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REFORMING THE WORKERS' COMPENSATION PROGRAM FOR FEDERAL EMPLOYEES

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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REFORMING THE WORKERS' COMPENSATION PROGRAM FOR FEDERAL EMPLOYEES

Wednesday, May 20, 2015
U.S. House of Representatives,
Subcommittee on Workforce Protections,
Committee on Education and the Workforce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2175, Rayburn House Office Building, Hon. Tim Walberg (Chairman of the subcommittee) presiding.

Present: Representatives Walberg, Rokita, Brat, Bishop, Stefanik, Wilson, Pocan, DeSaulnier, and Fudge.

Also present: Representatives Kline, Scott, and Bonamici.

Staff present: Lauren Aronson, Press Secretary; Janelle Belland, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Callie Harman, Staff Assistant; Christie Herman, Professional Staff Member; Tyler Hernandez, Press Secretary; Nancy Locke, Chief Clerk; John Martin, Professional Staff Member; Zachary McHenry, Legislative Assistant; Daniel Murner, Deputy Press Secretary; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Alissa Strawcutter, Deputy Clerk; Alexa Turner, Legislative Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Austin Barbera, Minority Staff Assistant; Denise Forte, Minority Staff Director; Carolyn Hughes, Minority Senior Labor Policy Advisor; Eunice Ikene, Minority Labor Policy Associate; Kendra Isaacson, Minority Labor Detailee; Brian Kennedy, Minority General Counsel; Richard Miller, Minority Senior Labor Policy Advisor; Amy Peake, Minority Labor Policy Advisor; Veronique Pluviose, Minority Civil Rights Counsel; Rayna Reid, Minority Labor Policy Counsel; and Theresa Tilling-Thompson, Minority Special Projects Assistant.

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

Good morning. And welcome to all of our guests, as well as the Committee members.

We have a distinguished panel of witnesses here today, and we thank you all for joining us this morning.

Since 1916 the *Federal Employees' Compensation Act* has been a critical resource for federal employees who have suffered an injury or illness because of a work-related activity. Today the program

covers approximately three million workers and last year alone paid out nearly $3 billion in benefits.

Despite the significance of the FECA program, it has been nearly 40 years since the law was meaningfully updated. That goes back a ways.

When you are talking about a program of this size and cost, making sure that it is operating as efficiently and as effectively as possible is imperative. We are dealing with lives. Concerns have been raised that FECA benefits are too generous and can discourage an employee's return to work.

So we are here today to explore how Congress can modernize the FECA program, to ensure taxpayer dollars are being used in a smart and responsible way, and to make certain this program is serving federal employees as intended.

Fortunately, we are not starting from scratch. Reforming the FECA program is something members in Congress and those in the administration have been working on in recent years. During the 112th Congress, Chairman Kline and I, along with our former Democratic colleagues George Miller and my former Ranking Member Lynn Woolsey, introduced the *Federal Workers' Compensation Modernization and Improvement Act* in a bipartisan way to begin addressing reforms proposed by the administration. The bill passed the House by a voice vote in 2011 and was accompanied by a request to GAO to examine the potential impacts of certain reforms.

Unfortunately, the bill was never considered in the Senate. But since then, we have continued to examine reforms the Department of Labor has put forward.

Strengthening the law remains a priority for this Committee, and today we will hear from the Department, GAO, and others to see what the path to reform looks like now and how the administration's proposals would affect the program and its beneficiaries. By fully understanding the options and impacts related to reform, we will be better positioned to modernize the FECA program, improve its integrity, and enhance its efficiency.

As with any reform process, updating the FECA program will require some tough choices, but I think we can agree that something needs to be done. Our challenge will be reforming the program in a way that will use taxpayer dollars more wisely while ensuring the programs continue to support those it was set up to assist.

Throughout this process it is important that we keep in mind both our responsibility to taxpayers and our commitment to the men and women who make up our federal workforce. Striking a balance between the two is not easy, but I believe it can be done.

I am hopeful that the insights and analysis of those here today will help us better understand the Department's proposal and continue to build on past bipartisan efforts to better meet the needs of a twenty-first century workforce and more effectively use taxpayer dollars.

With that, I now recognize the senior Democratic member of the subcommittee, my Ranking Member, Representative Frederica Wilson, for her opening remarks.

[The statement of Chairman Walberg follows:]

AS PREPARED FOR DELIVERY
May 20, 2015

CONTACT: Press Office
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Opening Statement of Rep. Tim Walberg (R-MI)
Chairman, Subcommittee on Workforce Protections
Hearing on "Reforming the Workers' Compensation Program for Federal Employees"

Since 1916, the FECA program has acted as a critical resource for federal employees who have suffered an injury or illness because of a work-related activity. Today, the program covers approximately three million workers and, last year alone, paid out nearly $3 billion in benefits. Despite the significance of the FECA program, it has been nearly 40 years since the law was meaningfully updated.

When you're talking about a program of this size and cost, making sure that it is operating as efficiently and effectively as possible is imperative. Concerns have been raised that FECA benefits are too generous and can discourage an employee's return to work. So we are here today to explore how Congress can modernize the FECA program, to ensure taxpayer dollars are being used in a smart and responsible way, and to make certain this program is serving federal employees as intended.

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Unfortunately, the bill was never considered in the Senate, but since then, we've continued to examine reforms the Department of Labor has put forward. Strengthening the law remains a priority for this committee, and today, we will hear from the department, GAO, and others to see what the path to reform looks like now and how the administration's proposals would affect the program and its beneficiaries. By fully understanding the options and impacts related to reform, we will be better positioned to modernize the FECA program, improve its integrity, and enhance its efficiency.

As with any reform process, updating the FECA program will require some tough choices, but I think we can agree that something needs to be done. Our challenge will be reforming

(More)

the program in a way that will use taxpayer dollars more wisely while ensuring the programs continues to support those it was set up to assist. Throughout this process, it's important that we keep in mind both our responsibility to taxpayers and our commitment to the men and women who make up our federal workforce. Striking a balance between the two is not easy, but I believe it can be done.

I am hopeful that the insights and analysis of those here today will help us better understand the department's proposal and continue to build on past bipartisan efforts to better meet the needs of a 21st century workforce and more effectively use taxpayer dollars.

# # #

U.S. House Committee on Education and the Workforce

Ms. WILSON. Thank you so much, Chairman Walberg. And thank you for calling this hearing today to discuss the *Federal Employees' Compensation Act*.

And I would like to thank the panelists for being here this morning and all of the members of the audience, some who have been specifically invited for testimony.

Chairman Walberg, I hope that we can work together. I know that you have been working on this issue for many years, and you just spoke of passing legislation that was bogged down in the Senate, and hopefully we can move forward with that piece of legislation. I was very interested in that.

Since 1916, FECA has been the governing statute providing benefits for federal civilian workers injured or killed on the job. The law provides compensation for lost wages, medical care, and vocational rehabilitation.

As we discuss reform, we must remind ourselves of the key principle behind the federal workers' compensation system: Workers and their families should be no worse off or better off financially than if the injury or death had not occurred.

As we discuss FECA reform, we must also remind ourselves of the bipartisan work this Committee has done on this issue: four years ago this Committee worked to pass the *Federal Workers' Compensation Modernization and Improvement Act* through the House.

The bill improved program integrity, modernized two benefits that had not been updated since 1949, expanded the availability of medical providers, and provided better benefits for civilian federal workers injured in a zone of armed conflict. This bipartisan bill strengthened the FECA system while providing savings to taxpayers.

Well, as I said before, I hope that this bill can serve as the basis for reform efforts going forward, Mr. Chairman.

Today's hearing will review the Department of Labor's FECA reform proposal, which makes three controversial cuts to benefits.

First, the proposal cuts benefits for the families who are left behind after the death of a worker. These cuts would greatly affect widows, like Helen Andujar, who has joined us here today. Two years ago her husband, Osvaldo Albarati, a former corrections officer, was brutally gunned down while returning home to his family.

He was assassinated in retaliation for breaking up a cell phone smuggling ring at the Department of Justice Bureau of Prisons facility where he worked. He left behind three children and a wife, who depend on FECA benefits.

I applaud the family's bravery in sharing their family's story with us. As we consider the proposed cuts to survivor benefits, let us remember Ms. Andujar and all the wives, husbands, and children she represents.

Second, the proposal reduces benefits for permanently disabled workers once they hit retirement age. This proposed cut is based on the idea that injured workers are unmotivated to return to work.

However, we know that injured workers want to go back to work. In fact, 98 percent of all disabled workers under FECA return to work within two years.

Because FECA benefits are less than a full retirement, they have an incentive to return to their jobs and earn a retirement. These workers want to be useful. They want to contribute to their retirements. They want to work.

No group is more representative of this spirit from our federal workers than the letter carriers and widow who have joined us here today. These postal workers were crushed between vehicles and suffered horrific injuries that left them with little or no use of their legs. Despite painful and disabling injuries that make it impossible to stand, many of them have insisted on returning to work, if only for two hours a day.

As we consider the proposed cuts to the permanently disabled at retirement age, let us remember these workers when it is argued that injured workers are unmotivated to return to work.

Third, the proposal reduces benefits for injured workers with families. Under current law, FECA provides a base benefit that is 66⅔ percent of the injured employee's average weekly wages. Individuals with dependents would receive an additional percentage.

This current system recognizes that injured workers with families have additional financial responsibilities. Under DOL's proposal, there would be a single compensation rate for all, regardless of dependents.

This is not a family-friendly policy. Let us remember this as we consider these proposed cuts.

We must also be reminded of the GAO studies this Committee requested. In late 2012, GAO issued three reports that found FECA benefits for the median-income worker are on par with or less than the earnings of an employee who works 30 years and retires under the Federal Employees Retirement System. GAO also reported the proposal would leave the median disabled worker with 31 percent to 35 percent less than the retirement they would have earned if they had not been injured.

These GAO reports, which use widely accepted methods, strongly suggest the proposed cuts are inappropriate and are not in line with the principle that workers should not be better off or worse off than if they had not been injured on the job. Let us remember this as we consider the proposed cuts.

I want to thank the witnesses for their preparation.

I also want to thank those who traveled a long distance to be with us at this hearing: the families who are affected by this rule and the families who will be affected by this hearing.

I yield back the balance of my time.

[The statement of Ms. Wilson follows:]

Opening Statement of Frederica S. Wilson, Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
"Reforming the Workers' Compensation Program for Federal Employees"
May 20, 2015

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

Since 1916, FECA has been the governing statute providing benefits for federal civilian workers injured or killed on the job. The law provides compensation for lost wages, medical care, and vocational rehabilitation.

As we discuss FECA reform, we must remind ourselves of the key principle behind the federal workers' compensation system:
Workers and their families should be no worse or better off financially than if the injury or death had not occurred.

As we discuss FECA reform, we must also remind ourselves of the bipartisan work this committee has done on this issue. Four years ago, this Committee worked to pass The Federal Workers' Compensation Modernization and Improvement Act, H.R. 2465, through the House.
This bill—

- improved program integrity,
- modernized two benefits that had not been updated since 1949;
- expanded the availability of medical providers; and
- provided better benefits for civilian federal workers injured in a zone of armed conflict.

This bipartisan bill strengthened the FECA system while providing savings to taxpayers.

Mr. Chairman, I hope that bill can serve as the basis for reform efforts going forward.

Today's hearing will review the Department of Labor's FECA reform proposal, which makes three controversial cuts to benefits.

First, the proposal cuts benefits for the families who are left behind after the death of a worker. These cuts would greatly affect widows like Helen Andujar, who has joined us here today. Two years ago, her husband Osvaldo Albarati, a federal corrections officer, was brutally gunned down while returning home to his family. He was assassinated in retaliation for breaking up a cell phone smuggling ring at the DOJ Bureau of Prisons facility where he worked. He left behind 3 children and a wife, who depend on FECA benefits. I applaud Ms. Andujar's bravery in sharing her family's story with us. As we consider the proposed cuts to survivor benefits, let us remember Ms. Andujar and all the wives, husbands, and children she represents.

Second, the proposal reduces benefits for permanently disabled workers once they hit retirement age. This proposed cut is based on the idea that injured workers are unmotivated to return to work. However, we know that injured workers want to go back to work. In fact, 98% of all disabled workers under FECA return to work within 2 years. Because FECA benefits are less than a full retirement, they have an incentive to return to their jobs and earn a retirement. These workers want to be useful. They want to contribute to their retirements. They want to work.

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GAO also reported the proposal would leave the median disabled worker with 31% to 35% less than the retirement they would have earned if they had not been injured.

These GAO's reports, which used widely accepted methods, strongly suggest the proposed cuts are inappropriate and are not in line with the principal that workers should not be better or worse off than if they had not been injured on the job. Let us remember this as we consider the proposed cuts.

I want to thank the witnesses for their preparation. I also want to thank those who traveled a long distance to be with us at this hearing.

I yield back the balance of my time.

Chairman WALBERG. I thank the gentlelady.

Pursuant to Committee rule 7(c), all subcommittee 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 today's witnesses.

First, Mr. Leonard Howie is director of the Office of Workers' Compensation Programs at the U.S. Department of Labor here in Washington, D.C. Mr. Howie became director of OWCP in February 2015.

Before joining OWCP, Mr. Howie served as secretary of Maryland Department of Labor, Licensing, and Regulation, a job previously held by Secretary of Labor Perez. Prior to his work with the state of Maryland, Mr. Howie was an attorney advisor with the Office of Civil Rights in the U.S. Department of Education.

Welcome.

Mr. Ron Watson is the director of retired members with the National Association of Letter Carriers here in Washington, D.C. In this role Mr. Watson oversees the compensation department at NALC. He represents and defends the rights of nearly 290,000 letter carriers employed by the USPS.

Welcome.

Dr. Andrew Sherrill is director of education, workforce, and income security with the U.S. Government Accountability Office here in Washington, D.C. In his 20 years at GAO, Dr. Sherrill has issued reports on a broad range of topics, including workforce development, unemployment insurance, workers' compensation programs, women in the labor force, welfare reform, and foreign labor programs.

Welcome.

Mr. Scott S. Dahl, the inspector general for the U.S. Department of Labor here in Washington, D.C. As IG, Mr. Dahl is responsible for overseeing the administration of a nationwide, independent program of audits and investigations involving DOL's programs and operations.

Prior to his time at DOL, Mr. Dahl served as the IG at the Smithsonian Institute and has previously held senior IG positions at the Office of the Director of National Intelligence and the Department of Commerce.

Welcome.

I will now ask, as is our process here, our witnesses to stand and be sworn in, raising your right hand.

[Witnesses sworn.]

Let the record reflect the witnesses answered in the affirmative.

And you may now take your seats.

Before I recognize you to provide your testimony, let me briefly remind all of us here in the room of our lighting system. You will have five minutes to present your testimony. We hope that you can keep very close to that. Won't cut you off in mid-sentence or mid-thought, but please keep to it as closely as possible.

The same would be true for our subcommittee members when we ask the questions, as well.

The green light is on for the first four minutes of your five minutes. Yellow light comes on, you have another minute. And the red light calls you to close off your testimony before us.

After all have testified, members will each have five minutes to ask questions.

And so let me begin the testimony by recognizing Mr. Howie now for your five minutes of testimony. Thank you for being here.

STATEMENT OF MR. LEONARD HOWIE, III, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

Mr. HOWIE. Thank you, Mr. Chairman.

Chairman Walberg, Ranking Member Wilson, Chairman Kline, Ranking Member Scott, I appreciate the—and members of the Committee, I appreciate the opportunity to discuss the *Federal Employees' Compensation Act* with you today. This is the third time in recent years that OWCP programs have been before this subcommittee to discuss FECA reform, but it is the first time since I arrived at OWCP in February that I have had the pleasure to come before this subcommittee.

And thank you again, Mr. Chairman and Ranking Member Wilson, for meeting with me earlier to discuss these important issues.

I would like to share a set of balanced proposals that would enhance our ability to assist FECA beneficiaries returning to work, providing a more equitable array of benefits, and to generally update the program. But first I would like to share a brief overview of program highlights since—and developments since we last appeared before this subcommittee.

Almost 100 years ago, Congress enacted FECA to provide workers' compensation coverage to all federal employees and their survivors for disability and death due to a work-related injury. The Office of Workers' Compensation Programs 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 to reduce cost to the taxpayers.

Over the past five years, an average of 119,000 new injury and illness claims were filed annually and processed by OWCP staff. Due in part to our quality case management initiative and other efforts to return injured employees to work, less than 2 percent of all new injury cases remain on the long-term compensation rolls for two years after the date of injury.

OWCP continually employs a variety of strategies available within the confines of FECA to strengthen the program. In fiscal year 2014 we established a FECA program integrity unit. Elder Research, a respected consulting company in data-mining and predictive analytics, is helping OWCP establish a data-driven approach to our program integrity work.

Now to the matter at hand. To further improve FECA, we have made a comprehensive set of recommendations to Congress, which will include some statutory changes that I will now highlight.

To help injured employees return to work, we request authority to start vocational rehabilitation activities without waiting until the injury is deemed impermanent—deemed to be permanent, as

well as a mandate to develop return-to-work plan with claimants early in the rehabilitation process wherever feasible.

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 concurrently with wage loss compensation and to be fair, should be calculated at a uniform rate for all employees.

We also propose to increase the woefully outdated benefits of funeral expenses and facial disfigurement. We recommend setting a uniform level for all new claimants of 70 percent. This compensation adjustment would address challenges in returning claimants to work and to reduce the level of improper payments.

To provide equity with other federal employees, we also recommend establishing a conversion rate for beneficiaries who are beyond Social Security retirement age which would more closely mirror OPM retirement rates. We recommend that these changes be prospective in nature so that no injured worker currently receiving benefits is impacted by these changes.

My written testimony outlines other important provisions that would streamline and improve the program—for example, expanding our assistant reemployment subsidy to include federal agencies.

In summary, while FECA is the model workers' compensation program, it does have limitations that need to be addressed. The reforms that we are suggesting here today are not new. They are careful, they are balanced, and they are based on DOL's experience as well as on the recommendations and comments of GAO and the OIG, and at a bottom line, they reflect good government.

And as you said, Mr. Chairman, when OWCP appeared before your subcommittee in 2011, any opportunity to better serve workers in need of assistance and spend taxpayer dollars more efficiently should be encouraged. We couldn't agree more, and I look forward to working with the subcommittee in advancing this shared goal.

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

[The statement of Mr. Howie follows:]

STATEMENT OF LEONARD J. HOWIE, III

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS

U.S. DEPARTMENT OF LABOR

BEFORE THE SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

May 20, 2015

Chairman Walberg, Ranking Member Wilson, 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 beneficiaries in returning to work, provide a more equitable array of FECA benefits, and generally modernize the program and update the statute. Almost 99 years ago, on September 7, 1916, Congress enacted FECA to provide comprehensive Federal workers' compensation coverage to all Federal employees and their survivors for disability or death due to an employment injury or illness. FECA's fundamental purpose is to provide compensation for wage loss and medical care, facilitate return to work for employees who have recovered from their injuries, and pay benefits to survivors. The faces of FECA include the Postal worker whose mail truck is hit while driving and delivering the 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 over 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, while producing potential cost savings of more than $360 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.

The proposals are based on the results of internal studies, recommendations by the Government Accountability Office (GAO) and the DOL Inspector General, as well as discussions with the Office of Personnel Management (OPM) 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. The current basic compensation rate for an employee without dependents is 66 2/3% of salary; an employee with at least one dependent (which includes a spouse or child) receives an augmented rate of 75% of salary. Approximately 64% of FECA claimants are paid at this augmented 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 2014 chargeback year, which ended on June 30, 2014, the Fund paid more than $1.9 billion in wage-loss compensation, impairment, and death benefits and another $951.3 million to cover medical and rehabilitation services and supplies. These totals include outlays for non-chargeable costs of $84.2 million. Benefits paid have remained relatively stable at these levels for the past 15 years, with the exception of payments under the War Hazards Compensation Act.

Although the program is almost 100 years old, OWCP's administration of FECA is by no means antiquated. Claims are managed in a paperless, integrated system. Video and teleconferencing options are available to claimants to expedite the OWCP hearing process. Electronic Data Interchange capabilities are utilized by many of the program's agency partners and OWCP developed a secure, web-based document upload and electronic document-filing portal called the Electronic Claims Operations and Management Portal (ECOMP). Since being deployed, ECOMP has been used by claimants, physicians, representatives and other stakeholders to upload over 1.5 million documents to FECA claim files. Government-wide, almost 92% of initial injury and illness claims filed in FY2014 were timely compared to 85.5% in FY2009. Over 90% of wage-loss claims were received timely, which is a dramatic increase over the 76.8% achieved in FY2009. The timely receipt of claims allows OWCP to provide more rapid adjudication, benefit approval, and disability management. Early intervention can aid in lessening the length and severity of work-related disability – IT efficiencies throughout our claims process allow OWCP to provide better service to our injured workers and their employers.

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 reviews these submissions and can require claimants to be examined by outside 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 to provide data on current FECA claimants receiving periodic disability compensation to assist State Unemployment Agencies in addressing duplicate payments.

In addition, OWCP has conducted program evaluation studies to identify areas for process and policy improvements. Based on the resulting recommendations and our claims experience, we have also improved how the program approaches disability management and return to work. The program's early nurse intervention and quality case management initiatives are particularly noteworthy as the program evolves to reflect a renewed focus on return to work. We have found that our nurse program improves return to work outcomes and promotes more effective medical management of our claims. Nurses work with claimants and federal employers to facilitate return to work, including schedule adjustments and accommodations as needed. Under the President's Protecting Our Workers and Ensuring Reemployment (POWER) Initiative (FYs 2010-2014), we worked with the federal agencies with the highest volume of serious workplace injuries to increase the percentage of injured workers who return to work within two years. In FY2009, 85.8% of these employees went back to their employing agency. OWCP collaborated with the agencies by providing technical assistance and tracking as well as creating the POWER Return to Work Council to share best practices and to improve opportunities for reemployment of injured federal workers. In FY2014, performance rose to 90.7%. It should be noted that the return-to-work rate under POWER peaked in FY2013 at nearly 92% but receded in FY2014 because of the impacts of budget sequestration and government furloughs.

OWCP continually employs a variety of strategies available within the confines of the FECA to strengthen the program. In FY2104, OWCP established a FECA Program Integrity unit, with $1.5 million in dedicated annual funding and staffing. OWCP and DOL's Office of Inspector General (DOL OIG), are analyzing claims data through an analytic framework utilized by the USPS OIG to identify payment and medical billing anomalies. Elder Research, a respected consulting company in data mining and predictive analytics, is helping OWCP establish a data-driven approach to the shared program integrity work using data analytics. In addition to the new program integrity unit, OWCP established an OMB-approved methodology to audit improper payments per IPERIA guidelines, and conducted the first annual review in FY2014. The result was an improper payment rate of 2.5% and the identification of the leading causes of improper payments. Process refinements have been put into place and will be evaluated during the FY2015 audit.

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 119,000 new injury and illness claims were filed annually and processed by OWCP. The acceptance rate for new injury claims in FY2014 was 84%. Ninety two percent (92%) were submitted within program timeliness standards of 10 working days and approximately 96% of traumatic injury claims (which represent the majority of our claims) were processed by OWCP within program timeliness standards.

In FY2014, fewer than 13,000 claims involved a significant period of disability. Eighty-eight percent (88%) 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 quality case management initiative and other efforts to return injured employees to work, less than 2% of all 119,000 new injury cases remain on the long-term compensation rolls two years after the date of injury. Currently, approximately 41,000 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. 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.

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 through Social Security retirement age. 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 and expand it to federal employers. 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. DOL appropriations bills have for years given OWCP the authority to provide up to three years of salary reimbursement to private-sector 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, and provide further incentive for Federal agencies to hire those employees that may be less likely to return to work without additional supports. These provisions would assist with that effort and support the President's Executive Order 13548 to increase hiring of individuals with disabilities in the Federal government.

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 is 66 2/3%, a majority of Federal employees receive an augmented benefit of 75%, reflecting at least one dependent. Few state systems provide any augmentation for dependents or approach the Federal level of augmentation. In addition, the 75% compensation rate can result in benefits greater than the injured worker's usual take home pay. The Administration's proposal would establish a single compensation rate, reducing work disincentives, simplifying simplify administration and claims processing, and eliminating potential overpayments that can occur due to changes in dependency status.

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 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 2/3% FECA benefit based on the individual's salary when injured. With respect to the Federal Employees' Retirement System, OPM believes it is

reasonable to conclude that converting retirement age disability beneficiaries to a 50% conversion benefit level will result in totally disabled claimants receiving after-tax income roughly equivalent to the level of after-tax income Congress intended to provide through the three-part FERS retirement system.

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 thereafter), 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 schedule 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. We believe paying all schedule awards at a single rate (70% of $53,639, roughly equivalent of the annual base salary of a GS 11 Step 2/3 and representing an approximate mid-point of federal salary), adjusted annually for inflation, would be more equitable and would also speed claims processing.

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 simplify the

process for claimants and OWCP. The current process is complicated and convoluted for claimants, and leads many to switch back and forth between FECA and OPM retirement to avoid the prohibition on concurrent receipt of schedule award and wage-loss payments. While individuals are collecting OPM benefits, OWCP and employing agencies cannot require return-to-work activities and as a result claimants sometimes do not return to work as early or as often as they could. Allowing concurrent receipt of these benefits would mean claimants are compensated for permanent loss and vocational rehabilitation efforts can continue uninterrupted, thereby improving the chances of a successful and timely return to employment.

Finally, this proposal increases benefit levels for funeral expenses from $800 to $6,000 and facial disfigurement from $3,500 to $50,000; the proposal further provides that those levels will have a cost of living adjustment, similar to the cost of living adjustment currently done for wage-loss benefits. Both of these have not been significantly updated since 1949, and this change will bring FECA in line with increases in other workers' compensation statutes.

Modernizing and Improving FECA

Because FECA has not been amended in over 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 will enhance OWCP's ability to return federal employees to work and 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 $360 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 would 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 seeing 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 Subcommittee may have.

Chairman WALBERG. Mr. Howie, thank you. This is your first time before us. You have already set the standard high, finishing before five minutes were completed. Thank you.

Mr. Watson.

STATEMENT OF MR. RON WATSON, DIRECTOR OF RETIRED MEMBERS, NATIONAL ASSOCIATION OF LETTER CARRIERS, WASHINGTON, D.C.

Mr. WATSON. Thank you, Chairman Walberg, Ranking Member Wilson, and members of the subcommittee, for inviting me to testify. I am pleased to be here on behalf of the nearly 290,000 members of the National Association of Letter Carriers, including some who are here with me today. I would like to introduce them.

They are letter carriers, and a surviving spouse, who have suffered catastrophic on-the-job injuries when they were crushed between their postal vehicles and out-of-control oncoming vehicles: Shirley Rondeno, widow of letter carrier Roy Rondeno, of Metairie, Louisiana; Dan Hohenstein, of Arvada, Colorado; Doug Poole, of Columbus, Ohio; Keith Wagner, of Seattle, Washington; Joel Cabrera, of San Gabriel, California; and Dave Betts, of Exeter, New Hampshire.

I am the director of retired members of the NALC. I have represented injured letter carriers with their OWCP claims for 35 years.

The NALC welcomes the prospect of reform to the FECA, provided it does not result in unfair harm to the injured workers it was designed to protect. Any such reform should be consistent with the basic principle that workers should be no better off, but no worse off, as a result of suffering an on-the-job injury.

In the 112th Congress, the House passed bipartisan FECA reform legislation, H.R. 2465. The NALC supported that bill because its provisions met that fairness test and at the same time saved money. The NALC strongly encourages the Committee to pass a similar bill.

But other proposals do not pass the fairness test, including DOL's reductions of wage-loss compensation for injured workers with dependents, widows and orphans, and further reductions when workers reach retirement age. The NALC is concerned that DOL proposals to reduce the 75 percent wage-loss compensation rate for families are not evidence-based. Department of Labor has no studies or independent analysis to support these proposed cuts.

Our analysis of that 75 percent rate fails to support the argument that it is a disincentive to return to work.

First, many injured workers do not receive that full 75 percent or the full 66⅔ percent rate. They receive a pro-rated percentage of the applicable rate based on OWCP's determination of their wage-earning capacity.

Every one of the injured letter carriers here today with me is potentially subject to reductions in wage-loss compensation upon decisions by OWCP regarding permanency of their conditions and their wage-earning capacity. Reduction of the 75 percent rate would further reduce the rate—the income of partially disabled workers whose wage-loss compensation has already been proportionally reduced by OWCP.

And second, workers receiving wage-loss compensation lose significant benefits. They lose Thrift Savings Plan matching funds, the benefit of sheltering income in the TSP, credit towards their Social Security benefits, overtime opportunities, promotion prospects, and other pay-increase opportunities. All of the injured letter carriers here today have suffered loss of these benefits.

The NALC is also concerned that DOL proposals to reduce wage-loss compensation at retirement age are not evidence-based. Department of Labor has no studies or independent analysis to support these proposed cuts.

DOL's arguments fail in the light of GAO reports showing the extent of FERS benefits when compared with FECA benefits. Contrary to DOL testimony, benefits under FECA do not exceed that provided for FERS recipients who work a full 30-year career.

Ninety-two percent of all current federal and postal employees are covered by FERS. Any comparison with CSRS is not relevant.

In closing, too many letter carriers, including some here today, have suffered catastrophic injuries when they were crushed between incoming vehicles and their mail trucks. What message will be sent to workers who already lose so much from work-related injuries?

There is no evidence that FECA benefits need to be reduced, unless DOL is simply following the practice of some states and arbitrarily cutting workers' compensation benefits without regard to consequences.

Thank you for the opportunity to testify.

[The statement of Mr. Watson follows:]

Prepared Statement of
Ron Watson
Director of Retired Members
National Association of Letter Carriers
Before the
Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
May 20, 2015 Hearing on
Reforming the Workers' Compensation Program for Federal Employees

Good morning Chairman Walberg, Ranking Member Wilson, and members of the Subcommittee. I am pleased to be here today on behalf of the nearly 290,000 members of the National Association of Letter Carriers (NALC). Thank you for inviting me to testify at this hearing, entitled *Reforming the Workers' Compensation Program for Federal Employees.*

I am accompanied today by members of the NALC, and a surviving spouse of a member, who have suffered from on-the-job injuries.

- **Shirley Rondeno**, widow of letter carrier Roy Rondeno in Metairie, LA. In September 2009 Roy was crushed by an oncoming vehicle as he was loading mail at the rear of his vehicle. Both of his legs were amputated, and he died on the operating table six days later.

- **Dan Hohenstein**, letter carrier in Arvada, CO. In January 2011 Dan was crushed by an oncoming vehicle as he was working mail at the rear of his postal vehicle. He suffered fractures of multiple bones in his legs, a torn artery, and disorders of muscles, ligaments and fascie, to name a few. Dan returned to part time work in July 2012 and full time work in August 2014. Medical reports in his file reflect that his surgeons repeatedly expressed astonishment at his return to work.

