

OPTION III: MONETARY COMPENSATION

LABORATORY EXPERIMENTS

I. ELIGIBILITY

All participants in government or government-sponsored laboratory experiments involving intentional exposure to ionizing radiation (not including routine clinical practices), exposed to high level of radiation without informed consent who have contracted one of several specified illnesses.

II. PAYMENT

\$ZZZ per person with specified radiation-related illnesses, independent of exposure level and independent of period within which illness was contracted.

III. EXTENSION OF BENEFITS

Benefits extend to immediate family, (i.e., spouse or children) if claimant is deceased.

ATMOSPHERIC RELEASES OF RADIATION

I. ELIGIBILITY

Do not provide compensation for civilians living downwind of radiation releases identified in the Executive Order. [Identify a separate mechanism for reviewing this question.]

II. PAYMENT

Not applicable.

III. EXTENSION OF BENEFITS

Not applicable.

MONETARY COMPENSATION OPTIONS: LABORATORY TEST SUBJECTS

COMP. ELEMENTS	OPTION I	OPTION II	OPTION III
ELIGIBILITY	All participants in laboratory radiation experiments with or without informed consent.	All participants in laboratory radiation experiments with or without informed consent.	All participants in laboratory radiation experiments exposed to high levels of radiation and who did not provide informed consent.
PAYMENT	\$XXX minimum; \$YYY per person exposed to high radiation levels; \$ZZZ per person with specified radiation-related illnesses.	\$XXX minimum; \$ZZZ per person with specified radiation-related illnesses, subject to restrictions. ²	\$ZZZ per person with specified radiation-related illnesses.
EXTENSION OF BENEFITS	Eligible survivors: spouses, children, grandchildren, parents, and grandparents.	Eligible survivors: spouses and children.	Eligible survivors: spouses and children.

² In this case, subjects would have to establish that they had been exposed to high levels of radiation. Other restrictions might include a maximum time between radiation exposure and contraction of disease, or evidence that claimant does not engage in risky behavior, such as smoking or heavy drinking.

MONETARY COMPENSATION OPTIONS: "DOWNWINDERS"

COMP. ELEMENTS	RECOMMENDED OPTION	OPTION II	OPTION III
APPROACH	Amend the Radiation Exposure Compensation Act.	Special legislation.	None.
ELIGIBILITY	Military test personnel and downwinders within a specified geographic area surrounding release sites who have contracted radiation-related illnesses.	Military personnel and downwinders identified in dose reconstruction studies as having received dangerous radiation exposures who have contracted radiation-related illnesses.	Downwinders ineligible.
PAYMENT	\$50,000 for civilian downwinders; \$100,000 for military test personnel.	\$50,000 for civilian downwinders; \$100,000 for military test personnel.	Not applicable.
EXTENSION OF BENEFITS	Eligible survivors: spouses, children, grandchildren, parents, and grandparents.	Eligible survivors: spouses, children, grandchildren, parents, and grandparents.	Not applicable.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 14, 1994

MEMORANDUM

TO: Bob Damus (OMB)
Lucy Huffman (Treasury)
Nancy McFadden (DOJ)
Bob Nordhaus (DOE)
Heather Ross (NEC)
Jack Thompson (VA)

FROM: T.J. Glauthier *Kp for TJ*

SUBJECT: Next Meeting of the Radiation Compensation Subcommittee

As you know, the next meeting of the Compensation Subcommittee will be held on Wednesday, March 16, from 10:30 a.m. to 12:00 p.m. in Room 248 of the Old Executive Office Building.

Attached to this memo is a document that identifies discussion issues and possible options for monetary compensation and health care elements of a compensation package. In addition, we have included a "worksheet" that suggests a framework for the subcommittee's compensation recommendations to the larger Interagency Group.

Please take a few moments to review these documents before the meeting. If possible, please attempt to "fill in the boxes" of the worksheet; this will help move our discussions forward as the subcommittee formulates its draft of an overall compensation package.

CC: Christine Varney
Philip Caplan
Joel Klein

POSSIBLE COMPENSATION ELEMENTS: MONETARY COMPENSATION

GENERAL ISSUES

- **Defining the Population.** The Administration has decided not to extend coverage to groups outside the scope of the Executive Order. However, efforts are being made in Congress to establish links between the efforts of the Interagency Working Group on radiation and issues such as DOE health care monitoring responsibilities, claims against the government by veterans exposed to mustard gas and LSD, and the possibility of renegotiating the Compact with the Marshall Islands. In presenting its recommendations on compensation, the Administration will need to explain the basis for distinguishing between various populations affected by radiation exposure and other government experiments. The subcommittee may wish to discuss whether a future policy body should address the concerns of groups not covered by the Executive Order.
- **Downwinders.** At this point, no information has been provided to the Interagency Group to suggest that the number of human subjects participating in laboratory experiments is substantially different from that cited in the Markey Report. However, no estimates have been provided about the number of civilians and veterans potentially affected by the atmospheric releases covered by the Executive Order.¹ The subcommittee may wish to request that DOE provide such estimates in the near future. The subcommittee also may wish to discuss whether to distinguish between people who were intentionally exposed to radiation in lab experiments versus those who were exposed through atmospheric releases that may not have been considered unsafe when they were conducted.
- **Ongoing Studies of Radiation Exposure.** The DOE Hanford site is currently engaged in an extensive research program to evaluate potential radiation exposure to local populations from a variety of intentional radiation releases conducted by Hanford during 1944 - 1947 and 1964 - 1966. Only preliminary results are currently available, and the program does not expect to have population and risk assessment estimates until approximately January 1995. It is not clear whether such efforts are ongoing at the other three sites identified in the Executive Order. The subcommittee may wish to delay recommending compensation for persons exposed to radiation during atmospheric releases until the results of such studies are available or to consider establishing similar research programs as part of the compensation package.

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¹ These are the 13 incidents that were identified in a November 1993 GAO report for Senator Glenn: "Nuclear Health and Safety: Examples of World War II Radiation Releases at U.S. Nuclear Sites." In addition to the so-called Green Run at Hanford (in 1949), a total of 12 incidents are identified that occurred in Oak Ridge, Tennessee, Los Alamos, New Mexico, and Dugway, Utah that occurred during 1948 - 1952.

Possible compensation elements: monetary compensation

- **Documentation Requirements.** The size of the population covered by compensation provisions is likely to represent the largest factor in the cost of any proposed compensation package. However, documentation requirements are a critical determinant of the number of "eligible" persons who succeed in obtaining compensation awards. The VA compensation program for radiation-exposed veterans awards less than ten percent of claims that are filed (figures provided below). Documentation requirements for the VA and comparable compensation programs include both proof of exposure and, often, proof of contracting a disease within a specified time period. VA has recently dropped its requirement that veterans establish causality between exposure and contraction of a disease.
- **Informed Consent.** Another critical eligibility question for subjects of laboratory experiments is the issue of informed consent. Most legislation that has recently been proposed makes compensation contingent on a lack of informed consent.² The subcommittee may wish to consider whether to ask the Advisory Committee make a recommendation on this issue.
- **Extending Coverage to Family Members.** Most compensation programs the subcommittee has considered as models include provisions to extend benefits to family members in the event that the eligible claimant is deceased. In general, benefits for eligible claimants are provided either to immediate family members or parents. Many subjects of laboratory experiments may be deceased. If the subcommittee elects not to extend some or all coverage to family members, it will be important to look at other models that would provide the basis for such a decision.
- **Amount of Payments.** Congress has determined the claim amounts that have been awarded under the Radiation Exposure Compensation Act (RECA), the Compact of Free Association, or the Japanese-American reparations program. In general, the range of compensation amounts is \$12,000 - \$100,000 per person. H.R. 3743, proposed by Rep. Martin Frost, proposes \$50,000 per person, while RECA offers a range of \$50,000 - \$100,000, based on level of exposure. In general, however there has not been an explicit analytical basis for financial awards. To simplify discussions, specific amounts have not been included in the options listed below.

² For example, the definition of informed consent provided in H.R. 3743, (Rep. Frost's proposed compensation bill) reads as follows: "Consent by an individual (or the individual's parent or legal guardian, in the case of an individual who was a minor or was incompetent at the relevant time), to the individual's participation in an experiment, after a full disclosure of the nature and purpose of the experiment and its possible consequences that was sufficient to allow the individual (or the individual's parent or legal guardian...) to intelligently exercise judgment to decide whether the individual should participate in the experiment."

VETERANS' ISSUES

Although many veterans who participated in nuclear testing during the 1950s are covered under the Radiation Exposure Compensation Act, few veterans have elected to file claims for \$100,000 payments for which they could be eligible under the act. The reason for this is that veterans are required to forfeit their VA disability benefits if they accept the lump-sum payment. Thus, subcommittee members may wish to consider alternative compensation mechanisms for veterans exposed to radiation in laboratory experiments or during intentional atmospheric releases covered by the Executive Order.

Presumption of Service-related Disability. The current VA program provides a "presumption of service-related disability" for veterans who participated in specific nuclear tests or in the occupation of Hiroshima or Nagasaki who contract a range of specified diseases. This presumption automatically entitles veterans (or their families) to VA monthly death or disability payments, (which extend to the immediate family). However, veterans exposed to radiation in other ways (e.g., by participating in tests not identified in existing legislation or during weapons production activities), must establish a connection between their exposure and their medical condition.³

- **Extending the Presumption.** The subcommittee may wish to consider extending the presumption of service-related disability to veterans exposed to radiation through specifically identified laboratory tests and/or intentional atmospheric radiation releases, (thereby expanding the population of veterans eligible for benefits under existing VA programs).
- **Number of Claims vs. Awards.** According to VA, of the approximately 401,000 "atomic veterans," (meaning those who have participated in atomic tests or occupation activities in Japan), only 15,000 have submitted claims for death or disability compensation payments. Of the claims submitted, less than ten percent (1400) have been allowed by VA.⁴ Comparable data has been requested from DOJ on the Radiation Exposure Compensation Act.

³ A radiation-exposed veteran with an illness listed in laws that provide the authority for the VA compensation program, but who did not participate in specified nuclear tests or occupation of Nagasaki and Hiroshima, must document a connection between radiation exposure and the illness. This process requires the Defense Nuclear Agency to review the claim and to make a determination regarding possible exposure resulting from the incident. The claimant must then obtain medical certification that his illness could have resulted from such a level of exposure. This process is lengthy and difficult for most claimants.

⁴ The reason that most claims are disallowed is that claimants either: a) do not have a disease covered by radiation-exposure legislation; b) did not contract the illness within the time specified to receive the presumption of service-related disability for incidents specifically identified in the act; or c) are not covered by specific legislation and are unable to document a connection between their radiation exposure and their illness.

VETERANS' ISSUES (continued)

- **Pressures to Expand Population of Veterans Eligible for Compensation.** Whether the veteran population covered under the terms of the Executive Order receive monetary compensation or VA benefits through a presumption of service-related disability, certain Members of Congress are likely to propose expanding this population to include veterans who participated in mustard gas and LSD experiments, or possibly atmospheric tests not identified in the GAO report. For example, only the so-called "Green Run" at Hanford is covered by the Executive Order, but at least several dozen intentional releases of radiation at Hanford potentially exceeded current safety standards during 1944 - 1947 and 1964 - 1966.⁵

AN Mike
should look at

⁵ One estimate of the number of veterans who served as subjects in military experiments on chemical warfare agents is 60,000 servicemen, including 4,000 who were exposed to mustard gas and Lewisite (these figures were published in Veterans at Risk, a recent study published a panel convened by the Institute of Medicine).

OPTIONS

The following potential options incorporate elements of various compensation schemes that the subcommittee has identified as potential models. Option A is the most inclusive, (and, as such, likely to be the most expensive option). Other options distinguish between populations of people based on the type of grievance or damage (e.g., contraction of disease or informed consent). All options (except option G) include extension of benefits to family members, which is consistent with most compensation models the subcommittee has considered. A table summarizing the various options is attached.

Clearly, the options presented represent only several of many possible combinations of elements. Subcommittee members may wish to "mix and match" elements or add new elements to the list.

Following the summary table, additional considerations for veterans are suggested for the subcommittee's discussion. Such options may overlap with general compensation provisions the Administration recommends for civilians. These "options" were generated to highlight issues unique to veterans, recognizing that VA is already equipped to provide health care and compensation for so-called atomic veterans.

