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EXAMINING THE FEDERAL WORKERS' COMPENSATION PROGRAM FOR INJURED EMPLOYEES

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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EXAMINING THE FEDERAL WORKERS COMPENSATION PROGRAM FOR INJURED WORKERS

TUESDAY JULY 26, 2011

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA,
OF THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:15 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. This hearing will come to order. Aloha and thank you all for being here today as the Subcommittee examines the Federal Employees Compensation Act (FECA) which provides compensation to Federal employees injured on a job and the various proposals to change or reform the program.

As the largest employer in the country, the Federal Government takes seriously its obligation to protect its employees and make them whole when they are injured at work. Nearly a century ago, workers' compensation benefits were enacted to help fulfill this commitment to workers and avoid costly litigation.

FECA provides Federal employees with work-related injuries or illnesses with lost wages, medical care for the injury or illness, and vocational rehabilitation (VR) services to help them return to work. One of FECA's core principles is that workers and their families should be no better or worse off than they would have been had the worker not been injured.

Today we will be reviewing a number of legislative proposals intended to modernize and improve this important Federal program. Some of the proposals contain common-sense reforms to modernize the program. For instance, as more civilian employees are serving in dangerous areas, such as Iraq and Afghanistan, we must ensure that they receive appropriate benefits if they are injured.

To that end, the Administration has proposed providing those injured while deployed overseas in a zone of armed conflict, additional time to file a claim with their full pay continued and would

ensure that employees injured in a terrorist attack while off-duty would receive FECA benefits.

Additionally, the Labor Department (DOL) has requested access to Social Security wage information to verify FECA recipients' earnings as a check against improper payments and fraud. I am also pleased with the Administration's focus on improving return-to-work programs and providing injured workers the support they need to re-enter the workforce.

My friend, Senator Collins, has introduced a bill that would transfer disabled FECA recipients from FECA into the Federal retirement system automatically at retirement age. I have deep concerns that this would create a substantial and unfair income reduction for many elderly disabled FECA recipients.

Recipients' retirement annuities would be based on their salary and years of service at the time of their injuries. The bill does not provide any adjustment to account for normal career progression that these injured employees miss out on. Worse, as drafted, benefits for some employees would not even be adjusted for inflation, which, in some cases, could be decades of inflation.

The large majority of Federal employees who are covered by the Federal Employee Retirement System (FERS) would face an even more drastic drop in pay. Unlike the Civil Service Retirement Service (CSRS), which provides a defined benefit pension, FERS divided Federal employees retirement annuity into three parts, Social Security, the Thrift Savings Plan (TSP), and a reduced Federal pension.

Congress explicitly considered Social Security and the TSP to be essential elements of retirement under FERS, but FECA recipients are not permitted to participate in the TSP and do not accrue additional Social Security benefits. With a low FERS annuity, little or no TSP savings, and a low Social Security benefit, many of these disabled FECA recipients could be impoverished if forced to transition to FERS.

Any proposal that significantly reduces benefits at retirement will need substantial work. We must ensure that proposals to change FECA are fair and do not create undue hardships for employees who are permanently disabled because of an injury or illness sustained at work. This critical program has not been significantly updated in almost 40 years, and I think it deserves a closer look.

I thank each of our witnesses for being here today and look forward to hearing from each of you about this program, the various reform proposals, and how these proposals will impact Federal employees. I look forward to hearing from our first panel of witnesses and welcome you here.

Ms. Christine Griffin, the Deputy Director of the Office of Personnel Management (OPM), Mr. Gary Steinberg, Acting Director of the Office of Workers' Compensation Programs (OWCP) at the U.S. Department of Labor, and Mr. Andrew Sherrill, Director of Education, Workforce, and Income Security at the U.S. Government Accountability Office (GAO).

I want to take a moment to acknowledge Ms. Griffin's service, since I understand that she will soon be leaving OPM, and this will

be her last time testifying before this Subcommittee. We are going to miss her.

Over the past few years, Ms. Griffin has shown tremendous commitment to improving all aspects of employment in the Federal Government. I am grateful to her for her work with this Subcommittee, especially on hiring reform and improving opportunities and accommodations for people with disabilities.

It is with great appreciation, Ms. Griffin, that I say, mahalo nui loa, thank you very much, for your years of valuable service with OPM and I wish you success in your future endeavors.

Ms. GRIFFIN. Thank you, Senator.

Senator AKAKA. It is the custom of this Subcommittee to swear in all witnesses and I ask you just to raise your hands.

Do you swear that the testimony you are about to give before this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. GRIFFIN. I do.

Mr. STEINBERG. I do.

Mr. SHERRILL. I do.

Senator AKAKA. Thank you. Let it be noted for the record that the witnesses answered in the affirmative.

Before we start, I want you to know that your full written statements will be made part of the record, and I would also like to remind you to please limit your oral remarks to 5 minutes. Ms. Griffin, will you please proceed with your statement?

STATEMENT OF CHRISTINE M. GRIFFIN,[1] DEPUTY DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Ms. GRIFFIN. Thank you for the opportunity, Senator, and thank you for your kind remarks. Thanks for the opportunity to testify today regarding OPM's views on retirement issues related to FECA reform proposals. I will defer to the Department of Labor on the details of broader FECA reform. However, I am here to discuss OPM's support of a workers' compensation system that is equitable to employers and employees and our efforts to improve the Federal employment of individuals with disabilities.

The current workers' compensation system provides a reasonable benefit comparable to an employee's income when they were able to work. When an employee reaches retirement age, however, FECA benefits, in many instances, are more generous compared to what the employee would receive as a retiree. Therefore, the vast majority of long-term FECA claimants remain on the FECA rolls well past retirement age.

To address the retirement equity issue, DOL and Senator Susan Collins have offered two different reform proposals. Labor's proposal contains a conversion benefit that would reduce the retirement-eligible FECA claimant's benefits to 50 percent of their gross salary at the date of the injury. This reduction would be closer to what their retirement benefit would have been after a career of service. It also has the advantage of simplicity and uniformity of coverage.

[1] The prepared statement of Ms. Griffin appears in the appendix on page 27.

The President's Fiscal Year budget request estimates that it would result in a cost savings of more than $400 million over 10 years. Senator Collins' proposal, S. 261, would take retirement-eligible individuals off the compensation rolls and place them onto the retirement rolls. OPM has strong concerns and believes that Labor's approach represents a more fair and equitable treatment.

Senate 261 would require a system change for FECA claimants. At Social Security retirement age, FECA benefits would stop, if the individual were eligible for a retirement annuity, under CSRS or FERS. For FERS enrollees, employees and employers do not make retirement contributions, including into Social Security or TSP while an employee is receiving workers' comp benefits.

In addition, S. 261 would provide for retirement based only upon employment performed before an employee's injury. These two issues combined could result in many individuals experiencing extreme financial hardship with very small annuities and without health benefits. Another unintended consequence is that individuals with the least amount of service at the time of their injury and who would not meet annuity requirements would not be subject to S. 261, and therefore, would receive much higher benefits than injured employees with more service.

While the conversion concept applies to all claimants regardless of their retirement system, S. 261 only applies to employees covered by CSRS and FERS. However, there are numerous retirement systems that cover Federal employees such as the Foreign Service or Federal Reserve. To fully cover all individuals the system change concept would require that these retirement plans be amended.

Senate 261 could be amended to provide a more equitable change from the workers' comp program to a retirement system, but it would be very complicated. Equity would require a retirement benefit comparable to what the individual would have received had their employment not been interrupted by an injury or illness.

This would require a formula for adjusting service credit and annual salary. It also would be necessary to address the loss of Social Security and TSP for the compensation period. Additionally, each Federal retirement system that covers individuals under FECA would have to be modified based upon its particular benefit provisions.

While the conversion concept would require only minimal administrative resources for implementation, the system change concept would require major changes utilizing substantial resources.

One year ago today, in fact, President Obama signed an Executive Order (EO) to increase Federal employment of individuals with disabilities, and in February I testified before the Subcommittee about OPM's efforts in this area. OPM partners with agencies across the Federal Government, including OWCP, to provide training on the Executive Order, recruitment strategies, reasonable accommodation policies and procedures.

Agencies are making strides toward the President's goal of hiring more people with disabilities over the next 5 years. And, in fact, just last week, Gary and I held a joint meeting at OPM with all of the individuals who are implementing the plans at their agencies, as well as all of the workers' comp return-to-work POWER ini-

tiative representatives, to make sure that they were aware that there are opportunities for people who want to return to work, they can, and we can accommodate them.

In conclusion, OPM supports the Administration's efforts to reform FECA in an equitable and fair manner. We welcome the opportunity to work with the Subcommittee to address our concerns. Thank you.

Senator AKAKA. Thank you very much, Ms. Griffin. Mr. Steinberg, will you please proceed with your statement?

STATEMENT OF GARY STEINBERG,[1] ACTING DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR

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

Almost 95 years ago, Congress enacted FECA to provide workers' compensation coverage to all Federal employees and their survivors for disabilities or death due to work-related injuries or illness. The faces of FECA include the postal worker who is hurt when his mail truck is hit while delivering the mail, the Federal Bureau of Investigation (FBI) agent injured or killed in the line of duty, and the Veterans Affairs (VA) nurse who hurts her back while lifting patients.

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

We have made major strides in disability management that have resulted in significant 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 over $53 million.

Our administrative costs are only 5 percent of the total program cost, well 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 those major recommendations now.

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

The proposed changes will also have a positive impact on the government's ability to achieve the President's Executive Order on

[1] The prepared statement of Mr. Steinberg appears in the appendix on page 31.

hiring individuals with disabilities as well as protecting our workers and ensuring reemployment, the POWER initiatives.

We also suggest changes to the benefit structure. For example, the payment of schedule awards for loss or loss of use of a limb, of one's sight or hearing is often complicated and, thus, often delayed. Although not intended as replacement for economic loss, payments are based on the employee's salary. So a letter carrier who has a knee impairment is compensated at less than half of her GS–15 manager for the very same injury.

We think these awards should be paid by DOL concurrently with wage loss compensation made more rapidly, and to be fair, they should be calculated at a uniform level for all employees. We also propose to increase benefit levels for burial expenses, as well as facial disfigurements.

Under current law, the majority of injured workers receive wage replacement at 75 percent of their salaries, tax-free, and Cost of Living Adjusted (COLA'ed). This rate is higher than the take-home pay of many Federal workers, and can serve as an obstacle to the Department's efforts to encourage workers to make that 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, which would more closely mirror OPM's retirement rate. Both changes would be prospective in nature.

In addition, elements of the statute need to be changed significantly to further reduce processing time. For example, the current statute increases the compensation rate for anyone with a dependent from the standard 66 and two-third rate to a rate of 75 percent. Paying all non-retirement age beneficiaries at 70 percent would simplify the process by eliminating the continuing need to obtain and validate documents regarding dependent eligibility.

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

In summary, while FECA is a model workers' compensation system, it has limitations that need to be addressed. The reform we suggest today is not new. It has been proposed by the current and previous Administrations. We believe it is careful, balanced, reflective of good government, and would bring the program into the 21st century. Thank you again for the opportunity to talk with you today and I look forward to answering any questions you have.

Senator AKAKA. Thank you for your statement, Mr. Steinberg. Mr. Sherrill, would you please proceed with your statement?

STATEMENT OF ANDREW SHERRILL,[1] DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. SHERRILL. Thank you, Chairman Akaka. I am pleased to be here today to discuss issues related to potential changes to FECA, which provides critical wage loss compensation and other benefits to Federal employees who are unable to work due to injuries sustained on the job.

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

Over the last 30 years, there have been numerous proposals to change FECA, and more recent options for revising the program for older beneficiaries are similar to those that we have discussed in prior work. My statement today discusses stakeholder views surrounding previous proposals for change and policy questions and issues that still merit consideration today in crafting legislation to change benefits for older beneficiaries.

In 1996, we reported that a perception among many that older FECA beneficiaries were receiving overly generous benefits had generated two types of proposals to change benefits once individuals reached retirement age. The first type would convert FECA benefits to Federal retirement benefits at retirement age. A bill recently introduced in the Congress includes a similar approach requiring FECA recipients to retire upon reaching Social Security age.

A second type of proposal involves converting FECA wage loss benefits to a FECA annuity. The Department of Labor has recently proposed a similar change that would reduce FECA benefits for retirement-age recipients to 50 percent of their gross salary at the time of injury.

In our past work, we have noted that proponents for change felt that reforms were necessary to control escalating costs and to ensure benefit equity. Those in opposition were concerned that benefit reductions would cause economic hardships, reduce incentives for employers to manage claims or develop safer work environments, and that age discrimination posed a possible legal challenge.

In soliciting views from various experts and stakeholders, we identified a number of issues that merit consideration in crafting legislation to change benefits for older FECA beneficiaries. In going forward, Congress may wish to consider the following questions as it addresses current reform proposals.

First, how would benefits be computed? For some proposals, as in the FECA annuity option, calculating the FECA benefits may be fairly simple. One issue for a FECA annuity option is whether it should be designed to achieve a certain benchmark, for example, to approximate a taxable retirement annuity.

Converting FECA benefits to a retirement benefit may be more complex as it could involve varying retirement benefits depending upon the specific provisions, the different retirement systems, and the individual's circumstances. For example, consideration of more

[1] The prepared statement of Mr. Sherrill appears in the appendix on page 45.

complex adjustments may be necessary to address extended time out of the workforce and other variables.

Second, which FECA beneficiaries would be affected and should some workers be exempt under some proposals such as those already on the rolls or those who are ineligible for Federal retirement?

Third, what criteria would initiate a benefit change? Would age or retirement eligibility alone trigger events or would you need secondary criteria such as a delayed transition period for those at or near retirement age who may recently have been injured, but still have strong prospects for recovery and return to work?

Fourth, how would other benefits be treated such as survivor and medical benefits under a reform system and who would administer the benefits?

And finally, the critical question of how would benefits be funded. The FECA annuity option likely would remain funded under the traditional FECA charge-back system. In contrast, converting FECA benefits to retirement benefits may result in funding shortfalls for the retirement benefits and warrant consideration of alternative funding options.

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

While not exhaustive, the analytical framework and questions posed in our prior report are still relevant today and can help all stakeholders and interested parties better understand the program complexities and key issues to consider as they move forward in assessing specific proposals for change.

As you may know, we have ongoing work examining various issues related to FECA benefits for older beneficiaries, but are not yet at the stage of having preliminary findings and we look forward to working with both labor and OPM as we move forward with those analyses. That concludes my statement. I would be happy to answer any questions.

Senator AKAKA. Thank you very much for your statements. My first question is for Mr. Sherrill. Your testimony discusses GAO work from 1996——

Mr. SHERRILL. Correct.

Senator AKAKA [continuing]. That looked at similar proposals to reduce benefits to FECA recipients who were over retirement age. As your statement notes, many of the same questions raised by that report have not been answered and remain relevant today. I am especially interested in your testimony on how benefits will be calculated and funded under a retirement conversion proposal like S. 261. Could you please elaborate on the complexities of calculating and funding retirement benefits under such a conversion?

Mr. SHERRILL. Certainly. Let me first talk about the calculation of the benefits. The first issue is whether or not to make any adjustments for people with regard to their retirement benefits, and if you make adjustments, you could treat the time on FECA as if the beneficiary had actually worked, either by giving credit for

years of service or increasing the salary base depending on wage increases or inflation.

Another question is whether you make any adjustments for foregone contributions to TSP or Social Security, whether you factor those in to provide protections or adjustments. So a number of different issues along those lines.

With regard to the funding of retirement benefits, to the extent that there are shortfalls in the amount that agencies and individuals have contributed, if we are going to provide retirement benefits, there are different options to consider. One would be to have agencies pay lump sum payments at conversion for these new retirement benefits. That may be costly.

Another option is to have agencies pay as you go, where they would make annual payments for these retirement benefits. There is also the option of having the agency and the employee continue retirement contributions before conversion, in order to provide additional sources of funding for this as well. Thus there are a lot of different factors to be considered.

Senator AKAKA. Thank you for that response. Ms. Griffin, in your testimony, you mentioned that moving retirement age FECA recipients over to the Federal retirement system could not only dramatically reduce their monthly payments, but also leave some of them without health insurance. Why is that? And is there some way to ensure that disabled employees do not lose their health coverage?

Ms. GRIFFIN. Well, not if we want to convert them over into retirement as S. 261 suggests because individuals are only entitled to continue health care benefits in retirement if they retire immediately after separation from employment, and these folks will all be in sort of a Catch 22 where they will already be out of the system by the time they retire. So they will not, by law, be eligible for health benefits.

Senator AKAKA. I see. Mr. Steinberg, if FECA recipients were transferred to the Federal retirement system from FECA, how would this change impact their other FECA benefits such as benefits for medical costs resulting from their injuries?

Mr. STEINBERG. They would still be eligible to receive the compensation for the medical costs. The point that concerns us even more is the fact that many of these individuals who have achieved retirement age still have the capacity to return to work and we are working with them in terms of vocational rehabilitation. We are working with them in terms of treatment of their injuries and illnesses.

We believe we have the opportunity to help them return to work. If they were to move to the OPM retirement rolls, we would preclude that opportunity. So we will continue to support with the other benefits, but again, I think the big cost is the fact that we have lost the return to work opportunity for these individuals.

Senator AKAKA. Thank you. Ms. Griffin, your statement briefly mentions that under S. 261, FECA recipients who concurrently apply for FERS disability would have their first benefit adjusted for additional service time and, hence, the average salary, while others would not. Would you please discuss why that is, as well as why a formula to adjust length of service and salary would be nec-

essary if FECA recipients were transferred to Federal retirement programs?

Ms. GRIFFIN. And this is, as you said, under FERS?

Senator AKAKA. Yes.

Ms. GRIFFIN. Well, the FERS system, because it is more complicated than the CSRS, we have the TSP contribution as well as the Social Security piece. Those contributions will not be made while the person is out on workers' comp. So those folks will really be in a more difficult situation under S. 261 if they are then converted over into retirement. Is that what you were asking?

Senator AKAKA. Yes. Thank you. Mr. Steinberg, as you know, under S. 261, FECA recipients who are not eligible for FERS or CSRS could remain on FECA at retirement age. This means that employees, with just a few years of service, might receive dramatically higher lifetime benefits than those who served long enough to vest in the pension system.

In contrast, the Administration proposal would apply uniformly to all FECA recipients. Will you please discuss why you propose to standardize benefits at retirement age and discuss any concerns you have with converting to Federal retirements?

Mr. STEINBERG. The question is very insightful. The reality is that there are three different cohorts of individuals that would be affected. I think, as Ms. Griffin has characterized, you have the individuals who have not worked for the government long enough to be eligible for CSRS or FERS. They would stay on FECA. Under our proposal, they would receive 50 percent of their salary at the time of their injury.

The individuals who just exceed the threshold have had very little opportunity to contribute to their retirement plan, both Social Security, FERS, as well as the Thrift Savings Plan, so they would be the ones impacted the most and be in a rather dire strait.

The third category is those individuals who have worked a large portion of their career become injured. They would have a fair amount of investment, but still, there would be a difference between the 50 percent, or currently the 75 percent, and where they would likely be given their FERS contributions.

We believe that the standard rate is fair, it is equitable, it brings the injured individual at retirement age to a level that far more closely equates to the retirement level of their colleagues who have worked their entire career, whether it is CSRS or FERS.

Senator AKAKA. Thank you. Ms. Griffin, from your testimony, it sounds like there would be a number of complicated administrative challenges to converting FECA recipients to the Federal retirement system. OPM already struggles with delays in retirement processing and has been increasing its retirement staffing. Would OPM need additional resources and staff to deal with these new administrative burdens?

Ms. GRIFFIN. Absolutely. Not only would we need more staff, but the changes to the computer systems—I mean, we are currently having difficulty modernizing the system as it is. To then further complicate it with these changes to all the different systems that exist would cause, I think, great difficulty and a fair amount of resources to actually implement.

Senator AKAKA. Ms. Griffin, the Department of Labor has indicated that reducing the FECA benefit to 50 percent at retirement age will give a FECA recipient a benefit comparable to what they would have received at retirement had they been able to continue working.

If Congress considers reducing the FECA benefits at retirement age, it is essential to ensure that the conversion is fair and does not leave disabled elderly employees worse off financially than they would have been if they had not been injured. Has OPM compared retirement benefits at different pay levels in both FERS and CSRS to the proposed reduced FECA benefit?

Ms. GRIFFIN. It is actually difficult. We looked at this and it is actually difficult to do a real straight comparison because there are a lot of variables that are unknown such as whether somebody is contributing to TSP and how much they are contributing and those types of things what is taxable and what is not.

But if you do sort of a rough look at people at different levels, you really do see that there is a comparable way of approaching this by exactly what Department of Labor is proposing, looking at what they would end up with at 50 percent of what they were earning, what their high three would be before they actually went out on workers' comp.

And we think it is actually quite fair. But there are the variables, and we can provide something to you that does a rough estimate and we have that here, but there really are variables such as income tax and Social Security and the TSP contribution.

Senator AKAKA. Well, thank you for that. I would ask you to please provide your analysis——

Ms. GRIFFIN. OK. We could do that.

Senator AKAKA [continuing]. For the Committee. Thank you. Mr. Steinberg, an important difference between the Administration's proposal and S. 261 is that the Administration's proposal would apply the changes in benefit rates only to new injuries and new claims, while S. 261 would retroactively apply to past injuries.

Will you please discuss why the Administration proposed only prospective benefit changes as well as any concerns you would have with retroactive changes?

Mr. STEINBERG. We believe that the prospective approach provides a level of fairness and equity. The individuals have a sense of expectation. At this point we have a large number of individuals who are on our rolls that have planned for that level as they move into the older spectrum of age.

Changing things immediately would cause a hardship to them, or have the potential to cause a hardship for them. Individuals who are currently Federal employees, understanding that the rate will be lowered and should they become injured or ill, as soon as they joined our rolls, they would understand that this would be their level of wage replacement once they achieve retirement.

They would be in a better position to be able to plan for their retirement given that circumstance. Again, as Christine has indicated, they are not in a position to be able to contribute to Social Security, to FERS, and to Thrift Savings. This is what they rely on. This will allow them to much better prepare for their future.

Senator AKAKA. Thank you. Mr. Sherrill, your testimony raises an interesting issue about some possible unintended consequences of S. 261. For instance, you note that someone over retirement age who gets injured at work could be forced into retirement even though they might otherwise have been able to recover and quickly return to work.

