



**TESTIMONY FOR THE RECORD BY
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**BEFORE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND
THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS**

**HEARING, TITLED
“REFORMING THE WORKERS’ COMPENSATION
PROGRAM FOR FEDERAL EMPLOYEES”**

May 20, 2015

Chairman Walberg, Ranking Member Wilson and Members of House Education and the Workforce Subcommittee on Workforce Protections, on behalf of the five million federal workers and annuitants represented by the National Active and Retired Federal Employees Association (NARFE), I appreciate the opportunity to express our views regarding proposed changes to the Federal Employees' Compensation Act (FECA).

It is our hope that this hearing will continue the bipartisan effort that began in the 112th Congress (and continued through the 113th) to consider and advance thoughtfully proposed FECA reforms that both reduce costs for taxpayers while preserving fairness for injured public servants. NARFE continues to support legislation in the mold of H.R. 2465 (112th Congress); that is, commonsense reform that would improve program efficiency, achieve cost savings and improve fairness without reducing the basic compensation provided to those employees unfortunate enough to suffer a debilitating injury or illness as a result of their public service.

FECA benefits are intended to compensate federal employees for work-related injuries and illnesses. The Act is intended to make employees whole, maintaining their compensation at a level it would have been had their public service not been cut short by an unforeseen job-related injury or workplace-induced illness. In exchange for their benefits, FECA recipients lose their right to sue the government for their work-related disability. It should go without saying that reimbursed medical expenses and monetary compensation will never be able to reverse the permanent damage of a debilitating injury or illness. Congress must do its best to ensure that FECA benefits provide injured employees the income security they would have received without their injury or illness.

Unfortunately, changes in FECA proposed by the Department of Labor would reduce benefits for FECA recipients and leave them significantly worse off than if they had been able to continue working, according to a report by the Government Accountability Office (GAO), GAO-13-108. Similar proposals were included in last Congress' postal reform legislation (S. 1486), which NARFE also opposed. We urge members of this Committee and Congress to reject these unfair benefit cuts.

Additionally, we implore the Subcommittee to avoid any temptation to put forward FECA reform legislation motivated solely by deficit reduction goals and the availability of the budget reconciliation process to circumvent thoughtful deliberation. Equity must be the key to any modification in FECA, now or in the future.

Background

Both the current Administration and previous Administration (dating back to President George W. Bush's Fiscal Year 2003 Budget) identified possible amendments to the FECA statute and its implementation, and have proposed legislation to update and reform the system in several respects. Some of those would make use of available information to better coordinate compensation payments. Others would update schedules of benefits that have remained unchanged for decades. These program integrity measures are worthy of consideration. But it is the major overhaul of the basic FECA benefit that could do the greatest harm to dedicated public servants with no other recourse.

NARFE opposes changes to FECA proposed by the Department of Labor (DOL) that would reduce the basic federal workers' compensation benefit, although prospectively only, from 66.67 percent (or 75 percent for those with dependents) to 50 percent at retirement age. The DOL proposal would provide 70 percent of pre-tax income to injured workers across-the-board, as opposed to the current 75 percent to injured workers with dependents and 66.67 percent to those without. The GAO report confirmed NARFE's concern that the elimination of the supplemental benefit for injured workers with dependents would have the effect of providing workers without dependents a higher replacement rate of their income than workers with dependents, due to the effects of taxation.

Additionally, the DOL proposal reduces the maximum amount a surviving spouse may receive in FECA benefits if an employee is killed in the line of duty from 75 percent to 70 percent. This is a particularly cruel change for widows who also may be caring for children dealing with the loss of a parent.

Reduced Benefits at Retirement Age

The Labor Department's proposal to reduce FECA benefits at retirement age does not adequately take into account the disadvantages faced by employees unable to work because of a work-related injury or illness in preparing for retirement. Notably, FECA recipients: (i) lose the ability to increase their salaries through raises and promotions; (ii) have a reduced ability to save because they are not able to contribute to the Thrift Savings Plan during the period of their disability (or receive matching contributions); and (iii) would have a reduced Social Security benefit because employees covered by Social Security are unable to earn quarterly credits to increase average monthly earnings used to calculate those Social Security benefit payments while receiving FECA benefits. Additionally, federal workers, and the agencies that employed them, stop contributing to their federal pension upon receipt of FECA benefits. For workers injured early in their careers, this can have a profound effect on their retirement income once they are eligible to receive an annuity.

It is no surprise that GAO found these proposals would leave injured workers with significantly less income than they would have had, had they been able to continue working. Specifically, GAO found that federal workers disabled as part of their service would receive up to 35 percent *less* in retirement income than if they were not injured and retired after 30 years under FERS. Under current law, median FECA benefits for totally disabled workers are "on par with or less than" what they would have received after a full 30-year career.

As such, one must ask why Congress is pursuing changes to the program that would further decrease benefits. Just because a proposal saves money does not make it a good idea. The FECA reductions proposed by DOL undermine a core principle of the program – to provide injured workers who have been deprived the ability to work with compensation on par with what they would have received had they not been injured and been able to continue to work. For this reason, NARFE wholeheartedly opposes these proposals.