- **Doug Poole**, letter carrier in Columbus, OH. In January 2012 Doug was crushed by an oncoming vehicle as he was loading mail at the rear of his postal vehicle. He suffered fractures of multiple bones in his legs and back, open wounds to the cavity of his spleen and kidney, a torn artery, and acute renal failure, to name a few. He went through 16 surgeries and suffered pneumonia, blood clots and kidney failure. He remains totally disabled.

- **Keith Wagner**, letter carrier in Seattle, WA. In July 2012 Keith had just closed the back of his postal vehicle when he was crushed when the parked car behind hi was slammed by an oncoming vehicle. He suffered fractures of multiple bones in his legs, dislocations of four specific vertebrae, and embolisms. A blood clot in his leg required four surgeries. He remains totally disabled.

- **Joel Cabrera**, letter carrier in San Gabriel, CA. In May 2013 Joel was crushed by an oncoming vehicle as he was loading mail at rear of his postal vehicle. He suffered fractures of multiple bones in his legs, disruption of ligaments, dislocations of the knee and complications of medical care. He spent 92 days in the Intensive Care Unit and had four surgeries to repair the severe injuries to his legs. He returned to work part-time in April 2015..

- **Dave Betts**, letter carrier in Exeter, NH. In March 2014 Dave was at the side of his parked postal vehicle locking the door when it was struck by another vehicle. The violent collision pinned Dave between his vehicle and a tree. He suffered a head wound that required nearly a week of special hospital care, shoulder dislocation, and embolisms. He returned to work part time in May 2014 and full time in April 2015.

The NALC welcomes the prospect of reform to the Federal Employees' Compensation Act (FECA), provided it does not result in unfair harm to the injured workers the FECA was designed to protect. Any such reform should be consistent with the basic principle that injured workers should be no better off and no worse off as a result of suffering an on-the-job injury.

HR 2465 was passed on a bipartisan basis by the House of Representatives on 11/29/11. It constituted reform that met that fairness test, and it would have provided financial savings. HR 2465 contained provisions that 1) authorized medical services and treatment by physician assistants and advanced practice nurses; 2) permitted the Secretary of Labor to readily obtain social security earnings information directly from the Social Security Administration; and 3) allowed subrogation of continuation of pay. Department of Labor has projected these reforms would save about 50 million dollars over the next 10 years. HR 2465 also included some modest increase in benefits for funeral expenses and disfigurement.

The NALC supports the provisions that were in HR 2465 in 2011 and encourages the Committee to pass a similar bill.

Other proposals have been made that do not pass the fairness test. The Department of Labor (DOL), has suggested reducing wage-loss compensation for injured workers and their families and further reducing benefits when they reach retirement age. These proposals would unfairly harm injured workers and their families, leave them worse off than if they had not suffered injuries, and are unsupported by credible evidence.

Proposals to reduce the 75% wage-loss compensation rate

DOL has proposed reducing wage-loss compensation from 75% to 70% for claimants who have families to support (that is to say, who have one or more dependents) while at the same time increasing wage-loss compensation from 66 2/3% to 70% for those with no dependents. Others have proposed reducing the 75% rate to 66 2/3%. Proponents of these reductions have argued that the 75% rate creates a disincentive for injured

workers to return to work. However, none Doug have offered any evidence in support of that argument.

An objective analysis of that 75% rate fails to support the argument that it is a disincentive to return to work.

First, many injured workers do not receive the full 75% or 66 2/3% rate. They receive a pro-rated percentage of the applicable rate, based on OWCP's determination of their wage-earning capacity.

For example, OWCP currently has authority to reduce the wage-loss compensation of the injured letter carriers accompanying me at this hearing. In the cases of Doug Poole, Keith Wagner, and Joel Cabrera, OWCP could do this by administratively determining their disabilities are permanent, and they are vocationally and medically able to return to sedentary work available on the open job market. OWCP could do this even if these injured workers were not successful in obtaining such sedentary work. In the cases of Dan Hohenstein and Dave Betts, who have returned to full-time work as letter carriers, OWCP has authority to reduce any potential future wage-loss compensation to zero, by administratively finding their current earnings fairly and reasonably reflect their wage-earning capacity.

And even though the FECA at 5 USC 8105b provides that loss of use of both legs, both hands, both arms, both feet, or sight in both eyes is prima facie permanent total disability, OWCP procedures provide that OWCP may determine even in those case that an individual may be able to work despite such severe medical conditions, and reduce wage-loss compensation on that basis.

The full 75% or 66 2/3% rate is provided only to claimants to who are totally disabled, as determined by OWCP. If a claimant is partially disabled, he or she does not receive 75% or 66 2/3% of base salary. Instead, partially disabled claimants (with dependents) receive only 75% of their lost wage-earning capacity. Partially disabled claimants (with no dependents) receive only 66 2/3% of their lost wage-earning capacity.

OWCP's then-acting Director explained this in a letter to Chairman Walberg dated September 16, 2013, in response to questions from the committee. He wrote:
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 represent that employee's earning capacity.

Please consider the following example. A married letter carrier has a base annual salary of $50,000. He suffers an injury and is no longer able to walk. Thus, he is disabled from performing the job of a letter carrier. OWCP begins paying wage-loss compensation at the annual rate of $37,500. OWCP then determines that while the letter carrier is disabled from performing the job of a letter carrier, he remains capable of performing the sedentary job of a customer complaint clerk. OWCP then determines the position of

customer complaint clerk is available on the open job market within the commute area of the letter carrier. OWCP then determines the average or normal wages that are paid for the position of customer complaint clerk in that commute area. In this example, OWCP determines the position of customer complaint clerk pays $25,000 annually. OWCP makes a lost wage-earning capacity determination, and reduces wage-loss compensation to 75% of $25,000 ($50,000 minus $25,000), or $18,750 annually. OWCP makes this reduction irrespective of whether the letter carrier is actually able to obtain employment as a customer complaint clerk.

DOL proposals to reduce the 75% rate, if enacted, would further reduce the income of partially disabled workers whose wage-loss compensation has already been proportionally reduced by OWCP based on OWCP's determination of their wage-earning capacity.

Second, workers receiving wage-loss compensation lose significant benefits.

For instance, consider Dan Hohenstein. If Dan had not suffered that catastrophic injury in January 2011, for the period beginning that date until he returned to full-time work in 2014, he would have earned tens of thousands of dollars in overtime, he would have received thousands of dollars in matching TSP funds from the Postal Service, he would have banked thousands of dollars of value in sick and annual leave. He lost all of those benefits, and more, solely because he suffered an on-the-job injury.

In order to receive wage-loss compensation, a worker must be in a Leave Without Pay (LWOP) status. Upon placement in an LWOP status by the employing agency, an injured worker loses the Thrift Savings Plan 5% matching funds, the financial benefit of sheltering income in the Thrift Savings Plan, credit towards their Social Security benefits, overtime opportunities, promotion prospects, and other pay-increase opportunities.

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

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

Thus, the argument that the 75% wage-loss compensation rate is so high that it constitutes a disincentive to return to work founders in the absence of evidentiary support and in the presence of LWEC reductions and significant loss of benefits.

Proposals to reduce wage-loss compensation at retirement age
Various proposals have been made to require retirement at a specific age. One proposal would terminate wage-loss compensation benefits and transition to CSRS or FERS retirement upon reaching Social Security retirement age. DOL's proposal would

continue OWCP wage-loss compensation payments but reduce them to 50% at Social Security retirement eligibility.

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

The large majority of federal employees today are not covered by CSRS. Currently, approximately 92% of Federal and Postal employees are covered under FERS and only 8% under CSRS. Unlike CSRS, FERS is a three-part retirement system that includes a defined benefit annuity, Social Security, and the Thrift Savings Plan.

The Government Accountability Office (GAO) analyzed proposed FECA changes in three reports in late 2012.

In a Report to the Committee on Education and Workforce concerning non-postal federal workers, GAO found that contrary to DOL's argument that FECA benefits were excessive at retirement age, the median FECA benefits package[1] for non-postal workers at retirement age is "on a par or less than the FERS benefit package" for those who worked a 30-year career.

Also, GAO found that DOL's proposal for a "reduced FECA" would result in median FECA benefits that are 31% to 35% less than if a comparable federal worker had worked a full career and collected a FERS benefit package.[2]

GAO found that DOL's proposal to set the compensation rate at 70% (instead of 66-2/3% for individuals and 75% for those with dependents) would reduce the median percentage of take home pay that was replaced by FECA—also known as the "wage replacement rate"—from 80% to 77% for non-postal workers. This falls below the 80% wage replacement rate urged by the National Commission on State Workmen's Compensation Laws, which was established under the Nixon Administration.

GAO also found there is a disparate impact on those with dependents. Under DOL's proposal, the median "wage replacement rate" (the percentage of take home pay replaced by FECA) for those with dependents (76%) would be 6% less that someone who is single (82%). This is because our federal tax code provides tax deductions for dependents; thus, those with families enjoy a higher take home pay than someone who is single. Since DOL's proposal eliminates any increase in FECA benefits for injured workers with dependents, the percentage of pre-injury take home wages that would be replaced by FECA benefits is lower for those with dependents.

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[1] The median FECA benefit package includes FECA wage replacement + TSP benefits accrued prior to disability.

[2] *Federal Employees' Compensation Act: Analysis of Proposed Program Changes,* GAO-13-108, Oct. 26, 2012. http://www.gao.gov/products/GAO-13-108. The variation depends whether 1% or 10% was contributed to TSP.

In a second study on USPS beneficiaries, GAO found with respect to postal workers, that the median FECA benefits at retirement age was on a par with (or slightly higher) than what a worker would have received from FERS had they worked a full career, but that DOL's proposed cuts to FECA would result in median benefits that are 22% to 29% less than if the postal worker had worked a full career.[3]

GAO concluded:

> *[C]onsideration needs to be given to the impact the change will have on the adequacy of benefits and the ensuing fairness across beneficiaries, both at the time of injury and over the lifetime of the beneficiary. Reducing FECA benefits could have a substantial impact over time on individuals who cannot work and may have limited options to replace income in response to benefit reductions.*

Moreover, a report by the Congressional Research Service shows that full FERS retirement amounts will likely far exceed CSRS annuity amounts.

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

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

DOL has suggested that "*In most instances, FECA benefits far exceed the amount an injured worker might receive in the form of retirement benefits, and therefore provide a strong disincentive for return to productive employment.*"

However, that suggestion is completely inconsistent with the GAO and Congressional Research Service reports noted above.

The argument that FECA wage-loss compensation benefits are far more generous than OPM retirement benefits also founders in the presence of Lost Wage Earning Capacity determinations. Where LWEC determinations have been made, based on either actual wages earned or constructed positions, OWCP wage-loss compensation will typically be only half of the 75% rate, far less than the identified average CSRS annuity of 60% of high-three average salary.

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[3] *Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries*, GAO-13-142R, Nov. 26, 2012, http://www.gao.gov/products/GAO-13-142R

Closing

Next year, the Federal Employees' Compensation Act will celebrate its 100th anniversary. In 1972, President Nixon commissioned a study on workers' compensation laws in the United States, as required by the Occupational Safety and Health Act. The ensuing report set the baseline for workers' compensation benefits. OWCP and other proposals to reduce wage-loss compensation for families and to reduce it again at retirement age, would result in FECA benefits falling below that baseline standard.

Unfortunately, many state workers' compensation system have fallen below that baseline. A recent report by the Occupational Safety and Health Administration, titled *Adding Inequality to Injury*, reviewed current state workers' compensation benefits. OSHA found that "*The costs of workplace injuries are massively subsidized by injured workers, their families and the taxpayer-supported components of the social safety net.*" Arguments that FECA benefits exceed state workers' compensation system benefits should be considered in light of OSHA's findings.

Too many letter carriers, including some here today with me, have suffered traumatic and catastrophic injuries, such as bilateral amputation of their legs, when they were crushed between oncoming vehicles and their mail trucks while working mail. What message will be sent to workers who lose their livelihoods and careers from work-related injuries while serving the American public? There is no evidence that FECA benefits need to be reduced, unless the DOL is simply following the practice of some states in arbitrarily cutting workers' compensation benefits without regard to the consequences.

The NALC supports FECA reform that is consistent with the intended remedial nature of the FECA. In our view, proposals to reduce the 75% wage-loss compensation rate, and proposals to mandate transition to OPM retirement (or reduced FECA benefits) at Social Security retirement age, are not consistent with that principle.

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

Chairman WALBERG. Mr. Watson, thank you, as well. And thank you for also putting face to this issue, with bringing people who have been impacted. And I can see the emotion that still is carried with them on this issue.

So appreciate your willingness to work with us. This is a process that none of us up and down this rostrum will take lightly.

Dr. Sherrill, thank you for being here. I recognize you for your five minutes.

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

Dr. SHERRILL. Chairman Walberg, Ranking Member Wilson, and members of the subcommittee, I am pleased to be here today to discuss the findings from three reports that GAO issued in fiscal year 2013 on the potential effects of proposed changes to benefit levels in the FECA program.

My testimony today summarizes our findings in three areas: first, the potential effects of proposals to compensate total disability FECA beneficiaries at a single rate of either 70 percent or 66.67 percent of gross wages at time of injury; second, potential effects of the proposal to reduce FECA benefits to 50 percent of applicable wages at full Social Security retirement age for total disability beneficiaries; and third, how partial disability beneficiaries might fare under the proposed changes.

Our analyses focused on individuals covered under the Federal Employees' Retirement System, FERS, which covered about 90 percent of the federal workforce in 2013. We conducted simulations comparing FECA benefits to the income—either take-home pay or retirement benefits—a total disability beneficiary would have had absent an injury.

Our methodology matched FECA beneficiaries to uninjured federal workers using a computer algorithm to select the closest worker for each FECA beneficiary on key characteristics. We used actual data on the uninsured worker—on the uninjured worker's earnings and retirement benefits. In addition, we conducted seven case studies of partial disability beneficiaries.

Our simulations found that under the current FECA program, in 2010 the median wage replacement rates—that is, the percentages of take-home pay replaced by FECA—were 88 percent for postal service beneficiaries and 80 percent for non-postal beneficiaries. Proposals to set the 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—under the current program are slightly higher for beneficiaries with dependents, but that under a single compensation rate proposal they would be higher for beneficiaries without dependents and the differences would be greater.

Our simulations comparing FECA and FERS found that under the current FECA program, the median FECA benefit package for total disability beneficiaries was 32 percent greater than the median FERS—2010 FERS retirement package for non-postal beneficiaries and 37 percent greater for postal beneficiaries. Under the

proposed FECA reduction at retirement age, the 2010 packages would be roughly equal.

However, FERS is not a mature retirement system, so those simulations understated the future FERS benefit levels. For example, the FERS annuitants we analyzed had a median federal career of 16 to 18 years. So we then simulated a mature FERS system intended to reflect the benefits of workers with 30-year careers and found that the median FECA benefit package under the proposed change would be from 22 to 35 percent less than the median FERS retirement package.

The results from our seven case studies of partial disability beneficiaries are not generalizable, but they do show how they might fare under the proposed FECA changes and that that can vary considerably based on their individual circumstances, such as their earning capacity and their actual levels of earnings. Partial disability beneficiaries differ fundamentally from total disability beneficiaries, as they receive reduced FECA benefits based on a determination of their earning capacity.

For example, beneficiaries with high earning capacities based on actual earnings might elect to retire under FERS if their potential retirement benefits were higher than their current or reduced FECA benefit levels. Thus, they would not be affected by the proposed FECA reduction proposal.

In contrast, beneficiaries with low earning capacities who might remain on FECA past retirement age would have their benefits reduced under the proposed change.

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

Finally, apart from proposed changes to FECA benefit levels, the administration has also proposed changes to strengthen FECA program integrity. As our prior work has recommended, Congress should consider granting the Department of Labor authority to access wage data to help verify claimants' reported income and help ensure the proper payment of benefits.

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

[The statement of Dr. Sherrill follows:]

United States Government Accountability Office

Testimony
Before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, House of Representatives

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FEDERAL EMPLOYEES' COMPENSATION ACT

Analysis of Benefits Associated with Proposed Program Changes

Andrew Sherrill, Director, Education, Workforce, and Income Security

GAO-15-604T

GAO Highlights

Highlights of GAO-15-604T, a testimony before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, House of Representatives

May 20, 2015

FEDERAL EMPLOYEES' COMPENSATION ACT

Analysis of Benefits Associated with Proposed Program Changes

Why GAO Did This Study

The FECA program, administered by the Department of Labor, provides wage-loss compensation to federal workers who sustained injuries or illnesses while performing federal duties. Benefits are adjusted for inflation and are not taxed nor subject to age restrictions. Initial FECA benefits are set at 75 percent of gross wages at the time of injury for beneficiaries with eligible dependents and 66-2/3 for those without. Some policymakers have raised questions about the level of FECA benefits, especially compared to federal retirement benefits. Prior proposals to revise FECA for future total- and partial-disability beneficiaries have included: setting initial FECA benefits at a single rate, regardless of whether the beneficiary has eligible dependents; and converting FECA benefits to 50 percent of applicable wages at time of injury—adjusted for inflation—once beneficiaries reach full Social Security retirement age.

This testimony presents results from GAO reports issued in fiscal year 2013. It summarizes (1) potential effects of the proposals to compensate total-disability FECA beneficiaries at a single rate, (2) potential effects of the proposal to reduce FECA benefits to 50 percent of applicable wages at full Social Security retirement age for total-disability beneficiaries; and (3) how partial-disability beneficiaries might fare under the proposed changes. For this work, GAO conducted simulations for USPS and non-USPS beneficiaries comparing FECA benefits to income (take-home pay or retirement benefits) a beneficiary would have had absent an injury and conducted case studies of partial-disability beneficiaries.

View GAO-15-604T. For more information, contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov.

What GAO Found

In 2012, GAO ran simulations to analyze proposals—similar to a proposal discussed in the Department of Labor's 2016 budget justification—to set initial Federal Employees' Compensation Act (FECA) benefits at a single compensation rate. GAO found that the proposals reduced the median wage replacement rates—the percentage of take-home pay replaced by FECA—for total-disability beneficiaries. Specifically, according to GAO's simulation, in 2010 under the existing FECA program, the median wage replacement rates were 88 percent for U.S. Postal Service (USPS) beneficiaries and 80 percent for non-USPS beneficiaries. The proposal to use a single rate of 70 percent to compensate both those with and without dependents would reduce the beneficiaries' median wage replacement rates by 3 to 4 percentage points. The proposal to use a single rate of 66-2/3 percent would reduce the beneficiaries' median wage replacement rates by 7 to 8 percentage points.

The simulations for GAO's 2012 reports also found that proposals to reduce FECA benefits upon reaching Social Security retirement age would reduce beneficiaries' retirement income, bringing the median FECA benefits on par with or below the median retirement incomes individuals would have received absent their injuries. In simulations comparing FECA benefits to retirement benefits—both in 2010—GAO found that under the existing FECA program, the median FECA benefit package for total-disability retirement-age beneficiaries was 37 and 32 percent greater than the median 2010 retirement benefit package for USPS and non-USPS beneficiaries, respectively. This analysis focused on individuals covered under the Federal Employees Retirement System (FERS), which generally covers employees first hired in 1984 or later. GAO found that the proposal to reduce FECA benefits at the full Social Security retirement age would result in a median FECA package roughly equal to the median 2010 FERS retirement package. However, the median years of service for the FERS annuitants GAO analyzed were 16 to 18 years—which did not constitute a mature FERS system—so these simulations understated the future FERS benefit level. GAO then simulated a mature FERS system—intended to reflect benefits of workers with 30-year careers—and found that the median FECA benefit package under the proposed change would be 22 to 35 percent less than the median FERS retirement package.

The potential effects of the proposed changes to FECA on partial-disability beneficiaries would vary based on individual circumstances. Partial-disability beneficiaries differ fundamentally from total-disability beneficiaries, as they receive reduced FECA benefits based on a determination of their post-injury earning capacity. GAO's seven case studies of partial-disability beneficiaries showed variation based on characteristics such as earning capacity and actual earnings. For example, beneficiaries with high earning capacities based on actual earnings might elect to retire under FERS if their potential retirement benefits were higher than their current or reduced FECA benefit levels. They would, thus, not be affected by the proposed changes. In contrast, those beneficiaries with low earning capacities who might remain on FECA past retirement age would have their benefits reduced under the proposed change.

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Chairman Walberg, Ranking Member Wilson, and Members of the Subcommittee:

I am pleased to be here today to discuss our work on proposed changes to benefit levels in the Federal Employees' Compensation Act (FECA) program. In fiscal year 2013, we issued three reports on how proposed changes would affect FECA beneficiaries covered under the Federal Employees Retirement System (FERS), and earlier issued a report that examined the characteristics and income of FECA beneficiaries in comparison to retired annuitants under the Civil Service Retirement System (CSRS).[1] Around the same time of our work on benefit levels under proposed changes, we also issued a report on improper payments in the FECA program.[2]

The FECA program pays cash benefits to federal workers who sustain injuries or illnesses while performing federal duties.[3] The U.S. Department of Labor (DOL) administers FECA and, according to DOL, the FECA program paid about $2 billion in wage loss benefits in fiscal year 2012. DOL's Office of Workers' Compensation Programs estimated that future actuarial liabilities for government-wide FECA compensation payments to those receiving benefits as of fiscal year 2012 would total over $34 billion (this amount does not include any costs for workers added to the FECA rolls in future years); the U.S. Postal Service represents over 40 percent (approximately $14.4 billion) of these estimated liabilities.

[1]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), 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: Analysis of Proposed Program Changes*, GAO-13-108 (Washington, D.C.: October 26, 2012), and GAO, *Federal Employees' Compensation Act: Benefits for Retirement-Age Beneficiaries*, GAO-12-309R (Washington, D.C.: February 6, 2012).

[2]GAO, *Federal Employees' Compensation Act: Case Examples Illustrate Vulnerabilities That Could Result in Improper Payments or Overlapping Benefits*, GAO-13-386 (Washington, D.C.: April 3, 2013).

[3]The receipt of FECA benefits is generally the exclusive remedy for being injured on the job and a federal employee is prohibited from recovering damages for such injury under another statute.

DOL bases FECA benefits on an employee's wages at the time of injury and whether the employee has eligible dependents. In addition, consideration is given to the beneficiary's ability to work after the injury. Specifically, beneficiaries unable to return to work—total-disability beneficiaries—who have an eligible dependent are compensated at 75 percent of gross wages at the time of injury and those without an eligible dependent are compensated at 66-2/3 percent.[4] These benefits are adjusted for inflation and are not taxed nor subject to age restrictions. Some policymakers have raised questions about the level of FECA benefits, especially compared to the retirement benefits under the Federal Employees Retirement System (FERS), which generally covers employees first hired in 1984 or later. As of September 30, 2013, about 89 percent of the federal workforce—not including workers in the Postal Service (USPS) or other agencies not covered by the Central Personnel Data File—was covered by FERS.

The 2016 congressional budget justification for the Office of Workers' Compensation Programs (OWCP) includes a discussion of a legislative proposal to reform certain aspects of the FECA program. For example, to reduce improper payments, the legislative proposal would authorize DOL to cross-match FECA records with Social Security records without obtaining claimant authorization. In addition, according to the budget justification, the legislative proposal would prospectively provide a uniform wage loss compensation rate of 70 percent of applicable wages and convert retirement-age beneficiaries to a retirement level conversion benefit. In 2012—at the time of our work—similar proposals to revise FECA included the following changes to the benefits for future total and partial-disability beneficiaries:[5]

[4]Beneficiaries who are determined to have some wage earning capacity—partial-disability beneficiaries—are compensated based on the difference between wages at the time of injury and wages that DOL determines they are able to earn in a suitable job. Those with a dependent are compensated at 75 percent of this difference and those without an eligible dependent at 66-2/3 percent of the difference.

[5]The proposals analyzed were DOL's "Federal Injured Employees' Reemployment Act of 2010" technical assistance discussion draft, January 13, 2011 and S. 1789, 112th Cong., tit. III (2012). Both proposals include setting initial FECA benefits at a single rate—DOL proposed 70 percent and S. 1789 proposed 66-2/3 percent. Both proposed reducing benefits at full Social Security retirement age to 50 percent of applicable wages.

- Set initial FECA benefits at a single rate (either 66-2/3 or 70 percent of applicable wages at time of injury), regardless of whether the beneficiary has eligible dependents.
- Convert FECA benefits to 50 percent of applicable wages at time of injury—adjusted for inflation—once beneficiaries reach the full Social Security retirement age.

My statement today will focus on our findings regarding (1) the potential effects of the proposals to compensate total-disability FECA beneficiaries at a single rate regardless of having dependents; (2) the potential effects of the proposal to reduce FECA benefits for total-disability beneficiaries to 50 percent of applicable wages at Social Security retirement age; and (3) how partial-disability beneficiaries might fare under the proposed changes. This statement is drawn primarily from our three prior reports issued in fiscal year 2013 which analyzed the effects of proposed changes to FECA.

To consider the effect of compensating total-disability FECA beneficiaries at the single rate of either 66-2/3 or 70 percent, we conducted simulations that compared the extent to which FECA and the proposed revision would replace a FECA beneficiary's take-home pay by analyzing a set of federal employees who had never been injured and who were employed at the end of fiscal year 2010.[6] We used a matching methodology, which allows us to capture the counterfactual of having never been injured and use it to

[6]We defined take-home pay as gross wages reduced by mandatory retirement contributions and federal and state income taxes (assuming a single dependent) and did not take discretionary deductions into account. The analyses were based on snapshots in 2010 and did not consider any cumulative effects of the proposed FECA revisions on lifetime income.

benchmark the adequacy of benefits.[7] We conducted separate simulations for non-USPS and USPS beneficiaries because their data were organized differently in separate databases and the USPS FECA population is substantial—43 percent of FECA beneficiaries in 2010 were employed by USPS at the time of injury. Once we matched the FECA beneficiaries to the relevant set of federal workers, we calculated their hypothetical FECA and hypothetical revised FECA benefits, and projected these initial benefits to 2010.[8] We calculated the proportion of 2010 take-

[7]We matched recent total disability FECA beneficiaries to these employees in order to ensure the two groups of individuals were similar. Our matches were based on work-related characteristics—such as employing agency and blue collar versus white collar classification—as well as on personal characteristics that may be important in terms of career and wage growth. These personal characteristics included the date and age when the employees started their federal careers, as well as their wage histories prior to the injury. We assumed that the tenure and income earned by the actual 2010 employees accurately simulate what their matched FECA recipients would have earned if they had not been injured. While this is a reasonable assumption, our analysis did not consider the extent to which FECA beneficiaries may have unobserved characteristics—such as the propensity to take risks—that also affect labor market decisions and behavior. Such characteristics could affect career paths and thus ultimately affect our results. For more details on the similarity of the matched set of FECA beneficiaries and federal employees, see appendix II of GAO-13-108 (non-USPS) and enclosure I of GAO-13-142R (USPS).

[8]After matching, we focused solely on the federal worker—rather than the FECA beneficiary—because doing so was more precise than comparing the benefit of the FECA beneficiary to the earnings of the matched federal worker. By considering only the federal worker, we were able to capture the wage replacement rate, the proportion of take-home pay replaced by FECA, in a way that meaningfully accounted for career growth while avoiding undue imprecision in wage replacement rates that could have been attributed to salary differences between the federal worker and the matched FECA beneficiary. We calculated initial benefits to reflect the timing of the corresponding FECA beneficiary's injury.

home pay replaced by the simulated FECA benefit, or wage replacement rate.[9]

By using 2010 take-home pay, we factored in missed career growth into the wage replacement rates we calculated. Although FECA was not designed to compensate for missed career growth, we used a matching methodology that allowed us to measure the adequacy of benefits with respect to the counterfactual. Specifically, we captured the extent to which FECA beneficiaries are able to maintain the standard of living they would have had absent an injury.[10]

[9]At the time of injury, wage replacement rates are actually greater than FECA compensation rates. For example, given a dependent and gross wages of $50,000, the FECA benefit is $37,500 (75 percent). Assuming 15 percent taxes, take home pay would be $42,500, and the wage replacement rate would be 88 percent (37,500/42,500). Policymakers can target wage replacement rates; however, there is no consensus on the appropriate wage replacement rate for workers' compensation programs, such as FECA. Such decisions involve balancing the goals of benefit adequacy and incentives to return to work. In 1972, the National Commission on State Workmen's Compensation Laws endorsed a move towards 80 percent of spendable pay or take-home pay. A 1998 GAO report on FECA also cited this 80 percent benchmark; see GAO, *Federal Employees' Compensation Act: Percentages of Take-Home Pay Replaced by Compensation Benefits*, GAO/GGD-98-174 (Washington, D.C.: August 1998). In 2004, a report by the National Academy of Social Insurance used two-thirds of gross wages as a target replacement rate for workers' compensation programs. See H. Allan Hunt, editor, *Adequacy of Earnings Replacement in Workers' Compensation Programs, A Report of the Study Panel on Benefit Adequacy of the NASI Workers' Compensation Steering Committee* (Washington D.C.: 2004).

[10]Alternatively, one could use a method that does not account for missed career growth. For instance, in our 1998 FECA report (GAO/GGD-98-174), we calculated wage replacement rates by comparing FECA benefits to take-home pay at the time of injury, adjusted for inflation. That approach measured the degree to which beneficiaries were able to maintain the standard of living they would have had at the time of injury. We took that approach in part because of the data available at the time of the report, GAO/GGD-98-174.The report found that, on average, FECA benefits replaced over 95 percent of wages at the time of injury for beneficiaries, including both USPS and non-USPS beneficiaries. In its comments on our 1998 report, DOL took issue with the fact that we did not take account of missed promotions. DOL stated that it is almost certain that some percentage of injured workers would have received promotions, thus lowering the wage replacement rate. The availability of additional data and the improved methods employed in our recent analysis allow us to present an assessment of the adequacy of benefits that includes career growth. For additional discussion of the merits of accounting for missed career growth in assessing the adequacy of benefits, see Hunt, 2004.

To compare FERS to total-disability FECA benefits, we also relied on a matching technique,[11] and conducted our analysis for both the current FECA program and the proposal to reduce benefits at full retirement age.[12] We projected simulated FECA benefits to 2010 and compared these FECA benefits, supplemented by a Thrift Savings Plan (TSP) annuity, to the actual FERS benefit packages.[13] The FERS benefit package includes the FERS annuity, Social Security benefits, and TSP annuities.[14] However, FERS had only been in place 26 years in 2010, so we did not capture a fully mature system.[15] To capture future FECA beneficiaries, we conducted another simulation to account for a mature FERS. In this simulation, we examined the effects of missing part of a 30-year career due to injury.[16]

To determine the effects on partial-disability beneficiaries, we used different methods to analyze how they might fare under proposed FECA revisions. We did not conduct the types of simulations we used for total-

[11]For details on the match and subsequent analysis, see appendix II of GAO-13-108 and enclosure I of GAO-13-142R.