Will you please elaborate why this would occur, as well as any thoughts you have on how it could be avoided?

Mr. SHERRILL. This relates back to the issue that Mr. Steinberg talked about, which is the importance of focusing on the return to work of older beneficiaries when that is a possibility, and I earlier made reference to the idea of whether it would be appropriate to have secondary criteria to deal with such cases.

If the primary criteria would be that there should be a change or a conversion at the retirement age, you would be concerned also about people who might be close to that, maybe recently injured, but do have a potential to return to work.

So you might want to consider a provision to have them transition to retirement or to a different benefit either at retirement age or, for example, after 5 years of FECA benefits or so that there would be opportunities for them to have return to work activities and to get back into employment.

Senator AKAKA. Thank you. Ms. Griffin, I appreciate this Administration's focus on improving Federal employment opportunities for people with disabilities. I believe you deserve a lot of credit for providing leadership on this issue. Both Administration witnesses touched on this topic, but I would like you to elaborate on how the renewed focus on improving FECA return-to-work outcomes dovetails with the President's other disability initiatives.

Ms. GRIFFIN. Well, as I mentioned in my testimony, a year ago today, we are celebrating the anniversary of not only the 21st anniversary of the Americans with Disabilities Act (ADA), but also the signing of the Executive Order to increase Federal employment of people with disabilities.

In that Executive Order, the President, I think, was smart enough to include a provision in there that talks about returning people to work, recognizing that we do have people who, from time to time, do go out because of an injury, but because we are actually saying that we can employ—we actually have the technology to employ the most severe people with disabilities in the Federal Government, who have the skills that we need to do certain jobs.

And we can accommodate them and we have an amazing system for the Computer/Electronics Accommodations Program (CAP), which is over housed at the Department of Defense (DOD), but provides accommodations for all employees in the Federal Government. So we are recognizing that we can bring the most severe—people with the most severe disabilities into the Federal Government who can do a great job and we can accommodate them. We have the technology to do that.

So there is, I think, with this Executive Order, a recognition that maybe some of these people do not have to go out in the first place because we can actually talk to them about how we can accommodate them, but more importantly, when they do have to go out, we

can bring them back easily because we can accommodate them as well.

And so, this dovetails beautifully and we have been working closely together, really going across the country, talking to Federal audiences and people with disabilities about this Executive Order and about the ability to hire people, but also return people to work that are out on workers' comp.

The technology is amazing. It changes almost, it seems like, on a monthly basis and we are able to do great things with veterans with disabilities, people with disabilities overall, and our own Federal workers' comp claimants to get them back to work and accommodate them.

Senator AKAKA. Thank you. Mr. Steinberg, your proposals asks that the Department have authority to access Social Security wage information to help reduce fraud by those who are working while still collecting FECA benefits. It is very important that personal Social Security information is protected, and because of that, access to it always has been very limited.

My question is, how would this information sharing work and what safeguards would be in place to ensure this personal information is secure?

Mr. STEINBERG. Senator Akaka, I was at the Department of Veterans Affairs when we had the data breach, so I am only too aware of the importance of protecting sensitive information, personally identifiable information (PII), health care information and so forth. But we have the responsibility to adhere to the Privacy Act. All of our individuals, all of our employees are well-trained and well-versed in the requirements associated with the Privacy Act.

The same holds true for our interaction with the other Federal agencies. We have memorandum of understandings (MOUs) with them that also require them to protect information. What we are looking for here is the opportunity to move forward and gather information from the Social Security Administration (SSA) in an expedient manner. Right now, we have to ask permission of each claimant to go to SSA and have access to their earnings information.

If we are afforded the opportunity to do that automatically, it eliminates the time of going and asking permission. It reduces the amount of time to then go forward to SSA. We will have an automatic ability to have access to that information. So again, we are able to evaluate situations of potential fraud, we are able to do it far quicker, but again, rest assured, we understand the Privacy Act requirements and we enforce that.

Senator AKAKA. Well, I want to thank you very much. To this panel, your statements have been valuable. It will help us move forward and be as fair as we can. I want to thank you very much for being here today and helping us do this. So thank you very much for coming and for your testimony.

I would ask that our second panel of witnesses come forward. On our second panel this afternoon, we have Mr. Joseph Beaudoin, President of the National Active and Retired Federal Employees Association (NARFE); Mr. Ronald Watson, Consultant for the National Association of Letter Carriers (NALC); and Dr. Gregory

Krohm, Executive Director of the International Association of Industrial Accident Boards and Commissions (IAIABC).

It is the custom of this Subcommittee to swear in all witnesses, and I would ask all of you to please stand and raise your right hand.

Do you solemnly swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BEAUDOIN. I do.

Mr. WATSON. I do.

Mr. KROHM. I do.

Senator AKAKA. Thank you. Let it be noted for the record that the witnesses answered in the affirmative.

Let me also remind all of you that although your oral statement is limited to 5 minutes, your full written statements will be included in the record.

Mr. Beaudoin, please proceed with your statement.

STATEMENT OF JOSEPH BEAUDOIN,[1] PRESIDENT, NATIONAL ACTIVE AND RETIRED FEDERAL EMPLOYEES ASSOCIATION

Mr. BEAUDOIN. Mr. Chairman, I am Joseph A. Beaudoin, President of NARFE. Thank you for the opportunity to testify. As you consider legislative reforms to FECA, I urge you to pursue common sense reforms that improve program efficiency, achieve cost savings, and improve fairness without reducing the basic compensation provided to those employees unfortunate enough to suffer a debilitating injury or illness as a result of their public service.

Current proposals by Senator Susan Collins and the DOL to reduce benefits for FECA recipients at retirement age do not adequately take into account the disadvantages faced by employees unable to work because of a work-related injury, leaving them worse off in terms of income.

I will now discuss the current proposals. S. 261, the Federal Employees Compensation Reform Act introduced by Senator Collins, would move FECA recipients to the retirement system at full Social Security retirement age. This presents multiple issues.

First, there is no provision to adjust upwards the average highest 3 years of salary to account for wage inflation. FECA recipients also will have lost the ability to increase their salary through raises and promotions. At the very least, they should receive an adjustment based on the Employment Cost Index, or another wage inflation indicator, to the average highest 3 years of salary for purpose of computing their annuity.

Second, FECA recipients may not receive credit for years of service for the time between when they became injured and when they turned 62. Third, FERS-covered FECA recipients lose the ability to invest in a Thrift Savings Plan and receive matching contributions from their agencies.

Finally, FERS-covered employees may have a reduced Social Security benefit because they are unable to earn quarterly credits used to calculate Social Security benefit payments. The net effect

[1] The prepared statement of Mr. Beaudoin appears in the appendix on page 59.

of the transition to the retirement system mandated by S. 261, as written, would be reductions in benefits for many FECA recipients.

We would like to thank Senator Collins for demonstrating a willingness to work with us and maintaining an open dialog with respect to FECA reforms.

Next, the DOL proposes to reduce FECA recipients' basic compensation benefit to 50 percent of their gross salary at the date of injury, still tax-free, when they reach full Social Security retirement age.

While this proposal provides a retirement level income closer to that of current retirees, it still does not fully account for disadvantages faced by FECA recipients, notably for many of the same reasons S. 261 does not foregone raises and promotions, lost matching contributions, and reduced Social Security benefits. While the framework of DOL's proposal offers more economic security than S. 261's, it still short-changes FECA recipients.

Last, H.R. 2465, the Federal Workers' Compensation Modernization and Improvement Act, provides a fairer, more considered approach to reform that achieves cost savings without reducing the basic benefits paid to employees who suffer a debilitating injury as a result of their public service.

The legislation combines much needed adjustments to compensation for the worst case injuries and illnesses and common sense measures that should improve the processing of claims and reduce improper payments and save money. H.R. 2465 represents a model of the best path to reform, one that will achieve cost saving and improve fairness and garners broad, bipartisan support.

In conclusion, current proposals to take money away from individuals who are irrefutably unable to work because they were injured as a result of their public service, fail a basic fairness test. If those individuals had the choice, they would be healthy and working and preparing for a retirement of choice, rather than of necessity. FECA reforms need not and should not sacrifice basic principles of fairness in the name of achieving cost savings.

Mr. Chairman, I want to thank you for inviting us to testify today.

Senator AKAKA. Thank you very much, Mr. Beaudoin. Mr. Watson, will you please proceed with your statement?

STATEMENT OF RONALD WATSON,[1] CONSULTANT, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL–CIO

Mr. WATSON. Good afternoon, Chairman Akaka.

Senator AKAKA. Good afternoon.

Mr. WATSON. I am pleased to testify today on behalf of the nearly 290,000 members of the National Association of Letter Carriers. Thank you for the invitation.

NALC welcomes the prospect of reform to the Federal Employees Compensation Act, provided that it does not result in unfair harm to the injured workers the Act was designed to protect. In our view, some of the proposed reforms meet this test; others do not. For instance, there is a proposal to level wage loss compensation to 70 percent for all injured workers.

[1] The prepared statement of Mr. Watson appears in the appendix on page 67.

Proponents argue that 75 percent tax-free often exceeds the pre-injury take-home pay, and thus creates a return-to-work disincentive that needs to be eliminated. We disagree with that. A 1998 GAO report examined FECA wage loss compensation, measured as a percentage of pre-injury take-home pay. One analysis indicated about 10 percent of claimants received compensation that exceeded pre-injury take-home pay, and that 10 percent consisted of only the highest paid employees.

Moreover, significantly, the analysis excluded all claimants who had established wage earning capacity determinations. Thus, the argument that wage loss compensation often far exceeds pre-injury take-home pay seems unsupported.

Additional points are relevant in assessing return-to-work disincentives. Loss of benefits is one. Generally, workers are motivated by benefits as well as pay when making employment decisions. FECA beneficiaries lose significant benefits. Upon placement in a leave-without-pay status by an employing agency, lost benefits include annual leave, sick leave, TSP advantages, over-time opportunities, promotion prospects, and other pay increase potentials.

After separation by the employing agency, additional lost benefits include Social Security credits for FERS employees, CSRS and/or FERS annuity credits, higher health benefit plan rates, higher basic Federal Employee Group Life Insurance (FEGLI) rates for postal employees, loss of step increases, and loss of union-negotiated contractual protections.

These losses are substantial. We believe there is no need to reduce the current 75 percent rate to address perceived return-to-work disincentives. Instead, there is a need to address OWCP policies that may foster disincentives for employing agencies to return injured employees to work.

Since 2007, the Postal Service National Reassessment Program (NRP) has resulted in the withdrawal of thousands of previously provided limited duty jobs. The NALC has aggressively challenged many of those withdrawals through our contractual grievance arbitration system.

These are cases involving injured workers who are able to do some work and want to work, even though most are receiving OWCP wage loss compensation. Despite the availability of limited duty work, they are not allowed to work by the Postal Service.

An example: It involved a letter carrier who had injured his foot on the job. OWCP authorized surgery. A chronic infection of the bone resulted from that surgery. As a result, he was medically restricted to very little walking. He could not deliver a route, but he could stand and sort mail. For many years, the Postal Service accommodated him.

Then local management withdrew that limited duty job and placed him on leave without pay (LWOP). The sorting work he had been doing was reassigned to temporary employees. He began receiving wage loss comp from OWCP, but he also immediately filed a grievance to get his job back with the Postal Service, and he never stopped fighting until he succeeded in that.

The argument that the 75 percent compensation rate creates a disincentive for return to work is wholly inconsistent with the

NALC's recent experience, which includes hundreds and hundreds of injured letter carriers fighting to get their jobs back.

Mr. Chairman, that concludes my testimony. Thank you for the opportunity and I welcome any questions that you may have.

Senator AKAKA. Thank you very much, Mr. Watson. Dr. Krohm, will you please proceed with your statement?

STATEMENT OF GREGORY KROHM,[1] Ph.D., EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

Mr. KROHM. Good afternoon, Chairman Akaka. It is a pleasure to be here. I am the Executive Director of the International Association of Industrial Accident Boards and Commissions. My organization, founded in 1914 at the inception of workers' compensation in this country, has existed for the purpose of educating and networking with our member States to develop better workers' compensation systems.

So it is a pleasure to be here to talk about State workers' compensation. That will be the focus of my remarks. I am not here to testify on any particular legislative proposal, but to offer some insights that my member states in the United States' workers' compensation systems, have learned through the years.

I would like to begin by comparing and contrasting State benefits with some FECA program benefits, again, just for the sake of information only. I will begin with medical payments. Medical payments are very similar across the States. They provide medical care, as necessary, to cure and relieve the consequences of a work injury or illness, so a wide variety of licensed medical providers can provide the care. The injured worker is not subject to co-payments or balanced billing.

So in that respect, in many respects, it is similar to the FECA program. States differ, however, very widely on the employer's or employee's rights to manage the care and how it is delivered to them in their choice of medical providers. As I understand it, FECA allows the claimant unlimited choice of medical providers and does not have guidelines or treatment protocols similar to what many States have. This seems to me to be a difference.

Temporary disability, temporary total disability (TTD) benefits are the second most common form of claimants in State workers' compensation. It is, by far, the most uniform type of indemnity benefit paid by States. Generally, States pay 66⅔ percent of preinjury wages. Four States pay a larger percentage; Texas, New Jersey, and Oklahoma pay 70 percent; and Ohio pays 72 percent.

There are four States that have a different formula based on, quote, spendable or after-tax income. TTD is usually paid for the length of disability or until maximum medical improvement is achieved, although some States, not a few, have weekly limits ranging in the area of 100 to 700 weeks as a higher limit on how many weeks of TTD can be paid.

TTD is usually capped about somewhere around the State average weekly wage (SAWW), and this is adjusted in some States, plus or minus 25 percent. The income continuation feature of FECA is

[1] The prepared statement of Mr. Krohm appears in the appendix on page 74.

without any counterpart in State workers' compensation. Now, it is true that some private sector employers offer sick leave benefits and short-term disability insurance that would ease the cash-flow crunch of an injured worker for that disability waiting period that is almost always imposed in State workers' compensation, usually in the range of 3 to 8 days of a waiting period.

An unusual feature of FECA is the increase in percentage of wage replacement from 66⅔ to 75 percent for cases where there is at least one dependent. This would be very unusual, in fact nonexistent, in State programs, to have that much of a benefit adjustment in the TTD payment for a dependent.

Permanent partial disability (PPD) benefits are a very, very large percentage of the payout in State workers' compensation. And in fact, for all permanent disability payments for the State using a country-wide number, claims with permanent disability constitute only about 38 percent of all claims in State work comp systems, but generate 80 percent of the indemnity payouts. So they are a very large percentage of the indemnity payouts in State systems.

PPD payments, in State systems are based on scheduled benefits or unscheduled benefits, scheduled benefits being a specific amount of indemnity is paid for the loss of use of a body part or a bodily system, and unscheduled benefits are based on some other form of assessment of impairment, usually made by a medical doctor, usually using the American Medical Association (AMA) impairment guidelines.

Twenty-nine States pay impairment based on—the PPD rates would be based on something very similar to the TTD rate, and other States adjust that rate by age, occupation, or other factors, the severity of injury, perhaps. And 45 States place limits on the number of weeks payable or the total dollars payable for PPD.

PPD, as a general rule, is very different across the States. It is one of the peculiarities of the State workers' compensation system, that they have not been able to agree on any degree of uniformity on how to compensate for permanent partial disability.

Permanent total disability (PTD) is, again, very difficult to summarize across States. There is much variation. As of 2010, 33 States offered lifetime permanent total disability payments similar to FECA. Twenty-one had some form of automatic or formula-based cost of living escalator, not always as uniform and automatic as FECA's.

And many States eliminate permanent total disability benefits if the claimant resumes gainful employment. I should also add to my testimony that many States, in lieu of permanent disability payments, settle the—the responsible payer will settle the case with a lump sum negotiated settlement. So many cases of severe permanent disability never end up as a permanent total case. They are settled out with a lump sum payment. That degree of settlement with a lump sum payment varies widely by State.

So there are significant differences between the State programs and FECA. By way of comparison, I have provided in my prepared testimony some statistics prepared by the National Council on Compensation Insurance (NCCI), which I will not read here but provided for your information only.

Next I would like to touch upon an issue that often arises in State workers' compensation, the relationship between benefit design and claim duration and cost. There is significant evidence that the richness of a disability benefit will affect claiming behavior. The richer the benefits—richer benefits are often associated with more positively—more positive or larger claiming behavior or duration of indemnity.

This should not be a surprise to us because it seems only natural that if the cost of reporting a work injury and staying out of work becomes higher, more claims will not be reported and/or the injured worker will come back to work more quickly.

For example, a case that I was familiar with when I worked with plumbing contractors, it was very clear that small plumbing contractors had very few workers' compensation claims, at least in normal construction periods, because plumbers could make a lot more money even working injured, hurt, very hurt in some cases, than reporting the claim because there was just more money to be made as a plumber than there was on workers' compensation. So as the expression goes, they would play hurt.

I provided in my testimony a chart[1] taken from a 2010 National Council on Compensation report on benefit features in 37 States and the median days of disability for lost time claims.

I have looked at that chart, I have studied it carefully, as I have in many other contexts studied these particular benefit design features, and I must say I cannot see an easy correlation between things like the cap on TTD payments and the percentage of State average weekly wage that one might get in TTD payments, or, even for that matter, the days of the waiting period, whether 3, 5, 7 or 8. I cannot see an easy relationship between those benefit design features and the disability duration days.

Now, I earlier said that benefit design does make a difference. I firmly believe that. Incentives do count, they do matter. But it is not an easy relationship. The National Council on Compensation Insurance often does studies at the request of State governments for their actuaries to make considered opinions as to how benefit design changes are going to affect claiming behavior.

They not only consider historic relationships and the objective facts of past claims, but they also try to bring into their consideration estimates of behavioral changes in claimants, both in terms of frequency of claiming behavior and the duration of their time away from work.

Senator AKAKA. Dr. Krohm, will you please——

Mr. KROHM. So I only add that to my testimony to say that I——

Senator AKAKA. Dr. Krohm, will you please summarize your statement.

Mr. KROHM. Pardon me, please?

Senator AKAKA. Will you please summarize your statement?

Mr. KROHM. OK. I will then go into my final part of my comments which is to state a strong plea, if you will, for the importance of disability management. From everything I can see, OWCP does place emphasis on disability management return-to-work. I think this is a very important component of workers' compensation.

[1]The chart referenced by Mr. Krohm appears on page 78.

It is a difficult thing to achieve. There is no easy formula on disability management and return-to-work. It requires a lot of coordination and hard work, but those efforts of coordination and hard work are well worth it because it is good for injured workers to be returned to work, presumably their pre-injury employer, as soon as possible.

I am firmly convinced that it is in the best interest of workers; it improves their health. The therapeutic healing benefits of return-to-work are pretty well-established, and I think it is a very important feature to controlling cost in workers' compensation. With that, I will conclude my testimony.

Senator AKAKA. Thank you very much, Dr. Krohm. Mr. Beaudoin and Mr. Watson, you both expressed some concerns with proposals to change the FECA benefit structure, but a willingness to support reforms that are fair to the injured workers that FECA was designed to protect. You both have members who were hurt serving this country and who rely on workers' compensation benefits.

Would you please elaborate on how you believe these proposals could impact disabled employees who are unable to work after a work-related illness or injury, and what must be done to ensure fairness? Mr. Beaudoin.

Mr. BEAUDOIN. Yes, sir. We believe that the Senate Bill 261, as it is proposed, will cause problems with our workers. No. 1, it is a failure to account for disadvantages faced by FECA recipients. There are no adjustments of highest 3-year salary to account for wage inflation, so their income can never grow.

They are not credited for years of service between the time they got injured and when the retirement age of 62 arrives. Again, there is no—they cannot grow in their income. The Civil Service Retirement System disability annuities do not increase for credit for service.

The recipients lose the matching contributions to the TSP, which again affects their future income, present and future income, and since they cannot work, they cannot get Social Security or gain more Social Security benefits so that their wages pretty much freeze. But under the present system, it is fairer than the Senate Bill 261.

We do believe that the House Bill 2465 is a much better bill for us or for the government to be using.

Senator AKAKA. Thank you. Mr. Watson?

Mr. WATSON. Yes. The NALC also agrees that House Bill 2465 encompasses fair reform measures. Regarding the major reduction to benefits proposals that we have seen, one I already discussed and that is the reduction to 70 percent for most employees, in payment of wage loss compensation, and regarding another major proposal to reduce wages at retirement age, both found in S. 261, and also in the OWCP's proposal to convert OWCP benefits to 50 percent at retirement age.

We believe that the case has not been made for either one of those reductions. Clearly, S. 261 would wreak a horrible effect on certain employees, employees who were hurt early in their career and only had a few years vested in FERS retirement, for instance. Those employees would be devastated financially by S. 261.

But even the other proposal to reduce benefits to 50 percent at Social Security retirement age, we do not believe the case has been made to do that. Usually when proponents of that reduction argue, they argue that, Well, CSRS employees, the average CSRS retirement computes to about 60 percent of what they were earning when they retired.

And then they compare that with the 75 percent tax-free. But the fact is that most Federal employees today are not covered by CSRS. The latest statistic I saw was 17 percent. So 83 percent of employees are covered by FERS. There is a recent Congressional Research Service (CRS) study on FERS retirement rates that shows that—and, of course, FERS is a three-part retirement. There is the FERS annuity, there is Social Security, and then there is the Thrift Savings Plan.

That CRS study showed that moderate placement into TSP for a career of only 5 percent at a nominal return rate of 6 percent, that would result in a typical FERS employee receiving about 82 percent, or even more, as their total retirement when you add up the Social Security component, the FERS annuity component, and then what you can buy in an annuity with that TSP.

And so, that old CSRS 60 percent rate does not seem to me to—that is not what people are going to be facing. If they contribute to the TSP and compensation on FECA benefits cannot do that, they are going to have much higher return rates. And so, we do not believe that the case has been made for the reduction to 50 percent. We do not believe it is fair.

Senator AKAKA. Well, let me followup to a question with both of you. The Administration's proposal to apply benefit changes only to future injuries and workers' compensation claims, while S. 261, as drafted, would apply retroactively to FECA recipients injured in the past, what are your views specifically on the issue of retroactivity?