- Option A:** Provide uniform lump-sum payments to claimants, using the Japanese internee reparations program as a model. Include no stipulations regarding level of exposure, contraction of a radiation-related illness, or informed consent. Claimants need only prove participation in laboratory or atmospheric release experiments. Extend benefits to family members.
- Option B:** Provide lump-sum payments to claimants, using the Radiation Exposure Compensation Act (RECA) payment scheme as a model. Establish several population categories with payment levels corresponding to factors such as level of exposure or type of experiment, (e.g. laboratory vs. atmospheric tests). Unlike RECA, however, include no stipulations regarding contraction of a radiation-related illness. Proof of participation and lack of informed consent constitute basis for claim. Extend benefits to family members.
- Option C:** Same as options A or B, but include requirements for claimants to document contraction of an illness. As in RECA, include a list of radiation-related illnesses for which claimants will receive compensation (if they contracted the illness within a specified time period after exposure). Require claimants to establish causality between radiation exposure and their illness only if illness does not appear on list.

Possible compensation elements: monetary compensation

Option D: Same as option C, but direct implementing agency or HHS to determine eligibility requirements for claimants. (Such an approach would be similar to H.R. 3743, which provides \$50,000 payments to individuals who did not provide informed consent when participating in laboratory experiments. The Attorney General is directed to determine whether claims meet eligibility requirements.)

Alternatively, the subcommittee could request that the Advisory Committee make recommendations regarding eligibility requirements.

Option E: Allow claimants to choose between a lump-sum payment (such as those described in options A - D) and specified health care benefits. — NO

Option F: Provide funding for a research program to evaluate the risks posed to individuals who participated in laboratory experiments and, if necessary, to atmospheric test participants and downwinders.⁶ Provide monetary compensation only to those individuals exposed to excessive levels of radiation. you should get me &

Option G: Provide no monetary compensation. Provide only health care and other compensation elements (e.g. outreach, apology).

⁶ As noted above, DOE is currently conducting a dose reconstruction project at its Hanford site to assess radiation exposure to local populations from all releases conducted at Hanford. This study is expected to yield results in approximately one year. If studies are not ongoing, they could be established at Oak Ridge, Los Alamos, and Dugway.

POSSIBLE COMPENSATION OPTIONS: ELIGIBILITY REQUIREMENTS

	ELIGIBILITY REQUIREMENTS				
OPTIONS	Proof of participation/ exposure	Lack of informed consent	Proof of contraction of radiation-related illness	Extension of benefits to family members	Distinguish between type of exposure
OPTION A	YES	NO	NO	YES	NO
OPTION B	YES	YES	NO	YES	YES
OPTION C	YES	NO/YES*	YES	YES	NO/YES*
OPTION D	YES	NO/YES*	Determined by implementing agency or adv. committee	YES	NO/YES*
OPTION E	YES	Choose from options above, but allow claimants to choose between monetary compensation and health care benefits.			
OPTION F	YES	Choose from options above, but allow claims only from populations determined to have been exposed to excessive levels of radiation.			
OPTION G	Provide no monetary compensation. Provide only health care and other compensation elements (e.g., outreach, apology)				
Subcommittee members may wish to develop additional options in space below:					
OPTION H					

* Based on either option A or B

ADDITIONAL CONSIDERATIONS/OPTIONS: VETERANS

- Option A:** Extend the presumption of service-related disability to all veterans who can document their participation in radiation experiments — e.g., laboratory experiments identified in the Markey report or atmospheric releases identified in the GAO report. Include no stipulations for level of exposure or contraction of a radiation-related illness.
- Option B:** Extend the presumption of service-related disability only to veterans who were subjects in laboratory radiation experiments; (this is likely to be an extremely small population). Include no stipulations for level of exposure or contraction of a radiation-related illness.
- Option C:** Extend the presumption of service-related disability to veterans who were subjects of laboratory radiation experiments and veterans who were subjects of mustard gas, LSD, and other "ethically questionable" government/government-sponsored experiments associated with chemical or biological warfare agents.
- Option D:** Provide monetary (lump-sum) payments to veterans if such an option is elected for civilians. Define a specific sum for veterans exposed during atmospheric releases; (this amount would likely be higher than civilian awards, based on presumption that military personnel exposure was higher). Radiation Exposure Compensation Act award amount is \$100,000 for servicemen.
- Option E:** Make no special provisions for veterans. Treat veteran claimants as civilians. Include no provision extending veterans presumption of service-related disability. (Veterans will be required to choose between monetary compensation and VA health care benefits to which they are otherwise entitled due to illness.)
- Option F:** Same as E, but establish a mechanism to help veterans to obtain documentation necessary to demonstrate their exposure to radiation and proof of disease. Establish a program to provide such assistance, if necessary; or, add such responsibility to the Defense Nuclear Agency's Nuclear Test Personnel Review program, which provides information to "atomic veterans" about VA benefits and services and information about veterans' individual radiation exposures. (This option could be considered as part of the "outreach" category discussed previously.)

POSSIBLE COMPENSATION OPTIONS: VETERANS' ISSUES

OPTIONS	ADDITIONAL POSSIBLE CONSIDERATIONS FOR VETERANS				
	Extend presumption of service-related disability	Include veterans exposed to other harmful substances	Distinguish between types of exposure	Distinguish between veterans and civilians	Additional support provisions
OPTION A	YES	NO	NO	YES	NO
OPTION B	YES	NO	YES (Lab expts. only)	YES	NO
OPTION C	YES	YES	YES	YES	NO
OPTION D	YES	NO	YES	YES	NO
OPTION E	NO	NO	(Depends on option selected for civilians)	NO	NO
OPTION F	NO	NO	(Depends on option selected for civilians)	NO	YES
<i>Subcommittee members may wish to develop additional options in space below:</i>					
OPTION G					

Possible Compensation Elements: Health Monitoring/Health Care

Most of the issues affecting the selection of an appropriate health care or health monitoring program revolve around administrative issues and cost. The size of the population covered in the compensation program also will determine the administrative options available. At this point, subcommittee staff are working to gather information on existing programs to identify key implementation issues. Further information on programs should be available for the next subcommittee meeting.

At this point, the subcommittee may want to consider the general question of whether health care or health monitoring (or neither) is the preferred approach.

GENERAL ISSUES

- **Cost and Administrative Burden of Providing Health Care.** Health monitoring and health care programs are extremely expensive to administer and represent an ongoing funding commitment. For this reason, few compensation programs outside VA have been designed to provide health care as a form of compensation. Tuskegee Study subjects compensated by HHS did receive full health benefits as compensation, but this was an extremely small population. It would be administratively difficult and highly costly to provide such extensive coverage unless the population covered in the Administration's proposal is limited to approximately the number of subjects cited in the Markey report (695), (therefore excluding all "downwinders").
- **Health Monitoring: DOE programs.** DOE is required to monitor the health of all workers occupationally exposed to radiation or hazardous waste, through a provision of the 1992 DOD authorization bill. However, no funds have been provided to implement this program and Rep. Dingell has expressed a strong concern about this issue. It may be difficult to avoid "linking" the issues of DOE worker health monitoring and new health monitoring provisions in an Administration compensation proposal. The subcommittee may wish to ask for a briefing on this issue from the Environment, Safety, and Health Branch of DOE to ensure that the Administration proposal is consistent with the DOE response to Rep. Dingell's inquiries.
- **Implementation.** If the subcommittee recommends a health monitoring program, a variety of agencies could be selected to administer the program. To avoid "linking" compensation to worker health monitoring issues at DOE, the subcommittee could charge another agency with responsibility to implement the program (e.g., HHS or VA).

OPTIONS

As in the case of monetary compensation, there are a variety of eligibility criteria that can be selected to distinguish between affected populations. The criteria outlined in the previous tables (e.g., informed consent, demonstration of illness, level of exposure) can be applied to each of the options listed below.

- Option A:** Provide full health care coverage to all laboratory subjects and downwinders with radiation-related illnesses.
- Option B:** Provide full health care coverage to all laboratory subjects with radiation-related illnesses.
- Option C:** Provide health monitoring to all laboratory subjects and downwinders with symptoms potentially related to radiation exposure.
- Option D:** Provide health monitoring to all laboratory subjects and downwinders who are judged to have been exposed to excessive levels of radiation, based on current standards. Such an option would require an ongoing research program of epidemiological studies and risk assessment and a delay in providing benefits to potentially eligible claimants.
- Option E:** Provide a combination of health care benefits and monitoring, distinguishing between populations. For example, provide health care benefits to subjects of laboratory experiments or downwinders with radiation-related illnesses, (requiring claimants to demonstrate contraction of a radiation-related illness within a certain time period). Provide health monitoring to others exposed to excessive radiation levels or those with potential symptoms of radiation-related illnesses.
- Option F:** Allow eligible claimants to choose between specific health benefits and monetary compensation.
- Option G:** Provide no health care benefits or health monitoring.

key question: must program be limited to disease-/harm-based

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OPTIONS	ELIGIBILITY REQUIREMENTS						
	Proof of participation/ exposure	Lack of informed consent	Proof of radiation- related illness	Extension of benefits to family members	Distinction between types of exposure	Other?	Other?
Cash compensation/ lump-sum payment							
Health care							
Health monitoring							
Veterans' option							
Formal apology/ recognition							
Public outreach							
Research program							

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 17, 1994

MEMORANDUM

TO: Bob Damus (OMB)
Lucy Huffman (Treasury)
Nancy McFadden (DOJ)
Bob Nordhaus (DOE)
Heather Ross (NEC)
Jack Thompson (VA)

FROM: T.J. Glauthier

SUBJECT: Next Meeting of the Radiation Compensation Subcommittee

The next meeting of the Compensation Subcommittee will be held on Wednesday, February 23, from 11:00 a.m. to 12:00 p.m. in Room 180 of the Old Executive Office Building. If you plan to send a representative who has not yet attended a Subcommittee meeting, please contact my assistant, Courtney Manning, at 395-4561 to arrange for clearance into the building.

At our last meeting, we discussed a framework of elements that could be included in a possible compensation package for human radiation subjects. Two of the elements that we may wish to consider as part of the package are: (i) an official apology or alternative form of recognition to subjects of radiation experiments; and (ii) research or outreach programs that would demonstrate a commitment to prevent abuses of human subjects in the future.

Attached to this memorandum is a short document that identifies options for these two compensation elements and items that the group may wish to consider as we work to develop a consensus on these issues.

As background, the following items also are attached:

- A staff memo on the recent House Judiciary Committee hearing on government-sponsored experiments;
- A package of bills that have been introduced to compensate or apologize to subjects of radiation and other government experiments; and
- An outline of the current regulation governing protection of human subjects of government-sponsored research, ("Common Federal Policy").

CC: Christine Varney
Philip Caplan
Joel Klein

Possible Compensation Elements: Apology or Recognition

Issues for Discussion

In determining whether to propose including an apology or official recognition in compensation legislation, the Subcommittee may wish to consider some of the issues below:

- The Radiation Exposure Compensation Act and the Civil Liberties Act of 1988, (which provided reparations to Japanese internees), included official apologies to the individuals covered in each piece of legislation.
- A compensation bill proposed by Rep. Frost (H.R. 3743) includes an official apology to the subjects of secret Government radiation experiments. A bill proposed by Rep. Goss (H.R. 1055) proposes that DOD provide an official commendation to all individuals exposed to mustard gas in World War Two. A Sense of the House resolution submitted by Rep. Frost and Rep. Johnson (H.R. 337) states that, *inter alia*, an apology should be made to the individuals who were the subjects of radiation experiments without providing informed consent.
- In a recent hearing held by the Administrative Law and Government Relations Subcommittee of the House Judiciary Committee, Rep. Frank (former Subcommittee Chairman) and several other Representatives underscored the importance of including an official apology in any final compensation legislation that is adopted.
- On several occasions, such as the issuance of an apology for the overthrow of the Hawaiian monarchy, debate in Congress concerning an official U.S. apology has been fervent and emotional. In the course of Congressional debate over an apology, other issues unrelated to radiation experiments could be raised, detracting attention from the legislation itself.
- In particular, African and Native Americans, and other populations with current or historical grievances related to U.S. Government actions may object to the issuance of an apology to subjects radiation experiments. Such an apology may seem inappropriate to groups who feel they have suffered greater injustices than individuals exposed to radiation in experiments; for example, no U.S. Government apology has been issued for the practice of slavery.
- The Subcommittee may wish to consider the implications, if any, of an admission of wrongdoing on the part of the U.S. Government: specifically, whether such a statement could expose the government to further legal claims beyond the proposed terms of the compensation package.

