REVIEWING WORKERS' COMPENSATION FOR FEDERAL EMPLOYEES

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

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C O N T E N T S

REVIEWING WORKERS' COMPENSATION FOR FEDERAL EMPLOYEES

Thursday, May 12, 2011
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:06 a.m., in room 2175, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.

Present: Representatives Walberg, Kline, Rokita, Bucshon, Woolsey, Payne, Kucinich, and Bishop.

Staff present: Katherine Bathgate, Press Assistant; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Barrett Karr, Staff Director; Ryan Kearney, Legislative Assistant; Donald McIntosh, Professional Staff Member; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Alissa Strawcutter, Deputy Clerk; Joseph Wheeler, Professional Staff Member; Kate Ahlgren, Minority Investigative Counsel; Aaron Albright, Minority Communications Director for Labor; Tylease Alli, Minority Hearing Clerk; Daniel Brown, Minority Junior Legislative Assistant; Brian Levin, Minority New Media Press Assistant; Jerrica Mathis, Minority Legislative Fellow, Labor; Richard Miller, Minority Senior Labor Policy Advisor; Megan O'Reilly, Minority General Counsel; and Michele Varnhagen, Minority Chief Policy Advisor and Labor Policy Director.

Chairman WALBERG. Good morning. A quorum being present, the subcommittee will come to order.

Welcome to our witnesses, and thank you for taking the time to be with us today. We appreciate you sharing your thoughts and expertise on federal workers' compensation.

It has been nearly 100 years since the Federal Employees' Compensation Act was signed into law by President Woodrow Wilson. The law establishes a program for federal workers to receive compensation for lost wages, medical care and rehabilitation services resulting from injury or illness incurred in a work-related activity.

In the event of a death from a work-related injury or illness, survivor benefits are provided to the worker's immediate family and loved ones. The law reflects our commitment to support the men and women who serve our nation in the federal workforce.

The program is administered by the Department of Labor's Office of Workers' Compensation Programs. Claims for compensation are received, processed and reviewed by OWCP staff. While several avenues for appeal are available to employees, decisions rendered by the Department of Labor are final and not subject to review by any federal agency or court.

Today, roughly three million federal workers are eligible to participate in the program. During fiscal year 2010, an estimated $2.8 billion in compensation was paid to beneficiaries. Yet, despite the size and cost of the program, it has not been significantly updated or reformed in nearly 40 years.

As with any federal program left unchecked, waste and inefficiencies often emerge and can result in a program that serves neither workers nor taxpayers well. This is unacceptable. In recent years, the challenges facing the FECA program have become more and more evident.

Workers in rural areas can have limited access to medical care, undermining their ability to file a claim. The level of compensation in many ways is outdated, such as providing assistance for funeral expenses based on average costs that existed in 1949. The law limits access to rehabilitation services designed to help an employee return to work.

We have also seen some cases where employees can receive compensation in excess of their total wages, creating a strong disincentive for those employees to return to work. These are just a few of the deficiencies that must be addressed. Toward that end, the administration is to be commended for putting together and forward a number of ideas to reform the FECA program.

The administration's proposal includes streamlining compensation for lost wages for all beneficiaries and allowing physician assistants and nurse practitioners to sign off on a worker's initial claim. To address the accuracy of the program, the administration's proposes allowing greater access to wage information housed at the Social Security Administration.

The administration's proposals build upon the efforts of previous administrations to modernize federal workers' compensation. However, these ideas are not without question or concerns, and that is why we are here today—to ask the tough questions, discuss the concerns of members and interested stakeholders and begin moving forward in a responsible way.

Especially during times of economic uncertainty and trillion-dollar deficits, it is critical policymakers work to ensure every taxpayer dollar is being well spent. Any opportunity to better serve workers in need of assistance and spend taxpayer dollars more efficiently should be encouraged.

I look forward to working with all of my colleagues in advancing this shared goal.

And so, at this time, I would like to recognize my colleague from California, Ms. Lynn Woolsey, the senior Democrat member of the subcommittee, for her opening remarks.

[The statement of Mr. Walberg follows:]

Prepared Statement of Hon. Tim Walberg, Chairman, Subcommittee on Workforce Protections

Good morning. Welcome to our witnesses, and thank you for taking the time to be with us today. We appreciate you sharing your thoughts and expertise on federal workers' compensation.

It has been nearly 100 years since the Federal Employees' Compensation Act was signed into law by President Woodrow Wilson. The law establishes a program for federal workers to receive compensation for lost wages, medical care, and rehabilitation services resulting from an injury or illness incurred in a work-related activity. In the event of a death from a work-related injury or illness, survivor benefits are provided to the worker's immediate family and loved ones. The law reflects our commitment to support the men and women who serve our nation in the federal workforce.

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As with any federal program left unchecked, waste and inefficiencies often emerge and can result in a program that serves neither workers nor taxpayers well. This is unacceptable. In recent years, the challenges facing the FECA program have become more and more evident.

Workers in rural areas can have limited access to medical care, undermining their ability to file a claim. The level of compensation in many ways is outdated, such as providing assistance for funeral expenses based on average costs that existed in 1949. The law limits access to rehabilitation services designed to help an employee return to work. We have also seen some cases where employees can receive compensation in excess of their total wages, creating a strong disincentive for those employees to return to work.

These are just a few of the deficiencies that must be addressed. Toward that end, the administration is to be commended for putting forward a number of ideas to reform the FECA program.

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Especially during times of economic uncertainty and trillion-dollar deficits, it is critical policymakers work to ensure every taxpayer dollar is being well-spent. Any opportunity to better serve workers in need of assistance and spend taxpayer dollars more efficiently should be encouraged. I look forward to working with all of my colleagues in advancing this shared goal.

At this time, I would like to recognize my colleague from California, Ms. Lynn Woolsey, the senior Democrat member of the subcommittee, for her opening remarks.

Ms. WOOLSEY. Thank you, Mr. Chairman, and thank you for calling this hearing today to discuss the Federal Employees' Compensation Act, or FECA.

This committee has primary jurisdiction over workers' compensation laws and has overseen and repeatedly improved FECA since 1949. FECA has been the governing statute providing benefits for federal civilian workers injured or killed on the job since 1916.

Some of the key principles that underpin this law include FECA benefits being made available to ensure that workers and their

families are no better off or no worse off than if the worker had not been injured. Secondly, all federal civilian workers, regardless of their employer, are eligible for the same benefit.

Another underpinning is that claims for benefits are administered on a no-fault basis. If workers give up the right to bring tort claims for injuries, they need to be fairly compensated in a timely manner with benefits administered in a non-adversarial way.

Consistent with these principles, Mr. Chairman, FECA benefits include compensation for lost wages, medical care and vocational rehabilitation. FECA ensures that injured workers are not impoverished while they are claims are being processed by providing their current income for 45 days following an injury. FECA also provides a cost of living adjustment.

Today, we will be reviewing the administration's legislative proposal. Some parts of it are straightforward. For example, the proposal increases payments for funeral costs, which have not been adjusted since 1949. It provides the Department of Labor permanent authority to access Social Security wage information in order to improve program integrity.

However, other aspects of the administration's proposal warrant scrutiny, and that is what we should be talking about today. For example, it cuts wage loss payments for injured workers with dependents and reduces the maximum survivor's death benefit. While these changes may simplify the FECA program, we have to assess the impact on federal workers who have been permanently disabled on the job.

The administration also argues that FECA unfairly allows some injured workers to receive more from FECA after they reach retirement age than if they had earned a retirement on the job. The Inspector General has called for a redesign, but has not actually specified what that redesign would be.

The administration's redesign cuts FECA benefits for permanently disabled workers with dependents from 75 percent of the average wage to 50 percent when they reach normal social security eligibility age. Perhaps this decision was made on the assumption that individuals leave the workforce and don't pursue employment after age 66 but, you know, that is not true anymore. So we have to take that into consideration.

Furthermore, this one-size-fits-all approach could result in unfair treatment of injured workers whose wages were low in the first place, and possibly violate a core principle of FECA that no one should be economically worse off because of a work-related injury.

Before we make an across-the-board change, Mr. Chairman, we will need to really better understand how the proposed changes will impact the diverse pool of federal employees covered by FECA. So I hope today's hearing will help us begin to answer these questions, and I too, look forward to working with you on this.

I yield back.

[The statement of Ms. Woolsey follows:]

Prepared Statement of Hon. Lynn Woolsey, Ranking Minority Member, Subcommittee on Workforce Protections

Chairman Walberg, thank you for calling this hearing today to discuss the Federal Employees Compensation Act, or FECA. This Committee has primary jurisdiction over workers' compensation laws, and has overseen and repeatedly improved

FECA since 1949. FECA has been the governing statute providing benefits to federal civilian workers injured or killed on the job since 1916.

I think it's important to list some of the key principles that underpin this law:

• FECA benefits are made available to ensure that workers and their families are no better off, and no worse off, than if the worker had not been injured.

• All federal civilian workers, regardless of their employer, are eligible for the same benefit.

• Claims for benefits are administered on a no-fault basis. If workers give up their right to bring tort claims for injuries, they need to be fairly compensated in a timely manner, with benefits administered in a non-adversarial way.

Consistent with these principles, FECA benefits include compensation for lost wages, medical care, and vocational rehabilitation. FECA ensures that injured workers are not impoverished while their claims are being processed by providing their current income for 45 days following an injury. FECA also provides a cost of living adjustment.

Today we will be reviewing the Administration's legislative proposal.

Some parts of it are straightforward: for example, the proposal increases payments for funeral costs which have not been adjusted since 1949. It provides the Department of Labor permanent authority to access Social Security wage information in order to improve program integrity.

However, other aspects of the Administration's proposal warrant scrutiny. For example, it cuts wage loss payments for injured workers with dependents, and reduces the maximum survivor's death benefit. While these changes may simplify the FECA program, we need to assess the impact on federal workers who have been permanently disabled on the job.

The Administration also argues that FECA unfairly allows some injured workers to receive more from FECA after they reach retirement age than if they had earned a retirement. The Inspector General has called for a redesign, but has not specified how.

The Administration's "redesign" cuts FECA benefits for permanently disabled workers with dependents from 75 percent of the average wage to 50 percent when they reach "normal" social security eligibility age. Perhaps this decision was made on the assumption that individuals leave the workforce and don't pursue employment after age 66, which we know is not true anymore.

Furthermore, this one-size-fits-all approach could result in unfair treatment of injured workers whose wages were low, and possibly violate a core principal of FECA that no one should be economically worse off because of a work related injury.

Before we make an across-the-board-change, we will need to better understand how the proposed changes will impact the diverse pool of federal employees covered by FECA.

I hope today's hearing can help us begin to answer these questions.

Chairman WALBERG. I thank the gentlelady.

Pursuant to committee rule 7(c), all members will be permitted to submit written statements to include in the permanent record—hearing record, and without objection, the hearing record will remain open for 14 days to allow questions for the record, statements and extraneous material referenced during the hearing to be submitted for the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses. Mr. Scott Szymendera is an analyst in disability policy with the Congressional Research Service. Mr. Szymendera's primary responsibilities with CRS include federal workers safety and compensation programs.

Prior to his service with CRS, Mr. Szymendera was an analyst for the Rutgers University Program for Disability Research. Mr. Szymendera holds an MA and a Ph.D. in political science from Michigan State University. Go green. Go white. That is a paid commercial for Michigan. An undergraduate degree in government and politics from the University of Maryland. Welcome.

Mr. Daniel Bertoni is the director of Education, Workforce and Income Security with the U.S. Government Accountability Office in Washington, D.C.

Mr. Bertoni began his career with GAO in 1989 and, over the course of his career, has led numerous management, operational and program integrity reviews of the Department of Labor, the Social Security Administration, the Internal Revenue Service, and other federal agencies.

Mr. Bertoni holds a master's degree in political science from the Rockefeller School of Public Affairs & Policy in Albany, New York. Welcome.

Mr. Gary Steinberg is acting director of the Office of Workers' Compensation Programs at the U.S. Department of Labor. Mr. Steinberg has served the federal government in a variety of positions throughout his career, including roles with the Department of Health and Human Services, the Department of Veteran's Affairs, and NASA.

Mr. Steinberg holds an undergraduate degree from the University of Connecticut, and he received his MBA from the University of Hartford.

Ms. Susan Carney is the director of Human Relations Department with the American Postal Workers Union. Ms. Carney has 22 years of experience serving the American Postal Workers Union. In her current position as director of Human Relations, Ms. Carney addresses inquiries related to community activities, civil rights, employee assistance, and equal opportunity employment, workplace violence and workplace injury compensation. Welcome.

And, finally, Mr. Elliot Lewis is the assistant inspector general for the audit with the U.S. Department of Labor's Office of Inspector General. Mr. Lewis has been with the Office of Inspector General since 1991, serving in a variety of positions within the Office of Financial Management Audits.

Before joining the federal government, Mr. Lewis was a partner at T.R. McConnell & Company, an accounting firm in Columbia, South Carolina. Mr. Lewis holds an undergraduate degree in accounting from the University of South Carolina. Welcome.

Before I recognize each of you to provide your testimony, let me briefly explain our lighting system. You will each have approximately 5 minutes. Let's try to keep it under that if at all possible to present your testimony.

When you begin, the light in front of you will turn green. When one minute is left, the light will turn yellow, and when your time has expired, the light will turn red, at which point, if I am not excessively interested in what you have to say, which is a problem for me, and I have a ranking member who will help me on that—but nonetheless, your time will have expired, and I will ask you to wrap it up. After everyone has testified, members will each have 5 minutes to ask questions of the panel.

And so we will begin by recognizing Mr. Szymendera for your testimony. Thank you.

STATEMENT OF SCOTT SZYMENDERA, CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS

Mr. SZYMENDERA. Thank you. Chairman Walberg, Ranking Member Woolsey, and members of the subcommittee, my name is Scott Szymendera, and I am an analyst at the Congressional Research Service. Thank you for inviting me to testify before the Subcommittee on Workforce Protections on the Federal Employees' Compensation Act, or FECA, and a complete statement has been provided for the record.

This year marks the 100th anniversary of the grand bargain of workers' compensation in the United States, in which employees receive no-fault compensation for economic losses associated with employment-related injuries, illnesses and deaths while giving up their right to sue their employers for damages associated with employment-related accidents and illnesses.

One of the general principles of workers' compensation is universal or near-universal coverage. Today, nearly 97 percent of all workers covered by the unemployment insurance system are also covered by workers' compensation. Workers' compensation provides medical care for covered injuries and disability benefits which are intended to replace a portion of a worker's wages or wage-earning capacity lost due to a covered condition.

In most systems, disability benefits are based on a standard benefit of two-thirds of the worker's pre-disability wage. If a worker dies on the job, his or her survivors are entitled to benefits to partially replace his or her capacity to provide for the family. Pursuant to the Internal Revenue Code, workers' compensation benefits are not subject to the federal income tax.

The first workers' compensation laws for federal employees were enacted in 1882 and 1908, did not provide for medical coverage and only applied to the United States Lifesaving Service and other hazardous activities, such as construction of the Panama Canal.

In 1908, President Theodore Roosevelt called the lack of a workers' compensation program for all federal employees quote—"a matter of humiliation to the nation." The original FECA act was enacted in 1916 and created a modern workers' compensation system for nearly all federal employees. The 1916 legislation remains the basis for the workers' compensation system for federal employees.

Amendments passed in 1949 created a schedule of benefits for permanent partial disabilities and provided for augmenting compensation in cases in which an injured worker had at least one dependent. This augmented compensation brought the level of FECA benefits for workers with dependents up to the current level of 75 percent of the worker's pre-disability wage. The benefit level for survivors was similarly increased.

The 1949 amendments also provided for a reduction of benefits when employees reached the age of 70 to account for age-related loss of earning capacity and establish that the FECA program would be the exclusive remedy against the federal government for federal workers with employment-related conditions.

Amendments passed in 1966 made two significant changes to FECA that remain part of the program today. The use of the GS scale as the basis for the maximum and minimum FECA benefit levels with the maximum level set at 75 percent of the highest rate

of basic pay at the GS-15 level, and an annual cost of living adjustment for FECA benefits.

The most recent major amendments to the FECA program came in 1974 and provided for up to 45 days of continuation of pay from a worker's employing agency in cases of traumatic injuries, authorized employees to select their own treating physicians rather than use doctors employed or selected by the federal government, and removed the reduction of benefits at age 70.

Today's FECA program covers all civilians employed by the federal government including employees in the executive, legislative and judicial branches of the government and provides full medical coverage from the employees chosen doctor, up to 45 days of continuation of pay after traumatic injuries, disability benefits of up to 75 percent of an employees pre-disability wage, and benefits for the survivors of a deceased employee. Benefits continue for the duration of disability or until death.

Additional benefits are paid if attendant care is needed, and an employee killed while working with the armed forces in a contingency operation is entitled to an additional death gratuity of up to $100,000. Vocational rehabilitation services paid by the government are also available to assist FECA beneficiary's return to the workforce. The FECA program is administered by the Office of Workers' Compensation Programs at the Department of Labor, and the cost of FECA benefits are charged back to each beneficiary's host agency.

This concludes the testimony, and I welcome any questions from the subcommittee.

[The statement of Mr. Szymendera follows:]

Prepared Statement of Scott Szymendera, Analyst in Disability Policy, Congressional Research Service

Chairman Walberg, Ranking Member Woolsey, and Members of the subcommittee, my name is Scott Szymendera and I am an analyst at the Congressional Research Service. Thank you for inviting me to testify before the Subcommittee on Workforce Protections on workers' compensation for federal employees.

For nearly 100 years, members of America's civil service have been protected from economic losses associated with employment-related injuries and illnesses, and their families have been protected in cases of employment-related deaths, by the Federal Employees' Compensation Act, or FECA, a workers' compensation program administered by the Department of Labor. In my testimony today, I will provide an overview of workers' compensation in the United States, the original intent of Congress when creating FECA, a legislative history of the FECA program, and a plain-language summary of the features of the FECA program that serves federal employees today.

Overview of Workers' Compensation

Origins of Workers' Compensation

This year marks the 100th anniversary of workers' compensation in the United States.[1] Prior to the advent of the modern workers' compensation system, workers who were injured, became ill, or died on the job could bring lawsuits against their employers to recover economic and non-economic losses. However, while employers could be held legally liable for losses associated with employment-related injuries, illnesses, and deaths, they were armed with the common-law defenses of "contributory negligence," "assumption of risk," and the "fellow-servant doctrine" which often made it difficult for workers to prevail in employment injury and illnesses cases.[2] While this system generally favored employers, employees who were successful in suits against their employers could be awarded non-economic damages that could prove costly to employers. In addition employers had to bear the legal costs of defending themselves against suits from workers, even if these suits ultimately proved unsuccessful.

The Grand Bargain

Workers' compensation is commonly referred to as "the grand bargain" between employees and employers. Employees receive compensation for economic losses associated with employment-related injuries, illnesses, and deaths, without regard to fault. In exchange for this no-fault coverage, workers are prohibited from suing their employers for damages related to covered injuries, illnesses, or deaths, giving employers protection from large judgments for non-economic losses such as pain and suffering or punitive damages.

Principles of Workers' Compensation

No-Fault Coverage

Workers' compensation in the United States, including workers' compensation provided to federal employees under FECA, is a no-fault system. As a no-fault system, employees are compensated for covered injuries, illnesses, and deaths regardless of who is at fault or whether or not fault can be determined.[3]

Exclusive Remedy

Workers' compensation is an exclusive remedy for workplace injuries, illnesses, and deaths. Employees are generally not permitted to sue their employers for compensatory or punitive damages relating to covered injuries, illnesses, and deaths. In some cases, suits by employees may be brought against employers for intentional harms and against third parties who may share in the liability for the covered injury, illness, or death.

The exclusive remedy and no-fault coverage principles are intended to create a workers' compensation system that is largely non-adversarial. Many workers' compensation systems, including FECA, use administrative rather than judicial proceedings to resolve disputes over claims and benefits. However, despite the desire of the creators of workers' compensation to remove cases involving work injuries from the courts, the 100-year history of workers' compensation in the United States has been marked by what historian Edward Berkowitz has termed a "persistence of litigation" as both employees and employers dispute workers' compensation claims decisions or appeal the decisions of administrative bodies to the courts.[4] In nearly all states, but not the FECA system, workers' compensation disputes and litigation can result in lump-sum settlements that release employers from all future responsibilities related to settled cases.

Universal Coverage of Employees

Workers' compensation systems generally do not exclude certain classes of employees because of the dangerous nature of their jobs or their increased risk of injury, illness, or death. While state workers' compensation laws vary in exactly who is covered, one of the general principles of workers' compensation systems is universal, or near-universal, coverage. For example, several of the recommendations issued in 1972 by the National Commission on State Workmen's Compensation Laws created by the 1970 Occupational Safety and Health Act relate to bringing states towards universal workers' compensation coverage of public and private-sector employees, regardless of risk or size of employer.[5] The National Academy of Social Insurance estimates that nearly 97% of all workers covered by the unemployment insurance system are also covered by workers' compensation.[6]

Coverage of Employment-Related Injuries, Illnesses, and Deaths Only

Workers' compensation only provides compensation for injuries, illnesses, and deaths that occur in the course of employment. Generally, this means that an employee must be at a work site when the injury, illness, or death was caused and the injury, illness, or death must have been caused by a situation related to the employee's job. Injuries, illnesses, and deaths that occur outside of work hours or while commuting to or from work, or that are caused by acts unrelated to employment, such as working on personal projects in the workplace, are generally not covered by workers' compensation.[7]

Compensation for Medical Care

Workers' compensation provides all of the costs of medical care associated with a covered injury or illness. Covered medical costs include necessary treatments, procedures, and medications and in some states and under FECA, certain costs associated with travelling to receive medical services. Employees are not required to contribute to the cost of this care through their own private insurance or through deductibles or coinsurance. Medical coverage under workers' compensation is limited only to the covered injury or illness and is not intended to provide for the general

healthcare needs of the worker. Workers' compensation systems vary on the rights of workers to choose their treating physicians.

Compensation for Disability and Death

Workers' compensation is intended to compensate workers for economic losses associated with employment-related injuries and illnesses and their families for economic losses associated with employment-related deaths. This compensation is provided in the form of cash disability benefits which are intended to replace a portion of a worker's wages, or wage-earning capacity, lost due to a covered injury, illness, or death. Total disability benefits are paid when a worker is unable to work or otherwise totally disabled and in most systems are based on a standard benefit of two-thirds of the worker's pre-disability wage.

Benefits for partial disabilities may be based on statutory or regulatory schedules which assign benefit amounts to specific conditions, such as the loss of a limb, or on other measures of partial disability such as wage-earning capacity, functional capacity, or overall level of impairment.[8] Disability benefits are generally subject to system-specific minimum and maximum levels which are often based on average wages in a state. Benefits generally last for the duration of disability, however, some systems do limit the duration of benefits or have age limits for the receipt of disability benefits.

If a worker dies on the job or from an employment-related injury or illness, his or her survivors are entitled to benefits to partially replace his or her capacity to provide for the family. Workers' compensation systems often also provide benefits to partially cover the costs of a workers' funeral.

Pursuant to Section 104(a)(1) of the Internal Revenue Code, workers' compensation benefits are not subject to the federal income tax.

Legislative History of FECA

The FECA program has its origins in a law from the late 1800's that covered only the employees of a federal agency that has long since ceased to exist on its own. The modern FECA system has its roots in legislation enacted in 1916, and many of the basic provisions of this original law, such as the basic rate of compensation, are still in effect today. Congress passed major amendments to the 1916 legislation in 1949, 1960, 1966, and most recently in 1974.[9] While these amendments made significant changes to the FECA program, the basic framework of the program endures as does the overall intent of Congress through the years to maintain a workers' compensation system for federal employees that is in-line with the basic principles that have governed workers' compensation in this country for a century.

Limited Workers' Compensation for the United States Life Saving Service and Other Hazardous Federal Occupations

The first workers' compensation law for federal employees was enacted in 1882 and provided up to two years of salary to any member of the federal United States Life Saving Service disabled in the line of duty and two years of salary to his or her survivors in case of a line of duty death.[10] In 1908, Congress passed a more comprehensive workers' compensation law for federal employees engaged in certain hazardous occupations such as laborers at federal manufacturing facilities and arsenals or working on the construction of the Panama Canal. This law provided workers with up to one year of salary, after a 15-day waiting period, if disabled due to an employment-related injury and their survivors with up to a year of salary in case of death.

