UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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MEETING

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TUESDAY
APRIL 26, 2016

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The Advisory Board met at the
Department of Labor, 200 Constitution Ave, N.W.,
Washington, D.C., at 8:30 a.m., Steven Markowitz,
Chair, presiding.
MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT  
MARK GRIFFON  
KENNETH Z. SILVER  
GEORGE FRIEDMAN-JIMENEZ  
LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Chair  
LAURA S. WELCH  
ROSEMARY K SOKAS  
CARRIE A. REDLICH  
VICTORIA A. CASSANO

CLAIMANT COMMUNITY:

DURONDA M. POPE  
KIRK D. DOMINA  
GARRY M. WHITLEY  
JAMES H. TURNER  
FAYE VRIEGER

DESIGNATED FEDERAL OFFICIAL

ANTONIO RIOS

PRESENTERS

THOMAS GIBLIN, Associate Solicitor, DEEOIC  
LEONARD J. HOWIE III, Director, OWCP  
RACHEL LEITON, Director, DEEOIC  
CHRISTOPHER P. LU, DOL Deputy Secretary  
JAMES MELIUS, Radiation Advisory Board  
MALCOLM NELSON, DOL, Ombudsman to EEOICPA  
JOSEPH PLICK, DOL FACA Counsel  
ROBERT SADLER, DOL Ethics Counsel  
JOHN VANCE, Branch Chief, DEEOIC Policy, Regulations and Procedures  
PATRICIA WORTHINGTON, DOE
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(8:41 a.m.)

MR. RIOS: All right, I think we have everybody here. Good morning, everybody. My name is Tony Rios and I would like to welcome you to today's meeting of the Department of Labor's Advisory Board on Toxic Substances and Worker Health.

I am the Board's Designated Federal Officer, or DFO. Before we begin I'd like to go over some general housekeeping items just to make sure that everybody is safe and comfortable during the next three days.

First, restrooms are located immediately outside these doors on both your left and right hand sides. The bathrooms to your right are handicapped accessible and next to each set of bathrooms is a water fountain.

If you want to purchase water or coffee there is a snack shop on this floor and a cafeteria on the 6th floor. So to get to the snack shop you make two lefts immediately after...
exiting these doors and you'll see it halfway
down the long hallway.

To get to the cafeteria you just take
one of the elevators and go up the 6th floor and
it will be apparent where the cafeteria is
located.

In case of an emergency evacuation you
will hear an announcement over the PA system and
we will likely be instructed to use the stairs.
The stairs are also located immediately outside
of the conference room doors on both the left and
right hand side.

We will guide everyone down and exit
through the same building entrance on the first
level where you came, but hopefully we won't have
to do that. I think that covers the housekeeping
portion and now on to the meeting.

So, first, I appreciate the time and
diligent work of our Board Members in preparing
for this meeting and for their forthcoming
deliberations.

The Board and I also wish to thank my
many colleagues here at the Department of Labor for their efforts in preparing for today's meeting, and, in particular, to Carrie Rhoads, our Committee Staff and Alternate DFO, Kevin Bird, who arranged everyone's travel, prepared the briefing books and is running our virtual meeting, Amit Daswani, our Conference Center Manager, and Juan Curtis, our WebEx Manager.

These folks did a lot of running around over the course of the last two weeks and I just wanted to thank them in front of everybody.

So before moving on to the more formal part of the meeting I would like to say a few words about my role as the Board's DFO, because I have been asked about it a few times.

As the DFO I serve as the liaison between the Board and the Department. I am also responsible for ensuring all provisions of the Federal Advisory Committee Act, or the FACA, are met regarding the operations of the Board.

I work closely with the Board's Chair,
Dr. Markowitz, and I am responsible for approving the meeting agenda and for opening and adjourning all of the meetings.

I also work with the appropriate Department officials to ensure that all relevant ethics regulations are satisfied, and as such this morning the Board Members will be briefed on the provisions of the federal conflict of interest laws, and, in particular, the conflict of interest provision contained in the Energy Employees Occupational Illness Compensation Program Act.

Finally, I would like to note that each Board Member has been asked to file a standard government financial disclosure form.

Regarding meeting operations, we have a full agenda for the next three days and you should note that agenda times are approximate. So as hard as we might try we may not be able to keep to the exact as was noted this morning.

Copies of all meeting materials and public comments are or will be available on the
Board's website under the heading "Meetings."

The Board's website can be found at
dol.gov\OWCP\energy\regs\compliance\advisory board.htm, or you can simply Google Advisory Board on Toxic Substances and Worker Health and it will likely be the first link that shows up.

So if you haven't already taken time to visit the Board's website I strongly encourage you to do so. After clicking on today's meeting date what you will see is a page dedicated entirely to this week's meeting.

That page contains all materials that were submitted to us in advance of the meeting and we will be publishing any materials that are provided by our presenters throughout the next three days.

There you can also find today's agenda as well as instructions for participating remotely in both the meeting and the public comment period at the end of each day.

If you are participating remotely I want to point out that the telephone numbers and
the links for the WebEx sessions are different for every day, so please, please make sure that you read the instructions carefully.

If you are joining us by WebEx please note that the sessions are for viewing purposes only and are not interactive. The same applies for the phones, the phones will also be muted until the public comment period opens at 5:00 p.m. today.

During Board discussions and prior to the public comment period I request that the people in the room remain as quiet as possible since we are recording the meeting to produce transcripts.

We do have a scheduled hour for public comment at the end of every day. The Chair will note that it isn't a question and answer sessions, but that rather it is an opportunity for the public to provide comments about the topics considered by the Board today.

If for any reason the Board Members require clarification on an issue that requires
participation from the public the Board may
request such information through the Chair or
myself.

I have been asked by several people
about meeting minutes versus transcripts. The
FACA requires that minutes of this meeting be
prepared to include a description of the matters
that are discussed in the next three days and any
conclusions that are reached by the Board.

As DFO I prepare the minutes and
ensure that they are certified by the Board's
Chair. The minutes of today's meeting will be
available on the Board's website no later than 90
days from today, per FACA regulations. However,
if they are available sooner they will be
published before the 90th day.

Also, although formal minutes will be
prepared because they are required by the FACA
regulations, we will be publishing verbatim
transcripts, which are obviously a lot more
detailed in nature, and those transcripts will be
available on the Board's website by May 30th.
In closing and before I turn it over to Dr. Markowitz I just want to note that I am very excited that the Board is fully seated and that I look forward to working with all of you and hearing your discussions this week.

And with that, Mr. Chairman, I convene this meeting of the Advisory Board on Toxic Substances and Worker Health.

CHAIR MARKOWITZ: Thank you. And I would first like to thank Mr. Rios, Ms. Rhoads, Mr. Bird, and others at the Department of Labor for help in making this meeting happen, putting together the materials, helping plan the agenda, and otherwise supporting the meeting, so thank you very much.

I think we should start off first by introducing ourselves to each other, to the attendees, and to whoever in the public is attending by phone.

I will start. You know, I also should say just a little bit of something about if you have any background at the Department of Energy.
I am Steven Markowitz, I am an Occupational Medicine Physician and Epidemiologist.

I started with the Former Worker Screening Program 20 years ago and co-direct the program that has now screened, given 50,000 examinations throughout the country. We are at 14 different DOE sites, seven different States, over the past 20 years.

And in the year 2000 or 2001 I and some others here served on what was the called the Workers Advisory Board for the Department of Energy trying to help with Subpart D of then the new EEOICPA Act and tried to provide some advice.

Eventually D turned into E, fortunately, but in any case let me turn it over.

Ken?

MEMBER SILVER: Ken Silver, Associate Professor of Environmental Health at East Tennessee State University in the College of Public Health.

Before locating to Tennessee I was integrally involved with Los Alamos workers and
their families getting the congressional
delegation onboard and keeping them focused to
get this law passed and implemented in a
claimant-friendly matter.

    I have long been interested, going
back to my doctoral program at Boston University
Department of Environmental Health, in the unique
historical resources of the DOE complex and how
they can be combined with workers recollections
and lived experiences to estimate historical
exposures.

    MEMBER CASSANO: Hi, Tori Cassano. I
am also an Occupational Physician, Retired Navy
Undersea Medical Officer, so in that capacity was
Radiation Health Officer, ran many radiation
health programs throughout the Navy, and then
went to VA and worked on the, as the Director of
the Radiation and Physical Exposures Program
there and was also on the FAC for the Veterans
Dose -- Board -- I'm forgetting the whole name of
it, but anyway, I was on that FAC and then have
continued to work in both radiation and
occupational environmental exposures since then.

MEMBER BODEN: Hi, I am Les Boden. I am a professor at Boston University School of Public Health and share moments in time with both Ken and Steve and some others of you.

I was involved in the workers surveillance at the Nevada Test Site back before the year 2000 and was also on the Worker Advocacy Advisory Board around that time, and Ken is a graduate of our program, and I know several others of you as well.

My particular interest in this is -- I've done a lot of work in the workers' compensation area and my interest in this is trying to think hard about how to make the program work the way it's supposed to work.

MEMBER DEMENT: I am John Dement. I am a professor in the Division of Occupational and Environmental Medicine at Duke University, and I've been at Duke about 23 years, before that I was with NIOSH about ten and NIEHS about 12.

I've been involved with the Workers
Surveillance Program through the Center for Worker Construction -- What's it called?

CPWR.

(Laughter.)

MEMBER DEMENT: The acronym doesn't go with a name anymore, so it confuses me completely.

But involved with that through the consortium that was put together about 20 years ago, long term interest has been exposure to reconstruction involved with health effect studies.

MEMBER GRIFFON: I am Mark Griffon. I am an Occupational Health and Safety Consultant. I worked in these programs with the Medical Surveillance Screening Program since '88, or whenever it started, and also was on the Radiation Board, the sister Board to this, for I think about 12 years.

MEMBER REDLICH: I am Carrie Redlich. I am a Professor of Medicine at Yale School of Medicine. I am a physician trained in
occupational environmental medicine and also
pulmonary and my clinical and research interests
have focused on occupational lung diseases.

MEMBER WELCH: Hi, I am Laurie Welch.
I am also an Occupational Physician and for 20
years have been working with the Building Trades
Medical Screening Program, which is one of the
seven former worker programs similar to what
Steve described for his.

We provide medical exams. We have
examined, provided individual people, it's about
21,000 and maybe 35,000 exams all together at 27
different sites around the country for the
construction workers at those sites.

MR. RIOS: If I can just ask everybody
to speak closer to the mic. If you want to pull
it --

MEMBER WELCH: Okay.

MR. RIOS: Thank you.

MEMBER TURNER: My name is James
Turner. I worked at the Rocky Flats Nuclear
Weapons Plant for approximately 26 years and I
was diagnosed with chronic beryllium disease in 1990, and the rest is history.

MEMBER POPE: My name is Duronda Pope. I am with the United Steelworkers International Office.

I am currently working with all our steelworkers across the country with the emergency response team. We respond to any fatalities or catastrophic incidents that happens with our members, but I am a former Rocky Flats employee.

MEMBER WHITLEY: I am Garry Whitley. I worked at the Y-12 National Security Complex for 42 years. I currently am working with the Worker Health Protection Program for the Oak Ridge National Laboratory and the Y-12 complex.

MEMBER DOMINA: My name is Kirk Domina. I am the Employee Health Advocate for the Hanford Atomic Metal Trades Council in Richland, Washington.

We represent about 2800 workers through 14 affiliated unions and I am the
employee advocate and I help with this program, workers' comp, and short-term/long-term disability. I am a current worker and I have been out there about 33 years.

MEMBER VLIEGER: Good morning, Faye Vlieger. I am a retired Air Force Hanford worker injured in a chemical exposure. Now I advocate for the injured nuclear weapons workers.

I was injured in 2002 and my advocacy began in 2004. I also have experience in the military with chemical weapons and biological and nuclear weapon training and battlefield triage.

So I have been working with a number of workers who have been injured at the various sites, both radiological and toxic exposure claims.

MR. RIOS: You're good?

MEMBER SOKAS: Yes, I think. Rosemary Sokas, I am a Professor and Chair of Human Science at Georgetown School of Nursing and Health Studies.

When I was at -- As an occupational
physician, I worked at OSHA for a while and
actually visited the Y-12 and the K-25 plants as
part of a joint evaluation program back in the
late '90s.

I was at NIOSH when the original bill
was being negotiated and so we had some input
into some of, although not much, into the way it
was eventually organized.

I think one of the things I am just
sort of flashing back to as I review some of
these materials is I also early in my career
reviewed claims for Social Security as a
physician so that was, you know, this is part and
parcel of that.

CHAIR MARKOWITZ: Okay, thank you.

Let me just remind you that when you want to
speak you need to turn your mic on and then turn
it off when you are done.

I would mention that George Friedman-
Jimenez will be here. He is going to be a little
bit late, he is from Bellevue Hospital NYU
Medical School.
In terms of the public comment period, just a couple of things to remind you. Each day we have a public comment period, 5:00 p.m. today, 5:00 p.m. tomorrow, and then for I think 45 minutes on Thursday.

We have asked through the Federal Register Notice that people sign up in advance and provide written comments if they wish. The people who have signed up in advance will be the ones who speak first during the public comment period.

Those who are here physically will go first, those who are the phone will go next. Now if there is time we will accommodate additional requests to speak by the public.

Right now, today, we have 45 minutes planned. We have a total of an hour to speak, so there is some time for additional public comments.

We will try to accommodate as many in the public who want to speak as possible, subject to time. We may ask people to shorten their
remarks somewhat if we get a large demand today, but we'll see how it goes.

If you have not signed up but you decide you would like to speak, and if you are here today if you could just at some point in the break just notify Mr. Rios or Ms. Rhoads that you would like to speak.

If you are on the phone and decide today that you would like to speak, simply send an email to the Energy Advisory Board at the email address, energyadvisoryboard@dol.gov, right, no spaces I should say when you send that.

The agenda, I won't walk through the agenda because it's self-evident. I would point out though two sessions, we have one on Wednesday and one on Thursday, in which we discuss DOL's proposed changes to the regulations.

In smaller groups over the phone in the last two weeks we have discussed those. During those two periods, a total of three hours, we will further discuss those as a joint Board and we will, if we can, try to formulate and vote
on some comments or recommendations to DOL at
this meeting within these three days, so that's
important that you take note of that.

If you have additional proposed
changes above and beyond those that have already
been discussed by phone, please let me know some
time in the next day or so so we can just plan
accordingly in terms of our discussion.

I forgot to mention, I think it's
important to say to the people in the room, among
the Board Members, also, the public, Department
of Labor, and those on the phone, I think why
many of us have volunteered to serve on this
Board, one, is we understand how important it is
to people, the Compensation Program, that there
are over a half million DOE workers, the majority
of whom are probably still alive, many of whom
were sick and who were unknowingly exposed to
toxic materials, and this program is about
providing them with some measure of justice.

And, secondly, the is, the Part E of
the program. It's an incredible -- I think it's
just an incredibly challenging task. I was thinking about this, in terms of workers' compensation to take a whole spectrum of occupational diseases and a very large number of exposures, thousands of exposures at DOE sites, and try to make those connections and then provide people with answers about compensation.

I can't think of another compensation program which is tasked with that. Now the Black Lung is very specific to one industry, essentially one disease.

World Trade Center is a limited number of conditions and it's one exposure, World Trade Center dust. In this program we have literally thousands of exposures and many, many different diseases.

So this is a challenging task and our hope is that we can contribute to improve what's going on in that program.

So that is it, let me just then turn it over to our first speaker of the day, who is Mr. Joseph Plick, who is the Department's Counsel
on FACA, the Federal Advisory Committee Act. So,
Mr. Plick?

MR. PLICK: Good morning. Hello, everybody. So my role here today is just to walk you through what the Federal Advisory Committee Act requires, talk a little bit about what's expected of you as committee members.

Please feel free to ask any questions as I go through this briefing. We want to make sure that we get the committee off to a good start and get you working right away.

And, Tony, feel free to jump in if you have anything to add about this particular committee. I know you are usually shy about things like that.

So I want to start with a little bit of purpose and background for the law. When Congress passed it, which has been quite a while ago now because it was passed in the '70s, Congress was concerned not that agencies were getting advice from outsiders, but that there wasn't any sunshine on it, so the public didn't
know who they were going to and what kind of advice they were getting.

So they created this system, this law, to try and shed sunshine on it to control a little bit about how these committees were operating and being formed, both in terms of cost controls because one of the things they didn't know was how much agencies were spending on committees, but also just making sure that the public was aware of what was going on.

MR. RIOS: Joe, can I interrupt you for a second?

MR. PLICK: Sure.

MR. RIOS: The closed captioner is having a hard time hearing you.

MR. PLICK: Okay. I'll try and pull this a little closer.

MR. RIOS: Yes, thank you.

MR. PLICK: See if that's any better.

So FACA governs the establishment, operation, and termination of committees that are established to give advice and/or recommendations to the
Executive Branch.

Committees are supposed to provide relevant advice, and basically what that means is that your advice should be done in accordance with whatever your authorization is, in this case there is a statute that created this committee that tasked you with looking at certain things and making sure, also, that you work with the agency so that there are things the agency can act on.

It obviously makes no sense to make a recommendation that just isn't in the agency's power to fulfill. It requires you or wants you to act promptly, of course.

There has been a history, not really here at the Labor Department, of committees over time that met but never really did anything, they just were around for years.

And then as I mentioned before there needs to be accountability through cost controls and recordkeeping requirements. And, lastly, again, to just point this out one more time,
Congress and the public want to be kept informed about what's going on with committees, so the process is transparent.

So the requirements of the Act, first of all a committee has to be established by statute, like this one is. It can be established by a presidential directive.

Some committees are not specifically established by statute, but rather just authorized, so agencies have the authorization to create committees and agency heads can also create committees when they determine there is a need and can justify it.

Committees have to be chartered so there is a charter. The general services administration leads the government's FACA effort. I'm not quite sure why, you know, you think of GSA you think of contracts and things like that.

I think they missed the meeting in which the assignments were being handed out so they got this one, and so they have regulations
that apply to all agencies who have committees.

Membership on committees by statute is required to be balanced, and FACA talks about balance in terms of points of view and functions to be performed.

In addition, as in this case, there can be statutory requirements that sort of help establish what that balance is and in your statute it set categories of members.

Meetings are generally open to the public, as this one is. Detailed minutes are being kept. Tony, I don't know, are you also transcribing this one, Tony?

MR. RIOS: Yes. I went over that earlier, yes.

MR. PLICK: Okay, yes. But the transcript doesn't serve the requirement of minutes.

GSA actually used to let agencies say well, we're just transcribing or recording the meeting and that counts for our requirement to keep minutes, and there were a lot of complaints
because people didn't want to have to wade
through three days of transcripts to figure out
what was going on at a meeting.

The minutes are a concise way of
recording what happens and then if somebody wants
to go listen to the transcript and see what
specifically happened they can.

Members of the public are permitted to
file written statements with the committee before
within a reasonable time and time permitting, and
this is, you guys have your own procedures here,
but there is no requirement in the FACA that the
public be allowed to speak at meetings.
Obviously, I think you guys will allow that and
that's fine.

The chair has to certify the minutes
within 90 days. And then we ask that because the
meetings are public we really ask that you don't
discuss substantive matters about the committee
when you are all here outside the meeting, that's
what the meeting is for, so that's what we want.

I know you already have broken up into
subgroups and that they operate under different rules. And also so you know the statute itself does not actually have an enforcement mechanism in it, and so what's happened over the years is the courts have fashioned essentially injunctive relief.

So basically the way it works is if an agency is attempting to implement a recommendation from a committee and someone thinks there was a violation of FACA they have to go into court and enjoin the agency from acting on that recommendation.

It's kind of what I call a nuclear option because it's the same option whether it was a process foul, something like not adequate meeting notice, you know, they missed the Federal Register by a day, or some other larger issue involving balance or something like that, the remedy is the same.

And so that's why there are a lot of rules and sometimes it can be a little bit frustrating, but we want to follow them because
obviously we don't want the work that you do, the recommendations that you provide, to be tripped up because of some procedural issue.

We want to make sure that the work you do here is valuable, is useful, and can be used by the agency.

The other thing that we ask is if any of you members are approached by the media that you let the Chair and the DFO know and they can work with you on responding. Any questions on any of that so far?

(No audible response.)

MR. PLICK: All right. Committees, this one, well it's got a statutory time limit, but the charter has to be renewed every two years. In the absence of a charter requirement, or a statutory requirement, committees actually have to be renewed every two years.

Okay, agency responsibilities, there are two statutorily designated positions under the Federal Advisory Committee Act. One, Tony, who will talk about it in just a minute, who you
deal with on a regular basis, the other is the committee management officer, which is an official with the Department who controls, sort of oversees FACA throughout an agency.

Then with respect to the designated federal official there is certain specific duties that he has. He has to approve and can call meetings, he has to approve the agenda, he has to attend, he has to be here.

He also has the power, and I have never seen this exercised here, I don't anticipate it will be, but he can adjourn a meeting when he determines it's in the public interest.

It rarely happens. It's if a committee really goes off topic on something and they are discussing things that have nothing to do with, you know, what they are tasked with doing.

Theoretically a DFO can chair a meeting, but, obviously, we have a chair here. He is the one who gets to maintain with his staff
all the records on costs and membership and
things like that, records for public
availability.

He ensures efficient operations, and
they have been doing a great job of that, so I
know there has been a lot of work going on here,
and he has to provide the committee reports to
the committee management officer, ultimately
reports of FACA committees actually are sent to
the Library of Congress.

And there is a lot of reporting
because it is a public committee. GSA maintains
a database, there is a lot of information up
there on committees, charters, balance plans,
membership lists, the type of committee, things
like that.

GAO has been interested in FACA and
has done some auditing, although they are not
looking at anything right now, but I will come
back to that in a second.

The Agency also sort of set, within
the confines of the statutory authority the
agency sets the objectives. You know, again, like I said, it doesn't make any sense for a committee to be making recommendations the committee can't act on.

And on the other hand the advice of the committee is supposed to be independent advice and it needs to be a collaborative effort between the DFO and the chair and the committee working on these and making sure, you know, that you have priorities and objectives and things like that within those confines, but that's something that the agency does have the authority to do.

Questions on any of this? Tony, anything to add?

MR. RIOS: No, not yet.

MR. PLICK: Okay. I am sure you will.

I'm going to mention closed meetings, generally, of course FACA committee meetings are open to the public.

There are ways to close meetings. I don't anticipate that this committee would need
to close a meeting. Generally the reasons track
the rationale for exemptions in the Freedom of
Information Act.

So, for example, you can close the
meeting if you are discussing matters of national
security or classified information, if you were
to have witnesses possibly who are coming in and
talking to you about proprietary information, or
personal or personnel information.

So if you had witnesses who were
coming in to talk about medical conditions that
they might not want to talk about publicly there
would be a mechanism to close the meeting, but it
requires approval by the agency head, it requires
legal review, and it requires 30 days' notice in
the Federal Register.

All right, subcommittees. The FACA
allows subcommittees, as you know, you guys have
already organized into subcommittees. They don't
currently have to follow the same openness rule.
Subcommittees are not required to
provide a notice in the Federal Register and meet
publicly. It's very, very important that the work of the subcommittee comes back to the full committee for deliberation.

If a subcommittee is seen to be reporting directly to the agency in effect it becomes a separate FACA committee subject to all the rules of balance and notice and open meetings.

So it's very important that the subcommittee work comes back to the full committee and that you review it and deliberate on it, and basically they are supposed to make recommendations to you. And, again, we have approved the establishment of subcommittees for this committee.

There are a couple of other activities that don't have to take place in public meetings, prep work, which is a little bit, it sounds a lot like a subcommittee, but it's not quite the same thing.

If instead of subcommittees you were just to task one or two of your members to go
write a draft for the next meeting you wouldn't necessarily be calling it a subcommittee, you would just be a writing group, and they could go off and do that and have exchanges and, you know, bring the work back to the committee and that wouldn't have to all be done in the public.

And, similarly, administrative matters don't have to be conducted in a public meeting. So, you know, if you are setting rules, you know, talking about hotels and, you know, where to go to lunch, things like that, you don't have to do that in a public meeting.

Talking about public meetings a little bit, and I think we've talked about this maybe a little bit before, basically you need to be careful when you are doing email exchanges.

I understand you guys have a procedure, so that I think everything is going to funnel through Tony, because, again, you know, in the modern era starting to cc everybody could quickly become something that looks like a meeting, and so we want to avoid that.
Let's see. Public availability of records, a key component of FACA as I have been saying is transparency, so Section 10(b) of the Act generally says that the records, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents made available to or prepared for or by a committee are made available for public inspection.

The public does not have to file a FOIA request to get those. It's so the public can follow along and see what you are doing.

The provision is subject to FOIA, but the courts have said that that's really limited to any information that might otherwise be exempt, that the agency is sharing with the committee so it can do its work.

So if the agency is providing you with drafts of things they would still be protected by the delivery of process privilege, for example.

Again, the work of subcommittees, that's not subject to FACA, it's not subject to these open record requirements. So if a
subcommittee is drafting records, you know, a recommendation, all of that work product is not subject to the open record requirement but what they bring back really is.

And then I just want to mention briefly so you know and then I'm going to open it up to questions. There are FACA amendments that have passed the House that have been referred to the Senate.

A couple of things, one, they may alter, I have seen some versions, I don't think the current version has this, but there are versions that wouldn't make the subcommittees subject to the same requirements as a parent committee, in other words the open meeting requirements.

There also -- Well it will impact you because of how you are placed on the committee and you will be getting the ethics briefing later, there may be more information required about members and about the agency's process for identifying and selecting the members and the
reasons they were selected.

And, you know, sometimes, and, again, you'll get more about this in your ethics briefing, conflicts can arise and you deal with the ethics people about getting a waiver or, you know, recusing yourself from part of the consideration, and there will be more reporting requirements on the agency with respect to conflicts of interest.

So that's a lot of what I have to say. Questions, Tony, things to add at this point?

MR. RIOS: No. I would just, since you were talking about FOIA and making things available contemporaneously to the public, it's my position and my desire that as a DFO we are going to be posting anything that we make available to the committee on the website as we do it or as soon as it is possible to do it.

MR. PLICK: Right.

MR. RIOS: In fact, you were talking about some subcommittee discussions that we already had and all the materials that we
provided to the Board have been published on the website.

MR. PLICK: Great.

MR. RIOS: And I intend to do that moving forward that way if there is, you know, that way it's entirely transparent and clear to everybody of what's going on and there is no need for many FOIA.

MR. PLICK: Good, perfect. Questions from the Board?

CHAIR MARKOWITZ: I just have a comment, it's not really a question. You referred to some of the work that we have done in preparation for today's meeting through formation of subcommittees.

Just to clarify, we had temporary committees, or subcommittees, that merely for the purpose of logistic reasons of being able to get people on the phone to discuss some of the proposed rule changes, those are not permanent committees, those will not be carried forward once that task is done today, so just to be clear
on that front.

MR. PLICK: Yes, and that's perfectly appropriate. I mean as you move through the work that you are doing, you know, you've got, what, I think four sort of topics that you are supposed to talk about, it makes sense that you may well, you know, shift your subcommittees as the work proceeds and you discover different issues that need to be explored, I think that's fine.

Clearly, these were done, obviously, for a very specific purpose. Other questions, comments? Yes?

MEMBER GRIFFON: I was just wondering if there was any quorum requirements for the Board and how do we -- I mean I was under the impression that we could have people meet or talk over lunch as long as we didn't violate quorum rules, but that may not apply for this?

MR. PLICK: Yes, I think it's a better idea that you really don't.

MEMBER GRIFFON: Yes.

MR. PLICK: Some of it will happen.
Quorum for the meetings, first of all I would say
we really want everybody here and to participate
and, obviously, the work of the Board, the
product is going to be better the more people are
here.

MEMBER GRIFFON: Yes.

MR. PLICK: Technically quorum I think
is 50 percent plus one.

MEMBER GRIFFON: Right.

MR. PLICK: But we strive to have 100
percent attendance whenever we can.

MEMBER GRIFFON: I don't think it's
even mentioned in the FACA, I was just looking
for --

MR. PLICK: It's not, yes.

MEMBER GRIFFON: Yes.

MR. PLICK: It's not.

MEMBER GRIFFON: Anyway. And then the
other question, and this came up in our planning
call, and I spoke incorrectly, but it is the case
on the other, the sister Board, and that's under
HHS, so they have their own agency rules --
MR. PLICK: Right.

MEMBER GRIFFON: -- but they have decided to have all the subcommittees and work groups public and transcribed.

MR. PLICK: Yes. And, obviously, there is nothing wrong with that.

MEMBER GRIFFON: Right. I mean I think it's something --

MR. PLICK: Yes. No, it's definitely --

MEMBER GRIFFON: Yes.

MR. PLICK: I would say it's a best practice, it's just it's not a central requirement.

MEMBER GRIFFON: Right. It's not a requirement, right.

MR. PLICK: It may become one, like I said, the amendments may require that.

MEMBER GRIFFON: Yes.

MR. PLICK: And, you know, it depends on what the Board is working on. I mean sometimes your subcommittees are going out and
doing fact finding and they may be visiting sites
or things like that where it might not
necessarily be practical to have it as a public
meeting.

On the other hand, if you are sitting
around in a small group in a room, you know,
that's fine. Other questions, comments? Sure.

MEMBER GRIFFON: One more comment. I
think as we go forward you might want to talk to
the NIOSH folks on this one, because it may come
up, I'm not sure if it will or not, but the
question of classified data.

There is certainly some classified
toxic and radiological exposures and how, you
know, we can't talk about those in a public
meeting and, you know, how do we deal with that,
right.

MR. PLICK: Right. And that would be,
you know, one of the reasons to close it, because
it's classified, so that falls under the national
security exception for classifying.

There are provisions in the statute
that created this Board for the Department of Energy to actually, you know, handle getting you folks clearances if that's necessary in order for you to do your work, so that can happen.

MR. RIOS: Yes, and the statute addresses that issue when it created the Board.

MR. PLICK: Yes.

MR. RIOS: Since we have not had the need right now to issue clearances or anything like that we're going to I guess cross that bridge when we get to it.

I think I had a couple of other Board Members ask about the same issue, too.

MR. PLICK: Yes. I mean obviously getting clearances is not cheap, it does cost money, but it's the Department of Energy who I think has to handle that. Other questions, comments?

CHAIR MARKOWITZ: Just a question on our subcommittee work.

MR. PLICK: Sure.

CHAIR MARKOWITZ: So the subcommittee
work does not have to be an open process and
could you just clarify what the boundary is
between the subcommittee work and what the full
Board work is in terms of the openness?

At what point does the subcommittee
work merge into the overall Board work such that
it would need to become open?

MR. PLICK: I think once -- At the
point in which the subcommittee is reporting back
to the Board.

As long as the subcommittee is off
doing its own thing and doing whatever it was
tasked with by the Board then it isn't subject to
those same restrictions, but whatever it brings
back is going to be public.

The other thing you want to be a
little careful of, too, and I mentioned this with
the email, there was another committee here that
was having some issues a few years ago, its
subcommittees essentially became committees of
the whole.

So they were subcommittees but
everybody was showing up at the meetings and that became a little bit of a problem, so you really need to keep them distinct.

It doesn't mean that a subcommittee might reach out to another member of the Board because they've got a specific question and that person has some expertise and asks a question, but you want to be really careful, and, again, I think that's why the emails are pretty much flowing through Tony because he can watch that, and if people start getting cc'd and it really is a subcommittee matter and all of a sudden everybody is on it he can, you know, make sure that that doesn't cross that line.

But, otherwise, as long as they are doing their work as the subcommittee then they are fine to proceed that way without being subject to all the restrictions.

Again, you know, obviously, the extent to which you want to make all that work public is up to you.

CHAIR MARKOWITZ: Okay.
MR. RIOS: No, but since Mark raised the issue, if we have to deal with security-related matters how do we go about closing meetings and would they be the parent committee or if, for example, Dr. Markowitz designated one subcommittee to just deal with issues relating to security, how do you go about closing it?

MR. PLICK: Well the subcommittee, obviously, you just don't open it.

MR. RIOS: Right, that's not -- Yes.

MR. PLICK: That's easy, you just don't open it, and then whatever precautions you have to take because of the nature of the material you would have to work out with, you know, whoever has classified the material to make sure it's done properly.

Again, with respect to the full committee, OWCP would have to make a request, the Secretary approves it and the Solicitor of Labor reviews it and it has to be published in the Federal Register 30 days in advance as opposed to the 15 days for notice of an open meeting.
There are reporting requirements,

obviously you don't report the minutes, but you
have to essentially tell the public what was
discussed or whatever to the extent that you can,
and those are the procedures for doing that.

So it does require some advanced
thinking about it and, obviously, if it comes to
that point we'll be talking, Tony.

MR. RIOS: Okay.

MR. PLICK: It doesn't happen at
Labor, the Department of Labor does not have
original classification authority, so we don't
actually deal with our own classified material.

We do have one board that operates
under the Trade Act with the U.S. Trade
Representative and all their, their meetings are
closed not only under FACA, but they have a
separate statutory provision under the Trade Act
that closes them because they are dealing with
matters of trade negotiation policy. Yes?

MEMBER CASSANO: I don't mean to
belabor the point --
MR. PLICK: No, no.

MEMBER CASSANO: -- but one more
question on the classified and subcommittee.

MR. PLICK: Sure.

MEMBER CASSANO: If it were one
subcommittee that looked at classified
information and they came up with
recommendations, those recommendations obviously
would not be classified, so if all of that goes
to the Board or just the recommendations go to
the Board at which point the Board can air those
publicly or not, how does that work?

MR. PLICK: Yes. Well I think your
initial assumption that the recommendations
wouldn't be classified you'd have to look at
that.

They might be, you know, it just
depends on what the recommendations are. If they
are not then obviously the Board can consider
those.

It might be possible that while the
recommendations themselves, the draft
recommendations, wouldn't be classified, the Board itself as a whole might still need to meet in a closed session to review the classified material that was the basis for that. So we just have to work that out I mean in just however it would happen.

CHAIR MARKOWITZ: I have one last question.

MR. PLICK: Okay.

CHAIR MARKOWITZ: Is a telephone meeting of the Board treated the same as an in-person meeting in terms of the notice requirements and everything?

MR. PLICK: Yes.

CHAIR MARKOWITZ: Thank you.

MR. PLICK: Yes. You can certainly use, take advantage of technology to hold your meetings. I mean it makes it easier for members to attend when they can't actually make it to Washington if they are not here. Other things?

MR. RIOS: Yes. So earlier today a member who is sitting out in the public asked me,
so there is the statute that created the Board
and then there is the charter.

MR. PLICK: Right.

MR. RIOS: In the charter there is a
section that talks about the estimated number and
frequency of meetings.

MR. PLICK: Yes.

MR. RIOS: The Board, I think the goal
was to stand up this Board last April, and so the
member of the public asked if you didn't hold two
meetings last year and this year you plan on
having one or two meetings since you lost that
one year are you going to try and, are you
required to have two additional meetings the year
that you are fully seated?

MR. PLICK: Yes, because of the
statute -- The FACA says nothing about the number
of meetings.

MR. RIOS: Right.

MR. PLICK: It's up to the agency. So
because the statute I don't believe said anything
about the number of meetings either, it just sat
MR. RIOS: It's in the charter, right.

MR. PLICK: Yes, it's just in the charter. It's just a charter requirement. I think -- So I don't think there is any legal requirement to make those up.

I think basically, obviously, you'll meet hopefully as many times as you need to do the work you need to do. I can't remember exactly what the charter says, I think it's at least a certain number of times.

MR. RIOS: It says a minimum of two, twice per year or something.

MR. PLICK: Yes. Yes, and so if you need to meet three, you know, to get the work done, particularly as you get further along you may decide that you need more meetings and, you know, then you would do that.

But, yes, there is no requirement.

There obviously were a lot of issues with getting the Board stood up, so --

MR. RIOS: Okay.
MR. PLICK: Okay.

MR. RIOS: Well, thank you, Joe.

MR. PLICK: Sure.

MR. RIOS: If there is no further questions?

(No audible response.)

MR. PLICK: Good luck, everybody.

MR. RIOS: Thank you. Okay, and our next speaker for the day is a gentleman who is very excited about addressing the Board.

When Dr. Markowitz and I agreed on today's date as the meeting he found out and specifically instructed, or ordered me, to make sure that this meeting was on his calendar, and I'm glad that he did.

So it is my distinct pleasure to welcome the Deputy Secretary of Labor, Mr. Christopher Lu.

DEPUTY SECRETARY LU: Thank you, Tony, for having me. This actually worked out perfect timing wise.

Well good morning, everyone, on behalf
of the Secretary who expresses his regrets that
he could not be here, I wanted to welcome all of
you, and I look around behind me as well, to the
inaugural meeting of this Advisory Board.

I especially want to thank the Board
Members for your service and for traveling to
Washington for this inaugural meeting.

As you all know we have had a lot of
nominations for the members of this committee,
and I had a chance to look at all of your
qualifications and have been suitably impressed
by what you have accomplished and your commitment
to this important issue.

And as I said I want to thank the
members of the public who are not only here in
person but who are watching this remotely or
participating remotely.

