# FECA REFORM AND OVERSIGHT: PRIORITIZING WORKERS, PROTECTING TAXPAYER DOLLARS

## HEARING

BEFORE THE

## SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE

## COMMITTEE ON EDUCATION AND WORKFORCE

## U.S. HOUSE OF REPRESENTATIVES

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# C O N T E N T S

# FECA REFORM AND OVERSIGHT: PRIORITIZING WORKERS, PROTECTING TAXPAYER DOLLARS

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**Tuesday, May 6, 2025**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS,
COMMITTEE ON EDUCATION AND WORKFORCE,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:17 a.m., in Room 2175, Rayburn House Office Building, Washington, DC, Hon. Ryan Mackenzie (Chairman of the Subcommittee) presiding.

Present: Representatives Mackenzie, Messmer, Miller, Fine, Walberg, Omar, Stevens, and Scott.

Also present: Courtney

Staff present: Vlad Cerga, Director of Information Technology; Maren Emmerson, Intern; Libby Kearns, Press Assistant; Libby Kearns, Press Assistant; Katerina Kerska, Legislative Assistant; Trey Kovacs, Director of Workforce Policy; Campbell Ladd, Clerk; R.J. Laukitis, Staff Director; Danny Marca, Director of Information Technology; Brad Mannion, Professional Staff Member; John Martin, Deputy Director of Workforce Policy/Counsel; Audra McGeorge, Communications Director; Daniel Nadel, Legislative Assistant; Ethan Pann, Deputy Press Secretary and Digital Director; Kane Riddell, Staff Assistant; Carl Rifino, Intern; Sara Robertson, Press Secretary; Ann Vogel, Director of Operations; Ali Watson, Director of Member Services; Joe Wheeler, Professional Staff Member; James Whittaker, General Counsel; Ellie Berenson, Minority Press Assistant; Ilana Brunner, Minority General Counsel; Jo Howard, Minority Grad Intern; Dhrtvan Sherman, Minority Research Assistant; Bob Shull, Minority Senior Labor Policy Counsel; Raiyana Malone, Minority Press Secretary; Kevin McDermott Minority Director of Labor Policy; Eleazer Padilla, Minority Staff Assistant; Véronique Pluviose, Minority Staff Director; Banyon Vassar, Minority Director of IT.

Chairman MACKENZIE. The Subcommittee on Workforce Protection will come to order. I note that a quorum is present, and without objection, the Chair is authorized to call a recess at any time. Today's hearing is about examining the Federal Employees' Compensation Act, known as FECA, a more than century old law to consider how it might be improved to benefit injured Federal workers, while also protecting taxpayers from waste, fraud and abuse.

Enacted in 1916, FECA provides workers compensation benefits to approximately 2.6 million civilian Federal employees, employees

of entities wholly owned by the United States, including the U.S. Postal Service, and volunteers with Volunteers and Service to America and the Peace Corps.

The FECA Program is administered and adjudicated by the Department of Labor's Office of Workers' Compensation Programs. Through this program DOL provides benefits to individuals who sustain an injury or illness in the performance of 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.

In Fiscal Year 2024, there were more than 86,000 new FECA cases. From July 1, 2023 to June 30, 2024, the program provided more than 2.9 billion dollars in benefits to more than 178,000 workers and survivors for work related injuries or illnesses. Of these benefit payments, approximately 2 billion dollars was for wage loss compensation, 843 million dollars for medical and rehabilitation services, and 143 million dollars for death benefits payments to surviving dependents.

However, FECA is widely considered to be in need of updating. With the last meaningful changes made more than 50 years ago. Critics of the existing program have argued that it is susceptible to waste, fraud and abuse, and that it can be at times overly generous as many beneficiaries remain on the program well into retirement.

The need for reforming FECA has long been recognized by Presidential administrations from both parties. In the Clinton administration, George W. Bush administration, Obama administration, and the first Trump administration, all making reform proposals.

While these administrations have differed on many matters, they agree on many reforms to benefit FECA recipients. Such reforms include making the wage loss compensation level uniform for all beneficiaries, permitting physician assistants and nurse practitioners to approve claims for FECA benefits, and allowing DOL to communicate with the Social Security Administration to review claimant's employment and wage information.

Federal workers and taxpayers deserve a more efficient and effective program. Working together in a bipartisan fashion, we can create comprehensive changes to ensure the FECA Program is meeting the needs of workers and taxpayers. Creating a program that prevents abuse by bad actors reflects the realities of the 21st Century, and provides adequate support to workers, and that is the end goal.

I look forward to hearing from today's witnesses about their perspectives on FECA, and discussing their recommendations about reforming this important program. With that, I yield to my Ranking Member for an opening statement.

[The prepared statement of Chairman Mackenzie follows:]

COMMITTEE ON EDUCATION & WORKFORCE
CHAIRMAN TIM WALBERG

COMMITTEE STATEMENT

Opening Statement of Rep. Ryan Mackenzie (R-PA), Chairman
Subcommittee on Workforce Protections
FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars
May 6, 2025

(As prepared for delivery)

Today's hearing is about examining the *Federal Employees' Compensation Act* (FECA), a more than a century-old law, to consider how it might be improved to benefit injured federal workers while also protecting taxpayers from waste, fraud, and abuse. Enacted in 1916, FECA provides workers' compensation benefits to approximately 2.6 million civilian federal employees, employees of entities wholly owned by the United States (including the U.S. Postal Service), and volunteers with Volunteers in Service to America and the Peace Corps.

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However, FECA is widely considered to be in need of updating, with the last meaningful changes made more than 50 years ago. Critics of the existing program have argued that it is susceptible to waste, fraud, and abuse and that it is overly generous, as many beneficiaries remain on the program well into retirement.

The need for reforming FECA has long been recognized by the presidential administrations from both parties, with the Clinton, George W. Bush, Obama, and first Trump administrations making reform proposals. While these administrations have differed on many matters,

they agreed on many reforms to benefit FECA recipients. Such reforms include making the wage-loss compensation level uniform for all beneficiaries, permitting physician assistants and nurse practitioners to approve claims for FECA benefits, and allowing DOL to communicate with the Social Security Administration to review claimants' employment and wage information.

Federal workers and taxpayers deserve a more efficient and effective program. Working together in a bipartisan fashion, we can create comprehensive changes to ensure the FECA program is meeting the needs of workers and taxpayers. Creating a program that prevents abuse by bad actors, reflects the realities of the 21st century, and provides adequate support to workers is the end goal.

I look forward to hearing from today's witnesses about their perspectives on FECA and discussing their recommendations about reforming this important program.

With that, I yield to the Ranking Member for an opening statement.

Ms. OMAR. Thank you, Mr. Chairman. Good morning, everyone. Thank you to our witnesses for being here today. FECA is more than just a compensation statute, it is a solemn promise. A promise that if a Federal worker is injured on the job, we as government, will make them whole.

It is a commitment not only to those who wear a uniform, or work on the frontlines, but to every civilian Federal employee from postal workers to TSA agents, to those inspecting our food supply and maintaining public safety. These individuals do their job with dedication, and we must ensure they are protected when they are injured doing that work.

Unfortunately, in a broader landscape of workers' compensation, we have seen a troubling trend. Years of regressive changes in many states have weakened employee compensation systems leaving too many workers behind in their moment of greatest need. FECA stands as one of the last stronghold of workers first compensation model, and we have a responsibility to preserve and

strengthen it, not dismantle it in the name of cost saving or efficiency.

Historically, this Committee has shown that FECA reform does not have to be partisan. In fact, some of the most significant improvements have been made through bipartisan cooperation. We have demonstrated that when we put politics aside, and focus on the mission of supporting Federal workers, we can deliver meaningful change, that legacy is worth continuing.

We do not need to reinvent the wheel, we can, but we can modernize the vehicle. That means updating outdated procedures, improving access to care, and ensuring injured workers do not fall through the cracks during the claim process. With bipartisan work already underway, including the Improving Access to Workers' Compensation for Injured Federal Workers from Chair Walberg, and Representative Courtney, we are headed in the right direction.

Let me be clear, any changes to FECA must be driven by one question, how does this help workers? The conversation must be centered on listening to workers. Too often, decisions about Federal workforce policy are made without real engagement with those directly impacted.

We need to hear from the workers navigating the claim process. The physicians providing care, and the families who face financial insecurity when benefits are delayed. Their experiences must guide our reforms. To help us understand the importance of the strengthening of FECA, I want to share two stories from my home State of Minnesota.

In November 2020, a postal truck was hit by a speeding SUV, causing the truck to flip over. The letter carrier inside was found unconscious. He suffered numerous injuries, including a broken wrist, a torn ACL, a broken chest bone, internal bleeding and a concussion.

Since the incident, he has lived with PTSD and cognitive communication deficit. Sadly, he will never be able to work again. However, it is only due to FECA that his medical treatment is covered, and he and his family receive steady cash benefits that while falling short of a paycheck he once earned, remain a vital lifeline.

This is why FECA matters because when tragedy strikes this law is what stands between a lifetime of hardship and a measure of dignity. Now, more than ever, we must remember that Federal workers are not just serving a government, they are serving all of us, and so at the very least, they deserve FECA Program that is fair and worthy of services they provide to the public.

The tireless and often fearless dedication of our Federal workers has real world impact on the safety and well-being of our communities. Just last week I had the privilege of honoring a letter carrier from my district in St. Louis Park who was named NALC's 2025 National Hero of the Year for saving a person trapped in a burning car.

This is only one example of the spirit of public service that emanates our Federal workforce, and it is exactly why our government must be committed to protecting them as they are protecting others. When our Federal workers know that they will be treated fairly, and supported in times of injury or illness, it builds the kind of stability that strengthens not only the workforce, but also the

quality and delivery of public service that millions of Americans rely on every day.

Now, I know we will hear concerns about cost efficiency, and of course, we all want to use tax dollars responsibly. The smartest and most cost-effective thing we can do is invest in workplace safety. Fewer injuries or illnesses mean fewer claims, and lower long-term costs.

That is why prevention matters. Like the proposed OSHA Heat Stress Rule, are not good just policy, they are common sense. Prevention is always cheaper than treatment, and when workers have the training, equipment and protection they need everyone benefits. Productivity goes up. Injury rates go down, and public trust in our institutions are strengthened.

This should not be a partisan issue. It is about dignity. It is about fairness. It is about whether we value the people who put in the work every single day to serve this country. When they get hurt, they should not be punished. They should not be pushed into poverty. They should not have to jump through hoops to get the care and compensation they have earned.

They certainly should not be treated as a liability or line items. These are human beings with families, careers and futures that depend on our decisions in this room. We owe it to our workforce, and to the public, to maintain a system that reflects our values of fairness, compassion and respect for those who serve.

We owe it to the institution to pursue those values in a bipartisan way, building on past reforms with renewed focus on the people who are the foundation of our government's daily operations. I hope that is what today's hearing will reflect, a real commitment to protecting workers, not cutting corners, a willingness to improve FECA, not by weakening its promise, but by strengthening the support it offers.

Thank you again, Mr. Chairman, and I yield back.

[The prepared statement of Ranking Member Omar follows:]

ED & WORKFORCE DEMOCRATS

# OPENING STATEMENT

House Committee on Education and Workforce
Ranking Member Robert C. "Bobby" Scott

**Opening Statement of Ranking Member Ilhan Omar (MN-05)**
Subcommittee on Workforce Protections
*FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars*
Tuesday, May 6th, 2025 | 10:15 a.m.

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Thank you, Mr. Chairman. Good morning, everyone, and thank you to our witnesses for being here today.

The *Federal Employees' Compensation Act*, or FECA, is more than just a compensation statute—it is a solemn promise. A promise that if a federal worker is injured on the job, we as a government will make them whole. It's a commitment not only to those who wear a uniform or work on the front lines, but to every civilian federal employee—from postal workers to TSA agents to those inspecting our food supply and maintaining public safety. These individuals do their jobs with dedication, and we must ensure they are protected when they're injured doing that work.

Unfortunately, in the broader landscape of workers' compensation, we've seen a troubling trend. Years of regressive changes in many states have weakened employee compensation systems, leaving too many workers behind at their moment of greatest need. FECA stands as one of the last strongholds of a worker-first compensation model, and we have a responsibility to preserve and strengthen it, not dismantle it in the name of cost savings or efficiency.

Historically, this Committee has shown that FECA reform doesn't have to be partisan. In fact, some of the most significant improvements to the program have been made through bipartisan cooperation. We've demonstrated that when we put politics aside and focus on the mission—supporting federal workers—we can deliver meaningful change. That legacy is worth continuing. We don't need to reinvent the wheel, but we can modernize the vehicle. That means updating outdated procedures, improving access to care, and ensuring injured workers don't fall through the cracks during the claims process.

With bipartisan work already underway, including the *Improving Access to Workers' Compensation for Injured Federal Workers Act*, from Chairman Walberg and Representative Courtney, this work must be continued. But let me be clear: any changes to FECA must be driven by one question—*how does this help workers? The conversation must be centered on listening to workers.* Too often, decisions about federal workforce policy are made without real engagement with those directly impacted. We need to hear from the workers navigating the claims process, the physicians providing care, and the families who face financial insecurity when benefits are delayed. Their experiences must guide our reforms.

To help us understand the importance of strengthening FECA, I want to share two stories from my home state of Minnesota. In November 2020, a postal truck was hit by a speeding SUV, causing the truck to flip over. The letter carrier was found unconscious. He suffered numerous injuries, including a broken wrist, torn ACL, broken chest bone, internal bleeding, and a concussion. Since the incident, he has had Post-Traumatic Stress Disorder and a cognitive communication deficit. Sadly, he will never be able to work again. However, it is only due to FECA that his medical treatment is covered, and he and his family receive a steady cash benefit that, while it falls

short of the paycheck he once earned, nevertheless is a lifeline for them. This is why FECA matters, because when tragedy strikes, that's what stands between a lifetime of hardship and a measure of dignity.

Now more than ever, we must remember that federal workers aren't just serving the government. They are serving all of us. And so, at the very least, they deserve FECA, which is far and worthy of the services they provide to the public. The tireless and often fearless dedication of our federal workers has a real-world impact on the safety and well-being of our communities.

Just last week, I had the privilege of honoring a letter carrier from my district in Saint Louis Park, whose name is NALC's 2025 national hero of the year for saving a person trapped in a burning car. This is only one example of public service that emanates from our federal workforce and is exactly why our government must be committed to protecting them as they are protecting others. Because when our federal workers know they will be treated fairly and supported in time of injury and illness, it builds the type of stability that strengthens not only the workforce but also the quality and deliver public services that millions of Americans rely on every day.

Now, I know we'll hear concerns about cost efficiency. And of course, we all want to use tax dollars responsibly. But the smartest, most cost-effective thing we can do is invest in workplace safety. Fewer injuries and illnesses mean fewer claims and lower long-term costs. That's why prevention matters—like the proposed OSHA heat stress rule—isn't just good policy, it's common sense.

Prevention is always cheaper than treatment. And when workers have the training, equipment, and protections they need, everyone benefits. Productivity goes up, injury rates go down, and public trust in our institutions are strengthened.

This shouldn't be a partisan issue. It's about dignity. It's about fairness. It's about whether we value the people who put in the work every single day to serve this country. When they get hurt, they shouldn't be pushed into poverty. They shouldn't have to jump through hoops to get the care and compensation they have earned. And they certainly shouldn't be treated as liabilities or line items—these are human beings with families, careers, and futures that depend on our decisions in this room.

We owe it to our workforce and the public to maintain a system that reflects our values: fairness, compassion, and respect for those who serve. And we owe it to this institution to pursue those values in a bipartisan way, building on past reforms with a renewed focus on the people who are the foundation of our government's daily operations. So, I hope that's what today's hearing will reflect—a real commitment to protecting workers, not cutting corners. A willingness to improve FECA not by weakening its promise, but by strengthening the support it offers.

Thank you again, Mr. Chairman, and I yield back.



Chairman MACKENZIE. Pursuant to Committee Rule 8–C, all members who wish to insert written testimoneys into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m., 14 days after this hearing.

Without objection, the hearing record will remain open for 14 days to allow such statements, and other extraneous material noted during the hearing to be submitted for the official hearing record. I note that the Subcommittee, for the Subcommittee, that some of my colleagues who are not permanent members of the Subcommittee may be waving on for the purpose of today's hearing.

Now, to the introduction of witnesses. I will turn—I will start—first witness is going to be Mr. Scott Szymendera, who is an Analyst of the congressional Research Service at the U.S. Library of Congress here in Washington, DC.

Our second witness is Mr. Luiz Santos, the Acting Inspector General for the U.S. Department of Labor in Washington, DC. Our third witness is Mr. Brian Renfroe, the National President for the National Association of Letter Carriers, also in Washington, DC. Our final witness is Ms. Tammy Hull, the Inspector General for the U.S. Postal Service, as well in Washington, DC.

Thank you to all of you for being here. We look forward to hearing each of your testimony today, and pursuant to Committee Rules I would ask that each of you limit your oral presentation to a 3-minute summary in addition to your written statements you have provided. The clock will count down from 3 minutes as Committee members have many questions for you, and we would like to spend as much time as possible on questions.

Pursuant to Committee Rule 8-D, and Committee practice, however, we will not cutoff testimony until you reach the 5-minute mark. I would also like to remind witnesses to be aware of their responsibility to provide the accurate information as they testify before the Subcommittee here today. At this time, I will now recognize our first witness, Mr. Szymendera for your testimony.

**STATEMENT OF MR. SCOTT SZYMENDERA, CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, WASHINGTON, D.C.**

Mr. SZYMENDERA. Thank you Chairman Mackenzie, Chairman Walberg, Ranking Member Omar, members of the Subcommittee. I am Scott Szymendera, and I am an Analyst at the congressional Research Service. Thank you for inviting CRS to testify at this hearing today.

Workers' compensation has been described as a grand bargain between employers and their employees. For the Federal Government and its workforce, the grand bargain is FECA, the Federal Employees' Compensation Act. FECA provides compensation for the duration of a worker's disability, which can last until death.

While workers may choose to convert to Federal retirement benefits, they are not required to do so, resulting in host agencies paying benefits for some workers after their expected retirement ages. Past FECA reform packages have included proposals to reduce the amount of FECA compensation at retirement age, to encourage workers to leave the FECA rolls for Federal retirement.

However, converting from FECA to Federal retirement could result in some workers, especially those injured early in their Federal careers, receiving a reduced benefit at retirement age. While most workers' compensation systems base the level of compensation on two-thirds of a worker's pre-disability wage, FECA provides augmented compensation in cases in which a beneficiary has a spouse or dependents bringing the level of compensation up to three-fourths of the pre-disability wage.

While augmented compensation provides additional resources for a larger family, it exceeds the compensation offered by a majority of State workers' compensation systems, and may result in a bene-

ficiary receiving more from FECA than what their net pay would be if they returned to work.

Past reform packages have proposed increasing the base rate of compensation, and eliminating augmented compensation. All workers compensation systems have waiting periods of several days before compensation is paid with these waiting periods serving in similar ways to deductibles in other insurance programs.

FECA is unique among workers' compensation programs in that workers with traumatic injuries are eligible for up to 45 days of continuation of pay at 100 percent of their regular salary from their host agencies before receiving FECA compensation. The FECA waiting period in these cases begins not at the time of injury, but after the continuation of pay.

This postponement of the waiting period may blunt its deductible function, and result in fewer injured Federal employees sharing in the costs of their compensation. In 2006, Congress moved the waiting period for postal workers to before continuation of pay, and since then there have been proposals to implement this change across the Federal Government.

This concludes the testimony of CRS. I would be happy to answer any questions the Subcommittee may have.

[The prepared statement of Mr. Szymendera follows:]

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TESTIMONY

Statement of

**Scott D. Szymendera**
Analyst in Disability Policy

Before

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

Hearing on

# "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars"

May 6, 2025

**Congressional Research Service**
7-5700
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CRS TESTIMONY
Prepared for Congress

Chairman Mackenzie, Ranking Member Omar, and Members of the Subcommittee, my name is Scott Szymendera and I am an analyst at the Congressional Research Service (CRS). Thank you for inviting CRS to testify before the Subcommittee on Workforce Protections on the Federal Employees' Compensation Act (FECA), the workers' compensation system for federal employees.

For over a century, FECA, a workers' compensation program administered by the Department of Labor (DOL), has protected members of America's civil service from economic losses associated with employment-related injuries and illnesses, and has protected their families in cases of employment-related deaths. In my testimony today, CRS provides an overview of workers' compensation in the United States, the original intent of Congress when creating FECA, a legislative history of the FECA program, a plain-language summary of the features of the FECA program that serves federal employees today, and information on three FECA reform proposals that have been considered in the past.

# Overview of Workers' Compensation

## Origins of Workers' Compensation

In 1911, Wisconsin enacted what is considered the first workers' compensation law in the United States.[1] Prior to the advent of the modern workers' compensation system, workers who were injured, became ill, or died on the job could bring lawsuits against their employers to recover economic and non-economic losses. However, while employers could be held legally liable for losses associated with employment-related injuries, illnesses, and deaths, they were armed with the common-law defenses of "contributory negligence," "assumption of risk," and the "fellow-servant doctrine" which often made it difficult for workers to prevail in employment injury and illnesses cases.[2] While this system generally favored employers, employees who were successful in suits against their employers could be awarded non-economic damages that could prove costly to employers. In addition, employers had to bear the legal costs of defending themselves against suits from workers, even if these suits ultimately proved unsuccessful.

## The Grand Bargain

Workers' compensation is commonly referred to as a "grand bargain" between employees and employers. Employees receive compensation for economic losses associated with employment-related injuries, illnesses, and deaths, without regard to fault. In exchange for this no-fault coverage, workers are prohibited from suing their employers for damages related to covered injuries, illnesses, or deaths, giving employers protection from large judgments for non-economic losses such as pain and suffering or punitive damages.

## Principles of Workers' Compensation

### No-Fault Coverage

Workers' compensation in the United States, including workers' compensation provided to federal employees under FECA, is a no-fault system. As a no-fault system, employees are compensated for

[1] The first general workers' compensation law in the United States was the Federal Employers' Compensation Act, P.L. 16-176, enacted in 1908. This law will be discussed later in my testimony. New York passed a workers' compensation law in 1910, but it was ruled unconstitutional by the state's courts in 1911.

[2] For a detailed discussion of these common-law defenses see Edward M. Welch, *Employer's Guide to Workers' Compensation* (Washington: Bureau of National Affairs, Inc., 1994), pp. 30-31.

covered injuries, illnesses, and deaths regardless of who is at fault or whether or not fault can be determined.[3]

## Exclusive Remedy

Workers' compensation is an exclusive remedy for workplace injuries, illnesses, and deaths. Employees are generally not permitted to sue their employers for compensatory or punitive damages relating to covered injuries, illnesses, and deaths. In some cases, suits by employees may be brought against employers for intentional harms and against third parties who may share in the liability for the covered injury, illness, or death.

The exclusive remedy and no-fault coverage principles are intended to create a workers' compensation system that is largely non-adversarial. Many workers' compensation systems, including FECA, use administrative rather than judicial proceedings to resolve disputes over claims and benefits. However, despite the desire of the creators of workers' compensation to remove cases involving work injuries from the courts, the history of workers' compensation in the United States has been marked by what historian Edward Berkowitz has termed a "persistence of litigation" as both employees and employers dispute workers' compensation claims decisions or appeal the decisions of administrative bodies to the courts.[4] In nearly all states, but not the FECA system, workers' compensation disputes and litigation can result in lump-sum settlements that release employers from all future responsibilities related to settled cases.

## Universal Coverage of Employees

Workers' compensation systems generally do not exclude certain classes of employees because of the dangerous nature of their jobs or their increased risk of injury, illness, or death. While state workers' compensation laws vary in exactly who is covered, one of the general principles of workers' compensation systems is universal, or near-universal, coverage. For example, several of the recommendations issued in 1972 by the National Commission on State Workmen's Compensation Laws created by the Occupational Safety and Health Act of 1970 (OSH Act; P.L. 91-596) relate to bringing states towards universal workers' compensation coverage of public and private-sector employees, regardless of risk or size of employer.[5] The National Academy of Social Insurance estimates that nearly 88% of jobs and 92% of all workers are covered by workers' compensation.[6]

## Coverage of Employment-Related Injuries, Illnesses, and Deaths Only

Workers' compensation only provides compensation for injuries, illnesses, and deaths that occur in the course of employment. Generally, this means that an employee must be at a work site when the injury, illness, or death was caused and the injury, illness, or death must have been caused by a situation related to the employee's job. Injuries, illnesses, and deaths that occur outside of work hours or while commuting

[3] Employees are covered even if they are at fault in the accident. However, if the injury, illness, or death was caused by the willful misconduct of the employee or if the employee was under the influence of drugs or alcohol at the time of the incident, then the injury, illness, or death may not be covered by workers' compensation.

[4] Edward D. Berkowitz, *Disabled Policy: America's Programs for the Handicapped* (New York: Cambridge University Press, 1987), pp. 21-27.

[5] National Commission on State Workmen's Compensation Laws, *The Report of the National Commission on State Workmen's Compensation Laws*, Washington, DC, July 1972, Chapter 2.

[6] Tyler Q. Welch, Griffin T. Murphy, and Michael Manley, *Workers' Compensation: Benefits, Costs, and Coverage (2022 data)*, National Academy of Social Insurance, November 2024, p. 74, https://www.nasi.org/research/workers-compensation/workers-compensation-benefits-costs-and-coverage-2022-data/.

to or from work, or that are caused by acts unrelated to employment, such as working on personal projects in the workplace, are generally not covered by workers' compensation.[7]

### *COVID-19 and Workers' Compensation*

The COVID-19 pandemic presented unprecedented challenges to the nation's workers' compensation systems. Generally, workers' compensation does not cover illnesses that are not directly linked to employment or that are transmissible outside of the workplace and in everyday life. For example, an employee who contracts the common cold or influenza would not be eligible for workers' compensation benefits.

However, the nature of COVID-19 transmission, which involved close contact between persons, such as often occurs in the workplace, and the exceptions to state public health restrictions that permitted in-person work by "essential" workers such as those in healthcare and retail, led to questions about how this novel disease would be treated by workers' compensation. During the pandemic, 20 states created presumptions that COVID-19 in certain types of employees, usually those required to work in-person or interact with the public at work, was contracted in the course of employment and thus compensable.[8] A COVID-19 presumption was also added to FECA and will be discussed later in this testimony.

## Compensation for Medical Care

Workers' compensation provides all of the costs of medical care associated with a covered injury or illness. Covered medical costs include necessary treatments, procedures, and medications. In some states and under FECA, workers' compensation pays for certain costs associated with travelling to receive medical services. Employees are not required to contribute to the cost of this care through their own private insurance or through deductibles or coinsurance. Medical coverage under workers' compensation is limited only to the covered injury or illness and is not intended to provide for the general healthcare needs of the worker. Workers' compensation systems vary on the rights of workers to choose their treating physicians.

## Compensation for Disability and Death

Workers' compensation is intended to compensate workers for economic losses associated with employment-related injuries and illnesses and their families for economic losses associated with employment-related deaths. This compensation is provided in the form of cash disability benefits which are intended to replace a portion of a worker's wages or wage-earning capacity lost due to a covered injury, illness, or death. Total disability benefits are paid when a worker is unable to work or otherwise totally disabled and in most systems are based on a standard benefit of two-thirds of the worker's pre-disability wage.

Benefits for partial disabilities may be based on statutory or regulatory schedules which assign benefit amounts to specific conditions, such as the loss of a limb, or on other measures of partial disability such as wage-earning capacity, functional capacity, or overall level of impairment.[9] Disability benefits are generally subject to system-specific minimum and maximum levels which are often based on average

[7] Employees travelling for the purposes of work, such as driving a delivery truck or attending a conference, are covered by workers' compensation.

[8] Welch, et al., *Workers' Compensation,* 2024, p. 36.

[9] How workers' compensation systems determine levels of partial disability benefits, and specifically the use of the sixth edition of the American Medical Association's *Guides to the Evaluation of Impairment*, was the subject of a hearing before this subcommittee on November 17, 2010 (U.S. Congress, House Committee on Education and Labor, Subcommittee on Workforce Protections, *Developments in State Workers' Compensation Systems*, hearing, 111th Cong., 2nd sess., November 17, 2010 (Washington: GPO, 2010)).

wages in a state. Benefits generally last for the duration of disability. Some systems do limit the duration of benefits or have age limits for the receipt of disability benefits.

If a worker dies on the job or from an employment-related injury or illness, his or her survivors are entitled to benefits to partially replace his or her capacity to provide for the family. Workers' compensation systems often also provide benefits to partially cover the costs of a workers' funeral.

Pursuant to Section 104(a)(1) of the Internal Revenue Code, workers' compensation benefits are not subject to the federal income tax.[10]

# Legislative History of FECA

The FECA program has its origins in a law from the late 1800s that covered only the employees of a federal agency that has long since ceased to exist on its own. The modern FECA system has its roots in legislation enacted in 1916, and many of the basic provisions of this original law, such as the basic rate of compensation, are still in effect today. Congress passed major amendments to the 1916 legislation in 1949, 1960, 1966, and most recently in 1974.[11] While these amendments made significant changes to the FECA program, the basic framework of the program endures as does the overall intent of Congress through the years to maintain a workers' compensation system for federal employees that is in line with the basic principles that have governed workers' compensation in this country for more than a century.

## Limited Workers' Compensation for the United States Life Saving Service and Other Hazardous Federal Occupations

The first workers' compensation law for federal employees was enacted in 1882 and provided up to two years of salary to any member of the federal United States Life Saving Service disabled in the line of duty and two years of salary to his or her survivors in case of a line-of-duty death.[12] In 1908, Congress passed a more comprehensive workers' compensation law for federal employees engaged in certain hazardous occupations such as laborers at federal manufacturing facilities and arsenals or working on the construction of the Panama Canal.[13] This law provided workers with up to one year of salary after a 15-day waiting period if disabled due to an employment-related injury and their survivors with up to a year of salary in case of death.

The 1882 and 1908 federal workers' compensation laws did not provide universal coverage for all federal employees. It is estimated that one-fourth of the federal workforce was covered by the 1908 law, which was clearly designed only to provide coverage for what were seen to be the most hazardous jobs in the civil service.[14] President Theodore Roosevelt recognized this shortcoming of the law he would eventually sign, as before the 1908 law's passage he called on Congress to pass a workers' compensation bill that

[10] 26 U.S.C. §104(a)(1). For additional information on the exclusion of workers' compensation benefits from the computation of income subject to the federal income tax, see U.S. Congress, Senate Budget Committee, *Tax Expenditures: Compendium of Background Material on Individual Provisions*, committee print, 117th Cong., 2nd sess., December 2022, S.Prt. 117-24 (Washington: GPO, 2022), pp. 943-945 and 1005-1010.

[11] This section of my testimony does not discuss minor, technical, or administrative amendments.

[12] Act of May 4, 1882, ch. 117, 22 Stat. 55 (1882). In 1915 the United States Life Saving Service was merged with the Revenue Cutter Service to form the United States Coast Guard.

[13] P.L. 60-176.

[14] Willis J. Nordlund, "The Federal Employees' Compensation Act," *Monthly Labor Review*, September 1991, p. 5.

would cover "all employees injured in the government service" and stated that the lack of such a comprehensive workers' compensation law was "a matter of humiliation to the nation."[15]

In addition to only covering a small portion of the federal workforce, the 1882 and 1908 laws did not provide for medical benefits for disabled workers, and the 1908 law only applied in cases of disability or death arising from injuries and not illnesses.

## The Federal Employees' Compensation Act of 1916

President Woodrow Wilson signed the Federal Employees' Compensation Act (P.L. 64-267) into law on September 7, 1916, and in so doing extended the protections of the modern workers' compensation system to nearly all federal employees. This original FECA law remains the basis for the workers' compensation system for the federal civil service.

The FECA law provided coverage for nearly all civilian employees of the federal government injured or killed in the line of duty. Coverage was not provided for occupational illnesses.[16] The law provided full medical coverage for covered injuries provided by government physicians and hospitals or private providers selected by the government. Disability compensation was provided, after a three-day waiting period, at a rate of two-thirds of the worker's pre-disability wage for total disability, with adjustments for partial disabilities. Disability benefits were subject to minimum and maximum levels specified in the law, and neither benefits nor these levels were subject to any cost-of-living or other annual adjustments. The survivors of an employee killed on the job were entitled to cash benefits based on the worker's wage and were also entitled to a benefit to help offset funeral costs.

The 1916 legislation created the Federal Employees' Compensation Commission, with three members appointed by the President with the advice and consent of the Senate, to administer the FECA program. Benefit and administrative costs associated with the program were paid out of the Employees' Compensation Fund created by the law and financed with permanently authorized appropriations.

### Congressional Intent

Congress had several intentions when drafting the FECA legislation in 1916: bringing the federal workers' compensation system in line with the states and providing workers' compensation coverage to all federal employees.

#### *Bringing the Federal System in Line with the States*

One of Congress's goals was to bring the protections offered to federal employees in line with those being offered by a majority of the states at the time, with the House Judiciary Committee reporting that such state laws were "working with most excellent results."[17] In addition, the committee reported that the schedule of compensation for disability in the FECA act was "in line with the best precedents found in State compensation acts" especially those in Massachusetts, New York, and Ohio.[18]

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[15] U.S. Congress, House Committee on Education and Labor, Subcommittee on Safety and Compensation, *Amendments to Federal Employees' Compensation Act*, hearings on H.R. 1196 and other bills to amend the Federal Employees' Compensation Act, 86th Cong., 2nd sess., February 10, 23, 24 and March 8, 23, 24, 1960 (Washington: GPO, 1960), p. 124.

[16] Coverage for occupational illnesses was added to the FECA program in 1924 by P.L. 68-195.

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

[18] House Committee on the Judiciary, *Compensation of Government Employees Suffering Injuries While on Duty*, H. Rept. 64-678, p. 9.

### *Providing Coverage to All Federal Employees*

An additional intention of Congress was to provide workers' compensation coverage to all federal employees regardless of occupation, thus correcting what was seen as a shortcoming of the 1908 act. The House Judiciary Committee's report on the 1916 FECA legislation criticizes the limited coverage of the 1908 law and states:

> The present law, in denying compensation to an injured employee if his occupation was not "hazardous" goes counter to the theory on which all compensation acts are based, viz, that the industry shall bear the burden of injuries caused by it.[19]

This criticism of the limited coverage provided by the 1908 act and the intention of the FECA legislation to correct this shortcoming, was echoed by the FECA legislation's sponsor in the Senate, Senator George Sutherland. Senator Sutherland, in a Senate Judiciary Committee hearing on the legislation, stated:

> The theory upon which compensation laws are drawn is that you are to compensate for the injury, not for the risk that the man ran in bringing about the injury; and under modern thought there is no logical reason for making distinction between what is hazardous and non-hazardous employment.[20]

Senator Sutherland reinforced his point with a graphic example stating "the clerk who has his leg cut off in his work about a store is just as effectively deprived of his leg as if it was cut off by a machine."[21]

## Major FECA Amendments

Congress has passed major amendments to the FECA program in 1949, 1960, 1966, and most recently in 1974.

### 1949 Amendments

The Federal Employees' Compensation Act Amendments of 1949 (P.L. 81-357) brought about the first set of significant changes to the FECA program since its inception in 1916. The 1949 amendments, in the words of the House Education and Labor Committee, sought to "modernize and liberalize" the FECA program, which, according to the Senate Labor and Public Welfare Committee provided "only illusory security for most workers or their families."[22]

### *Increased FECA Coverage*

The 1949 amendments expanded the scope of workers covered by the FECA program to include those classified as "officers" of the United States. In addition to better meeting the goal of universal coverage of all employees, the inclusion of federal government officers was intended to provide FECA protections to previously-excluded employees, such as Foreign Service Officers, who may serve in dangerous overseas areas.

The amendments also doubled the maximum disability benefit level, thus, essentially providing FECA coverage to a larger portion of federal employee wages. The increase in the maximum benefit level was

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[19] House Committee on the Judiciary, *Compensation of Government Employees Suffering Injuries While on Duty*, H. Rept. 64-678, p. 8.

[20] U.S. Congress, Senate Committee on the Judiciary, *Accident Compensation to Government Employees*, hearing on S. 2846, 64th Cong., 1st sess., February 26, 1916 (Washington: GPO, 1916), p. 27.

[21] Senate Committee on the Judiciary, *Accident Compensation to Government Employees,* p. 27.

[22] U.S. Congress, House Committee on Education and Labor, *Amendments to Federal Employees' Compensation Act*, report to accompany H.R. 3141, 81st Cong., 1st sess., June 6, 1949, H. Rept. 81-729 (Washington: GPO, 1949), p. 23; and U.S. Congress, Senate Committee on Labor and Public Welfare, *Amendments to Federal Employees' Compensation Act*, report to accompany H.R. 3141, 81st Cong., 1st sess., August 4, 1949, S. Rept. 81-836 (Washington: GPO, 1949), p. 29.

necessary since, at the time, it was estimated by the DOL that 90% of FECA cases involved workers with wages that were essentially not covered by the program because of the low maximum benefit level.[23]

### *Increased FECA Benefits*

Several provisions of the 1949 amendments effectively increased FECA benefits for workers and their survivors. The three-day waiting period was eliminated in cases of disability lasting more than 21 days. A schedule of benefits for permanent partial disabilities was created for the first time which permitted partial disability benefits to be paid without regard to actual impairment or wage loss. The elimination of the waiting period and creation of a benefits schedule were intended to bring the FECA program in line with state workers' compensation programs and the federal Longshore and Harbor Workers' Compensation Act (LHWCA) program.[24]

The 1949 amendments provided for augmented compensation, in the amount of 8.33% of a worker's pre-disability wage, in cases in which an injured worker had at least one dependent. This augmented compensation, along with the standard compensation rate of two-thirds of the worker's wage, brought the level of FECA benefits for workers with dependents up to the current level of 75% of the worker's pre-disability wage. The benefit level for survivors was similarly increased. The intent of the augmented compensation provision was to better ensure that disabled workers and the survivors of workers killed on the job could provide economically for their dependents. The two-thirds benefit level for dependents was criticized by the House and Senate committees which reported the bill as "not sufficient as to ensure reasonable economic security to a family of a deceased worker where there is a large family."[25] Similar concerns over the adequacy of the two-thirds benefit level were expressed at a House Education and Labor Committee hearing on the 1949 amendments.[26]

### *Reduced Benefits at Age 70*

While the 1949 amendments generally increased the level of FECA benefits, the amendments also required the FECA administrator to review the amount of compensation paid to any person aged 70 or older. The administrator was provided the authority to reduce the amount of such benefits if it was determined that the worker's wage-earning capacity had been reduced because of age, independent of his or her disability. This provision was opposed by several representatives from federal employee organizations who testified before the House Education and Labor Committee that such a provision was inconsistent with the mandatory federal employee retirement age of 70 in place at the time and could cause undue hardships to workers who, because of their disabilities, had not been able to reach their full earning potential or who had reduced pensions because of many years of limited or no earnings.[27]

### *Provisions for Vocational Rehabilitation*

The 1949 amendments permitted the FECA program administrator to send beneficiaries to receive vocational rehabilitation services at the government's expense. The amendments also created a special

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[23] Nordlund, "The Federal Employees' Compensation Act," 1991, p. 10.

