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FEDERAL EMPLOYEES' COMPENSATION ACT: A FAIR APPROACH?

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND LABOR POLICY

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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FEDERAL EMPLOYEES' COMPENSATION ACT: A FAIR APPROACH?

WEDNESDAY, APRIL 13, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND LABOR POLICY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:44 p.m., in room 2154, Rayburn House Office Building, Hon. Dennis A. Ross (chairman of the subcommittee) presiding.

Present: Representatives Ross, Amash, Lynch, Norton, Connolly, and Davis.

Also present: Representative Issa.

Staff present: Ali Ahmad, deputy press secretary; Robert Borden, general counsel; Molly Boyl, parliamentarian; John Cuaderes, deputy staff director; Gwen D'Luzansky, assistant clerk; Adam P. Fromm, director of Member liaison and floor operations; Ryan Little, manager of floor operations; Justin LoFranco, press assistant; James Robertson, professional staff member; James Peter Warren, policy director; Kevin Corbin, minority staff assistant; Adam Miles and William Miles, minority professional staff members.

Mr. ROSS. Good afternoon. Welcome. I would like to call the Subcommittee on Federal Workforce and U.S. Postal Service and Labor Policy to order. Today's hearing is on the Federal Employees' Compensation Act: A Fair Approach?

Before we begin, I will state the Oversight Committee mission statement, as we have done in the full committee and all subcommittees. We exist to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent. And second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people, and to bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Reform Committee.

I will now move into my opening statement. The Federal Employees' Compensation Act [FECA], provides workers' compensation coverage for roughly 3 million Federal civilian workers who suffer occupational injury or disease, including those in the U.S. Postal Service. In fiscal year 2010, the cost was $2.86 billion to approxi-

mately 251,000 claimants. Of that dollar amount, nearly half, or $1.1 billion, went to U.S. Postal employees.

FECA was last significantly amended in 1974. Today, this committee will hear from a panel of witnesses who will discuss whether FECA continues to adequately provide workers' compensation to Federal employees who have suffered work force-related injuries. Members of this committee recognize that FECA is an important program that was intended to provide income to employees while they recuperate prior to returning to work. Federal employees who have been injured while performing their duties should be compensated fairly.

Under FECA, compensation benefits are paid at a rate as high as 75 percent of salary, tax-free, for as long as the work-related injury continues or until death. Because FECA benefits typically exceed Federal retirement benefits, there exists a large incentive for Federal workers to remain on FECA beyond the point when they otherwise would have returned to work or retired.

The result is that FECA has become a retirement plan for thousands of Government employees because the payout is better. FECA pays monthly benefits to about 49,000 Federal employees who are on its "periodic" roll. Today, 14,500 Federal civilian employees continue to collect workers' compensation after their retirement age. Of the 15,470 Postal employees receiving FECA benefits, 8,632 are age 55 and older, including 2,051 ages 70 and older, and 132 ages 90 and older.

FECA was never intended to be a retirement plan. Workers who have been permanently disabled by their injuries and who will never return to work should not be covered indefinitely by FECA. They should receive a retirement annuity as other Federal workers do.

According to a 2005 audit by the Office of Inspector General for the Veterans' Administration, converting the retirement-eligible Postal and Federal employees on workers' compensation to the Federal employee retirement system when they reach retirement age will save taxpayers $500 million annually. Congress has an obligation to consider policy reforms that overhaul Federal workers' compensation to reduce costs system-wide. It is my hope we can reach bipartisan agreement on an equitable approach.

I thank the witnesses for appearing today, and I look forward to their testimony.

I will now recognize the distinguished ranking member, Mr. Lynch, for his opening statement.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank the witnesses for helping the committee with its work. I appreciate the chairman holding this afternoon's hearing, as it will afford us the opportunity to examine the Federal Employees' Compensation Act, which as the chairman has pointed out has not been revisited or significantly updated in over 30 years.

The Federal Employees' Compensation Act [FECA], and I will try to avoid using acronyms, as it is so commonly referred to, serves as the safety net for thousands of Federal workers that are injured while in the performance of their official duties. The Federal Employees Compensation Act benefits are also extended to Federal ci-

vilian employees that may contract occupational diseases or illnesses as a result of their work environment.

Today's hearing serves as a reminder that the Federal Government takes its responsibilities as an employer very seriously and is committed to having in place effective systems and policies that protect and assist the men and women of this great Nation who have dedicated their professional career to public service.

The Federal Workers' Compensation Program helps shield our employees and their families from undue hardships, often during times when they may be dealing with some challenging situations and circumstances. Wage loss payments ensure that these employees can continue to make ends meet, while medical reimbursement and vocational rehabilitation regularly mean the successful recovery and eventual return to work of these dedicated public servants.

Although the Federal Workers Compensation may commonly be lauded as a prime example of employee disability insurance, the program is not without its share of problems, especially given the fact that it has not been significantly reviewed in the past 30 years. For example, time and again we hear of how injured employees face delays in the processing of paperwork, they confront stringent time limits and encounter various difficulties when they are seeking to change their physician or medical provider.

On the other hand, we see employees of the Office of Workers' Compensation program having to deal with over 100,000 new claims a year. And they interact with a myriad of different Federal agencies and grapple with the case management expectations and efficiencies, all in the face of recent budgetary cuts.

Further, with tens of thousands of Federal employees currently serving overseas in zones of armed conflict, it is even more important now that we ensure the seamless medical care and efficient processing of workers' compensation claims upon the return of these employees, who unlike their military counterparts often lack an established medical rehab framework or agency personnel that are dedicated to helping them navigate bureaucratic hurdles associated with filing claims for Federal workers' compensation benefits. To that end, I look forward to today's proceedings to further the dialog on how best to update, modernize and improve the administration of the Federal Employees Compensation Act, with the goal of making it more equitable for our employees and more manageable for our agencies.

While I recognize that the various FECA-regulated reform proposals that have already been put forth this Congress attempt to accomplish this goal, I am less than confident that any of these proposals actually represents a truly fair approach to enhancing the Federal Workers' Compensation program going forward, as contemplated by the title of today's hearing.

Mr. Chairman, I would also like to ask unanimous consent that the statement of the National Active and Retired Federal Employees Association be included in the record.

And again, I thank our witnesses for appearing here before this subcommittee this afternoon, and for helping us sort out what options may need to be considered to guarantee that injured Federal employees and their family members are receiving the proper support and treatment they deserve from a grateful Nation.

Thank you.

Mr. ROSS. Thank you, Mr. Lynch. And without objection, we will show the report entered into the record.

Members may have 7 days to submit opening statements and extraneous material for the record.

We will now welcome our panel of witnesses. Mr. Gary Steinberg is the Acting Director of the Office of Workers Compensation Programs at the U.S. Department of Labor. Mr. Douglas Fitzgerald is the Director, Division of Federal Employees Compensation, at the U.S. Department of Labor. Unfortunately, David Williams, the Inspector General of the U.S. Postal Service, could not be with us today due to illness. However, Mr. Bill Siemer, the assistant inspector general for investigation, is here in his place.

We have next Ms. Lisa McManus, who is the president of CCS Holdings, L.P. And we have another witness who is not with us yet, Ms. Milagro Rodriguez, an occupational health and safety specialist with the American Federation of Government Employees.

What I would like to do, pursuant to committee rules, is ask you to stand, raise your right hands and I will swear you in before you testify.

[Witnesses sworn.]

Mr. ROSS. Thank you. Let the record reflect that all the witnesses answered in the affirmative.

Please be seated. In order to allow time for discussion, we are going to ask you to keep your remarks brief. Your written statements, of course, have been submitted and are part of the record of this hearing. At this time, I will now recognize Mr. Steinberg for an opening.

STATEMENTS OF GARY STEINBERG, ACTING DIRECTOR, OFFICE OF WORKERS COMPENSATION, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY DOUGLAS FITZGERALD, DIRECTOR, DIVISION OF FEDERAL EMPLOYEES COMPENSATION; BILL SIEMER, ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, U.S. POSTAL SERVICE; LISA McMANUS, PRESIDENT, CCS HOLDINGS, L.P.; AND MILAGRO RODRIGUEZ, OCCUPATIONAL HEALTH AND SAFETY SPECIALIST, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

STATEMENT OF GARY STEINBERG

Mr. STEINBERG. Thank you, Chairman Ross and committee members. I appreciate the opportunity to discuss the Federal Employees' Compensation Act with you today.

On behalf of Secretary Solis, I would like to share a set of balanced proposals that would enhance the ability for us to assist beneficiaries in returning 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 disability and death due to work-related injuries and illnesses. The basis of FECA includes the postal worker who is hurt when his mail truck is hit while driving and delivering the mail, the FBI agent who is injured or killed 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 communications and reduce the cost to the taxpayer. We have made major strides in disability management, resulting in significant reductions in the average number of work days lost from the most serious injuries. Over the last 10 years, the average number of days lost due to serious injuries has declined by over 20 percent, producing an annual savings of $53 million.

Our administration costs are only 5 percent of the 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. I wish to highlight some of the major changes now.

To help injured employees return to work, we request the authority to start vocational rehabilitation activities without waiting until an injury is deemed to be permanent in nature. We seek the mandate to develop a return to work plan with claimants early in the rehabilitation process and the authority to develop an assisted reemployment program with Federal agencies, similar to the one 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.

