part B, was results-driven. The part D was clearly a process-driven law and we're doing our best to implement that. If you want to change it into a results-driven law then I would go back to the discussion I just had with Senator Bingaman about, well, so what result would we be shooting for.

I will say some encouraging news is that we expect several hundred claims paid to be coming out of the system in the balance of this year, which if one wanted to figure out how to mimic the results coming from the states that have willing payers, then you'd at least have some data. And we have proposed a National Academy study to look at these equity issues and what the benefits actually appear to be as we get some statistically significant data.

The challenge with that for most of this committee who are here today is that will take longer than they have in mind, so that's kind of up to the system to figure out how fast are we going to move, if at all, to change the intent of the original law to produce a result-driven process instead of a process-driven process.

Senator MURKOWSKI. Well, for what it's worth, Mr. Chairman, I'm not particularly interested in waiting around for a study as more individuals wait around for compensation, and if in fact all we have set up in law is a process for people with no expectation that we're going to see results for them at the other end, then I would suggest we better change it pretty quickly.

Senator BUNNING. Thank you.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman. Mr. Card, you're, I'm sure, aware that there was an article in *The Washington Post* this weekend talking about the IG impending report and the fact that it basically said that DOE has maintained inaccurate and incomplete accident and injury data. Do you agree with that?

Mr. CARD. Well, the—actually I had the benefit of having a person debrief on that report from the IG a couple weeks ago. The data that they are referring to—well, first let me just say that hav-

ing any disconnect between what we're using to manage safety at headquarters and the field, which is the focus of—item of great concern for us, and there clearly was some.

I'm gratified though to say that the disconnect did not involve information that we use to manage our contractors and safety, and furthermore, the field, which has the primarily line responsibility for safety, had and was acting on all the right information all the time. So it's unfortunate that report came out in whatever form it did without our comments included in it, and when you see our comments, you'll see that we more clearly define what the implications of that information is.

Senator CANTWELL. So you're saying that DOE did maintain inaccurate information, but you're saying it wasn't relevant?

Mr. CARD. No, what—the focus of the report is the sites—contractors report into the sites various types of safety information. Some of that information is more important than other information and some of that information is customized for sites. What the IG detected was is the reporting from the site to headquarters on some of that information was not accurate, and that's a concern for us.

Senator CANTWELL. And some was incomplete.

Mr. CARD. Well, they identified that some, like our privatization contractors were not required to report at all because of the structure of their contracts and we're moving to rectify that problem. The key information we use, such as the OSHA recordable and lost work day statistics, were accurately reported from the field to headquarters, and furthermore, I just want to reemphasize that the field where the primary safety enforcement occurs and the monitoring had the right information all along and was acting on it.

Senator CANTWELL. I'm not sure what that means to the individual worker, because obviously part of this is DOE understanding what is happening to the contractors that we have contracted this work with, but let me also ask you, there was also information in that report that said that the Department had basically overstated some of its safety performance statistics, that basically the agency, the DOE, had kind of inflated, overstated the information so that it would look like the report was better. Do you think that happened as well?

Mr. CARD. And that was on particular metric called—I'm trying to remember the exact term of it, but it's where you combine a series of OSHA statistics with a cost indicator. That metric is not used as a primary performance indicator in DOE headquarters. But we did detect at our Idaho site and a couple others that there were some reporting errors, which we've moved to fix. Again, where you see one error, you have to suspect there may be more, and we've looked at that and we're relieved to find that in the key reporting statistics that we used that that was not an issue.

Senator CANTWELL. Well, I think we're all going to be very anxious to get our hands on the Inspector General report and I take all reports by Inspector Generals very seriously, and to have the agency basically comment in the newspaper over the weekend that it was politics was a huge surprise and it showed that basically that the information wasn't being taken seriously.

Mr. CARD. The comment regarding politics had nothing to do with our feelings about the Inspector General, who we have a great relationship with.

Senator CANTWELL. Well, without copy and access to this, you're saying, yes, there was inaccurate and incomplete information, but it didn't really matter because the field was doing its job, and that the overstating happened in one case but it doesn't really matter, and on the other hand we're sitting here dealing with decades of misinformation and people not having access to reports and data, and the fact that maybe what we're getting from DOE is not the oversight of the job that we expect them to do.

So it's pretty frustrating when we look on the end of what was happening with the individual contractors and we find no data, no information, and then we see an IG's report saying, yes, DOE isn't really doing their job on oversight of the contractors either, and you're saying, well, but the information exists in the field. And I guarantee you that's not what we're hearing from people out in the field, from the individual people in the process.

But let me ask you a question, because one of the challenges of the original act was that NIOSH was supposed to come up with, within 90 days, a way of looking at these other special cohorts and processes, actually looking at what information is available to be collected out in the field and give us some information reports. Do you think that the failure for NIOSH having done that is an important element of the success of this program?

Mr. CARD. I'm not familiar with that specific issue. I'll just say that we're very appreciate of the support we've got from NIOSH and they're doing a great job of helping us get through the physician panels. I know there will be a NIOSH witness later and it's—I also understand that it's a part B issue as well, so I just would feel I'm stepping out of bounds a little bit to comment on that.

Senator CANTWELL. Okay, then let me be clear and—I know my time is expired, Mr. Chairman, so maybe I'll come back on the next round.

Senator BUNNING. That's great, because we got lots of questions for Mr. Card. The Department of Energy stated at a hearing—the hearing on November 21 that it was developing proposals to fix many of the problems with the current set-up of the physician panels. Only 1.6 percent of the 23,000 cases DOE has received has been completed by the physicians panel.

Then, the question is, why did the Department wait until 6 p.m. last night, the night before this hearing, to show the Senate its proposed legislation?

Mr. CARD. Well, Senator, I think the polarity of the activity may be reversed there. The more correct is we worked hard with OMB and other agencies to get it done by then. So I wish I could say we had the luxury of having it done earlier and waited, but we frankly wanted it here for the hearing today so we could discuss it and we were able to get it out and we're proud we were able to do that. That was the last commitment I made at the November 21 hearing.

Senator BUNNING. November 21, December, January, February, March, that's 4 months plus, just about 4 months.

Mr. CARD. That would be correct.

Senator BUNNING. And you said you would have the information for us. Was this hearing a surprise to you?

Mr. CARD. No, it wasn't a surprise to us. We had a number of commitments, Senator. We revised the rule, there was—we agreed we would survey all of the obstacles that we had in the processes to make sure we delivered the right legislative package, we made the right rule revisions. And so frankly while we wish the process was much quicker and we're not satisfied, we're—I would say we're pleased with the progress that we've made since the November 21 hearing, and if we are able to resolve the issues that we've put before Congress now, then we're committed and we feel we have the ability to achieve the backlog work off by 2006 as we promised.

Senator BUNNING. Earlier, in our earlier discussion, you talked about—I talked about the 4 years and how much time, and you told me there was a rulemaking process and that kind of prevented you from getting to it. DOE was not prohibited before they passed their rule. They were just not allowed to work on the physician panels, so they could have worked on the cases during the 2-year period it took you to develop the rule.

Question: What did DOE do on the cases during the time they were developing the rule?

Mr. CARD. The cases were received, and as I understand it, and I'll clarify this for the record, make sure I'm giving you the correct answer here, the issue was, we needed to know what information the physician panels needed and how they were going to process their work, so it would have been redundant to have gone out and tried to prosecute those cases to the physician panel prior to the rule being finalized.

Senator BUNNING. But the law was pretty clear in how we wanted to cover those who were exposed.

Mr. CARD. Well, the law was clear in that it required a causality determination by the physicians panel, but it wasn't very clear in terms of how that would be done.

Senator BUNNING. That was your interpretation of the law?

Mr. CARD. Yes, sir.

Senator BUNNING. Well, it was not our interpretation of the law. That's where we have a major problem in the total process time it took for DOE to really get into this thing and get the services to the people that had the problems.

That's our concern. Everybody at this table up here is concerned we're not getting the dollars and the relief to the people that expose themselves for the good of their country in all of these cases, 23,000 of them have registered with the DOE and one case is completed. Now that's unacceptable in anybody's standards.

Mr. CARD. Well, let me apologize again for the late start. I just want to again offer the committee that looking forward we have a proposal on the table that we believe we can deliver on to resolve this backlog.

Senator BUNNING. Well, if it is as bad as the proposal and the process that you have set up to start with, it will not be acceptable to this committee, I'll guarantee you that, and you will be relieved of duty. And maybe that's what you want, for us to move this, as Senator Grassley has suggested and Senator Murkowski, from your

Department to the Department of Labor, where they seem to have had much better success with their section of the law.

Senator Bingaman.

Senator BINGAMAN. Mr. Card, let me ask you about this.

I'll probably sound like a broken record here, but it strikes me that you're focused on how you resolve your backlog and that's your job. But even if you resolve your backlog, the problem is the process that we've set up here merely gets these people the right to then go to their State workers' comp program. Then you've got an attorney hired by the insurance company to defend against any claim that they're making, and they may or they may not get compensated. I think the letter that Secretary Abraham gave us here, as accompanying this proposed legislation, says very clearly, nothing in EEOICPA requires a State to be bound by a physicians panel determination, and that's clearly the case, nor authorizes DOE to participate in State workers' comp proceedings, and that's clearly the case.

So basically we're saying, we're going to spend the next umpteen years, 10 years you mentioned, maybe this is a 10-year program, trying to resolve the backlog. All that means is we're taking these claimants and saying, okay, once you get through our complex, difficult process, you have the right to go fight it out with a defense attorney in front of a State workers' comp board. Isn't that the real problem we've got here? We still don't have—there's not a path that gets these people compensation in a reasonable period of time the way we've now got this thing structured?

Mr. CARD. Well, again, a good characterization, except that the right exists already, so this path actually conveys no rights whatsoever. It simply conveys technical support for the right they already have. Any of these workers could file a State workers' comp claim today, no matter where their case is in the process.

Senator BINGAMAN. So you're saying maybe what we've done here is to set up a great big diversionary effort where they're all fighting with the Department of Energy and these panels and NIOSH, everybody. I guess NIOSH isn't under yours, NIOSH is under the Department of Labor.

Mr. CARD. HHS.

Senator BINGAMAN. HHS. But I mean the claims that come through the radiation part of this chart wind up with NIOSH, not with you, not the ones that come through your Department. It just strikes me that the proposal that you have given us here and that Secretary Abraham has sent up to us for legislation is pretty weak soup compared to the size of the problem. He is saying three things in his letter. He wants us to eliminate the pay cap on physicians. Second, he wants us to eliminate the requirement that these physicians work on only a temporary or intermittent basis. And third, he wants us to eliminate the requirement for agreements between DOE and the states and then everything will be fine.

My strong impression is that we could do all of that this afternoon and nothing would be fine, the problem would still be enormous and the backlog would still be enormous and the main thing is the people that are intended to get some kind of financial relief for the injury they suffered would still not have that relief. That's

the big problem that I see with it. I don't know if you have a response. If you do, I'm glad to hear it.

Mr. CARD. Sure. Well, I don't think the Secretary's letter says everything will be fine, because clearly for some people——

Senator BINGAMAN. But that is all he's recommending.

Mr. CARD. Well, what that was intended to do is to maximize the effectiveness of us prosecuting our statutory duties under this law. You very clearly pointed out a possible disconnect between many Senators and Congressmen and constituents on whether the law is getting the right thing done or not. But we believe that with the funding will allow us to deliver what was expected in law.

I do want to point out various estimates which are statistically still not significant, but multiple agencies are suggesting there are 70 to 80 percent non-contested willing payers in the system, and the path we're on right now is to see how that works. We've had a claim paid too late, but we have one paid and we have many more in the pipeline. But we'd certainly respect your differences if you want to short-circuit that in some way and come up with another plan.

Senator BINGAMAN. Let me understand—can I still ask another question here? Under part D, site profiles, form the foundation for determining exposures to workers through these probably pathways of toxic substances, and those site profiles are intended to speed the case processing and determination through the physician panels. Has the Department undertaken a program to profile the sites covered in the program? And if so, could you tell us how many you've covered to date?

Mr. CARD. Well, the term site profile is not clearly defined, but for the advocates of that, I would say we have not yet engaged in a site profiling program. Our sites have much information available, historical information, as to what contamination existed in what buildings. We have not yet found there to be a cost benefit in our opinion of conducting site profiles for the applicants that we're looking at, because it would require diversion of substantial resources from the problem that we've highlighted here into that activity, and we don't want to do that until we're sure that there's going to be some payoff in the workers for doing that.

But we are fortunate through the various—Los Alamos is an example—where through the environmental program we have a lot of information on the chemicals and other characteristics of the facilities. In radiation, the—which is the Department of Labor side of this—we had much more rigorous and sophisticated information, which enabled the compilation of this, and furthermore, that the dose response algorithms are better defined for this program, which make the site profiling activity both easier and more relevant for the part B than it does for part D.

Senator BUNNING. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. You can tell from my prior questions that I'm very focused, very concerned about the willing payer issue. Will the Department of Energy provide this committee with a specific legislative proposal to resolve the willing payer issue?

Mr. CARD. We're not prepared to offer one at this time.

Senator MURKOWSKI. When will you be prepared to offer one?

Mr. CARD. Well, at a minimum we think we should see what happens with the benefits that were intended through the original legislation.

Senator MURKOWSKI. What does that mean?

Mr. CARD. Well, as I mentioned earlier, we now have a pipeline beginning to form of people entering into the workers' compensation programs, 70 to 80 percent of them who have a willing payer, and it will give us an opportunity to see what sort of benefits accrue to that. We just don't think that the information is there to jump in front of that at this point in time and for us as an agency to decide in the whole global scope of benefits to Federal and other works for various things, Agent Orange was mentioned, where this should fit in. And so we want to let the legislation as it was originally conceived take its course till we can gather some data to see what happens.

Senator MURKOWSKI. Isn't it correct though that with our Amchitka workers, we do not have a willing payer identified?

Mr. CARD. Right now we do not have one.

Senator MURKOWSKI. Okay. So our Amchitka workers are not in any pipeline that could be considered for completion of their claims, is that correct?

Mr. CARD. Not as of today, but I will say that under Mr. Kerry's perseverance, we are looking under every rock to determine if we can find a tail to willing payers and I think we've had some success there. We're not willing to give up on anybody, but we do recognize that Alaska and Iowa have particular problems, and thus, we empathize with your concern over that.

Senator MURKOWSKI. Well, would you be willing to work with my staff and that of any other interested Senator here to resolve this? I really don't have any interest in waiting for the process to work out and waiting for studies. I think this is something that we need to identify as soon as possible in those areas that we know are problematic. You may have other things in the pipeline that you're working on. Pursue those, but in those areas where we know we don't have a willing payer, I don't think it's fair to the people that were injured at Amchitka, the people that Senator Grassley is concerned about, that they should wait while we process people through the other pipeline. So I would like to know that we can have the support from DOE to work on this issue with you.

Mr. CARD. Well, we will be glad to work with you.

Senator MURKOWSKI. Thank you.

Senator BUNNING. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman. Mr. Card, to go back to my earlier questions about information, I almost just feel like this is a hat trick that my constituents have had to go, "where is information to prove their case," and I feel this morning I'm getting the same hat trick to a certain degree, so I want to make sure I understand where you are from a judgment of where the act was written and what changes.

I see, as Senator Bingaman said this morning, here's your legislative proposal, here's what you think needs to be changed in this program. So, as the original act stated, there was supposed to be a survey and site estimate for dose reconstruction. That hasn't been done. I get that it's not officially under DOE because it's

NIOSH doing that, but they have to rely on DOE information. And so you're saying today you don't think that is a prudent use of time as it relates to the part D of the program, is that correct?

Mr. CARD. Well, again, the dose reconstruction—I apologize for the complexity of this—but the dose reconstruction is intended for the part B part. We provide information to NIOSH to do that. I believe we're current on that information, is that right? We also use——

Senator CANTWELL. But they haven't—so you believe that they have, NIOSH has complied under the act? You think they're in compliance under the act?

Mr. CARD. Well, I don't have—since I haven't analyzed, I've had enough on my hands dealing with part D, I haven't analyzed part B, but we have no reason to believe that NIOSH isn't prosecuting their efforts with all deliberate speed on these dose reconstruction——

Senator CANTWELL. NIOSH has not done a dose reconstruction. In fact, there was legislation in the 2004 Defense authorization telling them to do it again because they hadn't done it, and the fact that you don't know they haven't done it, I mean, this is the puzzle that these individual cases have to have. If they go to their employer and their employer sends them records that looks like this, no information available, or things that are blank calendars, the fact that the dose reconstruction was supposed to be done by NIOSH so that then they could find out, well, am I exposed, have I been exposed or not, what was going on at that facility at that time, and then the fact that you don't even know whether they have completed that or not just leaves people without the information to prove the case.

So as Senator Bingaman was saying, it's not about the proposals you put on the table today. We're still going to have the same mess on our hands because the information isn't available.

Mr. CARD. Well, we'd be glad to evaluate your specific case. My understanding is the information you have there is FOIA information, it's not the information we would normally give an applicant to run through the part D process. But again, any constituent issue you have, we'd be delighted to step in and help on it.

Senator CANTWELL. So your position on dose reconstruction is you didn't know that it hadn't been done. Now that you know, do you think that it should be done by NIOSH?

Mr. CARD. Well, I would really rather that NIOSH respond to that because——

Senator CANTWELL. I'm asking you as somebody who has to discharge this program.

Mr. CARD. Okay. Well, let me just say that dose reconstruction, and I'm not even sure what the requirement is for part B, is a very complex thing. At the site I formerly worked at, Rocky Flats, the State of Colorado was funded by DOE and it took them more than half a decade to do a dose reconstruction for that site. So I think—Bob, do you want to explain what in your opinion NIOSH——

Mr. CAREY. The problem is that the dose reconstruction really is not connected to the part D program. It's all about the part B program. Where there's not a special exposure cohort under the part B, as in boy, program that Department of Labor runs, then they

go to NIOSH to get a dose reconstruction done for the part B program and the part B benefit. It has—the only part that the Department of Energy plays in this is in providing data, backup data to NIOSH in order to be able to complete those, and they're reporting that we are timely, 60 days timely with less than 1 percent of the total number of requests and that we are more than meeting their standard for providing that data to them.

Senator CANTWELL. So, Mr. Carey, do you believe then that the requirements of the act have been fulfilled as it relates to site dose reconstruction?

Mr. CAREY. The establishment of the rule by NIOSH is a process totally outside of the Department of Energy's purview. We have no control over that.

Senator CANTWELL. You're here talking about recommendations to change this so that we can have more expedited processing of this entire program. One of the big puzzles is, where's the information? And so I'm just asking you, you didn't come with that recommendation, so I'm just asking you whether you think that they have completed that task or not?

Mr. CAREY. I think it would be improper for the Department of Energy to comment on whether NIOSH is doing their job or not.

Senator CANTWELL. Whether information that they——

Mr. CAREY. We are providing them all the information that they request.

Senator CANTWELL. You've made other comments about the program that they—that they're involved in, so I don't understand why you would not be aware of the fact that one of the requirements of the act was to compile information so that in the same way as Agent Orange, you could go backward if you had to and say, here's what exposure was.

Mr. CAREY. In the part B program.

Mr. CARD. Senator, I apologize for the obvious confusion here, but we have no reason to believe that NIOSH is not completely fulfilling their statutory responsibilities, and their side of the program has been the one that's been praised, so frankly we just haven't spent much time evaluating it.

Senator CANTWELL. Well, I'm sure we'll get a chance to ask them as well, but thank you for that. Thank you, Mr. Chairman.

Senator BUNNING. Thank you.

Senator Landrieu.

