



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

**STATEMENT OF
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before the

**SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE
FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
UNITED STATES SENATE**

on

**“EXAMINING THE FEDERAL WORKERS’ COMPENSATION PROGRAM FOR
INJURED EMPLOYEES”**

July 26, 2011

Chairman Akaka, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to testify today regarding the Office of Personnel Management’s (OPM’s) views on retirement issues related to legislative reform proposals to the Federal Employees Compensation Act (FECA). Administered by the Department of Labor’s Office of Workers’ Compensation Programs (OWCP), FECA is a robust program that provides workers’ compensation coverage to approximately 2.8 million Federal civilian employees, including those in the U.S. Postal Service.

I will defer to the Department of Labor (DOL) to provide a more comprehensive overview of the various FECA reform proposals. However, I look forward to discussing OPM’s support of a workers’ compensation system that is equitable to employers and employees, concerns with retirement changes under FECA reform proposals, and efforts to improve opportunities for Federal employment of individuals with disabilities.

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Proposals to Reform FECA

The current workers' compensation system provides a reasonable benefit comparable to an employee's income when they were able to work. When an employee reaches retirement age, however, the FECA benefits in many instances are more generous compared to what the employee would receive as a retiree. While retirement eligible employees under FECA have the right to elect coverage under their retirement plan, there is little incentive to do so because the workers' compensation benefits far exceed those benefits available under employees' retirement plans. The average Federal employee voluntarily retiring under the Civil Service Retirement System (CSRS) receives an annuity of about 60 percent of their "high-three" average salary, most of which is taxable, compared to a tax free 75 percent or 66.66 percent FECA benefit. Therefore, the vast majority of long-term FECA claimants remain on the FECA rolls well past retirement age.

To address the retirement equity issue under FECA, the DOL and Senator Susan Collins have offered two different reform proposals. The President's budget request for fiscal year 2012 proposes reforms to the current FECA program that would standardize FECA benefits, allow for a retirement conversion benefit, and result in cost savings. The proposal from DOL would reduce a retirement eligible FECA claimant's benefits to 50 percent of their gross salary at date of injury (with cost of living adjustments), a level closer to what their retirement benefit would have been after a career of service. This concept has the advantage of simplicity and uniformity of coverage. Regardless of an individual's particular retirement system, the claimant would be treated fairly and equitably upon reaching retirement age. In addition, FECA claimants would not change coverage systems from workers' compensation to one of the retirement programs. The President's budget estimates the FECA reform proposal would have Government-wide savings of more than \$400,000,000 over ten years.

Legislation introduced by Senator Collins, S. 261, the Federal Employees' Compensation Reform Act, would take retirement eligible individuals off the compensation rolls and place them onto retirement rolls. We have strong concerns with the approach taken by S. 261, which we have detailed below, and believe that the approach offered by the DOL proposal represents a more fair and equitable treatment under FECA reform.

The House Education and the Workforce Committee recently approved a bipartisan FECA reform bill, H.R. 2465, which incorporates portions of the Administration's FECA proposal, but does not affect issues with retirement. As such, we will not comment on the legislation at this time.

Comments on S. 261, the Federal Employees' Compensation Reform Act

S. 261 would require a system change, and at Social Security retirement age, FECA benefits would terminate if the individual were eligible for a CSRS or Federal Employee Retirement System (FERS) annuity. The bill, however, makes no provision for any other retirement changes.

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Employees and employers do not make retirement contributions, including into Social Security or the Thrift Savings Plan (TSP) for those employees enrolled in FERS, while an employee is receiving workers compensation benefits. While the conversion concept would deal with all individuals receiving compensation regardless of their retirement system, S. 261 would only apply to employees covered by CSRS and FERS. However, while CSRS and FERS do cover the majority of Federal employees, there are numerous retirement systems that cover Federal employees such as the Foreign Service or Federal Reserve. To fully cover all individuals, the system change concept would require that these retirement plans be amended.

As drafted, S. 261 would provide for retirement based only upon employment performed before an employee's injury. This could result in many individuals being placed in extreme financial hardship with a very small annuity and without health benefits. While differences would depend upon circumstances, it would be plausible that a \$4,000 per month beneficiary could be converted to a \$300 per month annuitant with no health benefits. Another possibly unintended and inequitable consequence is that individuals with the least amount of service at the time of their injuries and who would not meet annuity requirements would not be subject to S. 261 and therefore would receive much higher benefits than injured employees with more service.

Even though individuals who concurrently apply for FECA benefits and FERS disability benefits will have their FERS benefit recomputed at age 62 with added service credit and an enhanced average salary, such individuals will still suffer from the loss of Social Security and their TSP for the period of disability.

It would be possible to amend S. 261 to equitably provide for individuals subject to change from the workers' compensation program to a retirement system, but to do so would be very complicated. Presumably, equity would require that a system change benefit yield a retirement benefit comparable to what the individual would have received had their employment not been prematurely interrupted by an injury or illness. This would require a formula for adjusting service credit and annual salary. Furthermore, since FERS is only one tier of a three-tier retirement plan, addressing the loss of Social Security and TSP for the compensation period would also be necessary. Additionally, each Federal retirement system that covers individuals under FECA would have to be individually modified based upon its particular benefit provisions. While the conversion concept would require only minimal administrative resources for implementation, each and every retirement system would require major changes utilizing substantial resources under the system change concept.

Improving Workers Compensation and Employment for People with Disabilities

OPM supports improving workers compensation for employees that have been injured during their employment, and the agency strongly supports efforts to improve employment for people with disabilities. One year ago today, President Obama signed Executive Order (E.O.) 13548 to Increase Federal Employment of Individuals with Disabilities. In February, I testified about OPM's efforts to improve Federal employment of people with disabilities. OPM continues to partner with agencies across the federal government, including DOL's OWCP, to provide

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comprehensive training for federal agencies on: the E.O.; model recruitment strategies; reasonable accommodation policies and procedures; the Department of Defense's program to provide free accommodations to all Federal employees with disabilities; and DOL's return to work strategies. Agencies are making strides toward the President's goal of hiring 100,000 people with disabilities over the next five years. They are beginning aggressive efforts to tap into the tremendous talents of people with disabilities, a long neglected segment of our society with a lot to offer the Federal government.

Conclusion

OPM supports the Administration's efforts to reform FECA in an equitable and fair manner. We believe that S. 261 would have potentially unintended and inequitable consequences. We welcome the opportunity to work with the Committee to address our concerns.

Again, I thank you for the opportunity to be here, and I am happy to answer any questions that you may have.