Mr. BEAUDOIN. I am sorry. Were you asking me, sir? I thought you were asking Mr. Watson.

Senator AKAKA. Mr. Beaudoin.

Mr. BEAUDOIN. I am sorry. We feel it is very unfair right now because if we look at the younger workers, they are the ones that are going to be affected the most. The elderly workers or the ones that are in retirement, the effect on them will be not as great as the effect on the younger workers.

But unless the people that are disabled at a young age can increase their retirement benefits by either being able to contribute with the matching contributions of TSP, or they can—you index their salaries, or allow them to—their salaries to grow, if S. 261 was put into effect, some of our members would be on poverty. They would not be able to pay their bills and they would go on welfare. They just would not have the income to live a normal life.

Senator AKAKA. Mr. Watson.

Mr. WATSON. The idea of making a requirement to move to retirement at a certain age, Social Security age, or to reduce OWCP benefits at that age, in theory, the idea that those changes would be prospective rather than retroactive, is more fair, would be more fair for the reasons I believe Mr. Steinberg testified to, to make it prospective because then people could plan for it.

However, when you look at the OWCP's proposal, on the one hand, it is prospective to a degree, but there are, if you read the language of their proposal closely, you can see that there are circumstances where they would bring in people. So it is not completely prospective. It is only partially prospective.

But even still, with OWCP's proposal, here is what the effect would be. It would not be retroactive so it would not apply to all of those CSRS retirees who average 60 percent, but it would apply to all the FERS employees who might be more reasonably and fairly looking at an 80 or 90 percent replacement rate. So it does not make any sense.

Senator AKAKA. Thank you. Dr. Krohm, I understand that the majority of States have workers' compensation benefits that are similar to FECA in that they are payable for the duration of the disability with no reduction at retirement age.

Do you know if any of these States have considered reductions at retirement age, and why they have opted to continue coverage for the life of a permanently disabled recipient?

Mr. KROHM. As I said, 33 percent of the—it should be 33 States have lifetime benefits. I have seen no discussion of any of those States changing that, and I have been looking at State laws pretty carefully since about 2000. There has been no discussion of that. It just seems to be a very settled part of the law in those States.

Senator AKAKA. Mr. Watson, your testimony indicates that NALC members who are on FECA generally want to return to work if they can.

Mr. WATSON. Yes.

Senator AKAKA. And will even fight for a limited duty job when it is taken away. What barriers have you seen for returning to work, both at the Postal Service and, more generally, in the current FECA program? And do you believe the Administration's reform proposals would improve return-to-work outcomes for your members?

Mr. WATSON. I think that the Postal Service makes decisions based on financial calculations, so that in the past, it has been our experience or our belief that the Postal Service calculated a typical injured employee is paid 75 percent wage loss compensation. OWCP has about a 5 percent overhead rate and they charge the Postal Service.

So the Postal Service paid 80 percent to have a guy sit at home. And as a result of that, we believe the Postal Service calculated it is better for us to get some work, even if the guy, for instance, a letter carrier, he cases his route, he goes out and delivers it. He has a leg injury. Now he cannot walk very much, and so all he can do is limited duty. He can only do part of his job, and maybe even then he is not as efficient as he used to be or perhaps as some others.

But the Postal Service used to calculate, since we are going to pay 80 percent anyway of the guy's salary, we might as well get some work out of him and have him work. We will pay him 100 percent, but he will be here at work and we can assign him limited duties. That is the way it used to be.

We believe they made a different calculation now and it flowed right from their transformation plan in 2002. The Postal Service

made this big plan way back then, big, big blue book, and one of the parts of the plan was to make an agreement with OWCP to have vocational rehabilitation of employees that was very condensed.

And so, what they hoped for, what they planned for with that was to have employees who were found by OWCP to be vocational rehabilitated, and so a wage earning capacity would be placed on them. And what that means is, the FECA does not provide for 75 percent of your date of injury salary. That is not what it says. It provides for 75 percent of your date of injury salary minus your remaining capacity to earn wages.

And so what we find OWCP doing now is sometimes, many times, they will say to a letter carrier who is not provided limited duty by the Postal Service, we are going to help you find a job as a customer service rep for 3 months, and at the end of that period, we are going to determine that the job of customer service rep is available in your commute area and it pays $10 an hour, so you have a $400-a-week remaining wage earning capacity.

Once they do that, OWCP no longer pays 75 percent of the date of injury salary. They pay 75 percent of the date of injury salary minus that ability to earn those wages, and that is true if the individual is able to obtain that employment or not. And we believe that is the calculation the Postal Service has made, and we think that is a major impediment to our efforts to allow employees who are injured on the job at the Postal Service to continue their careers in the Postal Service. It is that kind of thing that we are facing and dealing with.

The other part of your question, Chairman Akaka, was what about the Administration's proposals. We think that reductions in benefits such as to 70 percent and reductions at the retirement age, that those reductions of the cost to an employing agency like the Postal Service are only going to increase the incentives of employers to not provide limited duty work. And so, we are concerned about many of those proposals.

Senator AKAKA. Thank you, Mr. Watson. Mr. Beaudoin, I would like to hear your thoughts on this as well. In your experience, do your members who are on FECA generally want to return to work and when they are able to their job, their old job, or to a more limited job duty? Do you think the reforms in the Department of Labor's proposal will help improve return-to-work incentives?

Mr. BEAUDOIN. Chairman Akaka, the workers or the members that we have would definitely like to return to work if they were able to so that they can increase in their retirement, they can have dignity, they can be model citizens. But in the Department of Labor proposal, there is a significant reduction in retirement age benefits for all recipients.

And as we talked about before, the proposal fails to take into account disadvantages faced by the FECA recipients and that is, as we talked about also, the loss of ability to increase salary through raises and promotions and the loss of the contribution to TSP, and the recipients have lost the Social Security benefits.

But if I could, I would like to give you an example of one of our members who has experienced a problem. This lady began working as a seasonal temporary employee for the Postal Service in 1993

and became a career employee in 1998. Fifteen years on the job with repetitive motions and continual heavy lifting left her with a serious back injury resulting in immobility, severe pain, and inability to work.

At the time of her injury, she was about 41 years old, earned about $53,300 a year, or $4,441 a month. Her FECA benefit on that salary is about $2,931 per month, but a FERS retirement annuity for a high three salary of $53,300 on 15 years of service is only $666 per month.

Even if she were to receive credit for years of service for time out of work between the ages of 41 and 62, her annuity would only be about $1,758 per month, a significant reduction from her FECA benefit. Furthermore, she has little savings in her Thrift Savings Plan, only $12,000, hardly enough to make a serious contribution to her retirement age.

Her injury causes her enough pain and discomfort and losing her FECA benefits would cause even more. We do not believe that Senate Bill 261 should be considered because of the loss of wages that she will experience, as well as others.

Senator AKAKA. Thank you. Mr. Watson, the Administration proposed expanding an authority to reimburse employers that provide suitable employment to injured Federal workers, to allow reimbursement to Federal agencies that hire these workers. Do you believe this proposal would help open a broader range of opportunities for your members who are able to return to work?

Mr. WATSON. We have very serious misgivings about that proposal. We are certainly in favor of broadened opportunities, but we are afraid that the actual effect of this proposal would be to encourage the Postal Service to withdraw limited duty job offers even more, and that is for a couple of reasons.

One of the major concerns we have with this proposal that DOL has made includes—well, the proposal includes a provision that allows the office to begin to require vocational rehabilitation services after 6 months, even if the injured worker has not yet fully recovered as much as they are going to recover from the injury.

So currently, the law regarding the FECA provisions regarding vocational rehabilitation only require an employee to undergo and cooperate with it once they have reached maximum medical improvement (MMI), once they have recovered, once their disability is determined to be permanent.

And so, the proposal of the DOL is to include requiring employees to do vocational rehabilitation, even though they have not reached that MMI point. And the problem with that is that there are restoration rights that employees have right now. It is based in the FECA and the implementing regulations are found at 5 C.F.R. 353, and those restoration provisions hold that if an employee totally recovers within 1 year or if they reach MMI within 1 year, then their rights to restoration to employment with the employer at the time of the injury are much greater than if they reach those points after 1 year.

And so, this proposal is potentially going to result in letter carriers being required to undergo vocational rehabilitation; that is to say, get ready for a different job when they very well may have res-

toration rights within the Postal Service if they do reach MMI or fully recover within 1 year.

So we are afraid what that is going to do is encourage the Postal Service to do even more of what it has been doing, which is not providing limited duty to injured letter carriers. We are very concerned about that.

Senator AKAKA. Thank you very much. This question is for the panel and I would like to begin with Dr. Krohm. So before we close this hearing, I would like to give each of you the opportunity to discuss any additional thoughts or highlight what you believe are the most important issues we should keep in mind as we consider reforms to FECA. We will now start with Dr. Krohm.

Mr. KROHM. Thank you. Well, as we have heard, incentives can be tricky, they matter, they matter for both employees and they matter for both—and the employer. Getting them right requires hard work, but I think it is worth the effort because getting the injured worker back to work, preferably with the pre-injury employer, preferably in a job situation as close as possible to their pre-injury employment, is the way to go.

It is the gold standard for the best State systems that I know of, and I think it probably would apply just as well to the FECA program. Vocational rehabilitation is a good idea. It is necessary at times, but it would not be my first choice. It would be getting the injured worker back to work on light duty, modified duty with the pre-injury employer as soon as possible.

Absent any medical restriction to the contrary, that could be the day after injury. There is no arbitrarily long waiting period that should be used to get the injured worker back to work at their pre-injury employer.

Senator AKAKA. Thank you. Mr. Watson.

Mr. WATSON. Yes, I agree with Mr. Krohm that it is very important that injured workers have the opportunity to return to work as soon as medically called for, and ideally with the employer at the time of injury. I believe that is very important. And I think in order to achieve that goal, there are two things that could be done, now that we are dealing with FECA reform, and that is to address two very major issues.

One is the issue of loss of wage-earning capacity determination, sometimes called Wage-Earning Capacity (WEC). The two terms mean the same thing. That is a major, major issue for us.

What we have is letter carriers who have had a loss of wage-earning capacity determination made based on a limited duty job in the Postal Service which is later withdrawn and then, because of that WEC determination, they receive no benefits from OWCP, none. They get nothing. They have no pay from the Postal Service, they have no benefits from OWCP. They lose their health benefit plan.

That is happening and that needs to be addressed. And I think we have an opportunity to do that since we are discussing FECA reform.

And the other related issue that I think we could try and address is the responsibilities of employing agencies to provide work for injured workers. There is very little in the FECA right now regarding that. The implementing regulations, such as they are, are found in

5 C.F.R. 353, and I think that we could do a lot of good by addressing those. Thank you.

Senator AKAKA. Thank you. Mr. Beaudoin.

Mr. BEAUDOIN. Chairman Akaka, the Federal workers who participate in FECA would do anything to turn back the clock and be working without injury. But that is not their reality. That is why the least we can do for the trauma they have suffered is compensate them fairly.

We have looked at Senate Bill 261. We feel that is a start, but a start in the wrong direction. We have looked at the DOL and DOL has some good things in it, whereas, they would look into the fraud, look into the improper payments, but again, that is not as good as the House bill.

Also, the House Committee on Education and Workforce requested a report from the GAO to study the impact of the DOL proposal on FECA recipients. We strongly request that they wait and consider that GAO report before moving forward with any type of legislation.

But the present House bill, H.R. 2465, is the most fairest method there is for our injured workers and members who are on FECA, and we would request that one be the model that your Committee starts to work from and then expand upon it. Thank you.

Senator AKAKA. Well, thank you very much, Mr. Beaudoin. I want to thank our witnesses today for your thoughts and your recommendations. I look forward to continuing to work with my colleagues and with all of you to make changes to improve FECA while ensuring that those with work-related injuries and illnesses are treated fairly and receive the benefits they deserve.

The hearing record will remain open for 2 weeks for Members to submit any additional statements or questions or for members of the public who wish to submit additional written testimony. What you have done today will certainly help us as we continue to work on this legislation and we want to continue working with you, as I said, to keep it fair and to give our workers what they deserve. So thank you very much again. This hearing is now adjourned.

[Whereupon, at 3:54 p.m., the hearing was adjourned.]

APPENDIX

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
CHRISTINE M. GRIFFIN
DEPUTY DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
UNITED STATES SENATE

on

"EXAMINING THE FEDERAL WORKERS' COMPENSATION PROGRAM FOR INJURED EMPLOYEES"

July 26, 2011

Chairman Akaka, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to testify today regarding the Office of Personnel Management's (OPM's) views on retirement issues related to legislative reform proposals to the Federal Employees Compensation Act (FECA). Administered by the Department of Labor's Office of Workers' Compensation Programs (OWCP), FECA is a robust program that provides workers' compensation coverage to approximately 2.8 million Federal civilian employees, including those in the U.S. Postal Service.

I will defer to the Department of Labor (DOL) to provide a more comprehensive overview of the various FECA reform proposals. However, I look forward to discussing OPM's support of a workers' compensation system that is equitable to employers and employees, concerns with retirement changes under FECA reform proposals, and efforts to improve opportunities for Federal employment of individuals with disabilities.

Congressional and Legislative Affairs • 1900 E Street, N.W. • Room 5H30 • Washington, DC 20415 • 202-606-1300

Statement of Christine M. Griffin
Deputy Director
U.S. Office of Personnel Management

July 26, 2011

Proposals to Reform FECA

The current workers' compensation system provides a reasonable benefit comparable to an employee's income when they were able to work. When an employee reaches retirement age, however, the FECA benefits in many instances are more generous compared to what the employee would receive as a retiree. While retirement eligible employees under FECA have the right to elect coverage under their retirement plan, there is little incentive to do so because the workers' compensation benefits far exceed those benefits available under employees' retirement plans. The average Federal employee voluntarily retiring under the Civil Service Retirement System (CSRS) receives an annuity of about 60 percent of their "high-three" average salary, most of which is taxable, compared to a tax free 75 percent or 66.66 percent FECA benefit. Therefore, the vast majority of long-term FECA claimants remain on the FECA rolls well past retirement age.

To address the retirement equity issue under FECA, the DOL and Senator Susan Collins have offered two different reform proposals. The President's budget request for fiscal year 2012 proposes reforms to the current FECA program that would standardize FECA benefits, allow for a retirement conversion benefit, and result in cost savings. The proposal from DOL would reduce a retirement eligible FECA claimant's benefits to 50 percent of their gross salary at date of injury (with cost of living adjustments), a level closer to what their retirement benefit would have been after a career of service This concept has the advantage of simplicity and uniformity of coverage. Regardless of an individual's particular retirement system, the claimant would be treated fairly and equitably upon reaching retirement age. In addition, FECA claimants would not change coverage systems from workers' compensation to one of the retirement programs. The President's budget estimates the FECA reform proposal would have Government-wide savings of more than $400,000,000 over ten years.

Legislation introduced by Senator Collins, S. 261, the Federal Employees' Compensation Reform Act, would take retirement eligible individuals off the compensation rolls and place them onto retirement rolls. We have strong concerns with the approach taken by S. 261, which we have detailed below, and believe that the approach offered by the DOL proposal represents a more fair and equitable treatment under FECA reform.

The House Education and the Workforce Committee recently approved a bipartisan FECA reform bill, H.R. 2465, which incorporates portions of the Administration's FECA proposal, but does not affect issues with retirement. As such, we will not comment on the legislation at this time.

Comments on S. 261, the Federal Employees' Compensation Reform Act

S. 261 would require a system change, and at Social Security retirement age, FECA benefits would terminate if the individual were eligible for a CSRS or Federal Employee Retirement System (FERS) annuity. The bill, however, makes no provision for any other retirement changes.

Statement of Christine M. Griffin
Deputy Director
U.S. Office of Personnel Management

July 26, 2011

Employees and employers do not make retirement contributions, including into Social Security or the Thrift Savings Plan (TSP) for those employees enrolled in FERS, while an employee is receiving workers compensation benefits. While the conversion concept would deal with all individuals receiving compensation regardless of their retirement system, S. 261 would only apply to employees covered by CSRS and FERS. However, while CSRS and FERS do cover the majority of Federal employees, there are numerous retirement systems that cover Federal employees such as the Foreign Service or Federal Reserve. To fully cover all individuals, the system change concept would require that these retirement plans be amended.

As drafted, S. 261 would provide for retirement based only upon employment performed before an employee's injury. This could result in many individuals being placed in extreme financial hardship with a very small annuity and without health benefits. While differences would depend upon circumstances, it would be plausible that a $4,000 per month beneficiary could be converted to a $300 per month annuitant with no health benefits. Another possibly unintended and inequitable consequence is that individuals with the least amount of service at the time of their injuries and who would not meet annuity requirements would not be subject to S. 261 and therefore would receive much higher benefits than injured employees with more service.

Even though individuals who concurrently apply for FECA benefits and FERS disability benefits will have their FERS benefit recomputed at age 62 with added service credit and an enhanced average salary, such individuals will still suffer from the loss of Social Security and their TSP for the period of disability.

It would be possible to amend S. 261 to equitably provide for individuals subject to change from the workers' compensation program to a retirement system, but to do so would be very complicated. Presumably, equity would require that a system change benefit yield a retirement benefit comparable to what the individual would have received had their employment not been prematurely interrupted by an injury or illness. This would require a formula for adjusting service credit and annual salary. Furthermore, since FERS is only one tier of a three-tier retirement plan, addressing the loss of Social Security and TSP for the compensation period would also be necessary. Additionally, each Federal retirement system that covers individuals under FECA would have to be individually modified based upon its particular benefit provisions. While the conversion concept would require only minimal administrative resources for implementation, each and every retirement system would require major changes utilizing substantial resources under the system change concept.

Improving Workers Compensation and Employment for People with Disabilities

OPM supports improving workers compensation for employees that have been injured during their employment, and the agency strongly supports efforts to improve employment for people with disabilities. One year ago today, President Obama signed Executive Order (E.O.) 13548 to Increase Federal Employment of Individuals with Disabilities. In February, I testified about OPM's efforts to improve Federal employment of people with disabilities. OPM continues to partner with agencies across the federal government, including DOL's OWCP, to provide

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Deputy Director
U.S. Office of Personnel Management

July 26, 2011
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comprehensive training for federal agencies on: the E.O.; model recruitment strategies; reasonable accommodation policies and procedures; the Department of Defense's program to provide free accommodations to all Federal employees with disabilities; and DOL's return to work strategies. Agencies are making strides toward the President's goal of hiring 100,000 people with disabilities over the next five years. They are beginning aggressive efforts to tap into the tremendous talents of people with disabilities, a long neglected segment of our society with a lot to offer the Federal government.

Conclusion

OPM supports the Administration's efforts to reform FECA in an equitable and fair manner. We believe that S. 261 would have potentially unintended and inequitable consequences. We welcome the opportunity to work with the Committee to address our concerns.

Again, I thank you for the opportunity to be here, and I am happy to answer any questions that you may have.

STATEMENT OF

GARY STEINBERG
ACTING DIRECTOR
OFFICE OF WORKERS' COMPENSATION PROGRAMS
U.S. DEPARTMENT OF LABOR

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

July 26, 2011

Chairman Daniel Akaka, Ranking Member Ron Johnson, and Members of the Subcommittee:

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

I appreciate the opportunity to discuss legislative reforms to FECA that would enhance our ability to assist FECA beneficiaries to return to work, provide a more equitable array of FECA benefits, and generally modernize the program and update the statute. Almost 95 years ago, on September 7, 1916, Congress enacted FECA to provide comprehensive Federal workers' compensation coverage to all Federal employees and their survivors for disability or death due to an employment injury or illness. FECA's fundamental purpose is to provide compensation for wage loss and medical care, facilitate return to work for employees who have recovered from their injuries, and pay benefits to survivors. The faces of FECA include the Postal worker whose mail truck is hit while delivering mail,

the Federal Bureau of Investigation (FBI) agent injured or killed in the line of duty, the Department of Veterans' Affairs nurse who hurts her back while lifting patients, and the Federal employee injured in the recovery efforts in Japan. All of these employees will receive benefits provided by this Act.

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

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

FECA Today

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

parts of the body; medical and vocational rehabilitation assistance in returning to work as necessary; and benefits to survivors in the event of a work related death.

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

FECA is a non adversarial system administered by OWCP. While employing agencies play a significant role in providing information to OWCP and assisting their employees in returning to work, the adjudication of FECA claims is exclusively within the discretion given to the Secretary of Labor by statute and is statutorily exempt from court review. Claimants are provided avenues of review within OWCP through reconsideration and hearing as well as an appellate forum, the Employees' Compensation Appeals Board (ECAB), a quasi-judicial appellate board within the DOL, completely independent of OWCP.

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

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

Maintaining Program Integrity

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

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

to identify FECA claimants who have died so that payments can be terminated to avoid overpayments.

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

A History of Performance

Under most circumstances FECA claims are submitted by employees to their employing agency, which completes the agency information required on the form and forwards the claim to OWCP. Over the past 5 years, an average of 133,000 new injury and illness claims were filed annually and processed by OWCP. The acceptance rate for new injury claims was 85%. Eighty-four percent (84%) were submitted within program timeliness standards of 10 working days and approximately 95% were processed by OWCP within program timeliness standards which vary depending on the complexity of the injury. Fewer than 15,000 of the accepted claims per year involve a significant period of disability. Eighty-five percent (85%) of claimants return to work within the first year of injury and a total of 89% return to work by the end of the second year. Due in part to OWCP's efforts to return injured employees to work, less than 2% of all new injury cases remain on the long-term compensation rolls two years after the date of injury. Currently,

approximately 45,000 injured workers have long term ongoing disability benefits for partial or total wage loss, which they receive every 4 weeks. Some 15,000 are 66 years of age or older. (It should be noted however, that of this 15,000, over 7,000 have been determined to have no return-to-work potential, largely because of the substantial nature of their disability.)

FECA Reform

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

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

Return to Work and Rehabilitation

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

We propose additional statutory tools that would enhance OWCP's ability to return injured workers to productive employment. While FECA currently has the authority to provide vocational rehabilitation services and to direct permanently injured employees to

participate in vocational rehabilitation, we suggest removing the permanency limitation in the statute to make clear that such services are available to all injured workers and that participation in such an effort is required. It is generally accepted and consistent with our experience that the earlier the claimant is involved in a vocational rehabilitation and a Return-to-Work program, the greater likelihood of a successful and sustained return to work post injury.