Senator LANDRIEU. Thank you, Mr. Chairman, and I'm glad I could step in a for a few minutes. I've had two other hearings this morning and I'm sorry I wasn't here at the very outset, because the contractor is based in Louisiana and I'm fairly familiar with the work of this contractor and they've done good work throughout the Government. I'm not familiar with the details of this particular contract, only to ask you, Mr. Card, that I know there were allegations that the contractors processing the claims is what is the primary fault of the situation, yet as I look at the outline of the claims process, the clear differences between the DOL process and the DOE process are very different.

From your perspective, is it the contractor that's dragging their feet on this and not processing the claims quickly enough, and why

did the Department choose a contractor if you didn't think they could do the work less expensively than the Government?

Mr. CARD. Well, first of all, the reason to choose a contractor is this type of work does not fit into a government profile that is neither an inherent government service, and it also has a lot of dynamic labor activity in it, which is not particularly conducive to a government employment structure, so that's why we went to a contractor to staff up on this.

We all had our growing pains starting in this program, but I would say that in general we are satisfied with the contractor's performance at this time. As you know, we intend to openly compete the expansion of this program when we receive this reprogramming. And as I—you may not have been here, Senator, but I pointed out that we have done a cost analyst for this contractor, at least on a dollars-per-hour basis, which doesn't tell everything but is substantive and was the basis of the accusations about higher costs. In fact, we believe they're lower cost than alternatives available to DOE, including Federal workforce.

Senator LANDRIEU. Well, I just wanted to add that no matter how efficient or not efficient a contractor would be, if the underlying program doesn't meet the needs of the injured workers, then that's a whole other issue, and I think that we should focus along the lines of what Senator Bingaman raised, which are the legitimate concerns of members who have thousands of workers in their states who have been going for some time with legitimate health concerns, and the process that we're asking them to go through doesn't really give them any hope of relief, either in the short term or midterm and perhaps not even in the long term.

So even if you had, and I'm not in a position to say, and I'm not going to get this morning into the details of this contract and whether the contractor is doing a good job, but the point is, even if they were doing a great job at what they were asked to do, if the program itself is cumbersome and difficult for people to access the medical records that are necessary and to get them help, I think that we really have to spend some time on the underlying program.

I know that there were two programs that were established about the same time, one to take care of about 23,000 workers and one to take care of about 53,000 potential workers. One program under DOL seems to be working well and people are compensated about $150,000 for injuries or illnesses that may have occurred in the line of work. But DOE has 23—I'm sorry—is it the opposite, 23,000 workers? One has 52,000 and one has 23,000, and as the chairman said, only one has been completely processed.

So it would seem to me, and I haven't been able to review your proposed legislation since it was just submitted yesterday, but regardless of whether the contractor, even if they were doing the most superb job they could possibly do, the system itself to me seems to be flawed in the sense of trying to get help to people who need help in a timely manner, and I would just hope that we could focus on the bigger picture, as well as looking at if there are any difficulties or failings or vulnerabilities with this particular contractor.

Senator BUNNING. Thank you, Senator. Mr. Card, a lot us have additional questions, and rather than keep you, we will submit them to you for written responses in case something comes up. We would like to get to the third panel. We thank you for being here and appreciate your testimony.

Mr. CARD. Thank you.

Senator BUNNING. Third panel, Mr. Shelby Hallmark, Dr. John Howard, Mr. Robert Robertson. We might as well go right across, so Dr. Howard, if you would start us off, we'd appreciate it.

STATEMENT OF JOHN HOWARD, M.D., M.P.H., DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dr. HOWARD. Thank you very much. My name is John Howard and I'm the Director of the National Institute for Occupational Safety and Health, part of the Centers for Disease Control and Prevention within the Department of Health and Human Services. I'm joined today by Larry Elliott, Director of the NIOSH Office of Compensation Analysis and Support.

I'm pleased to come to you today to update you on HHS activities under the act. We've been charged with support of four activities for the Department of Labor and one activity for the Department of Energy. First, the President charged HHS with administering a new Federal advisory committee, the Advisory Board on Radiation and Worker Health, to advise HHS on its activities under part B of the act.

The Board has been exceptionally active, having met a total of 22 times since the beginning of 2002. The Board has advised HHS on all of our rulemakings, and has begun the process of reviewing the validity and the quality of the NIOSH dose reconstruction program.

Second, HHS was charged with promulgating two regulations required under the act. One regulation established methods for conducting radiation dose reconstructions for cancer claimants, and a second regulation established guidelines by which DOL would determine which cancer—whether the cancer of an employee was, quote, "at least as likely as not," related to radiation doses estimated for that employee through dose reconstruction. We promulgated both regulations in final form in May 2002.

Third, the responsibility of HHS delegated to NIOSH was the development and administration of the dose reconstruction program to serve cancer claimants under the act. Dose reconstruction is a science-based process for retrospectively estimating the amounts and types of radiation doses incurred by a person. Since dose reconstructions for a compensation program are very different from those used in radiation research, NIOSH developed methods of dose reconstruction that build upon established approaches and principles of this discipline, but are tailored to the unique aspects of a compensation program.

Dose reconstruction is the largest task assigned to HHS, and required building both an internal and an external capacity. As of March 19, 2004, NIOSH has completed just over 2,000 dose recon-

structions and sent them back to DOL to make a final decision on the claim. And even though we have a substantial backlog of dose reconstructions to complete, largely because we had to begin accepting dose reconstruction requests in 2001, long before we had the structure or capacity to complete any of our reconstructions, we are at this point steadily increasing our capacity to complete the dose reconstructions we have been sent by DOL.

Much of our program development is completed, and the rate of production of dose reconstructions is increasing. While it took NIOSH 26 months from when we received our first referral from DOL to complete the first 1,000 dose reconstructions, NIOSH completed the second 1,000 dose reconstructions in less than 4 months, and I'm hopeful that we can even speed up the process faster.

The fourth responsibility of HHS under part B of the act is directly related to the dose reconstruction program and involves making additions to the special exposure cohort established by the act. The act provides members of the cohort with a different claims adjudication procedure than that applied to most cancer claimants. Claims for members of the cohort who have 22—any of 22 specified cancer designated by the act do not require dose reconstructions, nor do they require a determination by DOL of the probability of causation.

Congress included in the cohort, as we've heard, certain employees of three DOE facilities and one nuclear weapons test site. Importantly, Congress gave the President and delegated to the Secretary of HHS the authority to designate other classes of employees to be members of that same cohort, subject to congressional review, provided that for each class it is not feasible to estimate with sufficient accuracy the radiation dose that that class received, and two, that there's a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

This authority allows HHS to designate classes of employees for addition to the cohort in situations in which a class of employees had potential radiation exposure, but the available records and data are insufficient for NIOSH to complete dose reconstructions.

The final regulation which takes into account all of the public comments made since our first noticed of proposed rulemaking was issued in June 2002 and a second notice issued in March 2003 is being developed by HHS, is undergoing final review, and is expected very soon. Once the cohort regulation is promulgated, HHS will solicit and begin considering petitions by classes of employees to become members of that cohort.

Fifth, HHS also has a small but important role under part D of the act, which requires DOE to establish, as we've heard, a program assistance to certain employees of DOE contractors in state worker compensation proceedings. HHS' role in this is responsibility for appointing the physicians who serve on the DOE physician panels. HHS has made several rounds of appointments to date, has selected a total of 215 physicians to serve on these panels, of which 167 have been referred to DOE. In response to DOE concerns that the number of physicians has been insufficient to address the DOE caseload in a timely fashion, HHS has recently expanded our criteria for identifying qualified physicians and is focusing on the recruitment of physicians who are making a transition

from full clinical practice to retirement, or who have recently retired and are willing to undertake this important non-clinical work. HHS is committed to recruiting as many physicians as possible and necessary to serve on DOE's physician panels.

In closing, Mr. Chairman, I'll just say that HHS and NIOSH are working intensively to meet our responsibilities under the act, which we take very seriously. The major tasks are difficult because they employ dose reconstruction expertise and systems on an unprecedented production scale.

We keenly are aware that nuclear weapons workers and their families, as has been stated this morning, are relying on us to accomplish this work as quickly as possible, and we understand that saying that we are doing our best is not good enough from the perspective of our claimants, some of whom are dying of cancer, who have lost a spouse, parent, or sibling. So as we proceed, we are hopeful that our dose reconstructions are timely as possible, that they're fair, and that they're grounded on the best available science.

Thank you very much, Mr. Chairman, for the opportunity to make a statement. I'd be happy to answer questions.

[The prepared statement of Dr. Howard follows:]

PREPARED STATEMENT OF JOHN HOWARD, M.D., M.P.H., DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

INTRODUCTION

Mr. Chairman, and members of the Committee, my name is John Howard and I am the Director of the National Institute for Occupational Safety and Health (NIOSH), part of the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS). I am joined today by Mr. Larry Elliott, Director of the NIOSH Office of Compensation Analysis and Support.

CDC's mission is to promote health and quality of life by preventing and controlling disease, injury and disability. NIOSH is a research institute within CDC that is responsible for conducting research and making recommendations to identify and prevent work-related illness and injury. Within this mission, NIOSH is the lead federal agency for research on the occupational health of U.S. workers, including nuclear weapons workers.

I am pleased to appear before you today to update you on HHS activities under the Energy Employees Occupational Illness Compensation Program Act ("the Act"). Under the Act, HHS, with the assistance of NIOSH, is charged with conducting a variety of compensation-related activities important to nuclear weapons workers and their families. My testimony today will focus on the set of activities we conduct to support the Department of Labor (DOL), which administers the federal compensation program under "Part B" of the Act. I will also briefly summarize other HHS activities under Part D and a separate provision of law relating to residual contamination.

Under Executive Order 13179, issued on December 7, 2000, the President charged HHS with five specific responsibilities related to Part B. I will briefly describe each of these five activities and summarize its progress.

ADVISORY BOARD ON RADIATION AND WORKER HEALTH

First, the President charged HHS with administering a new federal advisory committee, the "Advisory Board on Radiation and Worker Health," to advise HHS on its activities under Part B. I will note the specific advisory roles and contributions of the Board in context throughout this testimony.

HHS nominated and the President appointed the initial members of the Board in 2001. The Board is chaired by Dr. Paul Ziemer, an internationally recognized health physicist, and includes 11 members, who are scientists, physicians, or representatives of nuclear weapons workers, a membership which reflects the Act's requirement that the Board include a balance of scientific, medical, and worker perspectives.

The Board held its first meeting in January of 2002. The Board has been exceptionally active, having met a total of 22 times in the first 26 months since the beginning of 2002. The board has advised HHS on all of our rulemakings and has begun the process of reviewing the validity and quality of the NIOSH dose reconstruction program.

REGULATION FOR DOSE RECONSTRUCTIONS AND CANCER CAUSATION

Second, HHS was charged with promulgating two regulations required under the Act. One regulation established methods for conducting radiation "dose reconstructions" for cancer claimants.[1] Dose reconstruction is a science-based process for retrospectively estimating the amounts and types of radiation doses incurred by a person. Since dose reconstructions for a compensation program are very different from those used in research, HHS developed methods of dose reconstruction that build upon established approaches and principles of this discipline but are tailored to the unique purposes and needs of the Act, particularly striking a balance between the needs for accuracy and efficiency in a compensation program. This effort included substantial scientific work on the part of NIOSH to develop specialized analytical methods and tools needed to estimate the occupational radiation doses of nuclear weapons workers.

The Act required a second regulation to establish guidelines by which DOL would determine whether the cancer of an employee was "at least as likely as not" related to the radiation doses estimated for that employee through a dose reconstruction.[2] This regulation for determining "probability of causation" (the probability that a person's cancer was caused by radiation) required the further development of a scientific tool for calculating probability of causation. This tool, the "Interactive Radio Epidemiological Program," or "IREP," is a complex computer program that uses "risk models" for associating radiation doses with risk information on different cancers. This tool estimates the probability of disease causation specific to each employee's unique history of exposures to different types and quantities of radiation during the course of his or her employment. The final development of this tool was undertaken by NIOSH in collaboration with the National Cancer Institute, which had created the initial version of this tool in the 1980s and was in the process of updating it as a result of an extensive scientific review by the National Research Council.

HHS promulgated both regulations in final form in May 2002, after issuing a notice of proposed rulemaking for the probability of causation regulation and an interim final rule for the dose reconstruction regulation in October of 2001 and obtaining and considering public comments. The Board also reviewed and advised HHS on both these rules during the public comment period and supported the final rules. The rules are based on the best available scientific evidence and have widely employed a policy to ensure that important limitations of science and available data are handled in ways that do not penalize the claimant. The rules are designed with efficiencies necessary to serve the high claims case load expected then and experienced now. The rules also are designed in recognition of the fact that science is always improving. Hence, the rules allow for new scientific findings and consensus to be integrated into dose reconstruction methods and probability of causation determinations as they become available, after proper scientific consideration.

DOSE RECONSTRUCTION PROGRAM

The third responsibility of HHS, delegated to NIOSH, is the development and administration of a program of dose reconstruction to serve cancer claimants under the Act. This is the largest task assigned to HHS and required building a large internal and external capacity. The production scale and scientific complexity of the dose reconstruction program required by the Act are significant compared to other federal compensation programs requiring dose reconstructions.

I will report on the progress of this dose reconstruction program in two parts. First, I will outline the major milestones in the development of the program and the activities that remain to be completed. Second, I will report on the current status of dose reconstructions, both completed and underway.

Program Development Milestones. NIOSH began developing this dose reconstruction program in the summer of 2001. We have accomplished the following milestones:

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[1] 42 CFR part 82
[2] 42 CFR part 81

June - December 2001

- Recruited an initial group of scientists and support staff
- Acquired a temporary facility to house program staff
- Published interim final dose reconstruction regulation
- Published notice of proposed rulemaking for probability of causation regulation
- Established claimant interview procedure
- Developed the principal scientific tools and procedures
- Developed the records and data management systems to handle the high volume of claims and DOE data and to track and manage dose reconstructions

2002

- Expanded internal staff
- Published final dose reconstruction and probability of causation regulations
- Published Notice of Proposed Rulemaking for Procedures for Adding Classes of Employees to the Special Exposure Cohort
- Developed implementation guides for performing dose reconstructions
- Tested tools and procedures using initial dose reconstructions
- Awarded a contract to build dose reconstruction capacity externally, employing health physicists throughout the U.S.
- Established contractor-related procedures and trained contractor staff Expanded the records and data management systems
- Began locating and obtaining facility-specific data from DOE and other sources
- Assisted DOE in establishing DOE's record retrieval systems and related interagency policies

2003

- Established a Memorandum of Understanding to formalize coordination between HHS and DOE
- Published Second Notice of Proposed Rulemaking for Procedures for Adding Classes of Employees to the Special Exposure Cohort
- Continued expanding internal and contractor staff and developing technical procedures
- Initiated the development of 15 site profiles and completed 5 site profiles

2004

- Continuing refining technical procedures for increased efficiency in production of dose reconstructions
- Continuing the development and completion of site profiles
- Close to completing a Final Rule for Procedures for Adding Classes of Employees to the Special Exposure Cohort

There are several important points to note about the development of this program. First, while NIOSH has some of the leading expertise in conducting dose reconstructions for scientific purposes, the practical challenges of conducting dose reconstructions for a compensation program involving a high volume of cases are new to us. One key example is the need for site profiles.

A site profile is a compilation of basic information about radiation monitoring practices and radiation exposures at a facility over time. At the outset of developing the dose reconstruction program, NIOSH expected to conduct dose reconstructions in tandem with developing site profiles. By doing both at once, we thought we could complete a substantial number of dose reconstructions to limit the accrual of a backlog. We learned, however, that to be able to complete dose reconstructions for a compensation program with a high volume of cases we had to complete initial versions of the site profiles first. It is prohibitively inefficient to collect the general site-related information used in dose reconstruction on a case-by-case basis.

We have faced a number of logistical challenges in establishing the dose reconstruction program. The demands have been exceptional for developing unique computerized data systems, for recruiting and training a nationally dispersed workforce of experts and diverse professionals, for establishing operational procedures sufficient to guide a dispersed workforce, and for establishing effective communications within our dose reconstruction workforce and with the claimant population.

A second point concerning the development of this program is that the Department of Energy (DOE) has had to develop systems for identifying and retrieving records requested for individual cases. While DOE has extensive employee and site records, which are of great value for dose reconstructions, DOE did not have sufficient infrastructure to identify and produce relevant records on the scale required

for NIOSH to conduct dose reconstructions under the Act. In 2003, DOE improved this capacity substantially. Almost all DOE sites are efficiently providing complete responses to NIOSH requests and DOE continues to improve this performance.

Finally, as we go forward, the Advisory Board will have an important role in advising NIOSH concerning the further development of the dose reconstruction program. The Board is charged under the Act with reviewing and advising NIOSH on the scientific validity and quality of the dose reconstruction program. This will include an independent review of a random sample of completed NIOSH dose reconstructions. The Board, with administrative assistance from NIOSH, has contracted for independent scientific support and has initiated its review, including the review of selected site profiles and related technical procedures.

Status of Dose Reconstructions. In most cases, a cancer claimant must obtain a dose reconstruction from NIOSH after the Department of Labor verifies that his or her claim is for a covered employee with cancer. DOL uses the results of this dose reconstruction and the HHS guidelines for probability of causation to determine whether the cancer of the employee was at least as likely as not to have been related to his or her exposure to radiation in the performance of duty.

Health physicists conduct dose reconstructions using radiation monitoring data, when it is available, as well as information on the radiation monitoring practices, the radiation sources to which a person was exposed, and the processes and environment through which the exposures occurred. NIOSH obtains the information from DOE, the claimants, and other sources. The process of conducting a dose reconstruction is completed in 11 steps, as follows:

- Upon receiving a claim from DOL, NIOSH creates a case file, notifies the claimant(s), and requests personal exposure data from DOE or other sources, as appropriate.
- NIOSH receives and reviews personal exposure data from DOE or other sources.
- NIOSH requests additional personal exposure data from DOE or other sources, as necessary.
- NIOSH interviews the claimant(s) and coworkers to evaluate the completeness, quality, and adequacy of the DOE data.
- The claimant(s) and co-workers review their interview summaries and correct or supplement them, as necessary.
- NIOSH assigns a health physicist to conduct the dose reconstruction, using personal and site-specific data from the site profile and other sources.
- NIOSH requests additional data from DOE or other sources, as necessary, based on informational needs identified by the health physicist. NIOSH submits a draft dose reconstruction report to the claimant(s) for review.
- NIOSH conducts a close-out interview with the claimant(s) to explain the dose reconstruction and to obtain any additional information from the claimant. NIOSH revises the draft dose reconstruction report and resubmits it to the claimant(s), when the claimant(s) provides additional information.
- The claimant(s) signs a form closing the record, which allows NIOSH to complete the dose reconstruction.
- NIOSH transmits the final dose reconstruction report to the claimant(s) and to DOL.

As of March 19, 2004, NIOSH has completed more than 2000 dose reconstructions and sent them back to DOL to make a final decision on the claim. Since October 2001, NIOSH has received approximately 15,000 cases from DOL requiring dose reconstructions. We currently have approximately 13,000 active cases requiring dose reconstruction. According to the process outlined above, we have obtained initial data from DOE and other sources for 10,000 of these 13,000 cases. We have completed dose reconstruction interviews of claimants and co-workers for 8,000 of these cases. We have assigned more than 5,000 of these cases to health physicists to conduct the dose reconstructions, usually after the completion of site profiles related to the cases. And we currently have drafted more than 300 draft dose reconstruction reports that are being reviewed by claimants, who have up to 60 days for this review.

As this summary indicates, we have a substantial backlog of dose reconstructions to complete. This backlog arose because we had to begin accepting dose reconstruction requests in 2001, long before we had the structure or capacity to complete any dose reconstructions.

