



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

**“Examining the Labor Department's Proposed Reforms to the FECA Program”**

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Chairman Walberg, Ranking Member Courtney, 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 administered by the Department of Labor.

Since 1916, federal employees 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 FECA. My testimony today will focus on two provisions of the Department of Labor's FECA reform proposal: the elimination of augmented compensation for dependents coupled with an increase in the base rate of compensation; and the creation of a lower benefit rate for workers who receive benefits after reaching retirement age.<sup>1</sup>

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<sup>1</sup> For additional information on the Department of Labor's FECA reform proposal see Department of Labor, *FY2014 Congressional Budget Justification, Office of Workers' Compensation Programs, Overview*, February 2013, pp. 4-5; and 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. For an analysis of the Department of Labor's FECA reform proposal see U.S. Government Accountability Office, *Federal Employees' Compensation Act: Analysis of Proposed Program Changes*, GAO-13-108, October 2012.

## Brief Overview of FECA<sup>2</sup>

In FY2012, there were 97,238 new, non-denied FECA cases created.<sup>3</sup> Of these cases, 48,967 involved lost time from work and 48 were cases of workplace fatalities.<sup>4</sup> During FY2012 the FECA program paid \$3.025 billion in benefits, including over \$1.956 billion in disability compensation, \$929 million in medical and vocational rehabilitation services, and \$140 million in survivors benefits.<sup>5</sup>

### Statutory and Regulatory Authorities

The FECA program is authorized in statute at 5 U.S.C. §§ 8101 *et seq.* Regulations implementing 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.

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.

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<sup>2</sup> For a more complete overview of the FECA program see CRS Report R42107, *The Federal Employees' Compensation Act (FECA): Workers' Compensation for Federal Employees*, by Scott Szymendera; and 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 Scott Szymendera.

<sup>3</sup> The number of new non-denied FECA cases includes all new injury, illness, and fatality cases submitted to the Department of Labor, less any denied cases. The Department of Labor reports a total of 115,697 new FECA cases created in FY2012 [Department of Labor, Office of Workers' Compensation Programs, *Division of Federal Employees' Compensation: About our Program*, <http://www.dol.gov/owcp/dfec/about.htm>].

<sup>4</sup> Department of Labor, Occupational Safety and Health Administration, *Federal Injury and Illness Statistics for Fiscal Year 2012*, [http://www.osha.gov/dep/fap/statistics/fedprgms\\_stats12\\_final.html](http://www.osha.gov/dep/fap/statistics/fedprgms_stats12_final.html).

<sup>5</sup> Department of Labor, Office of Workers' Compensation Programs, *Division of Federal Employees' Compensation: About our Program*, <http://www.dol.gov/owcp/dfec/about.htm>.

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## 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, conditions caused by the willful misconduct or intoxication by alcohol or any other drug of the employee are not covered by FECA.

## 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.

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 for up to 45 days.<sup>6</sup> 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.

### 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 and without dependents, 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 a spouse or at least one dependent, a monthly benefit equal to 75% of the difference between the employee's pre-disability and post-disability monthly wage.

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<sup>6</sup> Certain groups, including federal jurors, Peace Corps volunteers, and Civil Air Patrol members, are not eligible for continuation of pay. Employees of the United States Postal Service must satisfy a three-day waiting period before becoming eligible for continuation of pay.

The compensation benefits paid for partial disability are capped at 75% of the maximum basic pay at rate GS-15 (GS-15, Step 10), are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.

### *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 which pays benefits for a set period of time provided in statute or regulation.<sup>7</sup> 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.

### **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 and without dependents, a monthly benefit equal to two-thirds of the employee's pre-disability monthly wage; or
- if the employee has a spouse or 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 (GS-15, Step 10), are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.<sup>8</sup> 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:

- 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 or a spouse remarries after the death of the worker. Benefits for a child 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.

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<sup>7</sup> 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).

<sup>8</sup> Currently 21 states, the District of Columbia, and the federal Longshore and Harbor Workers' Compensation Act provide some form of a cost-of-living adjustment to permanent total disability benefits.

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The compensation benefits paid for death are capped at 75% of the maximum basic pay at rate GS-15 (GS-15, Step 10), are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.<sup>9</sup>

## 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. 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 reflect his or her increased wage earning capacity that likely would have resulted from participation in vocational rehabilitation.

## Department of Labor's FECA Reform Proposal

The Department of Labor has proposed a package of reforms to the FECA program intended to improve the return-to-work rate and rehabilitation of injured federal workers; update the FECA benefit structure; and modernize the program which has not been significantly amended since 1974.<sup>10</sup> Included in the Department of Labor's reform proposal are the following two provisions that, if enacted, would make significant changes to the structure of disability benefits paid by the FECA program:

1. elimination of augmented compensation for dependents and the creation of a new uniform basic benefit rate of 70% of the worker's pre-disability wage; and
2. conversion of FECA beneficiaries to a new benefit rate of 50% of the workers' pre-disability wage upon reaching Social Security full retirement age.<sup>11</sup>

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<sup>9</sup> The personal representative of the deceased may also be eligible for reimbursement of certain costs associated with terminating the deceased employee's formal relationship with the federal government, funeral expenses, and costs associated with shipping a body from the place of death to the employee's home. In addition, any 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 and employees of certain agencies such as the State Department may be eligible for additional death gratuities administered by their agencies for deaths that occur overseas.