The 1882 and 1908 federal workers' compensation laws did not provide universal coverage for all federal employees. It is estimated that only one-fourth of the federal workforce was covered by the 1908 law and the law was clearly designed only to provide coverage for what were seen to be the most hazardous jobs in the civil service.[11] President Theodore Roosevelt recognized this shortcoming of the law he would eventually sign as before the 1908 law's passage, he called on Congress to pass a workers' compensation bill that would cover "all employees injured in the government service" and stated that the lack of such a comprehensive workers' compensation law was "a matter of humiliation to the nation." [12]

In addition to only covering a small portion of the federal workforce, the 1882 and 1908 laws did not provide for medical benefits for disabled workers, and the 1908 law only applied in cases of disability or death arising from injuries and not illnesses.

The Federal Employees' Compensation Act of 1916

President Woodrow Wilson singed the Federal Employees' Compensation Act, P.L. 64-267, into law on September 7, 1916, and in so doing extended the protections of the modern workers' compensation system to nearly all federal employees. This

original FECA act remains the basis for the workers' compensation system for the federal civil service.

The FECA act provided coverage for nearly all civilian employees of the federal government injured or killed in line of duty. Coverage was not provided for occupational illnesses.[13] The law provided full medical coverage for covered injuries provided by government physicians and hospitals or private providers selected by the government. Disability compensation was provided, after a three-day waiting period, at a rate of two-thirds of the worker's wage for total disability, with adjustments for partial disabilities. Disability benefits were subject to minimum and maximum levels specified in the law and neither benefits nor these levels were subject to any cost-of-living or other annual adjustments. The survivors of an employee killed on the job were entitled to cash benefits based on the worker's wage and were also entitled to a benefit to help offset funeral costs.

The 1916 legislation created the Federal Employees' Compensation Commission, with three members appointed by the President with the advice and consent of the Senate, to administer the FECA program. Benefit and administrative costs associated with the program were paid out of the Employees' Compensation Fund created by the law and financed with permanently authorized appropriations.

Congressional Intent

Bringing the federal system in line with the states

Congress had several clear intentions when drafting the FECA act in 1916. One such intention was to bring the protections offered to federal employees in line with those being offered by a majority of the states at the time, with the House Judiciary Committee reporting that such state laws were "working with most excellent results."[14] In addition, the committee reported that the schedule of compensation for disability in the FECA act was "in line with the best precedents found in State compensation acts" especially those in Massachusetts, New York, and Ohio.[15]

Providing coverage to all federal employees

An additional intention of Congress was to provide workers' compensation coverage to all federal employees regardless of occupation, thus correcting what was seen as a shortcoming of the 1908 act. The House Judiciary Committee's report on the 1916 FECA legislation criticizes the limited coverage of the 1908 law and states:

The present law, in denying compensation to an injured employee if his occupation was not "hazardous" goes counter to the theory on which all compensation acts are based, viz, that the industry shall bear the burden of injuries caused by it.[16]

This criticism of the limited coverage provided by the 1908 act and the intention of the FECA legislation to correct this shortcoming, was echoed by the FECA legislation's sponsor in the Senate, Senator George Sutherland. Senator Sutherland, in a Senate Judiciary Committee hearing on the legislation, stated:

The theory upon which compensation laws are drawn is that you are to compensate for the injury, not for the risk that the man ran in bringing about the injury; and under modern thought there is no logical reason for making distinction between what is hazardous and non-hazardous employment.[17]

Senator Sutherland reinforced his point with a rather graphic example stating "the clerk who has his leg cut off in his work about a store is just as effectively deprived of his leg as if it was cut off by a machine."[18]

Major FECA Amendments

Congress has passed major amendments to the FECA program in 1949, 1960, 1966, and most recently in 1974.

1949 Amendments

The Federal Employees' Compensation Act Amendments of 1949, P.L. 81-357, brought about the first set of significant changes to the FECA program since its inception in 1916. The 1949 amendments, in the words of the House Committee on Education and Labor, sought to "modernize and liberalize" the FECA program, which, according to the Senate Committee on Labor and Public Welfare provided "only illusory security for most workers or their families."[19]

Increased FECA coverage

The 1949 amendments expanded the scope of workers covered by the FECA program to include those classified as "officers" of the United States. The amendments also doubled the maximum disability benefit level thus essentially providing FECA coverage to a larger portion of federal employee wages.

In addition to better meeting the goal of universal coverage of all employees, the inclusion of federal government officers was intended to provide FECA protections to previously-excluded employees, such as Foreign Service Officers, who may serve

in dangerous overseas areas. The increase in the maximum benefit level was necessary since, at the time, it was estimated by the Department of Labor that 90% of FECA cases involved workers with wages that were essentially not covered by the program because of the low maximum benefit level.[20]

Increased FECA benefits

Several provisions of the 1949 amendments effectively increased FECA benefits for workers and their survivors. The three-day waiting period was eliminated in cases of disability lasting more than 21 days. A schedule of benefits for permanent partial disabilities was created for the first time which permitted partial disability benefits to be paid without regard to actual impairment or wage loss. The elimination of the waiting period and creation of a benefits schedule were intended to bring the FECA program in line with state workers' compensation programs and the federal Longshore and Harbor Workers' Compensation Act program.

The 1949 amendments provided for augmented compensation, in the amount of 8.33% of a workers' pre-disability wage, in cases in which an injured worker had at least one dependent. This augmented compensation, along with the standard compensation rate of two-thirds of the workers' wage brought the level of FECA benefits for workers with dependents up to the current level of 75% of the worker's pre-disability wage. The benefit level for survivors was similarly increased. The intent of the augmented compensation provision was to better insure that disabled workers and the survivors of workers killed on the job could provide economically for their dependents. The two-thirds benefit level for dependents was criticized by the House and Senate Committees which reported the bill as "not sufficient as to ensure reasonable economic security to a family of a deceased worker where there is a large family."[21] Similar concerns over the adequacy of the two-thirds benefit level were expressed at a House Committee on Education and Labor hearing on the 1949 amendments.[22]

Reduced benefits at age 70

While the 1949 amendments generally increased the level of FECA benefits, the amendments also required the FECA administrator to review the amount of compensation paid to any person aged 70 or older. The administrator was provided the authority to reduce the amount of such benefits if it was determined that the worker's wage-earning capacity had been reduced because of age, independent of his or her disability. This provision was opposed by several representatives from federal employee organizations who testified before the House Education and Labor Committee that such a provision was inconsistent with the mandatory federal employee retirement age of 70 in place at the time and could cause undue hardships to workers who, because of their disabilities, had not been able to reach their full earning potential or who had reduced pensions because of many years of limited or no earnings.[23]

Provisions for vocational rehabilitation

The 1949 amendments permitted the FECA program administrator to send beneficiaries to receive vocational rehabilitation services at the government's expense. The amendments also created a special supplemental benefit for workers participating in vocational rehabilitation programs. These provisions were intended to improve the return-to-work prospects of FECA claimants which, it was thought, would ultimately benefit both the employee through a return to earning wages and the government through a reduction in FECA benefit costs.[24]

The exclusive remedy rule

The 1949 amendments established that the FECA program would be the exclusive remedy against the federal government for federal workers with employment-related injuries, illnesses, and deaths. This provision prohibited employees from seeking to recover economic or non-economic damages from the government for injuries, illnesses, and deaths covered by FECA and brought the FECA program in line with one of the general principles of workers' compensation which was already written into the workers' compensation laws in the states.

When the FECA program was created, an exclusive remedy rule was seen as unnecessary because of the general prohibition against suits against the federal government. However, by 1949 three factors had combined to result in significant numbers of federal employees choosing to bring lawsuits against the federal government rather than file for FECA benefits. First, the passage after 1916 of laws such as the Federal Tort Claims Act which permitted some suits against the government. Second, some injuries to federal employees occurred while they worked for government corporations subject to lawsuits. Finally, because FECA benefits are limited by statute to partial wage replacement and medical benefits, employees felt that

they could secure greater financial benefits from the courts than from the FECA program.[25]

1960 Amendments

The chargeback process

The Federal Employees' Compensation Act Amendments of 1960, P.L. 86-767, created the chargeback process in which the Secretary of Labor is required to bill each federal agency for the costs of FECA benefits provided to their employees in the previous fiscal year so that these agency may reimburse the Employees' Compensation Fund. In addition, these amendments required that government corporations also pay their "fair share" of FECA administrative costs to the government. The chargeback process was intended by Congress to "further the promotion of safety" among federal agencies by making the agencies ultimately responsible for the costs of injuries, illnesses, and deaths of their employees.[26]

1966 Amendments

The Federal Employees' Compensation Act Amendments of 1966, P.L. 89-488, made two significant changes to the FECA program. These changes continue to be in effect today.

Use of the GS scale to set minimum and maximum benefit levels

Prior to the enactment of the 1966 amendments, the maximum and minimum levels of FECA benefits were set by statute and not subject to any automatic adjustments. In 1966 FECA benefits were still subject to levels enacted as part of the 1949 amendments. According to the Senate Committee on Labor and Public Welfare, the statutory maximum provided for full benefits for over 99% of claimants in 1949, but only 85% of claimants by 1966.[27] To address the difficulty inherent in using statutory changes to keep pace with the growth in federal employees' wages, the 1966 amendments provide for use of the general schedule (GS) scale as the basis for the maximum and minimum FECA benefit levels with the maximum level set at 75% of the highest rate of basic pay at the GS-15 level.

Cost-of-living adjustment for benefits

The 1966 amendments provided for an annual cost-of-living adjustment for FECA benefits.[28] This annual adjustment is a unique feature of the FECA program not found in other workers' compensation systems.

1974 Amendments

The Federal Employees' Compensation Act Amendments of 1974, P.L. 93-416, made three major changes to the FECA program. These three changes remain key elements of the program today.

Continuation of pay

The 1974 amendments provided for up to 45 days of continuation of pay from a worker's employing agency in cases of traumatic injuries covered by FECA. During this period, an injured employee may receive his or her full pay rather than FECA compensation. Because continuation of pay is considered income rather than a benefit, it is subject to the federal income tax and is reduced by all standard payroll deductions.

Congress felt that 45 days of continuation of pay were needed because of the time it often took for FECA claims to be processed and compensation benefits to begin. In its report on the 1974 amendments, the Senate Committee on Labor and Public Welfare cited a General Accounting Office report that stated that the average processing time for FECA claims was between 49 and 70 days, a delay that the committee found "creates economic hardship on the injured employee and his or her family and causes difficult administrative problems for the Secretary of Labor and the employing agencies."[29]

Employee choice of physician

The 1974 amendments authorized employees to select their own treating physicians rather than use doctors employed or selected by the federal government. The right of employees to have free choice over who provides their medical care was one of the recommendations of the National Commission on State Workmen's Compensation Laws in 1972 and the this provision brought the FECA program in line with that recommendation as well as some other workers' compensation systems.

Elimination of reduced benefits after age 70

The 1974 amendments removed the provision, enacted as part of the 1949 amendments, requiring that FECA benefits be reviewed and permitting FECA benefits to

be reduced after a claimant reached age 70 to account for the reduced earning capacity that may come with age independent of any disability. In its report on the 1974 amendments, the Senate Committee on Labor and Public Welfare provided the following justification for eliminating the reduced benefit provision:

The Committee finds that such a review places an unnecessary burden on both the employees receiving compensation and the Secretary. Further, the fact that an employee reaches 70 has no bearing on his or her entitlement to benefits and is considered discriminatory in the Committee's opinion.[30]

Recent FECA Amendments

There have been no major amendments to the FECA program since 1974. However, the 109th and 110th Congresses did make changes to FECA that partially address two of the issues currently facing the program.

Change to the FECA Waiting Period for Postal Employees

Section 901 of the Postal Accountability and Enhancement Act, P.L. 109-435, changed the way the FECA three-day waiting period for compensation is applied to employees of the United States Postal Service. This provision requires that postal employees satisfy the three-day waiting period before the continuation of pay period can begin. All other federal employees continue to serve the three-day waiting period after the conclusion of the continuation of pay period and before FECA compensation benefits begin.

This provision was based on a recommendation of the President's Commission on the United States Postal Service. The commission's recommendation was part of a larger package of FECA reforms for postal employees intended to reduce the Postal Service's workers' compensation costs. Because of what the commission termed the "unique businesslike charter" of the Postal Service, the commission recommended that the service's workers' compensation system become more in line with the state workers' compensation systems that provide coverage for most private-sector businesses.[31]

Death Gratuity for Federal Employees Killed While Serving Alongside the Armed Forces

American military operations in Iraq and Afghanistan have been supported by an unprecedented number of civilian employees, some of whom are serving in hostile areas alongside the armed forces. These deployed civilian employees are covered by FECA, but concerns have been raised about the adequacy of FECA benefits for those injured or killed while serving in areas of combat, especially when compared to the benefits available to members of the armed forces from the Departments of Defense and Veterans Affairs.[32]

Section 1105 of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110-181, provides for a death gratuity of up to $100,000 to be paid to the survivors of any federal employee, or employee of a non-appropriated fund instrumentality, who "dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation." This death gratuity is paid in addition to the regular FECA compensation for survivors, but is offset by any other death gratuities paid by the federal government.

Overview of the FECA Program Today

This section of my testimony provides a plain-language overview of the major features of the FECA program in effect today.

Statutory and Regulatory Authorities

The FECA program is authorized in statute at 5 U.S.C. §§ 8101 et seq. Regulations implementing the FECA are provided at 20 C.F.R. §§ 10.00-10.826. The FECA program is administered by the Department of Labor, Office of Workers Compensation Programs (OWCP).

Program Financing

Benefits under FECA are paid out of the federal Employees' Compensation Fund. This fund is financed by appropriations from Congress which are used to pay current FECA benefits and which are ultimately reimbursed by federal agencies through the chargeback process.

Each quarter OWCP provides to all federal agencies with employees receiving FECA benefits an estimate of the cost of these benefits to assist these agencies in preparing their budget requests. By August 15 of each year, OWCP sends each agency a statement of their FECA costs for the previous fiscal year. Each agency must include in its next budget request an appropriation to cover its FECA costs for the previous fiscal year. Upon receiving this appropriation, or if a non-appro-

priated entity of the government, by October 15, the agency must reimburse the Employees' Compensation Fund for the costs of the FECA benefits provided to its employees.

The administrative costs associated with the FECA program are provided to the Department of Labor through the appropriations process. In addition, the United States Postal Service and certain other government corporations are required to pay for the "fair share" of the costs of administering benefits for their employees.

Employees Covered by FECA

The FECA program covers all civilians employed by the federal government, including employees in the executive, legislative, and judicial branches of the government. Both full-time and part-time workers are covered as are most volunteers and all persons serving on federal juries. Coverage is also extended to certain groups including state and local law enforcement officers acting in a federal capacity, Peace Corps volunteers, students participating in Reserve Officer Training Corps programs, and members of the Coast Guard Auxiliary and Civil Air Patrol.

Conditions Covered by FECA

Under FECA, workers' compensation benefits are paid to any covered employee for any disability or death caused by any injury or illness sustained during the employee's work for the federal government. There is no list of covered conditions nor is there a list of conditions that are not covered. However, no injury, illness, or death may be compensation by FECA if the condition was:

- caused by the willful misconduct of the employee;
- caused by the employee's intention to bring about the injury or death of himself or another person; or
- proximately caused by the intoxication of the employee.

In addition, any person convicted of a felony related to the fraudulent application for or receipt of FECA benefits forfeits his or her rights to all FECA benefits for any injury that occurred on or before the date of conviction. The benefits of any person confined in jail, prison, or an institution pursuant to a felony conviction are suspended for the duration of the incarceration and may not be recovered.

FECA Claims Process

All FECA claims are processed and adjudicated by OWCP. Initial decisions on claims are made by OWCP staff based on evidence submitted by the claimant and his or her treating physician. The law also permits OWCP to order a claimant or beneficiary to submit to a medical examination from a doctor contracted to the federal government. An employee dissatisfied with a claims decision may request a hearing before OWCP or that OWCP review the record of its decision. A final appeal can be made to the Employees' Compensation Appeals Board (ECAB). The decision of the ECAB is final, cannot be appealed, and is not subject to judicial review.

Time Limit for Filing a FECA Claim

In general, a claim for disability or death benefits under FECA must be made within three years of the date of the injury or death. In the case of a latent disability, such as a condition caused by exposure to a toxic substance over time, the three-year time limit does not begin until the employee is disabled and is aware, or reasonably should be aware, that the disability was caused by his or her employment.

FECA Compensation Benefits

Continuation of Pay

In the case of a traumatic injury, an employee is eligible for Continuation of Pay.[33] Continuation of pay is paid by the employing agency and is equal to 100% of the employee's rate of pay at the time of the traumatic injury. Since continuation of pay is considered salary and not compensation, it is taxed and subject to any deductions normally made against the employee's salary. Any lost work time beyond 45 days, or lost time due to a latent condition, is considered either a partial or total disability under FECA.

Employees of the United States Postal Service must satisfy a three-day waiting period before becoming eligible for continuation of pay.

Partial Disability

If an employee is unable to work full-time at his or her previous job, but is able to work either part-time or at a job in a lower pay category, then he or she is considered partially disabled and eligible for the following compensation benefits:

- if the employee is single, a monthly benefit equal to two-thirds of the difference between the employee's pre-disability and post-disability monthly wage; or

• if the employee has at least one dependent, a monthly benefit equal to 75% of the difference between the employee's pre-disability and post-disability monthly wage.

The compensation benefits paid for partial disability are capped at 75% of the maximum basic pay at rate GS-15, are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.

If an employee's actual wages do not accurately represent his or her true wage-earning capacity, or if he or she has no wages, then his or her partial disability benefit is based on his or her wage-earning capacity as determined by OWCP using a combination of vocational factors and "degree of physical impairment."

Scheduled awards

In cases in which an employee suffers a permanent partial disability, such as the loss of a limb, he or she is entitled to a scheduled benefit. The scheduled benefit is in addition to any other partial or total disability benefits received and an employee may receive a scheduled award even if he or she has returned to full-time work.[34] If an employee suffers a disfigurement of the face, head or neck that is of such severity that it may limit his or her ability to secure or retain employment, the employee is entitled to up to $3,500 in additional compensation.

Total Disability

If an employee is unable to work at all, then he or she is considered totally disabled and eligible for the following compensation benefits:

• if the employee is single, a monthly benefit equal to two-thirds of the employee's pre-disability monthly wage; or

• if the employee has at least one dependent, a monthly benefit equal to 75% of the employee's pre-disability monthly wage.

The compensation benefits paid for total disability are capped at 75% of the maximum basic pay at rate GS-15, are not subject to federal taxation, and are subject to an annual cost-of-living adjustment. Benefits are payable until it is determined that the employee is no longer totally disabled and may continue until the employee's death.

Death

If an employee dies on the job or from a latent condition caused by his or her employment, the employee's survivors are eligible for the following compensation benefits:

• if the employee's spouse has no children, then the spouse is eligible for a monthly benefit equal to 50% of the employee's monthly wage at the time of death;

• if the employee's spouse has one or more children, then the spouse is eligible for a monthly benefit equal to 45% of the employee's monthly wage at the time of death and each child is eligible for a monthly benefit equal to 15% of the employee's monthly wage at the time of death, up to a maximum family benefit of 75% of the employee's monthly wage at the time of death.

Special rules apply in cases in which an employee dies without a spouse or children or with only children.

If a spouse remarries before age 55, then he or she is entitled to a lump-sum payment equal to 24 months of benefits, after which all benefits cease. If a spouse remarries at age 55 or older, benefits continue for life. A child's benefits end at age 18, or age 23 if the child is still in school. A child's benefits continue for life if the child is disabled and incapable of self-support.

The compensation benefits paid for death are capped at 75% of the maximum basic pay at rate GS-15, are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.

Additional death benefits

The personal representative of the deceased employee is entitled to reimbursement, up to $200, of any costs associated with terminating the deceased employee's formal relationship with the federal government. The personal representative of the deceased employee is also entitled to a reimbursement of funeral costs up to $800 and the federal government will pay any costs associated with shipping a body from the place of death to the employee's home. An employee killed while working with the military in a contingency operation is also entitled to a special gratuity payment of up to $100,000 payable to his or her designated survivors.

FECA Medical Benefits

Under FECA, all medical costs, including medical devices, therapies and medications, associated with the treatment of a covered injury or illness are paid for, in full, by the federal government. A FECA beneficiary is not responsible for any coin-

surance or any other costs associated with his or her medical treatment and does not have to use any personal insurance for any covered medical costs. Generally, a beneficiary may select his or her own medical provider and is reimbursed for the costs associated with transportation to receive medical services.

A FECA beneficiary who is blind, paralyzed, or otherwise disabled such that he or she needs constant personal attendant care may receive an additional benefit of up to $1,500 per month.

Vocational Rehabilitation

The Secretary of Labor may direct any FECA beneficiary to participate in vocational rehabilitation, the costs of which are paid by the federal government. While participating in vocational rehabilitation, the beneficiary may receive an additional benefit of up to $200 per month. However, any beneficiary who is directed to participate in vocational rehabilitation and fails to do so may have his or her benefit reduced to a level consistent with the increased wage earning capacity that likely would have resulted from participation in vocational rehabilitation.

ENDNOTES

[1] The first general workers' compensation law in the United States was the Federal Employers' Compensation Act, P.L. 16-176, enacted in 1908. This law will be discussed later in my testimony. New York passed a workers' compensation law in 1910, but it was ruled unconstitutional by the state's courts in 1911. In 1911, Wisconsin enacted a workers' compensation law that is now generally considered to be the first such law in the United States.

[2] For a detailed discussion of these common-law defenses see Edward M. Welch, Employer's Guide to Workers' Compensation (Washington: Bureau of National Affairs, Inc., 1994), pp. 30-31.

[3] Employees are covered even if they are at fault in the accident. However, if the injury, illness, or death was caused by the willful misconduct of the employee or if the employee was under the influence of drugs or alcohol at the time of the incident, then the injury, illness, or death may not be covered by workers' compensation.

[4] Edward D. Berkowitz, Disabled Policy: America's Programs for the Handicapped (New York: Cambridge University Press, 1987), pp. 21-27.

[5] National Commission on State Workmen's Compensation Laws, The Report of the National Commission on State Workmen's Compensation Laws, Washington, DC, July 1972, Chapter 2.

[6] Ishita Sengupta, Virginia Reno, and John F. Burton, Jr., Workers' Compensation: Benefits Coverage, and Costs, 2008, National Academy of Social Insurance, Washington, DC, September 2010, p. 8.

[7] Employees travelling for the purposes of work, such as driving a delivery truck or attending a conference, are covered by workers' compensation.

[8] How workers' compensation systems determine levels of partial disability benefits and specifically the use of the sixth edition of the American Medical Association's Guides to the Evaluation of Impairment, was the subject of a hearing before this subcommittee on November 17, 2010 (U.S. Congress, House Committee on Education and Labor, Subcommittee on Workforce Protections, Developments in State Workers' Compensation Systems, hearing, 111th Cong., 2nd sess., November 17, 2010 (Washington: GPO, 2010)).

[9] This section of my testimony does not discuss minor, technical, or administrative amendments.

[10] Act of May 4, 1882, ch. 117, 22 Stat. 55 (1882). In 1915 the United States Life Saving Service was merged with the Revenue Cutter Service to form the United States Coast Guard.

[11] Willis J. Nordlund, "The Federal Employees' Compensation Act," Monthly Labor Review, September 1991, p. 5, hereafter cited as Nordlund 1991.

[12] U.S. Congress, House Committee on Education and Labor, Subcommittee on Safety and Compensation, Amendments to Federal Employees' Compensation Act, hearings on H.R. 1196 and other bills to amend the Federal Employees' Compensation Act, 86th Cong., 2nd sess., February 10, 23, 24 and March 8, 23, 24, 1960 (Washington: GPO, 1960), p. 124.

[13] Coverage for occupational illnesses was added to the FECA program in 1924 by P.L. 68-195.

[14] U.S. Congress, House Committee on the Judiciary, Compensation of Government Employees Suffering Injuries While on Duty, report to accompany H.R. 15316, 64th Cong., 2nd sess., May 11, 1916, H. Rept. 64-678 (Washington: GPO, 1916), p. 7.

[15] Ibid., p. 9.

[16] Ibid., p. 8.

[17] U.S. Congress, Senate Committee on the Judiciary, Accident Compensation to Government Employees, hearing on S. 2846, 64th Cong., 1st sess., February 26, 1916 (Washington: GPO, 1916), p. 27.

[18] Ibid.