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

[25] House Committee on Education and Labor, *Amendments to Federal Employees' Compensation Act*, H. Rept. 81-279, p. 11; and Senate Committee on Labor and Public Welfare, *Amendments to Federal Employees' Compensation Act*, S. Rept. 81-836, p. 20.

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

[27] House Committee on Education and Labor, Special Subcommittee, *Federal Employees' Compensation Act Amendments of 1949*.

supplemental benefit for workers participating in vocational rehabilitation programs. These provisions were intended to improve the return-to-work prospects of FECA claimants which, it was thought, would ultimately benefit both the employee through a return to earning wages and the government through a reduction in FECA benefit costs.[28]

### *The Exclusive Remedy Rule*

The 1949 amendments established that the FECA program would be the exclusive remedy against the federal government for federal workers with employment-related injuries, illnesses, and deaths. This provision prohibited employees from seeking to recover economic or non-economic damages from the government for injuries, illnesses, and deaths covered by FECA and brought the FECA program in line with one of the general principles of workers' compensation which was already written into the workers' compensation laws in the states.

When the FECA program was created, an exclusive remedy rule was seen as unnecessary because of the general prohibition against suits against the federal government. However, by 1949 three factors had combined to result in significant numbers of federal employees choosing to bring lawsuits against the federal government rather than file for FECA benefits. First, after 1916, laws such as the Federal Tort Claims Act were enacted that permitted some suits against the government. Second, some injuries to federal employees occurred while they worked for government corporations subject to lawsuits. Finally, because FECA benefits are limited by statute to partial wage replacement and medical benefits, employees felt that they could secure greater financial benefits from the courts than from the FECA program.[29]

## 1960 Amendments

### *The Chargeback Process*

The Federal Employees' Compensation Act Amendments of 1960 (P.L. 86-767) created the chargeback process in which the Secretary of Labor is required to bill each federal agency for the costs of FECA benefits provided to their employees in the previous fiscal year so that these agencies may reimburse the Employees' Compensation Fund. In addition, these amendments required that certain government corporations also pay their "fair share" of FECA administrative costs to the government. The chargeback process was intended by Congress to "further the promotion of safety" among federal agencies by making the agencies ultimately responsible for the costs of injuries, illnesses, and deaths of their employees.[30]

## 1966 Amendments

The Federal Employees' Compensation Act Amendments of 1966 (P.L. 89-488) made two significant changes to the FECA program. These changes continue in effect today.

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[28] House Committee on Education and Labor, *Amendments to Federal Employees' Compensation Act*, H. Rept. 81-279, p. 16; and Senate Committee on Labor and Public Welfare, *Amendments to Federal Employees' Compensation Act*, S. Rept. 81-836, p. 24.

[29] House Committee on Education and Labor, *Amendments to Federal Employees' Compensation Act*, H. Rept. 81-279, p. 14; and Senate Committee on Labor and Public Welfare, *Amendments to Federal Employees' Compensation Act*, S. Rept. 81-836, p. 23.

[30] U.S. Congress, House Committee on Education and Labor, *Federal Employees' Compensation Act Amendments of 1960*, report to accompany H.R. 12383, 86th Cong., 2nd sess., June 2, 1960, H. Rept. 86-1743 (Washington: GPO, 1960), p. 3; and U.S. Congress, Senate Committee on Labor and Public Welfare, *Federal Employees' Compensation Act Amendments of 1960*, report to accompany H.R. 12383, 86th Cong., 2nd sess., August 27, 1960, S. Rept. 86-1924 (Washington: GPO, 1960), p. 3.

### *Use of the GS Pay Scale to Set Minimum and Maximum Benefit Levels*

Prior to the enactment of the 1966 amendments, the maximum and minimum levels of FECA benefits were set by statute and not subject to any automatic adjustments. In 1966, FECA benefits were still subject to levels enacted as part of the 1949 amendments. According to the Senate Labor and Public Welfare Committee, the statutory maximum provided for full benefits for over 99% of claimants in 1949, but only 85% of claimants by 1966.[31] To address the difficulty inherent in using statutory changes to keep pace with the growth in federal employees' wages, the 1966 amendments provide for use of the general schedule (GS) pay scale as the basis for the maximum and minimum FECA benefit levels with the maximum level set at 75% of the highest rate of basic pay at the GS-15 level.

### *Cost-of-Living Adjustment for Benefits*

The 1966 amendments provided for an annual cost-of-living adjustment for FECA benefits.[32] The cost-of-living adjustment is intended to help FECA compensation keep pace with the growth in prices.

## 1974 Amendments

The Federal Employees' Compensation Act Amendments of 1974 (P.L. 93-416) made three major changes to the FECA program. These three changes remain key elements of the program today.

### *Continuation of Pay*

The 1974 amendments provided for up to 45 days of continuation of pay from a worker's employing agency in cases of traumatic injuries covered by FECA. During this period, an injured employee may receive his or her full pay rather than FECA compensation. Because continuation of pay is considered income rather than a benefit, it is subject to the federal income tax and all standard payroll deductions.

Congress decided that 45 days of continuation of pay were needed because of the time it often took for FECA claims to be processed and compensation benefits to begin. In its report on the 1974 amendments, the Senate Labor and Public Welfare Committee cited a General Accounting Office (GAO) report that stated that the average processing time for FECA claims was between 49 and 70 days, a delay that the committee found "creates economic hardship on the injured employee and his or her family and causes difficult administrative problems for the Secretary of Labor and the employing agencies."[33]

### *Employee Choice of Physician*

The 1974 amendments authorized employees to select their own treating physicians rather than use doctors employed or selected by the federal government. The right of employees to have free choice over who provides their medical care was one of the recommendations of the National Commission on State Workmen's Compensation Laws in 1972 and this provision brought the FECA program in line with that recommendation as well as some state workers' compensation systems.

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[31] U.S. Congress, Senate Committee on Labor and Public Welfare, *Federal Employees' Compensation Act Amendments of 1966*, report to accompany H.R. 10721, 89th Cong., 2nd sess., June 16, 1966, S. Rept. 89-1285, p. 3.

[32] Per Title 5, Section 8146a, of the *U.S. Code*, the cost-of-living adjustment is made each year on March 1 and is based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (all items-United States city average; CPI-W) as measured in December of each year.

[33] U.S. Congress, Senate Committee on Labor and Public Welfare, *Federal Employees' Compensation Act of 1970*, report to accompany H.R. 13781, 93rd Cong., 2nd sess., August 8, 1974, S. Rept. 93-1081 (Washington: GPO, 1974), pp. 3-4; and U.S. General Accounting Office, *Need for a Faster Way to Pay Compensation Claims to Disabled Federal Employees*, B-157593, November 21, 1973, p. 1.

### *Elimination of Reduced Benefits After Age 70*

The 1974 amendments removed the provision, enacted as part of the 1949 amendments, requiring that FECA benefits be reviewed and permitting FECA benefits to be reduced after a claimant reached age 70 to account for the reduced earning capacity that may come with age independent of any disability. In its report on the 1974 amendments, the Senate Labor and Public Welfare Committee provided the following justification for eliminating the reduced benefit provision:

> The Committee finds that such a review places an unnecessary burden on both the employees receiving compensation and the Secretary. Further, the fact that an employee reaches 70 has no bearing on his or her entitlement to benefits and is considered discriminatory in the Committee's opinion.[34]

## Additional FECA Amendments

There have been no major amendments to the FECA program since 1974. However, the 109th, 110th, and 117th Congresses did make changes to FECA that partially addressed several issues facing the program and the COVID-19 pandemic.

### Change to the FECA Waiting Period for Postal Employees

Section 901 of the Postal Accountability and Enhancement Act (P.L. 109-435) changed the way the FECA three-day waiting period for compensation is applied to employees of the United States Postal Service (USPS). This provision requires that postal employees satisfy the three-day waiting period before the continuation of pay period can begin. All other federal employees continue to serve the three-day waiting period after the conclusion of the continuation of pay period and before FECA compensation benefits begin.

### Death Gratuity for Federal Employees Killed While Serving Alongside the Armed Forces

American military operations in Iraq and Afghanistan after 2001 were supported by an unprecedented number of civilian federal employees, some of whom were serving in hostile areas alongside the armed forces. These deployed civilian employees were covered by FECA, but concerns were raised about the adequacy of FECA benefits for those injured or killed while serving in areas of combat, especially when compared to the benefits available to members of the armed forces from the Departments of Defense (DOD) and Veterans Affairs (VA).[35]

Section 1105 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) provided for a death gratuity of up to $100,000 to be paid to the survivors of any federal employee, or employee of a non-appropriated fund instrumentality, who "dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation." This death gratuity is paid in addition to the regular FECA compensation for survivors, but is offset by any other death gratuities paid by the federal government.

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[34] Senate Committee on Labor and Public Welfare, *Federal Employees' Compensation Act of 1970*, S. Rept. 93-1081, p. 7.

[35] See for example: U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Post Office, and the District of Columbia, *A Call to Arms: A Review of Benefits for Deployed Federal Employees*, hearing, 111th Cong., 1st sess., September 16, 2009; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Deployed Federal Civilians: Advancing Security and Opportunity in Afghanistan*, hearing, 111th Cong., 2nd sess., April 14, 2010.

### Presumption of Eligibility for COVID-19

Section 4016 of the American Rescue Plan Act of 2021 (P.L. 117-2) created a presumption of eligibility for FECA benefits for federal employees with COVID-19. This presumption applied to any person employed by the federal government at any time between January 27, 2020, and January 27, 2023, who met the following conditions:

- was diagnosed with COVID-19 during this eligibility period;
- did not exclusively telework during the eligibility period; and
- during a period to be determined by the Secretary of Labor, performed duties as a federal employee that required contact with patients, members of the public, or coworkers or that included a risk of exposure to COVID-19.

Employees meeting these conditions were not required to demonstrate a link between COVID-19 and their employment to be eligible for FECA. FECA benefits determined in accordance with this presumption are time-limited and are scheduled to be terminated on September 30, 2030, regardless of the disability status of the employee or continued eligibility of a deceased employee's survivors. Benefit and administrative costs associated with FECA cases determined under the COVID-19 presumption are not charged back to the employee's host agency.

### Presumption of Eligibility for Federal Firefighters

Section 5305 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (P.L. 117-263) established a list of cancers and other medical conditions presumed to be employment-related and thus compensable under FECA for federal firefighters with at least five years of experience in fire protection activities. In addition, the Secretary of Labor, in consultation with the director of the National Institute for Occupational Safety and Health (NIOSH), is required to periodically review the list of presumptive conditions and may add conditions to this list through rulemaking.

# Overview of the FECA Program Today

This section of my testimony provides a plain-language overview of the major features of the FECA program in effect today.

## Statutory and Regulatory Authorities

The FECA program is authorized in statute at Title 5, Chapter 81, of the *U.S. Code*. Regulations implementing FECA are provided at Title 20, Part 10, of the *Code of Federal Regulations*. The FECA program is administered by the Department of Labor, Office of Workers Compensation Programs (OWCP).

## Program Financing

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

Each quarter OWCP provides to all federal agencies with employees receiving FECA benefits an estimate of the cost of these benefits to assist these agencies in preparing their budget requests. By August 15 of each year, OWCP sends each agency a statement of their FECA costs for the previous fiscal year. Each agency must include in its next budget request an appropriation to cover its FECA costs for the previous

fiscal year. Upon receiving this appropriation, or if a non-appropriated entity of the government, by October 15, the agency must reimburse the Employees' Compensation Fund for the costs of the FECA benefits provided to its employees.

The administrative costs associated with the FECA program are provided to DOL through the annual appropriations process. In addition, the USPS and certain other government corporations are required to pay for the "fair share" of the costs of administering benefits for their employees.

## Employees Covered by FECA

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

## Conditions Covered by FECA

Under FECA, workers' compensation benefits are paid to any covered employee for any disability or death caused by any injury or illness sustained during the employee's work for the federal government. There is no list of covered conditions nor is there a list of conditions that are not covered. However, there is presumption that certain types of cancer and other medical conditions, provided in statute or through rulemaking by the Secretary of Labor in consultation with NIOSH, are employment-related and thus compensable for federal firefighters with at least five years of experience in fire protection activities.

No injury, illness, or death may be compensated by FECA if the condition was:

- caused by the willful misconduct of the employee;
- caused by the employee's intention to bring about the injury or death of himself or another person; or
- proximately caused by the intoxication of the employee.

In addition, any person convicted of a felony related to the fraudulent application for or receipt of FECA benefits forfeits his or her rights to all FECA benefits for any injury that occurred on or before the date of conviction. The benefits of any person confined in jail, prison, or an institution pursuant to a felony conviction are suspended for the duration of the incarceration and may not be recovered.

## FECA Claims Process

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

## Time Limit for Filing a FECA Claim

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

## FECA Compensation Benefits

### Continuation of Pay

In the case of a traumatic injury, an employee is eligible for continuation of pay.[36] Continuation of pay is paid by the employing agency and is equal to 100% of the employee's rate of pay at the time of the traumatic injury. Since continuation of pay is considered salary and not compensation, it is taxed and subject to any deductions normally made against the employee's salary. Any lost work time beyond 45 days, or lost time due to a latent condition, is considered either a partial or total disability under FECA.

Employees of the USPS must satisfy a three-day waiting period before becoming eligible for continuation of pay.

### Partial Disability

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

- if the employee is single, a monthly benefit equal to two-thirds of the difference between the employee's pre-disability and post-disability monthly wage; or
- if the employee has at least one dependent, a monthly benefit equal to 75% of the difference between the employee's pre-disability and post-disability monthly wage.

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

If an employee's actual wages do not accurately represent his or her true wage-earning capacity, or if he or she has no wages, then his or her partial disability benefit is based on his or her wage-earning capacity as determined by OWCP using a combination of vocational factors and "degree of physical impairment."

#### *Scheduled awards*

In cases in which an employee suffers a permanent partial disability, such as the loss of a limb, he or she is entitled to a scheduled benefit. The scheduled benefit is in addition to any other partial or total disability benefits received and an employee may receive a scheduled award even if he or she has returned to full-time work.[37] If an employee suffers a disfigurement of the face, head or neck that is of such severity that it may limit his or her ability to secure or retain employment, the employee is entitled to up to $3,500 in additional compensation.

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[36] Certain groups, including federal jurors, Peace Corps volunteers, and Civil Air Patrol members, are not eligible for continuation of pay.

[37] The list of FECA scheduled benefits are provided in statute at Title 5, Section 8107(c) of the *U.S. Code* and U.S.C. § 8107(c) in regulation at Title 20, Section 10.40(a), of the *Code of Federal Regulations*.

## Total Disability

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

- if the employee is single, a monthly benefit equal to two-thirds of the employee's pre-disability monthly wage; or
- if the employee has at least one dependent, a monthly benefit equal to 75% of the employee's pre-disability monthly wage.

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

FECA compensation benefits are subject to a three-day waiting period. For all federal employees, except those employed by USPS, this waiting period begins after the conclusion of the continuation of pay period. For postal employees, the waiting period begins before the continuation of pay period begins. The waiting period is retroactively waived if a beneficiary remains disabled for more than 14 days.

## Death

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

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

Special rules apply in cases in which an employee dies without a spouse or children or with only children.

If a spouse remarries before age 55, then he or she is entitled to a lump-sum payment equal to 24 months of benefits, after which all benefits cease. If a spouse remarries at age 55 or older, benefits continue for life. A child's benefits end at age 18, or age 23 if the child is still in school. A child's benefits continue for life if the child is disabled and incapable of self-support.

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

### *Additional death benefits*

The personal representative of the deceased employee is entitled to reimbursement, up to $200, of any costs associated with terminating the deceased employee's formal relationship with the federal government. The personal representative of the deceased employee is also entitled to a reimbursement of funeral costs up to $800 and the federal government will pay any costs associated with shipping a body from the place of death to the employee's home. An employee killed while working with the military in a contingency operation is also entitled to a special gratuity payment of up to $100,000 payable to his or her designated survivors.

### FECA Medical Benefits

Under FECA, all medical costs, including medical devices, therapies and medications, associated with the treatment of a covered injury or illness are paid for, in full, by the federal government. A FECA beneficiary is not responsible for any coinsurance or any other costs associated with his or her medical treatment and does not have to use any personal insurance for any covered medical costs. Generally, a beneficiary may select his or her own medical provider and is reimbursed for the costs associated with transportation to receive medical services. In order to be paid by FECA, a medical provider must enroll in the OWCP medical bill processing system.[38]

A FECA beneficiary who is blind, paralyzed, or otherwise disabled such that he or she needs constant personal attendant care may receive an additional benefit of up to $1,500 per month.

### Vocational Rehabilitation

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

## Discussion of Selected FECA Reform Proposals

While FECA has not been significantly amended since 1974, there have been numerous reform proposals put forth by presidential administrations, Congress, and advocates during this time. Many of these reform proposals have focused on the level of generosity of FECA benefits. The goals of these reform ideas have often involved bringing FECA more in line with the workers' compensation programs administered by the states and the LHWCA, better incentivizing the return to work of FECA beneficiaries, and reducing overall FECA administrative and benefit costs.

In this section of my testimony, I will focus on the following three reform proposals that have been subject of considerable congressional attention in the past:

1. reduction or elimination of benefits when a FECA beneficiary reaches retirement age;
2. elimination of augmented compensation paid in cases in which a beneficiary has a spouse or dependent; and
3. moving the existing three-day waiting period so that it begins before continuation of pay.[39]

These reform proposals, along with several others, were included in budgets for DOL submitted to Congress by both Presidents George W. Bush and Barack Obama.[40] In addition, these proposals were

[38] Additional information on the OWCP medical bill processing system is available on the website of the Department of Labor at https://owcpmed.dol.gov/.

[39] The selection of these reform proposals should not imply any endorsement of these or any policy proposals by the Congressional Research Service (CRS).

[40] See, for example, Office of Management and Budget, *Budget of the United States Government: Fiscal Year 2004*, Washington, DC, February 3, 2003, p. 663; and Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2013*, Washington, DC, February 12, 2013, p. 833.

included in several pieces of legislation introduced in the 112th, 113th, and 114th Congress.[41] This committee held a hearing on these proposals, which included CRS testimony, in 2013.[42]

## FECA and Retirement Age

Under current law, FECA benefits for permanent total disability are payable for the duration of the worker's disability, or for their lifetime. There is no maximum duration of FECA benefits, maximum amount of lifetime FECA benefits, or age when FECA benefits stop. Beneficiaries are given the option of converting from FECA to their federal employee retirement system when eligible, but are not required to do so. As a result, there are FECA beneficiaries who remain on the rolls long after it is reasonable to assume they would otherwise be working. For example, in a 2023 audit of the FECA program for USPS employees, the USPS Office of Inspector General (OIG) reported that 14,889 postal employees were receiving FECA benefits for disabilities that are expected to be permanent, with 3,064 of these employees aged 70 or older and the oldest being 103 years old.[43]

Numerous proposals have been put forth that would change or eliminate the FECA benefit amount payable once a beneficiary reaches retirement age to create an incentive for the beneficiary to leave the FECA rolls and began receiving federal retirement benefits.

Benefits under FECA, unlike federal retirement benefits, are not subject to taxation. In some cases, FECA benefits may be higher than the benefits available from the federal retirement system, which may serve as a disincentive for a FECA beneficiary to convert to a federal pension or return to work.

Because the costs of FECA benefits are charged back to each employee's host agency, the costs of providing FECA benefits to employees after they likely would have retired from the federal government is borne by those employees' host agencies and must be paid annually out of those agencies' budgets. Unlike in the case of federal retirement benefits where employees pay a portion of their federal retirement through payroll contributions, employees do not pay any part of the cost of FECA benefits. In the case of government corporations subject to "fair share" contributions, such as the USPS, the payment of FECA benefits after a workers' retirement age in lieu of that worker receiving a federal pension can also result in higher administrative costs being charged to that corporation.

### Legislative History

#### *1949 Amendments*

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

This provision was opposed by several representatives from federal employee organizations who testified before the House Education and Labor Committee that such a provision was inconsistent with the mandatory federal employee retirement age of 70 in place at the time and could cause undue hardships to

[41] H.R. 2465 and S. 1789 (112th Congress); S. 1486 (113th Congress); and S. 2051 (114th Congress).

[42] U.S. Congress, House Education and Workforce Committee, Workforce Protections Subcommittee, *Examining the Labor Department's Proposed Reforms to the FECA Program*, 113th Cong., 1st sess., July 10, 2013, Serial No. 113-27 (Washington: GPO, 2014).

[43] U.S. Postal Service, Office of Inspector General, *Workers' Compensation Program Update*, May 11, 2023, pp. 11-12, https://www.uspsoig.gov/reports/audit-reports/workers-compensation-program-update.

workers who, because of their disabilities, had not been able to reach their full earning potential or who had reduced pensions because of many years of limited or no earnings.[44] In addition, DOL testified in opposition to this provision and stated:

> Workmen's compensation is not supposed to be predicated upon the financial needs of an employee depending upon the particular stage of life through which he is passing. It is predicated on the basis of his lost wage-earning capacity at the time he suffered the disability, and this compensation is, and should be, completely unrelated to his longevity. Moreover, simple justice, it seems to me, would require that a worker whose income has been reduced for a period of time, who may have been denied the opportunity because of his injury to augment his wages through promotions, should not be further penalized in his later years by a downward revision of his disability payments. Moreover, the wage-earning capacity of an employee may have been considerably greater in his later years had he not been injured than it was at the time of the accident, so that a recomputation on the basis of what he was actually earning, when injured, rather than on the basis of his probable wage-earning capacity, would hardly constitute a fair and equitable mode of determining the benefits to be paid a disabled worker after he has attained the age of 70.[45]

### *1974 Amendments*

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

> The Committee finds that such a review places an unnecessary burden on both the employees receiving compensation and the Secretary. Further, the fact that an employee reaches 70 has no bearing on his or her entitlement to benefits and is considered discriminatory in the Committee's opinion.[46]

## Analysis

One proposal offered by DOL under the George W. Bush and Obama Administrations would have created a new "Conversion Entitlement Benefit" for FECA beneficiaries who reach Social Security full retirement age and have received FECA benefits for at least one year.[47] The Conversion Entitlement Benefit would be set at 50% of the worker's pre-disability wage and like all FECA disability benefits would be exempt from taxation. According to DOL in 2011, the goal of this new benefit would be to more closely align FECA benefits after retirement age to benefits that would be paid under the federal retirement systems and remove the often-significant financial incentive to employees to remain in the FECA program after retirement age.[48]

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

[45] House Committee on Education and Labor, Special Subcommittee, *Federal Employees' Compensation Act Amendments of 1949,* statement of John W. Gibson.

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

[47] The Social Security full retirement age ranges from 65 to 67 based on year of birth and is 67 for persons born in 1960 or later.

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

### *Impact on Beneficiaries*

Whether DOL's proposed Conversion Entitlement Benefit or any other system that would reduce FECA benefits once a beneficiary reached retirement age would have the desired effect of better incentivizing beneficiaries to convert from the FECA program to the federal pension system would depend on the individual circumstances of the beneficiary and could place certain beneficiaries in a substantially worse position financially than they would be under current law.

Most current federal employees participate in the Federal Employees' Retirement System (FERS) and are eligible for a FERS annuity, based on years of service and salary level, at retirement.[49] In addition, federal employees covered by FERS also pay into Social Security and may participate in the Thrift Savings Plan (TSP) with employer matching contributions. Upon retirement, Social Security benefits and the TSP are, along with the FERS annuity, the three key components of the total package of benefits available to most federal workers.

FECA beneficiaries may not contribute to either Social Security or the TSP while receiving FECA benefits. Thus, these employees, especially those who were permanently disabled early in their federal careers, may reach retirement age with eligibility for low levels of Social Security benefits based on a lack of lifetime contributions and low TSP balances to draw from. In addition, because these workers may have stopped working due to a disability before reaching their full earning potential in federal service, the amount of their FERS annuity may be low as the annuity is partially based on the amount earned in the highest earning years of service. These workers, who by nature of having incurred permanent total disabilities early in their careers may be among the most severely affected by their work injuries or illnesses, could see the amount of money they have available to provide for their retirement significantly reduced if they were to switch from FECA to FERS.

### *Comparison to Other Workers' Compensation Systems*

In 38 states, the District of Columbia, and the LHWCA, full workers' compensation benefits for permanent total disabilities may be paid for the duration of disability or the life of the worker without any limitation on benefit duration of maximum amount of lifetime benefits.[50] Thus, the FECA program is currently in line with the practices of a majority of the workers' compensation systems in the country. In the remaining states, benefits are capped based on the age of the beneficiary, the duration of benefits, the total amount of benefits paid, or some combination of these factors. One state, North Dakota, reduces compensation to a lower amount at retirement age.

### *Intent of FECA*

The question of whether FECA benefits should continue past retirement age depends somewhat on the intent of these benefits. If FECA disability benefits are intended solely to replace income lost by a worker because of an injury or illness, then one can reasonably argue that these benefits should stop at retirement age, when the worker would likely voluntarily stop working on his or her own, and thus no longer have wages to be replaced. It could be argued that the provision of FECA benefits for wage loss is analogous to the Social Security Disability Insurance (SSDI) program, which stops paying benefits when a disabled beneficiary reaches retirement age.[51] However, SSDI benefits automatically convert to Social Security retirement benefits at retirement age. Determining what age to use as a retirement age could also prove

[49] For additional information on FERS, see CRS Report R47084, *Federal Retirement Plans: Frequently Asked Questions*.

[50] Katherine Rothkin, *Workers' Compensation Laws as of January 1, 2025*, Workers' Compensation Research Institute, Washington, DC, February 2025, pp. 57-62.

[51] For additional information on SSDI, see CRS In Focus IF10506, *Social Security Disability Insurance (SSDI)*.

difficult as many workers remain employed beyond the Social Security retirement age, which ranges from 65 to 67 years old based on the date of birth of the worker.

However, if FECA disability benefits are intended to provide some relief to the worker beyond wage replacement, such as providing additional money that might have been paid by an at-fault employer through the tort system or guaranteeing a certain minimum standard of living for a disabled worker, then stopping benefits at any age while the disability continues would violate this intent and deprive the beneficiary of deserved benefits.

## Augmented Compensation for Spouse or Dependents

Under current law, the basic benefit rate used to determine the amount of a person's FECA compensation is two-thirds (66.67%) of the workers' pre-disability wage. However, if the worker has any dependent children or a spouse, the worker is eligible for augmented compensation in the amount of 8.33% of his or her pre-disability wage bringing the total rate of compensation to 75% of the worker's pre-disability wage. In the case of a total disability, a worker's compensation is equal to either of these two basic benefit amounts (66.67% or 75%). In the case of a partial disability, the amount of compensation is a percentage of either of these two basic benefit amounts. Because FECA benefits are not subject to the federal income tax, the payroll taxes for Social Security and Medicare, or other payroll deductions, the monthly FECA benefit may exceed the net pay a beneficiary would receive if they returned to the workforce, creating a possible disincentive to return to work.

### Legislative History

The FECA basic benefit rate of two-thirds of a worker's pre-disability wage was part of the original FECA statute enacted in 1916 and was based on state workers' compensation laws in place at the time. Augmented compensation for workers with dependents or spouses was added to the FECA program as part of the 1949 FECA amendments. In their reports on the 1949 amendments, both the House Education and Labor Committee and the Senate Labor and Public Welfare Committee stated that augmented compensation for workers with dependents or spouses would recognize the "greater need" of disabled employees with dependents than single employees and would "serve to prevent families from falling behind financially during the crisis occasioned by industrial injury."[52] In addition, both the House and Senate committees cited the existence of augmented compensation for dependents in state workers' compensation laws as justification for this provision.[53]

### Analysis

One of DOL's previous FECA reform proposals would have eliminated augmented compensation in cases of a spouse or dependents and increased the basic compensation amount for all beneficiaries from two-thirds to 70% of the workers' pre-disability wage. The goal of this proposal was to reduce the administrative burden on DOL of tracking the existence and age of spouses and dependents, bring FECA more in line with state workers' compensation programs and the LHWCA, and reduce the overall generosity of the FECA benefit to make returning to work more attractive financially to beneficiaries.

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

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

### *Comparison to Other Workers' Compensation Systems*

In the majority of state workers' compensation systems, the basic permanent total disability benefit is two-thirds of a worker's gross wage at the time of disability. Currently, 38 states and the District of Columbia have total disability benefit rates that are set at this level.[54] In addition, benefits under the LHWCA are also set at two-thirds of the pre-disability wage. No state pays augmented compensation for spouses or dependents, although family size is a factor in the benefit determination in Washington, and there is no augmented compensation in the LHWCA program.

Three states have total disability benefit rates that are based on pre-disability or average wages that exceed the two-thirds standard. In New Jersey and Oklahoma, benefits are paid at 70% of the worker's wage at the time of injury whereas benefits in Texas are based on 75% of the worker's pre-disability wage.[55] New Hampshire and Rhode Island have total disability rates that are less than the two-thirds standard at 60% and 62% of a workers' pre-disability wage, respectively.

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

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

When comparing benefit levels between the FECA program and other workers' compensation programs, it is important to also consider the maximum benefits available to workers. Every workers' compensation system has a limit on the amount of weekly or monthly compensation that any given beneficiary may receive. Because of these benefit maximums, some workers may not receive the full benefits that they would otherwise be entitled to based solely on their pre-disability income level.

The maximum FECA benefit is based on 75% of the GS-15, step 10 pay rate, without any locality adjustments whereas state maximums are generally based on state average wages or the worker's own pre-disability wage. For 2025, the annual salary at GS-15, step 10, with no locality adjustments, is $162,672, whereas the average federal salary for the executive branch in August 2024 was $106,665.[56] Thus, the maximum FECA benefit under the current system is higher than it would be if FECA based its maximum benefit level on average wages as is the case in the majority of the states. In addition, the maximum FECA benefit is higher than the maximum benefit under the LHWCA ($1,999.10 per week in FY2025).

### *Intent of FECA*

The FECA system of augmented compensation and the maximum benefit level, along with other features of the program such as continuation of pay, mean that, in general, FECA benefits are more generous than

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[54] Rothkin, *Workers' Compensation Laws as of January 1, 2025*, 2025, pp. 57-62. Seven states: Alaska, Connecticut, Iowa, Michigan, Pennsylvania, Washington, and Wyoming, base their benefit rates on net wages or have benefit rates that are otherwise not comparable to the standard rate of two-thirds of a workers' gross pre-disability wage.

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

[56] Information on the GS-15 salary rate is taken from the website of the Office of Personnel Management at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/25Tables/html/GS.aspx. Information on average federal salary is taken from the FedScope system online at http://www.fedscope.opm.gov/.

those offered to workers covered by state workers' compensation systems or the LHWCA. Ultimately, the proper level of any government benefit is a question of value that is beyond the scope of the analysis that CRS can provide. Whether or not the additional costs that may be incurred by the presence of additional dependent family members should result in higher benefits, or whether the presence of a spouse who may be able to work and contribute to a family's total available resources offsets these costs are factors that likely must be considered when determining the appropriate level for FECA compensation.

The "grand bargain" of workers' compensation has workers forfeiting their right to receive potentially more lucrative tort awards for compensatory and punitive damages from their employers in exchange for no-fault workers' compensation coverage. This can color views about benefit levels. Comparisons to state workers' compensation systems and the federal LHWCA are inevitable and show FECA as a program with more generous benefits. However, whether these comparisons are appropriate or whether federal employees, by the nature of their work or other factors, should be compared to private sector workers or state and local government employees, is a question facing Congress.

## Waiting Period and Continuation of Pay

Waiting periods of several days before the payment of cash benefits are a common feature of workers' compensation systems. These waiting periods are intended to keep cases with only minor injuries off the benefit rolls and provide some degree of cost-sharing between the injured worker and the employer, much like the purpose served by deductibles in other insurance systems.

There is a three-day waiting period before FECA compensation is paid. This waiting period is waived retroactively if the worker's disability lasts more than 14 days, similar to how waiting periods are handled in most workers' compensation systems. However, FECA differs from all state workers' compensation systems and the LHWCA in that a worker with a traumatic injury is entitled to up to 45 days of continuation of pay before serving the three-day waiting period and then becoming eligible for FECA compensation. During this continuation of pay period, the worker is paid their normal salary, subject to all applicable taxes and payroll deductions, from their host agency. For federal employees, other than postal employees, with traumatic injuries, the three-day waiting period does not begin until after the conclusion of the 45-day continuation of pay period. Workers with employment-related illnesses are not entitled to continuation of pay and must satisfy the three-day waiting period before receiving FECA compensation.

### Legislative History

A three-day waiting period before the commencement of cash benefits has always been part of the FECA program. The continuation of pay for workers with traumatic injuries was added to the program as part of the 1974 amendments and was intended to provide relief to injured workers while their claims were being processed and to reduce the administrative burden on the DOL and the host agencies.

In 2006, the way the FECA three-day waiting period for compensation is applied to employees of the USPS was changed through legislation.[57] Postal employees must now satisfy the three-day waiting period before the continuation of pay period begins. All other federal employees continue to serve the three-day waiting period after the conclusion of the continuation of pay period and before FECA compensation benefits begin.

This change was based on a recommendation of the President's Commission on the United States Postal Service. The commission's recommendation was part of a larger package of FECA reforms for postal employees intended to reduce the USPS's workers' compensation costs. Because of what the commission termed the "unique businesslike charter" of the USPS, the commission recommended that the service's

[57] Section 901 of the Postal Accountability and Enhancement Act (P.L. 109-435).

workers' compensation system become more in line with the state workers' compensation systems that provide coverage for most private-sector businesses.[58]

## Analysis

As part of its earlier package of FECA reforms, DOL proposed moving the three-day waiting period so that all workers would have to satisfy the waiting period before the beginning of the continuation of pay period.

Since 2006, FECA has treated postal workers differently than all other federal employees, including those in other government corporations, by requiring that only employees of the USPS satisfy the three-day waiting period before the continuation of pay period. As a result, postal employees with minor injuries resulting in less than three days of missed work are not entitled to any type of compensation, either their regular pay or FECA compensation, for these injuries and are required to use some type of sick leave or other personal leave during this time.

Waiting periods are part of all workers' compensation programs and serve as a type of deductible by requiring some cost sharing (the cost of not getting compensation during the waiting period) on the part of the employee. In addition, waiting periods can simplify the administration of minor cases which only involve a few days of missed work by keeping these cases off of the benefit rolls. In the case of FECA for non-postal employees, this deductible function may not be fully realized as the waiting period does not begin until well after a traumatic injury has occurred and the worker may have already been out of work, with full pay from the host agency, for up to 45 days.

In FECA cases that do not extend beyond the continuation of pay period, there is no cost sharing on the part of the employee. Rather than an upfront deductible, the current system is more like a "doughnut hole" in which compensation in form of continuation of pay is paid, then no compensation is paid for three days, then FECA compensation is paid. Requiring all workers to satisfy the waiting period before the continuation of pay period would close this gap and bring FECA more in line with how waiting periods are used in all other workers' compensation systems and with how the waiting period is used in cases of employment-related illnesses, which are not entitled to continuation of pay.

Since the employing agencies, rather than DOL, administer the continuation of pay period, adding a waiting period to this period could shift some administrative responsibilities from DOL to these agencies. In addition, moving the waiting period to before the continuation of pay period would result in (1) federal employees with minor injuries resulting in less than three days of missed work having no compensation and having to use their own leave for these days missed because of a traumatic work injury; and (2) a greater number of employees having to satisfy the waiting period and thus bearing some of the costs of their injuries.

[58] President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service*, Report of the President's Commission on the United States Postal Service, July 31, 2003, p. 134.

Chairman MACKENZIE. Thank you. Next we will go to Mr. Santos.

**STATEMENT OF MR. LUIZ SANTOS, ACTING INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.**

Mr. SANTOS. Good morning, Chairman Mackenzie, Chairman Walberg, Ranking Member Omar, Ranking Member Scott and members of the Subcommittee. Thank you for the opportunity to testify today on our oversight of the Federal Employees' Compensation Act Program.

FECA provides workers' compensation benefits to nearly 3 million Federal employees across all three branches of government. In Fiscal Year 1924, the program paid approximately 3.7 billion in benefits to over 178,000 claimants. Because FECA is the only remedy available to injured workers, and because employing agencies bear the costs, it is critical that OWCP adjudicate claims promptly, issue payments accurately, and support workers in their recovery.

Equally important, OWCP must ensure taxpayers only pay for medical benefits that are safe, effective, necessary and economical. Our audits and investigations have shown that FECA remains vulnerable to fraud, waste and abuse, especially in its pharmaceutical spending. Since fiscal year 1915, we have opened over 320 investigations that alleged 320 true convictions, and over 1.7 billion dollars in monetary outcomes. One notable case involved two pharmacy owners who paid doctors kickbacks to prescribe unnecessary compound creams.

These were often mixed in the backroom of pharmacies at a cost of $15 per prescription, and then charged to FECA at $16,000 each. The scheme led to a 405 million dollar forfeiture, the largest involving a healthcare fraud case, and very long prison sentences.

