

**Prepared Statement of
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Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
May 20, 2015 Hearing on
*Reforming the Workers' Compensation Program for Federal Employees***

Good morning Chairman Walberg, Ranking Member Wilson, and members of the Subcommittee. I am pleased to be here today on behalf of the nearly 290,000 members of the National Association of Letter Carriers (NALC). Thank you for inviting me to testify at this hearing, entitled *Reforming the Workers' Compensation Program for Federal Employees*.

I am accompanied today by members of the NALC, and a surviving spouse of a member, who have suffered from on-the-job injuries.

- **Shirley Rondeno**, widow of letter carrier Roy Rondeno in Metairie, LA. In September 2009 Roy was crushed by an oncoming vehicle as he was loading mail at the rear of his vehicle. Both of his legs were amputated, and he died on the operating table six days later.
- **Dan Hohenstein**, letter carrier in Arvada, CO. In January 2011 Dan was crushed by an oncoming vehicle as he was working mail at the rear of his postal vehicle. He suffered fractures of multiple bones in his legs, a torn artery, and disorders of muscles, ligaments and fasciae, to name a few. Dan returned to part time work in July 2012 and full time work in August 2014. Medical reports in his file reflect that his surgeons repeatedly expressed astonishment at his return to work.
- **Doug Poole**, letter carrier in Columbus, OH. In January 2012 Doug was crushed by an oncoming vehicle as he was loading mail at the rear of his postal vehicle. He suffered fractures of multiple bones in his legs and back, open wounds to the cavity of his spleen and kidney, a torn artery, and acute renal failure, to name a few. He went through 16 surgeries and suffered pneumonia, blood clots and kidney failure. He remains totally disabled.
- **Keith Wagner**, letter carrier in Seattle, WA. In July 2012 Keith had just closed the back of his postal vehicle when he was crushed when the parked car behind hi was slammed by an oncoming vehicle. He suffered fractures of multiple bones in his legs, dislocations of four specific vertebrae, and embolisms. A blood clot in his leg required four surgeries. He remains totally disabled.

- **Joel Cabrera**, letter carrier in San Gabriel, CA. In May 2013 Joel was crushed by an oncoming vehicle as he was loading mail at rear of his postal vehicle. He suffered fractures of multiple bones in his legs, disruption of ligaments, dislocations of the knee and complications of medical care. He spent 92 days in the Intensive Care Unit and had four surgeries to repair the severe injuries to his legs. He returned to work part-time in April 2015..
- **Dave Betts**, letter carrier in Exeter, NH. In March 2014 Dave was at the side of his parked postal vehicle locking the door when it was struck by another vehicle. The violent collision pinned Dave between his vehicle and a tree. He suffered a head wound that required nearly a week of special hospital care, shoulder dislocation, and embolisms. He returned to work part time in May 2014 and full time in April 2015.

The NALC welcomes the prospect of reform to the Federal Employees' Compensation Act (FECA), provided it does not result in unfair harm to the injured workers the FECA was designed to protect. Any such reform should be consistent with the basic principle that injured workers should be no better off and no worse off as a result of suffering an on-the-job injury.

HR 2465 was passed on a bipartisan basis by the House of Representatives on 11/29/11. It constituted reform that met that fairness test, and it would have provided financial savings. HR 2465 contained provisions that 1) authorized medical services and treatment by physician assistants and advanced practice nurses; 2) permitted the Secretary of Labor to readily obtain social security earnings information directly from the Social Security Administration; and 3) allowed subrogation of continuation of pay. Department of Labor has projected these reforms would save about 50 million dollars over the next 10 years. HR 2465 also included some modest increase in benefits for funeral expenses and disfigurement.

The NALC supports the provisions that were in HR 2465 in 2011 and encourages the Committee to pass a similar bill.