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

Our proposal would also amend FECA to provide permanent authority for what we call Assisted Reemployment. Assisted Reemployment is a subsidy designed to encourage employers to choose qualified rehabilitated workers whom they might otherwise not hire. As disabled Federal workers with skills transferable to jobs within the general labor market may prove difficult to place due to economic factors, Assisted Reemployment is designed to increase the number of disabled employees who successfully return to the labor force by providing wage reimbursement to potential employers. Recent DOL appropriations bills gave OWCP the authority to provide up to three years of salary reimbursement to private employers who provide suitable employment for injured federal workers. Our data from our currently limited private sector program show 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, many Federal employees receive an augmented benefit, 75%, if they have at least one dependent. Computed at 75% tax free, FECA benefits often exceed the employee's pre-injury take home pay. Few state systems provide any augmentation for dependents, and none approaches the Federal level.

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

status. At this level compensation would remain quite adequate. A similar rate reduction is also proposed in death claims.

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

This proposal provides claimants with a "Conversion Entitlement Benefit" upon reaching regular Social Security retirement age (and after receiving full benefits for at least one year) that would reduce their wage-loss benefits to 50% of their gross salary at date of injury (with cost of living adjustments), but would still be tax free. This benefit more closely parallels a regular retirement benefit, as opposed to a full wage-loss benefit, so that FECA recipients are not overly advantaged in their retirement years compared to their non-injured counterparts on OPM retirement. An injured worker receiving this

retirement level conversion benefit would no longer be subject to several of the sanction provisions outlined in the FECA, such as forfeiture for failure to report earnings or the requirement to seek/accept suitable employment or participate in vocational rehabilitation. Even at this reduced rate, however, an injured worker would still be required to substantiate continuing injury-related disability or face suspension of compensation benefits.

Updating Benefit Structures

We also propose a number of changes to the current FECA benefit structure. One relates to the schedule award provision, which is designed to address the impact of impairment on an individual's life function, such as the loss of vision, hearing, or a limb. Impairment is permanent, assessed when an individual reaches maximum medical improvement, and is based upon medical evidence that demonstrates a percentage of loss of the affected member. Each member, extremity or function is 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, the ten-year cost savings are estimated to be around $400 million, or potentially even higher.

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

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

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

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

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, United States Senate

For Release on Delivery
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FEDERAL WORKERS' COMPENSATION

Questions to Consider in Changing Benefits for Older Beneficiaries

Statement of Andrew Sherrill, Director Education, Workforce, and Income Security Issues

GAO-11-854T

Chairman Akaka, Ranking Member Johnson and Members of the Subcommittee:

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

My statement today will focus on (1) previous proposals for changing FECA benefits for older beneficiaries and (2) questions and associated issues that merit consideration in crafting legislation to change benefits for older beneficiaries. This statement is drawn primarily from our 1996 report in which we solicited views from selected federal agencies and employee groups to identify questions and associated issues with crafting benefit changes. For that report, we also reviewed relevant laws and analyzed previous studies and legislative proposals that would have

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

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

changed benefits for older FECA beneficiaries. For purposes of this testimony, we did not conduct a legal analysis to update the results of our prior work, but instead relied upon secondary sources such as the Congressional Research Service (CRS). The work on which this testimony was based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

Background

FECA

FECA is administered by Labor's Office of Workers' Compensation Programs (OWCP) and currently covers more than 2.7 million civilian federal employees from more than 70 different agencies. FECA benefits are paid to federal employees who are unable to work because of injuries sustained while performing their federal duties. Under FECA, workers' compensation benefits are authorized for employees who suffer temporary or permanent disabilities resulting from work-related injuries or diseases. FECA benefits include payments for (1) loss of wages when employees cannot work because of work-related disabilities due to traumatic injuries or occupational diseases; (2) schedule awards for loss of, or loss of use of, a body part or function; (3) vocational rehabilitation; (4) death benefits for survivors; (5) burial allowances; and (6) medical

care for injured workers. Wage-loss benefits for eligible workers with temporary or permanent total disabilities are generally equal to either 66-2/3 percent of salary for a worker with no spouse or dependent, or 75 percent of salary for a worker with a spouse or dependent. Wage-loss benefits can be reduced based on employees' wage-earning capacities when they are capable of working again. OWCP provides wage-loss compensation until claimants can return to work in either their original positions or other suitable positions that meet medical work restrictions.[3] Each year, most federal agencies reimburse OWCP for wage-loss compensation payments made to their employees from their annual appropriations. If claimants return to work but do not receive wages equal to that of their prior positions—such as claimants who return to work part-time—FECA benefits cover the difference between their current and previous salaries.[4] Currently, there are no time or age limits placed on the receipt of FECA benefits.

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

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

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

[5]39 Stat. 742.

allowing benefits to be reduced for older beneficiaries. The provision stated that compensation benefits could be adjusted when the wage-earning capacity of the disabled employee would probably have decreased on account of old age, irrespective of the injury.

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

Federal Retirement Systems

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

Under both CSRS and FERS, the date of an employee's eligibility to retire with an annuity depends on his or her age and years of service. The amount of the retirement annuity is determined by three factors: the number of years of service, the accrual rate at which benefits are earned for each year of service, and the salary base to which the accrual rate is

[6] 63 Stat. 854.

[7] Pub. L. No. 93-416, § 8, 88 Stat. 1143. According to Senate Report 93-1081, the Committee on Labor and Public Welfare stated that (1) the provision requiring the review of compensation was an unnecessary burden on both the injured employees and the Secretary of Labor (who had the authority to conduct the review); (2) age 70 had no bearing on one's entitlement to benefits; and (3) such a provision was discriminatory. FECA currently does not include a provision to change benefits based on retirement age.

applied.[8] In both CSRS and FERS, the salary base is the average of the highest three consecutive years of basic pay. This is often called "high-3" pay.

According to CRS, an injured employee cannot contribute to Social Security or to the TSP while receiving workers' compensation because Social Security taxes and TSP contributions must be paid from earnings, and workers' compensation payments are not classified as earnings under either the Social Security Act or the Internal Revenue Code. As a result, the employee's future retirement income from Social Security and the TSP may be reduced. Legislation passed in 2003 increased the FERS basic annuity from 1 percent of the individual's high-3 average pay to 2 percent of high-3 average pay while an individual receives workers' compensation, which would help replace income that may have been lost from lower Social Security benefits and reduced income from TSP.[9]

Proposals to Change Benefits for Older Beneficiaries

Concerns that beneficiaries remain in the FECA program past retirement age have led to several proposals to change the program. Under current rules, an age-eligible employee with 30 years of service covered by FERS could accrue pension benefits that are 30 percent of their high-3 average pay and under CSRS could accrue almost 60 percent of their high-3 average pay. Under both systems benefits can be taxed.[10] By contrast, FECA beneficiaries can receive up to 75 percent of their preinjury income, tax-free, if they have dependents and 66-2/3 percent without dependents. Because returning to work could mean giving up a FECA benefit for a

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

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

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

reduced pension amount, concerns have been raised by some that the program may provide incentives for beneficiaries to continue on the program beyond retirement age.

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

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

The second proposal, based on proposals that several agencies developed in the early 1990s, would convert FECA wage-loss compensation benefits to a FECA annuity benefit. These agency proposals would have reduced FECA benefits by a set percentage two years after beneficiaries reached civil service retirement eligibility. Proponents of this alternative noted that changing to a FECA annuity would be simpler than converting FECA beneficiaries to the retirement system, would result in consistent benefits, and would allow benefits to remain tax-free. Proponents also argued that a FECA annuity would keep the changed benefit within the FECA program, thereby avoiding complexities associated with converting FECA benefits under CSRS and FERS. For example, converting to retirement benefits could be difficult for some employees who currently are not participating in a federal retirement plan. Also, funding future retirement benefits could be a

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

problem if the FECA recipient has not been making retirement contributions. Labor recently suggested a change to the FECA program that would reduce wage-loss benefits for Social Security retirement-aged recipients to 50 percent of their gross salary at the date of injury, but would still be tax-free.[12] Labor's proposal would still keep the changed benefit within the FECA program.

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

Questions and Issues to Consider if Crafting FECA Changes

We also discussed in our 1996 report a number of issues that merit consideration in crafting legislation to change benefits for older beneficiaries. Going forward, Congress may wish to consider the following questions as it assesses and considers current reform proposals: (1) How would benefits be computed? (2) Which beneficiaries would be affected? (3) What criteria, such as age or retirement eligibility, would initiate changed benefits? (4) How would other benefits, such as FECA medical and survivor benefits, be treated and administered? (5) How would benefits, particularly retirement benefits, be funded?

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

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

How Would Benefits Be Computed?

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

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

Which Beneficiaries Would Be Affected?

Currently most federal employees are covered by FERS, but conversion proposals might have to consider differences between FERS and CSRS participants, and participants in any specialized retirement systems.[14] Other groups that might be uniquely affected include injured workers who are not eligible for federal retirement benefits, individuals eligible for retirement conversion benefits, but not vested; and individuals who are partially disabled FECA recipients but active federal employees. With regard to vesting, those who have insufficient years of service to be

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

	vested might be given credit for time on the FECA rolls until vested. There is also the question of whether changes will focus on current or future beneficiaries. Exempting current beneficiaries delays receipt of full savings from FECA cost reductions to the future. One option might be a transition period for current beneficiaries. For example, current beneficiaries could be given notice that their benefits would be changed after a certain number of years.
What Criteria Would Initiate Changed Benefits?	Past proposals have used either age or retirement eligibility as the primary criterion for changing benefits. If retirement eligibility is used, consideration must be given to establishing eligibility for those who might otherwise not become retirement eligible. This would be true for either the retirement conversion or the annuity option. At least for purposes of initiating the changed benefit, time on the FECA rolls might be treated as if it counted for service time toward retirement eligibility. Deciding on the criteria that would initiate change in benefits might require developing benchmarks. For example, if age were the criteria, it might be benchmarked against the average age of retirement for federal employees, or the average age of retirement for all employees. Another question is whether to use secondary criteria to delay changed benefits in certain cases. The amount of time one has received FECA benefits is one possible example of secondary criteria. Secondary criteria might prove important in cases where an older, injured worker may face retirement under the retirement conversion option even when recovery and return to work is almost assured.
How Would Other Benefits, Such As FECA Medical Benefits Or Survivor Benefits, Be Treated and Administered?	In addition to changing FECA compensation benefits, consideration should be given to whether to change other FECA benefits, such as medical benefits or survivor benefits. For example, the 1981 Reagan administration proposal would have ended survivor benefits under FECA for those beneficiaries whose benefits were converted to the retirement system. Another issue to consider is who will administer benefits if program changes shift responsibilities—OPM administers retirement annuity benefits for federal employees, and Labor currently administers FECA benefits. Although it may be advantageous to consolidate case management in one agency, such as OPM, if the retirement conversion alternative were selected, the agency chosen to manage the case might have to develop an expertise that it does not currently possess. For example, OPM might have to develop expertise in medical fee schedules to control workers' compensation medical costs.

How Would Benefits, Particularly Retirement Benefits, Be Funded?

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

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

Concluding Remarks

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

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

GAO Contact and Staff Acknowledgments

For further information about this testimony, please contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. In addition to the individual named above, key contributors to this testimony include Patrick Dibattista, H. Brandon Haller, Michelle Bracy, Tonnyé Conner-White, James Rebbe, Kathleen van Gelder, Walter Vance, and Matthew Saradjian.

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STATEMENT BY
JOSEPH A. BEAUDOIN
PRESIDENT
NATIONAL ACTIVE AND RETIRED FEDERAL EMPLOYEES ASSOCIATION

BEFORE
THE SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

HEARING: "EXAMINING THE FEDERAL WORKERS' COMPENSATION PROGRAM FOR INJURED EMPLOYEES"

JULY 26, 2011

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

Thank you for providing me the opportunity to testify on behalf of those 4.6 million federal workers and annuitants.

As you consider legislative reforms to the Federal Employees' Compensation Act (FECA), I urge you to pursue common sense reforms that improve program efficiency, achieve cost savings, and improve fairness without reducing the basic compensation provided to those employees unfortunate enough to suffer a debilitating injury or illness as a result of their public service.

FECA benefits are intended to compensate federal employees for work-related injuries and illnesses – to fairly make up for income they would have received had their public service not been cut short by an unforeseen job-related injury or workplace-induced illness. In exchange for their benefits, FECA recipients lose their right to sue the government for their work-related disability. Of course, reimbursed medical expenses and monetary compensation will never be able to reverse the permanent damage of a

debilitating injury or illness. But we should do our best to ensure that FECA benefits provide injured employees the income security they would have received without their injury or illness.

Unfortunately, current proposals by Senator Susan Collins and the Department of Labor (DOL) to reduce benefits for FECA recipients at retirement age do not adequately take into account the disadvantages faced by employees unable to work because of a work-related injury or illness, leaving them worse off in terms of income.

S. 261, Federal Employees' Compensation Reform Act

S. 261, the Federal Employees' Compensation Reform Act, introduced by Senator Collins, would move FECA recipients to the retirement system at full Social Security retirement age (between 65 and 67, depending on year of birth). Instead of receiving 66.67 percent of monthly pay (or 75 percent for recipients with dependents) tax-free, former FECA recipients would receive a taxable annuity computed by multiplying the average of their highest three years of salary *times* years of service *times* an accrual rate (1 or 1.1 percent for FERS-covered employees or 1.5 to 2 percent for CSRS-covered employees). This presents multiple issues.

First, there is no provision to adjust upwards the average highest three years of salary to account for wage inflation. FECA recipients also will have lost the ability to increase their salary through raises and promotions. At the very least, they should receive an

adjustment based on the Employment Cost Index or other wage inflation indicator to the average highest three years of salary for purposes of computing their annuity.

Second, unless FECA recipients are covered by FERS and applied for a disability retirement annuity within 12 months of their injury or illness, they likely would not receive credit for years of service for the time between when they became injured or ill and when they turn 62 years of age.[1]

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

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

Consider the example of one of our members. She began working as a seasonal/temporary employee for the postal service in 1993, and became a career employee in 1998. Fifteen years on the job with repetitive motions and continual heavy lifting left her with a serious back injury, resulting in immobility, severe pain and

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

inability to work. At the time of her injury, she was about 41 years old and earned about $53,300 a year, or $4,441.66 a month. Her FECA benefit on that salary is about $2,931.50 per month. But a FERS retirement annuity for a high-three salary of $53,300 on 15 years of service is only $666.25 per month. Even if she were to receive credit for years of service for time out of work between the age of 41 and 62, her annuity would only be about $1,758.90 per month, a significant reduction from her FECA benefit. Furthermore, she has little savings in her Thrift Savings Plan – only $12,000 – hardly enough to make a serious contribution to her at retirement age. Her injury causes her enough pain and discomfort. Losing her FECA benefits would cause even more.

This example highlights the impact the proposed changes would have on federal workers who are injured or become ill in the middle of their careers, as the lost ability to save and receive promotions has diminished what they would have received in retirement. For such individuals, there is little to rely on but the money they receive as compensation for their injuries.

The net effect of the transition to the retirement system mandated by S. 261, as written, would be reductions in benefits for many FECA recipients.

We would like to thank Senator Collins for demonstrating a willingness to work with us and maintain an open dialogue with respect to FECA reforms.

Department of Labor Proposal

The Department of Labor (DOL) proposes to reduce FECA recipients' basic compensation benefit to 50 percent of their gross salary at the date of injury, still tax-free, when they reach full Social Security retirement age. While this proposal provides a retirement level income closer to that of current retirees,[2] it still does not fully account for disadvantages faced by FECA recipients. Notably, FECA recipients (1) lose the ability to increase their salary through raises and promotions, (2) have a reduced ability to save because FERS-covered employees are not able to contribute to the Thrift Savings Plan and receive matching contributions, and (3) may have a reduced Social Security benefit because FERS employees covered by Social Security are unable to earn quarterly credits to increase average monthly earnings used to calculate those Social Security benefit payments.

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

H.R. 2465, Federal Workers' Compensation Modernization and Improvement Act

H.R. 2465, the Federal Workers' Compensation Modernization and Improvement Act, provides a fairer, more considered approach to reform that achieves cost savings without reducing the basic benefits paid to employees who suffer a debilitating injury or illness as a result of their public service.

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

The legislation combines much-needed adjustments to compensation for the worst-case injuries and illnesses, and common sense, cost saving measures that should improve the processing of claims and reduce improper payments. NARFE specifically supports the bill's provisions to expand coverage for injuries or illnesses caused by a terrorist attack; to increase the maximum compensation to employees for serious disfigurement of the head, face, or neck from an outdated $3,500 to a more reasonable $50,000; to extend the time period for a continuation of pay in a zone of armed conflict to 135 days; and to increase compensation for funeral expenses from an outdated $800 to a more reasonable $6,000.

H.R. 2465 represents a model of the best path to reform; one that will achieve cost savings and improve fairness and, not coincidentally, garners broad bipartisan support.

Conclusion

FECA reforms need not, and should not, sacrifice basic principles of fairness in the name of achieving cost savings. Rather, FECA reforms should save money by helping bring FECA recipients back into the workforce, eliminating inefficiencies in the processing of claims, allowing for full reimbursement from liable third parties, or reducing improper payments and fraud. H.R. 2465 provides a clear example of how to save money this way and improve fairness.

But current proposals to take money away from individuals who are irrefutably unable to work because they were injured or became ill as a result of their service for the federal

government fails a basic fairness test. If those individuals had the choice, they would be healthy and working and preparing for a retirement of choice rather than of necessity.

Thus, I urge all members of Congress to seriously consider the significant financial implications that proposed reductions to FECA benefits could have on disabled public servants who have lost the ability to earn income to adjust their financial situation to new circumstances. These federal employees include FBI agents who have been shot in the line of duty and federal firefighters injured while saving lives. We need to treat these public servants with respect and gratitude.

Mr. Chairman and subcommittee members, I urge you to do so, and thank you for inviting me to testify today.

Prepared Statement of
Ron Watson
Consultant to NALC President Fred Rolando
July 26, 2011
Senate Committee on Homeland Security and Government Affairs
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Good afternoon Chairman Akaka, ranking member Johnson, and members of the Subcommittee. I am pleased to be here today on behalf of the nearly 290,000 members of the National Association of Letter Carriers (NALC). Thank you for inviting me to testify at this hearing, titled *Examining the Federal Workers' Compensation Program for Injured Employees.*

The NALC welcomes the prospect of reform to the Federal Employees' Compensation Act (FECA), provided it does not result in unfair harm to the injured workers that the FECA was designed to protect.

In our view, some of the reform proposals being considered meet this test. One proposal would permit the Secretary of Labor to obtain Social Security earnings information for all claimants. Another would add Continuation of Pay to the existing subrogation provisions. These two proposals have been projected by the Office of Workers' Compensation Programs, if enacted, to save nearly 50 million dollars over a 10 year period. The NALC supports both.

There are additional proposals, some of which entail increased monetary benefits to injured workers and some of which are cost-neutral, that the NALC supports.

Some other proposals appear to us to unfairly harm injured workers.

For instance, a proposal has been made to level the rate of wage-loss compensation to 70% (of salary on date of injury, date of first disability, or date of recurrence of disability) for all injured workers. Currently, the compensation rate for injured workers with one or more dependents is calculated at 75%, while the rate for those with no dependents is calculated at 66 2/3%.

The 70% proposal

Proponents of this change argue that FECA benefits calculated at 75% (tax-free) often exceed the injured worker's pre-injury take home pay, and that this creates a significant disincentive to return to work. They argue that benefits should be reduced in order to eliminate the disincentive. This argument seems based on an over-simplified view of the matter, and it is completely at odds with the NALC's experience.

GAO Report GGD-98-174

A GAO report dated August 1998 provided an analysis of the percentages of take-home pay replaced by FECA compensation benefits. It noted a 1972 National Commission Report that recommended that benefits should replace at least 80% of pre-injury spendable earnings (take-home pay). It suggested that legislatures must walk a fine line between benefits that are high enough to provide adequate income, but not so high as to discourage an employee's return to work.

The GAO analysis established that FECA wage-loss compensation, measured as a percentage of pre-injury take-home pay, was dependent on a multitude of factors. These factors included whether the employee lived in a state with an income tax and if so, how high the rate was; whether the employee was single or married and if married whether the spouse had earned income, and if so, how much; the number of dependents; the length of time on the rolls; pay levels; and others. Significantly, the GAO analysis excluded beneficiaries who had established Wage Earning Capacity (WEC) determinations.

The GAO analysis considered data from the year ending June 1997. It began with that year's 78,060 cases involving wage-loss compensation benefits, of which 51, 265 were on the long term rolls. Of these 51,265, about 34,700 (or perhaps 30,057 – the report is unclear) were receiving full wage-loss compensation. (Assumably, the remaining 1/3 of the 51,265 had received LWEC determinations that reduced their wage-loss compensation by a percentage commensurate with their capacity to earn wages.)

GAO further reduced the number of beneficiaries being reviewed to a set of 23,250 in order to complete its analysis. For the 23,250 beneficiaries included in the analysis, GAO estimated that FECA benefits replaced, on average, over 95% of the take-home pay they would have received had they not been injured. Thus, the

estimated average replacement rate (which is below 100%), coupled with the exclusion of cases that include LWEC determinations from that average, suggest that the FECA tax-free 75% rate does not often exceed pre-injury take-home pay.

The GAO report is useful for illustrating ranges and averages of wage-replacement rates given certain variables. However, it does not provide analysis of how those ranges and averages might affect return-to-work disincentives.

Two major points should be considered in any effort to assess return-to-work disincentives in the context of FECA wage-replacement rates. The first is a loss of benefits. The second is the fact that in the Postal Service today, the problem is that hundreds, even thousands, of injured workers who are able, willing and eager to return to work are not being allowed to do so.

Loss of benefits

Generally, pay rate is probably the most significant factor in decisions by workers to seek and accept employment. However, benefits are also a highly significant consideration. Workers are motivated to accept employment offers based on the benefit package as well as the pay package. If we accept that this is true in general it is reasonable to conclude it is also true in the case of injured workers.

FECA beneficiaries receiving wage-loss compensation lose significant benefits.

Upon placement in a leave without pay (LWOP) status by the employing agency, lost benefits include annual leave, sick leave, Thrift Savings Plan benefits, overtime opportunities, promotion prospects, and other pay-increase opportunities.