We also suggest changes to the benefit structure. For example, the payment of schedule awards for a loss or loss of use of a limb or sight or hearing is often complicated and thus often delayed. Although not intended to replace economic loss, payments are based on the employee's salary. So a letter carrier's knee impairment 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, more rapidly, and to be fair, they should be calculated at a uniform level for all employees. We also recommend increases to burial benefits and benefits for facial disfigurements.

Under current law, the majority of injured workers receive wage replacement at 70 percent of their salary, tax-free and COLA. This rate is higher than the take-home pay for most Federal employees and at times can be an obstacle to the Department's effort to encourage every worker to make the hard and sometimes painful effort to overcome their injuries and return to work. We therefore recommend shifting the benefit level for the majority of claimants to 70 percent rather than 75 percent.

To provide equity with other Federal employees, we also recommend establishing a lower conversion rate for beneficiaries beyond retirement age. This would more closely mirror OPM's retirement rates. Both changes would be prospective.

In addition, elements of the statute need to be simplified so that we can process more expeditiously. For example, the current statute increases the compensation rate for anyone with a dependent beyond the standard 66 and two-thirds rate loss to 75 percent. Pay-

ing 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 written testimony outlines other important provisions that would streamline and improve the program. In summary, FECA is a model workers' compensation program. Yet, it has limitations that need to be addressed, we all recognize that.

The reforms we suggest today are not new. They have been proposed by both the current and previous administrations. They are careful, they are balanced. We believe they reflect good government, and they will bring the program into the 21st century.

Thank you again for the opportunity to discuss the program with you today. I will be prepared to answer any questions that you may have.

[The prepared statement of Mr. Steinberg follows:]

STATEMENT OF GARY STEINBERG

ACTING DIRECTOR
OFFICE OF WORKERS' COMPENSATION PROGRAMS

U.S. DEPARTMENT OF LABOR

BEFORE THE SUBCOMMITTEE ON FEDERAL WORKFORCE, US POSTAL SERVICE AND LABOR POLICY

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

April 13, 2011

Chairman Dennis Ross, Ranking Member Lynch, 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, while producing potential cost savings of approximately $400 million over a 10-year period for the American taxpayer. 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 Federal 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, 66 2/3%, is comparable to most state systems, the majority of Federal employees receive an augmented benefit, 75%, reflecting at least one dependent. Computed at 75% tax free, FECA benefits frequently 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 assigned 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, cost savings are estimated to be in excess of $400 million over a 10-year period.

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.

Mr. ROSS. Thank you very much.

Next we will move on to Mr. Siemer for 5 minutes. You are recognized.

STATEMENT OF BILL SIEMER

Mr. SIEMER. Thank you, sir.

Mr. Chairman, Ranking Member Lynch and members of the subcommittee, thank you for the opportunity to discuss workers' compensation issues and reform.

The Federal Employees' Compensation Act [FECA], requires Federal agencies to participate in Department of Labor's FECA program. The Department of Labor bills each agency annually for compensation paid and non-appropriated agencies also must pay the Department of Labor an annual administrative fee. Eligible disabled employees receive 66 and two-thirds percent, or 75 percent with dependents, of their basic salary tax-free, plus medical related expenses. Also, FECA places no age limit on receiving benefits. This is substantially more than other employees receive when they retire. Though unintended, FECA has become a lucrative retirement plan.

The Postal Service is the largest FECA participant, paying more than $1 billion in benefits and $60 million in administrative fees annually, creating a long-term liability of $12.6 billion. As of February 2011, the Postal Service had about 15,800 disabled employees. Over 8,700 were at least age 55; about 3,100 were at least age 65; and about 900 were between age 80 and 98.

Certain aspects of the program make it susceptible to fraud, including the claimant's ability to change their story until their claim qualifies, the claimant's ability to hire a physician, rather than use a plan physician to assess their injuries and conditions. The program incentivizes DOL to collect larger fees if they approve more claims, and lose budget dollars if they deny them. The lack of effective DOL case management, and employers not being allowed to present or respond to evidence at hearings.

The Department of Labor has some fraud detection responsibility, but it is unclear to what extent. They advise agencies to actively manage their own programs while still charging administrative fees. There is not a clear delineation of responsibility between agency program managers and their OIGs and DOL and its OIG in detecting fraud. Accordingly, there is significant risk that program oversight will be duplicative or not done.

Since October 2008, we have removed 476 claimants based on disability fraud, recovered $83½ million in medical and disability judgments, and halted significant future losses. In one investigation, a fraudulent claimant received $142,000 in benefits while she was working as a real estate agent. And we had pictures of her hiking and bungee jumping. She even bought a boat and named it Free Ride. Other investigations have found fraudulent claimants working as martial arts instructors, landscapers, hairdressers and mechanics.

Working with DOL can be difficult. They control needed documents but are often not responsive when we investigate cases. Additionally, they do not take timely action when told that a claimant

no longer qualifies for benefits. Even when a claimant is convicted, DOL is slow to terminate benefits.

We gave the Department of Labor an investigative report in 2006, which found a claimant was exceeding his limitations. Even though the employee was willing to return to work, the Department of Labor did not reduce his benefits until 2011. Fourteen months ago, we gave the Department of Labor an investigative report containing evidence of fraud by a disability claimant and a subsequent medical exam confirmed the claimant was able to return to work with no restrictions. Despite requests, DOL has taken no action and continues to pay benefits. Over a 5-year period, one claimant submitted $190,000 in unsupported mileage reimbursements, and the Department of Labor paid without question.

Stress claims in particular are at high risk for fraud. If a doctor sees a correlation between stress and a claimant's work, the claim is often approved. In one instance, a claimant's emotional reaction to a change in work schedule was enough for Department of Labor approval.

The OIG also investigates medical providers involved in criminal matters, including disability fraud. And we have recovered $78½ million since fiscal year 2009. Unfortunately, the Department of Labor provides no standardized billing guidelines for doctors, making it difficult to hold them accountable for fraudulent billings. If the Department of Labor instituted a system similar to Medicare's, prosecutors would be more inclined to take these cases.

From our reviews, the Postal Service would benefit from having its own workers' compensation program. Savings would be in the areas of reduced administrative fees, accurate assessment of claims by plan physicians, buy-out options, mandatory retirements, immediate access to records and improved accountability over case management.

FECA is in need of significant reform. Such reform could reduce the substantial risk for fraud and improve program efficiency and effectiveness while protecting reasonable benefits for legitimate claimants. Thank you.

[The prepared statement of Mr. Williams follows:]

Hearing before the Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy
Committee on Oversight and Government Reform
House of Representatives

Oral Statement

Hearing on the Federal Employees Compensation Act Program

April 13, 2011

David C. Williams
Inspector General
United States Postal Service

Mr. Chairman and members of the subcommittee, thank you for the opportunity to discuss workers' compensation issues and reform. The Federal Employees Compensation Act (FECA) requires federal agencies to participate in the Department of Labor's (DOL) FECA program. DOL bills each agency annually for compensation paid and non-appropriated agencies also must pay DOL an annual administrative fee.

Eligible disabled employees receive 66 2/3 percent (or 75 percent with dependents) of their basic salary, tax-free plus, medical-related expenses. Also, FECA places no age limit on receiving benefits. This is substantially more than other employees receive when they retire. Though unintended, FECA has become a lucrative retirement plan.

The Postal Service is the largest FECA participant, paying more than $1 billion in benefits and $60 million in administrative fees annually, creating a long-term liability of $12.6 billion. As of February 2011, the Postal Service had about 15,800 disabled employees. Over 8,700 were at least age 55, about 3,100 were at least age 65, and about 900 were between age 80 and 98.

Certain aspects of the program make it susceptible to fraud:

- The claimant's ability to change their story until their claim qualifies;
- The claimant's ability to hire a physician rather than use a plan physician to assess their injuries and condition;

- The program incentivizes DOL to collect larger fees if they approve more claims and lose budget dollars if they deny them;
- The lack of effective DOL case management; and
- Employers not being allowed to present or respond to evidence at hearings.

DOL has some fraud detection responsibility, but it's unclear to what extent. They advise agencies to actively manage their own programs, while still charging administrative fees. There is not a clear delineation of responsibility between **(1)** agency program managers and **(2)** their OIGs and **(3)** DOL and **(4)** its OIG in detecting fraud. Accordingly, there is significant risk that program oversight will be duplicative or not done.

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Working with DOL is difficult. They control needed documents, but are often not responsive when we investigate cases. Additionally, they do not take timely

action when told that a claimant no longer qualifies for benefits. Even when a claimant is convicted, DOL is slow to terminate benefits.

- We gave DOL an investigative report in 2006 which found a claimant was exceeding his limitations. Even though the employee was willing to return to work, DOL did not reduce his benefits until 2011.
- Fourteen months ago we gave DOL an investigative report containing evidence of fraud by a disability claimant and a subsequent medical exam confirmed the claimant was able to return to work with no restrictions. Despite requests, DOL has taken no action and continues to pay benefits.
- Over a 5-year period one claimant submitted $190,000 in unsupported mileage reimbursements that DOL paid without question.

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From our reviews, the Postal Service would benefit from having its own workers' compensation program. Savings would be in the areas of reduced administrative fees, accurate assessment of claims by plan physicians, buyout options, mandatory retirements, immediate access to records, and improved accountability over case management.

FECA is in need of significant reform. Such reform could reduce the substantial risk for fraud and improve program efficiency and effectiveness, while protecting reasonable benefits for legitimate claimants.