At this point, we steadily are increasing our capacity to complete dose reconstruction. Much of our program development is completed, as I described earlier in this testimony. The following chart shows our progress in producing completed dose reconstructions. Further, our rate of production is increasing. While it took NIOSH

26 months from when we received our first referral from DOL to complete the first 1000 dose reconstructions, NIOSH completed the second 1000 dose reconstructions in less than 4 months. I am hopeful that the next 1000 dose reconstructions will be completed in even less time.*

The March data in this chart cover activity through March 19th of this year.

While our capacity is increasing, the chart below shows that the number of new cases requiring dose reconstructions has been decreasing since the fourth quarter of Fiscal Year 2002. This declining number of new cases also will help us reduce the backlog of cases in 2004.

SPECIAL EXPOSURE COHORT

The fourth and fifth responsibilities of HHS under Part B of the Act are directly related to the dose reconstruction program. They concern making additions to the "Special Exposure Cohort" ("the Cohort") established by the Act.

The Act provides members of the Cohort with a different claims adjudication procedure than that applied to most cancer claimants. Claims for members of the Cohort who have any of 22 "specified cancers"[3] designated by the Act do not require dose reconstructions, nor do they require a determination by DOL of probability of causation.

Congress included in the Cohort certain employees of three DOE facilities, known as the gaseous diffusion plants, as well as employees of a nuclear weapons test site in Amchitka, Alaska. In addition, Congress gave the President (delegated to the Secretary of HHS) the authority to designate other classes of employees to be members of the Cohort, subject to Congressional review, provided that each class of employees meets two tests:

(1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

This authority allows HHS to designate classes of employees for addition to the Cohort in situations in which a class of employees had potential radiation exposure but the available records and data are insufficient for NIOSH to complete dose reconstructions.

HHS is in the final stage of promulgating a final regulation that will set out procedures by which classes of employees can petition HHS for addition to the Cohort, and by which HHS will consider such petitions. HHS issued an initial Notice of Proposed Rulemaking (NPRM) for the Cohort petition process in June 2002. In response to public comments, NIOSH made substantial changes to the proposal and issued a second NPRM in March of 2003. The final regulation, which takes into account all of the public comments, is being developed by HHS, is undergoing final review and is expected to be released soon.

Once the Cohort regulation is promulgated, HHS will solicit and begin considering petitions by classes of employees. The process of considering petitions will involve the review of such petitions by NIOSH and by the Board, which will advise HHS on each petition. Some of the technical aspects of the NIOSH review will be similar to those of dose reconstructions, since a principal question that must be addressed is the feasibility of conducting dose reconstructions for members of the petitioning class. The final step in the petition process, as required by the Act, will be an opportunity for Congress to review each designation by the Secretary of HHS of classes of employees to be added to the Cohort. The decisions to add a class to the Cohort become effective in 180 days, unless Congress provides otherwise.

PART D OF THE ACT

HHS also has a small but important role under Part D of the Act, which requires DOE to establish a program of assistance to certain employees of DOE contractors in state workers' compensation proceedings. DOE operates a set of physician panels that evaluate the relationship between an illness of a DOE employee and exposure to toxic substances in a DOE facility. When the findings of such evaluations affirm a work-related illness, meeting criteria specified by DOE in regulations, then DOE has procedures for assisting the employee in pursuing a state workers' compensation claim.

HHS is responsible for appointing the physicians who serve on the DOE physician panels and has made several rounds of appointments to date. HHS has selected a

*All charts have been retained in committee files.

[3] 20 C.F.R. 30.5(dd).

total of 215 physicians.to serve on these panels, of which 167 have been referred to DOE. In response to DOE concerns that the number of physicians has been insufficient to address the DOE caseload in a timely fashion, HHS has recently expanded its criteria for identifying qualified physicians and is focusing on the recruitment of physicians who are making a transition from a full clinical practice to retirement or who have recently retired and are willing to undertake this non-clinical work. We are committed to recruiting as many physicians as possible to serve on DOE's physician panels.

RESIDUAL CONTAMINATION

Finally, pursuant to Public Law 107-107, NIOSH was responsible for conducting a residual contamination study. The study, conducted by NIOSH, evaluated whether significant residual contamination remained at atomic weapons employer or beryllium vendor facilities after such facilities had concluded work for DOE or its predecessor agencies.

NIOSH submitted a final report on this study to Congress in November 2003. The study evaluated 219 AWE facilities and 72 beryllium vendor facilities. It found insufficient information to make a determination for 34 AWE facilities and 12 beryllium vendor facilities. Among facilities that could be evaluated, the study found that Atomic Weapons Employer sites were almost equally divided between those that had and did not have potential for significant residual contamination outside of the periods in which weapons-related production occurred (96 and 89 facilities, respectively). On the other hand, most of the beryllium vendor facilities (57) continue to have potential for significant residual contamination.

We regret the mistake recently identified in part of the report. The report wrongly stated that there was a potential for significant residual contamination at the Bethlehem Steel site in New York beyond the period when weapons related work was completed at the site. Documentation reviewed indicates that there is little potential for significant residual contamination outside of the period in which weapons-related production occurred. We are working to release an updated report as quickly as possible with this corrected information.

CONCLUSION

In conclusion, HHS and NIOSH are working intensively to meet our responsibilities under the Act. The major tasks are difficult because they employ dose reconstruction expertise and systems on an unprecedented scale. We remain keenly aware, however, that nuclear weapons workers and their families are relying on us to accomplish this work as quickly as possible. We understand that "doing the best we can" is not good enough from the perspective of our claimants, some of whom are dying of cancer or have lost a spouse, parent or sibling to cancer. As we proceed, we will continue to strive to produce dose reconstructions that are as timely as possible, that are fair, and that are grounded in the best available science.

Thank you for this opportunity to provide an update on the status of HHS activities under the Act. Mr. Elliott and I would be pleased to respond to any questions of the Subcommittee.

Senator BUNNING. Mr. Hallmark.

STATEMENT OF SHELBY HALLMARK, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR

Mr. HALLMARK. Thank you, sir. Mr. Chairman and members of the committee, my name is Shelby Hallmark. I'm the Director of the Office of Workers' Compensation Programs at the Department of Labor. I'm pleased to appear before the committee today to discuss EEOICPA, as we call it. We're proud of our role in implementing the act along with the other responsible departments.

As you know, DOL was assigned the lead role for part B and for getting it up and running in July 2001. We met that challenge, and since then, we have processed 95 percent of the 52,000 claims received and issued, as has been indicated, over $800 million in benefits and medical benefits. Labor is committed to holding ourselves accountable for achieving measurable results, and we have done so

with part B. With a starting backlog of 30,000 cases, we fell short of our timeliness goals in the first full year, 2002, but we cleared the backlog and met all of our timeliness goals last year and have achieved further improvements in 2004.

For example, the average time for an initial decision has been reduced from 98 to 73 days for a DOE prime contractor employee, and from 123 to 99 days for all other cases.

These very positive results were achieved through the hard work of our staff and in close coordination with HHS and DOE. For example, DOE has reduced the average time for its employment verification from 90 days to 45 days during the past year.

We've also focused on making quality decisions and on clear communications to our customers and stakeholders. No workers' compensation program is without conflict, but the level of appeals so far indicates that our program decisions do have credibility. Having reached what we would call steady state in part B processing, we are geared up now to handle the thousands of cases that will be coming back to us from NIOSH with dose reconstructions in the coming months.

We've issued approximately 1,700 recommended decisions so far on those cases, averaging 5 days from date of receipt to complete that work. We are prepared now for there to be more appeals and perhaps litigation as a result of these claims flowing through the system because they are more complex, subject to factual dispute, and have a lower approval rate.

Another challenge for us in the coming year will be to intensify our outreach efforts. This will mean many more of our traveling resource centers that we have conducted around the country to reach out to possible beneficiaries and we are also going to be branching out and contacting pension funds, unions, and other entities that can spread the word to people who no longer live close to the DOE facilities.

On dose reconstruction, we've noted that the intricate process of dose reconstruction has taken a long time to come to fruition, but it's now yielding results, as Dr. Howard mentioned. They've returned over 2,000 cases to us and we've made favorable recommended decisions on nearly 500 of those cases already. We expect that to accelerate as the 5,000-plus cases that are in their pipeline now flow through and with the completion of their site profiles.

We're encouraged by NIOSH's increased productivity, by the claimant-friendly of the dose reconstruction process as they've implemented it, and by the quality and balance of the reconstructions produced. We think this is state-of-the-art in identifying which specific cancers should reasonably be attributed to radiation exposure. Building it has obviously taken longer than we anticipated, but it is scientifically based and represents the most consistent, objective and understandable methodology available.

Regarding part D, we have provided assistance to DOE in the past and we will step up that effort starting next month. Senior staff from DOL will be working with DOE to prioritize many of the ideas for improvement. They've received, and we will help build them—with them build procedures and other guidelines to carry that out.

Roughly 95 percent of the claims that are filed go both ways, are both part D and part B, and that allows for some synergies in savings for DOE taking advantage of case development that's already been done on our side. For thousands of those dual cases, using part B materials can expedite part D case processing and also streamline the panel's review of the case.

Mr. Chairman, you asked that we address ideas for improving the act. I first would like to say that our experience with other compensation programs suggests that any substantial change to eligibility provisions should be approached with extreme caution. The history of our black lung program is an object lesson. Alterations in the standards of proof, eligibility, and coverage over time resulted in what I would call a crazy quilt of case law, and made it very difficult to explain to the target population while outcomes vary over time and for different individuals.

We urge that Congress consider such long-term ramifications when reviewing remedies to address the current problems. Specifically regarding part D, we support DOE's proposed legislation to remove certain administrative obstacles and we support DOE's request for reprogramming.

We believe part B is operating fully and effectively now, but some clarification of the statutes may be in order, specifically regarding the precise definition of a covered DOE facility to ensure that the program remains directed toward the population Congress intended to help. The administration is currently reviewing this issue and will present legislation shortly.

I'd be pleased to answer any questions.

[The prepared statement of Mr. Hallmark follows:]

PREPARED STATEMENT OF SHELBY HALLMARK, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR

Mr. Chairman, and Members of the Committee, my name is Shelby Hallmark. I am the Director of the Office of Workers' Compensation Programs (OWCP), a component of the Employment Standards Administration (ESA), Department of Labor (DOL).

I am pleased to have an opportunity to appear before the Committee today to discuss the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). While we are proud of the progress DOL has made in implementing Part B of the Act, EEOICPA has been and continues to be an interdepartmental activity, requiring the closely coordinated effort of the Departments of Energy (DOE), Health and Human Services (HHS), Justice (DOJ), as well as Labor.

Under Executive Order 13179, DOL was assigned primary responsibility for administering and adjudicating claims for compensation for cancer caused by radiation, beryllium disease and certain other conditions under Part B of the Act, and for ensuring that the program was up and running by July 31, 2001. Since funding for the new program was not received until January 2001, DOL faced a major initial challenge just to meet the congressionally mandated start date. We succeeded in issuing interim final regulations in May of that year and established a fully functioning program on schedule. Secretary Chao presented the first EEOICPA check on August 9, 2001. Since then, DOL has taken in over 52,000 claims (covering 39,500 cases), conducted nearly 600 public meetings to inform potential claimants of the program and help them file claims, established, in partnership with DOE, 11 full-time resource centers near major DOE facilities to service the regions where most potential claimants reside, established four DOL district offices and the infrastructure to support them, issued final decisions in nearly 22,000 cases, referred almost 16,000 cases to HHS for dose reconstruction, and awarded over $800 million in compensation and medical benefits.

EEOICPA OVERVIEW

Employees who worked for DOE, one of its contractors or subcontractors at a DOE facility, or at a facility operated by a private company designated as an Atomic Weapons Employer (AWE) or a beryllium vendor, may be eligible for a lump-sum award and future medical benefits under Part B of the Act. Survivors of these workers may also be eligible for benefits.

Part D of the Act established a system under which employees whose occupational diseases are found by a panel of independent physicians appointed by HHS to have been connected to work-related exposure to toxic substance receive assistance from DOE in obtaining state workers' compensation benefits. While DOL has no direct role in Part D, we have worked cooperatively with DOE on Part D implementation in developing processes and procedures and through the sharing of case files where claims have been filed under both Parts. In April, a DOL team of senior policy and procedural workers' compensation experts will be working with DOE to help evaluate and prioritize recommendations for improving Part D processing. This group will also assist in implementing improvements by developing necessary policy, procedures, and training materials for DOE consideration.

Under Part B of the EEOICPA, DOL determines eligibility for compensation and medical expenses for those conditions covered by Part B of the Act. DOE provides employment verification to DOL relevant to claims under Part B, provides worker exposure information to HHS for its use in dose reconstructions for covered workers, and designates private companies as atomic weapons employers and additional beryllium vendors. Since the inception of the program, DOE and DOL have jointly operated the resource centers located near the major nuclear weapons sites to provide assistance to potential claimants and others who need information about EEOICPA.

HHS establishes procedures for estimating radiation doses, develops guidelines for DOL to determine the probability that a cancer was caused by the exposure to radiation, estimates radiation doses (dose reconstruction), determines additions to the Special Exposure Cohort, and provides support for the Advisory Board established by the Act. And finally, the Department of Justice notifies uranium workers eligible for benefits under the Radiation Exposure Compensation Act (RECA) that they may also receive compensation from the Department of Labor, and provides DOL with documentation concerning those claims.

PART B ELIGIBILITY REQUIREMENTS AND PROCESSES

Several requirements must be met for a claimant to be eligible for compensation under the EEOICPA. For a worker (or eligible survivor) to qualify for benefits under Part B, the employee must have worked at a covered DOE, Atomic Weapons Employer, or beryllium vendor facility during a covered time period and developed one of the specified illnesses as a result of their exposure to radiation, beryllium or silica. Covered medical conditions include radiation-induced cancer, beryllium disease, or chronic silicosis (chronic silicosis is only covered for individuals who worked in nuclear test tunnels in Nevada and Alaska). Covered workers receive a one-time lump-sum payment of $150,000 as well as future medical treatment for the covered condition (medical services and evaluations only for beryllium sensitivity). The EEOICPA also provides compensation in the amount of $50,000 to individuals (or their eligible survivors) awarded benefits by the DOJ under Section 5 of the RECA.

When a Part B claim is filed, it is assigned to one of our four District Offices—Jacksonville, FL; Cleveland, OH; Denver, CO; or Seattle, WA—based on the geographical location of the covered worker's last employment. A claims examiner will review the documentation and determine if the criteria established by the Act for covered employment and covered illness are met. The claims examiner will work with the claimant, DOE and/or the private employer or employers involved to develop the case file as completely as possible.

There are several different types of claims under Part B of the Act, which require different processing steps. Claims for the $50,000 RECA supplement are the least complex, involving verification via the Department of Justice that a RECA award has been made, and documentation of the identity of the claimant (including survivor relationship issues). For claims involving beryllium disease, silicosis, or a "specified cancer" for workers at a Special Exposure Cohort (SEC) facility, the employment and illness documentation is evaluated in accordance with the criteria in the EEOICPA. The DOL district office will then issue a recommended decision to the claimant. The claimant may agree with the recommended decision, or may object and request either a review of the written record or an oral hearing (the latter will normally be held at a location near the claimant's residence). In either case, the Final Adjudication Branch (a separate entity within the DOL's Office of Workers' Compensation Programs) will review the entire record, including the rec-

ommended decision and any evidence/testimony submitted by the claimant and will issue a final decision, either awarding or denying benefits (or the Branch may remand to the district office if further development of the case is necessary). A Final Decision could then be appealed to the U.S. District Courts.

SPECIAL EXPOSURE COHORT CASES

DOL can move directly to a decision on cases involving a "specified cancer" at a Special Exposure Cohort facility because the Act provided a presumption that any of the twenty-two listed cancers incurred by an SEC worker was caused by radiation exposure at the SEC facility. DOL had received 6,147 cancer cases involving workers at the current SEC facilities as of March 18, 2004. Of these cases, 2,849 have been awarded $427 million in compensation. Another 2,181 cases either have been found not to meet the employment duration requirement or, more frequently, involve cancers other than the twenty-two specified cancers in the Act. In the latter circumstance, the case will be referred to HHS for a dose reconstruction so that DOL can determine whether to award benefits based upon the probability that radiation caused the cancer. About 40 percent of the cancer claims from SEC sites involve non-specified cancers and hence require a dose reconstruction.

DOSE RECONSTRUCTION CASES

For cases involving a claimed cancer not covered by the SEC provisions (that is, either a cancer incurred at a non-SEC facility, a cancer incurred at an SEC facility that is not one of the specified cancers listed in the Act, or an employee who did not have sufficient employment duration to qualify for the SEC), there is an intervening step in the process to determine causation, called "dose reconstruction." In these instances, once DOL determines a worker was a covered employee and that he or she had a diagnosis of cancer, the case is referred to the National Institute for Occupational Safety and Health (NIOSH) so that the individual's radiation dose—the relevant amount and character of radiation to which the individual was exposed related to his or her employment in the nuclear weapons complex—can be estimated.

After NIOSH completes the dose reconstruction and calculates a dose estimate for the worker, DOL takes this estimate and applies the methodology also promulgated by HHS (in its probability of causation regulation) to determine if the statutory causality test is met. The standard is met if the cancer was "at least as likely as not" related to the covered employment, as indicated by a determination of at least a 50 percent probability. DOL's district office then issues a recommended decision on eligibility for EEOICPA benefits, which is subject to the same subsequent administrative procedures and appeal rights described above with regard to other claims.

DOL PERFORMANCE GOALS AND OUTCOMES

The Department of Labor is committed to measuring the accomplishment of measurable outcomes and holding ourselves accountable for achieving the fundamental goals of all the programs we administer. With respect to the Energy Compensation program, we established high performance standards focused on moving claims rapidly through the initial and secondary adjudication stages. Our Government Performance Results Act (GPRA) goals, even for the first full year (FY 2002), were challenging in light of the large number of first year claims and program start-up activities.

Our goal for initial processing was to make initial decisions in 75 percent of the cases within 120 days for cases from DOE facilities and in RECA claims, and within ISO days for AWE, beryllium vendor, and subcontractor cases (for which employment and other critical information is generally more difficult to obtain). Because we had nearly 30,000 cases on hand to start with, we knew in advance we would not meet those goals, which were conceptualized in terms of a normal, steady-state flow of incoming claims. However, establishing rigorous performance goals signaled to our own staff and to those potentially eligible for benefits that we were committed to efficiently processing claims. In fact, eve took timely initial actions (either recommended decisions or referral to NIOSH for dose reconstruction) in about 48 percent of the cases during that first full year of operation (FY 2002), despite the backlog of cases from the previous year. The smaller number of final decisions completed in FY 2002 met our GPRA timeliness goals in 76 percent of cases.

During FY 2003 the DOL program was able to eliminate the initial backlog of claims, leaving only a working inventory of about two to three months' incoming claims pending in our district offices. At the same time, and despite making decisions on many older cases as we cleared the backlog, the program was able to exceed its GPRA timeliness goals. Our district offices issued initial decisions within

the target timeframe in 79 percent of all cases processed, in excess of the 75 percent goal. Our Final Adjudication Branch issued 77 percent of its final decisions within the program standards, also in excess of a goal of 75 percent. During FY 2004 we have continued to improve on these results, exceeding our GPRA standards on all counts and driving down the average times to complete each phase of the different types of Part B claims. For example, the average time to complete an initial decision for cases from DOE facilities has been reduced from 98 to 73 days, and the average for cases from all other facilities and subcontractors is down from 123 to 99 days.