Once an employee is separated by the employing agency, there are additional lost benefits, including Social Security credits (in the case of FERS employees), CSRS/FERS retirement annuity credits, higher Health Benefit Plan rates, higher basic FEGLI rates (in the case of Postal employees), loss of step increases, and loss of union-negotiated contractual protections.

These benefit losses are substantial and in some cases can be financially devastating to the injured worker.

LWEC determinations

In addition, in the significant number of cases where OWCP determines a Lost Wage Earning Capacity (LWEC) based on a constructed position, the injured worker's wage-loss compensation is further significantly reduced. The typical case involves 50% or more. Thus, a typical LWEC compensation amount will be calculated at (pay rate) X (66 2/3% or 75%) X (50%).

OWCP has authority to make LWEC determinations in cases where the injured worker is partially disabled, as opposed to totally disabled. Disability in this context is an economic, not medical, concept, and is defined as *"the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury – it may be partial or total."* LWEC determinations are intended to fairly and reasonably reflect the injured worker's ability to earn wages on the open job market. LWEC determinations may be based on actual earnings or on constructed positions. When based on constructed positions, OWCP determines that a specifically identified job is within the injured worker's medical limitations and that it is available within the worker's commute area. OWCP then determines the average wage of the identified job and reduces the wage-loss compensation accordingly.

Such LWEC reductions are made irrespective of whether the injured worker is actually able to obtain employment in the job identified by OWCP.

Summary of lost benefits and LWEC reductions

These lost benefits and LWEC reductions should be considered when weighing the balance between setting wage-loss compensation benefits high enough to provide adequate income for families of disabled workers, but not so high that it discourages return to work.

The NALC believes there is no need to reduce the current 75% rate in order to address a perceived imbalance regarding return to work disincentives for injured workers. Instead, there is a need to address OWCP policies that may foster disincentives for employing agencies to allow injured workers to continue working and/or to return to work.

Postal Service disincentives

Prior to 2007, Postal Service national policy was to make every effort to provide limited duty work to employees who had medical restrictions due to accepted on-the-job injuries. In 2007, the Postal Service began a national program, the National Reassessment Program (NRP), that effectively resulted in the withdrawal of thousands of previously provided limited duty jobs.

The NALC has aggressively challenged those withdrawals through our contractual-grievance arbitration system. We have taken approximately 160 of these cases to final and binding regional arbitration. Regional arbitrators have overwhelmingly found in the NALC's favor. In addition, we have made hundreds of pre-arbitration settlements in similar cases.

These are cases involving injured workers who are able to work and want to work, even though most are receiving wage-loss compensation from OWCP. Despite their abilities and desires, and the availability of limited duty work, they are not allowed to work by the Postal Service.

Let me provide an example. I advocated an NRP-related arbitration hearing that involved a letter carrier who had injured his foot on the job. OWCP authorized surgery. A chronic infection of the bone resulted from the surgery. As a consequence, he was medically restricted to very little walking. However, he was able to case or sort mail, and for many years the Postal Service accommodated him with limited duty involving mail sortation. Then, local management implemented the National Reassessment Program, withdrew his limited duty job offer and placed him on LWOP. The sorting work he had previously performed still existed and was reassigned to other, temporary employees. He began receiving OWCP wage-loss compensation. However, he immediately initiated a grievance to get his job back with the Postal Service and he never stopped fighting until he succeeded.

The argument that the 75% compensation rate creates a disincentive for return to work is wholly inconsistent with the NALC's recent experience.

Mandatory retirement

Various proposals have been made to mandate retirement at a specific age. One proposal would terminate wage-loss compensation benefits and transition to

CSRS or FERS retirement upon reaching Social Security retirement age. Another proposal would continue OWCP wage-loss compensation payments but reduce them to 50% at Social Security retirement eligibility.

Proponents of these changes generally argue that FECA wage-loss compensation benefits are far more generous than OPM retirement benefits. These arguments typically rely on comparison of the 75% FECA benefit with the average CSRS annuity of about 60%. There are significant problems with these proposals.

The majority of federal employees today are not covered by CSRS. Instead, they are covered by FERS. Unlike CSRS, FERS is a three-part retirement system that includes a defined benefit annuity, Social Security, and the Thrift Savings Plan. A report by the Congressional Research Service shows FERS retirement amounts will likely far exceed CSRS annuity amounts.

CRS Report 1/11/11
In a report titled *Federal Employees' Retirement System: The Role of the Thrift Savings Plan*, the Congressional Research Service calculated various retirement incomes for a 62 year old employee with 30 years of service, as a percentage of final salary. In almost all of the variable scenarios, the income was greater than the average CSRS annuity of 60%.

For instance, a GS-4 earning a $48,331 final salary, with a 5% TSP contribution rate computed at a nominal rate of return of 6%, would receive a retirement replacement rate of 82%. The same criteria except for a 10% TSP contribution rate results in a replacement rate of 94%.

Thus, it appears that a major argument in support of mandatory retirement (that the 75% FECA wage-loss compensation benefit is far more generous than OPM retirement benefits) is no longer accurate.

Public Law 108-92
In 2003, a law was signed to provide enhanced annuity computation for FERS employees who receive OWCP wage-loss compensation benefits. The law provides for an additional 1% for each year a FERS employee is on LWOP, performing no work, and receiving OWCP benefits.

While this law partially offsets the loss of retirement benefits for FERS employees receiving OWCP wage-loss compensation, there remain problems.

First, the enhanced 1% only accrues during periods of time that an employee remains on the rolls of the employing agency. Once an employee is separated from the employing agency, no further FERS entitlement accrues, regular or enhanced. (An exception exists where the employee is later reinstated in Federal service and earns title to a FERS annuity.)

Second, even if a 30 year employee drawing wage-loss compensation is kept on the rolls of the employing agency and accrues the enhanced 1% FERS annuity for many years, the final annuity will not come close to equaling the Congressional Research Service projection for an employee with a moderate 5% TSP contribution rate at a moderate 6% return rate.

LWECs

The argument that FECA wage-loss compensation benefits are far more generous than OPM retirement benefits also founders in the presence of Lost Wage Earning Capacity determinations. Where LWEC determinations have been made, based on either actual wages earned or constructed positions, OWCP wage-loss compensation will be significantly less that the identified average CSRS annuity of 60%.

Summary

The NALC supports FECA reform. However, every reform proposal should be consistent, as a basic principle, with the intended remedial nature of the FECA. In our view, proposals to level wage-loss compensation benefits to 70%, and proposals to mandate transition to OPM retirement (or reduced FECA benefits) at Social Security retirement age, as currently written, do not meet that basic principle.

Mr. Chairman, this concludes my prepared remarks. Thank you for the opportunity. I would be pleased to answer any questions that you or other members of the subcommittee may have.

STATEMENT OF GREGORY KROHM
EXECUTIVE DIRECTOR
INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS
BEFORE THE
SENATE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

July 26, 2011

Mr. Chairman and Members of the Subcommittee,

My name is Gregory Krohm. I am the Executive Director of the International Association of Industrial Accident Boards and Commissions (in short the IAIABC). The IAIABC was founded in 1914 by a group of civil servants who recognized a need to share information about workers' compensation laws and administration. Our mission is to advance the efficiency and effectiveness of workers' compensation systems throughout the world, and we accomplish this mission through a variety of education and research activities. Thus, it is very mission appropriate for me to testify on the functioning of state workers' compensation systems.

I appreciate the opportunity to discuss legislative reforms to FECA. My area of expertise is in state workers' compensation programs, and not FECA. As such, I have been asked to describe the current state of compensation benefits by state systems. A secondary contribution I hope to make is to discuss how a claim is typically handled within a private insurance system. In particular, I would like to sketch the typical patterns of claims handling that would be practiced by workers' compensation insurers for common types of claims. You may then, if you wish, contrast these with the practices of the Department of Labor, Office of Workers' Compensation Programs (OWCP).

For the record, let me state that my remarks have not been reviewed or approved by the Executive Committee of the IAIABC. While I am here in my capacity as Executive Director, these remarks should not be construed as an official statement of my organization, nor of its member states.

I would like to begin by comparing and contrasting state benefits with the FECA program. I will focus on four benefit categories: medical, temporary disability, and permanent partial and permanent total disability. In the second part of my remarks, I will focus on the goal, techniques and benefits of disability management.

The first thing that one learns about state workers' compensation is that each state is different. Hardly any aspect of state law on workers' compensation follows a national model. Terms are different and the administrative details in coverage, claims criteria, and benefits are always different to some degree. Yet, it is possible to see some common elements that might be compared fairly with FECA.

Medical Payments are very similar across states in the following features: 1) any medical care necessary to cure and relieve the consequences of work injury or illness is covered, 2) a wide variety of commonly licensed medical professionals can treat workers' compensation claimants, and 3) the injured worker is not subject to copayments or balance billing. States differ on the rights of the employer or payer to manage and direct care and on the maximum payment available to providers.

As I understand it, FECA allows the claimant unlimited choice of medical providers, and does not have guidelines on treatment. Only a handful of states would be comparable to this.

Temporary Total Disability (TTD) benefits are the second most common claim category in workers' compensation. This is the most uniform of the state indemnity benefits. Generally, states pay 66.6 % (36 states) of pre-injury wages. Four states pay larger percentages of wages, e.g., Texas, New Jersey and Oklahoma at 70%, and Ohio at 72%; a few states use a higher percentage on "spendable" or after tax income. TTD is usually paid for the length of the temporary disability (until maximum medical improvement), although several states have weekly limits in the range of 100-700 weeks. TTD amounts are usually capped at about the State Average Weekly Wage (SAWW); 21 states are at 100% of SAWW and most of the others are within +/- 25% of the SAWW. Complicating features include how wages are calculated and whether a cap is put on the number of weeks. While the percentage of wage replacement varies across states, the percentage is almost always uniform within a given state, i.e., no sliding scale or schedule of percentages.

The income continuation feature of FECA is without any counterpart in state workers' compensation law. Some employers attempt to ease case flow interruption for their employees through sick leave or short term disability insurance, but this is outside of workers' compensation. Another unusual feature of FECA is the increase of the percentage of wage replacement to 75% for workers with at least one dependent. A few states make a minor allowance for dependents but nothing of this magnitude.

Permanent Partial Disability (PPD) benefits are paid by all but a few states; those that do not recognize this benefit continue to pay lost wages. In compensating for Permanent Partial Disability, approximately 44 states pay compensation on a schedule basis, and 45 states on a non-schedule basis (some states use both methods). Scheduled benefits refer to a system for attaching specific benefits or a benefit formula to a loss of a body part, organ, or the impaired function of these body parts. Most commonly this impairment to the body is quantified in degree by a physician. The percentage loss of a body part or body as a whole is then converted to weeks of indemnity compensation. The amount of PPD compensation per week is usually a fixed dollar amount that is some fraction of the state average weekly wage. In 29 states the weekly amount based on impairment is adjusted to reflect factors that would make the wage loss from that impairment higher or lower than for the typical worker, e.g., age or occupation. 45 states place limits on the number of weeks payable or total dollar payout for PPD.

Permanent Total Disability (PTD) benefits are perhaps the most difficult to summarize across state systems. There is much variation in how permanent disability is determined and how benefits are paid. As of 2010, 33 states offered lifetime PTD payments, 21 had some form of automatic or formula based cost of living escalator. Many states eliminate PTD benefits if the claimant resumes gainful employment.

Some possible differences with FECA are: 1) there is a relatively unstructured and undefined criterion for Permanent Total Disability in FECA, 2) few states offer the high upside potential for PTD benefits from FECA's combined offering of PTD for life and annual CPI adjustment.

By way of comparison, I thought it might be useful to sketch some characteristics of state workers' compensation systems. The NCCI data is for 37 states that NCCI collects data from.

- The frequency of compensable injuries has declined 12 of the last 13 years. In most states, lost time injuries per hundred employees are probably as low as they have been since records were first kept. This frequency decline has much more to do with changes in the economy and technology than to workers' compensation law.
- According to NCCI, the percentage of insurance benefits paid that go to medical providers has been rising steadily for a decade and in 2009 was about 58% of the total insurance company payout.
- According to the Bureau of Labor Statistics, in 2010 workers' compensation was about 1.6% of total wage and benefit compensation paid by private employers.
- According to NCCI, the duration of Temporary Total Disability (TTD) indemnity benefits increased from about 92 days to 129 days between 1996 and 2001 and has remained fairly constant from 2001 to 2007. Average countrywide TTD

ultimate duration in 2010 was about 125 days; median ultimate duration is about 42 days.

- Roughly 85 percent of all lost time claims are closed by the end of the first year after injury date.

Next, I would like to touch upon an issue that often arises in discussion of state workers' compensation reform legislation: the relationship between benefit design and claims duration and cost. There is significant empirical evidence that benefit "richness" and duration of disability are positively related. This should not surprise us because as a general tendency of human nature, if the cost of reporting a work injury and staying out of work go down, more claims will be reported and more people will accept workers' compensation in lieu of their normal wages. However, one must be careful to assume that there is an ease, lock step relation between changing any benefit feature to produce a lower length of disability and low cost of claims.

The chart below is taken from a 2010 NCCI report in which they nicely compare the benefit features of 37 states and the median days of duration of lost time claims. I have studied this and can find no positive correlation between increasing the Maximum TTD benefit ceiling and duration. One might also suspect that increasing the waiting period might affect duration, but here the connection is a bit counter-intuitive. By increasing the waiting period one cuts off more short duration claims, and hence the median duration might be expected to increase. This does seem to be the case in the exhibit below; 7 day states tend to have higher duration than 3 day states. However, the average cost of claims in 7 day states will be lower because injuries with durations under 7 days are paid wage indemnity.

The above discussion is not intended as an actuarial estimate of claims cost as a function of benefit change, but rather a warning against making rash assumptions about the savings and cost of particular adjustments to waiting periods or maximum weekly benefits.

Table 1
Benefit Provisions and Median Durations by State

STATE	Waiting Period	TTD Benefits Retroactive After	Max TTD Benefits as % of SAWW	Max PPD Benefits as % of SAWW	Median Days Duration AY 2001 @12/31/2007
AK	3 Days	28 Days	120%	**	29
AL	3	21	100%	31%	28
AR	5	14	85%	64%	42
AZ	7	14	100%	100%	42
CO	3	14	91%	29%	40
CT	3	7	100%	78%	28
DC	3	14	100%	100%	28
FL	7	21	100%	75%	42
GA	7	21	100%	100%	52
HI	3	**	100%	100%	14
IA	3	14	200%	184%	24
ID	5	14	90%	55%	29
IL	3	13	133%	133%	37
IN	7	21	100%	100%	36
KS	7	21	75%	75%	42
KY	7	14	100%	100%	42
LA	7	41	75%	**	66
MD	3	14	100%	75%	27
ME	7	14	90%	90%	42
MO	3	14	105%	55%	32
MS	5	13	67%	67%	48
MT	4	**	100%	50%	47
NC	7	21	110%	110%	52
NE	7	41	100%	100%	32
NH	3	13	150%	150%	17
NM	7	28	100%	100%	46
NV	5	5	150%	**	31
OK	3	**	100%	50%	49
OR	3	14	133%	100%	24
RI	3	**	115%	115%	38
SC	7	14	100%	100%	56
SD	7	7	100%	100%	32
TN	7	14	110%	100%	45
TX	7	14	100%	70%	94
UT	3	14	100%	67%	29
VA	7	21	100%	100%	41
VT	3	10	150%	150%	29

Source: Barry Lipton et al, NCCI, 2010

The central feature of reducing the length of disability is the quality of claims handling and the ability of the claims process to get injured workers back to work on modified duty. In the remainder of my testimony I would like to address claims handling and return to work issues.

Based upon my knowledge of the private insurance industry, I would characterize the handling of a typical lost time workers' compensation case as follows:

1) The claim is reported to the employer who fills out some type of first report of injury and forwards it on to their insurer (web, phone, or fax).

2) Immediately upon receipt a claims file is opened and an adjuster (often assisted by a nurse case manager) is assigned. The adjuster is under strong incentive to make contact with the employer, claimant, and treating physician within 24-48 hours of receiving the claim.
3) If the discussion with the parties and the written report seem complete and the claim valid, the adjuster focuses on ensuring that the worker is getting prompt, competent medical care.
4) Soon after treatment begins, the adjuster will want a diagnosis, prognosis, and treatment plan from the treating provider. The adjuster is trained to get full and complete reports, especially duty restrictions relevant to return-to-work.
5) Unless the physician recommends immediate return to work with few limitations, the adjuster will want to ensure that the employer strongly considers a plan to get the worker back on the jobsite within the limits imposed by the physician.
6) If the physician seems to be protracting treatment or imposing unreasonable duty limits, the adjuster is trained to advocate for an approach consistent with treatment guidelines and disability parameters.
7) Adjusters handle 200 or more lost time claims at once and are under compulsion to move claims to closure as quickly as possible given the facts of the case.

Let us consider a non-surgical low back sprain to illustrate how a claim would be handled by a competent private insurance adjuster. The claim would be open and come to the attention of the adjuster within a day or two of the injury report to the employer. The adjuster would contact the worker, obtain information from him/her about the incident, and get their plans for medical treatment. The adjuster would be eager to see the medical report to obtain the physician's statement of the apparent facts of the case and the return-to-work date and restrictions. Often the medical report is vague or incomplete, so the adjuster must contact the doctor's office to "dig in" and get a specific statement of functional limitations during the projected healing period. With the medical facts in hand, the adjuster can then approach the employer about return-to - work, possibly with modified duty and ongoing therapy. The adjuster is trained and obliged to be proactive and make meaningful contact with the claimant, employer, and medical provider at all critical stages of the claim, and to close the claim with dispatch. Of course, if the claim seemed to have complications, that would have to be noted and communicated to claims supervision for possible special handling.

In my final remarks, I would to turn to disability management as a discipline with workers' compensation. My remarks in this area are less descriptive of state systems and more of my personal judgments on ideal features of a well-functioning workers' compensation system.

The system should not exist to pay indemnity for work injuries, but to reduce the social and personal costs of work injuries. I believe that it is time for workers' compensation to

embrace the goals and techniques of what has come to be characterized as "disability management." Disability management as I understand it is not a cost cutting tool or a trendy management fad. It boils down to using techniques that good claims adjusters and employers have learned and practiced for years. If you will, its common sense dressed up with a new title and more cache.

The American College of Occupational and Environmental Medicine (ACOEM) has partnered with my organization on a number of medical issues related to workers' compensation. In that partnership, the IAIABC has frequently promoted the work of the ACOEM Guidance Statement, "Preventing Needless Work Disability by Helping People Stay Employed." I would like to summarize the ACOEM work disability prevention report as follows:

I. Adopt a disability prevention model. The model should have the support of all stakeholders, i.e., legislators, regulators, policymakers, and benefits program designers and should agree that much work disability is preventable, and that successful reintegration to work requires collaboration among several parties. While the OWCP could provide leadership and coordination, the other stakeholders need to genuinely accept the new model of disability management.

II. Address behavioral and circumstantial realities that create and prolong work disability. These factors include age, marital status, and psycho-social conditions affecting the claimant (e.g., chemical addiction or mental health problems). Psycho-social issues are difficult to manage, but when done properly, disability days drop sharply. Another very important factor is the claimant's attitude about their supervisor and workplace generally.

III. Acknowledge the powerful contribution that motivation makes to outcomes and make changes that improve incentive alignment. Financial and administrative incentives to employers, insurers, doctors and claimant do affect their behaviors. Wage replacement has been shown empirically to have an inverse relation to return to work. Another harmful disincentive is paying medical providers relatively low fees without regard to quality of care or outcomes. One indirect incentive for employers to game the system is the structure of the charge back mechanism to federal agencies for their claims cost.

IV. Invest in system and infrastructure improvements. This includes training and special tools and forms for communicating among the parties.

These are simple, common sense principles, but putting them into action requires great skill. The first step in disability management is to break down suspicion and communication barriers between the claims handler, the injured worker, and the treating physician.

The notion of disability management strikes a bad feeling in the minds of many advocates for workers' rights. I believe they suspect that it is a plot to deprive workers of rights and benefits that they truly deserve. I am sympathetic to the need to protect workers from uncaring and clumsy management practices. Some employers are indeed inept at managing return to work. They lack motivation or imagination to create suitable light duty or alternate jobs or accommodations. They sometime ignore the duty limitations and therapy orders of treating physicians. Having said this, I believe that the majority of employers are supportive of disability management principles. Critics of early return to work abuses should not oppose disability management, but work to make it operate properly according an accepted model. It's worth the struggle to overcome the difficult challenges of disability management because getting workers back to work is good for them, both economically and physically. Returning to work is the best way to minimize the disruption to careers and earning from injury. Finally, in most cases, it complements and enhances the healing process.

Finally, I commend three good documents as objective sources of support for the benefits of disability management to injured workers : 1) *A Physician's Guide to Return to Work* by Drs. James Talmage and Mark Melhorn, 2nd Edition (forthcoming), AMA Press, 2011; 2) ACOEM Guidance Statement, "Preventing Needless Work Disability by Helping People Stay Employed" June 2006; and 3) *Is Work Good for Your Health and Well-being?* by Drs. Gordon Waddell and A. Kim Burton, UK Dept. of Work and Pensions, 2006.

For the Record
Submitted to the Honorable Christine Griffin
From Senator Daniel K. Akaka

"Examining the Federal Workers' Compensation Program for Injured Employees"
July 26, 2010

Senator Akaka asks Deputy Director Griffin, "[h]as OPM compared retirement benefits at different pay levels in both FERS and CSRS to the proposed reduced FECA benefit?" (Akaka, 26-27).

In response to Senator Akaka's question, Deputy Director Griffin states that OPM has "looked at this and it is actually difficult to do a real straight comparison because there are a lot of variables that are unknown such as whether somebody is contributing to TSP and how much they are contributing and those types of things, you know, what is taxable and what is not" (Griffin, lines 3-8, page 27).

Deputy Director Griffin goes on to state, "[b]ut there are the variables, and we can provide something to you that does a rough estimate…" (Griffin, lines 16-18, page 27).

Below we have provided estimates for a relatively new employee going on workers compensation, a person in mid-career, and a person who was injured years ago (new, mid, old). The US Department of Labor provided some of the givens for the scenario. We provided the additional inputs or givens in blue font. There are three separate estimates for each of the three scenarios (new, mid, old).

