



Statement of

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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

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

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

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.

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.

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.

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.

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

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 or 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.

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

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.

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.

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.

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