Other proposals have been made that do not pass the fairness test. The Department of Labor (DOL), has suggested reducing wage-loss compensation for injured workers and their families and further reducing benefits when they reach retirement age. These proposals would unfairly harm injured workers and their families, leave them worse off than if they had not suffered injuries, and are unsupported by credible evidence.

Proposals to reduce the 75% wage-loss compensation rate

DOL has proposed reducing wage-loss compensation from 75% to 70% for claimants who have families to support (that is to say, who have one or more dependents) while at the same time increasing wage-loss compensation from 66 2/3% to 70% for those with no dependents. Others have proposed reducing the 75% rate to 66 2/3%. Proponents of these reductions have argued that the 75% rate creates a disincentive for injured

workers to return to work. However, none Doug have offered any evidence in support of that argument.

An objective analysis of that 75% rate fails to support the argument that it is a disincentive to return to work.

First, many injured workers do not receive the full 75% or 66 2/3% rate. They receive a pro-rated percentage of the applicable rate, based on OWCP's determination of their wage-earning capacity.

For example, OWCP currently has authority to reduce the wage-loss compensation of the injured letter carriers accompanying me at this hearing. In the cases of Doug Poole, Keith Wagner, and Joel Cabrera, OWCP could do this by administratively determining their disabilities are permanent, and they are vocationally and medically able to return to sedentary work available on the open job market. OWCP could do this even if these injured workers were not successful in obtaining such sedentary work. In the cases of Dan Hohenstein and Dave Betts, who have returned to full-time work as letter carriers, OWCP has authority to reduce any potential future wage-loss compensation to zero, by administratively finding their current earnings fairly and reasonably reflect their wage-earning capacity.

And even though the FECA at 5 USC 8105b provides that loss of use of both legs, both hands, both arms, both feet, or sight in both eyes is prima facie permanent total disability, OWCP procedures provide that OWCP may determine even in those case that an individual may be able to work despite such severe medical conditions, and reduce wage-loss compensation on that basis.

The full 75% or 66 2/3% rate is provided only to claimants to who are totally disabled, as determined by OWCP. If a claimant is partially disabled, he or she does not receive 75% or 66 2/3% of base salary. Instead, partially disabled claimants (with dependents) receive only 75% of their lost wage-earning capacity. Partially disabled claimants (with no dependents) receive only 66 2/3% of their lost wage-earning capacity.

OWCP's then-acting Director explained this in a letter to Chairman Walberg dated September 16, 2013, in response to questions from the committee. He wrote: *Under 5 U.S.C. 8115, FECA requires a proportional reduction of compensation for those claimants who are only partially disabled; this reduction is accomplished through the use of their actual earnings or the use of a constructed position that fairly and reasonably represent that employee's earning capacity.*

Please consider the following example. A married letter carrier has a base annual salary of \$50,000. He suffers an injury and is no longer able to walk. Thus, he is disabled from performing the job of a letter carrier. OWCP begins paying wage-loss compensation at the annual rate of \$37,500. OWCP then determines that while the letter carrier is disabled from performing the job of a letter carrier, he remains capable of performing the sedentary job of a customer complaint clerk. OWCP then determines the position of

customer complaint clerk is available on the open job market within the commute area of the letter carrier. OWCP then determines the average or normal wages that are paid for the position of customer complaint clerk in that commute area. In this example, OWCP determines the position of customer complaint clerk pays \$25,000 annually. OWCP makes a lost wage-earning capacity determination, and reduces wage-loss compensation to 75% of \$25,000 (\$50,000 minus \$25,000), or \$18,750 annually. OWCP makes this reduction irrespective of whether the letter carrier is actually able to obtain employment as a customer complaint clerk.

DOL proposals to reduce the 75% rate, if enacted, would further reduce the income of partially disabled workers whose wage-loss compensation has already been proportionally reduced by OWCP based on OWCP's determination of their wage-earning capacity.

Second, workers receiving wage-loss compensation lose significant benefits.

