



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

“Reviewing Workers’ Compensation for Federal Employees”

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Chairman Walberg, Ranking Member Woolsey, and Members of the subcommittee, my name is Scott Szymendera and I am an analyst at the Congressional Research Service. Thank you for inviting me to testify before the Subcommittee on Workforce Protections on workers’ compensation for federal employees.

For nearly 100 years, members of America’s civil service have been protected from economic losses associated with employment-related injuries and illnesses, and their families have been protected in cases of employment-related deaths, by the Federal Employees’ Compensation Act, or FECA, a workers’ compensation program administered by the Department of Labor. In my testimony today, I will provide an overview of workers’ compensation in the United States, the original intent of Congress when creating FECA, a legislative history of the FECA program, and a plain-language summary of the features of the FECA program that serves federal employees today.

Overview of Workers’ Compensation

Origins of Workers’ Compensation

This year marks the 100th anniversary of workers’ compensation 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,

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. In 1911, Wisconsin enacted a workers’ compensation law that is now generally considered to be the first such law in the United States.

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 “the 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 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 100-year 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

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.

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.

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 1970 Occupational Safety and Health Act 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 97% of all workers covered by the unemployment insurance system are also 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 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

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 and in some states and under FECA, 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

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 Ishita Sengupta, Virginia Reno, and John F. Burton, Jr., *Workers' Compensation: Benefits Coverage, and Costs, 2008*, National Academy of Social Insurance, Washington, DC, September 2010, p. 8.

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

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.⁸ Disability benefits are generally subject to system-specific minimum and maximum levels which are often based on average wages in a state. Benefits generally last for the duration of disability, however, 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.

Legislative History of FECA

The FECA program has its origins in a law from the late 1800's 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 1974.⁹ 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 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.¹⁰ In 1908, Congress passed a more comprehensive workers' compensation law for federal employees engaged in certain hazardous

⁸ 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)).

⁹ This section of my testimony does not discuss minor, technical, or administrative amendments.

¹⁰ 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.

occupations such as laborers at federal manufacturing facilities and arsenals or working on the construction of the Panama Canal. 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 only one-fourth of the federal workforce was covered by the 1908 law and the law was clearly designed only to provide coverage for what were seen to be the most hazardous jobs in the civil service.¹¹ 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 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."¹²

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 act remains the basis for the workers' compensation system for the federal civil service.

The FECA act provided coverage for nearly all civilian employees of the federal government injured or killed in line of duty. Coverage was not provided for occupational illnesses.¹³ 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 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.

¹¹ Willis J. Nordlund, "The Federal Employees' Compensation Act," *Monthly Labor Review*, September 1991, p. 5, hereafter cited as Nordlund 1991.

¹² 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.

¹³ Coverage for occupational illnesses was added to the FECA program in 1924 by P.L. 68-195.

Congressional Intent

Bringing the federal system in line with the states

Congress had several clear intentions when drafting the FECA act in 1916. One such intention 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.”¹⁴ 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.¹⁵

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.¹⁶

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.¹⁷

Senator Sutherland reinforced his point with a rather 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.”¹⁸

Major FECA Amendments

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

¹⁴ 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.

¹⁵ *Ibid.*, p. 9.

¹⁶ *Ibid.*, p. 8.

¹⁷ 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.

¹⁸ *Ibid.*

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 Committee on Education and Labor, sought to “modernize and liberalize” the FECA program, which, according to the Senate Committee on Labor and Public Welfare provided “only illusory security for most workers or their families.”¹⁹

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

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 increase in the maximum benefit level was necessary since, at the time, it was estimated by the Department of Labor that 90% of FECA cases involved workers with wages that were essentially not covered by the program because of the low maximum benefit level.²⁰

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 program.

The 1949 amendments provided for augmented compensation, in the amount of 8.33% of a workers' 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 workers' 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 insure 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.”²¹ Similar

¹⁹ 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, hereafter cited as H. Rept. 81-729; 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. 29, hereafter cited as S. Rept. 81-836.

²⁰ Nordlund 1991, p. 10.

²¹ H. Rept. 81-279, p. 11; and S. Rept. 81-836, p. 20.

concerns over the adequacy of the two-thirds benefit level were expressed at a House Committee on Education and Labor hearing on the 1949 amendments.²²

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.²³

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 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.²⁴

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, the passage after 1916 of laws such as the Federal Tort Claims Act which 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,

²² 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.

²³ *Ibid.*

²⁴ H. Rept. 81-279, p. 16; and S. Rept. 81-836, p. 24.

employees felt that they could secure greater financial benefits from the courts than from the FECA program.²⁵

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 agency may reimburse the Employees' Compensation Fund. In addition, these amendments required that 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.²⁶

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 to be in effect today.

Use of the GS 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 Committee on Labor and Public Welfare, the statutory maximum provided for full benefits for over 99% of claimants in 1949, but only 85% of claimants by 1966.²⁷ 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) 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.²⁸ This annual adjustment is a unique feature of the FECA program not found in other workers' compensation systems.

²⁵ H. Rept. 81-279, p. 14; and S. Rept. 81-836, p. 23.

²⁶ 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.

²⁷ 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.

²⁸ The current cost-of-living adjustment is based on changes in the Consumer Price Index (all items-United States city average).

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 is reduced by all standard payroll deductions.

Congress felt 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 Committee on Labor and Public Welfare cited a General Accounting Office 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."²⁹

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 the this provision brought the FECA program in line with that recommendation as well as some other workers' compensation systems.

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 Committee on Labor and Public Welfare 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.³⁰

²⁹ 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, hereafter cited as S. Rept. 93-1081; 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.

³⁰ S. Rept. 93-1081, p. 7.

Recent FECA Amendments

There have been no major amendments to the FECA program since 1974. However, the 109th and 110th Congresses did make changes to FECA that partially address two of the issues currently facing the program.

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. 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.

This provision 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 Postal Service's workers' compensation costs. Because of what the commission termed the "unique businesslike charter" of the Postal Service, the commission recommended that the service's workers' compensation system become more in line with the state workers' compensation systems that provide coverage for most private-sector businesses.³¹

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

American military operations in Iraq and Afghanistan have been supported by an unprecedented number of civilian employees, some of whom are serving in hostile areas alongside the armed forces. These deployed civilian employees are covered by FECA, but concerns have been 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 and Veterans Affairs.³²

Section 1105 of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110-181, provides 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.

³¹ 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.

³² 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.

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 5 U.S.C. §§ 8101 *et seq.* Regulations implementing the FECA are provided at 20 C.F.R. §§ 10.00-10.826. 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 the Department of Labor through the appropriations process. In addition, the United States Postal Service 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, no injury, illness, or death may be compensation 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 claims 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.³³ 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 United States Postal Service must satisfy a three-day waiting period before becoming eligible for continuation of pay.

³³ Certain groups, including federal jurors, Peace Corps volunteers, and Civil Air Patrol members, are not 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, 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.³⁴ 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.

Total Disability

If an employee is unable to work at all, then he or she is 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.

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:

³⁴ The list of FECA scheduled benefits are provided in statute at 5 U.S.C. § 8107(c) and in regulation at 20 C.F.R. § 10.40(a).

- 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.

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.