[19] U.S. Congress, House Committee on Education and Labor, Amendments to Federal Employees' Compensation Act, report to accompany H.R. 3141, 81st Cong., 1st sess., June 6, 1949, H. Rept. 81-729 (Washington: GPO, 1949), p. 23, hereafter cited as H. Rept. 81-729; and U.S. Congress, Senate Labor and Public Welfare, Amendments to Federal Employees' Compensation Act, report to accompany H.R. 3141, 81st Cong., 1st sess., August 4, 1949, S. Rept. 81-836 (Washington: GPO, 1949), p. 29, hereafter cited as S. Rept. 81-836.

[20] Nordlund 1991, p. 10.

[21] H. Rept. 81-279, p. 11; and S. Rept. 81-836, p. 20.

[22] U.S. Congress, House Committee on Education and Labor, Special Subcommittee, Federal Employees' Compensation Act Amendments of 1949, hearing on H.R. 3191 and companion bills, 81st Cong., 1st sess., April 11-13 and May 2, 1949.
[23] Ibid.
[24] H. Rept. 81-279, p. 16; and S. Rept. 81-836, p. 24.
[25] H. Rept. 81-279, p. 14; and S. Rept. 81-836, p. 23.
[26] U.S. Congress, House Committee on Education and Labor, Federal Employees' Compensation Act Amendments of 1960, report to accompany H.R. 12383, 86th Cong., 2nd sess., June 2, 1960, H. Rept. 86-1743 (Washington: GPO, 1960), p. 3; and U.S. Congress, Senate Committee on Labor and Public Welfare, Federal Employees' Compensation Act Amendments of 1960, report to accompany H.R. 12383, 86th Cong., 2nd sess., August 27, 1960, S. Rept. 86-1924 (Washington: GPO, 1960), p. 3.
[27] U.S. Congress, Senate Committee on Labor and Public Welfare, Federal Employees' Compensation Act Amendments of 1966, report to accompany H.R. 10721, 89th Cong., 2nd sess., June 16, 1966, S. Rept. 89-1285, p. 3.
[28] The current cost-of-living adjustment is based on changes in the Consumer Price Index (all items-United States city average).
[29] U.S. Congress, Senate Committee on Labor and Public Welfare, Federal Employees' Compensation Act of 1970, report to accompany H.R. 13781, 93rd Cong., 2nd sess., August 8, 1974, S. Rept. 93-1081 (Washington: GPO, 1974), pp. 3-4, hereafter cited as S. Rept. 93-1081; and U.S. General Accounting Office, Need for a Faster Way to Pay Compensation Claims to Disabled Federal Employees, B-157593, November 21, 1973, p. 1.
[30] S. Rept. 93-1081, p. 7.
[31] President's Commission on the United States Postal Service, Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, Report of the President's Commission on the United States Postal Service, July 31, 2003, p. 134.
[32] See for example: U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Post Office, and the District of Columbia, A Call to Arms: A Review of Benefits for Deployed Federal Employees, hearing, 111th Cong., 1st sess., September 16, 2009; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Deployed Federal Civilians: Advancing Security and Opportunity in Afghanistan, hearing, 111th Cong., 2nd sess., April 14, 2010.
[33] Certain groups, including federal jurors, Peace Corps volunteers, and Civil Air Patrol members, are not eligible for continuation of pay.
[34] The list of FECA scheduled benefits are provided in statute at 5 U.S.C. § 8107(c) and in regulation at 20 C.F.R. § 10.40(a).

Chairman WALBERG. Thank you, Mr. Szymendera, and thank you for the promptness. I appreciate that.

I recognize Mr. Bertoni.

STATEMENT OF DANIEL BERTONI, DIRECTOR OF EDUCATION, WORKFORCE, AND INCOME SECURITY, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. BERTONI. Mr. Chairman, Ranking Member Woolsey, members of the subcommittee, good morning.

I am pleased to discuss issues related to potential changes to the Federal Employees' Compensation Act, or FECA, which provides critical wage loss compensation and other benefits to federal employees who are unable to work due to injuries sustained on the job.

Concerns have been raised that federal employees on FECA receive benefits that can be more generous than under the traditional federal retirement system, and that the program may incentivize individuals to remain on the rolls well beyond retirement age.

Over the past 30 years, there have bee numerous proposals to change FECA, and more recent options for revising the program for older beneficiaries are similar to those that we have discussed in prior work.

My statement discusses stakeholder views surrounding previous proposals for change and policy questions and issues that still merit consideration today in crafting legislation to change benefits for older beneficiaries.

In 1996, we reported that a perception among many that older FECA beneficiaries were receiving overly generous benefits generated two proposals to change benefits once individuals reach retirement age. The first would convert FECA benefits to federal retirement benefits at age 65 with certain protections, such as making adjustments for regular pay increases over time.

A bill recently introduced in the Congress includes a similar approach requiring FECA recipients to retire upon reaching social security retirement age. A second proposal we reviewed involved converting FECA wage loss benefits to an annuity and reducing benefits 2 years after a beneficiary reach civil service retirement age.

More recently, the Department of Labor proposed a similar change that would reduce FECA benefits for retirement age recipients to 50 percent of their salary at the time of injury. In our past work, we have noted that proponents for change felt that reforms were necessary to control escalating costs and ensure benefit equity.

Those in opposition were concerned that benefit reductions would cause economic hardships and reduce incentives for employers to manage claims or develop safer work environments. In soliciting views from various experts and stakeholders, we identified a number of issues that merit consideration in crafting legislation to change benefits for older FECA beneficiaries.

And going forward, Congress may wish to consider the following questions as it assesses current reform proposals: First, how would benefits be computed? For some proposals, as in the annuity option, calculating this FECA benefit may be fairly simple. For others, consideration of more complex adjustments may be necessary to address expended time out of the workforce and other variables.

Second, which FECA beneficiaries would be affected and should some workers be exempt under some proposals, such as those already on the rolls or those who are ineligible for federal retirement. Third, what criteria would initiate a benefit change? Would age or retirement eligibility alone trigger events, or would secondary criteria be needed such as a delayed transition period for those at or near retirement age at the time of enactment.

And fourth, how would other benefits be treated, such as survivor and medical benefits under a reformed system? And lastly, the critical question of how will benefits be funded? Depending on the proposal, funding alternatives may be needed.

In particular, we note in our 1996 report that if beneficiaries were converted to federal retirement, alternatives may be necessary. While the annuity option would likely remain funded under the traditional FECA charge back system.

In conclusion, FECA continues to play a vital role in providing compensation to federal employees who are unable to work because of injuries sustained while performing their duties. Prior and current reform proposals continue to raise a number of important issues with implications for both beneficiaries and federal agencies responsible for administering the program.

While not exhaustive, the analytical framework in questions posed in our prior work are still relevant today and can help all stakeholders and interested parties better understand program

complexities and key issues to consider as they move forward in assessing specific proposals for change.

As you may know, we have recently begun a new review of the FECA program, which will include an analysis of the characteristics of the beneficiary population as well as how potential changes to the program could impact cost and benefits, and we look forward to working with Labor as we move forward with this analysis.

Mr. Chairman, this concludes my statement. I am happy to answer any questions that you or other members of the subcommittee may have. Thank you, very much.

[The statement of Mr. Bertoni follows:]

Prepared Statement of Daniel Bertoni, Director, Education, Workforce, and Income Security Issues, Government Accountability Office

Chairman Walberg, Ranking Member Woolsey and Members of the Committee: I am pleased to be here today to comment on issues related to possible changes to the Federal Employees' Compensation Act (FECA) program, a topic that we have reported on in the past. At the end of chargeback year 2010, the FECA program, administered by the Department of Labor (Labor) paid more than $1.88 billion in wage-loss compensation, impairment, and death benefits, and another $898.1 million for medical and rehabilitation services and supplies.[1] Currently, FECA benefits are paid to federal employees who are unable to work because of injuries sustained while performing their federal duties, including those who are at or older than retirement age. Concerns have been raised that federal employees on FECA receive benefits that could be more generous than under the traditional federal retirement system and that the program may have unintended incentives for beneficiaries to remain on the FECA program beyond the traditional retirement age. Over the past 30 years, there have been various proposals to change the FECA program to address this concern. Recent policy proposals to change the way FECA is administered for older beneficiaries share characteristics with past proposals we have discussed in prior work. In August 1996, we reported on the issues associated with changing benefits for older beneficiaries.[2] Because FECA's benefit structure has not been significantly amended in more than 35 years, the policy questions raised in our 1996 report are still relevant and important today.

My statement today will focus on (1) previous proposals for changing FECA benefits for older beneficiaries and (2) questions and associated issues that merit consideration in crafting legislation to change benefits for older beneficiaries. This statement is drawn primarily from our 1996 report in which we solicited views from selected federal agencies and employee groups to identify questions and associated issues with crafting benefit changes. In that report, we also reviewed relevant laws and analyzed previous studies and legislative proposals that would have changed benefits for older FECA beneficiaries. For purposes of this testimony, we did not conduct a legal analysis to update the results of our prior work, but instead relied upon secondary sources such as the Congressional Research Service (CRS). The work on which this testimony was based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, we have reported that the perception that many retirement-age beneficiaries were receiving more generous benefits on FECA had generated two alternative proposals to change benefits once beneficiaries reach the age at which retirement typically occurs: (1) converting FECA benefits to retirement benefits and, (2) changing FECA wage-loss benefits by establishing a new FECA annuity. We also discussed a number of issues to be considered in crafting legislation to change benefits for older beneficiaries. Going forward, Congress may wish to consider the following questions in assessing current proposals for change: (1) How would benefits be computed? (2) Which beneficiaries would be affected? (3) What criteria, such as age or retirement eligibility, would initiate changed benefits? (4) How would other benefits, such as FECA medical and survivor benefits, be treated and administered? (5) How would benefits, particularly retirement benefits, be funded?

Background: FECA

FECA is administered by Labor's Office of Workers' Compensation Programs (OWCP) and currently covers more than 2.7 million civilian federal employees from more than 70 different agencies. FECA benefits are paid to federal employees who are unable to work because of injuries sustained while performing their federal duties. Under FECA, workers' compensation benefits are authorized for employees who suffer temporary or permanent disabilities resulting from work-related injuries or diseases. FECA benefits include payments for (1) loss of wages when employees cannot work because of work-related disabilities due to traumatic injuries or occupational diseases; (2) schedule awards for loss of, or loss of use of, a body part or function; (3) vocational rehabilitation; (4) death benefits for survivors; (5) burial allowances; and (6) medical care for injured workers. Wage-loss benefits for eligible workers with temporary or permanent total disabilities are generally equal to either 66⅔ percent of salary for a worker with no spouse or dependent, or 75 percent of salary for a worker with a spouse or dependent. Wage-loss benefits can be reduced based on employees' wage-earning capacities when they are capable of working again. OWCP provides wage-loss compensation until claimants can return to work in either their original positions or other suitable positions that meet medical work restrictions.[3] Each year, most federal agencies reimburse OWCP for wage-loss compensation payments made to their employees from their annual appropriations. If claimants return to work but do not receive wages equal to that of their prior positions—such as claimants who return to work part-time—FECA benefits cover the difference between their current and previous salaries.[4] Currently, there are no time or age limits placed on the receipt of FECA benefits.

With the passage of the Federal Employees' Compensation Act of 1916, members of Congress raised concerns about levels of benefits and potential costs of establishing a program for injured federal employees.[5] As Congress debated the act's provisions in 1916 and again in 1923, some congressional members were concerned that a broad interpretation threatened to make the workers' compensation program, in effect, a general pension. The 1916 act granted benefits to federal workers for work-related injuries. These benefits were not necessarily granted for a lifetime; they could be suspended or terminated under certain conditions. Nevertheless, the act placed no age or time limitations on injured workers' receipt of wage compensation. The act did contain a provision allowing benefits to be reduced for older beneficiaries. The provision stated that compensation benefits could be adjusted when the wage-earning capacity of the disabled employee would probably have decreased on account of old age, irrespective of the injury.

While the 1916 act did not specify the age at which compensation benefits could be reduced, the 1949 FECA amendments established 70 as the age at which a review could occur to determine if a reduction were warranted.[6] In 1974, Congress again eliminated the age provision.[7]

Federal Retirement Systems

Typically, federal workers participate in one of two retirement systems which are administered by the Office of Personnel Management (OPM): the Civil Service Retirement System (CSRS), or the Federal Employees' Retirement System (FERS). Most civilian federal employees who were hired before 1984 are covered by CSRS. Under CSRS, employees generally do not pay Social Security taxes or earn Social Security benefits. Federal employees first hired in 1984 or later are covered by FERS. All federal employees who are enrolled in FERS pay Social Security taxes and earn Social Security benefits. Federal employees enrolled in either CSRS or FERS also may contribute to the Thrift Savings Plan (TSP); however, only employees enrolled in FERS are eligible for employer matching contributions to the TSP.

Under both CSRS and FERS, the date of an employee's eligibility to retire with an annuity depends on his or her age and years of service. The amount of the retirement annuity is determined by three factors: the number of years of service, the accrual rate at which benefits are earned for each year of service, and the salary base to which the accrual rate is applied.[8] In both CSRS and FERS, the salary base is the average of the highest three consecutive years of basic pay. This is often called "high-3" pay.

According to CRS, an injured employee cannot contribute to Social Security or to the TSP while receiving workers' compensation because Social Security taxes and TSP contributions must be paid from earnings, and workers' compensation payments are not classified as earnings under either the Social Security Act or the Internal Revenue Code. As a result, the employee's future retirement income from Social Security and the TSP may be reduced. Legislation passed in 2003 increased the FERS basic annuity from 1 percent of the individual's high-3 average pay to 2 percent of high-3 average pay while an individual receives workers' compensation,

which would help replace income that may have been lost from lower Social Security benefits and reduced income from TSP.[9]

Proposals to Change Benefits for Older Beneficiaries

Concerns that beneficiaries remain in the FECA program past retirement age have led to several proposals to change the program. Under current rules, an age-eligible employee with 30 years of service covered by FERS could accrue pension benefits that are 30 percent of their average high-3 pay and under CSRS could accrue almost 60 percent of their high-3 average pay. Under both systems benefits can be taxed. [10] FECA beneficiaries can receive up to 75 percent of their preinjury income, tax-free, if they have dependents and 66⅔ percent without dependents. Because returning to work could mean giving up a FECA benefit for a reduced pension amount, concerns have been raised by some that the program may provide incentives for beneficiaries to continue on the program beyond retirement age.

In 1996, we reported on two alternative proposals to change FECA benefits once beneficiaries reach the age at which retirement typically occurs: (1) converting FECA benefits to retirement benefits, and (2) changing FECA wage-loss benefits to a newly established FECA annuity.

The first proposal would convert FECA benefits for workers who are injured or become ill to regular federal employee retirement benefits at retirement age. In 1981, the Reagan administration proposed comprehensive FECA reform, including a provision to convert FECA benefits to retirement benefits at age 65. The proposal included certain employee protections, one of which was calculating retirement benefits on the basis of the employee's pay at time of injury (with adjustments for regular federal pay increases). According to proponents, this change would improve agencies' operations because their discretionary budgets would be decreased by FECA costs, and, by reducing caseload, it would allow Labor to better manage new and existing cases for younger injured workers. A bill recently introduced in Congress includes a similar provision, requiring FECA recipients to retire upon reaching retirement age as defined by the Social Security Act.[11]

The second proposal, based on proposals that several agencies developed in the early 1990s, would convert FECA wage-loss compensation benefits to a FECA annuity benefit. These agency proposals would have reduced FECA benefits by a set percentage two years after beneficiaries reached civil service retirement eligibility. Proponents of this alternative noted that changing to a FECA annuity would be simpler than converting FECA beneficiaries to the retirement system, would result in consistent benefits, and would allow benefits to remain tax-free. Proponents also argued that a FECA annuity would keep the changed benefit within the FECA program, thereby avoiding complexities associated with converting FECA benefits under CSRS and FERS. For example, converting to retirement benefits could be difficult for some employees who currently are not participating in a federal retirement plan. Also, funding future retirement benefits could be a problem if the FECA recipient has not been making retirement contributions. Labor recently suggested a change to the FECA program that would reduce wage-loss benefits for Social Security retirement-aged recipients to 50 percent of their gross salary at the date of injury, but would still be tax-free. [12] Labor's proposal would still keep the changed benefit within the FECA program.

In our 1996 report, however, we identified a number of issues with both alternative proposals. For example, some experts and other stakeholders we interviewed noted that age discrimination posed a possible legal challenge and that some provisions in the law would need to be addressed with new statutory language.[13] Others noted that benefit reductions would cause economic hardships for older beneficiaries. Some noted that without the protections of the workers' compensation program, injured employees who have few years of service or are ineligible for retirement might suffer large reductions in benefits. Moreover, opponents to change also viewed reduced benefits as breaking the workers' compensation promise. Another concern was that agencies' anticipation of reduced costs for workers' compensation could result in fewer incentives to manage claims or to develop safer working environments.

Questions and Issues to Consider if Crafting FECA Changes

We also discussed in our 1996 report a number of issues that merit consideration in crafting legislation to change benefits for older beneficiaries. Going forward, Congress may wish to consider the following questions as it assesses and considers current reform proposals: (1) How would benefits be computed? (2) Which beneficiaries would be affected? (3) What criteria, such as age or retirement eligibility, would initiate changed benefits? (4) How would other benefits, such as FECA medical and

survivor benefits, be treated and administered? (5) How would benefits, particularly retirement benefits, be funded?

How Would Benefits Be Computed?

The retirement conversion alternative raises complex issues, arising in part from the fact that conversion could result in varying retirement benefits, depending on conversion provisions, retirement systems, and individual circumstances. A key issue is whether or not benefits would be adjusted. The unadjusted option would allow for retirement benefits as provided by current law. The adjusted option would typically ensure that time on the FECA rolls was treated as if the beneficiary had continued to work. This adjustment could (1) credit time on FECA for years of service or (2) increase the salary base (for example, increasing salary from the time of injury by either an index of wage increases or inflation, assigning the current pay of the position, or providing for merit increases and possible promotions missed due to the injury).

Determining the FECA annuity would require deciding what percentage of FECA benefits the annuity would represent. Under previous proposals benefits would be two-thirds of the previous FECA compensation benefits. Provisions to adjust calculations for certain categories of beneficiaries also have been proposed. Under previous proposals, partially disabled individuals receiving reduced compensation would receive the lesser of the FECA annuity or the current reduced benefit. FECA annuity computations could also be devised to achieve certain benchmarks. For example, the formula for a FECA annuity could be designed to approximate a taxable retirement annuity. One issue concerning a FECA annuity is whether it would be permanent once set, or whether it would be subject to adjustments based on continuing OWCP reviews of the beneficiary's workers' compensation claim.

Which Beneficiaries Would Be Affected?

Currently most federal employees are covered by FERS, but conversion proposals might have to consider differences between FERS and CSRS participants, and participants in any specialized retirement systems. [14] Other groups that might be uniquely affected include injured workers who are not eligible for federal retirement benefits, individuals eligible for retirement conversion benefits, but not vested; and individuals who are partially disabled FECA recipients but active federal employees. With regard to vesting, those who have insufficient years of service to be vested might be given credit for time on the FECA rolls until vested. There is also the question of whether changes will focus on current or future beneficiaries. Exempting current beneficiaries delays receipt of full savings from FECA cost reductions to the future. One option might be a transition period for current beneficiaries. For example, current beneficiaries could be given notice that their benefits would be changed after a certain number of years.

What Criteria Would Initiate Changed Benefits?

Past proposals have used either age or retirement eligibility as the primary criterion for changing benefits. If retirement eligibility is used, consideration must be given to establishing eligibility for those who might otherwise not become retirement eligible. This would be true for either the retirement conversion or the annuity option. At least for purposes of initiating the changed benefit, time on the FECA rolls might be treated as if it counted for service time toward retirement eligibility. Deciding on the criteria that would initiate change in benefits might require developing benchmarks. For example, if age were the criteria, it might be benchmarked against the average age of retirement for federal employees, or the average age of retirement for all employees. Another question is whether to use secondary criteria to delay changed benefits in certain cases. The amount of time one has received FECA benefits is one possible example of secondary criteria. Secondary criteria might prove important in cases where an older, injured worker may face retirement under the retirement conversion option even when recovery and return to work is almost assured.

How Would Other Benefits, Such As FECA Medical Benefits Or Survivor Benefits, Be Treated and Administered?

In addition to changing FECA compensation benefits, consideration should be given to whether to change other FECA benefits, such as medical benefits or survivor benefits. For example, the 1981 Reagan administration proposal would have ended survivor benefits under FECA for those beneficiaries whose benefits were converted to the retirement system. Another issue to consider is who will administer benefits if program changes shift responsibilities—OPM administers retirement annuity benefits for federal employees, and Labor currently administers FECA benefits. Although it may be advantageous to consolidate case management in one agen-

cy, such as OPM, if the retirement conversion alternative were selected, the agency chosen to manage the case might have to develop an expertise that it does not currently possess. For example, OPM might have to develop expertise in medical fee schedules to control workers' compensation medical costs.

How Would Benefits, Particularly Retirement Benefits, Be Funded?

For the retirement conversion alternative, another issue is the funding of any retirement benefit shortfall. Currently, agencies and individuals do not make retirement contributions if an individual receives FECA benefits; thus, if retirement benefits exceed those for which contributions have been made, retirement funding shortfalls would occur. Retirement fund shortfalls can be funded through payments made by agencies at the time of conversion or prior to conversion. First, lump-sum payment could be made by agencies at the time of the conversion. This option has been criticized because the start-up cost was considered too high. Second, shortfalls could be covered on a pay-as-you-go basis after conversion. In this approach, agencies might make annual payments to cover the shortfall resulting from the conversions. Third, agencies' and employees' contributions to the retirement fund could continue before conversion, preventing shortfalls at conversion. Proposals for the FECA annuity alternative typically keep funding under the current FECA chargeback system. This is an annual pay-as-you-go system with agencies paying for the previous year's FECA costs.

In total, these five questions provide a framework for considering proposals to change the program.

Concluding Remarks

In conclusion, FECA continues to play a vital role in providing compensation to federal employees who are unable to work because of injuries sustained while performing their duties. However, continued concerns that the program provides incentives for beneficiaries to remain on the program at, and beyond, retirement age have led to calls for the program to be reformed. Although FECA's basic structure has not significantly been amended for many years, there continues to be interest in reforming the program. Proposals to change benefits for older beneficiaries raise a number of important issues, with implications for both beneficiaries and federal agencies. These implications warrant careful attention to outcomes that could result from any changes.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other members of the committee may have at this time.

ENDNOTES

[1] FECA benefits are paid out of the Employees' Compensation Fund and most are charged back to the employee's agency. Labor's chargeback year for FECA agency billing purposes ends June 30, 2010.

[2] GAO, Federal Employees' Compensation Act: Issues Associated With Changing Benefits for Older Beneficiaries, [hyperlink, *http://www.gao.gov/products/GGD-96-138BR* (Washington, D.C.: Aug. 14, 1996).

[3] Employees eligible for FECA benefits could also be eligible for retirement disability benefits from the Office of Personnel Management or Social Security Disability Insurance benefits from the Social Security Administration. Depending on which benefits employees are entitled to, employees might have to make an election between them. In many cases in which individuals receive benefits from different programs simultaneously, one benefit would likely be offset against the other.

[4] The maximum monthly FECA compensation payment cannot exceed 75 percent of the basic monthly pay for a GS-15, step 10 employee ($129, 517 per year as of Jan. 2, 2011). In general, OWCP continues to pay claimants the difference between their current salary and the salary they were earning at the time of their injury for as long as this difference exists and their medical work restrictions remains the same. (FECA benefits are indexed to the cost of living.) OWCP would not continue to pay this difference for claimants who quit their job without good cause (for example, if they quit because they did not like their work hours).

[5] 39 Stat. 742.

[6] 63 Stat. 854.

[7] Public Law No. 93-416. 88 Stat. 1143. According to Senate Report 93-1081, the Committee on Labor and Public Welfare stated that (1) the provision requiring the review of compensation was an unnecessary burden on both the injured employees and the Secretary of Labor (who had the authority to conduct the review); (2) age 70 had no bearing on one's entitlement to benefits; and (3) such a provision was discriminatory. FECA currently does not include a provision to change benefits based on retirement age.

[8] Under CSRS, a worker with at least 30 years of service can retire at the age of 55; a worker with at least 20 years of service can retire at the age of 60; and a worker with 5 or more years of service can retire at the age of 62. The FERS minimum retirement age for an employee with 30 or more years of service is 55 for workers born before 1948. A worker who has reached the minimum retirement age and has completed at least 30 years of service can retire with an im-

mediate, unreduced annuity. A worker with 20 or more years of service can retire with an unreduced annuity at age 60, and a worker with at least 5 years of service can retire at age 62 with an unreduced annuity.