Accomplishment of these goals took the persistent, case-by-case effort of the entire staff of our Division of Energy Employees Occupational Illness Compensation Program (DEEOIC), as well as the continuing support of our Solicitor's Office. Close and frequent coordination with HHS allowed us to move cases smoothly and efficiently to NIOSH when dose reconstruction is needed. In addition, DOL and DOE worked cooperatively to improve the employment verification process and reduce the average time for completion of DOE verifications from nearly 90 days at the beginning of FY 2003 to a current average of less than 45 days. These cooperative measures were instrumental in reducing Part B processing times.

DOL has also focused on achieving quality decisions, and on providing clear and effective communications to our customers and stakeholders. DEEOIC instituted a rigorous Accountability Review process, borrowed from the older compensation programs administered by OWCP. This process subjects statistically valid samples of case work in each program office to careful scrutiny by objective reviewers, both to assess the level of quality of the work and to guide managers in developing training and other corrective action measures. The headquarters staff has developed comprehensive procedural and policy guidance, a difficult task in the context of a new and still evolving compensation program. Although no workers' compensation program is without conflict, the level of appeals has been relatively low, suggesting that the new program has reached a level of quality that builds credibility for its decisions.

Since the effective date of the Act, DOL has received over 52,000 claims, which were filed based on 39,500 individual cases or workers. As of March 18, 2004, our district office staff have made recommended decisions or referred the case to NIOSH for dose reconstruction in over 95 percent of the cases received. There have been over 1,000 Final Decisions issued in nearly 22,000 cases and nearly $778 million in compensation payments made to over 10,400 claimants. Additionally, nearly $29 million in medical benefits have been paid. A detailed listing of current program statistics is displayed in attached Program Status Report.*

CURRENT DOL CHALLENGES

After two and a half years in existence, Part B of the EEOICPA program is approaching stability. The staff is now well trained and experienced, and support systems have been refined. The initial backlog has been eliminated, and the relatively steady stream of incoming claims is being processed timely as received. Nevertheless, DOL must gear up to adjudicate the thousands of cases that are now beginning to return from NIOSH with completed dose reconstructions. To date, DOL has issued a recommended decision on roughly 1,700 of these over 2,000 dose reconstructed cases, completing that work within an average of five days after they are received from NIOSH. This is well below the program's timeliness goal of 21 days for such actions, but it is expected that this workload will become more challenging as NIOSH production accelerates. In addition, dose reconstruction cases are more complicated, entail much more factual evidence subject to dispute, and will inevitably have a lower rate of initial approvals (approximately 28 percent at the recommended decision level thus far, about 30 percent less than the overall approval rate). Accordingly, we anticipate a growing level of appeals requests and potential litigation as this workload matures and becomes the predominant Part B claim type being adjudicated.

Recognizing that there are still groups of potential beneficiaries who have not been made aware of the program or do not understand how it works, we have also made a commitment to intensify our already extensive outreach efforts. These efforts, in cooperation with DOE, will include a significant number of strategically located traveling resource centers to provide assistance to potential claimants, as well as coordination with pension funds, unions, and other groups which may be able to extend our message about the program to retirees and workers or their survivors who no longer live in proximity to a DOE facility. This outreach has particular urgency for living workers who may have contracted a covered condition but have not

*The report has been retained in committee files.

yet filed a claim. This is because these individuals' eligibility for Part B medical benefits does not begin until the date their claim is filed. We are also using some of the partner organizations just mentioned to obtain employment information for subcontractor employees and construction workers for whom employment records are not available otherwise.

DOSE RECONSTRUCTION ISSUES

Although the intricate dose reconstruction process took time to be developed and become fully operational, that process is now beginning to yield results. NIOSH has returned approximately 2,000 completed dose reconstruction cases to DOL through mid March 2004. Of that group, nearly 500 have received favorable recommended decisions, indicating that the probability of causation was found to be 50 percent or more. Most of those cases (390) have already been paid. We anticipate an acceleration in completed close reconstructions, and hence in payments generated through this avenue, based on the more than 5,000 cases now in the final stages of the NIOSH dose reconstruction production process and in light of NIOSH's development and refinement of complex "site profiles" for most of the major facilities. While building the site profiles has been laborious and time consuming, these profiles should allow NIOSH to ensure consistency, accuracy, efficiency, and increased promptness in completing individual dose reconstructions in the future.

DOL is encouraged by the increased productivity in the dose reconstruction process, the claimant-friendly approach NIOSH has adopted, and the duality and balance of the dose reconstruction reports produced. We believe this process is the most effective means of identifying which specific cancers can reasonably be attributed to the increased risk of cancer caused by radiation exposure at a covered facility. While the process has taken longer than anticipated to get moving, it is scientifically based and represents the most consistent, objective, and understandable method available in determining the presence of radiogenic cancer.

DOE PART D ISSUES

I mentioned earlier that DOL shares case information with DOE for claims fled under both Parts B and D of the EEOICPA. Nearly 95 percent of the claimants who have filed Part D cases have also filed claims with DOL under Part B. DOL and DOE have developed procedures for sharing case-level information, and will work together to reduce the time spent on redundant case development and investigation. However, the extent to which sharing the DOL case work reduces the need for case development by DOE varies considerably by the nature of the case and due to the difference between Part B and Part D eligibility criteria. For example, a large number of overlapping cases do not present a covered Part B medical condition - they are true Part D claims that were in effect misfiled with DOL. In those instances, DOL would not develop the medical conditions not covered by Part B, nor would we develop or make a determination of covered employment unless a Part B covered medical condition was being claimed. However, sharing case file information for Part D cases in which a claimant also has alleged a Part B covered condition, when DOL has already developed the case, may provide DOE with confirmed evidence such as covered employment, and sufficient medical documentation to determine that the employee did suffer a cancer, beryllium disease, or silicosis. DOE has indicated that it has reprioritized its Part D application processing to put those dual Part B - Part D applications with a positive Part B determination higher in their processing queue, given the work already done by DOL, and the higher standard of causation used for the Part B program.

It is not easy to quantify the extent to which this data sharing reduces redundant investigation and development of Part D cases, but DOE can benefit from some of the case development work already conducted by DOL. A data match between DOE Part D claims and DOL Part B claims was conducted in June 2003, and identified 16,304 individuals for whom claims were filed under both programs. As of March 11, 2004, DOL had made at least an initial determination as to covered employment and/or the sufficiency of medical evidence of cancer, beryllium disease, or silicosis in 15,834 cases (97 percent of the matches).

The DOL cases most readily applicable for processing under Part D are 1,741 matched cases (11 percent of the matches) containing evidence of covered employment. Sufficient medical justification of a Part B covered illness, and sufficient evidence of causation. These cases include Final Approvals for matched cases for beryllium disease (482 case for beryllium sensitivity and 333 for chronic beryllium disease), chronic silicosis (16 matched cases), cases of multiple Part B covered illnesses (12 matched cases), and cases returned by NIOSH with completed dose reconstructions (898 matched cases).

Also directly applicable to Part D are the 6,788 matched cases (42 percent of the matches) currently pending NIOSH dose reconstruction. (DOE has advised us that they are now utilizing the NIOSH reports as a means of simplifying the work of its panels in these instances.) As these cases are returned by NIOSH, they can be used by DOE as significant evidence for physician panel consideration. In cases where the applicant has only fled for cancer, DOE can send these cases to its panel with little additional preparation. It must be noted, however, that DOE may need to do additional case development for cases where the applicant has claimed multiple illnesses. In those cases, DOE may need to obtain additional exposure data for conditions not evaluated under Part B, so as to properly develop the case under Part D criteria.

Of less direct applicability would be 1,507 matched cases that have final DOL approvals for SEC cancers. These cases may have significant employment and medical information that would be useful for Part D processing. Because of the SEC presumption, however, they may not include evidence related to causation that would be applicable to Part D's causation standard. DOE may also need to validate other (non-DOL covered) illnesses, and obtain additional employment and exposure data for these cases.

RECOMMENDATIONS FOR IMPROVEMENT

Mr. Chairman, you asked that we address ideas for improving the EEOICPA in our testimony. We support the proposed legislation DOE has advanced to remove certain administrative obstacles to the smooth operation of that program, most notably elimination of the current cap on compensation for its physician panel members. We support DOE's request for an appropriations transfer to allow it to expedite case processing and expand its physician panels, and to maintain and enhance the retrieval of records for both Parts B and D. This appropriation transfer is particularly important since without it, DOE has indicated it may not be able to continue to provide Part B employment verifications or NIOSH dose reconstruction data requests for all of FY04. As noted earlier, DOL will work with DOE more intensively in the coming weeks with administrative initiatives that will aid in clearing the existing Part D backlog.

While we believe that Part B is now operating fully and effectively, some clarifications of the statute may be in order. Clarification may be needed regarding the precise definition of which DOE facilities or activities are covered, to ensure that EEOICPA benefits, and the expense of administering the statute, are directed toward the population Congress intended to help. The Administration is currently reviewing this issue and will provide legislative language in the near future.

I would note, however, that DOL's experience with compensation programs like EEOICPA suggests that any substantial changes should be undertaken with extreme caution and an eye to the long term. The history of the Black Lung program is an object lesson regarding the effects of frequent and fundamental programmatic shifts. Major alterations in that program in the standards of proof, eligibility criteria, and coverage have resulted in frustrating inconsistencies for the intended beneficiaries. We urge Congress to consider such ramifications whenever legislation to change EEOICPA is proposed to avoid establishing an environment for program inequities and instability over the long-term.

I would be pleased to answer any questions the Committee may have.

Senator BUNNING. Mr. Robertson.

STATEMENT OF ROBERT E. ROBERTSON, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, GENERAL ACCOUNTING OFFICE

Mr. ROBERTSON. Good morning and thanks for the opportunity to be here this morning to talk about these very important issues. My remarks are going to be based on our ongoing work looking at DOE's implementation of subtitle D of the Energy Employees Occupational Illness Compensation Program Act. What I'd like to do this morning is quickly run through three points.

First, while Energy has increased the speed of initial case development, large numbers of claims still have not been processed. During the first 2½ years of the program ending December 31, 2003, Energy had fully processed about 6 percent of the more than

23,000 claims it had received. The majority of the fully processed claims, and that's about 5 percent of the overall cases, had been found ineligible because of either a lack of employment at an eligible facility, or the absence of an illness related to toxic exposure. Energy had not begun processing nearly 60 percent of the cases it had received. In the last 6 months of 2003, Energy had more than tripled the number of cases receiving a final determination from a physicians panel—this has increased from 42 to 150. These 150 cases represented less than 1 percent of the total cases filed.

As an aside, I should also note that assessing Energy's achievement of case processing goals was complicated by systems limitations, which also make it difficult to assess progress toward goals related to program objectives, such as the quality of assistance given to claimants in filing for state worker compensation.

My second point is to raise a concern about the availability of suitable numbers of qualified physicians to serve on physicians panels. As you're aware, these are the panels that issue determinations claimants use to file claims under State worker compensation systems. Even with panels operating at full capacity, the small pool of physicians qualified to serve on panels is likely to limit the agency's ability to produce more timely determinations.

Now, Energy, as you heard earlier this morning, has taken some actions to address some of the physician panel problems. It has identified additional sources for recruiting physicians and it has implemented modifications to the qualifications required for physicians to serve. It also has recently reduced the number of physicians required to evaluate cases and changed timeframes for completing their review.

However, it's still just too early to determine the extent to which these changes will actually improve the speed of obtaining a physician determination. In the meantime, claimants have experienced lengthy delays in receiving the determinations they need to file worker compensation claims. Further, Energy has not kept claimants sufficiently informed about the delays in processing their claims or what they, the claimants, can expect to see as they proceed with the State worker compensation systems.

My third and final point is to note that while a majority of the cases associated with Energy facilities in the nine States we examined are not likely to be contested by employers or their insurers, actual compensation is not certain. Specifically, slightly more than half the cases associated with these facilities are likely to have a willing payer benefits. Another quarter of the cases, while not having willing payers, will have worker compensation coverage provided by an insurer who has stated that it will not contest the claim for benefits. These figures are order-of-magnitude estimates based largely on the method of workers' compensation coverage used by Energy contractor employers, and are not an estimate of the number of cases that will be ultimately paid. In fact, for all claimants actual compensation is not certain because of additional factors such as variations in State worker compensation programs or contractor's uncertainty on how to compute benefits. These are items that were discussed earlier this morning.

Roughly 20 percent of the cases in the nine States we reviewed are likely to lack a willing payer. My written testimony provides

framework for considering options to deal with the absence of willing payers for claims that receive a positive determination from Energy. Options for changing the program range from adding a Federal benefit to the existing program for cases that lack a willing payer to designing an entirely new program.

If the Congress chooses to modify the current program, it would need to examine these options in terms of several issues, including the source, method, and amount of Federal funding required to pay benefits, the length of time needed to implement changes, the criteria for determining who is eligible, and the equitable treatment of claimants. In particular, the cost implications of any change should be carefully considered in the context of current Federal fiscal environment.

That ends my prepared remarks. I'll be happy to answer questions.

[The prepared statement of Mr. Robertson follows:]

PREPARED STATEMENT OF ROBERT E. ROBERTSON; DIRECTOR; EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES; GENERAL ACCOUNTING OFFICE

ENERGY EMPLOYEES COMPENSATION

OBSTACLES REMAIN IN PROCESSING CASES EFFICIENTLY AND ENSURING A SOURCE OF BENEFIT PAYMENTS

What GAO Found

During the first 2½ years of the program, ending December 31, 2003, Energy had completely processed about 6 percent of the more than 23,000 cases that had been filed. Energy had begun processing of nearly 35 percent of cases, but processing had not yet begun on nearly 60 percent of the cases.

While Energy got off to a slow start in processing cases, it is now processing enough cases that there is a backlog of cases waiting for review by a physician panel. Energy has taken some steps intended to reduce this backlog, such as reducing the number of physicians needed for some panel Nonetheless, a shortage of qualified physicians continues to constrain the agency's capacity to decide cases more quickly. Consequently, claimants will likely continue to experience lengthy delays in receiving the determination: they need to file workers' compensation claims.

GAO estimates that more than half of the cases associated with Energy facilities in 9 states that account for more than three-quarters of all Subtitle D cases filed are likely to have a willing payer of benefits. Another quarter of the cases in these 9 states, while not technically having a willing payer, have workers' compensation coverage provided by an insurer that has stated that it will not contest these claims. However, the remaining 20 percent of cases lack willing payers and are likely to be contested, which means that many of these cases may be less likely to receive compensation. Because of data limitations, these percentages provide an order of magnitude estimate of the extent to which claimants will have willing payers. The estimates are not a prediction of actual benefit outcomes for claimants.

In this testimony, GAO also provides a framework for evaluating potential options for changing the program to address the willing payer issue. This framework includes a range of issues that would help the Congress assess options if it chooses to change the current program. One of these issues in particular—the federal cost implications—should be carefully considered in the context of the current federal fiscal environment.

Mr. Chairman and Members of the Committee, I am pleased to be here today to update the information we provided in our November 21, 2003 testimony before you on our work regarding the effectiveness of the benefit program under Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). This legislation was designed to provide assistance to contractor employees in obtaining compensation for occupational illnesses. Congress mandated that we study this issue and report to the Senate Committees on Energy and Nat-

ural Resources and Appropriations and the House Committees on Energy and Commerce and Appropriations

For the last several decades, the Department of Energy (Energy) and its predecessor agencies and contractors have employed thousands of individuals in secret and dangerous work in the nuclear weapons production complex. Over the years, employees were unknowingly exposed to toxic substances, including radioactive and hazardous materials, and studies such as one commissioned by the National Economic Council have shown that many of these employees subsequently developed serious illnesses. EEOICPA established two programs to help secure compensation for employees who developed occupational illnesses or for their survivors. Congressional Committees, as well as individual Members of Congress, claimants, and advocates have raised concerns regarding Energy's processing of claims and the availability of benefits once claims have been decided.

Enacted as title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which was signed into law on October 30, 2000, this legislation has two major components. Subtitle B provides eligible workers who were exposed to radiation or other toxic substances and who subsequently developed illnesses such as cancer and lung disease a one-time payment of up to $150,000 and covers future medical expenses related to the illness. The Department of Labor administers these benefits, payable from a compensation fund establishes by the same legislation. Subtitle D allows Energy to help its contractor employees file state workers' compensation claims for illnesses determined by a panel of physicians to be caused by exposure to toxic substances in the course of employment at an Energy facility.

My testimony today reflects our ongoing review of the effectiveness of Energy's implementation of Subtitle D. Our work is focused on four key areas: (1) the number, status, and characteristics of claims filed with Energy; (2) the extent to which Energy policies and procedures help employees file timely claims for state workers' compensation benefits; (3) the extent to which there will be a "willing payer" of workers' compensation benefits; that is, an insurer who—by order from, or agreement with, Energy—will not contest these claims; and (4) a framework that could be used for evaluating possible options for changing the program in the event that there may not be willing payers of benefits.

In summary, as of December 31, 2003, Energy had fully processed about 6 percent of the more than 23,000 cases received. Most of the fully processed cases had been found ineligible because of either a lack of employment at an eligible facility or an illness related to toxic exposure. While Energy got off to a slow start in processing cases, it is now processing enough cases that there is a backlog of cases waiting for review by a physician panel. The agency has taken some steps to reduce this backlog; nonetheless, a shortage of qualified physicians continues to constrain Energy's capacity to decide cases more quickly. In the meantime, Energy has not kept claimants sufficiently informed about the delays in the processing of their claims as well as what claimants can expect as they proceed with state workers' compensation claims.

While the workers' compensation claims from about 80 percent of the cases associated with major Energy facilities in 9 states are not likely to bE contested by employers or their insurers, actual compensation is not certain. This figure is based primarily on the method of workers' compensation coverage used by the Energy contractors and is not an estimate of the number of cases that will ultimately be paid. Specifically, slightly more than half the cases associated with facilities in the 9 states are likely to have a willing payer of benefits and another quarter of the cases, while not having willing payers, have workers' compensation coverage provided by an insurer that has stated that it will not contest the claim for benefits. However, the remaining 20 percent of cases lack willing payers and are likely to be contested, which means that many of these cases may be less likely to receive compensation. Because of data limitations, these percentages provide an order of magnitude estimate of the extent to which claimants will have willing payers. The estimates are not a prediction of actual benefit outcomes for claimants.

Various options are available to improve payment outcomes for the cases that receive a positive physician panel determination, but lack willing payers under the current program. If it were decided that the program should be modified, the options for changing it range from adding a federal benefit to the existing program for cases that lack a willing payer to designing a completely new program. Congress would need to examine these options in terms of several issues, including the source, method, and amount of the federal funding required to pay benefits; the length of time needed to implement changes; the criteria for determining who is eligible; and the equitable treatment of claimants. In particular, the federal cost implications of these

options should be carefully considered in the context of the current federal fiscal environment.

To perform our review, we analyzed data extracted from Energy's Subtitle D case management system for applications filed through June 30, 2003, and again through December 31, 2003.[1] We also reviewed the provisions of and interviewed officials with, the workers' compensation programs in nine states with Energy facilities accounting for more than three-quarters of Subtitle D cases filed, and we interviewed the contractors operating the major facilities in these states. In addition, we conducted site visits to three Energy facilities in Oak Ridge, Tennessee, the state with facilities accounting for the largest number of Subtitle D claims. We also interviewed key program officials and other experts. Although our review is continuing, we conducted our work for this testimony from April 2003 through March 2004 in accordance with generally accepted government auditing standards.

BACKGROUND

Energy oversees a nationwide network of 40 contractor-operated industrial sites and research laboratories that have historically employed—more than 600,000 workers in the production and testing of nuclear weapons. In implementing EEOICPA, the President acknowledged that it had been Energy's past policy to encourage and assist its contractors in opposing workers' claims for state workers' compensation benefits based on illnesses said to be caused by exposure to toxic substances at Energy facilities.[2] Under the new law, workers or their survivors could apply for assistance from Energy in pursuing state workers' compensation benefits; and if they received a positive determination from Energy, the agency would direct its contractors to not contest the workers' compensation claims or awards. Energy's rules to implement the new program became effective in September 2002, and the agency began to process the applications it had been accepting since July 2001, when the law took effect.

