EXAMINING THE LABOR DEPARTMENT'S PROPOSED REFORMS TO THE FECA PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

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C O N T E N T S

EXAMINING THE LABOR DEPARTMENT'S PROPOSED REFORMS TO THE FECA PROGRAM

Wednesday, July 10, 2013
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:01 a.m., in room 2175, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.

Present: Representatives Walberg, Kline, DesJarlais, Rokita, Hudson, Courtney, and Bonamici.

Also present: Representative Miller.

Staff present: Katherine Bathgate, Deputy Press Secretary; Owen Caine, Legislative Assistant; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Legislative Assistant; Marvin Kaplan, Workforce Policy Counsel; Nancy Locke, Chief Clerk; Donald McIntosh, Professional Staff Member; Brian Newell, Deputy Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Nicole Sizemore, Deputy Press Secretary; Alissa Strawcutter, Deputy Clerk; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Jody Calemine, Minority Staff Director; John D'Elia, Minority Labor Policy Associate; Daniel Foster, Minority Fellow, Labor; Eunice Ikene, Minority Staff Assistant; Richard Miller, Minority Senior Labor Policy Advisor; Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director; Michael Zola, Minority Deputy Staff Director; and Mark Zuckerman, Minority Senior Economic Advisor.

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

Good morning and welcome, to our guests. We appreciate you being here. We have, I believe, assembled a distinguished panel of witnesses and thank you all for joining us this morning.

Today's hearing is part of an effort that began last Congress to improve the Federal Employees' Compensation Act. In 2011 the house passed with strong bipartisan support—and I note that: bipartisan support—a package of reforms that would have strengthened FECA program significantly.

Among other provisions, the bill would have improved administrative efficiency, modernized various benefits, and strengthened the overall integrity of the law. While the legislation did not become law, it still represents good public policy and reflects our commitment to addressing this issue in a bipartisan way.

We recognized then, as we do now, that the bill passed by the House during the 112th Congress was simply a first step. Without a doubt more comprehensive changes are needed to ensure the FECA program is meeting the needs of workers and taxpayers.

Toward that end, committee leaders asked the nonpartisan Government Accountability Office to examine proposals put forward by the Department of Labor. I am pleased to have representatives from both the GAO and the department with us this morning.

The department's proposal would eliminate increased benefits for those employees with dependents, covert benefits to 50 percent of gross wages once an individual reaches retirement age, and implement a three-day waiting period before an individual can draw continuation-of-pay benefits. These are significant changes to the FECA program, which is why a careful review by the GAO was both necessary and appropriate.

I will let the qualified experts describe in greater detail the GAO's findings. However, the report does make a couple things clear.

First, the department's proposal would have a disproportionate impact on workers with dependents. Moving toward a single rate of wage loss compensation is worthy of consideration. However, we have to be mindful how this will affect federal employees with families, especially when their colleagues without dependents stand to gain financially.

The second point the GAO report makes clear is that there are no easy answers. Fundamentally, we are talking about men and women who suffer an injury or illness while employed by the federal government. But as with any government program, there will be those who try to take advantage of the system.

In an article entitled "Experts Say Fraud Rampant in Federal Worker Disability Programs," the Washington Examiner reveals a program plagued by waste, abuse, and inefficiencies. This is not acceptable, especially at a time when our nation faces a severe debt crisis.

Creating a program that prevents abuse by bad actors, reflects the realities of the 21st century, and provides adequate support to workers will require policymakers to make some tough choices, but we all agree maintaining the status quo is not an option. We have a responsibility to federal workers and federal taxpayers to create a stronger program, and I look forward to the work that lies ahead. I am hopeful that in the coming weeks and months we can build on the bipartisan efforts that took place in the last Congress.

With that, I will now recognize the senior Democratic member of the subcommittee, Representative Joe Courtney, for his opening remarks.

[The statement of Chairman Walberg follows:]

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

Good morning and welcome to our guests. We have assembled a distinguished panel of witnesses and thank you all for joining us this morning.

Today's hearing is part of an effort that began last Congress to improve the Federal Employees' Compensation Act. In 2011 the House passed with strong bipartisan support a package of reforms that would have strengthened the FECA program. Among other provisions, the bill would have improved administrative efficiency, modernized various benefits, and strengthened the overall integrity of the law. While the legislation did not become law, it still represents good public policy and reflects our commitment to addressing this issue in a bipartisan way.

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The second point the GAO report makes clear is that there are no easy answers. Fundamentally, we are talking about men and women who suffer an injury or illness while employed by the federal government. But as with any government program, there will be those who try to take advantage of the system. In an article entitled "Experts say fraud rampant in federal worker disability program," the Washington Examiner reveals a program plagued by waste, abuse, and inefficiencies. This is not acceptable, especially at a time when our nation faces a debt crisis.

Creating a program that prevents abuse by bad actors, reflects the realities of the 21st century, and provides adequate support to workers will require policymakers to make some tough choices, but we all agree maintaining the status quo is not an option. We have a responsibility to federal workers and federal taxpayers to create a stronger program, and I look forward to the work that lies ahead.

I am hopeful that in the coming weeks and months we can build on the bipartisan efforts that took place in the last Congress. With that, I will now recognize the senior Democratic member of the subcommittee, Representative Joe Courtney, for his opening remarks.

Mr. COURTNEY. Thank you, Mr. Walberg. Good morning.

And good morning to all the witnesses, and thank you for being here today.

And I want to thank you, Mr. Chairman, for calling this hearing to discuss the Federal Employees' Compensation Act, or FECA.

FECA has been the governing statute providing benefits for federal civilian workers injured or killed on the job since 1916. Not only does it provide compensation for lost wages, medical care, and vocational rehabilitation, but it also ensures that disabled workers are not impoverished while their claims are being processed by continuing their pay for 45 days following an injury.

This committee has primary jurisdiction over workers' compensation laws and it has overseen and repeatedly improved FECA since 1949.

At the outset it is worth noting some of the key principles which underpin this law. First, workers and their families should be no worse off, and no better off, than if the worker had not been injured or made ill in the course of their federal service. Those who are disabled from their work on behalf of the American people should not be forced to bear any of that cost.

Second, since workers surrender their right to bring tort claims against the government for work-related injuries, they need to be fairly compensated in a timely manner with benefits administered in a non-adversarial manner. Civilian workers from all three branches of government are and should be treated equally under FECA, whether they are firefighters, overseas food inspectors, law enforcement officers, or postal workers.

This hearing follows a bipartisan effort by this committee in the last Congress, the 112th Congress, to enact consensus reforms that improved program integrity, modernized benefits that have not been updated since 1949, expanded the availability of medical providers, and provided civilian federal workers who are injured in a zone of armed conflict with an additional 90 days to receive pay while they receive a FECA claim. These reforms were reported out of committee in July 2011 as the Federal Workers' Compensation Modernization and Improvement Act, H.R. 2465, and passed the House by voice vote in November of 2011, which is no mean feat in the 112th Congress or the 113th Congress. Regrettably, however, this legislation was not adopted by the Senate.

Mr. Chairman, I hope that bill will serve as a foundation on which to build a bipartisan reform effort moving forward.

Today's hearing will review the Department of Labor's proposal to, quote—"redesign," benefits under FECA. DOL's proposal reduces the compensation rate for permanently disabled workers at retirement age, reduces benefits for those with families, and lowers the cap on benefits for widows and orphans of federal workers killed on the job.

In July 2011, this committee jointly asked the Government Accountability Office to assess whether injured workers in the Federal Employee Retirement System would wind up worse off under the DOL's proposal than if they worked a full career and had never been injured. In late 2012, GAO issued three reports covering impacts to federal workers, postal workers, and partially disabled workers.

Included in these reports was the finding that cutting FECA benefits for permanently disabled workers at retirement age would leave them with 31 percent to 35 percent less than the median benefit package they would have earned if they had never been injured. To date, the Department of Labor has not modified its proposals in response to these GAO reports.

I hope today's hearings will explore GAO's findings and help us understand whether we can expect any changes to the Department of Labor's proposal.

Again, I want to thank the witnesses for their preparation and extend my appreciation for those who have had to travel a long distance to be with us at this hearing.

I yield back the balance of my time.

[The statement of Mr. Courtney follows:]

Prepared Statement of Hon. Joe Courtney, Ranking Member, Subcommittee on Workforce Protections

Chairman Walberg, thank you for calling this hearing today to discuss the Federal Employees' Compensation Act, or FECA.

FECA has been the governing statute providing benefits for federal civilian workers injured or killed on the job since 1916. Not only does it provide compensation for lost wages, medical care, and vocational rehabilitation, but it also ensures that disabled workers are not impoverished while their claims are being processed, by continuing their pay for 45 days following an injury. This Committee has primary jurisdiction over workers' compensation laws, and has overseen and repeatedly improved FECA since 1949.

At the outset, it is worth noting some the key principles which underpin this law:

- First, workers and their families should be no worse off, and no better off, than if the worker had not been injured or made ill in the course of their federal service. Those who are disabled from their work on behalf of the American people should not be forced to bear any of that cost.
- Second, since workers surrender their right to bring tort claims against the government for work-related injuries, they need to be fairly compensated in a timely manner, with benefits administered in a non-adversarial manner.
- Civilian federal workers from all three branches of government are and should be treated equally under FECA, whether they are firefighters, overseas food inspectors, law enforcement officers, or postal workers.

This hearing follows a bipartisan effort by this Committee in the 112th Congress to enact consensus reforms that improved program integrity, modernized benefits that had not been updated since 1949, expanded the availability of medical providers, and provided civilian federal workers who are injured in a zone of armed conflict with an additional 90 days to receive pay while they file a FECA claim. These reforms were reported out of Committee in July 2011 as the Federal Workers' Compensation Modernization and Improvement Act, H.R. 2465, and passed the House by voice in November 2011. Regrettably, this legislation was not adopted by the Senate.

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To date, the Department of Labor has not modified its proposals in response to these GAO reports. I hope today's hearing will explore GAO's findings and help us understand whether we can expect any changes to the Department of Labor's proposal.

I want to thank the witnesses for their preparation, and extend my appreciation for those who had to travel a long distance to be with us at this hearing.

I yield back the balance of my time.

Chairman WALBERG. I thank the gentleman.

Pursuant to committee rule, all members will be permitted to submit written statements to be included in the permanent hearing record; and without objection the hearing record will remain open for 14 days to allow statements, questions for the record, and other extraneous material referenced during the hearing to be submitted in the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses.

Mr. Scott Szymendera is from the Congressional Research Service in Washington, D.C. and is not a stranger to this committee.

Mr. Gary Steinberg is the acting director of the Office of Workers' Compensation Programs at the U.S. Department of Labor in Washington, D.C.

Welcome.

Mr. Andrew Sherrill is the director of education, workforce, and income security at the U.S. Government Accountability Office in Washington, D.C.

And welcome.

Dr. Seth Seabury is the longest-traveling member of this panel, is an associate professor in the Department of Emergency Medicine at the University of Southern California's Keck School of Medicine in Los Angeles, California.

Welcome.

Before I recognize each of you to provide your testimony let me briefly explain our lighting system. Green, yellow, red. You know the rule on that.

Five minutes of testimony. The yellow comes on with a minute remaining; seek to wrap it up as quickly as possible. And when the red light comes on cut it off as quickly as possible.

We will have opportunity to ask questions. The same will be held for our committee members and we will have opportunity to ask those 5 minutes of questions.

And so now let me recognize Mr. Szymendera for your opening comments?

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

Mr. SZYMENDERA. Thank you.

Chairman Walberg, Ranking Member Courtney, and members of the subcommittee, my name is Scott Szymendera and I am an analyst at the Congressional Research Service. Thank you for inviting CRS to testify before the Subcommittee on Workforce Protections on the Federal Employees' Compensation Act, the workers' compensation system for federal employees administered by the Department of Labor.

The FECA program began in 1916 and has not been significantly amended since 1974. The testimony of CRS today will focus on two provisions of the Department of Labor's FECA reform proposal: the elimination of augmented compensation for dependents coupled with an increase in the base rate of compensation, and the creation of a lower benefit rate for workers who receive benefits after reaching retirement age.

Under current law, the basic benefit rate used to determine the amount of a person's FECA compensation is two-thirds of the worker's pre-disability wage. However, if the worker has any dependent children or a spouse the worker is eligible for augmented compensation, bringing the total rate of compensation to 75 percent of the worker's pre-disability wage.

The Department of Labor's proposal would eliminate augmented compensation in cases in which a worker has a dependent child or spouse. In addition, the proposal would raise the basic benefit level for all workers regardless of whether or not they have any dependents or a spouse to 70 percent of the worker's pre-disability wage.

In the majority of state workers' compensation systems the basic permanent total disability benefit is two-thirds of a worker's wage at the time of disability. Currently, 38 states and the District of Columbia, as well as the federal Longshore and Harbor Workers'

Compensation Act, have total disability benefit rates that are set at this level. The FECA augmented compensation rate of 75 percent is higher than that paid by any comparable state workers' compensation system except Texas, which also has a 75 percent benefit rate.

When comparing benefit levels between the FECA program and other workers' compensation programs it is important to also consider the maximum benefits available to workers. Every workers' compensation system has a limit on the amount of weekly or monthly compensation that any given beneficiary may receive.

The maximum FECA benefit is based on 75 percent of the GS-15 Step 10 pay rate without any locality adjustments, whereas state maximums are generally based on state average wages. Thus, the maximum available benefits under FECA are greater than under any state workers' compensation program or under the federal Longshore and Harbor Workers' Compensation Act.

Under current law, FECA benefits for permanent total disability are payable for the duration of the worker's disability or for his or her lifetime. Benefits under FECA, unlike federal pension benefits, are not subject to taxation.

In addition, FECA beneficiaries covered by the Federal Employees Retirement System may not contribute to either Social Security or the Thrift Savings Plan while receiving FECA benefits. Thus, these employees, especially those who were permanently disabled early in their federal careers, may only be entitled to low Social Security benefit amounts and may have low TSP balances to draw from upon retirement.

Permanent total disability benefits under FECA have always been payable for the duration of disability or the life of the worker. However, as part of the 1949 FECA amendments Congress required the FECA program administrator to review the wage-earning capacity of all beneficiaries upon reaching age 70 and granted the administrator the authority to reduce a worker's benefits upon reaching age 70 if, in the opinion of the government, the worker's wage-earning capacity had been reduced because of age independent of his or her disability. This provision was removed by the 1974 FECA amendments.

The Department of Labor's proposal would create a new conversion entitlement benefit for FECA beneficiaries who reach Social Security, full retirement age, and have received FECA benefits for at least 1 year. The conversion entitlement benefit would be set at 50 percent of the worker's pre-disability wage and, like all FECA disability benefits, would be exempt from taxation.

In 39 states and under the federal Longshore and Harbor Workers' Compensation Act, workers' compensation benefits for permanent total disabilities are paid for the duration of disability or the life of the worker. Thus, the FECA program is currently in line with the practices of a majority of the workers' compensation systems in the country.

In the remainder of the states, benefits terminate after a set duration, when the worker reaches a certain age, or when total benefits paid reach a certain level. North Dakota is the only state that currently converts a worker's benefit to a lower benefit at retirement age.

This concludes the testimony of the Congressional Research Service. I will be happy to answer any questions that the subcommittee may have.

[The statement of Mr. Szymendera follows:]

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

CHAIRMAN WALBERG, RANKING MEMBER COURTNEY, AND MEMBERS OF THE SUBCOMMITTEE: My name is Scott Szymendera and I am an analyst at the Congressional Research Service (CRS). Thank you for inviting CRS to testify before the Subcommittee on Workforce Protections on the Federal Employees' Compensation Act (FECA), the workers' compensation system for federal employees administered by the Department of Labor.

Since 1916, federal employees have been protected from economic losses associated with employment-related injuries and illnesses and their families have been protected in cases of employment-related deaths by FECA. My testimony today will focus on two provisions of the Department of Labor's FECA reform proposal: the elimination of augmented compensation for dependents coupled with an increase in the base rate of compensation; and the creation of a lower benefit rate for workers who receive benefits after reaching retirement age.[1]

Brief Overview of FECA[2]

In FY2012, there were 97,238 new, non-denied FECA cases created.[3] Of these cases, 48,967 involved lost time from work and 48 were cases of workplace fatalities.[4] During FY2012 the FECA program paid $3.025 billion in benefits, including over $1.956 billion in disability compensation, $929 million in medical and vocational rehabilitation services, and $140 million in survivors benefits.[5]

Statutory and Regulatory Authorities

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

Program Financing

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

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

Employees Covered by FECA

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

Conditions Covered by FECA

Under FECA, workers' compensation benefits are paid to any covered employee for any disability or death caused by any injury or illness sustained during the employee's work for the federal government. There is no list of covered conditions nor is there a list of conditions that are not covered. However, conditions caused by the willful misconduct or intoxication by alcohol or any other drug of the employee are not covered by FECA.

FECA Claims Process

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

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

FECA Compensation Benefits

Continuation of Pay

In the case of a traumatic injury, an employee is eligible for Continuation of Pay for up to 45 days.[6] Continuation of pay is paid by the employing agency and is equal to 100% of the employee's rate of pay at the time of the traumatic injury. Since continuation of pay is considered salary and not compensation, it is taxed and subject to any deductions normally made against the employee's salary.

Partial Disability

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

- if the employee is single and without dependents, a monthly benefit equal to two-thirds of the difference between the employee's pre-disability and post-disability monthly wage; or
- if the employee has a spouse or at least one dependent, a monthly benefit equal to 75% of the difference between the employee's pre-disability and post-disability monthly wage.

The compensation benefits paid for partial disability are capped at 75% of the maximum basic pay at rate GS-15 (GS-15, Step 10), are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.

Scheduled awards

In cases in which an employee suffers a permanent partial disability, such as the loss of a limb, he or she is entitled to a scheduled benefit which pays benefits for a set period of time provided in statute or regulation.[7] The scheduled benefit is in addition to any other partial or total disability benefits received and an employee may receive a scheduled award even if he or she has returned to full-time work.

Total Disability

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

- if the employee is single and without dependents, a monthly benefit equal to two-thirds of the employee's pre-disability monthly wage; or
- if the employee has a spouse or at least one dependent, a monthly benefit equal to 75% of the employee's pre-disability monthly wage.

The compensation benefits paid for total disability are capped at 75% of the maximum basic pay at rate GS-15 (GS-15, Step 10), are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.[8] Benefits are payable until it is determined that the employee is no longer totally disabled and may continue until the employee's death.