Mr. ROSS. Thank you.

Ms. McManus, you are recognized for 5 minutes.

STATEMENT OF LISA McMANUS

Ms. MCMANUS. Thank you, Mr. Chairman, committee.

I believe I am the only individual speaking today from the private sector, so I feel somewhat of a little bit at a disadvantage. Nevertheless, let me explain how I even became interested in the FECA.

We manage workers' comp for the non-appropriated funds' instrumentalities. And because of that, we were asked to go down to a Navy base in Corpus Christi to assist them in their FECA program. That was in the early 1990's.

Since that time, we have been approached by several agencies to assist them. And so we do have contracts with some, the Department of Commerce, for example, some FECA agencies and as such, have realized that there are so many nuances of the law that foster abuse.

For example, not to be repetitive to both what the chairman in his opening remarks or what has already been said, we feel that the entire FECA law needs to be sunset and start over, and to fashion a new law that would either compare or combine both NAFE workers and FECA-appropriated fund workers. Along those lines, reduce the average weekly wage of 75 percent to 66 and two-thirds. Seventy-five percent of an average weekly wage tax-free lends itself to abuse, because many times the worker actually is making more on workers' comp than if they were working.

Federal workers who are beyond the retirement age continue to receive workers' comp. Under the current scenario, Federal workers would continue to receive 75 percent of their average weekly wage tax-free, with an annual cost of living increase, versus 56 percent under a retirement plan. Again, this scenario lends itself to abuse.

Afford appropriated workers the same benefit entitlement as non-appropriated workers at the rate of 66 and two-thirds. Offer retirement benefits under OWCP to only those employees deemed to be permanently and totally, by legal definition, disabled. Protocols within the Department of Labor are far outside industry standards with regard to case management and oversight. For example, in certain situations, a Department of Labor case manager is only required to review a case file every 2 years. A lot happens in 2 years.

Perhaps change the law to allow a government agency the option of seeking a third party administrator to handle its FECA claims, or the Department of Labor. Or increase DOL staffing that would ensure proper case management that closely aligns with industry standards. The number of DOL full-time equivalents used to administer newly created cases plus the ongoing claims from previous years far exceeds standard used in the private sector and industry standards.

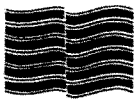
Many agencies do not even have a centralized program, a key element in measuring and managing overall performance goals. Implement a requirement that if an agency manages its claims internally, a standard set of protocols and policies, as well as standard performance goals and benchmarks, must be used. The OIG has

performed many audits for various agencies. Most findings indicate ineffective monitoring, a lack of return to work initiatives, ineffective medical management, poor monitoring of chargeback reports, and overall poor performance by the agencies.

Agency employees involved in handling or oversight of FECA claims would be required to have 15 hours or more of continuing education each year covering FECA laws, claims management and benchmarking. Many agencies have no standard return to work program in place for injured workers who may be able to return to the work force once maximum medical improvement has been achieved. Mandate a program for all agencies to at least attempt to bring workers back to work.

Regarding continuation of pay, and that's the first 45 days of disability, to my knowledge there is no other jurisdiction that allows a 45-day continuation of pay where an employee receives 100 percent of their salary. Our suggestion would be to eliminate that in its entirety.

[The prepared statement of Ms. McManus follows:]



Contract Claims Services, Inc.

RECOMMENDATIONS FOR CHANGES TO THE FEDERAL EMPLOYEE COMPENSATION ACT

General

1. Appropriated Federal workers are under the Federal Employees' Compensation Act (FECA) for job related injuries; however, Non-Appropriated Federal workers are under the Non-Appropriated Funds Instrumentalities Act (NAFIA). FECA has many challenges, including liberal benefits and weak administration. In comparing the two Acts, FECA is substantially more costly and gives more opportunity for fraud, waste, and abuse.

   Recommended change to the law:

   Sunset the FECA law. Either combine the two types of federal workers into one law or write a similar law for FECA as found in the NAFIA.

2. Workers' compensation, whether federal or statutory, that provides benefits greater than if the employee was actually working, fosters abuse. An injured federal worker can receive up to 75% of his or her average weekly wage tax free, and subject to a cost of living adjustment each October.

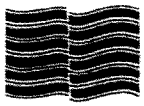
   Recommended change to the law:

   A. Afford appropriated workers the same benefit entitlement as non-appropriated workers.
      Or,
   B. Reduce the benefit entitlement to 66 2/3rds of the average weekly wage of the injured worker.

3. Federal workers who are beyond retirement age continue to receive workers' compensation; under the current scenario, federal workers would continue to receive 75% of their average weekly wage tax free, with annual cost of living adjustments versus the 56% under the retirement plan. Again, this scenario lends itself to abuse.

   Recommended change to the law:

   A. Afford appropriated workers the same benefit entitlement as non-appropriated workers at a rate of 66 2/3rds of the average weekly wage.



If the Office of Personnel Management (OPM) retirement is realized, the Office of Workers' Compensation Programs (OWCP) payments terminate for disability.
Or,

B. Offer retirement under OWCP to only those employees deemed to be permanently and totally (legal definition) disabled.

4. Protocols and procedures within the Department of Labor (DoL) are far outside of industry standards with regard to case management and oversight, e.g. in certain situations a DoL case manager is only required to review a case file every two years.

   Recommended change to the law:

   A. Change the law to allow a government agency the option of selecting a Third Party Administrator (TPA) to handle its FECA claims, or the Department of Labor. Should a TPA be selected, the Department of Labor would still regulate the claims to ensure proper management according to FECA laws.
   Or,
   B. Increase DoL staffing that would ensure proper case management that closely aligns with industry standards. The number of DoL full time equivalents (FTE's) used to administer newly created cases, plus the on-going claims from previous years, far exceed standards used in the private sector and industry standards.

5. The "non-adversarial" verbiage contained in the Act lends itself to "just pay, don't question." The growing cost of this provision will place the future of some agencies at risk.

   Recommended change to the law:

   A. Remove "non-adversarial" verbiage.

6. Many agencies do not even have a centralized program, a key element in measuring and managing overall performance goals.

   Recommended changes to the law or procedures:

   A. Implement a requirement that if an agency manages its claims internally, a standard set of procedures and policies, as well as standard performance goals and benchmarks, must be used. The OIG has performed many performance audits for various agencies. Most findings indicate ineffective monitoring, a lack of return to work initiatives, ineffective medical management, poor monitoring of chargeback reports, and overall poor performance by the agencies.
   B. Agency employees involved with handling or oversight of FECA claims would be required to have at least 15 hours of continuing education each year covering FECA laws, claims management, and benchmarking.

7. Many agencies have no standard return-to-work program in place for injured workers who may be able to return to the workforce once maximum medical improvement has been achieved.

   Recommended change the law:

   A. Mandate a return-to-work program for all agencies.

8. Most agencies, including DoL, do not have the manpower necessary to closely and properly administer a program of this magnitude.

   Recommended change to the law:

   A. Establish minimum industry standards for both government agencies and the DoL for handling of FECA claims. If the standards cannot be met require the agency and/or the DoL to outsource to a TPA.

Department of Labor Protocols

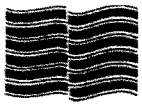
1. "Periodic Roll" files are cases subject to review once every two years by the DoL. Additionally, medical evidence to support continuing disability and payments oftentimes does not exist. If and when medical evidence is presented that does indicate the injured worker is released to return to work, DoL sends a "Notice of Proposed Termination" letter, allowing the employee an additional 30 days of compensation and an opportunity to "appeal" the evidence.

   The NAFIA terminates benefits upon medical evidence that the employee is no longer disabled. Appeals may be made, but lacking medical evidence to support disability, benefits do not continue. In addition, this file classification Form EN-1032 is set for a two year review. This form is sent to the injured worker to complete and would indicate if the injured worker has received other wages during the period of compensation. If the worker has received other wages during this two-year period, an overpayment of compensation would then exist. When an overpayment is realized DoL has discretion to "forgive" the overpayment, or alternatively, structure a repayment plan.

   Recommended change to the law:

   A. Terminate disability payments when medical evidence demonstrates the ability to return to employment.

2. "Continuation of Pay" for an injured worker can be paid by the agency for up to 45 days from the date of injury. This benefit (100% of salary) can be abused by employees. There is no other jurisdiction (to our knowledge) that provides this type of benefit. All other



jurisdictions have some form of "wait period," usually three to seven days in which the employee would not be paid for lost time until the "wait period" had been exceeded.

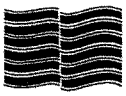
Recommended change to the law:

A. Discontinue "Continuation of Pay" entirely.

3. Contractor services for payment of medical bills have created other opportunities for abuse. For example, protocols exist that the contractor pays mileage to the injured worker to attend various appointments. Such payments are not verified, nor monitored by DoL. The contractor is very difficult to reach, as is DoL. In some areas, physicians and medical providers will not accept a federal employee as a patient for treatment because of delays in payment and ability to secure authorizations. Prescription drugs and durable medical equipment bills are paid by the contractor without an evaluation from the treating physician.