Energy's claims process has several steps. First, claimants file application, and provide all available medical evidence. Energy then develops the claims by requesting records of employment, medical treatment, and exposure to toxic substances from the Energy facilities at which the workers were employed. If Energy determines that the worker was not employed by one of its facilities or did not have an illness that could be caused by exposure to toxic substances, the agency finds the claimant ineligible. For all others, once development is complete, a panel of three physicians reviews the case and decides whether exposure to a toxic substance during employment at an Energy facility was at least as likely a-, not to have caused, contributed to, or aggravated the claimed medical condition. The panel physicians are appointed by the National Institute for Occupational Safety and Health (NIOSH) but paid by Energy for this work Claimants receiving positive determinations are advised that they may wish to file claims for state workers' compensation benefits. Claimants found ineligible or receiving negative determinations may appeal to Energy's Office of Hearings and Appeals.

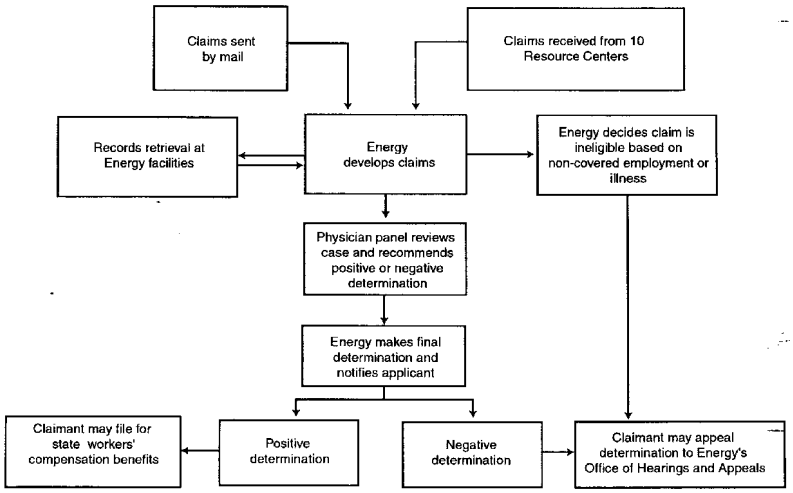
Each of the 50 states and the District of Columbia has its own workers' compensation program to provide benefits to workers who are injured on the job or contract a work-related illness. Benefits include medical treatment and cash payments that partially replace lost wages. Collectively, these state programs paid more than $46 billion in cash and medical benefits in 2001. In general, employers finance workers' compensation programs. Depending on state law, employers finance these programs through one of three methods: (1) they pay insurance premium to a private insurance carrier, (2) they contribute to a state workers' compensation fund, or (3) they set funds aside for this purpose as self-insurance. Although state workers' compensation laws were enacted in part as an attempt to avoid litigation over workplace accidents, the workers' compensation process is still generally adversarial, with employers and their insurers tending to contest aspects of claims that they consider not valid.

State workers' compensation programs vary as to the level of benefits, length of payments, and time limits for filing. For example, in 1999, the maximum weekly benefit for a total disability in New Mexico was less that $400, while in Iowa it was approximately $950. In addition, in Idaho, the weekly benefit for total disability

[1] We collected data as of this date to enable us to assess the reliability of Energy's data by (1) performing electronic testing for obvious errors in accuracy and completeness, (2) reviewing available documentation, and (3) interviewing agency officials and contractors knowledgeable about the data. We determined that the data elements used were sufficiently reliable for our purposes.

[2] Executive Order 13179 of December 7, 2000.

Figure 1. Energy's Claims Process



Source: GAO analysis of Energy Claims Process.

would be reduced after 52 weeks, while in Iowa benefits would continue at the original rate for the duration of the disability. Further, in Tennessee, a claim must be filed within 1 year of the beginning of incapacity or death. In contrast, in Kentucky a claim must be filed within 3 years of either the last exposure to most substances or onset of disease symptoms, but within 20 years of exposure to radiation or asbestos.

ENERGY HAS PROCESSED FEW CASES AND INSUFFICIENT STRATEGIC PLANNING AND DATA COLLECTION COMPLICATE PROGRAM MANAGEMENT

As of December 31, 2003, Energy had completely processed about 6 percent of the more than 23,000 cases that had been filed. Energy had begun processing of nearly 35 percent of cases, but processing had not yet begun on nearly 60 percent of the cases. Insufficient strategic planning and systems limitations complicate assessment of Energy's achievement of case processing goals. Further, these limitations make it difficult to assess achievement of other broader goals, related to program objectives, such as the quality of the assistance given to claimants in filing for state workers' compensation.

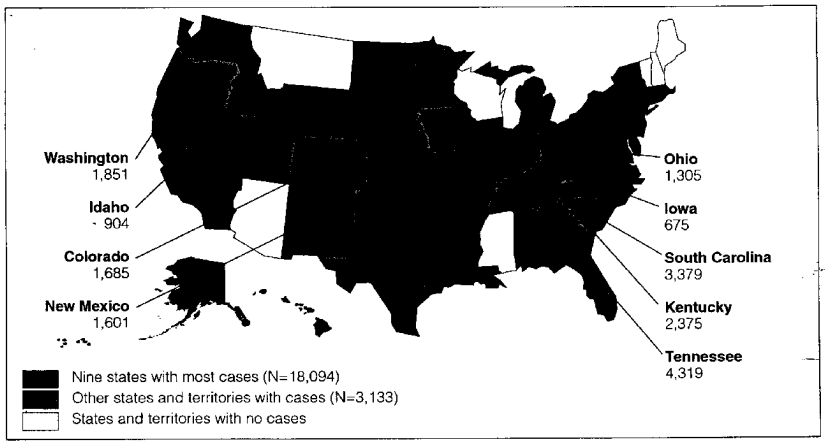
ENERGY HAS FULLY PROCESSED ABOUT 6 PERCENT OF ITS CASES

During the first 2½ years of the program, ending December 31, 2003, Energy had fully processed about 6 percent of the more than 23,000 claims it received. The majority of the fully processed claims (about 5 percent of all cases) had been found ineligible because of either a lack of employment at an eligible facility or an illness related to toxic exposure. I1 the last 6 months of 2003, Energy more than tripled the number of cases receiving a final determination from a physician panel, from 42 to 150. These 150 cases represent less than 1 percent of the more than 23,000 cases filed.

While cases filed are associated with facilities in 43 states or territories, the majority of cases are associated with Energy facilities in 9 states. Facilities in Colorado, Idaho, Iowa, Kentucky, New Mexico, Ohio, South Carolina, Tennessee, and Washington account for more than 75 percent of cases received by December 31, 2003. The largest group of cases is associated with facilities in Tennessee.

A majority of all cases were filed during the first year of program implementation, but new cases continue to be filed. Nationwide, the number of cases filed increased by 22 percent in the last 6 months of 2003 from fewer than 19,000 to more than 23,000. However, the rate of increase in cases filed was not uniform across the 9 states with facilities that account for more than three-quarters of all cases. For example, cases associated with facilities in Washington increased by 8 percent during

Figure 2. Distribution of Cases by Employee's Last Energy Facility Worked



Source: GAO analysis of Energy data.

Note: Facility information is missing or unknown for 1,859 cases.

the 6-month period while cases in New Mexico increased by 34 percent and cases in Ohio increased by 80 percent.

As of the end of calendar year 2003, Energy had not yet begun processing nearly 60 percent of the cases, and an additional 35 percent of cases were in processing. The majority of cases being processed were in the case development stage, where Energy requests information from the facility at which the claimant was employed. Of the cases still in processing, about 2 percent were ready for physician panel review and 3 percent were undergoing panel review.

Energy reports that, in recent months, it has considerably accelerated the rate at which it is completing the development of cases that are ready for physician panel review. Since our testimony in November 2003, Energy's case development process has met the agency's goal of completing the development on 100 cases per week, which is considerably higher than the average of about 30 cases per week it was completing in September 2003. Moreover, since our prior testimony, Energy has also completed a comprehensive review of its Subtitle D program that resulted in a plan that identifies strategies for further accelerating its case processing. This plan sets a goal of eliminating the entire case backlog by the end of fiscal year 2006 and is dependent, in part, on Energy's shifting additional funds into this program.

INSUFFICIENT STRATEGIC PLANNING AND DATA COLLECTION LIMIT ENERGY'S ABILITY TO DETERMINE WHETHER PROGRAM GOALS ARE BEING MET

Insufficient strategic planning regarding system design, data collection, and tracking of outcomes has made it more difficult for Energy officials to manage some aspects of the program and for those with oversight responsibilities to determine whether Energy is meeting the goal of providing assistance in filing for workers' compensation. The data system used by Energy to aid in case management was developed by contractors without detailed specifications from Energy. Furthermore, the system way developed before Energy established its processing goals, and the change: Energy implemented to improve its ability to track certain information have resulted in more recent status data being not completely comparable with older status data.

Because it did not adequately plan for the various uses of its data, Energy lacks some of the information needed to analyze how cases will fare where they enter the state workers' compensation systems or to track their outcomes. Specifically, it is difficult for Energy to predict whether willing payers of workers' compensation benefits will exist using case management system data because the information about the specific employer for whom the claimant worked is not collected in a format that can be systematically analyzed. Since employers are liable for workers' compensation coverage, specific employer information is important in determining whether a willing payer exists. In addition, while Energy has not been systematically tracking

whether claimants subsequently file workers' compensation claims or the decisions on these claims, Energy now plans to develop this capability.

A Shortage of Qualified Physicians To Issue Determinations Delays Filing of Workers' Compensation Claims And Claimants May Receive Inadequate Information To Prepare Them To Pursue These Claims

Energy was slow in implementing its initial case processing operation, but it is now processing enough cases so that there is a backlog of cases awaiting physician panel review. With panels operating at full capacity, the small pool of physicians qualified to serve on the panels may ultimately limit the agency's ability to produce more timely determinations. Claimants have experienced lengthy delays in receiving the determinations they need to file workers' compensation claims and have received little information about claims status as well as what they can expect from this process. Energy has taken some steps intended to reduce the backlog of cases.

THE ABILITY TO PRODUCE MORE TIMELY DECISIONS MAY BE LIMITED BY THE SMALL POOL OF QUALIFIED PHYSICIANS AND GAPS IN INFORMATION THEY NEED TO QUICKLY DECIDE CASES

Additional resources have allowed Energy to speed initial case development, and it has been processing enough cases to produce a backlog of cases waiting for physician panel review. However, the limited pool of qualified physicians for panels may continue to prevent significant improvements in processing time. Under the rules Energy originally established for this program that required that each case be reviewed by a panel of 3 physicians and given the 130 physicians currently available, it could have taken more than 13 years to process all cases pending as of December 31, without consideration of the hundreds of new cases the agency is receiving each month.[3] However, in an effort to make the panel process more efficient, Energy published new rules on March 24, 2004, that re-defined a physician panel as one or more physicians appointed to evaluate these cases and changed the timeframes for completing their review. In addition, the agency began holding a full-time physician panel it Washington, D.C. in January 2004, staffed by physicians who are willing to serve full-time for a 2- or 3-week period.

Energy and NIOSH officials have taken steps to expand the number of physicians who would qualify to serve on the panels and to recruit more physicians, including some willing to work full-time. While Energy has made several requests that NIOSH appoint additional physicians to staff the panels, such as requesting 500 physicians in June 2003, NIOSH official: have indicated that the pool of physicians with the appropriate credentials and experience is limited.[4] The criteria NIOSH originally used to evaluate qualifications for appointing physicians to these panels included: (1) board certification in a primary discipline; (2) knowledge of occupational medicine; (3) minimum of 5 years of relevant clinical practice following residency; and (4) reputation for good medical judgment, impartiality, and efficiency. NIOSH recently modified these qualifications, primarily to reduce the amount of required clinical experience so that physicians with experience in relevant clinical or public health practice or research, academic, consulting, or private sector work can now qualify to serve on the panels. NIOSH has revised its recruiting materials to reflect this change and to point out that Energy is also interested in physicians willing to serve on panels full-time. However, a NIOSH official indicated that only a handful of physicians would likely be interested in serving full-time on the panels.

Energy officials have also explored additional sources from which NIOSH might recruit qualified physicians, but they have expressed concerns that the current statutory cap on the rate of pay for panel physicians may limit the willingness of physicians from these sources to serve on the panels. For example, Energy officials have suggested that physicians in the military services might be used on a part-time basis, but the rate of pay for their military work exceeds the current cap. Similarly, physicians from the Public Health Service could serve on temporary full-time details as panel physicians. To elevate the rate of pay for panel physicians to a level that is consistent with the rate physicians from these sources normally receive, Energy officials plan to develop a legislative proposal that will modify the current cap on the rate of pay and would also expand Energy's hiring authority.

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[3] This 13-year estimate assumes that none of the pending cases would be determined ineligible on the basis of noncovered employment or illnesses because we did not possess sufficient basis for projecting the number of pending cases that would be determined ineligible in the future.

[4] In March 2004, Energy requested additional physicians from NIOSH that would result in tripling the number of full-time equivalent physicians in 2004 and increasing the number of full-time equivalent physicians by a factor of 6 in 2005.

Panel physicians have also suggested methods to Energy for improving the efficiency of the panels. For example, some physicians have said that more complete profiles of the types and locations of specific toxic substances at each facility would speed their ability to decide cases. While Energy officials reported that they have completed facility overviews for about half the major sites, specific site reference data are available for only a few sites. Energy officials told us that, in their view, the available information is sufficient for decision making by the panels. However, based on feedback from the physicians, Energy officials are exploring whether developing additional site information would be cost beneficial.

ENERGY HAS NOT SUFFICIENTLY COMMUNICATED CASE STATUS AND EXPECTATIONS ABOUT THE PROCESS TO CLAIMANTS

Energy has not always provided claimants with complete and timely information about what they could achieve in filing under this program. Energy officials concede that claimants who filed in the early days of the program may not have been provided enough information to understand the benefits they were filing for. As a consequence, some claimants who filed under both Subtitle B and Subtitle D early in the program later withdrew their claims under Subtitle D because they had intended to file only for Subtitle B benefits or because they had not understood that they would still have to file for state workers' compensation benefits after receiving a positive determination from a physician panel. After the final regulations were published in August 2002, Energy officials said that claimants had a better understanding of the benefits for which they were applying.

Energy has not kept claimants sufficiently informed about the status of their claims under Subtitle D. Until recently, Energy's policy was to provide no written communication about claims status between the acknowledgement letters it sent shortly after receiving applications and the point it began to process claims. Since nearly half of the claims filed it the first year of the program remained unprocessed as of December 31, 2003, these claimants would have received no information about the states of their claims for more than 1 year. Energy recently decided to change this policy and provide letters at 6-month intervals to all claimants with pending claims. Although the first of these standardized letters sent to claimants in the fall of 2003 did not provide information about individual claims status, it did inform claimants about a new service on the program' redesigned Web site through which claimants can check on the status of their claim. However, this new capability does not provide claimants with information about the timeframes during which their claims are likely to be processed and claimants would need to re-check the status periodically to determine whether the status of the claim has changed.

Claimants may not be given sufficient information as to what they are likely to encounter when they file for state workers' compensation benefits. Energy's letter to claimants transmitting a positive determination from a physician panel does not always provide enough information about how they would go about filing for state workers' compensation benefits. For example, a contractor in Tennessee reported that a worker was directed by Energy's letter received in September 2003 to file a claim with the state office in Nashville when Tennessee's rules require that the claim be filed with the employer. The contractor reported the problem to Energy in the same month, but Energy letters sent to Tennessee claimants in October and December 2003 continued to direct claimants to the state office. Finally, claimants are not informed as to whether there is likely to be a willing payer of workers' compensation benefits and what this means for the processing of that claim. Specifically, advocates for claimants have indicated that claimants may be unprepared for the adversarial nature of the workers' compensation process when an insurer or state fund contests the claim.

WORKERS' COMPENSATION CLAIMS FOR A MAJORITY OF CASES ARE NOT LIKELY TO BE CONTESTED

The workers' compensation claims for the majority of cases associated with major Energy facilities in 9 states[5] are likely to have no challenges to their claims for state workers' compensation benefits. Specifically, based on additional analysis of workers' compensation programs and the different types of workers' compensation coverage used by the major contractors, it appears that slightly more than half of the cases will potentially have a willing payer-that is, contractors that will not contest the claims for benefits as ordered by Energy. Another 25 percent of the cases, while

[5] The cases in these 9 states represent more than three-quarters of the cases filed nationwide. The results of our analysis cannot necessarily be applied to the remaining 25 percent of the cases filed nationwide.

not technically having a willing payer, have workers' compensation coverage provided by an insurer that has stated that it will not contest these claims and is currently processing several workers' compensation claims without contesting them. The remaining 20 percent of cases in the 9 states we analyzed are likely to be contested. Because of data limitations, these percentages provide an order of magnitude estimate of the extent to which claimants will have willing payers.[6] The estimates are not a prediction of actual benefit outcomes for claimants.

As shown in table 1, the contractors for four major facilities in these states are self-insured, which enables Energy to direct them to not contest claim: that receive a positive medical determination.[7] In such situations where there is a willing payer, the contractor's action to pay the compensation consistent with Energy's order to not contest a claim will override state workers' compensation provisions that might otherwise result in denial of a claim, such as failure to file a claim within a specified period of time. Similarly, the agreement by the commercial insurer for the workers at the two facilities that constitute 25 percent of the cases to pay the workers compensation claims will mostly likely also supercede such state provisions. However, since the insurer is not bound by Energy's orders and it does not have a formal agreement with either Energy or the contractors to not contest these claims, there is nothing to guarantee that the insurer will continue to process claims in this manner.

About 20 percent of cases in the 9 states we analyzed are likely to be contested. Therefore, in some instances, these cases may be less likely to receive compensation than a comparable case for which there is a willing payer, unless the claimant is able to overcome challenges to the claim. In addition, contested cases can take longer to be resolved. For example, one claimant whose claim is being contested by an insurer was told by her attorney that because of discovery and deposition motions by the opposing attorney, it would be two years before her case was heard on its merits. Specifically, the cases that lack willing payers involve contractors that (1) have a commercial insurance policy, (2) use a state fund to pay workers' compensation claims, or (3) do not have a current contract with Energy. In each of these situations, Energy maintains that it lacks the authority to make or enforce an order to not contest claims. For instance, an Ohio Bureau of Workers' Compensation official said that the state would not automatically approve a case, but would evaluate each workers compensation case carefully to ensure that it was valid and thereby protect its state fund. Further, although the contractor in Colorado with a commercial policy attempted to enter into agreements with prior contractors and their insurers to not contest claims, the parties have not yet agreed and several workers' compensation claims filed with the state program are currently being contested.

Several Issues Should Be Considered in Evaluating Options for Improving the Likelihood of Willing Payers

Various options are available to improve payment outcomes for the cases that receive a positive determination from Energy, but lack willing payers. under the current program. If it chooses to change the current program, Congress would need to examine these options in terms of several issues, including the source, method, and amount of the federal funding required to pay benefits; the length of time needed to implement changes; the criteria for determining who is .eligible; and the equitable treatment of claimants. In particular, the cost implications of these options for the federal government should be carefully considered in the context of the current federal fiscal environment.

options for changing the current program

We identified four possible options for improving the likelihood of willing payers, some of which have been offered in proposed legislation. While not exhaustive, the options range from adding a federal benefit to the existing program for cases that lack a willing payer to addressing the willing payer issue as part of designing a new program that would allow policymakers to decide issues such as the eligibility cri-

[6] Because of data limitations, we assumed that: (1) all cases filed would receive a positive determination by a physician panel, (2) all workers lost wages because of the illness and were not previously compensated for this loss, and (3) in all cases, the primary contractor rather than a subcontractor at the Energy facility employed the worker.