[9] Pub. L. No. 108-92, 117 Stat. 1160 (2003).

[10] The replacement rate for a federal worker who retires with 30 years of service under CSRS is 56.25 percent. FERS accrual rates are lower than the accrual rates under CSRS because employees under FERS pay Social Security payroll taxes and earn Social Security retirement benefits. Estimating replacement rates under FERS is complicated by the fact that income from two of its components—Social Security and the TSP—will vary depending on the individual's work history, contributions to the TSP, and the investment performance of his or her TSP account.

[11] Federal Employees' Compensation Reform Act of 2011, S. 261, 112TH Cong. (2011).

[12] According to CRS, an injured employee cannot contribute to Social Security or to the TSP while receiving workers' compensation because Social Security taxes and TSP contributions must be paid from earnings, and workers' compensation payments are not classified as earnings under either the Social Security Act or the Internal Revenue Code.

[13] Some argued that changing benefits for older beneficiaries violates protections against age discrimination contained in federal law by forcing them into accepting retirement benefits or a reduced annuity at a certain age.

[14] One conversion decision concerns whether to exempt injured workers who are ineligible for federal retirement benefits. Ineligible workers include, for instance, those without 5 years of federal service under CSRS, those who have withdrawn retirement contributions, temporary workers, and state and local police covered under special FECA provisions.

Chairman WALBERG. Mr. Bertoni, thank you.

Now I recognize Mr. Steinberg for your testimony.

STATEMENT OF GARY A. STEINBERG, ACTING DIRECTOR OF THE OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR

Mr. STEINBERG. Thank you, Chairman Walberg, Ranking Member Woolsey, and committee members.

I appreciate the opportunity to discuss the Federal Employees' Compensation Act today. On behalf of Secretary Solis, I would like to share a set of balanced proposals that would enhance our ability to assist beneficiaries to return to work, provide a more equitable array of benefits, and generally modernize the program.

Almost 95 years ago, Congress enacted FECA to provide workers' compensation coverage to all federal employees and their survivors for disabilities or death due to work-related injuries or illnesses.

The faces of FECA include the postal worker who is hurt when his truck is hit while delivering the mail; the FBI agent who is killed or injured in the line of duty; and the VA nurse who hurts her back while lifting a patient.

DOL's Office of Workers' Compensation Programs works hard to administer the program fairly, objectively and efficiently. We seek to continuously improve the quality and service delivery to our customers, enhance internal and external communication, and reduce costs to the taxpayer.

We have made major strides in disability management that have resulted in significant reduction in the average number of days lost from the most serious injuries. Over the last 10 years, the average number of days lost due to serious injuries has declined 20 percent, producing an annual savings of $53 million.

Our administrative costs are only 5 percent of total program costs, far below the average of all state self-insurance programs, which is over 11 percent. To further improve FECA, we have made comprehensive recommendations to Congress, and I wish to highlight some of the major recommendations now.

To help injured employees return to work, we request authority to start vocational rehabilitation activities without waiting until an

injury is deemed permanent in nature. We seek a mandate to develop a return to work plan with the claimants early in the rehabilitation process and the authority to deploy an assisted re-employment program with the federal agencies similar to the program that we have successfully implemented with the private sector.

The proposed changes will also have a positive impact on the government's ability to achieve the president's executive order on hiring individuals with disabilities, which we believe is extremely important.

We also suggest changes to the benefit structure. For example, the payment of schedule awards for loss or loss of the use of a limb, one's sight, one's hearing, is often very complicated and that is often delayed. Although not intended to replace economic loss, payments are based on the individual salary.

So a letter carrier's knee injury is compensated at less than half the rate of her GS-15 manager with the same injury. We think these awards should be paid by DOL concurrently with wage loss compensation, made more rapidly, and to be fair, they should be calculated at a uniform level for all employees.

We also propose increases to the benefit levels for burial expenses and for facial disfigurement. Under current law, the majority of injured workers receive wage replacement at 75 percent of their salary, tax free and COLA. This rate is higher than the take-home pay for many federal workers and can serve as an obstacle to the department's effort to encourage every worker to make the hard and sometimes painful effort to overcome their injuries and go back to work.

We, therefore, recommending shifting the benefit for the majority of claimants to 70 percent rather than 75 percent. To provide equity for other federal employees, we also recommend establishing a lower conversion rate for beneficiaries beyond retirement age, which would more closely mirror OPM's retirement rates.

Both of these changes we propose as prospective in nature. In addition, elements of the statute need to be simplified to enable us to further reduce processing time. For example, the current statute increases the compensation rate for anyone with a dependent from the standard 66 and two-thirds wage loss rate to 75 percent. Paying all non-retirement age beneficiaries at 70 percent would simplify the process by eliminating the continuing need to obtain and validate documentation regarding dependent eligibility.

A single rate would be simpler, more equitable, and would produce a significant savings to the taxpayer. This change alone would yield a 10-year savings of over $500 million. My testimony also outlines other important provisions that would streamline and improve the program.

In summary, while FECA is a model workers' compensation system and 95 years old, it has limitations that need to be addressed. The reforms that we suggest today, they are not new. They have been proposed by both the current and previous administrations. They are careful. They are balanced. We believe that they are reflective of good government, and they will help bring the program into the 21st century.

Thank you again for the opportunity to meet with you today to discuss FECA reform, and I will be pleased to answer any questions as we continue on.

[The statement of Mr. Steinberg follows:]

Prepared Statement of Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor

Chairman Tim Walberg, Ranking Member Lynn Woolsey, and Members of the Subcommittee: My name is Gary Steinberg, and I am the Acting Director of the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP). OWCP administers a number of workers' compensation programs, including the Federal Employees' Compensation Act (FECA), which covers 2.7 million Federal and Postal workers and is one of the largest self-insured workers' compensation systems in the world.

I appreciate the opportunity to discuss legislative reforms to FECA that would enhance our ability to assist FECA beneficiaries to return to work, provide a more equitable array of FECA benefits, and generally modernize the program and update the statute. Almost 95 years ago, on September 7, 1916, Congress enacted FECA to provide comprehensive Federal workers' compensation coverage to all Federal employees and their survivors for disability or death due to an employment injury or illness. FECA's fundamental purpose is to provide compensation for wage loss and medical care, facilitate return to work for employees who have recovered from their injuries, and pay benefits to survivors. The faces of FECA include the Postal worker whose mail truck is hit while delivering mail, the Federal Bureau of Investigation (FBI) agent injured or killed in the line of duty, the Department of Veterans' Affairs nurse who hurts her back while lifting patients, and the Federal employee injured in the recovery efforts in Japan. All of these employees will receive benefits provided by this Act.

Since FECA has not been significantly amended in over 35 years, there are areas where the statute could be improved. Thus we have developed a number of proposals to reform and maintain FECA as the model workers' compensation program for the twenty-first century. In the 2012 Budget we estimated 10-year savings of around $400 million, but we think the potential savings are likely higher. After briefly discussing the current status of the FECA program, I am pleased to outline possible changes to the statute for consideration.

Many of the proposals are based on the results of studies by the program, the Government Accountability Office (GAO), the Inspectors General, as well as discussions with stakeholder organizations over the past 20 years. Recently, we have shared these proposed changes with staff of this and other Congressional committees and various outside parties such as representatives of Federal employee unions and members of the disability community.

FECA Today

Benefits under the FECA are payable for both traumatic injuries (injuries sustained during the course of a single work shift) and occupational disease due to sustained injurious exposure in the workplace. If OWCP's review of the evidence determines that a covered employee has sustained a work-related medical condition, the FECA program provides a wide variety of benefits including payment for all reasonable and necessary medical treatment; compensation to the injured worker to replace partial or total lost wages (paid at two-thirds of the employees' salary or at three-fourths if there is at least one dependent); a monetary award in cases of permanent impairment of limbs or other parts of the body; medical and vocational rehabilitation assistance in returning to work as necessary; and benefits to survivors in the event of a work related death.

FECA benefits are based upon an employee's inability to earn pre-injury wages with no time limit on wage loss benefit duration as long as the work-related condition or disability continues; the amount of compensation is based upon the employee's salary up to a maximum of GS-15 Step 10. More than 70% of FECA claimants are paid at the augmented (three-fourths) level. As workers' compensation benefits, they are tax free; long-term benefits are escalated for inflation after the first year of receipt.

FECA is a non adversarial system administered by OWCP. While employing agencies play a significant role in providing information to OWCP and assisting their employees in returning to work, the adjudication of FECA claims is exclusively within the discretion given to the Secretary of Labor by statute and is statutorily exempt from court review. Claimants are provided avenues of review within OWCP

through reconsideration and hearing as well as an appellate forum, the Employees' Compensation Appeals Board (ECAB), a quasi-judicial appellate board within the DOL, completely independent of OWCP.

FECA benefits are paid out of the Employees' Compensation Fund and most are charged back to the employee's agency. During the 2010 chargeback year, which ended on June 30, 2010, the Fund paid more than $1.88 billion in wage-loss compensation, impairment, and death benefits and another $898.1 million to cover medical and rehabilitation services and supplies. (These totals include outlays for non-chargeable costs for war risk hazards that total $86.2 million, primarily for overseas Federal contractor coverage under the War Hazards Compensation Act (WHCA). Benefits paid have remained relatively stable at these levels for the past 10 years, with the exception of war risk hazard payments. In addition, the administrative costs to manage the program have consistently averaged a very modest 5% of total outlays.

Although the program is almost 95 years old, OWCP's administration of FECA is by no means antiquated. All new claims are electronically imaged into a sophisticated paperless claims management system. Video and teleconferencing options are available to claimants to expedite the OWCP appeals process. Electronic Data Interchange capabilities are utilized by many of the program's agency partners. A secure, web-based electronic document-filing portal is currently under development; this new access will be deployed later this year and for the first time will be available to all system stakeholders, including injured workers and their physicians. This new tool will further reduce reliance on paper documents and shrink data input and imaging costs while speeding claim processing and reducing administrative costs.

Maintaining Program Integrity

OWCP actively manages the FECA program so that benefits are properly paid. After a case is accepted as covered, OWCP monitors medical treatment for consistency with the accepted condition—if more than a very brief disability is involved, OWCP often assigns a nurse as part of our early nurse intervention program to assist with the worker's recovery and facilitate the return-to-work effort. If disability is long-term, but the claimant can work in some capacity, a vocational rehabilitation counselor may be assigned to the case.

Once a claim is accepted for ongoing, periodic payments, injured workers are required to submit medical evidence to substantiate continued disability (either annually or on a two or three year schedule for those less likely to regain the ability to work). Injured workers must cooperate with OWCP-directed medical examinations and vocational rehabilitation, accept suitable employment if offered and annually report earnings and employment (including volunteer work) as well as the status of their dependents and any other government benefits. OWCP claims staff carefully review these submissions and can require claimants to be examined by outside medical physicians to resolve questions on the extent of disability or appropriateness of medical treatment such as surgery. OWCP also conducts monthly computer matches with the Social Security Administration (SSA) to identify FECA claimants who have died so that payments can be terminated to avoid overpayments.

In addition, OWCP has conducted program evaluation studies to identify areas for process and policy improvements. I noted earlier some of our case processing improvements. Based on the resulting recommendations and our claims experience, we have also improved how the program approaches disability management and return to work. The program's early nurse intervention and quality case management initiatives are particularly noteworthy as the program evolves to reflect a renewed focus on return to work We have partnered with the Occupational Safety and Health Administration (OSHA) and our federal agencies to improve timely filing of claims and reduce lost production days. As result of these efforts, the average number of days lost as a result of the most serious injuries each year has declined from 195 days in 1996 to 156 in 2010. By speeding the average time to return to work in these cases, OWCP saves the government millions of dollars just in the first year of the injury; this also helps to avoid long term disability that can last for years thereafter.

A History of Performance

Under most circumstances FECA claims are submitted by employees to their employing agency, which completes the agency information required on the form and forwards the claim to OWCP. Over the past 5 years, an average of 133,000 new injury and illness claims were filed annually and processed by OWCP. The acceptance rate for new injury claims was 85%. Eighty-four percent (84%) were submitted within program timeliness standards of 10 working days and approximately 95% were processed by OWCP within program timeliness standards which vary depending on

the complexity of the injury. Fewer than 15,000 of the accepted claims per year involve a significant period of disability. Eighty-five percent (85%) of claimants return to work within the first year of injury and a total of 89% return to work by the end of the second year. Due in part to OWCP's efforts to return injured employees to work, less than 2% of all new injury cases remain on the long-term compensation rolls two years after the date of injury. Currently, approximately 45,000 injured workers have long term ongoing disability benefits for partial or total wage loss, which they receive every 4 weeks. Some 15,000 are 66 years of age or older. (It should be noted however, that of this 15,000, over 7,000 have been determined to have no return-to-work potential, largely because of the substantial nature of their disability.)

FECA Reform

As I have discussed, OWCP has made significant administrative and technical changes to improve the administration of FECA. These changes were legally permissible within the existing statutory framework and had a demonstrable effect in advancing our progress. The current FECA reform proposal embodies certain reforms that can only be gained through statutory amendment that transforms FECA into a model twenty-first century workers' compensation program, increasing equity and efficiency while reducing costs. These amendments fall within three categories:

- Return to Work and Rehabilitation
- Updating Benefit Structures
- Modernizing and Improving FECA

Return to Work and Rehabilitation

The proposal that we have crafted for consideration would provide OWCP with enhanced opportunities to facilitate rehabilitation and return-to-work while simultaneously addressing several disincentives that may impact timely return to work by applying a new set of benefit rates prospectively to new injuries and new claims for disability occurring after enactment of the FECA amendments.

We propose additional statutory tools that would enhance OWCP's ability to return injured workers to productive employment. While FECA currently has the authority to provide vocational rehabilitation services and to direct permanently injured employees to participate in vocational rehabilitation, we suggest removing the permanency limitation in the statute to make clear that such services are available to all injured workers and that participation in such an effort is required. It is generally accepted and consistent with our experience that the earlier the claimant is involved in a vocational rehabilitation and a Return-to-Work program, the greater likelihood of a successful and sustained return to work post injury.

The proposal would amend FECA to explicitly allow for vocational rehabilitation, where appropriate, as early as six months after injury. It provides OWCP the authority to require injured claimants unable to return to work within six months of their injury to participate with OWCP in creating a Return—to-Work Plan where appropriate. The Return-to-Work Plan would generally be implemented within a two-year period. This provision would send a strong signal to all Federal workers, whether injured or not, that the Federal government as a model employer is committed to doing everything it can to return employees to work as early as possible.

Our proposal would also amend FECA to provide permanent authority for what we call Assisted Reemployment. Assisted Reemployment is a subsidy designed to encourage employers to choose qualified rehabilitated workers whom they might otherwise not hire. As disabled Federal workers with skills transferable to jobs within the general labor market may prove difficult to place due to economic factors, Assisted Reemployment is designed to increase the number of disabled employees who successfully return to the labor force by providing wage reimbursement to potential employers. Recent DOL appropriations bills gave OWCP the authority to provide up to three years of salary reimbursement to private employers who provide suitable employment for injured federal workers. Our data from our currently limited private sector program shows that when we enter into an Assisted Reemployment agreement with a private employer, the employee is permanently hired by that employer at or beyond the 3 year period over 55% of the time. Of the employees not working for the same employer, approximately half are working with other employers. Because most Federal employees desire continued employment with the Federal government, our proposal to expand this program to the Federal sector would significantly increase its appeal and effectiveness. We are working closely with OPM and our partner agencies to actively seek re-employment opportunities for Federal workers who become disabled as a result of work related injuries or illnesses. These provisions would assist with that effort and comport with and support the President's Executive Order 13548 to increase hiring of individuals with disability in the Fed-

eral government. Under this proposal, OWCP would reimburse in part the salaries paid by Federal agencies that hire workers with work-related injuries.

Return to work following an injury is often a difficult, painful process, requiring physical, mental and emotional adjustments and accommodations. If a workers' compensation system contains disincentives to return to work, that difficult transition back to work will occur more slowly, or in some cases, not at all. Where the medical evidence of ability to work is ambiguous and returning to work would require an employee to overcome actual physical limitations, these disincentives will exact a high price. That high price means a more costly program, lost productivity to the employing agency, and, for the workers themselves, disrupted lives and diminished self-esteem.

As currently structured, FECA creates direct disincentives to return-to-work in two significant ways. The first and most far-reaching is that while the basic rate of FECA compensation, 66⅔%, is comparable to most state systems, many Federal employees receive an augmented benefit, 75%, if they have at least one dependent. Computed at 75% tax free, FECA benefits often exceed the employee's pre-injury take home pay. Few state systems provide any augmentation for dependents, and none approaches the Federal level.

Since the 75% compensation rate can result in benefits greater than the injured worker's usual take home pay, we also suggest amending FECA to provide that all claimants receive compensation at one uniform level of 70%. This compensation adjustment would remove disincentive to return to work, respond to equity concerns, and significantly simplify administration by greatly reducing documentation requirements for claimants and eliminating potential overpayments that can occur due to changes in dependency status. At this level compensation would remain quite adequate. A similar rate reduction is also proposed in death claims.

A second significant disincentive to return to work is created by the disparity that exists between the level of retirement benefits, provided by the OPM, received by most Federal employees and the level of long-term FECA benefits for retirement age FECA recipients. Under current law, the thousands of long-term FECA beneficiaries who are over normal retirement age have a choice between Federal retirement system benefits and FECA benefits, but they overwhelmingly elect the latter because FECA benefits are typically far more generous. OPM informs us that the average Federal employee retiring optionally on an immediate annuity under the Civil Service Retirement System will receive about 60% of their "high-three" average salary, most of which is taxable, compared to a tax free 75% or 66.66% FECA benefit. The newer Federal Employees' Retirement System is designed to provide a comparable level of retirement replacement income from the three parts of its structure. Because returning to work could mean giving up a FECA benefit in favor of a lower OPM pension amount at eventual retirement, injured workers may have an incentive to consciously or unconsciously resist rehabilitation and instead, in certain cases, may cling to the self-perception of being "permanently disabled." In any event, the considerable difference between FECA benefits and OPM retirement benefits results in certain FECA claimants receiving far more compensation in their post retirement years than if they had completed their Federal careers and received normal retirement benefits like their colleagues. This disparity also suggests that a statutory remedy is needed.

This proposal provides claimants with a "Conversion Entitlement Benefit" upon reaching regular Social Security retirement age (and after receiving full benefits for at least one year) that would reduce their wage-loss benefits to 50% of their gross salary at date of injury (with cost of living adjustments), but would still be tax free. This benefit more closely parallels a regular retirement benefit, as opposed to a full wage-loss benefit, so that FECA recipients are not overly advantaged in their retirement years compared to their non-injured counterparts on OPM retirement. An injured worker receiving this retirement level conversion benefit would no longer be subject to several of the sanction provisions outlined in the FECA, such as forfeiture for failure to report earnings or the requirement to seek/accept suitable employment or participate in vocational rehabilitation. Even at this reduced rate, however, an injured worker would still be required to substantiate continuing injury-related disability or face suspension of compensation benefits.

Updating Benefit Structures

We also propose a number of changes to the current FECA benefit structure. One relates to the schedule award provision, which is designed to address the impact of impairment on an individual's life function, such as the loss of vision, hearing, or a limb. Impairment is permanent, assessed when an individual reaches maximum medical improvement, and is based upon medical evidence that demonstrates a percentage of loss of the affected member. Each member, extremity or function is as-

signed a specific number of weeks of compensation and the employee's salary is used to compute his or her entitlement to a schedule award. This payment structure results in considerable disparities in compensation: for example, a manager is paid far more than a letter carrier for loss of a leg even though the impact on the letter carrier may in reality be far more severe. In that instance, a GS-15 would receive twice what a GS-7 receives for the same loss of ability to get around, engage in recreational activities, etc., for this permanent impairment. Paying all schedule awards at the rate of 70% of $53,630 (the equivalent of the annual base salary of a GS 11 step 3) adjusted annually for inflation would certainly be more equitable.

Similarly, allowing injured workers to receive FECA schedule award benefits in a lump sum concurrently with FECA wage loss benefits for total or partial disability would provide a more equitable benefits structure for claimants. The current process is complicated and convoluted, often leaving injured workers frustrated and confused. It also can generate substantial unnecessary administrative burdens, as schedule award payments cannot be paid concurrently with FECA wage-loss benefits. To avoid the concurrent receipt prohibition some eligible claimants may elect OPM disability or retirement benefits, which they are allowed to receive for the duration of a schedule award. When the schedule award expires, they may elect to return to the more advantageous FECA wage-loss benefits. While they are collecting OPM benefits, OWCP and employing agency efforts to assist the employee in returning to work are stymied. In addition to switching to OPM benefits during the period of a schedule award, claimants can also switch back and forth between benefit programs over the life of a claim. As a result of these overly complex provisions and benefit streams, claimants sometimes do not return to work as early or as often as they could. By allowing concurrent receipt of these benefits, the claimant is timely compensated for the loss to the scheduled member and switching back and forth between OPM and OWCP benefits for this reason is eliminated. This allows a return-to-work or vocational rehabilitation effort to continue uninterrupted, thereby improving the chances of a successful return to employment.

Finally, this proposal increases benefit levels for funeral expenses and facial disfigurement, both of which have not been significantly updated since 1949, to bring FECA in line with increases in other workers' compensation statutes.

Modernizing and Improving FECA

Because FECA has not been amended in over 35 years, updates are needed to modernize and improve several provisions of the statute. One such change was made several years ago but only applied to workers employed by the U. S. Postal Service (USPS). In order to discourage the filing of claims for minor injuries that resolve very quickly, state workers' compensation programs generally impose a waiting period before an injured worker is entitled to wage-loss compensation. Because of the way in which the 1974 amendments to FECA adding the "Continuation of Pay" provisions were drafted, the waiting period under FECA for traumatic injuries was effectively moved after the worker has received 45 days of "Continuation of Pay," thus defeating the purpose of a waiting period. The Postal Enhancement and Accountability Act of 2006 amended the waiting period for Postal employees by placing the three-day waiting period immediately after an employment injury; we suggest placing the three-day waiting period immediately after an employment injury for all covered employees.

Another longstanding concern addressed by the proposal relates to the application of FECA subrogation provisions to claims. Workers' compensation systems generally provide that when a work-related injury is caused by a negligent third party the worker who seeks damages from that third party must make an appropriate refund to the workers' compensation system. As a result of the way in which the 1974 "Continuation of Pay" provision was drafted, OWCP cannot include amounts paid for Continuation of Pay in calculating the total refund to OWCP when a recovery is received by a FECA beneficiary from a third party.

OWCP also seeks the authority to match Social Security wage data with FECA files. While the SSA collects employment and wage information for workers, OWCP presently does not have authority to match that data to identify individuals who may be working while drawing FECA benefits. OWCP currently is required to ask each individual recipient to sign a voluntary release to obtain such wage information. Direct authority would allow automated screening to ensure that claimants are not receiving salary, pay, or remuneration prohibited by the statute or receiving an inappropriately high level of benefits.

This proposal would also increase the incentive for employing agencies to reduce their injury and lost time rates. Currently the USPS and other agencies not funded by appropriations must pay their "Fair Share" of OWCP administrative expenses, but agencies funded by appropriations are not required to do so. Amending FECA

to allow for administrative expenses to be paid out of the Employees' Compensation Fund and included in the agency chargeback bill, would increase Federal agencies' incentive to reduce injuries and more actively manage return to work when injuries do occur.

To improve access to medical care, we suggest a provision that would increase the authority and use of Physicians' Assistants or Nurse Practitioners. We suggest amending FECA to allow Physicians' Assistants and Nurse Practitioners to certify disability during the Continuation of Pay period so that case adjudication is not delayed and treatment can be provided more rapidly. The provision allowing Physicians' Assistants and Nurse Practitioners to certify disability during the Continuation of Pay period would also reduce the burden of disability certifications in war zone areas because access to a physician may be even more limited in these circumstances.

To further address injuries sustained in a designated zone of armed conflict, FECA should be amended to provide Continuation of Pay for wage loss up to 135 days for such injuries. This increase from the standard 45 days would allow additional flexibility for claims handling in these challenging areas and is an outgrowth of a cooperative effort with OPM, the Department of State and the Department of Defense to address the needs of deployed civilian employees.