New 1. Letter Carrier Annual Annuity as of 11/01/2021: $34,350.00

Assumptions:

- CSRS Immediate Retirement - 55/30
- DOB: 8/30/55
- Date of Injury: 10/18/2010
- Date of Separation for Retirement: 10/31/2010
- Annuity Commencing Date: 11/01/2010
- Age at Retirement: 55y 2m 1d
- SS Normal Retirement Age: 66y 2m (10/30/2021)
- Final Salary: $55,970
- High-3: $52,620
- Length of Service: 30 years 3 months (all full-time)
- No outstanding deposit or redeposit balances
- No survivor annuity
- Cola Assumptions:
    - No cola on 12/01/2010
    - Subsequent colas after 12/01/2010 until Social Security Normal Retirement Age: 2.4% each year

Basic Annuity : $52,620 x .5675 = $29,861.85/yr $2,488/mo

Cola Increases for 10 years (12/1/2011 through 12/1/2020) at 2.4% each year

- 12/1/2011: $2,547
- 12/1/2012: $2,608
- 12/1/2013: $2,670
- 12/1/2014: $2,734
- 12/1/2015: $2,799
- 12/1/2016: $2,866
- 12/1/2017: $2,934
- 12/1/2018: $3,004
- 12/1/2019: $3,076
- 12/1/2020: $3,149 x 12 = $37,788

New 2. Postmaster, Texas Annual Annuity as of 05/01/2019: $15,660

Assumptions:

- FERS Immediate Retirement (MRA+10)
- DOB: 4/15/1953
- Date of Injury: 12/3/2010
- Date of Separation: 12/31/2010
- Annuity Commencing Date: 4/01/2013 (postponed commencing date to eliminate age reduction – annuity suspended due to receipt of OWCP)
- Age at Separation: 57y 8m 16d
- Age at Commencing date: 59y 11m 17d
- Age when FERS Colas start: 62 (12/1/2015 is first cola)
- SS Normal Retirement Age 66 (4/15/2019)
- Final Salary: $75,181
- High-3: $70,675
- Length of Service: 21 years 7 months (all full-time)
- Partial survivor annuity
- Cola Assumptions:
    - Not entitled to a cola until 12/01/2015
    - All colas payable through 12/01/2018 (last cola payable before employee reaches NRA in April 2019) equal 2.0% (in accordance with FERS cola provisions, a 2.4% cola payable to social security recipients and CSRS annuitants results in a 2.0% cola to be paid to FERS annuitants).

Basic Annuity before Survivor Reduction: $70,675 x .01 x 21.583333 = $15,254.02
Annuity Reduced for Maximum Survivor Election: $15,254.02 x .95 = $14,491.32/yr
$1,207/mo as of

04/01/2013

Cola Increases for 4 years (12/1/2015 through 12/1/2018) at 2.0% each year

- 12/1/2015: $1,231
- 12/1/2016: $1,255
- 12/1/2017: $1,280
- 12/1/2018: $1,305 x 12 = $15,660/year

New 3. Border Patrol Agent – TexasAnnual Annuity as of 8/1/2048: $7,392
Assumptions:

- FERS Deferred Retirement (62/5)
- DOB: 7/5/1981
- Date of Injury: 10/19/2010
- Date of Separation: 10/31/2010 (resignation)
- Annuity Commencing Date: 8/1/2043
- Age at Separation: 29y 3m 26d
- Age at Annuity Commencing Date: 62y 26d
- SS NRA: 66 (7/5/2048)
- Final Salary: $88,878
- High-3: $83,545
- Length of Service: 8 years 2 months (all full-time)
- No survivor annuity
- Cola Assumptions:
    - COLA Paid to Social Security Recipients and CSRS Annuitants from 12/01/2043 through 12/01/2047 equals 2.4%
    - Colas paid to FERS employees for same period equals 2.0%
    - First COLA payable 12/01/2043 is prorated to reflect time annuitant was eligible to receive annuity as of 12/01/2043 (4 months divided by 12 months). Subsequent colas are based on the 2.0% rate.

Basic Annuity: $83,545 x 1% x 8.166667 = $6,822.84/yr $568/mo beginning 8/1/2043

Cola Increases for 4 years (12/1/2043 through 12/1/2047) at 2.0% each year (except first year's cola is prorated 4/12 x 2% = 0.7%

- 12/1/2043: $571
- 12/1/2044: $582
- 12/1/2045: $593
- 12/1/2046: $604
- 12/1/2047: $616 x 12 = $7,392.00

Mid 1. Service Representative – Oklahoma Annual Annuity as of 6/1/2022: $18,396
Assumptions:

- CSRS Disability Retirement (40%)
- DOB: 1/26/1956
- Date of Injury: 4/19/1995
- Date of Separation: 4/30/1995
- Annuity Commencing Date: 5/1/1995
- Age at Annuity Commencing Date: 39y 3m 5d
- SS NRA: 66y 4m (5/26/2022)
- Final Salary: $28,310
- High-3: $26,611
- Length of Service: 14 years 5 months (all full-time)
- No outstanding deposit or redeposit balances
- Maximum survivor annuity
- Cola Assumptions:
    - Actual colas paid from 12/1/95 through current date and then cola at 2.4% until annuitant reaches NRA (66y 4m = 6/1/2022)

Basic Annuity (before survivor reduction): $26,611 x 40% = $10,644.40
Annuity Reduced for Survivor Election: 10,644.40 x .9 + 270 = $9,849.96/yr $820/mo effective 5/1/1995

- Monthly Annuity Rate after Applying Actual Colas from 1995 through 12/01/08: $1186
- Additional Colas (2.4%):
    - 12/01/2011: $1,214
    - 12/01/2012: $1,243
    - 12/01/2013: $1,272
    - 12/01/2014: $1,302
    - 12/01/2015: $1,333
    - 12/01/2016: $1,364
    - 12/01/2017: $1,396
    - 12/01/2018: $1,429
    - 12/01/2019: $1,463
    - 12/01/2020: $1,498
    - 12/01/2021: $1,533 x 12 = $18,396

Mid 2. Support Specialist – Washington DCAnnual Annuity as of 11/01/2013: $38,208
Assumptions:

- CSRS Disability (earned)
- DOB: 10/21/1947
- Date of Injury: 9/11/2001
- Date of Separation: 9/30/2001
- Annuity Commencing Date: 10/01/2001
- Age at Annuity Commencing Date: 53y 11m 10d
- SS NRA: 66 (10/21/2013)
- Final Salary: $54,930
- High-3: $51,635
- Length of Service: 30 years 4 months (all full-time)
- No outstanding deposit or redeposit balances
- No survivor annuity
- Cola Assumptions:
    - Actual colas paid from 12/1/01 through current date and then cola at 2.4% until annuitant reaches NRA (66y = 11/01/2013)

Basic Annuity: $51,635 x .569167 = $29,388.94/yr $2,449/mo beginning 10/01/2001

- Monthly Annuity Updated for Colas from 12/1/2001 through 12/01/08: $3,038
- Additional Colas:
    - 12/01/2011: $3,110
    - 12/01/2012: $3,184 x 12 = $38,208

Mid 3. Tax Examiner – Pennsylvania **Annual Annuity as of 7/1/2018: $14,712**

Assumptions:

- FERS Disability
- DOB: 6/26/1952
- Date of Injury: 10/29/1997
- Date of Separation: 10/31/1997
- Annuity Commencing Date: 11/1/1997
- Age at Annuity Commencing Date: 45y 4m 5d
- SS NRA: 66 (6/26/2018)
- Final Salary: $35,965
- High-3: $33,807
- Length of Service: 12y 7m 17d
- Disability Recalculation date (age 62): 6/26/2014
- Recalculation High-3: $47,019
- Recalculation Total Time Credited: 29y 3m 12d
- No outstanding deposit or redeposit balances
- Full survivor annuity
- Cola Assumptions:
    - Actual colas from 12/1/97 to present and then 2.0% ,starting 12/01/2011, were used to update high-3) (FERS cola is 2.0% when CSRS and SS cola is 2.4%)
- Disability recalculated at age 62 – (6/26/2014)
    - Time on annuity roll from 11/1/97 to 6/26/2014: 16y 7m 25d
    - Total creditable service at retirement: 12y 7m 17d
    - Total time used in age 62 recalculation: 29y 3m 12d

Basic Annuity (before survivor reduction): $47,019 x 1.1% x 29.25 = $15,128.36

Annuity Reduced for Survivor Election: $15,128.36 x .90 = $13,615.52/yr $1,134/mo beginning 6/26/2014

- Colas (2% each year)
    - 12/01/2014: $1,156
    - 12/01/2015: $1,179
    - 12/01/2016: $1,202
    - 12/01/2017: $1,226 x 12 = $14,712

Old 2. Clerk Typist – Rhode Island Annual Annuity as of 5/01/2003: $4,272
Assumptions:

- CSRS Deferred
- DOB: 2/27/1938
- Date of Injury: 9/26/1983
- Date of Separation: 9/30/1983
- Annuity Commencing Date: 2/27/2000
- Age at Annuity Commencing Date: 62y
- SS NRA: 65y 2m (4/27/2003)
- Final Salary: $15,350
- High-3: $14,429
- Length of Service: 16y 4m
- No outstanding deposit or redeposit balances
- Full survivor annuity
- Cola Assumptions:
    - Actual colas applied to annuity for periods 2/27/2000 through 4/27/2003)

Basic Annuity (before survivor reduction): $14,429 x .289167 = $4,172.39
Annuity Reduced for Survivor Election: $4,172.39 x .90 + $270 = $4,025.15 $335/mo beginning 2/27/2000

- Colas (actual colas)
    - 12/01/2000 (2.9): $344
    - 12/01/2001 (2.6): $352
    - 12/01/2002 (1.4): $356 x 12 = $4,272

Old 3. Revenue Officer – New Jersey **Annual Annuity as of 7/1/1989: $10,992**

Assumptions:

- CSRS Disability (projected to age 60 – look back)
- DOB: 6/17/1924
- Date of Injury: 8/23/1977
- Date of Separation: 8/31/1977
- Annuity Commencing Date: 9/01/1977
- Age at Annuity Commencing Date: 53y 2m 14d
- SS NRA: 65y (6/17/1989)
- Final Salary: $19,900
- High-3: $18,706
- Length of Service: 11y 2m
- No outstanding deposit or redeposit balances
- No survivor annuity
- Cola Assumptions:

Actual colas applied to annuity for periods 9/1/1977 through 6/17/1989)

Special Formula for Look Back Calculation – not shown

Monthly Annuity beginning 9/1/1977: $532

Monthly Annuity updated for COLAs from 9/1/1977 through 6/17/1989: **$969** (x 12 = $11,628)

Old 4. Nurse – Maryland Annual Annuity as of 6/1/2009: $7,248

Assumptions:

- FERS Disability
- DOB: 5/3/1943
- Date of Injury: 3/5/1988
- Date of Separation: 3/31/1988
- Annuity Commencing Date: 4/1/1988
- Age at ACD: 44y 10m 28d
- SS NRA: 66y (5/3/2009)
- Final Salary: $19,810
- High-3: $18,620
- Length of Service: 4y 2m 28d
- Disability Recalculation date (age 62): 5/3/2005
- Recalculation High-3: $27,560
- Recalculation Total Time Credited: 21y 4m
- No survivor annuity
- Cola Assumptions:
  - Actual colas from 4/1/1988 to 5/3/2005 used to update high-3
- Disability recalculated at age 62 – (5/3/2005)
  - Time on annuity roll: 17y 1m 2d
  - Total creditable service at retirement: 4y 2m 28d
  - Total time used in age 62 recalculation: 21y 4m 0d
- Note: If individual did not apply for disability retirement within one year of separation, individual would not be entitled to any annuity at age 66. Individual would only be entitled to a refund of retirement deductions based on 4 years, 2 months, and 28 days of service.

Basic Annuity: $27,560 x 21.333333 x 1.1% = $6,467.41/yr $538/mo

- Colas (actual colas)
  - 12/01/2005 (3.1): $554
  - 12/01/2006 (2.3): $566
  - 12/01/2007 (2.0): $577
  - 12/01/2008 (4.8): $604 x 12 = $7,248

BACKGROUND
EXAMINING THE FEDERAL WORKERS' COMPENSATION PROGRAM FOR INJURED EMPLOYEES
JULY 26, 2011

Background

FECA is administered by the Office of Workers' Compensation Programs (OWCP) at the Department of Labor (DOL) and provides workers' compensation coverage to approximately 2.8 million federal civilian workers, including employees of the U.S. Postal Service. Workers are eligible for wage-loss compensation, medical coverage, rehabilitation services and return-to-work assistance for any injury or illness incurred while in the performance of duty.[1] FECA also provides schedule compensation when an employee suffers certain permanent disabilities, such as losing a limb or facial disfigurement, as well as survivor benefits if an employee dies on the job or from a condition caused by his or her employment. Each year, DOL receives 133,000 new FECA claims; on average, less than two percent of those claims involve permanent, long-term disabilities lasting two years or more.[2]

When a worker is injured on the job, he or she receives Continuation of Pay from their employing agency for the first 45 days. If, at the end of 45 days, the employee is still unable to return to work, he or she is considered either partially or totally disabled under FECA and, after a three-day waiting period, is eligible to receive wage loss compensation.[3]

Wage loss compensation benefits are available to an employee who is injured at work and has long-term disabilities and is unable to work. These benefits are based on the employee's pre-disability salary and are equal to 66.7 percent of that salary for a worker who has no dependents or 75 percent for a worker with at least one dependent. These benefits are capped at 75 percent of the maximum basic pay rate for a GS-15, are not taxed, and are increased by an annual cost-of-living adjustment. Benefits are payable until the employee is no longer totally disabled, are reduced by the amount of his or her wages if the employee is able to work in some more limited capacity, and may continue for the rest of the employee's life if the employee is never able to fully return to work.

FECA medical benefits are provided to injured employees for all medical costs associated with the work-related injury or illness and recipients are generally allowed to select their own medical provider. FECA also provides return–to-work assistance, such as medical or nursing care for rehabilitation to return to work. If the employee is unable to return to the same type of work, vocational rehabilitation services are also available to prepare the employee for other work. For more information on FECA, visit the OWCP website at http://www.dol.gov/owcp/dfec/.

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[1] FECA is codified in title 5, chapter 81 of the United States Code.

[2] Information provided to the Subcommittee by the Department of Labor in briefing materials, March 11, 2011.

[3] Note: Employees of the United States Postal Service have three-day waiting period before they are eligible for Continuation of Pay instead of the three-day waiting period between Continuation of Pay and wage loss compensation. This change for postal employees was included in the Postal Accountability and Enhancement Act of 2006 (P.L. 109-435).

FECA Reform Proposals

FECA was established in 1916 and has not been significantly updated since 1974, resulting in a number of outdated benefit provisions and program weaknesses. A number of reform proposals have been suggested to modernize the program, improve program efficiency and effectiveness, and reduce its overall costs.

Department of Labor Proposal

In January 2011, DOL offered technical assistance to Congress with recommendations for comprehensive FECA reform.[4] These recommendations also were included in the President's budget proposal for FY 2012.[5] This proposal aims to improve return-to-work incentives and reduce fraud by allowing the Department to verify reported earnings with Social Security wage information. It would move the three-day waiting period to the beginning of the period of Continuation of Pay, extend the claims process for those injured the while deployed in a designated zone of armed conflict by increasing the time period for Continuation of Pay, and label injuries sustained due to terrorism as war-risk hazards. It would also increase payments for facial disfigurement and funeral expenses to bring them in line with current costs, and allow physician assistants and advanced practice nurses and to certify disability during the Continuation of Pay period and be reimbursed for medical services.

In addition, this proposal would set one 70 percent benefit level for all recipients – instead of the current 75 percent for employees with dependents and 66.7 percent for those without -- and would reduce benefits to 50 percent for FECA recipients at the Social Security retirement age. A number of these reforms are widely supported (some have been included in H.R. 2465, see below), but provisions to set one benefit level for all recipients and reduce benefits for FECA recipients at the social security retirement age have raised some concerns.

Proponents of provisions to provide one benefit level for all recipients argue that wages do not consider whether an employee has dependents so FECA wage loss compensation likewise should make no distinction and that eliminating this distinction would reduce the administrative burden on the OWCP and make FECA more equitable. In addition, no other workers' compensation program, either state or private, calculates benefit levels differently based on dependent status. Opponents of this proposal argue that it would be unfair to reduce the benefits for those with dependents. Additionally, because FECA benefits are not taxable, opponents of the proposal argue that the distinction is needed because those with dependents are not able to claim a deduction that would normally decrease their tax burden and increase take-home pay.

Proponents of provisions to reduce benefits to 50 percent for FECA recipients at the Social Security retirement age suggest that allowing FECA recipients continue to receive full FECA

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[4] The Federal Injured Employees' Reemployment Act of 2010, Department of Labor Technical Assistance Discussion Draft, January 13, 2011.

[5] The Budget of the United States Government, Fiscal Year 2012, Appendix, pg. 769-770.

benefits after retirement age is inappropriate because often FECA benefits are greater than retirement annuities possibly putting them in a better position than they would have been in if they had been working and then retired at the normal age.

Opponents argue that the employer, the Federal government, is responsible for the injury and has an obligation to these employees to provide these benefits for the duration of the injury or illness. Therefore, age should not have a bearing on their entitlement to FECA benefits, even if they are permanently disabled and never able to return to work. In addition, they argue that reducing benefits at a certain age is discriminatory, may cause undue hardship, and puts FECA recipients in a worse position than they would have been had they been able to work and experience normal career progression and salary increases.

S. 261

On February 2, 2011, Senator Collins (R-ME) introduced the Federal Employees' Compensation Reform Act of 2011 (S. 261), which would to convert retirement eligible employees on FECA to Federal retirement plans when they reach retirement age. This language is also included in Senator Collins' postal reform proposal, the U.S. Postal Service Improvements Act of 2011 (S. 353). This proposal generally is subject to the same arguments for it and against it as the DOL proposal to reduce benefits to 50 percent at retirement, discussed above.
Opponents of S.261 additionally argue that this approach would be especially unfair since it contains no provision to adjust years the high three years of salary used to calculate retirement benefits, to account for inflation or normal career progression that disabled employees missed out on. Similarly, it would not adjust the years of service in the retirement calculation to account for time that the employee would have been expected to work. Placing FECA recipients in Federal retirement plans would be a particular concern for the large majority of Federal employees covered by the Federal Employee Retirement System (FERS). FERS, created in 1986, included Federal employees in Social Security for the first time but with a significantly reduced retirement annuity. Congress specifically intended Social Security benefits and the Thrift Savings Program (TSP) to be essential elements of FERS retirement. However, FECA recipients are not permitted to participate in the TSP or earn credit for and increase monthly earnings used to calculate Social Security retirement benefits.

H.R. 2465

On July 8, 2011, Representatives Kline (R-MN), Miller (D-CA), Walberg (R-MI) and Woolsey (D-CA), introduced the Federal Workers' Compensation Modernization and Improvement Act (H.R. 2465). This bipartisan legislation includes some of the reforms that are included in the Department of Labor proposal, such as providing the Department with access to Social Security wage information to verify earnings and reduce improper payments, extending the claims process for those injured the while deployed in a designated zone of armed conflict by increasing the time period for Continuation of Pay, labeling injuries sustained due to terrorism as war-risk hazards, increasing payments for facial disfigurement and funeral expenses to bring them in line with current costs, allowing physician assistants and advanced practice nurses to be reimbursed for medical services and to certify disability for traumatic injuries. H.R. 2465 was referred to the House Committee on Education and the Workforce and was reported favorably on July 13, 2011.

Additional Resources

This spring, both the House Committee on Education and the Workforce Subcommittee on Workforce Protections and the House Committee on Oversight and Government Reform Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy held hearings on FECA and various reform proposals. Hearing videos and other materials can be found on the committee websites at: http://edworkforce.house.gov/ and http://oversight.house.gov/.

Congressional Research Service, Statement of Scott Szymendera, Analyst in Disability Policy, House Committee on Education and the Workforce, Subcommittee on Workforce Protections, May 12, 2011, available at http://edworkforce.house.gov/UploadedFiles/05.12.11_szymendera.pdf.

U.S. Government Accountability Office, *Federal Workers' Compensation: Better Data and Management Strategies Would Strengthen Efforts to Address Improper Payments*, February 2008, available at http://www.gao.gov/new.items/d08284.pdf.

U.S. Government Accountability Office, *Federal Employees' Compensation Act: Percentages of Take-Home Pay Replaced by Compensation Benefits*, August 1998, available at: http://www.gao.gov/archive/1998/gg98174.pdf

U.S. Government Accountability Office, *Federal Employees' Compensation Act: Issues Associated with Changing Benefits for Older Beneficiaries,* August 1996, available at: http://www.gao.gov/archive/1996/gg96138b.pdf.

STATEMENT OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

On

COMPENSATION FOR WORKERS INJURED
IN THE FEDERAL WORKPLACE (FECA)

To the

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT AND THE FEDERAL WORKFORCE,
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

JULY 26, 2011

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

This year, the nation celebrates the centennial of Workers' Compensation laws. One hundred years ago the first Workers Compensation program was enacted into law by the state of Wisconsin, following on workplace injury insurance programs adopted in Germany and Great Britain. Nine other states followed this progressive initiative that same year and by 1948 all states had laws covering private and state workers. Five years after Wisconsin led the nation on this, Congress moved to insure the federal government's own employees as well as railway, longshoremen and other harbor workers. The Kern-McGillicudy Act developed the program we now know as the Federal Employees Compensation Act (FECA). Workers' Compensation insurance is a recognition of the responsibility of employers and society to take care of those injured in the workplace. It was our nation's first social insurance program. Today, Workers' Compensation stands as an important protection for the benefit of all Americans. Almost 98% of the workforce is covered by workers' compensation insurance.

FECA is one of the most important programs for federal workers. This program provides federal employees with workers' compensation coverage for injuries and diseases sustained while performing their duties. The program seeks to provide adequate benefits to injured federal workers while at the same time limiting the government's liability strictly to workers compensation payments. Payments are to be prompt and predetermined to relieve employees and agencies from uncertainty over the outcome of court cases and to eliminate costly litigation. Efficient government is advanced by a civil service that is expected to have the highest levels of professionalism and competency and in turn is fairly compensated and treated with dignity and

respect. There is no greater disrespect to human dignity than to have to suffer injury from an unsafe workplace or from employer negligence.