Death

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

- if the employee's spouse has no children, then the spouse is eligible for a monthly benefit equal to 50% of the employee's monthly wage at the time of death;
- if the employee's spouse has one or more children, then the spouse is eligible for a monthly benefit equal to 45% of the employee's monthly wage at the time of death and each child is eligible for a monthly benefit equal to 15% of the employee's monthly wage at the time of death, up to a maximum family benefit of 75% of the employee's monthly wage at the time of death.

Special rules apply in cases in which an employee dies without a spouse or children or with only children or a spouse remarries after the death of the worker. Benefits for a child end at age 18, or age 23 if the child is still in school. A child's benefits continue for life if the child is disabled and incapable of self-support.

The compensation benefits paid for death are capped at 75% of the maximum basic pay at rate GS-15 (GS-15, Step 10), are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.[9]

FECA Medical Benefits

Under FECA, all medical costs, including medical devices, therapies and medications, associated with the treatment of a covered injury or illness are paid for, in full, by the federal government. Generally, a beneficiary may select his or her own medical provider and is reimbursed for the costs associated with transportation to receive medical services. A FECA beneficiary who is blind, paralyzed, or otherwise disabled such that he or she needs constant personal attendant care may receive an additional benefit of up to $1,500 per month.

Vocational Rehabilitation

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

Department of Labor's FECA Reform Proposal

The Department of Labor has proposed a package of reforms to the FECA program intended to improve the return-to-work rate and rehabilitation of injured federal workers; update the FECA benefit structure; and modernize the program which has not been significantly amended since 1974.[10] Included in the Department of Labor's reform proposal are the following two provisions that, if enacted, would make significant changes to the structure of disability benefits paid by the FECA program:

1. elimination of augmented compensation for dependents and the creation of a new uniform basic benefit rate of 70% of the worker's pre-disability wage; and
2. conversion of FECA beneficiaries to a new benefit rate of 50% of the workers' pre-disability wage upon reaching Social Security full retirement age.[11]

My testimony will focus on these two provisions.

Elimination of Augmented Compensation and Creation of a New Uniform Basic Benefit Rate

Current Law

Under current law, the basic benefit rate used to determine the amount of a person's FECA compensation is two-thirds (66.67%) of the workers' pre-disability wage. However, if the worker has any dependent children or a spouse, the worker is eligible for augmented compensation in the amount of 8.33% of his or her pre-disability wage bringing the total rate of compensation to 75% of the worker's pre-disability wage. In the case of a total disability, a worker's benefit is equal to either of these two basic benefit amounts (66.67% or 75%) and in the case of a partial disability; the amount of benefits is a percentage of either of these two basic benefit amounts.

Legislative History

The FECA basic benefit rate of two-thirds of a worker's pre-disability wage was part of the original FECA statute enacted in 1916[12] and was based on state workers' compensation laws in place at the time. In its report on the legislation, the House Judiciary Committee stated that the FECA benefit rates were "in line with the best precedents found in State compensation acts" especially those in Massachusetts, New York, and Ohio.[13]

Augmented compensation for workers with dependents or spouses was added to the FECA program as part of the Federal Employees' Compensation Act Amendments of 1949, P.L. 81-357. In their reports on the 1949 amendments, both the House Education and Labor Committee and the Senate Labor and Public Welfare Committee stated that augmented compensation for workers with dependents or spouses would recognize the "greater need" of disabled employees with dependents than single employees and would "serve to prevent families from falling behind financially during the crisis occasioned by industrial injury."[14] In addition, both the House and Senate committees cited the existence of augmented compensation for dependents in state workers' compensation laws as justification for this provision.[15]

Proposed Change

The Department of Labor's proposal would eliminate augmented compensation in cases in which a worker has a dependent child or spouse. In addition, the proposal would raise the basic benefit level for all workers, regardless of whether or not they have any dependents or a spouse, to 70% of the worker's pre-disability wage.

Comparison to Other Workers' Compensation Programs

Basic Benefit Rate

In the majority of state workers' compensation systems, the basic permanent total disability benefit is two-thirds of a worker's wage at the time of disability. Currently, 38 states and the District of Columbia have total disability benefit rates that are set at this level.[16] In addition, benefits under the federal Longshore and Harbor Workers' Compensation Act are also set at two-thirds of the pre-disability wage.[17] New Hampshire's benefit rate is 60% of the worker's pre-disability wage.

Currently, four states have total disability benefit rates that are based on pre-disability or average wages that exceed the two-thirds standard. In New Jersey and Oklahoma, benefits are paid at 70% of the worker's wage at the time of injury whereas benefits in Texas are based on 75% of the worker's average wage.[18] In Ohio, benefits are paid at 72% of the pre-disability wage for the first 12 weeks, and then are reduced to the standard two-thirds rate.

Six states—Alaska, Connecticut, Iowa, Maine, Michigan, and Rhode Island—base benefits on net, rather than gross wages. It is generally not possible to compare these benefits to FECA benefits because of differences in tax rates that affect net income. In Washington, the basic benefit rate ranges between 60% and 75% of wages and the value of certain employee-provided benefits at the time of injury depending on the number of dependents.

Because of the augmented compensation provision of the FECA program, beneficiaries with dependents, including spouses, may receive total disability benefits at a rate of 75% of their pre-disability wages. No state pays augmented compensation for dependents, and the 75% benefit rate is higher than that paid by the federal Longshore and Harbor Workers' Compensation Act or any comparable state workers' compensation system except Texas.

The uniform basic FECA benefit rate of 70% of the worker's pre-disability wage proposed by the Department of Labor would be higher than the basic benefit rates in 39 states, the District of Columbia, and under the federal Longshore and Harbor Workers' Compensation Act; equal to the basic benefit rates in New Jersey and Oklahoma; and lower than the basic benefit rates in Texas and for the first 12 weeks of benefits in Ohio.

Maximum Benefits

When comparing benefit levels between the FECA program and other workers' compensation programs, it is important to also consider the maximum benefits available to workers. Every workers' compensation system has a limit on the amount of weekly or monthly compensation that any given beneficiary may receive. Because of these benefit maximums, some workers may not receive the full benefits that they would otherwise be entitled to based solely on their pre-disability income level. When comparing maximum benefits available, it is important to note that while these are the maximum benefits available, the individual benefits available to each claimant are based on that claimant's individual circumstances and pre-disability wage and that absent additional data, it is not possible to estimate the number of claimants in FECA program or any other workers' compensation system whose benefits are reduced because they reach the program's maximums.

The maximum FECA benefit is based on 75% of the GS-15, Step 10 pay rate, without any locality adjustments, whereas state maximums are generally based on state average wages or the worker's own pre-disability wage. For 2013, the annual salary at GS-15, Step 10, is $129,517, whereas the average federal salary for the executive branch in December 2012 was $76,913.[19] Thus, the maximum FECA benefit under the current system is higher than it would be if the FECA system based its maximum benefit level on average wages as is the case in the majority of the states.

The maximum FECA benefit, when calculated on a per-week basis is $1,868 which is higher than the current maximum weekly benefit available in any state or under the federal Longshore and Harbor Workers' Compensation Act. For example, the maximum weekly benefit for non-federal workers in the District of Columbia is based on 100% of the District's average weekly wage and is currently $1,416, or approximately 76% of the FECA maximum.[20] In Mississippi, the state with the lowest maximum benefit for permanent total disability, the maximum weekly benefit is based on two-thirds of the state's average weekly wage and is currently $449.12, or 24% of the FECA maximum.[21] In Texas, the only state that matches the augmented FECA compensation level of 75% of a workers' pre-injury wage, the weekly maximum for permanent total disability benefits (referred to as Lifetime Income Benefits in Texas) is based on 100% of the state's average weekly wage and is currently $818, or 44% of the FECA maximum.[22]

Conversion of Benefits at Retirement Age

Current Law

Under current law, FECA benefits for permanent total disability are payable for the duration of the worker's disability, or for his or her lifetime. There is no maximum duration of FECA benefits and workers are given the option of converting from FECA to their federal employee retirement system, but are not required to do so.

Benefits under FECA, unlike federal pension benefits, are not subject to taxation. In addition, FECA beneficiaries covered by the Federal Employees' Retirement System (FERS) may not contribute to either Social Security or the Thrift Savings Plan (TSP) while receiving FECA benefits.[23] Thus, these employees, especially those who were permanently disabled early in their federal careers, may only be entitled to low Social Security benefit amounts and may have low TSP balances to draw from upon retirement.[24]

Because the cost of FECA benefits are charged back to each employee's host agency, the costs of providing FECA benefits to employees after they likely would have retired from the federal government is borne by those employees' host agencies and must be paid annually out of those agency's budgets. Unlike in the case of federal retirement benefits, there is no cost-sharing by the employees themselves who pay a portion of their federal retirement through payroll contributions.

Legislative History

1949 AMENDMENTS

Permanent total disability benefits under FECA have always been payable for the duration of disability or the life of the worker. However, as part of the 1949 FECA amendments, Congress required the FECA program administrator to review the wage-earning capacity of all beneficiaries upon reaching age 70 and granted the administrator the authority to reduce a worker's benefits upon reaching age 70 if, in the opinion of the government, the worker's wage-earning capacity had been reduced because of age, independent of his or her disability.

This provision was opposed by several representatives from federal employee organizations who testified before the House Education and Labor Committee that such a provision was inconsistent with the mandatory federal employee retirement age of 70 in place at the time and could cause undue hardships to workers who, because of their disabilities, had not been able to reach their full earning potential or who had reduced pensions because of many years of limited or no earnings.[25] In addition, the Department of Labor testified in opposition to this provision and stated:

Workmen's compensation is not supposed to be predicated upon the financial needs of an employee depending upon the particular stage of life through which he is passing. It is predicated on the basis of his lost wage-earning capacity at the time he suffered the disability, and this compensation is, and should be, completely unrelated to his longevity. Moreover, simple justice, it seems to me, would require that a worker whose income has been reduced for a period of time, who may have been denied the opportunity because of his injury to augment his wages through promotions, should not be further penalized in his later years by a downward revision of his disability payments. Moreover, the wage-earning capacity of an employee may have been considerably greater in his later years had he not been injured than it was at the time of the accident, so that a recomputation on the basis of what he was actually earning, when injured, rather than on the basis of his probable wage-earning capacity, would hardly constitute a fair and equitable mode of determining the benefits to be paid a disabled worker after he has attained the age of 70.[26]

1974 AMENDMENTS

The provision requiring that FECA benefits be reviewed and permitting FECA benefits to be reduced after a beneficiary reached age 70 to account for the reduced earning capacity that may come with age independent of any disability was removed by the Federal Employees' Compensation Act Amendments of 1974, P.L. 93-416. In its report on the 1974 amendments, the Senate Committee on Labor and Public Welfare provided the following justification for eliminating the reduced benefit provision:

The Committee finds that such a review places an unnecessary burden on both the employees receiving compensation and the Secretary. Further, the fact that an employee reaches 70 has no bearing on his or her entitlement to benefits and is considered discriminatory in the Committee's opinion.[27]

Proposed Change

The Department of Labor's proposal would create a new "Conversion Entitlement Benefit" for FECA beneficiaries who reach Social Security full retirement age and have received FECA benefits for at least one year. The Conversion Entitlement Benefit would be set at 50% of the worker's pre-disability wage and like all FECA disability benefits would be exempt from taxation. According to the Department of Labor, the goal of this new benefit is to more closely align FECA benefits after retirement age to benefits that would be paid under the federal retirement systems and remove the often significant financial incentive to employees to remain in the FECA program after retirement age.[28] Under this proposal, FECA beneficiaries would retain the right to choose between remaining in the FECA program with the reduced Conversion Entitlement Benefit, or leaving the FECA program and receiving their federal retirement benefits.

Comparison to Other Workers' Compensation Systems

In 39 states and under the federal Longshore and Harbor Workers' Compensation Act, workers' compensation benefits for permanent total disabilities are paid for the duration of disability or the life of the worker.[29] Thus, the FECA program is currently in line with the practices of a majority of the workers' compensation systems in the country.

In three states—Indiana, North Carolina,[30] and South Carolina—and the District of Columbia, workers' compensation benefits for permanent total disabilities terminate after a set number of weeks of benefit receipt. For example, in Indiana, benefits are terminated after 500 weeks. In four additional states—Florida, Montana, Tennessee, and West Virginia—benefits terminate when the beneficiary reaches an age provided in statute, such as age 75 in Florida. Benefits in Kansas are terminated once a beneficiary has received a total lifetime amount of benefits and termination in Mississippi comes either after a set number of weeks or after a total amount of benefits has been received. Benefits in Georgia are paid for the duration of disability only in cases of catastrophic injuries. In other cases, such as occupational illnesses, benefits terminate after 400 weeks.

North Dakota is the only state that converts a worker's benefit to a lower benefit at retirement age. In North Dakota, once a worker reaches Social Security full retirement age, his or her workers' compensation disability benefits are terminated and replaced with an "Additional Benefit Payable" that ranges from 5% of the worker's previous benefit for workers who were disabled for less than three years to 50% of the previous benefit for workers who were disabled for more than 30 years.[31] The Additional Benefit Payable is payable for a length of time equal to the length of time that the worker received workers' compensation benefits.

ENDNOTES

[1] For additional information on the Department of Labor's FECA reform proposal see Department of Labor, FY2014 Congressional Budget Justification, Office of Workers' Compensation Programs, Overview, February 2013, pp. 4-5; and U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Workforce Protections, Reviewing Workers' Compensation for Federal Employees, 112th Cong., 1st sess., May 12, 2011, H.Hrg. 112-22 (Washington: GPO, 2011), statement of Gary Steinberg. For an analysis of the Department of Labor's FECA reform proposal see U.S. Government Accountability Office, Federal Employees' Compensation Act: Analysis of Proposed Program Changes, GAO-13-108, October 2012.

[2] For a more complete overview of the FECA program see CRS Report R42107, The Federal Employees' Compensation Act (FECA): Workers' Compensation for Federal Employees, by Scott Szymendera; and U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Workforce Protections, Reviewing Workers' Compensation for Federal Employees, 112th Cong., 1st sess., May 12, 2011, H.Hrg. 112-22 (Washington: GPO, 2011), statement of Scott Szymendera.

[3] The number of new non-denied FECA cases includes all new injury, illness, and fatality cases submitted to the Department of Labor, less any denied cases. The Department of Labor reports a total of 115,697 new FECA cases created in FY2012 [Department of Labor, Office of Workers' Compensation Programs, Division of Federal Employees' Compensation: About our Program, *http://www.dol.gov/owcp/dfec/about.htm]*.

[4] Department of Labor, Occupational Safety and Health Administration, Federal Injury and Illness Statistics for Fiscal Year 2012, *http://www.osha.gov/dep/fap/statistics/fedprgms—stats12—final.html*.

[5] Department of Labor, Office of Workers' Compensation Programs, Division of Federal Employees' Compensation: About our Program, *http://www.dol.gov/owcp/dfec/about.htm*.

[6] Certain groups, including federal jurors, Peace Corps volunteers, and Civil Air Patrol members, are not eligible for continuation of pay. Employees of the United States Postal Service must satisfy a three-day waiting period before becoming eligible for continuation of pay.

[7] The list of FECA scheduled benefits are provided in statute at 5 U.S.C. § 8107(c) and in regulation at 20 C.F.R. § 10.40(a).

[8] Currently 21 states, the District of Columbia, and the federal Longshore and Harbor Workers' Compensation Act provide some form of a cost-of-living adjustment to permanent total disability benefits.

[9] The personal representative of the deceased may also be eligible for reimbursement of certain costs associated with terminating the deceased employee's formal relationship with the federal government, funeral expenses, and costs associated with shipping a body from the place of death to the employee's home. In addition, any employee killed while working with the military in a contingency operation is also entitled to a special gratuity payment of up to $100,000 payable to his or her designated survivors and employees of certain agencies such as the State Department may be eligible for additional death gratuities administered by their agencies for deaths that occur overseas.

[10] U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Workforce Protections, Reviewing Workers' Compensation for Federal Employees, 112th Cong., 1st sess., May 12, 2011, H.Hrg. 112-22 (Washington: GPO, 2011), statement of Gary Steinberg.

[11] The Social Security full retirement age ranges from 65 for persons born in 1937 or earlier to 67 for persons born in 1960 or later. For additional information on the full retirement age see CRS Report R41962, Fact Sheet: The Social Security Retirement Age, by Gary Sidor.

[12] Federal Employees' Compensation Act, P.L. 64-267.

[13] U.S. Congress, House Committee on the Judiciary, Compensation of Government Employees Suffering Injuries While on Duty, report to accompany H.R. 15316, 64th Cong., 2nd sess., May 11, 1916, H. Rept. 64-678 (Washington: GPO, 1916), pp. 7-9.

[14] U.S. Congress, House Committee on Education and Labor, Amendments to Federal Employees' Compensation Act, report to accompany H.R. 3141, 81st Cong., 1st sess., June 6, 1949, H. Rept. 81-729 (Washington: GPO, 1949), p. 9; and U.S. Congress, Senate Labor and Public Welfare, Amendments to Federal Employees' Compensation Act, report to accompany H.R. 3141, 81st Cong., 1st sess., August 4, 1949, S. Rept. 81-836 (Washington: GPO, 1949), p. 19.

[15] At the time of this legislation, 10 states and the Territory of Alaska provided some sort of augmented compensation to disability benefits in cases in which workers had dependents [Department of Labor, State Workmen's Compensation Laws as of October 1, 1948, Bulletin No. 99, Washington, DC, October 1948, p. 20].

[16] Workers' Compensation Research Institute and International Association of Industrial Accident Boards and Commissions, Workers' Compensation Laws as of January 2012, Cambridge, MA, March 2012, Table 5.

[17] For additional information on the Longshore and Harbor Workers' Compensation Act see CRS Report R41506, The Longshore and Harbor Workers' Compensation Act (LHWCA): Overview of Workers' Compensation for Certain Private-Sector Maritime Workers, by Scott Szymendera.

[18] In Texas, most private-sector employers may opt out of the workers' compensation system, but in doing so forfeit their protection from civil suits for workplace injuries, illnesses, and deaths.

[19] Information on the GS-15 salary rate taken from the website of the Office of Personnel Management (OPM) at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/gs.pdf*. Information on average federal salary taken from the OPM FedScope system online at *http://www.fedscope.opm.gov/*.

[20] District of Columbia Department of Employment Services, Workers' Compensation FAQ's, *http://does.dc.gov/node/192372*.

[21] Mississippi Workers' Compensation Commission, Mileage, Weekly Maximum and Lifetime Disability Rates, *http://www.mwcc.state.ms.us/faq/—rates.asp#2013*.