Possible Compensation Elements: Apology or Recognition

Options

- Option A:** Include an official apology in the compensation package that covers the population eligible for compensation (e.g., subjects of radiation experiments who did not provide informed consent).¹ Alternatively, include all people who were affected in any way by such experiments.
- Option B:** Same as option A, but include also all individuals who have been affected by government-sponsored experiments (e.g., mustard gas, lewisite, and LSD experiments).
- Option C:** Provide an official commendation from the Secretary of Defense to all veterans affected by radiation experiments. Alternatively, include all veterans who have been affected by government-sponsored experiments (including mustard gas, lewisite, and LSD experiments).²
- Option D:** Provide a purple heart to all persons (civilians and veterans) eligible for compensation (e.g., subjects of radiation experiments who did not provide informed consent). Alternatively, include all people who were affected by radiation experiments.
- Option E:** Dedicate a memorial to subjects of radiation experiments or to all subjects of all objectionable government-sponsored tests.
- Option F:** Include no apology or recognition in compensation package.

Example

The following apology is included in Section 2 of the Radiation Exposure Compensation Act:

"The Congress apologizes on behalf of the Nation to the individuals described in subsection (a) and their families for the hardships they have endured." (Subsection (a) lists Congressional findings and identifies civilians that lived downwind from the Nevada tests, uranium miners, and servicemen involved in conducting nuclear tests).

¹ In the case of Japanese internees, individual letters of apology from the President were sent to each person receiving compensation. Such letters do not automatically accompany an official apology. The Subcommittee may wish to consider whether Presidential letters should accompany an apology.

² Such an option would be similar to the provisions of the bill proposed by Rep. Goss (mentioned on previous page).

Possible Compensation Elements: Outreach Programs

Issues for Discussion

- The Civil Liberties Act of 1988 that provided reparations to Japanese-Americans interned during World War II established a Presidentially appointed Civil Liberties Public Education Fund Board. The Board was directed to conduct a public education campaign about the internment and to report annually on the status of the campaign. The President of the Board was appointed in the summer of 1992, but the Board has not yet been active. Funds from the Civil Liberties Fund established by the Act are authorized for use in the public education campaign.
- The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (1984) required VA to conduct epidemiological studies of the health effects experienced by veterans exposed to herbicides containing dioxin and radiation. (This type of research program might be more appropriately considered under medical monitoring and health care.)
- In 1980, Congress established the U.S. Holocaust Memorial Council and directed the Commission to carry out the recommendations of the President's Commission on the Holocaust (P.L. 96-388, 94 Stat. 1547). One of the recommendations was to establish an education foundation "dedicated to educational works...[on] issues raised by the Holocaust for all areas of human knowledge and public policy". The Commission recommended programs for elementary, secondary, and higher education, along with grants for research and other programs. Such a council subsequently was established and currently awards grants and prizes for education.
- Federal regulations concerning experimental practices related to the use of human subjects are currently in place, (see background fact sheet, attached). In addition, a recent Presidential memorandum requires the Heads of all Federal agencies that conduct research to review their current policies for the protection of human subjects. The Office of Science and Technology Policy has been directed to gather this information and issue a report by August 1994. The Administration may wish to consider referencing such efforts in legislation, rather than establishing new programs to address such issues.
- Rep. Markey testified at a recent hearing that he and Sen. Kennedy are collaborating on a bill that would propose a comprehensive code of conduct for all government agencies.

Possible Compensation Elements: Outreach Programs

Options

Option A: Establish a grant to a leading U.S. research university, (or universities), for a program (or institution) focused on ethical matters arising from the use of human subjects in experiments.

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involvement

Option B: Establish a Board of Directors or Foundation to administer grants for one or more of the following types of activities to educate the public about radiation or ethics in scientific experimentation:

- art exhibits on radiation or ethics in research;
- documentaries or television series on radiation;
- high school programs to educate students about research ethics.

NO

Grants could be administered either through government agencies (e.g., NSF, DOE, NEA, Smithsonian, CPB) or awarded directly to non-governmental organizations.

Option C: Establish a Board of Directors and a trust fund or a foundation to provide grants for medical schools, scientific education institutions, or government agencies for educational activities and programs that promote ethical research practices.

NO

Option D: Establish no new programs. Instead, propose a comprehensive code of conduct for the U.S. Government, (in cooperation with Messrs. Markey and Kennedy).

yes

Option E: Establish no new programs, but reference (or codify) Administration actions to review the ethical standards of Federal research practices in compensation legislation.

Option F: Do not include research or education programs. Do not address reforms of government practices.

MEMORANDUM TO T.J. GLAUTHIER

February 3, 1994

THROUGH: Kathy Peroff

FROM: Emily Pelton

SUBJECT: Highlights of House Judiciary Committee Hearing on
Government-Sponsored Experiments on Human Subjects

This memorandum provides several highlights of the hearing I attended yesterday held by House Judiciary Committee (Subcommittee on Administrative Law and Government Relations).

General Remarks

- Subcommittee Members and Members of Congress testifying before the committee were highly supportive of the Administration response to this issue. Chairman Bryant remarked that the Subcommittee had not yet decided on an appropriate legislative response and that they would "work with the Administration" in developing one.
- Administration officials were well-prepared and had no difficulty answering the questions posed by Subcommittee members. (A list of panelists and Subcommittee Members attending is provided in Appendix A.)
- Several bills have been introduced or are anticipated in the near future that will address compensation for participants in government experiments. (Those for which details were available are summarized in Appendices B and C.)
- The hearing was well-attended and received considerable press coverage. CBS News featured the hearing as the number two story on the Evening News.

Policy Issues

- Several Subcommittee Members made it clear that they intend to address the broad community of human subjects in government experiments, rather than limiting the scope of inquiry to subjects of ionizing radiation tests. The panel consisting of veterans testifying before the Subcommittee included subjects of Government-sponsored LSD, mustard gas, and radiation experiments. Rep. Gekas, (Ranking Republican Member), promised to "fold each of these cases into the portfolio of cases" the Subcommittee will consider.

Policy Issues (continued)

- Much of the discussion focused on the issue of informed consent. Although no consensus on this issue emerged, Rep. Frost's bill (HR 3743) would provide monetary compensation to all human subjects in DOE experiments who did not grant informed consent.¹
- Many members, particularly Rep. Frank (former Chairman of the Subcommittee) emphasized the need for an apology in compensation legislation.
- Mr. Frosini, a subject in radiation experiments conducted in 1945, spoke strongly of the need to include subjects of experiments on the Administration's Advisory Panel on human radiation experiments.
- Rep. Gekas requested a formal memorandum from each Agency involved in experimentation describing the process by which documents relating to experimentation will be declassified.
- Chairman Bryant emphasized the Subcommittee's strong interest in learning the number of people affected by the experiments as soon as this information is available from the Interagency Working Group.

¹ The definition of informed consent provided in the bill (Section 4 (4)) reads as follows: "Consent by an individual (or the individual's parent or legal guardian, in the case of an individual who was a minor or was incompetent at the relevant time), to the individual's participation in an experiment, after a full disclosure of the nature and purpose of the experiment and its possible consequences that was sufficient to allow the individual (or the individual's parent or legal guardian...) to intelligently exercise judgment to decide whether the individual should participate in the experiment."

Appendix A
Hearing on Government Sponsored Experiments
House Judiciary Committee
Subcommittee on Administrative Law and Governmental Relations
February 2, 1994

PANELS

1. Rep. Edward Markey (D-MA)
Rep. Martin Frost (R-TX)
Rep. Porter Goss (D-FL)
Rep. Leslie Byrne (D-VA)
2. Lloyd Gamble (LSD Test Subject)
Andrew Frosini (Radiation Test Subject)
Nathan Schnurman (Mustard Gas Test Subject)
3. Bob Nordhaus, General Counsel, DOE
Frank Hunger, Assistant Attorney General, Civil Division, DOJ
Donald Henderson, Deputy Undersecretary for Science, HHS
4. Harold Smith, Assistant to the Secretary for Atomic Energy, DOD
David Giles, Director, Center for the Study of Intelligence, CIA
Mary Lou Keener, General Counsel, VA
5. Gregg Herken, Chairman, Space History Department, Air and Space Museum,
Smithsonian Institution
John Rundo, retired biophysicist, Argonne National Laboratory
David Rall, Chairman, Committee to Survey Health Effects of Mustard Gas and
Lewisite for the National Academy of Sciences, Institute of Medicine
Stewart Finch, Vice President, Research and Development, Cooper Hospital
University Medical Center

SUBCOMMITTEE MEMBERS ATTENDING

John Bryant, Chairman (D-TX)
George Gekas, Ranking Republican Member (R-PA)
Barney Frank, (D-MA)
David Mann, (D-OH)
Steven Schiff (R-NM)
Jim Ramstad (R-MN)
Bob Goodlatte (R-VA)

Appendix B: Proposed and Upcoming Bills on Compensation for Subjects of Government Experiments

H.R. 3743 "Radiation Experiment Compensation Act" (Rep. Martin Frost)

Compensation for Radiation Experiment Subjects. H.R. 3743 would compensate all subjects who participated in ionizing radiation experiments without providing informed consent. Subjects would not be required to demonstrate proof of a radiation-related disorder or illness to receive compensation. Compensation of \$50,000 per person would be provided to each subject, consistent with the provisions of the Radiation Exposure Compensation Act for civilian "downwinders" exposed to radiation from nuclear tests. The Attorney General would be directed to establish a process for determining eligibility for compensation. The bill also proposes a formal apology.

H.R. 1055 (Rep. Porter Goss)

Commendation for Veterans Exposed to Mustard Gas. H.R. 1055 would direct the Secretary of Defense to provide commendations to each veteran involved in secret mustard gas experiments "in honorary recognition of the individual's special service, loyalty, and contribution to the United States." In addition, the bill directs DOD to provide all subjects with all available documentation of their exposure to lethal chemical gases during such experiments.

A hearing on this bill is expected to be held by a Subcommittee of the House Armed Services Committee in the near future.

H.R. 337 (Rep. Martin Frost and Rep. Bernice Johnson)

Sense of the House on Radiation Experiments. H.R. 377 states that the Administration should be commended for responding to disclosures of radiation experiments; that individuals affected by experiments should receive follow-up medical care; that the President should consider whether compensation should be provided to subjects of experiments (who participated without informed consent); and that the U.S. Government should issue an apology to individuals who were subjects of experiments and their families.

H.R. 3344 (Rep. Leslie Byrne)

Compensation for Lloyd Gamble (LSD Test Subject). H.R. 1055 would provide compensation to Mr. Lloyd Gamble (a witness at the hearing) for lost pay and mental anguish caused by his participation in Army LSD experiments. (The House had passed an earlier version of this bill in the last Congressional session, but no action was taken in the Senate.) Rep. Byrne urged the Subcommittee to consider this claim in the overall effort to "compensate the victims of human experimentation."

H.R. 2375 and S. 1094

Proposed Amendments to VA Health Care Provisions. Bills have been introduced in both the House and the Senate that would amend title 38 of the U.S. Code. The amendment would "extend for ten years the authority for the VA to provide priority health care to veterans exposed to ionizing radiation or dioxin."

UPCOMING BILLS

- **Radiation Compensation Legislation (soon to be introduced by Rep. Edward Markey)** This bill will have three main provisions:
 - 1) To require full disclosure of information to subjects of experiments using ionizing radiation that were not intended to provide benefits to subjects.
 - 2) To require DOE to conduct medical follow-up for subjects and to provide free medical care for injuries related to experiments.
 - 3) To require the Secretary of Energy to recommend compensation to subjects or families who have suffered damages and possibly others who have been wronged. (This legislation does not propose a compensation package per se, but rather requires DOE to report recommendations for compensation to Congress within six months.)

According to Rep. Markey's testimony, the proposed legislation will cover experiments sponsored by the DOE or its predecessor agencies.

- **Comprehensive Code of Conduct for USG.** Rep. Markey is working with Senator Kennedy on legislation that would require a comprehensive code of conduct for all Government agencies. Senator Kennedy may hold hearings on radiation experiments conducted at the Fernald School in the near future.

Draft copies of all bills that have been formally introduced are attached to this memorandum as a separate package.

