Congressional Research Service
Informing the legislative debate since 1914

The Federal Employees' Compensation Act (FECA): Workers' Compensation for Federal Employees

Updated March 8, 2022

Congressional Research Service
https://crsreports.congress.gov
R42107

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The Federal Employees' Compensation Act (FECA) is the workers' compensation program for federal employees. Like all workers' compensation programs, FECA pays disability, survivors, and medical benefits, without regard to who was at fault, to employees who are injured or become ill in the course of their federal employment and to the survivors of employees killed on the job. The FECA program is administered by the Department of Labor (DOL) and the costs of benefits are paid by each employee's host agency.

Elements of the FECA program include

- basic disability benefits equal to two-thirds of an injured worker's pre-disability wage, which rises to 75% of the pre-disability wage if the worker has any dependents;
- disability benefits that continue for the duration of disability or the life of the beneficiary; and in cases of traumatic injuries, beneficiaries can receive a continuation of their full pay for the first 45 days;
- disability benefits for persons with specific permanent partial disabilities, such as the loss of a limb, for a set number of weeks provided by schedules set by statute and regulation;
- coverage of all medical costs associated with covered conditions without any copayments, cost-sharing, or use of private insurance by the beneficiaries;
- cash benefits for the survivors of employees killed on the job based on the worker's wages and a benefit for funeral costs; and
- vocational rehabilitation services to assist beneficiaries in returning to work.

This report also focuses on several key policy issues facing the program, including the payment of FECA benefits after retirement age, the overall level of FECA disability benefits as compared with those offered by the states, the administration of the FECA program, efforts to limit the use of opioids by FECA beneficiaries, and the coverage of anomalous health incidents (AHIs) commonly referred to as "Havana Syndrome."

In 2020, DOL issued guidance establishing special procedures for federal employees with Coronavirus Disease 2019 (COVID-19) to determine if their exposure was related to their employment, and thus compensable under FECA.

Section 4016 of the American Rescue Plan Act of 2021 (P.L. 117-2) created a presumption of eligibility for FECA benefits for federal employees with COVID-19. FECA benefits determined in accordance with this presumption are time-limited and are scheduled to be terminated on September 30, 2030, regardless of the disability status of the employee or continued eligibility of a deceased employee's survivors.

The modern FECA program can trace its roots to 1916 and has not been significantly amended since 1974. A legislative history of the FECA program is provided in **Appendix B**.

Contents

Introduction 1
Overview of the FECA Program 1
Statutory and Regulatory Authorities 1
Program Financing 1
FECA Benefit Costs 1
Employees Covered by FECA 1
Conditions Covered by FECA 2
FECA Claims Process 2
Time Limit for Filing FECA Claims 2
FECA Compensation Benefits 3
Continuation of Pay 3
Partial Disability 3
Total Disability 4
Death 4
FECA Medical Benefits 5
Vocational Rehabilitation 5
Coordination with Other Benefits 5
Coordination with Retirement Benefits for Federal Employees 5
Coordination with Disability Retirement Benefits 6
Coordination with Social Security Disability Insurance Benefits 7
Coordination with Social Security Retirement Benefits 7
Coordination with Public Safety Officers' Benefits 7
Selected Current Issues Facing the FECA Program 7
Presumption of Eligibility for COVID-19 Cases 7
Termination of Benefits After September 30, 2030 8
Payment of Benefits and Administrative Costs 8
FECA and Retirement Age 8
Policy Considerations 9
FECA Benefit Levels 10
Insurance 10
Opioids 11
OWCP Opioid Prescribing Guidelines and Policies 12
FECA Benefits for Anomalous Health Incidents (Havana Syndrome) 14
Establishing the Facts of the AHI 14
Establishing a Causal Relationship Between an AHI and a Claimant's Symptoms 15
Relationship Between FECA and Benefits Under the HAVANA Act of 2021 15

Tables

Table A-1. FECA Scheduled Benefits for Partial Disability Compensation 16

Appendixes

Appendix A. FECA Scheduled Benefits 16

Appendix B. Legislative History of FECA 17

Contacts

Author Information..... 24

Introduction

The Federal Employees' Compensation Act (FECA) is the workers' compensation system for federal employees. Every civilian employee of the federal government, including employees of the executive, legislative, and judicial branches, is covered by FECA, as are several other groups, including federal jurors and Peace Corps volunteers.