[22] Texas Department of Insurance, State Average Weekly Wage (SAWW) / Maximum and Minimum Weekly Benefits, *http://www.tdi.texas.gov/wc/employee/maxminbens.html*.

[23] P.L. 108-92, enacted in 2003, increased the FERS basic annuity from 1.0% of the individual's high-three years of average pay to 2.0% of high-three average pay for the duration of the period when the worker received FECA benefits. For additional information on this provision see CRS Report RS22838, Disability Retirement for Federal Employees, by Katelin P. Isaacs.

[24] For additional information on FERS see CRS Report 98-810, Federal Employees' Retirement System: Benefits and Financing, by Katelin P. Isaacs. For additional information on the relationship between FECA and federal retirement systems see U.S. Government Accountability Office, Federal Employees' Compensation Act: Analysis of Proposed Program Changes, GAO-13-108, October 2012.

[25] U.S. Congress, House Committee on Education and Labor, Special Subcommittee, Federal Employees' Compensation Act Amendments of 1949, hearing on H.R. 3191 and companion bills, 81st Cong., 1st sess., April 11-13 and May 2, 1949.

[26] Ibid., statement of John W. Gibson.

[27] U.S. Congress, Senate Committee on Labor and Public Welfare, Federal Employees' Compensation Act of 1970, report to accompany H.R. 13781, 93rd Cong., 2nd sess., August 8, 1974, S. Rept. 93-1081 (Washington: GPO, 1974), p. 7.

[28] U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Workforce Protections, Reviewing Workers' Compensation for Federal Employees, 112th Cong., 1st sess., May 12, 2011, H.Hrg. 112-22 (Washington: GPO, 2011), statement of Gary Steinberg.

[29] Workers' Compensation Research Institute and International Association of Industrial Accident Boards and Commissions, Workers' Compensation Laws as of January 2012, Cambridge, MA, March 2012, Table 5.

[30] In North Carolina benefits can be extended beyond 500 weeks if it is determined that the worker has sustained a total loss of wage-earning capacity.

[31] N.D. Cent. Code § 65-05-09.4. There is an exception to this provision for workers who can prove that they are not entitled to Social Security or any other type of retirement benefit.

Chairman WALBERG. I thank you.

Mr. Steinberg, recognize you for your 5 minutes?

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

Mr. STEINBERG. Thank you, sir.

Chairman Walberg, Ranking Member Courtney, and committee members, I appreciate the opportunity to meet with you again to discuss the Federal Employees' Compensation Act. On behalf of Acting Secretary Harris I would like to share a set of balanced proposals that would enhance our ability to assist beneficiaries to return to work, provide a more equitable array of benefits, and generally modernize the program.

Almost 97 years ago Congress enacted FECA to provide workers' compensation coverage to all federal employees and their survivors for disability or death due to a work-related injury. The faces of FECA include the postal worker who is hurt when her mail truck is hit driving and delivering the mail, the FBI agent who is killed in the line of duty, the VA nurse who hurts her back while lifting a patient, and the U.S. Forest Service firefighter who is injured while fighting a wildfire.

DOL's Office of Workers' Compensation Programs, OWCP, works hard to administer this non-adversarial program fairly, objectively, and efficiently. We seek to continuously improve quality and service delivery to our customers, enhance internal and external communications, and reduce cost to the taxpayers. This is fundamental to the achievement of our mission to protect the interests of workers who become injured or ill on the job, their families, and their employers by making timely, appropriate, and accurate decisions on claims, providing prompt payment of benefits, and helping injured workers return to gainful employment as early as is feasible.

We have made significant strides in disability management that has resulted in significant reduction in the average number of work days lost from the most serious injuries. Over the last 10 years the average number of work days lost due to serious injuries has declined by over 20 percent, producing an annual savings of $53 million. Our administrative costs are only 5 percent of the total program cost, far below the average of all states' health insurance programs, which is over 11 percent.

To further improve FECA we have made a comprehensive set of recommendations to Congress. I wish to highlight some today.

To help injured employees return to work we request authority to start vocational rehabilitation activities without waiting until the injury is deemed permanent in nature and a mandate to develop a return-to-work plan with claimants early in the rehabilitation process. These proposed changes will also have a positive impact on the government's ability to achieve the President's executive order on hiring individuals with disabilities.

We also suggest changes to the benefit structure. For example, the payment of schedule awards for the loss or loss of use of a limb, one's sight or hearing, is often very complicated and thus often delayed. We think that these awards should be paid by DOL concurrently with wage loss compensation, made more rapidly, and to be fair, should be calculated at a uniform level for all federal employees. We also propose to increase benefit levels for burial expenses and facial disfigurement.

Under current law, the majority of injured workers receive wage replacement at 75 percent of their salary, tax free and COLAed. This rate is higher than the take-home pay of many federal workers who are working each day and this can serve as an obstacle to the department's efforts to encourage every worker to overcome their injuries and to go back to work.

We therefore recommend shifting the benefit level for all new claimants to 70 percent. Paying a non-retirement age beneficiaries at a single 70 percent rate would also simplify the process for both claimants and OWCP by eliminating the continuing need to obtain and validate documentation regarding dependent eligibility. A single rate would be simpler and more equitable and would produce significant savings to the taxpayers.

To provide equity to other federal employees we also recommend establishing a lower conversion rate for beneficiaries beyond Social Security retirement age which would more closely mirror OPM retirement rates. It should be noted that we recommend these changes be prospective in nature, not retrospective.

My written testimony outlines other important provisions that would streamline and improve the program.

In summary, while FECA is the model workers' compensation system, it does have limitations that need to be addressed. The reforms that we suggest today are not new. They have been proposed by both current and previous administrations.

They are careful; they are balanced; they are well researched; and they reflect good government while producing a 10-year savings of over $500 million. These changes will bring the program into the 21st century.

Thank you again for the opportunity to meet with you today. I will be pleased to answer any questions that you may have.

[The statement of Mr. Steinberg follows:]

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

CHAIRMAN, RANKING MEMBER, AND MEMBERS OF THE SUBCOMMITTEE: Thank you for inviting me to this important hearing today. As you know, the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) administers a number of workers' compensation programs, including the Federal Employees' Compensation Act (FECA) program, 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 97 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 beneficiaries include the Postal worker whose mail truck is hit while he is delivering mail, the Federal Bureau of Investigation (FBI) agent injured or killed in the line of duty, and the Department of Veterans Affairs nurse who hurts her back while lifting patients. All of these employees will receive benefits provided by this Act.

Since FECA has not been significantly amended in almost 40 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 and adopt best practices in State systems, while producing potential cost savings of more than $500 million over a 10-year period on a government wide basis. 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 internal studies, the Government Accountability Office (GAO), the DOL Inspector General, as well as discussions with the Office of Personnel Management and other partner and stakeholder organizations over the past 30 years. Over the past few years, 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 employee's 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 generally tax free; long-term benefits are escalated for inflation after the first year of receipt, however, the program is not designed to compensate for missed career growth resulting from employment interruptions due to injury.

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 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 2012 chargeback year, which ended on June 30, 2012, the Fund paid more than $2.1 billion in wage-loss compensation, impairment, and death benefits and another $901.9 million to cover medical and rehabilitation services and supplies. These totals include outlays for non-chargeable costs for war risk hazards that total $54.5 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.

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). In those situations where it is unlikely that a claimant may return to work due to their work related medical condition, eligible claimants may elect OPM disability or retirement benefits.

Those injured workers who choose to remain in the FECA program 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. OWCP is also working with the Department of Labor's Employment and Training Administration (ETA) to provide current FECA claimant lists to State Unemployment Agencies to help them address their offset requirements.

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. Under the Protecting Our Workers & Ensuring Reemployment (POWER) initiative, we have partnered with the Occupational Safety and Health Administration (OSHA) and other federal agencies to improve timely filing of claims and reduce the number and severity of injuries. By speeding the average time it takes for federal employees to return to work after an injury, OWCP saves the government millions of dollars just in the first year of the injury; this also helps avoid placing them on long term disability status, which can last much longer.

OWCP continually employs a variety of strategies available within the confines of the FECA to strengthen the program. For FY14, OWCP has requested increased funding to further enhance FECA program integrity. This dedicated funding will be utilized to establish an operation which will identify areas of improper payment vulnerability, develop strategies for preventing improper payments, and enhance our payment recapture program to recover overpayments due to error or fraud in compensation payments.

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 125,000 new injury and illness claims were filed annually and processed by OWCP. The acceptance rate for new injury claims in 2012 was 86%. Ninety percent (90%) were submitted within program timeliness standards of 10 working days and approximately 97% were processed by OWCP within program timeliness standards, which vary depending on the complexity of the injury.

Fewer than 17,000 of the accepted claims per year involve a significant period of disability. Eighty-five percent (85%) of these claimants return to work within the first year of injury and 91% 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 receive long term ongoing disability benefits for partial or total wage loss, which they receive every four weeks.

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 have 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 adversely 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 OWCP currently has the authority under FECA to provide vocational rehabilitation services and to direct permanently injured employees to participate in vocational rehabilitation, our proposal removes 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. Since disabled Federal workers with skills transferable to jobs within the general labor market may in some cases prove difficult to place, 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. 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, especially for those less likely to return to work without additional supports. We are working closely with OPM, DOL's Office of Disability Employment Policy (ODEP), 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 disabilities 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 significant physical limitations, these disincentives will exact a high price. That high price means a more costly program, lost productivity to the employing agency, and, for the workers themselves, disrupted lives and diminished self-esteem.

As currently structured, FECA creates direct disincentives to return to work in two significant ways. The first and most far-reaching is that while the basic rate of FECA compensation, 66⅔%, is comparable to most state systems, the majority of Federal employees receive an augmented benefit, 75%, reflecting at least one dependent. Few state systems provide any augmentation for dependents, and none approaches the Federal level.

As outlined in GAO's 2012 report on the FECA, specifically the "Analysis of Proposed Changes on USPS Beneficiaries," there is no consensus on the appropriate wage replacement rate for workers' compensation programs and such decisions involve balancing goals of benefit adequacy and incentives to return to work. We therefore suggest amending the FECA such that all claimants receive compensation at one uniform level of 70%. This compensation adjustment would reduce disincentives 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, in certain cases, may adhere 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.

The Administration's proposal would provide 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.

As the GAO report referenced numerous times, the FECA, like all workers' compensation programs in general, is not designed to compensate for missed career growth due to employment interruptions due to injury; however, this proposed conversion 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 $53,639 (approximate 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 the incentive to switch 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. The expansion and enhancement of this benefit is a vital part of our reform proposal that was not addressed in the GAO's analysis. Allowing for the concurrent receipt of and establishing a uniform pay rate for schedule awards will serve to protect the income security of long term injured federal workers, and can mitigate against the consequences of lost career growth especially for those who are at lower grade levels and are injured early in their careers.

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 almost 40 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)—the imposition of an upfront waiting period. 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 seeks authority to include these amounts.

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 and 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. We believe that our proposals, if adopted in their entirety, 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 benefits. Even with this prospective approach, cost savings are estimated to be in excess of $500 million over a 10-year period government-wide.

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

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

Chairman WALBERG. Thank you. Appreciate it.

Mr. Sherrill, we recognize you now for your 5 minutes of testimony?

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

Mr. SHERRILL. Chairman Walberg, Ranking Member Courtney, and members of the subcommittee, I am pleased to be here today to discuss the findings from several of GAO's recently issued reports on the potential effects of proposed changes to benefit levels in the FECA program.

Under the current program, total disability beneficiaries with an eligible dependent are compensated at 75 percent of gross wages at the time of injury, and those without are compensated at 66.66 percent. Benefits are adjusted for inflation and they are not taxed nor subject to age restrictions. Some policymakers have raised questions about the level of FECA benefits, especially compared to federal retirement benefits.

My testimony today summarizes our findings in three areas: first, potential effects of the proposals to compensate total disability FECA beneficiaries at a single rate of either 70 percent or 66.66 percent; second, potential effects of the FECA proposal to reduce FECA benefits to 50 percent of applicable wages at full Social Security retirement age for total disability beneficiaries; and three, how partial disability beneficiaries might fare under the proposed changes.

Our analyses focused on individuals covered under the Federal Employees Retirement System, or FERS, which covered about 85 percent of the federal workforce in 2009. We conducted simulations comparing FECA benefits to the income—either take-home pay or retirement benefits—that a total disability beneficiary would have had absent an injury.

Our methodology matched FECA beneficiaries to uninjured federal workers with similar characteristics and we used actual data on the uninjured workers' earnings and retirement benefits. In addition, we conducted seven case studies of partial disability beneficiaries.

Our simulations comparing FECA benefits to take-home pay for total disability beneficiaries found that current FECA benefits replaced about 88 percent of the 2010 take-home pay for Postal Service beneficiaries and about 80 percent for non-postal beneficiaries. Proposals to set initial FECA benefits at a single compensation rate regardless of the presence of dependents would reduce these wage replacement rates by several percentage points.

We also found that wage replacement rates under the current FECA program are slightly higher for beneficiaries with dependents but that under the single rate compensation proposals they would be higher for beneficiaries without dependents, and the differences would be greater. This reflects the fact that FECA benefits are not taxed, where as wages are, allowing individuals with dependents to keep a greater portion of their earnings and have greater take-home pay.

Our simulations comparing FECA and FERS found that under the current FECA program the median FECA benefit package is higher than the median 2010 FERS benefit package and that under the proposed FECA reduction at retirement age the 2010 packages would be roughly equal. However, the first annuitants we analyzed had a median federal career of 16 to 18 years, which is far less than the average of about 30 years under the older civil service retirement system.

Recognizing that we had not captured a mature retirement system and had likely understated future benefits of workers with 30-year careers, we simulated a mature FERS system, reflecting future benefits of workers with 30-year careers. This provided us with a basis for assessing the potential benefits of the proposed change on future FECA beneficiaries, which is the focus. We found that in a mature FERS system the median FECA benefit package under the proposed change would be from 22 to 35 percent less than the median FERS retirement package.

Partial disability beneficiaries are fundamentally different from total disability beneficiaries, as they have received reduced FECA benefits based on a determination of their earning capacity. Our seven case studies of partial disability beneficiaries show that how they might fare under the proposed FECA changes can vary considerably based on their individual circumstances, such as their earning capacity and actual level of earnings.

For example, among our case studies, those beneficiaries with high earnings capacities may elect to retire under FERS and would likely not be affected by the proposed FECA reduction at retirement age because their potential retirement benefits were substantially higher than their current or proposed reduced FECA benefit levels. In contrast, those beneficiaries with low earning capacities had potential retirement benefits that were lower than their current FECA benefits and the proposed FECA reduction at retirement age would reduce their FECA benefits.

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 federal duties. Our simulations incorporated the kind of approaches used in the literature on assessing benefit adequacy for workers' compensation programs, such as taking account of missed career growth. We assessed the proposed changes by simulating the level of take-home pay or retirement benefits FECA beneficiaries would have received if they had not been injured, which provides a realistic basis for assessing how beneficiaries may be affected.

However, it is important to note we did not recommend any particular level of benefit adequacy. As policymakers assess proposed changes to FECA benefit levels they will implicitly be making decisions about what constitutes an adequate level of FECA benefits before and after they reach retirement age.

Thank you very much and I would be happy to answer any questions.

[The statement of Mr. Sherrill may be accessed at the following Internet address:]

http://www.gao.gov/assets/660/655812.pdf

Chairman WALBERG. Thank you for your testimony.

Dr. Seabury, recognize you now for your 5 minutes?

STATEMENT OF DR. SETH SEABURY, ASSOCIATE PROFESSOR, DEPARTMENT OF EMERGENCY MEDICINE, KECK SCHOOL OF MEDICINE, UNIVERSITY OF SOUTHERN CALIFORNIA

Dr. SEABURY. Chairman Walberg, Ranking Member Courtney, and members of the subcommittee, thank you for the opportunity to meet with you today to discuss reforms to the FECA system. My name is Seth Seabury and I am an associate professor in the Department of Emergency Medicine and the Leonard D. Schaeffer Center for Health Policy and Economics at the University of Southern California.

Throughout my career I have worked on and led numerous studies of the adequacy of workers' compensation benefits for disabled workers. I am here today to discuss the potential effects of two proposed changes to the FECA program: the adoption of a single replacement rate for all workers, and the proposed reduction in benefits for workers at retirement age.

The Labor Department argues that these will help improve return to work and restore equity to the system. However, I have reviewed the GAO analyses of these proposals and I believe they raise some serious questions about how they would affect disabled workers.

First, the GAO analysis shows the proposed shift to a single rate would reduce benefits for most injured workers. Perhaps surprisingly, changing the system to apply the same rate to all workers would actually make benefits less equitable. That is, the effective replacement rate after taxes would be consistently higher for workers with no dependents after the change.

An alternative approach could attain a given level of adequacy while making benefits more equitable by targeting post-tax as opposed to pre-tax replacement rates. This could be done by directly targeting replacement rates based on spendable income, as is done in some states, or a simpler change making a replacement rate proportional to the number of dependents.

The GAO also found that reducing FECA benefits at retirement age would lower the income for total disability beneficiaries. There is some question over the methods they used because the GAO estimated the long-term impact of an injury on a worker's career growth and future earnings. They did this even though FECA, like other workers' compensation systems, calculates benefits using only pre-injury earnings.

But in my opinion, estimating the potential earnings over a worker's career is the only way to get an accurate picture of the economic impact of a disabling injury. Let me explain.

Benefit adequacy is measured by how much of the income that someone loses because of an injury is actually replaced by benefits. By definition, how much you lose from an injury is the difference between what you would have made had you not been injured and what you actually did make.

For most people, income doesn't stay the same over time. Workers experience employment opportunities that offer higher wages, but these opportunities can be lost or delayed by a disabling injury.

Ignoring disruptions like these will provide potentially a misleading account of the true economic impact of an injury. This is important for understanding the generosity of benefits as well as the incentives of workers.

Of course, we can't actually observe what someone would have made if they weren't injured. This is something that we have to estimate.

The GAO analyses compared what FECA beneficiaries actually made to the earnings of uninjured workers who are otherwise similar. That is, they had the same age, the similar job, et cetera. This approach has been widely used by myself and others to evaluate workers' compensation policy in state systems, and the National Academy of Social Insurance declared it the preferred approach for assessing the adequacy of disability benefits.

Applying these methods, the GAO found that the loss in career growth and retirement savings meant the retirement-age FECA beneficiaries had benefits that were comparable to or lower than what they would have received in the Federal Employee Retirement System if they worked a full career without getting injured. This means that reducing FECA benefits at retirement age could significantly reduce retirement income for most of these beneficiaries. However, it is true that some workers might earn more under FECA, but more analysis could be done to identify which workers would benefit more and design a more targeted response.