You know, this issues one that I have
been aware of and I have been involved with since
my time on Capitol Hill. I had the chance to
work on this when I was in the U.S. Senate and
have spent time on this during my two years at
the Department of Labor, and the Secretary and I recognize that these workers have given so much for this country and they have made significant sacrifices.

They, as a result of their sacrifices, have suffered from disabling injuries and deaths as well and we owe them, we owe them to do better, and it's important to get the feedback from all of you about how we can do better on this.

Too often these workers were neither adequately protected from nor or informed of the substances to which they were exposed, and now it's the job of the Department of Labor to provide compensation and medical benefits to those who are eligible and who have become ill as a result of their employment.

And so because we want to make sure that the benefits are rewarded whenever possible and as importantly as the law allows, we look forward to hearing from all of you to learning from your experience, your wisdom, your thoughts
about how we could better on the process.

And I know that we have an ambitious agenda, and so I don't want to take up too much time, but I am interested in some of the topics, many of the topics that you will be covering.

I know that you will be looking at our SEM database and additional ways that it can be strengthened, the weighing of medical evidence by our claims staff, evidence required for Part B lung conditions, like beryllium, and the reports of the programs industrial hygienists and medical experts, and we look forward to working with you and getting your input on these issues and I know that you will also be hearing from other experts from some of our colleague agencies, the Department of Energy, NIOSH, and the Ombudsman here at the Department of Labor.

And so I also know that we are, you all are going to be spending time over the next day or so discussing the proposed new regulations for the energy program, and this is important, we need to get this done.
We extended the comment period because we wanted to get all of your opinions, and so I know that work has gone into this in the subcommittee level, and so we look forward to the participation and your comments about how these regulations can be improved.

So I really just am here to thank you and express my support on behalf of the Secretary. I think the advisory committees that we have at the Department are some of our key tools for seeking input from stakeholders.

The Secretary often says, well I'll say this on behalf of the Secretary myself, none of us have any, neither of us any original ideas, and so we rely on folks on the outside to bring their wisdom to the work that we do here, and we all share the same common goal, so I want to thank you for being here.

I am told -- This is my favorite part, I have certificates to hand to all of you. My staff often says are you okay handing things out or cutting ribbon and I said I can cut ribbon
like no one else.

I can cut ribbon and I hand out
certificates like no -- This is the easiest part
about my job, so let me -- How are we doing this?

MR. RIOS: It's up to you if you want
to stand up or sit down.

DEPUTY SECRETARY LU: Yes, how do we
-- Oh, I was going to say it would make sense if
we had a photographer, but we don't have a
photographer do we?

(No audible response.)

DEPUTY SECRETARY LU: Well it would
have been a good thing for us to figure out, but
we'll just give you the certificate. So why
don't I come up here and --

PARTICIPANT: I'll hand them to you.

DEPUTY SECRETARY LU: Oh, actually,
that's perfect. John Dement. Why don't we come
-- How do we do this, actually?

PARTICIPANT: Do you want them to come
up here?

DEPUTY SECRETARY LU: Yes, why don't
we come up here. We'll just -- We had everything perfectly choreographed except for this part actually. John, thank you.

MEMBER DEMENT: Thank you, sir.

DEPUTY SECRETARY LU: Leslie Boden.

Thank you for your service.

MEMBER BODEN: Sure, thank you.

DEPUTY SECRETARY LU: Rosemary, is it Sokas?

MEMBER SOKAS: Sokas.

DEPUTY SECRETARY LU: Sokas. I appreciate it. Thank you for your service. Mark Griffon. Mark, thank you. Kenneth Silver. We didn't do this in alphabetical order or otherwise people could've figured out -- We'll try to keep you all on your toes a little bit. Thank you.

George Friedman-Jimenez.

MR. RIOS: Oh, George is not here yet.

DEPUTY SECRETARY LU: Okay. Laura Welch. Thank you.

MEMBER WELCH: Thank you.

DEPUTY SECRETARY LU: Carrie, is it
Redlich?

MEMBER REDLICH: Yes.

DEPUTY SECRETARY LU: Thanks, Carrie.

Victoria Cassano.

MEMBER CASSANO: Nice meeting you.

DEPUTY SECRETARY LU: Thank you.

Duronda Pope.

MEMBER POPE: Thank you.

DEPUTY SECRETARY LU: Kirk, is it

Domina?

MEMBER DOMINA: Domina.

DEPUTY SECRETARY LU: Domina. Kirk, thank you.

MEMBER DOMINA: Thank you, sir.

DEPUTY SECRETARY LU: Garry Whitley.

Garry or Jerry?

MEMBER WHITLEY: Garry.

DEPUTY SECRETARY LU: Garry, thank you. James Turner. Sir, thanks. Faye Vlieger, did I get that?

MEMBER VLIEGER: It's Vlieger.

DEPUTY SECRETARY LU: Vlieger.
MEMBER VLIEGER: Thank you very much, sir.

DEPUTY SECRETARY LU: I'm actually helping everyone out so everyone knows their -- And then most importantly our Chairman, Steven Markowitz. Thank you for taking this on.

CHAIR MARKOWITZ: Thank you, sir.

DEPUTY SECRETARY LU: And that's it.

I'll turn it back to your regularly scheduled business.

MR. RIOS: All right, thank you.

(Applause.)

MR. RIOS: Thank you, sir.

CHAIR MARKOWITZ: So now that we, Board Members, now that we have our certificates we can go home.

(Laughter.)

CHAIR MARKOWITZ: We're going to take a break for 15 minutes and we'll reassemble at ten of ten.

(Whereupon, the above-entitled matter went off the record at 9:36 a.m. and resumed at
9:56 a.m.)

CHAIR MARKOWITZ: Okay, we will reconvene. Let me remind the board members that when you speak pull the mic close to you, okay. Because apparently some of the transmission is problematic. So just pull the mic close to you.

Next, I would like to introduce Mr. Robert Sadler, who's the Ethics Counsel of the Department of Labor, who will discuss the ethics rules that govern our work.

MR. SADLER: Good morning, everyone. As Chairman Markowitz said, I'm the Counsel for Ethics here at the Department. And I guess I want to lower our expectations right away. There will be no certificates. Very few people in the Department have earned those. So next speaker?

(Laughter.)

MR. SADLER: All right. Now I know what I have to deal with. Okay. So I know you got a briefing this morning from one of my colleagues, Joe Plick, on the application of the Federal Advisory Committee Act.
And part of the explanation too that I will add is that you serve on the committee as what we call special government employees in the government. And it's, interestingly enough, just a little background. It's a provision that appears in the criminal code of the United States code. So no stigma is involved with that.

But for some reason, when they amended the statute this is where they put it. It's really more of a personnel type law. But it's a provision that's used by the government, and it simply means a person who serves as an employee for less than 130 days in a 365 period. And generally that's the definition.

But it's the provision that the United States government uses to bring experts in or consultants to advise the government on aspects of its work which is why we have this particular committee.

So I'm here this morning, as Dr. Markowitz said, to sort of explain to you provisions of the ethics rules. These are the
standards of conduct for executive branch employees that apply to you as committee members.

    Now, I should tell you not all the rules apply. And some of them apply in a, for lack of a better word, a lighter way than they do on regular government employees. But these are rules that are essentially designed to ensure public confidence in the integrity of the work that employees do. And some of them do apply.

    So I'll start off with the worst news. I think many of you have been, well, I guess I should say you should have received a handout in advance. It was a pamphlet called Ethics for SGEs. And I think it's not in your notebook, but I understand that it was sent to your electronically and that you may have had a chance to look at that. So the bad news first.

    I think all of you may have been informed that you are subject to financial disclosure. There is a form called the OGE Form 450. It's called the Confidential Financial Disclosure Form. I do want to emphasize that
it's confidential. I think the only two people
that will ever look at these forms are Tony, Mr.
Rios, and myself.

It is a tool that's used in the
government to, again, ensure the public
confidence in the integrity of governmental
action and decision making. We look at this tool
in a way to determine whether or not there's
potential conflicts of interest that might be
presented by an employee's work, depending on
what they may be doing.

My office is able to help you with
those. I know there may be questions. The form
has been simplified over time, and many things
that used to have to be reported are no longer
required to be reported.

Those are explained pretty well, I
think, in the instructions. And there are some
examples that go along with that form. But if
you have questions, my office would be glad to
answer those. And I guess you can funnel those
questions to Tony. And Tony can contact me, and
we can deal with those when they come up. Or you
can contact me directly.

I think if you have that handout, one
of the things that appears in that handout, on
the very front cover, is my telephone number so
that you'll be able to contact me.

All right. So the worst news is
behind us. So I'm going to be explaining some of
the rules that apply to federal employees. And
in some instances, I'm going to explain rules
that may never come up during the committee's
work. But, you know, I think you should be aware
of the rules that do apply. And we can talk
generally about how they may not apply.

Now, my understanding is the
committee's work is really going to be looking at
and focusing on policy related issues. You're
going to be looking at the regulations. I'm not
sure if you're going to be discussing
legislation. But this is one of the large
dichotomies in the ethics realm.

So we look at what we call particular
matters. Those could be things like cases, or investigations, or audits where the Department is looking at a particular company or a particular individual who may have filed claims for benefits before the Department of Labor.

And then we have the other side, the items that I just mentioned, sort of regulations, policy, legislation that is sort of the broader, general matters that we deal with. And my understanding is the committee is really going to be looking at that, those types of issues with respect to some of the aspects of the program.

And you're really not going to be looking at particular claims or particular cases. But if those should come up, you should be aware that there's a criminal conflict of interest statute that applies to federal employees that says they may not work on matters that could affect their personal financial interests.

Now, the interests that we're normally talking about are stock holdings that the individual may have. And for the purposes of
this statute, spouse, minor children, or the
interests of those individuals are imputed to
federal employees. So they're also responsible
for those.

So if you are looking at a particular
issue, or if an employee was looking at a
particular issue here at the Department, and it
could potentially affect that person's personal
financial interest, they're generally required to
disqualify themselves from working on that.

My office is the office that generally
people call to find out whether or not that's
required. But I don't think that that is an
issue that's going to come up. But I wanted you
to be aware of it.

The other sort of related matter is a
provision in the ethics rules that we call sort
of the rule regarding appearances of bias. This
is not a criminal statute but just an ethics rule
that really focuses on relationships that people
may have.

So if an employee recognizes that they
are dealing with a matter or working on a matter
in which they have a personal relationship with
an individual, and from a reasonable person
standard, you may have heard of this standard if
you've watched any of the legal shows or if you
have any legal background, there's this imaginary
person that they posit who's reasonable.

I keep advocating that we should
change this to the unreasonable person test,
because that's Washington environment these days.
But, so there is this reasonable person test that
we look at.

And this is if someone, you know, was
aware of all the facts, and they knew that you
had a relationship with an individual in a matter
you were discussing that might affect your
ability to remain impartial, then again the
remedy for this is to disqualify yourself.

Now again, I don't think you're going
to be looking at particular cases, so this is
unlikely to come up. But I wanted you to be
aware of it.
There is a provision concerning outside work. Generally you can't represent another person, whether or not you receive compensation before a federal agency or a federal court, if it's related to a matter that you've worked on as part, as an SGE, as part of your work on the committee.

So it doesn't affect other types of work that you may be dealing with or you may be representing persons before the Department. But if it's a matter that you discuss within the committee, you may fall under that particular provision.

Representation in this aspect covers oral, written, electronic communications made with the intent to influence a federal official with respect to that particular issue. If that comes up, people can always consult with my office and get advice or, again, take it to Tony. And Tony will be glad to convey those questions to me.

Now, there are some other standards of
conduct that you should be aware of that should
guide your conduct as an SGE when you're working
on issues related to the committee work.

One of them is not to ask for or
accept improper gifts that may come from OWCP
stakeholders or from persons who have interests
in matters that are before this particular
committee.

I often tell people you should use the
but for test, but for the fact that you're a
member of this committee, would you be receiving
this particular gift? It's usually a good test.
It distinguishes between those types of gifts
which you may receive from personal friends or
from family members. And those can certainly
continue.

But if someone is giving you a gift
because of your membership on the committee, such
as a golf trip to Scotland and an expensive
dinner, those are things you would like to try to
avoid. Because those can create appearance
issues, as they did, you may be aware.
Again, I'm not sure if this is going
to come up, but you're not permitted, under these
ethics rules, to disclose non-public, or
confidential, or protected information that you
may be privy to as part of your committee.

If there's any release of information,
you should talk to the Chair, and make sure you
consult with Tony, and make sure that this is
comfortable with the agency and/or my office, if
you would like to talk to us.

You also should not be accepting
compensation for speaking or writing during your
tenure that relates to work that you may be
specifically focusing on here as part of the
committee work.

You may not serve as an expert witness
in a judicial or administrative proceeding if
you've participated as an SGE in that matter as a
part of the proceedings of this particular
committee. I doubt if that's going to come up,

but I just wanted you to be aware of it.

Finally, post-employment, just so
you're aware, when you terminate your service as an SGE with the committee, there is a provision that prevents you from making communications on behalf of third parties with respect to the issues that you worked on here.

Now, it only applies to particular matters. So again, it would be cases, or investigations, or claims. And I don't think that's going to be part of your discussion. So I don't think that this particular provision on the post-employment side is going to come down on you as it normally would with respect to other employees here in the building.

And finally, I think we're all aware that this is a Presidential election year. There is a lot of activity going on. Most employees are subject to the Hatch Act which is a, it's a statute that limits the types of activities that federal employees can participate in with respect to partisan political activity.

So I just want to remind you, when you're serving or acting as a special government
employee, this provision applies to you,
especially in the building. You should not be
conducting any type of partisan political
activity in the building or using any type of
government resources.

Otherwise, when you're not serving or
acting on behalf of the committee or a
subcommittee, then you wouldn't have to worry
about the particular restrictions under this act.

And that's my presentation unless
there are questions. Yes?

MEMBER WELCH: So on the last point,
I was planning to leave here and go to the polls.

MR. SADLER: Yes.

MEMBER WELCH: It's election today in
Maryland.

MR. SADLER: Yes, yes.

Constitutionally.

MEMBER WELCH: I'm outside of the
building?

MR. SADLER: Absolutely.

MEMBER WELCH: I can hand out stuff
there?

MR. SADLER: Absolutely.

Constitutionally you're allowed to vote.

(Laughter.)

MEMBER WELCH: Well, no, no, no. I've already voted. I was going to be handing out literature. It is the most expensive Congressional race in the whole country --

MR. SADLER: Yes, yes. That's right.

I heard that on NPR this morning.

MEMBER WELCH: But anyway, so now that I'm here, the Hatch Act would prevent me from handing out ---

MR. SADLER: No. When you leave your duties here, when you depart from the committee meetings, you can conduct partisan political activities outside of the building.

MEMBER WELCH: Okay.

MR. SADLER: That's right. Good question, good question.

MEMBER WELCH: Well, most federal employees interpret it as, like, you can never --
MR. SADLER: Oh, I know, they do.

MEMBER WELCH: -- you can never even breathe the name of a candidate.

MR. SADLER: And usually they, usually they're over interpreting too.

MEMBER WELCH: Yes.

MR. SADLER: Under the statute, there are many things that we can now do as federal employees.

MEMBER WELCH: Thanks.

MR. SADLER: Good, good question.

Great. Thank you all very much. And I wish you success in your work.

CHAIR MARKOWITZ: No, no, thank you.

No other questions, comments?

(No audible response.)

CHAIR MARKOWITZ: Okay, thank you very much, Mr. Sadler. Great presentation.

MR. RIOS: We also wanted a brief description from Tom Giblin, the associate solicitor who handles the energy program, to talk
about the conflict of interest provision in the energy statute.

MR. GIBLIN: Okay. You guys are probably already familiar with this provision. It's both narrow and broad. It's narrow as to what it applies to, because it only involves interactions with medical providers for this program. But it's broad in the context that it's any financial interest where employment or contracting with those medical providers.

It does exclude routine consumer transactions. If you're a claimant, and you're seeing a doctor that we're paying for, that doesn't create the conflict.

So I know everyone's seen it, and had signed a statement that it doesn't apply. And we've looked at it and said okay. But if anyone has any other questions about it, I'm here. Any?

(No audible response.)

MR. GIBLIN: Okay, good.

CHAIR MARKOWITZ: Okay, thank you very much. So next I'm happy to invite and introduce
Mr. Leonard Howie, who's director of the Office
of Worker's Compensation Program here at the
Department of Labor, who will give us our charge
as a committee.

MR. HOWIE: Good morning, everyone.

I've got good news and bad news. The good news
is that I do not have a PowerPoint. I don't like
PowerPoints, and I tend not to use them which
sort of can cause problems sometimes.

Because by training I'm an attorney.

And our designated federal officer, Tony Rios,
said I had 15 minutes. So that means I have to
fill 15 minutes, right? That's what lawyers do,
they fill the time. But I'll try to keep it just
a little bit shorter today.

I'm the final speaker before you get
into the content. And this is a very exciting
moment for us, a very exciting thing that you all
are about to do. I don't know that I've ever
really had the privilege of giving an official
charge to a group. That can mean a lot of
things. It could be very bureaucratic, very
ritualistic.

But I think what I'm going to do is just a little bit weaving in a story with the charge. And the story really begins with my arrival here, because I just came new to this issue. I was appointed on February 2nd, 2015, by Secretary Perez after having served as a labor secretary for the state of Maryland and as a civil rights attorney with the U.S. Department of Education.

The first week on the job, I had the privilege of getting my charge from Deputy Secretary Chris Lu that you all just met. And one of my first meetings was on this board.

There was a series of weekly meetings that had been taking place. And my first week in the office was hearing all of the discussion that everybody was having about this board. It was really quite exciting.

In fact, when you --- and then probably two weeks after that, my very first road trip was to Denver, and did a site visit out
there with our staff, met the claims examiners
who adjudicate the claims for our energy workers,
met with our stakeholder group, ANWAG, and
attended an offsite resource information fair.

So I got to see a lot of things
firsthand, some of the pain that the former
workers were having, some of the questions that
they had of DOL and of DOE, so really immersed
from the very beginning in what was the, and what
is the energy program.

So my first six weeks or so, it was
really heavily on the energy side of the house.
And the learning curve is quite steep for this
program. It is very complicated. But it's
something that I took on readily, because it is
absolutely so critically important.

And it's important because we all
recognize why we're here. And we're here because
the American nuclear weapons workers really
sacrificed a lot over the years. Many of them
gave up their family, their careers. And
unfortunately, in many cases, they gave up their
lives for working amidst hazards that many times they did not know even existed.

So when you look at the benefit of all of that work, clearly we brought an earlier end to a major world war. And we prevented possibly future world wars from happening. But it did come at a tremendous cost, a cost that was so great that, between the President, the United States Congress, and many of you in this room, many advocates and workers who worked on behalf of trying to stand up something that would help benefit those workers who spent so much time and gave so much of themselves in this process.

You had the creation of EEOICPA, and you had, really, a mechanism that we can begin to make amends, that we can begin to compensate, that we begin to provide for the medical and healthcare needs of those workers.

But there was one catch. There is one key prerequisite that every former worker must establish in order to qualify for benefits. And as Dr. Markowitz referenced in his opening
comments, they really do have to establish that their health condition was caused by exposures to dangerous and toxic substances during the course of employment which is quite a complicated process.

There are thousands of conditions out there that staff, that employees have to deal with, have to internalize, have to process, to come to a reasonable determination. Making these determinations of causation, that really is the bread and butter, the single most important reason for our existence here at OWCP in the energy program.

We must connect the illness to the work without prejudice, without bias, without any other intervening factor that would alter how we examine each individual case that's presented to us.

Now, many of you have already, you already have a good idea of how we go about doing our work, how we make these determinations. We rely upon the scientific expertise of our
colleagues at NIOSH. We rely upon the records
maintained by the Department of Energy,
physicians, and former workers themselves. We
rely on a staff of claims examiners and
industrial hygienists to collect very detailed
information, to analyze that information, and
then to render a judgement as to what all of this
means.

This is a very heavy responsibility
that I can assure you that no one in this agency
takes lightly. We need to work with the best
science that is available. We need to ensure
that our claims examiners have access to first
class training. We need to make sure that the
industrial hygienists we work with, that that
function is carried out professionally and by
enough of them so that there aren't unacceptable
waiting periods for cases to be adjudicated.

And this really does bring us to why
I am here today. And that's the charge. And as
charges go, our charge for this advisory board is
very straightforward. It's set in statute, and
in Presidential Executive Order.

You, the Advisory Board on Toxic Substances and Worker Health are advised, the Secretary of Labor, with respect to the site exposure matrices, guidance for weighing medical evidence, evidentiary requirements related to lung disease, and how we can ensure the quality, objectivity, and consistency of the work of the industrial hygienists, staff physicians, and consulting physicians.

There's two themes that I think have been brought out already in the discussion. And I would encourage the board, as you continue your service, to keep these in mind. The first one is transparency. We heard our FACA Counsel, Joe Plick, use the word sunshine. But there's nothing more important than keeping this entire process as transparent as we possibly can.

And justice, Dr. Markowitz mentioned justice in his opening remarks. But if you were to walk around this building, you would see signs up on the walls, jobs equal justice.
This is an administration. We have a Secretary who really focuses on the justice aspect of labor, ensuring that workers are treated fairly, that they're compensated appropriately, and that when they're injured their injuries are dealt with appropriately. So we look at the Department of Labor, at this issue of workers compensation, within the energy program, though the lens of justice.

So keep those two things in mind, transparency and justice, as you move forward.

Now, it's my responsibility, as director of OWCP, to ensure that you have the support and resources that you need to carry out this responsibility. Dr. Markowitz and Tony Rios have a direct line of communication with me, if needed. And my guess is that they will tap into it whenever they need to freely.

Each of you, you've all volunteered your time, your expertise, and your passion to serve on this board. For that I thank you. And I do look forward to all the great work that you
will be doing on behalf of our energy workers.

Any questions of me? Yes?

CHAIR MARKOWITZ: Yes. Dr. Sokas.

MEMBER SOKAS: So I actually do have a question related to the definition in the Act that says that the disease or the adverse outcome is at least as likely as not to have been caused by the exposure, which is very different, I think, from some of the other experiences that people have in general, claims examiners may have in other areas of OWCP.

And so I'm just wondering how the Department communicates that to the various people implementing the program.

MR. HOWIE: Well, I'm sure that Rachel Leiton, our program head, I mean our program head for the program, will talk in detail about that. But you're talking essentially about the weighing of all of this evidence and what standards that we use.

That's square within your charge. So I encourage you to ask questions about that and
to help us think through all of the considerations that we should be thinking of when making these determinations.

CHAIR MARKOWITZ: Other questions, comments?

(No audible response.)

CHAIR MARKOWITZ: Okay, thank you very much, Mr. Howie. And the next, actually, Ms. Rachel Leiton, the director of the Division of EEOICP who will give us an overview.

And I would remind her, there are some people around the table who are reasonably familiar, and there are some people who maybe are very unfamiliar. But for all of us, we have a steep learning curve, as Mr. Howie said. And we appreciate your enlightenment.

MS. LEITON: My name is Rachel Leiton. I'm the director of this Division of Energy Occupational Illness Compensation. I've been with the OWCP, Office of Workers Compensation Programs, for 22 years.

I started out in FECA, our Federal
Compensation Program. I was there in various positions, as a claims examiner, as a hearing representative, until this program came about. In around 2001, I became the first policy chief.

And we were charged with creating policies and procedures from pretty much scraps after the statute was created, and the regulations were in process at that time. And it's been quite a challenge and a tremendous experience for me.

You know, I truly believe in the mission of this program. My first and foremost desire is to ensure that we are compensating the individuals that have been harmed because of their work at Department of Energy facilities over the course of many, many years.

And to that end, we strive to ensure that the policies that we create are, you know, in line with that mission. At the same time, there are a lot of challenges. And it's a complicated program, as many others have mentioned already today.
And so I'm actually really looking forward to having a group of people who have worked there, scientists and doctors, to help us with some of these really complicated issues.

You know, today I'm going to start out with an overview. And some of you have probably heard this overview, because it's kind of what we give to our claimant population when we're doing outreach. So I'm going to start out with that.

But we're going to have, like, five other people from my staff, we'll have our policy branch individuals walking you through more and more of the details. So first we'll start with this presentation. And then John Vance, our policy chief, is going to walk through more of the details, like, how does a claims examiner and a hearing rep actually do their job, the flow chart of how all this works.

And then we're going to go through, step through all of the four topics that you've been charged with reviewing. It does get kind of detailed. We are going to be here for questions.
You know, the question that's already been raised about causation is one of the biggest, what is the significant factor, at least as likely as not?

So throughout our presentations, just like from this one and John's first one today, but when we get into the topic areas we actually have challenges that we've faced over the years that we're going to just bring to your attention, that maybe you can help us with, for your consideration, just because we do recognize that there's a lot of areas that we could use expert guidance in.

So, you know, with that said, I will, I'll start our overview. The EEOICPA is administered by the Department of Labor. And it was passed in 2000. And initially there was a Part B which is compensation for cancers, beryllium disease, and silicosis under certain circumstances related to cancer-related irradiation.

And it was a fairly simple program at
that time. We thought, okay, well it's lump sum.

It's radiation, case goes to NIOSH. And I'll go
into all of that. But for the Department of
Labor, the case kind of would be over.

At the same time, they created Part D
which was administered by the Department of
Energy which was kind of a, I think it was
modeled after a state workers comp where they
would go to a board, a panel of physicians for a
review of their condition, whether it was related
to toxic substances. If the panel said yes, they
could take it to their state workers comp. And
the state workers comp would be obligated to pay.

Unfortunately, there were some ---
states weren't always, you know, there was no
real enforcement of that or reasons why they
would have to. So Congress, in 2004 they created
Part E. They abolished Part D, and they moved
that portion of the program from the Department
of Energy to the Department of Labor.

And that's where it started really
getting complicated with regard to what we were
charged with. And the way the statute's written, basically this, at least as likely as not, the significant factor, causation standard, and any toxic substances, as I believe Mr. Howie and others have mentioned, you know, there's lots of conditions, lots of toxic substances.

So over the years, we've been trying to find ways to actually figure out how can we help the claimants establish this exposure and establish this causation. So I'll talk a little bit more in detail about why these tools are created, how we use them as we go along.

But under both parts, we provide lump sum compensation and medical benefits to individuals who are current and former workers of the Department of Energy, their contractors, and subcontractors, who became ill as a result of their work in that facility related to toxic substance exposure, including radiation. We also will compensate survivors of those workers if they're qualified.

So the program is administered by the
Department of Labor. But we work very closely with several other agencies. We work with the Department of Energy. They help us with employment verification. They provide us with records related to the Former Worker Program and any exposure information they may have for Part E.

And then we work with the Department of Health and Human Services through NIOSH. And they do our dose reconstruction for Part B cancer claims. And then we also work with the Department of Justice.

One of the other provisions of the Act is that if an individual applied for the Radiation Compensation Act, which is administered through the Department of Justice, and they receive compensation there, it's a lump sum of $100,000. Then we will provide them with the additional $50,000 that would equalize that compensation, as it would be with Part B.

So there are two paths to adjudication under our program, as I indicated, Part B and
Part E. There are similarities in the way that we adjudicate these claims. The first, these three that are on this slide are basic paths that we take.

So under Part B and Part E, we'll look at employment first. I will go to the Department of Energy. We'll ask for records. Then we'll obtain medical evidence. Any medical evidence the claimants can provide us with, we'll start there. And then, of course, if there are survivors we'll look at that survivorship definition.

There are differences, significant differences in the actual statute in the law and the way that --- who's compensated and who isn't under which parts. So under Part B, in order for an employee to be considered a covered employee, they would have to be a DOE contractor, a subcontractor, a federal employee, an atomic weapons employee, which is defined specifically in the Act as to what that means, beryllium vendors, again, specifically defined in the Act,
and the RECA beneficiaries.

    Under Part E, we do not cover the
federal employees, the atomic weapons employees,
or the beryllium vendors. Those are only B. So
we do cover DOE contractors, and subcontractors,
and the RECA.

    The medical is also different. Under
Part B, the statute's very prescriptive about
what we cover. There's only four conditions.
And that's cancer related to radiation, chronic
beryllium disease, which we will be talking at
length to you later about under Part B, and
chronic silicosis. We, again, also cover RECA,
Section 5 awardees.

    Under Part E it's any condition, as
long as we can establish that they were exposed
to a toxic substance that's related to their
condition that they've sustained. And that's
where it gets a little bit more complicated, as
I've indicated.

    And the survivorship definition is
also different. As I indicated, since I think
there were following the state workers comp model for Part D, and that got translated to Part E, the difference is, in the survivorship under Part E, is more related to state workers comp.

So under Part E, under both parts, the first person who will be covered in the event of a death would be the spouse as long as they were related to the employee for at least a year prior to death. But under Part E, the only way that a spouse or any other survivor is going to be covered is if we can establish that the death is related to the condition that we would accept. That is not a requirement under Part B.

Under Part B, we cover adult children, grandchildren, grandparents, in that order. That's the way the statute lays it out. Under Part E, we will only cover children if they were under the age of 18, under the age of 23, and employed as a full time student, or medically incapable of self-support at the time of death.

The benefits we provide are slightly different as well. Under Part B there is, if we
find an employee or a survivor is eligible, they will receive automatically $150,000 lump sum and medical benefits. If there's, as I indicated for RECA employees who have been already determined by DOJ to be covered, we would pay the $50,000 to that employee or that survivor.

Under Part E, the first thing we'll do is accept for medical benefits. But then in order to receive any other additional monetary compensation, we need to establish impairment or wage loss for the employee. And that means --- and I'll talk a little bit about those two things, but the dollar amount is $2,500 per percentage of permanent impairment.

And then wage loss is between $10,000 and $15,000 per year for each period of time they lost wages as a result of the covered condition. For survivors under Part E, it's $125,000 lump sum as long as we can establish that relationship between the death and the condition we're covering. There is a $400,000 cap for B and E combined.
So there are various means of verifying employment. And over the years, we've, you know, it ranges from DOE has all the records, and it's perfect, and we can verify all the time that an individual worked at the site.

In other instances, it's not so simple. Because they don't have records at DOE. The contractor no longer exists, we can't find the records. And so we've tried to find ways over the years to determine whether the person worked there if DOE doesn't have the records first.

Now, when we first started with the program, they provided us with a list of corporate verifiers that we still use for corporations and any earnings that they have. And they've been great in terms of assisting us in that way.

When they can't, we work with, we have the Oak Ridge Institute for Science and Education. They have a database that can sometimes help us verify employment. Again, we
have the corporate verifiers.

We also have an arrangement with SSA, Social Security Administration. They can not only provide us with the place a person worked but in some cases with the wage information, so that if we're trying to verify wage loss we can go to them for those records.

And we've worked actually, been able to improve our relationship and our methods of obtaining this information over the years. With Department of Energy, we've now got an electronic system of sharing that information. We are able to now do some of that electronically with Social Security. And we're working towards moving more in that direction as we move forward. But it saves some time if we don't have to use the Postal Service to get that information.

The other sources we will rely on are affidavits, any records that a claimant may have, taxes or any other documents that a claimant might have to help us with this. But whenever we can get the information without having to rely on
the claimant, we do.

So Part B, I'm going to talk a little bit about the various ways a Part B case can get accepted. First and foremost, most cancer cases will first go to — once we've established that person has a cancer diagnosis, we will end the employment at a covered site.

The case will be referred to NIOSH. And they are tasked by statute to determine the level and extent of occupational radiation dose. And that's where, you know, the advisory board for NIOSH comes in to play more on the radiation side.

But once they do — first they'll do a CATI, which is an interview with the employees. They'll talk about what they may have been exposed to. And then they will conduct a study of the site. They have site profiles, various other resources they use to come up with a dose reconstruction.

They will provide that dose reconstruction to the claimant and then send the
case back to the Department of Labor for the
determination on the probability of causation.
And what we do at the Department of Labor at that
point, we use a computer program that was created
by NIOSH to determine whether it was 50 percent
or greater related to the --- caused by the
radiation in the workplace. And that, again, is
statutory. It has to be 50 percent or greater
for Part B in order for a cancer case to be
accepted.

There is another path under Part B
that a cancer case could get accepted. And that
is if it's part of a Special Exposure Cohort.
And what that means is, if you worked at a
particular facility that has been designated as a
Special Exposure Cohort for at least 250 days,
work days, and you had one of 22 cancers that are
specified, again by statute, then you don't need
to go through a dose reconstruction. And there's
an automatic assumption of, presumption of
causation.

Under Part B, if we've accepted a B
cancer case, that's an automatic acceptance under E that doesn't need to undergo another assessment. So that's where you could get, at B, $150,000, and then whatever other Part E benefits you might be entitled to.

In NIOSH, there were four statutory SEC classes created by the law. And those are the gaseous diffusion plants in addition to Amchitka Island. But the law also said that over the years NIOSH may create new SEC classes, meaning they are unable to do a dose reconstruction or an individual petition for it to be added as a class.

So they will evaluate that to determine whether, okay, maybe this facility, for a portion of time or for the whole portion of time that it's covered, could be designated as a Special Exposure Cohort. They've created, since the beginning they've created over 115 Special Exposure Cohorts.

The issue there is if there's not one of the 22 cancers, like, it's a cancer like
prostate cancer isn't one of those specified cancers, that's going to undergo, usually in those cases, like, a partial dose reconstruction.

That's where a separate analysis is going to occur for those cancers under Part E for us to look at. Department of Labor has no role in the designation of the SEC class, but we do have a role, obviously, in administering that class.

So Part E causation, first, in order for us to determine a causation of a party, first we have to obviously establish exposure to toxic substances in the workplace.

And again, how we do that is complicated. A lot of claimants don't know, you know, especially survivors, they don't know what their spouse or their father was exposed to. So we have a lot of different ways that we try to help with that analysis.

And then the cause, as has been pointed out already, the causation standard is different under Part B. Because it includes, the
whole definition is, at least as likely as not, a
significant factor in causing, contributing to,
and aggravating a condition.

That definition is a mouthful. It's
also rather difficult to administer, because we
have to figure out what is a significant factor,
how much contribution, aggravation is going to be
enough to accept the claim. How do we make that
determination?

And we're going to get into a whole
presentation about this later. So, you know,
we'll talk about weighting medical evidence,
about the IH referral process in detail. Because
those are going to be where you guys are going to
be, the areas you'll be looking at.

But that is a challenging definition
for causation for us. But we do have tools to
help with both the exposure analysis as well as
the causation. First is we do similar to what
NIOSH does, is we'll meet with the claimant, the
employee, or the survivor, and ask them what job
categories they were in, what jobs they did, you
know, what types of processes they might have
been involved with. That will help us in this
causation analysis, particularly the exposure
analysis, at the end of the day, to determine
what they might have been exposed to.

We also created what you guys are
going to be tasked with looking at, is the site
exposure matrices. And the reason that we
created this matrix was basically that, as I
indicated, people didn't know what they were
exposed to.

We thought, well, if we create
something that could help with that analysis,
maybe we could move cases towards an acceptance.
So that's really the motivation behind it.

So we have, we hired a contractor to
help us with this, DOE, people who had worked at
DOE, industrial hygienists, scientists that could
help us put together this matrix. And what we
did was we had a series of round tables around
the country to determine, you know, get the input
from the employees themselves about what might
have been there.

They went to the sites, they went to the Department of Energy, and we looked at records, boxes and boxes of records. And what the database does -- I'm not going to go into too much detail, obviously, because we're going to have a whole session on this later -- but the idea is that a person, a claims examiner can go in, look at a person, where they were, say it's Oak Ridge. They were a carpenter. Maybe they were exposed to wood dust. I mean, those are the obvious ones. But that's the idea. Or they worked in a particular building where these certain toxic substances were prevalent.

And then we have a -- we link to Haz-Map, which is a database that was created by Dr. Jay Brown. Again, we'll talk about this later in the week. But that will help us with, well, this looks like this wood, you know, if you were exposed to this wood dust you might have COPD.

And those are places where you can start. It's not a decision tool. It's not
something we're going to say if it's in there
we're going to accept the case. Because there's
too many variables, personalized variables. This
is a very generalized database.

It's also not something that's
complete. We're constantly trying to add to it.
We take public input. So there's a lot to it.
And it's constantly moving. But it is something
to start with for our claims staff.

We also go to the Department of Energy
for what we call DAR records. And that's
Document Acquisition Request. That's where
they'll provide us with Former Worker Medical
Screening Program physician reports, they'll
provide us with industrial hygiene records if
they have them, and any other records that might
be able to assist us with the exposure analysis.
Again, we will also rely on affidavits, facility
records, et cetera.

The other -- which is not on this
slide, but the other way that what we've done
over the years since, sometimes, as I'm sure many
of you know, doctors are not experts in occupational exposures. They might say, well, I think it might be related to some kind of exposure, but they're not going to be specific.

And unfortunately, in order to do this analysis, we kind of need to know a little bit more specifics as to whether, you know, this particular person's exposure to these substances caused, contributed to, or aggravated the condition.

So we'll ask the doctors that. If they can't come up with a response or if they give us a vague answer, sometimes we'll, in order to get a more complete answer on that question, we've contracted with contract medical consultants. That's a broker, actually, that we go through. And they, if we have a -- you know, we have some indication it might be related, but we can send the case to that contract medical consultant, and they can provide us with an opinion about causation.