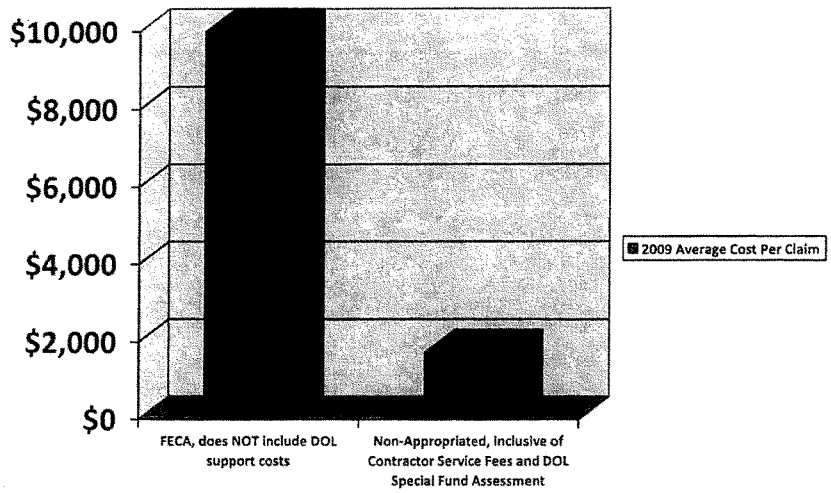
   Recommended changes to the law:

   A. Case workers should review and approve all medical charges prior to payment.

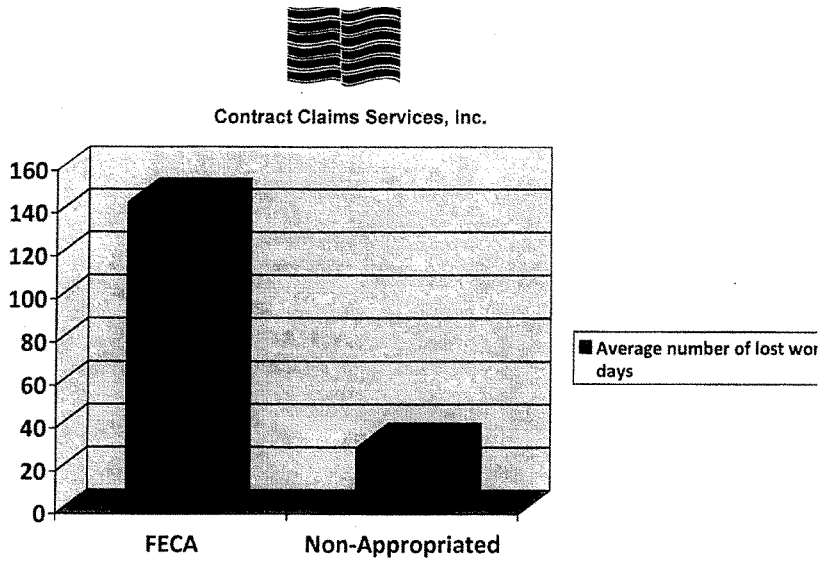


Contract Claims Services, Inc.

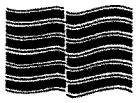
An argument that appropriated employees should receive the same benefit entitlement as non-appropriated employees:

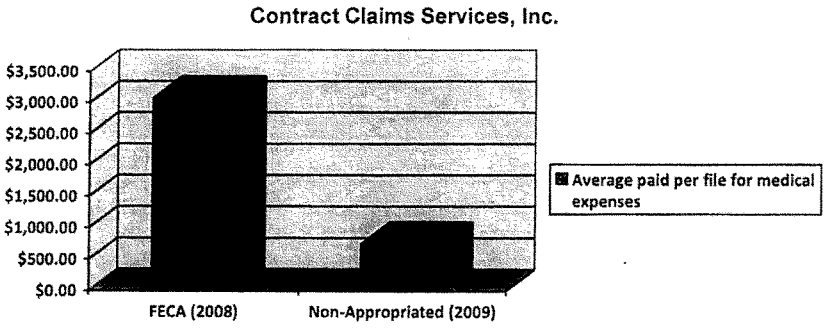


For payment of medical expenses, both FECA and NAFIA claims are paid in accordance with the OWCP fee schedule. The significant difference in average cost per claim is the benefit entitlement for lost wages and the duration of lost work days. These figures do NOT include Continuation of Pay during the first 45 days of lost work days for FECA employees.



The above chart does reflect the initial 45 days of Continuation of Pay for FECA employees. NAFI employees do not have Continuation of Pay.





FECA and NAFIA utilize the exact same fee schedule (OWCP Fee Guidelines) for payment of medical expenses. It is curious, then, why there would be such a difference in the average amount paid per claim. NAFIAs (with the exception of Air Force MWR) utilize a TPA for claims administration. As such, if that TPA has the benefit of PPO networks, the savings are passed on to government. FECA does not utilize PPO networks. Also, NAFIA medical bills are reviewed by a claims examiner for relatedness prior to payment.

Mr. ROSS. Thank you, Ms. McManus.

Ms. Rodriguez, welcome. I understand you had some transportation delays getting here. We are pleased to have you here.

The only thing you missed was the swearing-in part, so if you don't mind, stand and raise your right hand and I will swear you in.

[Witness sworn.]

Mr. ROSS. Thank you. Let the record reflect that the witness answered in the affirmative. And again, Ms. Rodriguez, thank you very much for being here. You are recognized for 5 minutes.

STATEMENT OF MILAGRO RODRIGUEZ

Ms. RODRIGUEZ. Thank you, Mr. Chairman.

On behalf of the members of AFGE, which represents more than 600,000 Federal employees, including the claims examiners who adjudicate workers' compensation claims, I thank you for the opportunity to testify today on the proposed changes to the Federal Workers Compensation Act.

We wish we were here offering our views on how to improve the Federal Workers' Compensation Program and how to save the Government money. Although the proposed changes are described as modernizing and improving FECA, they basically amount to reducing benefits for injured or ill employees 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, the changes that would give employees the time they need to recover and get well sooner, the changes that would ensure that employing agencies meet their FECA responsibilities. Also, the changes that would compel agencies to improve health and safety so workers do not get hurt or become ill in the first place.

First, I have some general comments about the proposal. The language in the proposal that implies that injured employees do not want to get back to work is unfortunate. Words like incentivize 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 on workers' compensation benefits. That is an unfair characterization. It does not take into account the diminished work life that many injured employees face. It does not take into account the physical pain employees must endure and the psychological pain they have to deal with when their life starts spiraling into debt because OWCP payments take so long or because their cases are denied.

In our experience, most workers wish they had never been hurt. Most want to go back to work when it is safe for them to do so. And most wish they did not have to deal with the workers' compensation process at all.

Next, I would like to address some specific changes that are being proposed. The proposal to create an assisted re-employment program seems to be a positive step. However, we are concerned that this program would serve as a disincentive to agencies to make every effort to find suitable jobs for their injured employees. It would potentially create a rush to get the employee into the pro-

gram and the worker may be forced to return to work before it is medically advisable.

AFGE is also concerned about what happens after the 3-year period. For example, a TSA worker is injured and cannot do his TSA job, but he can do a Social Security job. So for 3 years, he works at SSA and DOL reimburses SSA for his salary. But if he cannot go back to his job at TSA and SSA will not keep him without the subsidy, what alternative does the employee have?

We are also concerned about how OWCP will address the needs of workers who do not find employment after the vocational rehabilitation program is completed. We think agencies will use this to get rid of their injured employees. We see this happening already at TSA.

AFGE does not believe claimants should be forced to choose between a lower disability retirement than they would have if they had continued to work, or having their benefits reduced through the proposed conversion. To make this change more equitable and fair to claimants, the amount of the reduced benefit should be higher than the proposed 50 percent.

The proposal would eliminate the increased percentage for claimants with dependents, making the basic compensation rate 70 percent of monthly pay for all claimants. We do not see this as a matter of increasing compensation because a worker has dependents, but of providing injured workers with compensation comparable to what would be their take-home pay before their injury or illness.

The proposal would place the 3-day waiting period immediately after the employment injury and prior to the 45-day continuation of pay period. So if a worker is injured or made ill on the job, the worker already suffers a loss of income or is forced to use his or her own leave. 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 proposal to include sanctions for non-cooperation with nurses is too harsh and does not include any due process considerations. In our experience, the primary reason claimants sometimes resist their nurse's intervention is that some nurses exceed their authority by adversely influencing the treating physician's opinions or reports to OWCP. 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.

In closing, 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 by lowering benefits to the States' levels. We urge the subcommittee to direct the Officer of Workers' Compensation Programs to propose changes that save money by improving the workers' compensation process and not simply by reducing the benefits available to employees injured or made ill by their jobs when they most need them.

That concludes my statement. I would be happy to respond to your questions.

[The prepared statement of Ms. Rodriguez follows:]

STATEMENT BY

MILAGRO RODRÍGUEZ

OCCUPATIONAL HEALTH AND SAFETY SPECIALIST

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE,
U.S. POSTAL SERVICE, AND LABOR POLICY

OF

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

FECA: A FAIR APPROACH

ON

APRIL 13, 2011

American Federation of Government Employees, AFL-CIO
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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 the 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

Mr. ROSS. Thank you, Ms. Rodriguez.

We will now move into questions. And I will begin by recognizing the full committee chairman, the distinguished gentleman from California, Chairman Issa.

Mr. ISSA. Thank you, Mr. Chairman. Although your questions will be better trained and insightful, I will try to get the easy ones out of the way.

