

STATEMENT OF LEONARD J. HOWIE, III
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
U.S. DEPARTMENT OF LABOR
BEFORE THE SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

May 20, 2015

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

Thank you for inviting me to this important hearing today. As you know, the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) administers a number of workers' compensation programs, including the Federal Employees' Compensation Act (FECA) program, which covers 2.7 million Federal and Postal workers and is one of the largest self-insured workers' compensation systems in the world.

I appreciate the opportunity to discuss legislative reforms to FECA that would enhance our ability to assist beneficiaries in returning to work, provide a more equitable array of FECA benefits, and generally modernize the program and update the statute. Almost 99 years ago, on September 7, 1916, Congress enacted FECA to provide comprehensive Federal workers' compensation coverage to all Federal employees and their survivors for disability or death due to an employment injury or illness. FECA's fundamental purpose is to provide compensation for wage loss and medical care, facilitate return to work for employees who have recovered from their injuries, and pay benefits to survivors. The faces of FECA include the Postal worker whose mail truck is hit while driving and delivering the mail, the Federal Bureau of Investigation (FBI) agent injured or killed in the line of duty, and the Department of Veterans Affairs nurse who hurts her back while lifting patients. All of these employees will receive benefits provided by this Act.

Since FECA has not been significantly amended in over 40 years, there are areas where the statute could be improved. Thus, we have developed a number of proposals to reform and maintain FECA as the model workers' compensation program, while producing potential cost savings of more than \$360 million over a 10-year period on a government-wide basis. After briefly discussing the current status of the FECA program, I am pleased to outline possible changes to the statute for consideration.

The proposals are based on the results of internal studies, recommendations by the Government Accountability Office (GAO) and the DOL Inspector General, as well as discussions with the Office of Personnel Management (OPM) and other partner and stakeholder organizations over

the past 30 years. Over the past few years, we have shared these proposed changes with staff of this and other Congressional committees and various outside parties, such as representatives of Federal employee unions and members of the disability community.

FECA Today

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

FECA benefits are based upon an employee's inability to earn pre-injury wages, with no time limit on wage loss benefit duration as long as the work-related condition or disability continues; the amount of compensation is based upon the employee's salary up to a maximum of GS-15 Step 10. The current basic compensation rate for an employee without dependents is 66 2/3% of salary; an employee with at least one dependent (which includes a spouse or child) receives an augmented rate of 75% of salary. Approximately 64% of FECA claimants are paid at this augmented level. As workers' compensation benefits, they are generally tax free; long-term benefits are escalated for inflation after the first year of receipt, however, the program is not designed to compensate for missed career growth resulting from employment interruptions due to injury.

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

FECA benefits are paid out of the Employees' Compensation Fund and most are charged back to the employee's agency. During the 2014 chargeback year, which ended on June 30, 2014, the Fund paid more than \$1.9 billion in wage-loss compensation, impairment, and death benefits and another \$951.3 million to cover medical and rehabilitation services and supplies. These totals include outlays for non-chargeable costs of \$84.2 million. Benefits paid have remained relatively stable at these levels for the past 15 years, with the exception of payments under the War Hazards Compensation Act.

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

Maintaining Program Integrity

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

Once a claim is accepted for ongoing, periodic payments, injured workers are required to submit medical evidence to substantiate continued disability (either annually or on a two- or three-year schedule for those less likely to regain the ability to work). In those situations where it is unlikely that a claimant may return to work due to their work-related medical condition, eligible claimants may elect OPM disability or retirement benefits. Those injured workers who choose to remain in the FECA program must cooperate with OWCP-directed medical examinations and vocational rehabilitation, accept suitable employment if offered, and annually report earnings and employment (including volunteer work) as well as the status of their dependents and any other government benefits. OWCP claims staff carefully reviews these submissions and can require claimants to be examined by outside physicians to resolve questions on the extent of disability or appropriateness of medical treatment such as surgery. OWCP also conducts monthly computer matches with the Social Security Administration (SSA) to identify FECA claimants who have died so that payments can be terminated to avoid overpayments. OWCP is also working with the Department of Labor's Employment and Training Administration to provide data on current FECA claimants receiving periodic disability compensation to assist State Unemployment Agencies in addressing duplicate payments.

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

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

A History of Performance

Under most circumstances FECA claims are submitted by employees to their employing agency, which completes the agency information required on the form and forwards the claim to OWCP. Over the past 5 years, an average of 119,000 new injury and illness claims were filed annually and processed by OWCP. The acceptance rate for new injury claims in FY2014 was 84%. Ninety two percent (92%) were submitted within program timeliness standards of 10 working days and approximately 96% of traumatic injury claims (which represent the majority of our claims) were processed by OWCP within program timeliness standards.