APPENDIX C: SUMMARY OF PROVISIONS IN PROPOSED BILLS

Legislation/ Compensation Program	Eligible Population/# of claimants	Monetary Compensation	Health Care/ Monitoring or Other Services	Apology/ Recognition	Information Disclosure/ Research Programs	Program Cost	Terms or Conditions for Compensation
Compensation Legislation, (soon to be proposed by Rep. Markey)	Subjects of radiation experiments that provided little or no benefit to subjects; (includes experiments conducted by DOE or its predecessor agencies).	None explicitly provided in legislation, but DOE is required to recommend appropriate "compensation" for those suffering damages.	Proper medical follow-up for subjects of experiments and free medical care for injuries related to experiments.	Not mentioned.	Full information disclosure to subjects is required.	No estimate.	DOE to make recommendations to Congress within 6 months on compensation for subjects and families who have suffered "damages" and others who have suffered "indignities" (probably non- monetary).
H.R. 3743 "Radiation Experimentation Compensation Act" (Chief Sponsor: Rep. Frost)	All subjects of government- sponsored radiation experiments not intended to provide benefits to subjects; (includes experiments conducted by DOE or its predecessor agencies)	\$50,000 per person (same as "downwinder" provisions in Radiation Exposure Compensation Act).	No.	Yes.	Not mentioned.	No estimate. Amounts paid are offset against amounts paid under RECA (1990).	Attorney General to establish process for determining eligibility. Subjects need not provide proof of disease. Experiments must have taken place between 1/1/40 and 12/31/74.

Legislation/ Compensation Program	Eligible Population/# of claimants	Monetary Compensation	Health Care/ Monitoring or Other Services	Apology/ Recognition	Information Disclosure/ Research Programs	Program Cost	Terms or Conditions for Compensation
H.R. 1055 (Chief Sponsor: Rep. Goss, 50 cosponsors)	All veterans that participated in secret Mustard Gas tests during World War II. (Note: recent report by NAS Institute of Medicine, <u>Veterans at Risk</u> , indicates that 4,000 veterans were exposed to mustard gas and Lewisite)	No.	No.	Directs the Secretary of Defense to issue commenda- tions to veterans involved in experiments.	DOD must notify all subjects or exposure, possible health effects, and options for medical treatment; DOD to provide VA with all documents related to exposure.	No estimate.	No health services or monetary compensation proposed in legislation.
H.R. 377 – Sense of the House (Sponsors: Rep. Frost and Rep. Johnson)	All subjects of government radiation experiments who did not provide informed consent.	President should consider whether to provide compensation to such individuals or their survivors, if deceased.	All subjects still alive should receive appropriate medical follow- up care.	Yes.	All documents and records concerning experiments to be made available to subjects and their families.	No estimate.	Covers subjects who did not provide informed consent to participate in government radiation tests.
H.R. 3344 – For the relief of Lloyd B. Gamble (Sponsor: Rep. Byrne)	One individual.	\$253,488 as compensation for injuries resulting from participation in U.S. Army LSD tests in 1957.	No.	No.	No.	Not a program.	Mr. Gamble would not be eligible for compensation or benefits from VA or DOD. Payment would constitute full satisfaction of claims against USG.

HR3743

Frost (D-TX)
Introduced in House

01/26/94

(346 lines)

To provide for payments to individuals who were the subjects of
radiation experiments conducted by the Federal Government.

Special typefaces used in this bill version:

// \\ Italic
!! !! Bold roman

Item Key: 9832

103D CONGRESS
2D SESSION

H. R. 3743

To provide for payments to individuals who were the subjects of
radiation experiments conducted by the Federal Government.

=====

IN THE HOUSE OF REPRESENTATIVES

January 26, 1994

Mr. FROST introduced the following bill; which was referred to the
Committee on the Judiciary

=====

A BILL

To provide for payments to individuals who were the subjects of
radiation experiments conducted by the Federal Government.

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

!!SECTION 1. SHORT TITLE.!!

This Act may be cited as the "Radiation Experimentation
Compensation Act of 1994".

!!SEC. 2. FINDINGS, PURPOSE, AND APOLOGY.!!

(a) FINDINGS.--The Congress finds that--

(1) since the 1940's, the Federal Government has
intentionally conducted secret radiation experiments in the
United States without the informed consent or knowledge of the
individuals on whom the experiments were performed;

(2) such radiation experiments included, but were not limited to, experiments involving injections of plutonium, ingestion of irradiated food, exposure to atmospheric radiation, and the prescription of radioactive medication to pregnant women;

(3) the Federal Government performed such experiments not in order to achieve medical or health benefits for the individuals used in the tests, but for research purposes, to allow Federal Government scientists and health specialists to study the effects of radiation on the human body;

(4) at the time of such experiments and in the years following the experiments, the Federal Government failed to inform the individuals tested, or their families, about the nature and effects of the tests;

(5) the Federal Government has harmed the subjects of such radiation experiments;

(6) the Congress presumes that the exposure to radiation of the subjects of such experiments has generated an excess of cancers and other debilitating diseases and health problems for such subjects;

(7) the Federal Government should recognize that the lives and health of the innocent individuals who were the subjects of such experiments were put at risk by the individuals' unknowing and involuntary participation in radiation experiments; and

(8) the Federal Government should assume responsibility for the harm caused by its actions regarding the experiments.

(b) PURPOSE.--It is the purpose of this Act to establish a procedure to make partial restitution to the individuals described in subsection (a) for the burdens they have borne for the Nation as a whole, although monetary compensation can never fully compensate them.

(c) APOLOGY.--The Congress apologizes on behalf of the Nation to the individuals described in subsection (a) and their families for the hardships they have endured because of the experiments described in subsection (a).

!!SEC. 3. TRUST FUND.!!

(a) ESTABLISHMENT.--There is established in the Treasury of the United States a trust fund to be known as the "Radiation Experimentation Compensation Trust Fund" (in this Act referred to as the "Fund"), which shall be administered by the Secretary of the Treasury.

(b) INVESTMENT OF AMOUNTS IN FUND.--Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be credited to and become a part of the Fund.

(c) AVAILABILITY OF FUND.--Amounts in the Fund shall be available only for disbursement by the Attorney General under section 5.

(d) TERMINATION.--

(1) TIME OF TERMINATION.--The Fund shall terminate not later than the earlier of--

(A) the date on which the amount authorized to be appropriated to the Fund by subsection (e), and any income earned on such amount, have been expended from the Fund; or

(B) 22 years after the date of the enactment of this Act.

(2) AMOUNTS REMAINING IN FUND.--At the end of the 22-year period referred to in paragraph (1)(B), if all of the amounts in the Fund have not been expended, investments of amounts in the Fund shall be liquidated, the receipts of such liquidation shall be deposited in the Fund, and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

(e) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to the Fund \$100,000,000. Any amount appropriated pursuant to this subsection is authorized to remain available until expended.

!!SEC. 4. CLAIMS ELIGIBLE FOR PAYMENT.!!

(a) IN GENERAL.--Any individual who, without the individual's informed consent, was intentionally exposed to radiation as a subject in an experiment of the Federal Government at any time during the period beginning on January 1, 1940, and ending on December 31, 1974, shall receive \$50,000 if--

(1) a claim for such payment is filed with the Attorney General by or on behalf of such individual; and

(2) the Attorney General determines, in accordance with section 5(b), that the claim meets the requirements of this Act.

(b) DEFINITIONS.--For purposes of this section:

(1) The term "experiment" means a test or other action that is conducted primarily for research purposes to determine the effect of exposure to radiation on the human body.

(2) The term "exposed to radiation" means caused to come into contact with any radioactive substance or material by means including, but not limited to, injection, ingestion, inhalation, or prescription of, or skin exposure to, any radioactive substance or material.

(3) The term "Federal Government" means--

(A) the legislative, judicial, or executive branch of the government of the United States, or any agency or instrumentality of such a branch;

(B) any person or entity whose actions regarding an experiment under which humans were exposed to radiation were funded in any manner, approved, authorized, supervised, or contracted for, by an entity referred to in subparagraph (A); or

(C) any person or entity that was funded in any manner, approved, authorized, supervised, or contracted with, wholly or partially, by an entity referred to in subparagraph (A)

during a time period in which an entity referred to in subparagraph (A) had knowledge that such person or entity was conducting any experiment under which humans were exposed to radiation.

(4) The term "informed consent" means consent by an individual (or the individual's parent or legal guardian, in the case of an individual who was a minor or was incompetent at the relevant time), to the individual's participation in an experiment, after a full disclosure of the nature and purpose of the experiment and its possible consequences that was sufficient to allow the individual (or the individual's parent or legal guardian, in the case of an individual who was a minor or was incompetent at the relevant time) to intelligently exercise judgment to decide whether the individual should participate in the experiment.

!!SEC. 5. DETERMINATION AND PAYMENT OF CLAIMS.!!

(a) ESTABLISHMENT OF FILING PROCEDURES.--The Attorney General shall establish procedures under which individuals may submit claims for payments under this Act.

(b) DETERMINATION OF CLAIMS.--For each claim filed under this Act, the Attorney General shall determine whether the claim meets the requirements of section 4(a).

(c) PAYMENT OF CLAIMS.--

(1) IN GENERAL.--The Attorney General shall pay, from amounts available in the Fund, each claim that the Attorney General determines meets the requirements of this Act.

(2) OFFSET OF PAYMENT.--

(A) OFFSET OF PAYMENT MADE UNDER THIS ACT.--A payment under this Act to or on behalf of an individual described in section 4(a) shall be offset by the amount of any payment made to or on behalf of the individual pursuant to a final award or settlement on a claim (other than a claim for worker's compensation) against any person, that is based on the individual's participation in an experiment that is the basis for the payment under this Act, including any payment under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(B) OFFSET OF PAYMENT MADE UNDER RADIATION EXPOSURE COMPENSATION ACT.--For purposes of section 6(c)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note), a payment made under this Act shall be considered to be a final award or settlement on a claim described in subparagraphs (A) and (B) of such section.

(3) RIGHT OF SUBROGATION.--Upon payment of a claim under this section, the Federal Government is subrogated, for the amount of the payment, to a right or claim that the individual to whom the payment was made may have against any person on account of participation in an experiment that is the basis for the payment made under this Act.

(4) PAYMENTS IN CASE OF DECEASED PERSONS.--

(A) IN GENERAL.--In the case of an individual who is deceased at the time of payment under this section, such payment may be made only as follows:

(i) If the individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(ii) If the individual is not survived by a spouse described in clause (i), such payment shall be made in equal shares to the children of the individual who are living at the time of payment.

(iii) If the individual is not survived by a person described in clause (i) or (ii), such payment shall be made in equal shares to the parents of the individual who are living at the time of payment.

(iv) If the individual is not survived by a person described in any of clauses (i) through (iii), such payment shall be made in equal shares to the grandchildren of the individual who are living at the time of payment.

(v) If the individual is not survived by a person described in any of clauses (i) through (iv), such payment shall be made in equal shares to the siblings of the individual who are living at the time of payment.

(vi) If the individual is not survived by a person described in any of clauses (i) through (v), then such payment shall be made in equal shares to the grandparents of the individual who are living at the time of payment.

(B) FILING OF CLAIM BY SURVIVOR.--If an individual eligible for payment under this Act dies before filing a claim under this Act, a survivor of the individual who may receive payment under subparagraph (A) may file a claim for such payment on the individual's behalf.

(C) DEFINITIONS.--For purposes of this paragraph:

(i) The term "child" includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

(ii) The term "grandchild of the individual" means a child of a child of the individual.

(iii) The term "grandparent of the individual" means a parent of a parent of the individual.

(iv) The term "parent" includes fathers and mothers through adoption.

(v) The term "sibling of the individual" means a child of the parent or parents of the individual.

(vi) The term "spouse" means a person who was married to the relevant individual for at least the 12 months immediately preceding the death of the individual.

(d) ACTION ON CLAIMS.--Within 18 months after the filing of any claim under this Act--

(1) the Attorney General shall make the determination required by subsection (b) regarding the claim; and

(2) if the claim is determined to meet the requirements of section 4(a), the Attorney General shall make the payment required by subsection (c)(1).

(e) SETTLEMENT IN FULL OF CLAIMS AGAINST UNITED STATES.--Payment under this Act, when accepted by an individual, or the individual's survivors, shall be in full satisfaction of all claims of or on behalf of the individual against the United States that arise out of the participation in the experiment that is the basis for the payment made under this Act.

(f) ADMINISTRATIVE COSTS NOT DEDUCTED FROM PAYMENT.--No costs incurred by the Attorney General in carrying out this Act may be paid from, set off against, or otherwise deducted from any payment made under subsection (c)(1).