Conclusion

This proposal provides a fair and reasonable resolution to the disincentives and inadequacies that have arisen within the current FECA statute. Since any FECA reform should be prospective only, it would apply to new injuries and new claims of disability after enactment. Injured workers currently in receipt of disability benefits would see no changes in their benefit level. This will allow all federal employees and federal agencies to embrace and adopt a more pro-active and progressive attitude about return to work and disability employment, and avoid any unfair interruption of benefits. Even with this prospective approach, the ten-year cost savings are estimated to be around $400 million, or potentially even higher.

We believe that our proposals, if adopted, would allow all Federal employees and Federal agencies to embrace and adopt a more pro-active and progressive attitude about return to work and disability employment, and avoid any unfair interruption of existing benefit streams.

The FECA program is at a critical juncture. We have done our best to keep the program current and responsive to the changing world we live in through administrative, technological and procedural innovations and investments. Without these statutory reforms, OWCP's best efforts may yield some further gains. However, we cannot overcome the fundamental disincentives in the current law and achieve the breakthrough improvements that we know are possible within the FECA program which will allow FECA to maintain its status as a model of workers' compensation programs.

The federal workforce comprises dedicated, hard working women and men that are committed to serving the public. OWCP is fully committed to ensuring that all injured workers receive the medical care and compensation they deserve, as well as the assistance needed to return to work when able to do so. FECA reform will enable OWCP to achieve those goals more effectively.

Mr. Chairman, I would be pleased to answer any questions that you or the other members of the Committee may have.

Chairman WALBERG. Thank you, Mr. Steinberg.

Now I recognize Ms. Carney for your testimony.

STATEMENT OF SUSAN CARNEY, HUMAN RELATIONS DIRECTOR, AMERICAN POSTAL WORKERS UNION

Ms. CARNEY. Mr. Chairman, Madam Woolsey, and members of the subcommittee, we appreciate the opportunity to share our views regarding the Federal Employees' Compensation Act and its reform.

If we are to achieve the true objective of FECA, we must acknowledge there are various facets of the Act that need improvement. The reform proposals being suggested address a small portion of them. Sadly, however, there are many aspects of this reform that will negatively affect public servants and their families.

Injured workers do not lack motivation to return to work, nor do they reap greater benefits. To the contrary, their losses are monumental. They suffer losses to leave, to TSP, to their Family Medical Leave balances. They miss out on pay increases. They are separated for disability, lose credible service time, and in some cases, health benefits and life insurance.

Vocational rehabilitation efforts cause a loss or reduction to compensation even when workers are unable to obtain other employment. This enables employers to escape a large portion of their chargeback and motivates them to refuse or withdraw suitable work. This has happened in cataclysmic proportions within the Postal Service.

Thousands of injured workers ready, willing and able to work who are injured on the job, many of whom are veterans, have been refused work or have had their work withdrawn. FECA's supposed to be non-adversarial, yet many workers and their physicians would disagree.

These proposals, in many ways, will compound the adversity forcing employees with temporary medical restrictions into voc-rehab programs and creates additional disincentives for employers to return employees to work, and would interfere with employees' prescribed recovery processes, or force employees to exceed, or feel the need to exceed, their physical capacities.

With only 2 percent of new claimants remaining on the compensation rolls beyond 2 years, which often is a normal recovery period for a given injury, there is little need to add additional expensive rehabilitation costs to the program.

We are gravely concerned that re-employment efforts would result in a reduction of compensation benefits because there is no mechanism to reinstate compensation when subsidized employment ends, and a reduction or a loss in compensation would occur even when the worker is unsuccessful in procuring one of these positions.

Since federal jobs can't be used as a basis to determine wage earning capacities, the Division of Federal Employees' Compensation has advised it will look to comparable private sector positions for this purpose. As has happened in the Postal Service, employers would be motivated to refuse their employees rather than to restore them.

To support their continuing work-related disabilities, compensationers are required to provide medical documentation on a fairly regular basis in order to remain on the OWCP rolls. Regardless of their age, they are subjected to OWCP-directed medical examinations, and if their medical documentation illustrates they are able to work, they too are subject to voc-rehab programs, which means an employee is not staying on workers' comp because they have self-certified themselves to be there.

It is a flawed comparison to measure annuitants who are able to achieve a 30-year career and obtain a true high three against compensationers whose wage loss is not augmented with employer pay increases. Fifty-six percent of a high versus 50 percent of a low—employees who are the greater majority are barred from building their retirement savings. Compensationers cannot contribute to social security and cannot receive credit for substantial

earnings. Unlike their coworker annuitants, compensationers can't supplement their income if they are totally disabled.

Under these circumstances, any reduction would be an unfair reduction and discriminatory. Of all of the proposed changes, this is one of our top priorities. Changing wage loss compensation to 70 percent in our opinion lacks equity. Wage earners with dependents net more than single earners. Wage earners are able to recoup tax withholdings by filing annual tax returns. Compensationers cannot.

APWU is opposed to any change that would burden families or penalize workers because they are married or have children. Shrouding harmful changes as modernization, return to work and administration simplification is simply and, frankly, disingenuous.

We have enumerated our additional concerns in our written testimony and have provided for your review viable reasonable alternatives which are conducive to the President's executive order, improving workplace safety, restoring injured workers to their place of employment, and significantly reducing costs.

Although we are disappointed with the Offices recent actions, most specifically its apparent desire to appease agencies while stripping workers of benefits as demonstrated through these proposals and its recent proposed rule changes, APWU still believes the Department of Labor remains the best means available to handle the claims process for all federal and postal workers; although, there is vast room for improvement.

We would implore the committee to carefully consider our recommendations and exhaust all options and avenues to avoid bringing harm to injured workers and their families. We further recommend taking legislative measures to prevent the Office from making rule changes without legislative review.

In closing, as we examine our options, we should be mindful not to regress, but progress. Before we consider passing legislative changes, we must ensure they are meaningful changes and examine how the consequences of our actions will impact workers and their families.

Thank you, and I am available for questions to the committee.

[The statement of Ms. Carney follows:]

Prepared Statement of Sue Carney, National Human Relations Director, American Postal Workers Union (AFL–CIO)

Mr. Chairman and Members of the Subcommittee, my name is Sue Carney, and I am the National Human Relations Director for the American Postal Workers Union, AFL-CIO. The American Postal Workers Union is the world's largest postal union, representing more than 220,000 postal employees in the clerk, maintenance, and motor vehicle divisions and in support services; 50, 000 of which are veterans. We are employed in approximately 32,000 sites throughout the country, providing a public service in every city, town and community in our nation.

Workplace injuries, illnesses and deaths negatively impact a significant number of postal employees so we appreciate the opportunity to share our views regarding the Federal Employees Compensation Act (FECA) and the Department of Labor's proposed Federal Injured Employees Re-employment Act (FIERA). We believe various aspects of FECA and FIERA, if adopted as written, are disparaging and will negatively affect public servants and their families.

Furthermore, we would like to add that during a DOL briefing, the unions were adamantly advised that our concerns and objections would not be considered. Seemingly DOL used the occasion to gauge our response, rather than consider the validity of our concerns, consequently amending some of their "marketing strategies" to make the proposal appear more equitable. Additionally, they claim their reform proposals will "produce potential cost savings of approximately $400 million over a 10-

year period for the American taxpayer." To our understanding the Office has not shared how it derived this figure, nor produced documentation to support it. It's noteworthy to point out that not all of the costs related to workplace injuries are borne by taxpayers. Also significant, wage loss compensation and death benefit costs have remained stable since 2001; however war risk hazard payments and escalating costs for medical and rehabilitation services and supplies brought a combined $367.3 million increase to the program.[1] It's our understanding that this figure includes all OWCP directed medical exams.

The FECA represents a longstanding covenant that our government made with federal workers. Each side gave up something to make it equitable and fair to both parties. Its primary purpose is to shield injured federal employees and their families from loss while limiting the employers' liabilities. "The employer relinquished the defenses enjoyed under the common law, but this loss was offset by a known level of liability for work-place injuries and deaths. The employee gave up the opportunity for large settlements provided under the common law, but receives the advantage of prompt payment of compensation and medical bills. These tradeoffs make the federal workers' compensation system fair and equitable to both parties. However, where either party does not receive the benefits of this covenant, the system becomes unacceptable. When FECA was amended in 1974, Congress stated it is essential that injured or disabled employees of all covered departments and agencies, including those of the United States Postal Service, be treated in a fair and equitable manner. The Federal Government should strive to attain the position of being a model employer".[2]

As we begin, it is important to point out that postal and federal workers are injured on the job because of the circumstances they encounter in performing a public service. These employees are victims of traumatic injuries such as slips and falls, muscle tears and herniated disc injuries. They are victims of poor ergonomic working conditions, like those that cause repetitive stress disease, making it difficult to perform simple tasks that involve grasping, holding and reaching. They suffer motor vehicle accidents, sustain injuries caused by faulty equipment and are innocent victims of unforeseeable, heinous crimes. Workplace injuries and diseases change lives; in many cases forever. No one ever goes to work wanting it to be the day they are injured or the day they will not return home to their family.

Injured workers do not reap greater benefits, nor do they lack motivation to return to work when capable, as some have wrongfully implied. In addition to the physical, mental and emotional pain that workplace injuries bring, it is important to understand the losses compensationers presently suffer before we consider asking more of these workers. They do not earn annual or sick leave. They are not able to contribute to the Thrift Savings Plan nor can they receive matching funds; this, in and of itself, causes a substantial loss for injured federal workers.[3] Their compensation rate remains locked at their date of injury (or first disability) pay rate. These employees do not receive the "employer pay increases" they would otherwise be entitled to had it not been for their injury; only a COLA based on the Consumer Price Index (CPI), which has averaged just 2.1% annually over the last decade. Their lost workdays erode their Family Medical Leave balance, and they are often separated because of their disabilities. If separated prior to achieving the retention of health benefits and life insurance, these benefits are lost. When placed in the OWCP's vocational rehabilitation program they can expect to have their wage loss compensation reduced whether they are successful in obtaining employment or not.[4]

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[1] War risk hazard payment $86.2 million(WHCA); increase cost for medical services $281.1 million

[2] Excerpt from Joseph Perez's statement when appearing before The House Government Reform and Oversight Committee Government Management, Information and Technology Subcommittee on July 6, 1998. Perez is a former OWCP DFEC Claims Examiner and currently practices law.

[3] The TSP Calculator illustrates that an employee who is earning $40,000 annually, contributing 10% and receiving the employer's maximum 5% contribution over the span of a 30 year career, and who is earning an average of 5% interest is estimated to realize more than$416,000 towards his/her retirement savings

[4] Division of Federal Employees Compensation Procedure Manual Part 2 Chapter 0814 Sections 7 and 8. These actions are known as loss wage earning capacity (LWEC) determinations. In basic terms, a LWEC is a comparison between wages of actual or potential earnings against wages at the time of injury. The difference is what the claimant is entitled to receive in wage loss compensation. For example, a worker was making $20 hr when injured. They normally would receive $15 in WLC if they have dependents, but if the Office finds a potential job that pays $18 hourly, the employee is then only entitled to receive 75% of the difference, which in this scenario would be $1.50 hourly, even when the employee was an unsuccessful applicant.

Continued

In our opinion, these Division of Federal Employees Compensation (DFEC) procedures motivate and enable employers to refuse or withdrawal medically suitable work in order to escape a large portion of their chargeback liabilities; leaving injured workers with a significantly reduced or eliminated source of income.

FECA is supposed to be a non-adversarial, yet many workers and their physicians would disagree. In addition to the losses that were previously presented, let me share just a few examples of the adversarial scrutiny they are often subjected to. Physicians are frustrated. OWCP requires an extraordinary amount of paperwork from them and pays poorly for medical services; just 5% over the Medicare fee schedule. It is not enough for treating physicians to give their expert-medical opinion, confirming that a condition is work-related based on their examinations, testing and findings; their medical narratives are often rejected by claims examiners who have no medical background stating the doctor's opinion is not good enough because the doctor failed to share his or her reasoning. Prescribed medical treatment is often delayed or denied. In recent testimony presented by OWCP, the Acting Director stated "overcoming actual physical limitations exact a high price", which "means a more costly program". Taken in context, he seemed to imply that the Program will forgo the expense of medical treatment if it won't clearly result in a return-to-work.

Additionally, claimants are subjected to second opinions, and independent medical examinations, rather than trusting the opinion of the claimant's treating physician who understands the extent of the disability and is responsible for prescribing medical treatment. All of this needlessly adds to the cost of the program. These factors have made it difficult for claimants to find and keep doctors. When claimants do find doctors that are willing to treat them, claimants have been barred from using them if they are located further than 25 miles away. To the contrary, the Office regularly finds it acceptable to send claimants more than 100 miles away for their directed exams. DFEC also refuses to adjudicate questionable job offers for suitability; rather a claimant is required to refuse a job offer and risk going without income while the program takes months to make a suitability determination. These factors, coupled with the Office's recent and sweeping Proposed Rulemaking changes[5] and portions of the FIERA, all bring additional favor to employing agencies; cause unnecessary harm, in some cases irreparable harm, to injured workers and their families and do little to promote the non-adversarial program FECA is intended to be. They should not be permitted to stand.

Examining FIERA Proposals

Vocational Rehabilitation

We agree measures should be taken to help all injured workers return to suitable employment when their treating physician states that they are physically capable; however, granting authority to place employees with temporary medical restrictions into OWCP's vocational rehabilitation program is an objectionable approach. It would serve as further disincentive to employers who believe workers with disabilities are crippling their production. Currently, only employees with permanent medical restrictions can be voc-rehabbed. It's been our experience that employers regularly refuse work to these employees because they can escape chargeback through OWCP's vocational rehabilitation program due to loss wage earning capacity determinations. Comparatively, employers are more compelled to return employees with temporary restrictions to employment because they cannot be voc-rehabbed. In addition, premature vocational rehabilitation could interfere with the employees' prescribed recovery process or force employees to exceed their physical capacities. Recently, a Jacksonville OWCP District Office rehab counselor required a worker, who was only capable of working four hours a day, to interview for fifty jobs by the end of the week.

Additionally, the Office has not disclosed the specifics of its new Return-To-Work Plan for employees who are physically unable to be voc-rehabbed, nor has it shared if the employee's treating physician will be partnered into the process. According to figures provided by OWCP, only a mere 2% of all new injury claims remain on the long-term compensation rolls for more than two years. This demonstrates there is little need to compound the Program with additional rehabilitation costs.

To accomplish the goal of returning injured workers more readily to employment, we recommend that OWCP be more prompt in authorizing all recommended medical treatment, including physical therapy and surgeries which are often denied or delayed for extended periods of time.

And if the employee procured the job but subsequently the job was withdrawn, the employee would still only be entitled to $1.50 per hour in WLC.

[5] RIN 1240-AA03

Assisted Reemployment Program

The APWU can appreciate the Office's efforts to subsidize federal employment opportunities where suitable work does not actually exist within the worker's own employing agency; however, we are gravely concerned that such efforts would result in a reduction of compensation benefits. Again, the problem lies within the Office's LWEC procedures. DFEC procedure permits a reduction to wage loss compensation based on actual earnings. This alone is not objectionable, but, when the subsidized employment ends and residual disabilities remain there is no mechanism to reinstate the compensation that was eliminated. Another DFEC procedure permits LWECs based on constructed positions. Essentially, this permits a reduction in compensation even when the worker is unsuccessful in procuring a position. How is this fair and equitable?

We recognize that federal work cannot be used as a basis for making LWEC determinations, but the reality is, DFEC has advised it will look to comparable private sector positions to LWEC these employees. The Office has offered its Private-Sector Assisted Reemployment Program as an indicator of potential success for its Federal Assisted Reemployment Program. Interestingly, the Office has not disclosed how many private-sector program candidates they successfully placed in the program, nor has it advised how many LWEC's were issued as a result of the program, but we do know, based on figures provided by OWCP, that 45% of the employees who secured private—sector subsidized employment were not hired at or beyond the 3 year agreement period; consequently leaving many injured workers and their families at a deficit.

We recommend employers be required to provide compelling evidence when they assert that do not have medically suitable work for partially recovered employees and prove that they have taken all mandated measures to make reasonable accommodations for their disabled workers, before these workers are sent looking for work with other employers. In our opinion, the "Federal" Assisted Reemployment Program would only be favorable if changes were made to reinstate lost compensation when employment stops and if constructed LWECs were eliminated. These actions would aid in facilitating employer cooperation, they are conducive to the President's Executive Order 13548, and would compel employers to retain their injured employees. On the surface, this proposal with all of its employer incentives could appear to inspire employers to hire injured workers; however, when you examine the existing procedures it would trigger, failure to incorporate our recommended changes creates the potential to bring irreparable harm to workers.

Conversion to Reduced Benefits for Total and Partial Disability at Retirement Age

To put matters into proper perspective, we should point out that regulations and procedures are so stringent it is virtually impossible to "milk" the system as is often implied. This is evidenced in OIG's recent Semiannual Report to Congress where only twenty-three convictions for medical provider and claimant fraud were reported.[6] Compensationers are required to provide medical documentation on a fairly regular basis to support their disabilities in order to remain on the OWCP rolls. Compensationers aren't permitted to self-certify so it is meaningless for anyone to assert that injured workers may have an incentive "to cling to the self-perception of being permanently disabled." Even if they had that perception, it wouldn't be enough to keep them on the rolls. Furthermore, compensationers are regularly subjected to OWCP directed second opinion and independent medical examinations. Additionally, there is the existing and unforgiving OWCP Vocational Rehabilitation Program, so we must presume that many of the long-term compensationers are permanently and totally disabled; otherwise regardless of age, they would have been placed in OWCP's Vocational Rehabilitation Program to seek alternate employment.

It is wrong to infer that OWCP is a lucrative retirement program marked by disincentives that preclude employees from returning-to-work, as some have stated. It is also misleading and inequitable to compare annuitants who are able to achieve a 30 year career and obtain a true high three to compensationers who stop earning creditable service when they are separated for disability.[7] Compensationers do not receive the same salary increases their uninjured coworkers do. As we previously mentioned, their compensation is locked at their date of injury pay rate. It is disingenuous to cite CSRS as comparable. The federal retirement system converted to FERS in 1983. Since that was 28 years ago, and since FIERA is supposed to be prospective, the greatest majority of workers will fall under FERS. In either case,

[6] April 1—September 30, 2010

[7] Employers are permitted and generally do separate employees who are collecting wage loss compensation for one continuous year.

compensationers are not able to TSP, and are ineligible to receive matching contributions. Compensationers cannot contribute to Social Security and cannot receive credit for substantial earnings. Unlike their uninjured coworkers who can work after retirement to supplement their income, totally disabled compensationers are incapable of performing any work. The loss injured workers sustain by comparison is monumental. To reduce their compensation to 50% at a pre-selected and arbitrary age on the basis that CSRS annuitants receive a slightly higher but taxable percentage than that which is being proposed, is unfounded. To assume any age a "normal" retirement age would be unjust, age discriminatory and presumptive. To the contrary, the Bureau of Labor Statistics reports more senior employees are opting to work well into their golden years to stay active and because they cannot afford to retire.[8] Do we really want to penalize seniors with work-related medical restrictions because of their age?

We would be remiss in assuming that our senior compensationers would have retired had they not been injured. We have to presume, based on existing OWCP procedures, that these employees are incapable of working otherwise OWCP would be derelict in performing its duties. For those who have temporary medical restrictions, it's important that we recognize they may be capable of working in the future once OWCP approves all prescribed treatment and the employee is given appropriate recovery time consistent with the nature of their injury. It would be punitive to reduce their wage loss compensation based on age and the time spent on the rolls. Recovery for extensive injuries can often take longer than a year.

Several measures can be taken to make FECA more fair and equitable. Laws could be changed to allow TSP withholdings and matching contributions; or a retirement fund, comparable to TSP could be created for compensationers that would permit employee withholdings and mandate employer contributions. Compensationers could be afforded the option to elect retirement based on an estimation of what their high-three would have been had they been able to continue their federal career. As it currently stands, employing agencies are the only benefactor.

Augmentation

Currently workers with dependents receive 75% of their pay, while workers without dependents receive 66⅔%. DOL originally offered its proposal to convert all compensationers to 70% on the premise that workers with dependents do not earn more than those without. They also state the change would ease entitlement calculations for its claims examiners. Although it is true that workers with dependents do not earn more, tax deductions for these workers are less. This creates a larger net check to better support their families; workers without dependents net less. As to DOL's newer argument that FECA benefits frequently exceed the employee's pre-injury tax-home pay; there is no equity in being locked in at a rate that does not allow your usual pay increases. Additionally, uninjured coworkers are able to recoup tax withholdings by filing annual tax returns to add to their income; compensationers cannot. It is a ridiculous notion that claims examiners are being challenged by wage loss calculations with the technology that is available. The installation of a computer program or the use of a calculator would resolve the nuisance without going to the extreme of reducing benefits of worker families. APWU is opposed to any change that would burden families, or penalize workers because they are married and /or have children.

Scheduled Awards

Our primary objection to this proposal is based upon the change in pay rate percentages. It is our opinion that claimants should continue to receive their benefits based on their dependent status (75% dependents, 66⅔% no dependents) for reasons we offered under augmentation. Moreover, we object to the GS 11 Step 3 rate ($53, 639.00) being used to calculate the value of scheduled awards. Historically, the employee's actual pay rate, at time of injury or first disability, whichever is greater, has been used to calculate scheduled awards. Today, this change would result in an increase for some claimants but a decrease for others. In the future however, it is likely that the GS-11 Step 3 rate would be even less reflective of the actual pay rates for some workers. Coupled with the DOL's recent adoption of the AMA Guide

[8] The Bureau of Labor Statistics indicates that as of 2007, 56.3% of workers age 65 and older have opted for fulltime employment over part-time employment. That employment of workers ages 65 and over has increased 101 % between 1977 and 2007: men rose by 75%; women climbed by 147%; while workers 75 and over had the most dramatic gain, increasing by 172%. There is also an apparent failure to acknowledge that projected growth in the labor force for workers between the ages of 65 and 74 is predicted to soar by 83.4 percent between 2006 and 2016. The number of workers age 55-64 is expected to climb by 36.5 percent. By 2016, workers age 65 and over are expected nearly double its participation in the total labor force from that of 2006.

Sixth Edition, which significantly reduces impairment ratings and in turn considerably reduces the value of scheduled awards, the utilization of the GS 11 Step 3 rate would be a double-blow to compensationers who suffer a permanent loss of use.

In order to be equitable and fair the APWU recommends that scheduled awards remain based on the employee's pay rate. We strongly urge the DOL to convert back to using the AMA Guide Fifth Edition, in order to facilitate a more accurate means to rate impairments. There are no regulations that require DOL to use the latest edition of the AMA. In fact, AMA Guides Task Force Member, Matthew Dake, reports the AMA Sixth Edition is a flawed process that produces flawed results.

Death Benefits

Our objection to this proposal is based upon the change in pay rate percentages. It is our opinion that survivors should continue to receive their benefits based on the historic compensatory rate of 75%. A reduction does little more than swipe income from the spouses and children of federal workers who died providing a public service to our country.

Definition of New Claim for Disability

APWU has strong objections to this proposal. This is a veiled attempt to corral all compensationers, even those with existing approved claims into the FIERA. Passage would gather individuals submitting short-lived disability claims caused by a need to recover from physical therapy, spinal injection, surgery or other intermittent medical treatment. It would net claimants that experience a spontaneous worsening of an already accepted medical condition, and would also capture claimants who have medically suitable job offers withdrawn by employers, as is happening within the Postal Service in cataclysmic proportion. This is perhaps the slyest of all the DOL proposals. The DOL leaves many with the impression that FIERA is prospective as it will only affect individuals with "new" claims, but in reality DOL is attempting to change the understood definition of what is "new". Passage of this proposal would afford employing agencies even greater favor by burdening a significantly greater number of injured workers and their families. All Compensation Act submissions require adjudication but traditionally only two are considered new claims. The definition of a new claim should remain limited to traumatic injuries and occupational disease.

Burial Expenses

This update is long overdue; however APWU would suggest the benefit be more reflective of actual final expenses. According to the National Funeral Directors Association, the average cost in 2009 was $7,755.00.

Computation of Pay

Workplace injuries are not supposed to cause loss to workers. Therefore, compensation is purposeful in including all of the pay factors that an employee would have been entitled to had they not been injured. Traditionally, compensation is based on an employee's salary, including night differential, Sunday premium pay and holiday pay, and for some workers includes overtime. Quite simply, APWU objects to compensation being paid at any rate other than the employee's actual pay rate at time of injury or first disability, inclusive of all usual entitlements to Sunday premium, night differential, holiday pay and where appropriate overtime pay. It should not be based or capped on an arbitrarily selected GS rating, which would create a pay increase for some employees and a decrease for others. It is neither fair nor equitable to generate savings for employers off the backs of injured workers. Furthermore, we will restate that it is a ridiculous notion that claims examiners are being challenged by wage loss calculations with the technology that is available.