Overview of the FECA Program

Statutory and Regulatory Authorities

The FECA program is authorized in statute at 5 U.S.C. Sections 8101 *et seq*. Regulations implementing FECA are provided at 20 C.F.R. Sections 10.00-10.826. The FECA program is administered by the Department of Labor (DOL), 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 that are used to pay current FECA benefits and that are ultimately reimbursed by federal agencies through the chargeback process.

Each quarter, OWCP provides to all federal agencies with employees receiving FECA benefits an estimate of the cost of these benefits to assist these agencies in preparing their budget requests. By August 15 of each year, OWCP sends each agency a statement of their FECA costs for the previous fiscal year. Each agency must include in its next budget request an appropriation to cover its FECA costs for the previous fiscal year. Upon receiving this appropriation, or if a nonappropriated entity of the government, by October 15, the agency must reimburse the Employees' Compensation Fund for the costs of the FECA benefits provided to its employees.

The administrative costs associated with the FECA program are provided to the DOL through the appropriations process. In addition, the U.S. Postal Service (USPS) and certain other nonappropriated entities of the federal government are required to pay for the "fair share" of the costs of administering benefits for their employees.

FECA Benefit Costs

During the period between July 1, 2019, and June 30, 2020 (the chargeback year), the FECA program paid out $2.96 billion in benefits, including approximately $2.03 billion in disability benefits, $790 million in medical benefits, and $140 million in benefits to the survivors of federal employees killed on the job.[1]

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

[1] Department of Labor (DOL), FY2022 Congressional Budget Justification, May 2021, p. OWCP-FPWC-18.

officers acting in a federal capacity, Peace Corps volunteers, students participating in Reserve Officer Training Corps (ROTC) programs, and members of the Coast Guard Auxiliary and Civil Air Patrol.

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. Nonetheless, as discussed later in this report, Section 4016 of the American Rescue Plan Act of 2021 (P.L. 117-2) created a presumption of FECA eligibility for cases of Coronavirus Disease 2019 (COVID-19). However, no injury, illness, or death may be compensated by FECA if the condition was

- caused by the willful misconduct of the employee;
- caused by the employee's intention to bring about the injury or death of himself or another person; or
- proximately caused by the intoxication of the employee.

In addition, any person convicted of a felony related to the fraudulent application for or receipt of FECA benefits forfeits his or her rights to all FECA benefits for any injury that occurred on or before the date of conviction. The benefits of any person confined in jail, prison, or an institution pursuant to a felony conviction are suspended for the duration of the incarceration and may not be recovered.

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 an OWCP review of 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.

Time Limit for Filing FECA Claims

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.[2] 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. Any lost work time beyond 45 days, or lost time due to a latent condition, is considered either a partial or total disability under FECA.

Employees of the USPS must satisfy a three-day waiting period before becoming eligible for continuation of pay.

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, 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 at least one dependent or a spouse, a monthly benefit equal to 75% of the difference between the employee's pre-disability and post-disability monthly wage.

The compensation benefits paid for partial disability are capped at 75% of the maximum basic pay at rate GS-15 (GS-15, step 10 without any locality adjustment) at the time of eligibility, are not subject to federal taxation, and are subject to an annual cost-of-living adjustment. Benefits are paid for the duration of the disability or the life of the beneficiary.

If an employee's actual wages do not accurately represent his or her true wage-earning capacity, or if he or she has no wages, then his or her partial disability benefit is based on his or her wage-earning capacity as determined by OWCP using a combination of vocational factors and "degree of physical impairment."

Scheduled Benefits

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. The scheduled benefit is in addition to any other partial or total FECA disability benefits received. An employee may receive a scheduled award even if he or she has returned to full-time work.[3] The list of scheduled benefits is provided in the **Appendix A** to this report and for each type of permanent partial disability, an employee receives the standard FECA benefits for the number of weeks indicated.[4] If an employee suffers a

[2] A *traumatic injury* for the purposes of eligibility for continuation of pay is defined in the regulations at 20 C.F.R. §10.5(ee) as "a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." Certain groups, including federal jurors, Peace Corps volunteers, and Civil Air Patrol members, are not eligible for continuation of pay.

[3] The list of the Federal Employees' Compensation Act (FECA) scheduled benefits are provided in statute at 5 U.S.C. Section 8107(c) and in regulation at 20 C.F.R. Section 10.404(a).