Ms. Rodriguez, since you spoke last, you probably are most freshly in my mind. If I heard you correctly, your objections are based on mostly abuses or potential abuses, wouldn't that be a fair characterization of some of the areas that you were saying, including that nurses may not be fair, that employers may dump their employees to another entity of Government and so on? Can you show me any example in the private sector where there is a system that looks like the system that you would modify our thoughts to? In other words, where in the private sector would the current system be paralleled? Who, for example, like the Post Office, and I don't pick on the Post Office lightly, but their system allows two 98 year old people to continue getting full pay years and years after they should have retired.

Now, postal workers don't like this any better, it is just part of the legacy system that has thousands who are past retirement age but still not disabled and retired in any way, shape or form. So are you saying that you like some parts of this proposal? And if so, what parts do you like?

Ms. RODRIGUEZ. There are some areas that would be beneficial to employees, things like the streamlining. I know we are all about cutting costs and I think comparing——

Mr. ISSA. No, we are not necessarily all about cutting costs, although we certainly do want to make the system world class. Let me go through a couple of questions. Do you believe that if someone is unable to do one job but able to do another job, they should be able to do that job during their short or long-term disability?

Ms. RODRIGUEZ. Yes. And we often struggle with agencies to provide those positions for them, yes.

Mr. ISSA. So assuming for a moment that there were a neutral third party, and I am trying to find a yes here, I am fishing for it, if there were a neutral third party that arbitrated, in other words, an agency couldn't arbitrarily get rid of somebody, refuse to take somebody, and for that matter, if you will, the disabled would be fairly allocated to agencies where they could perform the job. If we did that, and I did not say with a subsidy, but if we did that so that the person would be able to go to a part of government which they could still perform, this is very much like our disabled veterans who so often find usable and worthwhile jobs in the Post Office where they get a preference, if in fact we develop that system and had safeguards so the agencies themselves were not arbitrary, would you approve of a change like that?

Ms. RODRIGUEZ. Yes, I think that would benefit employees.

Mr. ISSA. And would it be fair to say that the difference between two jobs could again be arbitrated by some sort of a panel that would determine whether or not that change was directly related to their disability and as such, there should be some supplemental compensation and obviously, on a yearly basis, monitoring it to see

if as they progressed in their new job essentially they phased out of that subsidy?

Ms. RODRIGUEZ. Certainly. And I think our only concern would be positions that would be medically suitable to the employee. Otherwise, the situation that you are describing would be fine.

Mr. ISSA. OK, but isn't it true that virtually every State in the Union that has workers' comp, State workers' comp, you don't get to choose your doctor to get the opinion you want, you get, for the most part, assigned to doctors who evaluate your fitness, and they do so as agents of the government, not agents of the injured? Isn't that true?

Ms. RODRIGUEZ. I can only speak to my experience with the Federal Government. I cannot compare with the States. I have not worked in workers' compensation with the States. I cannot answer that.

Mr. ISSA. OK. Mr. Steinberg, I think I will go to you. If you are looking at trying to eliminate waste, fraud and abuse, and you are trying to find those very few, and they are few, who ride the system, who have a football accident over the weekend and somehow turn it into an injury that they never work again and they get all these benefits, we all know there are some of these, as few as there might be. Wouldn't it be true that the Government should obviously consider outside opinions contrary to the Government's, but shouldn't the Government have a medical review board that works on behalf of a fair interpretation of the Government, not incentivized to take people off disability, but paid to do an evaluation for fitness?

Mr. STEINBERG. Yes. That would certainly eliminate a lot of the potential for fraud by claimants that are trying to abuse a good system. Because when they can pick their own doctors, there is the implied ability for them to have a biased opinion on their side.

Mr. ISSA. We are trying to get to a fair and expeditious system, fair to the employee but expeditious to the process. Do you believe that the Government should act, maybe not everything that Ms. Rodriguez wants to do or doesn't want to do, but do you believe the system, whether it is the Post Office or other Federal employees right now needs reform?

Mr. STEINBERG. Absolutely.

Mr. ISSA. Thank you.

Mr. Chairman, I told you I wouldn't have the best questions, but thank you for letting me have the first.

Mr. ROSS. Very good questions. Thank you, Mr. Chairman.

I will now recognize the ranking member of the subcommittee, the distinguished gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman, I appreciate that.

Again, I thank the witnesses for helping us with our work.

Mr. Siemer, I was surprised by some of your numbers, especially regarding the older employees who remain on the FECA disability system as opposed to retirement. I want to go back to your numbers. You had, I think it was like 4,000 employees over age 80.

Mr. SIEMER. We had 900 employees over 80, we had 3,100 employees over the age of 65. And we had 8,700 employees that are over the age of 55.

Mr. LYNCH. I will take the latter two categories there, so about 4,000, in other words, 900 and 3,100?

Mr. SIEMER. Yes, sir.

Mr. LYNCH. And those are all over 80 years old?

Mr. SIEMER. Over 65.

Mr. LYNCH. Oh, over 65. And there was a small group, 900, between 80 and 98?

Mr. SIEMER. Actually, sir, the 900 is a subset of the 3,100.

Mr. LYNCH. OK. You don't combine them into all one. But still, that is a pretty big number.

Mr. SIEMER. Yes, sir.

Mr. LYNCH. Does the Inspector General track the success rate we have for folks over 80 years old that actually get rehabbed and come back to work?

Mr. SIEMER. The Postal Service may have that information. The Inspector General's office does not.

Mr. LYNCH. I am just curious, because it would seem to me to be a—any of the panelists have an indication of how many people who are injured and over 80 actually return to work?

Mr. STEINBERG. We can't tell you over 80, sir. What we can tell you is that on average, over 500 individuals are removed from our long-term rolls on an annual basis. Over the last 10 years, it has been close to 10,000. So there are individuals who move on for a variety of reasons, sir.

Mr. LYNCH. I am really focusing on that, we are trying to devise some reforms here. That would be good information for me to have.

Mr. STEINBERG. We can provide that for the record, sir.

Mr. LYNCH. That would be great. So Mr. Steinberg, are you going to provide that or Mr. Siemer?

Mr. STEINBERG. We will provide that, sir. We provide that for the Government.

[The information referred to follows:]

[NOTE.—The information referred to was not provided to the committee.]

Mr. LYNCH. OK, that would be great.

So anybody over 80 years old, maybe you can give me coordinates like 70, 80, 90. It would just seem to me, look, I am just looking at this as an average person, not an actuary. But it would seem to me that it would be a pretty slim chance that someone age 90 or 98 is coming back to work after an occupational injury. I am just trying to save the Government some money here. So maybe we could take a whack at that.

Mr. Siemer, again, I probably toot my own horn here, I filed legislation along with Ranking Member Cummings, I introduced H.R. 1351, the U.S. Postal Service Retirement Pension Obligation Recalculation and Restoration Act—title just kind of rolls off your tongue—a couple of weeks ago. [Laughter.]

Contained in my legislation is a proposal to use a portion, we have a portion of the U.S. Postal Service's FERS, the Federal Employee Retirement System, we have a surplus of $6.9 billion. And what we tried to do is move some of that money over, I think it was about $1.2 billion, to pay some of the on-budget costs of the workers' compensation system. Do you have any comments on the wisdom or lack of wisdom that I might have in trying to do that?

Mr. SIEMER. Certainly any move to use that surplus in the FERS retirement system to pay bills that we would otherwise, the Postal Service would otherwise have to pay out of revenue this year is a good thing. So applying it to those normal costs that are occurring this year is a good thing.

Mr. LYNCH. Thank you.

Mr. Steinberg, any comment on that?

Mr. STEINBERG. No, sir, I can't speak for the Postal Service and the use of their revenues.

Mr. LYNCH. OK. I realized my time is short here. I realize we have to do more than just sort of pay as you go. We have some real reforms here that we have to tackle, and I appreciate that and your help in doing so.

But in the meantime, I think it is fair, given there is a surplus owed to the Postal Service, that we pay for some of the costs going forward.

I have 12 seconds I will yield back. Thank you, Mr. Chairman.

Mr. ROSS. Thank you, Mr. Lynch.

A couple of questions I have. For lump sum settlement purposes, Federal employees and the Federal Government cannot settle the exposure in a case, can they, Mr. Steinberg?

Mr. STEINBERG. No, sir, we do not do that at this point in time.

Mr. ROSS. But wouldn't that be a good idea for both sides? In other words, if you knew what your exposure was, and State workers' compensation programs, for example, allow that. It would allow for the injured worker to get on with their life, to be able to have benefits in lump sum fashion, and then actually have the benefits survive them by way of an annuity.

Mr. STEINBERG. Let me address that from two different perspectives. As I mentioned in my testimony, we do propose a lump sum payment for a scheduled award. And again, that is associated with a permanent functional disability, and there is that form of compensation. That can serve as, if you will, an investment for retirement for an individual who may have a lifetime disability.

In terms of a lump sum payment associated with a wage loss, we believe that should be a continued payment. We continue to hope that individuals will be able to return to work. And as we continue to provide the wage loss supplement, we can work with them in terms of vocational rehabilitation, looking for opportunities for them to come back either to their original job or to other jobs, preferably within the Federal Government. We believe that is the most prudent approach. It allows us to maintain a relationship with them as they continue to go through, if you will, a recovery stage.

Mr. ROSS. Thank you.

Ms. Rodriguez, would you agree that employees should have the option of whether they want to lump sum settle a permanent disability case?

Ms. RODRIGUEZ. Yes, if they have the option. And I think in the way that Mr. Steinberg has described it, I would agree with that.