Waiting Period

Continuation of Pay, its very spirit is stated in its name. It is in place to ensure employees and their families have an income while OWCP adjudicates their claim. Despite OWCP's testimony, it often takes 60—120 days for claims to be approved and for wage loss compensation to begin. The APWU is opposed to federal employees being subjected to a three-day waiting period. All workplace injuries are real; even minor ones. This fact does not make them frivolous. Employees are subjected to the same scrutiny and requirements for minor injuries. They still need to meet the same five requirements to achieve claim approval, one of which includes a medical narrative with medical reasoning. A three day waiting period has been unjustly imposed upon Postal Workers in order to save money for the employer. The same should not be imposed upon federal workers. APWU would request the three day waiting period be removed from COP for postal workers. This action would satisfy the stated goal of uniformity and enable COP to fulfill its intended purpose.

Sanction for Non-Cooperation with Nurses

To impose sanctions for non-cooperation with nurses means to eliminate eligibility for wage loss compensation and scheduled awards. The nurse intervention program is already fraught with overzealous nurses who attempt to impede or redirect the prescribed medical treatment of the claimant's treating physician, and who impose themselves in private examinations and doctor patient discussions. APWU is opposed to giving these nurses the authority to have sanctions initiated without first giving claimants access to due process.

Compensation for Foreign Nationals

Upgrades to this provision are long overdue. However, since these foreign nationals are performing a public service for our country, APWU believes they should be compensated using the same percentage ratings that apply to our claimants (75% dependents, 66⅔% no dependents).

Conclusion

Although we are very disappointed with portions of FECA, many of the FIERA proposals, and some of the Office's action, we still believe the Department of Labor is the best means available to handle the claims process for all federal and postal workers. APWU feels strongly that the Federal Workers Compensation Program (OWCP DFEC) should continue to strive to be a model program, not work to be comparable to insufficient state programs. To help OWCP meet its burden, it is our opinion that more claims examiners are needed. To eliminate some of the erratic decisions claimants are receiving all claims examiners should be required to receive, on a regular basis, more comprehensive training regarding regulations, procedures and precedent setting Employees Compensation Appeals Board decisions.

We also believe efforts should be made to recreate the non-adversarial atmosphere that the Program is intended to be. To help accomplish this we recommend more substantive outreach to employee representatives and more meaningful technical assistance to treating physicians and claimants who are often confused by the processes. Efforts should be made to make the Program more palatable for doctors.

Many forgo treating claimants because of the extraordinary reporting requirements and low reimbursement rate for services. It is our opinion that OWCP should be granted moderate enforcement authority to compel employers, who have been skirting return-to-work obligations and other responsibilities to comply. We would also implore the Committee to work to create more meaningful safety and health mandates to protect workers, and provide better mechanisms to enforce them. These initiatives alone could reduce the overall cost of workplace injuries and disease.

Bending policy and recreating procedures to favor agencies do little to maintain a fair and equitable atmosphere. Shrouding them as "modernization, return-to-work and administration simplification" is disingenuous. As we examine the history presented by the Congressional Research Service, we would request that we be mindful not to regress but rather progress. Before we consider passing legislative changes, we must ensure they are meaningful changes and examine how the consequences of our actions will impact workers and their families.

We thank you for your time and consideration regarding this paramount issue. I am available to answer any questions you may have to further clarify your understanding of the compensation processes and of our concerns.

Chairman WALBERG. Thank you, Ms. Carney.

I recognize Mr. Lewis for your testimony. Thank you.

STATEMENT OF ELLIOT P. LEWIS, ASSISTANT INSPECTOR GENERAL FOR AUDIT, U.S. DEPARTMENT OF LABOR'S OFFICE OF THE INSPECTOR GENERAL

Mr. LEWIS. Good morning, Mr. Chairman, and members of the subcommittee. Thank you for inviting me to testify on the work of the Department of Labor Office of Inspector General regarding the FECA program.

Over the years, the OIG has conducted numerous audits and investigations related to the FECA program. Our audits have identified opportunities for program administration improvements related to eligibility, determination of re-employment status and customer service.

Moreover, our investigations have focused on FECA claimants who work while continuing to receive benefits and all medical or other service providers who bill the program for services not rendered.

As a result of our work and observations, for more than a decade, the OIG has been recommending changes to strengthen the FECA program with respect to the 3-day waiting period, benefit payments beyond the federal or social security retirement age, and access to federal data basis to aid in fraud detection.

The OIG has recommended that the benefit structure be examined to determine whether a change in benefit rate should occur at some point at or near the normal federal or social security retirement age. FECA program benefits currently do not change once a beneficiary reaches the federal or social security retirement age.

While the overwhelming majority of beneficiaries return to work within the first couple of years of their injury, a small percentage remain on FECA for life. According to OWCP, tax-free FECA benefits, which are set at 66 and two-thirds percent or 75 percent, are typically more generous in federal retirement.

We are aware the administration is considering a proposal to reduce tax-free FECA wage loss benefits to 50 percent at the normal social security retirement age. As the department begins to consider changes, careful consideration is needed to ensure that the percent of benefits that may ultimately be established will have the desired effect, while ensuring fairness to injured workers, especially those who will never be able to return to work.

We have also recommended that the department be granted statutory access to social security wage information in a national directory of new hires. Information from these wage and employment data bases would enable the department to identify FECA beneficiaries who are working while receiving wage loss benefits.

In addition to our recommendations, Mr. Chairman, there are a couple of related issues under review by the administration that are of interest given OIG's prior work. The department is considering a proposal to set a 70 percent level of benefits for all claimants regardless of whether they have dependents.

The department indicates that this change will reduce over payments and documentation requirements. While we defer to OWCP as to the benefits structure level and what it should be, it is important to note that our prior audit work found that obtaining documentation on dependents has been a challenge for OWCP.

For example, in 13 percent of FECA claims we reviewed during a 2007 audit, we found that compensation payments were continued even though claimants had provided—had not provided required evidence of dependent's continued eligibility. We also found that compensation payments had not been reduced for claimants who had provided evidence indicating a reduction was warranted.

Therefore, as reforms are considered, it is important to examine the challenges posed by dependent eligibility documentation requirements given that FECA's a wage loss compensation program. The department is also planning improvements in its return-to-work process, another area which we have previously identified weaknesses.

In 2009, we looked at FECA's claimants on the period roll whose re-employment or wage-earning capacity had not yet been determined. In other words, these claimants were receiving regular monthly wage loss compensation but OWCP had not determined whether these claimants could return to work in some capacity.

At the time of our audit, their re-employment status had not been determined for more than 20,000 claimants, and almost 3,000 had been in the temporary status for 15 years or longer.

Thank you for the opportunity to testify on our work. I would be pleased to answer any questions that you or members of the subcommittee may have.

[The statement of Mr. Lewis follows:]

Prepared Statement of Elliot P. Lewis, Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Labor

Good morning, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me to testify on the work of the Office of Inspector General (OIG), U.S. Department of Labor (DOL), in the Federal Employees' Compensation Act (FECA) program. My name is Elliot Lewis, and I am the Assistant Inspector General for Audit in the OIG. Today I will discuss the OIG's recommendations for improvement in this important program. As you know, the OIG is an independent agency within the Department of Labor, and the views expressed in my testimony are based upon the independent observations and recommendations of the OIG, and are not intended to reflect the Department's position.

DOL administers several programs and statutes designed to provide and protect the benefits of workers. FECA is a comprehensive workers' compensation law covering some three million Federal and Postal workers around the world with work-related injuries or occupational diseases. FECA benefits include payment of medical expenses and compensation for lost wages. In the case of work-related deaths, survivor benefits are payable to family members.

The Office of Workers' Compensation Programs (OWCP) is responsible for administering the FECA program and ensuring that it serves injured workers in an efficient and effective manner. It is important to note that FECA benefits constitute Federal workers' sole remedy for a work-related injury or death, as employees or surviving dependents are not entitled to sue the government to recover damages. Therefore, it is incumbent on OWCP to promptly adjudicate claims, pay medical bills and compensation in accepted cases, and do everything possible to help employees return to work. It is also important to note that the overwhelming majority of injured workers return to work within the first year of injury.

FECA benefits are paid from the Employees' Compensation Fund, which is principally funded through chargebacks to the Federal agency that employs the injured or ill worker. Therefore, the FECA program affects the budgets of all Federal agencies and quasi-Federal agencies such as the United States Postal Service. For the Chargeback Year ending June 30, 2010, the FECA program provided almost $2.8 billion in compensation to approximately 250,000 workers and survivors for work-related injuries or illnesses.

Over the years, the OIG has conducted numerous audits and investigations related to the FECA program. Our audits have identified opportunities for program administration improvements related to eligibility, determination of reemployment status, and customer service. Moreover, our investigations have focused on FECA claimants who work while continuing to receive benefits, and on medical or other service providers who bill the program for services not rendered. We also process hundreds of complaints through our hotline from dissatisfied claimants. These complaints generally involve disagreements with OWCP's adjudication of claims. As a result of our work and observations, for more than a decade the OIG has been recommending changes to strengthen the FECA program with respect to: the 3-day waiting period, benefit payments beyond the Federal or Social Security retirement age, and access to Federal databases to aid in fraud detection.

Recommendations to Improve the FECA Program

Changing the 3-Day Waiting Period

FECA currently has a provision that allows employees who sustain work-related injuries to receive continuation of pay (COP) for a period not to exceed 45 calendar days. The intent of this provision is to eliminate interruption of the employee's in-

come while OWCP is processing the claim. The FECA legislation provides for a 3-day waiting period which is intended to discourage frivolous claims. However, as currently written, the legislation places the 3-day waiting period at the end of the 45-day COP period; therefore negating the purpose of the 3-day waiting period. In 2006, the legislation was amended to require that the 3-day waiting period for Postal workers precede the 45-day continuation of pay period. We continue to recommend moving the 3-day waiting period to the beginning of the 45-day continuation of pay period for all injured Federal employees.

Reviewing the Benefit Structure for Retirement Age Beneficiaries

As currently designed, FECA program benefits do not change once a beneficiary reaches the Federal or Social Security retirement age. While the overwhelming majority of FECA beneficiaries return to work within the first couple of years of their injury, a small percentage remain on FECA for life. According to OWCP, tax-free FECA benefits which are set at 66⅔ percent (or 75 percent if the claimant has dependents) are typically more generous than Federal retirement. The OIG recommends that this benefit structure be examined to determine whether a change in benefit rate(s) should occur at some point at or near the normal Federal or Social Security retirement age.

We are aware that the Administration is considering a proposal to reduce tax-free FECA wage loss benefits to 50 percent at the normal Social Security retirement age. As the Department begins to consider a change to the benefit structure, careful consideration is needed to ensure that the percent of benefits ultimately established will have the desired effect while ensuring fairness to injured workers, especially those who have been determined to be permanently impaired and thus unable to return to work.

Accessing Earnings Information

Our third recommendation has been for the Department to be granted statutory authority to access Social Security wage information and the National Directory of New Hires (New Hire Directory), which is maintained by the Department of Health and Human Services. Information from these wage and employment databases would enable the Department of Labor to identify FECA beneficiaries who are working while receiving wage loss benefits. If it is determined that a claimant has unreported outside employment or income, any inappropriately paid benefits can be reduced or withdrawn, and criminal remedies may be pursued. Currently, the Department can only access Social Security wage information if the claimant gives it permission to do so. Obviously Mr. Chairman, claimants who are defrauding the FECA program are unlikely to willingly grant OWCP or the OIG the authority to access information about their earnings. Likewise, access to the New Hire Directory, which contains employer-reported information on newly hired individuals, is not available to OWCP or the OIG. Congressional action would be required for OWCP and OIG to have access to Social Security data and the New Hire Directory.

As previously indicated, Mr. Chairman, the OIG investigates FECA claimant fraud, as well as fraud committed against the program by medical and other service providers. Whether it is a mechanic for the Navy who receives total disability benefits while operating his own business, or a Smithsonian security guard who fails to disclose his employment with a private security firm, our case work demonstrates the need for OWCP and OIG to have access to these databases.

Related Issues

In addition to our recommendations, Mr. Chairman, there are a couple of related issues under review by the Administration that are of interest to the OIG based on our prior audit work. As you know, currently OWCP requires that claimants receiving payments at the 75 percent rate periodically verify their marital status and the eligibility of dependent children. Beneficiaries in death cases are required to annually submit a report regarding their marital status and continuing eligibility of dependent children. A beneficiary is required to submit proof of continuing eligibility for children over the age of 18 who are students or who are physically or mentally incapable of self support. We are aware that the Department is considering a proposal to set a 70 percent level of benefits for all claimants regardless of whether they have dependents. The Department indicates that this change will reduce overpayments and documentation requirements. While we defer to OWCP as to what the benefit structure and level should be, it is important to note that prior audit work found that obtaining documentation on dependents has been a challenge for OWCP. For example, in 13 percent of FECA claims we reviewed during our 2007 audit of OWCP's largest FECA district office in Jacksonville, Florida, we found that compensation payments were continued even though claimants had not provided required evidence of their continuing eligibility. We also found that compensation pay-

ments had not been reduced on claims for which claimants had provided evidence indicating a reduction was warranted. Therefore, as reforms are considered, it is important to examine the challenges posed by dependent eligibility documentation requirements given that FECA is a wage-loss compensation program.

The Department is also planning improvements in its return-to-work processes and incentives that do not require legislative action. This is another area for which we believe improvements are needed based on our prior-audit findings. Specifically, in 2009 we looked at FECA claimants whose reemployment or wage-earning capacity had not yet been determined. The audit, which examined cases from OWCP's Jacksonville and New York District Offices, found that in 11 percent of the cases reviewed, claims examiners did not perform critical required activities such as referring claimants for nursing and vocational rehabilitation to determine if claimants could return to work in some capacity. We also found lax monitoring of cases. For example, in 34 percent of cases reviewed, claims examiners did not take timely actions on referrals for second opinions or independent medical examinations, and/or had not acted on completed medical examinations. Furthermore, we noted at the time that the reemployment status had not been determined for 37 percent of claimants (20,236 out of 54,674) and that 2,860 claimants had been in this temporary status for 15 years or longer.

Conclusion

In conclusion, Mr. Chairman, our work and recommendations have focused on improving the operation and integrity of the program. Our work continues to this end. For example, we are currently looking at the Department's efforts to comply with recently-enacted improper payments legislation, as well as whether OWCP has adequate controls to prevent improper durable medical equipment and medical travel payments. Mr. Chairman, this concludes my written statement; I would be pleased to answer any questions you or the other members of the Subcommittee may have.

Chairman WALBERG. Thank you, Mr. Lewis.

And we thank the full panel.

And, members of the subcommittee, I think we have a high standard to reach up to in the brevity efficiency of their testimonies in keeping, generally, to the time limit and underneath that.

Let me begin the questioning. Asking Mr. Steinberg, one of the challenges associated with modernizing workers' compensation is transitioning individuals from collecting FECA benefits to retirement benefits.

Many long-term beneficiaries may find themselves in situations where they have substantial gaps in contributions to retirement plans. Has there been any discussion on allowing individuals receiving workers' compensation benefits to contribute a portion of these funds to a retirement account?

Mr. STEINBERG. No, sir. There have not been those discussions. We have been in the discussions with OPM with regards to the proposal to move individuals to the OPM retirement program, if you will. We see complications associated with that, both from a management as well as from an administration perspective.

I think it has been pointed out. One of our key tenets is to try to ensure opportunities for return to work, and if we are able to keep individuals on the FECA program, then even after retirement age, we do have the opportunity to find work positions for them and return them to work.

So, again, we have not had discussions about that type of contribution. That is something that would be complicated and an unfunded mandate at this point.

Chairman WALBERG. Would be complicated, but if there were provisions that—even voluntarily with the compensated individual to be able to contribute a portion to a retirement account and not be caught in a trap at the end of their compensation period and in

retirement years with nothing to show for it, nothing available wouldn't that be a direction that would be good to go?

Mr. STEINBERG. That is certainly, sir, something that can be complicated—contemplated. It is an issue that should also be discussed with OPM, who really is the expert in terms of retirement compensation and pensions.

Chairman WALBERG. Okay. Thank you.

Mr. Lewis? In your testimony, you recommended the OWCP be granted access to social security wage information and the national directory for new hires. How would access to this information benefit FECA, and is this in the Department of Labor's proposal?

Mr. LEWIS. Yes, I believe it is their proposal—access to the social security records. I am not sure that the National Directory of New Hires is in the proposal. It would be a more efficient way for them to focus in on claimants who may have underreported or not reported earnings—claimants we find in our investigations that have returned to work that they have not reported that to OWCP. Currently, that is a self-certification.

OWCP really has no way to verify if what the claimants are reporting is correct. An automated match would allow them to more efficiently focus in on the claimants that they need to investigate further.

Chairman WALBERG. Okay. Thank you.

Mr. Bertoni, in 1996, the GAO reported two proposals for addressing benefit changes for current FECA beneficiaries once they reach retirement age. How would reforms safeguard employees' retirement? Secondly, what types of calculations and considerations would be used to determine retirement benefits?

And then, finally, what affects would this have on agencies' budgets in regards to paying FECA costs? I would be glad to go through those three questions again.

Mr. BERTONI. How would reform help? The second one was?

Chairman WALBERG. Reform safeguard employee's retirement. What types of calculations and considerations would be used to determine retirement benefits, and then, thirdly, what affects would this have on agencies' budgets in regards to paying FECA costs?

Mr. BERTONI. I think the short answer is, we don't know. Based on the prior work that we did—I guess the questions that we surfaced with that is exactly what you really want to do when you are starting to go down the road of thinking about implementation.

We tried to tease out the issues that you need to consider as you develop these proposals and you think about implementation. So how would it help? I think, from just a strictly budgetary standpoint, the agency has to look at if we cut benefits by 50 percent, what is the upside in terms of cost savings.

But I do believe an important issue or consideration is to know where the inequities might occur also to assess the data, look at where at some point who may be worse off—how big that population is, and then it is a policy question as to what you want to do about that.

Chairman WALBERG. Thank you.

I recognize the gentlelady from California, Ranking Member Woolsey.

Ms. WOOLSEY. Thank you, Mr. Chairman.

Mr. Steinberg? Just following on the question between the chairman and Mr. Bertoni, you and we are going to stay on, I believe, this recommendation in your testimony that FECA benefits are cut from 75 to 50 percent at retirement age providing that the average worker is the comparable.

You don't address what happens to the lower income workers under this scenario. I am wondering did you work that out? Do you know who wins and who loses? Mr. Bertoni said they weren't sure about that. I mean, what happens to the lower income worker?

Mr. STEINBERG. It is difficult to segregate between the lower income worker, the average income worker, the high income worker. What we look at is, in essence, the way that the program is implemented and, I think, has been discussed. The program has an annual increase. I would suggest that this year reflects the advantage of the program, where using the CPI index, an individual is receiving a cost of living increase, whereas the normal federal employee is not receiving an increase this year.

Ms. WOOLSEY. Well, I would like to suggest that there is modern 21st century technology. I would think there could be a program set up easy pie and figure out who wins and who loses when you make a cut to that degree. I mean, that is 25 percent.

So I hope we can do that before we can buy into a program that saves a lot of money for the federal government, but on whose back is our question.

Mr. STEINBERG. You make a very good point, and we will research that further.

Ms. WOOLSEY. Thank you, very much.

Ms. CARNEY. The department's testimony implies that workers have a disincentive to return to work once they are healed, and that we should cut the replacement benefits to encourage return to work.

One, I would like you to comment on do you see this as being something that actually happens with the workforce? And, two, they also have a great recommendation, I believe, but you comment on it also, to put in place a plan to help workers re-enter the workforce and be, you know, with them throughout the incidents of their injury.

So would you respond to both of those?

Ms. CARNEY. Yes, and you might have to help me with the reminder on the second part——

Ms. WOOLSEY. Okay.

Ms. CARNEY [continuing]. When I get through with the first——

Ms. WOOLSEY. I will.

Ms. CARNEY [continuing]. Part, but as I mentioned, you know, I think the losses that I have listed out already demonstrate that there isn't a disincentive for employees not to return to work. To the contrary, if they return to work, they would be getting, you know—kick in their pay increases again. It would start bringing up their family medical leave, and they would be able to contribute since the greatest majority are FERS employees in TSP.

And let me just say on the TSP, you know, the average worker giving 10 percent with a matching contribution from the employer of 5 percent over a course of 30 years—these folks that are out on

compensation extended periods: $416,000 in retirement savings lost. So there is a great incentive for them to get back to work.

I also spoke on the national reassessment programs that the Postal Service has. When I said thousands, I mean thousands of postal workers have come back to work following compensable injury, and thousands of them were put back out of work under these programs. So I think that is——

Ms. WOOLSEY. Explain to me what you mean by that.

Ms. CARNEY. It is a complicated program, but——

Ms. WOOLSEY [continuing]. And then what happens.

Ms. CARNEY. But basically, the national reassessment program—you know, there is job offers when you come back to work. That happens before the NRP was in place, and then the employer decided, well, you know, we need to look and see if we really have work for these workers.

And while the work still existed—and that was the premise of the program—they actually took those workers that were offered those job offers—that were conducive to their medical restrictions and said, sorry, that is not there anymore and they have got other workers, you know, working in behind them.

So the work was withdrawn, or if somebody was newly injured, it was just not offered, but there is work there. So, okay, so to answer the second part of the question, and you will have to remind me.

Ms. WOOLSEY. Well, the department's suggesting a plan where the manager works with the employee, I would assume, the manager.

Ms. CARNEY. You are talking about the federal reemployment—our concern with the subsidy really lies wholly with procedures that are called loss wage earning capacity determinations. And this is where, you know, an employee who is collecting wage loss compensation—if they are employed—would have their wage loss compensation reduced.

We have no objection with that, but when the subsidized employment ends, there is no mechanism—and it is likely to end, because it is subsidized—there is no mechanism to reinstate that wage loss compensation, and we have to assume those jobs are going to be available, and if they don't get one of those positions, they also can have their wage loss compensation reduced because the job was available but the employee didn't obtain it through no fault of their own.

Now, the department will tell you can't use federal jobs to do wage earning capacity determinations, but as I said in my earlier testimony, they will look to private sector jobs for that purpose to reduce the wages, and this is how they will achieve savings on the back of injured workers for their program.

And while I think it is a great idea to get workers back into employment, I think we have to make this favorable by eliminating the LWEC procedures first.

Ms. WOOLSEY. Thank you.

Chairman WALBERG. Thank you.

And I want to recognize the chairman of the full committee, gentleman from Minnesota, and especially today since you finished up our markup at 2:30 this morning in another committee, and ended

up being the first one to arrive to this committee. I am delighted to introduce you before you fall asleep.

Mr. KLINE. You know me too well. Thank you, Mr. Chairman.

Thank all of the witnesses for being here today, for your testimony, for engaging in this issue, and educating us in this issue.

Mr. Steinberg, the administration has a plan, which you have been talking about. Are you going to formally introduce legislation to the Congress. And, if so, when might we expect that?

Mr. STEINBERG. No, sir.

Mr. KLINE. No.

Mr. STEINBERG. We are here to provide technical assistance. We have a number of proposals that we are anxious to talk with you about, but a formal legislative proposal will not be submitted.

Mr. KLINE. Okay. Thank you.

I want to pick up on a couple of things we have already talked about. One, let's go to the—and I guess I will stay with you, Mr. Steinberg, since you have the plan out there and you are dealing with this all the time—on the issue of social security records, which was discussed earlier, you would like the ability to have direct access to those records.

As I understand, it would simplify your ability to process claims and make the job easier if you had direct access.

Mr. STEINBERG. Yes, sir. That is correct.

Mr. KLINE. So what is happening now? You can ask for the information, correct, on a routine basis, or do you have OWCP going up to employees and they are refusing to give the information—what happens now?

Mr. STEINBERG. You characterized it correctly. On an annual basis, we ask for information about medical, about wages, about dependent status and so forth. If we don't receive the information, or if we believe that there are issues associated with the information, on a case-by-case basis, we contact Social Security, and obviously, it is a time-consuming process in terms of interacting with the individuals, getting the information, making sure that the information is complete.

What we would like to be able to do is to have, if you will, ongoing access to all files associated with our claimants so that any point of time, we can access the information, and we can verify the accuracy of the information.