We give that physician as much as we
can about exposures that we know of, what they
might have been exposed to, when they were
exposed to it, that sort of thing. And they'll
provide us with opinion.

Again, this will be covered in much
more depth later this week, but just to give you
an idea. And the reason we created that
contract, again, is to try to find more ways,
more tools, to help with this causation analysis.

So just a little bit about the
impairment data, how we compensate for E
claimants. The percentage of whole person
impairment is determined by a physician based on
a review of the American Medical Association's
Guidelines to the Evaluation of Permanent

And that is -- you know, the statute
outlined that the guides were to be used. The
Sixth Edition has since come out, but we relied
on the Fifth Edition after analysis that it might
not be as favorable to claimants if we were to
move to the Sixth Edition. So we have stuck with
the Fifth Edition at this point.

But what will happen is either a
treating doctor and the claimants can choose one
or the other they want, their treating doctor to
do an evaluation, or we can send the case
information, like the test results, anything that
we can get from the claimant, to a contract
medical consultant who knows how to use the
guides and can do that.

Because we found out not a lot of
doctors in the areas where these claimants live
know about the guides or know how to use the
guides. So that's why we have this other
resource available.

So once we get that determination from
a physician, we will then -- if they say it's,
you know, ten percent, that would be a $25,000
award. Because it's $2,500 for each percent. An
individual employee can come back every two
years, if their condition worsens, and get a new
evaluation.

Wage loss, it's basically the
decreased capacity to work as a result of the condition that we've determined an individual has resulting from their work. And we need to rely on a couple of things for this determination.

First, we need to have medical evidence that an individual either stopped working completely or started losing some amount of wages as a result. And what we pay for is any year where the individual lost less than 50 percent of their pre-disability wage. They'll get $15,000 for each one of those years. Any year where it's between 50 percent but less than 75 percent of that pre-disability wage, they'll get $10,000 for each of those years.

So there are certain responsibilities that we lay out in terms of how we go about adjudicating these claims. And John will get into this in much more detail after lunch.

But first, you know, an individual has to file a claim. We have resource centers, 11 resource centers around the country that can help with that process in terms of talking with the
claimant, helping them file their claims, then
submit evidence to us, whatever the employee or
the survivor might have, submit that along with
the claim, and then respond to any letters that
we ask them for if they can.

And what we've taken on, obviously, what our responsibilities are is to gather all
the evidence, go to whatever resources we can to
obtain the information. And then we will issue a
recommended decision.

And that happens at the district
office level. We have four district offices
around the country, Jacksonville, Denver,
Cleveland, and Seattle. And that's where our
claims staff is on the ground making these
decisions, developing the evidence.

And they'll issue, as I said, like a
recommended decision. And that's not a final
decision. It just means that this is what
they're recommending. The case will then
automatically move to our final adjudication
branch which is separate from our district
And there we have hearing representatives. Some of them co-located in those cities. We also have a final adjudication branch here in DC. And at that point, the claimant can either -- if, let's say it's an acceptance, they can say I want to waive my right, because then you'll get to an acceptance faster. And we can issue a final decision.

But if they want to object to a denial, we can take a written objection, review the written record, any oral objections, and we will have an oral hearing with them. And then at that point, after all objections have been heard, the final adjudication branch will issue a final decision.

The case is then transferred back to the district office where they will pay, make the payment if it's an acceptance. And the case remains back at the district office.

Just a little bit about, I mean, one of our missions, prime missions, particularly at
the beginning of this program and ongoing, is outreach. Because our desire is to try to reach as many people as possible to let them know about the program, to encourage claims where it may be appropriate.

So we've done a lot of outreach.

We've done, as Mr. Howie indicated and others have indicated, we have done meetings with the advocate community, five in-person meetings since 2011, and quite a few conference calls.

We also do public outreach. We've had about 80 events nationwide since 2010. Before that we were going all over the country. When we got Part B, when we got Part E, everybody was going around the country.

But we have joined forces with the Department of Energy, and with NIOSH, and the Ombudsman's Office from Department of Labor, as well as with the Department of Energy, to create this joint outreach task force group.

And what this group does is we go out, we meet annually, we have monthly calls, try to
talk about how we can get the word out, what
types of new materials we can provide, and where
we can go that maybe we haven't been before or a
place that we should be going.

We also have a lot of events in the
Department where we try to go reach out to the
medical community, the providers, whether it's a
physician's -- we'll solicit for physicians but
also for any other type of provider that provides
services to provide them information about our
medical benefits.

And the reason we started doing this
in the last several years is just that there's a
lot of, like, misinformation or confusion about
the program. We try to make that clear and just
to kind of take questions and focus on that
community.

Because one of the things we do hear
a lot is that there aren't enough physicians for
claimants to go to in their areas. And they
don't know how to get the benefit. And they
don't know how to answer our questions. So
that's one way that we try to address that.

This is just a breakdown of our payments nationwide since the beginning of the program. We've paid over $12 billion in compensation which is actually a lot more than they ever expected when the program was created. I think they were talking, like, 20 percent of claims at first when we got Part B. But it has grown over the years, both in Part B and Part E.

We do have our list of covered facilities on the website. We have a lot of information on our website, all of our --- I'm sure you know, because we've sent a lot of links to Tony and Dr. Markowitz about this. But as I indicated, there's 11 resource centers nationwide. Our district office is in our website.

This is just our jurisdictional map for our resource centers. This is also on our website as well as our district offices.

So with that said, I know I covered really broad sweeping, and you probably have a
lot of questions. I'm happy to take them now or after lunch, I think you wanted to, Tony, or however you want to do this.

But I just want to emphasize that we will be going into great detail about the SEM, about the way to medical audience, about Part B lung conditions, and about our referral process to our industrial hygienists and our contract medical consultants, et cetera.

But one thing I do want to emphasize is that we really are excited to have you here. I'm excited to have you here. As I indicated, we struggle all the time with how best to do this. And so to have a group of scientists, and doctors, and advocates in the room talking about these issues, I think it's great.

And that's why we're going to have a bunch of things at the end of each of our presentations saying maybe you could help with this, and maybe you can help with that. Obviously, you guys will choose what you want to talk about within those realms, but hopefully we
can really benefit from this. So thank you, and
I'm happy to take any questions.

CHAIR MARKOWITZ: Thank you very much.

That was very useful. Any comments or questions?

Dr. Dement?

MEMBER DEMENT: Just a quick -- how
many claims examiners do you have? And what's
the process for training and retraining these so
that they are more or less in sync with regard to
how they --

MS. LEITON: So we have about 400
claims examiners nationwide. There's less
hearing representatives. The size of each office
varies, but we have our smaller offices at
Cleveland and Denver. And then we have larger
offices in Jacksonville and Seattle, partly due
to the size of the facilities in those areas.

But we do have turnover. And so we've
developed a basic training program which goes ---
we've got modules, we'll have classroom training.
Like, right now we have a group of students in
Jacksonville, about ten, and they're going
through a two month process.

Part of that is we're going to immerse them in the claims adjudication in between. But it's a matter of what we have. People who have been claims examiners, or supervisors, managers, will come and talk to them in a classroom setting, walk them through all the procedures. So that's the basic CE training.

But we also have other more advanced training. So last year actually, myself, and John Vance, and some of our other experienced final adjudication branch people went out to all the district offices. And we kind of did casework, walked them through a case and how you need to -- how to formulate a final decision, what to put in it, what not to put in it. How to best make these explanations.

Because what we're finding -- and it wasn't just final, we also had claims staff from our district offices there. Because one of the struggles is always how do you best explain this complicated process to a claimant? How is he
supposed to understand it, and how do you make
this written in such a fashion that they can
really either appeal it or understand that when
they finally get their final decision.

So that is one example of a group of
us going out and talking through the issues. In
other instances, if there's a more complicated
circular or bulletin, we will have our experts,
maybe it's an industrial hygienist, or a health
physicist, or one of the other scientists, or
even our policy branch individuals who are very
familiar with these issues.

We've had a lot of training on our
site exposure matrices, that would include our
policy experts as well as our industrial
hygienists going out. So it really depends on
the type of need that we have.

We are actually -- this year we're
going to be hiring a new training lead. We had
somebody retire last year. And so this person's
really going to take on the task of, okay, where
can we enhance the training. And so it's a big
part of what we do. And we understand that there's a lot. With that many people, it's hard to find consistency.

MEMBER TURNER: Yes. Can you explain why the program was taken away from the Department of Energy and given to the Department of Labor?

MS. LEITON: So as I indicated earlier, when Part D came out, it was administered by the Department of Energy. And I think what they found after a couple of years is that people weren't actually getting payments in their hands.

There were, like, only 100 cases that went through the process and actually got any payments. So I think Congress took a look at it and said, well, maybe this should be a federally funded program. Because it wasn't federally funded. They weren't getting money from the feds. They were taking it to their state workers comp.

And the state workers comp may or may
not pay them. So that's why, I believe, Congress changed the law and said we're going to move this to out of that realm and move it to the Department of Energy, I mean, to the Department of Labor.

And I think they -- I mean, I would only guess, because I'm not Congress, but we administer workers compensation programs. We have four programs here. We were already administering Part B. And so I felt that -- I believe they thought the logical move would be to move it to the Department of Labor.

CHAIR MARKOWITZ: This is Steven Markowitz. I encourage -- we're actually in the discussion section which is supposed to occur ---

MS. LEITON: I'm sorry.

CHAIR MARKOWITZ: No that's okay -- was supposed to occur after lunch, which is fine, because we're ahead of schedule, so I encourage board members to raise questions and make comments.

Also, if you wouldn't mind, just when
you do turn on the mic and make a comment, just
identify yourself for the record. I have some
questions. And some of these are details that we
may or may not get to later, but actually
repetition of details is kind of useful.

MS. LEITON: Sure.

CHAIR MARKOWITZ: Because, you know,
we're trying to understand. And you don't learn
everything at first blush. You talked a little
bit about or referred to the occupational health
questionnaire. And my question is does every
claimant complete that? Is that always done in
person? And then I've got some other questions
from that. But let's start with that.

MS. LEITON: Okay. So our resource
centers are the ones that actually do the
occupational history questionnaires. So the
staff, they try to set up in-person conversations
with each of the employees or the survivors to do
those.

But I believe they do do some by
telephone where an individual lives too far away.
They're not going to be able to travel to a resource center to undergo that evaluation. So they're both conducted by telephone and by in person. And they're conducted by our resource center staff.

The questionnaire itself is something we created at the very beginning of the program, I think. You know, we took input from what types of questions were asked at the Department of Energy side when they had the cases. And it's something we're actually evaluating now to determine if there are better questions, if there are better ways to conduct the analysis.

CHAIR MARKOWITZ: Steven Markowitz. So are the claims examiners who do these interviews, are they trained to take occupational histories?

MS. LEITON: It's actually the resource center staff that does this, so it's -- rather than the claims examiners at the resource centers. Many of the resource center staff have worked at Department of Energy facilities. Many
of them have been, you know, working at the resource center since the beginning of the program.

And, you know, in terms of a specific training, there's probably not been a targeted training of how to specifically ask the questions. They rely on the questionnaire itself and pretty much record what's being asked of them.

CHAIR MARKOWITZ: Steven Markowitz again. So do some claimants submit affidavits about their work history and exposure in addition to the occupational history questionnaire? And if so, how is that viewed and why is that done sometimes if the occupational health questionnaire addresses the same issue?

MS. LEITON: The affidavits, we get some. I wouldn't say we get a lot of affidavits with regard to exposure. We do get statements from claimants and so, like, basically the same thing as an affidavit versus a statement.

We will ask -- send in our development
letters, what do you think you were exposed to. And I think the reason that they would provide us with that information is just to supplement the record. Or maybe they thought of something later after the occupational history was taken.

And the way we would look at that is we will rely on affidavits and claimant statements to a degree, but we also usually have to have something to back it up in terms of we'll look at does it make sense at a particular facility based on what we have, either in the site exposure matrices, or the DAR records, or something.

Oftentimes, we will have to look outside of just one statement from a claimant saying I was exposed to these ten substances. That's the way we've looked at the way the law is written thus far.

CHAIR MARKOWITZ: Other questions, comments?

MEMBER VLEGER: Faye Vlieger. How would a worker know what they were exposed to?
Let me give you an example. At Hanford we have a toxic soup of about 3,000 chemicals, none of which are in the workers' EJTA. They are listed by groups. How would the worker know how to fill out accurately, for your use, the occupational history questionnaire?

MS. LEITON: Oftentimes they don't. And that's why we have other resources that we use. Because as I indicated earlier, a survivor is not going to know half the time what their spouse might have been exposed to. That's why we have industrial hygiene referrals. That's why we go have the site exposure matrices, is to help us -- help with that analysis to determine what they might have been exposed to where.

CHAIR MARKOWITZ: Dr. Redlich.

MEMBER REDLICH: Carrie Redlich. Is there some estimate or guesstimate of the total number of workers who might be eligible?

MS. LEITON: We don't have that information, only because we don't have the records. Like, we don't know --- the Department
of Energy has the records of how many workplaces. But contracts, you know, are no longer in existence now. You know, there are so many variables as to who might have been exposed.

We know what facilities are covered, what periods of time they were covered. But that's why we do so much outreach, is to try to get the word out so we can make that information about the benefits of the program available.

But I don't have a guesstimate. I don't think that the Department of Energy can really even guesstimate that in terms of who might have -- get the exposure and be compensated.

MEMBER REDLICH: And also, on the web page there is a data sheet with the statistics of how many claims have been filed and how many accepted. What period of time is that over?

MS. LEITON: That's from inception to date. So if you were to look at a different -- like, we have an annual report to Congress which will show the approval rates, the changes over
years in terms of approval rate.

And we have drastically improved in
the percentage of acceptances we have now versus
what we had many years ago, partly because we
have new information available, partly because
there's a lot of new SECs. So under Part B
there's a lot more acceptances. But that figure
is just from inception to date.

MEMBER REDLICH: It might be helpful
to see the trends.

MS. LEITON: Annual?

MEMBER REDLICH: Yes.

MS. LEITON: I'll take note of that.

MEMBER SOKAS: I have two kinds of
questions. One is if you wouldn't mind just kind
of walking us through. Somebody wants to file a
claim. Do they start with the resource center?
Who's at the resource center? How do they get to
the claims examiner?

I'm assuming that this is all
electronic, or by phone or something, and then so
-- kind of walking it through from the claimant's
perspective.

And then if you have, like, the numbers, like, what's the typical caseload per claims examiner? How long does it -- you know, what's the time spent, and is there a range? How much time did the people at the secondary review -- I forget what it's called -- the final adjudication, you know, who's on that, and how long do they take? You know, that kind of question.

MS. LEITON: Now, John Vance is going to be walking through the flow charts from beginning of a case all the way to the end of a case when he comes up this afternoon. So I don't want to repeat information there. But at that time, if he doesn't answer those questions, we'll be happy to answer them.

MEMBER SOKAS: And the numbers, he'll have those numbers.

MS. LEITON: In terms of the numbers -- so I'll have to probably get back to you on the typical cases for CE. I've got that written
In terms of the time it takes, we do have -- it varies. And we have actual operational plan goals that we set every year for our claims staff, for our final adjudication branch staff.

You know, there are -- I've looked at the -- we look at this all the time in terms of how long it takes. It's going to vary depending on if a case goes to NIOSH. Because that can take up to 200 days. If the case needs to have a hearing, which can take a lot longer, because if we're scheduling hearings at a particular remote location, it takes us more time to schedule that hearing.

If there's no hearing, and there's no NIOSH process, we've been able to get a lot of these done within 180 days from beginning to end. But that is the shortest amount of time. If there's a hearing involved, it can be up to a year.

The longest time period, even though
-- if you're looking at from beginning to end in a typical average case, you're going to see between the six months and a year and a half. But you will see exceptions to that depending on if there were, you know, other factors involved.

And if you're looking at --- and you might have seen news stories where they say it takes ten years for us to adjudicate a claim. It really depends on how you -- I mean, you can look at a case that we started evaluating in 2001. We denied it first, we got more evidence, we accepted it. Or we -- you know, years and years later they get an acceptance. But that doesn't mean we didn't make adjudicatory decisions throughout that process.

But we do strive to do these timely, and we do actually measure it. And we hold our claimants and our CEs, I mean, our CEs accountable for it in their standards. So it's an important factor of what we do.

CHAIR MARKOWITZ: Dr. Boden?

MEMBER BODEN: So listening so far I
can imagine that this is a kind of daunting procedure for claimants to go through.

MS. LEITON: It is.

MEMBER BODEN: And I guess one question, if these kinds of cases were in a state workers comp system, probably most of the people who had these cases would be hiring attorneys, because they couldn't figure out what, you know, what to do themselves.

Are there people who act as representatives for the claimants in the process? And how are -- if there are, how are those representatives funded, paid?

MS. LEITON: Okay. So first, the reason we created the resource centers is to kind of help at least start with the process, help them through the process. But, yes, oftentimes they will find it daunting, particularly if they're elderly, and they don't understand bureaucracy and all of that.

We try -- I hate the fact that it's bureaucratic. I know these people struggle with
this. And it's one of our biggest challenges. If we could, one of the -- maybe you guys could help us make it easier, have more presumptions, things like that.

But in terms of getting representatives, that's why, when I mention the advocacy groups, a lot of those individuals work with them and will help them with their claims, voluntarily in some cases. In other cases they are attorneys, or they've signed contracts.

But we do have fee limits in our regulations that specify what they can be paid. So I believe it's two percent for initial filing. And then if a case is initially denied at a recommended level and is overturned at the final adjudication branch, the authorized rep can get ten percent of the award. Those are the limitations set by statute.

MEMBER BODEN: Okay. So I'm, just to make sure I have this right, then the fees for their advocates are paid out of their settlements?
MS. LEITON: Yes.

MEMBER BODEN: Okay.

CHAIR MARKOWITZ: Dr. Welch?

MEMBER WELCH: Rachel, since you worked in OWCP before EEOICPA, can you describe the difference between how a chronic disease claim is handled under EEOICPA and under OWCP. I mean, it's my understanding that the initial intent was to make it a lot easier for the claimant under EEOICPA, because the claims examiners would put effort in to try to establish causation.

Over time, do you think they've come closer together? Or do you think it's still more claimant friendly than the -- because, I mean, I have a lot of experience with OWCP than some of the other occupational physicians have. I thought it might help people understand the program better if they understand that.

MS. LEITON: Absolutely. Under FECA, the majority of their claims are slips and falls, orthopedic injuries, very concrete, something
happened at work that you can tie it to. And you
go to the doctor, and the doctor says you have
spinal stenosis or you have a herniated disk.

And that is something that can be
adjudicated fairly quickly and fairly easily by
the claims examiner. Not to say that there
aren't complicated stress claims or, you know,
other things like that. But you're not going to
see as much of the toxics exposure or the
radiation. That's just -- it's rare in the
federal compensation program.

So I would say the comparison is
really difficult to do just because of the fact
that this is not as straightforward. You can't
just -- a doctor can't just look at you and say
you just fell down. I know you just fell down,
and here's your diagnosis. And you can send this
to workers comp, and they'll pay you.

So the analysis itself is where it
became, you know, coming from that background
it's not so straightforward. We can't just look
at it and be, like, okay, the doctor knows for
sure. He told us. And we can go ahead and accept the claim. Because we also have to look at the exposures.

And, you know, the way that the federal compensation program works is that the money that goes for workers comp is charged back to the employing agency. And they are then -- that's considered part of their annual budgets.

We have the benefit of that not being the case for us. So, you know, we have -- there's a fund there that's for that purpose. We have zero incentive to try to deny claims. There's no reason there. I mean, not that we're not -- we try to balance being good stewards of the taxpayer dollars, but at the same time, what I teach and what we say in our training is we're here to try to compensate the people that have become ill as a result of the conditions.

Finding the lines as to where that acceptance versus non-acceptance is is where we constantly and continue to struggle. But the intent is always -- and you can ask any one of my
... staff or any one of our claims examiners -- the intent is to pay when we can.

And in fact, it's easier to pay somebody than to not. Because if you don't, you have to write really complicated decisions. And, you know, I mean, so they really do want to accept claims. And I've seen people go the extra mile to do that.

But there is a big difference, I would say, between that kind of a compensation program and what we're handling here. So thank you for the question.

CHAIR MARKOWITZ: Dr. Cassano?

MEMBER CASSANO: Dr. Tory Cassano. I have a couple of, actually a couple of questions. My background in this area is sort of from the VA. I find that system arcane. This system is arcane in an entirely different way.

But my questions are, you talk a lot about developing the case. Is there any regulatory or statutory duty to assist the claimant in developing their case? Because
that's a big difference that I see from where I come from.

    MS. LEITON: We don't have a statutory
duty to assist, but we take that role on as much
as we possibly can. The burden of proof actually
lays with the claimant, the way that it's
written. So that's why we do whatever we can,
but it's not the same as some of those, the
burden lies on the government to accept the case
or whatever.

    MEMBER CASSANO: And my second
question is somewhat related to that. You talked
a lot about 50 percent probability which is
equipoised. Is there any benefit of the doubt
included in those decisions? Because that's
another statutory phrase that I'm used to that I
don't see here.

    MS. LEITON: So when you're referring
to the probability of causation, 50 percent or
greater --

    MEMBER CASSANO: Right.

    MS. LEITON: -- that's a statutory
mandate. And really that's a process that's completely done at the NIOSH level. So they've developed -- you know, I think they, excuse me, took a couple of years after the statute was create to develop the regulations. They did that in conjunction with their board. And they had to, you know, to work out how those determinations are made.

But I do know that they have, like, a 99 percentile. And they do try to be -- you know, give the benefit of the doubt to the claimant where they can. If they don't have records, they'll make assumptions based on co-worker data.

Now, I'm not going to get into a lot of that, because I'm not on the NIOSH side. And I'm not a scientist.

MEMBER CASSANO: And on the non-radiation side, is it the same thing, pretty much or no?

MS. LEITON: No. It's different. And that's why we have the different standard of
causation. I mean, we do have to rely --- and
this is where it gets a little bit, you know, we
look at toxic substances on the party's side.
The radiation we do kind of rely on that 50
percent. And then that's where you get into
questions of synergy. And again, that's where we
could use some guidance at the end of the day.

MEMBER CASSANO: Thank you.

CHAIR MARKOWITZ: Dr. Silver?

(Off microphone comment.)

CHAIR MARKOWITZ: Steven Markowitz,
was there a follow-up to that particular line of
questioning? Yes. Okay, Dr. Boden?

MEMBER BODEN: So I'm reading here the
Part E causation, right, which talks about
aggravating, contributing to, or causing the
claimed illness, which is a much more generous
framing than simply a 50 percent or more
causation. But also a much less specific ---

(Laughter.)

MEMBER BODEN: So I'm wondering, for
example, what 50 percent contributing to might --
MS. LEITON: Well, when we look at toxic substances, the 50 percent isn't really what we're looking at. What we're looking at is significant factors, since that's the way they phrase it, is they say that the toxic substance exposure must have been a significant factor in causing, contributing to, or aggravating.

So our struggle is always what's considered a significant factor. And so we rely on our doctors to help us. I mean, you know, we struggle with prescribing exactly how the doctor is supposed to interpret this significant factor in causing, contributing to, or aggravating.

If we had a prescription to hand to them then, that would be great. But that's where the analysis, that's where the medical, personal physician or the consultant who are looking at the facts of the case, and they will provide us with that response.

But given that, it is kind of vague. And given that there's no prescription given to
us, we rely heavily on our medical physicians who
are looking at the cases to provide us with that
opinion.

And again, that's an area where I
think that a lot of --- we've had a lot of
discussions, but you guys might have some
discussions there too.

MEMBER BODEN: Right. And that's also
because it's so unclear where you might get lots
of differences of ---

MS. LEITON: You are going to have
difference of opinion. You know, some doctors
are going to know exactly how to say it, what to
say. And, you know, I mean, just in general
terms, they've been working on the program. So
they know. But you're going to have other
physicians that, you know, they may think it's
related, but they don't really know how much or
what that means. So it is a struggle.

CHAIR MARKOWITZ: Thank you. Dr.
Silver?

MEMBER SILVER: Ken Silver. I have
two questions. I try to look at this from the standpoint of a conscientious but not very experienced claims examiner working out there. Over history, there have been a couple of people doing this work who found it so alienating that they launched literary careers at their desks. They didn't work for OWCP.

How much movement is there between Energy, FECA, and other OWCP programs for the claims examiners?

MS. LEITON: So when the program first started, when we first got Part B, there was a lot of movement. People came from FECA, most of them. I think a lot of them came from FECA. Some people came from other OWCP programs, but mostly it was FECA.

We relied on that. Because these people knew how to adjudicate claims. And they had a process to start with. And that was where we -- I think a lot of our processes kind of started with -- in terms of you're moving through a case, the steps are going to be similar.
Because you have to take a claim in, you have to develop it for medical evidence. You have to make a decision on it. And so those steps were the same. Hiring people from a program that started doing that was logical.

And over the years we got people from all over. Though now, it's --- and we don't get as many people coming from FECA. We get people from private insurance, or from the VA, or from Social Security. So we do get a variety of different types of experiences, mostly people who have worked claims in their career some way or another. Does that answer your question?

MEMBER SILVER: Yes. And have you considered a system of ongoing career learning so that people can have a satisfying career beyond just on-the-job learning through trial and error?

Our friends in the building trades have a system where you do your apprenticeship, you get a union card, you have your welding certification, HAZWOPER, LEED certification, asbestos. And that gives society assurance that
the built environment has been built according to regulations. It's safe and healthy. And it's not going to collapse.

Do claims examiners have any kind of internal education program that allows them to earn recognition for what they know about lung diseases, what they know about toxic substances, et cetera?

MS. LEITON: I wouldn't say we have a formula like that, no. I would say that we -- as I indicated earlier, we do have an ongoing training mechanism for as we learn new things or as we go through the program.

However, you know, they do start off as, you know, a claims examiner. And there's a ladder. They will gain more responsibility as their grade grows. They'll get more cases, they'll have more training as they move through those steps. They have to reach a certain level of competency to move to the next level.

But also we have senior examiners who will be more of the mentor types. And then they
can grow to be supervisory claims examiners. So that's the kind of recognition they probably get, is just that.

But we also, you know, we do a lot of internal recognition for our employees if they've done exceptionally well in a certain area. We do a certain --- some of the offices have certificates they'll give them or -- you know, it just varies.

We don't, as you've said, like, we don't have a prescribed system like they would at building trades or anything like that. But there are mechanisms for recognition and, you know, becoming a trainer, or being a technical assistant or -- you know, depending on what they're interested in doing.

A lot of our staff, what we find is they find great satisfaction in doing exactly what they're doing and that they do want to learn and that they care about that program and the claimants. And so there's this --- and I think this is for all of OWCP, this kind of
satisfaction in doing a good job where you are.

And the performance evaluation system, the accountability review systems that we have in place, will lend to that level of personal satisfaction. They'll do really well in their evaluations. I mean, there are things like that. But as you said, it's like -- as you indicated, no formal process for it.

CHAIR MARKOWITZ: Dr. Redlich?

MEMBER REDLICH: I do not have an experience with the range of different compensation systems, but I'm just curious. Approximately how much does it cost to --- I'm sorry. Approximately how much does it cost to administer this program? I was just sort of curious, approximately how much it costs to administer this program.

MS. LEITON: I'd rather not give you a figure without looking into it. We could get back to you this week on that. But I need to --- when you say administer, there's a lot of different things.
MEMBER REDLICH: Sure.

MS. LEITON: We've got contracts. So, I mean, if you're saying administer in terms of how much --- I think earlier you said case load per CE. So maybe if you mean administer, like, a claims examiner staff is one thing. If you're talking about contracts for IT, which are shared costs within the Department, or contracts for our resource centers, that's going to be another whole thing.

So let me look at it, and maybe I can give you a breakdown of some sort that can give you an idea of what exactly that means, okay?

MEMBER REDLICH: Just from experience, for the range of different programs, some of which have some presumptions, like Agent Orange or, you know, state workers comp, or World Trade Center. There are sometimes tradeoffs between precision and some presumptions.

MS. LEITON: Yes. I mean, you know, the system itself is similar to, in terms of FECA, in terms of what we -- the grades that we
have. They're going to be, you know, the same grade levels, GS grade levels, and that sort of thing.

But in terms of the complexity, that's kind of a hard thing to measure in terms of, well, do we spend --- they just spend more time on certain cases. But I'll look into that. And I'll get you some figures.

MEMBER REDLICH: Yes, I realize it's --

MS. LEITON: It's a little -- there's a lot of factors involved in that assessment.

CHAIR MARKOWITZ: Dr. Boden?

MEMBER BODEN: Would you be able to get us --- I don't think it would be good to have the time here now taken up with that, but I'm curious about what the performance evaluation system is for evaluating the performance of the program as a whole and for evaluating the performance of particular people in the program.

MS. LEITON: Okay. Yes. I mean, I'll have to check exactly how that would look.
Obviously, we have some PII, I'm assuming. But in terms of performance evaluations, we can probably provide you with what that looks like for each individual CE or HR.

And then in terms of the accountability reviews, that's another whole process. So you've got individual assessments that are performance evaluations at the end of the year. And that is very detailed. And we can probably just give you a sample of what those look like.

And then the accountability review is another system. We do that annually, meaning we go out and evaluate the work of the district offices in the final adjudication branches based on a series of categories. And so it's a pretty robust process. But we could give you a copy of, like, our accountability review manuals, I'm assuming.

MR. RIOS: Whatever you feel comfortable with describing.

MS. LEITON: Okay. So I'll -- well,
I'll just look and see what we have and what we can give you. And we'll get back to you on that.

MEMBER CASSANO: So I got back to my third, my last question, since others have spoken. The occupational questionnaire, the occupational history, how and by whom was that developed? Because that could be very key to developing a claim. And I'm just wondering how that was developed, and at what level, and what kind of expertise was put into that.

MS. LEITON: Okay. I'm going to talk about what I know. And I wasn't always involved in every single piece of the process. But I believe that when we --- we didn't start doing those until we got Part E. Because that's where it became the most relevant to us.

We took what they had done. I believe they had some questionnaires back then that they used for their process. So we took that and modified it. I believe that we had some assistance from our -- maybe the resource centers. But I have to double check it. Because
I don't want to give you incorrect information, exactly who was involved in that process. So I will write it down, and I'll get back to you on that.

CHAIR MARKOWITZ: Mr. Whitley?

MEMBER WHITLEY: Garry Whitley here. How much access do the claims examiners have to your employee records? Let me state what, for instance, will happen. If I am a 42 year employee, and I file a claim today, and I go to the resource center and file my claim, it goes to Jacksonville, -- it goes to Jacksonville.

I'm going to get a letter in two weeks that says they've received my claim. More than likely, they're going to say that they can't verify my employment. They're going to send me that affidavit to give me to fill out, or to have somebody fill out, about your work record.

Now, what access do they have to our work records? I know how long it takes for me to get them. But how long -- how much access does DOL claims examiners have to the DOE work
records?

MS. LEITON: Okay. So the first step in any claim that we receive, once it comes to us, is to go to the Department of Energy. As I indicated, we have an agreement with them. And their responsibility, per the statute, is to assist us in obtaining those records.

So we rely on the Department of Energy to provide us with whatever records they have. They then rely on, you know, in some cases they'll have to rely on their contractors, their corporate verifiers we'll go to. So that's the access that we have, because they're the ones that own those records.

So we'll go to them first, and then we'll use the other resources, like the Oak Ridge database I mentioned, ORISE database. And, you know, the Former Worker Program. In some cases, they'll have information.

But that's the first line. And that's the first thing we do. Before we'll go to you and ask for an affidavit, we try to get any
information we can. We'll go to SSA if we have
to get information about your records. But
since we don't own those records, we have to rely
on the other organizations to provide it to us.

MEMBER WHITLEY: My point is, in
reality, you're going to send me that letter and
give me 30 days to respond, okay. And I can ask
for a 60-day extension.

But if I apply for my employee record
from DOE, if I worked at K-25 or ORNL where they
go through DOE, I can get them in about a month,
three weeks maybe, a month.

If I worked at Y-12, and where I've
got to go through Albuquerque and NSA, I'm lucky
if I can get my employee records in six months.
I know of a year. But I'm very lucky if I can
get them in six months.

MS. LEITON: Well, usually they've
been pretty responsive on those particular sites.
They usually have been able to give us records.

But, you know, if it's a subcontractor, the
circumstance may be different. But again, we at
DOL have to rely on the Department of Energy for those records.

MEMBER WHITLEY: But can you all get them faster than we do? Do you all get them electronically or ---

MS. LEITON: We have electronic --- what we first do when we first get the case is we will send a request to the Department of Energy on a form and say this is what the individual said they worked at. They'll provide it. We send it to a portal. They upload it to a portal back. And so, yes, we can usually get those out within 30 days if they have the records.

MEMBER WHITLEY: Well, let me say, that kicks the whole program off of tough for that employee, because they feel like, right off the front, what do you mean? You can't prove I worked there? So you can think what that advocate, I mean, what that claimant is thinking already. They don't even know I worked there, and I worked there 30 years.

MS. LEITON: I understand.
CHAIR MARKOWITZ:  Steven Markowitz.  I have a number of questions.  So how frequently can you not verify employment?  The claimant submits a claim and says he or she worked at a given site.  Here's the number of years.  And you go through your various sources, and you can't verify it.  So how often does that happen?

MS. LEITON:  So it's kind of hard to say exactly how often.  But what I can tell you is that for DOE facilities, DOE contractors, some contractors or particularly contractors, it's a lot easier than for, say, atomic weapons employers.

Because a lot of those smaller -- if it's a smaller company that hasn't existed in 30 years, we're going to have a really hard time getting those records.  So, you know, I don't --- we are usually able to verify employment at the bigger sites, at the bigger contractors.  The smaller the site, the smaller the subcontractor, or the type of employment will make it more difficult.
And that's where we get into SSA records, and we get into affidavits, co-worker affidavits, that sort of thing. Do I have a specific percentage, I don't really have a percentage.

But I will say, like, there's a smaller percentage of atomic weapons employers. Most of those are in our Cleveland district office. And I would say that's where we have probably the most difficulty with getting employment records.

But that doesn't mean -- it's not to say that we don't have difficulty in other areas. We still have difficulty if it, again, if it's a subcontractor or a small mom and pop shop that worked for a contractor who worked for, you know, a DOE facility. So that's where we get into the most struggle with it.

CHAIR MARKOWITZ: So when you can't verify employment, is the worker's and their co-workers' affidavit sometimes sufficient proof of employment?
MS. LEITON: That will depend on the rest of the case. Usually, I mean, we do try to verify employment outside of only the claimant's statements, just because we believe that there's an evidentiary requirement that there be some sort of verification.

But if you have an affidavit from an employee, and an affidavit from a co-worker, and maybe they have, like, a security pass or something that they can show you, those things we will look at combined. But a statement alone, it's difficult to rely on just a statement. But we will look at the totality and any other information they can give us.

CHAIR MARKOWITZ: So their evidentiary requirement that you mentioned, is that part of the statute? Is that by regulation? Is that --- I don't see if the program -- what's the status of that?

MS. LEITON: Well, the statute requires that we verify employment. The statute also outlines that we go to Department of Energy
for those records. Outside of that, you know, we
do have to then refine from the statute, to the
regulations, to the procedures.

And, you know, as I indicated, what we
try to do is look at the totality of the
evidence. If there is circumstantial evidence
that would lead to, you know -- we have had cases
where we couldn't verify anything from a
corporate verifier, from the Department of
Energy. But we've had other things, like
pictures, certificates, a supervisor saying
something.

But we would need to have something
besides just one statement from a claimant saying
I worked there. We need to have some -- we
believe that the way that the statute is laid out
is that it requires some level of scrutiny as to
whether an employee worked there to provide them
with a pretty significant benefit.

CHAIR MARKOWITZ: So there's some
reference to DOE disagreeing with the fact of
employment of an individual. How did that
happen?

    Well, I can understand how DOE would confirm or not confirm, but actually there's a statement that, in the instances in which DOE disagrees with the evidence of employment, what does that look like?

    MS. LEITON: You know, that's difficult to answer when it's kind of a broad question. You may be referring to the fact that we have to -- we analyze whether or not a facility is considered a DOE facility or the covered time periods for coverage.

    Some of that is a Department of Labor determination. So say we're trying to determine what part of a site should be covered. And we will rely on Department of Energy records to make that determination in collaboration with other evidence that we might have received from an advocate group or from, you know, some other source that says this should be covered.

    Because now we have a contract that shows that it should be covered. That's a
determination that we can make with input from Department of Energy. And they will provide us with whatever they have. But the ultimate determination on certain types of facilities or coverage will be our determination with input from them.

And it really, I think what you're referring to is do we consult with Department of Energy on whether something -- you know, what information they might have that could lead to determination of coverage in a certain period or at a certain part of a location. We do rely on them, but there may be some back and forth that happens before that determination is finally made.

But they don't tell us, like, for a particular claim -- for example, if I were to refer a case to them and they -- they would never come back and say, you know, they would say we don't have evidence that somebody worked there.

