

FEDERAL FIREFIGHTERS FAIRNESS ACT OF 2022

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MAY 6, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2499]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2499) to amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employees duty, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Federal Firefighters Fairness Act of 2022”.

**SEC. 2. CERTAIN DISEASES PRESUMED TO BE WORK-RELATED CAUSE OF DISABILITY OR DEATH FOR FEDERAL EMPLOYEES IN FIRE PROTECTION ACTIVITIES.**

(a) PRESUMPTION RELATING TO EMPLOYEES IN FIRE PROTECTION ACTIVITIES.—Subchapter I of chapter 81 of title 5, United States Code, is amended by inserting after section 8143a the following (and by conforming the table of contents of such chapter accordingly):

**“§ 8143b. Employees in fire protection activities.**

“(a) CERTAIN DISEASES DEEMED TO BE PROXIMATELY CAUSED BY EMPLOYMENT IN FIRE PROTECTION ACTIVITIES.—

“(1) IN GENERAL.—For a claim under this subchapter of disability or death of an employee who has been employed for a minimum of 5 years in aggregate as an employee in fire protection activities, a disease specified on the list established under paragraph (2) shall be deemed to be proximately caused by the employment of such employee.

“(2) ESTABLISHMENT OF INITIAL LIST.—There is established under this section the following list of diseases:

“(A) Bladder cancer.

“(B) Brain cancer.

“(C) Chronic obstructive pulmonary disease.

“(D) Colorectal cancer.

“(E) Esophageal cancer.

“(F) Kidney cancer.

“(G) Leukemias.

“(H) Lung cancer.

“(I) Mesothelioma.

“(J) Multiple myeloma.

“(K) Non-Hodgkin lymphoma.

“(L) Prostate cancer.

“(M) Skin cancer (melanoma).

“(N) A sudden cardiac event or stroke while, or not later than 24 hours after, engaging in the activities described in subsection (b)(1)(C).

“(O) Testicular cancer.

“(P) Thyroid cancer.

“(3) ADDITIONS TO THE LIST.—

“(A) IN GENERAL.—The Secretary shall periodically review the list established under this section in consultation with the Director of the National Institute on Occupational Safety and Health and shall add a disease to the list by rule, upon a showing by a petitioner or on the Secretary’s own determination, in accordance with this paragraph.

“(B) BASIS FOR DETERMINATION.—The Secretary shall add a disease to the list upon a showing by a petitioner or the Secretary’s own determination, based on the weight of the best available scientific evidence, that there is a significant risk to employees in fire protection activities of developing such disease.

“(C) AVAILABLE EXPERTISE.—In determining significant risk for purposes of subparagraph (B), the Secretary may accept as authoritative and may rely upon recommendations, risk assessments, and scientific studies (including analyses of National Firefighter Registry data pertaining to Federal firefighters) by the National Institute for Occupational Safety and Health, the National Toxicology Program, the National Academies of Sciences, Engineering, and Medicine, and the International Agency for Research on Cancer.

“(4) PETITIONS TO ADD TO THE LIST.—

“(A) IN GENERAL.—Any person may petition the Secretary to add a disease to the list under this section.

“(B) CONTENT OF PETITION.—Such petition shall provide information to show that there is sufficient evidence of a significant risk to employees in fire protection activities of developing such illness or disease from their employment.

“(C) TIMELY AND SUBSTANTIVE DECISIONS.—Not later than 18 months after receipt of a petition, the Secretary shall either grant or deny the petition by publishing in the Federal Register a written explanation of the reasons for the Secretary’s decision. The Secretary may not deny a petition solely on the basis of competing priorities, inadequate resources, or insufficient time for review.

“(b) DEFINITIONS.—In this section:

“(1) EMPLOYEE IN FIRE PROTECTION ACTIVITIES.—The term ‘employee in fire protection activities’ means an employee employed as a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous material worker, who—

“(A) is trained in fire suppression;

“(B) has the legal authority and responsibility to engage in fire suppression;

“(C) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk, including the prevention, control, suppression, or management of wildland fires; and

“(D) performs such activities as a primary responsibility of his or her job.

“(2) SECRETARY.—The term ‘Secretary’ means Secretary of Labor.”

(b) RESEARCH COOPERATION.—Not later than 120 days after the date of enactment of this Act, the Secretary of Labor shall establish a process by which a Federal employee in fire protection activities filing a claim related to a disease on the list established by section 8143b of title 5, United States Code, will be informed about and offered the opportunity to contribute to science by voluntarily enrolling in the National Firefighter Registry or a similar research or public health initiative conducted by the Centers for Disease Control and Prevention.

(c) REVIEW OF SCIENCE ON BREAST CANCER.—Not later than 3 years after the date of enactment of this Act, the Secretary shall—

(1) evaluate the best available scientific evidence of the risk to an employee in fire protection activities of developing breast cancer;

(2) add breast cancer to the list established under section 8143b of title 5, United States Code, by rule in accordance with subsection (a)(3) of such section, if the Secretary determines that such evidence supports such addition; and

(3) submit a report of the Secretary’s findings under paragraph (1) and the Secretary’s determination under paragraph (2) to the Committee on Education and Labor of the House and the Committee on Health, Education, Labor, and Pensions of the Senate.

(d) APPLICATION.—The amendments made by this section shall apply to claims for compensation filed on or after the date of enactment of this Act.

## PURPOSE AND SUMMARY

H.R. 2499, the *Federal Firefighters Fairness Act of 2021*, amends the eligibility for workers’ compensation benefits under the *Federal Employees’ Compensation Act* (FECA)<sup>1</sup> for federal firefighters by establishing a presumption of causation for 16 diseases associated with employment in firefighting. These changes to FECA are similar to the policies in 49 states recognizing the occupational health hazards of firefighting work.<sup>2</sup> Since no comparable law covers the approximately 15,000–28,000 firefighters employed by the federal government,<sup>3</sup> it is necessary for Congress to fill the gap to help those who put their lives on the line to protect property, life, and the environment.

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Every state except for Delaware has a policy facilitating access for firefighters to a benefit for one or more occupational illnesses by applying a presumption of work-relatedness. These policies vary in terms of conditions covered as well as type of benefit. For example, New Mexico offers presumptive workers’ compensation coverage for various conditions, including cancer, whereas North Carolina (the most recent state to establish such a policy) provides a one-time, lump-sum benefit only for cancers. See *Presumptive Health Initiative*, INT’L ASS’N FIRE FIGHTERS, <https://www.iaff.org/presumptive-health/> (last viewed Mar. 25, 2022).

<sup>3</sup> There are 9,396 federal firefighters in the Office of Personnel Management job classification GS–0081 (Fire Suppression and Prevention). Other covered employees may be scattered across other job classifications, such as GS–0462 (Forestry Technician) and GS–0640 (Health Aid and Technicians).

Despite a higher incidence of certain diseases due to occupational hazards, federal firefighters face substantial evidentiary burdens qualifying for federal workers' compensation benefits because of their inability to document specific dates of specific exposures to establish causation. This legislation addresses the inequity that arises when federal fighters, who are often working side-by-side with state and local fire fighters, receive reduced eligibility for workers' compensation for work related diseases compared to their peers.<sup>4</sup>

#### COMMITTEE CONSIDERATION

##### 107TH CONGRESS

On June 13, 2001, Rep. Ciro Rodriguez (D-TX-28) introduced H.R. 2163, the *Federal Firefighters Fairness Act of 2001*. The bill was referred to the House Committee on Education and the Workforce. The Committee on Education and the Workforce referred the bill to the Subcommittee on Workforce Protections. The bill had 52 Democratic cosponsors and 10 Republican cosponsors. No further action was taken on the bill.

On December 18, 2001, Sen. John Kerry (D-MA) introduced S. 1845, the *Federal Firefighters Fairness Act of 2001*, as a companion bill to H.R. 2163. The bill had no cosponsors. The bill was referred to the Senate Committee on Governmental Affairs. The Committee on Governmental Affairs referred the bill to the Subcommittee on International Security, Proliferation and Federal Services. No further action was taken on the bill.

##### 108TH CONGRESS

On March 5, 2003, Rep. Rodriguez introduced H.R. 1101, the *Federal Firefighters Fairness Act of 2003*. The bill was referred to the House Committee on Education and the Workforce. The Committee on Education and the Workforce referred the bill to the Subcommittee on Workforce Protections. The bill had 28 Democratic cosponsors and seven Republican cosponsors. No further action was taken on the bill.

On March 5, 2003, Sen. Kerry introduced S. 530, the *Federal Firefighters Fairness Act of 2003*, as a companion bill to H.R. 1101. The bill was referred to the Senate Committee on Governmental Affairs. The Committee on Governmental Affairs referred the bill to the Subcommittee on Financial Management, the Budget, and International Security. The bill had one Democratic cosponsor. No further action was taken on the bill.

##### 109TH CONGRESS

On February 9, 2005, Rep. Jo Ann Davis (R-VA-1) introduced H.R. 697, the *Federal Firefighters Fairness Act of 2005*. The bill was referred to the House Committee on Education and the Workforce. The Committee on Education and the Workforce referred the bill to the Subcommittee on Workforce Protections. The bill had 59

<sup>4</sup>Letter from Bill Webb, Exec. Dir., Congressional Fire Inst., to the Hon. Robert C. "Bobby" Scott & the Hon. Virginia Foxx (Mar. 30, 2022) ("This legislation will go a long way towards helping federal firefighters and their families, as well as ensuring that federal firefighters are eligible to receive the same benefits as their compatriots employed at the state and local levels.").

Democratic cosponsors, 15 Republican cosponsors, and one Independent cosponsor.

On May 26, 2005, the Subcommittee on Workforce Protections held a hearing entitled “*Legislative Hearing on H.R. 697, ‘Federal Firefighters Fairness Act of 2005’ and H.R. 2561, ‘Improving Access to Workers’ Compensation for Injured Federal Workers Act.’*” During this hearing, the Subcommittee heard testimony relevant to H.R. 697 from the Honorable Jo Ann Davis, Member of Congress, U.S. House of Representatives, Gloucester, VA; James B. Johnson, 16th District Vice President, International Association of Firefighters, Washington, D.C.; and Joel Shufro, Executive Director, New York Committee on Safety and Health, New York, NY. No further action was taken on the bill.

On June 9, 2005, Sen. Mark Dayton (D–MN) introduced S. 1221, the *Federal Firefighters Fairness Act of 2005*, as a companion bill to H.R. 697. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee on Homeland Security and Governmental Affairs referred the bill to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. The bill had four Democratic cosponsors and two Republican cosponsors. No further action was taken on the bill.

#### 110TH CONGRESS

On January 4, 2007, Rep. Davis (VA) introduced H.R. 103, the *Federal Firefighters Fairness Act of 2007*. The bill had no cosponsors. The bill was referred to the House Committee on Education and Labor. The Committee on Education and Labor referred the bill to the Subcommittee on Workforce Protections. No further action was taken on the bill.

On February 16, 2007, Rep. Lois Capps (D–CA–23) introduced H.R. 1142, the *Federal Firefighters Fairness Act of 2007*. The bill was referred to the House Committee on Education and Labor. The bill had 108 Democratic cosponsors and 32 Republican cosponsors. No further action was taken on the bill.

On August 1, 2007, Sen. Thomas Carper (D–DE) introduced S. 1924, the *Federal Firefighters Fairness Act of 2008*. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee on Homeland Security and Governmental Affairs referred the bill to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. The bill had 13 Democratic cosponsors, four Republican cosponsors, one Independent cosponsor, and one Independent Democratic cosponsor.

On June 25, 2008, the Committee on Homeland Security and Governmental Affairs held a markup of S. 1924. The Committee ordered S. 1924 to be reported favorably to the Senate with an Amendment in the Nature of a Substitute by voice vote.

On October 1, 2008, S. 1924, as amended, was placed on the Senate Legislative Calendar. No further action was taken on the bill.

#### 111TH CONGRESS

On February 10, 2009, Rep. Capps introduced H.R. 948, the *Federal Firefighters Fairness Act of 2009*. The bill was referred to the House Committee on Education and Labor. The Committee on Edu-

cation and Labor referred the bill to the Subcommittee on Workforce Protections. The bill had 120 Democratic cosponsors and 20 Republican cosponsors. No further action was taken on the bill.

On March 16, 2009, Sen. Carper introduced S. 599, the *Federal Firefighters Fairness Act of 2009*, as a companion bill to H.R. 948. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee on Homeland Security and Governmental Affairs referred the bill to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. The bill had 16 Democratic cosponsors, two Republican cosponsors, and one Independent cosponsor.

On May 20, 2009, the Senate Committee on Homeland Security and Governmental Affairs held a markup of S. 599. The Committee ordered S. 599 reported favorably to the Senate floor, with an amendment offered by Sen. Thomas Coburn (R-OK), by voice vote.

On September 14, 2009, S. 599, as amended, was placed on the Senate Legislative Calendar. No further action was taken on the bill.

#### 112TH CONGRESS

On April 4, 2011, Rep. Capps introduced H.R. 1066, the *Federal Firefighters Fairness Act of 2011*. The bill was referred to the House Committee on Education and the Workforce. The Committee on Education and the Workforce referred the bill to the Subcommittee on Workforce Protections. The bill had 62 Democratic cosponsors and four Republican cosponsors. No further action was taken on the bill.

#### 113TH CONGRESS

On December 12, 2013, Rep. Capps introduced H.R. 3718, the *Federal Firefighters Fairness Act of 2013*. The bill was referred to the House Committee on Education and the Workforce. The bill had three Republican cosponsors. No further action was taken on the bill.

On April 29, 2014, Sen. Carper introduced S. 2266, the *Federal Firefighters Fairness Act of 2014*, as a companion bill to H.R. 3718. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The bill had one Republican cosponsor. No further action was taken on the bill.

#### 114TH CONGRESS

On February 24, 2015, Rep. Capps introduced H.R. 1035, the *Federal Firefighters Fairness Act of 2015*. The bill was referred to the House Committee on Education and the Workforce. The Committee on Education and the Workforce referred the bill to the Subcommittee on Workforce Protections. The bill had one Democratic cosponsor and two Republican cosponsors. No further action was taken on the bill.

#### 115TH CONGRESS

On April 4, 2017, Rep. Salud Carbajal (D-CA-24) introduced H.R. 1884, the *Federal Firefighters Fairness Act of 2017*. The bill was referred to the House Committee on Education and the Work-

force. The bill had 16 Democratic cosponsors and 16 Republican cosponsors. No further action was taken on the bill.

#### 116TH CONGRESS

On February 13, 2019, Rep. Carbajal introduced H.R. 1174, the *Federal Firefighters Fairness Act of 2019*. The bill was referred to the House Committee on Education and Labor. The bill had 58 Democratic cosponsors and 11 Republican cosponsors. No further action was taken on the bill.

On June 24, 2019, Sen. Carper introduced S. 1942, the *Federal Firefighters Fairness Act of 2019*, as a companion bill to H.R. 1174. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The bill had ten Democratic cosponsors, one Republican cosponsor, and one Independent cosponsor. No further action was taken on the bill.

#### 117TH CONGRESS

On April 14, 2021, Rep. Carbajal introduced H.R. 2499, the *Federal Firefighters Fairness Act of 2021*. The bill was referred to the Committee on Education and Labor. The bill has 144 Democratic cosponsors and 22 Republican cosponsors.<sup>5</sup>

On April 14, 2021, Sen. Carper introduced S. 1116, the *Federal Firefighters Fairness Act of 2021*, as a companion bill to H.R. 2499. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The bill has seven Democratic cosponsors, one Republican cosponsor, and one Independent cosponsor.

On December 2, 2021, the Committee on Education and Labor's Subcommittee on Workforce Protections held a hearing entitled "*Strengthening the Safety Net for Injured Workers*" (December 2 Hearing). During this hearing, the Subcommittee heard testimony relevant to H.R. 2499 from the Honorable Salud Carbajal, Member of Congress, U.S. House of Representatives, Santa Barbara, CA; and Christopher J. Godfrey, Director, Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, Washington, D.C.

On March 16, 2022, the Committee on Education and Labor held a markup of H.R. 2499. The Committee adopted an Amendment in the Nature of a Substitute (ANS) offered by Rep. Mark Takano (D-CA-41). The ANS incorporated the provisions of H.R. 2499 with the following changes:

- Changed the year in the short title from 2021 to 2022.
- Clarified the bill's applicability to federal wildland firefighters by adding "including the prevention, control, suppression, or management of wildland fires" to the definition of "employee in fire protection activities."
- Removed language that presumptions can be rebutted by a preponderance of the evidence from the employing agency.
- Eliminated the stipulation that the presumption of work-related illness only applies if the employee is diagnosed within 10 years of the employee's last date of active employment in fire protection activities.

<sup>5</sup>The Republican cosponsors include Rep. Don Young (R-AK-At Large), who died March 28, 2022, and Rep. Jeff Fortenberry (R-NE-1), who resigned on March 31, 2022.

- Removed the presumption for any communicable disease declared a pandemic.
  - Added chronic obstructive pulmonary disease, mesothelioma, prostate cancer, thyroid cancer, and stroke or sudden cardiac events within 24 hours of service to the initial presumptive list, and removed heart disease, lung disease, and breast cancer from that list.
  - Modified “cancer of the blood or lymphatic systems,” “cancer of the digestive system,” and “cancer of the respiratory system” to include specific diagnoses within each category.
  - Required the U.S. Secretary of Labor (Secretary), in consultation with the Director of the National Institute for Occupational Safety and Health (NIOSH), to periodically review and add diseases based on the weight of the best available scientific evidence.
  - Established a process by which any person may petition the Secretary to add diseases to the initial list and required the Secretary to provide a substantive response within 18 months of receiving a petition.
  - Required the Secretary, not later than 3 years after the date of enactment, to (1) review the science on firefighters’ risk of developing breast cancer, (2) determine whether breast cancer should be added to the presumptive list, and (3) report to Congress on the Secretary’s decision.
  - Directed the Secretary to inform any federal firefighter applying for workers’ compensation about the opportunity to enroll in the NIOSH National Firefighter Registry.
- One amendment to the ANS was offered:
- Rep. Fred Keller (R-PA-12) offered an amendment to strike the text of the bill and replace it with text to direct the Comptroller General to prepare a report on health care benefits and treatment for federal firefighters with certain health conditions. The amendment was defeated by a vote of 20 Yeas and 29 Nays.
- H.R. 2499 was reported favorably, as amended, to the House of Representatives by a vote of 31 Yeas and 18 Nays.

## COMMITTEE VIEWS

### INTRODUCTION

The Committee on Education and Labor (Committee) is committed to protecting the health and safety of our nation’s workers. The Committee supports federal employees’ health and safety by continuing to strengthen FECA. FECA provides wage-loss compensation, medical treatment, return-to-work assistance, and vocational rehabilitation to assist civilian federal employees (or their survivors) from work-related injuries, illnesses, or death. FECA provides benefits for federal employees injured, sickened, or killed as a result of their work, regardless of fault.

H.R. 2499, the *Federal Firefighters Fairness Act of 2022*, supports federal firefighters in their application for FECA benefits by deeming certain specified diseases as proximately caused by employment. H.R. 2499 has been endorsed by the American Federation of Government Employees (AFGE); Antilles Consolidated Education Association (ACEA); Asbestos Disease Awareness Organization

(ADAO); Congressional Fire Services Institute (CFSI); Department for Professional Employees, AFL–CIO (DPE); Federal Education Association/National Education Association (FEA/NEA); International Association of Fire Chiefs (IAFC); International Association of Fire Fighters (IAFF); International Association of Machinists and Aerospace Workers (IAMAW); International Federation of Professional and Technical Engineers (IFPTE); Metal Trades Department, AFL–CIO (MTD); National Active and Retired Federal Employees Association (NARFE); National Association of Government Employees, SEIU (NAGE); National Federation of Federal Employees (NFFE); National Postal Mail Handlers Union (NPMHU); National Weather Service Employees Organization (NWSEO); Patent Office Professional Association (POPA); Professional Aviation Safety Specialists, AFL–CIO (PASS); Seafarers International Union/NMU (SIU); and United Power Trades Organization (UPTO).

#### FIREFIGHTERS ARE AT GREATER RISK FOR CERTAIN ILLNESSES FROM OCCUPATIONAL HAZARDS

Firefighting is strenuous and dangerous work. In addition to the immediate safety risks posed by an active fire, firefighters also face the danger of longer-term health conditions associated with their work. As discussed below, research shows that firefighters are more likely than other workers to develop certain cancers and lung diseases and suffer cardiac events because of their daily exposure to stress, smoke, heat, carbon monoxide, and toxic substances.

Firefighters are routinely exposed to health hazards including diesel emissions and toxic substances from burning buildings.<sup>6</sup> The primary route of toxic exposure during fires is through inhalation, but exposure can also occur through dermal absorption.<sup>7</sup>

Firefighters are exposed to toxic compounds not just on active fire scenes but also in fire stations. In a study of dust samples in 26 fire stations across five states, researchers documented toxic flame retardant levels higher than those previously reported in homes and other occupational settings around the world.<sup>8</sup> Additionally, firefighters are exposed to high levels of diesel exhaust before and after responses in the station.<sup>9</sup>

Although necessary, personal protective equipment does not fully protect firefighters from these hazards. First, firefighters may not always be wearing personal protective equipment (PPE) during all phases of a fire response. Firefighters may remove their equipment due to exhaustion or difficulty breathing.<sup>10</sup> After the fire is suppressed, firefighters are less likely to wear PPE on the scene, even though dangerous chemicals such as benzene and formaldehyde are

<sup>6</sup>C.C. Austin *et al.*, *Characterization of Volatile Organic Compounds in Smoke at Municipal Structural Fires*, 63 J. TOXICOL. & ENVTL. HEALTH 437 (2001); W.T. Lowry *et al.*, *Studies of Toxic Gas Production During Actual Structural Fires in the Dallas Area*, 30 J. FORENSIC SCI. 59 (1985).

<sup>7</sup>Jennifer L.A. Keir *et al.*, *Elevated Exposures to Polycyclic Aromatic Hydrocarbons and Other Organic Mutagens in Ottawa Firefighters Participating in Emergency, On-Shift Fire Suppression*, 31 ENVTL. SCI. & TECH. 12,745 (2017).

<sup>8</sup>Beverly Shen *et al.*, *Organophosphate Flame Retardants in Dust Collected from United States Fire Stations*, 112 ENVTL. INT'L 41 (2017), doi:10.1016/j.envint.2017.12.009.

<sup>9</sup>Anjoeka Pronk *et al.*, *Occupational Exposure to Diesel Engine Exhaust: A Literature Review*, 19 J. EXPO. SCI. & ENVTL. EPIDEMIOL. 443 (2009), doi:10.1038/jes.2009.21

<sup>10</sup>Michael A. Maglio *et al.*, *Situational Pressures That Influence Firefighters' Decision Making About Personal Protective Equipment: A Qualitative Analysis*, 40 AM. J. HEALTH BEHAV. 555 (2016).

still present in the air.<sup>11</sup> Second, their self-contained breathing apparatus may run out of air inside a burning environment, resulting in significant smoke inhalation.<sup>12</sup> Finally, uniforms do not completely prevent dermal exposure.<sup>13</sup> Because of these gaps in personal protective equipment, toxic chemicals can enter firefighters' bodies via their breath and skin.

Smoke now contains more complex combustion products due to the increased number of synthetics in U.S. homes and businesses. American homes, cars, and businesses are increasingly constructed and furnished with synthetic material.<sup>14</sup> Studies have observed increased smoke density related to synthetics, such as styrene and vinyl-based materials.<sup>15</sup> In a Harvard study that measured air contaminant levels at more than 200 structural fires, the carcinogen benzene was detected in 181 of 197 of samples taken at fire scenes.<sup>16</sup> Because of the increased toxicity of structural fires, firefighters will continue to face health risks in the years ahead.

Many fire-related hazards are known to be cancer-causing chemicals, or carcinogens. The International Agency for Research on Cancer classifies chemicals according to their potential to cause cancer in humans: carcinogenic to humans, probably carcinogenic to humans, and possibly carcinogenic to humans. There are at least 11 chemicals frequently present in the firefighting environment that are classified by IARC as carcinogenic to humans,<sup>17</sup> such as arsenic, asbestos, benzene, and formaldehyde.<sup>18</sup> These chemicals are linked to cancers of the kidney, prostate, liver, and lung, as well as leukemia, non-Hodgkin lymphoma, and multiple myeloma.<sup>19</sup> Many other chemicals found in fire scenes are probably or possibly carcinogenic to humans.<sup>20</sup>

Due to frequent exposure to carcinogens, firefighters are more likely to develop cancer compared to the general population. A meta-analysis of 32 studies identified 10 cancers that firefighters have a statistically significant increased risk of developing: testicular (102% greater risk), multiple myeloma (53%), non-Hodgkin lymphoma (51%), skin and malignant melanoma (39% and 32%, respectively), brain (32%), rectum (29%), prostate (28%), stomach (22%), and colon (21%).<sup>21</sup> A different study using data from the Na-

<sup>11</sup> D.M. Bolstad-Johnson *et al.*, *Characterization of Firefighter Exposures During Fire Overhaul*, 61 AM. INDUS. HYGIENE ASS'N J. 636 (2000), <https://doi.org/10.1080/15298660008984572>.

<sup>12</sup> David C. Cone *et al.*, *Fireground Use of an Emergency Escape Respirator*, 14 PREHOSP. EMERG. CARE 433 (2010), doi:10.3109/10903127.2010.493989.

<sup>13</sup> KENNETH W. FENT *et al.*, NAT'L INST. OCC. SAFETY & HEALTH, 2010-0156-3196, EVALUATION OF DERMAL EXPOSURE TO POLYCYCLIC AROMATIC HYDROCARBONS IN FIRE FIGHTERS 39, 41 (2013).

<sup>14</sup> Stephen Kerber, *Analysis of Changing Residential Fire Dynamics and Its Implications on Firefighter Operational Timeframes*, 48 FIRE TECHNOL. 865 (2012).

<sup>15</sup> THOMAS FABIAN *et al.*, U. LAB'YS, FIREFIGHTER EXPOSURE TO SMOKE PARTICULATES (2010), <https://fsri.org/research/firefighter-exposure-smoke-particulates#tabs-findings>.

<sup>16</sup> Robert D. Treitman *et al.*, *Air Contaminants Encountered by Firefighters*, 41 AM. INDUS. HYGIENE ASS'N J. 796 (1980).

<sup>17</sup> *Known Carcinogens in the Firefighting Environment*, INT'L ASS'N FIRE FIGHTERS, <https://www.iaff.org/wp-content/uploads/2020-Carcinogens-and-Cancer-handout-002.pdf> (last viewed Mar. 25, 2022).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> INT'L AGENCY CANCER RES., *Painting, Firefighting, and Shiftwork*, 98 IARC MONOGRAPHS EVAL. CARCIN. RISKS TO HUMANS 397-559 (2010).

<sup>21</sup> Grace K. LeMasters *et al.*, *Cancer Risk Among Firefighters: A Review and Meta-Analysis of 32 Studies*, 48 J. OCCUP. & ENVTL. MED. 1189 (2006).

tional Cancer Institute found that non-lymphatic leukemia risks were also significantly elevated among firefighters.<sup>22</sup>

Firefighters are also more likely to die from certain cancers. A study of almost 30,000 career firefighters conducted by NIOSH found that firefighters have a 14% increased risk of dying from cancer compared to the general population.<sup>23</sup> This study identified seven cancers from which firefighters have a statistically significant increased risk of dying: mesothelioma (100% increased risk), rectum (45%), buccal/pharynx (40%), esophagus (39%), colon (31%), kidney (29%), and lung (10%).<sup>24</sup> Bladder and prostate cancer also posed statistically significant increased risk of death in firefighters under 65 years old.<sup>25</sup>

Smoke inhalation is particularly damaging to the respiratory system. In addition to lung cancer, firefighters are at greater risk of developing lung diseases, such as Chronic Obstructive Pulmonary Disease (COPD). In a cohort of almost 30,000 U.S. career firefighters, one study found a positive relationship between COPD mortality and fire-hours worked.<sup>26</sup> Another study of urban firefighters in Canada found an increase in COPD mortality compared to the general population.<sup>27</sup> Research suggests that increased COPD prevalence could be associated with exposure to diesel exhaust, a common hazard in fire stations.<sup>28</sup>

Smoke inhalation and strenuous activity put firefighters at greater risk of sudden cardiac events and death. Sudden cardiac death accounts for 45% of on-duty deaths among firefighters and is most likely to occur during or shortly after emergency duties.<sup>29</sup> Firefighting introduces four primary hazards which increase the risk of sudden cardiac events: chemical exposures, physical exertion, heat exertion, and shift work. First, smoke inhalation exposes firefighters to many compounds which reduce the availability of oxygen in the body, like carbon monoxide.<sup>30</sup> Blood tests in firefighters have demonstrated an elevated level of carboxyhemoglobin, a marker for carbon monoxide exposure.<sup>31</sup> The lack of oxygen caused by carbon monoxide exposure increases the risk of severe cardiac events, such as cardiac arrest.<sup>32</sup> Second, the physical exertion required during an active fire, combined with the extra weight of per-

<sup>22</sup> William Morton & Danijela Marjanovic, *Leukemia Incidence by Occupation in the Portland-Vancouver Metropolitan Area*, 6 AM. J. INDUS. MED. 185 (1984), <https://doi.org/10.1002/ajim.4700060304>.

<sup>23</sup> Robert D Daniels *et al.*, *Mortality and Cancer Incidence in a Pooled Cohort of US Firefighters from San Francisco, Chicago and Philadelphia (1950–2009)*, 71 OCCUP. & ENVTL. MED. 388 (2014).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Lynne Pinkerton *et al.*, *Mortality in a Cohort of US Firefighters from San Francisco, Chicago and Philadelphia: An Update*, 77 OCCUP. & ENVTL. MED. 84 (2020), <https://pubmed.ncbi.nlm.nih.gov/31896615/>.

<sup>27</sup> Tee L. Guidotti, *Mortality of Urban Firefighters in Alberta, 1927–1987*, 23 AM. J. INDUS. MED. 921 (1993).

<sup>28</sup> Sheila Weinmann *et al.*, *COPD and Occupational Exposures: A Case-Control Study*, 50 J. OCCUP. & ENVTL. MED. 561 (2008).

<sup>29</sup> Stefanos N. Kales *et al.*, *Firefighters and On-Duty Deaths from Coronary Heart Disease: A Case Control Study*, 2 ENVTL. HEALTH 14 (2003), <https://dash.harvard.edu/bitstream/handle/1/8000902/293431.pdf;sequence=1>.

<sup>30</sup> Richard D. Stewart *et al.*, *Rapid Estimation of Carboxyhemoglobin Level in Fire Fighters*, 235 JAMA 390 (1976).

<sup>31</sup> *Id.*

<sup>32</sup> Ibrahim Sari *et al.*, *Chronic Carbon Monoxide Exposure Increases Electrocardiographic P-Wave and QT Dispersion*, 20 INHAL. TOXICOL. 879 (2008), <https://pubmed.ncbi.nlm.nih.gov/18645728/>.

sonal gear, increases strain placed on the heart of a firefighter.<sup>33</sup> Third, heat stress produced by a combination of body heat from physical work, insulating protective equipment, and fire-related heat increases firefighters' core body temperature, which strains the heart, making firefighters more susceptible to sudden cardiac events.<sup>34</sup> Finally, shift work is a known cardiovascular risk due to frequent sleep deprivation and disturbance, leaving shift workers with a 23% higher risk of heart attack and a 24% higher risk of a coronary event compared to day workers.<sup>35</sup>

In summary, the existing body of research on the occupational hazards of firefighting demonstrates that the physical and chemical dangers of fire scenes and fire stations result in excess illness and death for firefighters compared to the general population.

FEDERAL FIREFIGHTERS FACE CHALLENGES QUALIFYING FOR  
WORKERS' COMPENSATION BENEFITS

Because of the evidence supporting the occupational nature of conditions such as cancers, COPD, and acute cardiac events, federal firefighters should qualify for workers' compensation benefits if they are made ill, disabled, or suffer a fatality due to one of these illnesses. This aligns with the basic purpose of workers' compensation systems: to cover medical care and lost wages for disability or death caused by illness or injury arising from work.

However, while most workers' compensation systems are well designed to address acute injuries, they are poorly designed to provide benefits for occupational illnesses with long latency periods caused by years of exposure to toxic chemicals. Illnesses with decades-long latency periods and complicated, unobservable pathologies, such as cancer, are especially difficult for traditional workers' compensation systems to adjudicate. Except where presumptions are stipulated in law, the burden falls on the claimant to prove that an injury or illness was more likely than not caused by employment. Unsurprisingly as a result, experts estimate that fewer than one in 100 occupational cancer victims receives workers' compensation benefits.<sup>36</sup>

To establish an illness, injury, or death was work-related, FECA requires claimants to provide extensive evidence documenting the exposure and related disability. According to the U.S. Department of Labor's (DOL) FECA claim form, in addition to other requirements, claimants must submit a narrative linking their illness to specific incidents or exposures. This narrative must include "a detailed history of the disease or illness from the date it started, complete details of the conditions of employment which are believed to be responsible for the disease or illness, [and] a description of specific exposures to substances or stressful conditions causing the disease or illness, including locations where exposure or stress oc-

<sup>33</sup> Elpidoforos S. Soteriades *et al.*, *Cardiovascular Disease in US Firefighters A Systematic Review*, 19 *CARDIOL. IN REV.* 202 (2011).

<sup>34</sup> *Id.*

<sup>35</sup> Manav V. Vyas *et al.*, *Shift Work and Vascular Events: Systematic Review and Meta-Analysis*, 2012 *BRIT. MED. J.* 345:e4800, <https://www.bmj.com/content/345/bmj.e4800.long>.

<sup>36</sup> Amer. Pub. Health Ass'n, *The Critical Need to Reform Workers' Compensation* (Pol. Statement No. 20174, Nov. 7, 2017), <https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2018/01/18/The-Critical-Need-to-Reform-Workers-Compensation>.

curred, as well as the number of hours per day and days per week of such exposure or stress.”<sup>37</sup>

Federal firefighters face obstacles securing compensation under FECA because of the difficulty linking their diseases to specific workplace events or exposures. Because, as discussed above, their work environment involves routine exposure to multiple hazardous substances, each incident—or the cumulative exposure from many incidents over time—could potentially cause a disease or condition such as cancer or COPD, and it is not realistic for firefighters to detail dates, locations, and numbers of exposures for FECA claims. As a result, too many federal firefighters disabled or killed by these conditions fail to receive proper benefits from FECA. In fact, according to DOL, only 30.9% of firefighters’ FECA claims for lung and respiratory diseases were accepted, and only 9% of their claims for cancers were accepted.<sup>38</sup> These numbers reflect only the claims that were actually filed; many occupational illness claims are never filed at all.<sup>39</sup>

CURRENT FEDERAL LAW INADEQUATELY SUPPORTS FEDERAL FIRE-FIGHTERS AND IS INCONSISTENT WITH MOST STATES’ WORKERS’ COMPENSATION LAWS

To avoid burdening firefighters with the task of linking a workplace cancer or other disease to a specific date and location of exposure, 49 states provide for a benefit distributed based on a presumption that certain health conditions in firefighters are work-related.<sup>40</sup> California passed the nation’s first presumptive disability law for firefighters in 1982.<sup>41</sup> Since then, every state except for Delaware (whose firefighting services are almost exclusively staffed by part-time volunteers rather than career firefighters<sup>42</sup>) has followed suit. For example, Florida law outlines a presumption for firefighters with five years or more service, covering all of the cancers included in H.R. 2499, except leukemias, as well as six other cancers, communicable diseases, and behavioral health conditions.<sup>43</sup> While the details of each law vary between states, all establish a presumption for some cancers. Many states expand this presumption to other conditions, such as heart disease, lung disease, infectious diseases, and behavioral health conditions like post-traumatic stress disorder (PTSD).<sup>44</sup>

<sup>37</sup>The claim form, Form CA-2, is available online at <https://www.dol.gov/sites/dolgov/files/owcp/regs/compliance/ca-2.pdf> (last viewed Mar. 25, 2022).

<sup>38</sup>Email from U.S. Dep’t of Lab. to Dem. Comm. Staff (Mar. 28, 2022). The data could vary if job categories other than GS-0081 (Fire Suppression and Prevention) were included.

<sup>39</sup>Jeff Biddle *et al.*, *What Percentage of Workers With Work-Related Illnesses Receive Workers’ Compensation Benefits?*, 40 J. OCC. & ENVTL. MED. 325 (1998) (finding that only 9–45% of workers in database of known or suspected cases of occupational illness filed for workers’ compensation benefits).

<sup>40</sup>INT’L ASS’N FIRE FIGHTERS, *supra* note 1.

<sup>41</sup>The first modern presumption law was California’s 1982 law covering cancer, although the state also passed an earlier law in 1939 addressing some lung, heart, and hernia conditions. CAL. PROF. FIREFIGHTERS, *Firefighter Presumption Laws: Why They Matter*, CPFNWSPAPER.ORG, Summer 2021, <https://www.cpfnewspaper.org/firefighter-presumption>.

<sup>42</sup>Zoë Read, *Delaware Task Force Offers Recommendations to Address Dwindling Volunteer Firefighting Force*, WHYY, June 16, 2021, <https://whyy.org/articles/delaware-task-force-offers-recommendations-to-address-dwindling-volunteer-firefighter-force/> (“Fire, rescue, and emergency medical services in Delaware are mostly provided by volunteer fire departments. Delaware is the only U.S. state that uses volunteer firefighters in its capital city. . . . Wilmington has the only fully paid fire department in the state.”).

<sup>43</sup>FLA. STAT. § 112.18 *et seq.*

<sup>44</sup>INT’L ASS’N FIRE FIGHTERS, *supra* note 1.

However, no such law covers the approximately 15,000 28,000 firefighters employed by the federal government. Federal firefighters often fight alongside firefighters employed by state and local governments, as Rep. Carbajal observed in the December 2 Hearing:

Last month, over a thousand firefighters put their lives on the line to battle the Alisal Fire in my district on the Central Coast of California. I am so thankful for the federal, state, and local firefighters who worked together to put out the blaze and keep our community safe. All of them performed the same job, but [federal firefighters] experience a disparity in health benefits.

It is not fair that federal firefighters are being denied access to benefits that their local counterparts receive, especially when they fight the same fires and expose themselves to the same risks.<sup>45</sup>

Federal firefighters protect our nation’s most important military installations, laboratories, and national forests, and they should be fairly protected by federal workers’ compensation law.

H.R. 2499 WOULD REDUCE THE BURDEN FOR FEDERAL FIREFIGHTERS  
TO QUALIFY FOR BENEFITS

H.R. 2499 would ease the process for federal firefighters to qualify for FECA benefits by establishing an initial list of diseases which would be presumed to be “proximately caused” from “fire-fighting activities” for the purposes of FECA claims. The initial list of conditions includes bladder cancer, brain cancer, chronic obstructive pulmonary disease, colorectal cancer, esophageal cancer, kidney cancer, leukemias, lung cancer, mesothelioma, multiple myeloma, non-Hodgkin lymphoma, prostate cancer, skin cancer (melanoma), testicular cancer, thyroid cancer, and sudden cardiac event or stroke not later than 24 hours after working in fire protection activities.

In filing a FECA claim associated with any of these conditions, a federal firefighter with at least five years of service would no longer be required to provide evidence of a specific incident or exposure. Instead, if the eligibility requirements are satisfied, the firefighter would be presumed to have developed the condition from employment and automatically qualify for FECA disability or death benefits.

This approach is comparable to existing federal laws. For example, the *Energy Employees Occupational Illness Compensation Program Act*<sup>46</sup> provides compensation and medical benefits to employees whose work in the nuclear weapons industry made them ill. This program includes a presumption for covered workers diagnosed with beryllium disease, silicosis, and cancer.<sup>47</sup>

Similarly, veterans exposed to Agent Orange in the Vietnam War who are diagnosed with prostate cancer, bladder cancer, leukemias,

<sup>45</sup>*Strengthening the Safety Net for Injured Workers: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab.*, 117th Cong. (Dec. 2, 2021) [hereinafter *Strengthening the Safety Net*] (statement of Rep. Salud Carbajal, <https://edlabor.house.gov/imo/media/doc/CarbajalSaludTestimony120221.pdf>).

<sup>46</sup>Energy Employees Occupational Illness Compensation Program Act, Pub. L. No. 106–398 (42 U.S.C. § 7384 *et seq.*).

<sup>47</sup>*Id.* § 3621 (42 U.S.C. § 7384).

and many other conditions are presumed to have a service-connected disability and are thus automatically eligible for VA benefits.<sup>48</sup>

#### H.R. 2499 IS BASED ON SOUND SCIENCE

H.R. 2499 reflects current scientific research. The relationship between each of the conditions included on the initial presumptive list and firefighting is backed by a reputable study or multiple peer-reviewed studies.<sup>49</sup> Additionally, NIOSH is designated in the legislation to serve as a scientific resource to DOL in evaluating the addition of other diseases that would be deemed related to firefighting activity.

Moreover, H.R. 2499 is limited to firefighters at heightened risk of developing an occupational condition. The presumption would take effect for federal firefighters who have been employed in firefighting activity for a minimum of five years. While repeated toxic exposure increases the risk of developing many diseases, a single exposure to a cancer-causing chemical can cause tumor development.<sup>50</sup> Five years of firefighting will routinely expose employees to hazards both in active fire suppression and in fire stations. On average, a fire station responds to a structure fire once every 22 days, or over 16 fires per year.<sup>51</sup> This means an individual firefighter could fight 80 fires over a five-year span. Since the smoke of just a single fire releases dozens of dangerous chemicals, five years of active employment in firefighting activities is sufficient time to be occupationally exposed to the conditions in this bill.<sup>52</sup>

#### H.R. 2499 WOULD ENSURE POLICIES REMAIN ALIGNED WITH EVOLVING SCIENCE

The scientific community's understanding of the relationship between firefighting and occupational diseases will likely change as scientists collect more data and complete additional studies. Accordingly, H.R. 2499 would require the Secretary, in consultation with the Director of NIOSH, to periodically review and update through rulemaking the initial list of diseases with additional conditions that pose a significant risk to firefighters. This provision would allow the list of presumed conditions to remain aligned with evolving science without requiring further congressional action on the issue. With this provision, the federal government can continue to support federal firefighters with quality, evidence-based policy in an efficient manner.

To determine significant risk, the Secretary can rely upon evidence from a variety of reputable organizations. H.R. 2499 author-

<sup>48</sup> For a helpful summary, see *Presumptive Disability Benefits*, U.S. VETS. ADMIN., <https://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/presumption.pdf> (last viewed Mar. 25, 2022).

<sup>49</sup> See text accompanying notes 6–35 *supra*.

<sup>50</sup> Edward J. Calabrese & Robyn N. Blain, *The Single Exposure Carcinogen Database: Assessing the Circumstances Under Which a Single Exposure to a Carcinogen Can Cause Cancer*, 50 TOXICOL. SCI. 169 (1999).

<sup>51</sup> Fred S. McChesney, *Fewer Fires, So Why Are There Far More Firefighters?*, WASH. POST, Sept. 4, 2015, [https://www.washingtonpost.com/opinions/2015/09/04/05316abe-517c-11e5-933e-7d06c647a395\\_story.html](https://www.washingtonpost.com/opinions/2015/09/04/05316abe-517c-11e5-933e-7d06c647a395_story.html).

<sup>52</sup> Accordingly, 23 states with presumptive illness laws include a five-year minimum service requirement: Arizona, Arkansas, California, Colorado, Florida, Hawaii, Illinois, Kansas, Kentucky, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Oregon, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. See INT'L ASS'N FIRE FIGHTERS, *supra* note 2.

izes the Secretary to “accept as authoritative and may rely upon recommendations, risk assessments, and scientific studies” from NIOSH, the National Toxicology Program, the National Academies of Science, Engineering, and Medicine, and the International Agency for Research on Cancer. These organizations produce credible and reliable research on issues related to occupational health that can inform the Secretary’s future decisions.

In addition to a periodic review initiated by DOL, H.R. 2499 would authorize any person to petition the Secretary to consider an addition to the initial presumptive list. Firefighters, fire chiefs, and the medical practitioners who treat them can identify trends firsthand and would be well-positioned to use this petition process. Petitioners would be required to provide evidence that the condition is a significant risk to firefighters, rather than base the petition on an individual case.

One condition of interest to researchers and firefighters is breast cancer. Epidemiological studies point to both genetic and environmental factors which can increase risk of developing breast cancer.<sup>53</sup> Research conducted on rats and mice identified 20 chemicals which caused mammary gland tumors, including several carcinogens known to be present in the firefighting environment, such as benzene and 1,3-butadiene.<sup>54</sup> Additionally, polycyclic aromatic hydrocarbons (PAH), often found in smoke, are known to cause mammary gland tumors in animals and thought to impact humans during critical exposure periods.<sup>55</sup> This evidence suggests that there is a plausible link between the chemicals firefighters are routinely exposed to and the development of breast cancer.

Occupational health research on firefighters’ health risks has not, to date, included large enough populations of female firefighters to fully assess this link.<sup>56</sup> “There have been too many occasions in the past when the health risks particular to women have been ignored by researchers and policymakers alike,” Rep. Susan Wild (D–PA–7) said during the Committee’s markup of H.R. 2499.<sup>57</sup> This research gap could soon close, however, as Ms. Wild pointed out: “[NIOSH] is developing a large study population through the National Firefighter Registry Program—a vital and necessary step, if an overdue one.”<sup>58</sup>

<sup>53</sup> Esther A. Welp *et al.*, *Environmental Risk Factors of Breast Cancer*, 24 SCAN. J. WORK, ENV’T & HEALTH 3 (1998).

<sup>54</sup> Richard A. Griesemer & Scot L. Eustis, *Gender Differences in Animal Bioassays for Carcinogenicity*, 36 J. OCCUP. MED. 855 (1994).

<sup>55</sup> Jessica Korsh *et al.*, *Polycyclic Aromatic Hydrocarbons and Breast Cancer: A Review of the Literature*, 10 BREAST CARE 316 (2015); K.C. Snell & H.L. Stewart, *Pulmonary Adenomatosis Induced in DBA/2 Mice by Oral Administration of Dibenz[a, h]anthracene*, 28 J. NAT’L CANCER INST. 1043 (1962).

<sup>56</sup> *Firefighters and Breast Cancer*, BREAST CANCER PREV. PARTNERS, <https://www.bcpp.org/resource/firefighters/> (last visited Mar. 25, 2022).

<sup>57</sup> *Markup: H.R. 6102, Black Lung Benefits Improvement Act of 2021; H.R. 5129, Community Services Block Grant Modernization Act of 2021; H.R. 2499, Federal Firefighters Fairness Act of 2021; H.R. 5428, School Shooting Safety and Preparedness Act; H.R. 3114, Longshore and Harbor Workers’ COVID–19 Compensation Act of 2021, and H.R. 6087, Improving Access to Workers’ Compensation for Injured Federal Workers Act*, H. COMM. ON EDUC. & LAB. (Mar. 16, 2022), <https://edlabor.house.gov/hearings/hr-6102-black-lung-benefits-improvement-act-of-2021-hr-5129-community-services-block-grant-modernization-act-of-2021-hr-2499-federal-firefighters-fairness-act-of-2021-hr-5428-school-shooting-safety-and-preparedness-act-hr-3114-longshore-and-harbor-workers-covid19-compensation-act-of-2021-and-hr-6087-improving-access-to-workers-compensation-for-injured-federal-workers-act-> (video at 3:06:56–3:07:32).

<sup>58</sup> *Id.*

H.R. 2499 would therefore direct the Secretary to evaluate the scientific evidence on breast cancer in firefighters within three years of enactment. If the evidence suggests that firefighters are at significant risk of developing breast cancer due to their occupation, the bill instructs the Secretary to add breast cancer to the presumptive list. Regardless of the results of the evaluation, the Secretary would be required to submit a report of the findings to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions. This provision ensures that this condition receives heightened priority for inclusion on the presumptive list of diseases.

To expand the data available on the occupational hazards of firefighting, H.R. 2499 would encourage participation in the National Firefighter Registry by requiring the Secretary to inform federal firefighter claimants of the opportunity to enroll. It would not require a firefighter to enroll in the National Firefighter Registry; this provision would only encourage enrollment to improve the science on firefighter health and safety. More participants in the registry would enhance researchers' understanding of the occupational hazards of firefighting by expanding the sample size for research. Improved research would allow the federal government to better support firefighters through workers' compensation and other programs.

#### H.R. 2499 WOULD COMPLEMENT DOL'S NEW INITIATIVE ON FIREFIGHTER DISEASE CLAIMS

In light of the problems discussed above, OWCP announced on April 20, 2022, a new initiative using existing legal authority to facilitate occupational illness claims by federal firefighters. Specifically, OWCP published a policy bulletin outlining special claims procedures for federal firefighters.<sup>59</sup> A Special Claims Unit will handle firefighters' claims for certain listed diseases (mirroring the list in H.R. 2499, along with buccal cavity/pharynx cancer, larynx cancer, hypertension, coronary artery disease, pulmonary fibrosis, and asthma). As with H.R. 2499, firefighters who will qualify for special claims processing must have five years or more of firefighting service. If the claim meets these criteria and the employee was diagnosed within 10 years of the date of last exposure to firefighting work, the employee will not need to submit additional evidence of specific exposures or medical evidence proving a causal relationship. Instead, the claim will be reviewed by a medical advisor for verification that the employment was capable of producing the diagnosed condition(s); if verified, the claim will then be approved. If a claim does not meet these three criteria, it will be adjudicated under established FECA case processing procedures.<sup>60</sup>

This new Biden Administration initiative is an important step forward for firefighters, but federal firefighters still need H.R. 2499. The DOL's policy bulletin effectively imposes a 10-year latency period on claims eligible for special processing, even though

<sup>59</sup> Off. of Workers' Comp. Progs., *FECA Bull. No. 22-07, Special Case Handling in Certain Firefighter FECA Claims Processing and Adjudication*, Apr. 19, 2022 [hereinafter *Firefighters Bulletin*], <https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECAB2207>.

<sup>60</sup> *Id.*

many cancers do not manifest clinically until much later.<sup>61</sup> Additionally, although the policy bulletin pledges that “OWCP will continue to monitor medical developments in this area and update its list of specific medical conditions as appropriate,”<sup>62</sup> H.R. 2499 would make that general promise a mandatory, nondiscretionary duty, both to respond to petitions to add diseases to the list based on the weight of the best available science and to review the evidence about one specific disease, breast cancer, by a date certain.

#### CONCLUSION

Without H.R. 2499, federal firefighters would continue to experience difficulty accessing health care and disability benefits they are eligible for through FECA. During the December 2 Hearing, the Biden Administration agreed that H.R. 2499 is an effective solution to remove that burden from federal firefighters:

MR. SCOTT. Mr. Godfrey, in your written testimony you mention challenges with claims for firefighters. Does Mr. Carbajal’s bill address those challenges?

MR. GODFREY. Yes . . . . That piece of legislation is a positive piece of legislation that does address issues related to federal firefighters, especially with those very difficult-to-prove long-term occupational disease claims due to exposures.<sup>63</sup>

Congress should pass H.R. 2499, as amended, to rectify this inequity and support our brave federal firefighters.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section specifies that the bill may be cited as the *Federal Firefighters Fairness Act of 2022*.

##### *Section 2. Certain diseases presumed to be work-related cause of disability or death for Federal Employees in Fire Protection Activities*

Section 2(a) amends chapter 81 of title 5, United States Code, by adding a new section 8143b as follows:

- Section 8143b(a)(1)–(2) establishes an initial list of diseases for which an automatic presumption of work-related illness would apply to “employees in fire protection activities.” The presumption would apply for employees who have been employed in fire protection activities for at least 5 years. The initial list includes the following diseases: bladder cancer, brain cancer, chronic obstructive pulmonary disease, colorectal

<sup>61</sup>A latency period is the amount of time that elapses between the initial exposure to a cancer-causing substance and the diagnosis of cancer. A general rule of thumb in the medical community is that the latency period for solid tumors is “on the order of 20 years.” TEE L. GUIDOTTI, *EVALUATING THE ASSOCIATION BETWEEN DISEASE AND OCCUPATION AS A FIREFIGHTER* 26 (2d ed. 2012). Some cancers have even longer latency periods. For example, mesothelioma takes a median of 32 years after first exposure to be diagnosed, and a Canadian study found the peak latency for bladder cancer in firefighters was 40 years. Guidotti, *supra* note 27; Bruce P. Lanphear & C. Ralph Buncher, *Latent Period for Malignant Mesothelioma of Occupational Origin*, 34 J. OCC. MED. 718 (1992).

<sup>62</sup>*Firefighters Bulletin*, *supra* note 57.

<sup>63</sup>*Strengthening the Safety Net*, *supra* note 45 (reply of OWCP Director Christopher Godfrey to question from Chairman Robert C. “Bobby” Scott, <https://edlabor.house.gov/hearings/strengthening-the-safety-net-for-injured-workers>, video at 1:09:23–1:09:58).

cancer, esophageal cancer, kidney cancer, leukemias, lung cancer, mesothelioma, multiple myeloma, non-Hodgkin lymphoma, prostate cancer, skin cancer (melanoma), testicular cancer, thyroid cancer, and sudden cardiac event or stroke not later than 24 hours after working in fire protection activities.

- Section 8143b(a)(3) requires the Secretary to periodically review the initial list in consultation with the Director of NIOSH. It requires the Secretary to add a disease to the list by rule if the Secretary determines, based on the best available scientific evidence, that there is a significant risk to employees in fire protection activities of developing the disease. In making that determination, this provision authorizes the Secretary to rely upon authoritative recommendations and research by NIOSH, the National Toxicology Program, the National Academies of Sciences, Engineering, and Medicine, and the International Agency for Research on Cancer.

- Section 8143b(a)(4) establishes a petition process by which any person may propose additions to the disease list. The Secretary must grant or deny each petition with a substantive written explanation within 18 months of receipt.

- Section 8143b(b) defines relevant terms. It establishes a definition for “employee in fire protection activities,” which is the class of employees to whom the bill would apply, as a federal employee who is trained and has the legal authority to engage in fire suppression; is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk, including the prevention, control, suppression, or management of wildland fires; and performs such activities as a primary responsibility of his or her job.

Section 2(b) requires the Secretary to establish a process to inform claimants under this section of the opportunity to enroll in the National Firefighter Registry or a similar public health research initiative.

Section 2(c) requires the Secretary to evaluate the latest science on breast cancer risks for firefighters and determine whether breast cancer should be added to the list within 3 years of passage of the Act. The Secretary must submit a report of the findings and determination to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions.

Section 2(d) states that the amendments made by this section apply only to compensation claims filed on or after the date of enactment.

#### EXPLANATION OF AMENDMENTS

The amendments, including the Amendment in the Nature of a Substitute, are explained in the descriptive portions of this report.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104–1, H.R. 2499, as amended, applies to terms and conditions of employment within the legislative branch because the law amended by H.R. 2499 (FECA) is included within the list

of laws applicable to the legislative branch enumerated in section 102(a) of the *Congressional Accountability Act*.

#### UNFUNDED MANDATE STATEMENT

Pursuant to section 423 of the *Congressional Budget and Impoundment Control Act of 1974* (as amended by section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), H.R. 2499, as amended, contains no intergovernmental or private-sector mandates as defined by the *Unfunded Mandates Reform Act*.

#### EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2499 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

#### ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 2499:

Date: 3/16/2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:1

Bill: 2499

Amendment Number:2

Disposition: Defeated by a roll call vote of 20-29

Sponsor/Amendment: Keller / FECA\_FIRE\_02

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)		X		Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)			X	Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)	X		
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Ms. MILLER-MEEKS (IA)	X		
Ms. WILD (PA)		X		Mr. OWENS (UT)	X		
Mrs. MCBATH (GA)		X		Mr. GOOD (VA)	X		
Mrs. HAYES (CT)		X		Mrs. MCCLAIN (MI)	X		
Mr. LEVIN (MI)		X		Mrs. HARSHBARGER (TN)	X		
Ms. OMAR (MN)		X		Mrs. MILLER (IL)		X	
Ms. STEVENS (MI)		X		Mrs. SPARTZ (IN)			X
Ms. LEGER FERNÁNDEZ (NM)		X		Mr. FITZGERALD (WI)	X		
Mr. JONES (NY)		X		Mr. CAWTHORN (NC)		X	
Ms. MANNING (NC)		X		Mrs. STEEL (CA)	X		
Mr. MRVAN (IN)		X		Ms. LETLOW (LA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. CHERFILUS-MCCORMICK (FL)		X		<i>Vacancy</i>			
Mr. POCAN (WI)		X					
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)			X				

TOTALS: Ayes: 20

Nos:29

Not Voting:3

Total: 53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 3/16/22

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:2

Bill: H.R. 2499

Amendment Number: Motion

Disposition: Adopted by a Full Committee Roll Call Vote of 31-18

Sponsor/Amendment: Takano Motion to Report H.R. 2499 to the House, with an amendment and with recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)		X	
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)			X	Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)		X	
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)		X	
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Mr. MORELLE (NY)	X			Ms. MILLER-MEEKS (IA)		X	
Ms. WILD (PA)	X			Mr. OWENS (UT)		X	
Mrs. MCBATH (GA)	X			Mr. GOOD (VA)		X	
Mrs. HAYES (CT)	X			Mrs. MCCLAIN (MI)		X	
Mr. LEVIN (MI)	X			Mrs. HARSHBARGER (TN)		X	
Ms. OMAR (MN)	X			Mrs. MILLER (IL)	X		
Ms. STEVENS (MI)	X			Mrs. SPARTZ (IN)			X
Ms. LEGER FERNÁNDEZ (NM)	X			Mr. FITZGERALD (WI)		X	
Mr. JONES (NY)	X			Mr. CAWTHORN (NC)	X		
Ms. MANNING (NC)	X			Mrs. STEEL (CA)		X	
Mr. MRVAN (IN)	X			Ms. LETLOW (LA)		X	
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)		X	
Mrs. CHERFILUS-MCCORMICK (FL)	X			<i>Vacancy</i>			
Mr. POCAN (WI)	X						
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)			X				

TOTALS: Ayes: 31

Nos: 18

Not Voting: 3

Total: 53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

## STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 2499 is to improve access to job-related medical, disability, and death benefits for federal firefighters. The legislation achieves this by establishing a presumptive illness list for disability and death claims by federal firefighters and authorizing the Secretary to add to the list based on the best available scientific evidence.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 2499 is known to be duplicative of another federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

## HEARINGS

On December 2, 2021, pursuant to clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee's Subcommittee on Workforce Protections held a hearing entitled "*Strengthening the Safety Net for Injured Workers*," which was used to develop H.R. 2499. Relevant to H.R. 2499, the Subcommittee heard testimony from the Honorable Salud Carbajal, Member of Congress, U.S. House of Representatives, Santa Barbara, CA; and Christopher J. Godfrey, Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, D.C.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget and Impoundment Control Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget and Impoundment Control Act of 1974*, the Committee has received the following estimate for H.R. 2499 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 19, 2022.*

Hon. ROBERT C. (BOBBY) SCOTT,  
*Chairman, Committee on Education and Labor,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2499, the Federal Firefighters Fairness Act of 2022.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Meredith Decker.

Sincerely,

PHILLIP L. SWAGEL  
*Director.*

Enclosure.

At a Glance			
H.R. 2499, Federal Firefighters Fairness Act of 2022			
As ordered reported by the House Committee on Education and Labor on March 16, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	*	5	22
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	5	22
Spending Subject to Appropriation (Outlays)	0	5	23
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

The bill would

- Increase the number of firefighters and other federal employees who can receive federal workers' compensation benefits under the Federal Employees' Compensation Act

Estimated budgetary effects would mainly stem from

- Additional spending for workers' compensation benefits

Areas of significant uncertainty include

- Estimating the incidence of disease among federal firefighters

Bill summary: H.R. 2499 would expand eligibility for federal workers engaged in fire protection who have certain diseases and conditions to receive medical, wage replacement, and death benefits under the Federal Employees' Compensation Act (FECA).

Estimated Federal cost: The estimated budgetary effects of H.R. 2499 are shown in Table 1. The costs of the legislation fall within budget functions 300 (natural resources), 550 (health) and 600 (income security).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 2499

	By fiscal year, millions of dollars—											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022–2026	2022–2031
Net Increases in Direct Spending												
Estimated:												
Budget Authority .....	*	1	1	1	2	2	3	3	4	4	5	22
Estimated Outlays .....	*	1	1	1	2	2	3	3	4	4	5	22
Increases in Spending Subject to Appropriation												
Estimated:												
Authorization .....	0	1	1	1	2	2	3	4	4	5	5	23

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 2499—Continued

	By fiscal year, millions of dollars—											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022– 2026	2022– 2031
Estimated Outlays .....	0	1	1	1	2	2	3	4	4	5	5	23
Memorandum:												
Intragovernmental collections <sup>a</sup> ....	0	-1	-1	-1	-2	-2	-3	-4	-4	-5	-5	-23

Components may not sum to totals because of rounding; \* = between zero and \$500,000.

<sup>a</sup>Intragovernmental collections from federal agencies to the Department of Labor to pay for federal workers' compensation benefits paid to those agencies' employees.

**Basis of estimate:** For this estimate, CBO assumes that H.R. 2499 will be enacted in fiscal year 2022 and that the estimated amounts will be available in each year. Estimated outlays are based on historical spending patterns for the affected programs.

**Direct spending:** Under current law, federal employees are eligible for workers' compensation benefits, including medical expenses, disability payments, and death payments to survivors, if they can demonstrate a connection between their federal employment and their injury or illness. H.R. 2499 would confer presumptive eligibility for such benefits upon firefighters and other federal workers engaged in fire protection if they contract certain diseases, including heart disease, lung disease, and certain cancers. Based on the rates of incidence, disability, and death associated with those diseases, CBO estimates that between 300 and 400 people would newly qualify for benefits over the next decade than would qualify under current law. CBO estimates that providing such additional FECA benefits would increase direct spending by \$24 million over the 2022–2031 period.

Some claimants who would receive FECA benefits under the legislation would have received other federal benefits under current law. When such claimants qualify for FECA benefits, spending from other programs could be reduced. Enacting the bill would reduce the federal government's share of health care premiums for federal retirees under the Federal Employees Health Benefits program because costs for covered medical conditions would be paid under FECA. In addition, spending for some disability programs could be lower but CBO expects that reduction would not be significant. In addition, after accounting for those effects, which would total \$2 million over the 10-year period, CBO estimates that enacting H.R. 2499 would, on net, increase mandatory spending by \$22 million over the 2022–2031 period.

**Spending subject to appropriation:** FECA costs are charged back to a claimant's employing agency and those amounts are paid from the agency's salaries and expense accounts. (Most federal firefighters are employed by the Departments of Agriculture and the Interior.) Based on the timing of those reimbursements, CBO estimates that H.R. 2499 would increase discretionary costs for salaries and expenses by a total of \$23 million over the 2022–2031 period; most of the costs would be borne by those two departments. Any spending would be subject to the availability of appropriated funds. Those reimbursements would be transferred to and credited to the FECA account, as shown in the memorandum line in Table 1.

**Uncertainty:** The disease incidence among federal firefighters and other workers engaged in fire protection is a significant source

of uncertainty in the estimate. CBO estimates that a higher percentage of those workers would be diagnosed with heart disease, lung disease, and certain cancers compared to the general population, based on studies of firefighters' relative risk of contracting these diseases. If the incidence of disease differs from CBO's estimates, spending might be higher or lower than estimated.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays are subject to those pay-as-you-go procedures are shown in Table 1.

Increase in long-term deficits: CBO estimates that enacting H.R. 2499 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2032.

Mandates: None.

Estimate prepared by: Federal Costs: Meredith Decker (federal workers' compensation), Stuart Hammond (Federal Employees Health Benefits); Mandates: Andrew Laughlin.

Estimate reviewed by: Elizabeth Cove Delisle, Chief, Income Security Cost Estimates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2499. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget and Impoundment Control Act of 1974.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 2499, as reported, are shown as follows:

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

### TITLE 5, UNITED STATES CODE

\* \* \* \* \*

### PART III—EMPLOYEES

\* \* \* \* \*

**SUBPART G—INSURANCE AND ANNUITIES**

\* \* \* \* \*

**CHAPTER 81—COMPENSATION FOR WORK INJURIES**

SUBCHAPTER I—GENERALLY

Sec.

\* \* \* \* \*  
 8143b. *Employees in fire protection activities.*  
 \* \* \* \* \*

SUBCHAPTER I—GENERALLY

\* \* \* \* \*

**§ 8143b. Employees in fire protection activities.**

(a) **CERTAIN DISEASES DEEMED TO BE PROXIMATELY CAUSED BY EMPLOYMENT IN FIRE PROTECTION ACTIVITIES.—**

(1) **IN GENERAL.—***For a claim under this subchapter of disability or death of an employee who has been employed for a minimum of 5 years in aggregate as an employee in fire protection activities, a disease specified on the list established under paragraph (2) shall be deemed to be proximately caused by the employment of such employee.*

(2) **ESTABLISHMENT OF INITIAL LIST.—***There is established under this section the following list of diseases:*

- (A) *Bladder cancer.*
- (B) *Brain cancer.*
- (C) *Chronic obstructive pulmonary disease.*
- (D) *Colorectal cancer.*
- (E) *Esophageal cancer.*
- (F) *Kidney cancer.*
- (G) *Leukemias.*
- (H) *Lung cancer.*
- (I) *Mesothelioma.*
- (J) *Multiple myeloma.*
- (K) *Non-Hodgkin lymphoma.*
- (L) *Prostate cancer.*
- (M) *Skin cancer (melanoma).*
- (N) *A sudden cardiac event or stroke while, or not later than 24 hours after, engaging in the activities described in subsection (b)(1)(C).*
- (O) *Testicular cancer.*
- (P) *Thyroid cancer.*

(3) **ADDITIONS TO THE LIST.—**

(A) **IN GENERAL.—***The Secretary shall periodically review the list established under this section in consultation with the Director of the National Institute on Occupational Safety and Health and shall add a disease to the list by rule, upon a showing by a petitioner or on the Secretary's own determination, in accordance with this paragraph.*

(B) **BASIS FOR DETERMINATION.—***The Secretary shall add a disease to the list upon a showing by a petitioner or the Secretary's own determination, based on the weight of the best available scientific evidence, that there is a significant*

risk to employees in fire protection activities of developing such disease.

(C) *AVAILABLE EXPERTISE.*—In determining significant risk for purposes of subparagraph (B), the Secretary may accept as authoritative and may rely upon recommendations, risk assessments, and scientific studies (including analyses of National Firefighter Registry data pertaining to Federal firefighters) by the National Institute for Occupational Safety and Health, the National Toxicology Program, the National Academies of Sciences, Engineering, and Medicine, and the International Agency for Research on Cancer.

(4) *PETITIONS TO ADD TO THE LIST.*—

(A) *IN GENERAL.*—Any person may petition the Secretary to add a disease to the list under this section.

(B) *CONTENT OF PETITION.*—Such petition shall provide information to show that there is sufficient evidence of a significant risk to employees in fire protection activities of developing such illness or disease from their employment.

(C) *TIMELY AND SUBSTANTIVE DECISIONS.*—Not later than 18 months after receipt of a petition, the Secretary shall either grant or deny the petition by publishing in the Federal Register a written explanation of the reasons for the Secretary's decision. The Secretary may not deny a petition solely on the basis of competing priorities, inadequate resources, or insufficient time for review.

(b) *DEFINITIONS.*—In this section:

(1) *EMPLOYEE IN FIRE PROTECTION ACTIVITIES.*—The term “employee in fire protection activities” means an employee employed as a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous material worker, who—

(A) is trained in fire suppression;

(B) has the legal authority and responsibility to engage in fire suppression;

(C) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk, including the prevention, control, suppression, or management of wildland fires; and

(D) performs such activities as a primary responsibility of his or her job.

(2) *SECRETARY.*—The term “Secretary” means Secretary of Labor.

\* \* \* \* \*

## MINORITY VIEWS

### INTRODUCTION

The *Federal Employees' Compensation Act* (FECA) is administered by the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) and provides workers' compensation benefits for the roughly 10,000 federal firefighters employed by the United States federal government.<sup>1</sup> The FECA program provides benefits to individuals who sustain an injury or illness in the performance of their duty anywhere in the world. Such benefits include wage replacement, reasonable and necessary medical treatment related to the injury, vocational rehabilitation and job placement assistance for disabled workers, compensation for the permanent impairment of limbs and use of body systems, and compensation for survivors of employees due to a work-related death.

H.R. 2499, the *Federal Firefighters Fairness Act of 2021*, establishes a presumption of eligibility for medical benefits, lost wages, and survivor benefits for federal employees employed in fire protection activities for five years who contract certain illnesses.<sup>2</sup> H.R. 2499 creates an extremely broad presumption that federal firefighters who are diagnosed with heart disease, lung disease, or various cancers contracted the disease due to work-related activities. The bill also creates a presumption that any disability or death of the employee due to such disease is presumed to result from performance of duty. Further, the bill requires the Secretary of Labor to add conditions to the bill's list of diseases that are presumed to have caused illness due to work-related activities.

Under long-standing law governing federal workers' compensation programs, there is no list of injuries or illnesses that are automatically or presumptively covered. Instead, claims have been evaluated on a case-by-case basis depending on the medical and supporting evidence available to validate the benefit claim.

### H.R. 2499 REMOVES CRITICAL INTEGRITY MEASURES IN THE FECA PROGRAM

Coverage for occupational illness was added to the FECA program in 1924.<sup>3</sup> The federal government has provided benefits for occupational related diseases for nearly 100 years, processing claims on a case-by-case basis. H.R. 2499 would overturn these longstanding precedents and fundamentally alter the FECA program.

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<sup>1</sup> Information provided to Committee on Education and Labor Republican staff by the Congressional Research Service.

<sup>2</sup> Under H.R. 2499, an employee in fire protection activities can include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, and hazardous material workers.

<sup>3</sup> <https://www.crs.gov/Reports/R42107?source=search&guid=46624cf11fd34da08b337fe2c845020e&index=0>.

To apply for FECA benefits, federal employees must file a claim with OWCP, which processes and adjudicates occupational illness claims. Federal employees, including federal firefighters, who believe they have contracted an occupational illness must submit form CA-2, “Notice of Occupational Disease and Claim for Compensation.”<sup>4</sup> Workers submitting a CA-2 form may also refer to CA-35, “Evidence Required in Support of a Claim for Occupational Disease.”<sup>5</sup> CA 35 includes documentation to be submitted depending on the type of occupational disease. The employee’s claim must be filed within three years of the onset of the condition.<sup>6</sup> However, in the case of a latent disability, the three-year limitation does not begin until the employee is disabled and aware, or reasonably should be aware, that the disability was due to employment related activities.<sup>7</sup>

Contrary to the bill sponsor’s claim, federal firefighters are not required to pinpoint “the precise exposure that caused their illness.”<sup>8</sup> Instead, the CA-2 form asks the claimant for the date they first realized the disease or illness was caused or aggravated by their employment and to explain why they came to this realization. The claimant must then submit a statement which further narrates a history of the disease and the conditions of employment which are believed to be responsible for the disease or illness. The claimant must also provide a medical report with a description of the physicians’ findings and opinions as to whether the disease or illness was caused or aggravated by employment.

Claimants generally submit the claim through their employing agency. The OWCP district office will review the information submitted by the employing agency and determine whether there is sufficient information to adjudicate the claim. If there is insufficient information to adjudicate the claim, OWCP will send the claimant a letter advising of the additional information needed.

Creating a presumption of eligibility for a specific group of federal employees not only creates disparities among FECA beneficiaries based upon their occupation but also removes critical oversight measures in the FECA program. Currently, all FECA claimants must attest that their disease or illness was the result of their employment and must provide supporting medical evidence to OWCP. Without a process to determine whether the disability or illness is work-related, there is nothing to prevent coverage of non-occupational medical costs from being shifted from the private insurance market to the federal government.

#### OWCP HAS TAKEN STEPS TO ADDRESS FIREFIGHTERS’ NEEDS

In December 2021, OWCP released a bulletin to streamline the processing of federal firefighter claims. The bulletin states that all new incoming firefighter claims must be adjudicated by OWCP’s Special Claims Unit and that the agency is “developing policy changes to ease the evidentiary requirements needed to link a fire-

<sup>4</sup> <https://www.dol.gov/sites/dolgov/files/owcp/regs/compliance/ca-2.pdf>.

<sup>5</sup> <https://www.dol.gov/sites/dolgov/files/owcp/regs/compliance/ca-35.pdf>.

<sup>6</sup> 5 U.S.C. § 8122(a); <https://www.federalregister.gov/documents/2011/06/28/2011-14915/performance-of-functions-claims-for-compensation-under-the-federal-employees-compensation-act#sectno-reference-10.101>.

<sup>7</sup> 5 U.S.C. § 8122(b); 20 C.F.R. § 10.100(c).

<sup>8</sup> <https://e-dearcolleague.house.gov/Home/Preview?DCID=358104>.

fighter’s exposure to toxic substances when they are diagnosed with certain conditions where there is a medically documented increased risk of developing those conditions due to such exposure.”<sup>9</sup>

According to OWCP, approximately 16 occupational disease claims are filed per year by firefighters for heart disease, lung disease, or cancer.<sup>10</sup> The Biden administration has not sought additional resources to address occupational illness claims from federal firefighters. The President’s Fiscal Year 2023 budget request did not address federal firefighter claims or request any legislative changes to FECA occupational illness claims.<sup>11</sup> Congress should allow OWCP to continue implementing its improvements assisting federal firefighters through the Special Claims Unit. Congress should also thoroughly examine whether adding presumptions to FECA is appropriate before enacting H.R. 2499.

H.R. 2499 IS BROADER THAN MANY STATE WORKERS’ COMPENSATION PROGRAMS FOR FIREFIGHTERS

The bill’s sponsor claims that “49 states already recognize the link between certain serious diseases and the occupational hazards of firefighting and have enacted presumptive disability laws. These laws presume that heart disease, lung disease, certain cancers, and other infectious diseases are job-related for purposes of worker’s compensation and disability retirement unless proven otherwise.”<sup>12</sup> However, this assertion is disingenuous, because it combines presumptions in state retirement and pension systems with presumptions in state workers’ compensation programs. In fact, only 26 states have some form of a presumption that certain illnesses are employment related for firefighters under state workers’ compensation programs. Additionally, very few state workers’ compensation laws have a presumption as broad as the one in H.R. 2499.<sup>13</sup>

According to the International Association of Firefighters, federal firefighters and many state and provincial fire fighters do not have presumptive laws in their jurisdictions. Most states and provinces also limit the types of cancers or diseases that are presumed to be associated with firefighting. Moreover, most states and provinces include rebuttable clauses that allow an employer to challenge that a condition or illness came from firefighting and not from other causes. A classic example is when a fire fighter is diagnosed with cancer but was also a smoker: the employer is allowed to rebut the presumption of occupational illness and claim that smoking was the primary cause of the cancer, not firefighting.<sup>14</sup>

H.R. 2499 MAKES CHANGES TO FECA WITHOUT THE BENEFIT OF DATA FROM THE NATIONAL FIREFIGHTER REGISTRY

The *Firefighter Cancer Registry Act of 2018* requires the Centers for Disease Control and Prevention (CDC) to develop and maintain a National Firefighter Registry to collect data regarding the inci-

<sup>9</sup> <https://www.dol.gov/agencies/owcp/FECA/FederalFirefighterclaims>.

<sup>10</sup> Information provided to Committee on Education and Labor Republican staff by the Department of Labor.

<sup>11</sup> <https://www.dol.gov/sites/dolgov/files/general/budget/2023/FY2023BIB.pdf>.

<sup>12</sup> <https://e-dearcolleague.house.gov/Home/Preview?DCID=358104>.

<sup>13</sup> [https://www.iaff.org/wp-content/uploads/Presumptive\\_Disability\\_Chart\\_as\\_of\\_4-12-2021.pdf](https://www.iaff.org/wp-content/uploads/Presumptive_Disability_Chart_as_of_4-12-2021.pdf).

<sup>14</sup> <https://www.iaff.org/presumptive-health/>.

dence of cancer in firefighters.<sup>15</sup> The CDC anticipates opening enrollment to all U.S. fire service members in the summer/fall of 2022.<sup>16</sup> Enacting H.R. 2499 would be premature without the benefit of the data that the National Firefighter Registry will collect on the incidence of cancer in firefighters.

#### H.R. 2499 EXPANDS A GOVERNMENT PROGRAM IN NEED OF REFORM

FECA is widely considered to be in need of reform since the last meaningful amendments to the Act were made in 1974. Government watchdogs have consistently documented mismanagement in the FECA program. In 2014, the Office of Inspector General of the U.S. Government Accountability Office (GAO) found several instances of mismanagement:

GAO has not effectively managed its FECA program to ensure that it pays only valid claims for continuation of benefits, and employees are returned to work when able. Information documenting eligibility of employees receiving benefits is generally outdated and not maintained. In addition, efforts to identify employees for reemployment and pursue options to return them to suitable work are limited. Third-party cases are not monitored to minimize GAO's workers' compensation program costs. Furthermore, policy intended to prevent, identify, and report potential fraud for investigation lacks specific fraud-prevention controls and is outdated.<sup>17</sup>

In the 112th Congress, the Committee took steps on a bipartisan basis to reform FECA. In July 2011, then-Chairman John Kline (R-MN) introduced the *Federal Workers' Compensation Modernization and Improvement Act* (H.R. 2465), which contained several reforms to modernize the FECA program, improve its integrity, and enhance its efficiency. The Committee reported the bill by voice vote in July 2011 and it passed the House by voice vote in November 2011, but the Senate did not take it up. It is irresponsible for Congress to expand an unreformed program and remove oversight mechanisms when additional oversight of the FECA program is clearly needed.

#### H.R. 2499 IGNORES NON-OCCUPATIONAL CAUSES OF DISEASES

H.R. 2499 includes 16 diseases on the initial list of diseases that are presumptively caused by employment related activities. These diseases occur throughout the U.S. population and may have environmental causes unrelated to employment or genetic causes. Presuming these diseases are caused by occupational exposure ignores other potential causal factors. Moreover, H.R. 2499 unfairly creates an unequal, two-tiered system for federal employees in which presumptions apply to federal firefighter claims but not to other federal employee claims. These other federal employees would be subject to higher standards in seeking medical benefits under FECA than federal firefighters.

<sup>15</sup> Pub L. No. 115-19 (2018).

<sup>16</sup> <https://www.cdc.gov/niosh/firefighters/registry.html>.

<sup>17</sup> <https://www.gao.gov/assets/oig-14-2.pdf>.

- **Bladder Cancer:** Bladder cancer is the sixth most common cancer in the United States, with more than 80,000 new cases diagnosed each year.<sup>18</sup> It is more prevalent among men than women—men are four times more likely to develop bladder cancer—and mainly develops in adults older than age 55.<sup>19</sup> People who have family members with bladder cancer have a higher risk of getting it themselves.<sup>20</sup>

- **Brain Cancer:** Brain tumors may be linked to hereditary genetic factors or conditions.<sup>21</sup> Other than radiation, no known environmental factors are clearly linked to brain tumors.<sup>22</sup>

- **Chronic Obstructive Pulmonary Disease (COPD):** In 2018, 16.4 million people, or 6.6 percent of adults, reported a diagnosis of COPD.<sup>23</sup> The vast majority of COPD is caused by long-term cigarette smoking. One percent of COPD cases result from a genetic disorder.<sup>24</sup>

- **Colorectal Cancer:** Colorectal cancer is the third most common cancer diagnosed in the United States, excluding skin cancers. In 2022, there were 106,180 new cases of colon cancer and 44,850 new cases of rectal cancer. Overall, the lifetime risk of developing colorectal cancer is about 1 in 23 for men and 1 in 25 for women.<sup>25</sup> Many lifestyle-related factors have been linked to colorectal cancer. The links between diet, weight, and exercise and colorectal cancer risk are some of the strongest for any type of cancer.<sup>26</sup> Five to 10 percent of all colon cancer cases are hereditary.<sup>27</sup>

- **Esophageal Cancer:** Esophageal cancer makes up about 1 percent of all cancers diagnosed in the United States, impacting approximately 1 in 125 men and 1 in 417 in women.<sup>28</sup> Tobacco usage is a major risk factor for esophageal cancer, and someone who smokes a pack of cigarettes a day or more has at least twice the chance of getting adenocarcinoma of the esophagus than a nonsmoker. Other risk factors include having gastroesophageal reflux disease, drinking alcohol, age, having Barrett's esophagus, obesity, diet, physical activity, and other digestive health issues relating to the esophagus.<sup>29</sup>

- **Kidney Cancer:** Kidney cancer is among the 10 most common cancers in both men and women.<sup>30</sup> Factors that can increase the risk of kidney cancer include older age, smoking, obesity, high blood pressure, treatment for kidney failure, cer-

<sup>18</sup> <https://www.cancercenter.com/cancer-types/bladder-cancer>.

<sup>19</sup> <https://www.cancer.org/cancer/bladder-cancer/about/key-statistics.html>.

<sup>20</sup> <https://www.cancer.org/cancer/bladder-cancer/causes-risks-prevention/risk-factors.html>.

<sup>21</sup> <https://rarediseases.info.nih.gov/diseases/2491/glioblastoma>.

<sup>22</sup> <https://www.cancer.org/cancer/brain-spinal-cord-tumors-adults/causes-risks-prevention/what-causes.html>.

<sup>23</sup> <https://www.lung.org/research/trends-in-lung-disease/copd-trends-brief/copd-prevalence>.

<sup>24</sup> <https://www.mayoclinic.org/diseases-conditions/copd/symptoms-causes/syc-20353679>.

<sup>25</sup> <https://www.cancer.org/cancer/colon-rectal-cancer/about/key-statistics.html>.

<sup>26</sup> <https://www.cancer.org/cancer/colon-rectal-cancer/causes-risks-prevention/risk-factors.html>.

<sup>27</sup> [https://www.hopkinsmedicine.org/gastroenterology\\_hepatology/diseases\\_conditions/faqs/familial\\_colorectal\\_cancer.html](https://www.hopkinsmedicine.org/gastroenterology_hepatology/diseases_conditions/faqs/familial_colorectal_cancer.html).

<sup>28</sup> <https://www.cancer.org/cancer/esophagus-cancer/about/key-statistics.html>.

<sup>29</sup> <https://www.cancer.org/cancer/esophagus-cancer/causes-risks-prevention/risk-factors.html>.

<sup>30</sup> <https://www.cancer.org/cancer/kidney-cancer/about/key-statistics.html>.

tain inherited syndromes, and a family history of kidney cancer.<sup>31</sup>

- **Leukemia:** Leukemia occurs most often in adults older than 55.<sup>32</sup> Factors that may increase risk of developing some types of leukemia include previous cancer treatment, genetic disorders, exposure to certain chemicals, smoking, and a family history of leukemia.<sup>33</sup>

- **Lung Cancer:** Lung cancer is the second most common cancer (not counting skin cancer).<sup>34</sup> Smoking is by far the leading risk factor for lung cancer, and about 80 percent of lung cancer deaths are thought to result from smoking. Other risk factors include exposure to radon, asbestos, and other carcinogens, taking certain dietary supplements, and consuming arsenic in drinking water.<sup>35</sup>

- **Mesothelioma:** Mesothelioma is rare in the United States and only about 3,000 new cases are diagnosed each year.<sup>36</sup> The main risk factor for mesothelioma is exposure to asbestos. The link between asbestos and mesothelioma is well known, and most use in the United States stopped several decades ago, although it is still used in some products.<sup>37</sup>

- **Multiple Myeloma:** In the United States, the lifetime risk of getting multiple myeloma is 1 in 132.<sup>38</sup> Scientists do not know what causes most cases of multiple myeloma, but factors that may increase risk include older age, sex (more common in men), race (more common in African Americans), family history, obesity, and having other plasma cell diseases.<sup>39</sup>

- **Non-Hodgkin Lymphoma (NHL):** NHL is one of the most common cancers in the United States, accounting for about 4 percent of all cancers.<sup>40</sup> Most people diagnosed with NHL do not have any obvious risk factors.<sup>41</sup> Some factors that may increase the risk for NHL include older age, gender, race, ethnicity, geography, family history, exposure to certain chemicals and drugs, radiation exposure, a weakened immune system, autoimmune diseases, certain infections, and body weight.<sup>42</sup>

- **Prostate Cancer:** About one in eight men will be diagnosed with prostate cancer during their lifetime. About six cases in 10 are diagnosed in men who are 65 or older, and it is rare in men under 40.<sup>43</sup> The most common risk factors for prostate

<sup>31</sup> <https://www.mayoclinic.org/diseases-conditions/kidney-cancer/symptoms-causes/syc-20352664>.

<sup>32</sup> <https://www.cancer.gov/types/leukemia>.

<sup>33</sup> <https://www.mayoclinic.org/diseases-conditions/leukemia/symptoms-causes/syc-20374373#:~:text=Leukemia%20is%20cancer%20of%20the,involved%20the%20white%20blood%20cells>.

<sup>34</sup> <https://www.cancer.org/cancer/lung-cancer/about/key-statistics.html>.

<sup>35</sup> <https://www.cancer.org/cancer/lung-cancer/causes-risks-prevention/risk-factors.html>.

<sup>36</sup> <https://www.cancer.org/cancer/malignant-mesothelioma/about/key-statistics.html>.

<sup>37</sup> <https://www.cancer.org/cancer/malignant-mesothelioma/causes-risks-prevention/risk-factors.html>.

<sup>38</sup> <https://www.cancer.org/cancer/multiple-myeloma/about/key-statistics.html>.

<sup>39</sup> <https://www.cancer.org/cancer/multiple-myeloma/causes-risks-prevention/risk-factors.html>.

<sup>40</sup> [https://www.cancer.org/cancer/non-hodgkin-lymphoma/about/key-statistics.html#:~:text=Non%2DHodgkin%20lymphoma%20\(NHL\),will%20be%20diagnosed%20with%20NHL](https://www.cancer.org/cancer/non-hodgkin-lymphoma/about/key-statistics.html#:~:text=Non%2DHodgkin%20lymphoma%20(NHL),will%20be%20diagnosed%20with%20NHL).

<sup>41</sup> <https://www.mayoclinic.org/diseases-conditions/non-hodgkins-lymphoma/symptoms-causes/syc-20375680>.

<sup>42</sup> <https://www.cancer.org/cancer/non-hodgkin-lymphoma/causes-risks-prevention/risk-factors.html>.

<sup>43</sup> <https://www.cancer.org/cancer/prostate-cancer/about/key-statistics.html>.

cancer are age, race, geography, family history, and inherited gene changes.<sup>44</sup>

- **Skin Cancer:** Cancers of the skin are by far the most common types of cancer. About 5.4 million basal and squamous cell skin cancers are diagnosed each year in the United States, occurring in about 3.3 million Americans, as some people have more than one type.<sup>45</sup> Factors that may increase risk of skin cancer include fair skin, a history of sunburns, excessive sun exposure, living in sunny or high-altitude climates, moles, precancerous skin lesions, a family history of skin cancer, a weakened immune system, and exposure to radiation and other substances.<sup>46</sup>

- **Sudden Cardiac Event or Stroke:** There are more than 356,000 out-of-hospital cardiac arrests annually in the United States, nearly 90 percent of them fatal.<sup>47</sup> Every year, more than 795,000 people in the United States have a stroke.<sup>48</sup> The American Heart Association tracks seven key health factors and behaviors that increase risks for heart disease and stroke: smoking, physical inactivity, nutrition, obesity, high cholesterol, diabetes, and high blood pressure.<sup>49</sup> A family history of coronary artery disease is also a major risk factor.<sup>50</sup>

- **Testicular Cancer:** About one out of every 250 males will develop testicular cancer at some point during their lifetime.<sup>51</sup> Factors that may increase risk of testicular cancer include an undescended testicle, abnormal testicle development, family history, age (most common in men between ages 15 and 35), and race (more common in white men than in African American men).<sup>52</sup>

- **Thyroid Cancer:** Every year about 12,000 men and 33,000 women get thyroid cancer.<sup>53</sup> Thyroid cancers are about three times more common in women than men.<sup>54</sup> Risk factors for thyroid disease include hereditary conditions, a family history of thyroid cancer, radiation exposure, obesity, and low iodine in diet.<sup>55</sup>

The 16 diseases listed in H.R. 2499 can be caused by environmental factors unrelated to work, by lifestyle, or by an individual's genetic makeup, in addition to occupational causes. Congress

<sup>44</sup> <https://www.cancer.org/cancer/prostate-cancer/causes-risks-prevention/risk-factors.html>.

<sup>45</sup> <https://www.cancer.org/cancer/basal-and-squamous-cell-skin-cancer/about/key-statistics.html>.

<sup>46</sup> <https://www.mayoclinic.org/diseases-conditions/skin-cancer/symptoms-causes/syc-20377605>.

<sup>47</sup> <https://www.sca-aware.org/about-sudden-cardiac-arrest/latest-statistics#:~:text=According%20to%20the%20report%2C%20cardiac,nearly%201%2C000%20people%20each%20day.>

<sup>48</sup> <https://www.cdc.gov/stroke/facts.htm#:~:text=Every%20year+%2C%20more-%20than%20795%2C000,are%20first%20or%20new%20strokes.&text=About%20185%2C000%20strokes%E2%80%94nearly%201,have%20had%20a%20previous%20stroke.&text=About%2087%25%20of%20all%20strokes,to%20the%20brain%20is%20blocked.>

<sup>49</sup> <https://www.heart.org/-/media/PHD-Files-2/Science-News/2/2022-Heart-and-Stroke-Stat-Update/2022-Stat-Update-At-a-Glance.pdf>.

<sup>50</sup> <https://www.mayoclinic.org/diseases-conditions/sudden-cardiac-arrest/symptoms-causes/syc-20350634#:~:text=A%20previous%20episode%20of%20cardiac,sudden%20cardiac%20arrest%20increases%20with.>

<sup>51</sup> <https://www.cancer.org/cancer/testicular-cancer/about/key-statistics.html>.

<sup>52</sup> <https://www.mayoclinic.org/diseases-conditions/testicular-cancer-care/symptoms-causes/syc-20352986>.

<sup>53</sup> <https://www.cdc.gov/cancer/thyroid/index.htm>.

<sup>54</sup> <https://www.cancer.org/cancer/thyroid-cancer/causes-risks-prevention/risk-factors.html>.

<sup>55</sup> <https://www.cancer.org/cancer/thyroid-cancer/causes-risks-prevention/risk-factors.html>.

should not remove OWCP's authority to determine an occupational link by inserting a presumption of eligibility.

CONCERNS WITH THE SECRETARY ADDING DISEASES TO THE LIST OF  
DISEASES IN H.R. 2499

H.R. 2499 requires the Secretary of Labor to add diseases to the list of 16 diseases in the bill presumed to be caused by occupational exposure upon a showing by a petitioner or the Secretary's own determination that there is a significant risk to firefighters of developing such a disease. This provision in the bill gives too much authority to the Secretary to determine without oversight whether a disease poses significant risk to firefighters. The list of diseases presumed to be caused by employment could expand indefinitely for federal firefighters, while all other federal employee claims are processed on a case-by-case basis.

REPUBLICAN SUBSTITUTE

Committee Republicans are committed to ensuring that all federal workers, including federal firefighters, have access to workers' compensation benefits. However, H.R. 2499 creates presumptions of eligibility that are not justified. DOL has not indicated there is a need to create a new presumption of eligibility for federal firefighters covered by FECA. DOL has instead used its existing authority to direct resources to provide federal firefighters with additional tools and assistance when filing occupational illness claims.

Before removing critical oversight mechanisms in the FECA program, Congress should be fully informed of the specific barriers that federal firefighters with occupational illnesses and diseases face when applying for FECA benefits. To achieve this goal, Representative Fred Keller (R-PA) offered a substitute amendment at the Committee markup directing GAO to conduct a study on the medical benefits and treatment provided to federal firefighters with occupational illnesses under FECA. The report would also examine any barriers to care, evaluate the approval rate of federal firefighter occupational illness claims, and provide a description of the standard that DOL uses to determine causation with respect to these claims. Unfortunately, Committee Democrats chose to remove important oversight mechanisms in the FECA program by unanimously opposing this commonsense amendment.

CONCLUSION

Committee Republicans strongly support assisting federal firefighters and ensuring they have access to medical benefits under the FECA program. Unfortunately, H.R. 2499 will remove important oversight mechanisms within the program while creating an unequal, two-tiered system for federal firefighters as compared to all other federal employees. H.R. 2499 is not grounded in science. It mandates coverage of certain diseases and illnesses without sufficient research on the causes of such illnesses, proceeds without the benefit of data from the National Firefighter Registry, and requires the Secretary of Labor to add new diseases to the list of diseases presumed to be work-related based upon public petitions with no oversight. H.R. 2499 also expands an unreformed program that

needs additional federal oversight. Finally, DOL has not indicated any need for broad presumption of eligibility for federal firefighters and has directed existing resources to address the needs of federal firefighters filing occupational illness claims.

For these reasons, Congress should reject H.R. 2499 so that Democrats and Republicans can work across the aisle to pursue policies that will help federal workers, including federal firefighters, receive appropriate benefits.

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