[12]This approach captures retirement benefits in the counterfactual case of having never been injured and is consistent with our February 2012 FECA report, which compared FECA benefits to retirement benefits under the Civil Service Retirement System. See GAO, *Federal Employees' Compensation Act: Benefits for Retirement-Age Beneficiaries*, GAO-12-309R (Washington, D.C.: February 6, 2012).

[13]FECA beneficiaries cannot receive FECA benefits concurrently with the FERS annuity. Further, Social Security benefits attributable to federal service are offset by FECA after retirement.

[14]To conduct our simulations, we used data from the 2010 Integrated Federal Employees' Compensation System (iFECS); 1988-2010 data from the Central Personnel Data File (CPDF); 1995-2010 data from USPS Human Capital Enterprise System (HCES); 2010 FERS annuitant data; 2000-2012 Thrift Savings Plan (TSP) data; and Social Security benefit data from the Master Beneficiary Record (MBR). We determined that the data we used were sufficiently reliable for the purposes of the reports.

[15]By mature FERS, we mean a retirement system in place at least 30 years to give a full range of income levels and investment growth. Federal employees age 62 with 20 or more years of service accrue retirement benefits at a slightly higher rate. In addition, having 4 additional years of TSP contributions and growth can lead to greater account balances. Our data had limited observations on FERS annuitants with more than 25 years of service. Without taking account of the mature system, our results understate the future FERS benefit.

[16]We then simulated different scenarios by varying the percentage an individual contributed to the TSP and the rate of growth for TSP balances. Please see appendix II of GAO-13-108 for more details about our simulation of a mature FERS.

disability beneficiaries, in part because DOL does not keep data about their total income (including any earnings) in an electronic database. Instead, we reviewed partial-disability beneficiary case files to examine how their post-injury employment outcomes varied (e.g., re-employed by the federal government, re-employed in the private sector, or unemployed) and changed over time and judgmentally selected 7 beneficiaries to present as case studies.[17] The results from these case studies are not generalizable to all partial-disability beneficiaries, but provide insights.

A more detailed description of our scope and methodology can be found in each of the reports cited in this statement. The work on which this testimony was based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

FECA

FECA provides cash and other benefits to eligible federal employees who suffer temporary or permanent disabilities resulting from work-related injuries or diseases. DOL's Division of Federal Employees' Compensation in the Office of Workers' Compensation Programs (OWCP) administers the FECA program and charges agencies for whom injured employees worked for benefits provided. These agencies subsequently reimburse DOL's Employees' Compensation Fund from their next annual appropriation. FECA benefits are adjusted annually for cost-of-living increases[18] and are neither subject to age restrictions nor taxed. USPS has large FECA program costs. At the time of their injuries, 43 percent of

[17]We selected the 7 case studies to show variation in wage earning capacity and post-injury job outcomes, including 4 beneficiaries who returned to work (2 to federal service and 2 to private sector jobs) and whose wage earning capacity was based on their actual wages, and 3 beneficiaries whose wage earning capacity was based on a DOL estimate of what the beneficiary could earn in an appropriate job placement.

[18]FECA and Social Security are adjusted by the same price index (CPI-W).

FECA beneficiaries in 2010 were employed by USPS, as shown in table 1.

Table 1: Number of Federal Employees' Compensation Act (FECA) Beneficiaries per Agency in 2010

Agency	All FECA beneficiaries	
	Number	Percentage
U.S. Postal Service	130,483	43
Department of Veterans Affairs	26,157	9
Department of Homeland Security	25,408	8
Navy	19,919	6
Army	19,852	6
Air Force	12,728	4
Department of Justice	11,001	4
Department of Agriculture	10,691	3
Department of the Interior	9,205	3
Defense agencies[a]	6,101	2
Other agencies[b]	35,360	12
Total	**306,905**	**100**

Source: GAO analysis of Department of Labor data. | GAO-15-604T

[a]Defense Agencies covered include the Defense Contract Audit Agency, Defense Logistics Agency, and the Defense Contract Management Agency, among others.

[b]The remaining agencies listed each have less than 2 percent of the total number of beneficiaries receiving workers' compensation benefits, and fewer than 5,275 beneficiaries each.

One way to measure the adequacy of FECA benefits is to consider wage replacement rates, which are the proportion of pre-injury wages that are replaced by FECA. 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 whereas 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 (i.e., standard of living absent an injury). Data limitations can preclude calculating wage replacement rates that account for missed career growth; however, doing so provides a more complete story of the comparison between an injured worker and his or her counter-factual of having never been injured. Wage replacement rates can be targeted by

policymakers; however, there is no consensus on what wage replacement rate policies should target.[19]

FECA and Retirement under FERS

FECA beneficiaries receive different benefits past retirement age than workers who retire under a federal retirement system. Specifically, under FERS, federal retirees have a benefit package comprised of three components: the FERS annuity, which is based on years of service and high-3 average pay; the TSP, which is similar to a 401(k); and Social Security benefits.[20] FECA benefits do not change at retirement age and beneficiaries cannot receive a FERS annuity and FECA benefits simultaneously. In addition, FECA beneficiaries cannot contribute to their TSP accounts post-injury, but they can receive benefits from contributions made to their TSP accounts prior to being injured. In addition, Social Security benefits attributable to federal service are offset by FECA.

Partial and Total-disability

If an individual has a disability and no current capacity to work, OWCP determines that he or she is a total-disability beneficiary and calculates long-term FECA benefits as a proportion of the beneficiary's entire income at the time of injury.[21] In 2010, 31,880 FECA beneficiaries received long-term total-disability cash benefits.[22]

Alternatively, if an individual recovers sufficiently to return to work in some capacity, OWCP determines that he or she is a partial-disability beneficiary and reduces his or her FECA benefits from the total-disability

[19]H. Allan Hunt, editor, *Adequacy of Earnings Replacement in Workers' Compensation Programs, a Report of the Study Panel on Benefit Adequacy of the NASI Workers' Compensation Steering Committee* (Washington, D.C.: 2004).

[20]FERS, which generally covers employees first hired in 1984 or later, replaced the Civil Service Retirement System (CSRS). According to OPM, about 80 percent of federal annuitants that were on OPM's rolls in 2011 were CSRS annuitants. Among those CSRS annuitants, the average years of federal service was almost 30 years.

[21]The amount of time a beneficiary receives these long-term total-disability benefits varies depending on the extent and speed of recovery.

[22]See GAO, *Federal Employees' Compensation Act: Benefits for Retirement-Age Beneficiaries*, GAO-12-309R (Washington, D.C.: February 6, 2012) for more information on the number and types of FECA beneficiaries in 2010. In this report we found that, compared to their federal CSRS retired counterparts, non-USPS long-term, full-time FECA beneficiaries typically received higher benefits in 2010. The median annual FECA benefit of $35,614 was about 26 percent higher than the median annual annuity received by retirees, which was $28,289, after adjusting for the effects of taxes.

amount. For such partial-disability beneficiaries, OWCP calculates long-term benefits based on any loss of wage earning capacity (LWEC), as compared to their pre-injury wages.[23] A beneficiary's LWEC may be based on the difference between their pre-injury wages and their actual post-injury earnings if the beneficiary has found employment that OWCP determines to be commensurate with their rehabilitation. Alternatively, OWCP may construct a beneficiary's LWEC based on the difference between pre-injury wages and OWCP's estimate of what the FECA beneficiary could earn in an appropriate job placement (constructed earnings). In 2010, 10,594 FECA beneficiaries received long-term partial-disability cash benefits.[24]

FECA Operations

In addition to our work on FECA benefit levels, we have also conducted work on program integrity and management. We have identified several weaknesses in these areas.[25] Most recently, in April 2013, we found examples of improper payments and indicators of potential fraud in the FECA program, which could be attributed, in part, to oversight and data-access issues. For example, we found cases where, in comparison to state wage data reports, individuals underreported their employment wages to DOL. Underreporting earnings could result in overpayments of FECA benefits. DOL did not have access to wage data to corroborate the self-reported incomes. Because of this limitation, we included a matter for congressional consideration, stating that Congress should consider granting DOL additional authority to access wage data to help verify claimants' reported income and help ensure the proper payment of

[23]We use the term "pre-injury wages" for clarity. OWCP calculates long-term benefits based on the current pay rate—at the time of this calculation—of the job the beneficiary held at the time of injury.

[24]See GAO-12-309R for more information on the number and types of FECA beneficiaries in 2010.

[25]GAO, *Federal Employees' Compensation Act: Case Examples Illustrate Vulnerabilities That Could Result in Improper Payments or Overlapping Benefits*, GAO-13-386 (Washington, D.C.: April 3, 2013). GAO, *Federal Employees' Compensation Act: Status of Previously Identified Management Challenges*, GAO-12-508R (Washington, D.C.: March 21, 2012). GAO, *Federal Employees' Compensation Act: Preliminary Observations on Fraud-Prevention Controls*, GAO-12-402 (Washington, D.C.: January 25, 2012). GAO, *Federal Employees' Compensation Act: Preliminary Observations on Fraud-Prevention Controls*, GAO-12-212T (Washington, D.C.: November 9, 2011). GAO, *Federal Employees' Compensation: Better Data and Management Strategies Would Strengthen Efforts to Prevent and Address Improper Payments*, GAO-08-284 (Washington, D.C.: February 26, 2008).

benefits. Congress has not yet passed legislation to give DOL additional authority to access wage data. We also found that, although some FECA claimants may be eligible to receive both FECA and unemployment insurance benefits,[26] DOL did not have a process to share the necessary data to help the states identify overlapping payments. We recommended that the Secretary of Labor assess the feasibility of developing a cost-effective mechanism to share FECA compensation information with states. DOL agreed with the recommendation and has taken steps to develop a cost-effective mechanism to share FECA compensation information with states, but has not completed its efforts. Specifically, in August 2014, a DOL official stated that the agency's Office of Workers' Compensation Programs and Office of Unemployment Insurance are working with DOL's Office of the Solicitor to develop agreements that would allow DOL to provide information on FECA compensation to states for use in determining unemployment benefits. When completed, these actions should help states to identify whether claimants are inappropriately receiving overlapping UI and FECA payments.

[26]Individuals may be eligible for both FECA and unemployment insurance depending on the applicable state laws regarding unemployment insurance eligibility, and federal law does not authorize an automatic reduction or potential elimination of benefits if a claimant receives both. However, claimants may be not eligible to receive both types of payments because their disability, especially for those receiving compensation for total disability, may render them unable and unavailable to work.

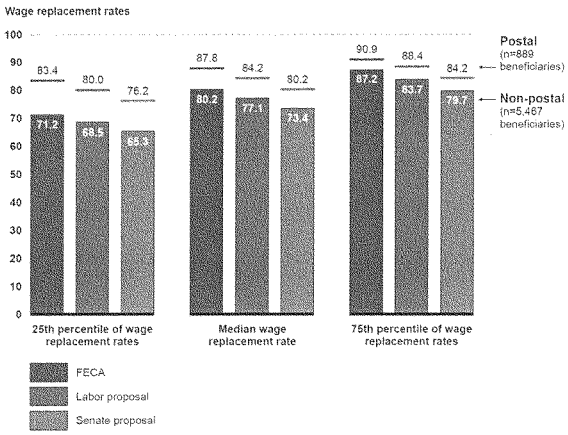
Proposed FECA Revisions Would Reduce Median Wage Replacement Rates and Increase the Difference between Total-Disability Beneficiaries With and Without a Dependent

Our simulations of the effects of compensating non-USPS and USPS total-disability beneficiaries at the single rate of either 66-2/3 or 70 percent of wages at injury, regardless of the presence of dependents, reduced the median wage replacement rates. Median wage replacement rates overall, and within the subgroups we examined, were generally lower under the 66-2/3 percent compensation proposal.

Proposed Single Rates Would Reduce Wage Replacement Rates

As we reported in 2012, compared to the current FECA program, both proposals reduced 2010 median wage replacement rates for total-disability non-USPS and USPS beneficiaries, as shown in figure 1. The decreases in the overall median wage replacement rates were due to the greater proportion of beneficiaries who had a dependent—73 percent of non-USPS beneficiaries and 71 percent of USPS beneficiaries. Beneficiaries with a dependent received lower compensation under both proposals whereas beneficiaries without a dependent saw their compensation increase or stay the same.

Figure 1: 2010 Wage Replacement Rates under the Federal Employees' Compensation Act (FECA) and the Proposed Revisions



Source: GAO analysis of simulation results. | GAO-15-604T

Note: Wage replacement rates are calculated based on 2010 take-home pay and account for missed income growth. Postal refers to USPS and non-postal refers to non-USPS.

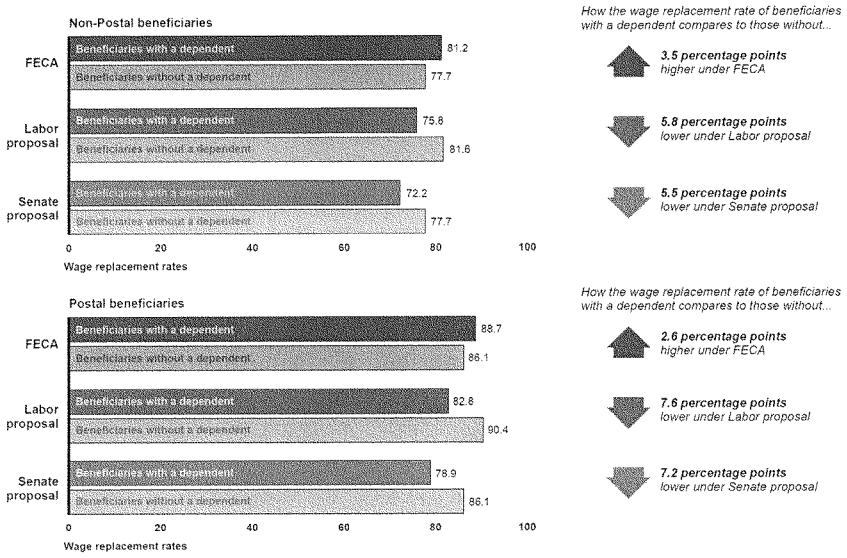
As shown in the middle group of bars in figure 1, the results of our simulation indicate that median wage replacement rates for USPS beneficiaries were generally higher than those for non-USPS beneficiaries. In both cases, the wage replacement rates account for missed income growth, as they are simulated based on 2010 take-home pay. All else equal, FECA beneficiaries who would have experienced more income growth—from the time of injury through 2010—had lower wage replacement rates than did those beneficiaries who would have experienced less income growth absent their injury. In general, USPS beneficiaries missed less income growth due to their injury than did non-USPS beneficiaries. Consequentially, USPS beneficiaries had higher wage replacement rates than non-USPS beneficiaries. For example, 4 out of 5 USPS beneficiaries in our analysis would have had less than 10 percent income growth had they never been injured. In contrast, 2 out of

5 non-USPS beneficiaries would have had less than 10 percent income growth, absent an injury.

Under our simulations, both proposals increased the difference in wage replacement rates between beneficiaries with and without a dependent, increasing the magnitude and reversing the direction of the difference in median wage replacement rates, as shown in figure 2. Had we been able to account for the actual number of dependents, beneficiaries with dependents would have had lower wage replacement rates and thus the difference between median wage replacement rates would have been smaller under FECA and larger under both proposals.[27]

[27] Our data did not include information on the number of dependents, so we assumed a single dependent. All else equal, having more dependents would generally increase take-home pay (because of smaller tax liabilities) and therefore result in lower wage replacement rates. For more information, see GAO-13-108.

Figure 2: 2010 Median Wage Replacement Rates for Federal Employees' Compensation Act (FECA) Beneficiaries With and Without a Dependent



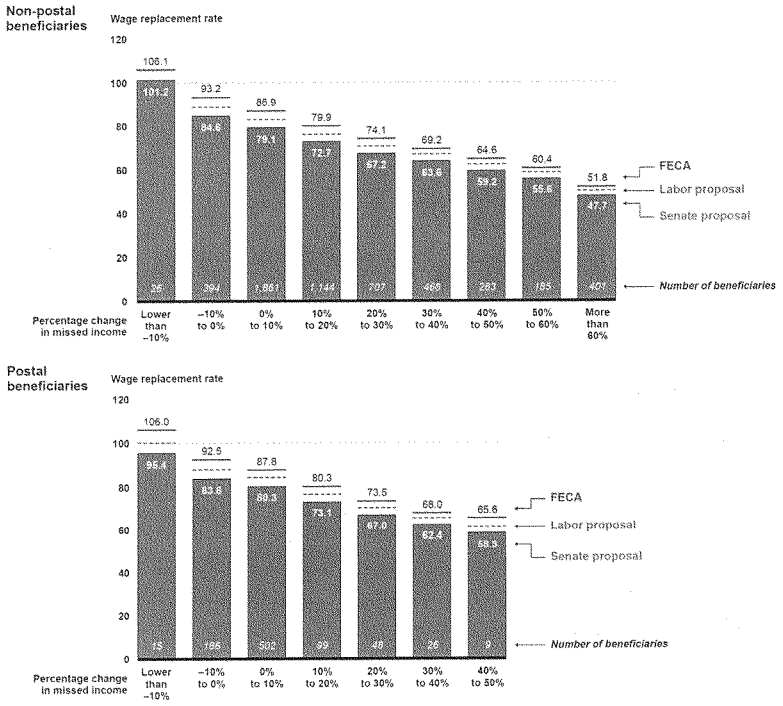
Source: GAO analysis of simulation results. | GAO-15-604T

Note: Wage replacement rates are calculated based on 2010 take-home pay and account for missed income growth. Postal refers to USPS and non-postal refers to non-USPS.

For other beneficiary subgroups we examined for our 2012 reports, the proposals did not reduce wage replacement rates disproportionately to the reduction in the overall median.[28] However, we found that under the current FECA program and both proposals, wage replacement rates for some beneficiaries, such as those who, due to injury earlier in their careers, missed out on substantial income growth, were substantially lower than the overall median. FECA was not designed to account for missed income growth and thus total-disability beneficiaries who missed substantial income growth had lower wage replacement rates—outweighing the cumulative effect of FECA's annual cost of living adjustments—as shown in figure 3.

[28] We examined subgroups of beneficiaries by state tax rates, General Schedule (GS) level at injury and GS level growth (non-USPS), and income percentile category at injury (USPS). The GS classification and pay system covers the majority of civilian white-collar federal employees.

Figure 3: 2010 Median Wage Replacement Rates by Missed Income Growth under the Federal Employees' Compensation Act (FECA) and the Proposed Revisions



Source: GAO analysis of simulation results. | GAO-15-604T

Note: Intervals do not include the upper endpoints. In addition, not enough USPS beneficiaries had missed income growth over 50 percent to report their wage replacement rates. Wage replacement rates are calculated based on 2010 take-home pay and account for missed income growth. Postal refers to USPS and non-postal refers to non-USPS.

Years of Service Play a Key Role in the Comparison between FECA and FERS Benefits

Current Median FECA Benefit Packages Exceed 2010 FERS Benefit Packages

According to the retirement simulations from our 2012 reports comparing current FECA benefits to FERS benefits, we found that the overall median FECA benefit package (FECA benefits and TSP annuity) for both USPS and non-USPS FECA beneficiaries was greater than the current median FERS retirement benefit package (FERS annuity, TSP annuity, and Social Security). Specifically, the median FECA benefit package for non-USPS beneficiaries was 32 percent greater than the current median FERS—and 37 percent greater for USPS FECA beneficiaries.[29] This implies that in retirement, FECA beneficiaries generally had greater income from FECA and their TSP in comparison to the FERS benefits they would have received absent an injury.

Increased Years of Service Were Associated with Increased FERS Benefits Relative to FECA Benefits for 2010 Annuitants

As we reported in 2012, although the overall median FECA benefit was substantially higher than the median FERS benefit for 2010 annuitants, the difference between the two varies based on years of service. Our simulation showed that median FECA benefit packages were consistently greater than median FERS benefit packages across varying years of service; however, the gap between the two benefits narrowed as years of service increased. This occurred in large part because FERS benefits increase substantially with additional years of service. For example, under our simulation non-USPS beneficiaries whose total federal career would have spanned less than 10 years had a median FECA benefit that was about 46 percent greater than the corresponding FERS benefit. In contrast, non-USPS beneficiaries whose total federal career would have spanned 25 to 29 years had a median FECA benefit that was 16 percent greater than the corresponding FERS benefit. For USPS beneficiaries, those whose total federal career would have spanned less than 10 years had a median FECA benefit that was about 65 percent greater than the corresponding FERS benefit, while beneficiaries whose total federal

[29]In our datasets, non-USPS FERS annuitants had a median of about 16 years of service, while USPS annuitants had a median of 18 years.

career would have spanned between 20 and 24 years had a median FECA benefit that was 23 percent greater than the corresponding FERS benefit.

Proposals Would Roughly Equalize FECA and FERS Benefit Packages for 2010 Annuitants

Based on the simulations we conducted for our 2012 reports, we found that reducing FECA benefits once beneficiaries reach retirement age to 50 percent of wages at the time of injury would result in an overall median for the reduced FECA benefit package (reduced FECA plus the TSP) that is about 6 percent less than the median FERS benefit package for non-USPS annuitants. Under our simulation for USPS annuitants, the reduced FECA benefit package would be approximately equal to the median 2010 FERS benefit package. This implies that under the proposed reduction, both USPS and non-USPS FECA beneficiaries would have similar income from their FECA benefit package in comparison to their foregone FERS benefit.

In addition, under our simulation reduced FECA benefits were similar or less than FERS benefits across varying years of service.[30] However, as years of service increase, the gap between the two benefits widened. For example, we found that non-USPS beneficiaries whose total federal career would have spanned less than 10 years had a median reduced FECA benefit that was about 2 percent greater than the corresponding FERS benefit. In contrast, those non-USPS beneficiaries whose total federal career would have spanned 25 to 29 years had a median reduced FECA benefit that was 19 percent less than the corresponding FERS benefit. Similarly, USPS beneficiaries whose total federal career would have spanned less than 10 years had a median reduced FECA benefit that was about 13 percent greater than the corresponding FERS benefit. In contrast, USPS beneficiaries whose total federal career would have spanned 25 to 29 years had a median reduced FECA benefit that was 20 percent less than the corresponding FERS benefit.[31]

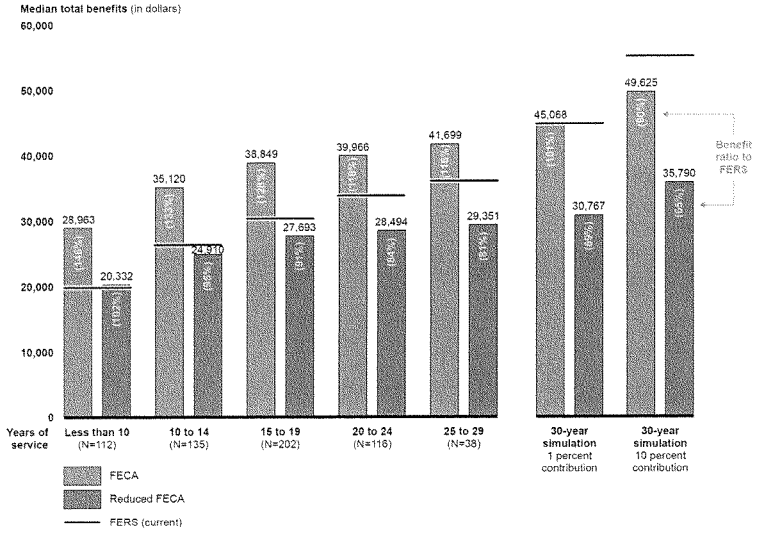
[30] In other words, under the proposed reduced FECA, based on our simulations, beneficiaries would have similar or less income in retirement than they would have had absent an injury.

[31] Because few people in our dataset had more than 25 years of federal service at the time of retirement, we do not capture those who would choose to work 30 or more years in the federal government before retiring.

Median Reduced FECA Benefit Packages Would Likely Be Less Than Median FERS Benefit Packages for Federal Annuitants with 30-Year Careers

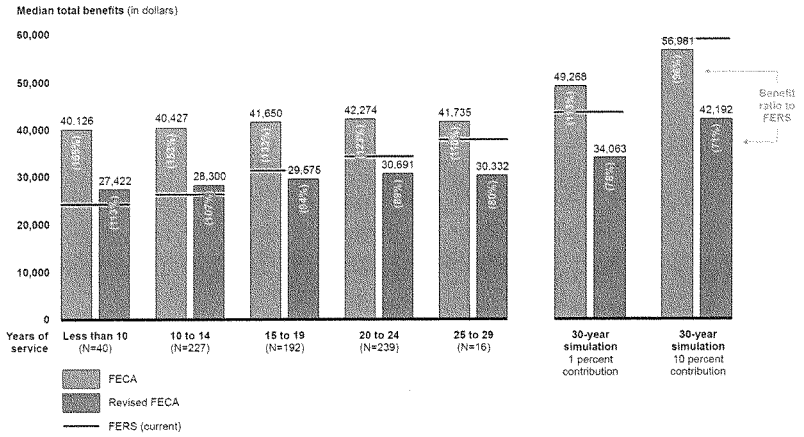
When we conducted simulations for our 2012 reports, FERS had only been in place for 26 years in 2010, and therefore our simulation did not capture the "mature" FERS benefit that an annuitant could accrue with more years of service. Consequently, it is likely that our analysis understated the potential FERS benefit when we considered 2010 benefit levels. As a result, we conducted a simulation of a "mature" FERS that was coupled with the assumption that individuals have 30-year federal careers. Based on this simulation, we found that the median current FECA benefit packages for non-USPS beneficiaries were on par or less than the median FERS benefit package—depending on the amount an individual contributes toward their TSP account for retirement. As shown on the right sides of figures 4 and 5, under the default scenario where there is no employee contribution and the employing agency contributes 1 percent to TSP, the median FECA benefit package is about 1 percent greater than the median FERS benefit package. However, under a scenario where each employee contributes 5 percent—and receives a 5 percent agency match—the median FECA benefit package is about 10 percent less than the median FERS benefit package. Similarly, our simulation showed that for USPS annuitants, the median FECA benefit package was about 13 percent greater than the median FERS benefit package under the 1 percent agency contribution scenario, and about 4 percent less than the median FERS benefit package under the 10 percent contribution scenario.

Figure 4: Median Federal Employees' Compensation Act (FECA) and Federal Employees Retirement System (FERS) Benefit Packages by Years of Service (Non-U.S. Postal Service)



Source: GAO analysis of simulation results. | GAO-15-604T

Figure 5: Median Federal Employees' Compensation Act (FECA) and Federal Employees Retirement System (FERS) Benefit Packages by Years of Service (U.S. Postal Service)



Source: GAO analysis of simulation results. | GAO-15-604T

Our simulation also found that, for both non-USPS and USPS annuitants, the median reduced FECA benefit package under the proposed changes was less than the median FERS benefit package—regardless of the simulated contributions to TSP accounts. Specifically, under a scenario where there is no employee contribution—and a 1 percent contribution from the employing agency—the median reduced FECA benefit package is about 31 percent less than the median FERS benefit package for non-USPS annuitants and 22 percent less than the median FERS benefit package for USPS annuitants. Under a scenario where each employee contributes 5 percent—and receives a 5 percent agency match—the median reduced FECA benefit package is about 35 percent less than the FERS benefit package for non-USPS annuitants and about 29 percent less than the FERS benefit package for USPS annuitants.

Effects of Proposed FECA Revisions on Partial-disability Beneficiaries Depend on Post-Injury Earning Capacity and Employment Over Time

As we reported in 2012, partial-disability beneficiaries are fundamentally different from total-disability beneficiaries, as they receive reduced benefits based on their potential to be re-employed and have work earnings. However, there is limited information available about the overall population of partial-disability beneficiaries. They do not all find work and their participation in the workforce may change over time, and their individual experiences will determine how they would fare under the proposed revisions.

Total Income Comparisons for Partial-disability Beneficiaries Under Single-Rate Proposals Depend on the Extent to Which Each Is Reemployed

As we reported in 2012, we found that partial-disability beneficiaries in the case studies we examined fared differently under both FECA and the proposed revisions to pre-retirement compensation, depending on the extent to which they had work earnings in addition to their FECA benefits. To consider this larger context, we conducted total income comparisons for the partial-disability case studies we examined. We defined the post-injury total income comparison to be the sum of post-injury FECA benefits and any gross earnings from employment at the time of the LWEC decision, as a percentage of pre-injury gross income.[32]

Among the seven partial-disability case studies we examined, those beneficiaries with constructed earnings LWECs had post-injury total income comparisons that were substantially less than those with actual earnings LWECs. As shown in table 2, the beneficiaries in case studies 5 to 7 had constructed earnings LWECs and had post-injury total incomes that ranged from 29 to 65 percent of their pre-injury income under the current FECA program. This range was substantially lower than the total income comparisons for the beneficiaries in case studies 1 to 4 with actual earnings LWECs (77 to 96 percent). We found that by definition, at the time of their LWEC decision, those beneficiaries with constructed

[32]This total income comparison is not the same as the wage replacement rate used in our prior analysis for total-disability beneficiaries. Total income includes FECA benefits and any gross earnings from work (not accounting for taxes). Post-injury earnings and FECA benefits are deflated to the time of injury to conduct a consistent comparison at a single point in time. For further details on the methodology we used, see enclosure I of GAO-13-143R.

earnings LWECs earned less than the income OWCP used to calculate their LWECs. Consequently, their total income comparisons—FECA benefits plus earnings, as a percentage of pre-injury wages—are necessarily lower than those with actual earnings LWECs.

Table 2: GAO Case Studies of Total Income Comparisons at Time of Loss of Wage Earning Capacity (LWEC) Decision under the Federal Employees' Compensation Act (FECA) and the Proposed Revisions

						Total Income Comparisons Under:[c]		
Case Study	Has a Dependent	Wages @ Injury[a]	Wages Post-Injury @ LWEC	Post-Injury Earning Capacity[b]	FECA Benefit @ Injury	Current FECA Benefit Structure (pre-retirement)	Labor Proposal (pre-retirement compensation)	Senate Proposal (pre-retirement compensation)
1 - Returned to Agency	Yes	$52,684	$16,472	26%	$29,240	81.5%	77.8%	75.3%
2 - Returned to Agency	No	$28,691	$25,829	88%	$2,295	96.0%	96.4%	96.0%
3 - Private Sector Job	Yes	$75,724	$8,320	9%	$51,682	77.3%	72.7%	69.7%
4 - Private Sector Job	No	$38,675	$33,097	82%	$4,641	94.0%	94.6%	94.0%
5 - Constructed LWEC	Yes	$58,033	$5,383	26%	$32,208	64.5%	60.8%	58.3%
6 - Constructed LWEC	Yes	$35,082	$0	49%	$13,419	38.3%	35.7%	34.0%
7 - Constructed LWEC	No	$34,936	$0	56%	$10,248	29.3%	30.8%	29.3%

Source: GAO analysis of partial-disability case studies. | GAO-15-604T

[a]The dollar amounts for wages and benefits are in nominal terms from the year of the injury or Office of Workers' Compensation Programs' (OWCP) LWEC decision; they are thus not comparable for each beneficiary or across beneficiaries. Dollars are standardized in the income comparisons and are thus comparable across beneficiaries (see enclosure I of GAO-13-143R for details on the methodology).

[b]Post-injury earning capacity represents OWCP's determination of a beneficiary's potential to earn wages. For instance, OWCP determined that the beneficiary in case study 1 had the potential to earn 26 percent of her wages at the time of injury.

[c]Total income comparisons represent each beneficiary's post-injury FECA benefits plus any gross earnings from employment at the time of the LWEC decision, as a percentage of his or her pre-injury gross income, under current FECA policy and the proposed revisions to pre-retirement benefits.

We also found that beneficiaries in our case studies were affected differently by the proposed revisions to pre-retirement benefits. As expected, the beneficiaries who did not have a dependent (case studies 2, 4, and 7) experienced either slight increases or no change in their post-injury total income comparisons under the proposed revisions to pre-retirement benefits. Under both proposals, the beneficiaries in our case studies who had a dependent (case studies 1, 3, 5, and 6) experienced

declines in their post-injury total income comparisons.[33] However, these decreases in total income comparisons were relatively small compared to the impact of not having actual earnings. For instance, the beneficiary with a constructed earnings LWEC in case study 6 experienced declines in total income comparisons of about 3 to 4 percentage points between the current FECA program and the proposals. However, the beneficiary's total income comparisons under the current FECA program and the proposals were over 30 percentage points lower than those of the beneficiary in case study 3 who had the lowest total income comparisons of those beneficiaries with actual earnings LWECs.

Due to the importance of actual work earnings on partial-disability beneficiaries' situations, we have previously concluded that a snapshot of post-injury total income comparisons is insufficient to predict how beneficiaries fare over the remainder of their post-injury careers. Employment at the time of OWCP's LWEC decision does not necessarily imply stable employment over time, as beneficiaries can find, change, or lose jobs over time.

Effects of Proposals to Reduce FECA at Retirement Age Depend on Whether Partial-disability Beneficiaries Remain on FECA or Elect OPM Retirement Benefits

We have also found that the proposals to reduce FECA benefits at retirement age would primarily affect those partial-disability beneficiaries who continue to receive FECA benefits past retirement age. As we reported in December 2012, among those partial-disability beneficiaries who stopped receiving FECA benefits in 2005-2011, 68 percent did so due to their election of Office of Personnel Management (OPM) retirement or other benefits, such as Veterans Affairs disability benefits. At that time, DOL officials told us that because many variables affect retirement benefits, they cannot predict why partial-disability beneficiaries would potentially choose to retire instead of continuing to receive FECA benefits. Only 17 percent of partial-disability beneficiaries who stopped receiving FECA benefits were beneficiaries who died (i.e., received benefits from injury until death). These aggregate numbers do not track individual beneficiaries' decisions to elect retirement or to continue receiving FECA benefits past retirement age, but they suggest that there

[33]The proposals to compensate FECA beneficiaries at the single rate of 70 percent or 66-2/3 percent of wages at injury, regardless of the presence of dependents, would reduce pre-retirement FECA benefits for partial-disability beneficiaries with a dependent and would increase or have no effect on pre-retirement FECA benefits for those without a dependent, respectively.

is a substantial percentage of partial-disability beneficiaries that elects other benefits instead of FECA at some point post-injury.[34]

Since those beneficiaries who elect FERS retirement would not be affected by the proposed revisions to FECA compensation at retirement age, the overall effects of the proposals on partial-disability beneficiaries should be considered in the larger context of retirement options. To do so, in our December 2012 report, we used data from the seven partial-disability case studies to simulate and compare FERS and FECA benefits and to highlight various retirement options these partial-disability beneficiaries may face.[35] As shown in table 3, we found:

- The beneficiaries in case studies 2, 4, and 6 had potential FERS benefit packages that were **higher** than their FECA benefits under the current FECA program and the proposed revision—they would likely not be affected by the proposed revision.
- The beneficiaries in case studies 1, 3, and 7 had potential FERS benefit packages that were **lower** than their FECA benefits under the current FECA program and the proposed revision—they would likely face a reduction in FECA benefits in retirement under the proposed revision.

[34]While those beneficiaries who elect OPM retirement would not be affected by the proposals, they would receive lower retirement benefits than they would have had they never been injured, all else equal. Their federal careers were either shortened or they returned to federal employment at a reduced capacity—both of which would reduce their FERS annuities and Social Security benefits attributable to federal service.

[35]We compared potential FERS and FECA benefits for each beneficiary in the case studies at age 62—a common decision point for electing to retire and also consistent with our prior work—which measures what each beneficiary would actually receive though the beneficiaries were not actually retired. This comparison is thus not the same as the retirement counter-factual analysis conducted for total-disability beneficiaries that compared FECA benefits to retirement benefits if never injured. Although the proposed reduction would only go into effect once a beneficiary reaches full Social Security retirement age, we simulated the benefit reduction for all case studies, regardless of age. We did so to be consistent with our prior work, to present the comparison under each compensation rate, and to avoid imputing additional unknown years of service. Had we conducted the comparison at full Social Security retirement age, FECA benefits would have been larger due to additional cost of living adjustments and FERS benefits may have been larger due to additional years of service. We did not include Thrift Savings Plan (TSP) benefits or Social Security benefits attributable to non-federal service in the comparison because each beneficiary would have received those benefits whether they elected FERS retirement or chose to remain on FECA.

- The beneficiary in case study 5 had a potential FERS benefit package that was **lower** than his FECA benefits under the current FECA program, but **higher** than his benefits under the proposed FECA reduction—he would likely face a reduction in FECA benefits in retirement under the proposed revision.

Table 3: GAO Case Studies: Benefits Comparisons at Retirement under the Federal Employees' Compensation Act (FECA) and the Federal Employees Retirement System (FERS)

						Total Benefits in Retirement:[d]		
Case Study	**Has a Dependent**	**Wages @ Injury[a]**	**Wages Post-Injury @ LWEC**	**Post-Injury Earning Capacity[b]**	**Years of Federal Service[c]**	**Potential FERS Retirement Package**	**Current FECA Benefit Structure**	**Labor and Senate Proposals to Reduce FECA**
1 - Returned to Agency	Yes	$52,684	$16,472	26%	14	$15,823	$34,554	$23,023
2 - Returned to Agency	No	$28,691	$25,829	88%	29	$24,410	$3,575	$2,678
3 - Private Sector Job	Yes	$75,724	$8,320	9%	17	$19,843	$75,023	$50,011
4 - Private Sector Job	No	$38,675	$33,097	82%	17	$13,513	$6,318	$4,758
5 - Constructed LWEC	Yes	$58,033	$5,383	26%	23	$25,518	$38,077	$25,376
6 - Constructed LWEC	Yes	$35,082	$0	49%	20	$17,132	$16,536	$11,011
7 - Constructed LWEC	No	$34,936	$0	56%	6	$7,905	$15,808	$11,830

Source: GAO analysis of partial-disability case studies. | GAO-15-604T

[a]The dollar amounts for wages are in nominal terms from the year of the injury or Office of Workers' Compensation Programs' (OWCP) Loss of Wage Earning Capacity (LWEC) decision; they are thus not comparable for each beneficiary or across beneficiaries. Benefit comparison dollars are in nominal terms, but as of the same year for each individual; FERS and FECA benefits are thus comparable for each beneficiary, but not across beneficiaries (see enclosure I of GAO-13-143R for details on the methodology).

[b]Post-injury earning capacity represents OWCP's determination of a beneficiary's potential to earn wages. For instance, OWCP determined that the beneficiary in case study 1 had the potential to earn 26 percent of her wages at the time of injury.

[c]Years of federal service includes any additional years of service added to advance beneficiaries who were not yet 62 to age 62—the point of benefit comparison. See enclosure I of GAO-13-143R for additional details on the methodology.

[d]Total benefits in retirement compares the potential FERS retirement package if a beneficiary elects Office of Personnel Management retirement, FECA benefits under current FECA policy, and FECA benefits under the Labor and Senate proposals. Social Security benefits not attributable to federal service and Thrift Savings Plan (TSP) benefits were not included in the analysis because they cancel out on both sides of the comparison; whatever TSP balance and Social Security benefits attributable to non-federal employment a beneficiary had accrued would be theirs whether they elected FECA benefits or FERS retirement.

Based on our prior work, we have concluded that the differences in retirement options that individual beneficiaries face stem from two key factors: (1) OWCP's determination of their earning capacities, and (2) their total years of federal service. Partial-disability beneficiaries with greater potential for earnings from work receive relatively lower FECA benefits to account for their relatively lower loss of wage earning capacity, all else equal. In table 2, beneficiaries with:

- low earning capacities post-injury (case studies 1, 3, and 5) had FECA benefits that were more favorable than FERS benefits;
- high earning capacities post-injury (case studies 2 and 4) had FECA benefits that were less favorable than FERS benefits; and
- mid-range earning capacities post-injury (case studies 6 and 7) had FECA benefits whose favorability depended on their total years of federal service. Fewer years of federal service resulted in a lower FERS annuity and lower Social Security benefits attributable to federal service, all else equal.

We have also found that partial-disability beneficiaries who choose to remain on FECA past retirement age currently face lower FECA benefits in retirement as compared with total-disability beneficiaries, and would experience a reduction in benefits under the proposals. Partial-disability beneficiaries receive FECA benefits that are lower than those of otherwise identical total-disability beneficiaries to account for their potential for work earnings. As long as they work, their income is comprised of their earnings and their FECA benefits. However, once they choose to retire, partial-disability beneficiaries who choose to stay on FECA likely no longer have any work earnings and are not eligible to simultaneously receive their FERS annuity.[36] Thus, we found that because of the way FECA benefits are currently calculated, such partial-disability beneficiaries may have less income in retirement than otherwise identical total-disability beneficiaries, and the proposals would reduce benefits in retirement without differentiating between partial and total-

[36]Eligible total and partial-disability FECA beneficiaries may elect to retire under FERS in lieu of receiving FECA benefits.

disability beneficiaries.[37] The proposed reduction may serve as a long-term incentive for partial-disability beneficiaries to return to work,[38] particularly because their initial FECA benefits are lower than those of total-disability beneficiaries.

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 and FECA benefits generally serve as the exclusive remedy for being injured on the job. Our simulations of the potential effects of proposed changes to FECA benefit levels incorporated the kinds of approaches used in the literature on assessing benefit adequacy for workers' compensation programs, such as accounting for missed career growth. More specifically, 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, 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 benefits for FECA beneficiaries before and after they reach retirement age. While our analyses focused on how the median FECA beneficiary might be affected by proposed changes, it also highlighted how potential effects may vary for different subpopulations of beneficiaries, which can assist policymakers as they consider such changes to the FECA program. Apart from proposed changes to FECA benefit levels, the legislative proposal in the 2016 congressional budget justification for OWCP also seeks to strengthen FECA program integrity. As policymakers examine proposed changes to reduce improper payments in the FECA program, they should consider granting DOL authority to access wage data so the agency does

[37]Those partial-disability beneficiaries who were re-employed in non-federal jobs (e.g., in the private sector) can remain on FECA and receive any non-federal retirement benefits they may have accrued; similarly, those who were re-employed in federal jobs and remain on FECA in retirement may receive greater TSP benefits from any additional contributions during their re-employment.

[38]For example, by returning to work, partial-disability beneficiaries would be able to increase their potential FERS benefits with additional years of federal service and contributions to TSP, or obtain non-federal retirement benefits through other employment that could supplement their lower FERS or FECA benefits (depending on their retirement elections). Not all partial-disability beneficiaries return to work.

not have to rely on self-reported income data, as our prior work has recommended.

Chairman Walberg, Ranking Member Wilson, and Members of the Subcommittee, this concludes my prepared statement and I would be happy to answer any questions that you may have at this time.

GAO Contacts and Staff Acknowledgments

For further information regarding this testimony, please contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include: Nagla'a El-Hodiri (Assistant Director); Michael Kniss (Analyst-in-Charge), James Bennett, Jessica Botsford, Holly Dye, Kathy Leslie, James Rebbe, and Walter Vance.

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Chairman WALBERG. Thank you.
Inspector General Dahl.

STATEMENT OF HON. SCOTT DAHL, INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

Mr. DAHL. Thank you, Chairman Walberg, Ranking Member Wilson, and members of the subcommittee.

For more than three years a nurse who was supposedly injured and unable to work earned and collected—earned $98,000 in benefits she wasn't entitled to and failed to disclose that to the FECA program. Likewise, a food inspector collected FECA benefits for more than five years while working another job. We were able to stop these fraudulent activities, but these cases could have been detected sooner if timely wage information was available to OWCP and to the OIG.

For almost two decades, the OIG has made three recommendations to strengthen the FECA program: one, give the Department access to Social Security earnings records and the National Directory of New Hires data; two, move the three-day waiting period; three, reassess the level of benefit payments once an individual reaches retirement age.

Granting this statutory access to Social Security earnings information, and especially to the National Directory of New Hires, would provide valuable information for improving program integrity and detecting fraud. This would enable OWCP to make informed claim determinations and identify individuals who are working but continuing to receive FECA disability benefits. This would also enable the OIG to better investigate fraudulent claims.

The Department can access this Social Security earnings information only if the claimant gives the Department permission. Obviously, claimants intending to defraud the FECA program are very unlikely to give the Department the authority to access their earnings data.

Congressional action would be required for the Department to have this direct access to Social Security data and to the New Hire Directory.

Another longstanding recommendation that OIG has made involves the three-day waiting period. FECA allows employees to receive a continuation of pay for up to 45 days to eliminate interruption of income while OWCP is processing that claim.

The three-day waiting period is intended to deter frivolous claims. But currently, this three-day waiting period is placed at the end of the 45-day period—continuation-of-pay period. In 2006, Congress changed this period for postal workers by placing it at the beginning of the 45-day period, and we recommend that this change be made for federal workers—other federal employees.

At present, more than 40,000 claimants receive FECA benefits for long-term disability, many into retirement age and beyond. The OIG has recommended that the Department reassess the benefit rate structure for FECA to determine what an appropriate benefit should be for those beneficiaries who remain on the FECA rolls into retirement.

As Dr. Sherrill has testified, GAO has done significant work on this issue that will help inform Congress and policymakers to make appropriate decisions on this rate.

In our current oversight work, we issued a report several days ago containing several recommendations to the Department to improve its estimation methodology in order to capture the full extent of improper FECA payments.

For our investigative work, we have focused more recently on identifying and investigating medical provider fraud because of the magnitude of dollars that are involved in that kind of fraud. For instance, a recent investigation resulted in the conviction of a psychologist who received almost $2 million in payments for services that he never rendered.

And we have been doing even more to prevent fraud. In an effort to identify key indicators of both medical provider and claimant fraud, the OIG is strengthening its data analytics capabilities to better enable us to review FECA data. This approach will provide us and the Department with greater insight into the overall extent of the fraud of the FECA program.

Mr. Chairman, thank you for the opportunity to testify. I would ask that my full statement be entered into the record, and I would be pleased to answer any questions that you or the other members have.

[The statement of Mr. Dahl follows:]

WRITTEN TESTIMONY OF
SCOTT S. DAHL
INSPECTOR GENERAL
U.S. DEPARTMENT OF LABOR
BEFORE THE HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
May 20, 2015

Good morning, Chairman Walberg, Ranking Member Wilson and Members of the Subcommittee. Thank you for inviting me to testify on the oversight work of the Office of Inspector General (OIG) in the Federal Employees' Compensation Act (FECA) program. I appreciate the opportunity to discuss my office's recommendations for improvement in this important program. As you know, the OIG is an independent agency within the Department of Labor (DOL), and the views expressed in my testimony are based upon the independent observations and recommendations of my office, and are not intended to reflect the Department's position.

My testimony today will focus on our three longstanding legislative recommendations to improve the effectiveness and integrity of the FECA program:

- providing DOL with statutory access to Social Security earnings records and National Directory of New Hires (New Hire Directory) data;
- moving the 3-day waiting period; and
- reassessing the FECA benefit rate structure to determine what an appropriate benefit should be when claimants reach normal federal or Social Security retirement age.

In addition, I will also discuss our ongoing oversight work relating to integrity concerns in the FECA program.

DOL administers several programs and statutes designed to provide and protect the benefits of workers. FECA is a comprehensive workers' compensation law covering almost three million federal and postal workers around the world. FECA provides wage-loss compensation, payment for medical treatment, return to work assistance, and vocational rehabilitation to civilian employees of the federal government injured at work

and to other certain designated groups. In the event of death, FECA also provides ongoing monetary compensation to dependents.

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

FECA benefits are paid from the Employees' Compensation Fund, which is primarily funded through chargebacks to the federal agency that employs the injured or ill worker. Therefore, the FECA program affects the budgets of all federal agencies and quasi-federal agencies such as the United States Postal Service. For chargeback year 2014, the FECA program provided almost $2.9 billion in compensation for work-related injuries or illnesses.

Over the years, the OIG has conducted numerous audits and investigations related to the FECA program. Our audits have identified opportunities for program administration improvements, efficiencies, and costs savings related to eligibility, determination of reemployment status, and improper payments. Furthermore, our investigations have focused on medical or other service providers who bill the program for services not rendered, as well as FECA claimants who work while continuing to receive benefits.

As a result of our work and observations, for almost two decades the OIG has been recommending changes to strengthen the FECA program with respect to accessing federal databases containing earnings information to aid in fraud detection, moving the 3-day waiting period, and reassessing benefit payments beyond the federal or Social Security retirement age.

Accessing Earnings Data

OIG's work in the FECA program has continued to focus on integrity issues and demonstrates the need for access to Social Security earnings information and the New Hire Directory. Granting the Department, and by extension the OIG, statutory access to these sources of data would provide valuable information for improving program integrity and detecting fraud. On the "front end," having more timely and complete wage information regarding claimants would enable OWCP to make more informed claims determinations. On the "back end," this sort of data would enable the Department to conduct cross matches to identify individuals who are working but continuing to receive FECA disability benefits, and would enhance the ability of the OIG to investigate allegations of claimant fraud.

For example, one of our investigations identified that a licensed vocational nurse who was supposedly injured and unable to work failed to disclose to OWCP that for more than three years she had earned income working for several health care providers. As a result, the nurse received more than $98,000 in FECA benefits to which she was not entitled. In another case, we identified a food inspector with the U.S. Department of Agriculture, who failed to notify OWCP of her employment at a high school. For more than five years she fraudulently collected more than $52,000 in benefits to which she was not entitled. If Social Security wage information was available to OWCP and OIG, it is possible that the fraud would have been detected and addressed sooner, and perhaps even completely prevented.

Currently, the Department can only access Social Security earnings information if the FECA claimant gives it permission to do so. Obviously Mr. Chairman, claimants who are defrauding the FECA program are unlikely to willingly grant OWCP the authority to access information about their earnings. Likewise, access to the New Hire Directory, which contains employer-reported information on newly hired individuals, is not available to the Department. Congressional action is therefore required for the Department to have direct access to Social Security data and the New Hire Directory.

The New Hire Directory data would be especially helpful, because Social Security wage records are only updated annually. The use of the New Hire Directory has the potential to detect potential benefit overpayments earlier, as employers are generally required to report new hires within 20 days.

Moving the 3-Day Waiting Period

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

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

Reassessing the Benefit Structure for Retirement Age Beneficiaries

The OIG has recommended that the Department reassess the benefit rate structure for FECA to determine what an appropriate benefit should be for those beneficiaries who remain on the FECA rolls into retirement, and the Department is considering a legislative proposal to change that structure.

As currently designed, FECA program benefits do not change once a beneficiary reaches the federal or Social Security retirement age. According to OWCP, tax-free FECA benefits, which are set at 66 ⅔ percent (or 75 percent if the claimant has dependents), are typically more generous than federal retirement.

While the majority of FECA beneficiaries return to work within the first couple of years of their injury, the Department reports that there are more than 40,000 claimants receiving compensation benefits for long-term disability. These injured federal workers have typically sustained more severe injuries with longer recovery periods or have permanent impairments that require long term monitoring.

Careful consideration is needed to ensure that the percent of benefits ultimately established for retirement-age employees will have the desired effect while ensuring fairness to injured workers, especially those who have been determined to be permanently impaired and thus unable to return to work. At the time we previously testified on this issue in May 2011, there was no analysis or information available to help assess the impact of changes to the benefit structure. Since that time, GAO has done a study that provides information on this issue.

Related Issues

In addition to our legislative recommendations, the Department is proposing others to improve and update the FECA program, including a uniform wage-loss compensation rate of 70 percent, permission to recapture additional program costs from responsible third parties, and the addition of an administrative surcharge to the amount billed to appropriated federal agencies for their FECA compensation costs beginning in Fiscal Year (FY) 2017.

As you know, Mr. Chairman, OWCP currently requires that claimants receiving payments at the 75 percent rate periodically verify their marital status and the eligibility of dependent children. Beneficiaries are required to submit proof of continuing eligibility for children over the age of 18 who are students or who are physically or mentally incapable of self-support. Beneficiaries in death cases are also required to annually submit a report regarding their marital status and continuing eligibility of dependent children.

We are aware that the Department is considering a proposal to set a 70 percent level of benefits for all claimants regardless of whether they have dependents. Our prior audit work found that obtaining documentation on dependents had been a challenge for the Department. In 13 percent of FECA claims we reviewed, we found that the Department continued to make compensation payments even though claimants had not provided evidence of their continuing eligibility.

The Department indicates that its proposal to provide a uniform wage-loss compensation rate of 70 percent will reduce overpayments and documentation requirements. While we defer to the Department and Congress as to what the benefit structure and level should be for a wage loss program, its decision-making should focus on what the appropriate policy should be going forward, rather than how difficult it may be to obtain documentation.

In addition, the Department's proposal permitting OWCP to recapture additional program costs from responsible third parties seems like a reasonable cost saving measure, although the OIG has not conducted work in this area. Regarding the Department's proposal to add an administrative surcharge to the amount billed to appropriated federal agencies for their FECA compensation costs, we believe that it would be important to include controls over the accuracy and reasonableness of those surcharges.

Current OIG Oversight Work

The OIG's most recent FECA audit work has focused on improper payments. Indeed, for the past decade, we have identified improper payments as one of the Top Management Challenges for the Department.

Our 2013 review of improper payment reporting for FY 2012 noted that due to a waiver from the Office of Management and Budget, the Department had not been required to develop an estimate of FECA improper payments since 2008. However, we found that the improper payments estimation method DOL used for FECA prior to the waiver was

not sufficient. Specifically, the improper payment estimates reported in FYs 2005 to 2008 fluctuated widely and appeared to be low in comparison to the fraud and abuse identified by OIG investigations. Furthermore, OWCP's methodology did not encompass all the risks associated with improper payments, such as those identified in the GAO's February 2008 audit — late or no notice of when claimants returned to work, late or no notice of when claimants or their survivors died, unverified self-reported data on wage earnings and other federal benefits, and inaccurate data from employing agencies.

In our very recent report on improper payments for FY 2014, we noted improvement in the Department's detection and reporting of FECA improper payments. The Department's new methodology resulted in estimated FECA improper payments totaling $72 million and an improper payment rate of 2.5 percent. This is certainly an improvement from the FY 2008 estimate of $500,000 or .0002 percent, but we remain concerned that it does not capture the full extent of improper payments in the program.

We identified three areas in our May 2015 audit report where DOL's estimate could be enhanced. These enhancements would require DOL to consider in its estimate (1) the initial payments made in the first 90 days of compensation, (2) compensation payments on older claims that originated before FECA implemented its electronic case management system, and (3) an estimate of undetected fraud. On the last point, DOL's calculation of fraudulent FECA payments was based only on actual restitution amounts and therefore did not reflect an estimate of undetected fraud. This methodology assumes that all fraud is being identified, which is incorrect.

Finally, we noted that DOL should have more fully disclosed the limitations of the FECA improper payment estimation methodology in its FY 2014 Agency Financial Report. Accurate and comprehensive information on the extent of improper payments is essential for the Department to assess its status and progress in ensuring the integrity of the FECA program.

In addition to our review of FECA improper payments, our current investigative work has been more focused on identifying and investigating medical provider fraud, due to the magnitude of dollars involved. For example, a recent investigation resulted in the conviction of a psychologist who received more than $1.8 million in payments for services he never rendered to injured federal workers. Another investigation identified a physician who had prescribed controlled substances to patients who did not need them and inflated the amount of time he spent with patients. As a result, the doctor defrauded FECA and other health care programs of at least $615,000.

In an effort to identify key indicators of both medical provider and claimant fraud, the OIG is strengthening its data analytics capabilities to better enable us to review information in FECA's electronic database. Based on risk factors we have identified using the results of successful fraud investigations, we were able to assign risk scores to more than 900,000 FECA claims denoting which claims are most likely to be fraudulent. In the past, we have relied on tips and hotline complaints to initiate time consuming investigations into possible fraud. This new data analytics capability will allow us to better use our limited resources by proactively investigating claims that having a higher risk of being fraudulent. Additionally, this approach will provide us and the Department a better idea of the overall extent of fraud in the FECA program.

Conclusion

Mr. Chairman, border patrol agents, mail carriers, and other federal workers deserve fair compensation benefits for disability due to injuries sustained while in the performance of their duty. The federal government should also pay for their rehabilitation, medical, surgical and other necessary medical expenses. The Department must ensure that FECA benefits are provided in a timely manner to eligible workers, but it must also strive to ensure that compensation benefits are only paid to those who are truly injured and unable to work, and medical benefits are paid for necessary services that were actually provided. We believe that the legislative recommendations we have proposed – granting the Department access to Social earnings records and National Directory New

Hires data, moving the 3-day waiting period to the beginning of the 45-day continuation of pay period for all injured federal employees, and reassessing the benefit rate structure for FECA to determine what an appropriate benefit should be for those beneficiaries who remain on the FECA rolls into retirement – would contribute to greater program integrity.

Mr. Chairman, this concludes my written statement. I would be pleased to answer any questions you or the other members of the Subcommittee may have.

Chairman WALBERG. Thank you, Mr. Dahl. And your statement is fully entered into the record.

I now recognize myself for five minutes of questioning. And before we lose the train of thought, and I want to go to Director Howie, but let me go first to Inspector General Dahl.

One important longstanding recommendation that you pointed out very clearly in several ways from the Office of Inspector General is that OWCP should have access to Social Security wage information to document whether a claimant has unreported or failed to report outside income. Could you elaborate a little bit further on how access to this information would result in measurable savings, and improvements along with that, to the program?

Mr. DAHL. Certainly. On the front end, for OWCP to have access to this data they would be able to verify wage information for claims when needed. In particular, the Directory of New Hires, as I mentioned, is even a more valuable resource because it provides more timely information about when an employee has returned to work. An employer has to report that generally within 20 days of the new hire.

On the back end, for the OIG, access to these databases would help us to pursue our criminal investigations in a more efficient and effective manner by targeting certain claimants and using the data to cross-match, and also provide the oversight of OWCP.

Chairman WALBERG. Okay. Thank you.

Mr. Howie, an important purpose of FECA, and workers' compensation systems in general, is to ensure that injured and ill workers return to gainful work as quickly as possible—if possible. How does OWCP currently assist injured or ill workers in returning to work? And secondly, how would Department of Labor's reform proposals improve upon or revamp the return-to-work process?

Mr. HOWIE. Mr. Chairman, that is a correct statement of what one of our core programs is, and that is to get the injured worker back to work as soon as possible. We have a very active disability management program where we have registered nurses who assist in the identification of occupational or just other physical issues that the employee has, get them into rehabilitation as quickly as possible so that they can see improvement in their medical condition.

Chairman WALBERG. Are these clearly offered to them?

Mr. HOWIE. These are offered to——

Chairman WALBERG. They are not having to search that out?

Mr. HOWIE. They do not have to search for that. So this is part of our core mission, to provide that particular service.

We have an active vocational rehabilitation effort so that if—in those cases where we have injured workers who are unable to return to the jobs that they had, perhaps for years, we work with them to identify other things that they can do within either their current organization or another placement. So we do try to provide those services that the employees need to identify their physical issues and new limitations and to get them on a pathway that will see that medical improvement, and then help them to find opportunities for continued employment.

Chairman WALBERG. You also noted in your prepared testimony that components of the administration's FECA reform proposal fall within three categories: return to work and rehabilitation, updating benefit structures, and thirdly, modernizing and improving FECA. Can you discuss the process undertaken by the administration in proposing these reforms to the FECA program?

Mr. HOWIE. Absolutely, Mr. Chairman. As you noted in your opening comments, there is nobody on the dais up there who is going to—sorry, there is nobody up there who is taking this effort lightly. This is a very serious endeavor.

And in doing so, there are a couple underlying principles that we have applied to this. First of all, just want to kind of state what this is not.

This is not a reform proposal that is not well thought out. It is something that we put a lot of energy into, and actually that this administration and prior administrations have actually owned, so I own this, Secretary Perez owns it, and we do believe that it is good government.

Chairman WALBERG. What other stakeholders along that point are involved in this process?

Mr. HOWIE. What stakeholders? We have worked with GAO, we have worked with the IG, we have worked with all of the servicing agencies that have employees that we provide services to.

Now, as you can imagine, not everybody is on the—in full agreement with everything that we are proposing, but these are concepts that have been shared and talked through throughout the years.

Chairman WALBERG. Okay.

Well, I see my time is expired, and so I now recognize the Ranking Member, gentlelady from Florida, Ms. Wilson.

Ms. WILSON. Thank you, Mr. Chair.

Mr. Chair, we have statements from groups that represent the federal employees that would be harmed by proposed cuts to FECA. I ask that the following statements be entered into the record under unanimous consent: statement from the National Treasury Employees Union; statement from Helen Andujar, widow of Osvaldo Albarati; statements from National Active and Retired Federal Employees Association; statement from the Federal Law Enforcement Officers Association; and a statement from the American Federation of Government Employees, the AFL–CIO.

[The information follows:]

STATEMENT FOR THE RECORD

BY

COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

ON

Compensation for Workers Injured in the Federal Workplace (FECA)

BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

MAY 20, 2015

STATEMENT OF COLLEEN M. KELLEY

NATIONAL PRESIDENT

NATIONAL TREASURY EMPLOYEES UNION

On

COMPENSATION FOR WORKERS INJURED

IN THE FEDERAL WORKPLACE (FECA)

To the

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

MAY 20, 2015

Chairman Walberg, Ranking Member Wilson 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 here in the

USA or on assignment inspecting products in India and China. These public servants show up for work each day prepared 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 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), covering 2.7 million Federal and Postal employees.

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. For example, NTEU supported the bi-partisan legislation in 2011 sponsored by Chairman Kline and then Ranking Member George Miller. This bill, HR 2465, called for important reforms and efficiencies in the FECA program.

However, I want to state our strong opposition to social 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 we did in 2011. 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.

Helen Andjuar
helenwandujar@aol.com

May 18, 2015

Honorable Tim Walberg
Chairman
U.S. House Education and Workforce Subcommittee on Workforce Protection
2181 Rayburn House Office Building
Washington, DC 20024

Honorable Frederica Wilson
Ranking Member
U.S. House Education and Workforce Subcommittee on Workforce Protection
2101 Rayburn House Office Building
Washington, DC. 20024

Dear Chairman Walberg and Ranking Member Wilson,

Good morning, thank you for giving me the opportunity to submit this letter to the Subcommittee. My name is Helen Andujar, and Lieutenant Osvaldo Albarati was my husband. My husband worked hard every day as a correctional worker to keep our community, and our family, safe from the most dangerous criminals in Puerto Rico. But my husband was not just a correctional worker – he was a husband, a father to three children, and my best friend. On February 26, 2013, Osvaldo was murdered on his way home from work.

He knew he was in danger, but he shielded our children and me from that so we wouldn't worry. Osvaldo had been actively working to break up a gang-run cell phone smuggling ring inside of the prison. Unlike some other employees, he refused to let these criminals get their way and fought them every day. The leader of this gang put a hit out on my husband, and on February 26 he was ambushed on his way home. Osvaldo was shot and killed for doing his job.

Even though the FBI recognized Osvaldo's death as being directly related to his work in the prison, the Department of Labor didn't agree. I had to obtain an autopsy report – which being in Puerto Rico was written in Spanish – which the Department of Labor then rejected because they didn't have the resources to translate the report. I paid out of my own pocket to have the autopsy report translated into English and then sent it back to the Department of Labor. They denied my claim.

For the next two years I fought the Department of Labor to obtain FECA benefits. During that time my only source of income was my husband's insurance and his social security. It took a criminal indictment before the Department of Labor would realize what we've known all along – and what the FBI has known all along – that my husband's death was directly linked to his job. As of last month my case was overturned and I will soon begin to receive FECA benefits. I need these benefits to provide for my two daughters, who are 9 and 13, and to help my son finish college in Connecticut.

Helen Andjuar
helenwandujar@aol.com

I wish my story were unique, but sadly it's not. Countless families have had to struggle, just like I have, to receive these much-needed benefits. Now the Administration is proposing cutting FECA so that everyone receives a flat rate. That means that a single beneficiary would be receiving the same percent as I do with my children. This one-size-fits-all approach is shortsighted and does significant harm to families who are already hurting. If the Department of Labor has its way, a widow trying to raise her children will be receiving the same percentage of benefits as a single person with no children. This proposal is not some type of structural change – it's a benefit cut for hurting families. I urge the Members of this Subcommittee to not use families as a cost saving mechanism. Like so many others my husband gave his life for this country, families like mine shouldn't be asked to suffer any more than we already have. Thank you again for allowing me to submit this letter to the Subcommittee.

Sincerely,

Helen Andujar

TESTIMONY FOR THE RECORD BY
RICHARD G. THISSEN
PRESIDENT
NATIONAL ACTIVE AND RETIRED FEDERAL EMPLOYEES ASSOCIATION

BEFORE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS

HEARING, TITLED
"REFORMING THE WORKERS' COMPENSATION PROGRAM FOR FEDERAL EMPLOYEES"

May 20, 2015

Chairman Walberg, Ranking Member Wilson and Members of House Education and the Workforce Subcommittee on Workforce Protections, on behalf of the five million federal workers and annuitants represented by the National Active and Retired Federal Employees Association (NARFE), I appreciate the opportunity to express our views regarding proposed changes to the Federal Employees' Compensation Act (FECA).

It is our hope that this hearing will continue the bipartisan effort that began in the 112th Congress (and continued through the 113th) to consider and advance thoughtfully proposed FECA reforms that both reduce costs for taxpayers while preserving fairness for injured public servants. NARFE continues to support legislation in the mold of H.R. 2465 (112th Congress); that is, commonsense reform that would improve program efficiency, achieve cost savings and improve fairness without reducing the basic compensation provided to those employees unfortunate enough to suffer a debilitating injury or illness as a result of their public service.

FECA benefits are intended to compensate federal employees for work-related injuries and illnesses. The Act is intended to make employees whole, maintaining their compensation at a level it would have been had their public service not been cut short by an unforeseen job-related injury or workplace-induced illness. In exchange for their benefits, FECA recipients lose their right to sue the government for their work-related disability. It should go without saying that reimbursed medical expenses and monetary compensation will never be able to reverse the permanent damage of a debilitating injury or illness. Congress must do its best to ensure that FECA benefits provide injured employees the income security they would have received without their injury or illness.

Unfortunately, changes in FECA proposed by the Department of Labor would reduce benefits for FECA recipients and leave them significantly worse off than if they had been able to continue working, according to a report by the Government Accountability Office (GAO), GAO-13-108. Similar proposals were included in last Congress' postal reform legislation (S. 1486), which NARFE also opposed. We urge members of this Committee and Congress to reject these unfair benefit cuts.

Additionally, we implore the Subcommittee to avoid any temptation to put forward FECA reform legislation motivated solely by deficit reduction goals and the availability of the budget reconciliation process to circumvent thoughtful deliberation. Equity must be the key to any modification in FECA, now or in the future.

Background

Both the current Administration and previous Administration (dating back to President George W. Bush's Fiscal Year 2003 Budget) identified possible amendments to the FECA statute and its implementation, and have proposed legislation to update and reform the system in several respects. Some of those would make use of available information to better coordinate compensation payments. Others would update schedules of benefits that have remained unchanged for decades. These program integrity measures are worthy of consideration. But it is the major overhaul of the basic FECA benefit that could do the greatest harm to dedicated public servants with no other recourse.

NARFE opposes changes to FECA proposed by the Department of Labor (DOL) that would reduce the basic federal workers' compensation benefit, although prospectively only, from 66.67 percent (or 75 percent for those with dependents) to 50 percent at retirement age. The DOL proposal would provide 70 percent of pre-tax income to injured workers across-the-board, as opposed to the current 75 percent to injured workers with dependents and 66.67 percent to those without. The GAO report confirmed NARFE's concern that the elimination of the supplemental benefit for injured workers with dependents would have the effect of providing workers without dependents a higher replacement rate of their income than workers with dependents, due to the effects of taxation.

Additionally, the DOL proposal reduces the maximum amount a surviving spouse may receive in FECA benefits if an employee is killed in the line of duty from 75 percent to 70 percent. This is a particularly cruel change for widows who also may be caring for children dealing with the loss of a parent.

Reduced Benefits at Retirement Age

The Labor Department's proposal to reduce FECA benefits at retirement age does not adequately take into account the disadvantages faced by employees unable to work because of a work-related injury or illness in preparing for retirement. Notably, FECA recipients: (i) lose the ability to increase their salaries through raises and promotions; (ii) have a reduced ability to save because they are not able to contribute to the Thrift Savings Plan during the period of their disability (or receive matching contributions); and (iii) would have a reduced Social Security benefit because employees covered by Social Security are unable to earn quarterly credits to increase average monthly earnings used to calculate those Social Security benefit payments while receiving FECA benefits. Additionally, federal workers, and the agencies that employed them, stop contributing to their federal pension upon receipt of FECA benefits. For workers injured early in their careers, this can have a profound effect on their retirement income once they are eligible to receive an annuity.

It is no surprise that GAO found these proposals would leave injured workers with significantly less income than they would have had, had they been able to continue working. Specifically, GAO found that federal workers disabled as part of their service would receive up to 35 percent *less* in retirement income than if they were not injured and retired after 30 years under FERS. Under current law, median FECA benefits for totally disabled workers are "on par with or less than" what they would have received after a full 30-year career.

As such, one must ask why Congress is pursuing changes to the program that would further decrease benefits. Just because a proposal saves money does not make it a good idea. The FECA reductions proposed by DOL undermine a core principle of the program – to provide injured workers who have been deprived the ability to work with compensation on par with what they would have received had they not been injured and been able to continue to work. For this reason, NARFE wholeheartedly opposes these proposals.

Additional Concerns

GAO found that the current FECA structure provides an 81 percent replacement rate in terms of after-tax income for those with a dependent and 77 percent replacement rate for those without a dependent. While there is no consensus, the Commission on State Workers' Compensation Law, as far back as 1972, endorsed a move toward an 80 percent replacement rate as adequate. This puts FECA benefits on par with those endorsed widely across the country.

The DOL proposal to provide a uniform compensation rate equaling 70 percent of pre-tax salary actually allows workers without dependents to achieve a higher replacement rate of pre-injury income compared to the after-tax income than workers who have dependents. This occurs because workers with dependents pay lower marginal tax rates than workers without dependents. Workers' compensation benefits are provided tax-free, as they represent a payment intended to make the injured worker whole, and are not earned income. Since FECA benefits are tax-free, the tax benefit provided to individuals with dependents does not affect FECA payments. Presumably, DOL proposed a uniform rate to improve equity between workers with dependents and those without. However, the proposed policy change would disadvantage workers with dependents where the current system puts them at a slight advantage compared to their colleagues without dependents. In other words, a move intended to provide equality does the opposite in practice.

Additionally, with regard to both the retirement rate reduction and the elimination of supplemental benefits, GAO found that the Department of Labor proposal would have a disproportionate impact on the lowest-wage employees and those who are injured early in their careers. This occurs because the lowest-wage employees have lower marginal tax rates, and thus receive less benefit from the exclusion from taxation of workers' compensation benefits. Also, employees injured earlier in their careers miss out on more opportunities for career growth than those injured later on.

Commonsense Reform - H.R. 2465 (112th Congress)

NARFE does not oppose all FECA reforms – in fact, we have continually supported the measures contained in the bipartisan House bill, H.R. 2465 (112th Congress), the Federal Workers' Compensation Modernization and Improvement Act of 2011, which was crafted in this committee and passed the House by voice vote on November 29, 2011. The bill provides commonsense reform that achieves cost savings for taxpayers by improving program integrity and reducing costs while improving fairness towards disabled workers.

The provisions of H.R. 2465 would have improved coverage for the worst-case scenarios arising under the Federal Employees' Compensation Act. Specifically, it would reform the FECA program by:

- Updating benefit levels for severe disfigurement of the face, head or neck (from an outdated maximum of $3,500 to a more reasonable $50,000) and for funeral expenses (from an outdated $800 to a more reasonable $6,000). Neither of these levels has been updated since 1949.

- Making it clear that the FECA program covers injuries caused by a terrorist attack.

- Extending the time, from 45 days to 135 days, that a federal employee who suffers a traumatic injury in a zone of armed conflict may continue to receive his or her regular salary before transitioning to FECA compensation, and providing more time for those employees to initially apply for FECA compensation.

The legislation also would save taxpayers money through sound reforms that should improve program integrity and reduce costs. The Congressional Budget Office estimated that the bill would have reduced net direct spending by a total of $22 million over the 2012-2021 period. Specifically, the provisions would have saved money by:

- Reducing improper payments by allowing the Department of Labor to cross-reference Social Security earnings information.

- Increasing reimbursements to the government from recoveries made by FECA recipients from liable third parties by expanding government subrogation rights to allow reimbursement for salary paid during the continuation of pay period.

- Reducing costs by authorizing physician assistants and advanced practice nurses to provide medical services and certify traumatic injuries.

Some of these provisions are part of the DOL proposal, and should be part of any legislative reforms to FECA moving forward.

NARFE believes it is incumbent on Congress to reform FECA in a way that does not punish injured workers once they reach retirement age. However, we recognize that some in Congress have concerns with individuals receiving FECA benefits past the age they would have otherwise retired. FECA compensation comes out of agency budgets and, as such, the agency is continuing to pay for an employee longer than their career would likely have lasted had the employee not been injured. NARFE agrees reform of the balance of responsibility in this area is necessary, particularly as agency budgets are squeezed by ever-tightening budget caps.

Reducing benefits to 50 percent at retirement age only serves to punish the injured worker and does not solve the problem of these individuals staying on the agency rolls after they would have otherwise retired. Since FECA recipients cannot contribute to Social Security, their federal government annuities or their Thrift Savings Plan accounts while receiving benefits, NARFE believes it is necessary for Congress to design a system in which injured workers can plan for retirement, and contribute to a fund accordingly.

Conclusion

We applaud the House Committee on Education and the Workforce for working on a bipartisan basis to advance reforms like those contained in H.R. 2465, and look forward to continuing our

work with members of the Committee to address issues of fraud and improper payments rather than undermining the security of the program as a whole for disabled workers.

If it was not clear before GAO issued its comprehensive report on the Department of Labor proposal to reduce retirement-age FECA benefits that those proposals were wrongheaded and unfair, it certainly is now. Members of Congress should pay close attention to the GAO findings before acting rashly to make severe cuts to the basic income protection afforded to federal employees injured while serving their country, as the DOL proposal aims to do. Many of the changes DOL is proposing are not based on sound policy or program integrity. They are suggested solely as a means to reduce benefits, which only serves to punish the very people struggling to recover after a debilitating injury in service to their country.

Thank you, again, for the opportunity to share our views with you.

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TESTIMONY

of

Jon Adler
National President,
Federal Law Enforcement Officers Association

on

"Reforming the Workers' Compensation Program for Federal Employees"

Before the

Subcommittee on Workforce Protections,
Committee on Education and the Workforce,
U.S. House of Representatives

May 20, 2015

Mr. Chairman, Ranking Member Wilson, and Members of the Subcommittee:

Thank you for the opportunity to submit testimony on behalf of the membership of the Federal Law Enforcement Officers Association (FLEOA) for this important hearing on reform of the Federal Employees Compensation Act (FECA). FLEOA is the largest nonpartisan, nonprofit professional association exclusively representing more than 26,000 active and retired federal law enforcement officers from over 65 different agencies.

FLEOA is no stranger to the issue of FECA reform. In the 112th Congress our organization worked with Chairman Walberg, full Committee Chairman Kline, and others on H.R. 2465, the "Federal Workers' Compensation Modernization and Improvement Act." And we are grateful to those Members of the Subcommittee who helped champion the bill. Unfortunately, H.R. 2465 was not taken up as a standalone measure in the Senate even though it passed the House by a unanimous voice vote in 2011. Rather than passing this commonsense legislation, the Senate instead opted to try its hand at government-wide FECA reform as a small part of legislation to reform the U.S. Postal Service.

For the past four years, our organization has raised considerable concerns with the form and manner in which the Senate has attempted to use postal reform legislation as a means to enact government-wide changes to the Federal Employees Compensation Act. Not the least of which is that there are serious issues with the FECA system that need to be addressed. These issues deserve separate consideration, and not to be treated as ancillary matters or as a spending offset in efforts to salvage the Postal Service. This is particularly true when it comes to changes that impact how the federal government treats its law enforcement officers who are injured or disabled in the defense of our nation.

FLEOA takes very seriously its obligation to protect the health, welfare, and livelihoods of the federal law enforcement officers we are proud to represent. Every year, hundreds of these same officers sustain injuries in the performance of their duties at home and abroad. These injuries are the result of such things as violent physical encounters, vehicle accidents, training incidents, exposure to hazardous materials, and drug enforcement operations. They affect officers like former Navy SEAL and Federal Air Marshal Donald Tyson, who had a career that took him to most continents and several hotbeds of violence around the globe. As a result of his commitment to protect and serve, Tyson is now permanently disabled after contracting a degenerative heart disease during his service as an Air Marshal. He has sacrificed both his heart and his overall wellness, survived several open heart surgeries, and lives with a disability that has limited his movements and quality of life. Tyson is currently receiving FECA benefits.

Tyson and countless other federal law enforcement officers answered the call of duty when and where it arose, and they suffered disabling injuries in the performance of that duty. Regardless of the circumstances of their injury, these federal law enforcement officers are heroes. That is an important fact that cannot and should not be overlooked when considering any legislation that would impact their FECA benefits or the standard of care disabled officers receive.

Guidelines for FECA Reform

Over the course of the past several years, FLEOA has supported meaningful reforms of the Federal Employees Compensation Act on both the legislative and administrative levels. In

addition to our efforts on H.R. 2465, we have also worked, for example, with the Department of Labor to establish traumatic care nurses for law enforcement injuries and a law enforcement Ombudsman in each Office of Workers' Compensation Program (OWCP) district.

As a threshold matter, FLEOA believes that Congress should reject a "one size fits all" approach to FECA reform that leaves many issues unresolved. In the areas of pay, retirement benefits, relocation and transfer, and physical standards, federal law enforcement officers are treated differently than their civilian counterparts. This is due to the unique operational requirements of law enforcement agencies. FLEOA therefore believes that any reform of the FECA system must also address the unique nature of law enforcement work, law enforcement disabling injuries, and the unique needs of disabled federal law enforcement officers.

Specifically, FLEOA believes that FECA reform should achieve the following goals:

1. *Ensure that any changes to the Federal Employees Compensation Act are prospective only.* As currently contemplated in the context of the Senate's postal reform legislation, the government-wide changes to FECA would apply to existing FECA recipients except where certain exceptions would apply such as the age of the disabled employee or nature of the injury as of the date of enactment. There are a large number of employees, however, who would not be so fortunate. These individuals would face a reduction in benefits to 50 percent of their pre-disability wages. There is no justifiable public policy rationale that is served by pulling down so dramatically the standard of living of a disabled federal law enforcement officer at a time when they are least able to afford it. These individuals were hired and injured under one federal workers' compensation system, and it is patently unfair to change the rules on these employees after they have sustained a disabling injury. Therefore any reform of the FECA system should be prospective, and apply only to those individuals hired after the date of enactment.

2. *Strengthen anti-fraud and program integrity capabilities, especially within the Office of Inspector General.* By and large, the call for FECA reform is led by those who argue that DOL must strengthen program integrity and fight fraud. One option for accomplishing this goal is to assign a DOL-Office of Inspector General (DOL-OIG) agent to be a liaison with OWCP and make this individual responsible for fraud investigations in every region. Additional OWCP liaisons should also be established with every federal agency under its umbrella, and that liaison should monitor its own agency's disability payouts. Second, the DOL-OIG should be granted full access to OWCP systems and an analyst should be assigned to review data for potential fraudulent activity (such as for doctors and physical therapy offices with excessive billings, or individual employees that return to work and then file for recurrence). Finally, OWCP should have a more formal information sharing arrangement with both the Social Security Administration and U.S. Department of Agriculture so that OWCP can cross-check disability and food stamp payouts, as well as the DOL unemployment insurance database.

3. *Allow federal law enforcement officers to stay with their agency in a continuation of pay (COP) status for up to one year.* Currently, officers can remain in continuation of pay status for 45 days. For those officer's assaulted by a suspect, exposed to a toxic substance, or injured by a firearm or explosive, a one-year time frame would allow a proper period of evaluation necessary to determine if a return to work will be possible. In

addition, one of the most common complaints from injured officers is that OWCP does a poor job processing pay. Anecdotally, we know that in many cases the pay is incorrectly calculated and repeatedly delivered late. Allowing law enforcement officers to remain on their agencies' payrolls will remove them from this morass and will also have two other key benefits.

First, it will get officers back to work quicker. Injured officers enrolled in OWCP are detached from their agency and often feel isolated. Law enforcement is not just a job, it is a way of life. This change will allow many officers to come back to work earlier in a light duty/restricted duty status and allow the agency to derive a benefit from their experience and training during their continued employment. Second, it allows officers to continue to accrue time toward retirement. Unlike most federal employees, federal law enforcement officers face mandatory retirement at age 57. A serious injury and being placed on FECA effectively prevents them from accruing time toward retirement and from contributing to the Thrift Savings Plan. Most federal employees can make an adjustment from an injury by working longer. This is not an option for law enforcement officers and the time lost cannot be regained.

4. *Allow law enforcement officers who have not attained age 50 or 20 years of service to retire at the higher law enforcement officer rate under 5 USC 8336(c) or 8412(d) ("LEO Retirement").* Federal law enforcement officers are eligible for regular retirement with 20 years of service at age 50, or after 25 years of service at any age. This—along with the requirement of mandatory separation at age 57—ensures that the ranks of federal law enforcement agencies are staffed with individuals who are physically capable of meeting the rigors of the job. It also requires federal law enforcement officers to contribute towards their retirement at a higher rate than other federal employees. Under current law, however, a law enforcement officer is not eligible for this "early" retirement unless they have met both the age and service requirements. An officer who suffers a disabling injury in the line of duty that prevents them from completing their service requirements does not have the option of taking LEO Retirement, but must elect to either stay on the FECA rolls, take disability retirement, or retire with the standard FERS/CSRS benefit. Allowing disabled law enforcement officers to retire at the LEO Retirement rate would increase the number of officers who take this option.

Conclusion

In conclusion, Mr. Chairman, we recognize that reforming FECA is no small task, and that there are no easy answers. It requires striking the type of careful balance between protecting taxpayer funds and caring for disabled federal employees that simply cannot be done within the context of a larger postal reform bill or other similar measure. That is why there must be a focus solely on FECA by both the House and the Senate; one that looks not only at the benefit structure, but also considers FECA reform in the context of the disability retirement system.

Our federal law enforcement officers are a highly motivated and highly trained group of professionals who are held to a higher standard than any other civilian federal employees. They routinely place themselves in harm's way for the protection of society and for the defense of their country. If federal law enforcement officers are to continue facing the daily dangers that

their occupation brings, they need to do so with the knowledge that they will be taken care of in the event of a disabling injury.

We appreciate the opportunity to provide this testimony to the Committee. FLEOA stands ready to work with you and other Members on this important issue.

STATEMENT BY

J. DAVID COX, SR.
NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE

ON

REFORMING THE WORKERS' COMPENSATION PROGRAM FOR FEDERAL EMPLOYEES

MAY 20, 2015

American Federation of Government Employees, AFL-CIO
80 F Street, NW, Washington, D.C. 20001 * (202) 737-8700 * www.afge.org

Chairman Walberg, Ranking Member Wilson, and Members of the Subcommittee –

My name is J. David Cox, Sr., and I am the National President of the American Federation of Government Employees (AFGE), AFL-CIO. On behalf of the more than 670,000 federal workers in 65 federal agencies our union represents, I thank you for the opportunity to offer this written statement to the Subcommittee as it considers the important issue of reforming the Federal Workers' Compensation Act (FECA).

Among other things, the FECA program provides wage-loss compensation benefits to federal workers who become injured or ill through a work-related activity. The FECA program is particularly important to those men and women whose work-related activity is inherently dangerous – Bureau of Prison correctional workers, U.S. Customs and Border Protection officers, federal firefighters, and other federal law enforcement officers.

As President Obama remarked at the National Peace Officers Memorial ceremony on May 15:

> *"It takes a special kind of courage to be a peace officer. To be the one people turn to in their most desperate moments. To be willing to run into a dangerous situation, when everyone else is running the other way. Scripture tell us to love our neighbors as we love ourselves – but only a special few take that commandment so deeply to heart that they are willing to risk their lives so that others – often total strangers – can know peace and security."*

The FECA program is indeed important. Unfortunately, it has not been significantly reformed since 1974, and as a result, a number of weaknesses have emerged.

Support the reintroduction of the Federal Workers' Compensation Modernization and Improvement Act of 2011.

AFGE strongly urges the reintroduction of the Federal Workers' Compensation Modernization and Improvement Act (H.R. 2465), which Rep. John Kline (R-MN-2) introduced July 8, 2011 and the House agreed to by voice vote on November 29, 2011.

The reintroduced-H.R. 2465 will enhance and update the FECA program, thereby ensuring the program meets the needs of both workers and taxpayers. The bill will reform the FECA program by:

- Authorizing physician assistants and advanced practice nurses, such as nurse practitioners, to provide medical services and to certify traumatic injuries.
- Updating benefit levels for severe disfigurement of the face, head, or neck (up to $50,000) and for funeral expenses (up to $6,000) – both of which have not been increased since 1949.

- Making clear that the FECA program covers injuries caused from an attack by a terrorist or terrorist organization.

- Giving federal workers who suffer traumatic injuries in a zone of armed conflict more time to initially apply for FECA benefits and extending the duration of the "continuation of pay" period from 45 days to 135 days.

- Including program integrity measures recommended by the Inspector General and the Government Accountability Office.

AFGE supported this measure in 2011 - and will support it again if reintroduced - because it modernizes the FECA program without undercutting federal workers' compensation benefits. We look forward to working with you in the months ahead to remedy other aspects of the FECA law that are in need of legislative attention. We are particularly interested in working together to help injured workers return to work without subjecting them to the harmful consequences that currently exist.

Oppose the reintroduction of the Workers Compensation Reform Act of 2014, which was Title V of the Postal Reform Act of 2014.

AFGE strongly opposed in 2014 the Workers Compensation Reform Act of 2014, which was Title V of the Postal Reform Act (S. 2465) – and will oppose the reintroduction of the egregious Title V, especially given the troubling, critical analyses of these proposed changes conducted by the Government Accountability Office (GAO).[i]

AFGE opposes Title V because it:

1. **Would leave totally disabled FECA beneficiaries with the worst long-term injuries vulnerable to impoverishment when they reach their full Social Security retirement ages.**

Section 502 of Title V would slash the FECA wage-loss compensation rate for totally disabled beneficiaries to 50 percent of their gross wages at time of injury once those beneficiaries reach their full Social Security retirement age. Currently, totally disabled beneficiaries who have an eligible dependent are compensated at 75 percent of their gross wages at time of injury and those without an eligible dependent are compensated at 66 2/3 percent.

The rationale for making this cut provided by the Senate Homeland Security and Governmental Affairs Committee report (S.Rept.112-143) is that injured federal employees garner a larger benefit at retirement age under FECA than they would have received if they had been able to work their full careers under the Federal Employees Retirement System (FERS). This has left some lawmakers with the mistaken impression that many injured federal employees have no incentive to return to work, and that their non-injured co-workers receive inequitable retirement benefits after working full careers.

However, GAO has analyzed this "reduce FECA at retirement" proposal and found the rationale is incorrect:

- Under current law, the median FECA benefit packages for federal employee beneficiaries with 30-year federal careers were on par or less than the median FERS benefit packages – depending on the amount a FERS participant contributes toward his or her TSP account for retirement. Under a scenario where there is no employee contribution and the employing agency contributes 1 percent to TSP, the median FECA benefit package is about 1 percent greater than the median FERS benefit package. Under a scenario where each employee contributes 5 percent – and receives a 5 percent agency match – the median FECA benefit package is about 10 percent less than the median FERS benefit package.

- But under a proposal – like Section 502 – that reduces the FECA wage-loss compensation rate to 50 percent once beneficiaries reach the full Social Security retirement age, GAO found that the median FECA benefit packages for federal employee beneficiaries with 30-year federal careers were significantly less than FERS benefit packages – regardless of the contributions to TSP accounts. Under a scenario where there is no employee contribution – and a 1 percent agency contribution – the median reduced FECA benefit package is about 31 percent less than the median FERS benefit package. Under a scenario where each employee contributes 5 percent – and receives a 5 percent agency match the median reduced FECA benefit package is about 35 percent less than the FERS benefit package.

2. Would be extremely detrimental to totally disabled federal employees with dependents.

Section 503 of Title V would set FECA wage-loss compensation benefits at a single rate - 66 2/3 percent - for totally disabled beneficiaries, regardless of whether the beneficiary has eligible dependents. Currently, totally disabled beneficiaries without an eligible dependent are compensated at 66 2/3 percent of their gross wages at time of injury and those with dependents are compensated at 75 percent - an augmentation of 8 1/3 percent.

The rationale for eliminating the FECA augmented payment provided by the committee report is that "it is out of line with benefits under state workers' compensation systems" with "few state systems providing any augmentation for dependents." This, of course, begs the question as to whether the state systems provide adequate wage replacement benefits for totally disabled beneficiaries with dependents. After all, the modest 8 1/3 percent augmentation for totally disabled federal employees with dependents recognizes – unlike the single 66 2/3 percent rate - the greater financial needs of beneficiaries with dependents than those without.

The GAO's analysis of the "single rate of 66 2/3 percent" proposal found that eliminating the augmented compensation rate would be extremely detrimental to totally disabled beneficiaries with dependents. Such a proposal:

- Would increase the difference in the 2010 median wage replacement rates between totally disabled FECA beneficiaries with and without a dependent—but would reverse the direction of the difference to the detriment of beneficiaries with dependents. Currently under FECA, the 2010 median wage replacement rate of beneficiaries with dependents is *3.5 percent higher* than those without a dependent: 81.2 percent compared to 77.7 percent. But under the "single rate of 66 2/3 percent" proposal, the 2010 median wage replacement rate of beneficiaries with dependents is *5.5 percent lower* than those without a dependent: 72 percent compared to 77.7 percent.

- Would reduce the 2010 median wage replacement rate for totally disabled FECA beneficiaries with dependents by 9 percent: 81.2 percent under FECA compared to 72.2 percent under the "single rate of 66 2/3 percent" proposal. At the same time, the 2010 median wage replacement rate for FECA beneficiaries without dependents would remain the same: 77.7 percent.

Thank you for the opportunity to offer this written statement on the important issue of reforming FECA.

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[i] *Federal Employees' Compensation Act: Analysis of Proposed Program Changes* (GAO-13-108); *Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries* GAO-13-142R; *Federal Employees' Compensation Act: Effects of Proposed Changes on Partial Disability Beneficiaries Depend on Employment After Injury* (GAO-13-143R); *and Federal Employees' Compensation Act: Analysis of Benefits Under Proposed Program Changes (GAO-13-730T).*

J. David Cox Sr.
National President
American Federation of Government Employees, AFL-CIO

Jeffrey David Cox Sr. was elected National President at AFGE's 39th National Convention in Las Vegas in 2012. As National President, Cox has invested heavily in growing union membership both within AFGE and among the labor movement as a whole. Since Cox first was elected to national office in 2006, AFGE has boosted its membership by more than 71,000 employees. In fact, AFGE membership has grown every year for the past decade – even in the face of hiring freezes, budget cuts and continual attacks on the pay and benefits of government workers.

Cox galvanized AFGE members in opposition to sequestration and the 2013 government shutdown, which resulted in federal employees being locked out of their jobs for up to 16 days. To seize on public support shown government workers in the wake of the shutdown, AFGE launched a year-long nationwide campaign, "I Am AFGE," in March 2014 to increase the public's awareness and appreciation of government employees.

In September 2013, Cox convened hundreds of AFGE members at a National Leadership Conference in Orlando to chart the union's direction for the next decade. The resulting plan, "Big Enough to Win," is organized around four key strategies: Organizing and Growth, Legislative Mobilization, Political Strength, and Creating Strong Effective Locals.

As a nationally recognized labor leader, Cox was appointed by President Obama to serve on the Federal Salary Council and the Federal Prevailing Wage Council. He is a member of the AFL-CIO Executive Council and Vice President of the North Carolina State AFL-CIO, serving in the latter position since 1993. Cox was unanimously elected chairman of the Executive Committee of the Department for Professional Employees (DPE), AFL-CIO. He also chairs the AFL-CIO's Union Veterans Council, which seeks to help veterans with employment opportunities through the VA and in the building trades.

Cox began his career in healthcare in 1970. In 1983, Cox became a registered nurse and started a public-sector career with the VA that lasted until September 2006 when he became AFGE secretary-treasurer. In 2012, Cox won the Yitzhak Rabin Public Service Award from the American Friends of the Yitzhak Rabin Center. In 2013, Cox was honored with the AFL-CIO's *At the River I Stand* award, which is given annually to a national leader who has demonstrated an unyielding commitment to civil rights and workers' rights. That year he was also honored by the Rev. Jesse Jackson with the *Martin Luther King Labor Leader* award. In 2014 he received the *National Action Network Labor Award* from the Rev. Al Sharpton and the *Peggy Browning Award for Social Justice Advocacy* from the Peggy Browning Foundation.

A native of North Carolina, Cox is a graduate of North Carolina's Rowan-Cabarrus Community College and a former member of its board of trustees. He also attended Gardner Webb University in Boiling Springs, N.C.

Chairman WALBERG. Without objection, and hearing none, they will be recorded.

Ms. WILSON. Thank you, Mr. Chair.

Mr. Howie, today we heard about a federal prison guard, and we saw his picture. He was murdered. And we also heard about a mail carrier who died because he was crushed between vehicles.

DOL's legislative proposal calls for reducing benefits for the surviving widows and orphans of these types of workers killed during federal service. Can you explain why the Department wants to cut benefits from the families who have just lost a loved one like this?

Mr. HOWIE. Absolutely. First of all, I would just like to reiterate that this proposal is prospective, so no one who is in the program right now is going to receive any cuts at all.

And what this allows to have happen is that as the date of injury occurs for federal employees who are injured in the future, people are able to plan accordingly. So the rate is lower, but our analysis shows that that 70 percent rate still provides a level of income replacement that keeps them roughly equivalent with where they were had they not been injured.

Now, it has been mentioned previously that there is a harm that is placed on the dependents and the strain that is placed on family. When you look at our law, our law is clear. We are to provide replacement wages for injuries.

There is no other program in OWCP where we actually pay additional money for the number of dependents that an employee has. And what our proposal does—and again, we use the word "balanced" repeatedly. What our proposal does is that for those, just as you would have employees with dependents whose rates are going to come down, but they come down to a level that even GAO notes is still only in the 3 to 4 percent range, so it is still relatively—roughly equivalent, you have those injured workers without dependents who have been at that 66.67 rate, and this actually brings them back up to a rate.

Because one of the main principles that we are trying to attain here is that in addition to no employee should have a reduction in their overall benefit level because of their injury, we really believe that two federal employees similarly situated, working the same jobs at the same pay rate, should not be compensated differently just because there are dependents at issue. So we know these are extremely difficult issues to talk about, but that is really at the core policy determination that we are making in proposing the 70 percent rate.

Ms. WILSON. Mr. Howie, you state in your testimony that one reason to cut benefits is that FECA is more generous than most states. Of course you realize that many states, including my home state of Florida, are taking the deplorable position of slashing benefits on the workers.

We are the worst. We are the worst on the workers' compensation in a race to the bottom. Can you explain why the Federal Government would want to follow this state trend instead of maintaining benefit levels and being a strong standard-bearer for workers' compensation?

Mr. HOWIE. Absolutely. Absolutely.

First of all, I had the benefit of attending and participating in a conference in Orlando last week hosted by the National Council on Compensation Insurance, and my opening remarks really extolled the benefits, the virtues, if you will, of our federal employees' compensation program, of which they don't know that much about because they obviously do not have federal employees that they are concerned with.

But the panel that followed me, the issue that was—the question that was presented to them was that very question about racing to the bottom. And there are a number of states who are proudly taking on the task of reducing benefits.

Our proposal is not even in that same ballpark. When you look at state programs, they have elements within their programs that we hope to never have and we do not have right now.

They have caps on the amount of compensation that can be provided. They have limits on the duration that benefits are paid. They have the ability to enter into settlements, which experience shows is not always the best outcome for employees.

So we don't do any of those things. We don't propose to do any of those things.

We desire to continue to remain at that level of being that shining light for states to follow, because our programs do not have a duration limit on them. They do not have a dollar amount on them.

So we continue to be a standard. And I would just respectfully submit that we do not put ourselves into that position of equating what we are doing with what many of the states are doing.

Chairman WALBERG. The gentlelady's time is expired. I appreciate the questioning.

And now I recognize the gentleman from pure Michigan, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman.

I want to thank the panel for their testimony today.

I also would like to thank the interested parties who are here participating in a very important discussion on public policy. Thank you very much for your input.

Dr. Sherrill, wonder if you might be able to help me out here. I know that according to the Internal Revenue Code, FECA benefits are not subject to federal income tax. Can you explain to me the rationale for excluding the benefits from income tax?

Dr. SHERRILL. Well, all I can say is that—I don't know the rationale, but they are not considered earnings under the *Social Security Act* nor the Internal Revenue Code, so FECA beneficiaries generally can't contribute to Social Security or a Thrift Savings Plan, although on the back end, FECA beneficiaries can receive withdrawals from prior TSP contributions, but not make contributions once they are receiving FECA.

Mr. BISHOP. So when it comes to receiving FECA benefits during retirement years, in terms of tax implications, how does the FECA compensation compare to the typical retirement earnings?

Dr. SHERRILL. Well, one of the things to keep in mind is that when we did our analysis comparing the FECA package compared to the FERS retirement package that their uninjured counterpart would have, which includes the FERS annuity, the TSP, and the Social Security, we did an analysis to make a comparison to the

taxable versions. It is all of the retirement income is taxable that we did that analysis there, compared to the FECA benefit, which is untaxable.

And so what we found in the first sort of line of analysis is that under the current system, FECA benefits are higher than what they would have gotten if they had been uninjured, as a FECA—as a FERS retirement package. But then we looked at what would the effect of the compensation proposal to change the compensation to 50 percent at retirement, and at that level it would be roughly equal. The FECA beneficiary's package would be roughly equal or on a par with what they would have gotten in retirement.

But then there is a further consideration there. The FERS system is immature, so the more years you have benefits under FERS, the more those grow. And so when we did that final simulation, then, in terms of the median benefit, the FERS package was higher than the FECA packages.

Mr. BISHOP. Good. Thank you very much.

Mr. Inspector General, just following up on a question that was asked to you by our good Chairman, wondered if you might elaborate for me on the subject you were discussing with regard to access to Social Security, and wondered if you might share with me any risks that are associated with allowing DOL to—direct access to Social Security.

Mr. DAHL. There are risks that OWCP would—could make a unilateral decision and reduce or terminate benefits. To mitigate those risks, there would need to be sufficient controls in place to ensure that that data that they are relying on is accurate and that the claimant have an opportunity to respond. And so, you know, while there is a risk, there could be controls in place to mitigate those.

Mr. BISHOP. And would the access to information help DOL improve program integrity and the process of detecting fraud?

Mr. DAHL. Absolutely. In a more timely fashion they can do the cross-matching I mentioned before, both on the earnings information from Social Security and on the new hires, with the New Hire Database—the New Hire Directory. And that would enable them to detect at an earlier point in time and better target their program integrity activities.

Mr. BISHOP. Thank you, sir.

Mr. CHAIRMAN. I yield back.

Chairman WALBERG. Thank the gentleman.

And I recognize the Ranking Member of the Education and Workforce Committee, the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman, and thank you for holding the hearing today.

The Department of Labor claims its proposal to cut benefits and make program adjustments will save between $360 million and $550 million over 10 years, and as I understand it, these cuts are possible candidates for budget reconciliation. I would ask Mr. Howie if this proposal is designed to save money or to improve the program.

Mr. HOWIE. The proposal is designed to improve the program, first and foremost. What happens is that when you do adopt that new rate, savings do happen.

Now, the savings in this case, that was not our primary objective in——

Mr. SCOTT. But you could have done it in a budget-neutral way without having to inflict cuts. Is that right?

Mr. HOWIE. Well, what we recognize, sir, is that the two largest areas where savings could actually be achieved are in the percentage rate of compensation and in the retirement benefit. The others would not produce, for those looking for savings, would not produce that level of——

Mr. SCOTT. So savings is a—you could have done this without inflicting benefit cuts, but you were trying to achieve savings. Is that right?

Mr. HOWIE. That was not our primary objective, and we could have——

Mr. SCOTT. Well, you could have—then why did you cut the benefits?

Mr. HOWIE. Well, again, these benefits are prospective, so we are not cutting anybody's benefits. What——

Mr. SCOTT. Yes. You are protecting present beneficiaries from the harm inflicted by this proposal. It is still harmful to the future employees because they would have gotten more.

And my question is if you weren't trying to save money, why did you want to cut benefits?

Mr. HOWIE. It goes——

Mr. SCOTT. You were trying to save money.

Mr. HOWIE. It goes back to our guiding principle of—one of our guiding principles of making sure that the employees who are injured are compensated at a level that does not exceed those who are not. And even what GAO's reports show is that that was actually happening.

So we wanted to make sure that that——

Mr. SCOTT. Wait a minute. I heard GAO say that the benefits were better if you would continue to work than if you had been injured and gotten compensated.

Mr. HOWIE. In that point on the data, looking at that final simulation of that 30-year employee, that is the one example that was pointed out where that—where the FECA benefit reduction would be materially different. But all of the rest of the bands, that is where the payments were roughly equivalent.

Mr. SCOTT. Well, did you do a study under FERS?

Mr. HOWIE. I am sorry, please repeat——

Mr. SCOTT. Did you do a study under FERS?

Mr. HOWIE. In looking at the retirement benefits, and even looking at——

Mr. SCOTT. Which retirement plan did you study?

Mr. HOWIE. We relied on a lot of the work that GAO did and looking at what the impact of the reductions would be to employees who are operating under FERS. And for the most part, there was no——

Mr. SCOTT. Did you produce a study that showed your numbers under FERS, as opposed to the GAO study that studied—I understand you were looking at the old retirement plan and not the new retirement plan. That is not right?

Mr. HOWIE. No. We looked at the new retirement plan also in the context of the work of the three reports that GAO prepared.

Mr. SCOTT. Okay.

Well, let me—Dr. Sherrill, can you remind me of what your conclusion was?

Dr. SHERRILL. Well, the bottom line conclusion from our simulations are that if you are focusing and interested on sort of what is likely to happen in the future, then projecting 30-year federal careers for workers would result in the FERS retirement package being higher, on an order, I think, of 20-something or 30-something percent, than the typical FECA benefit package under the revised FECA amount.

Mr. SCOTT. Did you calculate the money contributed to Social Security and the effect that it would have on your Social Security benefits?

Dr. SHERRILL. Yes. We had actual earnings data on the uninjured federal counterparts for their actual TSP, actual Social Security, and actual FERS annuity amounts.

Mr. SCOTT. And when the dust settled, the person who continued to work was significantly better off than the person who you are trying to compensate at the same level.

Dr. SHERRILL. Yes, for the median person.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman WALBERG. Will the gentleman yield?

Mr. SCOTT. I will yield.

Chairman WALBERG. Just picking up a little bit of time here, let me go back to Mr. Howie, and further explain for us—because I think that was a great approach and questioning. Can you please explain the savings associated with the proposed reforms in more detail?

And you said it wasn't done necessarily for savings, but it was to set a standard to make sure that equity was in place. Touch on that a little bit more.

Mr. HOWIE. In the years of administering the program, part of the assertions that have been out there in the public sphere is that the FECA program is too generous. We started from the presumption of really exploring whether that was the case.

So we can use information like was obtained in the GAO study to show that yes, FECA recipients do receive income—or do receive compensation at higher levels than employees who are not injured. That is one data point.

And we also have—when you look at—on the retirement issue, you can look at the measure of—or how employees feel, where they stand on the—I guess the—how rich their benefits are going to be when you compare it from FECA to the retirement system. Of the 41,000 claimants that we have on the periodic rolls, about 17,000 are at the retirement age and they are still drawing FECA benefits.

So just the fact that we have employees who are at retirement age who are still on the FECA system instead of the retirement system is about as strong an indication as we can have that those benefits are more generous, and——

Chairman WALBERG. I thank the gentleman for yielding.

Mr. SCOTT. Mr. Chairman, on that point, they would be more generous and that is the point, because your retirement benefits are so much lower because you didn't work, you didn't contribute to the retirement system, the TSP, you didn't get your matching, your Social Security is less, and you would be better off with FERS. But your comparable employee—your colleague would be making a lot more on retirement than you are struggling with FERS. That is the point that Dr. Sherrill was making.

Chairman WALBERG. The gentleman's time is expired, and we probably could go on. And I appreciate you yielding, and it is an issue we need to look more closely at, so thank you.

I now recognize the Chairman of the full Education and Workforce Committee, the gentleman from Minnesota, Mr. Kline.

Mr. KLINE. Thank you. Thank you, Mr. Chairman.

Thanks to the panelists for being here.

I guess we are going to keep—this is what this hearing is all about, so we are going to keep rolling around about the retirement issue and how does that work with FECA benefits, and so forth.

So let me back up, Mr. Howie. You said that you were protecting or not going to affect those employees currently retired or receiving benefits and it was going to be prospective.

At what point would their—your new system step in? As a brand new hire? At the date of retirement? The date of injury? When would it come into effect?

Mr. HOWIE. It is the date of—well, once the approval is given and the statute is enacted, it is the date of injury. So anybody who was—who has a date of injury after this becomes effective, they are under the new system.

Mr. KLINE. Okay. So they could be an employee for 20 years but you would still—if you had an injury then you would come under the new system, assuming all this was enacted.

Okay. We were just a little bit confused. I guess I could have read it a little bit more carefully and had the answer, but thank you for that.

So there is the discussion about why you are doing this, and Mr. Scott was talking about that. Could you again, one more time, tell us what the policy rationale is—the policy rationale—behind treating benefits differently at retirement age is?

Mr. HOWIE. The policy rationale is that it is—in order to maintain equitable payments and equitable situation for employees who are similarly situated, the injured employee should receive a level of compensation that is roughly equivalent to that non-injured employee.

So in this case, we actually did run this issue also by OPM, and they too concurred that the 50 percent rate would make it relatively equivalent to the compensation that an employee would get under FERS.

Mr. KLINE. Okay. There was a discussion about—I think, Mr. Howie, you talked about being more efficient and effective, and Mr. Scott was talking about was this to save money or to make the program better, and so forth.

And so I want to go to Inspector General Dahl. In your testimony you testified to the need to adjust benefits when a claimant reaches

retirement age. Presumably you looked at GAO's work in this area. I see you are nodding your head, so that would be an affirmative.

So let me ask the question this way: Would altering benefits for workers at retirement age make the program more efficient and effective overall?

Mr. DAHL. Chairman Kline, it is—for us it is not so much a question of making it more efficient and effective, because we haven't studied that, but it is more of a policy issue that we defer to the policymakers to decide on. Chairman Walberg and, actually, Ranking Member Wilson both said striking that balance between being good stewards of taxpayer money and providing a fair compensation to injured workers.

And so that is why we are recommending that the retirement age issue be reassessed as a policy question, to strike that balance and consider some of the factors that GAO analyzed in its study, the algorithms and the simulations that Dr. Sherrill referred to.

Mr. KLINE. Okay.

Thank you. I yield back, Mr. Chairman.

Chairman WALBERG. Thank the gentleman.

I recognize the gentleman from Wisconsin, Mr. Pocan.

Mr. POCAN. Thank you, Mr. Chairman.

And thank you, to our guests here today.

So let me focus on a couple of things. One, first of all, this just seems like the idea is still—I don't want to call it—it is not fully baked. I am not saying it is half-baked, but it is not fully baked in that we seem to be tending towards—rather than focusing on the inspector general, who just had a number of ideas to deal with the fraud that is out there, but when you have got 98 percent of people going back within two years, you have got a system where fundamentally people are going back to work.

And if you are trying to deal with some savings—and I know you say there is a policy process to this, as well—it just seems that we are going a little too far, I think, in some of the changes. And let me just bring up a couple things that were said that I don't know if were completely accurate, which is part of why I say this is not fully baked.

I know one of the things—and while we are—we should be somewhat assured that it is a prospective policy, I think, you know, people here still realize it is going to be someone else who is going to be in the exact same situation they are in in the future that are going to be affected. So while it may not affect the people sitting directly behind you, it is still going to affect people who are working in the same jobs as those people, so it doesn't provide a great reassurance.

I think one of the things, Mr. Howie, that you said was no other program in the Federal Government allows for additional money for additional benefits, but I know at least the Black Lung Program, for example, does. So there are some programs, and I would like to know, you know, where else that might occur.

I think one of the things, also, that you said was that states are capping this. If I understand right, about 14 states. Thirty-six don't, including my state of Wisconsin, although sometimes I think we are in the same race to the bottom that Frederica was talking about.

I hate to see the Federal Government get in front of the line to race to the bottom when it comes to this, because 36 states aren't capping this, so we really would be running to the front to do that.

And I think one of the other things that was said was that 50 percent figure was the roughly equivalent, based on the OPM report, but that was based on the CSRS, not on FERS, so it is another difference when it relates directly to some of the people that are here.

So just the fact that in a few minutes in this, you know, hour we have had so far, we have got some inconsistencies, perhaps, to what is out there tells me I don't know if we are 100 percent there.

One of the things that I do think really stands out is in the GAO report, when specifically they are looking at benefits for missed career growth as part of the formula that we do, and I don't believe that is part of this proposal.

So I was hoping that Dr. Sherrill, first, if you could talk a little bit about it, and then maybe Mr. Howie respond to why it is not included, would be very helpful.

Dr. SHERRILL. Your question is the reasons for taking account of missed career growth?

Mr. POCAN. Yes.

Dr. SHERRILL. Yes. Several reasons. First, it provides a more realistic basis for assessing the adequacy of benefits. Second, the National Academy of Social Insurance in 2004 had a study panel on benefit adequacy in which they talked about the technique of matching injured workers to comparable uninjured workers as the current, quote: "state of the art" in doing benefit adequacy studies.

OPM's own briefing slides on FECA recipients transitioning to retirement talked about the standard at—of retirement should be comparable to the amount the FECA beneficiary would have received had they completed their career and not been injured, i.e., assuming that you take account of missed career growth.

So those were all the reasons we took that into account in our analysis.

Mr. POCAN. And that is a factor.

And then, Mr. Howie, just why it is not in what you are looking at?

Mr. HOWIE. Well, it is not in our proposal because it is not part of the current law. We do not take into account missed career growth.

Our FECA program, it is not a surrogate for the career growth issue and it is not a replacement for the federal retirement system. It is to provide compensation for lost wages.

So this is the appropriate conversation to have, whether there is a change in law that is needed, but currently that is just not our law.

Mr. POCAN. So this kind of piggybacks on what Ranking Member Scott was asking specifically about—what if someone who is younger gets injured, they are not only not going to have the career growth potential, but also the lack of paying in is going to show a reduced benefit. How do you address that concern, since the time ran out when he was asking that question?

Mr. HOWIE. I am sorry, can you——

Mr. POCAN. When Ranking Member Scott was asking specifically about if a younger, you know, person who gets injured, they are not going to continue paying into the system. That is going to have a depressed—what they are going to be receiving at retirement anyway. Again, not considered in the report that you have.

Mr. HOWIE. Well, keeping with the basic principles and what we are doing here, that 70 percent payment is not at a level that is dramatically different from what is being received. It is roughly equivalent to the payments that are out there.

So again, we are not joining that——

Mr. POCAN. If I can just reclaim my time, I just want to end with this. I am reading the example of Roy Rondeno, who spent his entire life working for the Postal Service and went in on a day off. And you look at the story, and I am sure you are familiar with the story: injured, went through surgeries, wanted to get back to work, and died on the operating table.

If that had happened to someone 20 years earlier in their career, they will be disadvantaged under the proposal that is on the table. And I think that we have to keep things like that specifically in mind because it affects very real people.

And even though it is prospective, there are going to be future Roy Rondenos, and I just hope that we would have a plan that would take that into consideration.

Chairman WALBERG. I thank the gentleman. His time is expired.

And now I recognize the gentleman from California, Mr. DeSaulnier.

Mr. DESAULNIER. Thank you, Mr. Chairman. And I really do think this is a good hearing, I must admit a little frustrating as being a freshman who, as the Ranking Member said, when I was in state government I—mostly because most of my colleagues in both parties didn't want to get them involved in workers' compensation reform, I wasn't bright enough to avoid that. So it is a little frustrating to sit here because it seems to me that this should be less emotive and more driven by evidence base, as Mr. Watson said.

So I have a question for you, Mr. Watson, but—in that regard, and also for Mr. Howie.

So it should be about prevention, and then it should be about the 98 percent that we get back to work so quickly in two years. So you—it seems to me—maybe this is a little sophomoric—but you should consider the total compensation, and if it needs a change in statute then that should be one of the recommendations.

So, Mr. Watson, you said that there was a lack of evidence base in the proposal and the decision-making process by the Department. Would you like to add to that?

Mr. WATSON. Yes. I would like to add to that.

I read the GAO studies, both the old ones regarding CSRS, comparing CSRS retirement benefits to FECA benefits from many years ago, and the newer ones in 2012. There is also a Congressional Research Service study on FERS benefits.

And I don't see anything in those reports that supports the idea that OWCP's 75 percent rate for an injured worker with a family somehow is a disincentive to return to work. I don't see it.

And as I have listened to the numbers that I heard in testimony today, 119,000 injuries annually reported, only 2 percent of those on long-term disability. And I might add, only employees who are totally disabled—and that is to say—that is an economic concept, not primarily a medical concept—only employees who are totally disabled, they are not able to do medically their date-of-injury job and they are not able to do any other job, they are the ones who get 75 percent.

Partially disabled employees, those who are able—not able to do their date-of-injury job but are able to do some other work, they don't receive the full 75 percent. OWCP is required by the FECA to proportionally reduce that 75 percent that they get by what OWCP determines is their remaining wage-earning capacity.

And so I don't know what percentage of these 41,000 on the rolls are partially disabled, but whatever percentage that is, those people are not receiving 75 percent of their date-of-injury salary; they are receiving 75 percent of their date-of-injury salary minus OWCP's determination of their remaining wage-earning capacity.

Mr. DESAULNIER. Dr. Sherrill——

Mr. WATSON. And so——

Mr. DESAULNIER. Can I ask Dr. Sherrill a question?

So given what you have done, would it be your expectation that we would actually have long-term cost savings from the DOL report?

Mr. WATSON. I am sorry. Would you repeat the question?

Mr. DESAULNIER. It is directed at Dr. Sherrill, Mr. Watson.

Dr. SHERRILL. I am sorry. Was the question about whether the proposal would have cost savings?

Mr. DESAULNIER. In the long term, given what you—given the research that you have done.

Dr. SHERRILL. We did not look at the issue of cost savings. We just focused on sort of how people would likely fare, in terms of benefit levels, under the proposals.

Mr. DESAULNIER. Well, not an extreme jump to suggest that if your—what your testimony is correct, that there might be cost savings, Mr. Howie, in the near term, but over the long term prospectively that would not be the case. Would you be concerned about that?

Mr. HOWIE. We do project the savings because of the sheer number of the reduction in the rate.

Mr. DESAULNIER. Would you expect that 98 percent would actually go down with this, so that people would be going back to work within two years faster?

Mr. HOWIE. Well, it is our hope that everybody gets back to work as fast as they possibly can. That is why we are here. Those are the services that we provide.

And as the numbers indicate, the lion's share of employees are eager to get back to work. And that is our mission to help them.

Mr. DESAULNIER. Okay.

I see my time is almost up. Thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentleman.

And now I recognize the gentlelady from Ohio, Ms. Fudge.

Ms. FUDGE. Thank you very much, Mr. Chairman.

I thank you all for being here and for your testimony.

I want to, of course, recognize our young people who are here today for foster care day. Thank you for being with us.

I want to just say this is really kind of personal with me. My uncle was a letter carrier for 42 years. Today I have a first cousin who is a postmaster that worked her way up through the system. So I just want to put that out front for you right now.

Director Howie, in your testimony you stated that the rate of compensation creates a "direct disincentive"—your words—to return to work. Are you aware that in this hearing room today there are letter carriers who have suffered significant traumatic injuries to their legs as they were crushed between vehicles performing their regular duties, yet they have managed to return to work? I don't think that that supports your proposition that they have a disincentive to return to work.

On page five of your testimony you state that in fiscal year 2014 fewer than 13,000 claims involved a significant period of disability. You suggested 88 percent of those claimants return to work within the first year of the injury, and a full 91 percent return within the second year. In fact, you state that less than 2 percent of the 119,000 new injury cases remain on the long-term compensation rolls.

So it does not appear to me that your statement would run in direct contradiction to your claims. It just doesn't make any sense.

Mr. Watson, do you agree with the Department's assessment that injured workers are looking for a disincentive to return to work?

Mr. WATSON. I do not agree with that. My experience has been that the big problem letter carriers face is convincing the Postal Service to let them come back to work when they remain disabled from their letter carrier jobs. That is a huge problem for us. It is not my experience at all, what you said.

Ms. FUDGE. As well, could you tell us what role FECA has played in assisting the workers that accompanied you today and others like them? Mr. Watson?

Mr. WATSON. I am sorry. Would you repeat the——

Ms. FUDGE. Could you tell us how FECA has played a role in assisting the workers that you brought with you today?

Mr. WATSON. Yes. As the law exists right now, there are restoration rights to injured workers who partially recover, as well as fully recover, from their injuries.

But Department of Labor does not exercise authority over those restoration rights. Instead, it is OPM who has authority over the restoration rights.

So, for example, if Department of Labor issues an adverse decision regarding a claim, an employee can appeal within OWCP, within Department of Labor. But if an employee disagrees with an agency decision regarding restoration, they cannot appeal to OWCP; they have to appeal to the MSPB, the Merit Systems Protection Board.

And so there is this separation between OWCP's authority and injured employees trying to get back to work unsuccessfully. I think that Congress could look at that discrepancy and consider doing something about it.

Ms. FUDGE. I mean, it is just so interesting to me that we have employees who want to go back to work and they won't let them

come back. Very different from everything that we have been hearing in these reports.

I just want to say to the letter carriers who are here, I appreciate what you do every day. You know, people talk about they want to privatize the Postal Service. There is no other group of people who are required to deliver to every house every day but you. So we appreciate what you do.

I thank you, and I yield back, Mr. Chairman.

Chairman WALBERG. Forgive me for not listening to last yielding. I appreciate it.

We have 42 seconds remaining. Could I ask the gentlelady to yield to me?

Let me ask this question, because I think it goes to previous questions, of Mr. Howie. How does the Department plan to expand the assisted reemployment program, which allows OWCP to provide a subsidy to provide—to private employers, as I understand it, in an effort to encourage hiring of qualified rehabilitated workers?

Mr. HOWIE. Well, currently the—we have authorization to provide assisted reemployment services for private sector employees, and that is a—it is an ongoing process. We have a customer base, as you will, that are—that have been injured and may have some significant limitations coming back to work, so the—more or less the advocacy that is required to convince our private sector partners out there to participate is an ongoing process.

What we are asking in this case in this reform is to permit us to have that same relationship with the public sector, so with other federal agencies, because if there is one thing that we know is that if employees—if injured employees are permitted and have opportunities to remain within the Federal Government then they are more than willing to go back there because we know that the—their outcomes, their economic outcomes are better if they are back at work, and the Federal Government is a logical place to put forth a lot of that effort. So that is—we really want the authorization to strengthen those ties.

Chairman WALBERG. So there is an effort to do that; you just need the authorization. I just want to make that clear.

Mr. HOWIE. There is an effort on the private sector side. But on the public sector side we need the——

Chairman WALBERG. We need the authorization. Okay. Well, thank you.

I thank the gentlelady for yielding, and her time is expired so I will yield it back for her at this point.

And now I recognize the gentlelady from Oregon, who is not a member of the subcommittee but is a member of our full Education Workforce Committee who has a strong interest in this area and has chosen to sit with us today. We are delighted for that, and so I recognize Ms. Bonamici.

Ms. BONAMICI. Thank you very much, Mr. Chairman, and thank you, Ranking Member, as well, for allowing me to participate in the subcommittee hearing.

And thank you, to our panel of witnesses.

I would especially like to thank Mr. Watson for traveling from Oregon to testify on behalf of the National Association of Letter Carriers. It is great to have an Oregonian contributing to our work

here in Washington, D.C., and I greatly value your comments and your work advocating for letter carriers.

Workers' compensation and FECA are an important part of the workforce safety net. My Oregon office has been working on a case for a constituent who was injured in an accidental shooting during a training exercise at the federal prison in Sheridan back in 2007.

His wife had to leave her job to stay at home and help take care of him, and they struggle financially. They were once a two-income family and are now solely dependent on workers' compensation benefits to survive.

So given this and many other cases like it, I am very concerned about proposals that would lower benefits for workers, especially with dependents.

Mr. Watson, it is important that workers' compensation benefits and FECA benefits are based on the core principle that federal workers should be no better off and no worse off than if they had not been injured or made ill on the job. So what additional principles should guide this committee in evaluating the adequacy of benefits?

Mr. Watson, what should we be looking at to evaluate the adequacy of benefits?

Mr. WATSON. If I may apologize to the Committee, I have hearing aids and one is malfunctioning, so I am having a really hard time hearing. I am so sorry.

Ms. BONAMICI. I could repeat the question. So it is important that workers' compensation benefits are based on the core principle that federal workers should be no better off, no worse off than if they had not been injured or made ill on the job.

So are there additional principles? That is very important, but what else should guide this Committee in evaluating whether benefits are adequate?

Mr. WATSON. I am sorry. Are you asking are there additional principles to that "no better off"?

Ms. BONAMICI. Yes.

Mr. WATSON. I think that is the fundamental principle. I think that is the idea. I think the idea of fairness is encompassed within that principle.

Ms. BONAMICI. Terrific. Thank you.

And about 25 years ago in the face of high rates of workplace injury and high workers' compensation costs, Oregon brought management and labor to the table to enact comprehensive workers' compensation reforms, and Oregon now has very low costs and has managed to maintain the benefits available to workers even while many other states have reduced benefits. And most importantly, Oregon has seen a 50 percent reduction in workplace injury and illness over the last 25 years.

I know at least 33 states have reduced their benefits or made it more difficult to qualify, while Oregon, because of that work that has been done over the last couple decades, still has low rates and high benefits.

So, Mr. Watson, are there lessons that we can learn here in Washington, D.C., in Congress from Oregon's experience that could help us reduce the number of workplace injuries and reduce costs while continuing to provide fair benefits to injured workers?

Mr. WATSON. I think so. I think so. I think we can learn from the Oregon lesson if the parties work together to make the system better.

I know that we have agreed already to certain reforms that were encompassed in H.R. 2465 a couple years ago. I think those were sensible and common-sense reforms.

Certainly we agree with the idea that it should be easier for Department of Labor to obtain Social Security information. Right now OWCP can require an employee to sign the agreement to provide Social Security information, but you could make that more efficient and easier. I think it is a good idea.

Ms. BONAMICI. We appreciate your input.

The GAO testimony on page 22 shows that the Department of Labor's proposal—under that proposal, disabled postal workers could see benefits that are 22 to 29 percent below what they would have earned if they had not been injured or worked a full career. Does that uphold that core principle of people injured on the job should be no worse off than if they were not injured?

Mr. WATSON. No, of course it does not.

Ms. BONAMICI. No, it does not. So I look forward to working with you and others to make sure that we can come up with policy that upholds that principle that people should be no better off but no—definitely no worse off than if they had not been injured on the job.

Mr. Sherrill, the Department of Labor has argued that benefits should be cut by up to 33 percent on the hypothesis that FECA benefits exceed what someone would have earned had they worked a full career and retired. And I know that there has been a statement that they want to be sure that workers are not overly advantaged in their retirement years compared with their non-injured counterparts.

And I wonder, did GAO compare the two benefit level for workers in the Federal Employee Retirement System? And if so, what did they find?

Mr. SHERRILL. Well, when we did our comparison of the FECA benefits to the retirement package for their uninjured counterpart, as I mentioned before, we found sort of at the current level FECA is more generous than FERS. Under the proposal—the Department of Labor's proposal—to reduce the level at retirement we found that the packages were roughly on a par.

But then when we did the final simulation looking at under a mature FERS system with 30-year careers on average, what would that look like? The final result was that the FERS packages—retirement packages were higher; the FECA packages were lower on a level of 20——

Ms. BONAMICI. I see my time is expired, but I know we need to be talking about missed career growth, as well.

So thank you, Mr. Chairman, and I yield back.

Chairman WALBERG. I thank the gentlelady.

And I thank the panel for your answers, your willingness to address the questions that this panel has asked of you. I thank you for your involvement in this issue, as well.

And I thank the subcommittee for paying attention to it.

So now at this time I recognize the gentlelady from Florida, Ranking Member, Ms. Wilson, for any closing remarks she might have.

Ms. WILSON. Thank you, Mr. Chairman. I want to thank you again for holding this hearing and giving us the opportunity to review the Department of Labor's proposal to reform the *Federal Employees' Compensation Act*.

I also want to welcome Kenesha, from Miami, Florida, who is shadowing me today from foster care, and she is on TV.

Let me just say that I have great respect for the Department of Labor and the Office of Workers' Compensation Programs.

That being said, I strongly urge the administration to reconsider its proposal to cut benefits under the FECA. These cuts are not fair. They are not fair to federal workers.

Let us remember that FECA provides coverage for 2.8 million federal civilian workers, from postal workers to FDA scientists, across more than 70 agencies and all three branches of government. That means these unfair cuts would affect the law enforcement agents entrusted with protecting our borders, the prison guards tasked with working in overcrowded prisons, and the federal firefighters charged with battling unwieldy wildfires.

In fact, FECA even covers members of Congress. Our beloved former Congresswoman Gabrielle Giffords relied on FECA to cover her medical costs and lost wages after she was viciously gunned down while convening a small town hall meeting called "Congress on Your Corner." Her injury reigned fear in the hearts of every member of Congress, knowing that we are all at risk.

We are considering these benefit cuts in the name of budget reconciliation, but I want to remind the Committee that we do not have specific instructions to make cuts here.

We cannot make budget cuts on the backs of injured federal workers. We cannot make budget cuts on the backs of the widowers, widows, and orphans who have lost a loved one due to federal service, like Osvaldo Albarati's widow and his orphans. We cannot make budget cuts on the backs of federal workers who are permanently disabled and unable to build towards a secure retirement, like the postal workers represented here today.

In truth, the best way to reduce benefits under FECA is to reduce workplace injuries and deaths. But, regrettable as it is, injuries and deaths do occur. When they do, we must ensure that the workers who have committed themselves to federal service are honored by a system that does not leave them and their families financially worse off than if the injury or death had not occurred.

I hope my colleagues remember this as we consider this proposal in the future.

And I yield back the balance of my time.

Chairman WALBERG. I thank the gentlelady, and I thank her for her sentiments—I think sentiments we all feel.

If there is one thing that I just absolutely hate that seems to be a—and my mother if she heard me say the word "hate" would be attacking me for that—but I hate the fact that bad things happen to good people. I mean, I am looking out at good people here, and I am looking at good—two good people that it happened to their loved ones, and they no longer have their loved ones with them ex-

cept in wonderful memories. And those are bad things happening to good people.

My esteemed colleague, even Congress can't stop that. But you are absolutely right, and we ought to do our best to make sure that we care for, in a fair and just fashion, those that have committed to serving our constituents, our citizens, in some very important functions.

But it is an issue of people. People here in this room.

But it is also an issue of numbers. And we have good people who are put in responsible positions to make sure that we have systems that are there and will continue to work the best way possible—not to hurt people who are presently receiving this help, but to make sure that there is a system that continues on. And that deals with numbers.

But then we look at people—again, taxpayers who expect certain things to be carried on. But they also have bad things happen to them that impact their lives, as well. And that frustrates their ability to carry on with the resources necessary to support the functions of government and agencies and individuals that carry that on, as well.

So we have got people, numbers, people, numbers, and it goes back and forth. Our concern here on this subcommittee is to make sure that we combine those people and numbers in a productive way that, to the best of our ability, provides fair and just outcomes.

We can't bring about perfection. And that is what I appreciated about the bill that we passed out of the House here several years ago. We worked to a compromise. We worked in a bipartisan fashion.

I think it can be done again, but it has to be done relative to understanding that there is only so much that we ultimately can do with the resources we have. So let's find a way to do it as best as possible so future employees that take on the good work and effort to carry on the functions that our citizens ask us to carry on are carried on in such a way that all of us benefit in the process.

And then—and I hesitate saying this, but I think it must be said as well, because it is reality—while we see people here in the room who want to be doing jobs for the organization they hired into, they carried on, and they were injured in the function of the duties there, we also want to make sure that we don't give any type of incentive—perverse incentive to still some others who may ultimately be pushed in the setting where they can act irresponsibly. Don't want to do that either.

So let's find a way to make sure we incentivize people who want to do well, who want to continue and do good, and disincentivize people who will abuse the system.

Now, if I could bring Solomon into the room with his sword, we would figure a way to cut it down the middle to make it work. But we don't have that so, Ms. Wilson, you and me and our subcommittee will continue to work.

There being no further business, the subcommittee stands adjourned.

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

STATEMENT OF SUSAN M. CARNEY
DIRECTOR
HUMAN RELATIONS DEPARTMENT
AMERICAN POSTAL WORKERS UNION, AFL-CIO

REVIEWING WORKERS' COMPENSATION FOR FEDERAL EMPLOYEES
BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

MAY 20, 2015

Chairman Walberg, Ranking Member Wilson, and Members of the Subcommittee,

My name is Sue Carney, and I am the National Human Relations Director for the American Postal Workers Union, AFL-CIO. On behalf of APWU President Mark Dimondstein and our members we appreciate the opportunity to present our views regarding the Federal Employees' Compensation Act (FECA) and its administration by the Department of Labor, Office of Workers' Compensation Program (OWCP).

The American Postal Workers Union represents more than 200,000 postal employees and retirees; 50,000 of whiom are veterans. Our members work in the Clerk, Maintenance, Motor Vehicle and Support Services Divisions. We are employed in nearly 32,000 sites throughout the country; we handle 40 percent of the world's mail volume, process more than 155 billion pieces of mail annually and provide a trusted, universal, public service in every city, town and community in our nation.

Overview

Approximately 2.8 million postal and federal employees are covered by the FECA – of which 119,000 on average sustain workplace injuries, illnesses and death each year in performance of their duties. And while the APWU is not in a position to speak on behalf of *all* of these workers, or the unions that represent them, we assure you we stand united with every employee, their families and every other postal and federal union who represents them in opposition to many of the Department of Labor's proposed amendments and the White House's proposed budget cuts regarding FECA, which we fervently believe are inequitable and, if adopted as written, will have a negative and devastating impact on the lives and well-being of our nation's public servants and their families.

The guiding principles of FECA and anyone contemplating changes to it must be to leave the injured worker no better or worse situated as a result of their workplace injury. In the 112th Congress we accomplished that by passing the bipartisian bill H.R. 2465, which adopted at least ten of the recommendations made by the Office of the Inspector General (OIG), the Department of Labor (DOL), the Government Accounting Office (GAO) and the Office of Management and Budget (OMB). H.R. 2465 strengthened program integrity by allowing Social Security cross-matching and the subrogation of continuation of pay (COP). It improved elements of the statute

that are significantly deficient, such as burial expenses, and facial disfigurement, and it produced savings – although lawmakers should be mindful that not all of the costs related to workplace injuries are borne by taxpayers. For example, FECA benefits paid on behalf of postal employees and their survivors use no tax dollars.

During this hearing, Mr. Leonard Howie, OWCP Director stated on the record that "any opportunity to better serve workers should be encouraged". Yet the DOL has not been able to demonstrate that its proposed changes will "better serve workers". Under oath, neither OWCP Deputy Director Gary Steinberg, in past hearings, nor Mr. Howie presently, was able to offer plausible explanations to justify the DOL's proposed cuts to widows(ers) and their children whose spouses / parents died because of a workplace injury. In fact when Mr. Steinberg testified before the Senate on July 26, 2011 as the Acting OWCP Director he stated that a single pay rate (70%) would simplify processes for DOL. Lessening the DOL workload by cutting the income of working families is not how we accomplish better serving workers and it is exemplary of the Administration's misplaced priorities.

DOL officials have been consistently unable to defend its recommended cuts to families whose earners are injured on the job. They have also been unable to legitimize proposals that cut benefits of seniors who are incapable of funding their retirement because of an occupational illness or injury. In fact DOL is misleading lawmakers and the general public by cloaking the reduction as a "conversion" – implying that injured workers who reach retirement age will transition to the same benefits as their uninjured, retired co-workers, which is absolutely not the case. Injured workers are locked in at their date of injury (or first disability) pay rate and only receive a Consumer Price Index (CPI) cost of living adjustment (COLA), which has averaged just 2.1% over the past decade. Injured workers cannot increase their wage loss compensation with contract increases, contract colas or step increases. They are unable to enjoy career growth and are not permitted to make contributions to their Thrift Savings Plan through personal withholdings or with employer matching funds – all of which would otherwise factor into their retirement had they not been injured on the job.

DOL officials and some others, including Mr. Howie, have expressed a misguided notion that FECA creates a disincentive for injured workers to return to work but Director Howie's testimony contradicts that theory by declaring "less than 2% of the injured workforce covered by FECA remains on the long-term compensation rolls more than two years after sustaining their injury". To further help dispel the deceptive "disincentive" marketing strategy that is being promoted, I would respectfully direct the lawmakers to three unbiased studies that were conducted in 2012 by the Government Accounting Office (GAO) following our last "review" of the Federal Employees Compensation Act on May 12, 2011.

GAO Studies

The GAO concluded that the proposal to use a single pay rate of 70% to compensate both claimants with and without dependents would reduce the beneficiaries' median wage replacement rates by 3 to 4 percentage points. The proposal to use a single rate of 66-2/3% would reduce the beneficiaries' median wage replacement rates by 7 to 8 percentage points. In fact if you were to use the median salary of $42,800.00 and apply IRS tax codes[1], the take home pay for single and

[1] The data driven analysis was conducted in 2013

married workers, with and without dependents – claiming 1 to 4 exemptions actually falls between 82.4 % – 89.4 % of their gross salary. The data demonstrates that the net pay of working employees is far greater than the 75% permitted by FECA for claimants with dependents and the 66 2/3% without.

It's important to point out that FECA beneficiaries also lose significant benefits. Employees collecting wage loss compensation are in a leave without pay status, so, in addition to less take-home-pay, and the physical, mental and emotional pain that workforce injuries bring, these workers cannot earn annual leave and sick leave. They cannot reap TSP advantages [2] nor benefit from over-time opportunities, promotion prospects, and other pay increase potentials. Their lost workdays erode their Family Medical Leave balance, and they are often separated because of their disabilities[3]. When separated for disability they stop accruing creditable service time and, if separated prior to achieving the retention of health benefits and life insurance, these benefits are forfeited. Compensationers cannot contribute to Social Security and cannot receive credit for substantial earnings. So contrary to the DOL's position and the misunderstanding of others, it can be readily demonstrated, for many reasons, that injured workers do in fact have an incentive to return to work.

If there is any disincentive, it lies in the statute's loss wage earning capacity (LWEC) determinations[4]. When injured workers are restored to work with their employer or when they are placed in OWCP's vocational rehabilitation program, which is *supposed* to be a benefit, they can expect to have their wage loss compensation reduced by their actual earnings which is just. What is unjust is: when these disabled workers are not successful in obtaining employment, their wage loss compensation is reduced anyway through a "constructed" LWEC. What is unjust is: a LWEC determination can also leave injured workers without an income when their employer alleges medically suitable work is no longer available. In our opinion, LWECs motivate and enable employers to refuse or withdrawal medically suitable work in order to escape a large portion of their chargeback liabilities; leaving injured workers destitute. Employees should not fear restoration, and any procedure that permits employers to game the system should be eliminated.

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

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

[4] Division of Federal Employees Compensation Procedure Manual Part 2 Chapters 0815 and 0816. These actions are known as loss wage earning capacity (LWEC) determinations. In basic terms, a LWEC is a comparison between wages of actual or potential earnings against wages at the time of injury. The difference is what the claimant is entitled to receive in wage loss compensation. For example, a worker was making $20 hr when injured. They normally would receive $15 in WLC if they have dependents, but if the Office finds a job that pays $18 hourly, the employee is then only entitled to receive 75% of the difference, which in this scenario would be $1.50 hourly, <u>even when the employee was an unsuccessful applicant.</u> And if the employee procured a job which is subsequently the job, the employee would still only be entitled to $1.50 per hour in WLC.

The GAO also simulated a mature Federal Employees Retirement System (FERS) to compare FECA benefits received by injured workers to the annuity benefits of uninjured coworkers, who, unlike their disabled counterparts, were able to enjoy 30-year careers and obtain a true high three. The GAO found that the median FECA benefit package under the proposed change would be 22 - 35% less than the median FERS retirement package; here again, the evidence is in opposition of the "disincentive" purported to exist. It's noteworthy to mention that all federal and postal employees first hired in 1984 or later are covered by FERS. In that it has been 31 years since FERS was implemented so it stands to reason the lion's share of our current postal and federal workforce fall under FERS. Therefore, it is not realistic nor would it be appropriate to rely on any analysis that used the Civil Service Retirement System as its base for comparison.

When confronted with the findings of these impartial GAO studies, the DOL refuses to abandon its imbalanced and daunting proposals, arguing instead that FECA "is not a surrogacy program" and declaring that its recommendations are "based on experience" (opinion), rather than substantiated facts. Howie's written testimony stated "the proposals are based on internal studies" yet under oath he readily confessed that DOL has not conducted an analysis. The truth is DOL has not created a report that supports its position nor have they been able to authenticate how projected savings stemming from its recommendations were derived, which mind you change each time a DOL official presents testimony despite their recommendations remaining constant. On one occasion a total of $400 million, on another $500 million from augmentation alone, and on this occasion $360 million (each over the span of a 10-year period).

Stakeholders

The Department of *"Labor"* has however seemingly abandoned its workers – according to Director Howie, OWCP stakeholders and partners include OIG, OPM, and OMB but never once did he refer to the laborers and their families as stakeholders. According to his testimony Federal and Postal employee unions are viewed as "outside parties", when in fact we are the voice of 2.8 million employees covered by FECA– that's a stakeholder, not an outside party. He informed legislators that the proposed changes were shared with the unions and members of the disability community, which could easily be misconstrued as our being part of the discussions and being granted input, and that is simply not true. It must be clarified for the record that we were invited to one briefing, during which their proposals were presented as innocuous. When we saw through the charade and attempted to voice our concerns, we were adamantly advised by DOL officials that our views would not be considered. Instead the DOL used the occasion to gauge our response, rather than consider the validity of our concerns, consequently amending some of their tactics to make the proposal seemingly more palatable.

History and Examination

It is essential that we appreciate that the FECA represents a longstanding covenant that our government made with postal and federal workers. Each side gave up something to make it equitable and fair to both parties. Its primary purpose is to shield injured postal and federal employees and their families from loss, while limiting the employers' liabilities. "*The employer relinquished the defenses enjoyed under the common law, but this loss was offset by a known level of liability for work-place injuries and deaths. The employee gave up the opportunity for large settlements provided under the common law, but receives the advantage of prompt payment of compensation and medical bills. These tradeoffs make the federal workers' compensation system fair and equitable to both parties. However, where either party does not receive the*

benefits of this covenant, the system becomes unacceptable. When FECA was amended in 1974, Congress stated it is essential that injured or disabled employees of all covered departments and agencies, including those of the United States Postal Service, be treated in a fair and equitable manner. The Federal Government should strive to attain the position of being a model employer".[5]

As we continue with our examination, it is important to understand that the wage loss compensation and death benefit costs have remained stable since 2001; however war risk hazard payments and escalating costs for medical and rehabilitation services and supplies brought a combined $367.3 million increase to the program[6]. It's our understanding that this figure includes all OWCP directed medical exams. It is also essential to recognize that postal and federal workers are injured on the job because of the circumstances they encounter in performing a public service.

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

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

Additionally, claimants are subjected to second opinions and independent medical examinations, rather than trusting the opinion of the claimant's treating physician who understands the extent of the disability and is responsible for prescribing medical treatment. All of this needlessly adds to the cost of the program. These factors have made it difficult for claimants to find and keep doctors. When claimants do find doctors who are willing to treat them, claimants have been

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

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

barred from using them if they are located further than 25 miles away. To the contrary, OWCP regularly finds it acceptable to send claimants more than 100 miles away for their directed exams. DFEC also refuses to adjudicate questionable job offers for suitability; rather a claimant is required to refuse a job offer and risk going without income while the program takes months to make a suitability determination. These factors, coupled with OWCP's most recent and sweeping rulemaking changes[7] and portions of the DOL's current recommendations, all bring additional favor to employing agencies, cause unnecessary harm - in many cases irreparable harm to injured workers and their families - and do little to promote the non-adversarial program FECA is intended to be. These Division of Federal Employees Compensation (DFEC) practices should not be permitted to stand.

We also appreciate legislators giving consideration to the significance of other recommendations that are being proposed by the Administration and allowing us to share our views as follows:

Vocational Rehabilitation

We agree measures should be taken to help all injured workers return to suitable employment when their treating physician states that they are physically capable; however, granting authority to place employees with temporary medical restrictions into OWCP's vocational rehabilitation program is an objectionable approach. It would serve as another disincentive to employers who believe workers with disabilities are crippling their production. Currently, only employees with permanent medical restrictions can be voc-rehabbed. The reality is employers regularly refuse work to these employees because they can escape chargeback through OWCP's vocational rehabilitation program due to loss wage earning capacity determinations previously discussed. Comparatively, employers are more compelled to return employees with temporary restrictions to employment because they cannot be voc-rehabbed. In addition, premature vocational rehabilitation could interfere with the employees' prescribed recovery process or force employees to exceed their physical capacities. For example, it is not uncommon for Rehab Counselors to require disabled workers, who are only capable of working a few hours per day, to interview for fifty jobs in the span of a week.

Additionally, OWCP has not disclosed the specifics of its new Return-to-Work Plan for employees who are physically unable to be voc-rehabbed, nor has it shared if or how the employee's treating physician will be partnered into its processes. As earlier stated, OWCP statistics confirm less than 2% of the workers covered by FECA remain on the long-term compensation rolls more than two years after sustaining their injury. This surely demonstrates there is little need to burden the program with additional rehabilitation costs.

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

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[7] RIN 1240-AA03

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

We recognize that federal work cannot be used as a basis for making LWEC determinations, but the reality is that DFEC has advised it will look to comparable private sector positions to LWEC employees who are placed in the Assisted Reemployment Program.

The Office has offered its Private-Sector Assisted Reemployment Program as an indicator of potential success for its Federal Assisted Reemployment Program. Interestingly, the Office still has not disclosed how many private-sector program candidates they successfully placed in the program, nor has it advised how many LWEC's were issued as a result of the program, but we do know, based on figures previously provided by OWCP, that 45% of the employees who secured private –sector subsidized employment were not hired at or beyond the 3 year agreement period consequently leaving many injured workers and their families in peril.

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

Program Integrity and Conversion of Benefits at Retirement Age
We must eradicate the illusionary idea that the FECA is fraught with workers who game the system. This grossly exaggerated pretense is evidenced in OIG's recent Semiannual Report to Congress, where only five convictions for medical provider and claimant fraud were reported[8]. We agree fraud should not be tolerated, but when you compare the very few to the number of FECA beneficiaries, the percentage is miniscule – less than one-tenth of one percent. Frankly,

[8] OIG USPS Semiannual Report to Congress October 1, 2014 – March 31, 2015; 1 medical provider and 4 claimants were cited as convicted of committing compensation fraud.

OIG is guilty of committing a higher percentage of fraud if you compare convicted agents to its complement.

Existing regulations and procedures are so stringent it is virtually impossible to "milk" the system *as is too frequently implied.* Compensationers are required to provide medical documentation on a fairly regular basis to support their disabilities in order to remain on the OWCP rolls. Claimants are not permitted to self-certify, so it is meaningless for anyone to assert that injured workers may have an incentive "to cling to the self-perception of being permanently disabled." Even if they had that perception, it wouldn't be enough to keep them on the rolls. Furthermore, FECA beneficiaries are regularly subjected to OWCP directed second opinion and independent medical examinations.

Additionally, there is the existing and unforgiving OWCP Vocational Rehabilitation Program, so we must presume that many, if not all, of the "less than 2%" long-term compensationers are permanently and totally disabled; otherwise, regardless of their age, they would have been placed in OWCP's Vocational Rehabilitation Program to seek alternate employment. As illustrated in the GAO's findings and as detailed earlier, it is wrong to infer that OWCP is a lucrative retirement program marked by disincentives that preclude employees from returning-to-work. As previously mentioned the GAO report solidifies the median FECA benefit package under the proposed change would be 22 - 35% less than the median FERS retirement package

It is additionally noteworthy that, unlike their uninjured coworkers, who can work after retirement to supplement their income, totally disabled compensationers are incapable of performing any work. The loss injured workers sustain is monumental. To reduce their compensation to 50% at a pre-selected and arbitrary age on the basis that CSRS annuitants receive a slightly higher but taxable percentage than that which is being proposed, has been proven to be unfounded.

Further, to assume any age a "normal" retirement age would be unjust, age discriminatory and presumptive. To help put this in a better perspective, forty-nine of our country's 100 Senators, and 157 House Representatives are 62 years of age or older, and we are not suggesting they retire because they achieved a particular milestone age. In fact the Bureau of Labor Statistics reported that more senior employees are opting to work well into their golden years to stay active and because they cannot afford to retire.[9] Do we really want to penalize seniors with work-related medical restrictions because of their age?

We would be remiss to assume that our senior compensationers would have retired had they not been injured. We have to presume, based on existing OWCP procedures, that these employees are incapable of working; otherwise OWCP officials would be derelict in performing their duties.

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

For those who have temporary medical restrictions, it's important that we recognize they may be capable of returning to work sooner if OWCP approved all prescribed treatment in a more timely fashion. We must also heed the importance of giving employees access to appropriate care and adequate recovery time that is consistent with the nature of their injury. It would be punitive to reduce wage loss compensation based on age and the time spent on the rolls. Recovery for extensive injuries can often take longer than a year.

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

Augmentation
Currently workers with dependents receive 75% of their pay, while workers without dependents receive 66 2/3%. DOL originally offered its proposal to convert all compensationers to 70% on the premise that workers with dependents do not earn more than those without – as previously mentioned that conception was disproven by the GAO analysis.

Although it is true that workers with dependents do not earn more than those without, tax deductions for workers with dependents are less. This creates a larger net check to better support their families; workers without dependents net less, which has been affirmed by performing simple calculations using existing IRS tax codes. As for DOL's argument that FECA benefits frequently exceed the employee's pre-injury tax-home pay, there is no equity in being locked in at a rate that does not allow your usual pay increases.

Additionally, uninjured coworkers are able to recoup tax withholdings by filing annual tax returns to add to their income; compensationers cannot.

It is a ridiculous belief that claims examiners are being challenged by wage loss calculations with the technology that is available. The installation of a computer program or the use of a calculator would resolve the nuisance without going to the extreme of reducing benefits of worker families. APWU is opposed to any change that would burden families, or penalize workers because they are married and /or have children.

Scheduled Awards
Our primary objection to this proposal is based upon the change in pay rate percentages. It is our opinion that claimants should continue to receive their benefits based on their dependent status (75% dependents, 66 2/3% no dependents) for reasons we offered relevant to augmentation.

Moreover, we object to the GS 11 Step 2/3 rate ($53,639.00) being used to calculate the value of scheduled awards. Historically, the employee's actual pay rate at time of injury or first disability, whichever is greater, has been used to calculate scheduled awards. Today, this change would result in an increase for some claimants but a decrease for others. In the future however, it is likely that the designated rate would be even less reflective of the actual pay rates for some

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

It is also illogical for DOL to attempt to assert that an arm of one wage earner is always valued equally to another's. Comparing the surgeon's hand to a phlebotomist, a quarterback's arm to the arm of his coach depicts how appendages are valued. In order to be equitable and fair the APWU recommends that scheduled awards remain based on the employee's pay rate.

We also strongly urge mandates be implemented that eliminate the utilization of the AMA Sixth Edition. Relying upon the AMA Guide Fourth or Fifth Editions would facilitate a more accurate means to rate impairments. There are no regulations that require DOL to use the latest edition of the AMA. In fact, AMA Guides Task Force Member, Matthew Daker reports the AMA Sixth Edition is flawed and produces flawed results, as did Christopher James Godfrey, Chief Judge and Chairman of the DOL Employees' Compensation Appeals Board.

Mr. Godfrey testified before this Subcommittee on November 17, 2010 in his capacity as the Iowa Workers Compensation Commissioner. He shared his strong views on the paradigm shift in the Sixth Edition that blurred boundaries between medical and legal determinations. He cited a number of troublesome principles that conflict with statutory and case law, and illuminated Dr. Christopher Brigham's[10] self-interest—his business was primarily focused on employer-insurance carriers.

The conclusion of the Iowa Workers Compensation's designated Task Force, in a 7-1 vote, was to reject the use of the AMA 6th Edition. Ironically Dr. Christopher Brigham was hired by DOL to perform evaluations – another example of the Administration's misplaced priorities. And while we recognize that an ECAB judge does not set policy, it would likely prove productive to compel the SOL and OWCP officials to explore Mr. Godfrey's views with Mr. Godfrey.

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

Definition of New Claim for Disability – *perhaps the slyest of all the DOL proposals*
APWU has strong objections to this proposal. This is a veiled attempt to corral all compensationers, even those with existing approved claims under the new FECA, if changes are passed. Passage would gather individuals submitting short-lived disability claims caused by a need to recover from physical therapy, spinal injection, surgery or other intermittent medical treatment. It would net claimants that experience a spontaneous worsening of an already accepted medical condition, and would also capture claimants who have medically suitable job offers withdrawn by employers, as occurred within the Postal Service in cataclysmic proportion.

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[10] Brigham was one of the primary medical practitioners involved in the development of the AMA Guide to Impairment Ratings, Sixth Edition

This is perhaps the slyest of all the DOL proposals. Making the amendments prospective would in and of itself be unjust, but the DOL is attempting to leave lawmakers and others with the impression that prospective changes will only affect individuals with "new" claims; what the DOL is actually attempting to accomplish is to change the understood definition of what is "new".

Passage of this proposal would afford employing agencies even greater favor by burdening a significantly greater number of injured workers and their families. All Compensation Act submissions require adjudication but traditionally only two are considered new claims. The definition of a new claim should remain limited to the acceptance or denial of newly filed traumatic injuries and occupational disease claims.

Burial Expenses
Currently at $800, this benefit is long overdue for an update. APWU would suggest the benefit be more reflective of actual final expenses. According to the most recent information available through the National Funeral Directors Association, the median cost of an adult casketed funeral with a vault, which is usually required by most cemeteries, was $8,343.00 in 2012.

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

Waiting Period
Continuation of Pay (COP) is only paid for timely filed traumatic injury claims. Its very spirit is stated in its name and it is in place to ensure employees and their families have an income while OWCP adjudicates their claim which regularly takes 60 – 120 days depending on the complexities of the claim. The APWU is opposed to federal employees being subjected to a three-day waiting period as we have been. As we understand it, the average COP usage is just 66.3 hours per traumatic injury. Implementing a three-day waiting period would impose a 37% slash to the worker's pay that, if not for the workplace injury, would be earned.

As for the argument that the three-day waiting period would discourage "frivolous" or "non-meritorious" claims, this reasoning implies that it is permissible to penalize the worker whose injury was not severe enough. All workplace injuries are real, even minor ones. This fact does not make them frivolous or non-meritorious. Employees are subjected to the same scrutiny and

requirements for minor injuries. They still need to meet the same five requirements as severe injuries to achieve claim approval, one of which includes a medical narrative with medical reasoning. The report is expected to have probative value, be written with reasonable medical certainty, and demonstrate a causal connection between the injury and the work environment. Non-meritorious claims are going to be denied by OWCP. When the claim is denied, the employee must reimburse the employer either by substituting leave for the COP, or by paying out of pocket. Therefore, these non-meritorious claims are not a cost factor for the employer, and a three-day waiting period is simply a pretext for an inequitable reduction of a reasonable wage loss payment for the worker.

In 2006, a three-day waiting period was unjustly imposed upon postal workers in order to save money for the employer. The same should not be imposed upon federal workers. APWU would request the three-day waiting period be removed from COP for postal workers. This action would satisfy the stated goal of uniformity and enable COP to fulfill its intended purpose.

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

Compensation for Foreign Nationals
Upgrades to this provision are long overdue. However, since these foreign nationals are performing a public service for our country, APWU believes they should be compensated using the same percentage ratings that apply to our claimants (75% dependents, 66 2/3% no dependents).

Conclusion
It seems the Department of Labor officials have lost compass of its mission "to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights"; and are overlooking the substance of their Department's name – *of Labor, aka the workers.*

It's disturbing that our Secretary of Labor would allow officials under his charge to take a meat ax to the basic benefits of injured workers and their families in order to gain modest "pay for" savings, or that he would be willing to appease the White House and its proposed FECA budget cuts rather than having the courage of his convictions to reject the proposals and admonish the makers. I imagine France Perkins would be as gravely dissatisfied with the Department as we are.

Although we are very disappointed with many of the proposed changes that are being recommended regarding the FECA, and disillusioned with OWCP's unbalanced approach in administrating applicable statute provisions, regulations and procedures, we still believe the

Department of Labor is the best means available to handle the claims process for all federal and postal workers. APWU feels strongly that the Federal Workers Compensation Program (OWCP DFEC) should continue to strive to be a model program, not work to be comparable to insufficient state programs.

To help OWCP meet its burden, more claims examiners are needed. To eliminate some of the erratic decisions claimants are receiving, all claims examiners should be required to receive, on a regular basis, more comprehensive training regarding regulations, procedures and precedent setting Employees Compensation Appeals Board decisions.

It is also our judgment that OWCP should be granted moderate enforcement authority to compel employers, who have been skirting return-to-work and reasonable accommodation obligations, and other responsibilities, to comply. We would also implore the Committee to work to create more meaningful safety and health mandates to protect workers, and provide better mechanisms to enforce them. These initiatives alone could reduce the overall cost of workplace injuries and disease.

We think efforts should be made to recreate the non-adversarial atmosphere that the Program is intended to be. To help accomplish this, we recommend more substantive outreach to employee representatives and more meaningful technical assistance to treating physicians and claimants, who are often confused by the processes. Efforts should be made to make the Program more appealing to doctors. Many forgo treating claimants because of the extraordinary reporting requirements and low reimbursement rate for services.

We also believe that officials who possess an "injured workers sit around eating bonbons" mentality, as well as those who are incapable of seeing anything but the bottom line of a financial statement should be retrained or relocated to positions that do not impact the livelihood and well-being of injured workers and their families. Everyone must remember that there are real people, with real and painful injuries and losses who have real bills to pay that are attached to the pieces of paper that we call claims.

Bending policy and recreating procedures to favor agencies do little to maintain a fair and equitable atmosphere. Shrouding them as "modernization, return-to-work and administration simplification" is disingenuous. As we examine the FECA and its purpose, we would request that we be mindful not to regress but rather progress. Before anyone considers passing legislative changes, we must ensure they are meaningful changes and examine how the consequences of our actions will impact workers and their families. It is important to understand the losses compensationers presently suffer before we consider asking more of these workers. That being said, we find balance and improvement in the bipartisan bill H.R. 2465 and encourage legislators to do the same.

We thank you for your time and consideration regarding this paramount issue.

Susan M. Carney
Director
Human Relations Department
American Postal Workers Union, AFL-CIO

Ms. Susan M. Carney is an ardent advocate for injured workers and their families. She been a career employee with the United States Postal Service since 1989. She has 26 years of union experience serving the American Postal Workers Union, AFL-CIO membership.

She has held numerous positions within her APWU Local and State organizations, including: Shop Steward, Trustee, Secretary-Treasurer, Executive Vice-President and President of the New Jersey State APWU. In 2001, she was elected the APWU National Human Relations Director and currently serves full-time as a resident officer in Washington, DC in that capacity.

Ms. Carney serves as the senior committee member of the USPS National Employees Assistance Program (EAP); the AFL-CIO Union Veterans' Council, the AFL-CIO Civil, Human and Women's Rights Committee; and also serves on the Postal Employees Relief Fund as the senior Executive Committee member.

Under Ms. Carney's direction, the Human Relations Department is responsible for providing guidance to the APWU membership in relation to a number of issues, including: the EAP, veterans' rights, members' assistance programs, illegal discrimination, community services, disaster relief; civil, human and women's rights; reasonable accommodation, and workplace injuries and illnesses, which is a top priority of the department.

She implemented the union's first National Injury Compensation Training Program. She has conducted hundreds of training seminars - educating thousands of labor representatives, attorneys and medical professionals throughout the country. Ms. Carney has created countless resources to assist members navigate their way through the OWCP processes and to help representatives achieve justice for injured workers.

Ms. Carney understands first-hand the impact of workplace injuries and is painfully aware of what it means for employees and families to live with disabilities. She herself suffers from carpal tunnel and thoracic outlet syndromes which were caused by her employment as a mail processor; as a result she endures a combined 44% permanent loss of use to her arms. Her husband, having served in the United States Army, is rated 100% disabled as a result of his military service.

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May 26, 2015

Congressman Tim Walberg
Member, House Committee on Education & the Workforce
Chairman, Subcommittee on Workforce Protections
2436 Rayburn House Office Building
Washington, DC 20515

Congresswoman Frederica S. Wilson
Member, House Committee on Education & the Workforce
Ranking Member, Subcommittee on Workforce Protections
208 Cannon House Office Building
Washington, DC 20515

Re: 05/20/15 Hearing, "Reforming the Workers' Compensation Program for Federal Employees", re proposed changes to the Federal Employees' Compensation Act (FECA) - House Committee on Education and the Workforce, Subcommittee on Workforce Protections

Dear Congresspersons Walberg and Wilson:

I am writing to you on behalf of Workers' Injury Law and Advocacy Group [1], and also as a concerned citizen and as an attorney who represents industrially injured federal employees, to ***urge you to oppose the Administration's proposed changes to FECA.***

As you know, there have several bills introduced in the last five years proposing changes to this law. These bills also have included S. 1789, S. 1486, S. 353, H.R. 2309, H.R. 2465, and H.R. 2748. One of them (H.R. 2465) – which WILG supported – passed the House (it was not taken up by the Senate), and one of them (S. 1789) – which WILG supported parts of and opposed others – passed the Senate. None passed both Houses.

FECA, which as a workers' compensation law is part of our nation's social safety net, should not be tampered with if we are to avoid unintended consequences. The Administration's proposals, which are part of cost savings included in its overall budget,

[1] WILG is the nation's only professional association of attorneys dedicated to representing injured workers under all U. S. workers' compensation systems, state and federal, with about 1,000 members and members in all 50 states.

are not well thought-out, are objectionable, and would result in significant hardships for those federal employees who have the misfortune to be injured at work. It would result in cost-shifting to other programs like Social Security Disability, federal retirement programs such as FERS, and welfare, since disabled former employees who cannot work at normal jobs and can't survive on reduced benefits will understandably search for other sources of funds. The proposals would have a particularly devastating effect on federal law enforcement officers, whose benefits would be drastically reduced if the way in which schedule awards are computed is changed

Problems with the Administration's proposed cuts in FECA benefits through various statutory changes can be quickly summarized as follows:

Schedule Awards – This proposal would set an "annual salary" of $53,639 (the wages of a GS-11 step 3), described as some kind of average or median wage for all federal employees, as the basis of these permanent disability awards, and would also change the compensation rate for the awards from either 66-2/3% (employees without a dependent) or 75% (employees with a dependent) to 70% for all employees. The employee's actual wage has always been the basis of such awards, but this would now be changed. The proposal would mean that higher-paid law enforcement personnel (ICE, Secret Service, firefighters, FBI etc.) would suffer disproportionately.

> EXAMPLE: Our office's client Kevin Kozak has a case (OWCP File No. 132267126) that illustrates what the result of this proposal would be for schedule awards. Kevin was the ICE employee who was shot seven times at close range by a subordinate ICE employee when Kevin was giving that employee a performance appraisal in Long Beach on 02/16/12. Another ICE employee shot and killed the subordinate, and the case made the national news. In the incident Kevin was shot multiple times in the abdomen, and also in the right wrist, left hand, left knee and right groin. He underwent multiple surgeries to remove bullet fragments and repair his shattered bones, and spent several months in the hospital recovering. He has returned to work at ICE.
> On 05/15/15 OWCP issued him a schedule award for permanent partial loss of use of his left hand. The award was for 16%, which at his regular pay rate ($155,500) would have been $87,558; however, FECA already has caps on the maximum wage ($132,122 - GS-15 step 10) on which to base benefits including these awards. His compensation rate is 75%, so his benefit was reduced, based on this cap, to $74,395.
> Under this proposal, his benefit would be calculated on a wage of $53,639 instead of $132,122, and be paid at a rate of 70% instead of 75%, further reducing his benefit to only $28,189 – 62% less than his already-capped benefit. Kevin has also claimed another schedule award for his left leg, which would be reduced in a similar fashion. Question: Is this really how we want to treat heroic employees like Kevin?
>
> COMMENT: The current proposal to change FECA would result in higher awards for a few but lower awards for many more others, since about 70% of

FECA benefit recipients receive them at the 75% rate.[2] The proposal, coupled with the use of AMA Guides 6th Edition that was adopted by OWCP in 2009 for FECA claims (which has greatly reduced awards), creates a "double-whammy" against permanently disabled workers. Nothing justifies such a drastic reduction.

Conversion of entitlement at retirement age – The current proposal would reduce the compensation rate to 50% of wages (for employees on total disability) and to 50% of wage-earning capacity loss (for employees receiving partial disability) once any of those employees has reached retirement age. Certain employees would be "grandfathered", and thus exempt from this change.

EXAMPLE: Our office's client Bobby Kea has a case (OWCP File No. 132124141) that illustrates what the result of this proposal would be for older, disabled workers. Bobby was doing equipment maintenance work for the Department of the Army in Desert Storm and in Bosnia for several years, and ended up with severe PTSD, major depression, and panic disorder. He is 56 years old, is married and has a dependent. His total disability benefit every 28 days is $5,080.97 at the 75% rate.
Under this proposal, his benefit would be reduced to 50% at his Social Security retirement age of 67, and thereafter he would be paid only $3,387.31 per 28-day cycle – a 33% reduction (which would be a similar percentage reduction at age 67 despite interim dollar increases due to inflation). Question: Is this really how we want to treat older, totally disabled employees like Bobby who served their country as civilians in war zones?

COMMENT: This proposal would drastically reduce by up to 1/3 (from 75% or 66-2/3% of wage loss to 50% of wage loss) the compensation for older, disabled employees once they reach Social Security retirement age. Given that many people (including members of the House and Senate and their staffs, all of whom are covered by FECA) are working past the traditional retirement age, this is unfair and raises issues of age discrimination. Of more benefit for all stakeholders would be stepped-up enforcement of safety regulations, to prevent workplace accidents and drive down workers' compensation costs.

Augmented Compensation for Dependents – The Administration's proposal would eliminate the 8-1/3% increase in compensation for injured employees with dependents, except for some employees protected by "grandfathering".

COMMENT: While the desire for uniformity is understood, there is no reason to simply pick the lesser amount and make that the standard amount of compensation on a "one size fits all" basis, especially given the economic hardship this would cause. Employees with dependents typically have higher monthly living expenses to deal with, and the

[2] Statement of Gary Steinberg, Acting Director of OWCP, on 07/26/11 presented to the Senate Subcommittee on Oversight of Government Management, etc., page 3.

augmented compensation under current law more fairly replaces their wage loss after an injury.

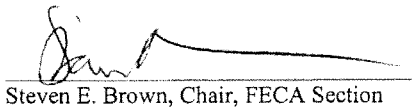
Disability Management Review – This provision would establish mandatory Second Opinion medical examinations six months after compensation begins. It would require subsequent Second Opinion examinations every 3 years.

COMMENT – It would be unwise to require strict adherence to a pre-set timeframe, when each case is different and OWCP already reviews medical reports from treating physicians and can send the injured worker for a Second Opinion exam whenever it chooses. So a new mandatory provision is unnecessary. Embedding into the law mandatory additional examinations would result in greatly increased costs, and unnecessarily increase the incidence of conflicts in medical opinion - which then must be resolved at OWCP expense. No other area of law discounts the opinions of treating physicians the way OWCP does in FECA claims, and this would make that problem worse. At a minimum, the poor quality and bias of Second Opinion examiners should be addressed before any increase in mandatory examinations is implemented.

In general – Don't believe those who would try to convince you there is a substantial problem of fraud in the FECA system, because there is absolutely no proof of that claim. OWCP itself has long estimated the fraud level in FECA is less than 1%. In 40 years of law practice in which I have represented thousands of these workers, I can count on the fingers of one hand the number of federal employees who sought representation by our office and who I felt were trying to "game the system". Moreover, the GAO reports issued on FECA since these reform proposals were first aired do not support the claimed rationale for these changes in the law.

We therefore urge you to reject these proposals. Thank you for your interest in this important area of law.

Very truly yours,



Steven E. Brown, Chair, FECA Section
Workers Injury Law & Advocacy Group

[Additional submissions by Chairman Walberg follows:]

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August 20, 2015

Mr. Leonard Howie III
Director
Office of Workers' Compensation Programs
United States Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

Dear Director Howie:

Thank you for testifying at the May 20, 2015, Subcommittee on Workforce Protections hearing entitled "Reforming the Workers' Compensation Program for Federal Employees." I appreciate your participation.

Enclosed are additional questions submitted by a subcommittee member following the hearing. Please provide written responses no later than September 15, 2015, for inclusion in the official hearing record. The response should be sent to Christie Herman of the Committee staff, and she 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 for the Record
"Reforming the Workers' Compensation Program for Federal Employees"
Subcommittee on Workforce Protections
May 20, 2015

Questions from Representative Frederica Wilson (FL-24):

1. Your written testimony states that unless benefits are cut, workers will have a "direct disincentive" to return to work. Last Congress, the Department of Labor testified that "injured workers may have an incentive to consciously or unconsciously resist rehabilitation," and, instead, "may cling to the self-perception of being 'permanently disabled.'"

    a. Your testimony also states that less than 2% of 119,000 new injury cases remained on the long term disability rolls for more than 2 years. That means over 98% returned to work or otherwise left the rolls in less than 2 years. Would you agree that the vast majority of benefit recipients overcome disabilities and return to work?

    b. Are injured workers required to submit medical evidence to substantiate continued eligibility for continuing disability benefits? Is it not also the case that DOL can require second opinion medical exams?

2. To help justify the DOL's proposal for eliminating the augmentation of benefits for injured workers with dependents, you testified that "There is no other program in OWCP where we actually pay additional money for the number of dependents that an employee has."

    a. Is this statement accurate? Would you care to clarify this in light of the fact that the Black Lung Benefits Act is an OWCP program where additional benefits are paid to miners depending on the number of dependents?

3. Did DOL rely on any studies to show that injured federal workers have an incentive to remain on disability benefits instead of returning to work because of the current benefit structure? What method did these studies use?

4. Why has the DOL not modified its proposals since 2011, despite subsequent GAO reports casting serious doubt on DOL's assertion that injured workers receive more on FECA at retirement age than working a full career and collecting a retirement under the FERS system?

5. GAO used the "gold standard" methodology for determining benefit adequacy that was outlined by the National Academy of Social Insurance its book "Adequacy of Earnings Replacement in Workers' Compensation Programs." Has the DOL found a better basis for estimating benefit adequacy?

6. One challenge injured workers face is getting their federal agency or the U.S. Postal Service to allow them to return to work under modified or limited duty. Are you proposing penalties in your legislation for federal agencies that refuse to allow partially disabled workers to return to work at modified or limited duty?

7. How much did OWCP spend in the last 5 years on vocational rehabilitation? Please provide the data for each year. In addition, please provide the following:

    a. How many and what percentage of partially disabled employees who go through DOL's vocational rehab process actually get jobs in private industry or the federal government? Please provide data for the past 5 years on numbers of people who went through vocational rehab, and the number who were re-employed as a result.

    b. What percentage of partially disabled workers who receive vocational rehab remain on FECA, but see benefits cuts due to a lost wage earning capacity determination (using constructed wages) e.g., that is based upon hypothetical jobs they never get?

    c. Please provide data on the number of injured workers who have been re-employed under the DOL's assisted re-employment program over the past 5 years. How much has the DOL expended in subsidies for such individuals over the past 5 years?

8. In FY 2014, what percentage of all partially disabled workers receive FECA benefits based upon constructed wage loss determinations? For FY 2014, what percentage of all partially disabled workers who were employed by the U.S. Postal Service at the time of injury receive FECA benefits based upon constructed wage loss determinations?

9. What systems are in place to make sure that physicians performing second opinion examinations for OWCP are actually doing comprehensive physical evaluations of claimants?

10. Does OWCP consider whether physicians doing examinations for the government are neutral? Or does it just check to make sure they are certified?

11. How does OWCP make sure that the pool from which referee medical examiners are selected contains as many local physicians as possible?

LEONARD J. HOWIE, III
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

Responses to Questions for the Record

1. Your written testimony states that unless benefits are cut, workers will have a "direct disincentive" to return to work. Last Congress, the Department of Labor testified that "injured workers may have an incentive to consciously or unconsciously resist rehabilitation," and, instead, "may cling to the self-perception of being 'permanently disabled.'"

> **a. Your testimony also states that less than 2% of 119,000 new injury cases remained on the long term disability rolls for more than 2 years. That means over 98% returned to work or otherwise left the rolls in less than 2 years. Would you agree that the vast majority of benefit recipients overcome disabilities and return to work?**

ANSWER: The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) emphatically agrees that the vast majority of injured federal employees return to work within two years, and we are proud of our role in that process. While it is true that only 2% of new injury cases remain on the long-term disability rolls for more than two years, the universe of 119,000 new injury claims include minor injuries with no lost time and claims that are not pursued for a variety of reasons including retirement and personal choice. The Protecting Our Workers and Ensuring Reemployment (POWER) initiative, established by President Obama on July 19, 2010, set aggressive performance targets for agencies, including the goals of reducing lost-time injuries, lost-production days, total injury and illness case rates, and lost-time injury and illness case rates. POWER measured the return-to-work rate of a subset of all claims, namely serious injuries or illnesses with resulting time loss and resulting disability management services. Over the four years of POWER, federal agencies (other than the U.S. Postal Service (USPS), which was not included in POWER), averaged a 91% return-to-work rate within two years for employees who experienced significant disability. While USPS averaged 82% over that four year period (which followed an overall significant reduction of Postal employment that included the USPS National Reassessment Program), 2014 saw an increase of Postal reemployment to 86.6%. The proposal that we have crafted for consideration would provide OWCP with enhanced opportunities to facilitate and expand rehabilitation and increase timely return to work, while simultaneously addressing disincentives that may adversely impact timely return to work.

b. Are injured workers required to submit medical evaluation to substantiate continued eligibility for continuing disability benefits? Is it not also the case that DOL can require second opinion medical exams?

ANSWER: Yes, injured workers are required to submit medical evidence to substantiate continued eligibility for Federal Employees' Compensation Act (FECA) benefits. 5 U.S.C. § 8121; 20 C.F.R. § 10.501. OWCP has the authority to require second opinion medical exams. 5 U.S.C. § 8123(a).

2. To help justify the DOL's proposal for eliminating the augmentation of benefits for injured workers with dependents, you testified that "There is no other program in OWCP where we actually pay additional money for the number of dependents that an employee has."

a. Is this statement accurate? Would you care to clarify this in light of the fact that the Black Lung Benefits Act is an OWCP program where additional benefits are paid to miners depending on the number of dependents?

ANSWER: OWCP agrees that the amount of compensation awarded under the Black Lung Benefits Act may be increased based on the number of dependents a miner has. An entitled miner's benefit is increased by 50% in the case of one dependent, 75% for two dependents and 100% in the case of three or more dependents. 30 U.S.C. § 922(a)(4). The Black Lung Benefits Act, however, differs from FECA in at least two important respects. Unlike FECA, black lung benefits have no relation to the worker's actual wages; instead, compensation is based on a percentage of the monthly salary of a Federal employee at the GS-2, step 1 level. In addition, the Supreme Court has noted that the Black Lung Benefits Act's purpose is to provide compensation not only for the miner's lost earnings but also for the loss of his or her health. Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976).

Like FECA, the Longshore and Harbor Workers' Compensation Act is a classic workers' compensation system. The current FECA statute pays an injured worker for disability at the basic rate of 66 2/3% or pays an augmented rate of 75% if the injured worker has at least one dependent. The Longshore Act does not provide additional benefits to an injured worker based on the number of his/her dependents. Nor does the Energy Employees Occupational Illness Compensation Program Act increase benefits based on the number of dependents including Part E where the benefits are based in part on wage-loss.

3. Did DOL rely on any studies to show that injured federal workers have an incentive to remain on disability benefits instead of returning to work because of the current benefit structure? What method did these studies use?

ANSWER: These proposals are based on internal reviews of our cases and administrative processes, Government Accountability Office reports, as well as discussions with the Office of Personnel Management (OPM) and other federal agency partners and other stakeholder organizations over the past 30 years. As currently structured, FECA creates disincentives to return to work since a majority of FECA beneficiaries receive an augmented benefit of 75%, reflecting at least one dependent, which can result in benefits greater than the injured worker's usual take home pay; take home pay is obviously subject to tax withholding (which can vary according to pay and geographic location) and various other deductions including Social Security and Medicare.

4. Why has the DOL not modified its proposals since 2011, despite subsequent GAO reports casting serious doubt on DOL's assertion that injured workers receive more on FECA at retirement age than working a full career and collecting a retirement under the FERS system?

ANSWER: We respectfully disagree that GAO reports have cast such doubt. Specifically, like nearly all workers' compensation programs, FECA was not designed to account for career growth. The recent GAO report did account for career growth. If career growth is not included, then an injured worker does receive more on FECA than by working a full career and collecting a retirement under the FERS system. As GAO recently found, "...under the existing FECA program, the median FECA benefit package for total-disability retirement-age beneficiaries was 37 and 32 percent greater than the median 2010 retirement benefit package for USPS and non-USPS beneficiaries, respectively." Government Accountability Office, "Federal Employees' Compensation Act: Analysis of Benefits Associated with Proposed Program Changes," page 1 (May 2015). http://www.gao.gov/assets/680/670291.pdf Under current law, 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 more generous. The proposed FECA conversion benefit, which DOL developed in concert with OPM, is designed to provide a retirement-like benefit to those employees that, due to their work-related injury, were not able to fully participate in the FERS program. Under our proposal, those employees for whom the FERS benefit would be more generous or advantageous may of course choose that benefit over the FECA conversion benefit.

5. GAO used the "gold standard" methodology for determining benefit adequacy that was outlined by the National Academy of Social Insurance in its book "Adequacy of Earnings Replacement in Workers' Compensation Programs." Has the DOL found a better basis for estimating benefit adequacy?

ANSWER: As GAO recently stated, "there is no consensus on the appropriate wage replacement rate for workers' compensation programs, such as FECA." Government Accountability Office, "Federal Employees' Compensation Act: Analysis of Benefits Associated with Proposed Program Changes," fn. 9 (May 2015). http://www.gao.gov/assets/680/670291.pdf DOL has based its proposals on prior GAO reports and its experience in administering the FECA since 1950. Our proposals were developed in consultation with our partner federal agencies.

6. One challenge injured workers face is getting their federal agency or the U.S. Postal Service to allow them to return to work under modified or limited duty. Are you proposing penalties in your legislation for federal agencies that refuse to allow partially disabled workers to return to work at modified or limited duty?

ANSWER: This question appears to involve restoration rights of partially recovered federal employees; restoration rights are administered by OPM and are not within the jurisdiction of OWCP. See 5 U.S.C. § 8151. OWCP further notes that agencies have legal obligations as employers (such as under Section 501 of the Rehabilitation Act) to provide reasonable accommodation in employment to individuals who have a disability. These employer obligations involve proceedings that OWCP is not a party to, as well as legal remedies outside of the FECA process.

DOL's proposal does include removing the "permanent disability" restriction from the vocational rehabilitation program, which should allow more employees with partial disabilities to return to some form of work sooner; additionally, OWCP believes that expanding Assisted Reemployment to federal agencies will assist in returning more injured workers to federal employment.

7. How much did OWCP spend in the last 5 years on vocational rehabilitation? Please provide the data for each year.

ANSWER: In chargeback years 2011 – 2015, OWCP spent $58,769,948.98 on vocational rehabilitation return to work efforts. The amounts spent in each year are:

CY2011: $13,311,341.56
CY2012: $13,428,932.75
CY2013: $12,702,822.99
CY2014: $9,769,447.67
CY2015: $9,557,404.01

In addition, please provide the following:

> **a. How many and what percentage of partially disabled employees who go through DOL's vocational rehab process actually get jobs in private industry or the federal government? Please provide data for the past 5 years on numbers of people who went through vocational rehab, and the number who were re-employed as a result.**

ANSWER: FECA provided vocational rehabilitation services to 13,111 injured workers during fiscal years 2010 – 2014. There were 3,348 reemployments in that population. We do not have the total number of injured workers who sustain a partial disability since some injured workers have a temporary partial disability that resolves (allowing them to return to their date-of-injury job eventually) while others have a permanent partial disability. Some partially disabled employees return to work with their date-of-injury employer without the need for vocational rehabilitation services including some instances where this return to work occurs before OWCP receives the claim.

> **b. What percentage of partially disabled workers who receive vocational rehab remain on FECA, but see benefits cuts due to a lost wage earning capacity determination (using constructed wages) e.g., that is based upon hypothetical jobs they never get?**

ANSWER: Following the same universe of claims receiving vocational rehabilitation in the past five years set out in the previous answer, of those 13,111 individuals, there were 1,690 constructed loss of wage-earning capacity decisions. Where claimants are partially disabled and where actual earnings do not reasonably represent the claimant's wage-earning capacity or if the employee has no actual earnings, the FECA statute requires this wage-earning capacity determination. 5 U.S.C. § 8115. Furthermore, these constructed wage-earning capacity determinations are only made if the claimant is medically and vocationally qualified to perform the selected job and the jobs must be found to be reasonably available in the commuting area.

> **c. Please provide data on the number of injured workers who have been re-employed under the DOL's assisted re-employment program over the past 5 years. How much has the DOL expended in subsidies for such individuals over the past 5 years?**

ANSWER: Assisted Reemployment (AR) subsidies can be paid to private sector employers for up to three years. For calendar years 2009 – 2014, AR subsidies were initiated in 110 claims. (During any given year, subsidies are paid for agreements initiated in prior years.) For chargeback years 2011 – 2015, OWCP paid $1,104,353.83, in AR subsidies. OWCP believes that expanding this program to include Federal agencies will significantly increase its appeal and effectiveness, and help bring back to work those employees that may be less likely to do so without additional supports. To aid in expanding the use of our current AR program, OWCP developed Labor for America (LFA), a free web-based candidate portal that provides interested employers

access to the resumes of injured federal employees receiving vocational rehabilitation services. The injured employee has to consent to posting their resume (free of personally identifiable information) on the website and potential employers can use an online calculator to estimate the assisted reemployment subsidy they would receive upon hiring that individual. LFA was successfully piloted in our San Francisco district office and we are in the process of implementing it nationwide.

8. In FY 2014, what percentage of all partially disabled workers receive FECA benefits based upon constructed wage loss determinations? For FY 2014, what percentage of all partially disabled workers who were employed by the U.S. Postal Service at the time of injury receive FECA benefits based upon constructed wage loss determinations?

ANSWER: As noted above, some injured workers sustain temporary partial disability and recover before the claim is adjudicated by OWCP. As a result, we do not have complete numbers on partially disabled workers in any given year. However, in looking at the same 13,111 injured workers who received vocational rehabilitation during fiscal years 2010 – 2014, OWCP issued constructed loss of wage-earning capacity decisions in 1,690 claims. Roughly half of those decisions (818) were issued in claims where the employee worked for USPS at the time of injury. While constructed wage-earning capacity determinations are required by the statute (5 U.S.C. § 8115), under FECA program procedures, constructed wage-earning capacity determinations cannot be made unless vocational rehabilitation (including placement services) is provided.

9. What systems are in place to make sure that physicians performing second opinion examinations for OWCP are actually doing comprehensive physical evaluations of claimants?

ANSWER: OWCP notes that second opinion examinations performed pursuant to 5 U.S.C. § 8123 are done for different reasons, including: assessing a need for surgery or additional therapy; determining the percentage of permanent impairment for purposes of granting a schedule award; assessing whether additional physical or emotional conditions are a consequence of the employment injury; and evaluating the nature and extent of an injury-related condition or associated disability. Not every second opinion examination is designed to be a comprehensive physical evaluation. However, if the second opinion physician fails to conduct a comprehensive physical evaluation when requested or fails to deliver a rationalized comprehensive report addressing the medical questions OWCP has raised, OWCP can and does seek clarification of that report, which sometimes includes sending the employee to a different physician.

10. Does OWCP consider whether physicians doing examinations for the government are neutral? Or does it just check to make sure they are certified?

ANSWER: OWCP utilizes physician services in a variety of ways: office medical advisors to perform case file reviews for OWCP; second opinion physicians to perform medical examinations as set forth above; and impartial/referee physicians to resolve

conflicts in medical evidence between attending physicians and office medical advisors/ second opinion physicians. For second opinion examinations, OWCP has a number of contracts with companies that provide physicians to conduct these evaluations. The physicians performing OWCP-directed second opinion medical examinations must be Board-certified, appropriately licensed and engaged in the active practice of medicine. OWCP notes that there is a distinction in the FECA program between a second opinion physician and an impartial referee physician. Impartial referee physicians (who are resolving a conflict in medical evidence between the attending physician and the physician for the government pursuant to 5 U.S.C. § 8123 (d)) are chosen by a strict rotational system.

11. How does OWCP make sure that the pool from which referee medical examiners are selected contains as many local physicians as possible?

ANSWER: The American Board of Medical Specialists (ABMS) lists all board-certified physicians in a directory on its public website. See abms.org and certificationmatters.org. The ABMS licenses its directory to Elsevier, Inc., which provides additional information and then, in turn, licenses its database to OWCP. OWCP then uses its own software to select an impartial referee physician from the database on a rotational basis. That selection is based on the employee's zip code, with a maximum limit of 200 miles.

However, sometimes a referee physician will not be local to the claimant. This can occur for any of a number of reasons: the particular specialty needed; a number of local doctors have already been associated with the case and thus may not be a referee physician; or the employee lives in a sparsely populated area. Unfortunately, under those circumstances, the employee will have to travel to the referee appointment; however, OWCP will pay for that travel and associated expenses.

[Whereupon, at 11:42 a.m., the subcommittee was adjourned.]

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