[4] In certain circumstances, if it is determined to be in the beneficiary's best interest, the full amount of the scheduled

disfigurement of the face, head, or neck that is of such severity that it may limit his or her ability to secure or retain employment, the employee is entitled to up to $3,500 in additional compensation.

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, a monthly benefit equal to two-thirds of the employee's pre-disability monthly wage or
- if the employee has at least one dependent (including a spouse),[5] 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), without any locality adjustment, at the time of eligibility, are not subject to federal taxation, and are subject to an annual cost-of-living adjustment. 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 in the course of employment or from a latent condition caused by his or her employment, the employee's survivors are eligible for the following compensation benefits:[6]

- if the employee had a spouse and 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 or
- if the employee had a spouse and 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.

If a spouse remarries before the age of 55, then he or she is entitled to a lump-sum payment equal to 24 months of benefits, after which all benefits cease. If a spouse remarries at the age of 55 or older, benefits continue for life. A child's benefits end at the age of 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.

---

award may be paid in one lump sum. For additional information on the payment of a scheduled award in a lump sum, see Section 2-1300 of the Division of Federal Employees' Compensation Procedure Manual at https://www.dol.gov/owcp/dfec/regs/compliance/dfecfolio/FECA-PT2/group2.htm#21300.

[5] A dependent can be a spouse, unmarried child under the age of 18, unmarried child 18 or older who is incapable of self-support, a student up to age 23 or until he or she completes four years of school beyond high school, or a dependent parent.

[6] The death must be related to the person's work. For example, a person who dies of an unrelated medical condition in the workplace would not be eligible for FECA benefits.

The compensation benefits paid for death are capped at 75% of the maximum basic pay at rate GS-15, without any locality adjustment, at the time of eligibility, are not subject to federal taxation, and are subject to an annual cost-of-living adjustment.

Additional Death Benefits

The personal representative of the deceased employee is entitled to reimbursement, up to $200, of any costs associated with terminating the deceased employee's formal relationship with the federal government. The personal representative of the deceased employee is also entitled to a reimbursement of funeral costs up to $800, and the federal government will pay any costs associated with shipping a body from the place of death to the employee's home. An 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.

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. A FECA beneficiary is not responsible for any coinsurance or any other costs associated with his or her medical treatment and does not have to use any personal insurance for any covered medical costs. A published fee schedule is used by OWCP to determine the rate or reimbursement paid to medical providers.[7]

Generally, a beneficiary may select his or her own medical provider and is reimbursed for the costs associated with transportation to receive medical services. Medical providers must be authorized by OWCP and can have their authorization removed if it is determined that they are violating program rules or are involved in fraud.

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 a level consistent with the increased wage earning capacity that likely would have resulted from participation in vocational rehabilitation.

Coordination with Other Benefits

Coordination with Retirement Benefits for Federal Employees

Most federal employees are covered by either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).[8] The CSRS covers federal employees initially

[7] A copy of the current Office of Workers' Compensation Programs (OWCP) medical fee schedule can be found on the DOL website at http://www.dol.gov/owcp/regs/feeschedule/fee.htm.

[8] Some federal employees, such as Foreign Service Officers or employees of nonappropriated fund instrumentalities are covered by federal retirement systems other than the Civil Service Retirement System (CSRS) or Federal Employees'

hired before January 1, 1984. The FERS covers employees hired on or after that date and CSRS-eligible employees who voluntarily switched to FERS coverage during "open seasons" held in 1987 and 1998. Employees contribute to the cost of the CSRS and FERS through payroll taxes. Both the CSRS and FERS provide for defined benefit pensions for retired and disabled federal employees. The FERS defined benefit pension is smaller than that provided by the CSRS, however, the FERS also provides for participation in the Social Security system and the Thrift Savings Plan (TSP), a federally managed defined contribution plan similar to a 401(k) plan offered to private-sector workers.[9]

While an injured federal employee is receiving FECA benefits and not working, he or she does not make any CSRS or FERS contributions, but does continue to accrue time in service for the purposes of retirement eligibility.[10] Because FECA benefits are not considered earnings under either the Social Security Act or Internal Revenue Code, FECA beneficiaries generally may not contribute to the Social Security system via the payroll tax or to the TSP.