For instance, consider Dan Hohenstein. If Dan had not suffered that catastrophic injury in January 2011, for the period beginning that date until he returned to full-time work in 2014, he would have earned tens of thousands of dollars in overtime, he would have received thousands of dollars in matching TSP funds from the Postal Service, he would have banked thousands of dollars of value in sick and annual leave. He lost all of those benefits, and more, solely because he suffered an on-the-job injury.

In order to receive wage-loss compensation, a worker must be in a Leave Without Pay (LWOP) status. Upon placement in an LWOP status by the employing agency, an injured worker loses the Thrift Savings Plan 5% matching funds, the financial benefit of sheltering income in the Thrift Savings Plan, credit towards their Social Security benefits, overtime opportunities, promotion prospects, and other pay-increase opportunities.

Once an employee is separated by the employing agency, there are additional losses, including CSRS/FERS retirement annuity credits, higher Health Benefit Plan rates, higher basic FEGLI rates (in the case of Postal employees), loss of step increases, and loss of union-negotiated contractual protections.

These benefit losses are substantial and in some cases can be financially devastating to the injured worker.

Thus, the argument that the 75% wage-loss compensation rate is so high that it constitutes a disincentive to return to work founders in the absence of evidentiary support and in the presence of LWEC reductions and significant loss of benefits.

Proposals to reduce wage-loss compensation at retirement age

Various proposals have been made to require retirement at a specific age. One proposal would terminate wage-loss compensation benefits and transition to CSRS or FERS retirement upon reaching Social Security retirement age. DOL's proposal would

continue OWCP wage-loss compensation payments but reduce them to 50% at Social Security retirement eligibility.

Proponents of these changes generally argue that FECA wage-loss compensation benefits are far more generous than OPM retirement benefits. These arguments typically rely on comparison of the 75% FECA benefit with the average CSRS annuity of about 60%. There are significant problems with these proposals.

The large majority of federal employees today are not covered by CSRS. Currently, approximately 92% of Federal and Postal employees are covered under FERS and only 8% under CSRS. Unlike CSRS, FERS is a three-part retirement system that includes a defined benefit annuity, Social Security, and the Thrift Savings Plan.

The Government Accountability Office (GAO) analyzed proposed FECA changes in three reports in late 2012.

In a Report to the Committee on Education and Workforce concerning non-postal federal workers, GAO found that contrary to DOL's argument that FECA benefits were excessive at retirement age, the median FECA benefits package^[1] for non-postal workers at retirement age is "on a par or less than the FERS benefit package" for those who worked a 30-year career.

Also, GAO found that DOL's proposal for a "reduced FECA" would result in median FECA benefits that are 31% to 35% less than if a comparable federal worker had worked a full career and collected a FERS benefit package.^[2]

GAO found that DOL's proposal to set the compensation rate at 70% (instead of 66-2/3% for individuals and 75% for those with dependents) would reduce the median percentage of take home pay that was replaced by FECA—also known as the "wage replacement rate"—from 80% to 77% for non-postal workers. This falls below the 80% wage replacement rate urged by the National Commission on State Workmen's Compensation Laws, which was established under the Nixon Administration.

GAO also found there is a disparate impact on those with dependents. Under DOL's proposal, the median "wage replacement rate" (the percentage of take home pay replaced by FECA) for those with dependents (76%) would be 6% less than someone who is single (82%). This is because our federal tax code provides tax deductions for dependents; thus, those with families enjoy a higher take home pay than someone who is single. Since DOL's proposal eliminates any increase in FECA benefits for injured workers with dependents, the percentage of pre-injury take home wages that would be replaced by FECA benefits is lower for those with dependents.

^[1] The median FECA benefit package includes FECA wage replacement + TSP benefits accrued prior to disability.

^[2] *Federal Employees' Compensation Act: Analysis of Proposed Program Changes*, GAO-13-108, Oct. 26, 2012. <http://www.gao.gov/products/GAO-13-108>. The variation depends whether 1% or 10% was contributed to TSP.