These changes have been proposed at least in part to improve return to work for disabled workers. It is true that if reducing benefits motivated return to work we would expect the additional income from working to offset the lower benefits. Improving return to work is a vital policy goal, but it is unclear whether or by how much these benefit changes that are proposed would actually lead to improvements in return to work.

The current system already reduces benefits for workers who are deemed to have recovered to the point that they have some capacity for work. If this reduction is insufficient to cause them to work it is unclear how much additional effect reducing their benefits at retirement age would have.

In general, more evidence is needed on this issue and more evidence is needed on the adequacy of FECA benefits for partially disabled workers.

This concludes my testimony. I would be happy to answer any questions.

[The statement of Dr. Seabury follows:]

Prepared Statement of Seth A. Seabury, Ph.D., University of Southern California

CHAIRMAN WALBERG, RANKING MEMBER COURTNEY AND MEMBERS OF THE SUBCOMMITTEE ON WORKFORCE PROTECTIONS OF THE EDUCATION AND THE WORKFORCE COMMITTEE: Thank you for the opportunity to appear before you today. My name is Seth Seabury, and I am an Associate Professor of Research in the Department of Emergency Medicine in the Keck School of Medicine and the School of Pharmacy at the University of Southern California. I am also a Fellow at the Leonard D. Schaeffer Center for Health Policy and Economics. Prior to coming to USC, I was a senior economist at the RAND Corporation and the Associated Director of the RAND Center for Health and Safety in the Workplace. I have studied policy issues surrounding the compensation of work related injuries throughout my career. I have worked on and led a number of studies in California that have evaluated the efficiency, equity and adequacy of workers' compensation benefits and have influenced several reform efforts.

I am appearing before you today to discuss the implications of proposed changes to the Federal Employees' Compensation Act (FECA), the system for compensating federal employees for work-related injuries. In particular, there are two changes to FECA total and partial disability benefits that have been proposed by the Department of Labor (DOL) that are at issue:

- A change to the benefit schedule that would set benefits at a single rate of 70% of applicable wages at the time of injury, as opposed to the current system that uses separate rates of 75% and 66⅔% for workers with and without at least one dependent, respectively.
- A mandatory reduction in benefits from the initial FECA rate to 50% of the applicable earnings (adjusted for inflation) once workers reach full Social Security retirement age.

To prepare for this hearing, I have reviewed the GAO report "Federal Employees Compensation Act, Analysis of Proposed Program Changes" (GAO-13-108) and the two follow up reports (GAO-13-142R and GAO-13-143R), as well as the report "Federal Employees Compensation Act: Benefits for Retirement-Age Beneficiaries" (GAO-12-309R). I have also reviewed the testimony from the Subcommittee on Workforce Protection's May 12, 2011 hearing "Reviewing Workers' Compensation for Federal Employees," and a slide presentation created by the United States Office of Personnel Management (OPM) titled "Long-Term FECA Recipients, Equitable Transition to the Retirement Years." My testimony is based on my reading of these sources, a number of additional works that I cite below, and my accumulated experience in the area of workers' compensation.

The key points of my testimony can be summarized as follows:

- The GAO reports estimate the long-term lost income that injured workers experience as a result of their injuries, including lost career growth, when assessing the adequacy of FECA benefits. This approach is widely believed to provide the best measure of benefit adequacy and is consistent with the methods that have been used in prior work in the area.
- Based on the GAO's findings, the DOL proposal makes FECA benefits less adequate and also less equitable, in the sense that workers without dependents will have more of their income replaced than those that do. Making the system more equitable requires adjustments that are designed to equalize after-tax (as opposed to pre-tax) replacement rates.

• The GAO's analysis shows that when lost career growth is considered, most workers earn less under FECA than what their normal retirement benefit would have been after a 30 year career had they not been injured. Reducing benefits at retirement age would thus worsen the adequacy of FECA benefits for most retirement-age beneficiaries.

• More work is needed to understand which workers might receive higher benefits at retirement age under FECA, and whether this has an impact on their incentives to return to sustained employment after an injury.

My testimony is organized as follows. I first discuss some criteria that can be used to evaluate changes in workers' compensation benefits. I then outline some of the challenges of accurately measuring the economic effects of workplace injuries and some of the research that has addressed this issue. I then discuss the two proposed changes, in the context of these criteria, based on the GAO analysis. Finally, I offer some concluding thoughts and recommendations.

Criteria for evaluating workers' compensation policy

The purpose of providing income replacement benefits through FECA, as in state workers' compensation systems, is to compensate workers for the lost income they suffer as a result of work-related injuries. While on the surface this is a straightforward objective, there are inherent challenges that arise in designing a system that provides these benefits in a fair and efficient manner. As a result, there have been many instances in state systems where public concern about how well the system is working has prompted legislative reform. However, such reforms often involve trading off the interests of competing agents. Thus, to understand the tradeoffs involved in any given policy proposal, it is important to have a clearly defined set of criteria with which to evaluate it.

For this testimony, I refer to four separate criteria that have been applied to evaluate changes in workers' compensation programs:

- Adequacy
- Equity
- Affordability
- Efficiency

I discuss each of these in turn. I spend the most time on benefit adequacy, because that is the criterion that is most central to the debate over the evaluation of the proposed FECA changes. However, the others are also relevant, so I provide a definition and a brief description of each.

Note that for these comments I am focusing on the application of these criteria solely to income benefits. Workers' compensation typically provides for other forms of benefits, such as medical care and vocational rehabilitation services, but these are unaffected by the two proposed changes at issue here.

Adequacy

Prior to the adoption of workers' compensation programs in the early part of the 20th Century, compensation for work related injuries was limited to the tort system.[1] Injured workers were entitled to full compensation for damages suffered as a result of their injuries, but only in the cases where they could demonstrate negligence on the part of employers. Like other torts, when the defendants (employers) were held liable, workers were entitled to full compensation of all damages suffered as a result of their injuries. This included noneconomic and economic damages, and possibly punitive damages. Economic damages in tort cases can cover a broad range of current and future damages, including factors such as expected future lost wages, medical costs and costs of attendant care or caregiving expenses. Workers' compensation was adopted as a carve-out from the tort system that provided no-fault compensation to injured workers. These benefits represented a compromise in which workers received benefits with greater certainty but only at reduced levels. Workers' compensation benefits offered no compensation for noneconomic damages and only partial compensation for lost wages, and none of the other economic costs related to an injury.

Because workers' compensation benefits provide only limited compensation, there has historically been intense interest in monitoring the system performance to ensure that the benefits reach minimum thresholds of compensation levels. The 1972 Report of the National Commission on State Workmen's Compensation Laws (the National Commission Report) provides the most comprehensive evaluation of the design of state workers' compensation programs.[2] The National Commission Report primarily relied on the adequacy and equity criteria to evaluate workers' compensation benefit programs. Benefit adequacy refers to the extent to which the benefits that are paid replace the income that is lost.

The adequacy of benefits is typically measured through the replacement rate of lost income. For temporary disability benefits, the standard for adequacy is generally held to be a replacement rate of two-thirds replacement of lost pre-tax income or 80% of after-tax income.[2,3] For permanent disability benefits, there is less of a consensus about what the target replacement rate should be, though two-thirds of lost income is usually held up as a benchmark.[3,4]

Note the distinction between the statutory replacement rate, which is the legislated fraction of pre-injury wages a worker receives (usually two-thirds), and the effective replacement rate, which is the portion of lost income that is actually replaced. For the purposes of this testimony, I will refer to the effective replacement rate unless I specify otherwise.

Equity

Equity refers to the idea that workers in similar conditions with similar injuries should be treated similarly. From the standpoint of compensating workers for lost earnings, this means that workers with similar injuries should have similar replacement rates. The equity criterion, as it has been applied in practice by the states, does not require that workers necessarily receive the same dollar amounts in compensation. For instance, higher wage workers will tend to have greater dollar value of losses (conditional on other factors) and so they will receive more benefits on average. Nor does it require that everyone have exactly the same replacement rate. State systems routinely cap the total benefits at some fixed dollar value (usually tied to the state average weekly wage). This means that, all else equal, higher wage workers will have lower replacement rates the more their expected earnings exceed the statutory cap. Similarly, the presence of benefit floors means that, all else equal, the lowest wage workers will receive the highest replacement rates. Both of these represent deviations from a stricter definition of equity, probably reflecting a more general concept of perceived fairness.

Note that the estimated replacement rate of lost income can be used to evaluate the equity of workers' compensation income benefits. That is, workers' compensation benefits are equitable if workers with the same expected losses have approximately the same replacement rate of lost income.[5,6]

Affordability

The affordability criterion refers to the cost of the workers' compensation system. An affordable system is one that all parties—employers, workers, and the public—can afford without serious adverse consequences.[6] This can refer to both the actual cost of the benefits themselves as well as the cost of administering them. The administrative costs of workers' compensation benefits in state systems have generally been considered quite high.[7,8] The administrative costs in FECA as reported by the DOL are much lower than is usually found in state systems (administrative costs in FECA are 5%, while administrative costs for privately insured employers in state systems average more than three times that amount)[8].

Note that there is often a direct conflict between making a system more adequate and making it more affordable. Holding expected losses constant, we make workers' compensation benefits more adequate by increasing them, but this makes the system less affordable. However, interventions that reduce expected losses, such as promoting the adoption of employer-based return to work programs, can serve the dual aim of making a system more affordable and more adequate.[9,10] Additionally, improvements in administrative efficiency can lower the overhead cost of delivering benefits, which makes the system more affordable without hurting its adequacy.

Efficiency

Broadly defined, I use the term efficiency to incorporate the indirect costs associated with workers' compensation benefits. This includes behavioral effects such as disincentives to return to work. For example, a workers' compensation system is more efficient if it achieves a given level of adequacy without creating adverse work incentives. Efficiency can also incorporate factors such as administrative delay or the levels of disputes. Other factors such as incentives for injury prevention—by employers and workers—can also be included here. While not all of these are easily measured, the impact of any given reform proposal on the efficiency of benefits could represent a significant portion of the total social costs or benefits of the proposal.

Measuring the economic impact of workplace injuries

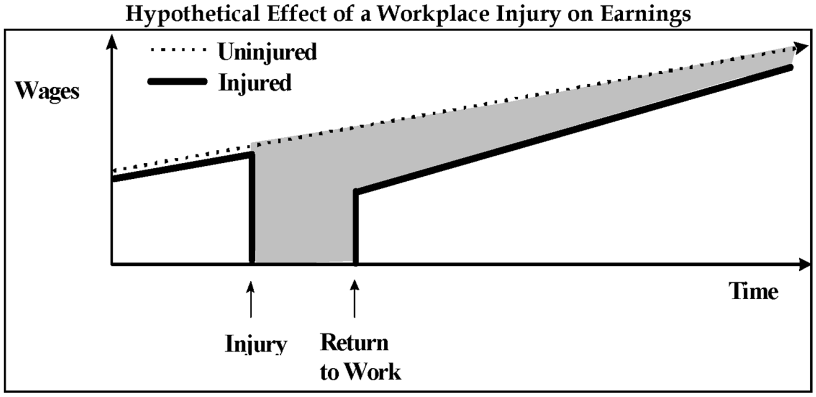
Both the adequacy and equity criteria described above require some measure of the replacement of lost income. Probably the most challenging part of measuring income replacement is defining and measuring "lost income." A simple way to compute lost income is to compare what someone was making at the time of injury to what they make afterwards. However, for most people income changes over time. This can be positive if individuals get promoted and advance in their careers, as is most often the case with younger workers. Or wages can decline if individuals are fired, if they cut back on hours, or if they retire, as will be increasingly likely as workers age. In either case, simply comparing what someone made before they were injured and what they made after an injury provides a misleading picture about the impact of the injury on income.

We illustrate the challenge of evaluating the impact of injuries on lost income with Figure 1.[11] Figure 1 illustrates the hypothetical losses from a permanently disabling workplace injury. The solid line represents the actual income that the worker earns from his or her job. The dashed line represents the worker's "potential" earnings—the earnings that a worker would have received in the absence of an injury. Prior to the date of injury, the potential earnings and actual earnings are the same. However, at the date of injury, the worker's actual earnings decline while the potential earnings continue to increase, reflecting the worker's increasing experience in the labor market.

At the time of injury, the worker receives no earnings for some time while recovering from the injury. In this example, at some point, the worker returns to work, perhaps in some modified capacity. In this hypothetical example that is shown in the figure, the worker returns at lower earnings than prior to injury. The worker recovers earnings over time, as the wages converge closer to what they would have been absent the injury. In this example, at the end of the observed period the worker makes more than she made prior to the injury, but not as much as she would have made if she had not been injured.

The shaded area in the figure represents the total lost income over the period after the injury. The fraction of these losses that is replaced by workers' compensation benefits is equal to the replacement rate of lost income. However, the figure also highlights the challenge of measuring lost income. Whereas wages received while the workers' actual earnings (the solid line in Figure 1) are readily observable, the potential earnings represented by the dashed line are unobservable for any individual and must be estimated.

Figure 1
Hypothetical Effect of a Workplace Injury on Earnings



In order to get an accurate assessment of the long-term economic consequences of an injury, we need to compare what an individual actually makes to what he or she would have made in the absence of an injury. Since this is a counterfactual that is unknowable in the sense that it cannot be directly observed, it must be estimated. Researchers have combined data on workers' compensation claims linked to information on earnings to estimate losses dating back to the 1960s. This research was described more completely in the 2004 NASI report, but I will summarize it here.[3] The earlier studies used the pre-injury earnings of injured workers and estimated potential earnings by projecting expected earnings using aggregate trends in earnings.[12 15] This approach is limited by the assumption that average earnings growth for injured workers mirrors aggregate trends, ignoring possible differences between injured and uninjured workers.

Starting in the late 1990s, researchers began using more advanced empirical methods to estimate potential earnings. These studies used a quasi-experimental design that compared the earnings of injured workers to a sample of uninjured control subjects before and after the date of injury. As long as the selected control workers have expected earnings in the post-injury period that are approximately equal to the expected earnings of injured workers, on average this method will produce unbiased estimates of earnings losses. Past studies have primarily relied on one of two criteria to identify control workers.[16] The first is to use workers who were injured but with minimal severity and little time out of work (e.g., medical only injuries).[17 19] The other commonly used approach is to match injured workers to workers who were never injured, but who worked at the same firm and had very similar earnings to the injured workers prior to the injury.[4,20,21]

In their reports, the GAO used matching to estimate the lost earnings of FECA beneficiaries. The GAO matched FECA beneficiaries to observably similar federal employees who weren't injured. What the injured workers would have made absent an injury was estimated by the actual earnings of the injured workers' matched, uninjured controls. Taking the difference between the average value of what matched, uninjured workers made and what injured workers made provides an estimate of expected wage loss for the FECA beneficiaries in the sample (note that this approach is only valid over large enough samples, not for a single individual).

With an estimate of earnings loss in hand, it is then possible to assess benefit adequacy by dividing total workers' compensation benefits by total earnings losses over some fixed period of time. This ratio is the estimated fraction of lost income that is replaced by workers' compensation benefits. This approach has been termed the "wage loss" approach to evaluating benefit adequacy. The National Academy of Social Insurance (NASI) argued that this approach is the preferred approach for assessing the adequacy of disability benefits.[3]

Because the process for estimating replacement rates generally requires linking state administrative workers' compensation benefits to state unemployment insurance information, these estimates have only been conducted for a comparatively small set of states. Berkowitz and Burton (1987) were, the first to conduct such a study, and they compared replacement rates in Wisconsin, Florida and California.[7] Using more recent estimation techniques and data sources, a series of studies have estimated losses in states such as California, New Mexico, Washington, Wisconsin and Oregon. In general, replacement rates fall well below the standard definitions of adequacy. In a comparison of these five states, the estimated pre-tax replacement rate ranged from 29% to 46% of lost income over a 10-year period post-injury. Even accounting for the favorable tax status of benefits, these findings have consistently shown that benefit adequacy is a significant problem in the states.

Proposal to reimburse workers at a single rate

Currently, FECA offers two different statutory replacement rates: two-thirds for injured workers who have no dependents and 75% for those who have at least one dependent. This is a departure from the standard model of workers' compensation that has been adopted in state system, which rarely offers differential compensation based on the number of dependents. The DOL proposes to set compensation at a single rate of 70% of pre-tax income, regardless of the number of dependents.

To construct their replacement rate estimates, the GAO matched injured workers to uninjured workers with similar pre-injury characteristics. They also conducted a number of specification checks that appear to verify that they have high quality matches. This is important, because for the matching estimator to work well, the income of the matched control workers must be close proxies for the expected income for injured workers (assuming they had never been injured).

The GAO found that this proposal would reduce the after-tax replacement of lost income by a modest amount overall (from 80% to 77% for non-postal employees), due to the fact that a majority of employees currently qualify for the higher rate. However, the proposed change to a single rate also appears to have some implications for the equity of benefits. According to the GAO, currently the system favors beneficiaries with a dependent by a modest amount (approximately 3.5% for the median worker). This difference is less than the approximate 7.3% difference in the statutory replacement rates because the absence of dependents implies a higher tax rate, so workers without dependents receive a higher effective replacement rate given a fixed statutory rate. However, under the proposed change to a single statutory rate, the lower tax rates of workers with a dependent imply that the change will result in workers without a dependent having a 5.8% higher replacement rate than workers with dependents. Thus, the reform will change the system from being skewed towards workers with dependents to being more skewed towards workers without.

Subsequent analyses by the GAO studied the implications of moving to the single 70% rate for postal workers, and moving to a single rate of two-thirds replacement of pre-tax, pre-injury wages (as proposed by the Senate). Postal employees generally had higher replacement rates before the change (88% before the change, reduced to 84%), but the pattern of moving towards a system that is comparatively more generous to workers with dependents to one that is more generous to those without was essentially the same. The Senate proposal of moving to a two-third replacement rate for all workers had the same impact on benefit equity, but lowered the overall median replacement rate even more (to 73% for non-postal employees and 80% for postal employees).

The implications of these findings for the DOL single rate policy proposal are mixed. On the one hand, the proposal does lead to a net decline in benefit adequacy, in terms of a lower replacement rate. The effect is fairly modest, though it is more pronounced under the Senate's proposed reduction to a single two-thirds rate for all workers. It also reduces the after-tax rate below the 80% level recommended by the National Commission Report—though the statutory rate is higher than the standard used by NASI.