But we don't go to them and say, well, we have evidence somebody worked there. Do you
agree? That doesn't happen. I mean, that's not --- I think what you're referring to is more of a broad-based situation than in a particular claim. But I'm guessing. Because it's kind of a broad question.

CHAIR MARKOWITZ: Dr. Boden?

MEMBER BODEN: I've been trying to understand the timing of the employment verification, the question that Mr. Whitley raised. So let me start off with a sort of broad question.

Why does it take 30 days for the DOE to get back to you? Is it because they don't have electronic records? They don't have enough people to get you the information?

MS. LEITON: Okay. So the Department of Energy is going to be up here soon. So I'm going to let them answer those questions.

MEMBER BODEN: You're going to let them answer that one, okay.

MS. LEITON: But what I can tell you is that oftentimes we can get them sooner. And
we have been able to get them within a couple of weeks. But other times, I think they have a lot of different places they need to go for it to get that information. But I really am going to defer to them on that.

MEMBER BODEN: Okay. So the other part of the question is that a lot of these folks ought to have records with Social Security about their earnings and their employers. And those are all electronic.

And basically, if you give somebody -- if you give Social Security four or five pieces of information, they can just go to their computer system and let you know who they were working for when. If they have people, time to do that. So is it, the question is, Social Security, of available person time?

MS. LEITON: So Social Security, you know, as I indicated, we've been working a lot with them in the last couple of years, particularly because of the timeliness issues.

One thing that was required of EEOICPA
before was that we had to get a signature from
the claimant first saying I'm going to allow you
to get these records. And then we had, that was
a paper process. We mailed them the form, they
mailed it back. We send it to SSA via Postal
Service. Since then, we've been able to talk to
the lawyers for their statute, and our statute,
IRS, and their statute.

MEMBER BODEN: That was fun, I'm sure.

MS. LEITON: Well, we had to be able
to do, in our program, in EEOICPA, is we no
longer require the signature of the claimant in
order to get those records. Because they sign
the claim form saying I'm releasing this.

So that's been determined in the last
couple of years. So that has cut off a lot of
time of getting that information. So now we can
send it to SSA, and we can sent it to them via
digital fax. So again, that's an electronic
process.

We're still working with them on their
end as to being able to get us that information
back electronically. But keep in mind that, yes, they have a database for a certain number of years. But if it's prior to, I'm not sure what the cutoff is, but a lot of these records are, they have to go to microfiche. And they have to go through a whole process to get that.

MEMBER BODEN: Yes, yes.

MS. LEITON: So that's what, you know, I think that's part of the delay. But we have actually been able to shave off about 45 days. You know, it can take 30 to 60 days now, 60 on the outside, to get these records. Whereas before it was up to 90 days or more. And so I think that we are making progress in that area.

MEMBER BODEN: So if I were sitting at SSA, and you sent me a person's name, date of birth, Social Security number, and it matched through the DDS system that they use to do the check in, I could send it back to you the same day.

MS. LEITON: By mail. And you --

MEMBER BODEN: No, no. Not by, I
could send you an encrypted file.

MS. LEITON: Yes. Well, that's what we're trying to get. But we're not there with them yet.

MEMBER BODEN: You're not there yet.

Okay. I know. I've spent months and months trying to get their lawyers to do things.

CHAIR MARKOWITZ: Mr. Turner?

MEMBER TURNER: Yes, my name is James Turner. Approximately three or four years ago, I think you had a meeting in Denver, Colorado. There was an --- that's when we were trying to get the SEC passed. There was an employee that testified that, or she literally had, her boss had her to destroy records. A lot of records are destroyed. And they'll never be brought back. So people are having problems jumping through these hoops trying to get, you know, their compensation.

MS. LEITON: And do you have a question for me?

MEMBER TURNER: Do you remember
anything about those records?

MS. LEITON: Well, I know that there have been some, in some cases there have been fires I've heard about. And there have been claimants that have said that their information was destroyed.

All I can tell you is that Department of Labor, what we try to do is get whatever information that we can to verify employment, whether it's through affidavits, through the Department of Energy, Social Security. These are the efforts that we take in order to get those records, in order to verify employment.

CHAIR MARKOWITZ: Dr. Welch?

MEMBER WELCH: Laura Welch. Correct me if I'm wrong, but I wanted to comment on Les' question about Social Security. Because Social Security will link you to an employer. But if that employer is a contractor providing workers at multiple sites, it doesn't put them Department of Energy site -- which has been a particular issue for construction work.
But I'm sure it applies for other sites where if you have a big site where it's a prime contractor and everybody works for them, it's not so hard. But if there are subcontractors, then somebody has to go through and say this contractor was working at Rocky Flats during the period of this worker's employment.

And CPWR did a lot of this work for construction, working with the building trades locally, which contractors worked at those sites at a particular time. And that's something they can refer to. And I'm sure that's happened with the atomic weapons employers too.

Over the years you know which contractor was there at which time. So it speeded it up. But it's taken, you know --- And in addition to which we just got a box of records that has, what, how many, 600,000 pages of records.

You know, there's records in storage, and there's records everywhere. It would be nice
if it were as simple as that. I mean, there's still lots of information that people keep digging up out of some federal archive building somewhere that requires going through by hand, which Department of Energy and Department of Labor do an amazing job. But the Social Security is helpful, at least in our experience, but not sufficient.

MS. LEITON: I appreciate that comment. You'll have a -- they might've gotten paid a corporation, but that doesn't mean it shows that they were at a contractor or subcontractor. But, yes, I appreciate the insight there.

CHAIR MARKOWITZ: Ms. Pope?

MS. POPE: Duronda Pope. What is the -- after a claimant has been denied, what is the process after that? What are the recourses? And is there someone at the resource center to help them through that process?

MS. LEITON: So this afternoon John Vance is going to walk through all of that. So
you'll get a pretty good picture. But in terms
of the --- there are certain -- if it's been
denied, there are various ways they can get it --
they can get a reconsideration which means they
ask within 30 days that a different hearing rep
look at the case.

They can ask for a re-opening which
means at any time after the denial, if they have
new information, or if there's been a change in
the NIOSH process or something, they can ask for
a re-opening.

That's looked at by the director,
either at my level or at the district office
level. We'll re-open that case if it turns out
there's more evidence. That would show that we
can accept the case.

And then there's always district court
which is the last piece. The resource centers
can help to a certain degree, but when it comes
to going to court, you would need an attorney for
that, if it were to get to that level. But there
are a lot of ways that we can look at it before
it would get there.

CHAIR MARKOWITZ: Steven Markowitz. I have a question. In one of your slides, you referred to wage loss. You referred to it as a decreased capacity of the work due to accepted medical condition. And I'm interested in this term, due to accepted medical condition.

Do you use the standard of at least as likely as not, that that condition plays a significant role in aggravating, contributing or caused, that crazy phrase that you need to use? Is that also used in the determination of disability, wage loss in particular?

MS. LEITON: Not so much. I mean, usually for wage loss, what we're --- first you have to establish that an individual was earning wages at the time that they're saying they began to lose wages. If they did begin losing wages, you know, we'll look for a medical doctor to say I believe this person began losing wages because of his significant COPD. And here's my medical rationale for why.
Usually that's going to be what we're looking for. Either that, some cases, you know, they've gone on Social Security disability. We can get those records. And it'll show what condition they went on that for. And then we have medical to support that.

So it is a slightly different standard, but it's --- we're going to look for pretty much the basic, a doctor can usually tell us, more so than in a case of exposure and whether or not the exposure caused the condition, a doctor can usually tell us I believe this person stopped working because of his condition that I've diagnosed. And here's why. Because he's unable to do X, Y, and Z.

That's what we're going to look for. Why does the physician believe they can't work anymore, or can work less, or was he putting him on restrictions? Those are the things we're going to look for in a wage loss determination.

CHAIR MARKOWITZ: But if a claimant has multiple medical conditions, and one or more
may be covered illnesses, others are not, and all of those problems contributed to the person's inability to work so that the covered illness may have contributed to the inability but may not be the sole factor that would satisfy a standard of due to, how do you look at that?

MS. LEITON: We look at that on a case-by-case basis. Really, I mean, we will take into consideration -- the doctor really is going to come and tell us I believe this is, you know, this condition was a major contributing factor or a contributing factor.

Really, I hate to say in every case where he'd be, like, if he says aggravated it, then we're going to accept it. But if you look at the amount of treatment, you know, if a person was treated regularly for the condition during the time, those are the types of factors we're going to look at, not just one statement, like, especially if it's contemporaneous.

That's going to be different from, you know, I'm going to go back now after 20 years and
say I think it's related and not have a basis for it. But if there's a basis, again, we look at the medical rationale of the physician. The physician truly believes that this was a contributing factor in this person not being able to work, we'll look at it from that perspective. But it's, again, hard to generalize that without looking at a specific situation in a case.

CHAIR MARKOWITZ: Another question I have. You talked about how the contract medical consultant has to interpret, apply the significant factor criterion and how difficult that is, how subject to interpretation.

Have you been able to look at the consistency across these doctors or, you know, more lately the industrial hygienists, in terms of decision making, or for that matter consistency within the same physician, if they've looked at a similar condition multiple times?

MS. LEITON: We actually do a regular audit of the CMC, the Contract Medical Consultant reports, to look at the consistency issues that
may require training. Because then we can go to
the broker, and our contractor, and say we
believe that this needs to be clarified.

We also have quarterly calls with the
physicians, some of the physicians who are our
contract medical consultants. And we have
accountability reviews in which we can see what
these consultants are saying and if there's ---
we do look for any outliers, like, this person's
always denying. You know, if there's some
pattern that we can identify and say, well, maybe
there's a reason for that, we would look for
that.

But we haven't really found that to be
the case. It's usually, you know, pretty equal
in terms of we don't have one person saying one
thing all the time. But consistency-wise, we do
try to work with them when they have questions.
And we've given them some training on, you know,
what to be evaluating, what to be looking at.
But as I said that we do it through audits and
accountability reviews.
CHAIR MARKOWITZ: Can you provide us with those audits at some point? That would be helpful.

MS. LEITON: I'll look into that.

CHAIR MARKOWITZ: Dr. Cassano?

MEMBER CASSANO: Tory Cassano. Just one last question Les Boden asked, I think, part of it. After your internal appeals process where you give the final decision, what is the process beyond that besides going back through the internal system?

Is there an independent board of appeals? Or do you have to go into then federal district appeals court in order to --- so there's nothing in between the internal process and the federal district appeals court?

MS. LEITON: Right. So we have, the district offices have a different reporting system there. They're separate from the final adjudication branch in terms of how that reporting structure -- they all are within our division.
We found going to outside, like a separate board or ALJ, was a very consuming time process for a lot of it. So if we had every case go to an ALJ -- we found in other programs that can be very, very time consuming.

So I believe, when the regulations were developed, the thought was we can do this as a separate process, keeping within the program but also separate. And that's why we have the final adjudication branch. But the beyond adjudication branch after the recon, after re-opening, it is district court.

MEMBER CASSANO: Thank you.

CHAIR MARKOWITZ: Okay. We're going to break. We will reconvene at 1 o'clock. And I want to first of all, before everyone gets up and leaves, I wanted to thank Ms. Leiton for a very enlightening discussion and also giving us, you know, very frank answers to our questions. We would, in case any questions come up, we would like to continue this at --

MS. LEITON: Sure.
CHAIR MARKOWITZ: -- 1 o'clock for a bit. And otherwise, we'll break. Thank you.

(Whereupon, the above-entitled matter went off the record at 11:48 a.m. and resumed at 1:03 p.m.)

CHAIR MARKOWITZ: So we're going to continue our discussion. And Ms. Leiton, you've been joined by Mr. Vance?

MS. LEITON: Yes.

CHAIR MARKOWITZ: Okay, so additional questions, comments? Well, I have a couple questions. Okay, go ahead Dr. Redlich. You can start.

MEMBER REDLICH: Well, you can go and then -- well okay. My question was --

MR. RIOS: Closer to the mic please.

MEMBER REDLICH: -- there was any data -- sorry, I was interested in seeing data, potentially on, let's say the types of claims, sort of what diseases.

MR. RIOS: Closer to the mic please.

Sorry.
MEMBER REDLICH: Yes. Whether you have that for, you know, trends over time.

MS. LEITON: So our annual report to Congress has some information about the types of conditions that we have accepted. And some information like that.

But usually what we, since our database is used for purposes like case adjudication, case management, I mean basically case management, case tracking, timeliness, that sort of thing. So we have to handle requests for information, like for data, on kind of a case-by-case basis.

So if you're looking for what's the highest number of acceptance use you have, it sounds like that's where you're going, if it's lung disease, there's certain kinds of conditions, we can look at running reports like that. But we probably just need to get a specific request and look at it from there.

So it would just have to be specific, because we do have to do a lot of manual --
MEMBER REDLICH: But you don't have the data in like a database with diagnostics codes or --

MS. LEITON: We have a database, but we don't have reports that are canned. We have to manually run the reports in order to get the information.

MEMBER VLIEGER: Actually, you've been providing EECAP with information that they've split out into statistics that are -- the other advocates have been using off of the EECAP database. Off of their web page.

MS. LEITON: Yes. I mean if I can just get requests on certain types of information you need, we can figure out the best way to handle it.

MR. RIOS: Yes. And if you have a request for a specific report with very precise parameters, we can certainly provide that to the program. But I think what Rachel is saying is more specificity --

MEMBER REDLICH: Got it.
MR. RIOS: -- is needed.

CHAIR MARKOWITZ: So I have a question about the role that a report from a physician describing the connection between the claimant's exposure and their illness. And then the rationale for the connection that physician is drawing.

Does every claimant have to produce such a report, and if not, what role does that report play?

I'm just having a hard time figuring out where it fits in, relative to checking the SEM, seeing in the Haz-Map and the SEM the connection between exposure and illness and the like.

MS. LEITON: Well, we will look at the SEM for exposure information to help us frame a basis for exposure information. And if there's a connection in SEM between certain toxic substances that we see in the SEM and the condition that's being claimed, that could further frame the evidence.
But what we have to do with that from there, is we would refer that to the treating physician, usually first, and say, here's what we have determined is a likely exposure related to this condition, can you provide us with your medical opinion regarding whether it was a significant factor and causing it to lead to an aggravating condition.

And in some cases the doctor is -- if it's a treating doctor who has no experience in that, then that they might come back and really not be able to answer that or not be willing to answer that. In which case, we would go to a contract medical consultant and say, we have this evidence, please provide us with an opinion.

And at that point, our claim staff will have to, and we'll get into this later in the week, they'll weigh the medical evidence in the file and see if there is an opinion from a contract medical consultant. And if treating is kind of leaning in that direction, then that's going to be an acceptance for the most part.
But you're going to have, you might have a CMC come back and say, I can't make that connection. And that's where we have to start weighing evidence and we have to look at the rationale that's provided by both sides.

And that's where our procedure manual lays out as much as possible, you know, what kinds of evidence we would -- how we would weigh this. But it's an area that is, it's difficult, because you do have to go case-by-case on it.

But that's how we would look at it first. So we start with the treating, go to a CMC and look at it in the totality from there.

CHAIR MARKOWITZ: So the SEM can suggest a connection between exposure and disease, but you're saying that a physician, either the treating physician or the CMC, has to confirm that connection?

MS. LEITON: Yes. The Haz-Map has some connection. So you'll see that you can look at, as I said earlier, you'll have the carpenter and wood desk and there's a possibility that the
COPD is something that comes from that.

However, there's going to be varying levels of years of employment. The type of work they actually did.

Those are factors that can't be taken into consideration, in the SEM, like it was done in the early '50's for ten years or 20 years, rather than maybe for just a couple of years later. So in latency, all of those things come into play.

So the SEM and the IH, they can frame the assessment. But then it has to really come down to medical evidence.

MR. VANCE: Yes. Hi everybody, let me introduce myself. My name is John Vance, I'm the branch chief for policy for the program. I've worked with some of you in the past, so I'm excited that you've been named to the board.

And Rachel and I decided it would be a good idea to have me come up and do some tag teaming up here on some of these things.

So thank you again for helping us.
I'm really looking forward to sharing some of the glamor and some of the horror of this process. So I'm really looking forward to getting some input on some of the things that we deal with every single day. And this is one topic.

But before I get into that, I also just want to share a little bit of my background so everybody is sort of comfortable with who I am and where I'm coming from.

So Rachel blazed the path in 1994, working in the Federal Employees' Conversation Act. I followed a year later and worked in the FECA Program. Dr. Silver, that was one of your questions. So I was on the FECA-ites that came into the energy program in 2001.

So my background has been claims examination. I was a nurse case manager for a while. I did long-term disability cases, I've done outreach and public interactions on media and other types of things. And right now I'm working as the policy branch chief. So I've sort of had my handle on the different things in the
program.

So in response to that question, I thought I'd illustrate it a little bit more in two areas. One is, when you're talking about a worker conversation determination, you're talking about a decision that is basically saying what aspects of this person's performance of duty is causing a disease. Okay.

So the question on medical causation is one at the tail end of the process. Once we've gone through and evaluated the employment factors, we've developed and identified what the diagnosed condition is, we then have to look at, okay, as part of this causation assessment, well, what were the toxins.

And when we're talking about toxins, we're talking about radiation, biological or chemical toxins or materials. What was the likelihood that that individual employee came into contact with that material?

So we have to develop an exposure profile for that individual. All right? And
there's filtering methodology that we go through, in order to get to that point.

Once we've gotten to a point where we feel pretty confident on what are the potential exposures that this employee encountered in their workplace, we are going to go to a doctor and say, given that information, given their duration of employment, given the information that we have about the extent duration of exposure, our industrial hygienists are opining on with regard to how much an exposure of these toxins they encountered in their workplace, the physician has got to take that in consideration of all these other variables and come to a outcome conclusion.

Either these factors of their employment, including the exposure, caused or contributed or aggravated based on that Part E standard, to the onset of this disease. So you really have an exposure and a medical causation component.

CHAIR MARKOWITZ: So I understand.

Does that mean that either the treating
physician, when you go back, if that treating physician has not provided a rationalized report, the treating physician or the CMC is actually given an industrial hygiene analysis of the claimant's degree of exposure, is that what you're saying?

MS. LEITON: Under most circumstances, yes. We try to give them at least some understanding of what exposure this person might have had, before we ask them for an opinion on causation. Because if we don't do that, they're kind of working in the dark. So that's why we do go to the industrial hygienist in a lot of these cases.

CHAIR MARKOWITZ: Just a quick follow-up. Does the industrial hygienist interview the claimant?

MS. LEITON: No, they rely on the evidence that's in the case file, the DAR records, any records that we've been able to obtain, in addition to the occupational history questionnaire that is in the file, that's already
been done. In addition to the SEM analysis and information that's been provided to them.

CHAIR MARKOWITZ: Other questions?

Other comments? Yes, Dr. Sokas.

MEMBER SOKAS: Hi. This is a question about the industrial hygiene information that's available.

So the original SEM included kind of a laundry list of what the contractors or the -- you know, provided, but not whether or not anybody was exposed to it. And there was some suggestion that maybe, with all of the DOE cohort studies that have been done, that maybe some of the industrial hygiene information from specific places that were used in epidemiologic studies, maybe that either, some of it's just job matrix analysis, but some of it was actual measurements.

Has that been added in to the mix of what the industrial hygienists have or how robust is the information they get?

MR. VANCE: This is John Vance. When the industrial hygienist gets the case file and
referral, what they're going to get is a copy of
the entire exposure history that we've been able
to obtain from the Department of Energy.

So if that record does contain any
individualized monitoring data, that will be part
of the review that the industrial hygienist does
take a look at.

They'll also look at the filtered
results of the Site Exposure Matrices that the
claims examiner has done.

They also have access, and we'll look
at the occupational history questionnaire, and
other information that may have been submitted by
an individual in support of their case.

The issue is, in the absence of that
material, how do you make exposure findings? And
I think that's one of the areas where we're
really looking for some help, because we have
consistently struggled with that.

And that's a reality across this
program, when you're talking about work
activities that started in 1942. And even a
little bit earlier, going forward, it's the absence of good exposure data.

And merely having site general, you know, generalized site exposure data, how do you take that and apply it to an individual employee? And that's where the challenge comes.

And that's where we have to rely on industrial hygienists to opine on what are the likely exposures that this employee, given the variables of their employment history or their work processes that they engaged in, what is it that they could have come into contact and how do you describe that type of exposure as being low, moderate, high, significant or in passing only.

And that's one area where I think that we have really struggled. And that would be an area definitely that we would be interesting in having some help with that.

CHAIR MARKOWITZ: Dr. Dement.

MEMBER DEMENT: Yes, does the IH also get -- I mean they get the occupational history that was filled out, do they also get any
statements by the worker or co-workers at that
time? Any affidavits to consider.

MR. VANCE: I'm fairly certain that
they would get any, the claims examiners are
going to submit anything of an exposure-related
nature, in the case file. So if there are
descriptive exposure discussions about what it is
that the employee felt that they were working
with or came into contact with, that will be
included.

The occupational history questionnaire
also has lists of different kinds of toxins that
they can mark off as being something that they
think they were exposed to.

Basically, any material that we have
that can give context to the type of exposure
that they employee had, should be going to the
industrial hygienist.

CHAIR MARKOWITZ: So a different kind
of question. Is there any element of
presumptions that you're able to use that would
make your life a little easier and maybe the
lives of some claimants a little easier?

MS. LEITON: So there aren't any in
the statute. Unfortunately, we don't have
anything in there that says you can make any
presumptions.

But, what we've been able to do over
the years is, based on our experience with the
claims and based on research that our
toxicologists have been able to do, we've been
able to come up with some circulars which will
give a certain set of circumstances. Like I
think it's TCE in kidney cancer, kidney disease.

So one of them is kidney disease and
TCE exposure. Trichloroethylene.

And we've been able to say, if you
worked this amount of time, you had this latency
period and you worked in this labor category, we
can make a presumption that that would be related
and you don't have to do anything further. And
so we've been able to come up with a few of
these.

And we've got the circulars. I think
we even sent them as a pre-read.

But those circulars are where we've been able to make those presumptions. Based on evidence we've received from case files that we've been able to do further research on or based on, just like we will look at the IARC information. And if they make a determination that a cancer is related to a certain toxic substance, we can move that into our Haz-Map database.

So some of those either can be in a circular where the presumption is pretty clear or we can add it to the Haz-Map, which will help. But this is an area which you're going to hear over and over again in our presentations this week, that we really would love some help.

If there are circumstances that this Board can recommend or help us go towards making a presumption of whether it's -- if it got, as I said, like at this latency period, any particular toxin we know of or can find more research on or areas we can go to make these presumptions,
whatever level of recommendations we can get from
this science and medical and advocate community,
the better for us and the better for the
claimants. Because, believe me, we don't want to
have to go through an individual assessment every
single case, in situations where that's not
necessary.

But unfortunately, we haven't found
lot of those as of yet. Because our business is
adjudicating claims on a case-by-case basis. And
when we can make these assumptions we do. Any
advice and guidance you guys can give us would be
appreciated.

MR. VANCE: Yes. And let me add a
couple of little details to these kind of
problems. Because as far as policy development
is concerned, the challenge that we're faced
with, with regard to presumptions, and what we're
talking about is generalizations. Being able to
take a policy document and apply it in a general
sense to a large group of claimants.

The challenge is getting the science
together that supports whatever it is that we have decided to do. Whether it's the science on the epidemiological side or whether we're talking about generalizations of exposure across the DOE complex.

So we can have assistance looking at, if we go to a site and say, okay for Hanford for example, let's use Hanford, are we able to go out there and say, okay, if we have these labor categories working in these job areas or these work circumstances, we are going to presume, for this labor category, a significant level of exposure. And be able to utilize that across the board with no questions asked.

That's one type of presumption that would be very helpful. And that is an issue in that we'd be looking at Hanford, we'd be looking at all of these sites. And all of these sites have different types of exposure parameters.

So you know, what might work for a significant exposure at Hanford might not work at Pinellas or Savannah River or Rocky Flats. But
if we're able to get in there, and when talk
about the site exposure matrices tomorrow and be
able to see, okay, if we know that this material
was there, we know these work processes were
engaged with that material, can we not have some
sort of guidance to our claim staff saying, you
just presume significant exposure. Or whatever
the level of exposure.

On the health effect side, the issue
there is looking at the science and trying to get
agreement as to, what does the total body of
science on a particular issue say, that allows
the Department of Labor confidently say, we can
presume that if you have these criteria satisfied
that this is going to end with an accepted case.

So we just did one recently with
chronic obstructive pulmonary disease where we
talked about, what was the available science that
showed us, if you were an employee engaged in
work around these particular materials, what is
the threshold for us to be able to say we're
confident, that if you meet these criteria, we
will accept the case. We are going to make the presumption that this exposure, in your workplace, caused COPD. And so when you look at the collage of all the science out there, some science will say this study says, well, the exposure needs to be five years. This study over here says ten years. This one says it doesn't exist at all. This one says 20 years.

So trying to get an agreement as to what standard to apply, is one of the areas where we really struggle because oftentimes the science is very conflicting. And so how do you take conflicting science and arrive at a compensable type of application for this program.

And that's where I think this Board would be particularly helpful for us. Because we have our experts, but we're limited in the resources that we've had in the past to do that.

With this Board, we now have that capacity to have those kind of issues looked at more carefully.

CHAIR MARKOWITZ: Dr. Welch.
MEMBER WELCH: Yes, Laura Welch. You may have just answered that a little bit. But I can see both needing a process and some assumptions.

And do you guys have a specific process you've used, say for COPD or the one on chemicals and hearing loss? Those are the two I'm -- or is it more of an ad hoc group internally that did it or did you have outside consultants?

Because one thing we could, I mean we probably as a group could agree on some -- if you gave us a disease, we can come up with a presumption and I'll make everybody agree with me, I promise. But in the long run, it might be nice to also say, here's a procedure that you could use that would be informed by the best experts that exist. If it's pulmonary, with the American Thoracic Society or things like that.

MS. LEITON: I absolutely think processes would help us. I mean as we've indicated, when you build a compensation program,
you're thinking about claims examiners to review cases.

And we've got a health science unit with a couple of industrial hygienists, a physician and a toxicologist. But that's a very, it's a limited group. And we do do research, but yes, processes.

You know, the use of outside resources then become an issue of, how do we reimburse. Then it becomes all those other kinds of concerns.

But whatever, you know, we'd be happy to look at any thoughts on, how do you get such a peer review process in place or something. You know, we always have to look resources, but I think process and actual presumptions would both be great for us to take a look at.

CHAIR MARKOWITZ: So this development of presumptions overtime, limited I understand, is in part based on your own experience in handling claims and seeing claims repeatedly for the same conditions among the same workers and in
part based on an increasing understanding of the underlying science, is that correct?

    MS. LEITON: Yes. But to put that in a context, we wouldn't just say, we've accepted 80 percent of COPD cases with this condition, without getting scientific or medical review of it. Obviously that's something we can provide and look at, but we would need to have further guidance on it.

    So it's always going to come down to a scientist or a medical doctor, somebody telling us that that's a presumption we can make. But yes, we've looked at both.

    MEMBER CASSANO: Victoria Cassano. So obviously, short of these presumptions then, what it sounds like might happen is, two workers, similar work experience, similar exposure, same medical outcome, based on the expertise of either their treating physician or the CMC that the case is sent to, you may have one accepted and one denied?

    MS. LEITON: That can happen. And I
mean again, I hate to say that there's any case, any two cases are exactly the same, but yes, there are going to be variations in the different types of cases.

CHAIR MARKOWITZ: Dr. Boden.

MEMBER BODEN: More of a comment then a question. About presumptions. So presumptions aren't purely scientific. Right?

You make a presumption bouncing off a bunch of things that aren't science. A presumption can be more generous or less generous.

And a more generous presumption will let more cases in that, you know, if we were God we could actually tell where the right case to go in. And we'll also let in more cases, that if we were God, weren't the right cases to go in. And the converse for a less generous presumption.

And there are other effects of presumptions too, in terms of how much time both the agency and the claimant spend trying to get to a resolution of a case. And not only how much
of their own hours of time, but how many calendar
days or months or years it takes.

So I just wanted to put that out there
to make the point that science only goes so far
in these things and that we should, I think,
really be thinking about these as what's the
overall goal we want to get and can particular
presumptions help us get there.

MS. LEITON: Thank you.

CHAIR MARKOWITZ: Yes, Dr. Dement.

MEMBER DEMENT: John Dement. In
listening to the discussion, it sounds like the
determinations are, at least it would be good to
the SEM, are pretty site specific.

So for example, if I have a pipe
fitter and he works on, I would say any of the
DOE sites up until a certain time frame when
asbestos was highly used, I think there could be
a presumption that if they have this lung disease
and they were in this trade, so if regardless of
the site, it's more likely than not that it
contributed to the outcome. Is that something
that's within the purview of the organization?

MS. LEITON: Again, I think that if there is, if we have backing by scientific and medical community to make those sorts of presumptions, then yes, I believe that it is.

But again, it really comes down to, our claims examiners are not going to make those sorts of presumptions without us making it for the program. And being able to make that with the backing of a group of scientists, or however we process one of the two, that is what I think we are allowed to do. But we just need to make sure we've got the backing for it at the end of the day.

CHAIR MARKOWITZ: Dr. Sokas.

MEMBER SOKAS: So this is, I'm sort of going back to the question of definitions, partly in follow-up to John's comment here.

So I want to make sure that I have this. In one of the circulars it says, it is at least as likely as not, that exposure to a toxic substance was a significant factor in
aggravating, contributing to or causing an illness.

So in my understanding, at least as likely or not, is the 50 percent or greater, right? I mean that's kind of the equivalent.

So that is for toxics, it's just qualified a little more by, that there is significant evidence that there's one of these three categories contributing.

MS. LEITON: That's true.

MEMBER SOKAS: But again, it's a 50 percent so it's not more likely than not, it's not with a reasonable degree of medical certainty, it's not metaphysical certitude, right.

I mean it's like all of the things that in general, in a law court, you kind of anticipate. Or if you're in clinical practice and you want to make sure that you're not giving somebody a medication that's going to have side effects, you want to be sure of that.

So there's a higher threshold in
almost every clinical encounter than what we're
talking about here.

    MS. LEITON: And that is a really good
point. Because that's a very difficult thing to
explain.

    At least as likely as not is defined
in Part B, as 50 percent. So when we're using at
least as likely as not again, in Part E, that 50
percent is still there. But it is caveated by
the significant factor cause contributed to and
aggravated.

    So that's an area where it can be very
confusing to people and say, why are you saying
at least the 50 percent here, when that's only a
B standard? It is a B standard but it's a B
standard for the least likely -- it's a standard
in general for the statute, for at least as
likely as not.

    MEMBER SOKAS: Yes.

    MS. LEITON: With that caveat. So I
appreciate that clarification.

    CHAIR MARKOWITZ: Steven Markowitz.
Well that fact is that most of the time you can't quantify the relationship between toxic substances and disease. So you couldn't come up with a percentage.

So 50 percent or 75 percent wouldn't mean anything to us in making that determination. So we're much more comfortable with language here rather than numbers. Because it reflects the underlying science. Mr. Whitley.

MEMBER WHITLEY: Garry Whitley here. So let's go back to what the claims examiners are doing today.

We don't have these presumptions in place, which you'd love to have some. So are they putting a lot of weight on the SEM database?

MS. LEITON: They're putting weight on the medical evidence in the file. I mean the SEM database will guide and direct where they can go in the case. Meaning, if there's evidence of exposure, we can find out maybe what the level of extent of their exposure might have been to an IH assessment, and then we go to medical. And
that's where they're looking at totality
evidence.

So it's not relying on SEM, it's
really relying on what kind of medical evidence
we've got and what kind of exposure information
we have.

MEMBER WHITLEY: And where are we
getting that medical evidence?

MS. LEITON: We're getting it from the
claim --

MEMBER WHITLEY: Go ahead.

MS. LEITON: We're getting it either
from the claimant, when we can, if the claimant
has it. Or we're getting it from a contract
medical consultant where we are unable to obtain
any information from the claimant's treating
physician.

MR. VANCE: All right. And let me add
a little bit about the site exposure matrices,
just to make sure folks, and we're going to talk
about this at length tomorrow.

But the site exposure matrices is a
development tool that is used by claims examiners
to try to prioritize and identify potential
exposures that an employee encountered in their
workplace, by correlating what information we
have on that employee in their employment records
or what they have identified in the occupational
history questionnaire or whatever other evidence
we have.

You assemble that information and then you
do basically an analysis of the site exposure
matrices. You got the application of that
resource in trying to say, okay, the site
exposure matrix exists to provide exposure
information, what are the toxins that a welder
would have encountered at Rocky Flats in this
building.

Or what is it that a laborer at K-25
would have been doing who also, as part of their
occupational history questionnaire, is basically
saying, I was demolishing building, outbuildings.
Okay. We can go into the site exposure matrices
using these characteristics that we correlate
back to the case file and we say, okay, if we
plug these criterion variables in, what is going
to be reproduced.

So you'll get a return out of the site
exposure matrices, depending on your filtering
methodology. These are the top three toxins that
somebody with that filter would have been
encountering. The potential exists for that
exposure to have occurred.

That information is then packaged up
to the industrial hygienist who looks at the
extent and duration and nature of exposure. So
they're getting further exposure data.

So that's sort of the mechanism for
exposure findings. From the CE.

CHAIR MARKOWITZ: Dr. Welch.

MEMBER WELCH: I know that from when
we did our site profiles for the screening
program, there are documents that describe the
exposure scenario in a little more detail than
what ends up in the SEM. The SEM is almost like
a shorthand.
And I think at this case, where some
gentleman from Savannah River had never smoked,
had lung disease and it turns out his job was
spraying waste water, spraying water onto a waste
pile, it then burst into flames.

So that's probably captured some way
in the SEM, but probably not with the detail that
John had, when I asked him like, what burst into
flames when you poured water on it. And then he
was in the cloud of hazardous material.

So do the industrial hygienists have
all that? Do you know if that's all in a
database in a way that people can go back and
look at the original records?

Or even, probably I'm sure our site
profiles are available, but the stuff that we
drew from to get to the site profile.

MS. LEITON: So the information that
we have in the SEM is going to be, well, based on
the research we've done with DOE.

The information you're talking about,
to the level of specificity that you're talking
about, if we get that kind of information and can
put it in the SEM, as one of the incidents,
because there's a whole space for incidents and
accidents and that sort of thing, that will
describe it. And there will be backup behind it.

But we are always looking for that.
And we have a public mailbox for when we know
about these things.

So that's the kind of information we
can always use to supplement the SEM or even get
specific case file documentation.

CHAIR MARKOWITZ: Yes, go ahead.

MEMBER TURNER: James Turner. I don't
know if you remember, that was adopted by the
name of Dr. Jim Ruttenber.

MS. LEITON: Yes.

MEMBER TURNER: Okay.

MEMBER WELCH: At Colorado.

MEMBER TURNER: Right.

MS. LEITON: Yes.

MEMBER TURNER: Colorado, yes. Okay.

They did a former workers, a study on former
workers.

So my question is, they were doing the job exposure matrix at that time, so it's been now changed to the site exposure matrix. So what's the difference?

MS. LEITON: That's something separate from the site exposure matrices. The site exposure matrices we developed in conjunction with looking at DOE records that were provided to us.

That's how it started. Was using DOE records, the roundtables that were used with employees and any other information that we've been able to obtain since then.

We have added information based on public record or public information or anything given to us. But what you're talking about is probably something separate from what is -- that's the Ruttenber database.

MR. VANCE: Yes. Let me just add just so everybody, some folks are probably really familiar and some are not.
But the site exposure matrices is a Department of Labor generated database. It was Rachel's decision that we really needed to make data available for claims adjudication.

So when this program first started under Part E, we needed to find this kind of information. So the Department of Labor took it upon itself to go out, get a contractor to go back and do the research to try to collect this exposure data on these toxic materials used at the sites.

This is independent from some of the former workers screening programs that are doing work in conjunction with DOE former workers. That's independent of certain other types of studies that are being done at these different facilities, including Rocky Flats.

So you did have some efforts by scientists and other medical experts to go out and do some profiling.

And Rocky Flats, what I think you're talking about is that. It's basically a
physician who was doing research and studying
Rocky Flats workers and exposures at that site.

But the site exposure matrices itself
is a Department of Labor developed and maintained
resource.

CHAIR MARKOWITZ: But do you know --
Steven Markowitz. But I'm not sure if this is
part of the question, but did Dr. Ruttenber's
work, in documenting exposures at Rocky Flats,
did that end up entering the SEM database? Maybe
that's too specific of a question to know.

MS. LEITON: I need to get back to you
on that.

CHAIR MARKOWITZ: Okay, sure. Yes,
Dr. Sokas.

MEMBER SOKAS: So this is just making
that specific question a little bit more general.
I mean, because I'm thinking of the SEM as a
laundry list of all the material safety data
sheets that used to be there kind of thing. And
a lot of it did not, and then separate incident
reports where there was a fire or there was an
explosion or whatever happened.

But did any of the -- because I can see where it would be challenging to do this, but I'm just wondering if any of the job exposure matrices or the site profiles or the research derived estimates of actual exposures, if any of them got incorporated and how that would work within the SEM?

MS. LEITON: So some of that information, I would imagine when we did research of the DOE records, that they maintained and they have had would have been part of the database.