[7] EEOICPA allows Energy, to the extent permitted by law, to direct its contractors not to contest such workers' compensation claims. In addition, the statute prohibits the inclusion of the costs of contesting such claims as allowable costs under its contracts with the contractors; however, Energy's regulations allow the costs incurred as the result of a workers' compensation award to be reimbursed in the manner permitted under the contracts.

teria and the type and amount of benefits without being encumbered by existing program structures. A key difference among the options is the type of benefit that. would be provided.

Option 1—State workers' compensation with federal back up. This option would retain state workers' compensation structure as under the current Subtitle D program but add a federal benefit for cases that receive a positive physician panel determination but lack a willing payer of state workers' compensation benefits. For example, claims involving employee, of current contractors that self-insure for workers' compensation coverage, would continue to be processed through the state programs. However, claims without willing payers such as those involving contractors that use commercial insurers or state funds likely to contest workers' compensation claims could be paid a federal benefit that approximates the amount that would have been received under the relevant state program.

Option 2—Federal workers' compensation model. This option would move the administration of the Subtitle D benefit from the state programs entirely to the federal arena, but would retain the workers' compensation concept for providing partial replacement of lost wages as well as medical benefits. For example, claims with positive physician panel determination could be evaluated under the eligibility criteria of the Federal Employees Compensation Act[8] and, if found eligible, could be paid benefits consistent with the criteria of that program.

Option 3—Expanded Subtitle B program that does not use a workers' compensation model. Under this option, the current Subtitle 1 program would be expanded to include the other illnesses resulting from radiation and toxic exposures that are currently considered under the Subtitle D program. The Subtitle D program would be eliminated as a separate program and, if found eligible, claimants would receive a lump sum payment and coverage of future medical expenses related to the workers' illnesses, assuming they had not already received benefits under Subtitle B. The Department of Labor would need to expand its regulation: to specify which illnesses would be covered and the criteria for establishing eligibility for each of these illnesses. In addition, since the current programs have differing standards for determining whether the worker's illness was related to his employment,[9] it would have to be decided which standard would be used for the new category of illnesses.

Option 4—New federal program that uses a different type of benefit structure. This option would address the willing payer issue as part of developing a new program that involves moving away from the workers' compensation and Subtitle B structures and establishing a new federal benefit administered by a structure that conforms to the type of this benefit and its eligibility criteria. This option would provide an opportunity to consider anew the purpose of the Subtitle D provisions. As a starting point, policymakers could consider different existing models such as the Radiation Exposure Compensation Act, designed to provide partial restitution to individuals whose health was put at risk because of their exposure even when their illnesses do not result in ongoing disability. But they could also choose to build an entirely new program that is not based on any existing model.

VARIOUS ISSUES SHOULD BE CONSIDERED IN DECIDING WHETHER CHANGES ARE NEEDED AND ASSESSING THE OPTIONS

In deciding whether and how to change the Subtitle D program to ensure source of benefit payments for claims that would be found eligible if they had a willing payer, policymakers will need to consider the trade-offs involved. Table 2 arrays the relevant issues to provide a framework for evaluating the range of options in a logical sequence. We have constructed the sequence of issues in this framework in terms of the purpose and type of benefit as being the focal point for the evaluation, with consideration of the other issues flowing from that first decision. For example, decisions about eligibility criteria would need to consider issues relating to within-state and across-state equity for Subtitle D claimants. The framework would also provide for decisions on issues such as the source of federal funding—trust fund or increased appropriations—and the appropriate federal agency to administer the benefit. For each of the options, the type of benefit would suggest which agency should be chosen to administer this benefit and would depend, in part, on an agency's ca-

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[8] The Federal Employees' Compensation Act (5 U.S.C. 8101, et seq.) provides workers' compensation coverage for federal and postal employees, who are not covered by the stat programs.

[9] Under Subtitle B, an individual with specified types of cancer shall be determined to have sustained that condition in the performance of duty if the cancer was at least as likely as not related to employment at a specified facility. Under Subtitle D, a physician panel must decide whether it is at least as likely as not that exposure to a toxic substance in the course of employment was a significant factor in aggravating, contributing to, or causing the illness or death of the worker.

pacity to administer benefit program. In examining these issues, the effects on federal costs would have to be carefully considered. Ultimately, policymakers will need to weigh the relative importance of these issues in deciding whether and how to proceed.

PURPOSE AND TYPE OF BENEFIT

In evaluating how the purpose and type of benefit now available under Subtitle D could be changed, policymakers would first need to focus on the goals they wish to achieve in providing compensation to this group of individuals. If the goal is to compensate only those individuals who can demonstrate lost wages because of their illnesses, a recurring cash benefit in an amount that relates to former earnings might be in order and a workers' compensation option, either a state benefits with a federal back up or a federal workers' compensation benefit, would promote this purpose. If, on the other hand, the goal is to compensate claimants for all cases in which workers were disabled because of their employment—even when workers continue to work and have not lost wages—the option to expand Subtitle B would allow a benefit such as a flat payment amount not tied to former earnings.

For consideration of a new federal program option, it might be useful to also consider other federal programs dealing with the consequences of exposure to radiation as a starting point. For example, the Radiation Exposure Compensation Act was designed to provide partial restitution to individuals whose health was put at risk because of their exposure. Similar to Subtitle B, the act created a federal trust fund, which provides for payments to individuals who can establish that they have certain diseases and that they were exposed to radiation at certain locations and at specified times. However, this payment is not dependent on demonstrating ongoing disability or actual losses resulting from the disease.

ELIGIBILITY CRITERIA AND EQUITY OF OUTCOMES

The options could also have different effects with respect to eligibility criteria and the equity of benefit outcomes for current Subtitle D claimants based on these criteria. By equity of outcomes, we mean that claimants with similar illnesses and circumstances receive similar benefit outcomes. The current program may not provide equity for all Subtitle D claimants within a state because a claim that has a willing payer could receive a different outcome than a similar claim that does not have a willing payer, but at least three of the options could provide within-state equity. With respect to across-state equity, the current program and the option to provide a federal back up to the state workers' compensation programs would not achieve equity for Subtitle D claimants in different states. In contrast, the option based on a federal workers' compensation model as well as the expanded Subtitle B option would be more successful in achieving across-state equity.[10]

Regardless of the option, changes made to Subtitle D could also potentially result in differing treatment of claims decided before and after the implementation of the change. In addition, changing the program to remove the assistance in filing workers' compensation claims may be seer as depriving a claimant of an existing right. Further, any changes could also have implications beyond EEOICPA, to the extent that the changes to Subtitle D could establish precedents for federal compensation to private sector employees in other industries who were made ill by their employment.

FEDERAL COSTS

Effects on federal costs would depend on the generosity of the benefit in the option chosen and the procedures established for processing claims for benefits. Under the current program, workers' compensation benefits that are paid without contest will come from contract dollars that ultimately come from federal sources—there is no specific federal appropriation for this purpose. Because all of the options are designed to improve the likelihood of payment for claimants who meet all other criteria, it is likely that federal costs would be higher for all options than under the current program. Specifically, federal costs would increase for the option to provide a federal back up to the state workers' compensation program because it would ensure payment at rates similar to the state programs for the significant minority of claimants whose claims are likely to be contested and possibly denied under the state programs. Further, the federal costs of adopting a federal workers' compensation option would be higher than under the first option because all claimants—those

[10] An additional within-state equity issue involves the comparative treatment of Subtitle D claimants and all other workers' compensation claimants in the same state.

who would have been paid under the state programs as well as those whose claims would have been contested under the state programs—would be eligible for a federal benefit similar to the benefit for federal employees. I general, federal workers' compensation benefits are more generous than state benefits because they replaces a higher proportion of the worker's salary than many states and the federal maximum rate of wage replacement is higher than all the state maximum rates.

For either of the two options above, a decision to offset the Subtitle D benefits against the Subtitle B benefit could lessen the effect of the increased costs, given reports by Energy officials that more than 90 percent of Subtitle D claimants have also filed for Subtitle B benefits.[11] However, the degree of this effect is difficult to determine because many of the claimants who have filed under both programs may be denied Subtitle B benefits. The key distinction would be whether workers who sustained certain types of illnesses based on their Energy employment. should be compensated under both programs as opposed to recourse under only one or the other. If they were able to seek compensation from only one program, the claimant's ability to elect one or the other based on individual needs should be considered.

The effects on federal cost of an expanded Subtitle B option or a new federal program option are more difficult to assess. In many cases, the Subtitle B benefit of up to $150,000 could exceed the cost of the lifetime benefit for some claimants under either of the workers' compensation options, resulting in higher federal costs. However, the extent of these higher costs could be mitigated by the fact that many of the claimants who would have filed for both benefits in the current system would be eligible for only one cash benefit regardless of the number or type of illnesses. This degree of cost or savings would be difficult to assess without additional information on the specific claims outcomes in the current Subtitle B program. The effects on federal costs for the new federal program option—would depend on the type and generosity of the benefit selected.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

[11] Under the current Subtitle B and Subtitle D programs, benefits are not offset against each other.

Table 1.—EXTENT TO WHICH CASES WILL POTENTIALLY BE CONTESTED IN 9 STATES

Likely outcome	Willing payer available	Types of workers comp. coverage	Energy facility, State	Number of cases as reported in energy data	Percentage of cases in category
Contests are not likely					
	Yes	Self-insurance	• Paducah Gaseous Diffusion Plant, Kentucky [1]	2,133	55%
			• Los Alamos National Lab, New Mexico	1,380	
			• Oak Ridge K-25, X-10, and Y-12 Plants, Tennessee.	4,115	
			• Hanford Site, Washington	1,798	
			Subtotal	9,426	
	No	Commercial policy, insurer will follow contractors instruction to not contest.	• Idaho National Engineering Lab, Idaho	849	25%
			• Savannah River Site, South Carolina	3,375	
			Subtotal	4,224	
			Subtotal	13,650	80%
Contests Likely					
	No	Commercial policy	• Rocky Flats Plant, Colorado	1,630	
	No	State fund	• Portsmouth Gaseous Diffusion Plant, Ohio	862	
			• Feed Materials Production Center, Ohio	286	
			• Mound Plant, Ohio	91	
			Subtotal	1,239	
	No	No current contractor	• Iowa Ordnance Plant, Iowa	645	

Table 1.—EXTENT TO WHICH CASES WILL POTENTIALLY BE CONTESTED IN 9 STATES—Continued

Likely outcome	Willing payer available	Types of workers comp. coverage	Energy facility, State	Number of cases as reported in energy data	Percentage of cases in category
			Subtotal	3,514	20%

Source: GAO analysis of Energy data and interviews with current contractors and state officials.

Note: The table includes the cases from the facilities in these states with the largest number of cases filed but does not include the remaining 693 cases (4 percent) from other facilities in these states.

[1]A total of 2,370 cases have been filed for the Paducah Gaseous Diffusion Plant, which has been operated since July 1998 by a private entity that leases the facility. Energy recently decided that workers who have only been employed by this private entity, and not by the prior contractors who operated the facility, will not be eligible for the program. An Energy contractor performing environmental cleanup at the site also employs workers at the facility. This contractor is reponsible for the workers' compensation claims filed by its employees as well as those filed by employees of the contractors who operated the facility prior to July 1998. We apportioned 90 percent of the cases filed for the Paducah facility (2,133) to the cleanup contractor because the facility was run by the prior contractors for about 90 percent of its years in operation. We apportioned the remaining 10 percent of the cases (237) to the private entity and do not show these cases in the table, due to Energy's decision that claims filed by the entity's workers would be ineligible for the program. However, this apportionment involves some uncertainty because the clean up contractor has not had an opportunity to analyze the effects of Energy's policy decision.

Table 2.—FRAMEWORK FOR EVALUATING OPTIONS TO CHANGE THE SUBTILE D PROGRAM

	Current program	Option 1—State workers' compensation with federal back-up	Option 2—Federal workers' compensation model	Option 3—Expanded subtitle B program	Option 4—New federal benefit
Purpose and type of benefit.	Varies by state, but generally inlcudes medical treatement and cash payments that partially replace lost wages.	Same as under current state programs.	Still a workers' compensation benefit, generally includes medical treatment and cash payments that partially replace lost wages.	Same as for current Subtitle B—coverage of future medical treatment and a one-tome payment of up to $150,000 as compensation for disability or death because of exposure to radiation or toxic substance.	Open for consideration.

Eligibility criteria.	Vary by state, but generally apply to workers who contract a work-related illness and who lose work time because of the illness.	For federal back-up benefit, should be similar to criteria under current state programs.	Uses criteria of workers' compensation program for federal employees.	Same as for current subtitle B claimants who worked for Energy contractors.	Open for consideration—should flow from type of benefit and the nature of the population it is designed to compensate.
Interaction with subtitle B.	Benefits are not offset against each other.	Open for consideration	Open for consideration	No interaction issues. Claimants would be eligible for only one payment regardless of number of illnesses. Because there is a large overlap in claimants filing under both programs, this could potentially reduce the total number of claims that would remain to be processed once combined.	Open for consideration. Depends on the nature of the benefit.

Table 2.—FRAMEWORK FOR EVALUATING OPTIONS TO CHANGE THE SUBTILE D PROGRAM—Continued

	Current program	Option 1—State workers' compensation with federal back-up	Option 2—Federal workers' compensation model	Option 3—Expanded subtitle B program	Option 4—New federal benefit
Equity of outcomes within subtitle D					
within states	Similar cases in the same state could receive differing benefits.	Similar cases in the same state could receive similar benefits regardless of employer.	Similar cases in the same state could receive similar benefits regardless of employer.	Similar cases in the same state could receive similar benefits regardless of employer.	Open for consideration.
across states	Similar casas in different states could receive differing compensation.	Similar cases in different states could receive differing compensation.	Similar cases in different states could receive differing compensation.	Similar cases in different states could receive differing compensation.	Open for consideration.
Funding source for benefits.	Most eligible cases with willing payers will be paid by contractors from contract funds from federal sources.	Same as current program for cases with willing payer, but would need a source for federal back-up benefit.	Would need new fedeal source.	Trust fund already established by section 3612 of EEOICPA.	Open for consideration—Appropriations or trust fund.
Federal administrato.	Energy	For federal benefit, selection criteria should include how quickly agency could implement and how well it was situated to process and pay cases. Energy would still need to secure records for all cases and process claims with willing payers.	Department of Labor/ Office of Workers' Compensation administers current program; also administers Subtitle B program. Energy would still need to secure records.	Department of Labor—same as current Subtitle B program.	Open for consideration—depends on type of benefit, experience in administering benefit program, and funding source.

Timeframe for implementation.	Program is implemented, but few cases have been completely processed.	Relatively short to implement since it is based on existing program. Infrastructure would have to be established and rules developed to provide for federal benefits that mirror those of the state programs.	Longer than Option 1. Infrastructure in place but regulations for existing federal workers' compensation program would need to be expanded to cover new benefit.	Longer than Option 1—structure in place to administer existing Subtitle B program—new rules need to be developed for evaluating additional illnesses.	Potentially longest of all options. Depends on administrator and whether infrastructure exits or would need to be built. In either event, need to publish rules and establish procedures.
Federal cost	For cases that are not contested, benefits that are paid will ultimately come from contract dollars from federal sources (Energy and Defense).	Federal costs could increase since benefits for cases without willing payers would be paid directly from federal funds.	Federal costs could be greater than for current program since benefits would be based on the often more generous workers' compensation program for federal workers.	To the extent that the option would ensure a source of benefits, could increase federal costs. However, the extent of these higher costs could be mitigated because many of the claimants who would have filed for Subtitle B and D benefits in the current system would be eligible for only one cash benefit regardless of the number or type of illnesses.	Open for consideration—Depends on type of benefit and eligibility criteria.

Source: GAO analysis.

Senator BUNNING. Thank you all for your testimony. Mr. Hallmark, what do you think about the Department of Energy's proposed Path Forward for processing claims? Do you believe that more money and more time are all DOE needs to succeed in processing subtitle D claims?

Mr. HALLMARK. Senator, we at the Department of Labor do support the reprogramming that DOE has asked for. I can't assess the overall nature of the Path Forward plan, but I can indicate that as we've seen today they've made some progress and DOL plans to, as I mentioned, work with DOE to try to enhance that process as well.

Senator BUNNING. Mr. Robertson, the DOE report shows that the Paducah plant cases will not have a willing payer problem that so many other sites will face. Yet at the hearing in November, GAO believed Paducah would have this issue. What has changed since your last testimony? Do you believe that DOE will be able to require all contractors and subcontractors for the Paducah plant to pay valid claims?

Mr. ROBERTSON. With my crystal ball I can't predict what's going to happen at Paducah specifically. But, as you've pointed out, just recently (within the last week or so) DOE did inform us that they are going to approach the Paducah plant differently than they had earlier, so that's the way we graded it out in our estimate.

Senator BUNNING. What does that mean in English?

Mr. ROBERTSON. Oh, okay. Basically what DOE told us is that the clean-up contractor that they had there will be responsible for all the employees who were working at the plant prior to, I believe it was 1998.

Senator BUNNING. In other words, Bechtel Jacobs is the contractor that they are speaking about?

Mr. ROBERTSON. Yes.

Senator BUNNING. Okay. In other words, they're going to assume the responsibility of all prior employees?

Mr. ROBERTSON. Well, as we point out in our statement, that is what the current situation is, and I'm——

Senator BUNNING. That's all you can report?

Mr. ROBERTSON. That's all we can report on.

Senator BUNNING. One more, Mr. Robinson. In your report, you say that 80 percent of claimants should not have a problem with a willing payer. You assume all workers worked for prime contractors rather than subcontractors. This distinction is very important since DOE can order and reimburse for many prime contractors' workers, but cannot order subcontractors to pay. Given the fact that there are hundreds of subcontractors used by DOE contractors, do you believe that the DOE estimate is high-end estimates?

At previous hearings, DOE said 50 percent of claims would have no willing payer. Is 80 percent the right range or the high range? What would you estimate is the low end of this range?

Mr. ROBERTSON. I don't have an estimate for the low end. It's the best estimate we can make with the information that we've got now. We do caveat it as an order-of-magnitude estimate, and the fact of the matter is that, regardless of that, the estimate of the percentage of folks who don't have a willing payer, at 20 percent

is still a large number of people who don't have a willing payer and that's——

Senator BUNNING. Absolutely, yes. Thank you.

Dr. Howard, DOE says that amount physician panel doctors are paid is why they can't process more subtitle D claims.

Do you feel that this is a problem? Do the doctors HHS qualifies to serve on physician panels express concern about the pay rate? Are you concerned that the DOE legislation, along with their recent rule revisions decreases the qualifications for individual doctors while removing the deliberative process? As a physician, how do you feel about DOE's proposals?

Dr. HOWARD. Well, as a physician, of course, I support any increase in salary for physicians.

Senator BUNNING. Absolutely. We can understand that.

[Laughter.]

Dr. HOWARD. That goes without saying. But I think that what the act requires are physicians that have expertise and experience in diagnosing occupational illnesses, and that's what is our basis. We started out with physicians who have 5 years of experience in the field in clinical occupational medicine. We've made every effort to make sure that we have—giving them qualified physicians, keeping that statutory language in mind, so we have changed some of our eligibility criteria in order to increase the pipeline of physicians. So we certainly support any effort that they're making to utilize those physicians well that we're supplying in terms of our process, and we're doing everything possible to give them more.