Because there is a net reduction in benefits, moving to the single rate would produce net savings. Thus, one could attempt to justify a decline in adequacy on the basis that it makes the system more affordable. But there appears to be little argument for making the changes based on equity. In fact, the GAO reports that the change actually makes the benefits less equitable, because the current system corrects for the differences in tax rates across the two groups. To make the benefits more equitable would require adjusting the system according to the after-tax replacement of lost income as opposed to the pre-tax replacement (for example, by directly targeting replacement rates of "spendable" income as is done in some states, or by adjusting the statutory pre-tax rate proportionally to the number of dependents).

Proposal to reduce benefits at retirement age

The second proposal suggested by the labor department is to reduce the FECA benefit to 50% once individuals reach their full Social Security retirement age. The DOL argues that this is necessary because the current system provides an incentive to injured workers to avoid returning to work. The argument for this is based on the OPM slide deck that indicated workers would receive higher benefits under FECA than under the Civil Service Retirement System (CSRS), a finding that was confirmed by the GAO (GAO-12-309R). Early return to sustained employment after an injury is something that is generally considered good for workers and good for employers,[9] so if the system created significant work disincentives this would be a serious concern.

The comparison between FECA and the CSRS is of limited utility, however, since the proposed legislative changes are prospective and the vast majority of current federal employees (90%) are now covered by FERS. Given that employees covered by CSRS represent a small and shrinking share of the federal workforce, the GAO analyzed the differences between employee compensation under FECA and FERS. One of the key challenges of making this comparison is that the FERS system is relatively new (covering federal employees beginning January 1, 1984), and there are no beneficiaries who have worked a full 30-year career covered by and retiring under FERS. Thus, the GAO conducted a simulation that compares the FECA benefits to FERS benefits at normal retirement age after a 30-year career. Under this simulation, FECA benefits were approximately equal to or less than FERS benefits, depending on what assumption was made about employee contributions to the Thrift Savings Plan (TSP). In this case, under the reductions at retirement proposed by DOL, workers receive less under FECA than what they would have received after working a 30 year career and retiring under FERS (35% less for non-postal employees and 29% less for postal employees, assuming 10% contribution to TSP). From the GAO analysis it appears clear that most workers who would have worked a full career and contributed to their retirement at a reasonable level over that time would not do better under FECA compared to FERS. This suggests that reducing FECA benefits from their current levels would likely reduce the adequacy of benefits for FECA recipients over retirement age.

This analysis is more complicated when considering the implications for workers with partial disabilities. This is because workers with partial disabilities are compensated differently under FECA. FECA benefits for the partially disabled are designed to reflect an injured worker's ability to work. Workers who have recovered from their injury and are deemed to have some capacity to work receive long-term FECA benefits based on their lost earnings capacity. The process for determining lost earnings capacity is based on whether a worker finds post-injury employment and whether this employment is deemed commensurate with their ability to work. This means that the difference between FECA and FERS benefits depends on the actual work history of the permanent disability claimants. The GAO considered several case studies, and in these case studies there were some workers appear to have higher benefits under FECA than FERS, but those are also the workers who have the lowest earning capacity and thus would be able to save or contribute little to retirement during their working years. More generally, most workers with partial disabilities already receive lower benefits than they would with a total disability, even if their circumstance was otherwise identical, and the DOL proposal would lower these benefits even more.

As far as return to work incentives, the implications here appear mixed. In general, this is only an issue for workers with partial disabilities (that is, workers who are totally disabled lack the ability to work regardless of incentives). It is true that cutting FECA benefits at retirement age could provide these workers with additional incentives to return to work. However, FECA benefits for workers with partial disabilities who are deemed to have sufficient earnings capacity are already reduced. Thus, it is unclear how much affect further reducing benefits on retirement age would have on these workers' labor supply decisions.

Ultimately, there appears to be a lack of sufficient evidence about which workers might receive higher benefits from FECA under FERS, and how much their work incentives would actually be affected by this difference. In particular, it is unclear how adequate FECA compensation is for partially disabled workers with different levels of perceived loss in earnings capacity. A more detailed and analysis of the relationship between FECA compensation, lost earnings capacity and long-term replacement rates of lost income for partially disabled workers should be considered.

Summary and conclusions

The GAO provides convincing evidence that, on net, shifting to a single rate would reduce benefit adequacy while possibly reversing and exacerbating the disparity in compensation between workers with and without dependents. If the goal of this policy proposal is to make compensation more equitable, some alternative approach should be considered that focuses more on equalizing post-tax replacement rates. The GAO also found that the adequacy of FECA benefits vary considerably across individuals, though that is likely to be true in any compensation system. Benefits under FECA do appear much more adequate than those under state systems, even after the DOL change. However, that is due in large part because state systems have generally been found to fall considerably below standard definitions of adequacy for permanent disability compensation.

The DOL provisions to reduce FECA benefits at retirement age would also lead to a net reduction in the generosity of FECA. The implication of this reduction on the adequacy of benefits depends on whether or not the long-term impact of earnings on employment and career growth are accounted for. Failing to account for career growth, FECA benefits appear generous relative to FERS and a reduction would make compensation across the two systems more equitable. However, lost career advancement is a real consequence of disabling workplace injuries, and once that is accounted for, the DOL reduction could result in workers facing substantially lower income in their retirement years than they would have experienced absent their injury. Justifying this on the basis of eliminating inefficient work disincentives would seem to require more evidence than is currently available about the extent to which the current system is actually deterring permanently disabled workers from re-entering the labor market. Further study on this issue and on the adequacy of FECA benefits for partially disabled workers is warranted.

In terms of the GAO analysis, one of the centers of the dispute seems to be whether we should consider the long-term impact of injuries on potential earnings—or career growth—when assessing different policy proposals. In general, there is a tradeoff in workers' compensation between benefit adequacy and the affordability and efficiency of the system. When choosing between different policies and balancing this tradeoff, it is important to have a full and complete understanding of the impacts on both sides of this ledger. Most previous work in this area has generally accepted that to fully understand benefit adequacy it is necessary to estimate the expected post-injury wage path of injured workers.

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Chairman WALBERG. Thank you.

And I thank each of the panel members for your testimony.

I recognize myself for 5 minutes of questioning.

And, Mr. Steinberg, I want to start with you and ask you to directly respond to GAO's findings and to elaborate on the basis for the department's proposals, specifically with respect to the proposal to set a uniform benefit rate.

Do you have any concerns with maintaining a level of equity between individuals with and without dependents? And with respect to the proposal to reduce benefits at retirement age, do you have any concerns with the adequacy of benefits at retirement age for an individual who experiences an injury early in his or her career?

Mr. STEINBERG. Thank you, sir.

Chairman WALBERG. Your microphone.

Mr. STEINBERG. Thank you.

We respect the work that is done by our colleagues in GAO over the last decade. We have worked closely with them to analyze this particular issue.

We note that their report predominantly focuses on wage replacement rate but it doesn't address the comprehensive package that has been proposed. And the reality is, from our perspective, that each of the components need to be—they need to be reviewed and they need to be looked at in a balanced way.

The wage loss change—the reductions—are only one dimension. There are other dimensions which actually enhance the situation for a beneficiary.

With respect to the study, as my colleague indicated, they provided no consensus on appropriate rates, nor did they provide specific recommendations. They didn't suggest that the 70 percent rate was inappropriate; they suggested that there are different options. And we agree that there certainly can be different options, but based on our analysis we believe that 70 percent is a proper rate.

They failed to respect—to address the issue of return to work and the implications that return to work can have both in terms of the liability to the organizations as well as to the individual.

Lastly, they did not address the issue of the schedule award, and the schedule award is part of our balanced proposal that provides compensation for those individuals that have a permanent loss of functionality. That should be viewed as part of the comprehensive package. It is an investment, once received, that the individual can use to prepare for their future, and the study does not reflect that.

The study does acknowledge the fact that the reduction at retirement level will bring the level closer to the FERS level.

Let me talk now a little bit about our process. We have consulted extensively with OPM, with GAO, with the I.G. community, with our partner agencies. We have looked closely at the states, as well.

I think, as you have heard from all the panel members, that FECA program is the most generous of all. And as Dr. Seabury indicated, even with the changes that we propose, our rates will still be more generous than any of the state programs.

The 70 percent level reflects a midpoint between the 66.66 and the 75 percent. Even at 70 percent it will be greater than the vast majority of the states. And we believe that it is fair and we do not believe that it is going to harm any of the claimants.

With respect to the retirement level, we consulted extensively with OPM. We studied the CSRS program. We also studied the FERS program, which is coming to a level of maturity. And based on our analysis, OPM confirmed the fact that the 50 percent tax-free level that we propose equates to the levels for CSRS and they indicated that they have designed FERS, which is a more complicated program, to roughly come to the same level as CSRS.

Chairman WALBERG. In respect to time, let me move on.

Mr. Seabury, your testimony discusses the techniques GAO used to estimate the missed future earnings of FECA beneficiaries. However, as GAO notes in its report, FECA was not designed to account for missed career growth. Your testimony also notes that inherent unknowability is, in predicting an individual's actual future career path.

So in your opinion, how should policymakers approach GAO's findings, given FECA's benefits were not designed to increase at a rate comparable to career growth?

Dr. SEABURY. So FECA, like other workers' compensation benefits, are not designed to incorporate—they are not designed to reflect career growth in the benefit levels. However, I don't think that that means that we shouldn't consider that career growth when evaluating the impact of the policy on workers.

This is true for considering the adequacy of benefits but also for understanding workers' incentives. If I have the capacity to work but choose not to I am missing out on that potential career growth. So not only—by not focusing on a career growth, not only am I making, potentially, benefits look more adequate than they actually are, I am also potentially making the incentive problem look worse than it actually is.

So I think that we need to incorporate these estimates of career growth in order to best understand how the system is affecting workers on many dimensions.

Chairman WALBERG. Thank you.

My time is expired.

I recognize my friend, the ranking member, Mr. Courtney?

Mr. COURTNEY. Thank you, Mr. Chairman.

And, Mr. Sherrill, again, listening to Mr. Steinberg a few minutes ago, who talked about the way DOL tried to consult with all the different agencies—OPM, GAO, CRS, et cetera—in terms of this retirement proposal that they have come forward with—again, maybe they consulted with you or reviewed your report, but again, looking at your report, when I read it it certainly, you know, seemed to suggest that in many instances disabled workers would clearly be worse off with the, you know, the proposal to reduce benefits at retirement age than if they had worked 30 years and then retired under FERS.

And again, it appears that their core objection is that GAO should not have accounted for the lost career growth in its comparison because workers' compensation benefits are not adjusted to account for lost promotional opportunities. So I just want to run through a couple questions with you, if I could.

First, what is the relevance of accounting for lost career growth and what is your response to DOL's position?

Mr. SHERRILL. Well, it is important to account for missed—sorry—it is important to account for missed career growth in doing these kinds of benefit adequacy studies because that provides the most realistic assessment and readily understandable assessment of how people would fare under the program compared to where they would have—what they would have had in the absence of an injury. This is the kind of approach that is commonly used in the literature to do that—to do these kind of benefit adequacy studies.

Mr. COURTNEY. And that is the approach that you took in your analysis.

Mr. SHERRILL. That is the approach that we took.

Mr. COURTNEY. And is your approach consistent with OPM, in terms of what they recommend in terms of how to analyze this?

Mr. SHERRILL. When OPM did briefing slides on these proposed changes one of the things they reiterated was that in considering changes at retirement age it is important to look at that in the context of what workers would have had if—had they not been injured—what their retirement package would have done. That is consistent with what we did.

Mr. COURTNEY. Okay. And in terms of outside, you know, credible, neutral sources, you know, is the methodologies that you used follow the recommendation of the National Academy of Social Insurance?

Mr. SHERRILL. Yes. We are consistent with the matching methodology, taking income—missed income career growth that they recommend.

Mr. COURTNEY. And in fact, I mean, DOL had previously argued that GAO needed to account for lost promotional opportunities when evaluating the adequacy of FECA benefits. Is that also correct in the past?

Mr. SHERRILL. That is right. We had done a 1998 report on FECA, looking at wage replacement rates where we had not factored it in because of limited data at that time. Labor, in its comments, took issue with that and said that the wage replacement rates would have been higher if we had factored in missed promotions.

Mr. COURTNEY. So do you have any explanation for why the department has changed its views?

Mr. SHERRILL. I wouldn't speculate on that. I——

Mr. COURTNEY. Okay.

Well, Okay, Mr. Steinberg, maybe you can help us, then, answer that question. It is just, I mean, obviously, you know, what we just heard was that some of these other sources that you say the department consulted with clearly have a different approach than what you described this morning.

Mr. STEINBERG. I can't speak to the position 15 years ago, but what I can comment on is that in the GAO report that Mr. Sherrill referenced GAO indicated that they did not believe that promotional or career growth should be calculated in because it was speculative in nature and, therefore, extremely difficult to predict what the growth of an individual would be.

We have looked at all federal workers' compensation programs, four of which we, I oversee. We also looked at all of the state programs. None of the state programs nor the federal programs reflect a career growth potential.

From an academic perspective it is certainly something that can be looked at, but we don't believe that it should be nor has it ever been part of the compensation package for a workers' comp program.

If you look at it from a practical perspective, it is very difficult to predict what the career path of an individual would be. One person may be a superstar. We don't know that. One person may be very satisfied working at a GS-7 level and not anticipate any career growth.

Lastly, there may be an individual who is on a performance plan and is likely going to be removed from their position. Now calculating a career potential we believe would be speculative and inappropriate.

Mr. COURTNEY. Well, except, I mean, FECA, under its present design, is not—I mean, no one is, like, using a, you know, inventor of Google kind of career path. I mean, this is still a very, you know, moderate, modest system that is in place right now.

So, you know, I mean, looking at it from a real practical standpoint, to use your own language, I mean, we heard earlier that, you know, somebody who is disabled at a relatively young age—you know, that FBI worker or that firefighter that you described—you know, who is not paying into Social Security, I mean, their benefit level at age 65 is going to be, you know, definitely suppressed as a result of that life-changing event. So from their practical standpoint, you know, converting this system to what you are proposing, I mean, really has a very negative impact and again, really kind of takes away what, on balance most workers can expect to have at least some step up over time, particularly when it is at a young age when the disability occurs.

Mr. STEINBERG. I would respond to that in two ways.

One, we have a COLA. The reality is for the last 3 years working federal employees have not received a cost-of-living increase; yet the individuals on workers' comp have received an increase. And we think that is extremely important and that obviously should continue.

Never has there been a factor for career growth, again, because we can't anticipate that.

I think to look at it from the converse, our goal is to get people back to work just as quickly as we can. We work to get early diagnosis, early treatment, early rehabilitation, and then help them find the right job.

What we have found in talking with the I.G. and talking with other partner agencies is that the increased level of the benefit at 75 percent as well as if there was to be included a career growth factor, then that would be a disincentive for people going through the activities of getting healthy and going back to work, and I think we want to avoid any disincentives.

Chairman WALBERG. The gentleman's time is expired.

And now I recognize Dr. DesJarlais for your 5 minutes?

Mr. DESJARLAIS. Thank you, Mr. Chairman.

Thank you all for appearing today.

Dr. Seabury, we will start with you first. Your testimony notes that one way to make benefits more equitable between beneficiaries with and without dependents could be to target wage replacement rates on spendable or after-tax income as opposed to pre-tax gross wages, as is used in the FECA program.

First, can you explain how this target would work in practice? And then can you also elaborate on the potential benefits and costs of this approach?

Dr. SEABURY. Well, I think there are different ways you could try to accomplish this in practice, and I would want to refer to some of the actual details in the state systems to give you the details on how you would actually implement a system, but the idea is to focus on rather than looking at the share of your pre-tax, pre-injury earnings that is replaced—they target two-thirds of that—some states have focused on, say, 80 percent of spendable income, so they try to evaluate your spendable income in the pre-injury period and set a varying benefit level to target the after-tax replacement rate.

I think in terms of the costs and benefits, that could be potentially a more difficult system to administer so I think that would be one of the more—part of the potential costs. The benefit would be increased equity.

I think one of the things that was actually somewhat surprising to me and very interesting to me about the GAO's reports was showing how a single pre-tax replacement rate creates this inherent inequity in the system between workers with and without dependents, or reverses the existing one and exacerbates it. So I thought that was interesting and so you would be able to avoid that kind of inequity with focusing on after-tax replacement rates.

I do think, you know, there are ways to try and implement a system and make it simpler to administer while still trying to attain those benefits.

Mr. DesJarlais. Thank you.

Mr. Steinberg, I note in your testimony it stresses that the entirety of your reform proposal is intended to improve the FECA program. Of course, the majority of the focus of today's hearing is on the two major benefit proposals.

Are there any other proposals we should be considering that are intended to work with the two benefit proposals or are closely related to those proposals and serving to improve the FECA program?

Mr. Steinberg. [Off mike.]

Mr. DesJarlais. Could you turn your microphone on?

Mr. Steinberg. That is twice now. I apologize.

This proposal has been fairly stable over the last several years. As I indicated in my testimony, it has been provided by previous administrations and this administration.

The general components of the proposal, which I have described as comprehensive, broad in nature, yet not sweeping in change, have been consistent. And again, it is addressing multiple dimension of improving return to work, providing an increased level of equity, and streamlining and modernizing the program, sir.

Mr. DesJarlais. Okay. Thank you.

Mr. Szymendera, your testimony notes that additional or augmented benefits for workers with dependents was added to FECA in the 1940s. At that time some 10 states also provided for a type of augmented compensation. However, your testimony further notes that today most state provides augmented compensation for dependents.

Can you discuss the move away from augmented compensation for dependents at the state level?

Mr. Szymendera. Well, to be honest, CRS has not looked so much at the history of state developments as much as we have looked at the history of the FECA program. It was noted that, interestingly, in 1949 when they added the—when they added the augmented compensation, one of the reasons they said they were doing it was to be consistent with the states. And so we went back to the laws in place in 1949 and found only 10 states, and none—you know, none today.

You know, as to why states have moved away from that, I don't know. One of the things that has been cited by the Department of Labor both here and in other forms is augmenting compensation for dependents can be difficult because they are changing when a child reaches 18, no longer a dependent; there are some provisions if the child is permanently disabled him or herself. So there are some administrative difficulties that may be present there.

But that would be—absent any research into why those specific states moved away, it would be—it would really be speculation.

Mr. DesJarlais. All right, thank you.

And, Mr. Sherrill, I did have a question for you but my time is about to expire so I am sure we will get to you.

Thank you. I will yield back.

Chairman WALBERG. I thank the gentleman.

Now I recognize the gentleman from California, Mr. Miller?

Mr. MILLER. Thank you, Mr. Chairman, and thank you very much for holding this hearing.