In addition to our investigative work, we have issued 33 audits and 79 recommendations over the past decade. Most recently, we found FECA overspent up to 321 million on prescription drugs between FY's '15 and '20, and allowed thousands of inappropriate or dangerous prescriptions, including fast-acting fentanyl, even after controls were in place.

In response to your work, Mr. Chairman, OWCP has significantly reduced pharmaceutical spending from 436 million in fiscal year 1916, to 43 million in fiscal year 1924, and strengthened oversight using data analytics in a pharmacy benefit manager. While these are very positive steps, more remains to be done.

To further improve FECA we recommend that Congress provide OWCP with statutory access for Social Security wage records, and NDNH move the 3-day waiting period to immediately follow work-related injury, and authorize OWCP to suspend indicted providers from participating in the program.

Mr. Chairman, thank you for the opportunity to testify, and for the Committee's continued support of the OIG's work. I have served now at the OIG for 15 years, and have very much enjoyed working with the Committee, especially the staff, in many critical oversight issues. I also want to pause a minute to thank the dedicated OIG staff for their work. All of the results I just spoke of are a result of their work, so thank you for that, and I will be pleased to answer any questions.

[The prepared statement of Mr. Santos follows:]

*U.S. Department of Labor*
*Office of Inspector General*

# Congressional Testimony

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

**Hearing Title:**
**"FECA Reform and Oversight:**
**Prioritizing Workers, Protecting Taxpayer Dollars"**

**Testimony of Luiz A. Santos**
**Acting Inspector General**
**U.S. Department of Labor**

**Number 03-25-002-04-431**

**May 6, 2025**

Good morning, Chairman Mackenzie, Ranking Member Omar, and distinguished Members of the Subcommittee. Thank you for the opportunity to testify on the work of the U.S. Department of Labor (Department or DOL) Office of Inspector General (OIG) in the Federal Employees' Compensation Act (FECA) program.

Today, I will highlight the important work the OIG has done over the years to combat fraud, waste, and abuse in the FECA program, including our recent efforts involving its pharmaceutical program. I will also discuss the OIG's recommendations to the Department and Congress to improve program integrity, efficiency, and fraud prevention. The views expressed in my testimony are based upon the independent and objective work of the OIG and are not intended to reflect the Department's position.

## Overview of the FECA Program

In 1916, Congress protected workers under the Federal Employees' Compensation Act. Today, the FECA program provides workers' compensation coverage to approximately 3 million federal employees around the world for employment-related injuries and occupational diseases. This includes all civilian employees of the United States in the executive, legislative, and judicial branches, as well as some additional groups such as state and local law enforcement officers acting in a federal capacity and Peace Corps volunteers.

Covered employees—such as FBI and border patrol agents, safety inspectors, firefighters, nurses and doctors, and mail carriers—who sustain job-related injuries or illnesses are entitled to receive several benefits through FECA. For example:

- A veterans' nurse who is injured while moving a patient may be eligible for medical care and partial wage replacement while recovering from the injury.
- A federal firefighter with a chronic illness—such as COPD from prolonged smoke exposure—may receive vocational rehabilitation and retraining for a more suitable job.
- The spouse and dependents of a border patrol agent who is killed in the line of duty may be eligible for survivor benefits.

These benefits ensure federal employees receive necessary support and compensation after job-related injuries or illnesses.

FECA provides payments for lost wages, permanent impairments, and survivor benefits. It also covers medical services, prescriptions, and equipment necessary to treat qualifying conditions. Employing agencies must reimburse the costs of workers' compensation benefits paid to their employees, as well as administrative costs, under FECA. Each year, federal agencies—including the United States Postal Service (USPS)—are billed through a chargeback process. In Fiscal Year (FY) 2024, the FECA

program provided approximately $2.9 billion in compensation and $851 million in medical benefits to more than 178,000 claimants for work-related injuries or illnesses.

DOL's Office of Workers' Compensation Programs (OWCP) is responsible for administering the FECA program and ensuring it serves injured workers in an efficient and effective manner. Importantly, federal employees or their surviving dependents are not entitled to sue the government for work-related injuries or death. Although they may appeal their claims to OWCP and the Employees' Compensation Appeals Board for additional review, FECA benefits constitute their sole remedy.

Therefore, it is incumbent upon OWCP to promptly adjudicate claims, properly pay medical bills and compensation in accepted cases, and help employees return to work. Equally important, OWCP must ensure taxpayers only pay for—and federal workers receive—medical benefits, including prescription drugs, that are safe, effective, necessary, and economical.

## OIG FECA Work Over the Years

Mr. Chairman, due to the program's cost and importance to injured federal employees, the OIG has dedicated significant resources to investigating and auditing the FECA program.

Our work has shown that FECA—especially the medical benefits portion—is vulnerable to fraud, waste, and abuse. Since 2016, we have listed medical benefit management under FECA as one of DOL's Top Management and Performance Challenges.[1] Our recent investigations have focused on doctors and pharmacists who defrauded the federal government by billing for services not rendered or necessary, charging multiple times for the same procedure, billing for non-existent illnesses or injuries, overcharging for prescriptions or services, and participating in kickback schemes. We also investigated claimants who defrauded the program by reporting false injuries, by continuing to claim benefits after they recovered from their injuries, and by failing to report or under-reporting income from outside employment to OWCP.

Since FY 2015, the OIG has opened more than 320 criminal investigations involving the FECA program. Our FECA investigations have resulted in the indictment and conviction of 322 individuals, including a significant number involving medical provider fraud, producing more than $1.7 billion in monetary results.

Also, since FY 2015, we have issued 33 audit reports or memoranda covering various aspects of the FECA program. These reports included 79 recommendations for improving the FECA program. Our most recent audit found OWCP overspent hundreds

[1] U.S. Department of Labor's Top Management and Performance Challenges (November 2024), available at: https://www.oig.dol.gov/public/DOL-OIG%202024%20Top%20Management%20and%20Performance%20Challenges_Final.pdf

of millions on prescription drugs and allowed inappropriate, potentially lethal prescriptions for FECA claimants from FYs 2015 through 2020.

## Investigations and Fraud Trends

Combatting fraud in the FECA program has been a long-standing priority for the OIG, and investigating medical provider fraud—which can lead to higher financial losses—remains our primary focus in this area.

In early 2016, DOL-OIG and USPS-OIG uncovered a sharp rise in medical fraud related to compounded drugs, especially pain creams. Pharmacists create compounded drugs by combining, mixing, or altering the ingredients of commercially available drugs to fit the needs of individual patients. However, without standard pricing rules, they often billed FECA exorbitantly—far beyond the cost of the ingredients.

While OWCP has since implemented safeguards like prior authorization and prescription limits, the OIG continues to investigate compounding fraud. For example, the OIG and our partners at USPS-OIG, U.S. Department of Veterans' Affairs-OIG, and Internal Revenue Service Criminal Investigation recently obtained the highest forfeiture ever obtained in a healthcare fraud case.[2]

In February and March 2025, two Texas pharmacy owners were sentenced for their roles in a $158 million scheme to defraud OWCP through the submission of fraudulent claims for prescription compound creams. The owners were sentenced to 210 and 180 months in prison. Both were ordered to pay restitution of more than $115 million jointly and severally. Additionally, the court ordered the owners to forfeit $405 million in assets tied to their fraud and money laundering schemes.

The owners and others conspired to pay doctors millions in bribes and kickbacks to prescribe medically unnecessary, expensive compound creams to injured federal workers, prescriptions then filled by their pharmacies. For instance, from May 2014 to March 2017, the pharmacies billed OWCP and a private health insurance company more than $145 million and were paid over $90 million for unnecessary prescriptions received in exchange for illegal bribes and kickbacks.

Trial evidence showed these compounds were being mixed in the back rooms of the pharmacies at a cost to the defendants of around $15 per prescription and then billed to OWCP for as much as $16,000 per prescription.

In another OIG case, between May and July 2024, seven co-conspirators were sentenced to anywhere from 18 to 52 months in prison, with one individual receiving

[2] Office of Public Affairs, U.S. Department of Justice, Texas Pharmacist Sentenced to Over 17 Years in Prison and Ordered to Forfeit $405M in Assets for Defrauding the Department of Labor, press release (March 10, 2025), available at: https://www.justice.gov/opa/pr/texas-pharmacist-sentenced-over-17-years-prison-and-ordered-forfeit-405m-assets-defrauding

time served.[3] The seven men were also ordered to pay restitution, jointly and severally, of more than $59 million for their roles in a wide-ranging healthcare fraud scheme to defraud OWCP, TRICARE, Medicare, and Civilian Health and Medical Program of the Department of Veterans' Affairs.

Three members of the conspiracy were the owners of two compounding pharmacies. Other conspirators were the chief financial officer, the pharmacist-in-charge, and marketers for the pharmacies. From May 2014 to September 2016, the pharmacies formulated expensive compounded medications prescribed for people, including members of the armed forces and injured federal workers. The conspirators recruited a network of marketers, who, in turn, recruited doctors and patients to obtain prescriptions for the compounded medications. Recruiters were paid kickbacks for their recruitment efforts. In addition, doctors were paid kickbacks for writing prescriptions for compounded drugs.

Our investigations also focus on other types of medical provider fraud. For example, an owner of a physical therapy business was convicted of healthcare fraud, wire fraud, and aggravated identity theft and sentenced to 7 years in prison.[4] The physician had engaged in a sustained pattern of "upcoding," which is when a provider performs a service and bills it at a higher price than what was actually performed. Another recent OIG investigation resulted in a 12 year prison sentence for a physician convicted of conspiracy to distribute controlled substances, distribution of controlled substances, and mail fraud. The physician had engaged in the issuance of prescriptions for controlled substances without a legitimate medical purpose.[5] The practices of upcoding and prescribing unneeded medicines are common themes in many of our FECA medical provider investigations.

FECA fraud is not limited to medical providers and pharmacies. For example, one case with our law enforcement partners resulted in a postal employee pleading guilty to making false statements and committing fraud.[6] While claiming FECA benefits for total disability, including for compensation, compounded pain cream, and home health care, she was also observed to be "the living, breathing image of physical activity," traveling

[3] Office of Public Affairs, U.S. Department of Justice, Pharmaceutical Marketer Sentenced for Compounded Medications Fraud Scheme, press release (July 12, 2024), archived, available at: https://www.justice.gov/archives/opa/pr/pharmaceutical-marketer-sentenced-compounded-medications-fraud-scheme, last accessed April 30, 2025

[4] Western District of Texas United States Attorney's Office, Department of Justice, Judge Sentences San Antonio Businessman to Federal Prison for Health Care Fraud Scheme, press release (December 2, 2019), available at: https://www.justice.gov/usao-wdtx/pr/judge-sentences-san-antonio-businessman-federal-prison-health-care-fraud-scheme

[5] Northern District of Texas United States Attorney's Office, Department of Justice, Arlington Doctor Sentenced to 12 Years in Pill Mill Case, press release (March 24, 2022), available at: https://www.justice.gov/usao-ndtx/pr/arlington-doctor-sentenced-12-years-pill-mill-case

[6] District of New Jersey United States Attorney's Office, Department of Justice, Former U.S. Postal Service Employee Admits Filing False Documents to Receive Over $650,000 in Workers' Compensation, press release (May 4, 2020), available at: https://www.justice.gov/usao-nj/pr/former-us-postal-service-employee-admits-filing-false-documents-receive-over-650000

and working without reporting the earnings.[7] In January 2024, the employee was sentenced to four years' probation and ordered to pay $743,000 in restitution to DOL. Because of the guilty plea, DOL terminated her workers' compensation benefits, which, according to USPS cost savings, saved them $1.3 million in future fraudulent claim payments.

The OIG has seen a recent increase in allegations related to fraudulent billing in physical therapy and home health care services and is investigating the matters accordingly.

## Audit Work

Over the past decade, much of our audit work on the FECA program has focused on pharmaceutical spending due to its high risk of fraud, waste, and abuse.

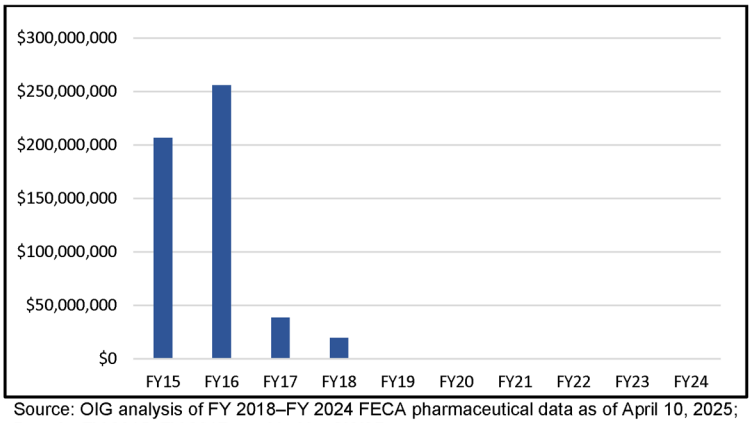
In 2016, USPS-OIG issued a management advisory noting OWCP had been warned more than a year earlier—in January 2015—about rising medical costs. OWCP dismissed the warning, saying the increase was simply "the law of averages catching up." In reality, spending on prescription drugs rose dramatically—from $183 million in FY 2011 to over $436 million in FY 2016. Most of that increase came from compounded drugs, which jumped from about $2 million to $256 million.

In May 2017, we issued an audit report[8] that found OWCP had not effectively managed the use and cost of compounded drugs in the FECA program. During the audit, OWCP began taking steps to improve the integrity of the program, such as requiring Letters of Medical Necessity from medical providers and prior approval for compounded drug prescriptions. As a result, OWCP reported an 84.9 percent decrease in compounded drug spending, from $256 million in FY 2016 to $38.5 million in FY 2017. Our latest analysis of FECA pharmaceutical data indicates the program practically eliminated spending on compounded drugs, spending approximately $100 total in FY 2024 (see Figure 1). This sharp decline raises serious questions about whether earlier billings were medically necessary or appropriate.

[7] Office of Inspector General, United States Postal Service, The Warnings Were Clear, Investigative Case Highlights (March 13, 2024), available at: https://www.uspsoig.gov/investigative-work/case-highlights/warnings-were-clear

[8] Interim Report on Audit of Pharmaceutical Management in DOL Benefit Programs - OWCP Needs Better Controls Over Compounded Prescription Drugs, Report No. 03-17-001-04-431 (May 23, 2017), available at: https://www.oig.dol.gov/public/reports/oa/2017/03-17-001-04-431.pdf

**Figure 1: FECA Compounded Drug Spending, FY 2015–FY 2024**




Source: OIG analysis of FY 2018–FY 2024 FECA pharmaceutical data as of April 10, 2025; Data for FY 2015–FY 2017 provided by OWCP

We have also evaluated the impact of opioids on the FECA program. We reported in May 2019[9] that, while OWCP had made progress in addressing our prior recommendations, more action was needed to further reduce the risks involving opioids. We found OWCP's policy on opioids was too permissive and OWCP had not developed sufficient controls to manage opioid addiction. For example, OWCP allowed physicians to initially prescribe opioids to FECA claimants for up to 60 days, while the Centers for Disease Control had reported prescribing opioids for 3 days or less was often sufficient and more than 7 days was rarely needed for the treatment of acute pain. In response to our work, OWCP strengthened controls over opioid prescriptions and began analyzing prescription data, reaching out to physicians when claimants have long-term prescriptions and high dosage levels, and taking a tailored approach with these claimants and their physicians to reduce their opioid usage.

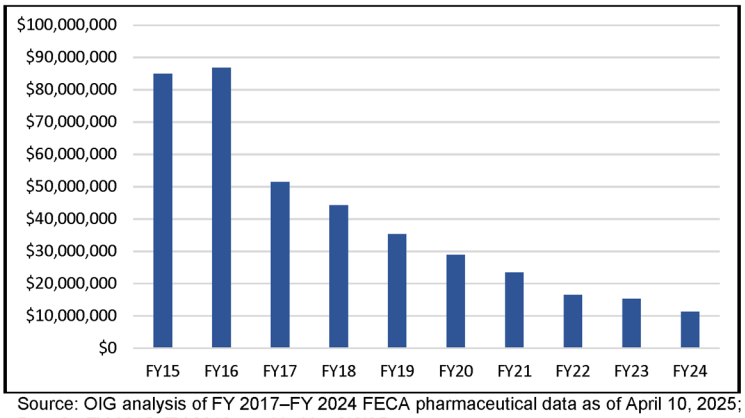
During the COVID-19 pandemic, we audited whether the influx of claims affected OWCP's ability to manage opioid use and timely adjudicate claims. We reported in September 2021[10] that, although we found the timeliness of claims adjudication declined during the audit period, the changes OWCP made to opioid management in response to the pandemic—shifting opioid prescription management resources to the claims adjudication process—did not have a negative impact on opioid use among claimants. We noted that both the number of claimants receiving opioid prescriptions

[9] OWCP Must Continue Strengthening Management of FECA Pharmaceuticals, Including Opioids Report No. 03-19-002-04-431 (May 14, 2019), available at: https://www.oig.dol.gov/public/reports/oa/2019/03-19-002-04-431.pdf

[10] COVID-19: Pandemic Causes Delays in FECA Claims Adjudication, Report No. 19-21-007-04-431 (September 23, 2021), available at: https://www.oig.dol.gov/public/reports/oa/2021/19-21-007-04-431.pdf

and claimants' dosage levels continued their previous downward trends from December 2018 through March 2021. Our latest analysis of FECA pharmaceutical data shows the FECA program has reduced overall spending on opioids from a peak of almost $87 million in FY 2016 to approximately $11.2 million in FY 2024 (see Figure 2).

**Figure 2: FECA Opioid Spending, FY 2015–FY 2024**




Source: OIG analysis of FY 2017–FY 2024 FECA pharmaceutical data as of April 10, 2025; Data for FY 2015–FY 2016 provided by OWCP

Our most recent report[11] on the FECA pharmaceutical program, issued in March 2023, concluded that OWCP did not effectively manage pharmaceutical spending during the audit period, FY 2015 through FY 2020. Specifically, we found OWCP did not pay the best available prices for prescription drugs and we identified up to $321 million in excess spending during the audit period. In addition, OWCP did not effectively monitor pharmaceutical policy changes to ensure implementation, resulting in claimants receiving thousands of inappropriate prescriptions and potentially lethal drugs, including 1,330 prescriptions for fast-acting fentanyl after issuing a policy that restricted its use.

We also found OWCP failed to timely identify and address emerging issues and did not perform sufficient oversight of prescription drugs that are highly scrutinized and rarely covered in workers' compensation programs. As a result, OWCP spent hundreds of millions of dollars on drugs that may not have been necessary or appropriate for FECA claimants.

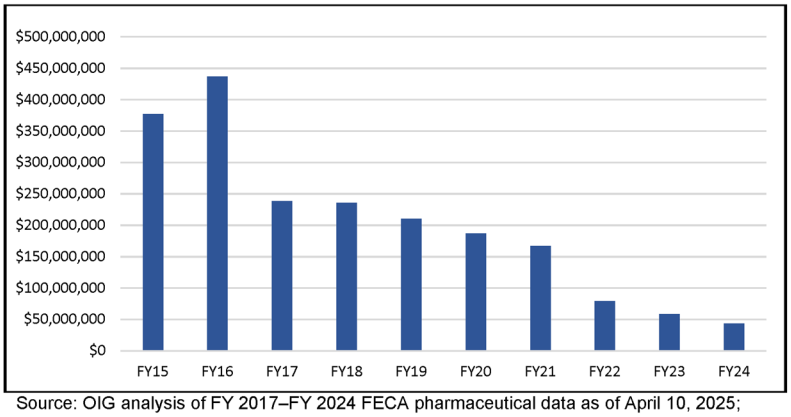
Overall, since 2017, we have made 33 recommendations to OWCP to strengthen management of pharmaceuticals in the FECA program. In addition to taking action on

[11] OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program, Report No. 03-23-001-04-431 (March 31, 2023), available at: https://www.oig.dol.gov/public/reports/oa/2023/03-23-001-04-431.pdf

compounded drugs and opioids, OWCP improved the capability of its Program Integrity Unit to identify potential fraud cases by performing targeted reviews of providers based on billing trends and reports from outside partners and stakeholders, which resulted in an increase in referrals to the OIG for investigation. The Program Integrity Unit also began using data analytics and data science to proactively identify unusual payment activity and patterns to better detect and prevent fraud in the FECA program.

Most significantly, in 2021, OWCP contracted with a pharmacy benefit manager that is responsible for pharmaceutical transactions, including implementation of FECA eligibility determinations and pricing for prescription drugs. Combined, these actions have resulted in a significant reduction to overall pharmaceutical spending—from over $436 million in FY 2016 to approximately $43 million in FY 2024 (see Figure 3).

**Figure 3: FECA Pharmaceutical Spending, FY 2015–FY 2024**




Source: OIG analysis of FY 2017–FY 2024 FECA pharmaceutical data as of April 10, 2025; Data for FY 2015–FY 2016 provided by OWCP

OWCP has addressed our prior recommendations and made strides in reducing prescription drug costs and improving safety for claimants. However, it must continue to maintain proper oversight of the FECA program to ensure the medical benefits it provides are safe, effective, medically necessary, and economical. Specifically, OWCP needs to:

- monitor closely the performance of its pharmacy benefit manager contractor to ensure appropriate price and savings;
- continue to analyze and monitor FECA medical costs and related data to identify risks, trends, and emerging issues before they become critical issues;

- continue to evaluate alternate pricing methodologies and other sources regularly and update its pricing methodology as appropriate to ensure competitive prices;
- continue to monitor the effectiveness of policy and process changes to ensure appropriate implementation; and
- monitor industry best practices adopted by insurance providers and other federal, state, and local agencies to successfully manage medical costs and other workers' compensation issues to identify practices suitable for the FECA program.

## Legislative Recommendations

The OIG has also proposed several legislative recommendations to further improve the effectiveness and integrity of the FECA program.

Accessing Earnings Data

Congress should provide DOL statutory access to the National Directory of New Hires and Social Security wage records. Currently, the Department has no direct access to the National Directory of New Hires data and can access Social Security wage information only if the claimant gives it permission. Without this information, OWCP is hampered in being able to determine whether FECA claimants are receiving outside employment income. Granting the Department routine access to these databases would aid in detecting fraud committed by individuals receiving FECA wage loss compensation but failing to report income they have earned. Since 2013, the Government Accountability Office (GAO) has had an open recommendation for Congress to consider granting DOL additional authority to access wage data to help verify claimants' reported income and ensure the proper payment of benefits.

Moving the 3-Day Waiting Period

FECA legislation provides for a 3-day waiting period, intended to discourage the filing of frivolous claims. Prior to being amended in 1974, the FECA statute required employees to use 3 days of accrued sick leave, annual leave, or leave-without-pay before they could begin receiving compensation for a work-related injury.

An amendment in 1974 added a continuation-of-pay provision allowing federal employees up to 45 calendar days of continued pay following a traumatic work-related injury. The intent of this provision was to eliminate interruption of the employee's income while OWCP processed the claim; however, the amendment placed the waiting period at the end of the 45-day continuation-of-pay period, thereby negating its purpose. The number of FECA claims escalated sharply after these changes, according to a 1979 GAO report. GAO found placing the 3-day waiting period at the end of the 45-day

period encouraged employees to file claims for minor and short-duration injuries that might have otherwise been eliminated.

Legislation that passed in 2006 placed the waiting period for postal employees immediately after an employment-related injury and before the 45-day continuation of pay period. If the intent of the law is to ensure a true waiting period before an employee applies for benefits, then that period should likewise come immediately after an employment-related injury—for all federal workers, not exclusively postal employees.

Suspending Medical Providers Under Indictment

While FECA regulations allow OWCP to automatically exclude a provider who has been convicted of fraud from participating in the FECA program, it cannot automatically suspend payments to a provider who has been criminally indicted for alleged fraudulent billing practices. OWCP can pursue a government-wide non-procurement suspension, but this process and the various procedures involved can be lengthy and relies on the Department's Suspension and Debarment Official, delaying OWCP's ability to protect the FECA program from medical providers alleged to have engaged in fraudulent billing practices. Legislative changes are necessary to enable DOL to automatically suspend all medical providers who have been indicted for alleged fraudulent billing practices from providing further medical services and receiving payments from the program until the indictment is resolved.

## Conclusion

Mr. Chairman, our oversight work has shown that the FECA program is vulnerable to fraud, waste, and abuse. Taxpayers and federal workers deserve a program that is cost-effective, free from fraud, and provides safe and medically necessary treatment for workers. While the Department of Labor has made substantial improvements to the FECA program over the past 10 years, proper programmatic oversight must continue to ensure the medical benefits provided are safe, effective, necessary, and economical. As such, the OIG will continue to work with the Department, Congress, and our law enforcement partners to ensure all vulnerabilities are addressed and all available remedies are pursued.

Thank you for the opportunity to testify at today's hearing. I would also like to take a moment to thank the dedicated employees of the OIG, who continue to work tirelessly in support of the agency and our essential oversight mission.

I would be pleased to answer any questions you may have.

Chairman MACKENZIE. Great. Thank you, Mr. Santos, and I would concur that we do have excellent staff here on the Committees, thank you for recognizing that. Next up I will recognize Mr. Renfroe for your testimony.

**STATEMENT OF MR. BRIAN RENFROE, NATIONAL PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS, WASHINGTON, D.C.**

Mr. RENFROE. Thank you, Chairman Mackenzie and Ranking Member Omar for the invitation to testify. Thanks also to the Subcommittee members for the chance to bring the voice and views of America's 220,000 hard working letter carriers to this hearing. I am a letter carrier from Hattiesburg, Mississippi, who was drawn to work with my union, the National Association of Letter Carriers in large part to protect the health and safety of my fellow letter carriers.

We carry much of the Nation's communication and commerce on our shoulders every single day. Five years ago during a global pandemic, when most businesses shutdown, as the rest of the Nation sheltered in place, letter carriers did not take 1 day off. We were lifelines for the American people, delivering letter mail, ballots, test kits, packages and providing a sense of normalcy during a time of worldwide uncertainty.

As ecommerce continues to boom, the people of this country are as dependent on our service, as they have ever been before. While serving the American public, despite our best efforts to avoid them, workplace injuries at the Postal Service are a fact of life.

Vehicle accidents, repetitive motion injuries, heat stroke or frostbite, or other injuries caused by weather extremes, assaults by criminals, even more mundane injuries like slips and falls are common in the working lives of the letter carriers that I represent.

Workers' compensation programs like FECA are incredibly important to America's working class, particularly, to those with jobs like ours. The people who shower after work instead of beforehand, the ones who earn their living with physically taxing jobs, and those whose jobs expose them to the risks of injuries, occupational hazards, and unfortunately, disabling accidents.

The goal of the FECA Program is to ensure that no worker suffers financially from their workplace injuries. Postal employees account for nearly half of the claims made to the Office of Workers' Compensation Programs each year, and letter carriers file most of those claims.

When letter carriers are injured on the job, or develop occupational diseases, FECA benefits provide critical financial support, allowing them the time to heal, and rehabilitate, so they can rejoin the workforce, or to compensate them for their lost wages if they are permanently unable to do so.

I would like to bring the Subcommittee's attention several ideas that will reduce the overall usage of workers' compensation in the first place. The first is the hazard of excessive heat. Letter carriers report hundreds of heat injuries to the Postal Service annually. The Postal Services productivity focus culture often even discourages us from reporting these injuries.

Next is crime. Since the COVID–19 pandemic, postal employees and city letter carriers in particular, have experienced a significant increase in crime. Between 2019 to 2023, violent crime against postal employees nearly doubled. More than two-thirds of these attacks involved a firearm, or some other kind of weapon.

Tragically, five letter carriers have been murdered while delivering mail since 2022. NALC is committed to working with the Postal Service and Congress, to do everything we possibly can to mitigate risk due to these factors and prevent injuries of any kind. We work with the Department of Labor and OWCP specifically, over multiple administrations, to improve efficiency and claims processing, which benefits both the Department and the injured worker.

We are committed to continuing that work throughout this administration, just as we did during the first Trump administration. When a letter carrier is injured, we must ensure they receive the care and the help that they need. Reducing benefits are making it harder for injured workers to access care, or are contrary to the goals we all share, prompt provisions of benefits to injured employees, and a more timely return to the workplace.

Thank you again for inviting me to testify. I look forward to answering any questions you may have.

[The prepared statement of Mr. Renfroe follows:]

**Testimony of**

**Brian L. Renfroe**

**President, National Association of Letter Carriers**

**Hearing on FECA Reforms and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars by the House Subcommittee on Workforce Protections May 6, 2025**

Thank you, Chairman Mackenzie and Ranking Member Omar, for this invitation to testify on a very important program for America's federal and postal employees, the Federal Employees Compensation Act (FECA). Thanks also to all the members of this sub-committee for this chance to bring the voice of America's 220,000 hard-working letter carriers to today's hearing.

I am a letter carrier from Hattiesburg, Mississippi who was drawn to work with my union, the National Association of Letter Carriers (NALC), to protect the health and safety of my fellow carriers more than 20 years ago. Despite our best efforts, workplace injuries in the day-to-day operations of the Postal Service are a fact of life. Vehicle accidents, repetitive motion injuries, heat stroke or frostbite and other injuries caused by weather extremes, assaults by criminals and the more mundane injuries like slips and falls are common features of the working lives of NALC members. The FECA program is essential to protecting injured letter carriers working for one of America's greatest institutions—the United States Postal Service (USPS), now celebrating its 250th anniversary.

The vital work we do in connecting our fellow citizens with each other is physical, repetitive, and strenuous. And it takes its toll on our bodies. We literally carry much of the nation's communications and commerce on our shoulders. Sometimes that weight can be too much to bear, whether from the physically demanding jobs we do or the physical dangers we face. As a result, we often suffer on-the-job injuries.

Workers' Compensation programs like FECA are incredibly important to America's working class, particularly to those with jobs like ours—the ones who shower after work instead of beforehand; the ones who earn their living with physically taxing jobs; and those whose jobs expose them to risks of injuries, occupational hazards and disabling accidents.

The goal of the FECA program, like other workers' compensation programs, is to ensure that no worker suffers financially from their workplace injuries—via punishing medical bills or lost wages. It's a crucial part of the social safety net for postal and federal employees. The program aims to help injured workers to return to work and to sustain those who cannot do so. The goal is to leave no injured worker behind, and to hold them harmless from occupational accidents and injuries.

**FECA & NALC**

Postal employees account for nearly half of the claims made to the Office of Workers' Compensation Programs (OWCP) each year, and letter carriers file a majority of these claims. In fiscal year 2022, Postal Service employees accounted for more than 41

percent of all new workers' compensation cases and 42 percent of all benefit payments across the federal government.[1]

The physical and outdoor nature of the letter carrier job heightens our risk of injury. In fact, letter carriers get injured more frequently than nearly all other workers in the federal government or in private industry. When letter carriers are injured on the job or develop occupational diseases, FECA benefits provide critical financial support allowing them the time to heal so that they can rejoin the workforce when they are able or compensating them for their lost wages if they are permanently unable to do so.

FECA benefits are a lifeline for injured letter carriers. One such example is a letter carrier in Lancaster, California, who was injured in 1987 when she suddenly turned to get away from a charging dog. In an attempt to flee, she twisted her ankle and foot which resulted in an ankle strain, peroneal tendonitis and subluxation. She was able to return to work, but underwent four surgeries on her left ankle in a span of nine years. In 2001, while driving to physical therapy, she was hit by a large truck. As a result, she sustained severe injuries to her neck which required surgery. Unfortunately, this carrier was left with residual neck pain and after several second opinion evaluations, and another surgery, physicians determined she would be unable to work again. Since 2001, the carrier has not been able to return to work due to disability, surgery and no work available from the post office. For over 20 years, while on the periodic rolls of OWCP, she has been unable to make

[1] https://www.uspsoig.gov/sites/default/files/reports/2023-05/22-121-r23.pdf

contributions to her Thrift Savings Plan account or to Social Security. Without wage-loss compensation from OWCP, at 68 years old, this carrier would be living well below the poverty level, almost completely unemployable due to her injuries and age, and would not be able to provide the necessary care for her disabled child.

It should come as no surprise that letter carriers are disproportionately affected. The outdoor nature of the letter carrier job heightens the risk of injury. NALC members sustain many types of injuries and develop a variety of occupational illnesses. Letter carriers frequently experience slips, falls and sprains while walking their routes; develop ergonomic injuries from repeated motions, like reaching and twisting in their vehicles to retrieve mail from mail trays; experience heat illness in hot weather and frostbite in extreme cold weather; are bitten by customers' dogs; sustain injuries from being hit by errant vehicles; narrowly escape fires in the engines of postal vehicles that are long past their safe use; and, more recently, are attacked by criminals while on their routes.

By many metrics, the Postal Service is a very dangerous place to work.

A 2023 USPS Office of Inspector General (OIG) audit found that between fiscal years 2017 and 2021, there were between 55,000 and 65,000 industrial accidents each year.[2] In an agency that had about 500,000 employees on average during those years, that is a lot of accidents. Seventy percent of these accidents were suffered by letter carriers.[3] During the

[2] https://www.uspsoig.gov/sites/default/files/reports/2023-02/22-120-r23.pdf
[3] https://www.uspsoig.gov/sites/default/files/reports/2023-02/22-120-r23.pdf

same period, city and rural letter carriers accounted for only about 50 percent of the total USPS workforce.

Compared to the rest of the federal government, Postal Service employees consistently experience more injuries and illnesses than employees of any other agency. In fiscal year 2019—the last year that the Department of Labor published federal injury and illness statistics that included the Postal Service—the agency had a total case rate of 5.81 (meaning 5.81 employees for every 100 employees experienced a workplace injury or illness and submitted a claim that was accepted by OWCP that year).[4] In comparison, the overall federal government rate was 1.52.

Compared to the private industry, Occupational Safety and Health Administration (OSHA) severe injury[5] data show that since this data first began to be reported in 2015, the Postal Service is the employer with the most reported severe injuries. An analysis of this data by the Economic Policy Institute in 2023 showed that USPS reported 1,142 severe injuries between 2015 and mid-2022, while Walmart only reported 571, UPS only reported 505 and FedEx only reported 285 severe injuries in the same period.[6]

To make matters worse, the injury rate is increasing as the mix of what a letter carrier delivers each day is changing. A 2022 USPS OIG report linked the changes in mail mix

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[4] https://www.osha.gov/enforcement/fap/statistics (FY 2019 (final))
[5] Severe injury is defined as an amputation, eye loss, or at least one night of hospitalization.
[6] https://www.epi.org/blog/an-average-of-27-workers-a-day-suffer-amputation-or-hospitalization-according-to-new-osha-data-from-29-states-meat-and-poultry-companies-remain-among-the-most-dangerous/

(specifically increases in package volumes and weight) to an increase in letter carrier injuries on the job. The report stated, "In addition to more packages moving through the network, USPS's total package weight has increased. The changing mail mix directly impacts the USPS workforce, as the repetitive nature of lifting, carrying, pushing, and pulling packages and other mail can and does contribute to carrier injuries. In fact, carriers make up a disproportionate share of the Postal Service's wage and medical payments made on behalf of injured employees."[7]

Additionally, the USPS OIG identified certain letter carrier sub-groups that experience more injuries than others, including City Carrier Assistants (CCAs, the city letter carrier non-career position, to which most new carriers are hired), who had a 10.3% higher injury rate than career carriers, and new carriers with less than one year of tenure.

This was true for a new letter carrier in Portland, Oregon, in 2016. While this carrier was making their deliveries, they entered a crosswalk and were struck by a car at full acceleration, which shattered the carrier's leg and pelvis and launched them about 50 feet to where they landed on their head on the pavement. The driver was uninsured. Because this carrier had only been working for the Postal Service for a few months prior to this terrible accident, their payrate through OWCP is locked at the beginning wages of $16.06 per hour. Additionally, because the carrier was hired as a CCA, which is considered a part-time position without guaranteed hours, they do not even get paid for a full 40 hours each

[7] https://www.uspsoig.gov/sites/default/files/reports/2023-01/RISC-WP-22-009.pdf

week. The only wage increases this carrier has gotten have been yearly cost of living adjustments, locking them into poverty wages for the rest of their life. Today, they only make $2050 every four weeks, which is less than the current Oregon minimum wage.

This carrier will never be the same, as the list of permanent disabilities from this incident is quite extensive. The carrier continues to receive treatment and is actively working to improve and return to some productive level of work, but this has been prevented due to the extent of their disabilities from the auto accident. Without OWCP benefits they would be destitute.

**Response to OIG report recommendations**

In regard to the May 11, 2023, USPS OIG audit "Workers' Compensation Program Updates," NALC opposes most of the recommendations in the report.

Limiting the dollar amount and duration of benefits, allowing settlements and buyouts, standardizing the rate of compensation regardless of dependent status and limiting the weekly payout amount would all unconscionably shift the costs of the injured or disabled worker's injury from the federal government onto the worker and their family.

NALC opposes, in particular, the recommendations to convert claims for disability to a lower benefit requiring employees to opt for an OPM annuity at age 65, to allow the Postal Service to provide a list of medical providers that injured employees must choose from and to allow apportionments to be factored in.

Lowering benefits at 65 - The proposal to require injured employees to convert claims for disability to a lower benefit at age 65 or one year after first receipt of FECA benefits, whichever is later, shows a fundamental misunderstanding of the way FECA is paid and the effects the permanent loss of a job due to disability has on an employee's career earnings.

FECA benefits were not designed to increase at a rate comparable to pay increases an individual would have received through step increases or promotions (career growth) if he or she had never been injured. The only increase in disability benefits is the result of an annual adjustment based on the Consumer Pricing Index (CPI). Injured federal employees are not enriched by their disability benefits, and when compared to the benefits expected through step increases and career growth, disability benefits disproportionately and negatively impact the injured workers' financial status.

Employees receiving compensation through OWCP are not taxed for Social Security because such compensation is tax free. They also can't contribute or receive matching employer funds to a federal pension because they aren't receiving pay through the Postal Service. Thus, injured Federal Employee Retirement System (FERS) employees are at a distinct retirement disadvantage when disabled from on-the-job injuries. While Congress attempted to fix this problem in 2003 by providing an enhanced annuity, this change has served only to create a semblance of parity. Many injured federal workers are separated from their employing agency while on the OWCP rolls. These separated employees not only

lose the remedial effects of the enhanced annuity, they also no longer gain service year credits when or if they eventually retire. There is no question that injured federal employees receiving FECA benefits are compensated at a significantly lower rate than if they had not been injured and were able to continue to work.