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

However, I want to state our strong opposition to insurance benefit cuts, particularly for those employees who came to work one day ready to serve their country but suffered a workplace injury that resulted in them never being able to return. We are strongly opposed to proposals for a forced retirement provision or a cut in benefits for older, injured beneficiaries.

An employee who is injured on the job and unable to work receives FECA payments equal to 67% of wages at the time of injury (a slightly higher amount if he has family obligations). This reduction in income makes it impossible for an injured employee to fund a retirement plan. Once workplace injured workers are on FECA, they receive no further step/grade increases or contribution matches, nor are they able to make elective contributions to the Thrift Savings Plan. This holds true for Social Security as well as the federal retirement programs. Forcing a worker to give up regular FECA benefits at some age deemed to be

retirement age and live on the income from retirement savings set aside up until his or her worklife was interrupted by an on the job injury would cause grave economic hardship to many disabled employees.

NTEU would also oppose elimination of the family benefit that is now a feature of FECA. This is not a complicated program to administer. It does not compensate for the tragic emotional burden a head of household must suffer having lost his or her ability to continue as the breadwinner for his or her children. But it does provide some modest additional payment so a former family breadwinner can still provide some material support for his dependents, such as maybe be able to afford to take them to a ballgame or to pay for dance lessons.

There are a number of ways that FECA fails to provide for just and proper benefits. NTEU would ask that the Senate act to improve FECA in this way, particularly regarding benefit amounts that have not been adjusted since 1949. NTEU has endorsed the Federal Workers' Compensation Modernization and Improvement Act (HR 2465) that recently was approved by the House Education and the Workforce Committee on a bi-partisan basis. This legislation increases the maximum scheduled award for facial disfigurement from the $3,500 cap set in 1949 to $50,000 and then for the future, indexes to inflation that figure. It does the same for the 1949 enacted funeral expense limit from $800 to $6,000 and again indexing it for the future. NTEU is also pleased the House bill adds coverage for disability or death of a federal employee sustained in a terrorism incident. Representing employees of the IRS and the Department of Homeland Security, we know that they, as well as many other federal workers, are particular targets of terrorists.

Let me close by stating that NTEU very much wants to work with the Senate and any other policymakers to find ways to reduce the costs of the FECA program. As I have said, our belief is the best way to do so is not by reducing benefits or denying claims but by preventing the occurrence of injuries. NTEU is committed to a safe and healthy federal workplace where employees are less likely to ever suffer the injuries that lead to FECA claims. Our union has also been one of the strongest forces for innovation in the federal workplace, often working with management on bold new programs and sometimes dragging management forward over its reluctance. We have received reports from our members about management resistance or disinterest in light duty assignments, alternative worksites, disability accommodations and other actions that could allow FECA recipients to return to work. A change in management practices and culture is needed. I don't expect this is something Congress can legislate, but the first step is to end the myth that able bodied workers are receiving FECA payments and accept the fact that many injured workers would like to return to work and could do so with open minded and innovative agency practices.

Further, NTEU is willing to work with policymakers to improve program integrity methods. For example, the Office of Worker Compensation Programs (OWCP) currently matches FECA claimants with Social Security Administration (SSA) data to determine if claimants have died. However, they do not match with SSA data to see if they are receiving wages that would make them ineligible for FECA benefits. If OWCP thinks FECA beneficiaries are falsely claiming dependents, they should be able to match their records with tax returns and FEHBP enrollment records. We support the cost savings provisions included in the bi-partisan

legislation recently passed by the House Education and Workforce Committee including sections 7 and 9, allowing subrogation of continuation of pay and a chargeback for administrative costs. We strongly believe these are the types of reforms that should be explored before Congress moves to cut these social insurance benefits to injured federal workers.

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

Testimony for the Record
Before the United States Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia
July 26, 2011

Examining the Federal Workers' Compensation Program for Injured Employees

Statement Submitted for the Record by the Federal Managers Association

Chairman Akaka, Ranking Member Johnson and Members of the Senate Subcommittee on the Oversight of Government Management, the Federal Workforce and the District of Columbia:

On behalf of the over 200,000 managers, supervisors, and executives in the federal government whose interests are represented by the Federal Managers Association (FMA), we would like to thank you for allowing us to express our views regarding reforms to the Federal Employees' Compensation Act (FECA).

Established in 1913, FMA is the largest and oldest association of managers and supervisors in the federal government. FMA originally organized within the Department of Defense to represent the interests of its civil service managers and supervisors, and has since branched out to include nearly forty different federal departments and agencies. We are a nonprofit, professional, membership-based advocacy organization dedicated to promoting excellence in the federal government.

BACKGROUD

Established in 1916, the Federal Employees' Compensation Act provides workers' compensation coverage to nearly three million federal and postal workers around the world for employment-related injuries and occupational diseases. Benefits include wage replacement, payment for medical care, and medical and vocational rehabilitation assistance in returning to work. FECA is administered by the Office of Workers' Compensation Programs (OWCP) at the Department of Labor (DOL). Although FECA is administered by OWCP, disbursements for an injured or disabled employee are charged back to the agency's salary and expense account.

Since its inception in 1916, FECA has only been overhauled five times. The last of these major reforms occurred in 1974. FECA, like any program, must be periodically evaluated to make sure that it is adequately responding to a rapidly changing environment. OWCP is to be commended for the remarkable strides it has made in improving service to injured workers and returning injured employees to work. With the help of Congress even more could be done.

Federal Employees' Compensation Act costs are a significant concern to federal agencies and federal managers alike. In 2010, total program costs were $2.78 billion. The charge back provision, instituted to make agencies accountable for safety, has led many managers to see their rapidly downsizing budgets tapped to pay for long-term disability cases. Currently, injured workers without dependents are compensated at a rate of 66 2/3 percent of income at the time of injury and those with dependents receive 75 percent. We at FMA would like to take this opportunity to discuss various reform proposals as well as put forth our own suggestions for reform.

S. 261 – The Federal Employees' Compensation Reform Act of 2011

The Federal Managers Association applauds Senator Collins (R-Me.) for her willingness to tackle the issue of FECA reform, which is complicated and complex. FMA has long championed FECA reform, and we appreciate the Senator's willingness to start a debate on the issue. However, we have serious concerns about S. 261, the Federal Employees' Compensation Reform Act of 2011, as currently written.

Under the legislation, FECA recipients would transition to their respective retirement system at full Social Security retirement age. FMA is supportive of reducing the strain on agency budgets for recipients who are of retirement age, but the bill as written poses many concerns. We are primarily worried that employees in the lower grades and those who were injured early on in their careers would be devastatingly impacted financially.

While receiving FECA benefits, participants cannot contribute to Social Security, the Thrift Savings Plan (TSP), or the Civil Service Retirement and Disability Fund (CSRDF). Correspondingly, as the recipient is no longer on agency employment rolls, the agency does not contribute to any of the above retirement plans on behalf of the employee. Under the legislation, employees would be credited for years of service before receiving workers' compensation. For employees who were injured early on in their careers, the financial impact of such a switch would be catastrophic. When receiving FECA benefits, the participant loses all possibility of promotions and raises, and they receive no service credit for the time spent on the FECA rolls. In short, the legislation as drafted could have serious financial implications for many of the FECA participants.

We at FMA support removing retirement-eligible FECA recipients from agency salary budgets, but S. 261 is not the answer. We look forward to working with Senator Collins to craft a sensible solution that will provide equitable benefits for FECA recipients as they approach retirement age.

H.R. 2465 – The Federal Workers' Compensation Modernization and Improvement Act

In July, the House Education and Workforce Committee approved legislation which would make much needed changes to the FECA program, but did not address the issue of retirement. The Federal Workers' Compensation Modernization and Improvement Act (H.R. 2465) provides updates to many outdated provisions in the FECA laws, and we at FMA support these changes. Specifically, the legislation expands FECA coverage for injuries as a result of a terrorist attack, increases compensation for facial disfigurement and funeral expenses, and eases the claims process for workers who sustain an injury in a designated zone of armed conflict.

Department of Labor Proposal in FY12 Budget

In the President's Fiscal Year 2012 Budget, the Department of Labor proposed changes to FECA which would, according to the agency, save the federal government $400 million over a ten-year period. We at FMA encourage implementation of several of the proposals put forth by DOL, but also have concerns with the recommendation to provide recipients with 50 percent of their gross salary at the time of injury plus cost of living adjustments once they reach retirement age. We have the same concerns with this change as we do with the proposal put forth by Senator Collins. For one, there is potential for financial hardship for many recipients. We are not convinced, as DOL claims, that the benefits provided under this proposal closely mirror the average retirement benefit for employees. Additionally, under the DOL proposal, agencies would still be financially responsible for FECA participants after they reach retirement age, a change we would like to see made.

However, we at FMA support other various reforms suggested by the Department of Labor. Under the proposal, DOL would have authority to match Social Security wage data with FECA files without the consent of the recipient. This authority would further ensure beneficiaries are compliant.

Additionally, the DOL proposal recommends reducing FECA benefits to seventy percent for all recipients. We at FMA agree with DOL in the sense that the current structure provides a disincentive to return to work, and we also feel the disparate benefits based on dependents or marital status is discriminatory. We detail our views and suggestions for reform in this area in the next section of our testimony. DOL also suggests changes to the schedule award provision based on physical impairment in an injury, such as the loss of a limb. DOL suggests paying all schedule awards at a rate of 70 percent of $53,630 (the equivalent of the annual base salary of a GS 11 step 3), adjusted annually for inflation. The Federal Managers Association supports an across-the-board standardization for physical impairments and we also discuss this later in our testimony.

FMA RECOMMENDATIONS FOR REFORM

The Federal Managers Association makes the following suggestions for legislative FECA reform:

- Reduce the FECA benefit from 75 percent to 66 2/3 percent of income
- Establish a FECA retirement program
- Base benefit increases on employee pay adjustments, not the Consumer Price Index (CPI)
- Extend the right to resume employment from one to three years
- Eliminate anatomical loss disparity

Eliminate Inherent Disincentive to Return to Work

In 1949, FECA was amended to increase the basic compensation rate from 66 2/3 percent to 75 percent of income if the injured employee had dependents. Injured workers without dependents are still compensated at a rate of 66 2/3 percent of income. According to the Department of Labor, more than seventy percent of recipients are paid at the 75 percent rate.

Since FECA benefits are tax free, the compensation rate for those with dependents can actually increase an employee's take home pay over what they would have earned from their regular paycheck. In fact, in 1998, the Government Accountability Office (GAO) reported that nearly 30 percent of recipients took in a higher income under FECA than when they were working. In the experience of FMA members, it is not unusual to see FECA beneficiaries collect more per pay period than their regular salary.

We at FMA also feel the current structure penalizes employees for their marital status as those without dependents receive less in compensation. In fact, several FMA members have commented that they feel this is discriminatory and would seek legal action if injured. The disparity was implemented in the 1940s when a household with two wage earners was uncommon and husbands served as the primary wage earner. In 2011, this is simply no longer the case.

The goal of FECA is to provide a stable source of income replacement for federal employees while they recover from their injury sustained on the job. Paying employees more to stay at home rather

than to come back to work represents a significant disincentive to leaving the FECA rolls. Setting the maximum rate of benefits at 66 2/3 percent of income, regardless of dependents, would remove an inherent disincentive for injured workers to return to their jobs.

Establish a FECA Retirement System

Prior to 1974, employees receiving FECA benefits had their case reviewed and benefits possibly reduced upon reaching age 70. In 1974, Congress eliminated this provision. This change effectively opened the door for individuals collecting FECA benefits to continue to do so well past the age that they would have retired had they not been injured. Federal employee retirement benefits are substantially less than active service pay; however, this is not the case with FECA beneficiaries. According to DOL, 65 percent of FECA beneficiaries are over age 55. What is even more shocking is that 22 percent of the long-term claimants are over the age of 70. This is well past the average retirement age in federal service, yet agencies are continuing to pay for these individuals.

Because FECA benefits are tax-free, they are more generous than an individual could receive under the federal retirement system, providing an incentive for individuals to remain on the FECA rolls past when they would otherwise have retired. This also forces the agency to continue providing FECA benefits longer than they would have paid the employee's salary. Many FMA members work in Department of Defense industrially-funded activities and must compete against the private sector for workloads and employees. The increase in overhead for having to pay FECA benefits past the age of retirement gives the government a significant competitive disadvantage compared to the private sector.

FMA recommends that FECA be amended to prospectively transfer the cost of FECA benefits for retirement age recipients from agencies to a separately funded account. While on FECA, we suggest employees and agencies contribute to this fund so recipients can transition smoothly. FMA additionally supports establishing a retirement category that identifies individual as compensation retirement eligible. We also support moving FECA recipients off their agency rolls and placing them on retirement rolls (at a pre-established retirement age) through this newly-established account.

Tie Benefit Increases to Active Employee Pay Adjustments

FECA, like many benefit programs, is structured to prevent benefits from being eroded by inflation by indexing benefits to increases in the Consumer Price Index (CPI). Federal employee pay adjustments, however, are based on wage growth in the private sector as measured by the Employment Cost Index (ECI). Since FECA benefits are income replacement, it would be more equitable to base increases on those given to active workers.

Extend Mandatory Re-employment Window to Three Years

From a management standpoint, FECA benefits greatly increase the cost of accomplishing the agency's mission. In paying FECA benefits, agencies are essentially paying one active worker to perform a task while also compensating a FECA claimant for the loss of potential earnings. According to DOL, 85 percent of claimants return to work within the first year of injury, and 89

percent return by the end of the second year. Only two percent of claimants remain on the FECA rolls long term. Because some injuries take longer than one year to resolve, extending a FECA recipient's right to reemployment from one year to three years would enable agencies to reduce their costs by reinstating more injured workers and therefore, FMA supports extending a FECA recipient's right to reemployment from one year to three years.

Eliminate Anatomical Loss Disparity

Under FECA, injured workers are awarded compensation for permanent injuries sustained on the job based on their pay grade. This leads to a disparity in payments for workers with identical injuries but who are of different pay grades. For example, the schedule award for the loss of the use of an arm for a GS-2, step 1 is $120,102 while a GS-15, step 1 is eligible to receive $597,768. FMA supports the use of a schedule that is wage grade neutral. Although this may in some cases be more expensive than the present system, it is fundamentally an issue of fairness that all employees be treated equally for anatomical loses.

PERSONAL EXPERIENCE WITH FECA REFORM

FMA's National Secretary Richard Oppedisano recently completed thirty years of federal service with the Department of the Army. Prior to his retirement, Dick served as Operations Officer/Chief of Staff in the Office of the Commander, US Army Watervliet Arsenal, Watervliet, NY. During his time at Watervliet, he established a very successful FECA review program with management and union support. We at FMA would like to provide you with a first-hand account and overview of the program in hopes it will encourage other federal agencies and installations to follow suit.

When I become Chief of Placement and Recruitment at Watervliet, I instructed my staff to review each FECA recipient's file to determine for what positions they qualified and their physical limitations. For example, a machinist (four-year apprentice graduate) could qualify for production comptroller, quality control specialist or an administrative position within the manufacturing division which did not require heavy lifting.

Additionally, for every vacancy that came through my office, my staff would review the opening to see if we had anyone on FECA who may qualify for the vacancy. Often, the position had a full performance level identified and would be a promotion opportunity for someone who was working full time. The union had concerns with this so we made an agreement that the vacancy would be capped at a level equal to the journeyman level. For any further promotion opportunity the vacancy would have to be advertised and any and all employees could apply and receive consideration.

If a match occurred, we would refer the FECA recipient to the selecting official. If the individual was selected (or someone else from the list of FECA employees), we would inform OWCP and the FECA entitlement would be reduced by the salary of the position in which the employee was placed. If the selecting official did not select the FECA recipient, the reasoning would be submitted to me in writing and if I concurred we would continue recruiting for the position. If I did not concur, and most of the time I did not, I would put my objections in writing and return the referral notice back to the selecting official for placement. If the selecting official still did not agree to select the

FECA recipient, we would set up an appointment with the Commanding Officer and after hearing both sides he would make the final decision. Ultimately, we did not have many Commander meetings.

The bottom line was that this program was so successful that the arsenal saved more than $700,000 in three years.

CONCLUSION

We at FMA have long championed reform to the FECA program, and we appreciate the newfound attention Congress is placing on reform proposals. We hope that FMA's insights and recommendations have contributed to your oversight and understanding of this important program. FMA stands ready to work with the Committee and other Members of Congress to effect common sense FECA reforms.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION
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July 22, 2011

Honorable Daniel Akaka
Chairman

Honorable Ron Johnson
Ranking Member

Subcommittee on Oversight of Government Management, the
Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member Johnson:

I am writing on behalf of the membership of the Federal Law Enforcement Officers Association (FLEOA), to express our views with respect to the Subcommittee hearing entitled "Examining the Federal Workers' Compensation Program for Injured Employees." We respectfully request that this letter be made part of the record for this hearing.

FLEOA is the largest nonpartisan, nonprofit professional association exclusively representing active and retired federal law enforcement officers. FLEOA represents more than 26,000 federal law enforcement officers from over 65 different agencies. The men and women we represent are employed in an occupation that is absolutely unique in the ranks of the federal government. Law enforcement positions are filled by men and women who risk their lives each day to protect our nation from criminals and terrorists. It is one of the most stressful, most dangerous, and most rewarding careers for those who meet the rigorous requirements of the job. Over the years, our organization has worked to address major flaws with the Federal Employees' Compensation Act (FECA) system, and we appreciate this opportunity to share our views on this important issue.

Every year, approximately 300 Federal law enforcement officers sustain line of duty injuries during violent physical encounters. They also suffer from serious duty related injuries from vehicle accidents, toxins and hazardous materials exposure, and training incidents. From all the pain these noble warriors have endured, the pain that hurts them the most is their negative experiences dealing with the Office of Workers' Compensation Programs (OWCP), and the Division of Federal Employee Compensation.

On July 21, 2010, I testified before the House Committee on Government Reform's Subcommittee on the Federal Workforce and highlighted situations in which federal law enforcement officers injured in the line of duty were made worse by the FECA-OWCP system. To illustrate the pattern of how our members have been mistreated, including having to endure financial and emotional duress, during my testimony I discussed five separate cases that bear repeating here:

1. On September 11, 2001, Special Agent Mike Vaiani was at Ground Zero when the World Trade Center Towers collapsed. Before the second Tower fell, Special Agent Vaiani and a firefighter ran into the building and rescued injured fire fighters and civilians. In the process, S/A Vaiani sustained serious injuries to his neck, shoulders and back. After filing his workers' compensation claim, he first heard from a OWCP claims examiner in October 2001. The examiner asked him one question: did the firefighter ask S/A Vaiani to follow him into the building? S/A Vaiani's response was that of a hero: "I went in to save lives because that's what I do." Afterwards, S/A Vaiani began to receive collection notices for unpaid medical bills. Then, in December 2002, OWCP lost his case file and his supervisor offered to pay his medical bills on her personal credit card. After enduring this miserable process, S/A Vaiani stated, "I would rather run back into the Tower while it's on fire than have to deal with the Department of Labor."

2. After Anthrax-contaminated mail was sent through the Brentwood postal facility in 2001, Postal Inspector Bill Paliscak responded to the crime scene. He was instructed to remove a contaminated filter to preserve as evidence. Wearing only a dust mask, Inspector Paliscak was unexpectedly covered in Anthrax dust. Days after the severe Anthrax exposure, Inspector Paliscak became deathly ill. The OWCP denied his claim because they questioned if it was in his job duties as an Inspector to touch a contaminated filter. In spite of the fact that the filter he removed was saturated with Anthrax spores, his claim was denied because he could not immediately prove he was suffering from Anthrax exposure. In May 2002, OWCP finally accepted Inspector Paliscak's claim. As a result of this incident, Inspector Paliscak's credit was ruined since his medical bills went unpaid for months, and his medical care was disrupted. Today, this hero is bound to a wheelchair, while he suffers from severe muscle spasms, overwhelming fatigue, and other debilitating effects of Anthrax exposure.

3. On November 16, 2006, Special Agent Paul Buta was off-duty with his family in a mall when he was shot while effectively stopping a violent assault committed in his presence. His heroic actions saved a man's life, and stopped a lethal threat. While his wife and his 13-year old daughter administered first aid, S/A Buta's 4-year old daughter went for help and called 911. After receiving medical care, S/A Buta's doctor told him he would need extensive physical therapy to prolong the atrophy of his leg muscles. With bullet fragments lodged in his leg, S/A Buta began physical therapy treatment. Unfortunately, due to OWCP's inability to pay S/A Buta's bills timely, his

physical therapy ended on June 30, 2008. Without the physical therapy, S/A Buta is struggling to meet the mandatory fitness standards to keep his job. Prior to the shooting, S/A Buta was a triathlon athlete. Now, he's a hero in pain and in serious debt.

4. From 2000 to 2007, Special Agent Tim Chard was assigned to a narcotics task force. During this time, S/A Chard was personally involved in busting and dismantling 100 meth labs. His task force commander stated, "I was so impressed that he, a Federal Agent, was helping us do a job we hated when other Detectives assigned to our team seemed to disappear whenever a lab was discovered." In late 2008 and into 2009, S/A Chard began to suffer from a variety of debilitating symptoms and pain that seemed connected to his exposure to meth labs toxins. Renowned expert Dr. Gerald H. Ross wrote, "It is my medical opinion that in all reasonable likelihood, S/A Chard's symptoms have resulted directly from his meth and meth-related chemical exposures." Dr. Ross recommended that S/A Chard be admitted to the Utah Meth Cop Project's 30-day detoxification program for treatment. Unfortunately, OWCP denied S/A Chard's claim. Appealing to his agency for help, S/A Chard was told that if he enrolled in the program, "any costs you incur up front will have to paid out of pocket. You will also be required to take sick leave for the program. You would then be reimbursed for your expenses by OWCP, if they accept your claim." In spite of OWCP's rejection of his claim, the FLEOA Foundation paid for S/A Chard to enter the treatment program. After completing the program, S/A Chard's health greatly improved. However, he will have to pay for all medical tests to monitor his condition.