In FY2014, fewer than 13,000 claims involved a significant period of disability. Eighty-eight percent (88%) of these claimants return to work within the first year of injury and 91% return to work by the end of the second year. Due in part to OWCP's quality case management initiative and other efforts to return injured employees to work, less than 2% of all 119,000 new injury cases remain on the long-term compensation rolls two years after the date of injury. Currently, approximately 41,000 injured workers receive long-term ongoing disability benefits for partial or total wage loss, which they receive every four weeks.

FECA Reform

As I have discussed, OWCP has made significant administrative and technical changes to improve the administration of FECA. These changes were legally permissible within the existing statutory framework and have had a demonstrable effect in advancing our progress. The current FECA reform proposal embodies certain reforms that can only be gained through statutory amendment. These amendments fall within three categories:

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

Return to Work and Rehabilitation

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

We propose additional statutory tools that would enhance OWCP's ability to return injured workers to productive employment. While OWCP currently has the authority under FECA to provide vocational rehabilitation services and to direct permanently injured employees to participate in vocational rehabilitation, our proposal removes the permanency limitation in the statute to make clear that such services are available to all injured workers and that participation in such an effort is required through Social Security retirement age. It is generally accepted and consistent with our experience that the earlier the claimant is involved in a vocational rehabilitation and a Return-to-Work program, the greater likelihood of a successful and sustained return to work post injury.

The proposal would amend FECA to explicitly allow for vocational rehabilitation, where appropriate, as early as six months after injury. It provides OWCP the authority to require

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

Our proposal would also amend FECA to provide permanent authority for what we call Assisted Reemployment and expand it to federal employers. Assisted Reemployment is a subsidy designed to encourage employers to choose qualified rehabilitated workers whom they might otherwise not hire. Since disabled Federal workers with skills transferable to jobs within the general labor market may in some cases prove difficult to place, Assisted Reemployment is designed to increase the number of disabled employees who successfully return to the labor force by providing wage reimbursement to potential employers. DOL appropriations bills have for years given OWCP the authority to provide up to three years of salary reimbursement to private-sector employers who provide suitable employment for injured federal workers. Because most Federal employees desire continued employment with the Federal government, our proposal to expand this program to the Federal sector would significantly increase its appeal and effectiveness, and provide further incentive for Federal agencies to hire those employees that may be less likely to return to work without additional supports. These provisions would assist with that effort and support the President's Executive Order 13548 to increase hiring of individuals with disabilities in the Federal government.

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

A second significant disincentive to return to work is created by the disparity that exists between the level of retirement benefits, provided by the OPM, received by most Federal employees and the level of long-term FECA benefits for retirement age FECA recipients. Under current law, the thousands of long-term FECA beneficiaries who are over normal retirement age have a choice between Federal retirement system benefits and FECA benefits, but they overwhelmingly elect the latter because FECA benefits are typically more generous. OPM informs us that the average Federal employee retiring optionally on an immediate annuity under the Civil Service Retirement System will receive about 60% of their "high-three" average salary, most of which is taxable, compared to a tax-free 75% or 66 2/3% FECA benefit based on the individual's salary when injured. With respect to the Federal Employees' Retirement System, OPM believes it is

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

The Administration's proposal would provide claimants with a "Conversion Entitlement Benefit" upon reaching regular Social Security retirement age (and after receiving full benefits for at least one year) that would reduce their wage-loss benefits to 50% of their gross salary at date of injury (with cost of living adjustments thereafter), but would still be tax free.

As the GAO report referenced numerous times, the FECA, like all workers' compensation programs in general, is not designed to compensate for missed career growth due to employment interruptions due to injury; however, this proposed conversion benefit more closely parallels a regular retirement benefit, as opposed to a full wage-loss benefit, so that FECA recipients are not overly advantaged in their retirement years compared to their non-injured counterparts on OPM retirement. An injured worker receiving this retirement level conversion benefit would no longer be subject to several of the sanction provisions outlined in the FECA, such as forfeiture for failure to report earnings or the requirement to seek/accept suitable employment or participate in vocational rehabilitation. Even at this reduced rate, however, an injured worker would still be required to substantiate continuing injury-related disability or face suspension of compensation benefits.

Updating Benefit Structures

We also propose a number of changes to the current FECA benefit structure. One relates to the schedule award provision, which is designed to address the impact of impairment on an individual's life function, such as the loss of vision, hearing, or a limb. Impairment is permanent – assessed when an individual reaches maximum medical improvement--and is based upon medical evidence that demonstrates a percentage of loss of the affected schedule member. Each member, extremity, or function is assigned a specific number of weeks of compensation, and the employee's salary is used to compute his or her entitlement to a schedule award. This payment structure results in considerable disparities in compensation: For example, a manager is paid far more than a letter carrier for loss of a leg even though the impact on the letter carrier may in reality be far more severe. In that instance, a GS-15 would receive twice what a GS-7 receives for the same loss of ability to get around, engage in recreational activities, etc., for this permanent impairment. We believe paying all schedule awards at a single rate (70% of \$53,639, roughly equivalent of the annual base salary of a GS 11 Step 2/3 and representing an approximate mid-point of federal salary), adjusted annually for inflation, would be more equitable and would also speed claims processing.