Or, if we see that there are issues, then we will share it with the IG or with the IG of the employing organization. So, again, it is a matter of increased efficiency for us.

Mr. KLINE. I am not at all sure that I am opposed to that, but I am just trying to understand the scale of—or scope of the problem. Is this something that happens two or three times a year, hundreds of times a year, thousands of times a year where you are just having difficulty getting the information.

Mr. STEINBERG. It happens hundreds of times a year. So, again, it is time consuming for our claims examiners. It delays the process at times and, again, we think that this would improve the situation both for the claimants as well as for us so that we can reinvest our time into reemployment type of activities.

Mr. KLINE. Okay. Thank you. I want to stay with you, if I might, because I, like Ms. Woolsey, am interested in this putting people back to work part of the program.

Right now, according to your testimony, there are limitations in the areas of vocational rehabilitation and the return to work process. And you touched on that in testimony, but can you take a little bit of time here and expand on what is in the way here?

Mr. STEINBERG. Certainly. There are a few different aspect of this. One is the timing. As we know—and I worked at the Department of Veterans Affairs for 9 years and worked closely with the medical community and learned from them the earlier that we can get an individual diagnosed and into rehabilitation, the more likely it is that we are going to have a timely opportunity for return to work.

So being able to accelerate that process when we know that an individual is most likely permanently disabled, we would like to begin that process. The next stage is working with the claimant and working with their physicians to develop a rehabilitation plan, and that is a plan that would look at the issue, the injury—look at the opportunities for employment and then work through, if you will, the rehabilitation process.

The last phase of that is the assisted reemployment where right now we work with private sector firms and, granted, the universe of claims that we have actually placed is less than 200. But in this circumstance, we would be able to subsidize the payment and, again, this is cost neutral, because we already collect the information in terms of chargeback.

This is the wage replacement, and it would be used to subsidize the employment. It is a great opportunity for us to help people get back to work, and I have to emphasize that that is really our primary issue and focus is returning people to work.

Mr. KLINE. The light has turned yellow here, and I want to just make sure I understand this assisted reemployment piece. So far, you have only been able to place the individual with the private sector, or can you—have you been able—only to the private sector not another federal agency?

Mr. STEINBERG. That is correct. We only have permission to do it in the private sector. We are asking for the ability to do it in the federal government. We think it is very promising.

Mr. KLINE. Okay. Thank you, very much.

I will yield back, Mr. Chairman.

Chairman WALBERG. Thank you.

I recognize the gentleman from New Jersey, Mr. Payne?

Mr. PAYNE. Thank you, very much.

Ms. Carney, the DOL testimony implies that workers lack motivation, sort of, as the other questioners—to return to work when capable and, thus, wage replacement benefits should be cut to create incentives to force them to return to work. Could you address this or give me your opinion on this matter?

Ms. CARNEY. On the motivation?

Mr. PAYNE. Yes, or do you agree with the DOL that——

Ms. CARNEY [continuing]. Partially addressed it with Ranking Member Woolsey, but let me suggest—because we talked about the national reassessment process and the Postal Service not letting

those employees come in and those losses, but one of the points I didn't get to—so I can build on what we have already spoke about is my recommendations on how to correct that.

And I would recommend that legislation be considered to eliminate the loss wage earning capacities on those constructed positions, which is what we talked about—constructed positions is when it is—you didn't actually get it. You know, because that is what motivates the employers—hey, if I can get people—you know, not take them back to work and rather dump them on another employing agency, I don't get hit with the chargeback. In the meantime, it is on the back of the injured worker.

So those wage earning capacity determinations really motivate employers not to return their injured workers—at least in the case of the Postal Service, and it was, like I said, cataclysmic in that case, not to return their injured workers to employment. Or when they did, it was just for a brief period of time, because the regulation says if you have been returned back to work for 60 days and they put you out, you know, then they can LWEC you too, because you no longer have a loss in wage earning capacity.

So I think we really have to spend some time—I know I am getting a little into the weeds—but as we look at this focusing on that. The other thing, I think, that would be helpful is when an employing agency says there is no work available—right now, there is no measures in place for the Department of Labor to challenge that.

They have to take them at their word, and I think there should be mechanisms put in place where the employing agencies would actually have to prove that, you know, they truly don't have work available before these employees are pushed off onto another agency and, you know, subsidy's going to cost something. You don't want to burden the program with anything else. I hope that addresses part of your concerns.

Mr. PAYNE. Yes. I have another question in regard—in 1998 OSHA became involved in the Postal Service, and since OSHA coverage began at that time, do you have any kind of verification that there has been a noticeable reduction in workplace injuries since OSHA has come in and, I assume, makes suggestions and so forth?

Ms. CARNEY. Since OSHA came in, there has been a huge reduction with postal employee claims being filed. You know, that was in 1998. I came into office in 2000—I know, one, the reports had said there were like 84,000 postal workers that filed claims. We are now at 40,500.

Now, part of that, obviously, is because we have had a reduction in employee population, but it is not that vast considering the cut in half. And also, there is people that are just scared to death to file claims at this point because of the national reassessment process. But you can't discount OSHA has had a very positive impact on safety on the workforce, whether it is because of their programs or because of enforcement.

And where we see the best progress is when there is these voluntary programs where management and unions can participate. And, of course, you have got to get management to, you know, buy into that program. But, yes, it has been successful.

Mr. PAYNE. Thank you. Thank you, very much.

Mr. Lewis, in your testimony, you said "careful consideration" needs to be given to DOL proposal to reduce FECA benefits at retirement age from 75 percent to 50 percent. What are the questions that should be asked, in your opinion, to ensure "careful consideration" is given as this is being moved forward?

Mr. LEWIS. Well, I think a lot of those have been raised this morning through Ms. Carney's testimony and GAO's but, we would advise to look at, you know, are you paying a benefit that is fair and equitable and that you are not—you don't have an adverse impact that you are putting someone in a worse situation than they would have been in.

So to look at those issues of where were they at their career when they became injured. You know, what has happened to them since then? What would have happened to them? What position would they have been in that kind of analysis.

So I think it is, you know, it is certainly worthwhile to look at this and reassess it, but I think as GAO, particularly, has brought out in their report there, there are a lot of issues that need to be addressed to make sure you don't have an unintended consequence.

Mr. PAYNE. Thank you, very much.

Yield back the balance of my time.

Chairman WALBERG. Thank the gentleman.

Now I turn to recognize the gentleman from Indiana. Dr. Bucshon?

Mr. BUCSHON. Good morning, and thank you for testifying in front of our committee.

Thank you, Mr. Chairman.

I was a practicing physician prior to being in Congress. So I have some questions related to the assessment of the disability in the first place and ongoing disability. In circumstances that are not otherwise obvious—there is obvious disabilities and—so, Mr. Steinberg, do you think we have an adequate program for the federal government to assess the disability of our workers initially or as an ongoing process?

Mr. STEINBERG. Yes, sir, I believe we do. Again, one of the key components, I believe, of the program is the right to first choice, if you will, for our patients to choose their physician.

We think this is core. We think it is extremely important in terms of having a comfortable dialogue, and so forth. We believe that the physicians provide a good and reasonable assessment of the circumstance.

As I talk about in terms of the rehabilitation plan, I think, again, that provides a forum—an opportunity for continued dialogue between the department, the claimant and the physician in terms of the progress that is being made and when the individual will be ready to return to work and in what capacity they can return to work.

So, again, I think we have a good program, and I think we have an opportunity to improve the interaction with the physicians.

Mr. BUCSHON. Great. That is good to know because, as a physician, I can tell you the subjectivity involved in assessing a worker's ongoing disability is very, very difficult. And I was in cardiovascular surgery, but if you are in a special that deals with back injuries, for example, like orthopedics or neurosurgery, it is very

difficult and partially subjective process, and I am glad to hear that you feel that the government has an adequate program to assess that.

Ms. Carney, I am interested in just a—would you be opposed to a reduction in benefits or compensation that the DOL's proposing in any circumstance? Because it seems like that with your testimony under whatever circumstance that might be in-place that would decrease any reimbursement for anyone, you would be opposed to.

And, if not, I would like to know under which circumstances that you feel would be appropriate that might result in decreasing compensation even though that compensation would bring these folks in line with what is fair and—in regards to the rest of our federal workers who are not disabled.

Ms. CARNEY. Well, first let me say, if something is fair and equitable, certainly receptive to embracing it. The problem I am having with these proposals isn't I am being contrary for the sake of being contrary, it is because I don't believe in my heart of hearts that it is fair and equitable.

You know, when these employees—you are saying 70 percent——

Mr. BUCSHON. Let me say, for example, the proposal that would bring in line where people who are disabled are—continue to get disability benefits after retirement age when those are clearly exceeding what if they were—if they had continued to work as a federal worker and then retired, their benefits would be slightly less than that.

Ms. CARNEY. Okay, you are making the comparison with the 56 percent of the——

Mr. BUCSHON. Well, I mean, I am just trying to determine the circumstances which you have—which you feel like that a decrease in compensation would be—under their proposal——

Ms. CARNEY. It would be favorable if and when we could put something in place to substitute the fact that these folks have no means to contribute to their Thrift Savings Plan or receive matching funds. Now, I am not—you know, that is one way. We could create another type retirement fund but, again, you know, you got to remember under TSP, and the majority of these folks are actually FERS not CSRS.

You know, it was put in place in, what, 1983 or 1984, so you are talking 27 or 28 years ago. So at this point, and if we are being prospective, we are going to be talking about FERS in place.

And then we also have to keep in mind—because you brought up, like, wage loss compensation—that those folks aren't getting their pay increases. I mean, so these things as they are currently—the 75 percent—is comparable as far as the retirement.

We would be amenable to, you know, but you have got to make up for the loss somehow, and the way it is just a reduction just because of your age—I don't think it is a very fair and an equitable comparison. Fifty-six percent of somebody that actually got to go through the Postal Service for 30 years or the federal government for 30 years, and they get, you know, granted, you get the COLAs, the CPI COLAs, which have only averaged 2.1 percent over the last 10 years, but what happened to their step increases and all the

other increases that they were supposed to be getting along the years.

The annuitants have gotten that, and that is, that makes it a true high three, where the compensationers don't. They haven't gotten those pay increases. They don't have a true high three. They are still down here. So 50 percent to 56 percent really isn't even a equitable comparison, and that is a CSRS thing anyway, and we really should be looking at FERS at this point, because that is where we are at or going.

Mr. BUCSHON. Thank you.

I yield back.

Chairman WALBERG. I thank the gentleman.

And I recognize the gentleman from Indiana. Mr. Rokita?

Mr. ROKITA. Thank you, Mr. Chairman.

I appreciate the witnesses as well.

My first question is to Mr. Szymendera. Am I pronouncing that right?

Mr. SZYMENDERA. Szymendera.

Mr. ROKITA. Szymendera?

Mr. SZYMENDERA. Yes.

Mr. ROKITA. You are not Polish, are you?

Mr. SZYMENDERA. I am.

Mr. ROKITA. Okay. With a name like Rokita, I get to ask those kind of questions, okay? And anytime you see a "z" and a "y" together, you start wondering if you are a member of my tribe. So welcome.

You testified that under the Internal Revenue Code, workers' compensation benefits are not subject to federal income tax. Is this true with state plans as well?

Mr. SZYMENDERA. Yes. The federal income tax does not apply to any workers' compensation benefits paid whether it is under a state plan, whether it is under FECA, or whether it is under the other federal workers' compensation plan, which is Longshore and Harbor Workers' Compensation Act.

Mr. ROKITA. What is the rationale?

Mr. SZYMENDERA. Workers' compensation benefits have never been treated as earnings or income. And so if you go all the way back, as I said, this is—we are in the 100th year of workers' compensation—there has always been a sense that workers' compensation benefits are different than income, and because they are different, they are treated differently—not taxed, as I think Ms. Carney has said, for example, you know, not eligible for TSP and things like, things of that nature.

Mr. ROKITA. Fair enough. Thank you, very much.

Mr. Bertoni, your testimony stated that if FECA beneficiaries at retirement age are converted to the federal retirement system, an agency such as OPM would have to develop an expertise that it currently doesn't have. Can you elaborate on that, and why is that such a hurdle?

Mr. BERTONI. Just both FECA and OPM have done different things for many years. So if you start putting—melding two systems, I am not—not to say that it is not possible, but you are now asking an organization that, perhaps, has dealt with the retirement

and—and benefits side of retirement to become case managers and case workers involved in the rehabilitation of the recipient.

So it is not impossible. It is just consideration when you meld the two systems together, they are going—who is going to do what and when?

Mr. ROKITA. That doesn't sound that difficult.

Mr. BERTONI. It is not impossible. It is just——

Mr. ROKITA. Okay.

Mr. BERTONI [continuing]. Consideration as we throw that out there, there are simpler ways to do things and there are more complex ways to do things. And it is just—on the continuum, it is somewhere in the middle.

Mr. ROKITA. Okay. Thank you. Appreciate that.

And then, Ms. Carney, in your written testimony, you mentioned a number of factors that make it difficult for claimants to find and keep doctors. And you talked about the rule example and how you—that person might be limited to a physician's assistant or nurse practitioner.

Have you reviewed the administration's proposal to allow for the limited utilization of physician's assistants and nurse practitioners, and do you have a——

Ms. CARNEY. No objection there. We think it is long over due, especially because it is so difficult, you know, because of a lot of other reasons, but it is so difficult to find physicians that are willing to participate in the plan.

It may look like a lot, you know, on paper, but if you are——

Mr. ROKITA. Right.

Ms. CARNEY. To answer your question, no. No problem.

Mr. ROKITA. Okay. Maybe I misunderstood your testimony. I just wanted to clear that up.

Ms. CARNEY. Okay.

Mr. ROKITA. I yield back, Mr. Chairman. Thank you.

Chairman WALBERG. I thank the gentleman.

And I think the panel for shedding on this subject.

And before making closing remarks, I would turn to the ranking member, Ms. Woolsey, for closing remarks.

Ms. WOOLSEY. Thank you, Mr. Chairman. I would like to submit two statements for the record. One is from the National Treasury Employees' Union. The other is from the National Active and Retired Federal Employees' Association.

Chairman WALBERG. Without objection, so ordered, and I believe we have copies already and additional ones now, thank you.

Ms. WOOLSEY. Now you have two.

Chairman WALBERG. We always can use more, huh?

Ms. WOOLSEY. Mr. Chairman, I want to be very clear that when I was supporting the Department of Labor's—what I thought—effort in assisting in returning employees, I meant returning to their original or comparable to their original employment. I am not talking about sending them off to some school to give them start over employment after they have become experts in what they were doing for the federal government.

I mean, there is a way to do this. It really does make a difference in employees feeling welcome back, getting back sooner, maybe restrictive duties—absolutely, but not punished for it. And I just

would like to see us work together it sounds like we have got a system that in the long run doesn't work out so well.

Thank you, witnesses. I think you have been very informative. There are many, many questions, I think, that still remain about the impacts to beneficiaries, whether employing agencies can do more to hire injured workers, whether there are opportunities to prevent accidents that cause workplace injuries in the first place.

, I was a human resources professional for 20 years, and I am telling you, anytime we worked with workers' comp, brought them into the plant and they gave us ideas and suggestions, our workers' comp claims went way down, because they knew what was going wrong. And I think that is something we ought to be thinking about and then training our managers and training the employees. Prevent workers' comp claims in the first place.

The testimony from the Government Accountability Office, Mr. Chairman, identified a list of questions that merit more consideration before we legislate any changes, I believe, to this very, very complex program. Because it impacts so many workers, and once we change something in our lifetime, it won't get changed again.

So I would like to suggest if we could that we would—and I would welcome the opportunity to work with you to gain assistance in securing more information from GAO in a valid way and assessing these administrative proposals and how it impacts—permanently impacts injured workers and have some case studies, maybe, involved.

So thank you for today, and thank all of you.

Chairman WALBERG. I thank the gentlelady.

And, again, thank you to the panel. This is a subject of great importance in a time of economic challenge in this country, in a time when there is a, in some sense, a general feeling that government employees don't earn their pay, should be challenged and castigated.

Ms. Carney, you are smiling, and I appreciate the fact when I talked to you earlier saying it would be terrible if nobody came to the party when we hosted one, and you said, there is only a party when I am here. And I appreciate your input today.

But, you know, I think whether we be Democrat or Republican, we must admit that employees of federal government, when asked to do the job—a job that has been offered to them—do that job and deserve the respect, consideration as they perform that job, and the respect and consideration when unexpected and undesired injuries take place or other subsequent problems that bring on a need for compensation.

And so, if we are going to have that in place—which we ought to—it ought to be a program that works for both sides and for the taxpayer.

And so, Ms. Woolsey, I would tend to agree with you that probably one of the next steps in going further with the taste-testing this morning—the teaser on information, there is plenty more to come up with, and a GAO study may be the direction we need to go.

I would encourage the Department of Labor to continue to be part of the solution here. I guess I was under a lack of under-

standing in thinking that you had some proposals that you were going to be putting forward for legislation.

I think it is something we ought to consider to make sure that it works. This subcommittee is certainly open and desirous of caring through that process. So we will be looking toward that and—in the coming days, and I think sooner rather than later.

So thank you. We do want to applaud the work that is done by our federal employees. We want to not only suggest that we do all do consideration to make sure that they are provided for but the deficiencies that can be built on the whole system including this, that ultimately produces quality of care, is something that we must consider with due diligence.

So having nothing more to present in this subcommittee hearing, I call the committee to adjournment.

[Additional submissions of Ms. Woolsey follow:]

Prepared Statement of Colleen M. Kelley, National President, National Treasury Employees Union

Chairman Walberg, Ranking Member Woolsey and Members of the Subcommittee on Workforce Protections, the National Treasury Employees Union (NTEU) appreciates the opportunity to offer this statement to the Subcommittee as it considers the important matter of Workers' Compensation in the federal sector. NTEU represents over 155,000 federal employees at 31 agencies. Our members perform every type of work for the American public from Customs and Border Protection Officers, to Transportation Security Officers, and Food and Drug Administration scientists working in laboratories at home or on assignment inspecting products in India and Mainland China. These public servants show up for work each day expecting to perform their important duties diligently and professionally in service to their country and then safely return home to their families. Nevertheless, some will suffer workplace injuries that make it impossible for them to return to work for short or long periods of time and, regrettably, in some cases to never be able to return to work at all due to permanent injury or even death.

This year, the nation celebrates the centennial of Workers' Compensation laws. One hundred years ago this month (May, 1911) the first Workers Compensation program was enacted into law by the state of Wisconsin, following on workplace injury insurance programs adopted in Germany and Great Britain. Nine other states followed this progressive initiative that same year and by 1948 all states had laws covering private and state workers. Workers' Compensation insurance is a recognition of the responsibility of employers and society to take care of those injured in the workplace. It was our nation's first social insurance program. Today, Workers' Compensation stands as an important protection for the benefit of all Americans. Almost 98% of the workforce is covered by workers' compensation insurance.

Five years after Wisconsin led the nation on this, Congress moved to insure the federal government's own employees as well as railway, longshoremen and other harbor workers. The Kern-McGillicudy Act developed the program we now know as the Federal Employees Compensation Act (FECA).

FECA is one of the most important programs for federal workers. This program provides federal employees with workers' compensation coverage for injuries and diseases sustained while performing their duties. The program seeks to provide adequate benefits to injured federal workers while at the same time limiting the government's liability strictly to workers compensation payments. Payments are to be prompt and predetermined to relieve employees and agencies from uncertainty over the outcome of court cases and to eliminate wasteful litigation. Efficient government is advanced by a civil service that is expected to have the highest levels of professionalism and competency and in turn is fairly compensated and treated with dignity and respect. There is no greater disrespect to human dignity than to have to suffer injury from an unsafe workplace or from employer negligence.

NTEU welcomes a review of the FECA program, while always keeping in mind this is an issue of human dignity. We believe such a review should be broad and comprehensive. By that, we mean that it should never start or be rigidly limited to benefit payments. Instead the first principle should be making the federal workplace safe by actions to move us towards the goal where no worker need come to work with the possibility it will be his last day on the job because of a workplace

injury. NTEU has worked with Republican and Democratic administrations on this goal and we are ready to continue those efforts.

However, I want to state our strong opposition to insurance benefit cuts, particularly for those employees who came to work one day ready to serve their country but suffered a workplace injury that resulted in them never being able to return. We are most concerned about proposals for a forced retirement provision. An employee who is injured on the job and unable to work receives FECA payments equal to 67% of wages at the time of injury (a slightly higher amount if he has family obligations). This reduction in income makes it impossible for an injured employee to fund a retirement plan. Once workplace injured workers are on FECA, they receive no further retirement credits or contribution matches, nor are they able to make elective contributions to the Thrift Savings Plan. This holds true for Social Security as well as the federal retirement programs. Forcing a worker at retirement age to give up regular FECA benefits and live on the income from retirement savings put aside up until his or her worklife was interrupted by an on the job injury would cause grave economic hardship to many disabled employees.

NTEU would also oppose elimination of the family benefit that is now a feature of FECA. Because FECA benefits are not taxed, the family allowance does little more than create some equity between the after tax income a worker with dependents and one without would have if not injured.

Let me close by stating that NTEU very much wants to work with this subcommittee or any other policymaker to find ways to reduce the costs of the FECA program. As I have said, our belief is the best way to do so is not by reducing benefits or denying claims but by preventing the occurrence of injuries. NTEU is committed to a safe and healthy federal workplace where employees are less likely to ever suffer the injuries that lead to FECA claims. Our union has also been one of the strongest forces for innovation in the federal workplace, often working with management on bold new programs and sometimes dragging management forward over their reluctance. We have received reports from our members about management resistance or disinterest in light duty assignments, alternative worksites, disability accommodations and other actions that could allow FECA recipients to return to work. A change in management practices and culture is needed. I don't expect this is something Congress can legislate, but the first step is to end the myth that able bodied workers are receiving FECA payments and accept the fact that many injured workers would like to return to work and could do so with opened minded and innovative agency practices. Further, NTEU is willing to work with policymakers to improve program integrity methods. For example, the Office of Worker Compensation Programs (OWCP) currently matches FECA claimants with Social Security Administration (SSA) data to determine if claimants have died. However, they do not match with SSA data to see if they are receiving wages that would make them ineligible for FECA benefits. We strongly believe these are the types of reforms that should be explored before Congress moves to cut these social insurance benefits to injured federal workers.

Thank you for this opportunity to present NTEU's views.

PERIODIC ROLL BREAKDOWN BY WEEKLY SALARY AND AGE (a)

[Based upon 4/9/2011 check cycle; excludes fatal cases; including only cases with DOI in calendar year 2008 in order to get current weekly wage data]

	WEEKLY SALARY									
	Under $500	$500 to $999.99	$1000 to $1499.99	$1500 to $1999.99	$2000 to $2499.99	$2500 to $2999.99	$3000 to $3499.99	$3500 to $3999.99	$4000 to $4499.99	
	ANNUAL SALARY									
	up to $25,999	$26,000 to $51,999	$52,000 to $77,999	$78,000 to $103,999	$104,000 to $129,999	$130,000 to $155,999	$156,000 to $181,999	$182,000 to $207,999	$208,000 to $233,999	
Age group:										All
0-20										0
21-25	2	4								6
26-30	11	20	2	2						35
31-35	15	61	10	3						89
36-40	14	81	34	2	1					132
41-45	25	87	62	5	2	4				185
46-50	30	128	145	12	5	4	1	1		326
51-55	30	132	174	15	5		1	2		359
56-60	25	96	134	10	7	5				277
61-65	14	65	92	12	1	1		1		186
66-70	4	15	20	3	4					46
71-75	3	4	7	1						15
76+	2	2								4
Totals	175	695	680	65	25	14	2	4	0	1660

Note: Although the weekly salaries listed include income over $182,000, the 1966 amendments to the FECA provide that compensation can not exceed 75% of the monthly salary of a GS-15, step 10.
Proposed Average Schedule Award Rate = $53,639 (GS11/3 in FY11).
Approx. number of people with annual salaries BELOW the new SA rate: 870.
Approx. number of people with annual salaries ABOVE the new SA rate: 790.

Source: U.S. DOL.