(g) TERMINATION OF DUTIES OF ATTORNEY GENERAL.--The duties of the Attorney General under this section shall cease when the Fund terminates.

(h) TREATMENT OF PAYMENTS UNDER OTHER LAWS.--A payment under subsection (c)(1) to an individual--

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be considered as income or resources for purposes of determining the individual's eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

(i) USE OF EXISTING RESOURCES.--The Attorney General should, to the extent available, use funds and resources available to the Attorney General to carry out the Attorney General's functions under this Act.

(j) REGULATORY AUTHORITY.--The Attorney General may issue regulations necessary to carry out this Act.

(k) ISSUANCE OF REGULATIONS AND PROCEDURES.--The initial regulations and procedures to carry out this Act shall be issued not later than 120 days after the date of the enactment of this Act.

(l) JUDICIAL REVIEW.--An individual whose claim for compensation under this Act is denied may seek initial judicial review solely in a district court of the United States. The court shall review the denial on the administrative record and shall hold unlawful and set aside the denial if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Such an individual may appeal the decision of the district court to the appropriate higher Federal courts.

!!SEC. 6. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.!!

No claim under this Act shall be assignable or transferable.

!!SEC. 7. LIMITATION ON CLAIMS.!!

An individual, or the individual's survivors, may not receive payment under section 5(c)(1) unless a claim by or on behalf of the individual is filed under this Act within 20 years after the date of the enactment of this Act.

!!SEC. 8. ATTORNEY OR AGENT FEES.!!

The agent, attorney, or other representative of an individual or of an individual's survivor may not receive, for services rendered in connection with a claim made under this Act, an amount equal to more than 10 percent of the payment made under this Act on such claim. Any person who violates this section shall be guilty of an infraction and shall be subject to a fine in the amount provided in title 18, United States Code.

!!SEC. 9. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.!!

A payment made under section 5(c)(1) shall not be considered a form of compensation, or reimbursement for a loss, for purposes of imposing liability on the individual who receives the payment to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments. A payment under this Act shall not affect any claim against an insurance carrier with respect to insurance, or against any person with respect to worker's compensation.

EC. 10. BUDGET COMPLIANCE.!!

No authority under this Act to enter into contracts or to make payments shall be effective in any fiscal year except to such extent or in such amounts as are provided in advance in appropriations Acts.

There are no more items to read.

1 of 1 items

CQ's WASHINGTON ALERT 02/03/94

HR1055

Goss (R-FL)
Introduced in House

02/23/93

(60 lines)

To direct the Secretary of Defense to issue a commendation to each individual exposed to mustard agents during World War II, and for other purposes.

Special typefaces used in this bill version:

// \\ Italic
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Item Key: 2062

103D CONGRESS
1ST SESSION

H. R. 1055

To direct the Secretary of Defense to issue a commendation to each individual exposed to mustard agents during World War II, and for other purposes.

=====

IN THE HOUSE OF REPRESENTATIVES

February 23, 1993

Mr. GOSS (for himself, Mr. FRANK of Massachusetts, Mr. BROWDER, and Mr. BILIRAKIS) introduced the following bill; which was referred to the Committee on Armed Services

=====

A BILL

To direct the Secretary of Defense to issue a commendation to each individual exposed to mustard agents during World War II, and for other purposes.

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

!!SECTION 1. ISSUANCE OF COMMENDATION TO INDIVIDUALS EXPOSED TO MUSTARD AGENTS DURING WORLD WAR II. !!

(a) IN GENERAL.--The Secretary of Defense shall issue to each individual described in subsection (b) a commendation in honorary recognition of the individual's special service, loyalty, and contribution to the United States.

(b) COVERED INDIVIDUALS.--An individual referred to in section (a) is an individual who, as a member of the armed forces or an employee of the Department of War, was exposed to mustard agents in connection with testing performed by the Department of War during World War II.

!!SEC. 2. NOTIFICATION OF EXPOSURE. !!

The Secretary of Defense shall notify each individual described in section 1 of the exposure described in such section, the possible health effects of the exposure, and the likely options available to the individual for medical treatment for health effects resulting from the exposure.

!!SEC. 3. AVAILABILITY OF INFORMATION.!!

The Secretary of Defense shall make available to the Secretary of Veterans Affairs any information of the Department of Defense regarding the exposure described in section 1, including the names of the individuals subjected to the exposure.

There are no more items to read.

Enter one or more numbers or ALL to display item(s),
Enter another display command and one or more numbers or ALL,
Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
Enter BACK, HELP, or STOP

H. RES. 337

Expressing the sense of the House of Representatives with respect to radiation experiments conducted by the Federal Government.

=====

IN THE HOUSE OF REPRESENTATIVES

February 2, 1994

Mr. FROST (for himself and Ms. EDDIE BERNICE JOHNSON of Texas) submitted the following resolution; which was referred jointly to the Committees on Government Operations, Energy and Commerce, and the Judiciary

=====

RESOLUTION

Expressing the sense of the House of Representatives with respect to radiation experiments conducted by the Federal Government.

Whereas the Federal Government intentionally conducted secret radiation experiments on individuals beginning in the 1940's;

Whereas the experiments were conducted without the informed consent or knowledge of the individuals on whom the experiments were performed;

Whereas the radiation experiments included, but were not limited to, experiments involving injections of plutonium, prescription of radioactive medication to pregnant women, ingestion of irradiated food, and exposure to atmospheric radiation;

Whereas the Federal Government performed the experiments not in order to achieve medical or health benefits for the individuals who were subjects in the experiments, but for research purposes to allow Federal Government scientists and health specialists to study the effects of radiation on the human body;

Whereas, at the time of the experiments and in the years following the experiments, previous Federal administrations failed to inform the individuals used as subjects, or their families, about the nature and effects of the experiments;

Whereas the failure to inform such individuals and their families persisted even after a 1986 report, issued by the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce of the House of Representatives, disclosed the existence of some of the experiments and recommended that individuals used as subjects in the experiments be identified, located, and provided with followup medical care; and

Whereas such experiments conducted on individuals without their consent or permission were wrong and unacceptable in a free and democratic society, and all reasonable steps should be taken to ensure that such experiments never happen again: Now, therefore, be it

//Resolved\\ , That it is the sense of the House of Representatives that--

(1) the people of the United States deserve a full accounting of the nature and extent of the radiation experiments conducted by the Federal Government;

(2) the Secretary of Energy should be commended for quickly responding to the disclosures that secret radiation experiments had been conducted on individuals without their informed consent by promising to locate and release all relevant records;

(3) the President should be commended for establishing a Human Radiation Interagency Working Group and an independent Advisory Committee on Human Radiation Experiments to examine the scientific and ethical questions raised by the experiments and to make recommendations to the President;

(4) all departments and agencies of the Federal Government should act expeditiously to locate, retrieve, and inventory all records and documents related to the radiation experiments;

(5) once located, retrieved, and inventoried, all relevant records and documents should be made available to the individuals who were used as subjects in the experiments, and to their families, to allow them to learn the truth about the experiments;

(6) the individuals who were subjects in the experiments and are still alive should receive appropriate followup medical care;

(7) the President should consider whether compensation should be provided to the individuals who were the subjects of the experiments;

(8) the President should consider whether compensation should be provided to the surviving family members of deceased individuals who were subjects of the experiments; and

(9) an apology should be made by the Federal Government to the individuals who were subjects in the experiments, and their families, for the hardships they have endured as a result of the secret radiation experiments.

There are no more items to read.

HR3344

Byrne (D-VA)
Introduced in House

10/21/93

(60 lines)

For the relief of Lloyd B. Gamble.

Special typefaces used in this bill version:

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!! !! Bold roman

Item Key: 8164

103D CONGRESS
1ST SESSION

H. R. 3344

For the relief of Lloyd B. Gamble.

=====

IN THE HOUSE OF REPRESENTATIVES

October 21, 1993

BYRNE introduced the following bill; which was referred to the
Committee on the Judiciary

=====

A BILL

For the relief of Lloyd B. Gamble.

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

!!SECTION 1. APPROPRIATION OF FUNDS. !!

(a) PAYMENT.--The Secretary of the Treasury shall pay, out of
any money in the Treasury not otherwise appropriated, to Lloyd B.
Gamble of Fairfax, Virginia, the sum of \$253,488.

(b) BASIS.--The payment required by subsection (a) shall be to
compensate Lloyd B. Gamble for the injuries sustained by him as a
result of the administration to him, without his knowledge, of
lysergic acid diethylamide by United States Army personnel in 1957.

!!SEC. 2. SATISFACTION OF CLAIMS. !!

The payment made pursuant to section 1 shall be in full
satisfaction of all claims Lloyd B. Gamble may have against the

United States for any injury described in such section.

EC. 3. INELIGIBILITY FOR ADDITIONAL BENEFITS. !!

Upon payment of the sum referred to in section 1, Lloyd B. Gamble shall not be eligible for any compensation or benefits from the Department of Veterans Affairs or the Department of Defense for any injury described in such section.

!!SEC. 4. LIMITATION OF AGENTS AND ATTORNEYS FEES. !!

It shall be unlawful for an amount of more than 10 percent of the amount paid pursuant to section 1 to be paid to or received by any agent or attorney for any service rendered to Lloyd B. Gamble in connection with the benefits provided by this Act. Any person who violates this section shall be guilty of an infraction and shall be subject to a fine in the amount provided in title 18, United States Code.

There are no more items to read.

103D CONGRESS
1ST SESSION

H. R. 2375

To amend title 38, United States Code, to extend for ten years the authority for the Secretary of Veterans Affairs to provide priority health care to veterans who were exposed to ionizing radiation or to Agent Orange.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1993

Mr. EVANS (for himself, Mr. EDWARDS of California, Mr. GUTIERREZ, Ms. WATERS, Mr. BONIOR, Mr. KENNEDY, and Mr. ABERCROMBIE) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to extend for ten years the authority for the Secretary of Veterans Affairs to provide priority health care to veterans who were exposed to ionizing radiation or to Agent Orange.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1710(e)(3) of title 38, United States Code,
4 is amended by striking out "December 31, 1993" and in-
5 serting in lieu thereof "December 31, 2003".

103D CONGRESS
1ST SESSION

S. 1094

To amend section 1710 of title 38, United States Code, to extend the period of eligibility of certain veterans for medical care for exposure to dioxin or ionizing radiation.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 1993

Mr. DASCHLE (for himself, Mr. AKAKA, Mr. CAMPBELL, Mr. DECONCINI, and Mr. KERREY) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend section 1710 of title 38, United States Code, to extend the period of eligibility of certain veterans for medical care for exposure to dioxin or ionizing radiation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXTENSION OF PERIOD OF ELIGIBILITY FOR**
4 **CARE.**

5 Section 1710(e)(3) of title 38, United States Code,
6 is amended by striking out "December 31, 1993" and in-
7 serting in lieu thereof "December 31, 2003".

Background: Current Standards for Experimentation Using Human Subjects

Federal agencies that conduct research are required to comply with a "Common Federal Policy for the Protection of Human Subjects," (often referred to as the "Common Federal Policy"). Sixteen agencies, including the Department of Energy, collaborated with OSTP to develop this policy, which became effective on August 19, 1991.³ The terms of the Common Federal Policy are incorporated into the Code of Federal Regulations governing each of the sixteen agencies. Several key elements of the Common Federal Policy are outlined below.

Core Principles

The principles that form the basis of the Common Federal Policy are the following:

- Risks to human subjects should be minimized;
- Risks to human subjects must be reasonable in relation to anticipated benefits;
- Selection of subjects must be equitable; "special problems" of research involving vulnerable populations must be evaluated (e.g. children, prisoners, mentally disabled persons, or educationally or economically disadvantaged persons);
- Informed consent must be sought from each prospective human subject;
- Research must make adequate provisions for health monitoring of subjects, including ongoing data collection, if necessary);
- Provisions must be made to protect subjects' privacy and maintain confidentiality of data; and
- Extra safeguards must be provided to protect the rights and any populations who could be subject to coercion.

Implementation

- All research that is conducted or supported by Federal departments or agencies are subject to the requirements of the Common Federal Policy.
- Departments and agencies are required provide "assurances" to HHS that their research programs are in compliance with the Common Federal Policy. Such assurances must be approved by HHS.

³ The Common Policy amended subpart A of HHS regulations for the protection of human research subjects (45 CFR part 46). This policy was originally adopted (by the Department's predecessor, the Department of Health, Education, and Welfare), on May 30, 1974.