But when we talk about specific databases, specific site profiles, I really need to check on what we have included and what we haven't included before we give you a definitive answer.

CHAIR MARKOWITZ: Dr. Cassano.

MEMBER CASSANO: Tori Cassano again. Jumping back to the medical opinion piece, again. What kind of criteria, or are there any criteria, used to evaluate the validity of a medical
opinion?

In another words, I give you a medical opinion that's as less than likely, no references, just I'm this great person and I'm telling you that it's less than likely or more than likely. What criteria are used?

I mean is it, I know you look for a rationale, but there are different levels of rationale. And how do you evaluate the validity of that opinion?

Whether it comes from a treating provider or comes from your CMC. Is it references, is it what?

MS. LEITON: So on, I believe it's either Wednesday or Thursday, we're going to have an hour long discussion of exactly that issue. So if you don't mind, maybe we can revisit it again then.

But we do. There is references and that sort of thing. But we will talk in depth about that.

CHAIR MARKOWITZ: Last questions.
Yes, Dr. Silver.

MEMBER SILVER: Going back to presumptions for a moment, I'm sure we'll spend a lot more time on this. When you're listing the different in-house experts you have, I didn't hear you mention occupational epidemiology. But I did hear the classic problem of some studies showing an effect and many others not.

There's a certain awareness that people who have studied it and applied it, develop, which is not all studies are created equal. Those with the sharpest characterization of past exposures are typically the best occupational epi studies.

And I'm wondering if you have anyone on your staff who has a keen eye for differentiating the best studies from all the others?

MS. LEITON: Our toxicologists. We do have a toxicologist on staff who is the one that analyzes those reports for the most part.

We have used outside experts on
occasion to assist us in looking at this. We had
a medical director for a while. But it's usually
the toxicologist that will look at that
particular issue, when it comes to presumptions.

   Using a pretty conservative approach,
with regard to what's peer reviewed, what's
generally known, that sort of thing, before. We
haven't been super -- well, we've been
conservative just because we would need to have,
and if we had more of a panel or a board to tell
us that sort of information, probably would be
more helpful.

   But we have to be a little bit careful
about just making, as I think somebody suggested
earlier, assumptions without making sure that
we've got a backing behind it.

MEMBER REDLICH: Carrie Redlich. You
mentioned the contract physicians that if
someone's own physician doesn't make an
association. So how many total of these people
are there?

MS. LEITON: I don't have that exact
figure, but we've got at least over a 100
physicians around the country that's listed with
the contractor that can consult on a various
variety of topics. We've got different
specialties, depending on, we have pulmonologists
or occupational specialist, et cetera.

MEMBER REDLICH: And do they go
through training?

MS. LEITON: Yes.

CHAIR MARKOWITZ: Yes, I think we're
going to get into this more in greater depth
Thursday morning or tomorrow afternoon, I'm not
sure.

MS. LEITON: Yes.

CHAIR MARKOWITZ: Any other questions,
comments? So thank you very much, Ms. Leiton --

MS. LEITON: Thank you.

CHAIR MARKOWITZ: -- and also Mr.
Vance. We're going to hear from our, I'd like to
welcome Dr. Patricia Worthington from the
Department of Energy. She's the director of the
Office of Health and Safety in the Office of
Environment, Health, Safety and Security.

And while she is getting settled, I'd also like to recognize her colleagues here from the Department of Energy. Greg Lewis, Moriah Ferullo and Isaf Al-Nabulsi who have come. And maybe others, I'm not sure, but those are the ones I recognize. Anyways, welcome and we look forward to hearing from you.

DR. WORTHINGTON: I want to thank this Board for the invitation. I am very pleased and honored to be a part of the inaugural seating and starting of work for this great Board.

And thank you, Dr. Markowitz for introducing the staff here. They're certainly a big part of this program.

I'm very pleased to follow Department of Labor on this discussion. There's been a lot of activity on what goes on and how it's being done.

But I guess at the end of the day it's important for DOE to make sure that they have the tools that they need. That the information is
available to do the work. All the documents. And we'll talk, as we go through this presentation, about sort of our commitment.

I want to tell you just a little bit about myself and why I'm still pleased and excited about this work. I've had a number of years working at the Nuclear Regulatory Commission. I came to the Department of Energy in 1991.

And I guess one of the most fulfilling things that I've done, at the Department of Energy, was work on the gaseous diffusion investigation. I lead a series of investigation that provided some very important information I think that supported the development of public law and everything related to EEOICPA.

We had a team in over about an 18-month period, we went to K-25 and Paducah and Portsmouth and we talked to over a thousand workers in that process. Some of them current workers and some of the workers that had worked at the plants over the years.
And it's nothing more rewarding then hearing from the workers about what they did. And all of them were very open and forthright about their activities and very pleased that the department would care enough to send someone to hear about their experiences.

So again, that was very good. I was very pleased in the 2006 time frame to actually be reorganizing, restructured and then working directly with some of these programs that I'll talked to you about today.

For us, the workers, whether they are current workers or former workers are extremely important. They've had some very important work. And some of that work still continues at the Department of Energy.

A little bit about some of the things we do for current workers. We have the responsibility for the various rules and regulations that govern worker health and safety responsibility.

For example, for having in place the
worker safety and health program that they are
governed by. We have the former worker medical
screening program because we care about workers,
even when they leave.

We'll talk a little bit more, in the
few minutes, about the former worker program and
how to structure it. Some of you around the
table, the PIs, very important role in that area.

Okay, here we go. A little bit about
the background, in terms of this work. A lot the
work was very hazardous. Done in a very
important time when we needed increased security.

And they owe us -- we owe these
workers a huge debt. And we look for ways to
pay, to pay them back for what they've done.

So the Department is committed to
health and safety of the workers. Again, the
current and former workers.

And let's talk a little bit about the
background of some of these activities. A very
exciting time in the U.S. when many of these
programs were being developed.

And you'll hear about some of them.

You're very familiar with some of them. But there were a lot of workers that were in the trenches, in terms of getting things done. And you'll never hear their names, other than the times that they're coming forward saying that I believe I have some adverse health effects and I'm looking for information that would help me support or better understand my condition.

You've heard some numbers here today about half a million workers, 600,000 workers, or whatever it is. You know, as we continue to work on these various programs, we find more information. We believe that the numbers are higher than ones that we've quoted in the past.

But also, we have some challenges in terms of determining the numbers. And I'll talk a little bit about some of those challenges right now.

We look back over a very long period of time, for these workers. And in some cases,
employment verification, which we've talked about already, was difficult. Or in some cases, nearly impossible to be determined.

We try at the Department of Energy to use everything that's available to us when we are looking for verifications. And we believe that the original request should come to us, as our responsibility, for verifying that these workers actually worked at the Department of Energy.

One of the things that we've used, for example at Hanford and some of the other sites, things that are simple, but useful, are like telephone books.

For example, if we find very old telephone books in Hanford, if you were in that telephone book at a certain period of time, you had to be working at that site. Because you wouldn't have any other reason, you would have any authority to be living in that area.

So we want this group to understand that we try to use every means possible, to determine whether people were working at the site
During the course of this presentation, and in the future, you'll hear us mention the word contractor. And for us, at the Department of Energy, we make no distinction between subcontractors and sub, sub, subs, for doing the work, in terms of being able to deliver for them, proof of verification. As well as proof of the kinds of things that they may have been exposed to.

It has been a challenge for us over the years to do that certain type of work where workers were transient. And moving about becomes more difficult.

Over the last year or so we've had some very interesting and enlightening things happening at Hanford for example. Where people there that are dedicated to looking for records and verifying work, and so forth for the Department of Energy, they've come up with a lot of new documents.

Again, this idea at Department of
Energy, is that we are committed to our workers and we don't want to miss anything or leave anything undiscovered in that area. And they're finding a lot of records and a lot of things that provide some clarity to not only just whether the individuals were working at those sites, but also what kind of work and what organizations and contractors they actually worked for.

A little bit about our core mandate. I'll talk about sort of our relationship to the NIOSH Board and what we do. And now we're very honored to have some responsibilities to help you get the information that you need so that you can help Department of Labor.

We provide information, various types of information. Even tours of facilities, or where if facilities don't exist anymore, information about the layout of those facilities and the kinds of things that went on during that time.

I think I'll take a moment and talk about security a little bit, right now, since it
was mentioned several times and the need for
clearances and so forth.

That was one thing, when this Board
was created, that there was a specific
responsibility for Department of Energy to grant
security clearances for members of the board, as
needed.

I would ask that as you're standing up
the board, you're stood up now and you're doing
various types of things, that you take the
opportunity to kind of revisit what your initial
request would be for security clearances.

Because of many of the breaches that they've had
in the government over the last few years, the
scrutiny for security clearances and the need for
clearances and the time it would take to get them
completed, is actually a longer more complicated
process.

And we also have, whenever we have a
major election and we stand up a new
administration, we have a number of people
related to those cabinet positions and so forth
that are also looking and seeking clearances. So it will take some time to get them done.

And so in the early hours and days of this group, if you would revisit what your requests would be and get them in so that they can be considered. Because in some cases, they're taking over a year to get them done now.

So certainly we would make, you know, request, give it high priority. But we are limited by the processes that are in place. And that include other agencies. So please feel free to think about those things in the near future.

In terms of, we've talked a little bit today about receiving information and transmitting information. We are in the business, at the Department of Energy, of making available the appropriate things to define and describe the work activities that went on.

In the process, a few years ago, we had some security breaches. Breaches of privacy and other kinds of things.

And so Greg Lewis and his organization
worked really hard with our IT department, and
other organizations, to come up with the security
electronic records transfer.

   It's been, I think, a major
improvement in terms of how long, how fast we can
get to the documents to NIOSH and to the
Department of Labor. But also, it provided a
high degree of security and protection of the
information. I think it's made our lives a lot
easier.

   Again, we look for opportunities. We
conduct research and other things to try to find
the information.

   Let's talk a little bit about why it
may be so difficult, in some cases, to obtain the
information. It should be easy to verify
employment and to provide specific information.

   But we're looking back over an
extremely long period of time. And in the
beginning, it was just paper. And in some cases,
not even paper. Some things weren't even well
documented.
And overtime things became better documented, but they were still in systems that were paper. We brought contractors onboard, at some point, where we had more sophisticated approaches for managing records.

But overtime, contracts changed and the new systems didn't talk to each other. And we had microfiche and old documents and things like that.

And so from time to time we actually, in some cases because of workers, in fact former workers, that make us aware of a collection of records that we weren't aware of before and that we're able to use and provide some specific information.

So in some cases, it is a challenge about finding the information, about searching the information and about, at some sites, I know for example, we actually maybe have 25 or 30 different places that you would look for a given individual. Depending upon the type of work they did and how they moved around. And if it was
over a long period of time.

So lots of places to look. Some places not easy to search. And some of the materials themselves are in poor condition. In terms of being able to read that.

So our commitment for looking for records is there. And we really don't like to say we can't find it. So we continue to look.

In some cases, we have an organization within the Department of Energy called Legacy Management. They are very good with managing long existing legacies and looking for records. And they are on contract to us to assist us in looking for records. And usually we're successful in those efforts.

A little bit about the kinds of records. Again, we talked about verification. Again, we think we should be the first stop for that and that we need to do everything we can to document that.

A little bit about the DARs, because they include a wide variety of things. And
again, it's another example of, for example, if you're looking for dose information, if you've had contract changes or management system changes over the years, again, you have these multiple searchers in terms of looking for the information and trying to locate it.

DOE's complex site, located all across the country. Different types of missions and activities going on.

And so Greg and his organization, he has a network of points of contact across DOE. Because certainly they can't do it all themselves.

These individuals, at the different sites, are committed. And Greg is meeting with them on a regular basis. Interfacing with them and looking for ways on how they can improve sharing lessons-learned, challenges and those kinds of things, to provide the information.

Our office is also the funding source for the information in terms of requesting records. As we moved and start doing contracts
in a different way, we've asked the contracts, we've made changes to our regulations, to make sure that there is an understanding and expectation that records would be kept.

But sometimes those things, in terms of searching and producing records that actually existed before that contract was in place, is not always well defined or funded. So our organization is the funding agency for funding office, in terms of funding the individuals, the programs to actually look for records.

Site exposure matrix, you've heard about that before. You're going to get a very good detail presentation and discussions on that again, later on in the week I believe.

I want to talk again about DOE's role in terms of the site exposure matrix. Again, this is about DOE workers, DOE operations, DOEs processes for managing the various things that are onsite.

And also, DOE's assignment of individuals that would be working with these
various types of substances.

We have worked with the Department of Labor, in terms of advancing SEM over the years. There was a request, and I think some of you around this table were involved in pushing for a release of SEM. A public release that the public could look at.

And so that was, again, a huge commitment for our organization to pull in the security experts to look at that and look at what did it mean if we were to release this information, were there any concerns about classification or whatever.

And so we have a commitment, rightfully so. We honor that and we're proud to do it. To work to review releases, public releases, of SEM to see if there is any concern on the DOE side. And so we partner with Labor, and again, high priority to carrying out this activity.

Again, I'll circle back to the security. Because we're always under strict
requirements to make sure that whatever we are
doing that we are honoring the national security
and that we are in no way having a violation.
And we had quite a few, as we stood up some of
these programs over the years.

And so if you are planning for a
closed session or some activity that would be
associated with classified documents, those
documents would likely be, DOE would be the
owner.

So we would be, not our office personally, but within our bigger office, the
people that have responsibility for security,
would be working with you, even on the
recommendations that would come out of that
group, to make sure that there are no concerns
from national security about making those
statements. Sort of in a public form.

So again, we have always moved things
around. Giving high priority to whenever, the
NIOSH Advisory Board will do that for you as
well, when we need to have people to work with
you on matters of security.

So again, working where we can with SEM. Assisting the Labor Department as requested. Again, because it's about DOE operations, activities and workers.

This is just a reminder that in the 2006/2008 time frame there was quite a bit of work going on in SEM. And the classification reviews that I spoke of just a few minutes ago.

We have responsibility for research and maintenance of covered facility database. That database is available for your use.

And we want to thank some of you here that have been involved, and certainly urge others that may use the database from DOE, is that whenever you find a problem, and we do get calls that the database is down, the links broke, they are concerned, is there for your use. And so if you have any concerns, please come to us so we can correct those things right away.

In terms of outreach, our colleagues at Department of Labor, Rachel had mentioned this
morning the importance of outreach and our
partnering with them in that area.

In terms of DOE, the question of how
many workers do we have out there, former
workers, are we reaching them, it's always been a
question. And so this partnership has been very
good for us.

One thing that we do, with regard to
the partnership, is that we have worked with our
programs at the Department or Energy, make sure
they understand the importance of being able to
reach back to workers and let them know about our
programs.

They're more willing now to understand
that it's a requirement for them to make
available to us rosters of former workers. So
that we can send out information, do outreach for
them and make them aware of other programs that
are available. And again, we do this in
collaboration with NIOSH and Department of Labor.

The former worker medical screening
program, I want to talk about that program. I
think it's the right thing to do.

It's something that we older workers, you've heard from discussions this morning, that in some cases it's nonexistent in their location to have an occupational medical physician that will understand the hazards that you were exposed to and then to do exams that would look at whether or not you had any adverse health effects, as a result of your working activities at Department of Energy. And so we believe that the former worker program is necessary, it's important.

And we have an annual report that we issue every year. And so if some of you haven't seen it, we would encourage you to look at that document.

And one of the things that's amazing to me is the testimonies. There are testimonies in that report from workers. So you can hear it from me, but it's better to hear from the workers about what they think about such a program and what it means to them.
Many of them, it's about peace of mind. They don't have any adverse health effects and they're good and the information is valuable to them.

For some, they're individuals that were able to pass on information. And in some cases, things can still be done.

And so we're very proud of that program. We think it's, again, a right thing to do for Department of Energy. And we have continued that program over a number of years. And we have intention strong, intentions to continue with it.

A little bit more about the former worker program here. We were very pleased, some years back, that we had hit the 100,000 mark in terms of medical screenings.

And then the next question is always, is that a good, was it too low. Again, that's why we keep focusing on the outreaching in letting more people know about the screenings.

And then looking for a way that once
we reach out to them, that we're able to offer them a screening within a very reasonable time. Reasonable in terms of 30 days is certainly the best target, but we don't want them to wait months and month for if they have decided that they want to do that.

We have what we believe is a very good infrastructure for the former medical screening program where we're able to target individuals. In many cases, near where they live, for these very unique medical screenings. But we also have a national screening program for people that have moved around.

Some people in retirement, you know, go on, relocate and live elsewhere. And so we're looking for ways to reach them, wherever they might be.

So we have these regional programs and we have our national programs. And you have that information in your package. You can go over that in greater detail.

We also have a listing of exposures
and medical examinations that are offered. We urge you to look at that site and get more information.

And then I believe that for people that may not be familiar with it, this great feeling of confidence and increased information as well.

A little bit about our early lung cancer detection program. Dr. Markowitz was a major, major player for that. You know, getting that program up and running.

And it was a time, sort of in the medical community, that there were questions and concerns with sort of the guidance that we got from former worker medical screening program. You know, DOE kind of stepped out front and said that, let's move forward with the program at that level. And we've been able to expand it over the years.

And you'll see some of those testimonies in the former worker annual report. Because some cases, it makes a huge difference in
terms of getting information early and being able
to address it and do something about it.

I'll talk about, I mentioned already,
but I'll talk about again, sort of requirements
for protecting the privacy of individuals. We
live in a different world, in a different time.

And again, as I mentioned earlier,
there have been a number of breaches. And so
we're under increase in scrutiny to make sure
that those kinds of things don't happen.

Certainly I mentioned the security
electronic records transfer had certainly helped
us in a major way, in that area.

I do want to mention that before we
had SERT in place, if we had a breach, in some
cases depending upon the size of the breach and
how many individuals were involved, we were down
in our programs months, a long period of time,
trying to resolve that.

There are very serious congressional
involvement, when we have such a breach, that
requires a lot of interaction in briefing of
congress, in terms of the breach and what did it mean and how many people were involved. So it's serious.

And we take our commitment to perform these services in a very serious way and we think it's the right thing to do. But we know that we have to do it in such a way that the people are, their privacy is protected.

So we put a number of measures in place. And I think that for the most part we are extremely pleased about where we are with that.

Resources for the former worker program, I have listed a brochure and a website here that's available for you to look at if you are not familiar with that program. And my contact information.

I want to just circle back, again, to sort of our overall mission and our responsibilities with regard to these programs. And that is that we believe that all the workers are, it's their right and their responsibility to get their information. And it is our job for us
to do that to the best that we can.

And so over the years we have looked for ways to improve document retrieval. We've funded, at some of the sites, activities regarding special projects to help them be able to do document retrieval and records management better.

But we welcome information, requests, discussion from this Board, on how we might do it better. If there are some things that you're looking for, things that you believe that should be available and they're not, then certainly we welcome the opportunity to look, look for ways to make this happen.

So I hope that what you've heard gives you just a flavor of what we do. And if you have additional questions you will ask them.

We deliberately designed the presentation to just kind of talk about what it is that we do and a little bit about how we do it. And not to include statistics. But we have statistics.
So if you have some, because we're always trying to figure out how we can do it better and look at the timing and so forth, in terms of what we're doing. So if you want some specifics on numbers from us, please let us know, we'll be happy to provide that information.

So again, I thank you for the opportunity. I think that you have some major things to do and that we look forward to it.

And I know the workers out there are very excited about it as well. As well as the agencies here that are involved and will be receiving information and recommendations from you. So I thank you.

CHAIR MARKOWITZ: Thank you. That was very interesting. Any questions or comments?

Mr. Domina.

MEMBER DOMINA: Kirk Domina. I asked you this question last month in Denver. I was just curious if you had any more information on 10 CFR 850, on the re-write, if we're going to see it this week? I gave you a month.
DR. WORTHINGTON: I know. Thank you for the question. We have not yet received final approval to release the NOPR. I believe, I hope, that it will be released very, very soon.

Because there are a lot of workers out there, there are a lot of advocates. There are a lot of people out there that want to have open communication, discussion, input.

And so until it's in the public, the Federal Registry Notice is published, we're not able to talk about the details. And so we are hopeful that it will be released soon.

We've learned so much over the years. And we need to make some refinements. And we need to hear from people about that.

MEMBER DOMINA: That's a brilliant standard for the people that don't know for the DOE sites. And then I have a couple other comments.

I understand what you're saying about classification with the security and stuff, but me being a current worker, we're the ones that
know this stuff down and dirty.

DR. WORTHINGTON: Yes.

MEMBER DOMINA: And I'm hoping that if we come up with stuff, that even if some of this stuff is still classified, because I've sat with classification officers before, that we can work through some of this if we don't get clearances. Because I believe, to me, right now, like I have access to information that nobody else here does, on certain things. Just because of everything being inside the fence.

And then there's different levels of that, like into our IDMS system, that we can work together or something and overcome those.

Because if it takes a year to get a clearance, and this is supposed to be a two year appointment. You know, we start this somewhere in the process and then some of the people may be here or not be there, or not, and I believe that it could be a hindrance for us having access to information.

Because it's just like you talk about
in the SEM database, where they talk about incidents and accidents. Well the McCluskey incident, which is one of the most famous ones there is from 1976, still isn't in the SEM. You know.

DR. WORTHINGTON: In terms of your question about, what are doing in the interim, in terms of the need for a classified interview or classified discussions, certainly those are things that are handled and have been done when the case was made. By our security side of the house.

So we would, again, be looking to hear from you about your classification security type needs. That information then we would take to our security organization for review and decision.

CHAIR MARKOWITZ: Well that's been put on our radar. We'll figure that out over the next few months. Whether we need to pursue that or not.

I'm skeptical that we will, but it's
an open question and we'll figure it out and get
back to you about that. Yes?

    MEMBER VLIEGER: Faye Vlieger here.
At a public meeting that we had last month in
Denver, we had discussed the legacy records for
breathing space monitoring and whether they do or
don't exist for the workers.

    And I think many times the Department
of Labor claims examiners are laboring under the
idea that they exist, it's just that no one
produced them, therefore they can't demonstrate
that the worker was actually exposed.

    Is it possible to go back and look at
that and by Labor category, state whether or not
those records exist?

    Because they're not available to the
record in their legacy employment records. They
only started existing, when did the EJTA start,
Kirk?

    MEMBER DOMINA: 1998 or '99.

    MEMBER VLIEGER: 1998, '99 where an
EJTA, and that's an employee job task analysis,
started lining out the groups of records of chemicals that you could be exposed to.

Could DOE, in some manner, bring forward the information that there is not breathing space monitoring, that it's not available, so that we can move past this stigma of having to prove the chemical and causation?

DR. WORTHINGTON: I think your question is, could DOE provide some specific information on, specifically with regard to legacy type processes, whether breathing space monitoring was done. And that's certainly something that we can ask the sites, was it done at your site and where, what type of operations and what time frame.

And a little bit about sort of the rigor and formality and the procedures that may have been used to do the airspace monitoring.

MEMBER VLIEGER: And I realize it's a monumental ask. It's a big deal. Lots of sites, lots of workers, legacy type situations. But I think it would be critical in helping the
workers, prior to current protective gear and policies.

DR. WORTHINGTON: And it would be helpful to us if there is some, a particular site that have higher priority, in terms of you're looking for this across DOE. But if there are a couple or so that you're looking for an answer sooner than, you know faster, that would be helpful to us in terms of working with the sites to ask them for that information.

MEMBER VLIJEGER: Thank you.

DR. WORTHINGTON: Okay.

CHAIR MARKOWITZ: Just a, hold on. Just a quick question, because we have to wrap this up. You have one, Dr. Sokas?

MEMBER SOKAS: A quick question. It's a repeat question. It's the, if you have, in DOE, the information from some of the studies that have been funded by DOE about prior exposures, does that get fed into the site exposure matrix?

DR. WORTHINGTON: I believe your
question is, for example, for some epi studies
that were done, would that information be
available and fed in.

I don't believe that it's fed in on a
routine way. But if you want --

MEMBER SOKAS: So the exposure
information that's recreated. That would be,
that's the question. So that could be useful.

DR. WORTHINGTON: But if we get
information for requests and they're asking for
exposures of this particular individual, and they
were included in part of an event or some
activity, then that information would be
reported.

MEMBER SOKAS: Okay. Thank you.

CHAIR MARKOWITZ: Okay, thank you.

Thank you very much Dr. Worthington.

DR. WORTHINGTON: Thank you.

CHAIR MARKOWITZ: So next I'd like to
welcome Mr. Malcolm Nelson who is the ombudsman
in the Department of Labor for this program.

And while he's settling in I just want
to recommend to the other Board Members the annual reports that his office produces. They're very informative and very easy to read actually. Very accessible, very nice language. So thank you.

MR. NELSON: Thank you very much.

Good afternoon. Let me start off by congratulating all of you on your appointment to this Board. And secondly, let me thank Dr. Markowitz and the Board for this invitation to speak to you this afternoon.

I'm going try not to take too much of your time. So what I would like to do is really just three things.

One, I'm going to introduce myself, secondly, I'd like to briefly give you a summary of the Office of the Ombudsman and how we operate. And third, I want to discuss some of the complaints my office received that may have some relationship to the issues that you're going to discuss as Board Members.

In introducing myself, let me start
out by saying that in terms of Washington, D.C.,
you're looking at a very unique individual. I am
one of those strange people who was actually
born, raised and still lives in Washington, D.C.
You're not going to see many of us, so if you
want to take pictures afterwards, feel free.

(Laughter.)

CHAIR MARKOWITZ: Do you have
certificates for us?

MR. NELSON: I don't have
certificates. I'll work on that for the next
meeting.

CHAIR MARKOWITZ: Okay. Thank you Mr.
Trump.

(Laughter.)

MR. NELSON: However, of more
importance to you, I am a career government
employee with close to 38 years of experience
with the government. And specifically, I have 38
years of experience working with various federal
worker's compensation programs.

My career with the Department of Labor
actually started while I was in law school. For
two summers I worked as a summer legal intern for
the Benefits Review Board.

The Benefits Review Board is a
workman's compensation board that reviews appeals
on longshore and black lung cases.

And just to briefly explain, in the
Black Lung and longshore cases, the OWCP issues
an initial decision. Any of the parties can then
appeal and have a hearing before an
administrative law judge.

After that administrative law judge's
decision, the parties can then appeal the
Benefits Review Board. The agency for which I
work with.

And in essence, the Benefits Review
Board really took the place of the U.S. District
Court, in reviewing these cases. From the
Benefits Review Board, the cases would then go to
the U.S. Court of Appeals.

I like to say that while I was at the
BRB, I held and was every legal position that
they ever had. I was basically their utility fielder.

I started out, as I said, as a summer legal intern. And then in 1979 I began as an attorney-advisor working first in the longshore division and then moving over to the black lung division.

I've been a supervisor in the motions branch, I've also supervised some attorneys in the attorney division. I served for ten years as the general counsel, supervising all of the attorneys in the Benefits Review Board. And then I had the privilege, for three years, of serving as an acting administrative appeals judge, on the board.

I'd also like to say I have another experience. And again, it's one of these truly D.C. experiences. For five years I worked as a, basically summer employee, for the Central Intelligence Agency.

I started out for two years as a summer employee and then worked for three more
years as a contract employee for the CIA. And I think that becomes important with this job because I think I have an understanding of what it is, one, to work behind that fence at a secret facility, and I worked there as an electrician. So I understand kind of doing that production work, and again, working as a facility and working in pressured conditions.

Now let me move on to describe my office. The Office of the Ombudsman.

The Office of the Ombudsman was created in the year 2004 as part of the amendments to the act.

Although the statute places the Office of the Ombudsman within the Department of Labor, the statute instructs the Secretary of Labor to take appropriate action to ensure the independence of the office from the other officers and members of the Department of Labor, who are working on related activities.

And while I don't do it enough, Deputy Secretary Lu is gone, but I would like to thank
him and the secretary for ensuring our
independence.

The statute outlines three specific
duties for the office. We provide information on
the benefits available under the program and on
the requirements and procedures applicable to the
program.

We make recommendations to the
Secretary of Labor regarding the location of
resource centers for the acceptance and
development of claims. And has been noted
already, there are currently 11 resource centers
around the country.

And third, we carry out such other
duties as specified by the Secretary of Labor.

The statute also requires the office
to submit an annual report to congress. And
according to the statute, this report is to set
forth the number and types of complaints,
grievances and requests for assistance that we
receive during the year and we provide an
assessment of the most common difficulties
encountered by claimants, and potential
claimants, during the year.

In carrying out these duties, I work
with four policy analysts and two administrative
assistants. Actually right now, we have three
policy analysts, we have one vacancy. And I'd
like to introduce them, I think they are here.

We have Kim Holt. Kim has been with
the office almost from its inception and had
previous work on Capitol Hill.

We have Amanda Fallon. Amanda is a
former hearing representative with EEOICPA and a
former trial attorney.

And we have James McQuade. And James
has both experience as a lawyer, both in private
and with the government.

Now to get to what the real question
is, what do we really do at the Office of the
Ombudsman. And as noted, the statute requires us
to provide information on the benefits available
under this program.

And what we find is that even today,
there is still many claimants who don't know about the program. In addition, we find that because many claimants hear about this program through word of mouth, they really don't have an accurate idea of what the program is.

So what we try to do is provide outreach. We partner with the joint outreach task group to host outreach meetings. We attend outreach events sponsored by the Department of Labor and other organizations. And we host our own outreach events.

And let me take this opportunity to say, we're always looking for more opportunities to go out and interface with people. So if you are aware of situations where there may be groupings of former employees or even current employees, please let us know. We would be more than happy to explore either going there or sending some of our literature to those groups.

As I said, my office also submits our annual report to congress. And throughout the year, through personal encounters, at outreach
events, through telephone calls, faxes, emails
and letters, we talked to claimants, authorized
representatives, healthcare providers and others,
who have concerns about this program.

If you were to review our report, you
would see that over the years it has grown from
about 38 pages to now about 74, 78 pages. Now I
know some people say that's because I just talk a
lot, but that may be part of the reason. But the
other reason I find is really two things.

One, I must admit that as I've been in
this job longer, I know more about the program, I
have a better understanding. And therefore I
think I can understand the concerns that are
being raised by the claimants.

But secondly, and more importantly, I
have found that both the claimants and the
authorized reps have gained a better
understanding and a better appreciation of this
program. And therefore the questions that they
are asking us are much more sophisticated and
complicated than what we used to see.
There used to be a time when someone would call us and maybe ask us, is there a regulation that addresses this. Now they know there is a regulation and they're calling and asking us, tell us the medical and scientific underlying of that regulation or of that procedure manual. So we're taking more time now in answering the questions that we have.

And thirdly what I have found is that with this program, and you've said it many times, it's a complicated program. And I find it has just taking time for claimants, and the authorized reps, to really understand the program.

So again, I think as people understand the program and see it more, we're seeing more questions.

What I always note to people is that although the statute says we're supposed to write this annual report about the complaints and grievances that we've received, when people come to us, they don't want to just tell me about
their complaint or their grievance, they want some assistance.

And so what we tried to do is assist them in some way. We cannot act as their authorized representative. We are not their attorney. But we do try, as much as we can, to try to assist that, listen to their concerns, point them in the right direction or whatever.

So like I said, we often will directly the claimants to the resource center or to the district office, as the case may be, for more assistance. We explain documents to the claimants and we point out to them the regulations where they can find something in the procedure manual or in a bulletin.

Also what we find is that many claimants don't have access to the internet. Or if they have access to the internet, they're not very savvy.

So very often we will either have to explain to them what is on the internet or for this with the internet, we often have to walk
them though trying to find that information.

    We also, in many instances, they ask us questions that really have to be answered by the Department of Labor. And so we will forward those questions to the Department of Labor for those claimants and try to provide answers for them.

    But as I said, in general, what we do is we try to listen to people. One of the things I've, and I know this is a problem with me, I've had to learn just to sit back sometimes and before you start trying to answer their question, just let them talk and hear their whole issue. And we try to listen to people and try to point them in the right direction.

    I also want to note that in furtherance of our work, we have developed some brochures that address some of the more common issues or questions that we have received. If you ever want any of those brochures, please let us know and we'll be more than happy to provide you with some.
The complaints that we've received address practically every aspect of the EEOICPA claims process. And as I look over what we discuss in those reports, it clearly becomes evident to me that some of the issues will have bearing on the admission of this Board.

For example, the Board is to advise the secretary on the site exposure matrix. SEM as we all call it.

As we know some years ago, there was a report by the, you've got to excuse me, I'm trying to do this without my glasses and it's not working. There was a report a few years ago by the National Institute of Medicine of the National Academies. The claimants were very happy for that report.

What they would now like is follow-up to make sure that there is some independent verification. One, that the recommendations are addressed and that they are addressed in an appropriate manner.

On a more general basis, claimants
continue to question the source of some of the
information contained in SEM.

In creating this program, EEOICPA,
congress specifically found that a large number
of workers were put at risk without their
knowledge and consent for reasons that were often
driven by fear of adverse publicity, liability
and employee demands for hazardous duty pay.

Many claimants believe that those same
fears led to some records being altered or maybe
records not being taken down in the first place.

We are also routinely assured by
claimants that the day-to-day activities that
went on behind those walls, or behind those
fences, was often very different from what was
written down.

In this regard, I was recently looking
at a PBS special on the bomb. And just kind of
sitting there listening to it and it really hit
me, when that special began to talk about how
that work was done under a very, the workers were
being pressured to do the work. They were being
pressed to hurry up.

And that really hit me because that's what I hear from claimants all the time. Is that, yes, we may have had a job description, but we were being rushed to complete a project, we were being rushed to finish an assignment and therefore we did not adhere strictly to the job category.

And in this sense, whenever I hear claimants say this, I have to admit. Again, working in the CIA, I can remember those days. We installed alarm systems. We were told to put in an alarm system and have that alarm system up and running by the next morning. We did it.

And we did not always follow instructions. Like the one I always remember, I always tell people, I know I was on metal ladders working on live wires. And I was doing it because that was the fastest way to get the job done.

Another duty of this Board is to give
advice on the evidentiary requirements for claims under Part B related to lung disease. As you know, under Part B, the statute outlines criteria for both pre-'93 and post-'93 CBD. Claimants really questioned the criteria, or really the application of that criteria.

For example, the post 1993 criteria for CBD said, one of the is a pulmonary function or exercise testing, showing pulmonary deficits consistent with CBD. Claimants want to know what exactly does that mean. And is a test result sufficient or do you have to submit more.

The same thing for the pre-'93. One of the criteria, it says, a characteristic chest radiographic abnormality. Again, what does that mean? Is the chest result, is the x-ray result enough, by itself enough, or do you need more? Claimants would love to have some of those questions answered.

The Board is also to give advice on the work of the industrial hygienists, staff physicians and consulting physicians and the
reports of such hygienists and physicians to ensure quality. Just to note, I've already heard from some claimants who note that that doesn't list toxicologists. And they would like to know if it also should include toxicologists.

But also, when it comes to industrial hygienists, we are currently encountering instances where current claimants are experiencing delays, as their cases await a report from industrial hygienists.

It's our understanding the DEEOIC is working on a contract that will provide more industrial hygienists. As they do that, many claimants are hoping that not only will they have industrial hygienists who understand a nuclear industry, but they hope that those industrial hygienists will have some understanding of the nuclear work as it was done 30, 40, 50 years ago.

And more specifically, do they understand how the work was done at those various facilities. Because as I'm often told, the work is often different at different facilities.
And if those industrial hygienists do not have that experience or that understanding, what information should they be given to make sure that they have information as they reach their opinions. And that is something, not just for the industrial hygienists, but something the claimants want for all of the experts who weigh in on these cases.

Another duty is to advise the secretary with respect to medical guidance for claims examiners with respect to the weighing of the medical evidence.

While the statute directs the Board to advise the secretary on the guidance, one thing I can definitely tell you is the claimants would love to see that guidance as well.

Many claimants often ask us, they're about to go to their doctor, they want to take something to their doctor to show the doctor what he or she should prepare. So they would love to see that guidance as well.

Many claimants believe if they had
this guidance, it will really cut down on the
number of times they have to go back to that
doctor for supplemental reports.

Moreover, some cases involve
complicated illnesses. And as a result, the
medical reports in the records often discuss
medical and scientific concepts.

Quite bluntly, claimants really want
questions where the CEs always understand what
they're looking for in evaluating this evidence.
And I know what many people will say. Well, you
just send it to, the CE can send that case to an
expert.

But in the end, the CE is the one who,
one, has to frame the question to that expert.
The CE then has to interpret that opinion from
that expert. And claimants want to make sure
that the CEs have some guidance or have some
understanding, one, in developing those questions
and, again, in interpreting that evidence.

By no means do I want to suggest that
what I have just said covers all of the issues
that, all of the complaints that I have heard or
all the issues that my office receives. Rather,
I just try to take a minute to just let you know
that we do hear complaints, that I do believe
would have bearing on your office. And I am more
than willing, or happy at any point, to sit down
with you and have a much more in depth discussion
with you on these issues.

I also again want to stress to you
again, my office's approach, both with the
claimants, the authorized reps and now with you
is that we have an open door, open phone policy.
If you have a question, feel free to call. If
you're in the building, feel free to stop up. We
are always more than willing to try to assist you
and help you in any way you can.