Dr. Seabury, DOL seems to be making an argument that somehow there is a—sort of a significant disincentive to return to work when you compare FECA benefits with the OPM data. Do you see this or is there—what other evidence is there to suggest that that is either the case or it isn't the case?

Dr. SEABURY. Well, it is true that FECA benefits are in general more generous than state systems, as we have heard, so—and there is evidence out there that increasing benefits can have a modest effect on return to work incentives.

Mr. MILLER. Do we see these people not returning to work at a very different rate than state programs, or——

Dr. SEABURY. Actually, you know, I would have to—I haven't seen a direct comparison. My impression is that return to work in the FECA program actually seems reasonably good but I would have to see some more empirical evidence on that.

Mr. MILLER. Has either Labor or GAO looked at this?

Has Labor looked at this?

Mr. STEINBERG. Again, our findings are from observations from our claims examiners, observations from the I.G. community that we work with, and other partner agencies who share with us that they do have problems—and again, we don't think that this is a rampant issue. There are some people within the community——

Mr. MILLER. Well, if it is rampant I assume we would be all holding a different hearing at the moment. I want to know if it is enough evidence to base upon the conclusions that you arrived at as to that somehow this benefit would drive people not to return to work.

Mr. STEINBERG. Yes, it can. What we have seen is that with the benefit being higher at 75 percent and remaining that level at retirement age, we believe that that is a disincentive to people going back to work.

Mr. MILLER. You believe that. I am just trying to find out how you base that belief.

Mr. STEINBERG. Again, that is from discussions that we have had with our partner agencies, with the I.G. community that has investigated particular cases and have discovered that an individual will, if you will, will not participate in a vocational rehabilitation program and will find other reasons to stay on the workers' comp program because it is very generous.

So to suggest that we have empirical analysis——

Mr. MILLER. It is an element of human nature that just expresses itself when you are injured.

Mr. STEINBERG. Yes, sir.

Mr. MILLER. And so what, if you take away support for their dependents and you lower the overall benefit you will drive them to work?

Mr. STEINBERG. Well again, the proposal to reduce the benefit is two-fold. One is a matter of equity, that in many situations we have individuals who are on workers' comp who are receiving more than their colleagues who are working. And then the second factor is the disincentive, the fact that there are certain situations where an individual would rather stay at 75 percent tax free than to go back to work. So we believe both it is a matter of equity and fairness——

Mr. MILLER. Well, let's talk about the people that decide that is not the case and they need the 75 percent to provide the wherewithal for their families.

Mr. STEINBERG. Well again, we believe that—and as GAO has concluded—the change from 75 percent to 70 percent will have fairly limited impact on the majority of individuals. The study fails to reflect the fact that many are dual-income families and the fact that the individual is out of work but yet still receiving in this case a 70 percent benefit is still sufficient, and again, is still more than their colleagues and the people who are working.

Mr. MILLER. Why would we give anything to people who are dual—families if their spouses are making a lot of money? Wouldn't we say, "Well, that is good enough. You don't get anything."

Mr. STEINBERG. Again, we don't factor those types of things into the——

Mr. MILLER. But you just did.

Mr. STEINBERG. I am sorry?

Mr. MILLER. You just did. You make an assumption about some are dual workers so this really won't harm them; they don't need this. Well, let's assume the spouse is making a million dollars a year. This is about the injured worker, isn't it?

Mr. STEINBERG. This is about the injured worker but it is also about the ability of the injured worker to——

Mr. MILLER. Do we have an incomes test then—a family income test?

Mr. STEINBERG [continuing]. To have wage replacement that is reflective of what their salary was.

Mr. MILLER. Do we have an incomes test——

Mr. STEINBERG. Do they have an——

Mr. MILLER [continuing]. So we know how well the spouse is doing so maybe we can pay them less?

Mr. STEINBERG. We don't do that analysis, sir.

Mr. MILLER. Yes, you did. You did it when you decided you were going from 75 to 70 percent because in some cases people won't go back to work and one of the reasons they might not go back to work is they are in a dual-income family.

Mr. STEINBERG. No, no, no. I am not——

Mr. MILLER. Does it make a difference if they are in a low-income dual-income family or a high-income dual——

Mr. STEINBERG. No. I am not suggesting that that is the reason for the reduction on the rate, sir. I am saying that that is now the work environment. When these rates——

Mr. MILLER. Well, let's go back and we will read the testimony because I think you did suggest that that is the reason.

Mr. STEINBERG. I am sorry?

Mr. MILLER. I said we will go back and read the testimony because I think we will see that you did suggest that that is the reason. I am just trying to find out what is based on fact and what is based upon assumptions, and how we disallow or allow based upon those assumptions.

Mr. STEINBERG. Well again, two points. One, the based on fact is the matter of equity with individuals who are working who are not injured. And a matter of going from 75 percent to 70 percent is a matter of fact and a matter of equity, and that has been—and that has been studied.

The issue of the disincentive, as you indicated, sir, is human nature, but it is something that we have observed, and our partner agencies have observed the fact that people are more comfortable staying at that rate. The I.G. community has come to—has observed that as well, sir.

Mr. MILLER. I think most studies suggest that the American worker is driven to go to work. Kind of opposite most other countries. But anyway——

Chairman WALBERG. The gentleman's time is expired, I am afraid.

And now I recognize the distinguished chairman of the Education and Workforce Committee, Mr. Kline?

Mr. KLINE. Thank you, Mr. Chairman, for the hearing.

Thank the witnesses for attending.

As you can tell, there is some considerable interest here in this committee on this issue. As Chairman Walberg pointed out, we passed some legislation out of this committee and the House in the last Congress to address some of these issues and we were—we called for the report—the GAO report—and the input from the distinguished folks on this panel as we move forward.

There are other committees, certainly, in the Congress and in the House that are looking at this issue, sometimes in connection with other departments, Postal Service, and so forth. So it is an issue that has to be addressed and we need to understand it, and so I am very grateful for all of you here and your testimony and the work you have done and the research and in your reports as well as your testimony.

Mr. Szymendera, your testimony—and again, thank you for your work for CRS and GAO. We depend very heavily on the work that you guys do, so thank you for that. But your testimony notes the choice FECA beneficiaries can make at retirement age to remain on FECA or leave the FECA program and receive federal retirement benefits.

What other benefits could a FECA beneficiary be eligible for example, FERS disability, retirement, Social Security disability? And what issues should be considered in terms of how FECA benefits can coordinate with, mesh with these other benefits?

Mr. SZYMENDERA. Well, there are several benefits that a FECA beneficiary could be eligible for. You mentioned Social Security disability benefits. If any workers' comp beneficiary, whether they are FECA or in a state workers' comp, is also eligible for Social Security disability, their combined FECA benefit plus the Social Security disability benefit cannot exceed 80 percent of their pre-disability wage, and that is the same for state workers' comp beneficiaries, as well. There is an offset mandatory in the Social Security Act for people who receive both workers' compensation and Social Security disability insurance.

Once a FECA beneficiary reaches retirement age and they have to make this election—do I stay on FECA or do I go to FERS or CSRS or another—as you know, there are other smaller federal employee retirement systems, as well—there is also to be considered the possibility of what is going to be their level of Social Security retirement benefits. As you know, under the FERS system—when Congress created the FERS system, when they moved away from CSRS, Social Security is a key component of that system, as is the Thrift Savings Plan.

And so I think when employees make that decision they have to look at how much their FERS annuity would be, how much they intend to receive from Social Security, which they should be somewhat aware of with information from the Social Security Administration that Congress requires them to provide, and then, of course, how much is in their TSP account, and that would play a role. If they go to retirement age and there is, you know—they are at the very, very low end because of all that income, then you are looking at a program like Supplemental Security Income, SSI, which is administered by the Social Security Administration, which could then provide an additional benefit—an income benefit to them, as well.

And then, of course, in other cases, as the Department of Labor has mentioned multiple times, for example, FBI agent or federal firefighters—they are eligible for public safety officer benefits, which I believe is over $250,000 lump sum from the Department of Justice; that is in addition. Several agencies such as the State Department have annuities for employees killed overseas; that gets added to that, as well.

So it can get a little bit complicated depending on the circumstances of the individual employee.

Mr. KLINE. Thank you. I would say it is—not that it can get complicated, it just got complicated in listening to that.

I was going to ask for some comment from Dr. Seabury, as well, but I see my—on the same subject, but I see the light is rapidly moving toward red.

So thank you very much, again, to all the panelists for your testimony and for your participation.

And I yield back the balance of my time.

Chairman WALBERG. I thank the gentleman.

And I now recognize Mr. Hudson for your 5 minutes of questioning?

Mr. HUDSON. Thank you, Mr. Chairman.

And thank the panel for your testimony today.

I would like to start with Mr. Szymendera.

Could you briefly discuss the policy considerations surrounding the treatment of benefits before and after retirement age? Specifically, what considerations may account for a workers' compensation system that continues benefits past retirement age? What policy rationale may account for different treatment of benefits at retirement age?

Mr. SZYMENDERA. I think it ultimately really is a fundamental question of workers' compensation that goes back, in the case of

FECA, to the beginning of the program in 1916 and the beginning of workers' compensation in the years before that, and that is, what is the role of workers' compensation? Is it simply year-to-year wage loss?

If that is the argument, that all workers' compensation is supposed to do is replace year-to-year wages, then I think a logical argument can be made that when a person reaches a certain age—retirement age—there are no wages to replace. They wouldn't be working otherwise. Now, that age differs for different people. People retire at different—but we could—Congress could set an age, as they have set a full retirement age for Social Security. That is one argument.

If you argue that, no, workers' compensation is more than that. It is intended to provide a benefit to a worker who was hurt at work under the assumption that the employer has a responsibility to provide a safe workplace, which Congress established in 1970 with the Occupational Safety and Health Act, for example, and this person went to work and got hurt, irregardless of fault, it is the employer's responsibility.

And there are all sorts of costs involved in becoming permanently disabled—not only lost wages but other costs. If you say that the goal, then, of FECA is to replace as much as possible all of those costs and provide for that worker who, remember, cannot sue the employer, and if they sue a third party has to essentially give back, under the subrogation rules, that money to FECA, then I think it becomes harder to make the argument logically that benefits should be cut off at a certain point because a person remains permanently disabled into their 60s, 70s, 80s, however long; they have lost lifetime earning capacity; and they may have incurred other costs that are associated with disability, not to mention other things that would be compensated in the tort system, such as pain and suffering.

Remember, as Department of Labor mentioned, the postal worker in the car accident. The postal worker in the car accident is limited under FECA to what he or she can receive different than the private citizen in the car accident, who may well endure tort claim, receive money for pain and suffering, punitive damages against the offending party that would be paid. None of that is available under workers' compensation.

And so if you feel workers' compensation is more than just year-to-year wage loss then I think it becomes more difficult, logically, to justify a cutoff at a certain age. This is a debate that really goes back to the beginning of workers' compensation and it is a debate that Congress took up in 1949 when they decided to implement a mandatory review at 70.

They didn't cut off benefits at 70 but they implemented a mandatory review. And it is a debate that Congress revisited in 1974 when they rescinded the mandatory review.

These same arguments that I have just made and the same—many of the same issues we are discussing today were discussed in—if you look at the hearing record in 1949 and in 1974 and, of course, in recent Congresses. And so it really comes down to what Congress wants as the fundamental goals of this program, and I think that ultimately would guide where the policy would go in regards to benefits after retirement.

Mr. HUDSON. Thank you for that.

Mr. Steinberg, just to clarify for the record, is DOL intending to incorporate any of the GAO findings into its proposals?

Mr. STEINBERG. I am sorry, sir. We don't have a timeline for submitting a legislative proposal. However, in terms of the findings of the GAO study, we do not believe that we should change the proposal that we have.

To build on my colleague's points, again, I think the difference between our program and most of the states' programs is that this is a lifelong benefit as long as the individual still has that work-related injury or illness. There is no cap either from a time dimension or from a dollars and cents perspective.

We believe that is our obligation to protect the federal worker, so there are no changes that we propose as a result of the study by GAO.

Mr. HUDSON. Thank you for that.

And I am interested in this discussion we have had sort of over the incentive to return to work, and so I would like to maybe discuss with you briefly here how the FECA program is working to reduce injured employees' time away from work and return employees to work. Can you explain in some detail the program's goals and——

Chairman WALBERG. The gentleman's time is expired.

Mr. HUDSON. I will submit that in writing. Thank you.

Chairman WALBERG. I now recognize the gentleman from Indiana, Mr. Rokita?

Mr. ROKITA. Well, I thank the chairman and I thank the witnesses for your testimony today.

Mr. Steinberg, could you answer the congressman's question?

Mr. STEINBERG. I can, and I can proudly answer that. We have extensive focus on return to work.

I think in years past workers' compensation programs were typically seen as a wage loss replacement program, and yes, our program does provide that and it is a hallmark of our program to have a very generous level. But we have spent a significant amount of time focusing on return to work.

We have put in place a disability management program where we have staff nurses; they work with field nurses. We try to get to the claimant as early as we can to make sure that they get diagnosed, they get into early treatment, and they get into early rehabilitation.

Those are some of the proposals that I talked about in my testimony to permit us to engage in vocational rehabilitation before the injury is identified as permanent in nature, which is typically 6 months. We believe that if we can begin vocational rehabilitation and put in place a rehabilitation return to work plan earlier in the process we have a much higher probability of returning the individual to work.

Our statistics are terrific: 85 percent of those individuals with serious injuries that are out of work for more than 45 days go—85 percent go back to work within one year and 92 percent go back within 2 years. Of the approximately 120,000 cases we receive each year only about 2,000 of them go on our periodic rolls at the end of the 2-year period, and I think to a large extent that is because of our interventions.

Mr. ROKITA. Thank you, Mr. Steinberg.

I also witnessed the spirited exchange that Congressman Miller had with you. Do you have anything to add to that?

Mr. STEINBERG. Well again, I think it is important to point out that OWCP, the Department of Labor, we take terribly seriously our responsibility to protect injured workers. I think this is being unfortunately portrayed as an intent to harm federal employees, and that certainly is not the intent. What we have done is an analysis of the rates that we have and the rates that the states have. We have also talked with OPM in terms of what retirement rates should be and we believe that we have proposed a slight reduction in rates—not major changes, but a slight reduction in rates that provide a level of fairness and equity between the injured worker and the non-injured worker.

Mr. ROKITA. Okay. Thank you, Mr. Steinberg.

Mr. Sherrill, is it my—am I pronouncing that right?

Thank you.

Quick question for you—maybe not so quick. Your testimony notes that in the prior report from 1998——

Mr. SHERRILL. Yes.

Mr. ROKITA [continuing]. GAO analyzed the adequacy of the FECA benefits by comparing benefits to take-home pay at the time of injury.

Mr. SHERRILL. Yes.

Mr. ROKITA. The current report compares benefits to take-home pay an employee would have had absent an injury.

Mr. SHERRILL. That is right.

Mr. ROKITA. First, can you briefly elaborate on the different methodology used in each report? And then also, as we consider policies in this area, what do you think are the merits and drawbacks of each methodology?

Mr. SHERRILL. The 1998 report basically answered the question of to what extent do the FECA benefits support the person in maintaining the standard of living they would have had at the point of injury, and so it factored in wage increases—sort of average wage increases for the federal workforce over time—factored that into the analysis.

The work that we have done here with improved methods, access to additional data sources, factored in what would the person's missed career growth have been because we matched them to a very closely matched counterpart. And so it really gave a sense of, you know, how adequate are the FECA benefits with respect to what they would have otherwise received in terms of federal wages and salary.

Mr. ROKITA. So an improvement, this later methodology over the earlier one?

Mr. SHERRILL. Yes. Because in the past it was—the data offered were not available to really get a sense of how people would really be affected and to assess the counterfactual in the absence of being injured what would have been the case, but now we have better data, better methods to do that kind of analysis.

Mr. ROKITA. Thank you.

And the last two witnesses, while I have some time.

Dr. Seabury, anything to add and—along the lines of the questions that I asked—in 30 seconds?

Dr. SEABURY. Yes, 30 seconds. I just would like to confirm, I do think the approach to using the matching approach is an improvement. I think that a distinction needs to be made between what is used to calculate benefits versus assessing the effect of a policy change on workers, and so I think to capture the actual effect of the policy change on workers you need to consider the lost career growth because that is a very real consequence of a workplace injury that should be factored in.

And with return to work, I think the real challenge with return to work is there is this—there is an assumption that—or it is an unknown how much of the workers who are on long-term disability currently have the capacity to work but aren't choosing to because of financial incentives, and I think it is just not clear. There is not enough evidence to say how big a share that is.

And so I think the biggest concern with some of the policy proposals is that the DOL proposals to get people back to work are great, and including increased rehabilitation, but we don't know who is—how that is going to affect the people who don't get back after those policy changes are in——

Mr. ROKITA. Thank you.

Apologies to Mr. Szymendera. My time is expired.

Chairman WALBERG. I thank the gentleman.

And now I recognize the gentlelady from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you very much, Mr. Chairman. I apologize for not being here for the testimony but I did review it in advance. I was in a committee markup.

I want to thank the chairman and the ranking member for putting together this bipartisan hearing on such an important topic. Our public servants are great assets to our country and deserve a workers' compensation program that ensures that they are no worse off and no better off than if they hadn't been injured or made ill on the job.

Mr. Steinberg, I am sure you are aware that bills have been proposed in the House to reform the Postal Service, and at least one of those includes a provision that would take postal workers out of FECA and instead have the Postal Service administer its own program. On top of that, it would force workers above retirement age into retirement benefits rather than keeping them in FECA.

So this proposal is concerning to me, among others. What is the administration's position on removing Postal Service workers from FECA?

Mr. STEINBERG. Well, the administration's proposal does not propose a separate system for postal employees but recommends system-wide reforms for all federal employees. We believe that the proposals that we will put forward will benefit all agencies.

I will point out that the Postal Service is about 45 percent of our customer base, so obviously they will benefit from the changes that we are putting forward. The President's budget does not either put forward a proposal to separate the workers' comp program and put it with the Postal Service.

We believe that creating a separate system would be extremely complex; it would be extremely expensive; it would be very labor intensive; it would require a substantial and entirely new infrastructure to be established by the Postal Service. Much of the work would likely be contracted out as opposed to being performed by federal employees, as it currently is today.

We think it will be significantly more expensive. As I indicated in my testimony, our administrative costs are 5 percent of the program.

The best of the state programs is at about 11 percent. That is the average. And we would project that the cost of the Postal Service doing this would be at least double the administrative cost for us doing that.

