

**STATEMENT OF JOHN KLINE (R-MN)**  
**CHAIRMAN, COMMITTEE ON EDUCATION AND THE WORKFORCE**  
**CONSIDERATION OF H.R. 2465,**  
***THE FEDERAL WORKERS' COMPENSATION AND MODERNIZATION AND***  
***IMPROVEMENT ACT***  
**BROUGHT BEFORE THE HOUSE UNDER THE SUSPENSION OF THE RULES**

I am pleased to offer the following Managers' Joint Statement of Legislative Intent on H.R. 2465, the *Federal Workers' Compensation Modernization and Improvement Act*, which I also offer on behalf of the Senior Democratic Member of the Committee on Education and the Workforce, Mr. George Miller (D-CA), and the Chairman and Senior Democratic Member of the Committee's Subcommittee on Workforce Protections, Mr. Tim Walberg (R-MI) and Ms. Lynn Woolsey (D-CA).

**Joint Statement of Legislative Intent on**  
**H.R. 2465, the *Federal Workers' Compensation Modernization and Improvement Act***

**Purpose**

H.R. 2465 amends the *Federal Employees' Compensation Act* (FECA), 5 U.S.C. §§ 8101 *et seq.*, the federal statute providing workers' compensation benefits to federal employees who become injured or ill due to a work-related activity. As further discussed below in the Joint Statement of Legislative Intent, the bill enhances the efficiency of the FECA program, which is administered by the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP); improves the integrity of the FECA program; and modernizes two FECA benefit levels that have not been adjusted for inflation in over six decades.

**Committee Action**

On May 12, 2011, the Committee on Education and the Workforce, Subcommittee on Workforce Protections, held a hearing entitled, "*Reviewing Workers' Compensation for Federal Employees.*" The purpose of the hearing was to review the current state of the FECA program and discuss ways to improve and modernize FECA. Testifying before the subcommittee were: Mr. Scott Szymendera, Congressional Research Service, U.S. Library of Congress, Washington, D.C.; Mr. Daniel Bertoni, Director of Education, Workforce, and Income Security, U.S. Government Accountability Office, Washington, D.C.; Mr. Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, D.C.; Ms. Susan Carney, Director, Human Relations Department, American Postal Workers Union, Washington, D.C.; and Mr. Elliot Lewis, Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Labor, Washington, D.C. Testimony for the record was submitted by the National Treasury Employees Union, the American Federation of Government Employees, AFL-CIO, and the National Active and Retired Federal Employees Association.

On July 8, 2011, I introduced H.R. 2465, along with cosponsors Reps. Miller, Walberg, and Woolsey. The Committee on Education and the Workforce considered H.R. 2465 in legislative session on July 13, 2011, and ordered the bill favorably reported to the House of Representatives by voice vote. There were no amendments.

The committee received letters of support for H.R. 2465 from the following organizations: the American Academy of Physician Assistants, the American Association of Nurse Anesthetists, the American College of Nurse-Midwives, the American College of Occupational and Environmental Medicine, the American Nurses Association, the American Postal Workers Union, the Federal Law Enforcement Officers Association, the National Active and Retired Federal Employees Association, the National Treasury Employees Union, the American Federation of Government Employees, the Workers' Injury Law & Advocacy Group, the National Association of Clinical Nurse Specialists, and the National Association of Letter Carriers.

H.R. 2465 represents the committee's initial consideration of reforms to FECA. The committee concluded the FECA reform package advocated by DOL lacked sufficient information to consider the impact of DOL's wider reforms. The DOL Inspector General testified before the committee on May 12, 2011, that before changes to the benefit structure are considered, "careful consideration is needed to ensure that the percent of benefits ultimately established will have the desired effect while ensuring fairness to injured workers, especially those who have been determined to be permanently impaired and thus unable to return to work." The May 12 hearing showed that DOL's reforms could have unintended adverse consequences and highlighted that further assessment would be needed. To that end, on July 8, 2011, the four sponsors of this legislation asked the Government Accountability Office (GAO) to evaluate the consequences of administration proposals to: modify FECA related to benefit levels when permanently injured employees reach social security retirement age; reduce benefit levels for individuals with dependents; and establish a three-day waiting period before FECA benefits can begin. GAO findings will inform further consideration of FECA program changes.

### **Joint Statement of Legislative Intent**

#### **Section 2. Physician Assistants and Advanced Practice Nurses.**

Section 2 amends FECA §§ 8101(3) (definition of "medical, surgical, and hospital services and supplies") to provide that the definition of "medical services" under FECA may include "treatment by a physician assistant or advanced practice nurse, such as a nurse practitioner, within the scope of the practice as defined by state law, consistent with regulations prescribed by the Secretary of Labor."

Section 2 amends FECA § 8103 (medical services and initial medical and other benefits) to provide explicitly that a "physician assistant or advanced practice nurse, such as a nurse practitioner," may provide "medical services" under FECA "within the scope of their practice as defined by state law, consistent with regulations prescribed by the Secretary of Labor."

Section 2 amends FECA § 8121(6) (certification of claims) to authorize a "physician assistant or advanced practice nurse, such as a nurse practitioner, within the scope of their practice as defined by state law," to certify a traumatic injury and the probable extent of related disability during the 45-day continuation of pay period covered by section 8118, in a manner consistent with regulations prescribed by the Secretary of Labor.

Expanding services provided by physician assistants and advanced practice nurses improves program efficiency by allowing injured federal workers to utilize local clinics or other health service providers in which only a physician assistant or advanced practice nurse is on site; expanding the number of providers eligible to provide certification of injury and the probable extent of disability for traumatic injuries with respect to claims for continuation of pay; and expanding eligible medical services providers, which is of particular benefit to those in rural areas and zones of armed conflict. The term “advanced practice nurse” may include, but is not limited to, nurse anesthetists, nurse practitioners, clinical nurse specialists, nurse midwives, and nurse psychotherapists, within the scope of their practice as defined by state law.