<sup>10</sup> 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.

<sup>11</sup> The Social Security full retirement age ranges from 65 for persons born in 1937 or earlier to 67 for persons born in 1960 or later. For additional information on the full retirement age see CRS Report R41962, *Fact Sheet: The Social Security Retirement Age*, by Gary Sidor.

My testimony will focus on these two provisions.

## Elimination of Augmented Compensation and Creation of a New Uniform Basic Benefit Rate

### Current Law

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 benefit is equal to either of these two basic benefit amounts (66.67% or 75%) and in the case of a partial disability; the amount of benefits is a percentage of either of these two basic benefit amounts.

### 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<sup>12</sup> and was based on state workers' compensation laws in place at the time. In its report on the legislation, the House Judiciary Committee stated that the FECA benefit rates were "in line with the best precedents found in State compensation acts" especially those in Massachusetts, New York, and Ohio.<sup>13</sup>

Augmented compensation for workers with dependents or spouses was added to the FECA program as part of the Federal Employees' Compensation Act Amendments of 1949, P.L. 81-357. 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."<sup>14</sup> 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.<sup>15</sup>

### Proposed Change

The Department of Labor's proposal would eliminate augmented compensation in cases in which a worker has a dependent child or spouse. In addition, the proposal would raise the basic benefit level for

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<sup>12</sup> Federal Employees' Compensation Act, P.L. 64-267.

<sup>13</sup> 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), pp. 7-9.

<sup>14</sup> 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.

<sup>15</sup> 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].

all workers, regardless of whether or not they have any dependents or a spouse, to 70% of the worker's pre-disability wage.

## Comparison to Other Workers' Compensation Programs

### *Basic Benefit Rate*

In the majority of state workers' compensation systems, the basic permanent total disability benefit is two-thirds of a worker's 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.<sup>16</sup> In addition, benefits under the federal Longshore and Harbor Workers' Compensation Act are also set at two-thirds of the pre-disability wage.<sup>17</sup> New Hampshire's benefit rate is 60% of the worker's pre-disability wage.

Currently, four 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 average wage.<sup>18</sup> In Ohio, benefits are paid at 72% of the pre-disability wage for the first 12 weeks, and then are reduced to the standard two-thirds rate.

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 federal Longshore and Harbor Workers' Compensation Act or any comparable state workers' compensation system except Texas.

The uniform basic FECA benefit rate of 70% of the worker's pre-disability wage proposed by the Department of Labor would be higher than the basic benefit rates in 39 states, the District of Columbia, and under the federal Longshore and Harbor Workers' Compensation Act; equal to the basic benefit rates in New Jersey and Oklahoma; and lower than the basic benefit rates in Texas and for the first 12 weeks of benefits in Ohio.

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<sup>16</sup> Workers' Compensation Research Institute and International Association of Industrial Accident Boards and Commissions, *Workers' Compensation Laws as of January 2012*, Cambridge, MA, March 2012, Table 5.

<sup>17</sup> For additional information on the Longshore and Harbor Workers' Compensation Act see CRS Report R41506, *The Longshore and Harbor Workers' Compensation Act (LHWCA): Overview of Workers' Compensation for Certain Private-Sector Maritime Workers*, by Scott Szymendera.

<sup>18</sup> 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.

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## Maximum Benefits

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. When comparing maximum benefits available, it is important to note that while these are the maximum benefits available, the individual benefits available to each claimant are based on that claimant's individual circumstances and pre-disability wage and that absent additional data, it is not possible to estimate the number of claimants in FECA program or any other workers' compensation system whose benefits are reduced because they reach the program's maximums.

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 2013, the annual salary at GS-15, Step 10, is \$129,517, whereas the average federal salary for the executive branch in December 2012 was \$76,913.<sup>19</sup> Thus, the maximum FECA benefit under the current system is higher than it would be if the FECA system based its maximum benefit level on average wages as is the case in the majority of the states.

The maximum FECA benefit, when calculated on a per-week basis is \$1,868 which is higher than the current maximum weekly benefit available in any state or under the federal Longshore and Harbor Workers' Compensation Act. For example, the maximum weekly benefit for non-federal workers in the District of Columbia is based on 100% of the District's average weekly wage and is currently \$1,416, or approximately 76% of the FECA maximum.<sup>20</sup> In Mississippi, the state with the lowest maximum benefit for permanent total disability, the maximum weekly benefit is based on two-thirds of the state's average weekly wage and is currently \$449.12, or 24% of the FECA maximum.<sup>21</sup> In Texas, the only state that matches the augmented FECA compensation level of 75% of a workers' pre-injury wage, the weekly maximum for permanent total disability benefits (referred to as Lifetime Income Benefits in Texas) is based on 100% of the state's average weekly wage and is currently \$818, or 44% of the FECA maximum.<sup>22</sup>

## Conversion of Benefits at Retirement Age

### Current Law

Under current law, FECA benefits for permanent total disability are payable for the duration of the worker's disability, or for his or her lifetime. There is no maximum duration of FECA benefits and

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<sup>19</sup> Information on the GS-15 salary rate taken from the website of the Office of Personnel Management (OPM) at <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/ga.pdf>. Information on average federal salary taken from the OPM FedScope system online at <http://www.fedscope.opm.gov/>.