One of our regional compensation assistants recently encountered a former Postal Service employee from Florida in her seventies who was severely injured on the job in 1982 and has been on the OWCP rolls for the last 43 years. At the time of her injury, she had worked for the Postal Service for only 18 months and was separated a year later, before she had a chance to become vested in the Civil Service Retirement System (CSRS). Because she has been on the OWCP periodic rolls the entire time, she does not have enough quarters to even qualify for Social Security. In her case, this proposal would effectively throw her out onto the street with no income at all. Our CCAs who have sustained serious permanent injuries and have been separated will find themselves in this same precarious position when they reach retirement age.

USPS-selected physicians - Requiring injured workers to select physicians from a list provided by the Postal Service would be inherently unfair to the injured worker. The Postal Service has huge incentives for claims to be denied in order to meet its budgetary and efficiency goals. In our experience, the Postal Service challenges most claims, even in cases of straightforward traumatic injuries. Physicians hired and paid by the Postal Service

would similarly have strong incentives to find against injured workers since their livelihoods would depend on continued postal employment.

OWCP's current policy and procedure allowing the injured employee to select their physician works efficiently and fairly as a system of checks and balances. While the injured employee may select their treating physician, the FECA grants OWCP the right to send injured workers to OWCP-directed exams with physicians selected by OWCP whenever and wherever OWCP deems it necessary.[8] These second opinion exams may occur whenever OWCP determines that the case record contains insufficient medical evidence to answer questions that arise during the life of the claim. An injured employee cannot opt out of a second opinion exam. A refusal to participate in the second opinion exam could result in suspension of compensation benefits. While in our experience second opinion exams are often adversarial and go against the injured worker, they provide an effective check on any personal physician that OWCP finds biased towards the injured worker.

Additionally, timely continuity of treatment is essential for recovery. While most traumatic injury cases are initially accepted by OWCP, less than 50 percent of occupational disease cases are accepted. The denied cases are often accepted upon appeal, but in occupational disease cases this appeals process can last months, and often even years. If an employee is forced to use a Postal Service physician and their claim is denied, there will

[8] 5 U.S.C. 8123(a): a) An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required.

be gaps in their treatment as they go through the difficult process of trying to find a physician to take on their denied case.

Both our experience and that of OWCP claims examiners have taught us that successful recovery and return to work drops precipitously the longer appropriate treatment is delayed and if claims are denied. While the Postal Service may financially benefit in the short run from the employee's denied claim and delayed treatment, the denials and delays come at great cost to the injured worker and society, and, in cases where the claim is eventually accepted, at great cost to the Postal Service as well.

Apportionment - Requiring apportionment (the division of how much of an employee's disability is due to a work-related injury and how much is due to a pre-existing disability) to be factored in goes against decades of Employees' Compensation Appeals Board (ECAB) precedent. It would also become a factor in almost every occupational disease case since these usually involve degenerative conditions such as osteoarthritis and ligament tears. And apportioning causality would be both complex and highly subjective. For example, while it would be fairly straightforward for a physician to determine that going up and down 3,500 concrete stairs on a daily basis for 30 years on a walking route has contributed to the osteoarthritis in a letter carrier's knee, it would be highly speculative for the physician to determine the percentage of the osteoarthritis that is due to letter carrier's work duties. They would have to take into account family history, age, weight, genetic predisposition, previous injuries, recreational activities, household chores,

prior work history, etc. In short, a rat's nest.

We have seen cases from states that apportion causality where different doctors associated with the case have apportioned causality with wildly different results. Requiring apportionment in FECA cases could lead to endless conflicts of medical opinions, additional medical reports, the scheduling of referee opinions and of course a lot of otherwise unnecessary litigation through the appeals process, leading to delayed claim acceptance and postponed treatment. It is doubtful that this recommendation would lead to efficiency and cost reductions.

There is one recommendation in the USPS OIG's audit that we find no issue with: requiring the use of generic drugs. In fact, this recommendation has already been implemented. In March of 2021, OWCP contracted OPTUM to provide pharmacy benefits. OPTUM requires claimants to use generic drugs to the extent possible.[9]

Instead of significant policy reforms that would cause further harm to injured workers, while likely not even reducing costs, NALC would like to bring the subcommittee's attention to several ideas that would reduce the overall usage of workers' compensation in the first place. The idea is simple: make every effort to reduce workplace illness and injury in the postal workforce, thus reducing the need for postal employees to use these benefits.

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[9] OWCP implemented these policy changes through FECA Bulletin 21-07 (March 9, 2021) and FECA Bulletin 22-02 (November 23, 2021).

The Postal Service is not currently doing all that it can to protect its employees. Two areas of significant harm to city letter carriers are heat and crime.

**Heat safety**

Turning first to heat, NALC's members work in every city and town in every state and territory of the United States, including in those areas that experience long seasons of stifling heat and humidity. We deliver all year long, including in the hottest weeks of summer. Typically, we work at least eight hours a day, including through the peak afternoon heat.

Some carriers, especially in urban areas, walk their entire routes, carrying a heavy mail satchel or pushing a cart full of letters and parcels along city streets. On hot days, they are fully exposed to the heat.

Other carriers deliver mail using a postal vehicle. The Postal Service has promised for years to provide a fully air-conditioned fleet of vehicles, and while new vehicles are coming, most delivery trucks remain without air conditioning and are poorly ventilated. When these vehicles sit in the sun on hot days, their interiors begin to bake, subjecting the carrier inside to excessive temperatures.

Most often, letter carriers park their vehicles at designated points along their route and deliver mail and packages by foot. Most letter carriers walk up and down the street

carrying heavy mail satchels on their shoulders. On hot days, those carriers suffer both the heat inside the truck and the heat outside on the pavement.

Heat poses a grave risk to city letter carriers. USPS records provided to NALC show that letter carriers report hundreds of heat injuries annually. And these are just reported incidents. The actual number of heat-related illnesses and injuries suffered by letter carriers is undoubtedly greater. The Postal Service's productivity-focused culture often discourages letter carriers from reporting heat illness.

OSHA data on severe work injuries confirm that letter carriers suffer from heat disorders at an excessive rate. According to data covering the last decade, USPS tops the chart of companies with the highest number of severe heat-related injuries, a category that includes at least one night of hospitalization due to conditions such as heat stroke, sunstroke or hyperthermia (abnormally high body temperature).

Heat illness does not just sicken letter carriers. On occasion, it kills them. The list of carriers who have died from the heat includes John Watzlawick of Independence, Missouri, who died of heat illness after collapsing on his route on a hot July afternoon; Daniel Rosenbach of Lexington, Kentucky, who died of a heart attack triggered by extreme heat; James Baldassare of Medford, Massachusetts, who collapsed on his route while delivering mail in 94-degree weather, and died the following day from heat stroke; Peggy Frank of Woodhills, California, who died of hyperthermia in her un-air-conditioned mail truck on a day when the temperature outside hit 115 degrees; and Eugene Gates of Dallas, Texas, who

died on his route while delivering mail on a sweltering afternoon when the heat index reached 110 degrees. Additional letter carrier deaths from heat include those of Roslyn Westfall of St. Louis, Missouri, and Dalvir Bassic of San Jose, California.

The danger that heat poses to letter carriers has been growing and will likely continue to grow in the years to come. The ten warmest years ever recorded have all occurred in the last decade. This unrelenting rise in temperatures makes outdoor work far more dangerous.

USPS management has been resistant to implementing meaningful heat safety measures, which has left letter carriers unprotected. While there is a Heat Illness Prevention Program in place, it does not include the necessary elements that heat safety experts agree are critical to preventing serious illness and injury. These elements are the right to paid breaks to cool the body down when necessary and the implementation of an acclimatization protocol when letter carriers are first hired or return to work after an extended absence, like a vacation or recovering from illness or injury.

To truly mitigate the dangers that heat poses, America needs a nationwide heat standard that sets clear requirements for USPS and other employers. NALC strongly supports OSHA's proposed heat standard and urges its implementation. The proposed standard includes all of the elements that experts agree will keep workers safe. The proposed measure will also undoubtedly have beneficial economic effects, by reducing work hours lost to heat illness, and also by reducing hospital and medical costs and

workers compensation outlays. We strongly encourage the administration to reverse its regulatory freeze on the previous administration's rulemaking on heat injury and illness prevention. The lives of our nation's letter carriers in extreme weather depend on this protection.

**Crime**

Second, we turn to crime. Since the COVID-19 pandemic, postal employees, and city letter carriers in particular, have experienced a significant increase in crime.

Between 2019 and 2023, the number of serious crimes against postal employees nearly doubled. In 2023, postal inspectors opened about 1,400 cases investigating assaults (542), robberies (628) and burglaries (197) against postal employees in almost 500 metropolitan areas across the country. More than two-thirds of these attacks involve a firearm or other weapon. Tragically, five letter carriers have been murdered while dutifully delivering the mail since 2022.

An increase in robberies is driving this spike in crime. Due to the solitary nature of our work and the valuable equipment and material we carry and access, city letter carriers have been the target in 90 percent of these robberies.

In December of 2024, a letter carrier in Baker City, Oregon, was assaulted while trying to deliver some packages. The carrier was threatened with a rifle and then beaten on their head and body with the stock of the rifle. The carrier suffered a concussion, head and

face lacerations, a broken nose and nasal structure, multiple fractured vertebrae and intercranial injury. The carrier did nothing wrong. They were simply doing their assigned work of delivering packages to customers during the holiday season. They are doing everything they can to recover as much as possible because all they want is to be well enough to work and live a normal life again. They recently returned to work part time and hope to be full time soon. Without OWCP benefits, this letter carrier would have lost their home. Unfortunately, nearly every day, NALC learns of new instances of letter carriers being assaulted, robbed, and even murdered while delivering mail and essentials.

The Postal Service has begun implementing infrastructure changes that we hope will deter crime and reduce the number of attacks on postal employees. Reducing these attacks will undoubtedly reduce the number of workplace injuries and associated workers' compensation costs. However, more needs to be done. NALC supports the bi-partisan Protect Our Letter Carries Act (H.R. 1065), and we encourage Congress to pass this critical legislation to protect letter carriers and deter violent criminals.

**Other considerations**

Over the last five years, we have seen more policy and procedure changes within OWCP and the Division of Federal Employees' Compensation (DFEC) than in the previous 40. And most of the changes have been positive. The DFEC team has not only implemented many changes that streamline the adjudication process, but they have also created new

programs that have gone a long way towards fixing many of the issues involved in claim maintenance in accepted cases.

The new Escalations Program, for example, has created an expedited process to resolve issues involving wage-loss compensation, authorization for medical procedures and medications, medical billing problems, claim expansion to include new diagnoses, issues involving federal health and life insurance and dealing with overpayments. Thanks to the Escalations Program, problems that used to take months or even years to resolve are now resolved in a matter of days or weeks.

Making the entire injury compensation process less adversarial and more efficient advances goals we all share: prompt provision of benefits to injured employees in their time of need and a more timely return to the workforce. As an organization, we have learned over the years that most injured workers who are physically able to do some work, are better off—mentally, socially and emotionally—when they work rather than not work. We strongly support OWCP's efforts to return injured workers with their employing agency if it's done in a way that makes the return to work a success story.

Thanks again for inviting NALC to testify before your sub-committee. We look forward to working with you and Congressman Comer's Committee on Oversight and Government Reform on measures to strengthen and improve the quality and efficiency of the FECA program.

Chairman MACKENZIE. Thank you, sir. Last, I will recognize Ms. Hull for your testimony.

**STATEMENT OF MS. TAMMY HULL, INSPECTOR GENERAL, U.S. POSTAL SERVICE, WASHINGTON, D.C.**

Ms. HULL. Thank you. Good morning Chairman Mackenzie, Ranking Member Omar, and members of the Subcommittee, thank you for inviting me here today to discuss our work related to the Federal Employees' Compensation Act. When postal employees sustain a work related injury, or occupational disease they are covered by FECA.

While the Postal Service helps employees file claims, it manages efforts to return injured employees to work, the Department of Labor administers, implements and enforces FECA. The Postal Service reimburses DOL from postal revenues, and the workers' compensation costs are significant.

Last year it paid almost a billion and a half dollars in claims, and an additional 96 million dollars in administrative fees. Our work at the OIG found that the Postal Service is taking steps to reduce its workers' compensation costs, but more can be done to return employees to work and reduce costs.

We identified areas where current law restricts the Postal Service from using private sector best practices, including those adopted by some State governments. Allowing these best practices would have saved the Postal Service almost 350 million dollars a year. One significant restriction is FECA does not provide for settlement of claims through lump sum payments, and correspondingly, does not have limits on total compensation or length of benefits.

As of last fall, more than 600 postal employees aged 80 or older were receiving benefits, three are currently 100 or older. Claims are commonly paid over many years, tax free with cost of living adjustments. Thus, the incentive for employees to return to meaningful employment are minimized.

Other best practices include requiring employer selected physicians and the use of generic medications when available. We also do investigative work related to FECA. We coordinate with DOL, OIG, to identify and investigate workers' compensation fraud by postal employees and healthcare providers.

Our investigative work in this area results in substantial savings. We recently closed a case in Texas, along with DOL, OIG, where pharmacies paid kickbacks to doctors to prescribe certain medications based on high reimbursement rates instead of patient need.

This case returned about 100 million dollars to DOL. To support this work, we embrace technology and data analytics. For example, to identify provider fraud we implemented an in house artificial intelligence and machine learning model that identifies over billing for physical therapy and chiropractic care.

Our work in this area has identified vulnerabilities, and led to DOL making numerous policy changes in how it manages the workers' compensation program, including limitations on compounded drugs, billing restrictions, and third party controls. Over time, we estimated the changes saved the Postal Service and ratepayers over a billion and a half dollars.

These changes also resulted in cost savings for all agencies with employees on workers' compensation, as well as improved patient safety. Thank you again, and I am happy to answer any questions.

[The prepared statement of Ms. Hull follows:]

**Hearing before the**
**Subcommittee on Workforce Protections**
**Committee on Education and Workforce**
**United States House of Representatives**

**Statement of Tammy Hull**
**Inspector General**
**United States Postal Service**

# FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars

**May 6, 2025**

Good morning, Chairman Mackenzie, Ranking Member Omar, and members of the Subcommittee. Thank you for inviting me here today to discuss our work related to the Federal Employees' Compensation Act.

When postal employees sustain a work-related injury or occupational disease, they are covered by FECA. While the Postal Service helps employees file claims and manages efforts to return injured employees to work, the Department of Labor administers, implements, and enforces FECA. The Postal Service reimburses DOL from postal revenues, and its workers' compensation costs are significant. Last year, it paid almost $1.5 billion in claims and an additional $96 million in administrative fees.

Our work at the OIG found the Postal Service is taking steps to reduce its workers' compensation costs, but more can be done to return employees to work and reduce costs. We identified areas where current law restricts the Postal Service from using private sector best practices, including those adopted by some state governments. Allowing these best practices would have saved the Postal Service almost $350 million a year.

One significant restriction is FECA does not provide for settlement of claims through lump sum payments, and correspondingly, does not have limits on total compensation or length of benefits. As of last fall, more than 600 postal employees aged 80 or older were receiving benefits — three are currently 100 or older. Claims are commonly paid over many years, tax-free with cost-of-living adjustments. Thus, the incentives for employees to return

to meaningful employment are minimized. Other best practices include requiring employer-selected physicians and the use of generic medications when available.

We also do investigative work related to FECA. We coordinate with DOL OIG to identify and investigate workers' compensation fraud by postal employees and healthcare providers. Our investigative work in this area results in substantial savings. We recently closed a case in Texas where pharmacies paid kickbacks to doctors to prescribe certain medications based on high reimbursement rates instead of patient need. This case returned nearly $100 million to DOL. To support this work, we embrace technology and data analytics. For example, to help identify provider fraud, we implemented an in-house artificial intelligence and machine learning model that identifies overbilling for physical therapy and chiropractic care.

Our work in this area has identified vulnerabilities and led to DOL making numerous policy changes in how it manages the workers' compensation program, including limitations on compounded drugs, billing restrictions, and third-party controls. Over time, we estimated the changes saved the Postal Service and its ratepayers over $1.5 billion. These changes also resulted in cost savings for all agencies with employees on workers' compensation, as well as improved patient safety.

Thank you again, and I'm happy to answer any questions.



Chairman MACKENZIE. Thank you. Under Committee Rule 9, we will now ask questions of witnesses under the 5-minute rule, and I will recognize myself first for 5 minutes. My first question is for Mr. Szymendera, under the FECA Program you mentioned that injured workers with dependents can receive augmented compensation at 75 percent of their wages.

For some FECA beneficiaries, a 75 percent tax rate wage loss benefit exceeds their pre-injury gross income. Do you see, or have

you studied at all how this may serve as a disincentive to return to work?

Mr. SZYMENDERA. Well, it certainly could be a disincentive. The, as you said, if you look at the actual take home pay, it can be higher under FECA because you are talking about with augmented compensation, 75 percent of the pre-disability wage, tax free, and without other—many other payroll deductions. Now, you cannot receive your normal Federal salary increases.

You cannot get a competitive or a merit raise or a promotion while you are on FECA, but you do receive an annual cost of living adjustment, even in years when Federal employees that are working do not receive an adjustment. Certainly, this has been identified as one potential disincentive for some injured workers to return to the workforce.

Chairman MACKENZIE. Your written testimony also notes that the workers' compensation program in 38 states and the District of Columbia, as well as Federal Longshore programs, have set their benefits to two-thirds of a worker's gross wage, with no augmented compensation for a worker's dependents. Can you discuss how those programs are performing in comparison to FECA, and what can we learn from those State models and the Federal Longshore Program?

Mr. SZYMENDERA. It is—always should exercise caution when comparing the State workers' compensation programs, and even the Federal Longshore Program with FECA because there are differences that go beyond, even the level of compensation. For example, most workers in this country receive workers' compensation through State programs and through private insurance companies.

There is a private insurance company, thus, it is a more adversarial model that what you have in FECA, where you are dealing only with the Department of Labor. States, as was mentioned by the Postal Service Inspector General, states have options for lump sum settlements of claims. FECA does not. States—many states have caps on benefits, either a total amount or an age cap, which can essentially force people off their roles into work.

In addition, the majority of states limit the choice of medical provider. Again, in FECA, you have a near unlimited choice of treating physician. I think when you compare FECA to the states, and you want to say well, are states putting more people back to work? Do they have lower benefit durations and things like that?

It is important to look at the whole package of benefits under FECA, and I would say generally speaking, FECA is more generous in its benefit to the administration, than what you typically see in the State workers' compensation programs, or even in the Federal Longshore and Harbor Workers' Compensation Act Program.

Chairman MACKENZIE. Thank you. Next, I will go to Mr. Santos. Your written testimony highlighted many examples of medical benefits fraud, and the impact on prescription opioid abuse on the FECA Program. The Office of Inspector General's Audits have provided critical assistance to DOL to help solve those problems.

What further reforms would you recommend to further curb medical fraud within the FECA Program?

Mr. SANTOS. Thank you, Mr. Chairman. I will preface my response by giving OWCP quite a bit of credit for their progress over

the last 10 years. As a result of many of our audit oversight work, as well as the result of our investigations, and working closely with Postal OIG, and other OIGs.

OWCP has taken several actions that have resulted in improvements in both the prevention of improper payments and fraud, as well as the overall management of the program. In fact, we have seen both as it relates to the management of compounded drugs, the actions they took in response, as well as the management of opioids in the program, significant progress on the part of OWCP.

Having said that, there are two recommendations that we have to Congress that we believe would further strengthen the program, and provide OWCP with additional tools to prevent improper payments, and fraud in particular. The first one is to authorize OWCP to access Social Security wage records, as well as the National Director of New Hires, which provides contemporaneous information about the employment of individuals in the United States.

In doing so, it would afford OWCP representatives to cross match that information to identify the reporting of income or outside employment. We have also recommended, and this is a long-standing recommendation of the OIG, for OWCP to be authorized to suspend radical providers who were indicted for fraud, involving the FECA Program.

Under current law, OWCP can continue to pay for services being provided by medical providers that we, or other OIGs have indicted, with crimes associated with fraud against the OWCP Program.

Chairman MACKENZIE. It sounds like some good recommendations there. Thank you. With that, I will conclude my time, and I will now recognize the Ranking Member for the purpose of questioning the witnesses.

Ms. OMAR. Thank you Chairman. Again, thank you all for being here with us today, and for your testimoneys. Mr. Renfroe, if we are to think about some of the challenges that letter carriers experience while navigating the FECA process. If you were to start with the challenge that your members experience, what are some reforms that Congress should consider that would be timely and high-quality, a high-quality claim process and benefit awards?

Mr. RENFROE. The question is very timely. As I mentioned in my opening, we have made a significant amount of progress in recent years with OWCP, but one issue that continues to be prevalent is access to physicians that treat the employees, injured Federal employees.

Legislation has just recently been introduced entitled Improving Access to Workers' Compensation for Injured Federal Employees Act, and this is bipartisan legislation that would expand that access to include physicians assistants, and nurse practitioners. It really is a common sense solution to that problem that follows a trend that we have seen in the larger and healthcare really outside of our world around the country.

Ms. OMAR. Thank you. It is fascinating, and I think you talk about accessing physicians, and then we talked about how, you know, one of the other witnesses talked about how there is no cap on who you could see in regards to the benefits, so it is fascinating to see that sort of discrepancy.

Mr. Chairman, I am requesting unanimous consent to enter into the record a document provided by the Workers' Injury Law and Advocacy Group, summarizing stories provided by workers' compensation attorneys of challenges that their clients have faced in the FECA Program.

Chairman MACKENZIE. Without objection.

[The Information of Ms. Omar follows:]

**A Selection of Case Studies on Inefficiencies & Issues Associated with Current FECA Claims**

- Arizona: A worker's back pay was delayed from July 2024 until April 2025 after a successful claim due to OWCP's inability to get pay rate information from the employing agency and then information regarding the workers annuity from OPM.
- Arizona: A FECA claimant with physical and psychological conditions cannot find a treating physician after his previous physician retired.
- California: A worker claimant's OWCP benefits have been delayed since December and continue to be delayed due to OWCP's inability to coordinate with OPM.
- California: It took OWCP 8 months to transfer information on OWCP benefits to OPM following successful claim for compensation, thereby delaying benefits.
- California: In a survivor claim, OWCP determined there was a conflict in medical evidence. They have been unable to locate a doctor to resolve the conflict despite having allegedly contacted 473 different doctors.
- California: A worker had a FECA claim approved in July 2023. The claimant has been unable to access their benefits to date because the election of benefits issues has not been resolved by OWCP.
- California: OWCP took four years to process an acknowledged underpayment of benefits to a worker. No interest is payable on back pay or underpayments.
- Florida: OWCP took from July of 2024 to February 2025 to schedule a second opinion examination after a worker's claim was remanded from the Branch of Hearings and Review. The second opinion supported the claim, finding that the claimant's injury was work related. However, the claim still has not been approved almost a full year after the remand.
- Florida: A Department of Defense worker was diagnosed with PTSD in 2019 and had to stop working. His claim was accepted by OWCP in 2023 after multiple appeals. The worker claimant still has not been paid back-wages from 2019 to 2024 because OWCP is not able to get information from OPM.
- Georgia: A worker claimant, who is a USPS employee, had a cervical fusion approved in 2008 for a neck injury. The worker claimant re-injured their neck at work in 2019. His neurosurgeon advised he needed revision surgery. It took from 2019 until 2024 for OWCP to award benefits.
- Maryland: A Special Agent with an accepted brain injury and Parkinson's disease cannot get OWCP to provide the worker or their counsel with a copy of or access to the file for approximately two years. OWCP intermittently denies payment to claimant's residential care.
- Minnesota: A worker has multiple accepted claims but cannot find any treating physicians within 100 miles.
- Missouri: The widow of an injured worker was unable to get scheduled cancer surgery because of the severity of her work injury. She then died of cancer and was never able to receive a decision on her claim for survivor benefits before she herself passed. The claim for survivor benefits was filed in December 2023.
- Nevada: A federal worker has an accepted claim for a work related injury or illness. OWCP cannot find an ear nose and throat doctor that will take OWCP insurance. OWCP sent two referrals for doctors in California and Arizona. Neither of the referrals will take OWCP patients.
- Nevada: A worker had to travel to California to get a second opinion because there were no closer options that work with FECA.

- North Carolina: The worker claimant is a rural mail carrier for the USPS. She has established a claim for the recurrence of an earlier injury and had a second opinion that echoed the first claim. OWCP has taken no action despite the second opinion, and she has received no benefits for over six months.
- Rhode Island: OWCP determined the worker claimant's temporary position was not suitable for her based on a second-opinion doctor's determination of her work restrictions. When she filed for compensation, OWCP demanded she prove that she was disabled from that same job, delaying her receipt of compensation.
- Virginia: A FECA claimant's doctor ordered a CPAP machine. It took OWCP 8 months to approve the CPAP machine. The claimant had a stroke a week before he got the CPAP machine, which the treating physician has said would likely have been avoided if he had access to the CPAP machine earlier.
- Virginia: A Department of Defense worker claimant had a FECA claim accepted for aggravation of fibromyalgia, but for 10 years her treating doctor asked for PTSD, anxiety and depression to be added. Instead of adding on, OWCP terminated the claim in 2020. Claimant went homeless before OWCP finally added PTSD, anxiety and depression in 2024 and placed claimant back on wage-loss benefits.

Ms. OMAR. I ask for unanimous consent to enter into the record a redacted letter from OWCP informing a FECA claimant that an appeal hearing could not take place because the administration has canceled its contract for court reporters who transcribed hearings.

Chairman MACKENZIE. Without objection.

[The Information of Ms. Omar follows:]

File Number:
Cancelled Hearing-O-H

U.S. DEPARTMENT OF LABOR

OWCP-FECA, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

**Want Faster Service?**
**Upload a document at ecomp.dol.gov**

April 22, 2025

Date of Injury: 11/16/2024
Employee:

Dear :

Due to unforeseen circumstances related to our contracted transcription service, we regret to inform you that your upcoming hearing (scheduling details attached) must be cancelled.

If you prefer to continue with an oral hearing, your hearing will be rescheduled. You will receive at least 30 days' advance notice of the new hearing details.

You may also choose to convert your oral hearing appeal into a review of the written record.

Please complete the attached form and return it to our office via ECOMP or the address listed on the form.

Any responses not received within 30 days from the date of this letter will be automatically converted to a review of the written record.

Sincerely,

Jennifer M.
Federal Employees Program

UNITED STATES POSTAL SERVICE
OCCUPATIONAL HEALTH CLAIMS OFFICE
GULF ATLANTIC PROCESSING & MAINT.
P.O. BOX 39443
TAMPA, FL 33630

WAYNE JOHNSON, ESQ.
1201 SOUTH ORLANDO AVE
STE 362
WINTER PARK, FL 32789

***If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.***

File Number:
Cancelled Hearing-O-H

**CERTIFICATION OF THE CLAIMANT OR AUTHORIZED REPRESENTATIVE**

__ I elect to continue with an oral hearing. By selecting this option, you understand that your current hearing date is cancelled and will be rescheduled in the future (date to be determined). You will receive at least 30 days' advance notice of the rescheduled date.

__ I elect to convert my oral hearing request to a written review of the record. By selecting this option, you understand that your Hearing Representative will provide a copy of your request for a review of the written record, along with all pertinent new material, to your employing agency for comment. Pursuant to 20 CFR 10.618 (b), medical evidence is not considered pertinent for comment by the employing agency, since OWCP has sole responsibility for evaluating medical evidence, and therefore will not be furnished to the agency. You will be provided a copy of the letter to your employing agency. The employing agency will be allowed 20 days from the date of the Hearing Representative's letter to provide comments. Should you wish to provide a response or rebuttal to any comments from your employing agency, you should ensure OWCP receives your response or rebuttal within 20 days of the letter that provides their comments to you. Following the Hearing Representative's review and complete study of the evidence of record in your case file, the Hearing Representative should issue a decision within 90 days from the date of assignment.

Please select an option above and return the form to us.

**The fastest and most efficient way to submit documents to us is through ECOMP at https://ecomp.dol.gov/.**

If you are a registered user in ECOMP, access your case file. From the Forms tab for that case, choose "Upload a Document." Use the "Request for Hearing/Review of Written Record" drop-down option under "Document Type."

You may also mail the completed form to:

Branch of Hearings and Review
Office of Workers' Compensation Programs
PO Box 8311
London, KY 40742-8311

Any responses not received within 30 days from the date of this letter will be automatically converted to a review of the written record.

Ms. OMAR. Mr. Renfroe, how important is it for workers to be able to have a timely and fair hearing in their cases?

Mr. RENFROE. I think it is very important. I think it is important, of course, for the injured employee to get the benefits that the law entitles them to. I also think it is very much in the best interest of the Department of Labor, and the best interests of OWCP to be able to provide those benefits as efficiently as possible.

The hearing and adjudication process is a part of that for some that file claims. You mentioned that there have been recent changes in regards to the availability of court reporters due to contracts, we have seen some delayed hearings in recent months, as a result of those actions, so we would very much be in favor of improving or eliminating any barrier to timely access to whatever step in the process, even if that was a step that required a hearing.

Ms. OMAR. I appreciate that. Ms. Hull, you have heard President Renfroe testify that the risk that letter carriers and other Postal Service employees face from heat stress, which can cause heat related illnesses, such as heat cramp, organ damage, heat stroke, and even death. What has your office found regarding USPS's need to protect workers from heat stress?

Ms. HULL. Yes, we did a review. I think we issued the report. It was about a year ago, I believe, related to the heat issues that postal employees experience, and found that obviously significant problem.

We did evaluate what the Postal Service was doing to protect its employees from heat, and found that they were doing a pretty good job of providing equipment, and things like that to protect employees, but we found real challenges in the training area, making sure that employees were adequately trained, that training records were accurate, and that employees actually completed training, so that they knew when, you know, if they were experiencing symptoms that they should stop and take a break and get water, and those kinds of things.

We have done work in that area, and we are keeping our eye on it in case we need to do some additional work in that space.

Ms. OMAR. How do you see overcoming some of these challenges with training, and with the workers when we are seeing layoffs take place, and folks having to take on extra routes, and they have to complete it within the amount of hours they were already doing their previous routes?

Ms. HULL. Yes. I think that management has to be aware of the stress that the employees are under, and manage that stress effectively. Also, I think that it is really important that the Postal Service rolls out the vehicles with air-conditioning as part of the vehicle itself, so that it is hard to believe that there are still vehicles on the road delivering mail that do not have air-conditioning in this day and age.

That is an important factor in this as well, that I am sure Mr. Renfroe could speak more effectively to then even I could answer.

Ms. OMAR. I appreciate that. Thank you. I yield back.

Chairman MACKENZIE. Thank you. Next, we will go to Chairman Walberg.

Mr. WALBERG. Thank you Mr. Chairman, thanks for the panel for being here, and while I have you here, letter carriers, I want to say thank you for the service you provide. Being in a rural area myself, it is a rural letter carrier. I think you have most recently retired Gene, who took special attention to my late mother, who lived in a cottage on our property out on the farm.

Gene always was sure where my mom was at, and special needs were cared for. I did not get the same care, but my mom did, so thank you. Thank you for the work that you do day in and day out. Last Thursday, Congressman Joe Courtney and I introduced H.R. 1370, or 3170, Improving Access to Workers' Compensation for Injured Federal Workers Act.

This bipartisan bill amends FECA to allow injured workers to receive treatment for work related injuries from State licensed physician assistants and nurse practitioners, which in my neck of the woods, are in many cases the doctors in the rural community. This

is prohibited under current law, and is contributing to long delays in care for many Federal workers.

Delays in care means delays in injured workers returning to their jobs, and nurse practitioners and physician assistants that are a critical component in our healthcare delivery network, and if we are trying to make the Federal Government more efficient, it makes no sense to prohibit workers from receiving care from a reputable NP or PA.

H.R. 3170 updates the Federal Employee's Compensation Program to make it more efficient by improving access to care, and getting Federal employees back to work quicker. Mr. Szymendera, as I mentioned under current law, only physicians can certify a worker compensation claim in the FECA Program.

That is why Congressman Courtney and I introduced H.R. 3170 to allow NPs and PAs to treat FECA beneficiaries. Can you describe how this change would increase access to care for injured Federal workers, especially for those in rural areas?

Mr. SZYMENDERA. One of the great strengths, one of the great advantages of the FECA Program is the right to choose your treating physician. That is a right that is not given in a number of State worker's compensation programs.

However, there have been persistent complaints about FECA and the other OWCP programs that while you have the right to choose your treating physician, there is not a treating physician available for you to choose, especially when you are outside of the Washington area, or other metropolitan areas that have potentially a lot of Federal employees.

Expanding the pool of providers to include nurse practitioners, physician assistants, or as I think their national academy now prefers referred physician associates could expand the pool, and allow greater access to physicians. It also could bring certain non-traditional facilities such as urgent care clinics, or medical clinics and retail stores into a greater role in providing care.

The question that would have to be—remain to be seen is would this be enough to offset the problems that have got us here in the first place, with why we do not have enough physicians doing the treating? I have heard complaints about issues with the billing system, issues with frequent changes in the payment system that frustrate physicians and their staff.

Difficulty with websites, including difficulty that the claimants have navigating the website where you could find a physician, and an overall lack of awareness, for lack of a better word, marketing, of the program to providers. Increasing the pool, I think, would increase accessibility, but it is not the only potential solution to the problems of access to medical care.

Mr. WALBERG. It is a start. Okay, thank you. In the final few seconds, Mr. Santos, you intimated the need for the ability for OWCP to access Social Security information. Expand on why that would be an important asset?

Mr. SANTOS. Thank you Mr. Chairman. It would be very helpful for OWCP to have access to both Social Security wage records, as well as a national direct for new hires. It would—OWCP would be able to more quickly identify unreported income by claimants, as well as detect claims who have returned to work.

It would—also allowing for the timely and automated matching, cross matching of these systems, would improve fraud prevention overall, improper payments, prevention overall, as well as help the OWCP direct its very limited resources to those claims that require more attention from an upfront prevention perspective.

On the backend, it would assist the OIG in our efforts to investigate related crimes.

Mr. WALBERG. Save the proper funds for the proper recipients.

Mr. SANTOS. That is right.

Mr. WALBERG. Thank you, I yield back.

Chairman MACKENZIE. Thank you. Next, we will go to Ranking Member Scott.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman. Mr. Santos, you mentioned the scheme involving compound drugs where I think you mentioned they mix up 15 dollars' worth of materials, then charge $16,000. Did you refer any of the doctors or physicians to the licensing boards as that investigation was going on?

Mr. SANTOS. Thank you, Ranking Member Scott. I know this is a matter that is close to your heart. We have discussed this with your office for many years now. These cases go back to really the beginning of the issues involving compounded creams, which were originally identified by both our office and Postal OIG office.

In the course of our investigations we have referred many medical providers, to include doctors, to their respective boards for suspension as well.

Mr. SCOTT. Has the actions of DOGE reduced your capacity to do your job, canceling leases, credit cards, or anything?

Mr. SANTOS. Thank you, Ranking Member. There has been some limited impact on the ability of Labor OIG to conduct its work. I believe four of our leases were included in the governmentwide cancellation of commercial leases. Since then, I have engaged with both the Secretary and the Deputy Secretary that DOL manages our Space Program.

They have been very supportive of the need for Labor OIG to continue maintaining these geographic locations. Many of these offices were law enforcement offices, so we have very specific space requirements such as weapons storage, Grand Jury information, evidence rooms, interview rooms.

My understanding at this point in time is that some of these decisions are being revisited, and we are certainly hopeful that we will be able to maintain these locations.

The same is true for the purchase cards and the travel cards. OIG was, in fact, impacted originally by having the suspension of both purchase cards and travel cards. I engaged with DOL leadership immediately, and within hours they understood the requirement for law enforcement to continue its work, and reverse those decisions, so again, it has had some limited impact on our work.

Mr. SCOTT. Thank you. Can you say whether or not FECA is more vulnerable to fraud than other health insurances?

Mr. SANTOS. I cannot say that, Ranking Member Scott. I believe that the issues we find in the FECA Program as it relates to both claimant fraud and medical provider fraud are very similar to the issues that are identified by other law enforcement programs, pro-

grams such as Tri-Care or Medicare, or Medicaid, or in the private sector.

The same types of schemes and targeting of the system. We see that in the FECA Program as well so now I think it is very much a similar situation than many other healthcare benefit programs.

Mr. SCOTT. Thank you. Mr. Renfroe, we have heard about the problems with heat and crime. There is a legislation that has been pending about heat stress where at certain temperatures and what not, you have you take certain actions. Are you prevented—you have been trained, apparently, to recognize problems, workers have been trained.

Is there any limitation or resistance in them taking a break when the heat gets to a certain temperature? Humidity is a certain temperature? When heat stroke is much more possible?

Mr. RENFROE. The Postal Service has a heat illness prevention plan, a HIPP, as it is called in place. It has been in place for a few years. In fact, the earlier discussions that OIG Hull was referencing about training, that the issue we had with training a couple of years ago, is part of that HIPP.

The problem with that HIPP is it does not include all of the necessary mitigating factors that experts recommend to avoid the hazard of excessive heat, such as a regimented work-rest, a work-rest regime when an employee is not in the heat for a period of time due to vacation, or illness, or they are off work, and acclimatization period when they return.

Those are currently missing from the plan. There is a pending rule that would apply a heat safety standard to workers all across the country. We have, of course, been in communication with the Department of Labor about that.

Mr. SCOTT. Okay. I am trying to——

Mr. RENFROE. We strongly support that rule.

Mr. SCOTT. Thank you. Mr. Szymendera, do you know how long it takes to get a disability claim appealed, if you have a problem? You disagree with the analysis?

Mr. SZYMENDERA. I do not have that data available.