PERIODIC ROLL BREAKDOWN BY WEEKLY SALARY AND AGE (b)

[Based upon 4/9/2011 check cycle; excludes fatal cases]

Age group	Case status					
	OP	PN	PR	PS	PW	All
0-20	0	0	6	0	0	6
21-25	0	2	47	3	5	57
26-30	1	3	153	16	32	205
31-35	5	9	387	41	91	533
36-40	10	55	854	69	237	1225
41-45	28	98	1546	125	457	2254
46-50	67	309	3127	224	1018	4745
51-55	79	641	4304	388	1586	6998
56-60	102	1026	4382	464	2001	7975
61-65	115	1561	3581	434	1825	7516
66-70	118	1339	1813	149	1131	4550
71-75	61	1528	1005	49	788	3431
76+	52	4332	964	41	1264	6653
Totals:	638	10903	22169	2003	10435	46148

PR: Entitled to payment on periodic roll.
PN: Entitled to payment on periodic roll; determined to have no wage earning-capacity or re-employment potential for indefinite future.
PW: Entitled to payment on periodic roll at a reduced rate, reflecting a partial wage-earning capacity or actual earnings.
PS: Entitled to payment for schedule award.
OP: On the Periodic Roll, but an overpayment exists and is being deducted from compensation

Source: U.S. DOL

Appropriated Fund Agencies in FECA Which Do Not Reimburse for Administrative Costs

Department of Labor
Department of Health & Human Services
Department of State
Department of Housing & Urban Development
Department of Defense Agencies
Department of the Army
Department of the Air Force
Department of the Navy
Department of Homeland Security
Department of Education
Department of the Interior
Executive Office of the President
Social Security Administration
Smithsonian Institution
Federal Judiciary
Peace Corps
Corporation for National & Community Service
American Battle Monuments Commission
African Development Foundation
Inter-American Foundation
Architect of the Capitol
U.S. Commission of Fine Arts
Presidio Trust
Federal Communications Commission
Farm Credit Administration
Federal Mine Safety & Health Review Commission
Federal Trade Commission
Government Accountability Office
U.S. Government Printing Office
Federal Mediation & Conciliation Service
Library of Congress
Federal Labor Relations Authority
Institute of Museum & Library Services
Office of Special Counsel
National Archives & Records Administration
National Capital Planning Commission
National Labor Relations Board

National Mediation Board
National Science Foundation
Railroad Retirement Board
Office of Government Ethics
Securities & Exchange Commission
Selective Service System
Federal Energy Regulatory Commission
Office of Personnel Management
Broadcasting Board of Governors
International Trade Commission
Panama Canal Commission
Commission on Civil Rights
U.S. House of Representatives
U.S. Senate
Int'l Boundary & Water Commission/US & Mexico
Armed Forces Retirement Home
Consumer Product Safety Commission
Equal Employment Opportunity Commission
U.S. Tax Court
Office of Navajo & Hopi Indian Relocation
Merit Systems Protection Board
National Endowment for the Arts
National Endowment for the Humanities
Occupational Safety & Health Review Commission
U.S. Holocaust Memorial Council
National Transportation Safety Board
Nuclear Regulatory Commission
Commodity Futures Trading Commission
Congressional Budget Office
Federal Election Commission
U.S. Institute of Peace
U.S. Botanic Garden
Federal Maritime Commission
U.S. Arms Control & Disarmament Agency
Postal Regulatory Commission
U.S. Agency for International Development
Legal Services Corporation
U.S. Court of Veterans' Appeals
U.S. Capitol Police
General Services Administration
National Aeronautics & Space Administration
Environmental Protection Agency
Government Printing Office
Central Intelligence Agency
William Howard Taft Memorial Site
Valles Caldera Trust
State Justice Institute
Public Defender Service for the District of Columbia
National Indian Gaming Commission
Marine Mammal Commission
Morris K. Udall Foundation
Millennium Challenge Corporation
Interagency Council on Homelessness
Institute of American Indian Arts
Defense Nuclear Safety Facility Board
US Election Assistance Commission
Denali Commission
US Chemical Safety Hazard Investigation Board
Committee for Purchase/Blind or Severely Disabled
Appalachian Regional Commission
Administrative Conference of the United States
US Access Board
Court Services & Offender Supervision Agency

Source: U.S.DOL.

"Fair Share" Agencies Which Reimburse DOL for Administrative Costs Under FECA

United States Postal Service
Export-Import Bank
Federal Home Loan Bank Board
Small Business Administration
Overseas Private Investment Corporation
Board of Governors/Federal Reserve System
Federal Housing Finance Agency
Federal Deposit Insurance Corporation
Federal Retirement Thrift Investment Board
National Credit Union Administration
Resolution Trust Corporation
Pension Benefit Guaranty Corporation

Mixed "Fair Share" and Appropriated Fund Agencies

Department of Agriculture
Department of Commerce
Department of Energy
Department of Transportation
Department of Treasury
Department of Veterans Affairs
Department of Justice
Tennessee Valley Authority

Source: US DOL.

Prepared Statement of Joseph A. Beaudoin, President, National Active and Retired Federal Employees Association

Mr. Chairman and members of the Committee, I am Joseph A. Beaudoin, President of the National Active and Retired Federal Employees Association (NARFE). NARFE, one of America's oldest and largest associations, was founded in 1921 with the mission of protecting the earned rights and benefits of America's active and retired federal workers. The largest federal employee/retiree organization, NARFE represents the retirement interests of approximately 4.6 million current and future federal annuitants, spouses, and survivors.

I am submitting testimony today, for the record, on behalf of those 4.6 million federal workers and annuitants. I appreciate the opportunity to share our concerns about legislative proposals that would reduce Federal Employees' Compensation Act (FECA) benefits for retirement age recipients.

FECA reforms should focus on saving money by improving the workers' compensation process and structure and not by reducing benefits available to employees injured or made ill by their jobs. There have been numerous proposals to reform FECA by improving the number of employees rehabilitated who can return to work to changing the structure of payments for schedule awards to establishing waiting periods and more, none of which reduce the basic compensation paid to FECA recipients.

Unfortunately, both the Administration and Senator Susan Collins have made specific proposals which would reduce benefits paid to FECA recipients at retirement age. These proposals do not adequately take into account the disadvantages faced by those employees unfortunate enough to suffer a debilitating injury or illness as a result of their public service.

Administration Proposal

The Administration proposes to reduce FECA recipients' basic compensation benefit to 50 percent of their gross salary at the date of injury, still tax-free, when they reach full Social Security retirement age. While this proposal provides a retirement level income much closer to that of current retirees,[1] it still does not fully account for disadvantages faced by FECA recipients. Notably, FECA recipients (1) lose the ability to increase their salary through raises and promotions, (2) they have a reduced ability to save because (a) they are not receiving a full replacement of income pre-retirement, and (b) FERS-covered employees are not able to contribute to the

[1] According to OPM, the average federal employee retiring optionally on an immediate annuity under CSRS will receive about 60% of their "high-three" average salary.

Thrift Savings Plan and receive matching contributions, and (3) they may have a reduced Social Security benefit because FERS employees covered by Social Security are unable to earn credit for and increase monthly earnings used to calculate those benefit payments.

While the framework of the Administration's proposal offers more economic security than S. 261's, it still short-changes FECA recipients.

S. 261, Federal Employees' Compensation Reform Act

Senator Collins' bill would move FECA recipients to the retirement system at full Social Security retirement age (between 65 and 67, depending on year of birth). Instead of receiving 66.67 percent of monthly pay (or 75% for recipients with dependents) tax-free, former FECA recipients would receive a taxable annuity computed by multiplying the average of their highest three years of salary times years of service times an accrual rate (1 or 1.1% for FERS-covered employees or 1.5 to 2% for CSRS-covered employees). This presents multiple issues.

First, there is no provision to adjust upwards the average highest three years of salary to account for wage inflation. FECA recipients will also have lost the ability to increase their salary through raises and promotions. At the very least, they should receive an adjustment based on the Employment Cost Index or other wage inflation indicator to the average highest three years of salary for purposes of computing their annuity.

Second, unless the FECA recipient is covered by FERS and applied for a disability retirement annuity within 12 months of their injury or illness, s/he likely would not receive credit for years of service for the time between when s/he became injured or ill and when s/he turns 62 years of age.[2]

Third, FERS-covered FECA recipients lose the ability to invest a portion of their payments into the Thrift Savings Plan (TSP) and receive matching contributions from their agencies.

Finally, FERS-covered employees may have a reduced Social Security benefit because they are unable to earn credit for and increase monthly earnings used to calculate those benefit payments.

The net effect of the transition to the retirement system would be a substantial and unfair reduction in benefits for many FECA recipients. However, Senator Collins has consulted NARFE on S. 261 and we are working with her to improve the legislation.

Conclusion

Other FECA reform proposals save money by helping bring FECA recipients back into the work force, eliminating inefficiencies in the process, allowing for full reimbursement from liable third parties, or reducing improper payments and fraud. But unlike those proposals, reductions in retirement age benefits will take money away from individuals who are irrefutably unable to work because they were injured or became ill as a result of their service for the federal government. If they had the choice, they would be healthy and working and preparing for a retirement of choice rather than necessity.

Thus, I urge you to seriously consider the significant financial implications that proposed reductions to FECA benefits could have on disabled public servants who have lost the ability to earn income to adjust their financial situation to new circumstances. These federal employees include FBI agents who have been shot in the line of duty, or federal firefighters injured while saving someone's life. We need to treat these public servants with respect and gratitude, not indifference.

Mr. Chairman and subcommittee members, I urge you to do so, and thank you for receiving this testimony.

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[2] Under CSRS, a disability retirement annuitant, someone unable to perform their job due to a injury or illness that is not necessarily work related, is guaranteed a minimum benefit that equals the lesser of 40 percent of the high-three average salary or the regular annuity obtained after increasing years of service for the time between the disability and age 60. Thus, credit for years of service actually acts to reduce the minimum annuity under CSRS. Under FERS, disability retirement annuitants receive credit for years of service for the years between the injury or illness and age 62.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

John Gage
National President

J. David Cox, Sr.
National Secretary-Treasurer

Augusta Y. Thomas
National Vice President for
Women and Fair Practices

May 11, 2011

The Honorable Lynn Woolsey
Ranking Member
Workforce Protections Subcommittee of the
House Education and the Workforce Committee
Washington, DC 20515

Dear Rep. Woolsey:

On behalf of the American Federation of Government Employees, AFL-CIO, I am requesting that the attached statement of Milagro Rodriguez, the AFGE Occupational Health and Safety Specialist, be included in the record of the hearing on "Reviewing Workers' Compensation for Federal Employees" to be held May 12, 2011 before the Workforce Protections Subcommittee of the House Education and the Workforce Committee.

Thank you for your attention to this matter.

Sincerely,

Beth Moten
Legislative and Political Director

80 F Street, N.W., Washington, DC 20001 • (202) 737-8700 • FAX (202) 639-6490 • www.afge.org

STATEMENT BY

MILAGRO RODRÍGUEZ

OCCUPATIONAL HEALTH AND SAFETY SPECIALIST

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF

HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE

ON

REVIEWING WORKERS' COMPENSATION FOR FEDERAL EMPLOYEES

MAY 12, 2011

Mr. Chairman and Members of the Subcommittee, my name is Milagro Rodríguez, and I am the Occupational Health and Safety Specialist for the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the members of our union, which represents more than 600,000 federal employees, I thank you for the opportunity to testify today on proposed changes to the federal workers' compensation program.

We wish we would be offering our views on how to improve the federal workers' compensation program *and* how to save the government money. Too often the stories we hear from our injured or ill members are stories of loss—loss of income, loss of health, loss of choices, loss of their preferred shift, and loss of a job. The proposed changes would bring more loss to injured or ill employees by reducing benefits in order to save money.

The changes we would like to see are the changes that improve the claims process. The changes that would result in employees getting the medical attention they need sooner so they can return to work sooner. The changes that would give employees the time they need to recover in order to return to work sooner.

What would improve the process is the employing agencies promptly processing the claims and submitting them to OWCP for adjudication. The agency should not be taking the role of adjudicator and holding on to claims they deem not compensable, or not "good claims." If agencies processed claims in accordance with FECA regulations and in keeping with the deadlines, *that* would save money and return employees to work sooner.

If claimants could make contact with their claims examiners sooner, *that* would save money. They would not have to wait weeks and months to get clarification on a requirement or to ask what is expected of them, or to miss deadlines because they did not know there was one. They would know sooner what action they needed to take, what documentation they needed to present.

What would save money is OWCP making decisions on medical authorization more promptly as they will reduce the number of lost days. The sooner a needed surgery is approved, when appropriate documentation has been submitted, the sooner an injured employee will begin the recovery process and the sooner the employee will be able to return to work.

Employees should not have to satisfy duplicate requirements from OWCP and their employing agencies. At TSA for example, employees can be required to provide medical information to their agency in addition to the information they already provide to OWCP. Sometimes the TSA request for medical information is above and beyond what FECA requires. The TSA request is so detailed, in fact, that some treating physicians do not want to fill out because it intrudes on the privacy of their patient. Once the FECA requirement is met by submitting information to OWCP, the employee should not have to keep submitting similar information to the agency, which sometimes changes the requirements, until the agency is satisfied that it is acceptable.

The whole premise of "putting employees to work" should be reversed. Incentives should be going to the agency to give injured or ill employees light duty work while they recover. In returning employees to work, agencies focus on full time duties. When

employees are able to do some parts of their jobs but not others due to medical restrictions, they are required by FECA to tell their doctors that their agency may be able to offer light or limited duty positions. Agencies often claim that there are no light duty/limited duty positions available, or in the case of TSA, that there are only a few. When the agency does offer limited duty positions, the limited duty work is sometimes so unproductive and demeaning as to appear punitive. Injured employees should not have to be forced to work in such demoralizing conditions. Employees want to be productive and contribute in a meaningful way to the mission of their agencies. The stories we hear from our members are reminiscent of the stories we heard from chicken processing plants years ago where injured employees were told to report to work only to sit in a break room just so the company would not have to report lost-time injuries and increase their injury rates. That should not be happening in the federal workplace.

The incentive should be to the agency to improve health and safety so workers do not get hurt or become ill in the first place. Agencies are concerned about the costs of workers' compensation, yet do not take action when employees are injured to correct or improve the workplace. Employees continue to work in the same workplaces, doing the work the same way, and often injured employees return to the same workstation that caused their injury.

The federal workers' compensation program should strive to be the best— the model program. It should not be competing with the states in a "race to the bottom." The rationale behind several of the proposed changes is that state compensation programs

do it that way. The idea that the changes "provide benefits in a more equitable fashion" is bad. Bad changes were made for the postal workers; therefore, we will make it equally bad for other federal employees. The state programs provide benefits that are less beneficial for employees than FECA, so let's make FECA equally bad. That should not be what the federal government is striving for.

The external criticisms with the current FECA that DOL lists do not include the ones we hear: long processing periods, lack of communications with the claims examiner; long waiting periods for decisions on surgery or other medical treatments.

Another rationale for the proposed changes is that it would increase employment of disabled workers. On the contrary, one agency, TSA, is terminating employees who have been permanently disabled by their on-the-job injuries. Those efforts and the proposed changes are counter to the Executive Order President Obama signed in July 2010 calling on all federal agencies to improve the retention and return-to-work rate of federal employees with disabilities, particularly those with work-related disabilities.

Like many other federal agencies, OWCP is underfunded and understaffed. This affects the availability of OWCP personnel to discuss questions and issues with the injured or ill worker. AFGE is proud to count among its members the claims examiners who dutifully adjudicate workers' compensation claims. We know that despite improvements in communications made over the years, their current workloads do not allow for more contact with claimants, which we believe would help claimants receive

benefits and medical treatment sooner and potentially return to work sooner. Ensuring that this office has the necessary funding would greatly improve how well it meets the needs of workers suffering from on-the-job injuries or illnesses and would ultimately help reduce costs through improvements in the process.

The Current Proposal

First, the language in the proposal implying that injured employees do not want to get back to work is unfortunate. Words such as "incentive" and "motivate" lead one to believe that employees are injuring themselves so they can be paid by OWCP, so they don't have to work, and eventually "retire" with workers' compensation benefits. This does not take into account the diminished work life that many employees injured or made ill by their jobs face. It does not take into account the physical pain employees must endure and the psychological pain they have to deal with when their lives start spiraling into debt because their OWCP payments take so long or because their cases are denied.

Our experience is to the contrary. Many injured or recovering employees want to return to their jobs. Some can only return with some modifications in their duties for some time and some need accommodations indefinitely. However, most find their agencies unwilling to make accommodations.

The spirit of FECA is that "an injury should not be to the benefit or to the detriment of the worker". The Act is intended to ensure that workers are treated fairly and equitably based on their employment at the time of their injury, to ensure all injury related medical

expenses are covered and to ensure an employee is able to return to medically suitable, meaningful employment. This proposal seeks to save agencies money by taking away benefits from workers injured or made ill by their jobs and is contrary to the spirit of FECA.

To address the specific changes being proposed, we offer the following:

Section 101. Physicians' Assistants and Nurse Practitioners

AFGE thinks it is an excellent idea to allow PAs and NPs to certify disability during the continuation of pay period. This language would address the concern that injured federal workers are not able to utilize local clinics if only a PA or NP is on-site. Not only is this important in rural areas but in several large cities where there are not enough physicians who work with OWCP or where there are lengthy wait times for an appointment with the physician.

However, we question the use of PAs and NPs only during the continuation of pay period. Why not allow federal workers use their services throughout the claim? Once the claim has been accepted and a medical condition accepted, the claimant should be able to continue to have PAs and NPs certify disability. The requirement could be that the employee has to be under the care of the physician and see the PA and NP under the physician's direction.

Section 103. Vocational Rehabilitation

The creation of an assisted reemployment program which allows DOL to enter into agreements to reimburse a federal agency the salary paid to an injured federal worker for up to three years seems to be a positive step. However, we are concerned that this would serve as a disincentive to agencies to make every effort to find suitable employment for their injured employees. It would potentially create a rush to get the worker into a program. The worker may be forced to return to work before it is medically advisable, and this may interfere with the recovery process.

AFGE is also concerned about what happens after the three year period. For example, a TSA worker is injured and cannot do his TSA job – but he can do an SSA job. So for three years he works at SSA and DOL reimburses SSA for his salary. But if he remains seriously disabled and cannot go back to his TSA job, and SSA will no longer employ him because the three year subsidized period has ended, what alternative does the employee have?

We question how OWCP will address the needs of workers who do not find employment after the vocational rehabilitation program is completed. Merely retraining employees and expecting them to find employment is potentially setting them up to be without income following their injury or illness. This is particularly true if the loss of wage earning capacity determinations are based on the position they held with another agency.

Section 104. Conversion Entitlement and Reporting Requirements

AFGE does not believe employees who have permanent disabilities which prevent them from working should be penalized by having their benefits reduced. If due to their on-the-job injuries or illnesses workers are not able to continue working, they do not receive the within-grade increases they would have had they continued working. They would not have received any promotions leading to higher pay. They would not have been able to make contributions to their Thrift Savings Plans; neither would their employing agencies. Their high-3 salaries average salaries would be those before their injury. If they have been unable to work for some time, the high-3's would certainly be lower than if they continued working.

While OWCP makes the case that employees who retire at 62 receive a lower monthly benefit amount than employees who receive workers' compensation benefits, injured employees may well have elected to continue working until past age 62. In current economic times, workers are choosing to continue working because they cannot afford to live on their retirement benefit. In addition, workers with a work-related disability who are pushed to disability retirement may not be physically able to earn supplemental income as so many healthy annuitants currently do. FECA would impose a retirement date that may not have been of the employees' choosing.

To make this change more equitable and fair to injured or ill employees, and not merely a cost-saving measure, the amount of the reduced benefit should be higher than 50%. Alternatively, FECA could allow for withholding of TSP contributions and require the employing agency to pay their allowable matching contribution.

Section 106. Augmented Compensation for Dependents

AFGE wonders why there is a removal of augmented compensation on the basis of dependents. Current law provides 66% for injured workers without dependents and 75% for those with dependents. This section provides that there will not be an increased percentage for claimants with dependents. Other sections state that the basic compensation rate will be 70% of monthly pay for both injured workers with dependents and those without. This may make it easier for the DOL to provide compensation, but isn't it unfair to those injured workers with dependents? It's not a matter of increasing compensation because a worker has dependents but of providing injured workers with compensation comparable to what their take-home pay was prior to their claim. The take-home pay for a worker will vary based on the number of dependents – or exemptions – the worker can claim. That is why an augmented compensation for dependents in needed. Perhaps a more equitable way of calculating an augmentation would be to base it on the number of dependents the claimant is able to claim as per the IRS definition.

Section 108. Maximum and Minimum Monthly Payments

For some employees, such as physicians employed by the Department of Veterans Affairs, limiting compensation to the maximum rate of basic pay for GS-15 results in additional loss. For example, 70% of the GS-15 basic pay would be the equivalent of a

40% reduction for a physician. The maximum should be the comparable rate of pay the individual worker earned at the time of the injury.

Section 112. Waiting Period

This section would amend FECA to place the three-day waiting period immediately after an employment injury and prior to the 45-day continuation of pay period. Currently, the three-day waiting period is effectively placed after the 45-day continuation of pay period. The amendment permits the use of sick leave, annual leave or leave without pay for the waiting period days. So if a worker is injured or made ill on the job, the worker suffers a loss of income or is forced to use his or her own leave because that will keep workers from filing workers' compensation claims.

The intent of the change is "to reinvigorate the effectiveness of the three-day waiting period." Proponents argue that the three-day waiting period provides the injured worker with time to think whether he should make a FECA claim. In others words, it's intended to effectively reduce FECA claims. Our question: Is there any evidence – from state-level experiences and Postal Service experiences - that a three-day waiting period after an employment injury (1) causes injured workers to contemplate whether or not he should make a workers compensation claim and/or (2) results in a reduction of workers compensation claims? If not, why make the change?

Other than penalizing employees for becoming sick or injured on the job, we do not see any reason to change the way this is currently done. The reason that OWCP gives –

that it would equalize benefits among postal employees and non-postal employees -- is not a valid one. This cost-saving measure only benefits the agency that injured or sickened the employee and takes away from the injured or ill employee. It is meant to keep employees from filing claims and again, the language implies that employees have to be "incentivized" – not to file "frivolous" claims, to return to work, to not "retire" on workers' compensation.

Section 114. Sanction for Non-Cooperation with Nurses

This change is much too harsh and does not include any 'due process' considerations. In our experience, the primary reason claimants sometimes resist the nurses' intervention is that they sometimes exceed their authority by talking with treating physicians and influencing their opinions or reports to OWCP. It is usually in an effort to get the employee back to work, sometimes even when the treating physician advises against it for medical reasons. When nurses are essentially violating the claimants' right to privacy with their treating physicians, the employee should be able to register a complaint and have it addressed. If there are to be sanctions, there needs to be a forum for the claimant to state his or her position and to be heard.

Section 117. Funeral Expenses

AFGE supports increasing the amount payable for funeral expenses since the limit of the current law has been significantly changed since 1949. But the $6,000 increase is much too small – funeral expenses generally cost about $8,500. In order to fully update this benefit amount, a more current amount should be used. Cursory Internet

research shows that the proposed $6,000 amount would not cover most basic funeral costs and it should be increased.

Closing

In his July 1998 statement, Joseph M. Perez testified that:

> Workers' compensation law arose out of the frustrations employees and employers experienced with the common law remedies for workplace injuries and deaths. These frustrations were due to the difficulty employees had in obtaining an award for workplace injuries under the tort system; and the inability of employers to make provisions for their financial liability since jury awards were unpredictable.
>
> Workers' compensation, therefore, represents a covenant. Under workers' compensation law each side gives up something that is available to it under the common law, but simultaneously receives something as well. The employer relinquishes the defenses enjoyed under the common law, but this loss is offset by a known level of liability for work-place injuries and deaths. The employee gives up the opportunity for large settlements provided under the common law, but receives the advantage of prompt payment of compensation and medical bills. These tradeoffs make the workers' compensation system acceptable to both parties. However, where either party does not receive the benefits of this covenant, the system becomes unacceptable.

Thirteen years later, we are again looking at proposals that upset that balance, that trade-off, by taking away benefits from injured or ill workers. We should be focusing on ***facilitating*** return to work, not forcing injured employees to return to work sooner than medically-recommended because they fear losing their benefits or losing their jobs.

Unilaterally reducing benefits to the injured worker simply in an effort to lighten the financial liability of the employer is not an equitable response to the increasing injury compensation costs. Injured workers already suffer loses, both financial and emotional, for which they can never be compensated.

We urge the Subcommittee to direct the Department of Federal Employees Compensation to propose changes that save money by improving the workers' compensation process and not by reducing the benefits available to employees injured or made ill by their jobs when they most need them.

Thank you for the opportunity to address our concerns with this proposal.

[Whereupon, at 11:20 a.m., the subcommittee was adjourned.]

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