5. More recently, Deputy Jason Matthew was stabbed by a female inmate who had secreted an HIV-contaminated edged weapon on her person. Deputy Matthew was immediately taken for emergency treatment to tend to his wound and his exposure to an HIV contaminated weapon. While receiving emergency medical care, Deputy Matthew was given a prescription for HIV preventive medication. After laying out his money to purchase the medication, Deputy Matthew's OWCP claim was denied. He was informed that because he was not diagnosed with HIV, he would not be reimbursed for the prescription expense. Fortunately, his agency intervened and paid this hero's medical bill. Deputy Matthew continues to be monitored for his HIV exposure.

The obvious common denominator in all of these horror stories is that OWCP is unable to effectively process claims filed by injured law enforcement officers or to grasp the nexus of the injury with the law enforcement functions they perform. To their credit, after the 2010 hearing both the Directors of the Division of Federal Employees' Compensation and OWCP met with FLEOA and agreed to establish traumatic care nurses for law enforcement injuries and a law enforcement officer Ombudsman in each OWCP district. Despite this positive development, more work is still needed.

To date, several legislative proposals have been brought forward in both the House and the Senate to reform the FECA system. While we appreciate the work of the Subcommittee and others on this issue, we believe that it is fundamentally important that any such reform recognize the unique nature of law enforcement work and the injuries sustained by law enforcement officers, and not advance a "one size fits all" solution.

One idea which has been suggested is to transition FECA recipients into disability retirement under FERS or CSRS—an approach that raises more questions than it answers. Law enforcement officers who are forced into a disability retirement usually sustain injuries that are markedly different than those sustained by the general federal employee. Indeed, the phrase "line of duty injury" means one thing for a law enforcement officer, and something very different for other federal employees. A Special Agent wakes up each day knowing that there is a real risk that they may be critically injured or killed on the job. And the disability retirement system should reflect that fact. First and foremost, FLEOA believes that rather than the generic 40% of your high three taxable rate, a disabled law enforcement officer should be eligible for what many State and local law enforcement agencies provide: 75% of their high three. Secondly, Congress should look at providing these benefits tax free. Again, unlike other Federal employees, an officer who is disabled is unlikely to be able to find a similar job in law enforcement making the same salary. Thus there is a real question as to why—if placed on disability retirement—we would want to literally pull the standard of living rug out from under them when they sustain a disabling injury in the line of duty. Finally, it would also be important to ensure continuation of medical coverage for ongoing treatment related to a line of duty injury to ensure that law enforcement officers are not required to pay for these needed services out of pocket under a retiree Federal Employees Health Benefits (FEHB) program package.

Further, FLEOA fully supports extending the continuation of pay (COP) period for traumatic injuries sustained in the line of duty. For those officers assaulted by a suspect, exposed to a toxic substance, or shot or stabbed, or involved in an explosive blast while enforcing the law, a longer time frame would better allow for a proper evaluation to determine if a return to work will be possible.

On behalf of the membership of the Federal Law Enforcement Officers Association, thank you for the opportunity to provide our views on reform of the FECA system. Our organization stands ready to work with the Subcommittee as it considers this important issue.

Sincerely,

Jon Adler

J. Adler
National President

Hearing before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Government Affairs

Long Statement for the Record
Examining the Federal Workers' Compensation Program for Injured Employees

July 26, 2011

David C. Williams
Inspector General
United States Postal Service

Mr. Chairman and members of the subcommittee, thank you for the opportunity to provide comments on the Federal Employees Compensation Act (FECA) and its impact on the Postal Service. The Postal Service's financial condition is dire and it cannot afford the current disability program, which is vulnerable to fraud and abuse and charges a hefty $60 million administrative fee. Our concern will soon be the concern of other agencies as budgets tighten across the government.

I would like to provide a brief background on the FECA and its applicability to the Postal Service, identify aspects of the program that make it vulnerable to fraud and abuse, describe our recent investigative work and interaction with the Department of Labor (DOL), and discuss potential FECA reform that would improve effectiveness and efficiency and, more importantly, ensure that benefits remain available to truly deserving claimants.

Background

The FECA requires federal agencies to participate in the DOL's FECA program. The DOL bills each agency annually for compensation paid and non-appropriated agencies also must pay the DOL an annual administrative fee. Eligible disabled employees receive either 66 2/3 or 75 percent (with dependents) of their basic salary, tax-free, plus medical-related expenses. Also, the FECA places no age limit on receiving benefits, so federal workers' compensation payments can be

substantially more than they would otherwise receive when they retire. Though unintended, the 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, and has a long-term FECA liability of $11.6 billion as of March 2011. As of June 2011, the Postal Service had about 16,200 disabled employees (employees who receive benefits and are expected to be unable to work either permanently or long-term) on the periodic roll. Over 9,500 of these employees were at least age 55, about 3,400 were at least age 65, and about 900 were between age 80 and 99.

Vulnerability to Fraud and Abuse

Certain aspects of the FECA program make it susceptible to fraud and abuse:

- The claimant's ability to change their story until their claim qualifies. For example, the DOL allows claimants to add stress-related conditions to an existing claim and an agency can't challenge the new claim. In fact, the agency is never even notified about new claims and frequently only discovers them while investigating the original physical injury;
- The claimant's ability to hire a physician to assess their injuries and condition rather than use a plan physician;
- The DOL's incentive to collect larger fees if they approve more claims and lose budget dollars if they deny them or detect fraud;
- The lack of effective DOL case management;

- Employers not being allowed to present or respond to evidence at hearings; and
- The DOL's willingness to pay benefits based on information they never verify. For example, they can base benefits on dependents who may or may not exist and can continue paying them past the claimant's death.

In addition, some conditions that qualify individuals for program benefits are difficult to diagnose, making it challenging to separate legitimate from illegitimate claims. Stress claims in particular are at high risk for fraud. In fact, there are training courses that instruct claimants on exactly what they need to say to get the DOL to accept a claim. If a doctor sees a correlation between stress and a claimant's work, the claim is often approved. In one instance, we found that a claimant's emotional reaction to a change in work schedule was enough for DOL approval.

We compared the acceptance rate (the rate at which a new claim for benefits is approved) between the FECA program and the Social Security Administration's (SSA) disability insurance. We found that the 5-year acceptance rate for FECA was 85 percent and the acceptance rate for SSA claims was much lower at 40 percent. With FECA, medical evidence is required to prove the claimant has a work-related illness or disease and the claimant receives benefits prior to their agency approving their claim. Alternately, the SSA requires medical evidence to

establish that the claimant expects to be totally disabled for at least 12 months and the claimant does not receive benefits prior to claim approval.

The DOL has some fraud detection responsibility, but the extent of it is unclear. They advise agencies to actively manage their own programs, while still charging them full administrative fees. There is no clear delineation of responsibility for fraud detection between **(1)** agency program managers and **(2)** their OIGs; and **(3)** the DOL and **(4)** its OIG. This lack of clear responsibility creates significant risk that program oversight will be duplicative or not performed. Agencies have the ability to question a claim for benefits, yet only the DOL has the authority to deny a claim. Agencies also have no ability to present evidence in a claim hearing, which significantly handicaps their ability to prevent awarding improper benefits.

OIG Investigations and Interaction with the DOL

Since October 2008, we have removed 476 claimants based on disability fraud, recovered $84.3 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 named "Free Ride." Other investigations have found fraudulent claimants working as martial arts instructors, landscapers, hairdressers, and mechanics.

The OIG also investigates medical providers involved in criminal matters, including disability fraud, and we have recovered $78.7 million since fiscal year (FY) 2009.

Working with the DOL on these investigations is difficult. They control needed documents, but are often not responsive when we investigate cases. After receiving an OIG investigative report, the DOL does not take timely action when told that a claimant no longer qualifies for benefits. Even when a claimant is convicted, the DOL is slow to terminate benefits.

- In a number of our cases, the DOL failed to consider video evidence of a claimant exceeding his medical restrictions or to forward that evidence to the doctor responsible for making a medical determination. In November 2008 we submitted video evidence to the DOL proving that a claimant was exceeding his limitations and asked that they provide it to the doctor for an independent medical exam. When we discovered that the DOL did not provide the doctor with our report and video for examination, we again asked the DOL to submit it as an addendum. This time, when the independent doctor reviewed our video evidence, he agreed that the claimant could come back to work and the Postal Service offered him a position. In May 2010, the DOL sent a letter indicating their agreement that the job was suitable for the claimant. However, the claimant has refused to come back to work and continues to receive benefits to this day.

- In February 2010, we submitted an investigative report to the DOL which prompted them to schedule a claimant for a follow-up exam. When the claimant didn't appear for the exam, the DOL simply continued to pay benefits. In late 2010, the claimant finally attended the follow-up exam and was found to be capable of returning to work. However, despite several contacts by the OIG to the DOL since that exam, the DOL has not taken any action to terminate the claimant's benefits.
- We recently discovered a claimant who claimed $190,000 in mileage reimbursements for travel to therapy almost every day for 5 years, including weekends and holidays. The DOL never questioned any of the reimbursement requests, even though there were no medical services to justify the claims.

FECA Reform

The Postal Service and other federal agencies could significantly benefit from FECA reform. We are encouraged by Senator Collins' proposed legislation to move individuals who reach age 65 to their respective retirement plan. We know from recent work that if the FECA were reformed to convert compensation benefits to 50 percent of the employee's monthly pay when they reach retirement age, this alone would save the Postal Service about $37.8 million annually, or $378 million over 10 years. However, additional FECA reform could save the government and the Postal Service money and could protect benefits for those who are truly deserving.

Opportunities exist in the following areas:

- Cost-saving methods used by other federal agencies.
- Reporting additional income earned
- Increased support for fraud investigations
- Standardized billing guidelines
- Reimbursement of Continuation of Pay (COP) benefits

Cost-Saving Methods Used by Other Federal Agencies We benchmarked with four third-party administrators and one private organization to identify best practices and opportunities for reducing FECA costs. We found that the Postal Service workers' compensation cost far exceeds workers' compensation costs for the private sector. Specifically, the Postal Service's average workers' compensation cost per employee workhour was $0.95 compared to the private sector range of $0.42 to $0.67 for similar industries. We attribute the cost difference to the private sector's use of cost-containment methods not currently available under the FECA, such as:

- Using settlement and buyout options;
- Using employer-selected physicians;
- Making use of generic drugs mandatory;
- Reducing compensation payments; and
- Using third-party administrators to negotiate contracts and fees.

If the FECA were amended to include private sector cost-containment methods, the Postal Service could reduce its workers' compensation expenses from $0.95 to $0.67 per workhour and potentially save $335 million annually. Potential savings could be available to other agencies if these provisions were implemented across the government.

Our benchmarking also found the method used to determine the administrative fee charged for the FECA program should reflect the actual cost of managing claims. Accordingly, calculation of the DOL's administrative fee to administer the FECA program should be modified to eliminate incentives for the DOL to keep employees out of work. Currently, the administrative fee is proportionate to the amount of workers' compensation benefits paid and there are no incentives for the DOL to reduce the length of time an employee receives benefits.

Reporting Additional Income Earned The DOL should also be required to notify claimants receiving benefits that they are required to report all sources of additional income. Claimant pay should be adjusted retroactively to the date they receive additional income. Additionally, if a claimant does not initially report additional income to the DOL and it is subsequently identified, the DOL should remove the claimant from the program and terminate their benefits.

Increased Support for Fraud Investigations With regard to FECA fraud cases:

- As mentioned earlier, the responsibility for detecting fraud should be clarified between **(1)** agency program managers and **(2)** their OIGs and **(3)** the DOL and **(4)** its OIG;
- OIG investigators should have full access to all DOL records and direct access to claimant physicians;
- The agency should be allowed to present evidence at hearings and appeal determinations as appropriate;
- The DOL should be required to create a system which prevents claimants from taking advantage of mileage reimbursement allowances;
- The DOL should decide on agency referrals within 45 days of issuance of an investigative report with the agency in question recouping any financial impact from further delays through a reduction in their administrative fee; and
- The DOL should be prevented from sharing evidence with a claimant the OIG is investigating for at least 60 days after agents speak to their physician(s).

Standardized Billing Guidelines. The DOL has no standardized billing guidelines for doctors, making it difficult to review for potential fraud and hold them accountable for fraudulent billings. The lack of standardized billing guidelines for doctors is particularly worrisome because we've linked some of these doctors to

schemes where they fraudulently diagnose multiple employees with work-related stress or other hard to diagnose conditions.

The Department of Justice regularly declines criminal and civil cases because the DOL lacks the policies or guidance designed to prohibit abuse. In a current investigation involving a specific billing code for pain management services, the Assistant United States Attorney is reluctant to include charges for these particular services because the DOL does not have billing guidelines. The potential loss to the Postal Service is $8.2 million.

If the DOL instituted a system similar to Medicare's, it would be much easier to review for fraud and prosecutors would be more inclined to take these cases. An effective DOL medical provider billing program would include:

- Written rules and guidelines.
- Training for medical providers on program rules and guidelines.
- Procedures for detecting fraudulent medical provider billing.
- Enforcement of disciplinary actions.

Reimbursement of Continuation of Pay (COP) Benefits Finally, reform is needed to allow for reimbursement of COP benefits (payable for up to 45 days while the employee seeks medical treatment) the Postal Service pays related to recoveries from third parties responsible for injuring a Postal Service worker. In FY 2010,

the Postal Service paid over $36 million in COP costs; however, based on current FECA legislation, COP benefits cannot be recovered in third-party cases.

In closing, the FECA has not been modified in about 35 years and is in need of significant reform. Such reform could reduce the substantial risk for fraud and improve program efficiency and effectiveness, while protecting benefits for legitimate claimants.

TESTIMONY TO

Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
U.S. Senate Committee on Homeland Security & Governmental Affairs

FEDERAL WORKERS' COMPENSATION REFORM

STATEMENT PREPARED BY Ms. Lisa M McManus
President
CCS Holdings, L.P.
Dallas, TX

Daniel Akaka of Hawaii, Chairman
Ron Johnson of Wisconsin, Ranking Member and Members of the Committee:

I am pleased to furnish written comment on issues related to possible changes to the Federal Employees' Compensation Act (FECA) program. The FECA was passed into law in 1916, debated in 1923, changed in 1949 and amended in 1974. Among many antiquated provisions, the FECA has no time or age limits on the entitlement to benefits. While this is the primary focus of suggested reform, other general and procedural recommendations are suggested.

RECOMMENDATIONS FOR CHANGES TO THE FEDERAL EMPLOYEE COMPENSATION ACT

General

1. 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 their average weekly wage, tax free and subject to a cost of living adjustment each October.

   Recommended change 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.

2. 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 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, OPM retirement is realized, OWCP payments terminate for disability. Or,
   B. Offer retirement under OWCP to only those employees deemed to be permanently and totally (legal definition) disabled.

3. Protocols and procedures within Department of Labor 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 to handle their FECA claims, or the Department of Labor. Should they select a Third Party Administrator the Department of Labor would still regulate the claims to ensure the claims are being managed 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.

4. The "non-adversarial" verbiage contained in the Act lends itself to "just pay, don't question". The cost of this program is putting some agencies in jeopardy of existence.

   Recommended changes to the law:

   A. Remove "non-adversarial" verbiage.

5. 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 agency manages their claims internally that they have a standard set of procedures and policies, as well as, standard performance goals and benchmarks that they must adhere. 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 so forth.

   B. Agency employees involved with handling or oversight of FECA claims would be required to have at least 15 hours of continue education each year covering FECA laws, claims management, and benchmarking.

6. Many agencies have no standard return-to -work program in place for injured workers' who may be able to return to gainful employment once maximum medical improvement has been achieved.

   Recommended change the law:

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

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

   Recommended change to the law:

   Establish minimum industry standards for both government agencies and the Department of Labor for handling of FECA claims. If the standards cannot be met require the agency and/or the Department of Labor to outsource to a third party administrator.

Department of Labor Protocols

1. "Periodic Roll" files are cases which Labor designates and as such, are only subject to on-going case review once every two years. As such, medical evidence to support continuing disability (and payments) oftentimes does not exist. If and when medical evidence is presented that does indicate that the injured worker is released to return to work, Labor sends a "Notice of Proposed Termination" letter, allowing the employee an additional 30 days of compensation and an opportunity to "appeal" the evidence.

   Most other jurisdictions terminate 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 2 year review. This form is sent to the injured worker to complete and would indicate if the injured worker had 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 Labor has discretion to "forgive" the overpayment, or alternatively, structure a repayment plan.

   Recommended changes to the law:

   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 my knowledge) that provides this type of benefit. All other jurisdictions have some form of "wait period", usually 3 – 7 days in which the employee would not be paid for lost time until such time as the "wait period" had been exceeded.

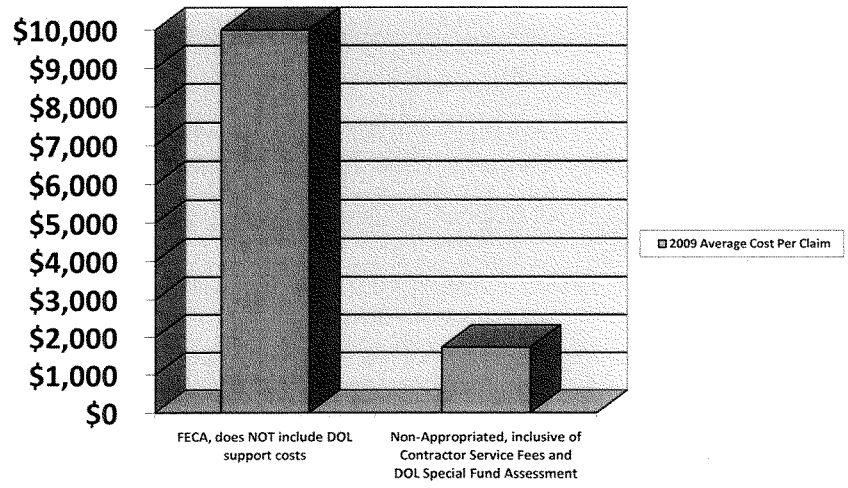
   Recommended changes to the law:

   Discontinue Continuation of Pay entirely.

3. Contractor services for payment of medical bills have created other opportunities for abuse. For example, protocol exists that the contractor pays mileage to the injured worker to attend various appointments. Such payments are not verified nor monitored by Labor. The contractor is very difficult to reach, as is Labor. In some areas, physicians and medical providers will not accept a patient for treatment if there is indication that this is a federal employee 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.

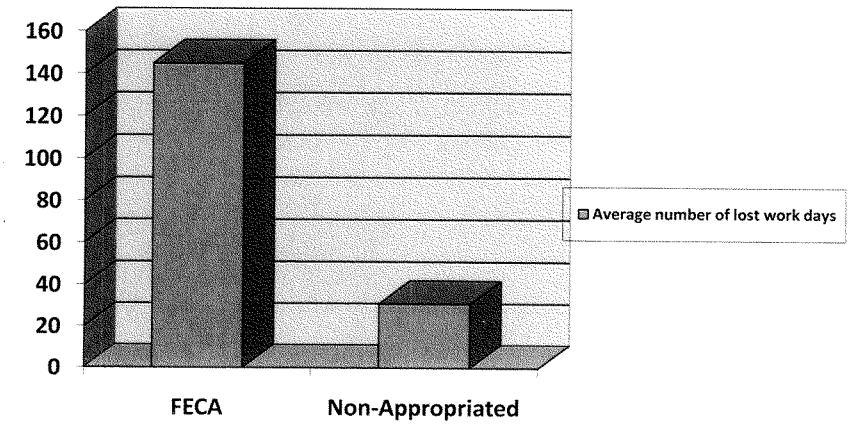
   Recommended changes to the law:
   Case workers should review and approve all medical charges prior to payment.

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

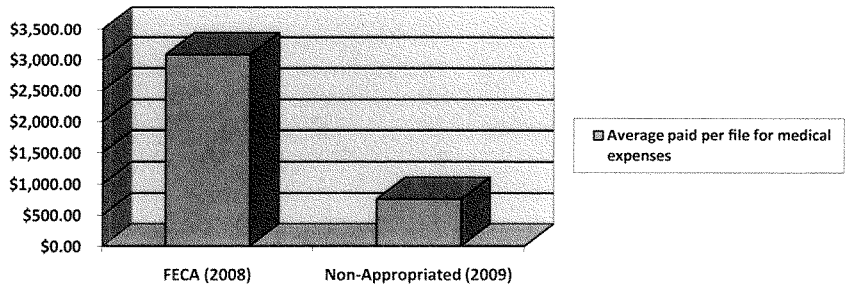


For payment of medical expenses, both FECA and NAFI claims are paid in accordance with the OWCP fee schedule. The significant difference in average cost per claim is the benefit

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.

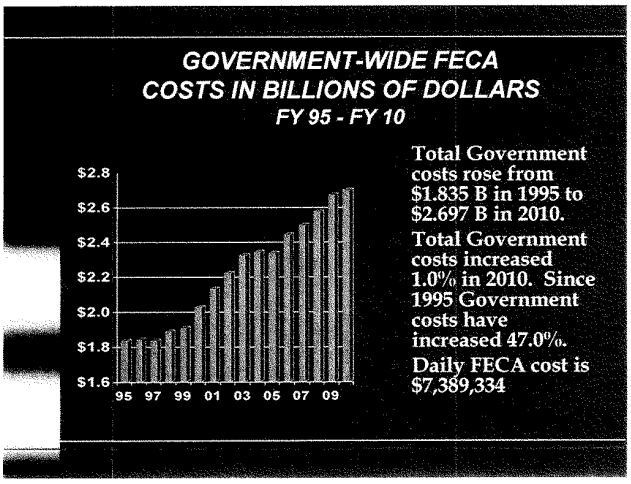


The FECA and the NAFI Act utilize the exact same fee schedule (OWCP Fee Guidelines) for payment of medical expenses. It is curious, then, why there would be such a difference in the average amount paid per claim. NAFI's (with the exception of Air Force MWR) utilize a Third Party Administrator for claims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

Summary

The FECA has become something far removed than the original authors' had intended, that being a supplemental retirement program for federal workers. If an employee "retires" he/she has removed himself from the workforce. Compensation for lost wages should cease. If a treating physician deems an employee physically able to return to work, compensation for total disability should cease. Continuation of pay for a forty-five day period after a work-related injury is unique to the FECA and should be discontinued. Greater controls by Department of Labor are needed.

Program costs are spiraling upward, as evidenced by the chart below. The FECA's basic structure has not changed since 1974. Reform is needed.



Thank you for the opportunity to provide these recommendations.