Mr. SCOTT. Does anybody on the panel? Does anybody on the panel know how long it takes to take a disability appeal? Thank you. Thank you, Mr. Chairman.

Chairman MACKENZIE. Thank you. Next, we will go to Mr. Fine from Florida.

Mr. FINE. Well, thank you Mr. Chairman, and thanks for having this important hearing today. Before I get to my question, I would note my perspective on this. I think it is incredibly important that we take care of those who get hurt on the job when they are working with the Federal Government.

I do not think anybody disagrees with that. Fraud puts the legitimacy of any of those types of programs at risk, and more importantly, the way I look at the world is when you give a dollar to someone who did not deserve it, you steal it from someone who did.

Eventually, we are going to come up in a world where we run out of money, and so if we do not get rid of the fraud, we are going to end up cutting the things that we actually need to do.

Ms. Hull, in your written testimony you talked about—expressed support for using technology and data analytics when reviewing

FECA expenditures. You talked about using AI, and machine learning models to identify over billing, which is a, you know, nice way of putting fraud, over billing for physical therapy and chiropractic treatments.

Using those technologies, what kinds of analytics, what have you learned from doing it, and in effect how much fraud have you uncovered by doing that?

Ms. HULL. We have worked closely with DOL OIG in this space, but we have a pretty sophisticated data analytics program, and have used it, and pointed it at this data set to identify fraudulent activity. In some cases, we have identified upcoding, or use of codes that are—that result in higher reimbursement rates.

We have identified employees that are getting significant travel reimbursements to drive hours and hours for treatment, and things like that, which is in some cases, can be fraudulent. We have identified providers that are prescribing these compounded pharmaceuticals, as we have talked about earlier.

We cannot—we see lots of potential fraudulent activity in this space. We have opened at the Postal Service OIG, we have opened about 1,000 cases in the last 5 years related to claimant fraud, and another, over 100, related to provider fraud, and worked many of those jointly with Luiz's staff at DOL OIG.

There is a lot there. The more we look using data analytics at this data set, the more concerns that we have in some of these areas from providers, but also from, in some cases, claimants. The issue that Luiz raised about identifying people that have gone back to work, and that are being compensated through other jobs while they are on the rolls, on the periodic rolls for their—the Postal Service.

Many of our 1,000 cases that I was talking about are in that space, where we have identified postal employees that are receiving benefits, but are also working other jobs.

Mr. FINE. If I were to put that into analytic terms in numbers, it sounds bad. Are we talking about like $100,000 worth of fraud, a million, ten million, 100 million, a billion? We are talking about roughly 3 billion dollars here. What is your—based on the analytics you have done, what is the scope of the problem? How many zeros come after the numbers?

Ms. HULL. Yes. It is probably in the hundreds of millions of dollars in certain aspects. What we see, because the Postal Service employees often, and employees in this space can go on the periodic rolls. If they are committing fraud, they are not going to come off the rolls until they are investigated and are required to come off the rolls.

An employee that goes on the rolls when they are early in their career, 20–30 years-old, in their career, that is a long-term liability, so that is, you know, a million dollars or more over a career, so.

Mr. FINE. That is hundreds of millions of dollars that is either being taken from a postal worker, or somebody else who actually has a problem, but that needs help, or that is money that we are borrowing from our grandkids to give to people who do not need it. Is that a reasonable way to look at it?

Ms. HULL. It is. It is.

Mr. FINE. Thank you, Mr. Chairman.

Chairman MACKENZIE. Thank you. Next, we will go to Mr. Messmer from Indiana.

Mr. MESSMER. Thank you, Chairman. Mr. Szymendera, under the FECA Program, current scheduled awards pay a fixed number of weeks for loss or impairment of a body part, based on written tables, written decades ago. How should Congress update the scheduled framework so the awards track contemporary medical impairment guides, and labor market related realities?

Mr. SZYMENDERA. Yes, in fact, it is the current schedule basically goes back to 1966. It has not been substantially changed since then. Since that time, for example, the American Medical Association guides to the evaluation of permanent impairment is now in its sixth published edition, with now annual digital updates, meaning if you considered that, and that is a guide used throughout workers' compensation, including in the FECA Program.

They are updating that multiple times. Now, annually updating it, and yet the schedule awards have not been updated since 1966.

Another comparison to VA, the VA in the VASRD, Veteran Affairs Schedule for Rating Disabilities, since 2017 alone, has updated their rating system for hundreds of medical conditions across ten major body systems.

There certainly is an opportunity for change, but only Congress can make the change. There is nothing in the law that allows for a change in the scheduled benefits through rulemaking. Meaning, it is going to take a law to amend it.

If a goal is to increase flexibility going forward, then one thing certainly to consider is allowing for changes to be made through rulemaking rather than through Congress.

That is, for example, how the VA changes its schedule of rating disabilities. That is also how other compensation programs utilize that as well, but there certainly is an opportunity for change. It has not been changed since 1966, but only Congress can make that change.

Mr. MESSMER. Thank you. Mr. Santos, inter-agency communication and coordination are integral to the operation of the FECA Program. The Department of Labor's Office of Workers' Compensation Programs works with Federal agencies and the workers to process claims, provide benefits, and return employees to work. Which aspects of the inter-agencies communication and coordination are working well, and which ones are not?

Mr. SANTOS. Thank you, Representative. We—our office has not looked at this specific issue recently, but I recognize the importance of all that OWCP to maintain these lines of communication. It assists with both the claimant in receiving the benefits that they are entitled to, as well as the agencies, right, in communicating directly with OWCP.

This has been brought to my attention previously, and I understand that OWCP is also aware of limitations that they have in communicating with the agencies. We have tried to facilitate that access on the part of OIGs by facilitating access through data, through documents, through information.

My understanding is also that OWCP has put in place a protocol, I believe in 2017, to facilitate this communication between OIGs who may be investigating claimant fraud, and OWCP, so they can

more readily receive the information, but we recognize that this is an area that where only OWCP can make improvements.

I would note, I think from their perspective, and again, I cannot speak for OWCP, but they have reported that I believe each one of their claim examiners are responsible for over 500 claims at a given moment, and the industry average should be between 120 and 200, so some of this is a reflection on resource constraints on the part of OWCP as well, but we recognize that more can be done.

Mr. MESSMER. Thank you. Ms. Hull, your office's 2023 report found that the cost per work hour of postal workers compensation program runs 31 to 41 percent higher than the private industry. It also found that the USPS could have saved nearly 693 million dollars in just 2 years, had it be able to use private sector cost containment tools.

Which cost containment mechanisms should the Congress authorize the USPS to adopt, so that its workers' compensation program more closely mirrors private sector practices?

Ms. HULL. Yes, as part of that work we looked at how others were managing their costs in their workers' compensation programs. What we saw was things like limitations on dollar amounts and duration of benefits. We saw something that I mentioned, my statement about allowing settlements to reduce the ongoing cost, buyouts and settlements to help reduce the costs.

We also looked at the use of employer selected physicians, versus employee selected physicians. Those are three of the areas that we saw were common in private sector, and in State workers' compensation programs that FECA does not have.

Mr. MESSMER. Okay. Thank you. I yield back my time.

Chairman MACKENZIE. Thank you. Next is Ms. Miller from Illinois.

Mrs. MILLER. Thank you. Mr. Santos, under the current FECA Program there have been instances of workers reporting an injury to collect disability benefits while they are subsequently found to be secretly working another strenuous job. What is being done to increase oversight, and address this fraud and abuse within FECA.

Mr. SANTOS. Thank you, Representative. This has been a concern of ours from an OIG perspective for many years. Not only our office, but also Postal OIGs, and many other OIGs, who are responsible for investigating claimant fraud associated with their own programs.

Many years ago, following the issues we identified jointly with Postal OIG on the compounded drug matters, Congress took action, and provided both the authority and the funding for all OWCP to create what's called a Program Integrity Unit, which has been in many ways a model of how this should be looked at from an oversight perspective.

They are constantly using data analytics, so is our office, as well as Postal OIG, to look at the claims because what we have found, particularly over the pandemic, is that data really is the key to provide adequate and comprehensive oversight of these matters. Then, the Program Integrity Unit refers those cases to my office, which then we take action in investigating these matters.

It remains a concern, certainly from our perspective, but to OWCP's credit, they are doing a better job of identifying these mat-

ters, and sending it our way for investigations. We also work very closely with other OIGs to pursue to those cases.

Mrs. MILLER. Thank you. Related to this, there are also some instances of injured workers who continue to claim benefits long after they have recovered. What is being done to ensure this abuse of FECA benefits is reduced?

Mr. SANTOS. Yes. That is also a very important matter and a concern for our office for quite some time. This is one of the reasons we have recommended that Congress, in looking at potential reforms for the program, authorize OWCP, and specifically the Program Integrity Unit I mentioned, to have access to Social Security, wage records, as well as the National Director of New Hires.

The NDNA specifically has updated information on income and employment. This is an HHS data base. I believe employers are required to update the data base within 20 days. Providing that access to OWCP would facilitate in this data matching and data analytics program I have referenced.

Then, in identifying when claimants have returned to work, or at times when they are under reporting their earnings, which is also important.

Mrs. MILLER. Those sound like good solutions. We need to make it happen. Also, I was wondering is there any public recourse for reporting of these of the system?

Mr. SANTOS. In what sense specifically?

Mrs. MILLER. Well, I am just—like is there any kind of portal where people are listed?

Mr. SANTOS. Yes.

Mrs. MILLER. Oh, there is one?

Mr. SANTOS. Not where it lists, but certainly we have a venue for individuals who are aware of complaints, or are aware of allegations against Federal employees, who maybe are continuing to receive the FECA.

Mrs. MILLER. Okay.

Mr. SANTOS. As well as the medical provider fraud. Not only do we, Labor OIG, operate our own hotline where individuals can report these matters to. I understand that all OIGs have similar hotlines where they can be reported to. Absolutely, there is a venue for individuals who bring these matters to our attention.

Mrs. MILLER. Okay. That is fantastic. Thank you. Ms. Hull, the U.S. Postal Service has an annual operating revenue of 78 billion, and over a half a million career employees. In my home State of Illinois, a 2021 investigative report showed that the USPS in Chicago has four of the worst performing offices, with that report showing 62,000 mail items were delayed over several months.

The Inspector General report also found that rates of improper scanning, and handling of hundreds of packages, were as high as 50 percent. What is being done to address these deficiencies in the Chicago USPS offices?

Ms. HULL. Yes, great question. Chicago has been a challenging area for the Postal Service for a very long time. We issued the report that you are speaking of, and made recommendations to the Postal Service to address some of the causes of the problems that we saw. I do not know the status of those recommendations right now, but we can get the status and get back to you on it.

We are continuing to do work around the country and in Chicago, looking at service issues, in particular, because clearly there are some hot spots around the country where service is challenging.

Mrs. MILLER. Well, thank you, and we would be very grateful.

Chairman MACKENZIE. Thank you.

Mrs. MILLER. I yield back.

Chairman MACKENZIE. I appreciate that. Next, we will go to Mr. Courtney from Connecticut.

Mr. COURTNEY. Thank you, Mr. Chairman. Thank you for the waiver, and to the Ranking Member for the waiver that allows me to participate today. Again, and just as the lead co-sponsor on the Democratic side for H.R. 3170, I just wanted to just foot stomp a couple points that were made by Mr. Renfroe and Ms. Omar, who raised this issue earlier in her questioning.

This is a bill which has been introduced a number of times. Actually, it goes back to 2011. It recognizes that direct access to nurse practitioners and physician assistants is widely sort of embraced now in the health care system, both at the State level and the Federal level.

The Medicare system has allowed direct billing by nurse practitioners and PAs for almost a decade at this point, and again, if anything again it has provided patients with access at a very stressed time, in terms of physician shortages.

The American College of Medical Colleges and Universities reports that we are going to have a physician shortage of about 86,000 at the rates we are going right now in terms of retirements.

You know, the inadequate replacement, so the issue of physician access in terms of just the global system, is anything going to worsen if we do not sort of provide other options? Again, Mr. Renfroe, your testimony again, I think powerfully demonstrated what the need is, particularly in rural parts of the country.

Mr. Chairman, I ask unanimous consent to enter into the record a letter of support from the American Association of Nurse Practitioners for H.R. 3170 as well as a letter in support of the legislation from the Worker's Injury Law and Advocacy Group.

Chairman MACKENZIE. Without objection.

[The Information of Mr. Courtney follows:]

AANP | American Association of NURSE PRACTITIONERS™

*The Voice of the Nurse Practitioner®*

May 2, 2025

The Honorable Tim Walberg
Chairman, House Committee on Education and Workforce
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Joe Courtney
2449 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walberg and Congressman Courtney,

On behalf of the over 431,000 nurse practitioners (NPs) in the United States, the American Association of Nurse Practitioners (AANP) writes in support of H.R. 3170, the *Improving Access to Workers' Compensation for Injured Federal Workers Act*. This is commonsense legislation supports federal workers who are injured at work; increases patient access and choice; and according to the Congressional Budget Office (CBO), would have no significant impact on federal spending while ensuring employees are able to return to work faster.[1,2] We appreciate your leadership on this critical bipartisan issue and respectfully request your continued support through swift Committee action and urging Leadership to consider the bill on the House Floor.

As you know, under current law, federal employees can select an NP as their health care provider under the Federal Employees Health Benefits Program (FEHPB). However, if that same federal employee is injured or becomes ill at work, the Federal Employees' Compensation Act (FECA) requires that they change providers for their workers' compensation claim. FECA currently states that only a physician can make the diagnosis, certify the injury and extent of the disability, and oversee a federal employee's treatment and care. Not only is this an outdated requirement, but it is also contrary to the majority of state workers' compensation laws, FEHBP, and the medical documentation requirements for disability claims under the Social Security Administration. This requirement also places an additional burden on federal employees, depriving them from receiving health care from their provider of choice, as well as hindering timely access to care and continuity of care.

Passage of H.R. 3170 would update the federal workers' compensation program and authorize NPs to certify disabilities and oversee treatment for injured or ill federal employees under FECA, consistent with state law. This would improve access to health care for injured or ill federal employees, particularly in rural and underserved communities. According to CBO, the bill is budget neutral because, while it may increase access to care for injured federal employees, it would also enable them to return to work more quickly.[3] Updating FECA to authorize federal employees to select their health care provider of choice when they are injured or become ill in the course of their federal employment will achieve greater access, overall efficiency, better continuity of care, and enable federal employees to return to work more quickly, all at no cost and consistent with state law.

Access to health care providers for injured federal workers continues to be an issue across the nation. In the Department of Labor's (DOL) 2022 Report to Congress, DOL stated that "the lack of sufficient medical providers willing and available to treat injured federal workers has been a growing challenge for

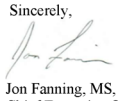
[1] Congressional Budget Office Cost Estimate on H.R. 6087, https://www.cbo.gov/system/files?file=2022-05/hr6087.pdf
[2] Congressional Budget Office Cost Estimate on H.R. 618, https://www.cbo.gov/system/files/2024-06/hr5567EdW.pdf
[3] Ibid.

the program"[4] noting that "injured workers have expressed difficulty in finding medical providers for treatment."[5] Further, a bipartisan Congressional delegation sent a letter to the Department of Labor identifying an "inability to get appointments with local providers" within the federal workers' compensation program as an issue for their constituents.[6]

As you know, this legislation has a strong history of bipartisan support in the 117th and 118th Congresses. We greatly appreciate the support of the Committee in passing this legislation by voice vote in the 117th Congress, and your strong words of support when this legislation was considered on the House Floor. The Committee's leadership led to the legislation passing the House of Representatives in the 117th Congress with broad bipartisan support by a vote of 325-83. In the 118th Congress, this bill was unanimously reported out of the Committee on Education and the Workforce on a 36-0 vote.[7]

AANP thanks you for your continued efforts to improve the health care system for our nation's federal employees. We look forward to working together to ensure timely access to care is provided to our federal employees by the provider of their choice. Should you have comments or questions, please direct them to MaryAnne Sapio, V.P. Federal Government Affairs, msapio@aanp.org, 703-740-2529.

Sincerely,



Jon Fanning, MS, CAE, CNED
Chief Executive Officer
American Association of Nurse Practitioners

[4] Ibid
[5] Ibid
[6] Sorensen, Durbin, Duckworth, Grassley, Miller-Meeks Lead Effort to Improve Workers' Compensation Access for Federal Workers in the Quad Cities | Representative Eric Sorensen
[7] Actions - H.R.618 - 118th Congress (2023-2024): Improving Access to Workers' Compensation for Injured Federal Workers Act | Congress.gov | Library of Congress

Mr. COURTNEY. Thank you, Mr. Chairman. In my remaining time, Mr. Renfroe, you heard Ms. Hull testify in favor of basically overriding employee's right to seek their own healthcare provider, and instead take doctors that are on a list provided by the Postal Service. What is the letter carriers' position on that type of possible change?

Mr. RENFROE. Yes. We would be very much opposed to modifying the current ability of Federal employees that are injured's right to seek their own provider that treats injured Federal employees. I think you highlighted very well the need to expand those treatment options.

I would also just like to comment on a couple of other points that were raised in the OIG report. The recommendations regarding lump sum payments as opposed to continuing benefits, there is an issue raised about requiring those that are injured to, again, taking an OPM annuity at age 65. We are very staunchly opposed to those type of reforms.

As I mentioned earlier, the most pressing issue is access to care, and this legislation would go a long way toward addressing that. I will note one piece that I think is important that was recommended in the OIG's report, and that is the maximize the usage of generic prescription drugs.

We are in full support of that as that is also become, you know, a trend sort of across the health care industry.

Mr. COURTNEY. Again, the OIG's Office has done really impressive work in terms of identifying waste, fraud and abuse, which you know, Ms. Hull's briefed the staff here, and kudos again, to OIG. Letter carriers completely support all efforts, right, to crack down on waste, fraud, and abuse in the system?

Mr. RENFROE. We 100 percent support efforts to crack down on waste, fraud, and abuse because the impact of expenses that are eventually passed on to the Postal Service is very much, as it was described earlier, potentially could result in benefits not being paid to someone who is entitled to them under the law.

I think it is important for me to mention my union has invested very heavily in representing our employees that are injured. One of the primary reasons, beyond of course ensuring that they received their benefits, is to make the process as efficient as we possibly can.

We have also engaged directly through beginning with the Obama administration, the first Trump administration, the Biden administration. Now, with the second Trump administration, with OWCP to improve and modernize processes to offer them the perspective of the individual that is filing the claim, and we have made a lot of progress.

This was mentioned earlier in recent years with OWCP, and we really believe that we can continue to do that. It is important to us that benefits are paid efficiently to those who are entitled to them under the law, but we certainly are supportive of efforts to eliminate fraud, to eliminate waste, to eliminate abuse of the program, so long as it does not result in—I think we have to be careful that we do not impact those that do—are entitled to those benefits to ensure they receive them, but yes, sir, we would 100 percent support any of those efforts.

Mr. COURTNEY. Great. Thank you, Mr. Chair, I yield back.

Chairman MACKENZIE. Thank you, and seeing no further questions, we will conclude the interviewing and questioning of witnesses, and now we will move to closing remarks. At this time, I would like to recognize the Ranking Member for her closing remarks.

Ms. OMAR. Thank you, Chairman, and thank you once again to our witnesses for speaking with us today. Today's hearing has reaffirmed a simple, but powerful truth. The Federal Employee's Compensation Act is not just a program, it is a promise. A promise to Federal workers who deliver our mail, guard our transportation system, inspect our food, and respond in times of crises.

These workers are not statistics or budget items. They are people who make our government function, and when they are injured or fall sick through their work, they deserve a system that works for them, not against them. We have heard important testimony today about FECA's strengths, but we have also heard about its shortcomings—outdated procedures, delays in care, and burdensome claim process.

These are solvable problems, and as we have seen before, bipartisan cooperation can deliver meaningful, lasting reforms. Let us be clear. Any reform must keep one question front and center—how does this help workers and their families? We cannot lose sight of that. This means not only supporting workers after injury, but also preventing injuries and death in the first place.

Investment in workplace safety, like training, protective gear, and commonsense protections, such as the proposed OSHA Heat Stress Rule, are both morally right and fiscally savvy. Fewer injuries and illnesses mean fewer claims, lower costs, and a stronger and more resilient system for everyone.

What we cannot do is follow the course of workers' compensation changes in the states which have cut benefits to the bone and pushed workers into poverty. I ask unanimous consent to enter into the record a policy position from the American Public Health Association entitled, "The Critical Need to Reform Workers' Compensation," which lays out the problems of State systems that we must avoid if we are committed to prioritizing the health and well-being of workers.

Chairman MACKENZIE. Without objection.

[The information of Ms. Omar follows:]

# The Critical Need to Reform Workers' Compensation

**Date:** November 7, 2017 | **Policy Number:** 20174

https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2018/01/18/the-critical-need-to-reform-workers-compensation

## Abstract

*State-based workers' compensation programs, one of the oldest types of social insurance programs in the United States, provide critical medical and income support to workers injured or made sick on the job. More than 129 million U.S. workers are covered by workers' compensation. Every state regulates its own program, and there are no federal minimum standards that guide these programs as there are for other state-based insurance programs. Changes in state workers' compensation programs over the past 20 years have made it increasingly difficult for injured workers to receive the full benefits to which they are entitled. Furthermore, exclusions in many state programs exempt many work-related injuries and illnesses and many workers in high-hazard occupations from receiving workers' compensation. The result is that employers now provide only a small percentage (about 21%) of the overall financial cost of workplace injuries and illnesses through workers' compensation. Instead, the costs of workplace injuries are borne primarily by injured workers, their families, and taxpayer-supported components of the social safety net. States are engaged in a race to the bottom over workers' compensation benefits, and as a result working people are at great risk of falling into poverty from work-related injuries. Reforms are needed to ensure that workers with occupational injuries and illnesses can access the medical and wage replacement benefits they need until they can go back to work.*

## Relationship to Existing APHA Policy Statements

- APHA Policy Statement 20097: Workers' Compensation Reform
- APHA Policy Statement 20039: Workers' Compensation Insurance—Increased Funding for Prevention of Occupational Disease and Injury

## Problem Statement

Workers' compensation is part of the social safety net of programs that insure workers against income losses associated with both expected and unexpected life events. These programs also include unemployment insurance (for unanticipated job loss due to economic conditions), Social Security Disability Insurance (for permanently disabled people who have been in the workforce), and Social Security old age assistance (for people over retirement age), as well as programs specifically targeted to helping people pay medical bills (such as Medicare).

In the United States, workers' compensation emerged in each state as a political compromise in the early 20th century, when occupation-related deaths and disability were alarmingly common. Medical bills and lost wages resulting from a work-related injury can place an enormous economic and psychosocial burden on workers and their families, and losing a family member to a work-related death can have devastating

consequences for the family's financial security. The basic principle of workers' compensation is that employers assume responsibility for providing insurance that offers cash and medical benefits for workers injured on the job without regard to fault; in return, employers are protected from personal injury or other liability for workplace injuries or illnesses. More than 129 million workers in the country are covered by workers' compensation programs.[1]

With the exception of a few national programs administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (e.g., programs for federal workers and workers covered by the Longshore and Harbor Workers' Compensation Act), workers' compensation has evolved as a state-based decentralized program. Between 1911 and 1948, every state developed some form of workers' compensation program.[2]

Workers' compensation benefits include coverage for medical care and rehabilitation, reimbursement for a portion of lost wages due to work-related injuries, and compensation for permanent impairment or functional loss. Workers' compensation also provides benefits to families of workers who die from work-related causes. Ultimately, workers' compensation systems should help prevent workplace injuries, which in turn will reduce costs for employers.[2]

Each state regulates its own workers' compensation system. There is no federal oversight of these state programs, and they vary substantially with regard to the specifics of coverage, benefit levels, financing, and administration.[2] In addition, there are no federal minimum standards for state-run workers' compensation programs (as there are for state-run unemployment insurance programs).[2]

Workers' compensation is generally financed by employers either through insurance purchased from private insurers or through a state insurance fund; large employers may choose to self-insure.[3]

In four states, a state-run program is the exclusive provider of mandatory insurance. In all others, employers choose an insurance carrier, generally on the basis of premium costs. As a result, prevention and claims services may be undervalued, or risk management may focus more on reducing claims costs (often through denial of benefits) than on primary prevention. Shifting of coverage among carriers means that there is generally no consistent or long-term effort directed at injury and disease prevention. Premium levels often fluctuate because of macroeconomic changes rather than because of an individual employer's attention to and success in reducing injury and illness.[1]

Each state system is unique and varied in its coverage and in the benefits offered to workers.[3] States differ, often dramatically, on many issues, including determination of permanent disabilities and coverage of work-related illnesses (such as repetitive trauma disorders and stress-related disorders).[3] As an example, the national average maximum compensation for losing an index finger is $11,343, as compared with $79,759 in Oregon and $2,065 in Massachusetts.[4] Some state workers' compensation systems cap the benefits offered to permanently disabled workers at 450 weeks. Others allow benefits to continue for life.[3] Some state laws contain strong language to prohibit retaliation against employees if they file for workers' compensation, while others do not.[2]

Recent changes in many state-based workers' compensation programs have made it increasingly difficult for injured workers to receive the benefits to which they are entitled.[5] For example, some states have established shorter time limits to file claims, some have taken away workers' right to use a health care practitioner of their choice, and some have added provisions allowing employers to conduct mandatory post-injury drug testing even when there is no nexus between injury and impairment. Others have reduced protections against retaliation aimed at individuals

filing for workers' compensation, allowed selective enforcement of safety policies, excluded illnesses such as repetitive strain injuries, and altered the criteria regarding injury or illness causation so that claims that may previously have been approved are no longer covered.[2]

Historically, workers' compensation has covered not only new work-related injuries or illnesses but also workplace events or exposures aggravating a preexisting condition. However, many states no longer cover these incidents despite the fact that workers were able to perform their job prior to the injury or exposure.[2] The number of weeks that injured workers can receive disability benefits, irrespective of their medical status, has also been limited in some states. Cutbacks on attorney fees allowed for claimants, which are paid only if a claim is successful, have hampered workers' ability to obtain legal representation, while insurance company legal fees are not regulated. In addition, in many states there are no funds to cover injured workers whose employers illegally fail to carry workers' compensation insurance.[2] Also, many states are allowing the use of different versions of guidelines prepared by the American Medical Association for determination of partial or total impairment even though these are guidelines are not evidenced based and do not consider physical and mental impairment in the context of an individual worker's education and ability.[2]

Because of the weaknesses in state laws, employers now provide, on average, only a small percentage (about 21%) of the $198 billion estimated annual cost of occupational injuries, illnesses, and fatalities. Instead, the costs of workplace injuries are borne primarily by injured workers, their families, and taxpayer-supported components of the social safety net.[6] Workers, their families, and their private health insurance pay for nearly 63% of lost wages and medical costs related to work-related injuries and illnesses, with other public program sources (i.e., taxpayers) shouldering the remaining 16%.[5] The failure of state workers' compensation programs to provide adequate benefits has increased workers' risk of falling into poverty as a result of workplace injuries.[6] Studies have also shown that even when injured workers have a successful claim, when the benefits for that claim expire, these workers on average never achieve the earning potential they had prior to the injury.[7]

Moreover, only a fraction of injured workers ever receive any benefits through state workers' compensation programs. Several studies have shown that fewer than 40% of eligible workers apply for workers' compensation benefits.[8] The workers' compensation system functions especially poorly in the case of low-wage and immigrant workers. Many face additional barriers to filing, including concern about retaliation for reporting a job injury and requesting medical care. A landmark study of more than 4,000 low-wage workers in Chicago, Los Angeles, and New York revealed that among those workers experiencing a serious injury on the job, fewer than one in 10 (8%) filed for workers' compensation benefits.[9]

Doubts about the adequacy of workers' compensation programs are not new. More than 60 years ago, concerns about the inadequacy of state-based programs were raised with the Department of Labor. In 1970, Congress called for a review of state laws and established the National Commission on State Workmen's Compensation Laws. In 1972, the commission issued a consensus report noting that "the protection furnished by workmen's compensation to American workers presently is, in general, inadequate and inequitable"; in addition, the commission unanimously endorsed 84 recommendations, including 19 that members regarded as "essential."[10]

After the commission's report, states began to comply with the essential recommendations. For example, weekly statutory benefit rates increased substantially between 1970 and 1985 and continued to grow, although more modestly, between 1985 and 1990.[11] However, Congress did not

adopt the commission's unanimous recommendation to require full compliance, and beginning in the mid-1980s and early 1990s states began to roll back the already weak safety net that workers' compensation provided to workers.[4] Not surprisingly, benefits have greatly decreased since the early 1990s.[1] A 2015 report indicated that, since 2003, 33 states have passed workers' compensation laws that reduce benefits or make it more difficult for those with certain injuries and diseases to qualify for them.[4]

In addition, in many states certain worker groups are explicitly excluded from coverage, such as agricultural, home health care, and domestic household workers. Furthermore, many workers in the emerging on-demand gig and alternative economy (e.g., Uber or Lyft workers) are denied workers' compensation protections because they are not properly classified as "employees," and this is true even for those who work in dangerous jobs.[12]

Workers' compensation programs generally fail to cover most diseases or illnesses.[2] Experts estimate that only one of 20 occupational disease victims receive workers' compensation benefits; in the case of occupational cancer, the figure is less than one in 100.[13,14] Severely disabled occupational disease victims are 10 times more likely to receive Social Security Disability Insurance or early retirement benefits than they are to receive workers' compensation benefits. This situation is perpetuated by systematic employer and health care practitioner underreporting of occupational injuries and illnesses to the Occupational Safety and Health Administration and the Bureau of Labor Statistics.[15–17] There are also major obstacles to accessing coverage in occupational disease claims. Determination of work relatedness is more difficult in illness cases, particularly those with long latency periods or those caused by cumulative exposures across multiple employers. In competitive private insurance systems, wherein coverage over time may be provided by several companies, there may be controversy about degrees of responsibility among different parties.[2]

The most comprehensive legislative development in terms of cutting benefits to workers was the 2013 Oklahoma statute that both substantially cut benefits within the state-administered system and created a new system that allowed employers to "opt out" of the requirement and provide workers' compensation benefits while retaining immunity from lawsuits brought by injured workers. Employers that chose the opt-out option were also allowed to define for themselves what injuries were covered, determine what benefits would be paid to workers, and design their own review process, leaving very narrow oversight for the state agency responsible for workers' compensation. Investigative reporters found that "the plans almost universally have lower benefits, more restrictions and virtually no independent oversight."[18] In September 2016, the Oklahoma Supreme Court, citing the discrepancy in worker rights, declared the opt-out system unconstitutional, noting that the policy "1) constituted an unconstitutional special law; 2) denied equal protection to Oklahoma's injured workers; and 3) denied injured workers the constitutionally protected right of access to courts."[19] Although no other states have introduced similar opt-out options since the Oklahoma decision, such efforts are indicative of attempts by employers to limit their legal and financial obligations.

Other states continue to cut benefits, however. In 2017, for example, Iowa severely limited the benefits available to workers and increased the hurdles workers must go through to obtain benefits under workers' compensation, despite evidence that business costs were decreasing.[20]

The erosion of benefits for injured workers has resulted in a significant shift of the cost of occupational illnesses and injuries onto injured workers and taxpayer-supported programs. Reforms are urgently needed to ensure that workers with occupational injuries and illnesses can

access coverage for their medical care and adequate wage replacement benefits until they can return to employment. There has been no federal oversight of this state-run program for more than a decade. And because there are no federally mandated minimum requirements for benefits, each state continues to weaken and reduce benefits for injured workers.

### Evidence-Based Strategies to Address the Problem

Social insurance programs in other countries have demonstrated that fundamental change is possible in workers' compensation. In these countries, workers' compensation is subsumed by broader social insurance systems. New Zealand, for example, has had a comprehensive accident insurance system since 1974 that provides compensation to all victims of injury (but not disease) regardless of whether the injuries are work related.[21] Emphasis is placed on injury prevention and, when necessary, on the rehabilitation of injured individuals. Public hospitals provide medical treatment, and the system offers timely compensation to injured workers. The Netherlands goes even further, providing wage replacement to those disabled by both injuries and diseases, regardless of cause.[21] Wage replacement schemes consist of social insurance covering loss of earnings stemming from age, unemployment, temporary sickness, or permanent disability.

In the United States, the cost of medical care is a major driver in workers' compensation costs. This is not true in other countries, however, where publicly funded universal health insurance covers occupational and nonoccupational impairments alike. In these countries, medical care expenses constitute a markedly smaller share of total workers' compensation costs.[22] Many Canadian provincial systems operate nonprofit workers' compensation programs that emphasize injury and illness prevention incentives and focus public attention on the nature and scope of the problem as well as the tragedy of the many preventable injuries that occur. Examples of such programs include WorkSafe Saskatchewan (www.worksafesask.ca) and WorkSafeBC (https://www.worksafebc.com/en).

Calls for reform in the United States have outlined a program of change consistent with reforms in other countries. Experts propose the integration of workers' compensation health care into a national health service system. Many states have passed reforms to include formerly excluded workers such as home health care, domestic, and agricultural workers. In addition, there are now state systems in place to provide workers' compensation for workers in the so-called gig or alternative economy. In New York, for example, the legislature added a surcharge of 2.44% on fares for transport network companies to fund workers' compensation payments for their drivers.[12]

The Department of Labor issued a recent report recommending (1) reinstitution of federal tracking of changes in states' workers compensation programs, (2) appointment of a new national commission to study the workers' compensation system, (3) establishment of minimum standards that would trigger increased federal oversight if workers' compensation programs fail to meet them, (4) adoption of policies to strengthen the linkage of workers' compensation with injury and illness prevention, and (5) further coordination of Social Security Disability Insurance and Medicare benefits with workers' compensation to ensure, to the extent possible, that costs associated with occupational injuries and illnesses are not shifted to social insurance programs.[2]

In addition, the Department of Labor report included possible solutions to some of the issues involved in workers' compensation. As an example, when the workers' compensation claims of employees who are off work due to an injury or illness are disputed, cash benefits and health care may be delayed until the dispute is resolved, leaving these injured workers with no income and putting tremendous pressure on them to settle claims for lesser amounts. A few states have come

up with solutions for such problems: for example, Massachusetts has a "pay without prejudice" provision that allows insurers to make initial disability payments without accepting full claim liability; Maine has created mechanisms for payment of medical bills, pending resolution of claims, to ensure the availability of immediate medical care; and New Jersey has enacted an expedited procedure to resolve compensability issues when workers need expedited medical care. In addition, a few states have short-term disability programs that are not linked to work-related disabilities; in New Jersey, if a workers' compensation claim is contested, the state program will provide weekly cash benefits that are reimbursed if the workers' compensation claim is found to be compensable.[2]

### Opposing Arguments/Evidence

Driven by pressure from employers and their advocates to reduce workers' compensation costs, state legislatures continue to limit benefits to workers, restrict the kinds of occupational injuries and illnesses covered by workers' compensation, increase barriers to accessing benefits, and restrict eligibility requirements. However, as noted in a recent landmark Department of Labor report, although "these kinds of provisions may successfully limit the scope of workers' compensation liability and result in reduction of costs to employers, they also transfer the costs of injuries to workers, families, communities and other social benefit programs."[2] Many of these changes to state workers' compensation laws have been challenged on constitutional grounds, with unprecedented success.

Employer and insurer advocates often argue that the workers' compensation "grand bargain" that offered workers quick, sure, and adequate benefits for occupational injuries in exchange for restricting workers' rights to sue their employers for negligence causing disability has "gone too far." Some argue that workers' compensation was begun in the United States 100 years ago, in the midst of the industrialization era, to address "life-changing events" such as severe burns, amputations, and fatalities. They contend that a clear and convincing link to a specific event protects against fraud, abuse, and other attempts to gain compensation for a disability that was not directly and wholly caused by working conditions. They see workers' compensation as a system designed only to address traumatic events traceable to a specific date, time, and place. They believe that the system should cover traumatic injuries and acute conditions only when a work connection is precise and identifiable.

Some claim that the system has gone beyond its origins if it also covers conditions related to chronic pain or other chronic disease conditions such as heart disease, cancer, or respiratory illness caused by repetitive hazardous exposures or repetitive trauma when there is not a clear relationship to an "injury." In this view, the compensation bargain was never intended for coverage of cumulative strains, and the focus should be narrowed so that ordinary diseases of life and natural degenerative conditions are not covered. They argue that injury frequency rates are holding steady or declining and that hazardous factory and industrial conditions are mostly a thing of the past. In their view of the problem, the "exclusive remedy" of workers' compensation has eroded over time to favor workers over employers. They believe that legislation allowing lawsuits against employers by victims of grave injury in instances in which employer negligence is found or unsafe conditions are not addressed is outside the scope of the bargain and that exclusive remedies should be strong and universal.

Some jurisdictions use "presumptions" to grant benefits to segments of workers who may, as a group, have increased rates of certain illnesses. Often these benefits are restricted to specific public-sector safety personnel who contract cancer or heart disease. Presumptions grant benefits to those who can show that they have a certain disease and have a requisite level of a

hazardous exposure that is linked to that illness, such as lung cancer among firefighters or heart disease among police officers.

Employers and insurers maintain a legislative agenda that addresses several issues. The cost of workers' compensation insurance (premiums for those who are not self-insured) is a constant target of employer-based reform. To address cost increases, employer organizations often cite their relative premium as a reason to cut benefits or reform their systems to be competitive regarding price of compensation. One employer spokesperson maintains that addressing well-known deficiencies in his state's permanent disability benefit, the lowest in the United States, without reducing another area of the system would be problematic. According to Charles Carr, who is also executive director of the Alabama Self-Insurers Association, a group of companies large enough to pay their own claims without buying policies from insurance companies, "This state has got to remain competitive. We're not going to be able to attract industry if our overall workers' compensation costs are out of control."[23] (However, in May 2017, an Alabama judge found these low benefit rates and the low cap of attorney's fees to be unconstitutional.[24]

The governor of Illinois has called for medical fee schedule reductions, higher causation standards for conditions to be found compensable, and attempts to legislatively scale back court decisions leading to cracks in exclusive remedy provisions or expanded benefits.[25] In New York, employers have pushed for limits on the time before a disabled worker reaches maximum medical improvement, which triggers a 10-year cap on benefits.[25] Employers paying for workers' compensation coverage, either through an insurer or by self-insuring, are advantaged if they are not charged for the full costs of injuries to which they contributed only partially.