Once a FECA beneficiary becomes eligible for CSRS or FERS retirement benefits, he or she may elect to receive these retirement benefits or remain in the FECA program for the duration of disability. Once this election is made, it may be changed at any time.

The amount of the FERS basic annuity is increased from 1% of the employee's high-three average pay to 2% of the high-three average pay for any period during which the employee was receiving FECA benefits rather than earnings. This provision, enacted in 2003, is designed to partially replace retirement income lost because of the employee's inability to contribute to the Social Security system or the TSP while receiving FECA benefits.[11]

Coordination with Disability Retirement Benefits

Both the CSRS and FERS offer federal employees who are unable to continue working because of disabilities the option to take a disability retirement annuity before reaching normal retirement age.[12] For the purposes of the CSRS and FERS disability retirement systems, an employee is considered disabled and eligible for an annuity if he or she is unable to perform his or her current federal job and cannot be accommodated with a job at the same rate of pay by his or her employing agency because of a medical condition that is expected to last at least one year. An employee must have five years of service to qualify for disability retirement benefits under CSRS and 18 months of service under FERS. Generally, the amount of an employee's disability annuity is lower than what the employee would have received had he or she worked until normal retirement age and collected a CSRS or FERS retirement annuity.

As in the case of a FERS or CSRS retirement annuity, a FECA beneficiary who is also eligible for CSRS or FERS disability retirement benefits may elect to receive these disability retirement

---

Retirement System (FERS). For additional information on the more than 30 types of federal retirement systems, see U.S. General Accounting Office, *Public Pensions: Summary of Federal Pension Plan Data*, GAO/AIMD-96-6, February 1996. For additional information on the FERS and CSRS, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*.

[9] For additional information on the Thrift Savings Plan (TSP), see CRS Report RL30387, *Federal Employees' Retirement System: The Role of the Thrift Savings Plan*.

[10] The only payroll deductions taken from FECA benefits are for Federal Employees Health Benefits (FEHB) and basic, optional, and post-retirement basic life insurance if the employee is enrolled in these programs.

[11] P.L. 108-92.

[12] For additional information on disability retirement under CSRS and FERS, see CRS Report RS22838, *Disability Retirement for Federal Employees*.

benefits or remain in the FECA program for the duration of disability. Once this election is made, it may be changed at any time.

Coordination with Social Security Disability Insurance Benefits

Because FECA is a workers' compensation program, it is covered by the public disability offset provisions of Section 224 of the Social Security Act.[13] If a FECA beneficiary is also receiving Social Security Disability Insurance (SSDI) benefits, then the total amount of the beneficiary's monthly SSDI benefit, all SSDI benefits paid to his or her spouse or dependents, and his or her FECA benefit cannot exceed 80% of his or her average monthly wage at the time of his or her disability. The FECA beneficiary's SSDI benefits, or the benefits for his or her spouse or dependents, are reduced until the 80% threshold is reached.

Coordination with Social Security Retirement Benefits

Federal employees covered by the FERS system are also covered by the Social Security system for their periods of federal employment. If a federal employee covered by FERS is entitled to both FECA and Social Security retirement benefits, the amount of his or her monthly FECA benefit is reduced by the amount of his or her Social Security retirement benefit attributable to his or her federal service.

Coordination with Public Safety Officers' Benefits

The amount of FECA benefits payable to a state or local law enforcement officer who is also eligible for benefits for death or permanent and total disability under the Public Safety Officers' Benefits (PSOB) program is reduced by the amount of the PSOB benefit.[14] There is no offset or reduction of FECA benefits for federal law enforcement officers or other federal public safety officers, such as federal firefighters, who also receive PSOB benefits.

Selected Current Issues Facing the FECA Program

Presumption of Eligibility for COVID-19 Cases

From the beginning of the COVID-19 pandemic in 2020 through the end of FY2021, there were 16,323 cases of federal employees in the executive branch (excluding the USPS) with COVID-19 submitted to OWCP; 14,492 of these cases resulted in lost work time, and 158 of these cases resulted in fatalities.[15]

Section 4016 of the American Rescue Plan Act of 2021 (P.L. 117-2) provides for a presumption of eligibility for FECA benefits for federal employees who contract COVID-19. This presumption applies to any federal employee employed by the federal government at any time between January 27, 2020, and January 27, 2023, who meets the following conditions:

[13] 42 U.S.C. §424a.