<sup>20</sup> District of Columbia Department of Employment Services, *Workers' Compensation FAQ's*, <http://does.dc.gov/node/192372>.

<sup>21</sup> Mississippi Workers' Compensation Commission, *Mileage, Weekly Maximum and Lifetime Disability Rates*, [http://www.mwcc.state.ms.us/faq/\\_rates.asp#2013](http://www.mwcc.state.ms.us/faq/_rates.asp#2013).

<sup>22</sup> Texas Department of Insurance, *State Average Weekly Wage (SAWW) / Maximum and Minimum Weekly Benefits*, <http://www.tdi.texas.gov/wc/employee/maxminbens.html>.



workers are given the option of converting from FECA to their federal employee retirement system, but are not required to do so.

Benefits under FECA, unlike federal pension benefits, are not subject to taxation. In addition, FECA beneficiaries covered by the Federal Employees' Retirement System (FERS) may not contribute to either Social Security or the Thrift Savings Plan (TSP) while receiving FECA benefits.<sup>23</sup> Thus, these employees, especially those who were permanently disabled early in their federal careers, may only be entitled to low Social Security benefit amounts and may have low TSP balances to draw from upon retirement.<sup>24</sup>

Because the cost 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 agency's budgets. Unlike in the case of federal retirement benefits, there is no cost-sharing by the employees themselves who pay a portion of their federal retirement through payroll contributions.

## *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 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.<sup>25</sup> In addition, the Department of Labor 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-

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<sup>23</sup> P.L. 108-92, enacted in 2003, increased the FERS basic annuity from 1.0% of the individual's high-three years of average pay to 2.0% of high-three average pay for the duration of the period when the worker received FECA benefits. For additional information on this provision see CRS Report RS22838, *Disability Retirement for Federal Employees*, by Katelin P. Isaacs.

<sup>24</sup> For additional information on FERS see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*, by Katelin P. Isaacs. For additional information on the relationship between FECA and federal retirement systems see U.S. Government Accountability Office, *Federal Employees' Compensation Act: Analysis of Proposed Program Changes*, GAO-13-108, October 2012.

<sup>25</sup> 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.

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.<sup>26</sup>

### ***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 Federal Employees' Compensation Act Amendments of 1974, P.L. 93-416. 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.<sup>27</sup>

### **Proposed Change**

The Department of Labor's proposal would create 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. 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 the Department of Labor, the goal of this new benefit is 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.<sup>28</sup> Under this proposal, FECA beneficiaries would retain the right to choose between remaining in the FECA program with the reduced Conversion Entitlement Benefit, or leaving the FECA program and receiving their federal retirement benefits.

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

In 39 states and under the federal Longshore and Harbor Workers' Compensation Act, workers' compensation benefits for permanent total disabilities are paid for the duration of disability or the life of the worker.<sup>29</sup> Thus, the FECA program is currently in line with the practices of a majority of the workers' compensation systems in the country.

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<sup>26</sup> Ibid., statement of John W. Gibson.

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> Workers' Compensation Research Institute and International Association of Industrial Accident Boards and Commissions, Workers' Compensation Laws as of January 2012, Cambridge, MA, March 2012, Table 5.

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In three states—Indiana, North Carolina,<sup>30</sup> and South Carolina—and the District of Columbia, workers’ compensation benefits for permanent total disabilities terminate after a set number of weeks of benefit receipt. For example, in Indiana, benefits are terminated after 500 weeks. In four additional states—Florida, Montana, Tennessee, and West Virginia—benefits terminate when the beneficiary reaches an age provided in statute, such as age 75 in Florida. Benefits in Kansas are terminated once a beneficiary has received a total lifetime amount of benefits and termination in Mississippi comes either after a set number of weeks or after a total amount of benefits has been received. Benefits in Georgia are paid for the duration of disability only in cases of catastrophic injuries. In other cases, such as occupational illnesses, benefits terminate after 400 weeks.

North Dakota is the only state that converts a worker’s benefit to a lower benefit at retirement age. In North Dakota, once a worker reaches Social Security full retirement age, his or her workers’ compensation disability benefits are terminated and replaced with an “Additional Benefit Payable” that ranges from 5% of the worker’s previous benefit for workers who were disabled for less than three years to 50% of the previous benefit for workers who were disabled for more than 30 years.<sup>31</sup> The Additional Benefit Payable is payable for a length of time equal to the length of time that the worker received workers’ compensation benefits.

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<sup>30</sup> In North Carolina benefits can be extended beyond 500 weeks if it is determined that the worker has sustained a total loss of wage-earning capacity.

<sup>31</sup> N.D. Cent. Code § 65-05-09.4. There is an exception to this provision for workers who can prove that they are not entitled to Social Security or any other type of retirement benefit.

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