Another concern would be that establishing a system—a separate system could raise equity issues if benefit levels were different or if their processes were different. Again, we believe that our proposal will have a positive impact on the Postal Service, and I believe the administration believes that this is how we should move forward.

Ms. BONAMICI. So I can infer, then, that the administration opposes a separate system?

Mr. STEINBERG. The administration has not proposed a separate system——

Ms. BONAMICI. That they oppose a separate system for postal workers.

Mr. STEINBERG. Again, the administration has not specifically addressed this. This is something new that has been discussed. I have not had conversations with the administration specifically on that.

What I can say is that the administration supports these changes and believes that these changes are the right way to move forward and will benefit the——

Ms. BONAMICI. Thank you.

Mr. STEINBERG [continuing]. The Postal Service.

Ms. BONAMICI. And you mentioned states. I know benefits vary from state to state. Oregon, for example, provides permanent disability for life, a maximum of $1,064 per week.

But is FECA generally consistent with the majority of states with regard to maintaining permanent disability benefits through retirement age without a reduction? How many other programs provide benefits without reduction past retirement——

Mr. STEINBERG. I am sorry. Could you repeat the latter part of the question?

Ms. BONAMICI. Yes. How many other programs provide benefits without reduction past retirement age?

Mr. STEINBERG. Oh. Many of the programs are actually capped in terms of time and then capped in terms of dollars. We tend to be the only program that continues on for the life of the individual. So I can't provide that comparison right now.

Ms. BONAMICI. Thank you. I will follow up.

And I have a question for Mr.—I hope I say your name right—Szymendera. Was I close?

Mr. SZYMENDERA. Yes. Szymendera, yes.

Ms. BONAMICI. Szymendera.

Your testimony notes that FECA beneficiaries covered by the Federal Employees Retirement System may not contribute to either Social Security or the Thrift Savings Plan while receiving FECA benefits. As a result, employees, especially those who are permanently disabled early in their careers, may end up with smaller Social Security benefits and low TSP balances on retirement.

So what are the implications of putting into place a general age-based test for FECA benefits? Would this be inconsistent with the purpose of a compensation law that is designed to make workers whole if they are permanently disabled?

Mr. SZYMENDERA. Thank you. First, if you don't mind, let me— I can address that first question you asked the Department of Labor, and that is currently 39 states pay benefits for the duration of disability or the life of the worker, as does FECA, as does the federal Longshore and Harbor Workers' Compensation Act. One additional state pays only in catastrophic—some of the state laws can get very complicated, but the general rule—the general answer would be 39 states——

Ms. BONAMICI. Thank you very much.

Mr. SZYMENDERA. So FECA is consistent with the majority.

Now, as to your question—and I think it is, as I mentioned before, it gets to this idea of what is the overall intent of the program. FERS relies on three components. Two of those components are Social Security and TSP. If you have a worker injured, especially at a young age, they are not going to be able to build up the balance in TSP, possibly, or have the Social Security to rely on; they and so they are really going to rely primarily only on the third, is annuity.

It gets ultimately to what is the goal of the program. If it is just year-to-year wage loss then you say, "Well, a person at retirement age wouldn't be working anyway." If it is we are trying to make this worker to some degree whole because of an injury that occurred in the workplace and we believe the employer—in this case the federal government—has a responsibility to do that, then I think you do have to consider the fact that you may have a worker with two of the three components of the retirement system that may be very low TSP balance and a low amount from Social Security.

Ms. BONAMICI. Thank you very much.

I see my time has expired. Thank you, Mr. Chairman.

Chairman WALBERG. Thank the gentlelady.

And again, thank you to the panel for your answers, for your experience, and what you shared with us today.

I now recognize the ranking member for closing comments?

Mr. COURTNEY. Thank you, Mr. Chairman.

And the panelists, excellent testimony and I think it is going to give us a great record as we move forward considering, again, the possibility of a bill that hopefully will be as bipartisan and successful in the House as last year.

And I really want to, again, salute Mr. Szymendera for the great historical perspective that you added to this hearing. You know, it is important, I think, to remember that worker compensation law, which, you know, a first-year law student is instructed was set up and there was a tradeoff. People gave up their right to access the civil justice system, which provides, again, a much broader array of benefits than what, again, the firefighter or the FBI agent who is injured on duty can collect.

And that is why, frankly, you know, looking at the administration's proposal—which again, I think only North Dakota is the only state that was cited in the CRS report that converts the benefit at retirement age—in my opinion would put the system, you know, as an outlier, to say the least. I mean, Connecticut—I will toot my own horn here—allows for, again, a benefit that extends beyond retirement and no conversion in terms of the calculation of the benefit. And to me that is consistent with that tradeoff.

So again, this hearing, I think, is going to help us really understand better the implications of the proposal that the department has come forward with.

GAO has informed us that DOL's proposal to cut benefits at retirement age for totally disabled workers will leave the median worker in the FERS system in many instances worse off than if they had worked a full career and not been injured. This finding applies to both executive branch workers as well as postal workers.

GAO's findings raise troubling concerns about the merits of DOL's proposal, as it violates a basic principle underpinning FECA, which is to ensure that workers are made whole if they are injured on the job. The bottom line is no one should be better off or worse off than if they had not been injured.

And this applies to federal law enforcement injured in the line of duty, firefighters protecting life and property, prison guards keeping our community safer, letter carriers injured in an accident. And as a matter of equity and the interests of avoiding more bureaucracy, it makes little sense to remove postal workers or any other group from FECA and create a separate program, which again, I think hopefully is a consensus point here this morning.

We have learned from our witnesses that GAO uses a mainstream approach in assessing benefit adequacy. In response to GAO's findings I would urge the Department of Labor to reevaluate its proposal.

I am aware that some are advocating approaches that would jettison core principles underpinning FECA and simply cut without regards to the impact on disabled workers who must rely on FECA as their exclusive remedy. Therefore—and I think hopefully all of us agree—our approach to reform should always be data-driven.

With the additional GAO data in hand I hope that we can continue our bipartisan efforts that were launched in the last 112th Congress that includes giving DOL tools to better improve program integrity, increasing the number of workers who will be rehabilitated and resume work at the federal agencies, to modernize obsolete benefits and increase the cost effectiveness of medical delivery by utilizing physician assistants and nurse practitioners to deliver treatment.

Mr. Chairman, in closing I would move that the committee include a statement from the National Treasury Employees Union and three other documents regarding GAO's assessment of the DOL proposal be placed in the record. And again, I want to thank you for organizing this outstanding hearing. And I yield back the balance of my time.

[The information follows:]

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

Chairman Walberg, Ranking Member Courtney and Members of the Subcommittee on Workforce Protections, the National Treasury Employees Union (NTEU) appreciates the opportunity to offer this statement to the Subcommittee as it considers the important matter of Workers' Compensation in the federal sector. NTEU represents over 150,000 federal employees at 31 agencies. Our members perform every type of work for the American public from Customs and Border Protection Officers, to mailroom workers at the Treasury Department, and Food and Drug Administration scientists working in laboratories at home or on assignment inspecting products in India and 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.

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.

In 1916, five years after Wisconsin led the nation in passing the first state Workers Compensation law, Congress moved to enact a program to insure the federal government's own employees as well as railway, longshoremen and other harbor workers. The Kern-McGillicudy Act developed the program we now know as the Federal Employees Compensation Act (FECA).

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

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

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

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

Let me close by stating that NTEU very much wants to work with this subcommittee or any other policymaker to find ways to reduce the costs of the FECA program. As I have said, our belief is the best way to do so is not by reducing benefits or denying claims but by preventing the occurrence of injuries.

NTEU is committed to a safe and healthy federal workplace where employees are less likely to ever suffer the injuries that lead to FECA claims. Our union has also been one of the strongest forces for innovation in the federal workplace, often working with management on bold new programs and sometimes dragging management forward over their reluctance. We have received reports from our members about management resistance or disinterest in light duty assignments, alternative worksites, disability accommodations and other actions that could allow FECA recipients to return to work. A change in management practices and culture is needed. I don't expect this is something Congress can fully legislate, but the first step is to end the myth that able bodied workers are receiving FECA payments and accept the fact that many injured workers would like to return to work and could do so with opened minded and innovative agency practices. Further, NTEU is willing to work with policymakers to improve program integrity methods. While we have not seen much evidence that FECA beneficiaries are fraudulently receiving other government benefits such as Social Security or Unemployment Insurance, there could be improved safeguards to verify this is not happening. 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.

[GAO report, "Federal Employees' Compensation Act: Percentages of Take-Home Pay Replaced by Compensation Benefits," excerpts from cover and pages 41-44, April 1998, may be accessed at the following Internet address:]

http://gao.gov/assets/230/226220.pdf

Adequacy of Earnings Replacement in Workers' Compensation Programs

NATIONAL ACADEMY OF SOCIAL INSURANCE

National Academy of Social Insurance
Study Panel on Benefit Adequacy

very similar to the injured workers and uses statistical methods that account for the impact on earnings of the characteristics of workers and their employers, it is possible to estimate future earnings for a group of workers rather precisely. After deriving these estimates of uninjured earnings, the comparison in Figures 3.1 and 3.2 can be made using observed postinjury earnings.

Two different approaches have been used to estimate uninjured earnings: matching and regression. The matching approach uses a comparison group of uninjured workers and attempts to match each injured worker to one or more uninjured workers with similar relevant characteristics in the immediate preinjury period. For example, uninjured workers would be matched to specific injured workers employed in the same workplace at the time of injury who, in addition, were within five years of the age of the injured worker, had the same gender, and had preinjury wages within 10 percent of the injured worker. The idea here is that people with similar characteristics should have similar earnings profiles. So, if their injuries could have been prevented, the earnings of the injured people would have been similar to their uninjured matched counterparts. Although we wouldn't expect this to be true in every case, statisticians have shown that, under reasonable conditions, it will be true on average.

So the average earnings of uninjured workers matched to a specific injured worker can provide an estimate of what the injured worker's earnings would have been in the absence of injury. In each observed postinjury period, this estimate of uninjured earnings is subtracted from the actual wages (if any) of the injured worker. This difference produces an estimate of the injured worker's gross earnings losses for each period. These estimated losses can then be averaged for all injured workers over all observed postinjury periods to obtain an estimate of average losses.

The other currently used statistical approach to measuring losses, the regression approach, doesn't try to match individual injured and comparison workers. Instead, it uses regression analysis techniques to generate profiles of average earnings over time for uninjured workers with specific individual, job, and employer characteristics. It then applies these models to injured workers with the same characteristics, generating estimated uninjured earnings for those workers. As with the matching method, the difference between the actual postinjury earnings benefit data as well. In addition, there may be significant delays between the payment of benefits, reporting of data by employers and insurers, and data entry and processing by the administrative agency. Only a few state data systems record the actual timing of payments. In at least one state, benefit data are not forwarded to the state until the case is closed. In addition, fees paid to claimants' attorneys or other claim expenses often are deducted from payments to the worker, and these fees may or may not be reported in state data.

Most state data systems record only income benefits paid to date. If a case is not resolved when the data are collected, the amount of any future benefit payments will be unknown. In this case, unless data are collected years after injuries occur, recorded benefit payments will be incomplete and benefit adequacy will be underestimated. This is one advantage of insurer data, because it is possible to collect information on reserves for future losses on an individual claim basis.

Compromised or "settled" cases present another problem in analyzing benefit payment data. As described earlier, the lump-sum payment may cover both income and medical benefits, and the amounts of these benefits are not always distinguished. In this case, the researcher must decide how to apportion the payments, so as not to mistakenly classify future medical benefits as wage replacement benefits. Frequently, all compromise payments are treated as income benefits, which may overestimate wage replacement rates in states that allow the compromise of future medical benefits.

ALTERNATE MEASURES OF ADEQUACY

The current "state of the art" in measuring wage replacement adequacy involves securing administrative data on a large sample of workers' compensation indemnity claimants and an even larger sample of potential comparison workers who were not injured. Injured workers should be matched to uninjured workers according to the set of characteristics available, to ensure that they were comparable before the injury occurred.

The losses sustained by injured workers can be estimated by comparing their earnings after the injury, if any, to the earnings of uninjured comparison workers for the same time period. Aggregate income replacement benefits paid to the injured worker under the workers' compensation program are divided by aggregate estimated wage losses to arrive at an average wage replacement rate.

According to the standard we have adopted, adequacy will be defined as two-thirds replacement of wage losses over the duration of the disability. But the analytical methods that provide the most accurate estimates of uninjured earnings from a statistical perspective may not be feasible in a given state and, even if they are, may not be optimal from a policy perspective. Some states simply may not have the automated workers' compensation data necessary to carry out such studies. In addition, these studies can be costly and time consuming.

Even though these methods develop measures that are closer to true wage losses than other methods, they typically cannot produce up-to-date descriptions of workers' compensation benefit adequacy. That is because it is impossible for such studies to produce results for periods more recent than four to six years ago due to the time needed after the injury to establish future earnings patterns, and the time needed to accumulate the necessary data and perform the analysis. Policymakers typically prefer to base decisions on more current information. This raises the issue of whether alternate methods can produce useful measures of adequacy. We will consider this question in a subsequent chapter.

Chapters 4 and 5 describe, in detail, several different measures of workers' compensation wage replacement adequacy. Chapter 4 uses statutory benefit levels, i.e., those prescribed by statute, without regard to what is actually paid, to determine the relative adequacy of prescribed benefits among states and changes in statutory benefits over time. Chapter 5 describes current state-of-the-art studies that have measured wage replacement adequacy in five states: California, New Mexico, Oregon, Washington, and Wisconsin.

Statutory Workers' Compensation Benefits Method (Chapter 4)

Benefit structures in workers' compensation are defined by state statute. The statute sets out the weekly benefit amount (as a percentage of the worker's preinjury wage), the maximum and minimum weekly benefit amounts (generally tied to the state's average weekly wage), and (perhaps) a maximum period for collection of benefits. Frequently,

A New Day for the Civil Service

Long-term FECA Recipients

Equitable Transition to the Retirement Years

The Problem

- A basic concept behind workers' compensation is that individuals who become sick or injured from their work should not be economically harmed by reason of their situation.
- The current system is equitable during compensationers' working lifetimes in that their tax preferred benefit is reasonably comparable to their working take-home income.
- However, when individuals reach retirement age, those levels of compensation are in excess of what the individual would have received in retirement income.

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S. 261

- As drafted, S. 261 would provide for retirement based only upon employment performed before the injury.
- This would result in many individuals being placed in penury with a very small annuity and without health benefits.
- While differences would depend upon circumstances, it would be easily possible for a $4,000 per month compensationer to be converted to a $300 per month annuitant with no health benefits.

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What Is Fair?

- To provide equity, a retirement benefit should be comparable to the amount the compensationer would have received had they completed their career and not been injured or become ill.
- To do so, an annuity computation would have to be adjusted to reflect higher salary and additional service.

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Average Retirement

- Individuals currently on the retirement rolls who retired optionally under CSRS on average retired at age 60 with 32 years of service. (Since FERS is a relatively new system, statistics under that system are not reflective of a mature system.)
- Yields a retirement of about 60% of the individuals' high-3 average salaries.

CSRS

- For CSRS, a solution would base the average salary element of the retirement computation on the wage base for the final three years of compensation.
- Service credit would factor in the amount of time the compensationer was on the OWCP rolls.
- A 60% or 70% cap on the percentage element might be appropriate since most employees do not work until SS retirement age.

FERS

- FERS is designed to yield similar retirement replacement income as CSRS, with about half coming from FERS, and the remainder coming from TSP and Social Security.
- Thus, in addition to updating service and salary, there also needs to be a make-up for the lost SS and TSP.
- For individuals who return to employment from FECA, this is accomplished by increasing the accrual rate for the FECA time by 1%, from 1% to 2% for most service. This could also be a fair solution for permanently disabled individuals.

Choices

- Given the tax preferred nature of FECA benefits, the proposed 50% conversion benefit is roughly comparable to the typical 60% CSRS replacement income level (which is mostly taxable).
- Thus, taking tax consequences into account, net costs should be reasonably comparable regardless of whether the solution to the problem is a FECA conversion benefit, or an equitably constructed CSRS/FERS alternative retirement benefit.
- FECA costs are charged back to agencies, but regular retirement costs are paid by agencies as work is performed. Since agencies are normally responsible for both FECA and retirement costs, there is no reason for funding source to be the basis for which model to choose.

The DoL Proposal

- The DoL proposal is simple. It can be introduced with a minimum of effort without need for creation of a new computational and administrative structure.
- Amount of savings will be about the same as an equitably designed CSRS/FERS alternative retirement benefit.
- It will not only save money but will also reduce instead of increase administrative burdens.

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A CSRS/FERS Alternative Retirement Benefit

- Creation of a CSRS/FERS alternative retirement benefit would be very complicated.
- It will require creation of new computational and administrative structure, and additional staff and computer capacity will be required from a program that is already stretched to its limits.
- It will increase the FERS normal cost percentage (NCP), and would create an unfunded liability.
- The increase in the FERS NCP will increase the retirement contributions based on salary paid by agencies.
- Other than for the Postal Service, the increase in the unfunded liability will be amortized and funded by Treasury payments. The Postal Service would be responsible for the increased costs for Postal Employees.

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The Postal Service

- Current FECA costs are a significant Postal expense.
- The FECA conversion benefit will reduce Postal costs.
- An equitably designed CSRS/FERS alternative retirement benefit would provide more FECA cost savings for the Postal Service than a FECA conversion, but would create additional retirement costs.
- Since the non-taxable FECA conversion benefit would be paid at a lower rate (than a CSRS/FERS alternative retirement benefit), it is possible that it would produce more savings for the Postal Service.

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FY 2012 CASES CREATED BY STATE

[Includes DC, et al]

State	Cases	State	Cases	State	Cases	
AK	559	MD	4429	SC	1140	
AL	1796	ME	613	SD	459	
AR	819	MI	2861	TN	1941	
AZ	3610	MN	1569	TX	9055	
CA	13829	MO	1956	UT	1367	
CO	2300	MS	1261	VA	4529	
CT	1125	MT	744	VT	245	
DC	558	NC	2835	WA	3854	
DE	299	ND	298	WI	1967	
FL	5404	NE	604	WV	718	
GA	3880	NH	557	WY	313	
HI	969	NJ	2732	AA	5	U.S. Armed Forces, America
IA	941	NM	1279	AS	2	American Samoa
ID	686	NV	903	AE	286	U.S. Armed Forces, Europe
IL	4407	NY	6185	AP	70	U.S. Armed Forces, Pacific
IN	1706	OH	2917	GU	72	Guam
KS	841	OK	1513	MP	4	Northern Mariana Islands
KY	1292	OR	1685	PR	872	Puerto Rico
LA	1465	PA	4601	VI	34	Virgin Islands
MA	2023	RI	374			

Chairman WALBERG. I thank the gentleman. And without objection, those will be placed in the record.