[14] 34 U.S.C. §10281(f). For additional information on the PSOB program, see CRS Report R45327, *Public Safety Officers' Benefits (PSOB) and Public Safety Officers' Educational Assistance (PSOEA) Programs*. State and local law enforcement officers covered by FECA may also be covered by state workers' compensation laws. In such cases, the amount of FECA benefits is reduced by the amount of any state workers' compensation benefits.

[15] DOL, Occupational Safety and Health Administration, *Federal Injury and Illness Statistics for Fiscal Year 2020*, and *Federal Injury and Illness Statistics for Fiscal Year 2021*, https://www.osha.gov/enforcement/fap/statistics.

- is diagnosed with COVID-19 during this eligibility period;
- did not exclusively telework during the eligibility period; and
- during a period to be determined by the Secretary of Labor, performed duties as a federal employee that required contact with patients, members of the public, or coworkers or that included a risk of exposure to COVID-19.

Federal employees who meet these conditions and their survivors are eligible for FECA without having to demonstrate a causal link between their federal employment and exposure to the SARS-CoV-2 virus or the contracting of COVID-19.

Termination of Benefits After September 30, 2030

For cases of FECA eligibility determined based on the COVID-19 presumption, no benefits are authorized to be paid after September 30, 2030.[16] A federal employee who becomes eligible for FECA based on the COVID-19 presumption and remains disabled or in need of medical services after September 30, 2030, or the survivors of a federal employee who was covered by the COVID-19 presumption, will not be eligible for any disability, medical, or survivors benefits after the scheduled termination date of September 30, 2030.

This limitation on the duration of benefits does not apply to federal employees or survivors with FECA eligibility not determined in accordance with the COVID-19 presumption created by Section 4016 of P.L. 117-2, including those determined to be eligible for FECA before enactment of the COVID-19 presumption under the OWCP COVID-19 guidance issued on March 30, 2020.[17]

Payment of Benefits and Administrative Costs

The costs of FECA benefits and administrative costs associated with cases determined in accordance with the COVID-19 presumption created by Section 4016 of P.L. 117-2 are paid by the Employees' Compensation Fund. The costs of these benefits are not to be charged back to the employees' host agencies, and administrative costs for these cases are not to be subject to reimbursement from the USPS and other government corporations under the "fair share" process.

FECA and Retirement Age

Both FECA compensation and medical benefits are payable for the duration of a person's disability. There is no maximum duration of benefits and no maximum age at which benefits must

[16] Pursuant to Section 313 of the Congressional Budget Act of 1974, as amended (P.L. 93-344, 2 U.S.C. §644, commonly referred to as the Byrd rule), a provision that would increase the deficit in any fiscal year beyond the budget window provided in the budget resolution is considered extraneous and subject to a point of order in the Senate. Thus, this provision in H.R. 1319, a budget reconciliation bill, limited federal spending to 10 years to comply with this rule. For additional information on budget reconciliation and the Byrd rule, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*.

[17] On March 30, 2020, OWCP issued guidance on how to process FECA claims related to COVID-19. Under this guidance, if an employee engaged in high-risk employment files a COVID-19 claim, and the employer supports the claim and concurs that the exposure occurred, OWCP will "accept that the exposure to COVID-19 was proximately caused by the nature of the employment" and authorize continuation of pay for up to 45 days. Under this guidance an employee would have to demonstrate a causal link between COVID-19 and his or her federal employment. For additional information on this guidance see OWCP, *Federal Employees Contracting COVID-19 in Performance of Duty*, March 31, 2020, https://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2020-2024.htm#FECAB2005.

be terminated. Beneficiaries who are eligible for CSRS or FERS retirement or disability annuities may chose to remain in the FECA program. Given the level of benefits, which can be as high as 75% of a worker's pre-disability wage; the annual cost-of-living adjustment to benefits; and the fact that FECA benefits are not taxed, in some cases the monthly FECA benefit is higher than what would be paid by a CSRS or FERS annuity. However, because FECA beneficiaries who are not working do not pay into either the Social Security system or the TSP, they may be unable to rely on these programs as a significant source of retirement income.