- Assurances include statements of principles, codes, or statements governing the institution for protecting the rights and welfare of human subjects of research conducted at (or sponsored by) the institution.
- In addition, assurances must include a designation of one or more "Institutional Review Boards" that are responsible for reviewing the institution's research to ensure that the rights of human subjects are protected.
- All Federal research proposals must be reviewed by an Institutional Review Board (IRB). Each IRB has the authority to approve or disapprove research projects. An IRB may terminate any research that is not conducted in accordance with the Common Federal Policy or that has caused unanticipated harm to any human subject.
- The IRB selection process is designed to ensure proper gender representation and a balance of scientific and nonscientific expertise on each board.
- Each IRB is charged with ensuring that human subjects involved in research experiments provide informed consent. Only under specific circumstances may the informed consent requirement be waived.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 30, 1994

MEMORANDUM

TO: Bob Damus (OMB)
Lucy Huffman (Treasury)
Nancy McFadden (DOJ)
Bob Nordhaus (DOE)
Heather Ross (NEC)
Jack Thompson (VA)

FROM: Emily Pelton

SUBJECT: Materials for the next meeting of the radiation compensation
subcommittee

As you know, the next meeting of the Compensation Subcommittee will be held on Thursday, March 31, from 10:30 a.m. to 12:00 p.m. in Room 472 of the Old Executive Office Building.

Attached to this memo is a draft document we have prepared as background for the meeting. The document is a next generation version of the framework for presenting a response package to the full committee. Section II, Compensation Response Elements, is not yet complete; however, that the remainder of section II will follow the outline presented in the table in section III. We expect to hand out several additional pages that will make the package complete at the meeting tomorrow.

We look forward to seeing you on Wednesday.

CC: Christine Varney
Philip Caplan
Joel Klein

**INTERAGENCY WORKING GROUP ON HUMAN
RADIATION EXPERIMENTS
SUBCOMMITTEE ON COMPENSATION
COMPENSATION RESPONSE OPTIONS**

I. ELIGIBILITY REQUIREMENTS

A. Type of Exposure: Laboratory Experiments versus Atmospheric Releases

The Interagency investigation covers two distinct populations that may have been exposed to ionizing radiation: individuals who participated in laboratory experiments and those who may have been exposed during intentional atmospheric releases of ionizing radiation. Such populations may require separate compensation responses due to differences such as: legal precedents governing atmospheric radiation releases; differing quality of data on individual exposure levels; and differing quality of techniques available for estimating individual radiation dose levels, based on the quantity of radiation released.

Precedents/Models

- The **Radiation Exposure Compensation Act (RECA)** provides cash compensation to military personnel involved in nuclear tests conducted in Nevada in the 1950s, civilians who lived "downwind" of such tests, and uranium miners — all of whom are presumed to have been exposed to high levels of ionizing radiation. Claimants must have one of several specified radiation-related illnesses to be eligible for compensation.
- The **Compact of Free Association** with the Marshall Islands (1986) provided cash compensation to the government of the Marshall Islands for damages caused by U.S. atomic tests during the 1940s and 1950s. In addition, the Departments of Energy and the Interior provide ongoing environmental and health monitoring services (DOE) and funding for a health care program for residents of Marshall Islands atolls that were contaminated by radiation (DOI).
- The **Department of Veterans Affairs** compensation program provides disability and death benefits to veterans who participated in specified military activities that resulted in high levels of radiation exposure (e.g., participation in certain nuclear tests or the occupation of Nagasaki or Hiroshima) and who have contracted one of several illnesses presumed to be caused by radiation exposure.

Alternatives

- Treat uniformly all individuals exposed to radiation in either laboratory experiments or atmospheric releases of ionizing radiation.
- Provide different response programs for individuals exposed to radiation in laboratory experiments versus those individuals exposed to ionizing radiation during atmospheric releases.
- Provide a response program only for individuals exposed to radiation in laboratory experiments.

B. Informed Consent

One eligibility criteria for compensation could be to distinguish between individuals based on whether they provided informed consent before participating in experiments. The interagency group may wish to ask the Advisory Committee determine whether current or contemporary standards of informed consent should apply to experiments conducted in previous decades.

Precedent/Model

- The sixteen federal agencies that conduct research using human subjects are required to comply with a "**Common Federal policy for the Protection of Human Subjects**," (often referred to as the "Common Federal Policy"), which became effective on August 19, 1991. The terms of this policy are incorporated into the Code of Federal Regulations governing each of these agencies. One of the central requirements of the Common Federal Policy is that human subjects must provide informed consent before participating in experiments.

Alternatives

- Compensate all individuals participating in laboratory experiments, regardless of consent.
- Compensate individuals who did not provide informed consent, based on current ethical standards.¹
- Compensate individuals who did not provide informed consent, based on contemporary ethical standards.

C. Level of Radiation Exposure or Dosage

Compensation programs for individuals exposed to ionizing radiation have been based on the assumption that covered groups are at higher risk for certain illnesses due to their exposure to high levels of ionizing radiation. Such precedents would suggest a need to distinguish between individuals exposed to high or low levels of radiation. At present, however, scientific techniques for linking radiation exposure to risk of illnesses are imprecise. For certain individuals exposed to radiation in laboratory tests, such a determination could require additional medical tests.

¹ The current federal standard for informed consent requires that all human subjects receive the following information: (i) an explanation of the purpose of the research; (ii) a description of any foreseeable risks or discomforts to the subject; (iii) a description of any potential benefits to the subject; (iv) disclosure of an appropriate alternative procedures; (v) a statement describing confidentiality provisions; (vi) an explanation of compensation or medical remedies available; (vii) a person to contact if any complications develop as a result of the experiments; and (viii) a statement that participation is voluntary. Additional information must be provided for certain types of experiments.

If a decision is made to distinguish between high and low exposure levels or doses, it may be appropriate to ask the Advisory Committee to determine what constitutes a "high" level of radiation exposure.

Precedents/Models

- Individuals eligible for compensation under the **Radiation Exposure Compensation Act (RECA)** are presumed to have been exposed to high levels of ionizing radiation. Each group is eligible for a different amount of money, based on their presumed level of exposure: civilian downwinders (\$50,000); military personnel (\$75,000); and uranium miners (\$100,000).
- The **Department of Veterans Affairs (VA)** extends a "presumption of service-connection" to veterans exposed to high radiation levels through military service who have contracted radiation-related illnesses. Such a presumption entitles a veteran to disability payments (or death benefits for his survivors) that are available to veterans with other service-connected injuries or illnesses. However, veterans who accept cash compensation under RECA must forfeit their VA disability or death benefits.

Alternatives

- Do not distinguish between individuals based on dosage or radiation exposure level.
- Distinguish between people exposed to high and low levels of radiation, based on records of laboratory experiments (or dose reconstruction studies for atmospheric releases of radiation).

D. Contraction of Radiation-Related Illnesses

Models that the subcommittee examined provide compensation based on the principle that eligible individuals have suffered physical harm as a result of their exposure to high levels of radiation. Compensating individuals on the basis of their *exposure* to radiation only could set a legal precedent for both radiation-related and other cases involving government experimentation (such as mustard gas or LSD tests conducted by the Army).

Precedents/Models

- The **Civil Liberties Act of 1988**, which provided reparations to Japanese-Americans interned during World War Two, compensates individuals based on loss of liberty during their internment. The act did not presume that individuals suffered physical harm.
- As noted above, a **Veterans Affairs** presumption of service-connected injury entitles a veteran to disability payments (or death benefits for his survivors) only if he contracts one of several specified radiation-related illnesses.

Precedents/Models (cont'd.)

- **The Radiation Exposure Compensation Act** provides compensation to people who lived within a specified geographic location during a specified period of time and can that prove that they contracted one of approximately thirteen radiation-related illnesses.

Alternatives

- Treat all individuals uniformly, regardless of whether they have contracted radiation-related illnesses.
- Provide a response program only for individuals who have contracted specified radiation-related illnesses, regardless of dosage or level of exposure.
- Provide a response program only for individuals exposed to high radiation levels who have contracted specified radiation-related illnesses.

II. COMPENSATION RESPONSE ELEMENTS

A. MONETARY COMPENSATION

1. Payment

In several compensation models the subcommittee considered, different cash compensation amounts are provided to recipients, based on their level of harm. Level of exposure and evidence of physical harm are both possible bases for determining appropriate levels of compensation.

Precedents/Models

- **The Radiation Exposure Compensation Act** provides different lump-sum payments to civilian downwinders (\$50,000), military personnel (\$75,000), and uranium miners (\$100,000).
- **Veterans Affairs** programs for radiation-exposed veterans provide disability payments based on the extent of injury (as for other types of service-related injuries).
- **The Civil Liberties Act of 1988** provides a uniform \$20,000 payment to all eligible claimants, or their survivors.

Possible Responses

- **Minimum for all participants.** Provide a minimum level of compensation to all participants of laboratory experiments, based on "dignity harm" caused by the experimentation.

- **Distinction between high and low radiation exposure.** Provide compensation awards corresponding to level of exposure. For laboratory experiments, provide higher compensation levels to subjects exposed to high levels of radiation. For downwinders, provide higher levels of cash compensation to those at highest risk of exposure.
- **Compensation for illness only.** Provide cash compensation only to individuals who have contracted radiation-related illnesses as a result of their exposure to radiation during laboratory experiments or atmospheric releases. Radiation Exposure Compensation Act requirements could be used to determine proof of radiation-related illness and eligibility for compensation.
- **Graded Compensation Levels.** Provide minimum level of compensation for all participants and higher levels for those exposed to either higher radiation levels or those with illnesses.

2. Extension of Benefits

Most compensation programs the subcommittee considered as models include provisions to extend benefits to family members in the event that the eligible claimant is deceased. In general, benefits are provided to immediate family members, although some programs extend survivors' benefits two generations (i.e., grandchildren or grandparents).

Precedents/Models

- The **Radiation Exposure Compensation Act** extends compensation to survivors within two generations (i.e., grandchildren or grandparents).
- The **Civil Liberties Act of 1988** extends compensation to survivors' spouses and children.
- **Veterans Affairs** compensation programs provide death benefits to survivors' spouses and children.

Possible Responses

- Extend benefits to survivors within two generations.
- Extend benefits to survivors within immediate family.
- Do not extend benefits to survivors.

B. HEALTH BENEFITS

1. Health Care

Health care benefits are one potential form of compensation for people who have contracted radiation-related illnesses. However, health care programs are extremely expensive to administer and represent an ongoing funding commitment. Only a limited number of federal agencies are set up to implement a health care program as part of a compensation package. Thus, few compensation programs outside VA have included health benefits as a form of compensation.

Precedents/Models

- The **Department of Veterans Affairs** provides health care to all veterans. Radiation-exposed veterans' primary form of compensation is in the form of disability payments. Radiation-exposed veterans are also entitled to priority health care at VA hospitals, (meaning that such veterans receive priority over most other eligible groups when receiving medical treatment for radiation-related illnesses).
- Subjects of the **Tuskegee Syphilis study**, conducted in the 1940s, received full health care benefits for life as compensation for participating in an ethically unsound study that tracked the spread of syphilis in a Mississippi community. Several hundred human subjects and their families were covered by this compensation package.²
- As noted above, through the **Compact of Free Association**, the Department of the Interior provides funding for a health care program administered by the government of the Marshall Islands Republic. The program was originally established to provide health care for 6,000 residents who were potentially affected by radiation contamination on the islands; the current program enrollment is over 10,000 people.

Possible Responses

- Provide full health care coverage to individuals who have contracted radiation-related illnesses as a result of their exposure.
- Provide limited health care benefits to individuals who have contracted a radiation-related illness as a result of their exposure.
- Provide no health care coverage.

² The Tuskegee study was funded by the Health, Education, and Welfare Service, the predecessor of HHS.

2. Health Monitoring/Health Screening

A health monitoring or health screening program could be established to help reduce uncertainties and anxieties subjects may feel in connection with their radiation exposures. A screening program could consist of a one-time medical exam either to detect any evidence of a radiation-related illness or to conduct epidemiological tests. An ongoing monitoring program would permit participants to receive periodic exams that could potentially identify early symptoms of a radiation-related illness.

Precedents

- DOE provides limited **health monitoring to workers** who are occupationally exposed to hazardous substances such as asbestos, beryllium, or radiation. The Environment, Safety, and Health Division is promoting a new policy to shift this program more toward prevention, however.
- Through the **Compact of Free Association**, the Department of Energy provides ongoing health monitoring services to residents of four atolls that were contaminated with high levels of radiation. One reason for the ongoing program is that high radiation levels still persist in the areas monitored by DOE.
- As part of the "**Common Federal Policy**" governing treatment of human subjects in federally funded research, scientists are required to monitor the health of human subjects after their participation in a medical experiment.