Additional Concerns

GAO found that the current FECA structure provides an 81 percent replacement rate in terms of after-tax income for those with a dependent and 77 percent replacement rate for those without a dependent. While there is no consensus, the Commission on State Workers' Compensation Law, as far back as 1972, endorsed a move toward an 80 percent replacement rate as adequate. This puts FECA benefits on par with those endorsed widely across the country.

The DOL proposal to provide a uniform compensation rate equaling 70 percent of pre-tax salary actually allows workers without dependents to achieve a higher replacement rate of pre-injury income compared to the after-tax income than workers who have dependents. This occurs because workers with dependents pay lower marginal tax rates than workers without dependents. Workers' compensation benefits are provided tax-free, as they represent a payment intended to make the injured worker whole, and are not earned income. Since FECA benefits are tax-free, the tax benefit provided to individuals with dependents does not affect FECA payments. Presumably, DOL proposed a uniform rate to improve equity between workers with dependents and those without. However, the proposed policy change would disadvantage workers with dependents where the current system puts them at a slight advantage compared to their colleagues without dependents. In other words, a move intended to provide equality does the opposite in practice.

Additionally, with regard to both the retirement rate reduction and the elimination of supplemental benefits, GAO found that the Department of Labor proposal would have a disproportionate impact on the lowest-wage employees and those who are injured early in their careers. This occurs because the lowest-wage employees have lower marginal tax rates, and thus receive less benefit from the exclusion from taxation of workers' compensation benefits. Also, employees injured earlier in their careers miss out on more opportunities for career growth than those injured later on.

Commonsense Reform - H.R. 2465 (112th Congress)

NARFE does not oppose all FECA reforms – in fact, we have continually supported the measures contained in the bipartisan House bill, H.R. 2465 (112th Congress), the Federal Workers' Compensation Modernization and Improvement Act of 2011, which was crafted in this committee and passed the House by voice vote on November 29, 2011. The bill provides commonsense reform that achieves cost savings for taxpayers by improving program integrity and reducing costs while improving fairness towards disabled workers.

The provisions of H.R. 2465 would have improved coverage for the worst-case scenarios arising under the Federal Employees' Compensation Act. Specifically, it would reform the FECA program by:

- Updating benefit levels for severe disfigurement of the face, head or neck (from an outdated maximum of \$3,500 to a more reasonable \$50,000) and for funeral expenses (from an outdated \$800 to a more reasonable \$6,000). Neither of these levels has been updated since 1949.

- Making it clear that the FECA program covers injuries caused by a terrorist attack.
- Extending the time, from 45 days to 135 days, that a federal employee who suffers a traumatic injury in a zone of armed conflict may continue to receive his or her regular salary before transitioning to FECA compensation, and providing more time for those employees to initially apply for FECA compensation.

The legislation also would save taxpayers money through sound reforms that should improve program integrity and reduce costs. The Congressional Budget Office estimated that the bill would have reduced net direct spending by a total of \$22 million over the 2012-2021 period. Specifically, the provisions would have saved money by:

- Reducing improper payments by allowing the Department of Labor to cross-reference Social Security earnings information.
- Increasing reimbursements to the government from recoveries made by FECA recipients from liable third parties by expanding government subrogation rights to allow reimbursement for salary paid during the continuation of pay period.
- Reducing costs by authorizing physician assistants and advanced practice nurses to provide medical services and certify traumatic injuries.

Some of these provisions are part of the DOL proposal, and should be part of any legislative reforms to FECA moving forward.

NARFE believes it is incumbent on Congress to reform FECA in a way that does not punish injured workers once they reach retirement age. However, we recognize that some in Congress have concerns with individuals receiving FECA benefits past the age they would have otherwise retired. FECA compensation comes out of agency budgets and, as such, the agency is continuing to pay for an employee longer than their career would likely have lasted had the employee not been injured. NARFE agrees reform of the balance of responsibility in this area is necessary, particularly as agency budgets are squeezed by ever-tightening budget caps.

Reducing benefits to 50 percent at retirement age only serves to punish the injured worker and does not solve the problem of these individuals staying on the agency rolls after they would have otherwise retired. Since FECA recipients cannot contribute to Social Security, their federal government annuities or their Thrift Savings Plan accounts while receiving benefits, NARFE believes it is necessary for Congress to design a system in which injured workers can plan for retirement, and contribute to a fund accordingly.

Conclusion

We applaud the House Committee on Education and the Workforce for working on a bipartisan basis to advance reforms like those contained in H.R. 2465, and look forward to continuing our

work with members of the Committee to address issues of fraud and improper payments rather than undermining the security of the program as a whole for disabled workers.

If it was not clear before GAO issued its comprehensive report on the Department of Labor proposal to reduce retirement-age FECA benefits that those proposals were wrongheaded and unfair, it certainly is now. Members of Congress should pay close attention to the GAO findings before acting rashly to make severe cuts to the basic income protection afforded to federal employees injured while serving their country, as the DOL proposal aims to do. Many of the changes DOL is proposing are not based on sound policy or program integrity. They are suggested solely as a means to reduce benefits, which only serves to punish the very people struggling to recover after a debilitating injury in service to their country.

Thank you, again, for the opportunity to share our views with you.