In a 2020 audit of the FECA program for USPS employees, the USPS Office of Inspector General (OIG) reported that 14,941 postal employees were receiving FECA benefits for disabilities that are expected to be permanent, with 2,619 of these employees aged 70 or older.[18] In its response to this audit, the USPS reported that there were 8,499 employees aged 60 or older receiving FECA benefits with the oldest USPS FECA beneficiary at that time being 105 years old.[19]

The provision of FECA compensation benefits to workers after retirement age has changed during the history of the FECA program. Although FECA benefits have always been paid for the duration of disability, between 1949 and 1974, the administrator of the FECA program was required to review the amount of benefits paid to each beneficiary at the age of 70 and was authorized to reduce the amount of such benefits if it was determined that the beneficiary's wage-earning capacity had been reduced by his or her age, independent of his or her disability. This provision was repealed in 1974 with the Senate Committee on Labor and Public Welfare calling the reduction of benefits at the age of 70 "discriminatory."[20]

Policy Considerations

The question of whether FECA benefits should continue past retirement age depends somewhat on the intent of these benefits. If FECA disability benefits are intended solely to replace income lost by a worker because of an injury or illness, then one can reasonably argue that these benefits should stop at retirement age, when the worker would likely voluntarily stop working on his or her own, and thus no longer have wages to be replaced. It could be argued that the provision of FECA benefits for wage loss is analogous to the SSDI program, which stops paying benefits when a disabled beneficiary reaches retirement age. However, SSDI benefits automatically convert to Social Security retirement benefits at retirement age.

However, if FECA disability benefits are intended to provide some relief to the worker beyond wage replacement, such as providing additional money that might have been paid by an at-fault employer through the tort system or guaranteeing a certain minimum standard of living for a disabled worker, then stopping benefits at any age while the disability continues would violate this intent and deprive the beneficiary of deserved benefits.

Currently, 17 states place limitations on the duration or total amount of permanent total disability benefits under their workers' compensation systems. These limitations are in the form of a maximum number of weeks for which benefits may be paid, a termination of benefits at retirement or some other age, some combination of both, or a maximum amount of total benefits that can be received.[21] Federal workers' compensation benefits paid through the Longshore and

[18] U.S. Postal Service, Office of Inspector General, *Workers' Compensation Program Cost Containment Activities*, Report Number 19-031-R20, August 6, 2020, p. 1, https://www.uspsoig.gov/sites/default/files/document-library-files/2020/19-031-R20.pdf.

[19] Ibid., p. 17.

[20] S.Rept. 93-1081, p. 7.

[21] Griffin Murphy et al., *Workers' Compensation: Benefits, Coverage, and Costs (2019 Data)*, National Academy of

Harbor Workers' Compensation Act (LHWCA) are paid for the duration of disability or the life of the beneficiary.[22]

FECA Benefit Levels

In general, FECA disability benefits are greater than those offered by state workers' compensation systems. For workers with traumatic injuries, FECA offers continuation of pay, at full salary, for the first 45 days. No state system currently provides any type of continuation of pay, absent the use of some form of sick or personal leave. Disability benefits under FECA are adjusted annually to reflect changes in the cost of living, a provision found in less than half of state systems.

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 2022, the annual salary at GS-15, step 10, is $146,757, whereas the average federal salary for the executive branch in September 2020 was $91,773.[23] 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 FECA basic benefit rate for total disability is two-thirds of the worker's pre-disability wage. Currently, 37 states and the District of Columbia have total disability benefit rates that are set at this level.[24] Benefits under the federal LHWCA are also set at two-thirds of the pre-disability wage.

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. One state, Washington, pays augmented compensation for dependents.

Insurance

The administration of state workers' compensation systems and the provision of insurance and benefits differ significantly from the FECA program. The FECA program does not involve any form of private insurance or private third-party administration of claims or benefits. Essentially, each federal entity acts like a self-insured employer with OWCP in the role of claims and benefit manager.

State workers' compensation benefits are generally provided by private insurance, state insurance funds, or through self-insurance. All but four states—North Dakota, Ohio, Washington, and Wyoming—allow for private insurance. In Ohio and Washington, employers may either purchase insurance from the state fund or self-insure, whereas employers in North Dakota and Wyoming may not self-insure and must purchase coverage from the state fund. In 18 states, employers may purchase insurance from either a state fund or private carriers. All states except North Dakota and

---

Social Insurance, October 2021, pp. 94-100, hereinafter cited as *Workers' Compensation: Benefits, Coverage, and Costs, 2019*.

[22] For additional information on the LHWCA, see CRS Report R41506, *The Longshore and Harbor Workers' