

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

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

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

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

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

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

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

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

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

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

Accessing Earnings Data

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

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

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

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

Moving the 3-Day Waiting Period

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

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

Reassessing the Benefit Structure for Retirement Age Beneficiaries

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

As currently designed, FECA program benefits do not change once a beneficiary reaches the federal or Social Security retirement age. According to OWCP, tax-free FECA benefits, which are set at 66 $\frac{2}{3}$ percent (or 75 percent if the claimant has dependents), are typically more generous than federal retirement.

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

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

Related Issues

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

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

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

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

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

Current OIG Oversight Work

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

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

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

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

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

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

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

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

Conclusion

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

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

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