Possible Responses

- Provide health monitoring and/or health screenings to all individuals who participated in laboratory experiments.
- Provide health monitoring and/or health screenings to all individuals who are presumed to have been exposed to high radiation levels (either through laboratory experiments or atmospheric releases).
- Provide no health monitoring or health screenings.

C. RESEARCH PROGRAMS AND PUBLIC OUTREACH

Public outreach and research programs are often included to supplementary elements of monetary compensation packages. In this case, one or more research programs could be established to obtain further information about exposure levels, or to conduct medical research that could benefit human subjects covered by the response package. Public outreach programs could serve one or more functions, such as educating the public about the circumstances surrounding experiments or atmospheric tests, promoting ethical scientific experimental methods in the future, or providing individuals information that may be relevant to their medical conditions or risks.

1. Research Programs

Precedents/Models

- The **Veterans' Dioxin and Radiation Exposure Compensation Standards Act (1984)** required VA to conduct epidemiological studies of the health effects experienced by veterans exposed to herbicides containing dioxin and radiation.
- The **Agent Orange Act of 1991** required the National Academy to conduct a study evaluating the association between diseases and exposure to dioxin in herbicides. VA also established a research program to evaluate the hazards associated with dioxin exposure through a blood testing program for veterans.
- The **National Vaccine Injury Compensation Program**, which provides compensation for persons injured by routine pediatric vaccines, includes an ongoing study with the Institute of Medicine about the risks to children posed by specific vaccines.

Possible Responses

- Establish a research program to conduct epidemiological studies of human subjects involved in experiments.
- Establish a program to conduct dose reconstruction studies for areas where radiation was released into the atmosphere.
- Do not establish a research program.

2. Public Outreach

Precedents

- The **Civil Liberties Act of 1988** established a Presidentially appointed Civil Liberties Public Education Fund Board. Funds from the Civil Liberties Fund are authorized for use in a public education campaign.
- In 1980, Congress established the **U.S. Holocaust Memorial Council**, which currently awards grants and prizes for education.
- The **National Vaccine Injury Compensation program**, administered by the Department of Justice, includes an outreach program to disseminate information about risks to children from vaccines.

Possible Responses

- Establish a grant to a leading U.S. research university, (or universities), for a program (or institution) focused on ethical matters arising from the use of human subjects in experiments, or establish a Board of Directors or foundation to administer grants to other types of organizations to educate the public and to promote ethical scientific experimentation.
- Establish no new programs. Instead, investigate the need for a comprehensive code of conduct for federal agencies or codify current Administration actions to review the ethical standards of Federal research practices in compensation legislation.
- Establish a program to provide ongoing research and medical information to subjects of experiments.

D. APOLOGY AND RECOGNITION

1. Apology

Many of the compensation models the subcommittee considered included an official apology on behalf of the Nation to individuals receiving compensation. In the case of the Civil Liberties Act of 1988, individuals received letters of apology signed by the President.

Precedents/Models

- **The Radiation Exposure Compensation Act and the Civil Liberties Act of 1988** included official apologies to the individuals covered by each piece of legislation.
- **Current Bills.** A compensation bill proposed by Rep. Frost (H.R. 3743) includes an official apology to the subjects of secret Government radiation experiments. A Sense of the House resolution proposed by Reps. Frost and Johnson (H.R. 337) includes an apology to individuals who were the subjects of radiation experiments without providing informed consent.

Possible Responses

- Include an official apology in compensation package that covers all people who have been harmed by radiation exposure through atmospheric releases or during laboratory experiments.
- Include apology to individuals who suffered harm (i.e., a radiation-related illness) as a result of either laboratory experiments or atmospheric releases of ionizing radiation.
- Include no official apology.

2. Recognition

An alternative to providing a formal apology on behalf of the Government or the Nation is to establish a monument, memorial, or other forms of official recognition.

Precedents/Models

- A bill proposed by Rep. Goss (H.R. 1055) proposes that DOD provide an official commendation to all individuals exposed to mustard gas in World War Two.
- There are many national monuments to veterans (e.g., the Vietnam Veterans Memorial wall, the adjacent monument to women who served in the military during wartime, and the Iwo Jima memorial in Arlington, VA). The U.S. Holocaust Memorial Museum is a recent example of a national monument to civilian victims of war.
- In 1990, the Russian government officially established a monument to the civilian victims of Stalinist camps (gulags) in downtown Moscow.

Possible Responses

- Dedicate a memorial to one or more of the following groups: laboratory test subjects, downwinders, or a broader population of people who have suffered from radiation exposures.
- Provide official commendations for veterans who participated in government experiments; (this could apply to radiation experiments only, or also subjects of LSD, mustard gas, and other types of experiments).

III. MENU OF COMPENSATION RESPONSE ELEMENTS

ELIGIBILITY REQUIREMENTS		OPTIONS	
Laboratory Test Subjects	All participants in laboratory radiation experiments, regardless of consent.	All participants in laboratory radiation experiments exposed to high radiation levels, regardless of consent.	All participants in laboratory radiation experiments exposed to high levels of radiation who did not provide informed consent.
Individuals Exposed to Atmospheric Radiation Releases ("Downwinders")	All residents with specified radiogenic illnesses who resided within a designated area near sites of (some or all) radiation releases identified in Executive Order.	All residents with specified radiogenic illnesses who were exposed to dangerous radiation levels, based on results of dose reconstruction studies at sites of radiation releases.	No coverage of "downwinders."
A. MONETARY COMPENSATION		OPTIONS	
1. Payment	\$XXX minimum; \$YYY per person exposed to high radiation levels; \$ZZZ per person with specified radiation-related illnesses.	\$XXX minimum; \$ZZZ per person with specified radiation-related illnesses, subject to restrictions. ³	\$ZZZ per person with specified radiation-related illnesses.
2. Extension of Benefits	Eligible survivors: spouses, children, grandchildren, parents, and grandparents.	Eligible survivors: spouses and children.	No extension of benefits to survivors.

³ In this case, subjects would have to establish that they had been exposed to high levels of radiation. Other restrictions might include a maximum time between radiation exposure and contraction of disease, or evidence that claimant does not engage in risky behavior, such as smoking or heavy drinking.

B. HEALTH BENEFITS		OPTIONS		
1.	Health Care	Provide full health care coverage to individuals who have contracted radiogenic illnesses as a result of their exposure.	Provide limited health care benefits to individuals who have contracted a radiogenic illness as a result of their exposure.	Provide no health care coverage.
2.	Health Monitoring	Provide health monitoring to all individuals who participated in laboratory experiments.	Provide health monitoring to all individuals exposed to high radiation levels.	Provide no health monitoring program.
3.	Health Screening (one-time)	Provide health screening to all individuals who participated in laboratory experiments.	Provide health screening to individuals exposed to high radiation levels.	Provide no health screening.
C. RESEARCH OR OUTREACH PROGRAMS		OPTIONS		
1.	Research Programs	Establish a research program to conduct epidemiological studies of human subjects involved in experiments.	Provide funds for additional dose reconstruction programs at sites of atmospheric releases.	No additional programs.
2.	Outreach Programs	Establish a program to provide information to subjects of experiments (or downwinders).	Establish a trust fund to administer grants for programs that promote ethical research practices.	No additional programs.
3.	Other Alternatives	Propose a comprehensive code of research conduct (bioethics) for the U.S. Government.	Reference or codify Administration actions to review ethical standards in federal research.	No additional programs.

MENU OF COMPENSATION RESPONSE ELEMENTS (continued)

D. APOLOGY/RECOGNITION		————— OPTIONS —————	
1. OFFICIAL APOLOGY	Include an apology that covers entire population covered by Executive Order.	Include an apology to laboratory test subjects only.	Include an apology to portion of population that suffered physical harm from radiation exposure.
2. RECOGNITION	Dedicate a memorial to subjects of all ethically questionable government experiments.	Dedicate a memorial to individuals exposed to radiation through tests or atmospheric releases.	Provide an official commendation from Secretary of Defense for radiation-exposed veterans.

IV. (ILLUSTRATIVE) COMPREHENSIVE COMPENSATION RESPONSE OPTION

ELIGIBILITY

- All participants in laboratory radiation experiments exposed to high radiation levels, regardless of consent.
- All residents with specified radiation-related illnesses who resided within a designated area near sites of (some or all) radiation releases identified in Executive Order.

A. MONETARY COMPENSATION

- \$XXX minimum; \$ZZZ per person with specified radiation-related illnesses, (subject to restrictions).
- Eligible survivors: spouses and children.

B. HEALTH CARE COMPENSATION

- Provide no health care coverage.
- Provide no health monitoring program.
- Provide health screening to all individuals who participated in laboratory experiments.

C. RESEARCH PROGRAM OR PUBLIC OUTREACH

- Establish a trust fund to administer grants for programs that promote ethical research practices.

D. APOLOGY AND RECOGNITION

- Include an apology that covers entire population covered by Executive Order.
- Dedicate a memorial to individuals exposed to radiation through tests or atmospheric releases.
- Provide an official commendation from Secretary of Defense for radiation-exposed veterans.

ADMINISTRATION POSITION ON COMPENSATION
RELATED TO HUMAN RADIATION EXPERIMENTS

The Administration's actions regarding compensation and other responses to individuals affected by the human radiation experiments include the following:

1. Taking immediate action to provide information to subjects and their families;
2. Acting, when required to protect the health of individuals, or their descendants, who were subjects of a human radiation experiment, to notify a particular subject, or his or her descendants, of any potential health risk or the need for medical follow-up;
3. Examining various models for appropriate federal responses, including those incorporated into other federal programs such as those for downwinders, Veterans exposed to radiation, and the Japanese interns during World War II. The range of federal responses under consideration include potential monetary compensation, medical follow-up, disclosure of detailed information, formal apologies or other recognition, and on-going research, education and information programs; and
4. Developing specific recommendations for legislative and other action that may be appropriate once the Working Group and Advisory Committee have at least completed their first phase of work. This will be in six months, when the Advisory Committee's interim report is issued to the Administration's Human Radiation Interagency Working Group.

Throughout all of this activity, the Administration will continue active consultations with the Congress.



U.S. Department of Justice

Washington, D.C. 20530

October 20, 1994

MEMORANDUM

TO: Eva M. Plaza
Deputy Assistant Attorney General
Civil Division

FROM: J. Patrick Glynn
Director
Torts Branch, Civil Division

SUBJECT: Analysis of Draft Interim Report of the Advisory
Committee on Human Radiation Experiments

While the report, generally, is a comprehensive, thoughtful, and helpful commentary on the scope of the Committee's mission, its activities during its first six months, and its proposed future course, I see two objectionable characterizations of the nature of the Committee's designated functions as recited in the report. The first objection can be addressed by broadening the statement of the Committee's inquiry into the nature of the experiments; the second, and more problematical, is how to deal with the Committee's stated intention to delve into the realm of "remedies...due those wronged or harmed". I'll address both issues in order.

The first of "three fundamental questions" the Committee is charged with answering is set forth as, "What is the Federal Government's role in wrongs or harms done as a result of human radiation experiments?" Draft Report at iii, lines 17-18 [restated at 3, lines 7-9]. In my view, this statement reflects a crabbed and overly negative interpretation of the Committee's mission to assess the ethical and scientific sufficiency of the subject human radiation experiments. I am not suggesting that this is not a question that should be addressed by the Committee. Indeed, identifying the Government's role in the experiments, particularly those that will not pass ethical or scientific scrutiny, is a critical function. However, the central mission of the Committee is to determine the ethical and scientific standards applicable to the experiments and to make judgments whether the experiments conformed to those standards. One hopes

that the Committee can provide the Interagency Working Group and the American public with the assurance that many, if not most, of the human radiation experiments did conform to the applicable ethical and scientific standards.

The Committee is not an accusatory or adjudicatory body; it is a scholarly and analytical advisory body. It should not open its interim report with a characterization of its inquiry into to the role of the government as relating only to the government's role in harms done as a result of human radiation experiments. In light of the prior and ongoing intense public interest in the topic of human radiation experimentation that has resulted from the Administration's initiative, those dedicated and ethical researchers who engaged in appropriate experimentation should be entitled to some public vindication, if in no other way than by avoidance of one-sided and unnecessarily inflammatory and negative characterizations of the task of his independent body.