In concluding, I just want to let you
know, and nobody else has told you, you've got
your work cut out for you. Good luck, but
congratulations. And again, we're willing to
help you in any way we can. Thank you very much.

CHAIR MARKOWITZ: Thank you. Any
questions or comments for Mr. Nelson? Yes, Dr. Sokas.

MEMBER SOKAS: So I have a question.

So six years ago there was a GAO report that said that the offices, that your office's reports were seen by the Department of Labor but not publically --

MR. NELSON: Yes.

MEMBER SOKAS: -- acted upon. Has that changed other action plans and how does that work now?

MR. NELSON: It has changed. I think following that report, the Department of Labor started to actually issue a response to my report. I believe those responses may be online. At least some of them are online.

And then more recently, in a most recent amendment to the act, the secretary is now required to respond to my report. And I do believe they're working on the response to the 2014 report, as we speak.

MEMBER SOKAS: Thank you.
CHAIR MARKOWITZ: Other questions or comments? Okay, well thank you very much, Mr. Nelson.

MR. NELSON: Thank you.

CHAIR MARKOWITZ: So we're going to take a break now. And we will, at 3 o'clock, in 20 minutes or so, we will resume. Thank you.

(Whereupon, the above-entitled matter went off the record at 2:38 p.m. and resumed at 3:02 p.m.)

CHAIR MARKOWITZ: Apparently some Board members have a better sense of time than others. But we want to stay on time. So let's get started. We're back to Mr. John Vance and Ms. Leiton. And I fear they switched chairs.

MR. VANCE: I'm talking a lot this time. But Rachel's here to kick me if I go too long.

CHAIR MARKOWITZ: Number one and number two. And Mr. Vance is the Branch Chief of Policy Regulations of Procedures for the Division of EEOIC. So, welcome.
MR. VANCE: Well, good afternoon. We're going to continue the discussion with, and apparently this is a really important discussion, because it's in parentheses here, where everything else is not. So I was kind of interested about that.

So what I'm going to be talking about is our basic adjudicatory claim process from start to finish. So this is going to be a fairly complicated discussion of just claim process. So I hope everybody got a caffeinated drink, and is ready to endure a flow chart discussion, and that sort of thing.

I am going to try to keep it as high level as I possibly can for everyone. This I think is going to address some of the questions that we had earlier in the day.

So, as we go along, Rachel's here to make sure that I pause and get some breathing going on, and allow for some questions. And I'll be looking to her for things that need to be added in.
So, what I wanted to do is just start a little bit about our case creation, and where our cases come from. So, we are, at the end of the day, a worker compensation claim program. We have case files that are filed on behalf of employees, or survivors of deceased employees.

So, it's case management 101, okay.

We have individuals that will file under both parts B and E. Or we'll have individuals that will file just under Part B, or E, or both, or what have you.

I'm going to try and stay out of the B E world. I'm going to just try to work through the general process of our claims adjudication process. And I'm not going to spend too much time trying to differentiate the two. Because it's really, that makes it that much more complicated.

So, as Rachel mentioned earlier, we have 11 resource centers around the country. Those resource centers are tasked with assisting claimants with the filing of the case. They also
work on collecting exposure information through
the occupational history questionnaire. And they
also do work for us with regard to medical bill
payment issues.

But their primary function is claims
intake. So they are our primary points of
contact for folks in the communities for
answering questions about, you know, filing
cases.

They also work with individuals to
help them navigate some of the forms that we
have, to make sure that information is complete.
That they are there to answer some of the basic
questions about our program.

And they are also there to really
solicit claims. So they're out in the community
working with different organizations, and doing
different types of outreach, and coordinating
with our joint outreach task force on different
events that we have.

So, we do have resource center folks
that attend those events, and are there for
claims intake. Okay.

Once the claims are actually brought into the program through the resource center, they are actually submitted to our central case create, or central mail room.

So, all of our cases right now are digitized. They are electronic scans of documentation. But they cases that we receive at the resource centers are in paper.

So people are filling out forms. They're filling out documentation relating to the case. They're submitting documents. Those documents are bundled again at the resource center, and sent to a central mail room where it is scanned.

Once it's been scanned it is going to be uploaded to a case create queue at our inner Cleveland district office, at which point it will be assigned a case identification number.

It will be assigned to a particular district office, dependent on the last known covered employment. So, in other words, if it is
Savannah River that means it's going to be going
to Jacksonville. If it's a Denver case with, for
RECA, that's where that will go. Like, Hanford
will go to Seattle. And so, there's a
jurisdictional determination based on the last
known covered employment.

So, once that case has been created
and assigned out to a district office, it's going
to be also tracked in our electronic case
management system. So, it's assigned a case
identification number. It's input into a case
management system.

Our case management system is the
energy compensation system. It is a case
management system. It's not necessarily a data
recording system, in the sense that it's there to
maintain a lot of information about the case.

It's basically set up to assist claims
managers march the case through all the
adjudication steps. But it does retain a lot of
knowledge and information about the case file.
So that's where, when people are asking about
statistical data, that's where we generally will go.

Once the case is received in our district office, it's going to be assigned, depending on a rotational basis. Each district office has different ways they are assigning cases, dependent on available claim staff.

Most offices have a number block assignment, based on the last digits of social security number, or a case ID number. And that will be assigned to a particular claims examiner. Okay.

At that point, once it's assigned to a claims examiner, that examiner becomes responsible for all the development and evaluation of the case. Okay.

The claims examiner's first role in looking at an incoming case is an initial screen. They're going to basically go back and make sure that the information that's been reported on the incoming case file is accurate with regard to the demographic data.
So, they're going to look at the employee name, you know, places of employment, all of the information that corresponds with what's been filed, what's been claimed, to make sure that it's recorded properly in the energy case management system, or in our case management system.

Once they've done that, they're also going to start deciding, okay, how are we going to proceed with this case? Is it going to be a Part B only case? Is it going to be a Part E only case? Or is it going to be a combination of both?

And they are going to certify that it's either Part B, E, or a combination, all right. Because that sets in motion what kind of development's going to occur. Because as everybody's explained, the process does have different criteria if it's a B case versus an E case.

Any questions up to this point?

Excellent. Okay. So, as this is a worker
compensation program, there are some very basic components to every single case file that has to first be evaluated.

So, the first question that we've sort of talked about is the question of covered employment, whether or not the individual has actually shown that they have verified employment at a qualifying Department of Energy facility, an atomic weapon employer facility, whether or not they're a RECA beneficiary, or have maybe worked at beryllium vendor, for a Part B case.

What we will then do is go through the process of developing that evidence, with regard to our different corporate verifiers, the Department of Energy, all the different resources that are at our disposal, that we use to try to verify employment.

In most instances we will start with the Department of Energy. And then we will go concurrently with other sources of information.

And at the end of that employment development path, what we're looking for is
generally a collection of information that the CE
is then looking at, and making a determination as
to whether or not he or she is convinced that
that employee worked at the facility for the
duration of the period being claimed, and that
they were working for a qualified employer.

So it is a very, that alone right
there has many steps to it. And I'm not going to
get into each one. But it's basically verifying
that that individual worked as alleged. Okay.

In addition to the employment
component, we're also concurrently developing the
medical documentation. We have an employment
component. But we also need to verify that we're
talking about a verified medical condition.

So someone when they file a claim is
going to say, I'm claiming for chronic beryllium
disease, or I'm claiming for lung cancer, or I'm
claiming COPD.

Well, when we begin the analysis for
the medical side of that claim, we're going to be
looking for the medical documentation that
establishes a diagnosis for the claimed
condition. Okay.

So, if it is lung cancer we're going
to be looking for a pathology report. We're
going to be looking for whatever evidence exists
to establish that that employee had the condition
as claimed. Okay.

That's easier said than done if we're
talking about individuals that worked back in the
'40s, or '50s, or '60s. Oftentimes those folks
may already be deceased. So we're ending up
having to go and look for information, historical
information that could potentially show what the
diagnosed condition was.

We will look at death certificates.
We will look at other kinds of information in the
possession of families, if we're talking about a
survivor case. We'll look at historical
documentation relating to hospital records,
whatever records we have available to us that
will help us identify a diagnosed condition.

Just like we had this morning in our
discussion about employment verification, the reality is, the hard reality is, in a lot of cases we don't have good medical records.

So oftentimes we're dealing with, you know, very circumstantial evidence with regard to the medical conditions that are being identified in the medical records. Or we just have no records at all.

In situations where we don't have any confirmation of a diagnosed condition, that case unfortunately goes down the path of denial. Because we have to have verified employment. And we have to have evidence of a diagnosed condition to allow the case to proceed to the next level of development, which would move into the causation component.

But before I get to that I'm also wanting to mention the fact that, you know, if we're talking about a survivorship case, in addition to the employment and the medical component, we also have eligibility criteria under both Part B and E, as you would expect,
different criteria for what individual qualifies
as a survivor. Okay.

So, under Part B there are specific
criteria for survivorship. Under Part E it's a
little bit different. Just enough to be
annoying. But it is another aspect of
development that has to occur.

So, on the initial steps, these
development actions for medical, employment, and
survivorship, in this it's a deceased employee,
are generally happening concurrently.

So it's not a sequential process where
the CE says, I'm going to develop employment, and
after I get that I'm going to go to medical. All
of this development is occurring from the onset.

So when they do their initial screen
they're going to say, what kind of employment
data do I have? Is it good enough for me to
verify employment? If not, I'm going to have to
develop that. What kind of medical documentation
do I have? If it's not available, I'm going to
have to develop that. Survivorship is the same
way.

So, that plays to some of the concerns that we've heard from Malcolm with regard to the extent of development letters. Because the development letters are going to go out, because the CEs are basically trying to get as much information together as quickly as possible.

So they're going to go out to the claimant asking for maybe a lot of records. And generally we're going to be asking for, give us as much information as you can to help us process this case.

So, as you can see from some of the flow charting here, and then in some of our discussions, we have lots of sources of information that we have to try to access.

So, you know, we were talking about DOE, talking about Social Security. We're talking about going to the claimant, asking for medical, employment, and in some situations survivorship records. There's a lot of initial development that occurs just in this first
initial stage of the case. Questions up to this point?

MEMBER WELCH: It's Lori Welch. So, you might be asking the worker for employment verification before you find out what DOE's going to give you?

MR. VANCE: Yes. I mean, we could be asking for all kinds of different information before we get an answer from DOE. So, in other words, we look at a case and say, we don't have any employment records at all. The claimant's filed a case and said, I used to work at Rocky Flats. And they submit no medical or no employment.

When the CE gets that case they're going to start the initial development of going to the Department of Energy and saying, can you please submit the employment records? But they're also going to be asking about the medical records as well.

You need to submit, they're going to communicate to the claimant and say, you know,
we're going to need the employment records. But we will also need to have medical records of a diagnosed condition. Okay.

(Off microphone comment.)

MR. VANCE: Yes. The first step of the employment verification is going to be starting with DOE. Other questions? Okay.

So, at that point, once we've gone out and collected as much information as we can, and we start making these, the initial screening determinations on covered employment, medical documentation of a diagnosed condition, and survivorship, we then will have enough medical and employment data to proceed to the next stage of review, which is actually where we start moving into the assessment of causation.

And that assessment of causation can be under Part B or E. And it's really going to be dependent on a lot of different factors.

So, under Part B we have specific kinds of medical conditions that can be claimed. And each one has a particular set of
legislatively required criteria that have to be met in order for the case to be adjudicated for causation.

All right. So, for example, we were talking about Part B cancer claims. So under Part B, when we're looking a radiological exposure for a determination of causation, we will utilize the dose reconstruction methodology for all the cases that are not part of the Special Exposure Cohort, that have a cancer diagnosis. Okay.

So, the CE has to look at this, and has to go back and look at the designated Special Exposure Cohorts, and identify whether or not that individual was, or potentially is in a Special Exposure Cohort class.

If the answer is no, or they have a non SEC specified cancer, then they know that that case is going to have to go down the route of a dose reconstruction. Okay.

So it's a matter of the CE looking at the evidence, and making judgments about the
direction of where the case needs to go, dependent on our policies and procedures, or available information about how the case is to be adjudicated, dependent on the medical condition.

Same thing for a case for silicosis. Silicosis has specific requirements under Part B. So the CE would have to start looking and mapping out, do they have the necessary evidence to establish a compensable silicosis case?

The RECA Section 5 provision, which is a supplemental process under Part B. They would be looking at, did DOJ issue an award letter for a RECA 5 recipient.

For chronic beryllium disease they're going to look under Part B, as Malcolm mentioned. They're going to start that analysis by looking at the pre or post 1993 standard.

In the law itself, the law specifies statutorily, what are the medical criteria for establishing chronic beryllium disease, dependent on whether or not there was evidence of a chronic respiratory disease post or pre-1993.
So they have to first meet that test, then decide, do we have the evidence to place that person in the pre or the post 1993 criteria standard?

And then they have to go and say, okay, if it's a pre-1993 standard, there are these requirements that need to be satisfied. Do I have that medical evidence?

If it's a post 1993 standard, then they're going to have to go back and look at it for the post 1993 criteria. And there are different criteria for the pre and the post standard. Okay.

CHAIR MARKOWITZ: I'm sorry, I just have a question on the green oval on the left. This has to do when you establish, first you establish the person has an illness. And then you move into the middle, establish if they had employment.

But on the green shape on the left it says, covered illness diagnosis under Part E. So, covered illness, there's no pre-defined set
of covered illnesses, right?

   MR. VANCE: No. It would be a claimed
and diagnosed illness. And it can be anything
under Part E.

   CHAIR MARKOWITZ: Right. Okay.

   MR. VANCE: Under Part --

   CHAIR MARKOWITZ: But it's not,
covered means that you've made the determination
that it's related to employment at DOE, right?

   MR. VANCE: Yes. I think it's,
basically it's denoting the fact that you can
have different types of coverage. So if it's a
Part B claim you could be looking at specific
types of covered illnesses.

   So, if you claim, say COPD under Part
B, that would be an ineligible condition for
coverage. And it would be considered a
compensable illness under Part E. Because you
can claim virtually any illness under Part E.

   CHAIR MARKOWITZ: Right. So my
question really is, why the word covered? It's
just confusing. Is that just carryover from
something else? It's, the illness diagnose is
under Part E, claimed under Part E. It just --

MR. VANCE: Yes. I may just be a --

CHAIR MARKOWITZ: I just want to make
sure I understand the concept.

MR. VANCE: It's a wording issue, I
think.

CHAIR MARKOWITZ: Thank you.

MR. VANCE: Other questions? So, we
can look at the Part B claim and resolve those
issues through the legislative requirements for
causation for those claims.

And that process, like Rachel
mentioned in her presentation on the review, Part
B is relatively simple from a worker compensation
program perspective, simply because the criteria
are very stringent.

The Act itself says, these are the
criteria that need to be satisfied. If you don't
meet them you're ineligible. If you do you are.

So the Part B process is relatively
straightforward.
I know that we are going to be talking tomorrow about some of the Part B lung disease conditions. The issue with the pre and post 1993 standard obviously is going to be an area of discussion. So, I'm not going to delve into that in any real detail. I just want to stick with the process.

So, moving to the Part E occupational illness process. So, that's where we really get into the meat of the complication of this program in assessing causation under Part E.

So, assuming that we already have covered employment or verified employment, we have a diagnosed illness, and we've established survivorship if it is an eligible survivor claim, we then move into looking at the employment history for the employee.

We start looking and trying to recreate, or identify what are the potential exposures that they encountered during their work. We will look at the claimed illness to determine whether or not we have any knowledge
about the health effects related to that condition.

In other words, you know, if somebody presents a claim saying, you know, I feel that my asbestos, or asbestosis is due to my work as a pipefitter at Hanford from 1950 to 1972. We know that asbestosis is related to asbestos exposure. That one will proceed through because we know that that relationship exists between the disease and the exposure.

But because the way that Part E operates isn't that anybody can file a claim for anything. We have to look at what is the medical condition that's being claimed.

So, in other words, if we get a claim for say something like diabetes. Well, diabetes is certainly something that can be claimed. But what kind of information do we have from an epidemiology standpoint that suggests that diabetes can be caused by an exposure to a toxic substance in the workplace?

And now, our program does not have
that kind of information. So then we will go
back and say, okay, well, we don't have an
established health effect for this condition.

And the CEs are going to use the site
exposure matrices to do that. So the site
exposure matrices has a listing of conditions
where the program has utilized data from Haz-Map
to basically say, here are the conditions out
there that science has established that there is
some relationship that exists between a toxic
substance exposure and a disease process.

But not everything that can be claimed
under Part E does that. So this is where we get
into some of the questions about the toxicology
and the epidemiology.

So, in other words, if somebody
presents us with a claim for diabetes, and
there's no documentation to suggest how that
condition is affiliated with their employment
from the onset.

Our first is going to go back to the
employee or the claimant and say, we don't really
have any health effect data that shows that diabetes is associated with a toxic substance exposure, whether that's radiation, biological or chemical.

You need to present us this data. Present us whatever science that you can produce that would suggest that there is some sort of exposure linked back to that condition. Okay.

If that data does, is forthcoming, then our toxicologists will evaluate it to determine whether or not the scientific evidence that's being presented is sufficiently probative to allow the program to make a determination that there is a viable health effect between diabetes and a particular exposure. Okay.

And that is one issue in the claim adjudication process where the CE is going to have to use our in house experts to get that information. But the claimant will be given the opportunity to provide that scientific data.

Question?

MEMBER CASSANO: Yes. I have a
question of that particular point. At that, oh
sorry, for that particular point. At that point
could the claimant submit an expert medical
opinion from somebody that he knows, with all the
references and all the data, and an opinion that
says, at least as likely as not, or whatever?

MR. VANCE: Yes, they can do that.

MEMBER SOKAS: And related to that,
does the program pay for outside, for independent
medical evaluations or expert opinions, or any of
that?

MR. VANCE: Not at that stage where
we're looking at health effect data. We would
only do that when we get to the tail end.
Because what we're, what this health effects
screen is, is we're basically trying to weed out,
or identify those cases that we just have, that
science does not suggest that there is some sort
of work related component to it.

And so, what we are trying to do is
say, okay, we have nothing to go on. We have
nothing to show, or the claims examiner has
nothing to go on that says that this condition is
linked, or can even potentially be linked to
something in their employment.

You know, the common things that we
see are like Alzheimer's disease, and sort of old
age dementia issues, and those kinds of things,
you know, so we have to look at that. And we
have to give the claimant the opportunity to
present whatever information that they want.

But again, those are oftentimes things
where there's just not science that would suggest
an occupational relationship.

MEMBER SOKAS: So this is just a
question. So, as you know the IOM Committee was
a little concerned about the level of peer review
that took place in Haz-Map. Is that still the
situation? And is that still what the claims
examiner bases this first cut on?

MR. VANCE: Yes. Haz-Map is always
going to be the, Haz-Map feeds into the site
exposure matrices. So, one of the first places
the claims examiners will go to look for health
effect data is going to be the site exposure matrices.

But they're also going to be looking for other kinds of information that may have been submitted by a physician. So, if a physician has submitted something that would suggest, for example, that the individual characteristics of this individual's medical history is showing that they, for whatever reason, had a reaction to a particular toxin in the workplace that may not even have any true scientific health effect data associated with it.

If it is supported by appropriate rationale from the physician, and that means that the doctor has offered something more than just a causative statement, that they've gone in and said, I've looked at this. I understand what the exposures were. I've evaluated the available scientific evidence.

And I've looked at maybe the medical records of this particular individual. And I am opining that there is a causal relationship
between this exposure and their medical conditions. Well, then, we can accept that.

    But in situations where we don't have that information the CE's got to have a resource to be able to say, do we have any kind of scientific knowledge showing that this condition is even potentially linked to something in the workplace?

    MS. LEITON: And there was a question about reimburse, or being paid for consultants. And we would pay, we could pay retroactively. If we accept a claim, and they got an expert opinion, we can pay it after the fact. But it has to be accepted first.

    MR. VANCE: I'm sorry.

    MEMBER FRIEDMAN-JIMENEZ: A question. How does the program deal with secondary causes? I'll give you an example. A person's exposed to a high level irritant. They develop irritant induced asthma. They're treated for years. And it's established as work related.

    Then they're treated for years on and
off with oral corticosteroids steroids. Now they have diabetes. The question is whether the diabetes is related to the steroid treatment for the established illness. Is that something that you see? And how do you deal with that kind of secondary --

MR. VANCE: Yes. That sounds like a consequential illness situation, which is a completely different adjudicatory process, in that once we've accepted a primary illness. So in other words, let's say we've accepted asthma. And as a consequence of medical treatment for that asthma the individual either develops a diabetic condition, or they're diabetic condition is aggravated by the medication they're taking for the primary accepted illness. We would accept that on the basis of a consequential illness.

MR. VANCE: Yes. It requires a doctor's opinion. But it would be something that we would treat as a consequential illness and accept, and pay for medical benefits for. Other
questions?

MEMBER TURNER: Yes. My name's James Turner. Yes, what about -- I'm sorry. What about secondary exposure? Like, you bring something home from work, and your family members got exposed?

MR. VANCE: No. Unfortunately the statute is clear that the exposures that are under consideration for compensability have to actually occur at the workplace. So, it's a question of premise. Where did the exposure occur? The exposure has to occur on the premise of a covered facility.

(Off microphone comment.)

MR. VANCE: Right. So, I mean, you have to be a qualified employee. You have to work at one of these sites. And you have to have the exposure at that facility.

MEMBER TURNER: Okay. I think I remember, I remember some time ago there was a reporter by the name of Same Rowe. And he wrote a report about some family member worked at this
manufacture place that manufactured beryllium.
And he brought something home. And the wife got
sick, and she passed away. I think she might
have got compensated. I'm not sure.

MR. VANCE: No. It, our program,
that's outside the legal scope of our program,
you know. What you're talking about is like
secondary exposures outside of the workplace that
are brought home.

And we've heard that. That's not
something that's not uncommon. I mean, it is
something that we've heard about. But the
statute is very clear that this is a worker
compensation program for those employees that
were working at the site, that were exposed to
things at the site. That answer your question?

MEMBER POPE: Duronda Pope. Along the
line of the secondary exposure. What if the
individual worked at the site, and became
pregnant, and passed that along to the infant?
That doesn't apply as well?

MR. VANCE: Unfortunately, no.
MEMBER VLIEGER: As far as -- Yes, this is Faith Vlieger. As far as consequential conditions, has the department developed any presumptive diseases? For example, diabetes, osteoporosis, from the inhaled corticosteroids steroids?

MR. VANCE: We have for chronic beryllium disease, I think a listing of common general, or consequential illnesses. But in most instances we have relied on physicians opining on the unique characteristics of a relationship between a primary illness and a secondary condition, and whether or not there's a consequential relationship.

But I do know that as far as, on one of our agenda items for tomorrow that was an issue that the Board can certainly be thinking about with regard to common consequential illnesses that we would see in other types of primary Part E illnesses.

So, in other words, if you have say lung cancer, you know, can we not creates some
sort of resource that says, you know, if you have lung cancer and you also have chronic obstructive pulmonary disease, or pulmonary fibrosis, then there's no doubt that that lung cancer is going to be in some way aggravating that other lung disease.

And we've looked at that. But we've never developed a resource along those lines. So I think that would be one area where we would probably be looking for some assistance.

But I want to try to get back onto the process here. So, we were talking about the toxicological process. Once we have established a health effect, and we've established that there is a disease linked to some potential toxic substance that the person could have encountered in the workplace, we then move to the exposure analysis.

We start looking for information relating to those toxins that caused that disease, or potentially can cause that disease, and whether or not the employee encountered them
in their workplace.

And that moves us into the site exposure matrices. That moves us into looking at any of the exposure records that we've received from the employer or from the employee. That means looking at the occupational history questionnaire, and looking at the totality of all that information.

The CE is going to conduct an initial screening, basically a finding on whether or not these are the reported toxins that they want to have the industrial hygienist review.

So, they're basically looking at the toxins. They are trying to prioritize and identify a number of toxins with the highest likelihood of producing a positive outcome.

And that's going to be dependent on looking at all of our available resources, primarily utilizing the site exposure matrices, but also using other types of information that we might have in the case file.

So, once that process is done the
claims examiner is going to produce basically a statement of accepted facts. It's a document that is actually just a referral to our industrial hygienist, saying, based on our analysis, based on our research, here is the factual information about this employee as we see it, as established in the case evidence.

In other words, these are the conditions that have been established through the medical evidence. This is the verified employment. Here is basic information about the employee's work history, with regard to labor categories, work process, and other types of information. And our SEM search results with regard to the identification of particular toxins.

All of that material, along with the case file exposure data is going to go to an industrial hygienist, okay. We currently have two and half industrial hygienists working on these cases.

There is a substantial backlog that
exists right now with regard to our industrial hygienists. And we have been striving, and we'll talk more about this in some of our later discussions tomorrow, to try to mitigate the amount of cases that are going to our industrial hygienists.

But the reality of our claim process has developed to such a point where we feel it is really important to have an expert looking at these cases from an industrial hygiene standpoint. And offering input on the extent, nature, and duration of exposure.

This has been something that has developed over time, where we really have had more and more cases going to our industrial hygienists, to the point where now virtually all of our Part E cases that get to this point are going to an industrial hygienist.

So I'll let Rachel make a couple of added comments on that.

MS. LEITON: Yes. We've gone back and forth in this program, with regard to industrial
hygienists and the amount of exposure information
a claims examiner should be presuming in certain
circumstances.

I mean, we've gotten criticisms for
the claims examiners not being trained in how to
evaluate exposures, and how to assess what job
descriptions they, an individual might have had
exposure, to what substances.

And even though we have the tools with
related, regard to SEM and things like that, as
we've moved through the program over the years
we've found, well, you know, our claims examiners
are trained in evaluating medical and scientific,
and factual, all kinds of information in terms of
evaluating for the ultimate purpose of
adjudicating.

But when it comes to making
determinations related science and medical, we
really need to have the experts looking at it.
So, that's why we've been, we've probably had
more referrals to the IHs.

One thing we have been working on,
we'll have probably a more definitive response
for you tomorrow, is a contract for industrial
hygienists to help assist with this. And we'll
have the resources to actually keep up and, you
know, provide them with the training, and then
move that easier.

And with your assistance, in terms of,
you know, the best referrals, the types of
referrals, things like, I mean, we've got that.
We've got that with our current industrial
hygienists now.

But with a contractor, I think that
that will make it as consistent as possible. And
we'll also have the resources to do it. So I'll
have more information on that hopefully tomorrow.
But it is something that's in the process right
now.

MR. VANCE: Any questions up to this
point?

MEMBER SILVER: It seems that by the
time the claimant gets to the third green oval
it's been awhile since they've had any input into
the case file.

I'm wondering, are there precedents
for the industrial hygienist provided with all
the documentation, picking up the phone to probe
the claimant or the authorized representative for
site specific exposure factors --

MR. VANCE: That --

MEMBER SILVER: -- about the process

that would not exist in Patty's industrial
hygiene manual or in a NIOSH HHE.

MR. VANCE: That's currently not part
of the process.

(Off microphone comment.)

MR. VANCE: Yes. If there are
questions that the industrial hygienist would
want to have clarification, they'd have to go
back to the claims examiner, who would turn back
to the claimant to ask those questions. But the
industrial hygienists currently don't have any
interaction with the claimants.

MEMBER SILVER: Which most industrial
hygienists would frown upon. That's where you
get the most useful information, from
interviewing workers.

CHAIR MARKOWITZ: So, I just have a
related question. Steven Markowitz. So, that
wasn't just DOE, but the general habit in
industry. And going back in time was that there
really wasn't all that much industrial hygiene
data collected.

And when it was collected, it's hard
to interpret what it mean, what methods were
used, did it reflect the workplace, et cetera?
So, I know you are increasing the uses of
industrial hygienists.

But to what extent actually do, are
they able to find useful data that will help them
make them decision about intensity, duration, and
frequency of exposure?

MR. VANCE: Well, I know we're going
to talk a lot more about this tomorrow. But I --

CHAIR MARKOWITZ: Well, I'll wait for
an answer for tomorrow. That's fine.

MR. VANCE: Yes. I mean, it's for an
entire session tomorrow. So, I mean, needless to say, I mean, they're going to look at as much information as possible that is in the case file, and the information that is available on the employee.

But oftentimes they're also going to be applying some of their own understanding of work processes, or the exposures that would be common for different type of labor categories.

And I think that's, I know that that is one area where we certainly would be looking forward to having some input on how that process can work more efficiently, and more robustly.

So, I want to continue on and try to get through this. Because we got a little bit more to go here. So, once we've gotten the exposure documentation ready to go, the next step is looking at the medical causation component.

So, in other words, that's the step at which we go to the treating physician to ask for a medical opinion on causation, the application, the Part E standard, as to whether or not the
claimed disease is related to the accepted exposures in the case. As far as that's as least as likely as not, as the exposure's a significant factor in causing, contributing, or aggravating.

It's left initially to the treating physician to opine on that, if there's an available treating physician. If not, we're going to go to one of our contract medical specialists to ask that question.

So, once we've obtained the response to that, we move into the benefit calculations stage. Depending on how the case plays out, we would assume that, just for this exercise, you know, if there is a compensable Part E case, and we can go forward with a determination on wage loss or impairment, we will calculate that lump sum payment to the employee.

That would be included in the decision that would be soon forthcoming. We would also start preparing ourselves for the determination on the medical benefits, based on the condition being accepted.
So, once we've done that, and have made a determination, if the response is a positive one we're going to prepare a recommendation to approve the case.

And if it's a recommendation to approve the case it's going to be, we're accepting a medical condition, either under Part B or E, or both. We would also be paying any kind of lump sum compensation that would be available to an employee or a survivor.

But none of, at this stage it's merely a recommendation, that these are the recommendations of the district office, the claims examiner who's evaluating the case. So none of the benefits are actually going to be paid or awarded. It's merely, I'm recommending, as a CE, this is the amount of money that you should be receiving. Okay.

Once that's done, and it's basically a proposal, the claimant will be notified in writing. They're going to get a recommended decision that explains the analysis of the
evidence as the CE sees it. All right.

So the CE will explain in a decision
his or her rationale for accepting the case, or
denying it. There will be multiple points of
discussion about different factors that the CE
has considered, and why they did or did not
accept certain components of the case file, as
far as the factual evidence is concerned.

This information is communicated to a
claimant or their authorized representative, who
then can choose what their action is going to be
in response to this recommendation.

They can choose to either accept it,
and submit a waiver that will eliminate the need
to wait for any period of additional objection.
So most individuals that are receiving
compensation or an award are going to want to
submit that waiver, so they can immediately go to
the next step in the process, which is a final
decision.

If there is a decision that the
claimant disagrees with, if there is a
recommendation that they don't feel is an appropriate outcome, they can have a couple of different options.

They can request an oral hearing. And that means that the case will be presented by the final adjudication board to a hearing representative, who will conduct an in-person interview, or a video conference appeal, where the person can come and challenge their decision, or present evidence in a one-on-one exchange with a hearing representative.

The other option would be if the claimant does not choose to do an oral hearing, they can choose to do a review of the written record, where they're submitting basically written objections that are going to be considered by the Final Adjudication Branch, which is the next body that is responsible for reviewing the adequacy of the recommended decision. Okay.

Regardless of whether the claimant objects or not, the Final Adjudication Branch is
responsible for reviewing the case, and issuing
the final decision. Okay.

So, even if a claimant does not
object, it's still the responsibility of the
Final Adjudication Branch to make sure that the
decision that's being issued is in compliance
with the legal regulatory and procedural criteria
that exist under the Act. Okay.

Once that FAB review is conducted, and
they've considered any objections that have been
presented at a review of the written record or an
oral hearing, they're going to issue their final
decision, which is a written decision that will
go to the claimant.

The claimant will be told exactly what
it is the outcome is going to be. It will be
either, you know, we're finalizing acceptance and
awarding benefits, at which point the employee
will be notified of how the benefits will be
allocated, whether that's lump sum compensation
or medical benefits. Or if it's a survivor case,
the survivor will receive their lump sum
compensation for survivor benefits.

          If it is a denial they will be
provided with a written explanation as to what
information was considered at a hearing, or
reviewed in the written record. They will
explain in the decision the consideration of any
objections. And the decision will finalize the
denial. Okay.

          If the Final Adjudication Branch is
reviewing a case and decides that there's been an
error in the application or program procedure
regulations, or a legal criteria, they actually
have the option of remanding the case back to the
district office.

          So it's basically sending it back to
the district office for additional development or
new review, and a corrected decision, if
necessary. And it could be a change in the
circumstance of the case.

          So any number of reasons can cause a
remand. But basically the Final Adjudication
Branch, not finalizing an acceptance or denial,
but returning it back to the district office for additional development.

After the issuance of a final decision there is additional appeal options that are allowed. Within 30 days of the issuance of a final decision a claimant can choose to request a reconsideration.

We mentioned that earlier. It's basically a written request on an appeal that will go to the Final Adjudication Branch. A new hearing representative, or a different staff person that has not been connected with the case file in the past will review the case and issue a new determination on whatever the issues are that are being raised in the reconsideration.

The other option on appeal would be a reopening request directly to the director of the program. This is a function that would allow an individual to contest a final decision at any point after their final decision, whereby the specifically request a reopening, and they present new information or new evidence, or
argument, with relation to their final decision.

That would be evaluated by the director. And the director has delegated out, in certain circumstance, the responsibility for evaluating reopenings to the district directors, and the local district offices. The last option of course would be taking the case to District Court.

Just the last two real quick components of this process. You know, once we've gotten through the entire decision process, if we are awarding benefits we will notify an employee or the survivor of their responsibilities for completing additional paperwork, and sending back information about how they want their deposit to be made, with regard to the money, if there's lump sum compensation involved.

We will also notify them of available medical benefits if it's a living employee. Those are all processes post adjudication after the Final Adjudication Branch has issued their final decision.
And then we also enter into some post adjudication activities. So we have some final maintenance activities that will occur annually with regard to evaluating, you know, additional receipt of state worker comp benefits, or other tort settlement benefits that have to be reported to us.

And we also have some other post adjudicatory activities relating to any kind of errors that might occur in the post adjudication period, where we might end up having to do some sort of over payment development, and the collection of any kind of overpaid funds.

So that's the claim process in a very quick and dirty nutshell. Any questions?

MEMBER SOKAS: Question, yes. So, I was wondering if you could describe, the final adjudication process, it's one person reviewing the case? It's like a secondary review basically. And is that correct? And what's the skill set of that individual compared to the original claim examiners?
MR. VANCE: Well, I mean, the function of this process is actually to have an independent review of the decision by someone that is sort of operating at the same level as the claim examiner, in the sense that they have the same kind of knowledge and understanding of the program. They've been trained in the same way to know what are the existing policies and procedures --

MEMBER SOKAS: So it's a check.

MR. VANCE: -- and regulations, and the legal criteria. But you're asking for somebody else to look at it and say, is what the claims examiner doing, and what they're recommending reasonable? Have they applied the guidance in an appropriate manner? And is the outcome appropriate?

And that's, I mean, that's, you know, and that's a really important functionality, to make sure that we are operating within reason. Because, you know, we truly try to task, like Rachel mentioned before, to try to move these
cases to an approval.

But we still have to operate within the framework of the law. So the FAB is there to make sure that we are doing that, and we are making, you know, good decisions that are in compliance with all of the requirements of the statute.

MS. LEITON: A couple of, just as a follow-up to that. The Final Adjudication Branch, only hearing representatives sign those decisions. So their grade level is higher than anybody in the district office.

We do have, we have both claims examiners and hearing reps. Claims examiners will review cases that don't have hearings. They will, like issue a decision that will then be reviewed and signed off on by a hearing representative. So, there is that for the claims staff and this higher level, grade level, at the Final Adjudication Branch level.

MEMBER SOKAS: So, just a couple of follow-up questions on that. What proportion of
the claims that go through, the determinations
that go through are changed, either if they are
originally positive changed to negative, or
originally negative changed to positive, at that
level?

MR. VANCE: We don't have that kind of
information available right now. We'd have to
get back to you on that. I will add though, that
as an important feature here, there are instance
where the Final Adjudication Branch, you know,
there is actually a fourth option where they can
actually reverse a case to approve it.

So, in other words, if there's some
circumstances that changes between a recommended
decision and the point at which they're issuing a
final decision.

The clearest example I can give you is
like the naming of a new Special Exposure Cohort.
You know, when we have one that's been issued,
and that case is in that interlude between the
recommended and the final decision, and the Final
Adjudication Branch gets a notification that this
SEC's been named, they can actually turn it from
a denial to a reversal.

MS. LEITON: And also, just, you know, the percentage. If we were to, you know, you talk about the percentage. That changes.

Sometimes at the Final Adjudication Branch level we get new medical evidence that shows a diagnosis that we didn't have before.

A lot of times if it's being changed, it's because we have new evidence that wasn't there before. The remands that are due to office error, it's a low percentage. I can tell you that.

MR. VANCE: You know, the other important thing here that I think is important for everybody on the Board to understand is that, you know, the recommended decision is the opportunity for the claimant to look at and understand the nature of the information that we're relying on to make that determination.

So in other words, we will describe to the claimant, hey, this is the exposure data that
we were relying on. This is the exposure information. This is the outcome of your analysis from a medical physician.

So they're given that opportunity to provide clarification at that point. That's why the oral hearing is so important. Because they come in person and explain, well, wait a second. You guys are telling me that, you know, I wasn't exposed to X, Y, and Z toxin. Well, let me tell you, I was.

And they can provide the information at an oral hearing that would then allow the hearing representative to look at that and say, that really was not considered appropriately. So that would justify potentially a remand.

So that, you know, that is an important feature of this process. It allows us to basically say, here's what we see at this point. Please let us know if you have something additional to add to this process.

So, some of these cases do end up in a lot of, kind of a cyclical process where we try
to address one issue, we issue a decision. We
get to oral hearing, or some sort of objection,
and we just have to continue to consider new
information as it becomes available.

CHAIR MARKOWITZ: We're going to
continue with the presentation, and then take
questions as we have time. So, if you could
continue?

MR. VANCE: Well, I wanted to add
really quickly, just because I think it's
important, as sort of the how to process. I also
want to talk just very quickly about procedural
writing within the policy branch.

I think it's kind of important for
everybody to understand that that's a major
function of my analysts on my staff. I have 11
policy analysts that are responsible for
evaluating policy, and making determinations
about how are we going to apply policy. And I
thought it would be kind of a good thing to talk
about, if you want to know about how the process
works.
So, we have a, my policy analysts are responsible for editing and drafting, and releasing updates to our federal procedure manual. As many of you might know, it is available online for everybody to review.

We're constantly in a state of editing of the procedure manual. It is a Herculean task in some cases to just go through that and constantly update it. But it is an internal process for our procedure manual to be updated within the program.

So we basically have analysts that identify issues that are coming forward from the district offices, from external stakeholders, from, guidance from Rachel's office, from whatever source. And we assess that.

We determine, is it going to have an effect on the policies and procedures of the program? And then we will draft a guidance that will be incorporated into the procedure manual. Okay.

We are constantly changing the
procedure manual. We have updates that are
current all of the time. And it just depends on
what the issues are. But that process for
clearing changes to the procedure manual, or
other kinds of policy directives that are issued
by the program, is a fairly regimented process.

So whether it's updates for our
procedure manual, or if it's policy directives
like a bulletin, or a circular, or program memos,
which basically describe how it is that the
program is applying the law and the regulations,
it goes through a development process, whereby we
have one of my analysts that will prepare
material based on whatever the assignment is,
based on the procedure manual subjects.

That material will then be circulated
to our field offices for comment and input. The
field offices get an opportunity to look at it,
and provide that guidance. Because the procedure
manual is designed to provide staff guidance on
how to adjudicate cases.

We will then collectively evaluate a
review those, oftentimes with Rachel's input on
the feedback that we get. It then enters into a
final drafting stage, where we prepare a final
version for review by the internal management of
the program.

So that means that it's going to go
through myself and some of the leadership within
the Energy Program, including our solicitor of
labor. They will look at it and make sure that
any guidance that we're issuing is within the
legal requirements of the statute, and within the
legal confines of what we can do from a
procedural standpoint. It will be then signed by
the director of the program.

And we're not done yet. It still then
has to go through upper tier clearance to the
Office of Worker Compensation Programs. That
means it has to go through a vetting process
above the program. And that means that we have,
you know, different individuals within EEOIC
reviewing and certifying before it can be
published.
So I just wanted to talk a little bit about that. Because I just wanted to make sure folks were understanding. But that process is a fairly laborious one, but is an important one. Because it does guide how claims examiners evaluate cases. And it provides written instructions on that.

MS. LEITON: And I just wanted to add to that. You know, the regulations that you guys reviewed are, they have to go through an even more robust process, obviously, through OMB and all of that.

The one benefit to having our procedures in such a fashion that we can change them if we want to is, if you guys have recommendations, a lot of the recommendations that you make can be made, or may be able to be made without a regulatory change.

So, because we get into so much detail, if there's a process that we use right now, you guys make a recommendation, there's oftentimes a lot of leeway, without having to go
through that whole, we need to change the regulations, process.

And we do, as John said, we do make changes all the time. So that is one avenue where, when you guys make recommendations, and we accept them, and we can hopefully do it more quickly than we would if we had to make any actual regulatory changes.

CHAIR MARKOWITZ: Questions, comments?

Dr. Welch.

MEMBER WELCH: Lori Welch. I thought it might be helpful, if you think you can do it, to have some example reports from the Final Adjudication Branch that the Board could review, that are either, the personal information is --

MR. VANCE: Well, yes. I was going to suggest that you actually go online. We have actually a resource that is available on our website. And it is a decisional database that is available to the public.

It is a set of decisions that our solicitor has vetted as being precedential in
nature. And it is divided up into different topics within the adjudicatory process.

So, if you're interested in doing that, I suggest that you might go take a look. And you can see how the decisions are worded in such a way as to cover particular topics. And I believe that they're sort of organized by headers, and different kinds of --

MS. LEITON: They're already redacted.

MR. VANCE: Yes. They're already redacted. So they're publicly available.

CHAIR MARKOWITZ: Other questions, comments? Yes, Dr. Cassano, go ahead.

MEMBER CASSANO: Tori Cassano. This may be a little bit tangential. But could you explain a little bit about how the medical benefits work into this?

Somebody is treating through private insurance for several years, and then all of a sudden gets accepted as a claim. And then, the medical benefits are future? Or, I mean, I could see all sorts of issues with private health
insurance here. I wanted to know how it works.

MR. VANCE: Well, for our program, once we've accepted a condition we become the primary payer for that medical condition. So, let's use, yes, let's use COPD as an example, because that's the most common kind. Respiratory disorders in general are the most common kinds of diseases that we'll see.

So, once we've accepted a case the claimant will be notified of the accepted condition. And in the case of a living employee they're the ones that we're going to pay medical benefits, obviously.

The claimant will be notified of the ICD-10 condition that is being approved. So that is going to trigger their ability to go to their physician and say, here's what's covered by the Department of Labor. The physician or the provider can then bill for any services related to the treatment or the care of that medical condition. All right.

The Department of Labor has a
relatively automated process for paying medical bills. The way that we pay medical bills is, basically we've created treatment suites that basically say, okay, if you have this diagnosed condition, and the doctor is billing on a form basically saying, here are the procedures that I have performed for this employee in treating them for their COPD or respiratory disorder, the system will automatically pay those bills according to a federally established fee schedule.

So those kinds of bills will hit our system. We will then, it will be tested against the treatment suite to say, oh, you have COPD, and you're being prescribed prednisone. So that will be paid.

But it will screen out things like if you try to submit a bill for let's say a broken leg in that same case. It's not part of the treatment suite for casting of a broken leg. So that's going to get rejected.

So it's basically a screening process.
But those medical bills will be paid. And it's a fairly effective and efficient system, until something happens where we've got to look at an exception to the rule.

MEMBER CASSANO: Actually, my question was more about, if you accept a client as of, you know, today, an insurer that's been paying all of those medical bills up until then, private insurer may say, well, heck, if it was due to employment now, it was due to employment --

MR. VANCE: Yes. It --

MEMBER CASSANO: -- it was due to employment before. Do you ever run into that?

MR. VANCE: It would be called a carrier reimbursement. And what happens is, we would go back to the data filing for the accepted condition and say, okay, the Department of Labor became responsible for all the medical bills effective this date.

And so, the insurer could then come back and say, okay, Department of Labor, you need to reimburse us for the out of pocket, or the
money that we've spent in treating that
condition.

And we would go back and assess the --
They'd have to submit, of course, all the
documentation relating to what they paid. But
then we would go back and assess that, and then
issue a reimbursement check to the insurer,
basically at whatever the established fee is.

CHAIR MARKOWITZ: Two last questions.

Dr. Silver, and then Dr. Boden.

MEMBER SILVER: What is the desk book?
And where does it fit in this flow chart? And
how does it relate to procedural writing.

MR. VANCE: The desk book? Yes, I'm
not sure what that is.

MEMBER SILVER: Or policy call notes?

MS. LEITON: So, one of the things
that we do on a monthly basis or so, and we've
been doing it since we started. Not, it's
changed over the years. We used to have, given
that this program's so new, we used to have a lot
of questions.
So we'd have a general guidance on a procedure. And we'd get a lot of questions about how is this going to apply to my case? So we started, back then we had, more often we'd have calls with our district office staff, and talk about issues that they came up with.

Or like, you'd see something that we hadn't seen before. And there was a lot of times you'd see something we hadn't seen before. And so we started having calls to talk through them.

And these calls have gotten a little bit smaller over the years, because we've been able to refine our procedures to be more clear. But it's most, it's a lot of times these exceptions that you don't see very often.

We'll have a call. We'll talk about it. And we'll talk about it with all of the staff, so they understand, in this weird situation we've determined we're going to go in this direction. In some cases those calls will turn into a policy guidance that goes into our procedure manual. In some circumstances it was
such a small vague issue that's never come up before, that it doesn't really make it into our procedure manual.

So, it's something that the, gives the staff an opportunity to raise issues to our level, at the policy branch level. And I sit in on these calls as well, just to kind of contemplate exceptions to the rule, where we really haven't made a rule yet.

But it's deliberative. We get into a point where we're saying, we need to make a call here on this situation. And if it gets to be a situation that is common we'll put it into our procedure manual. So that's kind of how that works.

CHAIR MARKOWITZ: And Dr. Boden.

MEMBER BODEN: So, I want to actually follow-up on the question that was just asked about past medical expenditures. So, in most cases the claimant will also have medical expenditures because of deductibles and co-pays, or whatever. How do you handle those?
MR. VANCE: Basically the same way.

So, I mean, there are certain services that an employee who are, you know, someone can pay for out of pocket that are actually, is relating to covered treatment for their accepted illness.

It basically follows the same path that we would for that carrier reimbursement. Basically, you've got to present us evidence that you received this bill, it's related to your accepted condition, you paid some out of pocket amount of money for that.

So you have to show us proof of payment. And then we would reimburse you up to the fee that is allowable under our fee schedule.

MEMBER BODEN: Right. Now --

MR. VANCE: And that would be a direct payment to the claimant.

MEMBER BODEN: Presumably, if this was covered by insurance that the documentation the insurer would give you would include documentation for what the patient's copay was.

So they wouldn't have to come up with any
additional evidence?

MR. VANCE: Not for, well, it depends.

I mean, you know, if you're talking about I paid
for, let's say, you know --

MEMBER BODEN: You paid out --

MR. VANCE: -- this particular
medication. And it was not something that I had
submitted before. But I paid out of pocket. But
I know that now that it's a treatment for my
accepted condition.

Well then, what we would ask for is,
you have to give us the information about the
drug that was prescribed. You have to give us
the amount of money that you paid. And, you
know, document that information, so that we could
turn around and then reimburse you for that cost.

If it's something that was paid by an
insurer, well, we're not going to reimburse the
claimant. We're going to reimburse the insurer.

MEMBER BODEN: No. But --

MR. VANCE: But we don't reimburse for
like copays, unless --
MEMBER BODEN: If I go to the doctor, and the doctor gets paid $150 by the insurer, and I have a $50 copay, then presumably I would be reimbursed for the copay, correct?

MR. VANCE: Yes. I'm not sure. I'm not sure exactly on that. Yes. They may, well, yes.

MEMBER BODEN: Okay.

MR. VANCE: Yes. I'm just, I'm more familiar with just the --

MEMBER BODEN: I understand, yes.

Okay.

MR. VANCE: I'm more familiar with the out of pocket for specific services.

MEMBER BODEN: Right. Yes. So, yes, pharmaceuticals would be different. Because --

MR. VANCE: Yes.

MEMBER BODEN: Although they might also be insured. And how --

CHAIR MARKOWITZ: So, let -- I'm sorry to interrupt. But we need to actually end this session.
MEMBER BODEN: Okay.

CHAIR MARKOWITZ: But the good news is, Mr. Vance is going to be here at 8:45 tomorrow morning. And we --

MR. VANCE: Get used to this face.

CHAIR MARKOWITZ: And we will be --

MR. VANCE: Yes. I know it's a hard thing.

CHAIR MARKOWITZ: We will be here too.

So, thank you very much, Mr. Vance.

MR. VANCE: Okay. Thanks.

CHAIR MARKOWITZ: It was nice. Let me welcome Jim Melius, who is an occupational medicine physician and epidemiologist, and administrator of the New York State Laborers Health and Safety Fund. He directs the Steering Committee of the World Trade Center Health Medical Monitoring Program.

And most relevant for today, he's Chair of the Radiation Advisory Board within the Department of Labor's function. So, welcome, Jim. Thank you.
DR. MELIUS: Okay. Yes, this works.

Hello, everybody. Many of you I know. And mostly in person, or sometimes through other circumstances. But anyway, welcome to this Board, and good luck with what you're doing.

And as I was telling Steve at the break, that boy was I happy when this Board was formed. A number of fewer questions for us.

But what I'm going to, what Steve asked me to describe is what we do on the Advisory Board for Radiation Worker Health, which was set up with the original EEOICPA legislation back in 2000. So, we've been working for a long time. So, I think this is that. Here we go.

Yes. We're up to 110, please. Yes. Ten since you left. If you have any detailed questions, or complaints, it's all Mark's fault. He served on the Board from the beginning with me. And so, you blame him. And if you have questions later on that come to mind, he can probably answer them, many of them better than I can.
So, the Board was formed in 2001. We're appointed out of the White House, Presidential appointments. We are administered through CDC, NIOSH, so that makes some difference in terms of how we work, some of our operating rules and so forth and that.

The legislation indicated that the members had to be, represent a balance of scientific, medical, and worker perspectives. I'm not quite sure what that meant. But there is some balance there in terms of who is appointed, and so forth.

And many of the members that were originally appointed, believe it or not back in 2001, are still on the Board, including myself and, what, six or seven others. I can't keep track. We're an aging cohort though through that.

As I said, we've had 110 meetings of the, official meetings of the Board. That doesn't include all our subcommittee and workgroup meetings. So it is a busy process.
I'll talk about the workgroups and subcommittees in a little bit.

But it's a busy Board. And a lot of time, a lot of effort. We do most of our meetings at the sites. We did a few in Cincinnati early on. And I don't think we've ever been here to Washington on it. But we have been out at almost, at least all the major sites, I believe.

We kept trying to get them to let us go out to the Pacific Proving Grounds. But couldn't quite get them to do that. And our only site in Alaska to visit is out in the, way out in the Aleutian Islands, Amchitka. I'm not sure, uninhabited I believe now. Or if inhabited, only seasonally. So, that's where they did some underground testing.

So, the legislation that set us up gave us very specific responsibilities. We needed to review the original set of regulations that were developed by NIOSH. And had input to those. We've not had like sort of formal
approval. But we had to, we developed written recommendations, and interacted with NIOSH, and to some extent the Department of Labor when we, in the early days, back in 2001, the program that was set up.

Secondly, we were supposed to review the scientific validity and quality of the dose reconstructions that were done. That, third, we were supposed to advise on Special Exposure Cohort designations.

And that was a very formal process, where we were, where NIOSH had to, as they evaluated a Special Exposure Cohort, a petition, and a petition had been approved and developed an evaluation, the Board had to review that, and make a recommendation, which we transmit to the Secretary of Health and Human Services. And then other duties as assigned.

So, but those reviews are, all those other issues are really something that's up to the NIOSH, or the Secretary, or whoever, to assign to us. So our powers are somewhat, are
limited. And our scope is limited outside of the areas that we have, are designated in the legislation.

And if anybody has questions as we go along, please interrupt. So, how do we do this? We have a, set up some Board processes for doing this. We broke up into workgroup and subcommittees. Workgroups tend to be relatively short lived, though that can be many years to get through a site. Those tend to be site specific or issue specific.

And then we have two standing subcommittees. One to review, that reviews the dose reconstructions, that process. Another one that looks at procedures that NIOSH has established to, technical procedures basically, to do the dose reconstructions.

So, and those workgroups and subcommittees meet independently of us. And then report back to the full Board. All, essentially all decisions are made by the full Board.

We have fairly complicated and long
running issues with conflict of interest. Because trying to balance out what was appropriate in terms of a Board that was, you know, supposed to represent certain perspectives.

The agency, NIOSH, the Board having its own technical contractor to assist us. And then the agency having more than one technical contractor helping them out that were, you know, under contract. And making sure that there was some sort of appropriate protections in terms of potential conflicts of interest, or bias in terms of the work that was done.

A lot of that was just to make sure that there was transparency in what was done. But it has involved changes along the way, to make sure that people with a significant conflict of interest are not involved in decisions or recommendations made on a particular site where they may have a conflict, or sites to that.

We insisted from the beginning that there be as much transparency as possible for our work. So that means that all of our meetings,
including our conference calls, have a full
government comment session to them, at least our in
person meetings, and full transcripts.

And I see that the Department of Labor
has brought our transcriber here, who has been
working with us for several years. So I guess
that's continuity, or something. Or who has the
Government contract. I don't know. But he does
the, he and his, the other staff working with him
do an excellent job, so to that.

We felt it was important that all the
work that we do be as transparent as we can
possibly make it. Again, recognizing that
certain limitations due to nuclear secrecy, and
obviously privacy issues. But that we try to
keep it as open as possible.

All of our meetings, including our
workgroup and subcommittee meetings, are noticed
in the Federal Register, and put up on the NIOSH
website, and so that people that are interested
are notified and know what's going on, and can
listen in. And occasionally, and very often
participate via the phone call conference call
when these are being done. And there are full
transcripts of those after the fact.

We try, and I'd like to say that all reports are available to the participating public before our meetings. I would probably get jumped on by several people here in the room or on the phone if I made that claim. But we do try to see that most reports are available ahead of time.

And I think the Board, our Board has been fairly insistent that it's not fair to a petitioner or person with interest in a particular site not to have time to review and, you know, read, and at least somewhat digest one of these reports prior to there being some action taken by the Board on that report.

It doesn't always happen. But it, I think for the most part we have. And we have delayed decisions many times because reports were not available until the night before or the day or two days before a meeting is supposed to take place.
I'll also add that our regulations require, I can't remember if it's in the law or not. But I know our regulations require that petitioners, formal petitioners for a Special Exposure Cohort also have the right to participate in the actual public meetings where those petitions are being discussed by the Board in the process of making a recommendation to the Secretary.

Finally, we have security issues. I heard, was in the room earlier when Pat Worthington was talking. And we've worked most of those out with the Department of Energy.

And I think Mark and others can testify that we've not had that, it's not been a major impediment in terms of dealing with sites, even sites with a fair amount of secrecy issues. We do have, a number of our Board members do have Q clearance.

And so, but we've managed to sort of work around that, those issues in terms of dealing with sites. And we've gotten into some
pretty, you know, I guess pretty difficult
situations where some of these issues could have
become a problem for our Board.

       But in terms of making a decision, and
making what we thought would be a publicly
defensible position. And we've also know, you
know, that there's a lot of sensitivity on the
part of the workers at these sites about
revealing information.

       We do a lot of secure interviews with,
classified interviews of people at particular
sites in order to collect information on it, and
make sure that the workers feel comfortable
providing that information in a way that does not
jeopardize them or their jobs. We do that.

       So, what do we actually do, given what
we're told to do, and what our process is? And
do we ever accomplish anything? You often
wonder. But, so we have reviewed about one
percent of the dose reconstructions that have
been done.

       We do not get to see individual dose
reconstruction, and cannot review it until it has
gone all the way through that adjudication
process, including the appeal process. And so,
we, so, and that was for obviously legal reasons,
and so forth.

But doing that, we don't, we choose
the dose reconstructions that we want to review.
They're not based on an outside request for doing
that. But we've done that. And it's a process.
I'll talk a little bit more about it later.

But in general it's improved, and it's
good that when there are problems found then
NIOSH will redo those, and so forth. I think
Rachel or somebody had mentioned the remand
process, where information for dose
reconstruction was sent back from DOL to NIOSH
for further work, and so forth.

We've looked at that, because we were
cconcerned about that. I think it's, but for the
most part it's done, as I think Rachel said, it's
done because there's additional information
available.
And we find that that's a fairly common occurrence within the process. It's just the nature, the amount of information involved, and the where -- it's not all located in one place. It's not always easy to find.

So very often NIOSH, or even the Board will come across information that has not been, you know, part of the case file. And are able to send it back up to Department of Labor, in terms of handling that particular case.

We review lots of technical documents. So the way that NIOSH does dose reconstructions are basically based on a huge number of technical documents, they're called.

They have various, you know, bureaucratic nicknames, Site Profiles, Technical Review, I forget what else. There's a whole different set of them, PERs, and so forth. I can't even remember now.

But they are -- So those form the basis for all of the individual dose reconstructions that NIOSH does. All of those
are available on the NIOSH website. And I would urge you, if you have questions about the site, I, frankly, I'll admit that I have not looked at the DOL website in quite some time.

But the NIOSH website I use all the time obviously, because we're working with them. And there's a lot of technical, you know, publicly available information on sites. The Site Profiles are, have an excellent history of the sites, and so forth.

Obviously, it focuses on, you know, radiation exposures, not on toxic, other toxic substances. But it is useful in terms of sort of background and history of processes, and so forth, at a particular site.

And almost all of those are reviewed at some stage by the Advisory Board, and our contractor, prior to they're being used, or while they're being used. They're constantly being updated.

And finally, what we do is, we review the Special Exposure Cohort evaluations. That
has actually been the, probably the biggest
consumer of effort on the part of the Board since
the original regulations were set.

Because it involves a large effort to
figure out what's available, and whether actually
individual dose reconstruction can be
appropriately done at a particular site. And
then it obviously feeds back to how Department of
Labor handles a particular site, and a particular
situation.

So, what issues do we have? I think
they're sort of obvious issues. But I'll mention
them. Well, the major one is finding
documentation.

It is, like, you probably will find
that more on the, once you get away from
radiological exposures. But even for
radiological exposures there's a lot of missing
information, or unavailable, or unsure where
documentation was stored.

We're constantly finding dose records
and other monitoring records stored away at some
other site, because that site has closed down, or
because operations were moved, and so forth.
It's a very complicated system that's been set
up. And it can be difficult to navigate through.

And I suspect as we go along we, there
will be more information found. DOE has been
very cooperative, in terms of at the sites in
general are cooperative, within sort of, you
know, limitations on resources, in terms of
getting and finding information. And so, it's,
but it is always a struggle.

Secondly, you have both too little
information, which I think you'll find on the
toxic substance side. There's no records, no
monitoring, and so forth. And that's often true
also on the radiological side.

However, we also have an abundance of
information on, dose records on certain sites
that can be overwhelming, in terms of trying to
figure out, is that information really complete
enough, by year, by task, by type of work, to be
able to justify doing individual dose
reconstructions, to that? But so, we've
struggled with that somewhat. But for the most
part it's too little information.

And I think what is, shouldn't have
been surprising to us, but it was, as we went
through this program is, what's often as
important, and particularly for Special Exposure
Cohorts but I think for all the work at these
sites that we're doing, is that the records of
what people did on the site are often very
meager.

The person may be assigned to a
certain building, or a certain job, or even a
certain part of a larger site. But what they
actually did, and how they moved around the site,
and what different tasks they did, is often not
well recorded, in terms of personnel records, or
other records at the site.

And for someone who's, you know, for a
survivor who's applying, a family member, or
something whose, you know, parent worked at a
secret site, and was told not to talk about it,
there really, can be very difficult for them to
even know where on that site that person worked.

    But we very often end up with making
very broad Special Exposure Cohort designations,
simply because there's just not the records for,
to administer the Special Exposure Cohort that
would limit it to a particular building or set of
buildings, or type of work, and so forth.

    And it's just impossible for
Department of Labor to then figure out who should
be in the Special Exposure Cohort, and who should
not be. So, and again, you think back, it should
have been obvious.

    So these, you know, dose records and
personnel records were, you know, personnel
records were set to, you know, pay people and,
you know, give them promotions, whatever. Put
them to work. And lots of subcontractors, and
issues, and so forth, and do that.

    And dose records were meant to
monitor, you know, usually a process, not
necessarily the, you know, to support a workers
compensation claim, you know, many, many years later. And so, we're trying to make do with something that, a record system that really wasn't established for what we're trying to use it for.

Finally, just one thing that we've, we've focusing now, in terms of our individual dose reconstruction reviews. And sort of looking at different ways of approaching that. And particularly trying to look at some of the judgments that are made, and ensuring consistency in those judgments.

Often what a dose, a health physicist will do in doing a doing a dose reconstruction is not, is based on judgment. And they're pulling together the information that is available. And we think it's important that we look at some of those judgments, which may not be based on a procedure manual, or definitive documentation, in order to make sure that everyone's being treated fairly.

So one person, two people doing the
same job, same period of time, and so forth, should be handled in the same way if they put in their compensation claims, and other issues like that.

So, anyway, let me end there. I think I've taken up probably too much of my time. But that's okay. We're glad to answer any questions.

CHAIR MARKOWITZ: So, Steve Markowitz. So, what do you do about them? How do you evaluate consistency?

DR. MELIUS: We're just starting to do it now. And one, what we're doing is documenting all of the areas where judgments are being made, which are not documented through some sort of procedure.

And so, we're sort of doing an inventory of that, which actually NIOSH didn't really have available to them. And the NIOSH contractor had it at some level. But not probably down to the individual level.

So we're trying to do sort of a, pull that together. And then we can also identify it
from the type of exposure, or the type of work that they're, the person is doing. We think we have some areas that we can particularly target for doing that.

But it is hard. Because, I mean, you know, you know what you know. And it's easy to go through a procedure, or something, you know, a written formula and say, did they calculate it correctly? Well, that's important.

But it's also important, you know, what judgments did they make in, you know, coming, using that particular formula, and applying it. And there's a fair amount of leeway. Do they use the 95 percent, or the 50 percent, you know, percentile? So, in terms of the exposure.

CHAIR MARKOWITZ: Other comments or questions? Yes, Dr. Boden.

MEMBER BODEN: Jim, that was enlightening. While you were talking I was thinking about the fact that your advisory committee has radiation as its focus.
DR. MELIUS: Yes.

MEMBER BODEN: So, you have one substance, and 150 meetings. And we have how many substances?

DR. MELIUS: Yes.

MEMBER BODEN: So, I'm, I guess my question is, do you have any sort of particular advice for how we structure or coordinate?

DR. MELIUS: What I think I told Steve was, good luck. But I can't help much. But, no, I think it's, you know, focusing on particular issues that come up.

I think that the public, the people making claims, the people representing people making claims can sort of identify issues that concern them.

We've learned a lot about sites, and about what we should be doing better from our public comment periods, which often went, you know, four or five hours, as Mark can tell you, into the evening. Usually we're abandoned by most of the staff. But we hung in there. And I
think that's helpful.

And I think again, you know, you're focusing on, you know, the approach you're taking is fine, identifying, you know, reviewing the process, and identifying what, you know, you think, you know, are particular issues that need to be addressed, and so forth.

That, and our task, you're right, in some ways it's much simpler, focused on one type of exposure. It's fairly complicated at Department of Energy sites, and around the country, and so forth. But it is much easier.

And then our compensation recommendations that are being made to the, I mean the final adjudication and so forth is done by DOL. But our sort of recommendations, and that process, and what information goes up to DOL to support those decisions was pretty much prescribed in the legislation, and then in the regulations that arose out of that legislation.

The only place there was room was, you know, which we've struggled with is, you know, is
with Special Exposure Cohort issues, and with the language of sufficient accuracy, and so forth, which the agency, despite our pleas, refused to really define very well.

So they made us work harder. But I think we would have had to anyway on those issues. But we've probably focused from site. We've done much more site based than I think, that I, yes, that would be a daunting task at this point to do.

And frankly, we also had the leverage, so to speak, that we were there, we had to review the original regulations. So, and NIOSH knowing that we were then going to review those dose reconstructions that were based on that, those regulations.

If we didn't like the regulations, or what was in the regulations, they would have been in trouble. I mean, you know, because we would have said, you know, 50 percent of these bad dose reconstructions, because they didn't follow, you know, proper science, or whatever.
Now, obviously that didn't happen.

But, so lots of advantages. But again, you know, technically a complicated area. And with a lot of information to try to handle, and so forth. I don't think you have that amount of information. But that's, not sure that's good or bad, in terms of committee's work.

CHAIR MARKOWITZ: Dr. Silver.

MEMBER SILVER: Jim, you mentioned that you had an outside contractor to provide technical assistance. If they'd been unhelpful you probably wouldn't have mentioned them. At the other end of the scale, would you say it was simply valuable, or absolutely essential for what you did?

DR. MELIUS: Well, I think it was, for us it was absolutely essential to do. The Board did not have the expertise or the time to do the kinds of technical reviews that were, would have been needed in terms of review, all the documents, all the dose reconstruction procedures, and so forth. So it was critical
that we have that.

   We wrestled a little bit with how to
best do it. It's a, health physics is a
relatively small field. And so, finding people
that weren't conflicted, or didn't overlap with
the -- You know, NIOSH got there first. They
already did their prime contractor for doing dose
reconstructions.

   So we had to find somebody else. But
we were fortunate in being able to get that
assistance. And, no, but we would not have been
able to do our tasks with it without that.

   CHAIR MARKOWITZ: Okay. It's 4:30.
Thank you very much, Jim.

   DR. MELIUS: Okay. Thank you.

   CHAIR MARKOWITZ: That was very
encouraging, I would say.

   DR. MELIUS: Yes.

   CHAIR MARKOWITZ: And we'll be sure to
hear from you again.

   DR. MELIUS: Thank you.

   MEMBER REDLICH: Would you like to
join the committee?

DR. MELIUS: So, one version of the legislation I think had me on the committee, I think. But it got lost in the drafting someplace.

CHAIR MARKOWITZ: So, we have a 15 minute period, and then we're going to take a break just for 15 minutes, and then begin the public comment at 5 o'clock.

So this 15 minutes I have a particular thing I'd like to discuss. But I'd like to know from the Board members anything that you need to make this work, at the meeting here that would make this work easier, any materials?

I know we have tenuous access to the internet. The internet has of course all the resource materials that we would need. The briefing book was meant for this contingency, so that it has some of the materials that are available in print before you.

But I'm not sure we can do much about the status of the internet, certainly by
tomorrow. But are there any other issues, any materials that you think you need? Okay.

So, this issue of subcommittees, and which we will, or committees, whatever, that we will form over the next couple of days. I'd like to discuss the issue of keeping them open to the public.

And my question really, if Tony could apprise us is, that involves a certain procedure, in terms of scheduling the meetings, putting notice in the Federal Register. So if you could just apprise the Board of what exactly is involved, as we think about that.

MR. RIOS: So, if you want to make a meeting public the FACA regs require that you provide notice to the public at a minimum of 15 calendar days before the actual meeting that's going to take place.

Prior to that the Federal Register notice has to be sent throughout the Department of Labor, because generally those Federal Register notices will have an agenda.
So, the best example that I can give you, Steve, is what we just went through in order to get the Federal Register notice for this meeting. That was an expedited process. And I think you and I started talking about that, I want to say the first week of March.

And I think we rushed to get the Federal Register notice, with me stepping on a lot of hands, and getting a lot of people, you know, not too happy with me. And we got the Federal Register notice I think published, gosh, Carrie, do you have the date? No? Not here? I think we published it, I want to say the first week of April.

So, it takes about a month to put together a Federal Register notice, and rush it through. So, to the extent that I would say that if you're going to make the subcommittee meetings open to the public, you probably want to take into consideration how many subcommittee meetings you're going to have, and how many issues you want to address through those subcommittee
meetings, particularly how many different
subcommittee meetings you're going to be holding
within the same month even.

I sit on the MACOSH Board as the
representative for the designated agency liaison.
And I participate in some of their subcommittee
meetings.

And they sometimes have two
subcommittee meetings going on at the same time.
So, that's, I mean, that's I guess the most
information that I can give you. I don't know if
I answered your question.

CHAIR MARKOWITZ: No, you did. You
did. But I think during that last period of time
you took a couple of Saturdays off. So maybe it
was too long.

So roughly a month is needed, and an
agenda is needed in order to set a meeting so
that it can be, go through approval and be
published in the Federal Register? Is that --

MR. RIOS: Yes, more than that.

CHAIR MARKOWITZ: Or six weeks?
MR. RIOS: Right.

CHAIR MARKOWITZ: Just give me a timeframe, that's all.

MR. RIOS: Yes. I would say six weeks is a good estimate.

CHAIR MARKOWITZ: Okay.

MR. RIOS: Yes. I mean, the only experience that I have in doing one of these Federal Register notices is, like I said, the one preparing for this one.

And that was unusual, because we were in a rush to seat the Board. We were in a rush to get the first meeting. And everybody in the department was aware of that.

I would say six weeks is a good timeframe. Eight weeks would be great. But six weeks I would say is generally, if you ask anybody else in the department who has to go through, who has to publish it, and how far in, that's probably the timeframe that they're given.

MEMBER BODEN: Right. But then another two weeks before you can have the
meeting.

MR. RIOS: No, no, no. No. I'm talking about six weeks before the actual meeting date. Yes.

CHAIR MARKOWITZ: And in the Federal Register notice, do you need to publish the agenda? Or can it be a general agenda? So, I'm concerned about, in that interim six weeks, if the committee wants to revise the agenda, that it's not fixed.

MR. RIOS: No. It's a general agenda. And, you know, because we even changed the substance of this next three days, the agenda. It doesn't have to be as specific as what we have on the website right now. The Federal Register notice just goes over, you know, generally the topics that you're going to discuss.

CHAIR MARKOWITZ: George.

MEMBER FRIEDMAN-JIMENEZ: George Friedman-Jimenez. I have a concern. Those 110 meetings over 15 years. That's about eight meetings a year. And radiation is a lot simpler
than chemical exposure.

And my concern is, what is going to be the scope of this committee? And what's going to be the magnitude of our commitment, in terms of numbers of meetings, in person meetings versus telephone conference calls, and the actual volume of work that we'll be involved in. I'm new to this process. So I'm just asking a question.

CHAIR MARKOWITZ: Well, you know, it's hard to give an exact answer to that. Except that I would say that the radiation, the agenda, and Mark can speak to this. But their agenda was a difficult agenda. And they actually, you know, went through, recreated dose reconstructions.

There, what they did was different from what we're doing. That's not giving you an exact answer. I think we'll have more of a sense over the next couple of days.

But we're going to have to do a fair amount of our work, I think, through committee work over the phone, and meeting, aiming to meet twice a year, perhaps more. But that's probably
reasonable.

MEMBER GRIFFON: Which is, I mean, the radiation board kind of eventually got into that direction, where we did a lot more of the workgroup and the subcommittee meetings via WebEx, or phone, or whatever. And just because everybody was traveling so much.

I mean, when we started we were, I was probably in Cincinnati. We were meeting at the airport hotel in Cincinnati, because it was sort of central for everyone.

And probably had four Board Meetings a year, and probably subcommittee and workgroup meetings six to eight, you know, if you were, for any one Board member. So we were, the staff had, since then the hotel knew us, you know. We were there all the time.

But I think as far as the subcommittee stuff being public, I hope I'm not downplaying the timing on the -- In fact, I had to do a few Federal Register notices with the Chemical Safety Board at the end of my term. So I know exactly,
including walking it over to get it at the Federal Register.

So I'm not downplaying that process. I think that NIOSH has been able to do it fairly easily. And with, you know, for the workgroups and subcommittees the agendas can be more simplified, not like this agenda we had here.

And if we plan this right, I just think it's an essential part of that Board. All the, a lot of the claimants and advocates are the same people that have been involved with the radiation board. And I think their input during that, those subcommittee meetings, as well as the full Board meetings was important.

And I just think we should make a commitment to do those publicly. And when I say publicly, they can be phone call meetings. They don't have to be face to face. But make them open to the public.

CHAIR MARKOWITZ: Other comments?
Yes.

MEMBER VLIJGER: I think it's
important that we make an effort to visit the
sites to some extent. Visiting in Washington, DC
is daunting for a lot of people. And these are
workers who would prefer to talk to you face to
face.

I know when I first met Dr. Melius I
wanted to talk to him face to face. And I wanted
him to see the face of somebody who had gone
through, you know, a claim at a site.

CHAIR MARKOWITZ: Are there other
comments specifically on the issue of open public
access meetings? All right. I think we're going
to get into, probably later in the meeting, about
location, a little bit more of a discussion about
that. So, if there are no other comments or
questions?

MR. RIOS: So, I just want to tell
everybody that's on the phone, I had talked about
it this morning, but we're about to take a break.
And then we're going to go into the public
comment period.

And in order to participate in the
public comment process remotely we're asking you to hang up and call the following number. It's 800-369-3381. And when prompted enter the following code, 2470553. Once again, the number is 800-369-3381. And the access code is 2470553.

CHAIR MARKOWITZ: Okay. So let's take a break. But let's be back a couple of minutes before 5:00, so that we can begin the public comment period on time. Thank you.

(Whereupon, the above-entitled matter went off the record at 4:42 p.m. and resumed at 4:59 p.m.)

CHAIR MARKOWITZ: Actually, we have a minute or so. George, you want to just introduce yourself to the group?

MEMBER FRIEDMAN-JIMENEZ: Hi, everybody. I'm George Friedman-Jimenez. I'm an occupational medicine physician and an epidemiologist. I am at Bellevue hospital in New York City which is a public hospital.