We're working, as Under Secretary Card said, with the American College of Occupational and Environmental Medicine, which is the largest group of professional societies, so we're trying to maximize their numbers.

Senator BUNNING. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. Mr. Hallmark, as you know, Senator Grassley and myself have proposed legislation that would transfer the authority to implement subpart B from DOE to DOL. Does the Department of Labor support our legislation?

Mr. HALLMARK. The administration position is that part D should remain at the Department of Energy and that is the position the Department of Labor supports.

Senator MURKOWSKI. Let's assume for discussion purposes that Congress should decide that the route that Senator Grassley and I are suggesting is the appropriate way to go, that in fact subpart B should be implemented by the Department of Labor. What issues would need to be resolved? How would we handle that transition?

Mr. HALLMARK. Well, obviously if the program were changed we would dig in and figure out a way to implement. The kinds of problems that would occur immediately, Senator, would be that this program is completely different than the workers' compensation programs we administer now because of the connection to the state workers' comp world and that delivery of a benefit through that second stage process. We don't have any experience in working with the State workers' comp systems, and so we would have to tool up to try to accomplish that. Plus the statute provides for DOE to instruct its contractors in certain ways to avoid defense, the

issues you were raising earlier this morning. DOL would not have any capacity to coerce or influence DOE's contractors, and therefore, presumably DOE would have to continue to play that role, so any referral of part of the program to us would be partial and could create additional interaction issues and complexities.

Senator MURKOWSKI. Well, based on your testimony that you are currently providing assistance to the Department of Energy I think you indicated that you were helping them prioritize and certainly helping them with certain procedures, so it sounds like you're getting familiar with what they're doing, so if in fact we do go down this road, you'll be right up to speed, so thank you.

Senator BUNNING. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman. Mr.

Robertson, in your report on page 15 you said, several issues should be considered in evaluating options for improving the likelihood of willing payers. In that you discussed the length of time to implement changes, the criteria for determining who's eligible. I was interested in what you meant by criteria for determining who's eligible.

Mr. ROBERTSON. That's basically the criteria for determining who would be eligible for the benefits under the program. You can change that criteria, particularly if you start with the fourth option, which is starting from scratch. You can develop any new criteria that you want.

Senator CANTWELL. And that's one of the things you think we should consider?

Mr. ROBERTSON. I'm going to give you an answer that probably won't be fully satisfactory. We don't tell you what the right answer is or what the best program is. What I hope that we've done is provided a framework that will help you get to the program that you want. Frankly I was very pleased our staff put in a lot of effort the last few weeks trying to put this together for this hearing, and I think it came out pretty well.

Senator CANTWELL. I appreciate their work and your work on this, and one of those options that you outlined, option 3, expand title B program that does not use the worker compensation model, and then under that you said, under this option, the current subtitle B program would be expanded to include the other illnesses resulting from radiation and toxic exposure and they would be considered under subtitle D. The subtitle D program would be eliminated as a separate program and, if found eligible, claimants would receive a lump sum. So it sounds like under that scenario you're trying to streamline this program, recommending that's one of the options we should consider.

Mr. ROBERTSON. We're not recommending it as an option. What we're saying is, under that program, what you would be doing is taking subtitle B and expanding the number of illnesses that would be compensable under subtitle B to include those that you could receive compensation for under subtitle D. Basically you would move from a worker compensation type of a system where you're compensating people for a loss of wages to a lump sum payment.

Senator CANTWELL. And I know you're not necessarily advocating, but what's the benefit of that?

Mr. ROBERTSON. The benefit of going to the——

Senator CANTWELL. Of this option.

Mr. ROBERTSON. Well, there's some benefits and drawbacks. One of the benefits is that, in the equity arena, you'd have everybody getting the same type of compensation regardless of what state they lived in. If your purpose was to compensate people for an illness or a disability, as opposed to for lost wages, you would also be getting that. Those are some of the advantages of going to that type of a model. Plus you wouldn't be paying two benefits, one subtitle D and one subtitle B.

Senator CANTWELL. Which I'm assuming one of the reasons why you make the recommendation is the ease of which some of the processes happen under subtitle B, is that correct?

Mr. ROBERTSON. In some respects it would be a little bit easier, yes.

Senator CANTWELL. Thank you. Dr. Howard, I'm interested in your comments about the dose reconstruction that, if I'm tracking your testimony correctly, you seem to say has been done on an individual basis, is that correct?

Mr. HALLMARK. Yes.

Senator CANTWELL. And why are we doing that on an individual basis as opposed to a larger site dose reconstruction?

Mr. HALLMARK. I think the statute requires individual dose reconstruction. We're in that process of doing individual dose reconstructions. We are looking at site profiles that give us information about the exposure profile that individuals had who worked at specific sites, so we're trying to get some economies of scale there, but I'm almost certain that it's an individual dose reconstruction we have to construct or reconstruct.

Senator CANTWELL. I'm looking at this Defense authorization language in the 2004 budget, basically that says an identification of each matter adversely affecting the ability of the institute to obtain information. So basically what we're saying is, what is—I don't even know how you track this. When you go to an—in your individual reconstructions, what do you determine when you find that there's no information there? How do you grade that?

Mr. HALLMARK. Exactly. I think Mr. Elliott, our program director, I think has specific information about how we do that.

Mr. ELLIOTT. Yes, Senator. I think you're referring to the report that is due from us on matters that affect processing claims through dose reconstruction. That report has been prepared and it's in final review and should be forthcoming to the congressional committees that it will be submitted to.

Specifically in response to your question, where we don't have information, where do we proceed, that's where the special exposure cohort and adding classes to that cohort would come to bear when we cannot do a dose reconstruction because we don't have sufficient information.

Senator CANTWELL. Are you recommending adding new cohorts?

Mr. ELLIOTT. Am I recommending?

Senator CANTWELL. Yes.

Mr. ELLIOTT. No, ma'am, I'm not. I'm simply stating that the special exposure cohort is an avenue for adding classes where we cannot do dose reconstructions.

Senator CANTWELL. Thank you, Mr. Chairman.

Senator BUNNING. Thank you, Senator. I'm not going to submit any more verbal questions to this panel. We may have some written questions that we will submit to you. Anyone wanting to submit further questions for the record should submit them to the committee by the close of business tomorrow. We stand adjourned.

[Whereupon, at 12:07 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

GENERAL ACCOUNTING OFFICE,
Washington, DC, May 13, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOMENICI: This information responds to your request to provide answers to written questions for the record regarding our testimony before the Committee on March 30, 2004 (GAO-04-571T). Please do not hesitate to call me on (202) 512-7215 or Andrew Sherrill on (202) 512-7252 if you have any questions or need further information.

Sincerely yours,

ROBERT E. ROBERTSON,
Director, Education, Workforce, and Income Security Issues.

[Enclosure.]

QUESTIONS FROM SENATOR CAMPBELL

Question 1. What, in GAO's opinion, are the main reasons DOE has not been productive in processing claims or moving them through the physicians panels?

Answer. Two main factors have affected Energy's productivity: a slow start in developing its case processing operations and difficulties finding a sufficient number of physicians to serve on physician panels. Although Energy's regulations for this program became effective in September 2002, the agency had not secured sufficient staff to meet its goal of completing development on 100 cases a week. Space limitations delayed the hiring of additional staff until the fall of 2003. By November 2003, Energy was meeting its goal of having 100 cases a week ready for physician panel review.

Processing was also delayed because Energy's original regulations required that a panel of three physicians review each case and the agency was unable to locate enough qualified physicians to perform this review. To expedite the process, Energy has recently published new rules to reduce the number of physicians on each panel, worked with the National Institute for Occupational Safety and Health to modify the qualifications for panel physicians and to encourage recruitment of full-time physicians, and developed a legislative proposal to eliminate the cap on the rate of pay for these physicians. However, it is too soon to assess the extent to which these efforts will improve the processing of cases.

Question 2. GAO has overseen other benefit programs. In terms of productivity, how do they compare with DOE's program?

Answer. It is difficult to compare processing productivity of different benefit programs because they often differ considerably in the activities involved in processing claims. For example, many EEOICPA Subtitle B claims can be processed without making a determination about whether exposure was sufficient to have caused an illness (i.e., without performing what is called a "dose reconstruction"), whereas all eligible Subtitle D claims require a review and determination by a physician panel. In addition, while the Subtitle B program deals with certain specified illnesses related to exposure to radiation, beryllium, and silica dust, the Subtitle D program must evaluate a broader range of illnesses related to toxic exposures to radiation, chemicals, and biological substances. In light of differences such as these, GAO has

not attempted to directly compare the productivity of the Subtitle D program with that of other claims processing programs.

Question 3. DOE asserts its program is far more complex than that at DOL and this explains the delays. Do all claims require research through 50 years of records, or is this only a small fraction?

Answer. The Subtitle D program may be more complex to the extent that Energy must evaluate a broader range of illnesses, which are related to exposure to radiation, chemicals, and biological substances, than the Subtitle B program. However, this alone would not account for the delays in processing. The need to locate records that are decades old would probably not explain much of the difference in processing times between Subtitle B and D because there is over a 90 percent overlap of cases in the two programs, according to the Energy officials.

Question 4. Is the DOE staff qualified to run this program? Is the DOE's contractor qualified to run this program?

Answer. The Department of Energy did not have prior experience operating a workers' compensation program and this probably contributed to its slow start in developing its case processing operations. However, GAO has not reviewed in detail the qualifications of Energy and its contractor staff that operate the Subtitle D program.

QUESTION FROM SENATOR ALEXANDER

Question 1. Subtitle D was not intended to be an entitlement program. Given this fact, of the four options proposed by the GAO for improving the program, which option would the GAO recommend that Congress pursue?

Answer. GAO is not recommending any particular option for making this policy decision. GAO developed the four options in response to our finding that under the current program, a significant minority of Subtitle D state workers' compensation claims are likely to lack willing payers and be contested, which could result in inequitable treatment of claimants across—and in some cases within—states. Moreover, our March 30 testimony also provided a framework to assist policymakers in considering the issues most pertinent to assessing the options.

QUESTIONS FROM SENATOR BUNNING

Question 1a. Mr. Robertson, you testified that GAO's opinion about whether Kentucky claimants have a willing DOE payer changed between November 2003 and March 2004. Could you please explain further what evidence of a willing payer DOE has provided to the GAO? Can you provide copies of that evidence to this committee?

Answer. Energy officials informed GAO in March 2004 about a recently made policy decision that could affect the Subtitle D eligibility of some current or former workers at the Paducah Gaseous Diffusion Plant. Specifically, Energy officials decided that individuals who had worked only for USEC, and not for any prior Energy contractor, would not be considered Energy employees under the Subtitle D program and such individuals would be ineligible for Energy's assistance in filing claims for workers' compensation. Further, these officials stated that, for Subtitle D claimants with positive physician panel determinations based on work at the Paducah plant prior to mid-1998, Energy would order Bechtel Jacobs Company, the clean-up contractor at Paducah, to not contest the claims for workers' compensation. Our testimony was based on these statements and not on documents provided by Energy.

Question 1b. Mr. Robertson, do you believe that DOE will be able to require all contractors and subcontractors for the Paducah plant to pay valid claims?

Answer. Based on recent interviews with Energy officials and officials of the Bechtel Jacobs Company, the clean-up contractor at Paducah, we believe that Energy will be able to require Bechtel Jacobs to pay valid claims of its own employees and those of prior contractors through September 30, 2004. However, Bechtel Jacobs is not competing for new contracts that will be awarded to perform clean-up work beginning October 1, 2004. While Energy officials are pursuing negotiations with Bechtel Jacobs to continue handling workers' compensation claims at Paducah after September 30, these negotiations have not been completed. Thus, it is unclear at this point whether Energy will continue to be able to require that the valid claims of contractor employees from Paducah be paid.

With regard to issue of subcontractors, we are unable to provide information as to whether subcontractor employees at Paducah have filed claims under Subtitle D and, if so, the status of these claims, because of limitations of the data in Energy's case management system (see responses to the following 3 questions for more details).

Question 2. Mr. Robertson, in your report, you assume (footnote—page 13) that all claimants worked for prime contractors rather than subcontractors. DOE can order and reimburse for many prime contractor workers, but cannot order subcontractors to accept claims in many instances. Why, given the DOE's touted multimillion dollar SEA database improvement, do you have to assume anything at all?

Answer. We made this assumption about prime contractors because Energy's case management system does not enable us to systematically identify those claims that involve subcontractors. Insufficient strategic planning regarding system design, data collection, and tracking of outcomes has made it more difficult for Energy officials to manage some aspects of the program. The data system used by Energy to aid in case management was developed by contractors without detailed specifications from Energy. In addition, because it did not adequately plan for the various uses of its data, Energy lacks some of the data needed to analyze how cases will fare when they enter the state workers' compensation systems. Specifically, it is difficult for Energy to predict whether willing payers of workers' compensation benefits will exist using case management system data because the information about the specific employer for whom the claimant worked, such as the employer's status as a prime contractor or a subcontractor, is not collected in a format that can be systematically analyzed and aggregated.

Question 3. Mr. Robertson, what information was the DOE missing which caused GAO to make the assumption discussed in question 2?

Answer. Energy's case management system was not designed to collect information about the worker's employer in a format that could be systematically analyzed, and as a result, GAO lacks an empirical basis for estimating the percentage of claims that involve subcontractors. Instead, information about employers is collected in text fields of up to 1,000 characters. Such information would have to be analyzed on a case-by-case basis for more than 23,000 cases to determine the names of the employers involved in these cases.

Question 4. Can the GAO identify, in the DOE data system, if a claimant worked for a prime contractor or a subcontractor? Is there any case or claim operation with which you are familiar, where the data can not tell the basic essential information about the claimants?

Answer. GAO cannot determine such information about claimants' employers using Energy's case management system. As stated above, Energy's system does not capture information about the worker's employer or employers in a format that could be systematically analyzed. In addition, the system does not include information on whether the employer was a prime contractor or a subcontractor. Energy has to access sources of information outside the case management system to determine whether an employer was a prime contractor or a subcontractor.

Question 5. If the GAO estimate that 80% of workers having a willing payer is the high end of the range of the number of claims with payers, could GAO please estimate the low end of the same range?

Answer. It is difficult to estimate the low end of the range because of data limitations and because the estimates could change as circumstances change. Because of data limitations, we assumed that: (1) all cases filed would receive a positive determination by a physician panel, (2) all workers lost wages because of the illness and were not previously compensated for this loss, and (3) in all cases, the primary contractor rather than a subcontractor at the Energy facility employed the worker. While we believe that the first two assumptions would not substantially affect the proportions shown in each category, the third assumption could result in an underestimate of the proportion of cases lacking willing payers to the extent that some workers may have been employed by subcontractors that used commercial insurers or state funds for workers' compensation coverage. Some subcontractors use these methods of workers' compensation coverage because they may not employ enough workers to qualify for self-insurance under some state workers' compensation programs. However, GAO lacks any empirical basis for estimating the percentage of claims that involve subcontractors.

The situation at Paducah described in our response to your question 1b above is an example of a potential change in circumstances that could affect our estimates. In the event that Energy is unable to continue to require that a current contractor pay the valid workers' compensation claims of contractor employees from Paducah, these cases would no longer have a willing payer. As a result, our estimate of the proportion of cases for which contests are likely in the 9 states we examined could increase from 20 to 33 percent.

Question 5a. Previously, DOE said 50% of claims would have no willing payer. Why do you believe the GAO estimate is so different from the DOE estimate?

Answer. In our interviews, Energy officials have refrained from estimating the number of claims that would have no willing payers because they said they have

not performed the necessary analysis to determine such an estimate. In addition, these officials have stated that they are unable to locate the source of the 50 percent estimate that has been attributed to Energy.

Question 6. Mr. Robertson, Mr. Card testified that claims processing work is better done by contractors than by the government. He also stated that DOL was going to help DOE with the claims operation due to the DOL's extensive experience in the field. Do you believe that government is unable or unqualified to process claims? Is this true for EEOICPA subtitle D claims?

Answer. We do not believe that either contractors or government has any inherent advantage over the other in performing claims processing work. In our view, the factors that determine how well an entity performs such work are more likely to pertain to characteristics such as extent of prior experience with this type of work, staff qualifications, information systems capabilities, and overall managerial expertise.

Question 7. Mr. Robertson, what would you estimate is the cost of the DOL preparing the claims for panel review under Subtitle B compared with SEA's costs of operation under Subtitle D?

Answer. GAO has not performed the analysis that would allow us to make such a cost comparison.

QUESTIONS FROM SENATOR BINGAMAN

Question 1. You determine on page 12 that approximately 20 percent of all cases under this program may lack a willing payer. How did you arrive at this determination and does it cover subcontractors to the main DOE contractor?

Answer. As indicated above, because of data limitations, we assumed that: (1) all cases filed would receive a positive determination by a physician panel, (2) all workers lost wages because of the illness and were not previously compensated for this loss, and (3) in all cases, the primary contractor rather than a subcontractor at the Energy facility employed the worker. With regard to the third assumption, GAO lacked any empirical basis for estimating the percentage of claims involving subcontractors because Energy's case management system cannot provide aggregated data on this factor. The third assumption could result in an underestimate of the proportion of cases lacking willing payers to the extent that some workers may have been employed by subcontractors that used commercial insurers or state funds for workers' compensation coverage.

Question 2. You note in your report on page 5, that "each of the 50 states and the District of Columbia has its own workers' compensation program", which indicates to me a large variation in the manner that a sick atomic worker may be compensated when cleared by the DOE physician panel. Can you please comment what the effect of this variation has on the ability of the DOE program to equitably compensate sick workers across the U.S.?

Answer. Because of the variations in the state workers' compensation programs, workers with similar work histories and similar illnesses living in different states could receive different amounts of compensation. In addition, the current program may not provide equity for all Subtitle D claimants because a claim that has a willing payer could receive a different outcome than a similar claim that does not have a willing payer.

Question 3. The DOE is proposing legislation to increase the pay of the physicians that will serve on their panels. Do you believe the proposed increase in pay for physicians will solve the lack of skilled physicians?

Answer. While we think that raising the pay for physicians is likely to help improve the situation, we do not believe that this change alone will elicit the numbers of physicians that Energy has projected are needed to eliminate the backlog of cases for the physician panels. NIOSH has projected that the pool of physicians with the appropriate credentials and experience is limited. Moreover, we do not have data on the extent to which the current cap on physician pay has deterred qualified physicians from agreeing to serve on the panels.

Question 4. Your Table 2 lists four options to consider the willing payer problem. How hard would it be to estimate the cost of these options?

Answer. It would be a challenge to estimate the costs of these options with currently available information. Additional information about the overlap of Subtitle B and Subtitle D claimants and additional information about the provisions and benefits of the state workers' compensation programs during the past 60 years would be necessary to begin estimating costs of the options. In addition, with some additional information about the status of employers as prime contractors or subcontractors, it might be possible to develop several alternative assumptions about the mix of contractors and subcontractors, and then perform sensitivity analyses to determine how

much these alternative assumptions would affect the cost estimates for some of the options.

QUESTION FROM SENATOR REID

Question 1. Some claims filed under Subtitle D from the Nevada Test Site lack a willing payor, which means that even if the DOE processes their claims, they will not receive compensation. If we do not provide federal compensation for these claims, are there other ways they would receive compensation?

Answer. Claimants with workers compensation claims may also be eligible for a lump sum and medical benefits under Subtitle B or, in the case of the Nevada Test Site, under the Radiation Exposure Compensation Act. However, with respect to workers compensation for Subtitle D claimants, we believe that valid claims that are not honored because of the lack of a willing payer could only be paid with some form of federal compensation. Each of the four options for addressing the willing payer issue that we outlined in our March 30 testimony would involve providing federal compensation for claims that lack willing payers. There have been other attempts to address the willing payer issue but to date they have not been successful. For example, the state of Ohio requested that Energy contract with the state to provide third party administrator services on Subtitle D workers' compensation claims and to serve as a conduit for payment of compensation from Energy funds. However, these other attempts to address the issue would also involve using some mechanism that provides federal compensation.

DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Washington, DC, June 22, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOMENICI: I am writing in reply to your letter dated April 6, 2004, in which you requested responses to a list of questions that were submitted following my testimony before the Senate Committee on Energy and Natural Resources on March 30, 2004.

Enclosed are our answers to those questions. I appreciated the opportunity to appear before the Committee. Please let me know if you have any further questions.

Sincerely,

SHELBY HALLMARK,
Director.

[Enclosure.]

QUESTIONS FROM SENATOR ALEXANDER

Question 1. Did the Department of Energy ask the Department of Labor for a detailed cost analysis of the DOL claims processing program?

Answer. DOE did not request detailed information relating to the cost associated with the DOL claims processing programs.

Question 2. Does DOL concur with the DOE's views that the DOE claims processing costs are actually less than those for the DOL?

Answer. It is not clear that DOE has expressed the opinion that the DOE claims processing costs are actually less than those for DOL. They have advised us that the Federal employee costs they compared to their contractors during the hearing were derived from an A-76 analysis using DOE Federal positions. We have no specific cost data relating to either the Federal comparative model or the contractor based claims processing in the Part D EEOICPA Program. However, we are confident that the structure established for Part B claims adjudication utilized the decades of DOL compensation experience to develop the most cost effective approaches for all aspects of adjudicating these claims. As we gain experience with the EEOICPA program, we modify our processes to ensure that claims are processed in a timely and effective manner at the least cost possible. The two programs are different, and costs are thus not directly comparable.

Question 3. What would be the cost to DOL for taking over the claims processing for Subtitle D?

Answer. DOL is not in a position to estimate costs of such a transfer. Part D was assigned to DOE by the EEOICPA statute, and transferring that program to DOL would entail several different possible sets of changes, each of which would have different cost implications. Unless the Part D program were restructured in funda-

mental ways, certain aspects of Part D claim processing would have to remain with DOE. Attempting to calculate the cost for DOL to take over a to-be-specified portion of part D claims processing would be speculative. Further, the Administration believes responsibility for Part D claims processing should remain within DOE.

Question 4. Does the DOL think that creating site profiles for toxic exposures would be as effective as those for radiation exposures?

Answer. Regulatory requirements for the collection and maintenance of information relevant to ionizing radiation exposures predate and are more extensive and stringent than such requirements for occupational exposures to other potentially toxic chemicals and substances covered under Subtitle D. Because of data limitations, the development of profiles of toxic exposures at worksites, referred to as job-exposure matrices, can be exceptionally difficult, labor intensive, and expensive, if they are scientifically feasible at all.

QUESTIONS FROM SENATOR BUNNING

Question 1. Mr. Hallmark, what do you think about the Department of Energy's proposed Path Forward for processing claims?

Answer. DOL supports DOE's efforts as outlined in the proposed "Path Forward." We believe the plan will expedite case processing and physician panel determinations of causation.

Question 2. Mr. Hallmark, do you believe that the DOE rule along with their proposed legislation will solve the operational problems that have made DOE totally ineffective in overseeing Subtitle D?

Answer. We support the DOE proposed legislation and believe the legislation and the rule will improve Part D processing. However, it is recognized that those measures are not intended to fix all aspects of Part D. DOL agrees with DOE that additional progress can be made through procedural streamlining and other initiatives and, if fact, DOE has already implemented some of these changes.

Question 3. Mr. Hallmark, do you believe that more money and more time are all DOE needs to succeed in processing Subtitle D claims?

Answer. We acknowledge that additional funding for continued processing of Part D claims will be beneficial in addressing the need to process large numbers of claims as quickly as possible. Even with procedural, regulatory, and statutory improvements, the current backlog of Part D claims will require additional resources, and additional time, to resolve. The pace of claims processing has already picked up, and with additional resources, expanded physicians panel availability and efficiency, and improved policies and procedures, DOE should be able to obtain panel determination within the time frames projected in its "Path Forward."

Question 4. Mr. Hallmark, what changes would you propose, including those requiring statute or rule changes, to improve the DOE claims operation?

Answer. As noted, DOL supports the improvements DOE has proposed, and we are prepared to provide senior policy and procedural experts to assist DOE in improving the processes as outlined in DOE's "Path Forward." Until our staff have studied the Part D process more closely and consulted with DOE regarding potential process changes, it would be premature to suggest specific process or policy improvements.

Question 5. Mr. Hallmark, do you believe, as Mr. Card testified, that DOE facility site profiles are not important for physician panel reviews for which DOE is responsible and are not more relevant for Subtitle B cases versus Subtitle D cases?

Answer. We believe site profiles may be helpful in expediting case processing and ensuring greater consistency. Where profile information is already available or can be gathered quickly, provision of this information could significantly enhance the physician panels' review of cases. DOL is not fully informed about the extent to which such materials may be available, however. We believe that provision of "accepted facts" to the panels—for example, the degree of likely exposure to a specific chemical at a site or building—would be a major step in improving the overall Part D process. Site profiles may be an effective means of generalizing such factual frameworks for large groups of claims in relatively short order.

Question 6. Mr. Hallmark, Mr. Card testified that claims processing is better done by contractors than by government. He also stated that DOL was going to help DOE with claims operation due to DOL's extensive experience in the field. Do you believe that government is unable or unqualified to process claims? Is this true for Subtitle D claims?

Answer. DOL has a long record of successful claims processing utilizing a mix of government and private sector staff. Since DOE had no pool of Federal staff with claims processing experience, we would not argue with DOE's decision to utilize primarily contractor staff.

Question 7. Mr. Hallmark, what would you estimate is the cost of the DOL preparing the claims for panel review under Subtitle B compared with SEA's costs of operation under Subtitle D?

Answer. Case processing under the two parts of EEOICPA is substantially different, and costs are not directly comparable. For example, DOL does not utilize "panel review'" for Part B cases; instead, our district offices prepare "recommended decisions" which are later reviewed and finalized by our Final Adjudication Branch. To date, our cost to produce Part B recommended decisions—excluding dose reconstruction costs—has been $1,366 per case. This figure is based on the full FY 2001-2003 costs for running our four district offices, plus a proportional share of the total Information Technology budget, divided by the number of claims processed during that time.

QUESTIONS FROM SENATOR BINGAMAN

Question 1. Would the Department of Labor support establishing an ombudsman's office to help sick atomic workers appeal their claims if they are denied?

Answer. To date, DOL has not found that there is a need for an ombudsman office to assist claimants in navigating the Part B system. Extensive outreach has been provided to claimants and their families, both by our district office staff and via the Energy Compensation Resource Centers run jointly by DOL and DOE, to get them started in the program. Most importantly, Part B is a non-adversarial process—there is no adversarial party (such as an insurer or employer) who engages in defense against the claim as it moves through the decision process. DOL staff carefully outline claimants' appeal rights in conjunction with any negative determination. DOL has made special efforts to ensure that decisions are written in plain language and clearly explain the reasons the specific outcome was reached. The program is in fact specifically designed to be clear enough that an individual does not need to resort to an attorney or other representative to obtain a full and complete airing of their case. Likewise, the NIOSH dose reconstruction process has been designed to provide claimants with extensive opportunities to provide input and to request clarification regarding the NIOSH findings.

Question 2. How hard would it be for the Department to administer a special set of cohorts related to toxic substances such as asbestos or mercury similar to the radiation cancer cohorts?

Answer. Congress specified benefits for DOE weapons workers for three conditions under Part B—radiation induced cancer, beryllium disease, and silicosis for certain miners. It specified presumption of causation for certain cohorts of radiation-exposed workers. Absent specific provisions, we cannot evaluate potential implementation problems or issues associated with additional special cohorts. As a general matter, however, workers' compensation adjudication is based on a case-by-case examination of the causal relationship between workplace exposures and a medical condition. Application of presumptive criteria for groups of claims may yield positive determinations for claims which are not as meritorious as claims which fall outside the "cohort" and are denied based on an evaluation of the individual facts of those cases. Further, the Administration would oppose extending federal compensation under Part B to diseases resulting from asbestos, mercury, and other hazards not unique to our Nation's nuclear weapons program.

QUESTIONS FROM SENATOR SCHUMER

Question 1. Western New York is home to 14 Atomic Weapons Employers (AWE) sites and DOE clean up facilities. Yet the only assistance applicants receive is from a traveling resource center that comes to the area too infrequently to effectively serve current and former nuclear workers. Would you support the installation of a permanent resource center to serve Western New York?

Answer. As noted, Western New York is home to many Atomic Weapons Employer (AWE) sites. However, many of these sites have been closed for some time. Since the inception of the program, we have been actively searching for any former workers that may have been employed during a covered time period at these facilities, or their survivors.

To ensure adequate assistance to potential claimants in New York, we have conducted several "traveling" resource center events to help individuals who have questions about the program and want to file a claim for benefits. The frequency of these traveling resource centers is determined primarily by the number of individuals who attend. Over the past three years, we have been to the, state of New York on six separate occasions, and have generated a number of claims through this process.

- Buffalo, NY (November 2001)—391 claimants assisted

- Buffalo, NY (December 2001)—154 claimants assisted
- Buffalo, NY (May 2002)—68 claimants assisted
- Long Island, NY (April 2002)—7 claimants assisted
- Amherst, NY (October 2003)—61 claimants assisted
- Springville, NY (October 2003)—23 claimants assisted

While we continue to view Western New York as a top priority for additional traveling resource centers, the declining attendance at more recent visits suggests that alternative forms of outreach may be needed at this time. We look forward to working with your staff to identify the best means of bringing assistance to potential EEOICPA claimants in New York State.

Question 2. How does the cost of claims processing in DOL compare with DOE? Which agency is more cost effective?

Answer. DOL does not have sufficient information to compare DOL and DOE claims processing, and in any case, the two programs are quite different.

QUESTIONS FROM SENATOR CANTWELL

Question 1. Under the Fiscal Year 2004 Defense Authorization Act, DOL was required to deliver, by February 22, a report on EEOICPA. To my knowledge, DOL has yet to issue that report. Would you please provide it to this Committee? If it is not yet available, when do you expect it to be issued?

Answer. The subject report is in final review and will be issued in the very near future.

Question 2. How many cases have been filed under EEOICPA Subtitle B for workers with Chronic Lymphocytic Leukemia (CLL), formerly employed at facilities covered by the Act?

Answer. As of April 12, 2004, there are 148 CLL cases with a final decision. Some 55 additional CLL cases are currently pending dose reconstruction at NIOSH, because the case also involves a claim of at least one other cancer.

Question 3. What is the DOL's administrative cost per claim processed (excluding funds transferred to NIOSH or other agencies)?

Answer. The average total administrative cost per claim during FY '01-'03 was $2,904. This amount does not include amounts transferred to HHS. It does include a proportional cost for DOL's share of the Resource Centers' operations, issuing recommended and final decisions, processing compensation and medical bill payments, conducting outreach and training, legal services, developing policies and procedures, and all automated systems, including the case management system.

Question 4. How much has DOL transferred to NIOSH in the previous four Fiscal Years? How much does DOL project transferring in Fiscal Year 2005?

Answer. DOL has transferred $103,708,000 to HHS to date, as follows:

- FY 01 $10,000,000
- FY 02 $37,538,000
- FY 03 $18,000,000
- FY 04 $38,170,000

Under the President's FY 2005 Budget, DOL projects that $30,400,000 will be transferred to HHS. It should be noted that funds transferred to HHS have not been fully expended in the year in which they were transferred. In fiscal years 2002 and 2003, HHS covered its operational costs with a combination of new and carryover budget authority. The FY 2004 and 2005 Budgets requested no new budget authority for HHS activities-they will be supported with carryover balances.

Question 5. What is the cost of the development of software for Subtitle B? Can it be used for processing claims under Subtitle D if such program were transferred to DOL?

Answer. The FY 2001 DOL/DEEOIC cost of $1.2 million represents the total outlays for planning, designing, developing, testing, implementing and maintaining the initial software release of ECMS (Energy Case Management System, deployed on July 31, 2001). These costs were spread out over the first nine calendar months of 2001.

The total costs to DOL/DEEOIC in FY 2001 for all other IT related projects and support were significantly more: nearly $6.5 million. These costs represent extensive acquisition and maintenance costs for network, infrastructure and desktop hardware, equipment, devices and non-ECMS software; labor costs for contract technical support in the district offices; and costs for planning and acquisition of the system and support for DEEOIC medical bill processing and operations.

DOL's ECMS was designed to address the Part B program, and would have to be adapted to accommodate Part D. The system would require modification to capture data relating to the specific processing stages of the Part D program (whatever

those might be determined to be), to clearly identify which cases have been filed under Part B, Part D, or both, and probably to provide additional data regarding medical conditions and exposures not covered under Part B.

Question 6. If Subtitle D were transferred to DOL, with responsibility for serving as claims processor and the willing payer, how many additional staff would DOL require? What would the incremental increase, in projected administrative budgets, be for Fiscal Years 2005 and 2006?

Answer. Without knowing the details of such a transfer, and the nature of the program changes it would entail, it is not currently feasible to project associated staff or resource needs.

Question 7. Please provide an account of DOL's outreach efforts to former Hanford workers who may be eligible for compensation under EEOICPA. Does the DOL plan to expand its outreach efforts, during this Fiscal Year, at Hanford and elsewhere?

Answer. DOL and DOE have jointly conducted significant outreach to potential claimants since the inception of the program, conducting over 600 public meetings and traveling resource centers throughout the country. During Fiscal Year 2004, we have implemented an even more aggressive outreach program nationwide to inform potential claimants of the availability and requirements of the EEOICPA and to provide assistance in filing claims. A key component of our enhanced efforts is an expanded role for participation of stakeholders in the process.

We have been particularly active in outreach at Hanford since the number of claims received from workers at this facility is significantly less than expected. A recent effort was conducted in cooperation with the PACE local at Hanford that has been very successful in the initial phases. We plan to continue these efforts to ensure that we reach as many potential claimants as possible. Our Seattle district office is working directly with the Richland resource center to create a more dynamic and effective outreach program in that community. We are also working closely with the Center to Protect Workers' Rights, a research and development arm of the Building and Construction Trades Division of the AFL-CIO, to obtain better information about construction workers at Hanford and elsewhere.

Question 8. I have heard from some of my constituents that, even after they are deemed eligible for coverage under DOL's program—either for beryllium sensitivity monitoring or other covered illnesses—it is difficult to find providers that recognize the DOL system of payment for medical care. What is the most appropriate way to address this problem?

Answer. DOL has undertaken significant outreach activities to providers in an effort to advise them about the program and assist there with enrollment. DOL/DEEOIC officials have traveled throughout the country, to educate and encourage medical providers about this new program and new payment process. In addition, last year DOL began sending out Medical Benefits Identification Cards (MBIC) to each employee who receives benefits under the EEOICPA. As of this date, every covered employee has received the MBIC card. This card, which the claimant can present to his or her medical providers to demonstrate coverage, includes the case number, covered condition for which DOL is committed to pay, and the address to which bills should be mailed. Concurrent with the issuing of these cards, DOL calls every employee to discuss the billing procedures and request the names and phone numbers of the providers to contact. In turn, we contact the claimant's providers directly and advise them about the EEOICPA Program and enrollment information. This practice is of course ongoing as new claims are accepted. Furthermore, DOL has established a system whereby third party providers (such as ORISE) may be reimbursed for any bills paid directly by their program. In addition, we have established a memorandum of understanding with the State of Ohio to ensure that bills payable by EEOICPA, that are submitted through Ohio State Workers' Compensation system, will be promptly paid by DOL. Finally, if any specific billing problems arise, DOL responds and resolves the issues as quickly as possible. We will continue to reach out to all stakeholder groups to encourage them to advise eligible claimants and their medical providers to fully utilize this valuable benefit.

APPENDIX II

Additional Material Submitted for the Record

HOUSE JOINT MEMORIAL 16

46TH LEGISLATURE—STATE OF NEW MEXICO—FIRST SESSION, 2003

INTRODUCED BY RAYMOND M. RUIZ

A JOINT MEMORIAL REQUESTING THE STATE'S CONGRESSIONAL DELEGATION TO SUPPORT REFORMS TO THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

WHEREAS, the federal Energy Employees Occupational Illness Compensation Program Act of 2000 was enacted to provide compensation to those veterans of the cold war who were employed by the United States department of energy and who were made ill from exposure to radiation, beryllium and other toxic substances; and

WHEREAS, the number of New Mexicans who have received benefits pursuant to that act is small compared to the number of recipients in other states; and

WHEREAS, on August 14, 2002, the United States department of energy issued regulations to implement a portion of that act to provide physician-panel determinations on occupational illnesses for contractor employees exposed to toxic substances at department of energy facilities; and

WHEREAS, the United States department of energy is encountering significant delays in securing physician panel review of claims and, at the current rate of implementation, claimants will wait one hundred sixty-six years to receive findings on their claims; and

WHEREAS, families filing claims have experienced delays in access to medical and exposure records, incident reports and confirmations of job histories; and

WHEREAS, the contractor performing radiation dose reconstructions for the national institute for occupational safety and health has reportedly admitted conflicts of interest; and

WHEREAS, the federal act restrains contractors who operate United States department of energy facilities from contesting state workers' compensation claims for illnesses induced by

toxic chemicals, claims that have been found by physician panels to be meritorious; and

WHEREAS, the United States department of energy has conceded it may not have a willing payor through state workers' compensation programs for claims that are deemed meritorious by physician panels; and

WHEREAS, legislation was introduced in the one hundred seventh congress, with bipartisan support, that established deadlines for the administration of claims and that provided for a federal willing payor to equitably administer disability payments and meritorious medical claims; and

WHEREAS, some New Mexicans with meritorious claims were unfairly denied state workers' compensation in the years prior to passage of the federal act, and these individuals and their survivors should not be left behind without a willing payor; and

WHEREAS, New Mexico's large population of potentially eligible claimants should not have to wait another generation or more to be compensated for their occupational illnesses; and

WHEREAS, the thousands of New Mexicans who risked their lives and good health in the service of their country should be compensated before they die;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the state's congressional delegation be requested to pursue legislation to amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to ensure that:

A. there is a willing payor for every meritorious claim, including those claims that were previously denied under state workers' compensation programs;

B. the United States department of energy concludes its reviews of claims within one hundred eighty days;

C. a non-adversarial forum be established to resolve claims independent of state workers' compensation programs;

D. those employees who are unable to obtain records establishing past exposures and employees whose claims of radiation exposure are in jeopardy of being denied due to scientific uncertainty in causation determinations should receive the benefit of the doubt and be compensated under the federal act;

E. chronic renal disease in workers exposed to uranium be recognized as a compensable illness;

F. special exposure cohorts be established for employees in area g and the linear accelerator, and for security guards and all construction workers, due to the impossibility of accurately reconstructing past radiation doses;

G. a program of technical assistance grants be created to enable community- and labor-based organizations to assist claimants; and

H. congressional oversight hearings be held to investigate whether the energy employees occupational illness compensation program is meeting the needs of claimants in New Mexico; and

BE IT FURTHER RESOLVED that the federal secretary of energy, the federal secretary of health and human services and the federal secretary of labor, each of whom shares responsibilities for implementing the energy employees occupational illness compensation program, be requested to redouble their efforts to ensure that the program achieves its intended purpose of providing benefits to the people of New Mexico who were made ill while employed at federal department of energy facilities; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the members of the New Mexico congressional delegation and to the cabinet secretaries of the departments of energy, health and human services and labor.

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