Increasing access to workers' compensation for those not currently receiving the benefit has both upsides and downsides. As it is currently operating, workers' compensation in complicated cases engenders claims rejections and often results in disputed liability, leading to the very litigation that was supposed to be eliminated by the system. Adding new groups of workers previously denied coverage will require states to handle more cases and develop new operating procedures.

One possible downside of increasing access to compensation for previously uncovered workers is that employers will choose to seek and adopt options creating carved out systems that statutorily limit coverage or that incentivize employers to reduce the number of employees they hire or turn their workers into independent contractors and deny them workers' compensation, safety and health protections, other job-dependent benefits such as sick or family leave, and other labor law decrees that apply only in employer-employee relationships.

Putting more cases into the workers' compensation system through covering more workers will marginally increase the costs to employers that had previously depended on subsidized disability from governmental or individual worker payments for uncovered work-related injury and disability. However, the imposition of such costs on those with the ability to address their prevention will motivate more attention to problems.

### Action Steps

APHA supports the following elements of a workers' compensation reform proposal:

1. Congress should appoint a new national commission to study the inadequacies of state-run workers' compensation programs and update recommendations regarding coverage, benefit adequacy, and compensability of injuries and illnesses as well as how workers' compensation programs can increase incentives to increase workplace safety efforts that prevent injuries and illnesses.

2. The U.S. Department of Labor's Office of Workers' Compensation Programs should reinstate its publication (suspended in 2004) of periodic evaluations of states' compliance with the essential recommendations of the National Commission on State Workers' Compensation Laws.
3. State government agencies should follow the lead of states such as Massachusetts and Maine that have enacted regulations on medical care payments for work-related injuries pending resolution of workers' compensation claims to ensure availability of immediate medical care.
4. State government agencies must ensure universal coverage in their workers' compensation laws and make sure that special categories of workers, such as migratory and seasonal agricultural workers, home health care workers, domestic workers, part-time workers, contractors, immigrant workers, and employees of small companies, are removed from exclusionary language.
5. State government agencies should ensure that employees who work for temporary and staffing agencies can receive benefits through requirements that contracting firms be held responsible for the failure of these agencies to carry workers' compensation policies.
6. State government agencies should increase their efforts to prosecute employers for failure to provide workers' compensation.
7. State governments should ensure that assessments of disability under workers' compensation occur through an evidence-based system that considers physical and mental impairments in the context of an individual worker's education and abilities and the available job market. Use of the American Medical Association's guidelines on evaluating permanent impairment does not meet this standard.
8. State governments must strengthen anti-retaliation protections for workers and make it illegal for any worker to be retaliated against for filing a workers' compensation claim.
9. State governments should ensure that workers can select their own health care practitioner for medical treatment under workers' compensation.
10. State governments should ensure that workers' compensation systems do not require or approve employer-mandated post-injury drug testing unless there is a proven nexus between the incident and impairment. However, all work-related injuries must be compensated regardless.
11. State governments should repeal any language that apportions blame for injuries to workers unless there is an equal decrease in the scope of exclusivity that results in expansion of tort remedies.

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Ms. OMAR. The story I shared earlier of the injured letter carrier from Minnesota reminds us of what is truly at stake. His life was upended in an instant, and while he may never work again, FECA ensures that he and his family are not abandoned. That is what this program is about. That is what this conversation is about, and so let us take today's testimony to heart, and let us build on the bipartisan progress already underway.

We must ensure that FECA continues to reflect the best of our values of compassion, fairness, and respect for those who serve our country, our constituents every day. Thank you, and I yield back the balance of my time.

Chairman MACKENZIE. Thank you to the Ranking Member. Now, I will deliver my closing remarks. First of all, I would just like to thank all the members of the Subcommittee for taking part in today's important hearing on FECA, and also to all of our witnesses for sharing their perspectives on how we can actually improve the program as we move forward.

I think that we have all seen that after the 109 year law having not been updated in the past 50 years, that it is long overdue that we make changes that bring us into the realities of the 21st Century, closing and cracking down on those issues of waste, fraud and abuse in the system, but at the same time, making sure that we deliver for those injured workers, the benefits that they deserve.

As we move forward in this process, I look forward to engaging in a bipartisan fashion with the members of the Subcommittee, the members of the Full Committee, and the outside stakeholders here, and others who may be interested. We appreciate all the input that we are gathering here today, but again, I think there is a path forward to do both of those things, crack down on waste, fraud and abuse, and make sure that we are providing for injured Federal workers.

With that, we will continue our important work to seek out possible solutions, and look forward to doing that in a bipartisan fashion. Again, I would like to thank our witnesses for joining us, and testifying before the Subcommittee today, and without that, there will be no further business, and Subcommittee stands adjourned.

[Whereupon, at 11:33 a.m., the Subcommittee on Workforce Protections was adjourned.]

[Additional submissions from Ranking Member Omar follows:]

NTEU
The National Treasury Employees Union

May 21, 2025

The Honorable Ryan Mackenzie
The Honorable Ilhan Omar
Subcommittee on Workforce Protections
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Mackenzie and Ranking Member Omar:

As President of the National Treasury Employees Union (NTEU), representing approximately 160,000 federal employees and retirees across 37 federal agencies, I am writing to express our appreciation for the recent hearing the subcommittee held on FECA Reform and Oversight. The Federal Employees' Compensation Act (FECA) is an essential program to provide income support to federal employees injured in the workplace.

NTEU cares deeply that federal employees on the job and serving our country be safe and free from disabling injuries. The best way to protect employees and save taxpayer money is to prevent them from ever happening. Many federal agencies have labor-management health & safety committees that have done outstanding work in this field. Congress should support and encourage these committees.

However, even with the best efforts to create a safe workplace, there will always be injuries. That is why FECA is essential. NTEU supports proposals to improve and update the program such as H.R. 3170, the Walberg-Courtney bill to permit physician assistants and nurse practitioners to approve claims for FECA benefits.

NTEU, however, opposes any cuts like those discussed at the hearing that would dramatically reduce insurance benefits for those who are older or who have a family. Such benefit cuts would impose a substantial and unfair income reduction on federal employees who simply came to work one day ready to serve their country but tragically suffered an injury that took away their ability to ever work again.

The family benefit is not a difficult provision to administer. It does not compensate for the tragic emotional burden a head of household must suffer having lost his or her ability to be a bread winner for his or her children. But it does provide some modest additional payment so former family bread winners can provide support for their dependents. And cutting benefits for older workers, particularly when their injury means they could not save for retirement, is unfair and cruel.

800 K Street, N.W., Suite 1000 • Washington, D.C. 20001 • (202) 572-5500

Thank you for your consideration of our views. If you have any questions, please feel free to contact Kurt Vorndran at 202.572.5560 or kurt.vorndran@nteu.org.

Sincerely,

Doreen P. Greenwald
National President

800 K Street, N.W., Suite 1000 • Washington, D.C. 20001 • (202) 572-5500

[Additional submissions from Rep. Scott follows:]

**Workers' Injury Law & Advocacy Group®**

Workers' Injury Law & Advocacy Group® is the national non-profit membership organization dedicated to representing the interests of millions of workers and their families who, each year, suffer the consequences of workplace injuries and illnesses. The group acts principally to assist attorneys and non-profit groups in advocating the rights of injured workers through education, communication, research, and information gathering. WILG® is a network of like-minded advocates for workers' rights, sharing information and knowledge, a sense of commitment and kinship, and networking to help each other and our clients.

May 1, 2025

The Honorable Ryan Mackenzie
Chairman
Subcommittee on Workforce Protections
House Committee on Education and the Workforce
2176 Rayburn House Office Building
Washington, D.C. 20510

The Honorable Ilhan Omar
Ranking Member
Subcommittee on Workforce Protections
House Committee on Education and the Workforce
2176 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Mackenzie and Ranking Member Omar:

We are writing to you on behalf of the Workers' Injury Law and Advocacy Group ("WILG") in regards to your upcoming hearing entitled: "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars." WILG is a national non-profit membership organization dedicated to representing the interests of millions of workers and their families who, each year, suffer the consequences of workplace injuries and illnesses. We urge the Committee to focus on prioritizing worker health and wellbeing and not on cutting life-saving benefits.

The Federal Employees' Compensation Program (FECP) is a program managed by the Office of Workers' Compensation Programs (OWCP) within the U.S. Department of Labor (DOL). Its purpose is to provide wage replacement, medical treatment, vocational rehabilitation, and other benefits to federal civilian employees who suffer job-related injuries or occupational illnesses under the Federal Employee Compensation Act (FECA). FECA covers almost 3 million federal employees from over 70 agencies. Federal employees serve a wide range of job functions including a number of dangerous jobs such as construction, firefighting, law enforcement and emergency services. Workers' compensation is crucial for employees because it provides vital financial and medical support in the event of a work-related injury or illness. It may also include rehabilitation services and death benefits. Cuts to benefits will result in irreparable harm to already injured workers and will just drive workers to other federal programs,

resulting in cost shifting rather than cost saving. Instead, we urge the Committee to look at options that will cut costs and prioritize workers at the same time.

Currently, injured workers waiting months— sometimes longer— just for an initial decision about their injury. Appeal hearings are being postponed indefinitely, and critical benefit determinations are languishing in administrative purgatory. The OWCP is already burdened with a heavy caseload and has been further strained by staffing cuts. Moreover, it is generally acknowledged that there are not enough doctors willing to work with the FECA program and injured workers sometimes must travel across states to see a FECA-eligible doctor.

A bi-partisan, common-sense way to bring down the costs of the FECA program and support workers at the same time is to enact the Improving Access to Workers' Compensation for Injured Federal Workers' Act. The Act, which already passed the House twice, expands the definition of "qualified physician" under the FECA to include Nurse Practitioners ("NPs") and Physician Assistants ("PAs"). This change will simply allow NPs and PAs to sign their own medical reports for their federal patients so those reports can be considered evidence in support of a work-related injury claim. More importantly, it will make medical care easier and bring down healthcare costs by expanding the pool of eligible healthcare providers that can treat FECA patients, thereby allowing them to return to work more quickly.

We also urge the Committee to combat baseless accusations of fraud and abuse in the FECA system. Policy differences between federal and state workers compensation programs do not amount to fraud or abuse. Federal employees work hard— many at jobs that are responsible for protecting the American public and, as a result, are entitled to benefits if and when they get hurt. There is absolutely no data that supports fraud and abuse as a major driver of costs in the FECA program.

There are thoughtful ways that the Committee could make improvements to FECA that would be beneficial to workers while also saving money. We urge the Committee to focus on those improvements.

Respectfully,

Roger Finderson
President

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[Additional submissions from Rep. Walberg follows:]

American Academy of Physician Associates

***AAPA Statement for the Record to the House Committee on Education and Workforce's Subcommittee on Workforce Protection on Hearing: "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars"***

May 6, 2025

Subcommittee Chairman Mackenzie, Subcommittee Ranking Member Omar, Chairman Walberg, Ranking Member Scott, and Members of the Committee on Education and Workforce:

On behalf of the approximately 190,000 physician associates/physician assistants (PAs) throughout the United States, the American Academy of Physician Associates (AAPA) thanks the Committee for your leadership and continued emphasis on reforming the Federal Employees Compensation Act (FECA). We would also particularly like to thank Chairman Walberg as well as Representative Courtney for their reintroduction of the Improving Access to Workers' Compensation for Injured Federal Workers Act (H.R. 3170), and for the Subcommittee's inclusion of the bill in its hearing. This bill is an important step towards better access to high-quality, cost-efficient care, and improved continuity of care.

The Improving Access to Workers' Compensation for Injured Federal Workers Act passed the House of Representatives during the 117th Congress with strong bipartisan support. However, it was not taken up in the Senate. The legislation was also passed by this committee without opposition in both the 117th and 118th Congress.

As you know, United States federal and postal employees receive workers compensation coverage for employment-related injuries and disease through the Federal Employees Compensation Act (FECA). However, FECA does not cover medical care overseen by PAs or nurse practitioners (NPs) within the current definition of "medical, surgical, and hospital services…" This means that once a federal or postal employee is injured on the job, they can no longer receive healthcare from a PA, even if that PA is their primary care provider (PCP) through their federal health insurance program.

This undue and unnecessary restriction negatively impacts our federal workforce, especially those in rural and underserved areas. PAs provide high-quality healthcare and are recognized providers in Medicare, Medicaid, and nearly every state and federal healthcare program, including state workers' compensation programs. PAs are included in the definition of an "acceptable medical source" by the Social Security Administration and thousands of PAs are federal employees themselves and practice within the Department of

Veterans Affairs, the Department of Defense, the Public Health Service, and Indian Health Services.

FECA is an outlier among federal programs because it does not recognize the critical role PAs play in our healthcare system. PAs practice in all medical and surgical specialties in all 50 states, the District of Columbia, U.S. territories, and the uniformed services. PAs provide high-quality, cost-effective medical care in every specialty and setting, undertake rigorous education and clinical training, and are well established as trusted medical professionals.

The Improving Access to Workers' Compensation for Injured Federal Workers Act would help ensure that all federal employees have access to high-quality healthcare from the provider of their choice and would align FECA with state workers compensation programs to recognize PAs and NPs as covered providers. All Americans deserve timely access to quality healthcare, especially our federal workforce in rural and underserved areas who already face challenges in the daily function of their job serving this great nation.

We strongly support this critical legislation and appreciate the committee's efforts on behalf of patients across the nation.




[Questions and responses submitted for the record by Mr. Renfroe follows:]

COMMITTEE ON
EDUCATION AND WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100



May 21, 2025

Brian L. Renfroe
President
National Association of Letter Carriers
100 Indiana Ave., NW
Washington, DC 20001

Dear Mr. Szymendera:

Thank you again for testifying at the May 6, 2025, Subcommittee on Workforce Protections hearing titled "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars." Enclosed are additional questions submitted by Committee members following the hearing. Please provide a written response no later than June 4, 2025, for inclusion in the hearing record. Responses should be sent to Daniel Nadel (daniel.nadel@mail.house.gov, (202) 226-3873) of the Committee staff. We appreciate your contribution to the work of the Subcommittee.

Sincerely,

Ryan Mackenzie
Chairman
Subcommittee on Workforce Protections

**Questions for the Record from**
**REPRESENTATIVE ROBERT C. "BOBBY" SCOTT**

**Committee on Education and Workforce**
**WP Subcommittee hearing titled: "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars"**

**Tuesday, May 6, 2025**
**10:15 A.M.**

**Representative Robert C. "Bobby" Scott (D-VA)**
**Questions for Witness Mr. Brian L. Renfroe**

1. Ms. Hull's testimony mentioned elderly people, well past retirement age, who are continuing to receive FECA benefits. What would you say to people who think the right solution would be to remove them from the FECA rolls and require them to draw from their retirement and Social Security instead?

2. A 2023 audit report by the United States Postal Service's Inspector General suggested amending FECA to include apportionment, which involves determining what fraction of a disability is attributed to a workplace injury as opposed to a preexisting condition, and then limiting compensation only to the portion deemed work-related. What is NALC's position on this proposed change, and why?

3. Can you explain why letter carriers are at such a high risk for heat-related illnesses, and whether USPS has effectively addressed the hazard?

4. The Postal Service is under a tremendous obligation to deliver mail and packages to every address in the nation while also sustaining itself financially. You have made the case that reducing FECA benefits would not ultimately reduce costs for USPS. What are the most effective ways to reduce costs for USPS?

5. How would you recommend improving FECA to make it better serve federal employees disabled by workplace injury and illness?

6. What are the elements of the proposed OSHA heat standard that are most important to NALC members? Why is it so important that the standard be implemented as proposed?

7. The Trump Administration has fired the vast majority of employees at the National Institute for Occupational Safety and Health (NIOSH). How do the layoffs at NIOSH affect the safety of letter carriers?

**Questions for the Record from**
**REPRESENTATIVE Haley Stevens**

**Representative Haley Stevens (D-MI)**
**Question(s) for Witness Brian Renfroe**

1. Thank you, Mr. Chairman, and thank you to our witnesses for being here and taking our questions today.

   This is an important topic and I want to highlight that Democrats and Republicans have a long history of working together on improving FECA. I hope that continues and we can continue to find ways to make the federal workers comp system function better for government employees while managing costs to taxpayers.

   That said, I need to touch on the broader context here. America's federal workers are workers. Despite everything the Trump Administration have said and done in the first months of this term, government employees deserve to be treated with dignity and respect. How can we trust a President who purposefully threatens the economic security of the families in his own workforce to hold private companies to account when they do the same?
   Careless slashing of critical government positions and then bragging about it puts federal workers and their families under financial stress and does not serve taxpayers.

   So, as we focus on FECA where Democrats and Republicans have been able to come together to support federal workers, let's be aware of the huge damage President Trump is doing to the federal workforce as we speak.

   Turning to FECA, a lot of recommendations on FECA cost-saving reforms have been modeled after changes states have made to their own workers comp programs. However, many of those state-level reforms focused on reducing employers' costs in a way that made support less accessible.

   a. Thank you for the work your members do. How did state-level workers' comp reforms starting in the late 1990s negatively affect American workers?

b. How would it affect your members and other federal workers if those reforms, like benefits caps, apportionment, and others were incorporated into FECA?

2. I'd now like to turn to capacity at the Department of Labor. The Trump- Vance Administration has been slashing government capacity to do its job of serving the American people, including at the Labor Department's Office of Workers' Compensation Programs (OWCP), which administers FECA and other workers' compensation programs. According to reports from former OWCP staff, the office has lost nearly 400 employees.

   a. It is estimated that the remaining OWCP employees will have to manage 1,000 active cases each. Mr. Renfroe, how will an understaffed OWCP impact the ability of letter carriers, and federal workers in general, to obtain critical FECA benefits when they are injured or fall ill?

I appreciate the focus on this topic and the bipartisan potential here. However, I am concerned the Trump Administration's attack on the federal workforce will undermine any positive work our committee produces.

Thank you.

**NALC President Brian L. Renfroe's responses to questions from Rep. Robert C. "Bobby" Scott (D-VA)**

1. **Ms. Hull's testimony mentioned elderly people, well past retirement age, who are continuing to receive FECA benefits. What would you say to people who think the right solution would be to remove them from the FECA rolls and require them to draw from their retirement and Social Security instead?**

It is true that there are people past retirement age who continue to receive FECA benefits. This is for a good reason: Injured federal employees receiving FECA benefits are compensated at a significantly lower rate than if they had not been injured and were able to continue to work, which leaves them at a huge disadvantage in their ability to prepare for retirement. NALC opposes any proposal that converts claims for disability to a lower benefit at age 65.

The proposed solution to require workers to draw from their retirement and Social Security instead also reveals a fundamental misunderstanding of the way FECA is paid and the effects permanent loss of a job due to disability has on an employee's career earnings. For many disabled workers, it would be impossible for them to survive if they were removed from the FECA rolls and required to draw from their retirement and Social Security, simply because their disabilities prevented them from being able to participate in these programs.

First, FECA benefits were not designed to increase at a rate comparable to pay increases an individual would have received through normal career growth (step increases or promotions) if they had never been injured or become ill. The only increases an injured worker receives are annual adjustments based on the Consumer Price Index. Injured letter carriers are not enriched by their disability benefits, and when compared to the earnings expected through step increases and career growth, disability benefits disproportionately and negatively affect their financial status, meaning they are less likely to be financially prepared for a decrease in income at retirement age.

Second, in many cases workers receiving FECA benefits will never receive their full federal retirement benefits. This is especially true for workers in the Federal Employees Retirement System (FERS), because workers on the Office of Workers' Compensation Programs (OWCP) rolls are not able to participate in two parts of the three-part FERS system. Employees receiving compensation through OWCP are not taxed for Social Security because such compensation is tax-free. They also cannot contribute or receive matching employer funds to a federal pension (the Thrift Savings Plan, or TSP) because they are not paid through the Postal Service. Thus, injured FERS employees are at a distinct retirement disadvantage when they become disabled from on-the-job injuries.

While Congress attempted to fix this problem in 2003 by providing an enhanced annuity to make up for the lost Social Security and TSP contributions while a disabled worker is on the OWCP rolls, the disabled worker must stay on the rolls of their employing agency to receive credit for the enhanced annuity. However, this is rarely followed in practice. Many disabled federal workers are separated from their employing agency while on the OWCP rolls. These separated employees not only lose the remedial effects of the enhanced annuity, they also no longer gain service year credits when, or if, they eventually retire.

2. **A 2023 audit report by the United States Postal Service's Inspector General suggested amending FECA to include apportionment, which involves determining what fraction of a disability is attributed to a workplace injury as opposed to a preexisting condition, and then limiting compensation only to the portion deemed work-related. What is NALC's position on this proposed change, and why?**

Requiring apportionment in FECA cases could lead to endless conflicts of medical opinions, additional medical reports, the scheduling of referee opinions and a lot of otherwise unnecessary litigation through the appeals process—all of which lead to delayed claim acceptance and postponed treatment for the worker. It is unlikely that this proposal would lead to efficiency and cost reductions. NALC opposes any proposal to amend FECA to allow apportionment to be factored into workers' compensation cases.

Requiring apportionment would make the adjudication of almost every occupational disease case less efficient, as they usually involve degenerative conditions like osteoarthritis and ligament tears, and apportioning causality in these conditions is both complex and highly subjective.

Where an employee is exposed to work conditions that aggravate or cause a progressive occupational disease, and the existence of such a disease remains undisclosed or unknown over a period of time, it is incredibly difficult to pinpoint, in retrospect, the triggering date of the condition, and even more difficult to determine the percentage or extent that work performed over decades contributed to the condition.

For example, while it would be fairly straightforward for a physician to determine that going up and down 3,500 concrete stairs daily for 30 years on a Seattle walking route has contributed to the osteoarthritis in a letter carrier's knee, it would be highly speculative for the physician to determine the percentage of the osteoarthritis that is due to letter carrier's work duties. Apportionment can be confounded by a variety of factors, including family history, age, weight, genetic predisposition, previous injuries, incomplete or forgotten history, missing health care records, prior work history, etc. In fact, the American Medical

Association's "Guides to the Evaluation of Disease and Injury Causation, 2nd Ed.," the standard reference work that physicians use to apportion causality states, "Causal relationship and apportionment may also be misrepresented by evaluators for reasons such as ignorance, financial motives, and advocacy."[1]

We have seen cases from states that apportion causality, where various doctors associated with the case have apportioned causality with wildly different results. The result is endless litigation.[2]

Apportioning causation in injury cases can also lead to unjust results because it doesn't factor in wage-earning capacity. For example, we can consider a scenario where a letter carrier developed severe arthritis and is no longer able to perform the functions of their position. If OWCP had an apportionment rule and its attending physician apportions 50 percent of the arthritis to age and genetic predisposition and 50 percent to letter carrier work, the carrier would only receive a wage-loss benefit of 50 percent, yet their loss of income would be 100 percent.

What's more, requiring apportionment to be factored in goes against decades of Employees' Compensation Appeals Board (ECAB) precedent. The ECAB has long held (for at least 40 years) that it is not necessary for employment by itself to have caused an injured worker's condition for a claim to be compensable. It only needs to have contributed to it. It is worth noting that in cases involving preexisting conditions, even though OWCP does not apportion causality, it will often expect the attending physician to differentiate between the effects of the work-related factors and any pre-existing condition.

3. **Can you explain why letter carriers are at such a high risk for heat-related illnesses, and whether USPS has effectively addressed the hazard?**

Letter carriers are at such a high risk for heat-related illnesses because of the strenuous physical nature of our work, which is predominantly performed outside and alone.

We deliver mail and packages on designated routes all year long, including in the hottest weeks of summer. Typically, we work at least eight hours a day, including through the peak afternoon heat, which exposes us to high temperatures, high humidity and direct sun. Most city letter carriers walk large portions of their routes, commonly walking 10 to 15 miles a

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[1] "AMA Guides to the Evaluation of Disease and Injury Causation," 2nd Ed. (2014, p. 146)

[2] For example, a recent summary of injury compensation apportionment case law for California alone runs more than 350 pages. See Correio, Raymond ed. "Apportionment: Case Law Outline Focusing On Evolving Themes, Trends, And Problem Areas." (January 2023 Edition)" (https://www.pbw-law.com/apportionments/apportionment-case-law-update-january-2023)

day while carrying heavy mail satchels and parcels, and this physical exertion in hot and humid weather puts us at great risk. Carriers who drive a postal vehicle, even for part of their route, do not get a break from the heat because most postal vehicles still lack air conditioning, and this limited air movement further increases our risk. We also perform our work alone while on the street. Solitary work has been shown to increase the risk of heat-related injuries and illnesses.

There are few protections in place to keep us safe in the heat. USPS has not effectively addressed the hazard. While there is a Heat Illness Prevention Program in place, it does not include the necessary elements that heat safety experts agree are critical to preventing serious illness and injury. It lacks the right to paid breaks to cool down the body when necessary and the implementation of an acclimatization protocol when letter carriers are first hired or return to work after an extended absence, like a vacation or recovering from illness or injury.

Over the last decade, NALC has fought to protect letter carriers from the dangers of heat exposure, but USPS management has been resistant to implementing meaningful heat safety measures, which has left letter carriers unprotected. Unmitigated exposure to excessive heat can cause heat stress, often resulting in serious injury, illness or death. Hundreds of city letter carriers report heat-related illness and injuries each year, and tragically at least seven city carriers have died from the heat.

4. **The Postal Service is under a tremendous obligation to deliver mail and packages to every address in the nation while also sustaining itself financially. You have made the case that reducing FECA benefits would not ultimately reduce costs for USPS. What are the most effective ways to reduce costs for USPS?**

The most effective ways to reduce costs for USPS have nothing to do with the FECA program.

The first is to address a long overdue misallocation of pension liabilities between the self-sustaining Postal Service and the pre-1971 taxpayer-funded Post Office Department. The accounting problem was first revealed in a study by the USPS Office of Inspector General (OIG) in the late 2000s, then further came to light in 2010 when the Postal Regulatory Commission released the results of an independent audit conducted by The Segal Group. The audit (now commonly referred to as the "Segal report") examined the Postal Service's assets and liabilities within the Civil Service Retirement System (CSRS) and found that the methodology used by the Office of Personnel Management in its valuation of postal CSRS

pensions did not meet the standard of "fair, equitable, or preferred [private-sector] methodology."

The report recommended immediate reforms. Almost 15 years later, the problem persists, and inaction continues to harm postal finances, resulting in at least $90 billion in unjust financial obligations put on the Postal Service. USPS has been paying more than its fair share into CSRS pensions for half a century, and it is well past time to correct the issue. NALC has urged three presidential administrations to stop the raid on postal pension funds. It is time to implement these reforms.

Second is passing legislation to allow USPS to properly invest its retirement funds in higher-yield assets.

The Postal Service has three retirement funds, one for CSRS, one for the Federal Employees Retirement System (FERS), and the Postal Service Retiree Health Benefits Fund (PSRHBF). Currently, these funds are required to be invested solely in low-yield Treasury bonds, causing the agency to lose hundreds of millions of dollars in potential annual returns. The Postal Service needs to be allowed to invest its retirement funds in higher-yield assets. NALC has proposed diversifying the investment portfolio with stocks and bonds by purchasing Thrift Savings Plan-style index funds, which could yield hundreds of millions of dollars more each year. In fact, a 2017 USPS OIG report called the current Treasury-bond-only investment strategy the riskiest policy, noting that diversification would raise returns and reduce the risk of underfunding.

By better investing its retirement funds, the Postal Service's overall rate of return will begin to rise and ultimately help to reduce the Postal Service's normal cost payments for postal pensions, lower and eventually eliminate amortization payments for unfunded retirement liabilities, save USPS and its employees hundreds of millions annually, and reduce the need for postage rate increases for millions of mailers.

5. **How would you recommend improving FECA to make it better serve federal employees disabled by workplace injury and illness?**

It is fair to say we all want a federal workers' compensation program that operates efficiently, while also providing fair benefits to injured workers. The primary goal of any workers' compensation program should be to return the worker to their job, or provide them with appropriate medical care and financial support if they are permanently unable to do so. Not only does this improve the morale of injured workers by making them productive members of society, but it is also sound social policy. Many of the proposals put forth at the hearing seem to disincentivize this goal by making the claims process more difficult to navigate and/or making the benefits less fair.

Letter carrier work is deeply enmeshed in our members' lives. Our work gives our lives dignity and a sense of value. In our experience, most letter carriers who are physically able to do some work are better off—mentally, socially and emotionally—when they work. Our experience has also shown that the more quickly an injured letter carrier gets their claim accepted and receives appropriate treatment, the sooner and more likely it is that they will return to work.

A quick and successful return to work should be both a goal of the program and one of the metrics by which we evaluate its success. Because of this, we strongly support the Office of Workers' Compensation Programs' (OWCP's) efforts to return injured workers as soon as possible with their employing agency if it's done in a way that makes the return to work a success story.

Innovative changes at OWCP over the last five years have led to increased efficiency, helped injured workers recover more quickly, and contributed to an increase in the percentage of injured workers who have successfully returned to work. We should see more such changes.

As I pointed out in my testimony, the new Escalations Program has created an expedited process to quickly resolve issues involving wage-loss compensation, authorization for medical procedures and medications, medical billing problems, claim expansion to include new diagnoses, issues involving federal health and life insurance, and dealing with overpayments. These issues used to take months, or even years, to resolve. Now, they can be resolved in a matter of days.

In addition, OWCP has created a new position, the medical treatment adjudicator (MTA), which has helped to expedite the resolution of medical authorization and billing issues. Many claims examiners are not fluent in the language of medical billing and authorization codes, which causes unnecessary frustration and delays for both claimants and their health care providers. MTAs who are trained in this language facilitate the review process. These new positions must be maintained and protected from cuts due to so-called efficiency.

The Protecting Employees, Ensuring Reemployment (PEER) Initiative that the Department of Labor (DOL) implemented in 2020 under the first Trump administration has also had a significant positive impact on the return-to-work rate, and contributed to a decrease in costs, as documented in a 2023 USPS OIG report.

There were several proposals discussed at the hearing that would improve the program and that have our support. In my testimony, I strongly endorsed H.R. 3170, the Improving Access to Workers' Compensation for Injured Federal Workers Act. This bill would amend the FECA to include nurse practitioners and physician assistants in the statutory definition

of "physician." I, along with other witnesses, pointed out that this bill not only reflects how the U.S. health care system currently works, but would also make finding a medical provider in FECA cases much easier. H.R. 3170 has bipartisan support and should be a legislative priority.

NALC also supports the proposal to allow the DOL and OWCP to coordinate and share data with the Social Security Administration, provided there are strong privacy protocols and protections in place. While some at the hearing suggested that dual payments under OWCP and Social Security represent fraud, OWCP itself does not treat these situations as fraud. It has been our experience in almost every case that recipients of dual payments are simply unaware of the potential offsets that may apply.

Still, it's a huge problem. Dual payments of Social Security age-related benefits and wage-loss compensation generate more overpayments within OWCP than any other source. Because of the lack of coordination between the two agencies, it can take years for the overpayments to be noticed, creating significant debt for injured workers. It is not unusual for the resulting debt to total tens of thousands of dollars, and sometimes even six figures. This creates huge hardships for working families who must pay off this debt, accumulated through no fault or malintent of their own.

While we believe that improvements in the timely adjudication of claims and the prompt provision of treatment and benefits would reduce costs more efficiently and fairly than the proposals that the USPS Office of Inspector General (USPS OIG) has put forward, we are also concerned about the left-behinds: the small percentage of people so injured that they will never be able to return to work. The proposed disincentives discussed at the hearing—lump-sum payments, apportionment, reducing benefits at 65—would cruelly affect these people.

For example, last year a New Jersey letter carrier with dependents slipped on the ice and landed on his back. He had emergency posterior cervical fusion and a laminectomy and is now a quadriplegic. He currently lives in the Chesire Home, a premier spinal care center, and receives round-the-clock care, as he is totally dependent.

His workers' compensation claim is accepted for multiple conditions. He transitioned from Continuation of Pay status right to the periodic rolls. OWCP has covered lost wages, medical services, appliances and supplies. He has physical and occupational therapy several times a week. He has a motorized wheelchair he operates with his mouth, having lost the use of his arms and legs. The goal is to transition the claimant from Chesire Home to his own home, and OWCP is in the process of building ramps and renovating the inside of the house to accommodate his needs.

While his benefits under FECA provide some relief, his life has been forever changed and his physical well-being forever diminished. We need to look at the proposed package of disincentives through the eyes of the permanently injured and ask ourselves what is fair and just. Proposals that reduce benefits go against the remedial intent of FECA.

Finally, I would like to discuss an issue that dominated the hearing but for us is a red herring that distracts from improving the program. Some members of the committee and the USPS OIG asserted that fraud is rampant within the FECA program. This is not true. NALC recognizes that fraud exists within FECA programs and encourages efforts to root it out, but we know it does not exist at the exaggerated level claimed by participants during the hearing.

According to the testimony of Luiz Santos, acting inspector general for the DOL, levels of fraud within OWCP are similar both to other government health care programs (such as Medicare, Medicaid and Tricare) and to private insurance and other health benefits programs. This is consistent with NALC's experience.

While it was asserted at the hearing that "hundreds of millions of dollars of fraud" exists within the program, almost every example given at the hearing did not cite schemes where workers were implicated, but instead went back to nine years ago when DOL discovered that certain pharmacists (limited mostly to one state, Texas) were overcharging for the compounding of medications.[3]

In recent months, we have seen overstatements of fraud, waste and abuse used as a pretext for gutting or demolishing humanitarian and remedial federal programs that assist millions of people in need. This should not happen with the FECA.

6. **What are the elements of the proposed OSHA heat standard that are most important to NALC members? Why is it so important that the standard be implemented as proposed?**

As I stated in my reply to Question 3, NALC has fought to protect letter carriers from the dangers of heat exposure, including by engaging directly with the Postal Service to try to implement a more robust Heat Illness Prevention Program (HIPP) that would better protect letter carriers. However, USPS management has repeatedly demonstrated that it does not

[3] According to the report the DOL OIG submitted at the hearing, in 2016 compounded drug spending was in excess of $250 million. Within two years, such spending went to almost zero. The DOL OIG report also indicated that by 2021 the total pharmaceutical costs of the program had dropped to about $150 million. And with new OWCP policy implemented in 2022 that emphasizes the use of generic drugs, in FY24 the total pharmaceutical costs of the program went below $50 million.

see heat as a danger, and it seems clear that the Postal Service will never implement or uphold adequate protections on its own.

A nationwide heat standard that sets clear requirements for USPS and other employers is the only way to truly mitigate the dangers that heat poses. A handful of states have enacted their own standards, but these set differing levels of protection and leave the rest of the country without any.

Overall, NALC believes that the Occupational Safety and Health Administration (OSHA) did an exceptional job designing an effective heat safety standard. We urge OSHA to implement its proposed heat rule in full.

There are two elements that are most important to NALC members.

The first is the "no cost to employees" principle and required paid breaks. NALC has always insisted that the Postal Service pay for the additional breaks that letter carriers take to stay safe, but the agency has refused. Carriers should not have to bear the cost of needed rest breaks any more than a worker in a factory should have to pay for an air ventilation system. Moreover, unless additional breaks are paid, carriers will be reluctant to take them, heightening the risk of heat illness and injury.

This was precisely the case with Eugene Gates, a letter carrier in Dallas, Texas, who collapsed and died in a customer's front yard on a sweltering afternoon when the heat index reached 110 degrees in June 2022. Just one month before his death, Brother Gates received a formal letter of warning from his supervisor for "stationary time" (resting from the extreme heat). This letter reprimanded Brother Gates for taking too long to deliver his route, including for stopping several times on his way back to the station.

Second is the gradual acclimatization protocol. Proper acclimatization protocols are vital to mitigating the risks of working in the heat. NALC knows this from bitter experience. The Postal Service's HIPP does not include acclimatization provisions. Nearly all the heat-related letter carrier deaths have happened to carriers who were returning to work after a period of absence or new to the job.

For example, in July 2018, Peggy Frank of Woodland Hills, California, died of hyperthermia inside her un-air-conditioned mail truck during a heat wave. She had recently completed a three-month medical absence and returned immediately to carrying her normal route on a day when the temperature outside reached 117 degrees. Sister Frank had not been given an opportunity to acclimate to the heat.

Only a month earlier, a brand-new letter carrier, Daniel Rosenbach of Lexington, Kentucky, had died of a heart attack, later proven to be triggered by extreme heat, on his first day delivering a route by himself. Brother Rosenbach also had no chance to acclimate to the heat.

NALC's concern about the risks that heat poses to letter carriers grows every year, as science shows that temperature and heat indices are steadily increasing. According to NASA, 2024 was the hottest year since record keeping began in 1880. The 10 warmest years ever recorded have all occurred in the last decade. Outdoor work is undeniably getting more and more dangerous.

To keep letter carriers safe, we strongly support OSHA's Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings proposed rule and urge its implementation in full. Lives depend on its full implementation.

7. **The Trump Administration has fired the vast majority of employees at the National Institute for Occupational Safety and Health (NIOSH). How do the layoffs at NIOSH affect the safety of letter carriers?**

The research conducted by NIOSH scientists plays a critical role in the development of occupational safety guidelines that inform OSHA's rules and standards. In particular, NIOSH's research has been critical to understanding the dangers of occupational exposure to heat and to the development of practices that prevent heat-related injuries, illnesses, disabilities and deaths. This research was cited repeatedly in OSHA's proposed heat safety rule. Without NIOSH's work, OSHA will lack access to impartial research from which to develop the regulations that keep letter carriers and all workers safe.

Additionally, on a practical level, NALC points letter carriers to NIOSH-created tools each summer to help keep themselves safe in the absence of greater protections. The OSHA-NIOSH Heat Safety Tool app for smartphones displays the heat index in the user's location and shows the current risk level. It also forecasts the hourly heat index throughout the entire workday and provides tips for recognizing the signs of heat-related illness and for rendering first aid. If NIOSH is unable to maintain these essential tools due to lack of staff, it will undoubtedly leave letter carriers less safe.