Mr. ROSS. Good, thank you.

With regard to third party recoveries, in a case where third party action has caused the injury which is compensable under the Federal Employees Compensation Act, there is no recovery, is there?

There are no lien rights for the Federal Government against a third party tort feasor, is there?

Mr. STEINBERG. At this point, that is one of the things we are asking for.

Mr. ROSS. And in any such fashion, do you have any ideas, percentage-wise, or just look at lien rights?

Mr. STEINBERG. We think it is going to be relatively small, but we can provide additional information on that for you, sir.

Mr. ROSS. Thank you. And Mr. Steinberg, with regard to medical, because medical drives these cases. As we know, the medical opinions are what dictates what type of disability a person may have. If somebody goes to their physician and their physician takes the case and continues to treat them, are there any medical fee reimbursement schedules? Or do you pay usual and customary? What does the Federal Government pay in terms of medical?

Mr. STEINBERG. We pay based on the AMA codes. We have the codes, that is what we follow. We monitor that, obviously, in terms of our central bill pay processing to ensure that the bills are at the proper level. We also look for situations where they may be over, or there may be an issue. So as the Postal Service IG has suggested, we do monitor that. We do monitor that closely, and we contact the IGs if we see that there are issues associated with payment, sir.

Mr. ROSS. The AMA fee reimbursement, how does that compare to Medicare reimbursement? Is that less or more? Mr. Fitzgerald.

Mr. FITZGERALD. Yes, we have a medical fee schedule that is tied to Medicare payment fee schedule. And on average, it is about 5 percent over that Medicaid pay schedule in order to attract more physicians to the program.

Mr. ROSS. OK, good, thank you.

Let me make sure I understand the legal classifications of benefits. You give temporary total disability benefits, temporary partial disability benefits, then once maximum improvement is reached, then you have either wage loss or permanent total disability. What is the legal definition of permanent total disability?

Mr. FITZGERALD. It is the inability to perform any work, particularly work that is associated with the date of entry job. But if there is no ability to perform any work as determined by medical evaluation and verification, then that is total disability. It is an economic construct, sir.

Mr. ROSS. So if there is no work available within a geographic area, does that constitute total permanent disability benefits?

Mr. FITZGERALD. No, it does not.

Mr. ROSS. So it is not uninterrupted light duty work, it is just no work at all.

Mr. FITZGERALD. What I am trying to say is, the ability to work is the determining factor whether or not compensation is paid, not the availability of a job. If someone has a wage-earning capacity, we will not pay benefits to them.

Mr. ROSS. How is that determined? Is it through vocational rehabilitation testimony as to whether they have wage-earning capacity?

Mr. FITZGERALD. It is an evaluation done by medical professionals and voc rehab specialists in——

Mr. ROSS. OK. With regard to fraud——

Mr. FITZGERALD. Excuse me, in conjunction with our claims examiners.

Mr. ROSS. OK. Mr. Siemer, you talked about in your testimony about somebody bungee jumping and doing all this. Is there any adjudication process that can determine whether somebody has committed fraud in the receipt of workers' compensation benefits?

Mr. SIEMER. Any time we investigate a claimant that appears to be defrauding the system, we present that to a prosecutor for prosecution. We count on feedback from the Department of Labor if they encounter fraud, but we have never received a referral from them.

Mr. ROSS. And one last question, because I am a little bit over my time here. If there is a determination or an adjudication of fraud and they are found guilty, does that in any way affect their receipt of workers' compensation benefits?

Mr. SIEMER. Yes, if they are convicted of FECA fraud or health care fraud related to their current injury, the benefits for that injury are immediately terminated. However, that conviction does not prevent them from claiming a new injury in the future if they continue to be an employee.

Mr. ROSS. Thank you very much. My time is expired.

I recognize the distinguished gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

If I could just pick up on that last thing, Mr. Siemer. You mean somebody convicted of fraud would still be on the Federal payroll?

Mr. SIEMER. If they remain an employee.

Mr. CONNOLLY. No, no, that's not what I'm asking. Somebody convicted of fraud can still remain a Federal employee?

Mr. SIEMER. Yes.

Mr. CONNOLLY. How is that possible?

Mr. SIEMER. We have instances where some of the employees, not for medical fraud, have been convicted or pled guilty in court, and through arbitration at the Postal Service, they have gotten their old job back.

Mr. CONNOLLY. So they don't go to jail?

Mr. SIEMER. No, that person did not that I am thinking of.

Mr. CONNOLLY. Right. But that is up to the courts, not the Postal Service or the Department of Labor.

Mr. SIEMER. About whether they go to jail?

Mr. CONNOLLY. If they are convicted of fraud in a court of law, it is up to the court to decide their sentence?

Mr. SIEMER. Yes.

Mr. CONNOLLY. Not the Federal agency?

Mr. SIEMER. Correct.

Mr. CONNOLLY. OK. I just wanted to be clear about that.

Mr. Steinberg, do I understand that, of the Federal Employee Compensation Act, overhead is just 4 percent of benefits?

Mr. STEINBERG. Overhead is actually 5 percent, sir. And it has remained at that level for years.

Mr. CONNOLLY. And Federal workers' compensation costs are 1.8 percent of total Federal and Postal payrolls?

Mr. STEINBERG. I believe so, yes.

Mr. CONNOLLY. And that compares to 2.3 percent for private insurance and State funds?

Mr. STEINBERG. I can't speak to the private sector or the State funds, sir.

Mr. CONNOLLY. Well, I am actually reading, I think, from your Web site. But if that were true, that would compare favorably?

Mr. STEINBERG. Yes, sir.

Mr. CONNOLLY. And do I also understand that we actually save some money because disputes of claims are resolved administratively rather than through litigation? Is that correct?

Mr. STEINBERG. We think that is the hallmark of the system. It is a non-adversarial system. We are unbiased. We are looking at the situation, we are required to review medical evidence. That is the basis for our adjudication. It is important to point out that 85 percent of the claims we receive we accept, but 15 percent of the claims we do reject. And those are cases where we determine it is not a work-related injury.

Mr. CONNOLLY. The point is, we save taxpayers a lot of money by avoiding litigation in the system?

Mr. STEINBERG. Yes, sir, we do.

Mr. CONNOLLY. All right, thank you.

Mr. Siemer, you talked, and Ms. McManus, I want to come to you as well, in fact, let me start with you, Ms. McManus, if I understood your testimony, you called for the complete sunset of the program on two bases. One was that somebody might actually in compensation get more money than they would otherwise get in, for example, a pension situation. And therefore we were rewarding people for being injured. And second, somebody might game the system, commit fraud. Is that correct?

Ms. MCMANUS. Partially, sir. That is not the only reason we would recommend sunsetting the FECA law. Those are just a few examples.

Mr. CONNOLLY. Let me ask you a question. Do people game private insurance? For example, do people game building insurance or auto insurance?

Ms. MCMANUS. I think it is safe to say yes.

Mr. CONNOLLY. Do you think those two systems, for example, ought to be completely sunsetted and we all start over again to create some new insurance system that somehow avoids that?

Ms. MCMANUS. No, sir.

Mr. CONNOLLY. So why would we do it for FECA, other than it happens to be a Federal program?

Ms. MCMANUS. By comparison to other workers' compensation laws, and if you look at sheer numbers, it is vastly greater than any other comparable workers' compensation law as far as the benefit entitlement.

Mr. CONNOLLY. So why not reform it? There are lots of reforms on the table. The administration has one, Susan Collins in the Senate has one, we have several here.

Ms. MCMANUS. That would be a great alternative.

Mr. CONNOLLY. That is all I was trying to get at. Sunsetting the entire program is a fairly draconian measure.

And I have 53 seconds left. Mr. Siemer, you gave us an example of somebody who named her boat, obviously fairly successfully hav-

ing gamed the system. And while that is certainly a juicy tidbit, hopefully you didn't mean to suggest that gaming characterized the whole system and that everybody was sort of gaming. You meant to illustrate how it could be abused in the extreme?

Mr. SIEMER. That is exactly correct.

Mr. CONNOLLY. And you would agree that abuse of a system, compensation system such as this, is not limited to the Federal Government, it also occurs in the private sector?

Mr. SIEMER. I would imagine so.

Mr. CONNOLLY. Is there any reason to believe that it is more, that it occurs more often in this program than it does in fact in the private sector?

Mr. SIEMER. I have no idea, sir.

Mr. CONNOLLY. Thank you. My time is up.

Mr. ROSS. Thank you, Mr. Connolly. I now recognize the Vice Chair of the subcommittee, the distinguished gentleman from Michigan, Mr. Amash.

Mr. AMASH. Thank you, Mr. Chairman, and thank you all for your testimony.

Mr. Steinberg, the President's Commission on the Postal Service argued the Postal Service should be given relief from the provisions of FECA that create costs and unintended consequences. Do you agree and why or why not?

Mr. STEINBERG. I believe that we should work closely with the Postal Service to address the requirements of the program. I believe we have an opportunity to work in partnership to address many of the issues that were discussed today. I think we share in a responsibility to help their injured workers return to work and to provide wage loss compensation while they are injured.

Mr. AMASH. What is the level of overpayment in FECA?

Mr. STEINBERG. Improper payments?

Mr. AMASH. Yes.

Mr. SIEMER. It is 0.1 percent. As measured by our Office of the Chief Financial Officer for the past several years.