I would concur with your statements to a great degree, as well. I think the fact that we passed in the last Congress a bipartisan proposal and did it on voice vote out of the chamber was significant, and I think it was significant for many reasons, but because it provided some updating to a law that we felt was necessary and we could agree to.

We certainly want our federal employees to be cared for. We certainly respect what they do and, when injured in the line of duty, we are responsible for providing care. Just want to make sure that that care is adequate, that it doesn't give unnecessary incentive or additional incentive to bad actors but also recognize that the overwhelming majority of our workforce who are injured have legitimate needs and that those needs are met.

The provisions that we did not include in the last bill simply came from the fact that we didn't have a full understanding of what was needed.

And so, Mr. Sherrill, I thank the GAO for providing the information in a report that we requested to come to us.

I also appreciate, Mr. Steinberg, your passionate defense of your position, of Department of Labor's position. I don't see that as discouraging at all. I think you ought to defend the position and I think in doing so you provided, at least for me, some more questions, along with some appreciation for decisions that were made.

As has been already stated, Mr. Szymendera, the history lesson that we received was helpful, and to know for a fact that we, with our employees, rank very well with state workers, and I think in turn have taken many considerations related to the private sector, as well.

In lieu of the fact that those of us who would like to see a downsizing of the whole federal government in many ways, and yet not seeing that happening overnight, I think my distinguished colleague would agree, as well, we have to take these considerations in for our employees. And so, not knowing with any certainty that the legislation that we offered last term and passed here in the House, whether that will be offered again in the form that it was, at the very least we know that with the information gained today we can look to expand it to add additional changes that might be necessary, might be perceived bipartisanly, as very important to go forward with.

And so I appreciate your testimony today. I appreciate the attention of the committee, the number of members that were here. And I think I can safely state that this will bear some benefit down the road.

And so, seeing that there is no further business to come before the committee, the committee stands adjourned.

[Questions submitted for the record and their responses follow:]

U.S. CONGRESS,
Washington, DC, July 30, 2013.

ANDREW SHERRILL, *Director,*
Education, Workforce and Income Security Issues, Government Accountability Office,
441 G Street, NW, Washington, DC 20548.

DEAR MR. SHERRILL: Thank you for testifying at the July 10, 2013 Subcommittee on Workforce Protections hearing entitled, "Examining the Labor Department's Proposed Reforms to the FECA Program." I appreciate your participation.

Enclosed are additional questions submitted by committee members following the hearing. Please provide written responses no later than August 14, 2013, for inclusion in the official hearing record. Responses should be sent to Owen Caine of the committee staff, who can be contacted at (202) 225-7101.

Thank you again for your contribution to the work of the committee.

Sincerely,

TIM WALBERG, *Chairman,*
Subcommittee on Workforce Protections.

QUESTIONS FROM CONGRESSMAN COURTNEY (CT-2)

1. The Department of Labor (DOL) testified that the Federal Employees' Compensation Act (FECA) should be amended to impose a 3-day waiting period before the receipt of wage loss benefits. DOL contends it was needed "in order to discourage the filing of claims for minor injuries that resolve very quickly." Currently, the waiting period under FECA for traumatic injuries begins after the worker has received 45 days of Continuation of Pay, except for the U.S. Postal Service workers. In 2006, Congress amended the waiting period for Postal Service employees by placing the three-day waiting period immediately after an employment injury (P.L. 109-435). Postal workers can either use available sick leave vacation pay, if available, or simply go without pay. The Committee of Education and the Workforce asked GAO to assess this proposed change in a July 2011 letter.

a) What are GAO's findings? Based on the 6 years of experience with the US Postal Service, is there evidence that changing the waiting period would produce savings for non postal workers, if it were adopted?

2. At the hearing, DOL objected to GAO's use of lost career growth in evaluating what a worker would have earned if they had not been injured. However, your testimony stated that in 1998 the DOL argued that the GAO needed to account for lost promotional opportunities (e.g., lost career growth) when evaluating the adequacy of FECA benefits.

(a) Is it correct that DOL has reversed its position? Did they put this in writing?

(b) Did DOL provide GAO with data or evidence to justify this change?

(b) What is the impact on wage replacement rates from accounting for lost career growth: would it increase or decrease the wage replacement rate?

3. The GAO's report Federal Employees' Compensation Act: Benefits for Retirement Age Beneficiaries (February 2012), which compared FECA benefits with Civil Service Retirement System (CSRS) benefits for those who had worked various length careers. That report found that FECA benefits were about 7% greater than CSRS retirement benefits for an individual who worked a 30-year career.

(a) In the February 2012 report, did the GAO account for lost career growth in the same way that it did in its subsequent reports which looked at the Federal Employee Retirement System (FERS)?

(b) Did DOL object to GAO's use of lost career growth in that report?

(c) To your knowledge, is the only time that DOL objected to GAO's use of lost career growth is when GAO found that FECA benefits were on a par with or less than the median FERS benefit package?

GAO,
441 G ST. NW,
Washington, DC, August 14, 2013.

Hon. TIM WALBERG, *Chairman,*
Subcommittee on Workforce Protections, Committee on Education and the Workforce, House of Representatives.

DEAR MR. CHAIRMAN: This letter responds to your July 30, 2013 request that we address questions submitted for the record related to our statement at the July 10, 2013 Subcommittee on Workforce Protections hearing entitled, "Examining the Labor Department's Proposed Reforms to the FECA Program." The enclosure provides our responses which are based on previously issued products.

If you have any questions or would like to discuss the responses, please contact me at (202) 512-7215 or sherrilla@gao.gov.

Sincerely yours,

ANDREW SHERRILL, *Director,*
Education, Workforce, and Income Security Issues.

Enclosure.

Mr. Sherrill's Response to Questions Submitted for the Record

QUESTIONS FROM CONGRESSMAN COURTNEY (CT-2)

1. The Department of Labor (DOL) testified that the Federal Employees' Compensation Act (FECA) should be amended to impose a 3-day waiting period before the re-

ceipt of wage loss benefits. DOL contends it was needed "in order to discourage the filing of claims for minor injuries that resolve very quickly." Currently, the waiting period under FECA for traumatic injuries begins after the worker has received 45 days of Continuation of Pay, except for the U.S. Postal Service workers. In 2006, Congress amended the waiting period for Postal Service employees by placing the three-day waiting period immediately after an employment injury (P.L. 109-435). Postal workers can either use available sick leave vacation pay, if available, or simply go without pay. The Committee of Education and the Workforce asked GAO to assess this proposed change in a July 2011 letter.

a. What are GAO's findings? Based on the 6 years of experience with the US Postal Service, is there evidence that changing the waiting period would produce savings for non postal workers, if it were adopted?

As we indicated on page 22 of our October 2012 report that analyzed proposed FECA program changes, available data do not allow for analysis of any related cost savings that may have resulted from the change in the waiting period for U.S. Postal Service employees before receiving wage loss benefits.[1]

2. At the hearing, DOL objected to GAO's use of lost career growth in evaluating what a worker would have earned if they had not been injured. However, your testimony stated that in 1998 the DOL argued that the GAO needed to account for lost promotional opportunities (e.g., lost career growth) when evaluating the adequacy of FECA benefits.

a. Is it correct that DOL has reversed its position? Did they put this in writing?

b. Did DOL provide GAO with data or evidence to justify this change?

c. What is the impact on wage replacement rates from accounting for lost career growth: would it increase or decrease the wage replacement rate?

a. In its comments on our 1998 report on percentages of take-home pay replaced by FECA benefits, the Department of Labor (Labor) expressed concern that we did not take account of missed promotions. Labor wrote, in part, that it is almost certain that some percentage of injured workers would have received promotions, thus lowering their replacement rate.[2]

We noted in our October 2012 report (GAO-13-108) that the availability of additional data and improved methods allowed us to present an assessment of the adequacy of benefits that included career growth. In its oral comments on the FECA reports we issued from October to December 2012,[3] Labor emphasized that FECA was not designed to account for missed career growth, which we noted in our work. In the specific instance in which Labor provided written technical comments—for GAO-13-143R—the comments did not pertain to the role of missed career growth in our analysis.

b. Labor did not provide us with any such data or evidence.

c. We noted in our October 2012 report (GAO-13-108) that wage replacement rates that do not account for missed career growth capture the degree to which a beneficiary is able to maintain his or her pre-injury standard of living, and wage replacement rates that account for missed career growth capture the degree to which a beneficiary is able to maintain his or her foregone standard of living. Accounting for missed career growth results in a lower wage replacement rate, as compared to not accounting for missed career growth.

3. The GAO's report Federal Employees' Compensation Act: Benefits for Retirement Age Beneficiaries (February 2012), which compared FECA benefits with Civil Service Retirement System (CSRS) benefits for those who had worked various length careers. That report found that FECA benefits were about 7% greater than CSRS retirement benefits for an individual who worked a 30-year career.

a. In the February 2012 report, did the GAO account for lost career growth in the same way that it did in its subsequent reports which looked at the Federal Employee Retirement System (FERS)?

b. Did DOL object to GAO's use of lost career growth in that report?

c. To your knowledge, is the only time that DOL objected to GAO's use of lost career growth is when GAO found that FECA benefits were on a par with or less than the median FERS benefit package?

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[1] GAO, Federal Employees' Compensation Act: Analysis of Proposed Program Changes, GAO-13-108 (Washington, D.C.: October 26, 2012).

[2] GAO, Federal Employees' Compensation Act: Percentages of Take-Home Pay Replaced by Compensation Benefits, GAO/GGD-98-174 (Washington, D.C.: August 1998).

[3] 213 GAO-13-108; GAO, Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries, GAO-13-142R (Washington, D.C.: November 26, 2012); GAO, Federal Employees' Compensation Act: Effects of Proposed Changes on Partial-disability Beneficiaries Depend on Employment After Injury, GAO-13-143R (Washington, D.C.: December 7, 2012).

a. In the February 2012 report, GAO accounted for missed career growth in its comparison of FECA beneficiaries and their similar non-injured annuitant counterparts, who were matched based on various characteristics.[4] The methodology was similar, but not identical, to that used for the subsequent reports comparing FECA to FERS for full disability beneficiaries; both methodologies took into account missed career growth.

b. No. Labor's comments on our February 2012 report (GAO-12-309R) did not raise any concerns with our use of missed career growth.

c. In its oral comments on our October 2012 report, Labor stated that FECA was not designed to account for missed career growth. These comments pertained to our findings related to wage replacement rates as well as our findings related to the comparison of FECA and FERS.

U.S. CONGRESS,
Washington, DC, July 30, 2013.

GARY A. STEINBERG, *Acting Director,*
Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

DEAR MR. STEINBERG: Thank you for testifying at the July 10, 2013 Subcommittee on Workforce Protections hearing entitled, "Examining the Labor Department's Proposed Reforms to the FECA Program." I appreciate your participation.

Enclosed are additional questions submitted by committee members following the hearing. Please provide written responses no later than August 14, 2013, for inclusion in the official hearing record. Responses should be sent to Owen Caine of the committee staff, who can be contacted at (202) 225-7101.

Thank you again for your contribution to the work of the committee.

Sincerely,

TIM WALBERG, *Chairman,*
Subcommittee on Workforce Protections.

QUESTIONS FROM CONGRESSMAN COURTNEY (CT-2)

1. GAO's December 7, 2012 report, Federal Employees' Compensation Act: Effects of Proposed Changes on Partial Disability Beneficiaries Depend on Employment After Injury, found that the percentage of new partial disability beneficiaries receiving benefits based on constructed earnings rose from 36 percent in 2004 to 63 percent in 2011. Beginning in 2009, the percentage of new beneficiaries receiving benefits based on constructed earnings exceeded those receiving benefits based on actual earnings.

a. What is the percentage of partial disability cases receiving constructed wage loss earnings 2012 (as compared with those receiving actual wages)?

b. What changes in DOL policy or practice contributed to the rate nearly doubling in 7 years? Please describe these new polices or practices.

c. The U.S. Postal Service implemented a National Reassessment Process in 2009 which resulted in light duty work being withdrawn and the partially disabled worker being notified that there is no work available. To what extent has this U.S.P.S. policy contributed to the increase in the number of cases where partial disability benefits are based on constructed earnings as opposed to actual earnings?

2. Your testimony stated that "fewer than 17,000 of the accepted claims per year involve a significant period of disability. Eighty-five percent (85%) of these claimants return to work within the first year of injury and 91% return to work by the end of the second year." How does this return to work rate compare with state workers' compensation and the Longshore and Harbor Workers Act?

3. GAO's report Federal Employees' Compensation Act: Case Examples Illustrate Vulnerabilities That Could Result in Improper Payments or Overlapping Benefits (April 2013) identified cases where claimants were receiving overlapping Unemployment Insurance (UI) and FECA benefits. While overlap is permissible in some cases, in others the state needs to apply an offset against UI benefits. GAO recommended that DOL assess cost effective ways to share data with states such as the National Directory of New Hires.

(a) What steps is DOL taking to implement this GAO recommendation?

(b) What other tools or authorities does the DOL need to improve program integrity?

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[4] GAO, Federal Employees' Compensation Act: Benefits for Retirement-Age Beneficiaries, GAO-12-309R (Washington, D.C.: February 6, 2012).

Mr. Steinberg's Response to Questions Submitted for the Record

DEAR CHAIRMAN WALBERG: Thank you for the opportunity to testify before the subcommittee during your hearing "Examining the Labor Department's Proposed Reforms to the FECA Program." I have received the committee's additional questions and appreciate the opportunity to provide additional information.

1. GAO's December 7, 2012 report, Federal Employees' Compensation Act: Effects of Proposed Changes on Partial Disability Beneficiaries Depend on Employment After Injury, found that the percentage of new partial disability beneficiaries receiving benefits based on constructed earnings rose from 36 percent in 2004 to 63 percent in 2011. Beginning in 2009, the percentage of new beneficiaries receiving benefits based on constructed earnings exceeded those receiving benefits based on actual earnings.

(a) What is the percentage of partial disability cases receiving constructed wage loss earnings 2012 (as compared with those receiving actual wages)?

ANSWER

The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) issued 793 loss of wage earning capacity decisions in 2004 and 716 in 2012. Of these, approximately 35 percent of the decisions issued in 2004 were based on constructed earnings and approximately 66 percent of the decisions issued in 2012 were based on constructed earnings.

(b) What changes in DOL policy or practice contributed to the rate nearly doubling in 7 years? Please describe these new policies or practices.

ANSWER

Under 5 U.S.C. § 8115, FECA requires a proportional reduction of compensation for those claimants who are only partially disabled; this reduction is accomplished through the use of their actual earnings or the use of a constructed position that fairly and reasonably represents that employee's earning capacity. Any constructed position which forms the basis of a wage earning capacity determination must be one that the claimant is vocationally and medically qualified to perform and that position must be found reasonably available in the employee's commuting area. Thus, some employees who in previous years might have been reemployed by their agencies are now found to be only partially disabled. Ifthere are positions that are reasonably available in their commuting area that they can perform, they are subject to DOL determining that they are only partially disabled based upon a constructed position.

While DOL cannot quantify the extent to which any specific changes in policy or practice may have caused or contributed to the finding cited in the GAO study 13-143R, it appears that a number of internal and external factors may have influenced this finding. OWCP's disability management process, under which substantial efforts are made to return every worker to gainful employment (including both early intervention strategies such as field nurse services and vocational rehabilitation services), is much more robust than it was in 2004. OWCP's case management processes have been automated and improved substantially in the last several years. Finally, it is also clear that some employing agencies within the Federal government—particularly the United States Postal Service—currently have less ability to create new positions for workers who have suffered a disability and are unable to return to their previous positions, but retain their ability to earn a wage in a different position.

(c) The U.S. Postal Service implemented a National Reassessment Process in 2009 which resulted in light duty work being withdawn and the partially disabled worker being notified that there is no work available. To what extent has this U.S.P.S. policy contributed to the increase in the number of cases where partial disability benefits are based on constructed earnings as opposed to actual earnings?

ANSWER

For the same periods listed above, approximately 24 percent of the decisions issued on Postal claims in 2004 were based on constructed earnings, compared to approximately 78 percent of those issued in 2012. The increase in constructed wage loss claims is higher than the overall average change in similar OWCP determinations for all other agencies. It is possible that the change in policy by the USPS was a contributing factor in this disparity. However the USPS has notified OWCP that the NRP ended on January 31, 2011. Because of this, the policy will not be a factor moving forward.

2. Your testimony stated that "fewer than 17,000 of the accepted claims per year involve a significant period of disability. Eighty-five percent (85%) of these claimants return to work within the first year of injury and 91% return to work by the end of the second year." How does this return to work rate compare with state workers' compensation and the Longshore and Harbor Workers Act?

ANSWER

OWCP does not have jurisdiction over state programs and does not collect data on state workers' compensation programs to compare with our own return to work success. Additionally, since the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901—950 primarily involves the provision of benefits by private insurers, OWCP does not currently track return to work outcomes for these claimants.

3. GAO's report Federal Employees' Compensation Act: Case Examples Illustrate Vulnerabilities That Could Result in Improper Payments or Overlapping Benefits (April 2013) identified cases where claimants were receiving overlapping Unemployment Insurance (UI) and FECA benefits. While overlap is permissible in some cases, in others the state needs to apply an offset against UI benefits. GAO recommended that DOL assess cost effective ways to share data with states such as the National Directory of New Hires.

(a) What steps is DOL taking to implement this GAO recommendation?

ANSWER

OWCP has met with the Department of Labor's Employment and Training Administration, Office of Unemployment Insurance. That office already has a data sharing platform with the states and OWCP is working with them to share FECA program data with those states where offset of FECA is required. This will be done utilizing the existing infrastructure.

(b) What other tools or authorities does the DOL need to improve program integrity?

ANSWER

OWCP employs a variety of strategies available within the FECA to strengthen the program, including internal and external audits. For Fiscal Year 2014, OWCP has requested $3.6 million to further enhance FECA program integrity. This dedicated funding would be utilized to establish an operation which will further assist in identifying areas of improper payment vulnerability, developing strategies for preventing improper payments, and enhancing our payment recapture program to recover overpayments due to error or fraud in compensation payments. In addition, our legislative proposal seeks authority to obtain Social Security earnings information without having to obtain a release from the claimant.

Thank you again for the opportunity to provide additional information regarding the FECA program.

[Whereupon, at 11:23 a.m., the subcommittee was adjourned.]

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