Similarly, allowing injured workers to receive FECA schedule award benefits in a lump sum concurrently with FECA wage-loss benefits for total or partial disability would simplify the

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

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

Modernizing and Improving FECA

Because FECA has not been amended in over 40 years, updates are needed to modernize and improve several provisions of the statute. One such change was made several years ago but only applied to workers employed by the U. S. Postal Service (USPS) – the imposition of an upfront waiting period. In order to discourage the filing of claims for minor injuries that resolve very quickly, state workers' compensation programs generally impose a waiting period before an injured worker is entitled to wage-loss compensation. Because of the way in which the 1974 amendments to FECA adding the "Continuation of Pay" provisions were drafted, the waiting period under FECA for traumatic injuries was effectively moved after the worker has received 45 days of "Continuation of Pay," thus defeating the purpose of a waiting period. The Postal Enhancement and Accountability Act of 2006 amended the waiting period for Postal employees by placing the three-day waiting period immediately after an employment injury; we suggest placing the three-day waiting period immediately after an employment injury for *all* covered employees.

Another longstanding concern addressed by the proposal relates to the application of FECA subrogation provisions to claims. Workers' compensation systems generally provide that when a work-related injury is caused by a negligent third party the worker who seeks damages from that third party must make an appropriate refund to the workers' compensation system. As a result of the way in which the 1974 "Continuation of Pay" provision was drafted, OWCP cannot include amounts paid for Continuation of Pay in calculating the total refund to OWCP when a recovery is received by a FECA beneficiary from a third party. OWCP seeks authority to include these amounts.

OWCP also seeks the authority to match Social Security wage data with FECA files. While the SSA collects employment and wage information for workers, OWCP presently does not have

authority to match that data to identify individuals who may be working while drawing FECA benefits. OWCP currently is required to ask each individual recipient to sign a voluntary release to obtain such wage information. Direct authority would allow automated screening to ensure that claimants are not receiving salary, pay, or remuneration prohibited by the statute or receiving an inappropriately high level of benefits.

This proposal would also increase the incentive for employing agencies to reduce their injury and lost time rates. Currently the USPS and other agencies not funded by appropriations must pay their “Fair Share” of OWCP administrative expenses, but agencies funded by appropriations are not required to do so. Amending FECA to allow for administrative expenses to be paid out of the Employees’ Compensation Fund and included in the agency chargeback bill would increase Federal agencies’ incentive to reduce injuries and more actively manage return to work when injuries do occur.

To improve access to medical care, we suggest a provision that would increase the authority and use of Physicians’ Assistants and Nurse Practitioners. We suggest amending FECA to allow Physicians’ Assistants and Nurse Practitioners to certify disability during the Continuation of Pay period so that case adjudication is not delayed and treatment can be provided more rapidly. The provision allowing Physicians’ Assistants and Nurse Practitioners to certify disability during the Continuation of Pay period would also reduce the burden of disability certifications in war zone areas because access to a physician may be even more limited in these circumstances.

To further address injuries sustained in a designated zone of armed conflict, FECA should be amended to provide Continuation of Pay for wage loss up to 135 days for such injuries. This increase from the standard 45 days would allow additional flexibility for claims handling in these challenging areas and is an outgrowth of a cooperative effort with OPM, the Department of State, and the Department of Defense to address the needs of deployed civilian employees.

Conclusion

This proposal will enhance OWCP’s ability to return federal employees to work and provides a fair and reasonable resolution to the disincentives and inadequacies that have arisen within the current FECA statute. Since any FECA reform should be prospective only, it would apply to new injuries and new claims of disability after enactment; injured workers currently in receipt of disability benefits would see no changes in their benefit level. *We believe that our proposals, if adopted in their entirety, would allow all federal employees and federal agencies to embrace and adopt a more pro-active and progressive attitude about return to work and disability employment, and avoid any unfair interruption of existing benefits.* Even with this prospective approach, cost savings are estimated to be in excess of \$360 million over a 10-year period government-wide.

The FECA program is at a critical juncture. We have done our best to keep the program current and responsive to the changing world we live in through administrative, technological, and

procedural innovations and investments. Without these statutory reforms, OWCP's best efforts may yield some further gains; however, we cannot overcome the fundamental disincentives in the current law and achieve the breakthrough improvements that we know are possible within the FECA program, which would allow FECA to maintain its status as a model of workers' compensation programs.

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

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