Mr. AMASH. Would the conversion from FECA to retirement allow broader survivor benefits?

Mr. STEINBERG. The conversion to, if you will, from FECA to FERS, for example, would not expand the survivor's benefit. It would create some challenges between us an obviously the Office of Personnel Management. That is why we suggest the conversion to a 50 percent level, which more closely relates to the retirement benefits from OPM.

Mr. AMASH. Your testimony, Mr. Steinberg, states that less than 2 percent of all new injury cases remain on the periodic roll 2 years after the date of injury. How does this compare to the private sector and State programs?

Mr. STEINBERG. That is something we will research for you, sir.

Mr. AMASH. Thank you. And what percentage of time does OWCP staff devote to the management of new FECA disability cases versus screening long-term disability cases, and is it an appropriate mix?

Mr. STEINBERG. We have evolved that over time. When the program began, there was a major focus on review, adjudication to payment. Over the last many years, as I talked about, we have

been able to impact the return to work rate significantly. And that is because we have applied a more balanced approach to dealing with the front end of the process, but also the return to work. We have made significant improvements in that arena, sir.

Mr. AMASH. In Ms. Rodriguez's written testimony, she indicates that many Federal employees are going into debt due to DOL rejecting a claim or taking too long to process it. Do you have statistics on the 15 percent of claims that are rejected in a given year?

Mr. STEINBERG. Sir, if you could clarify the nature—the 15 percent, those are claims that we reviewed, have been determined to be non-work related injuries, and we gain that through the evidence and through the discussions with the claimant themselves.

Mr. AMASH. So is it a fair accusation that the accepted claims are not processed in a timely manner?

Mr. STEINBERG. No, I believe that the accepted claims are processed in a timely manner. We can submit for the record data that shows the timeliness associated with our claim submission. On average, the average claim is processed within 16 days. Ninety-four percent of our claims are processed within 1 month. These beat the standards that we have established with OMB, yet we will continue to try to push to lower those numbers.

Mr. AMASH. Thank you. If you could submit the information on the timeliness, we would appreciate that.

Ms. Rodriguez, do you think it is appropriate that some Federal employees continue to receive FECA benefits while past retirement age, in some cases at the age of 98?

Ms. RODRIGUEZ. I think there is room for some improvement in that area. Certainly people who would retire normally, I just think our basic concern here is making things more equitable and not having the worker suffer a loss if they would have continued to work. So something that is more equitable to what they would have been receiving in retirement would be acceptable.

I know some of the proposals have looked at what OPM would do. We think 50 percent is not the right amount. People who continue to work would have access to higher, their higher three average salaries would be higher than when they stopped working. They would have had the opportunity to contribute to their thrift savings programs. Things like that other people who are not injured would have access to. We don't want to shortchange the people who did get hurt and were not able to continue to make those contributions into retirement.

Mr. AMASH. You offered several suggestions in your written testimony on how to improve DOL's FECA reform proposal. Do you have any cost estimates on your reforms?

Ms. RODRIGUEZ. No, I do not.

Mr. AMASH. OK, thank you, Mr. Chair. I yield back.

Mr. ROSS. Thank you. We have been called to vote. We have 11 minutes and 30 seconds and two questioners, and I will recognize the distinguished gentlelady from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. Very quickly. I have a question, I guess it would be for Mr. Siemer, for the IG report. I always find the examples anecdotally striking. But they immediately raise questions for me: how typical and what does the data show. For example, most of the

cases of the kind, $142,000 lady who was working as a real estate agent who was caught bungee jumping, most of those cases frankly I read about in the States. That a cop, for example, who has been off duty for 2 years and is out hiking or doing something worse. One who make the newspaper. In other words, I have seen these a lot.

So my first question is, really goes to how bad the system really is. You say we have removed 476 claimants based on disability fraud. Out of how many?

Mr. SIEMER. We investigated, since the beginning of fiscal year 2009, we have investigated a little over 2,000 allegations that claimants were defrauding the system.

Ms. NORTON. So this is in 2008 alone?

Mr. SIEMER. Since the beginning of fiscal year 2009. So, October 1, 2008 to the present; 2½ years.

Ms. NORTON. So you would call that high in relation, for example, to the States, or to the private sector?

Mr. SIEMER. I have no idea how that data compares.

Ms. NORTON. I am having a hard time understanding what would be a fair number, frankly. If you are a member of the public, any number looks awful. But I can't tell, unless I compare it with something. Mr. Steinberg, do you have any at least comparative numbers?

Mr. STEINBERG. I certainly do, ma'am. If you put into perspective we receive 130,000 cases a year, based on our information and our discussions with our IG, there are less than 100 convictions per year. So it is a very minute portion of the percent. Those are prosecutions.

Ms. NORTON. So are you in touch with that data, Mr. Siemer?

Mr. SIEMER. No, I am not certain how that data compares to the universe of cases we have investigated. However——

Ms. NORTON. How was your universe chosen?

Mr. SIEMER. Just from the cases that we worked.

Ms. NORTON. Oh, it was random?

Mr. SIEMER. No, it was the health care fraud cases we worked over the last 2½ years. In that body of work 116 of those employees were arrested. And a subset of those were convicted.

Ms. NORTON. So you chose those because those were really problematic. That category.

Mr. SIEMER. Well, it just pertained to the testimony. I brought in the universe of work that seemed appropriate.

Ms. NORTON. But that is, by all measures, a particularly problematic category.

Mr. SIEMER. We investigate allegations for a variety of reasons. Clearly, it is a very small subset of the total number of legitimate claims.

Ms. NORTON. What do you think of Mr. Steinberg's number?

Mr. SIEMER. The relative number of convictions I don't think has a direct bearing on how many people are getting benefits and shouldn't be.

Ms. NORTON. Well, how many people are getting benefits that shouldn't be of those 130,000?

Mr. SIEMER. Well, a quarter of the people that we investigated were removed or retired or resigned.

Ms. NORTON. So you are saying a quarter of the people?

Mr. SIEMER. That we investigated.

Ms. NORTON. But obviously that isn't my question. You investigated a particular slice. And we are being told the program needs a complete overhaul. Therefore, it is fair to ask, how typical is your slice of the program?

Mr. SIEMER. Well, we, I believe, represent half of all of the benefits that are paid out through the OWCP program in the Postal Service. This past year, we had 15,000 people, 800 on the long-term periodic rolls. In a given year, it looks like we have 200 people that are removed from those rolls. So that is the percentage that we see.

Ms. NORTON. Now, considering Mr. Steinberg, that we are talking also about Federal employees, and there is a recommendation that the Postal Service ought to be separated out, does the whole panel think the Postal Service ought to be separated out?

Mr. STEINBERG. No, ma'am. We believe that we have the skills, the experience, the capabilities to do this. We have individuals who are trained, this is our core mission. We don't believe that is the core mission of the Postal Service. As I indicated earlier, we are looking forward to working with the Postal Service to try to address their issues and to try to improve the program.

Ms. NORTON. Well, does Mr. Siemer's data reflect accurately on the full complement of disabilities that you look at, claims that you look at?

Mr. STEINBERG. Well, again, as pointed out, the Postal Service is 40 percent of our customer base. I think as you have suggested, by looking at the numbers, there is a very small cadre of individuals who commit fraud. And I think as suggested, an even smaller group of individuals who are ultimately convicted of fraud. I oversaw the program for a number of years at the Department of Veterans Affairs. We found very similar type of information, where we had over 15,000 individuals who were on the roll. When we did a complete review, we found that less than half of 1 percent were individuals that we referred to the IG.

So it was a very small number.

Mr. ROSS. Thank you, Mr. Steinberg. I am afraid the time has expired.

I will recognize the gentleman from Illinois, Mr. Davis, for 5 minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Mr. Steinberg, the AFGE's testimony focused a great deal on problems that individuals have with agency processing of claims. Obviously this is a big source of consternation. Do you think that the agencies could improve the time that it often takes to get a claim processed, so that individuals know the result and they can get back to work?

Mr. STEINBERG. Mr. Davis, that is an excellent question. And I can speak to my experience overseeing the Department of Veterans Affairs. I believe Mr. Lynch referred to the IG study of 2005. And there were a number of issues that were identified. We did a major planning exercise and a major transformational activity that focused on improving our process. One of the key elements of that was improving communication between the agency and the Department of Labor. We set up quarterly review meetings where we

would talk about cases, we would focus on particular problem cases. This significantly helped improve the processing and improve the situation.

We also did extensive training within the department of Veterans Affairs to educate both the employee and the supervisors in terms of the process. We also changed the culture in terms of return to work.

One of the reasons that I was so honored to join the Department of Veterans Affairs was to take those types of success stories and share those with other departments and agencies. And I am committed to doing that, sir.

Mr. DAVIS. Thank you. I represent an area that has a large number of postal workers. I come from Chicago, Cook County, 5½ million people. We have a lot of postal workers. And there seems to be a great deal of controversy surrounding what qualifies for a duty change, where physical requirements have had to be met, relative to the acquisition of the job. Are we making headway in determining what really constitutes the ability to move from one level or one piece of work to another as a result of injury or something comparable?

Mr. STEINBERG. I am prepared to address the positive aspect of that. Over the years we have worked very closely with the Postal Service to monitor the status of their employees as they go through rehabilitation and to look for opportunities for either full-time placement or light duty positions. And over the years, we have been successful in that.