I recommend that the first "fundamental question" be rephrased as, "(1) To what extent did the Federal Government conduct or sponsor human radiation experiments that were not consistent with applicable ethical and scientific standards?"

The second, and perhaps more daunting issue is how to deal with the second "fundamental question" posed in the interim report: "(2) What are the criteria for determining the remedies are [sic] due those wronged are harmed?" Id at lines 18-19. The concept of addressing the "remedies due" issue is repeated at various points in the interim report, generally, without any substantive discussion. See Draft Report at vi, lines 14-17; viii, lines 14-15; 3, lines 9-10; 8, lines 29-30, and 33 [continuing over to 9, line 1]; 10, lines 12-14. On the final page of the Draft Report, the Committee states clearly its intention to address directly this question, which, as has been pointed out by White House Counsel, is contained nowhere in the Committee's Charter:

3. Making Recommendations on Criteria for Determining Remedies for Past Experiments

Based on an analysis of past experiments in light of the ethical criteria adopted by the Committee, and on an analysis of the alternative forms of remedy that may be available, the Committee will make recommendations on criteria for determining the remedies due to those wronged or harmed.

41, lines 13-14; and 42, lines 13-18.

The first, most evident, flaw in the suggestion that this is an appropriate function of the Advisory Committee has already been stated by White House Counsel. Such a function is beyond the scope of the Committee's Charter. The essence of the Committee's function is that outlined in the previous section, to determine the applicable ethical and scientific standards by

which to evaluate the experiments and to evaluate the extent to which the experiments were consistent with those standards. The Committee may recommend notification of experiment subjects or their descendants to protect human health; it may recommend further policies to ensure compliance with recommended ethical and scientific standards; and it may carry out such additional functions as the Interagency Working Group may from time to time request. See Charter at 3.

It may be suggested on behalf of the Committee that, because the Committee has publicly discussed the "remedies" issue since its earliest meetings (I believe the first formal discussion was at the June 13 meeting), the Interagency Working Group has, de facto, acquiesced in, if not requested, the Committee's decision to embark on this course. I do not believe that such a suggestion has merit because the public discussions of which I'm aware were in the nature of background discussions, principally, if not exclusively, by the Committee's only designated legal expert, Ken Feinberg. Virtually all of Mr. Feinberg's public statements about remedies have been confined to cataloguing various statutory and judicial compensation schemes, indeed, essentially those that the Working Group's Compensation subcommittee have considered. I do not know what more he may have added at the San Francisco meeting earlier this month. Make no mistake, Mr. Feinberg has stated his view that he does not believe that the Committee can discharge its responsibility without saying something about the "remedies" issue. As a "Who shot John?" aside, this was, of course, the very concern that we expressed to the Interagency Working Group prior to Mr. Feinberg's appointment and at the time of his statements. However, it is my recollection that even Mr. Feinberg stated in his concluding remarks in June that there was serious question concerning the mandate of the Committee, stating, "How far does it go?" He stated that it was problematic how far it should go, noting that remedies are traditionally fashioned by courts, legislatures, and the executive. At most, he posited that, to some degree, it was an issue that the Committee could not avoid.

I do not believe that background supports an argument that the Working Group has endorsed this as an additional function of the Committee.

Beyond the technical objection that the "remedies" function is beyond the scope of the Committee's Charter, there are sound policy reasons why the Committee should not undertake to address this thorny issue. That most evident to me is the one on which all of the late winter Working Group focused in drafting the scope of the Committee Charter. The issue of what is the appropriate response to persons who were subjects of human radiation experiments is an important public policy question that is properly addressed to the executive and legislative bodies of government, not to a small body of public citizens, no matter what their individual talents and expertise may be. The issue presents national public policy concerns that implicate the

budget, as well as concerns of parity with respect to other citizens who may have been exposed to radiation under other circumstances or to other substances, or who arguably were aggrieved by other governmental activities.

In addition to the inappropriateness of the topic for such a body as the Committee, there is the fact that this, particular, Committee is not particularly well equipped by composition or numbers to address the issue. By clear majority, the membership of the Committee is comprised of ethicists and scientists. Only Mr. Feinberg has a background in compensation issues. If one were to suggest an advisory committee on compensation issues, one would hope that the composition would reflect a diversity of experience and views on the issue. This is not the proper body to deal with such a sensitive public policy issue, even if a body outside of one comprised of elected officials were asked to do so.

What, then, to do about the immediate practical concern that, as one of the participants in yesterday's conference call put it, "the cat is out of the bag." Well, I don't necessarily subscribe to that cliché in this instance. Again, by my recollection, all that the Committee has done is to have recited the fact that there are a number of existing compensation schemes that have dealt with radiation and other exposures. I see no harm in the Committee having confirmed publicly what the Interagency Working Group has known and stated to the Congress in the past--that there are potential models out there. Mr. Feinberg has mused whether the question falls within the Committee's mandate. For the reasons set forth above, I do not believe that it does. That conclusion supports deletion of all references to the question in the Interim Report.

If the Working Group is unwilling to take the stance that the Report should contain no discussion of the "remedies" issue, my suggestion would be that the Committee could recite its recognition that the Interagency Working Group has stated publicly that it intends to formulate recommendations concerning the appropriate response to persons who were subjects of human radiation experiments. In its role as advisor to the Working Group, the Committee is prepared [intends?] to make recommendations to the Working Group concerning those experiments that failed to conform to applicable ethical and scientific standards so that the Working Group can formulate appropriate responses, including appropriate "remedies," with respect to persons who were subjects of such experiments.

I shall be in your office at 2:00 p.m. today to discuss this with you further.

OFFICE OF THE GENERAL COUNSEL

U.S. DEPARTMENT OF ENERGY

WASHINGTON, D.C.

FAX #:
COML:



Date: 12/13/94

TO: Philip Caplan
White House Counsel

FAX NO: (202) 456-6704

VERIFY NO. (202) 456-7071

FROM: Lisa Schiavo

PHONE NO. (202) 586-5289

PAGES 2
(Including Cover Sheet)

REMARKS: Letter to Dr. Ruth Faden - Please call
Bob or me to discuss this. Thank you.

cc: Steve Neuwirth

Dr. Ruth Faden
Chairperson
Advisory Committee on Human Radiation Experiments

Dear Dr. Faden:

As you know, the Legal Issues Subcommittee of the Interagency Working Group has been examining the issues of compensation and other federal responses to individuals who were the subjects of human radiation experiments and/or their families. The range of federal responses under consideration have included potential monetary compensation, medical follow-up, information disclosure, formal apologies or other recognition, and ongoing research, education, and other similar programs. At the conclusion of the Advisory Committee's work on the scientific merits and ethical standards concerning past human radiation experiments, the Administration intends to develop and transmit to the Congress specific recommendations for legislative and other action that may be appropriate.

To better inform the Government's ultimate legislative recommendation, the Interagency Working Group requests that the Advisory Committee assume the further task of providing advice and recommendations to the President, through the Interagency Working Group, as to criteria for developing appropriate federal responses to instances in which wrongs or harm occurred to individuals subjected to human radiation experiments.¹ Specifically, the Interagency Working Group seeks recommendations on the range of appropriate federal responses and the factors or criteria the Government should consider in deciding the circumstances under which particular responses may be warranted.

Phil Caplan,
Interagency Working Group

Com with Nordhaus 1/16/95 letter now needed

¹ The Charter of the Advisory Committee provides that the Advisory Committee "may carry out such additional functions as the Interagency Working Group may from time to time request."

EXECUTIVE OFFICE OF THE PRESIDENT

03-Nov-1994 06:52pm

TO: Phillip M. Caplan
TO: Alice E. Shuffield

FROM: Emily D. Pelton
Office of Mgmt and Budget, ESD

SUBJECT: Next Meeting of Compensation Subcommittee -- Human Rad. Expt

The attached went out tonight, November 3, to Compensation Subcommittee members. Please let me know if you have any questions.

November 3, 1994

MEMORANDUM

TO: Bob Damus (OMB)
Lucy Huffman (Treasury)
Nancy McFadden (DOJ)
Bob Nordhaus (DOE)
Heather Ross (NEC)
Jack Thompson (VA)

FROM: Emily Pelton (OMB)

SUBJECT: Meeting of Compensation Subcommittee, Interagency Task Force
on Human Radiation Experiments

As you may be aware, the Advisory Committee on Human Radiation Experiments released its interim report on October 21. The Advisory Committee has transmitted copies of the report to the Heads of all agencies represented on the Interagency Task Force on Human Radiation Experiments. We hope that by now each of you has had the opportunity to review this document; (however, if you have not yet received the document, please notify me and I will forward a copy to you immediately).

The Chairwoman of the Advisory Committee, Dr. Ruth Faden, and the Committee's Executive Director, Dan Guttman, have kindly offered to provide a briefing to the Compensation Subcommittee on the results of their first stage of work and the Committee's strategy for addressing compensation issues during the coming months. This meeting is scheduled to be held on Wednesday, November 9, at 10:30 a.m. - 12:00 at 726 Jackson Place, in the Truman Conference Room, (across from the EOB — please see map, attached). If there are other items that you feel would be appropriate to add to the agenda for this meeting, please contact me as soon as possible.

I would appreciate a response as to whether you plan to attend at your soonest convenience. I will need the full names and dates of birth of all people outside the EOP complex attending the meeting for clearance into the building. If you have any difficulty gaining access to the building on November 9, please contact Mr. Glauthier's new assistant, Alice Shuffield, at extension 5-4596, and she will assist you.

I look forward to seeing all of you again next week.

Contact information: Emily Pelton (202) 395-3875 (tel.); (202) 395-4817
(fax)

CC: Philip Caplan
Eva Plaza
Pat Glynn

Rosemary Hart

EXECUTIVE OFFICE OF THE PRESIDENT

07-Nov-1994 04:21pm

TO: Phillip M. Caplan

FROM: Emily D. Pelton
Office of Mgmt and Budget, ESD

SUBJECT: Compensation Subcommittee Meeting

Phil, are you planning to attend the meeting on Wednesday? Also, I'd be interested to hear your thoughts on the attached memo from our GC office.

EXECUTIVE OFFICE OF THE PRESIDENT

07-Nov-1994 03:33pm

TO: Emily D. Pelton

FROM: Steven D. Aitken
Office of Mgmt and Budget, GC

CC: T J Glauthier
Robert G. Damus
Kathleen Peroff

SUBJECT: Radiation Advisory Committee; Compensation Issue

In your November 3rd memo, you state that, at the upcoming Wednesday meeting of the Interagency Task Force's Compensation Subcommittee, there will be a briefing by the Advisory Committee's Chairwoman and its Executive Director "on the results of their first stage of work and the Committee's strategy for addressing compensation issues during the coming months."

It was not my understanding that the Advisory Committee's mandate extended to the issue of appropriate "compensation." The Advisory Committee's functions are listed in Section 2 of Executive Order 12891, and in Section 4 of the Advisory Committee's charter. Neither the Executive Order nor the charter references "compensation" as one of the areas that the Advisory Committee would address. Instead, both the Executive Order and the Charter describe a mandate for the Advisory Committee that is focused on finding out the facts about what happened in the past and determining "ethical and scientific standards and criteria."

Nevertheless, from a reading of the Advisory Committee's October 21 Interim Report, it appears that the question of appropriate compensation is one of the principal areas that the Advisory Committee plans to look into:

* Page iii:

"The Committee seeks to answer several fundamental questions:
. . . (3) What are the criteria for determining appropriate federal responses where wrongs or harms have occurred? . . ."

* Page vi:

"While Phase I continues, and Phase II has just begun, the Committee is simultaneously turning to Phase III -- the tasks of evaluating past and present experiments, recommending policy changes, and developing criteria for a range of remedies that may be appropriate where wrongs or harms have occurred."

* Page 40:

"3. Considerations and Criteria for a Range of Remedies"

"The Committee will make recommendations on criteria for the range of remedies that may be appropriate where wrongs or harms have occurred. These criteria will be based on an analysis of past experiments in light of the ethics standards adopted by the Committee. The criteria also will reflect the Committee's consideration of alternative forms of remedy, including responses such as explicit governmental acknowledgement of the wrong done, medical monitoring and followup, access to personal information, compensation, or other potentially appropriate responses."

In sum, it looks like the Advisory Committee is going beyond its mandate by taking on the issue of appropriate compensation (remedies).

Am I overlooking something?