I run the Bellevue NYU occupational environmental medicine clinic, and we take care
of people that use the City public hospitals for medical care. So we see a lot of people that have low income and don't have medical insurance.

And now we're seeing increasing numbers of undocumented people who are at particular risk for hazardous exposures. So that's my population that I take care of and my take on this. I'm also trained in epidemiology, specifically radiation and cancer epidemiology. And so I'm interested in both the toxicology and the epidemiology. And I'm looking forward to seeing how I could contribute to this process. It seems like a pretty complex system you got here and --

(Simultaneous speaking.)

CHAIR MARKOWITZ: Thank you, George.

Thank you.

MEMBER FRIEDMAN-JIMENEZ: I'm just starting to learn it.

CHAIR MARKOWITZ: Thank you. Okay. So is it 5:00, can we get started? Yes? Okay. So we're entering the public comment period,
which will last for an hour. We have a number of
speakers, seven total who have signed up to
speak.

We have five who we will start with
who are here presently, and then we will turn to
one of the people who are phoning in and then
we'll have one last speaker who is present here.

I'm going to go over the order and the
time period that you've requested. We've been
able to accommodate the requested time periods.

Terrie Barrie for ten minutes, Deb Jerison ten
minutes, Stephanie Carroll ten minutes, Donna
Hand five minutes, Tee Lea Ong five minutes. And
then on the phone, Vina Colley for ten minutes
and Hugh Stephens here for five minutes.

I think I need to turn it over to the
moderator for some instructions.

MR. RIOS: Moderator, are you there?

CHAIR MARKOWITZ: Actually, if Terrie
Barrie could come and sit down while this is
happening.

MR. RIOS: Okay, thank you.
CHAIR MARKOWITZ: Okay, our first speaker will be Terrie Barrie.

MS. BARRIE: Good evening, Dr. Markowitz and Members of the Board, welcome. It is so exciting to finally to be here to be able to make public comments before the Advisory Board on Toxic Substances and Worker Health.

My name is Terrie Barrie and I'm a founding member of the Alliance of Nuclear Worker Advocacy Groups. ANWAG was formed in 2004 to monitor the implementation of the Energy Employees Occupational Illness Compensation Act.

I want to thank all of the Board members and those who agreed to be nominated for your willingness to serve on this very important Board. I also wish to thank Secretary Perez and the selection committee, Dr. John Howard, Dr. David Michaels and Leonard Howie, III for choosing outstanding individuals of the many highly qualified individuals who were nominated. And of course, many thanks to Congress and President Obama for establishing this Board.
This Board is tasked with a great responsibility of advising the Secretary of Labor on a number of issues related to EEOICPA. Tonight I would like to address just a few of those issues.

There are many good things about the Site Exposure Matrix database. For instance, it wasn't until SEM was released to the public that the claimants were given a glimpse of the thousands of toxic substances which were present at the facilities where they worked.

These workers toiled daily in a toxic soup of chemicals, radiation, solvents, and heavy metals for years, even decades. Econometrica was under contract with the Department of Labor. They began the process of linking toxic exposures to diseases, and they even provided latency periods for some of the more common diseases the workers suffer from.

The advocates had hoped that SEM would continue in this fashion. Yes, there are a number of diseases SEM has linked to exposures;
however, the decision on which toxic substances is responsible for a disease is based only on Haz-Map. And from what I understand, Haz-Map's standard of causation is much higher than what is required under EEOICPA.

DOL's own medical consultant handbook, which was published in 2011, places the standard of causation somewhere between the preponderance of the evidence and reasonable suspicion.

I'll be happy to send you the link for that document. Whereas Haz-Map's standard requires a sufficient evidence to show that exposure to a toxic substance causes a disease.

It is my understanding that the CMCs use the DMC manual. However, the advocates have not been able to obtain it through FOIA because it's considered proprietary property of the contractor.

Haz-Map does not include an evaluation of complex exposure situations, yet these workers were subjected to multiple exposures to a toxic substance on daily basis. Synergistic effects
are not considered by Haz-Map.

I fear that it's possible that a number of claimants may have been erroneously denied because of SEMs failure to address these effects.

Department of Labor says that SEM is only a tool and is used by claims examiners and are not to deny claims based on SEM. Unfortunately this is not always an accurate statement.

I have seen denials stating that, and I'll quote one final decision, "Based on the SEM search, the District Office was unable to find a link between the toxic exposure and" whatever disease was claimed.

This is why your review is so critical. The workers or their survivors need the claims examiners to have the best information available to them before deciding a claim.

There are two other issues I would like to address with the SEM. Labor categories do not always accurately reflect the toxic
substance a worker was exposed to. For instance, according to SEM, guards at the Iowa Ammunition Plant had no chance whatsoever of being exposed to any type of toxic substances.

From what I understand, the guards not only checked the workers who were permitted to enter the facility or a building, but they were also responsible for guarding the actual bomb product.

The DIAB interim advisory board submitted their report on SEM and job categories. I hope this Board will find DIAB's limited review of the SEM helpful in your future investigation.

The other issue I want to raise is that under current regulations, Department of Labor will not consider radiation as an exposure to, as a contributing factor in the development of a disease, specifically in the development of cancers.

Both chambers of Congress weighed in on this issue in 2005 and advised Department of Labor, and I quote, "The Department of Labor rule
applies the wrong standard of causation for radiation related cancers." And I have a copy of the letter and I'll hand it off to Mr. Rios for distribution to the Board.

This issue has been a longstanding complaint with the advocates. It makes no sense whatsoever to us that radiation cannot contribute to the development of a cancer or other disease. DOL's opinion is that they will only consider cancer was a result of radiation exposure if NIOSH determines that the probability of causation is 50 percent or greater.

What about the worker who's POC is 49.5 percent? Under the legislation, wouldn't that causation meet Part E's criteria?

I would like to thank Department of Labor for extending the public comment period for the proposed changes to the program so that this Board can weigh in. I am confident that DOL will value the advice given by this well respected Board and be guided by them and other stakeholders when deciding on any changes to this
program.

Again, I thank you for your service. You have an awful lot of work ahead of you and I appreciate your commitment to provide the best assistance to Department of Labor in this program. If you have any questions, I'll be happy to answer them.

CHAIR MARKOWITZ: Thank you very much. I think we'll move on to the next speaker. I'm sorry.

MS. BARRIE: Okay, thank you.

CHAIR MARKOWITZ: The next speaker is Ms. Deb Jerison.

MS. JERISON: Dr. Markowitz and Members of the Board, first I want to say that I'm thrilled to have the opportunity to address the advisory board on toxic substances and worker health.

It's wonderful to see the board finally seated after so many years of work to get it established, and I know you'll do a great job. I've been really impressed with the questions
today.

My name is Deb Jerison, I'm the daughter of a deceased worker from Mound Laboratory and the Director of the non-profit Energy Employees Claimant Assistance Project.

EECAP asks a question of interested EEOICPA stakeholders about once a month. I've compiled some questions and responses on several of the issues that I thought might be useful to the Board.

But I also want to address something that's one of the rules changes. I greatly appreciate the Board advising DOL on final bulletin 1404 Authorized Representative Conflicts of interest.

This bulletin's caused problems for sick workers since it took effect. DOL told the advocates the reason for this bulletin is to prevent fraud from home healthcare companies. Preventing fraud is good, and no one wants fraud perpetrated --

(Off microphone comment.)
MS. JERISON: I'm not good at this.

Preventing fraud is good and no one wants fraud perpetrated on sick workers or DOL. My concern however must lie with the sick workers, as DOL has the ability to prevent fraud without making sick workers suffer.

The home healthcare industry is very cutthroat which causes problems for sick workers as well as DOL. There are things DEEOIC could do to improve the situation such as assuring home healthcare companies are properly licensed and hold appropriate certification for the jurisdiction in which they're operating rather than allowing any company calling itself a home healthcare agency to operate without first verifying they meet the laws in the state in which they're practicing.

The current regulations state, "A claimant may authorize any individual to represent him or her in regards to a claim under EEOICPA unless the individual's service as a representative would violate any applicable
provision of the law."

DOL's been acting in violation of this rule since 2014 and is now pushing to codify this violation in the new proposed rules changes. In March I met two dedicated advocates from the Navajo Nation who have been hired by a home healthcare agency to act as authorized representatives for sick Navajo workers.

The Navajo Nation is huge, covering 27,413 square miles, roughly the size of West Virginia and spans three states, Arizona, Utah, and New Mexico. Three quarters of all covered uranium mines are on the Navajo Nation so the need for assistance there is great.

If I remember correctly, each advocate drives about 2,000 miles a week. They need to be able to communicate in Navajo and know Navajo customs in order to work with this population.

Both advocates know the pain caused by nuclear weapons work because of their own family histories. Why is it so important that sick workers be allowed to have the authorized
representative of their choice? Simply because
sick workers with authorized representatives are
more likely to have their claims approved.

A review of all Parkinson's disease
final decisions from June 27, 2006 to February
5th, 2014 showed that 27 percent of Parkinson's
disease claims with an authorized representative
were approved while only 18 percent were without
were approved.

Authorized representatives are allowed
payment of two percent of compensation awarded or
ten percent if the claim goes through the hearing
process. It can take years to get a claim
approved, and some claims provide medical
benefits but no compensation.

This means an authorized
representative receives no payment. Now I don't
know about you, but I couldn't afford gas for
2,000 miles every week on my own. The only way
these women can afford to act as advocates is if
somebody hires them to do so.

DOL's policy excludes them from
working as authorized representatives. Many sick workers cannot manage the difficult and cumbersome claims process alone. Those without authorized representatives often give up and never receive the compensation and medical care they're entitled to.

Some family members act as authorized representatives but if these family members also provide paid home healthcare services, DOL states they cannot act as authorized representatives for their loved ones. The result is a sick worker suffers because of DOL's policy.

Some sick workers have no one other than their nurses to act as authorized representatives. These sick workers may not receive medical benefits to which they're entitled because they have no one to help them with the difficult and burdensome recertification process.

Recertification is made even more difficult because DOL will often argue with sick worker's physicians to try to get them to reduce
the amount of home healthcare the worker needs. DOL says they do this because they believe home healthcare agencies try to influence the treating physician to provide more care than is necessary.

DOL's been very outspoken about their dislike of home healthcare agencies. At a recent annual meeting a DOL official described them as diabolical which struck me as way over the top.

I understand that administering EEOICPA is difficult. But this program was set up to provide necessary medical care to sick workers as a remedial program which means it must be liberally interpreted in favor of the sick workers.

While I understand DOL's concerns about the possibility of someone from a home healthcare agency committing fraud, this must be managed in a way that does not harm the sick workers. To date, one person from one home healthcare agency has been convicted of fraud.

Managing the threat of fraud by assuming everyone within an industry is guilty
without proof seems crazy to me, especially at the cost to sick workers.

DEEOIC's conflict of interest policy is more restrictive than any of the other agencies I reviewed including other OWCP programs which are not remedial programs. FECA uses the same standard as is in the current DEEOIC rules.

The Long Shore and Harbor Worker's Compensation has restrictions on individuals acting as authorized representatives if they have been convicted of fraud, for professional misconduct, or for accepting non-approved or excessive fees.

It removes those who have committed fraud or behaved inappropriately rather than assuming fraud will be committed. DEEOIC needs to find a way to manage their fear of home healthcare fraud without damaging the sick worker's right to medical benefits and assuming all connected with the industry are tainted,

thank you very much.

CHAIR MARKOWITZ: Thank you. Next we
will hear from -- thank you. Next we will hear from Ms. Stephanie Carroll. Ten minutes.

MR. RIOS: Into the mic, Stephanie.

MS. CARROLL: Okay. Thank you. First I want to thank the Board for giving of your time and expertise, and especially for the workers and they're going to be really hoping that you can get some movement in this program. So thank you for everything. And the questions today were amazing.

Let's see. There were some questions today about assistance given to workers and claimants. There is, assistance to the claimants is mandated by the Act under 42 USC 7384(v). If the claimant requests assistance, they are supposed to be given that.

So that was just, you know, a little mistake earlier. But some of the ways that I think we can give more assistance to clients and claimants is for the program, when they request medical and exposure evidence from the workers, they usually do it in a development letter.
And they never let the workers know that they actually are looking at maybe a 900 to 1,500 page Department of Energy file. So the letter that comes out to the worker is please give us your medical records as far back as you can. Usually it's not more than ten years, and give us your exposure history and any incidents you were, you know, exposed to.

Well, the claims examiner is looking at a file this big that includes incidents, exposures, usually yearly medical exams with chest x-rays and pulmonary function tests.

So they just do not let the claimant know that. Whenever I'm around claimants I tell them go get your file, especially get your file before you go to a hearing because you get to a hearing and you see this huge stack of paper there that the hearing rep is looking at and you have no access to this.

So, you know, in the interest of discovery I think that the Department of Labor should say if you're going to go to a hearing,
you need to request your file and we'll send that
to you.

But I think we may not even have to
get there because if they have their file ahead
of time, they may be able to prove their
exposure, get affidavits and such.

Let's see, one of the other ways
that's mandated to assist claimants is to
establish clear protocols to establish chronic
beryllium disease. We have a good protocol to
review for beryllium sensitization and once
sensitization is approved, claimants go through
testing that could last for ten years.

Most of my clients, as an authorized
rep specializing in chronic beryllium disease,
they've been ten years in the program. Some of
them have had three, four, or five lavages and
biopsies. They're beryllium sensitized and they
have never been diagnosed with CBD. And it is
awful.

Now my clients do get approved for
chronic beryllium disease. I'm probably one of
the only ARs that can get that done in the whole country. So it's outrageous. Beryllium disease really needs to be looked at.

Let's see, physicians. Okay, so physicians that do understand the protocol for established chronic beryllium disease under the program do not use that protocol to determine if people have CBD.

Once they've determined that somebody's beryllium sensitized, all of a sudden the doctors that know this protocol that it's a statutory requirement to be diagnosed with CBD, they get back to the medical diagnosis of CBD.

Do you know since 2005 in all the records I've looked at I have never seen a CT scan consistent with CBD prior to a lavage or biopsy. But then in the studies you'll see that a biopsy cannot be done unless a CT scan is consistent with chronic beryllium disease.

But I do not see doctors adhering to the protocol that was established for chronic beryllium disease. So if that could be better
explained to the physicians and then monitored and enforced, I think we could get more people approved and covered under beryllium disease.

Another question that was asked today is about the resource centers, do they help the workers? They do fill out the forms, they do the OHQ, they haven't been trained to do occupational health questionnaires.

And I've noticed that claims examiners in the IH don't really pay much attention to the questionnaire unless it goes against what the SEM says. Or they use the questionnaire, how I see it, to catch a worker up in a lie.

That's the only reference to an OHQ has been well you said on your OHQ that you were not exposed to this and now you're saying you are. So that's what I've seen with those.

And let's see. There is, it's very hard for workers to understand their recommended decisions because there isn't a reference to some of the tools that are being used in the decision to deny the claim.
So workers don't get offered the industrial hygienist's report or the CMC report. They're just supposed to ask for it. And people just don't do that. So a lot of people go into their hearings and they don't have their IH report and they don't have their CMC report, and that's really the only way you get approved is with those two reports. Affidavits don't really matter for workers.

And then these telephone conference calls. I actually have a telephone conference call. It's kind of how the workers see it is if you go by the procedure manual, you feel like if I meet these requirements, then we'll be approved.

But there's this secret underlying policy that nobody gets to see, and those are called telephone conference calls. And I actually have one that showed up in a file that said, one of the questions was should we use the telephone conference calls, should we quote them in our decisions.
And actually, National Office in 2012 said yes you should quote them if you use them. Well now they are not supposed to quote those telephone conference calls in decisions anymore because that would make them accessible to us.

We've been refused over and over again these calls. And we just want to know what rule book they're working with because it seems to be different from what we see online.

And let's see. And I'm not doing this because I don't get my claimants approved. I really have a very, very high success rate. But the other thing that claimants are very upset about is, let's see, all right, so today we heard that the program has no incentives to deny claims, but that's not the experience of the claimants.

Many feel that their statements and input from their personal physicians is not given the same probative value or weight as the DOL contracted experts. I have absolute proof of that, that it's not given the same weight.
Treating physicians are scrutinized and sometimes pressured to the point of refusing to advocate for their patients. I've had four doctors quit the program because they were pressured, given phone calls by claims examiners saying did you really mean that diagnosis? Did you really mean that?

I mean, well rationalized letters will get calls from claims examiners that put pressure on doctors that make them want to quit the program. So I think that's bad.

Many have concerns that the new regulations will make it more difficult for workers to get coverage by the program. We are pleased that the comment period has been expanded and hope that it can be expanded further.

The changes will have far reaching consequences and our nuclear workers need your input so that they can get fair and equitable treatment they deserve. Thank you so much for your service. So glad this board exists.

Thanks.
CHAIR MARKOWITZ: Thank you. Next will be Donna Hand who has requested five minutes.

MS. HAND: Again thank you to the Board, the whole Board for being here. We really appreciate that you all have taken on this daunting task. And we really as claimants and advocates, we appreciate your time and expertise.

My name is Donna Hand. I am a worker advocate authorized representative, member of the Beryllium Health and Safety Committee, a DIAB member as well as a member of the American Bar Administrative Procedure Act Committee. And I have been involved with this program since 2001 as a survivor claimant as well.

The Act itself was created in 2000, amended in 2001 and then amended in 2004, and I believe the last time it was amended was 2012 when it added on that the ombudsman could take care of Part B to help the claimants.

You talked about classified processes that need to be done because a lot of the
processes out at all these sites are classified, and some of these sites still have classified processes and projects today still going on. So not only the processes are classified, but sometimes the quantity of the toxic substances that were used and such as metal tritides, you got tritium, tritium water, heavy water, and you got the metal tritides. The metal tritides is a tritium plus a metal such as uranium, uranium and tritium or erbium. So you've got these exotic radioisotopes that again has a health effect and is considered a toxic substance. So the radiation nature and the biological nature may not have got to that 50 percent but they do effect over onto the Part E side. You also have in the reports of the BEIR V report as well as the BEIR VII Phase 2 report that low level radiation will also cause benign diseases, not only cancers but benign tumors and masses, thyroid diseases. So there's a list of benign diseases
such as brain and central nervous system illnesses that could be caused from radiation.

So you don't, you would not see that cancer.

Then you also have the issue of where you have metastasized cancers, secondary. The lymph nodes, is that being, you know, how is that affected and would that be covered under Part E?

So you've got the primary cancers, you've got the secondary cancers. Are the secondary cancers consequential cancers? So that would be considered a consequential illness. And how are you going to address it under Part E?

The Site Exposure Matrix was really required by statute. In 2004 the law was amended for Part E and it said that the Department of Labor will create site profiles. Those site profiles is for toxic substances.

The secretary at her discretion may use NIOSH to help develop these site profiles. Well, the secretary evidently didn't use NIOSH to develop the site profiles, but it is a mandatory site profile for toxic substances in the Act.
itself.

Also, the regulations in 2006, the final regulations, December the 29th, 2006 stated that these site profiles or the SIM will be used as prohibitive evidence for the claimant. It will be used as to maintain their burden of proof that they came into contact with those toxic substances while performing their work duties.

So it's not just labor categories. It is while they're performing their work duties. Did it arise out of their working experience, duties, buildings.

We have an issue there because they keep on saying causation. In their training manual they say causation includes aggravating and contributing to. But when we hear causation, all we hear is causation. We do not hear aggravating and contributing to.

You speak to a doctor, all he hears is causation. You go to a toxicologist, all they hear is causation. Then you have is it legal causation or is it medical causation? Is it a
general causation or is it a direct causation?

So you know, what type of causation are we talking about? Medical certainty with 75 percent? Well no, the statute and OWCP has defined in their DMC handbook in 2005 and it's still in effect today that at least as likely as not will be more than a mere suspicion and less, less than the preponderance of evidence. So that's less than 50 percent.

So it's more than a hunch and less than 50 percent. That's at least as likely as not. OWCP has stated in the preamble of the regulations that significant factor means any factor.

But it was Part D, Part D said it had to be an important factor. However, OWCP stated in the preamble regulations, redefine significant factor to be any factor because of the broad range of Part E.

The occupational history questionnaire, the claimants are confused with it. They usually don't get to see it. They are
just asked the questions over the phone. I tell all my claimants to say unknown because they do not know.

When I research a site, I know what that job did, I know where the area was, and I can say yes, you were exposed because I've got documentation that chemical was there.

But yet if I stated it, they would not address it. When the Site Exposure Matrix says yes, it's in building 770, he worked in 770, but yet he didn't come in contact with it. It doesn't make sense. If you worked there, you got air handlers that did not work, especially during the early years.

Affidavits from claimants are accepted. In the preamble of NIOSH it says that we will accept what the claimant states unless we can prove with substantial relevant evidence to the contrary.

That same language is in the regulations underneath 20 CFR 30.111 there is a presumption. Once the claimant has met by the
preponderance of the evidence every criterion of the claim, their employment, their illness, their cancer, everything, then it's presumed that they've got the claim, then it's presumed that they are to be granted unless Department of Labor or the DEEOIC can find substantial relevant evidence to the contrary.

And before the final decision is issued, that substantial relevant evidence to the contrary must be given to the claimant for the claimant due process rights to address.

So if you've got records showing, if you've got the site exposure matrix showing, you've got your work records, and a lot of these employees also were cross trained. They would work below their level and they could also work above their level for certain days.

They would work in units because they didn't want to ruin their queue clearance because it was so expensive and they didn't want to lay them off. So they would switch them to other units if production was low.
So you've got to remember just because their labor categories stated certain things, that doesn't mean that that's what they did. For an example a secretary, she put down on her occupational history, I'm a secretary.

I said well where were you a secretary at? Oh, the polymer lab. Oh, well where were the technicians? There was a wall separating you, right? No. It was just a cabinet, file cabinet only about three feet high and they were there working on their stuff.

Where do you think she got her exposure from? But she was just a secretary. You know, so you can't go by labor categories. And I think that's one reason why the statute says came in contact with.

It is rose out of work, working conditions. And again, you'll hear a lot from me after the days go by. And I don't want to take any more of your time.

But there's, you know, medical evidence is there. The people have done their
duty as far as working in these nuclear weapons. And a lot of the nuclear weapons activities are still classified as far as what really happened, and we just want justice, that's all, fairness and justice and consistency within the whole program. Thank you.

CHAIR MARKOWITZ: Thank you very much.

Our next speaker is Tee Lea Ong, five minutes.

MR. ONG: Dr. Markowitz, I have a flow chart that would simplify the comment I'm going to make. Can I share it?

CHAIR MARKOWITZ: Sure.

MR. ONG: And can I hand out copies of it because I don't think everybody can read it.

CHAIR MARKOWITZ: Sure. I'm sorry, you want to hand out copies now?

MR. ONG: Yes.

CHAIR MARKOWITZ: Yes, if you could just give them to Dr. Welch and she can pass them down so you can begin your presentation?

MR. ONG: Do I have to use this mic or can I use the standing one? So let me start with
a brief intro of who I am and kind of provide some context. My name is Tee Lea Ong. I work for a company, a home health company called Professional Case Management. We provide in home nursing care to former nuclear weapons workers.

So we've been doing pretty much exclusively this for, since the inception of the program. And over the years we've gained a lot of experience about the topic. We started back in, I would say since inception so we probably even started serving this special group of former workers before the DOL officially took over from the DOE.

So I know there is a lot of institutional experience that came with that. I myself have only been doing this for a few years but at least I observe since I manage outreach, the outreach effort, I come into contact with a lot of former workers. So a lot of what I, you know, would like to comment on is representative of what we hear a lot.

So it seems like everybody's gotten a
handout. But before that, just so, again, great
appreciation for the Board for coming together
and for the Department of Labor and Energy to
enable that because I think, and I'm very
couraged by the comments made by the Department
of Labor as well as the Energy colleague all the
way from the Deputy Secretary Lu to Leonard to
Rachel and John of the spirit of collaboration
and advising that, seeking from this Board
because I think there's a lot of opportunities
for further streamlining and making sure that
care is not delayed, and that's a comment I heard
this morning from Rachel as well as Leonard and
Deputy Secretary Lu.

So with that said, my comments are
going to specifically be focused on the proposed
rule changes. This flow chart right here which
is on the first page of the handout is actually
Exhibit 2 of Professional Case Management or
PCM's comments.

So if you need more detail, I know the
color didn't come out exactly right. So you
can't really see which box is shaded, but if you go to the DOL site you should be able to see the public comments and our exhibit. And Exhibit 2 comes with some backup.

So let me kind of tell you a highlight of what we're trying to showcase here. As it stands today, the rules as they are used today already are fairly onerous and cumbersome for a lot of our former workers, as you heard from other people who commented.

Now when you look at the current process, these are represented by the yellow boxes that's shaded in this flow chart. I know it didn't come through very well on your paper copy.

If you think about it, that's only eight steps that's involved. And we've seen that again and again it proved so cumbersome and onerous that a lot of people are not getting the time and the care that they need.

The proposed changes as they're stated now, I know while DOL is well intentioned as one
of the speakers, Deb Jerison mentioned earlier to make sure that there's no fraudulent activity. But by proposing these changes it introduces all these other steps that are not shaded that's on this flow chart.

And what it does is that it's now 36 steps in order to qualify for home care, 36 steps from 8. And the steps are not unique in that the number of people, you can see the swim lanes, here first row being the claimant themselves, and then followed by the Department of Labor and then the physicians and then the home care agency.

When you look at that, the number of people involved, the steps involved, you know, exponentially increased. But not only that, if you look at the requests the onus that's put on the claimant who is often sick and sometimes not familiar with bureaucracy as I think Rachel pointed out today, and sometimes they're not even at their house.

They're sick, they're in a hospital, they're in a facility. So it's very difficult to
find them in order for them to even initiate the
process.

So when you add on top of that the
back and forth required. And we did an
estimation of best case to worst case, those are
Page 2 to about 6 of the handouts. We did the
best estimate of best case, worst case how long
would it take. And we did an actual average.

You can see, and the last page of it
summarizes the assumptions we used of each one of
our rationale and so on. The time that it takes
now goes from several days as it is today in the
yellow shaded boxes to anywhere between two
months to ten months for you to qualify for home
care.

Now, I know I've not been involved for
a long time with this particular group of former
workers. But I do know even in my three and a
half years working here that I've seen many, many
former workers pass away before the ten month
mark.

So if you look at this as it stands
right now, even perpetuating the current process is already fairly difficult for a former worker community to get the home care that they want.

I just ask, urge the Board to take a look and see, and these are all exhibits you can see on the website, to peruse them tonight to see if that informs you a little bit more because to exacerbate by adding all these steps and all these people involved has a very dramatic impact on the home care that our clients need.

I know DOL is intentioned well but by introducing this proposed changes, it makes it incredibly difficult. And just one last comment. I have not even mentioned the second order impact of these changes.

Stephanie Carroll mentioned just now that she's had physicians who threw up their hands and said you know what, this is so difficult that I'm not sure where I want to go with this and I'm quitting the program.

It's very prevalent. And again, I know the intention's well but the way it's being
proposed that we've had physicians who literally gave up and said this is it. As it stands today, just the yellow boxes we have physicians who gave up and said you know what, I'm done.

And it's so prevalent that we even have a term for it internally. It's called physician fatigue. So the paperwork back and forth, sign this one, or the letter doesn't quite say it, back and forth, back and forth.

So I urge the Board to look carefully at this proposed change and see that if it indeed is going to streamline the care process for former worker as well as making it such that the care is not delayed which is the joint intention of the Board, the DOL, and us. Thank you.

CHAIR MARKOWITZ: Thank you. Thank you very much. Our next speaker, actually we're going to move to a speaker by phone, Ms. Vina Colley who has ten minutes, who has requested ten minutes.

MS. COLLEY: Are you ready now?

CHAIR MARKOWITZ: We are.
MS. COLLEY: Can you hear me?

CHAIR MARKOWITZ: Yes.

MS. COLLEY: Okay. My name is Vina Colley and I'm a sick worker from the Portsmouth Gaseous Diffusion Plant in Ohio and I am co-founder of National Nuclear Workers for Justice.

I would like to thank everyone for giving me this opportunity to speak about the Site Matrix System database and injustice it is causing both former and current workers.

The Energy Employees Compensation Act was effective 2000 and it is not currently being executed in accordance with intent of compensating workers with their health issues caused by working within a DOE facility.

National Nuclear Workers for Justice are asking both this advisory board and our state representatives to do a thorough investigation on the Site Matrix System database usage in its current practice and implication that denying workers for job related illnesses.

As you know, the database was set up
to help identify workers exposure, yet in practice it is being leveraged to deny the compensation.

National Nuclear Workers for Justice are asking that the Board verify the credentials of the medical consultants that are reviewing the worker's claim as it has been brought to our attention that the consultants may not be trained and qualified in nuclear radiation health issues.

We are also asking for an investigation into the qualifications of the employees in the Cleveland office and other offices that process compensation claims for sick and dying workers, and they do not understand the impact and the association of the multiple chemical exposures and relative illnesses, related illnesses and therefore should not be passing judgement.

Lastly, the Department citing National Security justification has declined to provide the entire database to sick workers who ask for it. This practice needs to be reviewed by
qualified authorities at the minimal, and
preferably removed.

Workers have the right to know the
health impact of their employment at these
facilities. National Nuclear Workers for Justice
are asking for a full disclosure on NIOSH
determination and the levels required for safe
versus unsafe exposures and its related
justifications to turn down workers' related
illnesses.

We would like to see safe dose levels
determination be conducted by an independent lab.
It is roughly the Site Matrix System, put
roughly, the Site Matrix System is correct.
Workers that were employed in places like the
Portsmouth Gaseous Diffusion Plant in Ohio where
victims are poor safety practices which resulted
in workers being exposed unnecessarily.

It has been well documented that the
Government withheld the information about what we
had been exposed to. Also, the Government never
properly tested the workers, nor were there
accurate records kept. And these records that
were kept had been falsified or possibly
destroyed.

The Government admitted that they made
us sick and they wanted to take care of the Cold
War heroes yet the current process of relying on
inaccurate, incomplete, and dishonest system has
resulted in denial of earned compensation.

One question to ask yourself is why 16
years later are sick workers being turned down
for the illnesses that are clearly job related.
Labor Department rules say the database should be
the guidance and the claim examiner should dig
deeper if they suspect an illness has risen from
working at these plants.

Yet due to unqualified evaluators, a
detailed investigation into the individual case
does not occur. Here is an example of the
problem with the Site Matrix System.

There's a link to calcium fluoride.
It's called the skeletal fluorosis. That will
not give any job title to anyone credited for
exposure to calcium fluoride. They don't want to
admit there is a link to HF in fluoride even
though most of the gaseous diffusion plant
workers have a positive fluoride test.

Other issues with the Site Matrix
System is that it does not address the multiple
exposures to chemicals and radiation exposure.
For example, if you type in the Site Matrix
System database a worker's job classification
like mine, electrician and then you type in the
illness like neuropathy which is just one of my
diagnosed conditions, the two experts who have
agreed with the chemical risk in the Site Matrix
System, your claim is still denied by the
Department of Labor Cleveland office even though
the Site Matrix System reveals chemicals and
radiation that my job description identifies as
the exposure and my Facebook both provide records
showing that the legacy period of these chemicals
such as those long term and short term health
effects according to the health, the glossary of
health effects compiled by NIOSH DOE office
oversight and many other agencies, my claim has again been denied.

The database is only focusing on one exposure and not multiple chemical or radiation exposures which workers have been exposed to. Workers and National Nuclear Workers for Justice are well aware of Dr. Eugene Stewart's recommendation back in 2009 and feel nothing has happened to valid claims of sick workers.

2016 should be the year where the Energy Employees Illness Compensation Act should truly reach wide and show and enforces the intent of its initiatives.

It is my considered opinion that the justification process has become corrupt and improperly executed. The only fix at this point in our opinion is that the head contractor of the programs to the federal, take the head program contact over the program to federal court and let the federal judge sort out the problems and/or corrections that are currently taking place.

My bottom line is that the leadership
in DC appears to be allowing career personnel in Cleveland and other district office to deliberately violate the rights of claimants.

    In closing, in 2010 the Department of Labor recommended further evaluation of my claim to the Cleveland office for neuropathy, multiple melanomas, hypothyroidism, arthritis, pulmonary edema and immune disorder system.

    As of today, all of my claims to the Cleveland office have been denied. Again, they are denied even though I have medical documents showing proof of illnesses and exposures and statements, medical statements over a period of 30 years.

    Cold War heroes should not have to spend their life fighting for benefits that cover illnesses that are the result of chemicals and radiation exposure.

    I would like to be updated if there are any changes to be made to this program. And at no time have I ever been called and asked exactly what electricians were exposed to.
On my job I worked in confined spaces with trichloroethylene, no respiratory protection, cleaning down uranium contaminated PCB oils with this trichloroethylene and no protective equipment.

I worked in an open machine shop and welding shop and motor shop. Not one chemical can be my diagnosis. Not only me but other workers who work in these facilities, they walk into these facilities, the grounds are contaminated with all kind of chemicals and radiation.

I mean, the radiation is off site, 360 acres off site. People are walking to work and going through this building to get into their jobs every day. So I don't know how we can use a Site Matrix System for one chemical that these workers have been exposed to.

I've asked a dozen times to NIOSH to show me how they turned me down on my exposures and to this day I have never got that report.

CHAIR MARKOWITZ: Ms. Colley, if you
could take one more minute, please.

    (Off microphone comment.)

CHAIR MARKOWITZ: Thank you. Our next speaker is present here, Mr. Hugh Stevens.

    (Off microphone comment.)

MS. COLLEY: -- they continue to deny our claims as bogus. I've been exposed to beryllium, fluoride, plutonium, neptunium, magnesium.

    Tell me how you calculate my exposure and I'm dying. I live every day but it's a slow death. These workers are dying with a slow death. You tell me how you calculated my illnesses and turned them down when there is a connection to hypothyroidism, to the pulmonary edema which caused my congestive heart failure? There's a connection to all these chemicals for all these workers and no one's paying attention. They're just letting them die.

CHAIR MARKOWITZ: Ms. Colley, thank you very much for your comments. We have to move on, but thank you.
MR. STEPHENS: Good afternoon, Dr. Markowitz and the rest of the Board. My name is Hugh Stephens. I am one of a small group of second generation environmental attorneys. I've been litigating environmental cases for about 20 years and I started in this program back in about 2010.

I just want to say that this is a great program. I have had a number of claims that didn't go very well. I was able to take them up to the folks in Washington and usually with good claims we've been able to get them resolved.

And so at one point I thought someday I'll litigate a case against the Department of Labor and win it for my client. Well, that's been unnecessary because once you get to people like Rachel and John they get things right.

I think the problems with the program are down in the trenches with those 400 claims examiners trying to figure out what to do with these claims.
I hear a term pretty often here, treating physician. Let me say as an attorney we try to use professionals. We hire people, we hire occupational physicians to write reports, detailed reports that are difficult to allow a claim to be denied after you read a report like this.

But if you go to your treating physician, the treating physician is going to say yes, that occupational exposure may very well be related to this illness. And the claimant will take that to the Department of Labor and that claim will be denied because that letter does not say what it needs to say.

So when we hear this talk about how great the treating physician is, you know, my experience is treating physicians write terrible letters in this program. They're uniquely qualified to write those letters because they are not occupational physicians.

So I hope I have a receptive group here. There are so many occupational physicians
in this group. So I think that's a problem, the idea that the treating physician is going to be able to write a good report that would form the basis for a claim.

And so you kind of get this sense well it's the treating physician. The treating physician is there hands-on. He or she knows this patient and can write this report based on actual physical contact. They know what the illness is.

We know that's not true because the treating physicians are there to treat, not to assess whether this illness is occupational.

PARTICIPANT: Can I ask you to hold the mic, please?

MR. STEPHENS: I will. I apologize. So the other part of this is these industrial hygienists. So then the program relies on these industrial hygienists and those industrial hygienists, they have no contact with the claimant. And we've heard people talk about that today.
And they go to a book and they take with them some sort of labor category from 20, 30, 40 years ago. And then there's this part of the program that is this idea that a worker and that a claim should not be paid on the basis of the self-serving testimony of a claimant.

And so the claimant comes in and says oh yes, I was exposed to this and that and this labor category they've got me in, no that's not right. And if you look over at this other facility, they got this description of my labor category and that's actually right.

But that stuff doesn't make it. I mean, by the time you get to John and Rachel it does. They understand these kind of subtle issues. But down at the lowest level, these are recurring problems.

And so you have these industrial hygienists that have no real interaction with the claimant and you have these treating physicians who have no interaction with occupational illness.
I'm going to leave it at that for today, maybe say a few things tomorrow. I appreciate everybody being here, and I'll let everybody get out of here. We've been here all day. Thank you very much.

CHAIR MARKOWITZ: Thank you very much. And so that, it's 6 o'clock, that concludes our public comment period and concludes the meeting for today. So we will meet promptly at 8:30 tomorrow morning. Yes, thank you.

(Whereupon, the meeting in the above-entitled matter was concluded at 6:00.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Meeting of the Advisory Board on Toxic Substances and Worker Health

Before: US DOL

Date: 04-26-16

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

__________________________
Court Reporter