### **Section 3. Covering Terrorism Injuries.**

Section 3 amends FECA § 8102(b) (compensation for disability or death of employee) to provide that a disability or death as a result of “an attack by a terrorist or terrorist organization, either known or unknown,” is “deemed to have resulted from personal injury sustained while in the performance of duty,” under FECA’s “war-risk hazard” provision. This codifies current OWCP practice of covering such disabilities or deaths as “war-risk hazards.”

### **Section 4. Disfigurement.**

Section 4 amends FECA § 8107(c)(21) (compensation schedule for scheduled awards) to increase the maximum amount payable for “serious disfigurement of the face, head, or neck” from \$3,500 to \$50,000. This amount has not been increased since 1949. The maximum will be adjusted for inflation on March 1 of each year in accordance with FECA § 8146a (cost-of-living adjustment of compensation).

Section 4 eliminates the current statutory requirement that disfigurement must be “of a character likely to handicap an individual in securing or maintaining employment.” Rather, pursuant to Section 4, scheduled awards will be made solely in proportion to the severity of the disfigurement, as determined by the Secretary of Labor.

Section 4 will apply to injuries occurring in the 3-year period prior to the date of enactment and for which the Secretary of Labor has not made a compensation determination on disfigurement, or for injuries which occur on or after the date of enactment.

### **Section 5. Social Security Earnings Information.**

Section 5 amends FECA § 8116 by adding a new subsection (e) authorizing the Secretary of Labor to require FECA claimants, as a condition of receiving FECA benefits, to authorize the Social Security Administration (SSA) to release earnings information to DOL. The purpose of this provision is to enable DOL to discover instances in which claimants are not disclosing earnings information to DOL as they are required to under FECA.

The FECA statute anticipates that the Secretary of Labor will require FECA claimants to submit reports of earnings, and further states that a claimant who fails to submit such a report or knowingly omits such earnings forfeits entitlement to compensation under FECA for the period

covered by that report. However, the statute currently contains no mechanism whereby DOL can cross-check such reports with claimants' SSA earnings. Receipt of FECA benefits for total disability, when a claimant is, in fact, earning a wage, is antithetical to one of the statute's fundamental purposes.

Section 5 will permit DOL to obtain individual earnings reports from SSA, which are needed to verify whether individual FECA claimants have earnings not reported to DOL. Section 5 will also permit DOL and SSA to conduct computer matches between a list of claimants produced by DOL by allowing DOL to provide SSA with such a list and a certification that each of the claimants on the list has consented to the release of SSA earnings information by virtue of and as part of his or her application for FECA benefits. This will conserve scarce DOL resources by avoiding the need to obtain from the claimant and provide to SSA individual consent forms. Ultimately, Section 5 will increase the ability of DOL to detect unreported earnings by FECA claimants.

### **Section 6. Continuation of Pay in a Zone of Armed Conflict.**

Section 6 amends FECA § 8118 (continuation of pay) to provide continuation of pay for wage loss due to traumatic injury in performance of duty in a designated zone of armed conflict, as defined in this Section, for a period not to exceed 135 days, so long as the employee files a claim for such benefit no longer than 45 days after terminating service in the zone of armed conflict or the employee's return to the United States, whichever occurs later.

### **Section 7. Subrogation of Continuation of Pay.**

Section 7 amends FECA §§ 8131 (subrogation) and 8132 (adjustment after recovery from third party) to authorize the United States to recover continuation of pay benefits received under FECA § 8118, if such damages were paid to a FECA beneficiary by a third party (other than the United States), subject to the existing formula in FECA. This right to recover continuation of pay is in addition to the existing right of the government to secure reimbursement of compensation benefits.

### **Section 8. Funeral Expenses.**

Section 8 amends FECA § 8134 (funeral expenses) to increase the amount payable for funeral expenses for deaths occurring on or after the date of enactment from the current \$800 to \$6,000. This amount has not been increased since 1949. The maximum will be adjusted for inflation on March 1 of each year in accordance with FECA § 8146a (cost-of-living adjustment of compensation).

### **Section 9. Employees' Compensation Fund.**

Section 9 amends FECA § 8147 to allow for administrative expenses for appropriated fund agencies to be paid out of the Employees' Compensation Fund and for a pro-rata share of administrative expenses to be included in agencies' annual chargeback. Currently, DOL charges non-appropriated fund agencies, such as the U.S. Postal Service, for administrative costs on a pro

rata basis, while the administrative expenses for all other agencies are appropriated on an annual basis to DOL. This provision will have no net effect on the budget of the federal government.

#### **Section 10. Conforming Amendment.**

Section 10 amends FECA § 8101(1) (definition of “employee”) to update the law to acknowledge that on May 3, 1979, District of Columbia employees became covered under the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139; D.C. Official Code § 1-601.01, *et seq.*, instead of FECA.

#### **Section 11. Effective Date.**

This section provides that unless specified otherwise in the *Federal Workers’ Compensation Modernization and Improvement Act*, the effective date of this Act is 60 days after the date of enactment.

#### **CBO Cost Estimate**

The Congressional Budget Office estimates that enacting these changes would reduce net direct spending by \$22 million over the 2012-2021 period, including \$6 million in on-budget savings and \$16 million in off-budget savings (to the U.S. Postal Service).

Over the 10 year period there would be a very slight decrease in spending subject to appropriation (< \$500,000).