**Responses to questions from Rep. Haley Stevens (D-MI)**

1. **a. How did state-level workers' comp reforms starting in the late 1990s negatively affect American workers?**

Our experience has been entirely with the FECA, since our members as federal employees don't fall under state compensation programs. That being said, we are puzzled by the many proposals asserting that OWCP must adopt the "best practice" policies of state injury compensation programs. According the DOL's own research, the federal program runs more efficiently and at a significantly lower cost than state programs (almost 25 percent):

> *The administrative cost of the services provided by the Federal Employees' Compensation Act (FECA) Claims Administration is very low. Overhead is just 4% of benefits, and Federal workers' compensation costs are only 1.8% of total Federal and Postal payrolls, compared to 2.3% for private insurance and state funds.*[4]

And the DOL accomplishes this while providing benefits that, in general, provide more appropriate levels of financial support than state programs. It seems to us that states should be emulating the "best practices" of the FECA. In our view, many of the "best practice" policy changes proposed by the USPS OIG would not only hurt injured workers, but would also make the program less efficient.

There have been comprehensive studies over the last 10 years that document how state workers' compensation program reforms have eroded benefits and negatively affected American workers.[5] These reforms in large part have been driven by business interests and aimed at reducing costs for employers and insurers.

Many states implemented caps on wage replacement and medical benefits, resulting in lower compensation for injured workers. In some cases, permanent disability benefits were drastically cut, even for workers with severe injuries. For example, in California, reforms passed in 2004 under SB 899 significantly reduced permanent disability benefits for many injured workers, in some cases up to 70 percent.[6]

A 2015 investigation by ProPublica and NPR found that states across the nation were dismantling their workers' compensation systems, with often disastrous consequences for the hundreds of thousands of workers who suffer serious injuries at work each year.[7] Many cases led to poverty, with injured workers losing their cars and homes.

States have also tightened the requirements for proving that an injury or illness was work-related, especially for cumulative or occupational diseases. The 2015 ProPublica and NPR investigation found that several states, including Florida and Texas, had raised the burden of proof on workers, requiring more extensive medical evidence and documentation.[8] This reform has made it more difficult for workers to qualify for benefits.

Reforms often included the imposition of treatment guidelines and provider networks that limited the medical care available to injured workers. These rules frequently delayed or denied necessary treatment. In some states, reforms allowed insurers to require injured

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[4] https://www.dol.gov/agencies/owcp/FECA/about

[5] See for example: Grabell, Michael, and Lena Groeger. "The Demolition of Workers' Comp." *ProPublica*, March 4, 2015; American Public Health Association. "The Critical Need to Reform Workers' Compensation." November 7, 2017. (https://www.propublica.org/article/the-demolition-of-workers-compensation)

[6] National Council on Compensation Insurance (NCCI), *Workers Compensation Reform: SB 899 in California*, 2005

[7] See Grabell and Groeger above.

[8] See Grabell and Groeger above.

workers to use company-selected doctors and follow rigid treatment guidelines, which often prioritized cost control over recovery.[9]

Many reforms also limited attorneys' fees, discouraged legal representation for workers, and shortened the statute of limitations for filing claims. This created a system that was hard to navigate without professional help, which many workers could no longer afford. In some states, like Florida, attorney fees were capped so tightly that injured workers struggled to find legal representation, effectively locking them out of the system.

State injury compensation reforms have also led to cost-shifting to public safety nets. As workers received less from workers' compensation systems, they increasingly had to rely on public programs like Social Security Disability Insurance, Medicare and Medicaid. According to the DOL, the percentage of lost income replaced by workers' compensation has dropped significantly over time, shifting costs to federal programs.[10]

Finally, state injury compensation reforms have had a disproportionate impact on vulnerable populations due to limited job protections, reduced access to legal help, and greater exposure to hazardous work. These workers are often unaware of their rights or reluctant to file claims due to fear of retaliation, which compounds the negative effects of systemic reforms.[11]

To sum up, state-level workers' comp reforms from the late 1990s onward reflect a trend of shifting costs away from employers and onto injured workers and the public. These reforms prioritized cost control and risk management over fairness and adequate support, leaving many workers with serious injuries inadequately compensated and unsupported in their recovery. OSHA emphasized this result in its widely cited report published March 4, 2015, "Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job":

> *The costs of workplace injuries are borne primarily by injured workers, their families, and taxpayer-supported components of the social safety net. Changes in state-based workers' compensation insurance programs have made it increasingly difficult for injured workers to receive the full benefits (including adequate wage-replacement payments and coverage for medical expenses) to which they are entitled. Employers now provide only a small percentage (about 20%) of the overall financial cost of workplace injuries and illnesses through workers' compensation. This cost-shift has forced injured workers, their families*

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[9] See Grabell and Groeger above.
[10] U.S. Department of Labor. "Does the Workers' Compensation System Fulfill Its Obligations to Injured Workers?" Report to Congress, October 2016 (https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSystemReport.pdf)
[11] American Public Health Association. "The Critical Need to Reform Workers' Compensation." November 7, 2017. (https://www.propublica.org/article/the-demolition-of-workers-compensation)

*and taxpayers to subsidize the vast majority of the lost income and medical care costs generated by these conditions.* [12]

**b. How would it affect your members and other federal workers if those reforms, like benefits caps, apportionment, and others were incorporated into FECA?**

The proposed FECA reforms in the USPS Office of Inspector General's (OIG) May 2023 report titled "Workers' Compensation Program Update" would almost all significantly disincentivize or delay appropriate treatment and harm the financial stability of injured workers and their families. NALC passionately opposes these proposals.

**Proposal: Limit dollar amount and duration of benefits**

Any limits to the dollar amount or duration of benefits would unconscionably shift the costs of the disabled worker's injury from the federal government onto the disabled worker and their family, as I described in my response to Question 1. NALC opposes any proposal to limit the dollar amount or the duration of benefits.

It appears to us that the legality of this proposal is dubious. FECA provides benefits to injured federal workers for as long as they suffer residuals of their accepted disabling conditions without limit to the dollar amount or duration of benefits. This is predicated, in part, by the fact that federal employees have a continuing property interest in their employment.[13] This legislative proposal suggests that while federal employees have a continuing property interest in their employment, that interest would end once an employee is injured, resulting in a denial of due process, possible discrimination and retaliation.

**Proposal: Allow settlements and buyouts**

Permitting-lump sum payments would be to the detriment of the injured worker. NALC opposes any proposal to allow lump-sum payments in wage-loss cases.

Until 1992, OWCP had the discretion to award lump-sum payments in wage-loss compensation cases. The DOL amended the regulations in 1992 to prohibit lump-sum

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[12] https://www.claimsjournal.com/research/research/adding-inequality-to-injury-the-costs-of-failing-to-protect-workers-on-the-job/

[13] This derives from a long line of federal and Supreme Court decisions. See for example Arnett v. Kenndy, 416 U.S. 134 (1974) that established that non-probationary federal employees possess a property interest in their continued employment. Other cases like Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), further solidified this property interest for public employees. It's been determined by a federal court in Kendall v. Brock 689 F. Supp. 354 (1987) that an OWCP claimant's interest in the continued receipt of their FECA benefits is a property interest also.

payments in cases involving loss of wage-earning capacity. This was done for several reasons. First, because regular periodic payments provide greater financial security and more closely approximate the lost wages that the FECA is designed to replace. Second, because periodic payments are consistent with government accounting and budgeting practices, while lump-sum payments are directly counter to those practices. And third, because they are sound fiscal policy due to the cost of lump-sum payments being generally greater than periodic payments.

OWCP maintains discretion to grant lump-sum payments in schedule award cases but uses the same reasoning as above. Lump-sum payments are generally only considered in the injured worker's best interest in cases where the employee does not rely on workers' compensation payments as a substitute for lost wages.

**Proposal: Allow the Postal Service to provide a list of medical providers that employees must choose from**

Requiring injured workers to choose from a list of medical providers would disrupt the timely treatment and recovery. NALC opposes this proposal both because it is unfair and because it has negative policy implications.

For the last 50 years, injured federal workers have had the right to choose their own physicians for treatment. Requiring injured workers to select physicians from a list provided by the Postal Service would be inherently unfair to them because the Postal Service has huge incentives for claims to be denied in order to meet its budgetary and efficiency goals. In our experience, the Postal Service challenges most claims, even in cases of straightforward traumatic injuries. Physicians hired and paid by the Postal Service would similarly have strong incentives to find against injured workers since their livelihoods would depend on continued postal employment.

OWCP's policy allowing the injured employee to select their physician works efficiently and fairly, and is safeguarded by a system of checks and balances. While the injured employee may select their treating physician, the FECA grants OWCP the right to send injured workers to OWCP-directed exams with physicians selected by OWCP when OWCP deems it necessary.[14]

These second opinion exams may occur whenever OWCP determines that the case record contains insufficient medical evidence to answer questions that arise during the life of the claim. An injured employee cannot opt out of a second opinion exam. In fact, a refusal to participate in the second opinion exam could result in suspension of compensation

[14] 5 U.S.C. 8123(a): a) An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required.

benefits. OWCP generally selects a physician to conduct these exams from a medical referral group that it has contracted to provide second opinion medical referrals.[15] While in our experience second opinion exams are often adversarial and go against the injured worker, they certainly provide an effective check on any personal physician that OWCP finds overly sympathetic and biased toward the injured worker.

Additionally, in cases where a conflict of medical evidence of equal weight exists between OWCP's physician and the claimant's physician, OWCP will refer the case to an impartial medical specialist in the appropriate field who is randomly selected. In these "referee's opinions," OWCP is required to give weight of evidence to the impartial specialist.

The current law, regulation and procedures balance the interests of the injured worker with those of the employing agency. Requiring injured workers to see physicians selected by the Postal Service would unfairly skew the process in favor of the employer, whose primary interests would be in cost reductions rather than the treatment and rehabilitation of the injured worker.

Also, the relationship between patient and physician should be one of trust that ensures proper treatment, recovery and rehabilitation. Forcing injured workers to use in-house physicians hired and paid for by the Postal Service would create an adversarial relationship fraught with distrust and certainly not conducive for rehabilitation or recovery.

In addition, timely continuity of treatment is essential for recovery. While most CA-1 traumatic injury cases are initially accepted, fewer than half of CA-2 occupational disease cases are accepted.[16] The denied cases are often accepted upon appeal, but in occupational disease cases this appeals process can last months and often even years. If an employee is forced to use a Postal Service physician and their claim is denied, there will be gaps in their treatment as they go through the difficult process of trying to find an attending physician to take on their denied case.

Successful recoveries and returns to work drop precipitously when claims are denied, and appropriate treatment is delayed. While the Postal Service may financially benefit in the short run from an employee's denied claim and delayed treatment, denials and delays come at great cost to injured workers and society, and, in cases where the claim is eventually accepted, at great cost to the Postal Service as well.[17]

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[15] This is provided for in the FECA Procedure Manual Part 3-0500.3.b.2

[16] The most recent data that NALC has received from OWCP indicates that in FY 2022 88.72% of CA-1 cases were accepted and only 49.7 percent of CA-2 cases were accepted. In FY 2023, 87.58 percent of CA-1 cases were accepted, and only 48.57 percent of CA-2 cases were accepted.

[17] Here is how *Larson's Workers' Compensation Law*—the standard, comprehensive, authoritative treatise on workers' compensation law and policy—describes what's at stake here:

**Proposal: Require the use of generic drugs**

This proposal has already been adopted, and NALC finds no issue with its adoption.

**Proposal: Standardize the compensation rate to 66.66 percent for all employees, regardless of dependent status**

This proposal goes against the intent of Congress and would harm families. NALC opposes any decrease in the compensation rate for employees with dependents.

The augmented compensation is unquestionably pro-family. Disabled workers with dependents have received compensation at the 75 percent rate for more than 75 years. The 8.33 percent augmented compensation for injured workers with dependents became part of the FECA through the 1949 amendments to the Act. According to the Congressional Research Service, the legislative intent of this reform was to ensure that the disabled worker could provide economically for their dependents because the lower benefit level was "not sufficient as to ensure reasonable economic security."[18]

Similarly, when the Government Accountability Office analyzed a similar proposal in 2012 to eliminate the augmented benefit and impose a uniform compensation rate of 66.33 percent, it found that the elimination actually put the disabled workers with dependents at a disadvantage when compared with disabled workers without dependents, concluding that the proposal "altered the relative equality in wage replacement rates between beneficiaries with and without a dependent."[19]

**Proposal: Limit the maximum weekly payment amount to the highest amount allowed under state workers' compensation**

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"*It is too obvious for argument that rehabilitation where possible, is the most satisfactory disposition of industrial injury cases, from the point of view of the insurer, employer and public as well as of the claimant. Apart from the incalculable gain to the worker, the cost to insurers and employers of permanent disability claims under a properly adjusted system is reduced; and, so far as the public is concerned, it has been said on good authority that for every dollar spent on rehabilitation by the Federal Government it has received back ten in the form of income taxes on the earnings of the persons rehabilitated. It is probably no exaggeration to say that in this field lies the greatest single opportunity for significant improvement in the benefits afforded by the workers' compensation system.*" vol. 5 95-21, 22.

[18] H.Rept. 81-279, p. 11; and S.Rept. 81-836, p. 20 and U.S. Congress, House Committee on Education and Labor, Special Subcommittee, *Federal Employees Compensation Act Amendments of 1949*, hearing on H.R. 3191 and companion bills, 81st Cong., 1st sess., April 11-13 and May 2, 1949. Cited in The Federal Employees' Compensation Act (FECA): Workers' Compensation for Federal Employees" updated 3/10/2025 Congressional Research Service https://crsreports.congress.gov R42107

[19] "Federal Employees' Compensation Act: Effects of Proposed Changes on Partial Disability Beneficiaries Depend on Employment After Injury" GAO-13-143R from the "Highlights" found at https://www.gao.gov/products/gao-13-143r

Currently, the highest amount allowed under state workers' compensation is 66.66 percent. For the reasons described in the section above, NALC opposes any limit to the maximum weekly amount paid to claimants.

**Proposal: Convert claims for disability to a lower benefit requiring employees to opt for an Office of Personnel Management annuity at age 65 or one year after first receipt of FECA benefits, whichever is later. Alternately, offer a settlement option to injured workers for compensation while continuing medical benefits.**

Injured federal employees who receive FECA benefits are compensated at a significantly lower rate than if they had not been injured and were able to work, which leaves them at a huge disadvantage in their ability to prepare for retirement. NALC opposes any proposal to convert claims for disability to a lower benefit at age 65.

For many disabled workers, it would be impossible for them to survive if they were removed from the FECA rolls and required to draw from their retirement and Social Security, simply because their disability prevented them from being able to participate fully in these programs.

FECA benefits were not designed to increase at a rate comparable to pay increases an individual would have received through normal career growth (step increases or promotions) if they had never been injured or become ill. The only increases an injured worker receives are annual adjustments based on the Consumer Price Index. Injured letter carriers are not enriched by their disability benefits, and when compared to the earnings expected through step increases and career growth, disability benefits disproportionately and negatively affect their financial status, meaning they are less likely to be financially prepared for a decrease in income at retirement age.

In many cases, workers receiving FECA benefits will never receive their full federal retirement benefits. This is especially true for workers in the Federal Employees Retirement System (FERS), because workers on the OWCP rolls are not able to participate in two parts of the three-part FERS system. Employees receiving compensation through OWCP are not taxed for Social Security because such compensation is tax-free. They also cannot contribute or receive matching employer funds to a federal pension (the Thrift Savings Plan, or TSP) because they are not paid through the Postal Service. Thus, injured FERS employees are at a distinct retirement disadvantage when disabled from on-the-job injuries.

While Congress attempted to fix this problem in 2003 by providing an enhanced annuity to make up for the lost Social Security and TSP contributions while a disabled worker is on the OWCP rolls, the disabled worker must stay on the rolls of their employing agency to receive credit for the enhanced annuity. However, this is rarely followed in practice. Many disabled

federal workers are separated from their employing agency while on the OWCP rolls. These separated employees not only lose the remedial effects of the enhanced annuity, they also no longer gain service year credits when, or if, they eventually retire.

**Proposal: Allow apportionments to be factored in, when applicable**

Allowing apportionment in FECA cases could lead to endless conflicts of medical opinions, additional medical reports, the scheduling of referee opinions and a lot of otherwise unnecessary litigation through the appeals process—all of which lead to delayed claim acceptance and postponed treatment for the worker. It is unlikely that this proposal would lead to efficiency and cost reductions. NALC opposes any proposal to amend FECA to allow apportionment to be factored into workers' compensation cases.

Apportionment would make the adjudication of almost every occupational disease case less efficient, as they usually involve degenerative conditions like osteoarthritis and ligament tears, and apportioning causality in these conditions is both complex and highly subjective.

Where an employee is exposed to work conditions that aggravate or cause a progressive occupational disease, and the existence of such a disease remains undisclosed or unknown over a period of time, it is incredibly difficult to pinpoint, in retrospect, the triggering date of the condition, and even more difficult to determine the percentage or extent that work performed over decades contributed to the condition.

For example, while it would be fairly straightforward for a physician to determine that going up and down 3,500 concrete stairs daily for 30 years on a Seattle walking route has contributed to the osteoarthritis in a letter carrier's knee, it would be highly speculative for the physician to determine the percentage of the osteoarthritis that is due to letter carrier's work duties. Apportionment can be confounded by a variety of factors, including family history, age, weight, genetic predisposition, previous injuries, incomplete or forgotten history, missing health care records, prior work history, etc. In fact, the American Medical Association's "Guides to the Evaluation of Disease and Injury Causation, 2nd Ed.," the standard reference work that physicians use to apportion causality states, "Causal relationship and apportionment may also be misrepresented by evaluators for reasons such as ignorance, financial motives, and advocacy."[20]

[20] AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Ed. (2014, p. 146)

We have seen cases from states that apportion causality, where different doctors associated with the case have apportioned causality with wildly different results. The result is endless litigation.[21]

Apportioning causation in injury cases can also lead to unjust results because it doesn't factor in wage earning capacity. For example, we can consider a scenario where a letter carrier developed severe arthritis and is no longer able to perform the functions of their position. If OWCP had an apportionment rule and its attending physician apportions 50 percent of the arthritis to age and genetic predisposition and 50 percent to letter carrier work, the carrier would only receive a wage-loss benefit of 50 percent, yet their loss of income would be 100 percent.

Requiring apportionment to be factored in goes against decades of Employees' Compensation Appeals Board (ECAB) precedent. The ECAB has long held (for at least 40 years) that it is not necessary for employment by itself to have caused an injured worker's condition for a claim to be compensable. It only needs to have contributed to it. It should be noted that in cases involving preexisting conditions, even though OWCP does not apportion causality, it will often expect the attending physician to differentiate between the effects of the work-related factors and any preexisting condition.

2. **a. It is estimated that the remaining OWCP employees will have to manage 1,000 active cases each. Mr. Renfroe, how will an understaffed OWCP impact the ability of letter carriers, and federal workers in general, to obtain critical FECA benefits when they are injured or fall ill?**

The DOL has told NALC repeatedly over the years that well-run state injury compensation programs, such as Washington state, operate most efficiently in balancing quality and timeliness of case decisions with a ratio of about 200 case per claims examiner. That's the industry gold standard. This is the one area in which the federal program should emulate a state "best practice." With a ratio five times as high at OWCP, we foresee a devastating backlog that will leave injured workers and their families without timely support or care and, in the long run, lead to an escalation of costs that goes against the goal of efficiency. As I have pointed out, timely adjudication of cases and prompt provision of treatment and benefits results in a much higher return-to-work rate. Delays lead to significantly higher

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[21] For example, a recent summary of injury compensation apportionment case law for California alone runs over 350 pages. See Correio, Raymond ed. "Apportionment: Case Law Outline Focusing On Evolving Themes, Trends, And Problem Areas." (January 2023 Edition)" (https://www.pbw-law.com/apportionments/apportionment-case-law-update-january-2023/)

costs with workers remaining on the OWCP rolls for much longer, and sometimes permanently.

[Questions and responses submitted for the record by Mr. Szymendera follows:]

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May 21, 2025

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Washington, DC 20540

Dear Mr. Szymendera:

Thank you again for testifying at the May 6, 2025, Subcommittee on Workforce Protections hearing titled "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars." Enclosed are additional questions submitted by a Committee member following the hearing. Please provide a written response no later than June 4, 2025, for inclusion in the hearing record. Responses should be sent to Daniel Nadel (daniel.nadel@mail.house.gov, (202) 226-3873) of the Committee staff. We appreciate your contribution to the work of the Subcommittee.

Sincerely,

Ryan Mackenzie
Chairman
Subcommittee on Workforce Protections

**Questions for the Record from**
**REPRESENTATIVE ROBERT C. "BOBBY" SCOTT**

**Committee on Education and Workforce**
**WP Subcommittee hearing titled: "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars"**

**Tuesday, May 6, 2025**
**10:15 A.M.**

**Questions for Witness Dr. Scott Szymendera**

1. You compared current FECA policies against prevailing practice in state workers' compensation programs and mentioned arguments in favor of adopting state practices (e.g., return-to-work incentives) without mentioning any of the countervailing arguments or research about the impact of such policies on benefits adequacy, the extent to which state workers' compensation absorbs the cost of occupational illness and injury, or related matters. To balance the record, please address the following:
    a. Approximately what percentage of the total economic cost of occupational illness and injury is absorbed by workers' compensation?
    b. Where is the remainder of the cost burden discussed in (a) shifted?
    c. With respect to lump sum or "compromise and release" settlements, what does the empirical evidence suggest are consequences for workers who enter into such settlements?[1]
    d. What policy considerations led Congress to pass the *Medicare Secondary Payor Act* and related reforms with respect to compromise and release settlements?
    e. Please describe the process by which impairment ratings are decided in the *AMA Guides*.
    f. What did the American Public Health Association conclude about the extent to which the *AMA Guides* impairment ratings are evidence-based?[2]
    g. The 6th edition of the AMA Guides in particular has proven a source of controversy among some experts in the workers' compensation field.[3] Please summarize those criticisms.

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[1] *See, e.g.*, Robert T. Reville et al., An Evaluation of New Mexico Workers' Compensation Permanent Partial Disability and Return to Work (2001); Terry Thomason & John F. Burton, Jr., *Economic Effects of Workers' Compensation in the United States: Private Insurance and the Administration of Compensation Claims*, 11 J. LAB. ECON. S1 (1992).

[2] AMER. PUB. HEALTH ASSOC'N, POL'Y NO. 20174, THE CRITICAL NEED TO REFORM WORKERS' COMPENSATION (Nov. 7, 2017), https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2018/01/18/the-critical-need-to-reform-workers-compensation.

[3] *See, e.g.*, Jason W. Busse *et al.*, *Comparative Analysis of Impairment Ratings From the 5th to 6th Editions of the AMA Guides*, 60 J. OCC. & ENVTL. HEALTH 1108 (2018) (finding a 36.4% relative reduction in impairment rating with the 6th edition of the *Guides* versus the 5th edition); *Developments in State Workers'*

   h. Please summarize the findings of the National Academy of Social Insurance Study Panel on Benefit Adequacy with respect to the impacts of the prevailing trends in state workers' compensation.
   i. Please summarize the findings of Bhushan and Leigh (2011) with respect to what drives the cost of workers' compensation premiums since the reforms of the 1990s.[4]
2. In considering FECA reform proposals over the past decade, GAO and CRS have issued multiple nonpartisan studies analyzing the adequacy of FECA benefits. For example, GAO issued reports in late 2012 (GAO-13-108; GAO-13-142R; GAO-13- 143R) and in 2020 (GAO-20-523), and CRS issued reports in 2015 (report RL 30387) and 2023 (report 98-972).
   a. What do these studies say about how FECA benefits at retirement age compare to what federal workers would have received under FERS had they not been injured, both under current compensation structures and proposed reductions at retirement age?
   b. What do these studies say about how FECA and FERS benefits compare for workers who are injured at younger ages and earlier in what would have been lengthy federal careers?
   c. What do these studies say about the wage replacement rate of FECA beneficiaries with and without dependents, after accounting for taxes on normal wages and the non-taxable FECA compensation?
   d. What do these studies say about the effects of compensating all FECA beneficiaries at a single compensation rate, regardless of whether they have dependents, and which beneficiaries this most affects?
   e. What do these studies say about how much of a federal worker's final salary FERS retirement benefits are expected to replace (FERS annuity, TSP, and Social Security, combined), based on various assumptions, including how long their career was?
   f. What do these studies say about the average career length of new federal retirees?

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*Compensation Systems, Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab.*, 11th Cong. 7 (2011) (statement of Emily A. Spieler).

[4] Abhinav Bhushan & J. Paul Leigh, *National Trends in Occupational Injuries Before and After 1992 and Predictors of Workers' Compensation Costs*, 126 PUB. HEALTH R. 625, 633 (2011).


**MEMORANDUM** June 3, 2025

**To:** House Committee on Education and Workforce, Subcommittee on Workforce Protections
Attention: Daniel Nadel

**From:** Scott D. Szymendera, Analyst in Disability Policy, sszymendera@crs.loc.gov, 7-0014

**Subject:** **Responses to Questions for the Record for the May 6, 2025, Hearing "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars"**

This memorandum provides responses to questions for the record for the House Committee on Education and Workforce, Subcommittee on Workforce Protections hearing, "FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayers Dollars," held on May 6, 2025.

If you would like any additional information or have any additional questions, please contact me by phone at x7-0014 or email at sszymendera@crs.loc.gov.

## Questions for the Record from Rep. Robert C. "Bobby" Scott

1. **You compared current FECA policies against prevailing practice in state workers' compensation programs and mentioned arguments in favor of adopting state practices (e.g., return-to-work incentives) without mentioning any of the countervailing arguments or research about the impact of such policies on benefits adequacy, extent to which state workers' compensation absorbs the cost of occupational illness and injury, or related matters. To balance the record, please address the following:**
   a. **Approximately what percentage of the total economic cost of occupational illness and injury is absorbed by workers' compensation?**

While workers' compensation systems are designed to pay all the costs of medical care for covered conditions, no system covers all compensation lost to occupational disability. In all systems, including the Federal Employees' Compensation Act (FECA), benefits replace less than 100% of wages lost.[1] In addition, workers' compensation generally does not provide compensation for the loss of employer-provided fringe benefits, such as health insurance for non-occupational conditions or pension benefits. Finally, the costs of home production, which include daily activities such as raising children, preparing meals, and tending to the household, are not directly paid by workers' compensation.

[1] Under FECA, the basic benefit rate for total disability is equal to two-thirds of a worker's pre-disability wage, or three-quarters of the pre-disability wage if the worker has a spouse or dependents.

In addition to structural features of workers' compensation that ensure that some costs borne by injured workers are not compensated, there are other policy factors that contribute to the differences between the total economic costs of work injuries, illnesses, and deaths in the United States, and the total value of the benefits provided by state and federal workers' compensation systems. These policy deficiencies led Congress to include in the Occupational Safety and Health Act of 1970 (P.L. 91-596) a provision establishing a national commission to study state workers' compensation laws..[2] The national commission's report included 84 recommendations, of which 19 recommendations were deemed "essential" (e.g., full coverage for work-related diseases). While states adopted many of the recommendations of the national commission during the 1970s and early 1980s, these reforms eventually slowed..[3] The last thirty years have seen rollbacks of many of the national commission-era reforms and other policy changes in the states that have impacted the amount of the economic costs of occupational injuries, illnesses, and deaths covered by workers' compensation benefits..[4]

In order to estimate the portion of the economic costs of occupational injuries, illnesses, and deaths that are covered by workers' compensation benefits, J. Paul Leigh of the University of California, Davis (UC Davis) created a methodology to estimate the total economic costs of work injuries, illnesses, and deaths..[5] This methodology allows for estimates of direct medical costs (e.g., related to hospitals, physicians, pharmaceuticals, and nursing homes) and indirect costs (e.g., current and future earnings, fringe benefits, and home production) associated with work injuries, illnesses, and deaths. Leigh's methodology also accounts for costs associated with the portion of cancer and circulatory, respiratory, and other diseases that may be attributed to conditions encountered in the workplace but are not likely to be the subject of workers' compensation claims.

While the total costs of workers' compensation benefits are published annually by the National Academy of Social Insurance (NASI),[6] Leigh and his UC Davis colleague James Marcin created their own methodology to estimate workers' compensation medical and disability benefits that, unlike NASI's estimates, look at estimated current and future benefit costs for occupational injuries, illnesses, and deaths incurred in a given year, rather than total costs paid in a given year for all previous cases..[7]

With the estimates for the total costs of occupational injuries, illnesses, and deaths, and the estimates of total workers' compensation benefits paid, it is possible to estimate that portion of the costs of work injuries, illnesses, and deaths covered by workers' compensation. Using data from 2007, Leigh and

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[2] See §27 of P.L. 91-596. For additional information on the work of this commission, see National Commission on State Workmen's Compensation Laws, *The Report of the National Commission on State Workmen's Compensation Laws*, Washington, DC, July 1972.

[3] Department of Labor, *Does the Workers' Compensation System Fulfill its Obligations to Injured Workers*, 2016, pp. 2, 12, https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSystemReport.pdf.

[4] DOL, *Does the Workers' Compensation System Fulfill its Obligations to Injured Workers*, pp. 12-20; and Emily A. Spieler, "(Re)Assessing the Grand Bargain: Compensation for Work Injuries in the United States, 1900-2017," *Rutgers University Law Review*, vol. 69, no. 3 (2017), pp. 934-955.

[5] J. Paul Leigh, "Economic Burden of Occupational Injury and Illness in the United States," *Millbank Quarterly*, vol. 89, no. 4 (2011), pp. 728-772.

[6] See, for example, Tyler Q. Welch, Griffin T. Murphy, and Michael Manley, *Workers' Compensation: Benefits, Costs, and Coverage (2002 data)*, National Academy of Social Insurance, November 2024, p. 2, https://www.nasi.org/wp-content/uploads/2024/11/2024-WC-Report-2022-Data-Final.pdf

[7] J. Paul Leigh and James P. Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," *Journal of Occupational and Environmental Medicine*, vol. 54, no. 4 (April 2012), pp. 445-450.

Marcin estimated that 20.72% of the total costs of occupational injuries, illnesses, and deaths were paid by workers' compensation..[8]

**Costs of Occupational Injuries, Illnesses, and Deaths Paid by Workers' Compensation**

Estimates for 2007, in 2007 dollars

| | Medical Costs (billions of $) | Indirect Costs (billions of $) | Total Costs (billions of $) |
|---|---|---|---|
| Total costs of occupational injuries, illnesses, and deaths | 67.09 | 182.54 | 249.64 |
| Paid by workers' compensation | 29.86 [44.51% of medical costs] | 21.87 [11.98% of indirect costs] | 51.73 [20.72% of total costs] |

**Source:** J. Paul Leigh and James P. Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," *Journal of Occupational and Environmental Medicine*, vol. 54, no. 4 (April 2012), p. 449.

**Notes:** Components may not add to totals due to rounding.

While Leigh and Marcin's methodology and estimates that less than 21% of the total costs of occupational injuries, illnesses, and deaths being covered by workers' compensation are now more than a decade old, they continue to be cited in published research..[9] Since the publication of Leigh and Marcin's estimates, the percentage of workers' compensation benefits attributable to medical costs have changed, medical prices have increased, and the Affordable Care Act was enacted and implemented. However, the lack of major state reforms that would increase workers' compensation generosity or coverage suggests that a significant increase in the portion of the economic costs of occupational injuries, illnesses, and deaths covered by workers' compensation since the publication of Leigh and Marcin's estimates is unlikely.

**b. Where is the remainder of the cost burden discussed in (a) shifted?**

In their study of the costs of occupational injuries, illnesses, and deaths and the portion of those costs paid by workers' compensation, Leigh and Marcin also estimated the other sources used to pay the costs not covered by workers' compensation..[10] While workers' compensation was estimated to pay 20.72% of the total costs of work injuries, illnesses, and deaths in 2007, an estimated 50.02% of these costs were paid "out-of-pocket" by injured workers' and their families. Private health insurance paid 13.19% of total costs, and federal, state, and local benefit programs, such as Social Security Disability Insurance (SSDI), Medicare, and Medicaid, paid 16.07% of costs..[11] Leigh and Marcin also estimated that in 2007, Medicare paid $7.16 billion (10.67%) and Medicaid paid $5.47 billion (8.15%) of the medical costs of occupational injuries and illnesses..[12] Leigh and Marcin's specific estimates of the costs paid out-of-pocket and by private medical insurance and public medical programs do not account for changes in the private health insurance market and eligibility for Medicaid in some states resulting from the enactment and implementation of the Affordable Care Act.

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[8] Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," p. 449.

[9] See, for example, David Michaels and Gregory R. Wagner, "OSHA Injury Data: An Opportunity for Improving Work Injury Prevention," *American Journal of Public Health*, vol. 115, no. 4 (April 2025), pp. 588-595.

[10] Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," pp. 445-450.

[11] Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," p. 449.

[12] Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," p. 448.

**c. With respect to lump sum or "compromise and release" settlements, what does the empirical evidence suggest are the consequences for workers who enter into such settlements?**

Compromise and release and other types of settlements of workers' compensation claims are not permitted for FECA claims. However, the settlement of workers' compensation claims are a common feature of most state workers' compensation systems..[13] Workers' compensation settlements of claims under the federal Longshore and Harbor Workers' Compensation Act (LHWCA) are permitted, subject to the approval of the Department of Labor (DOL) or an administrative law judge..[14] While state laws differ on the legality and specific requirements of workers' compensation settlements, there are generally three elements of workers' compensation settlements:

- a compromise between the workers' claim and the employer's offer concerning the amount of cash and/or medical benefits to be paid;
- the payment of the compromised amount in either a lump sum or some other structured manner; and
- the release of the employer from further liability for the consequences of the occupational injury, illness, or death..[15]

The national commission on state workers' compensation laws established by the Occupational Safety and Health Act of 1970 was critical of the overuse of compromise and release settlements and stated that "the extensive use" of such settlements "is not consistent with our recommendations for an active workers' compensation agency" and warned that such settlements have the potential to "seriously deprive the employee of his rights.".[16] In its final report, the commission included the following three recommendations regarding workers' compensation settlements:

- "We recommend that the workmen's compensation agency permit compromise and release agreements only rarely and only after a conference or hearing before the workmen's compensation agency and approval by the agency."
- "We recommend that the agency be particularly reluctant to permit compromise and release agreements which terminate medical and rehabilitation benefits."
- "We recommend that lump-sum payments, even in the absence of a compromise and release agreement, be permitted only with agency approval.".[17]

While noting that "there have been surprisingly few empirical studies" of workers' compensation settlements, H. Allan Hunt and Peter S. Barth, in a report commissioned by the Washington Department of Labor and Industry, summarized several major empirical studies that examined the impact of settlements on workers' compensation systems and workers..[18] The summarized studies were published between 1959 and 2001.

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[13] Spieler, "(Re)Assessing the Grand Bargain: Compensation for Work Injuries in the United States, 1900-2017," p. 945.

[14] Title 33, Section 908(i), of the *U.S. Code*.

[15] National Academy of Social Insurance, *Workers' Compensation: Benefits, Costs, and Coverage (2002 data)*, p. 65.

[16] National Commission on State Workmen's Compensation Laws, *The Report of the National Commission*, pp. 109-110.

[17] National Commission on State Workmen's Compensation Laws, *The Report of the National Commission*, p. 110.

[18] H. Allan Hunt and Peter S. Barth, *Compromise and Release Settlements in Workers' Compensation: Final Report*, W.E. Upjohn Institute for Employment Research, Report prepared for the State of Washington, Department of Labor and Industries, Kalamazoo, MI, November 21, 2010, p. 9, https://research.upjohn.org/reports/178/.

The first notable empirical study of workers' compensation settlements was a 1959 study of 485 workers' compensation claims in Michigan..[19] This study found evidence that the actions of workers' compensation insurers can have an influence over the decisions of injured workers to settle their cases. Claimants who worked for companies represented by insurers were more likely than those who worked for self-insured firms to settle their cases. Surveys with workers' compensation claimants found that those who eventually settled their cases were more likely to have encountered difficulty in obtaining benefits and more likely to have had their benefits suspended at some earlier point, even after controlling for the legal strength of the workers' claims as measured by an independent referee who reviewed the cases.

The Michigan study also demonstrated that claimants' immediate financial needs may have been a factor in their decisions to settle their cases. The study found that 6% of workers who settled their cases used their lump-sum settlements for further vocational rehabilitation and that lump sums from settlements were more commonly used to pay down debt incurred after an injury or for daily living expenses..[20] In terms of the economic value of the settlements, the study concluded that "Most of the contested settlement cases appear to have been settled for less than the worker would have received in weekly payments."..[21]

A 1961 study of 150 workers' compensation beneficiaries who had settled their cases in California also found a correlation between financial need and settlements as those with settled cases had a lower annual median income before their injuries ($3,996) than the annual median income for all permanent disability worker's compensation claimants in the state ($5,000)..[22] Interviews with these beneficiaries with settled cases found that those who chose to receive lump-sum payments and had a plan for their use generally reported successful outcomes of their plans (81.2% "successful" and 8.3% "partially successful")..[23] This group made up a minority of the sample of beneficiaries with settled claims as 62% reported having no plans for the use of their lump-sum payments. Ultimately, similar to the results from the Michigan study, the most common use of lump-sum settlement money was to pay down debt or pay for current living expenses..[24]

A 1971 study of 4,628 cases in Texas found evidence of power and information asymmetries between the two parties (the employer or insurer and the worker) negotiating a workers' compensation settlement..[25] In 84.5% of the settled cases, the worker was not represented by an attorney and in 92.6% of the cases the worker was not represented by a physician. In 4% of the settled cases an injured worker had representation by both an attorney and physician of their choosing. Overall, in 80.7% of the settled cases, the injured worker negotiated with the employer or insurer without the assistance of an independent attorney or physician..[26] The Texas study also found that in 20% of the settled cases, the settlement was completed before the injured worker received the formal notice of the workers' compensation process and their rights from the state workers' compensation agency..[27]

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[19] James N. Morgan, Marvin Snider, and Marion G. Sobol, *Lump Sum Redemption Settlements and Rehabilitation: A Study of Workmen's Compensation in Michigan* (Ann Arbor, MI: Cushing-Malloy, Inc., 1959).