We hope to continue to have that type of focus. And again, that is a partnership, as I indicated earlier, between the Department, DOL, the claimant and their physician. And we all work together in partnership to try to look for the right opportunities. So we have experienced success in the past.

Mr. DAVIS. Anyone else have any thoughts about that?

Mr. SIEMER. I would only add, sir, that I think an area that remains an opportunity is making that claims examination process or that feedback by DOL in managing the case toward a point where a limited duty offer can be presented can certainly be enhanced or improved.

Mr. DAVIS. Go ahead, please.

Mr. FITZGERALD. I just wanted to add that part of the proposals we put forward includes a provision called assisted re-employment, which would help Postal Service workers in particular, we think, because it basically uses the compensation payments they are receiving to help subsidize employment within Federal agencies. So we just think that is another alternative to be looked at in this process.

Mr. DAVIS. Well, I hope we would continue, because many of the individuals are often told that there is no light duty in their environment, or that there is nothing else that can be done. And of course, it frustrates them, it frustrates me, because I don't know what to tell them once they get beyond that.

Thank you very much, Mr. Chairman, and I yield back.

Mr. ROSS. Thank you, Mr. Davis, and I would like to thank our witnesses for testifying today. Mr. Lynch did have another question, but he is going to submit that in writing.

There being no further business, the committee will stand adjourned. Thank you.

[Whereupon, at 2:48 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

Questions for the Record from Representative Lynch
April 13, 2011
FECA: A Fair Approach?
Subcommittee on Federal Workforce, Postal Service and Labor Policy
Committee on Oversight and Government Reform

Director Steinberg, given the shifting of duties in Iraq from the Department of Defense to the Department of State, it is likely that the number of civilians in these dangerous environments will increase.

Q1: What is your office doing to improve the claims process for these workers?

The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) is doing a number of things to improve the claims process for those workers deployed around the world.

First, OWCP has highlighted the information needed by deployed employees on its website, at http://www.dol.gov/owcp/dfec/DeployedEmployees.htm. This posting includes information regarding when those employees are covered by the Federal Employees' Compensation Act (FECA), 5 U.S.C. § 8101, *et seq.* as well as information regarding what is needed in order to obtain FECA benefits. This website further includes information regarding what type of medical treatment is available and provides links to the Department of Defense's website which includes information regarding how employees may obtain treatment at a military facility that has expertise in injuries that more commonly occur in deployment.

Next, OWCP completed the regulations implementing the recent Death Gratuity provision that was added to FECA by 5 U.S.C. § 8102a. This provision authorizes FECA to pay up to $100,000 to the survivors or designated beneficiaries of an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation. The regulations implementing this section may be found at 20 C.F.R. Part 10, Subpart J. The website listed above also contains information regarding the Death Gratuity, including a link to the form used to either alter the order of precedence of beneficiaries or to designate an alternative beneficiary.

Finally, in what should improve the claims process for all employees, OWCP is working on implementing the Employees' Compensation Operations and Management Portal (E-COMP) initiative. This initiative, which should be complete in the fourth quarter of 2011, will allow claimants and agencies to electronically submit claims and supportive documents to OWCP through an online portal at no cost to the participating agencies. Electronic submission of claims and supportive documents is an effective way to ensure OWCP's timely receipt of FECA claims and relevant evidence from zones of armed conflict and to promote more timely adjudication of claims of deployed employees.

Q2: Do any of the proposed reforms to the Federal Employees' Compensation Act address issues related to workers' compensation benefits for deployed federal employees?

Yes, the proposed reforms address issues related to FECA benefits for deployed federal employees. OWCP participated in a working group with a number of agencies (including the Office of Personnel Management and the Departments of Defense and State) to develop proposals to address issues of employees deployed in zones of armed conflict. Those proposals include a provision that would extend the continuation of pay period for such employees from 45 days to 135 days and extend the time for filing a claim to 45 days from termination of assignment to a zone of armed conflict or return to the United States, whichever occurs later. This will allow an employee who is injured in a zone of armed conflict to receive their full salary from their employing agency for a period of disability of up to 135 days.

Another reform that would assist deployed employees is to allow Physician Assistants and Nurse Practitioners to certify disability during the continuation of pay period. As access to doctors for purposes of obtaining written disability certifications may understandably be more limited in zones of armed conflict, allowing Physician Assistants and Nurse Practitioners to certify disability for these initial periods will preserve precious medical resources in such areas and allow deployed employees access to medical practitioners who can provide disability certification.

Under FECA there is currently no schedule award compensation for injuries to the brain, back, and heart. Military personnel are compensated for such injuries.

Q3: Director Steinberg, do you feel that changes are needed to update these awards? If so, does the federal workers' compensation reform package you are promoting make any changes in this area?

FECA provides a wide variety of benefits to federal employees for work-related injuries or illnesses and to their surviving dependents if a work-related injury or illness results in the employee's death. A federal employee who suffers a work-related injury receives comprehensive medical benefits with no deductible or co-payments, compensation for any wage loss caused by the injury (either 75% or 66 2/3% of salary tax-free), and is also eligible for vocational rehabilitation and retraining if unable to return to full employment with his or her agency. A federal employee who is seriously injured with a heart, brain or back injury (or any other covered injury) is eligible to receive all the compensation benefits listed above. If an employee is killed in performance of duty or later dies from a covered injury, FECA survivor benefits are also payable. A FECA death gratuity of up to $100,000 (offset by other death gratuities paid by the United States) is also payable for a covered death that results from the employee's participation in a contingency operation.

A schedule award benefit under 5 U.S.C. 8107 may be paid for loss of or loss of use of certain specified body parts, organs, vision and hearing; the Secretary of Labor has

authority to add additional organs but is explicitly precluded from adding the brain, back and heart as organs to the schedule. *See* 5 U.S.C. § 8101 (19).

Given the extensive benefits already available under FECA to injured employees who suffer disabling or fatal injuries to the back, brain and heart, DOL is not persuaded that convincing justification has been presented sufficient to overcome Congress' previous determination to exclude the heart, back and brain from eligibility for payment under FECA's schedule award provision. DOL suggests that the matter be carefully studied before any such change is made. While some state worker's compensation programs do provide schedule compensation for the heart, back and the brain, other such programs do not. In this context, it should be noted that individual who sustains injuries associated with the heart, back, and brain may receive a schedule award if such injury has a permanent impact on the functionality of other schedule organs or limbs. For example, an individual with a back injury may suffer permanent loss of the use of one or both legs; in this case, the individual is eligible for a schedule award for the permanent loss of use of their leg(s).

Military compensation and disability ratings from the Department of Veterans Affairs (VA) are more diagnosis driven rather than based, as FECA is, on actual measured impairment to the injured individual. Ratings in the VA rating schedule are based on the average loss of wage-earning capacity resulting from specific injuries, rather than an individual's actual measured impairment. FECA's wage loss compensation already compensates for these injuries in a somewhat similar fashion to VA.

The Department of Labor has previously and continues to participate in a working group meeting of agencies (including the Office of Personnel Management, the Department of Defense, and the Department of State) aimed at exploring benefits and injury protection for civilians in zones of armed conflict.

As you may know, injured deployed employees report private sector physicians and hospitals that are unwilling or hesitant to treat certain combat injuries. VA hospitals have the most experience with, and often the best treatment for combat injuries, especially psychological combat trauma, limb restoration and prostheses.

Q4: Director Steinberg, do you believe OWCP's reliance on private sector physicians is adequate?

OWCP's reliance on private sector physicians has provided the program much needed flexibility in administering the FECA program across the nation and around the world. For this reason, OWCP has not sought changes to the current authority on physicians. Instead, OWCP has proposed changes to FECA that would provide additional flexibility of medical care through the increased use of Nurse Practitioners and Physician Assistants.

Employees injured in a war zone may request treatment at a military facility with expertise in injuries that more commonly occur in deployment. Information regarding how to seek such treatment may be found on the Department of Defense's website at http://www.cpms.osd.mil/expeditionary/cew-medical-care.aspx. By and large, VA hospitals are only permitted to provide treatment for veterans. Where a federal employee who is otherwise entitled to the use of VA hospitals uses such a facility for his or her FECA treatment at OWCP expense, treatment at that VA facility does not impact that employee's choice of physician.

Q5: Are there other specific recommendations in this area that the Subcommittee should be aware of or consider?

OWCP has proposed changes to FECA that would expand medical services coverage under current FECA to include treatment provided by Nurse Practitioners and Physicians' Assistants and would also allow these practitioners to certify disability claims during the continuation of pay period. We believe these changes will reduce the burden of disability certifications in war zone areas, and allow for more flexibility in covered medical services. In addition,, OWCP has proposed a number of other recommendations to improve administration of FECA. These recommendations include: greater vocational rehabilitation authority; extension of OWCP's assisted re-employment authority to include Federal employers; addition of a reduced "conversion" benefit once an injured employee reaches Social Security Retirement age or after one year of FECA compensation (whichever is later); establishing a uniform compensation rate of 70% for all claimants , including schedule awards, and removing benefit augmentation for dependents; imposing an up-front waiting period for benefits; and authority to access Social Security records to improve coordination.;
We would also like to make clear while FECA currently requires employees to pursue claims against responsible third party tortfeasors, current law does not permit OWCP to collect wage payments paid to injured employees during the continuation of pay period. The reform proposals include authority for OWCP to seek to recover wage payments made during the continuation of pay period from a responsible third party.

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