In a second study on USPS beneficiaries, GAO found with respect to postal workers, that the median FECA benefits at retirement age was on a par with (or slightly higher) than what a worker would have received from FERS had they worked a full career, but that DOL's proposed cuts to FECA would result in median benefits that are 22% to 29% less than if the postal worker had worked a full career.^[3]

GAO concluded:

[C]onsideration needs to be given to the impact the change will have on the adequacy of benefits and the ensuing fairness across beneficiaries, both at the time of injury and over the lifetime of the beneficiary. Reducing FECA benefits could have a substantial impact over time on individuals who cannot work and may have limited options to replace income in response to benefit reductions.

Moreover, a report by the Congressional Research Service shows that full FERS retirement amounts will likely far exceed CSRS annuity amounts.

In a report titled *Federal Employees' Retirement System: The Role of the Thrift Savings Plan*, the Congressional Research Service calculated various retirement incomes for a 62 year old employee with 30 years of service, as a percentage of final salary. In almost all of the variable scenarios, the income was greater than the average CSRS annuity of 60%.

For instance, a GS-4 earning a \$48,331 final salary, with a 5% TSP contribution rate computed at a nominal rate of return of 6%, would receive a retirement replacement rate of 82%. The same criteria with a 10% TSP contribution rate results in a replacement rate of 94%.

DOL has suggested that *"In most instances, FECA benefits far exceed the amount an injured worker might receive in the form of retirement benefits, and therefore provide a strong disincentive for return to productive employment."*

However, that suggestion is completely inconsistent with the GAO and Congressional Research Service reports noted above.

The argument that FECA wage-loss compensation benefits are far more generous than OPM retirement benefits also founders in the presence of Lost Wage Earning Capacity determinations. Where LWEC determinations have been made, based on either actual wages earned or constructed positions, OWCP wage-loss compensation will typically be only half of the 75% rate, far less than the identified average CSRS annuity of 60% of high-three average salary.

^[3] *Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries*, GAO-13-142R, Nov. 26, 2012, <http://www.gao.gov/products/GAO-13-142R>

Closing

Next year, the Federal Employees' Compensation Act will celebrate its 100th anniversary. In 1972, President Nixon commissioned a study on workers' compensation laws in the United States, as required by the Occupational Safety and Health Act. The ensuing report set the baseline for workers' compensation benefits. OWCP and other proposals to reduce wage-loss compensation for families and to reduce it again at retirement age, would result in FECA benefits falling below that baseline standard.

Unfortunately, many state workers' compensation system have fallen below that baseline. A recent report by the Occupational Safety and Health Administration, titled *Adding Inequality to Injury*, reviewed current state workers' compensation benefits. OSHA found that "*The costs of workplace injuries are massively subsidized by injured workers, their families and the taxpayer-supported components of the social safety net.*" Arguments that FECA benefits exceed state workers' compensation system benefits should be considered in light of OSHA's findings.

Too many letter carriers, including some here today with me, have suffered traumatic and catastrophic injuries, such as bilateral amputation of their legs, when they were crushed between oncoming vehicles and their mail trucks while working mail. What message will be sent to workers who lose their livelihoods and careers from work-related injuries while serving the American public? There is no evidence that FECA benefits need to be reduced, unless the DOL is simply following the practice of some states in arbitrarily cutting workers' compensation benefits without regard to the consequences.

The NALC supports FECA reform that is consistent with the intended remedial nature of the FECA. In our view, proposals to reduce the 75% wage-loss compensation rate, and proposals to mandate transition to OPM retirement (or reduced FECA benefits) at Social Security retirement age, are not consistent with that principle.

Mr. Chairman, this concludes my prepared remarks. Thank you for the opportunity to share the NALC's views. I would be pleased to answer any questions that you or other members of the subcommittee may have.