[20] Morgan, Snider, and Sobol, *Lump Sum Redemption Settlements and Rehabilitation: A Study of Workmen's Compensation in Michigan,* p. 12.

[21] Morgan, Snider, and Sobol, *Lump Sum Redemption Settlements and Rehabilitation: A Study of Workmen's Compensation in Michigan,* p. 15.

[22] Earl F. Cheit, *Injury and Recovery in the Course of Employment* (New York: John Wiley & Sons, Inc., 1961), p. 279.

[23] Cheit, *Injury and Recovery in the Course of Employment*, p. 276.

[24] Cheit, *Injury and Recovery in the Course of Employment*, p. 276.

[25] Sam B. Barton, "Compromise Settlements: Equity for Injured Workers?," *Industrial Relations*, vol. 10, no. 3 (October 1971).

[26] Barton, "Compromise Settlements: Equity for Injured Workers?," p. 266.

[27] Barton, "Compromise Settlements: Equity for Injured Workers?," p. 267.

The Texas study also found a link between settled cases and delays in the payment of benefits which could indicate pressure from the employer or insurer to settle a case. In cases that were ultimately settled through a compromise and lump-sum payment, weekly benefits were paid before the settlement in 1.6% of cases. By contrast, 88.2% of claims that did not settle received weekly payments before a final disposition of the case..[28] In their review of this study, Terry Thomason and John F. Burton, Jr. referred to this data as an "indication of underwriter pressure" to compromise and settle cases..[29]

Thomason and Burton tested the hypotheses that insurer activities increase the acceptance of settlements and that the amount paid to workers through settlements is discounted over time from what the workers would have received had their cases been adjudicated without settlements. Thomason and Burton tested these hypotheses by examining a stratified random sample of 977 New York workers' compensation claims with nonscheduled permanent partial disability awards from injuries that occurred in 1972. Regression analysis was used to determine the impact of insurer activities such as suspending or reducing benefits on the probability that a case would be settled. The results of the regression analysis then formed the basis for a simulation of the total amount of the awards that each claimant would have received if the claim had been settled or adjudicated without a settlement.

Thomason and Burton found that insurers do try to increase the probability of settlements through their interventions. However, the positive correlation between suspensions and reductions of benefits that were later overturned by the state workers' compensation agency (indicating that they were not proper) and the probability of case settlement was not statistically significant..[30] Regression results also showed that insurer activity to influence settlement decisions was based more on the claimants' ability to withstand economic pressure (shown in the study by a variable measuring English language proficiency) than the merits of the claim..[31]

The simulation model shows that the total amount paid to claimants with lump-sum settlements is significantly less than what those claimants would have received had their cases not been settled, even when controlling for the severity of injury. Thomason and Burton estimate that lump-sum settlement awards are discounted annually by approximately 24% from the lifetime benefits that would have been paid in these cases had they not been settled..[32]

As part of a larger study comparing New Mexico's workers' compensation outcomes with those of several other states, researchers with the RAND Institute for Civil Justice estimated earnings losses and total workers' compensation cash payments for 5,996 New Mexico permanent partial disability cases with injuries that occurred between 1994 and 1998..[33] RAND estimated that claimants who settled their cases would have higher post-injury income losses and lower total workers' compensation benefits than those without settlements. The estimated replacement rates (the percentage of lost income replaced by workers' compensation benefits) were 30.8% (pre-tax) and 40.7% (after-tax) for settled claimants versus 46.8% (pre-tax) and 60.6% (after-tax) for claimants without settlements..[34]

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[28] Barton, "Compromise Settlements: Equity for Injured Workers?," p. 268.

[29] Terry Thomason and John F. Burton, Jr., "Effects of Workers' Compensation in the United States: Private Insurance and the Administration of Compensation Claims," *Journal of Labor Economics*, vol. 11, no. 1 (January 1993), p. S11.

[30] Thomason and Burton, "Effects of Workers' Compensation in the United States," p. S27.

[31] Thomason and Burton, "Effects of Workers' Compensation in the United States," p. S33.

[32] Thomason and Burton, "Effects of Workers' Compensation in the United States," p. S31.

[33] Robert T. Reville, Leslie I. Boden, and Jeffrey E. Biddle, et al., *An Evaluation of New Mexico Permanent Partial Disability and Return to Work*, RAND Institute for Civil Justice, Prepared for the New Mexico Workers' Compensation Administration, Santa Monica, CA, 2001.

[34] Reville et al., *An Evaluation of New Mexico Permanent Partial Disability and Return to Work*, p. 30.

**d. What policy considerations led Congress to pass the Medicare Secondary Payor Act and related reforms with respect to compromise and release settlements?**

Medicare has always been a secondary payer to workers' compensation..[35] The original Medicare legislation, included the following provision:

> Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service under a workmen's compensation law or plan of the United States or any state....[36]

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173) established the current rules regarding Medicare as a secondary payer to a variety of health and other insurance systems, including workers' compensation. Section 1862(b)(8) of the Social Security Act [42 U.S.C. §1395y(b)(8)], as added by Section 111 of P.L. 110-173, requires a workers' compensation system to provide information on workers' compensation claimants that may also be eligible for Medicare to the Secretary of Health and Human Services.

The coordination of benefits between workers' compensation as a primary payer and Medicare as the secondary payer can become complicated in cases of workers' compensation settlements. Compromise and release settlements often provide a lump-sum payment for anticipated future medical costs related to the occupational injury or illness. The claimant is expected to use this money to pay for these future expenses as these future expenses will no longer be paid directly by workers' compensation. Claimants who also participate in Medicare may use that program to cover future medical expenses, rather than paying for those expenses out of their lump-sum settlement. When this occurs, Medicare becomes the primary payer in violation of federal law and the clear intent of Congress when creating Medicare.

To remedy this, the Centers for Medicare & Medicaid Services (CMS) has established a voluntary system of Workers' Compensation Medicare Set-Aside Arrangements (WCMSAs)..[37] There are no laws or regulations that require a WCMSA. A WCMSA is a voluntary financial agreement in which a portion of the amount of the workers' compensation settlement is dedicated to the payment of future medical expenses covered by workers' compensation. The amount of the settlement that should be placed in the WCMSA is the estimated amount of future medical expenses that would otherwise be paid by Medicare, but that should be covered by workers' compensation, for the life of the person. The amount in the WCMSA must be exhausted before Medicare will pay any medical expenses related to a workers' compensation claim, thus ensuring that Medicare does not pay medical expenses that should be paid by workers' compensation and ensuring that Medicare's remains a secondary payer in workers' compensation cases. A WCMSA that meets certain requirements may be submitted to CMS for approval with approval establishing that the parties to the settlement have met their burden of protecting Medicare from improperly paying for workers' compensation medical expenses.

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[35] For additional information on Medicare secondary payor provisions, see CRS Report RL33587, *Medicare Secondary Payer: Coordination of Benefits*.

[36] Section 1862(b) of the Social Security Act, as established by Section 2 of the Social Security Amendments of 1965 (P.L. 89-97).

[37] For the current CMS guidance on WCMSAs, see Centers for Medicare & Medicaid Services, *Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide: Version 4.3*, April 7, 2024, https://www.cms.gov/files/document/wcmsa-reference-guide-version-43.pdf.

**e. Please describe the process by which impairment ratings are decided in the *AMA Guides*.**

During a 2010 hearing of the House Committee on Education and Labor, Subcommittee on Workforce Protections on workers' compensation, a statement prepared by the American Medical Association (AMA) was entered into the record..[38] In this statement, the AMA described the process used to update its *Guides to the Evaluation of Permanent Impairment* (*AMA Guides)* to the sixth edition.

The AMA stated that the process of updating the *AMA Guides* began in 2004, with the publication of the sixth edition completed in 2008. The AMA invited medical specialty societies and state and county medical associations to nominate physicians with expertise in disability or impairment to serve as authors, content contributors, or reviewers and received nominations from 45 organizations. An 11-member editorial panel selected from AMA members prepared a set of recommendations for changes to be made for the sixth edition. These recommendations were sent to 16 additional physicians for their input. The editorial panel then adopted the following axioms that would guide preparation of the sixth edition:

- Adopt the terminology, definitions and, conceptual framework of disablement of the International Classification of Functioning, Disability and Health (WHO, 2001) in place of the current and antiquated ICIDH terminology (WHO, 1980).
- Make greater use of evidence-based medicine and methodologies.
- Wherever/whenever evidence-based criteria are lacking, give highest priority to simplicity and ease of application, and follow precedent unless otherwise justified.
- Stress conceptual and methodological congruity within and between organ system ratings.
- Provide rating percentages that are functionally based whenever possible, unless/until science supports otherwise..[39]

Six members of the editorial panel were selected to serve as section editors, with each section editor responsible for two to four chapters. Section editors then assigned nominated physicians to write chapters based on the physicians' specialties and expertise. Draft chapters were reviewed by all section editors, then sent for peer review to the remaining members of the editorial panel and outside reviewers.

An advisory committee was formed, made up of nominees from various specialty societies, state and local medical association, and other stakeholders. The advisory committee solicited comments from their respective societies and associations and submitted them to the editorial panel. The list of members of the editorial panel and advisory committee, and lists of contributors and reviewers are provided in the sixth edition of the *AMA Guides*..[40]

Since the publication of the sixth edition in 2008, the *AMA Guides* have been updated in a digital format in 2021, 2022, 2023, and 2024. The current digital edition is referred to as "AMA Guides Sixth 2024.".[41] As part of its process of making digital updates to the *AMA Guides*, the AMA has convened an editorial

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[38] U.S. Congress, House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, 111th Cong., 2nd sess., November 17, 2010, Serial No. 111-76 (Washington: GPO, 2010), pp. 53-58.

[39] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 54.

[40] *Guides to the Evaluation of Permanent Impairment, Sixth Edition*, ed. Robert D. Rodinelli (American Medical Association, 2008), pp. vi-ix.

[41] AMA Guides Sixth 2024 can be accessed on the AMA website at: https://ama-guides.ama-assn.org/.

panel made up of 12 members and five advisors..[42] The AMA is soliciting, via its website, proposals for updates and editorial changes and comments on proposed changes during public comment periods..[43] For the current, AMA Guides Sixth 2024, the proposed changes were posted online for public comment on September 12, 2024, and the final edition was published online on December 1, 2024.

**f. What did the American Public Health Association conclude about the extent to which the AMA Guides impairment ratings are evidence-based?**

In its 2017 policy brief, *The Critical Need to Reform Workers' Compensation*, the American Public Health Association (APHA) concludes that the impairments ratings in the *AMA Guides* are not evidence-based..[44] The APHA states:

> Also, many states are allowing the use of different versions of guidelines prepared by the American Medical Association for determination of partial or total impairment even though these guidelines are not evidenced based and do not consider physical and mental impairment in the context of an individual worker's education and ability.

The APHA also includes the following as one of the "elements of a workers' compensation reform proposal" that it supports:

> State governments should ensure that assessments of disability under workers' compensation occur through an evidence-based system that considers physical and mental impairments in the context of an individual worker's education and abilities and the available job market. Use of the American Medical Association's guidelines on evaluating permanent impairment does not meet this standard.

**g. The 6th edition of the *AMA Guides* in particular has proven a source of controversy among some experts in the workers' compensation field. Please summarize those criticisms.**

The sixth edition of the *AMA Guides* was published in 2008 and is the current edition in print. However, the AMA has produced digital updates to the sixth edition in each year from 2021 through 2024. It is the policy of the Department of Labor, Office of Workers' Compensation Programs (OWCP) to use the sixth edition of the *AMA Guides*, without any of the annual updates, in the FECA program..[45]

The development and publication of the sixth edition of the AMA Guides was accompanied by controversy and criticism from some in the workers' compensation community. There was also controversy in the workers' compensation community over the development and publication of the fifth edition of the *AMA Guides* and Emily A. Spieler, a member of an AMA steering committee for the fifth

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[42] Information on the current editorial panel is available on the AMA website at: https://www.ama-assn.org/practice-management/ama-guides/ama-guides-editorial-panel-members.

[43] Information on the submission of proposals and comments is available on the AMA website at: https://www.ama-assn.org/practice-management/ama-guides/ama-guides-proposal-submissions.

[44] American Public Health Association, *The Critical Need to Reform Workers' Compensation*, November 7, 2017, https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2018/01/18/the-critical-need-to-reform-workers-compensation.

[45] Department of Labor, Office of Workers' Compensation Programs, *Retention of the American Medical Association's Guides to the Evaluation of Permanent Impairment, 6th Edition (2009)*, FECA Bulletin No. 21-11, September 1, 2021, https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECAB2111. OWCP does incorporate the "Clarifications and Corrections" document issued by the AMA in August 2008 in its use of the sixth edition.

edition testified before Congress that many of the concerns raised by that steering committee regarding the fifth edition were not addressed in either the fifth or sixth editions of the *AMA Guides.*.[46]

In 2010, the House Committee on Education and Labor, Subcommittee on Workforce Protections, held a hearing on several issues facing state workers' compensation programs, including the use of the sixth edition of the *AMA Guides.* Much of the controversy over the sixth edition was discussed at this hearing by several witnesses from the workers' compensation community. In her testimony, Spieler provided the following six issues with previous editions of the *AMA Guides* that she felt were also problems with the sixth edition:

- The impairment ratings in the *AMA Guides* are not based on evidence and have not been subjected to validation studies.
- There has never been any attempt to correlate the percentages of impairment in the *AMA Guides* to the ability to work.
- The process by which the impairment rating percentages are developed is "opaque" and not subject to public comment or input. This concern was shared by an independent task force established by the state of Iowa to study the sixth edition of the *AMA Guides.*.[47]
- The scale used in the *AMA Guides* presumes that a 100% rating "represents a state close to death" and that a 90% rating requires total dependence on others, thus depressing all ratings in regards to the ability to work.
- The *AMA Guides* use a formula to combine multiple ratings, rather than adding ratings together..[48]
- The *AMA Guides* are not "broadly acceptable to the many constituencies involved in workers' compensation" in part because there is no scientific basis for the ratings..[49]

In addition to the criticisms of earlier editions of the *AMA Guides* that persist in the sixth edition, several experts in the field of workers' compensation have raised concerns with specific elements of the sixth edition. The sixth edition of the *AMA Guides* uses the World Health Organization's International Classification of Functioning, Disability, and Health (ICF) as a model for its impairment ratings..[50] Spieler is critical of this approach, noting that the ICF model uses different terminology from earlier editions of the *AMA Guides*, workers' compensation programs, and the Americans with Disabilities Act which may

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[46] Emily A. Spieler, Peter S. Barth, and John F. Burton, Jr., et al., "Recommendations to Guide Revisions of the *Guides to the Evaluation of Permanent Impairment*," *Journal of the American Medical Association*, vol. 283, no. 4 (January 26, 2000), pp. 519-523; and House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 54.

[47] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 40-41. The full report of the Iowa task force is included in the hearing record on pages 69-82.

[48] This formula can be expressed as: $Combined\ Rating = A + B(1 - A)$, where A and B are individual ratings expressed as values ranging from 0 to 1. For example, if a person has two impairments, one rated 25% and the other rated 50%, his or her combined rating would be determined using the following formula: $0.625 = 0.25 + 0.50(1 - 0.25)$. Converting the combined rating into a percentage, and rounding to the nearest whole number, would yield a combined impairment rating of 63%, rather than a rating of 75% if the two ratings were added together. This formula is repeated if there are more than two combined impairments.

[49] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 14-15.

[50] *AMA Guides, Sixth Edition*, pp. 3-6.

lead to confusion..[51] In addition, the ICF model is not a model of work disability and uses evaluations of ability to perform activities of daily living (ADLs) like taking care of personal hygiene that may indicate a level of impairment but may not be relevant to an evaluation of one's ability to work.

The sixth edition of the *AMA Guides* no longer provides for a 3% rating for pain associated with any organ system, but rather purports to incorporate pain into its base ratings. The additional rating for pain of up to 3% is only permitted in the sixth edition in cases in which there is no underlying rating scale for an organ system. Spieler was critical of the loss of the subjective nature of a rating for pain..[52] Similarly, Spieler was critical of the loss of a measure of range of motion in spine and pelvic impairments and the greater scrutiny given to reports from treating physicians as opposed to independent examiners..[53]

The sixth edition includes new definitions for a variety of legal terms associated with workers' compensation, such as causality and apportionment, that may go beyond the scope of the evaluation of a person's level of impairment. Spieler was particularly concerned with the sixth edition's treatment of the concept of apportionment, which provides for different ratings based on the existence of pre-existing conditions in accordance with the "local jurisdiction's guidelines" regarding the treatment by workers' compensation of subsequent injuries..[54] States differ in how their workers' compensation programs compensate subsequent injuries. Spieler expressed concern that incorporating apportionment into the AMA Guides "may have a troubling normative effect on programs in which apportionment is not currently appropriate, and further reduce the adequacy of benefits for injured workers.".[55] These concerns were shared by an independent task force established by the state of Iowa to study the impact of changing from the fifth to sixth edition of the *AMA Guides*, as reported in congressional testimony by Christopher James Godfrey, that state's Workers' Compensation Commissioner..[56]

Spieler noted that there are several "unexplained changes" to how certain body systems are evaluated and rated and that most of these changes will likely lower an individual's impairment rating versus what they would have scored under previous editions of the *AMA Guides*..[57] This perception is buttressed by data presented to Congress by John Nimlos, a physician and occupational medicine consultant who also referred to the changes in the sixth edition as "unexplained." In his testimony before Congress on the use of the sixth edition of the *AMA Guides*, Nimlos presented his own analysis of 35 ratings found in the AMA Guides that showed that whereas six ratings were decreased from the fourth to the fifth edition, the transition to the sixth edition resulted in 21 ratings being decreased..[58] Nimlos also cited a study in North Dakota by Sedgwick Claims Management Services that found that of the 52 impairment ratings it examined, ratings under the sixth edition would be the same or higher than under the fifth edition in six

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[51] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 11-12.

[52] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 12.

[53] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 12-13.

[54] *AMA Guides, Sixth Edition*, pp. 25-26.

[55] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 13.

[56] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 39-40.

[57] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 13-14.

[58] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 30.

cases and lower in 46 cases with the average rating for impairment of the cervical spine decreasing from a rating of 24.8% to 12.2%. Nimlos testified that Sedgwick concluded that North Dakota would save $1.1 million per year in permanent partial disability compensation by adopting the sixth edition of the *AMA Guides*..[59]

A 2018 study of 249 injured workers in Amsterdam found the median impairment rating for those evaluated under the fifth edition of the *AMA Guides* was 7% versus 4% for those evaluated under the sixth edition with a relative reduction of 36.4% in impairment rating from the fifth to the sixth edition..[60] The study concluded that "the sixth edition of the *AMA Guides* provides systematically lower impairment ratings for injured workers than the fifth edition.".[61]

The Iowa task force raised concerns about possible cultural and linguistic biases in some of the measures used in the sixth edition, specifically the DASH (Disabilities of the Arm, Shoulder, and Hand) and Quick DASH questionnaires used to evaluate certain musculoskeletal impairments. Godfrey testified that the Iowa task force was able to confirm that these questionnaires were not tested for cultural or other types of sensitivity and that when asked about this, Robert D. Rondinelli, medical editor of the sixth edition, "suggested that given the lack of cultural sensitivity in these tools, the questionnaires simply not be utilized with members of a minority population.".[62]

**h. Please summarize the findings of the National Academy of Social Insurance Study Panel on Benefit Adequacy with respect to the impacts of the prevailing trends in state workers' compensation.**

In 1998, the workers' compensation steering committee of the National Academy of Social Insurance (NASI) convened a study panel to review the adequacy of disability benefits provided by state and federal workers' compensation programs. The work of the Benefit Adequacy Study Panel culminated in a 2004 report, a seminar hosted by NASI and the Social Security Administration (SSA), and an article in the *Social Security Bulletin*..[63]

The NASI study panel evaluated the adequacy of workers' compensation disability benefits from the early 1970s to 1998, a period that included reforms of state workers' compensation laws inspired by the findings of the National Commission on State Workmen's Compensation Laws as well as reforms intended to reduce workers' compensation costs in the 1990s.

Benefit adequacy between 1972 and 1998 was measured using three methods. In the first method, statutory benefit levels were compared against the federal poverty threshold. The study panel found that for a four-person family, the average expected weekly benefit for temporary total disability rose from 80% of the federal poverty threshold in 1972 to 107% in 1998, with the largest period of growth

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[59] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 31.

[60] Jason W. Busse, Marieke M. de Vaal, and S. John Ham, et al., "Comparative Analysis of Impairment Ratings From the 5th to 6th Editions of the AMA Guides," *Journal of Occupational and Environmental Medicine*, vol. 60, no. 12 (December 2018), pp. 1108-1111.

[61] Busse, et al., "Comparative Analysis of Impairment Ratings From the 5th to 6th Editions of the AMA Guides," p. 1108.

[62] House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 42.

[63] *Adequacy of Earnings Replacement in Workers' Compensation Programs: A Report of the Study Panel on Benefit Adequacy of the Workers' Compensation Steering Committee of the National Academy of Social Insurance*, ed. H. Allan Hunt (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2004); and H. Allan Hunt, "Benefit Adequacy in State Workers' Compensation Programs," *Social Security Bulletin*, vol. 65, no. 4 (May 2005), pp. 24-30.

occurring in the mid-1970s..[64] In 1998, average temporary total disability benefits in 16 states were below the federal poverty threshold..[65]

The second method used by the study panel to evaluate benefit adequacy compared statutory benefit levels for a standard distribution of work injuries against the benefit levels prescribed by the revised Model Workers' Compensation act designed by the Council of State Governments in 1974, based on the recommendations of the National Commission on State Workmen's Compensation Laws..[66] The average level of all workers' compensation disability benefits rose from 37% of the revised Model Act's guidelines in 1972 to 47% in 1998, with the greatest period of growth occurring in the mid-1970s..[67] Temporary total disability benefits have consistently been the closest to those recommended by the revised Model Act, ranging from just over 60% of the revised Model Act levels in 1972 to nearly 90% in 1998. Permanent total disability benefits have been the least like those recommended by the revised Model Act, never exceeding 20% of the revised Model Act's recommended levels between 1972 and 1998.

The third method used by the study panel measured the percentage of wage loss due to disability replaced by workers' compensation benefits, using simulations of future wages of workers' receiving benefits. When future wages are held constant, simulating no wage growth over the life of the worker, workers' compensation benefits in 1972 replaced an average of just under 20% of lifetime wage losses and just under 26% in 1998..[68] When accounting for wage growth, simulated using a nominal growth rate of 6% annually until a worker reaches 65, the percentage of lifetime wages replaced by workers' compensation ranged from an average of 10% in 1972 to 13% in 1998. Similar to the comparisons of benefits against the poverty threshold and the revised Model Act, benefits relative to wage loss grew slightly in the mid-1970s then faced a slight decline to the 1998 levels.

The study panel also examined wage loss studies of workers' compensation in the 1990s in California, New Mexico, Oregon, Washington, and Wisconsin. The study panel concluded that wage loss studies "are the best yardstick to measure the adequacy of benefits.".[69] These studies test the adequacy of workers' compensation benefits by measuring the percentage of wage loss (the difference in actual wages earned before and after an injury) replaced by workers' compensation benefits. These studies, summarized by the study panel, found average wage loss replacement rates at 10 years after an injury of 37% for California, 46% for New Mexico, 42% for Oregon, 41% for Washington, and 29% for Wisconsin..[70] These results indicate that in the 1990s, workers' compensation benefits in these states were not actually replacing an average of two-thirds of a worker's wage loss, as might be expected by looking only at the statutory benefit provisions.

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[64] *Adequacy of Earnings Replacement in Workers' Compensation Programs,* pp.72-75; and Hunt, "Benefit Adequacy in State Workers' Compensation Programs." p. 25.

[65] *Adequacy of Earnings Replacement in Workers' Compensation Programs,* p. 73.

[66] The provisions of the revised Model Act are at: *Adequacy of Earnings Replacement in Workers' Compensation Programs,* pp. 99-100.

[67] *Adequacy of Earnings Replacement in Workers' Compensation Programs,* pp.84-89; and Hunt, "Benefit Adequacy in State Workers' Compensation Programs." pp. 26-27.

[68] *Adequacy of Earnings Replacement in Workers' Compensation Programs,* pp.89-96.

[69] *Adequacy of Earnings Replacement in Workers' Compensation Programs,* p. 132.

[70] *Adequacy of Earnings Replacement in Workers' Compensation Programs,* pp.106-122; and Hunt, "Benefit Adequacy in State Workers' Compensation Programs." pp. 27-28.

**i. Please summarize the findings of Bhushan and Leigh (2011) with respect to what drives the cost of workers' compensation premiums since the reforms of the 1990s.**

In 2011, Abhinav Bhushan and J. Paul Leigh published the results of a study of trends in work injury rates and workers' compensation costs, in the form of insurance premiums, from 1973 to 2007..[71] Using linear regression, Bhushan and Leigh found that for the period from 1973 to 2007, variables measuring medical inflation (the medical price index) and lost time injuries were positively correlated with insurance premiums while variables measuring potential returns on financial investments made by insurance companies (the Dow Jones Industrial Average and the U.S Treasury bond rate) were negatively correlated with insurance premiums. For the period from 1992 to 2007, the only significant correlation with insurance premiums was the Dow Jones Industrial Average (negative correlation). From these results, Bhushan and Leigh conclude that for the period from 1973-2007, medical price inflation and declining returns on insurance company investments were drivers of workers' compensation costs. For the period from 1992-2007, declining investment returns drove workers' compensation costs. Rising workers' compensation insurance premiums, especially after 1992, were more likely the result of declining insurance company investment returns than increased work injuries or growth in workers' compensation claims. Bhushan and Leigh report that these findings are consistent with the idea that insurance company profits come more from investments than underwriting and that insurers may adjust premiums to account for declining investment returns.

**2. In considering FECA reform proposals over the past decade, GAO and CRS have issued multiple nonpartisan studies analyzing the adequacy of FECA benefits. For example, GAO issued reports in late 2012 (GAO-13-108; GAO-13-142R; GAO-13-143R) and in 2020 (GAO-20-523), and CRS issued reports in 2015 (report RL30387) and 2023 (report 98-972).**

**a. What do these studies say about how FECA benefits at retirement age compare to what federal workers would have received under FERS had they not been injured, both under current compensation structures and proposed reductions at retirement age?**

In 2012 and 2020, the Government Accountability Office (GAO) evaluated how total federal benefits available under the Federal Employees' Compensation Act (FECA) at retirement would compare with what workers would receive at retirement under the Federal Employees' Retirement System (FERS) for a sample of federal beneficiaries and annuitants..[72] Comparisons were made under current law and under a proposal by the Department of Labor (DOL) to reduce the amount of FECA benefits to 50% of a worker's pre-injury wage when the worker reaches the Social Security Full Retirement Age (FRA)..[73] The total package of federal retirement benefits under FECA included FECA compensation and the amount in a beneficiary's Thrift Savings Plan (TSP). Under FERS, the total federal retirement package included the FERS annuity, the TSP, and the amount of an annuitant's Social Security retirement benefits.

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[71] Abhinav Bhushan and J. Paul Leigh, "National Trends in Occupational Injuries Before and After 1992 and Predictors of Workers' Compensation Costs," *Public Health Reports*, vol. 126 (September 2011), pp. 625-634.

[72] U.S. Government Accountability Office, *Federal Employees' Compensation Act: Analysis of Proposed Program Changes*, GAO-13-108, October 2012, https://www.gao.gov/products/gao-13-108; U.S. Government Accountability Office, *Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries*, GAO-13-142R, November 26, 2012, https://www.gao.gov/products/gao-13-142r; and U.S. Government Accountability Office, *Federal Employees' Compensation Act: Comparisons of Benefits in Retirement and Actions Needed to Help Injured Workers Choose Best Option*, GAO-20-523, July 2020, https://www.gao.gov/products/gao-20-523.

[73] For additional information on the Social Security FRA, see CRS Report R44670, *The Social Security Retirement Age*.

The 2012 reports compared federal retirement packages for both non-postal and postal employees in 2010. For both non-postal and postal employees under current law, the median benefits available under FECA were more than 30% higher than under FERS. Under the DOL proposal, FECA benefits for non-postal employees were slightly less than under FERS and equal for postal employees. One limitation of the analysis in the 2012 report was that FERS had not yet been in place for 30 years, thus preventing any FERS employee from having the 30 years of service required for a full annuity. For both non-postal and postal employees, the length of federal service was an important factor in how FECA compared with FERS. Generally, under current law, as the years of federal service increase, the gap between FECA and FERS decreased. However, under the DOL's proposal, increased length of service resulted in an increased gap between FECA and FERS. This is the result of the FERS annuity increasing with additional years of federal service.

The GAO replicated its comparison study in 2020 and now had the benefit of a "mature" FERS that had been in law for more than 30 years. In addition, the 2020 study only looked at Social Security retirement benefits attributable to federal service, unlike the 2012 study which looked at all Social Security benefits available to a FERS annuitant. The results were similar to what was found in 2020 for non-postal employees, while results for postal employees were not comparable to the 2012 results due to changes in the postal employee wage scales.

**b. What do these studies say about how FECA and FERS benefits compare for workers who are injured at younger ages and earlier in what would have been lengthy federal careers?**

The 2020 GAO study compared benefit ratios (median total FECA benefits available in retirement as a percentage of median total FERS benefits available in retirement) under current law and the DOL's proposal to reduce FERS benefits at the Social Security FRA for non-postal FERS annuitants with 25-to-29-year federal careers and non-postal FECA beneficiaries injured at various ages and stages of their federal careers..[74] The GAO found that the age or period in a federal career when an injury occurred had "substantial effects" on the comparisons between FECA and FERS..[75]

Workers whose injuries occurred at age 60 or older or at least 20 years into their federal careers had median FECA benefit packages under current law that were nearly 20% greater than FERS benefits, as they benefited from ample time in their careers to accrue pay increases and contribute to the TSP. The benefit ratio flipped, however, under the DOL's proposal, as the median FECA package was now nearly 10% less than what was available under the FERS package.

For workers whose injuries occurred before they reached age 40 or less than 10 years into their federal careers, the impact of the DOL proposal was more significant. These workers already had negative benefit ratios under current law (i.e., FECA benefits less than FERS benefits). The DOL proposal dropped their benefit ratios such that their median total FECA benefits were now approximately 40% of what would have been available to them had they not been injured and were able to claim the full package of FERS benefits..[76]

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[74] GAO-20-523.

[75] GAO-20-523, p. 17.

[76] GAO-20-523, p. 18.

**c. What do these studies say about the wage replacement rate of FECA beneficiaries with and without dependents, after accounting for taxes on normal wages and the non-taxable FECA compensation?**

In 2012, to determine the wage replacement rate of FECA, the GAO compared FECA benefits for injured workers with the "take home pay" those workers would have been expected to receive had they not gotten injured..[77] Median wage replacement rates were calculated for all workers, non-postal and postal, and then for workers with and without dependents. Under current law, the 2010 simulated median wage replacement rate for all non-postal workers was 80% (81% for workers with dependents, 78% without dependents). For all postal workers, the median FECA wage replacement rate was 88% (89% with dependents, 86% without dependents).

**d. What do these studies say about the effects of compensating all FECA beneficiaries at a single compensation rate, regardless of whether they have dependents, and which beneficiaries this most affects?**

In 2012, the GAO compared wage replacement rates under current law to wage replacement rates under two proposals: (1) a DOL proposal to eliminate augmented compensation for dependents and set FECA benefits to a single rate of 70% of a worker's pre-injury wage and (2) a 2012 Senate proposal to eliminate augmented compensation for dependents and set FECA benefits to a single rate of 66.67% of a worker's pre-injury wage..[78] The median FECA wage replacement rate for all workers decreased under both proposals. Workers with dependents experienced decreased in their wage replacement rates, while those without dependents saw gains under the DOL proposal and no change under the Senate proposal. The table below summarizes the GAO's findings.

**Median FECA Wage Replacement Rates, 2010 (GAO Simulations)**

| | Non-Postal | | | Postal | | |
|---|---|---|---|---|---|---|
| | All Workers | With Dependents | Without Dependents | All Workers | With Dependents | Without Dependents |
| Current Law | 80% | 81% | 78% | 88% | 89% | 86% |
| DOL Proposal | 77% | 76% | 82% | 84% | 83% | 90% |
| Senate Proposal | 73% | 72% | 78% | 80% | 79% | 86% |

**Source:** Congressional Research Service (CRS) table with data taken from GAO-13-108; GAO-13-142R; and GAO-13-143R.

**Note:** "GAO" is Government Accountability Office. "DOL" is Department of Labor.

**e. What do these studies say about how much of a federal worker's final salary FERS retirement benefits are expected to replace (FERS annuity, TSP, and Social Security, combined), based on various assumptions, including how long their career was?**

In 2015, using wage data from that year, the Congressional Research Service (CRS) prepared estimates of the percentage of a federal worker's final salary would be replaced in the first year of retirement by Social

[77] GAO-13-108; and GAO-13-142R.

[78] The Senate proposal was included as Section 303 of the 21st Century Postal Service Act of 2012 (S. 1789) as passed by the Senate in the 112th Congress.

Security,.[79] the FERS annuity, and the TSP, under a variety of assumptions..[80] CRS's estimates are provided in the tables below and apply only to 2015 wage levels.

**Percent of Final Year Salary Replaced by Retirement Components in First Year**

Employee Retiring in 2034 at the Age of 62 After 20 Years of Service

| | Final Pay Grade (2015 Wage Levels) | | | |
|---|---|---|---|---|
| **Retirement Estimates** | **GS-4** | **GS-8** | **GS-12** | **GS-15** |
| Social Security | 39.0% | 32.3% | 25.0% | 25.0% |
| FERS Annuity | 21.2% | 21.2% | 21.2% | 21.2% |
| TSP | | | | |
| *TSP monthly annuity with only 1% agency contribution* | *1.3%* | *1.3%* | *1.3%* | *1.3%* |
| *TSP monthly annuity with 5% from employee and 5% from agency* | *13.2%* | *13.2%* | *13.2%* | *13.2%* |
| *TSP monthly annuity with 10% from employee and 5% from agency* | *19.8%* | *19.8%* | *19.8%* | *19.8%* |

**Source:** CRS table with data from CRS Report RL30387, published in 2015, and additional analysis.

**Notes:** Estimates of income from the TSP are based on a level, single-life annuity at the January 2015 annuity interest rate of 2.375%. Assumes 6% nominal annual rate of investment return on TSP; federal salary at step 8 of pay grades in retirement year; future, average federal salary increases of 4.0% per year; and average inflation rate of 2.7% per year.

[79] Based on estimates from the Social Security Administration (SSA) and calculations by CRS using SSA estimates taken from Table V.C7 of the 2014 *Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds*, for individuals who retire at the age of 65 in 2014, Social Security benefits would replace about 39.0% of career-average earnings for a "scaled medium earnings" hypothetical worker, who has career-average earnings of about $46,787. This earnings profile is similar to a GS-4 federal employee. For a "scaled high earnings" hypothetical worker retiring at the age of 65 in 2014, who has career-average earnings of $74,859 and could be compared with a GS-8 federal employee, Social Security benefits would replace about 32.3% of career-average earnings. Finally, GS-12 and GS-15 employees could be compared with a "steady maximum earnings" hypothetical worker (with career-average earnings at or above the contribution and benefit base of $117,000 in 2014) for whom Social Security benefits would replace about 25% of $117,000 for retirement at 65 in 2014 ($29,209), based on estimates from SSA.

[80] CRS Report RL30387, *Federal Employees' Retirement System: The Role of the Thrift Savings Plan.*

**Percent of Final Year Salary Replaced by Retirement Components in First Year**

Employee Retiring in 2044 at the Age of 62 After 30 Years of Service

| Retirement Estimates | Final Pay Grade (2015 Wage Levels) GS-4 | GS-8 | GS-12 | GS-15 |
|---|---|---|---|---|
| Social Security | 39.0% | 32.3% | 25.0% | 25.0% |
| FERS Annuity | 31.7% | 31.7% | 31.7% | 31.7% |
| TSP | | | | |
| *TSP monthly annuity with only 1% agency contribution* | *2.3%* | *2.3%* | *2.3%* | *2.3%* |
| *TSP monthly annuity with 5% from employee and 5% from agency* | *23.2%* | *23.2%* | *23.2%* | *23.2%* |
| *TSP monthly annuity with 10% from employee and 5% from agency* | *34.8%* | *34.8%* | *34.8%* | *34.8%* |

**Source:** CRS table with data from CRS Report RL30387, published in 2015, and additional analysis.

**Notes:** Estimates of income from the TSP are based on a level, single-life annuity at the January 2015 annuity interest rate of 2.375%. Assumes 6% nominal annual rate of investment return on TSP; federal salary at step 8 of pay grades in retirement year; future, average federal salary increases of 4.0% per year; and average inflation rate of 2.7% per year.

**f. What do these studies say about the average career length of new federal retirees?**

A 2023 CRS report compiled the following data on the average career length of new federal retirees in FY2022, under both the Civil Service Retirement System (CSRS) and FERS, based on data from Office of Personnel Management (OPM)..[81]

[81] CRS Report 98-972, *Federal Employees' Retirement System: Summary of Recent Trends*, pp. 6-7.

**Average Length of Service, in Years, at Retirement**

Annuitants who Retired in FY2022

| Civilian Retirement Category | CSRS | FERS |
|---|---|---|
| Normal Retirement | 40.6 | 24.3 |
| Disability Retirement | 23.7 | 13.2 |
| Involuntary Retirement[a] | 32.7 | 24.6 |
| Voluntary Early Retirement | 28.1 | 26.3 |
| Special Provision Retirement[b] | 37.6 | 25.1 |
| *Total All Retirements*[c] | *39.2* | *23.6* |

**Source:** CRS Report 98-972.

a. Discontinued service retirement after an involuntary separation not due to misconduct or delinquency.

b. Includes law enforcement officers, firefighters, air traffic controllers, and Members of Congress.

c. Includes other, unclassified retirements not shown separately.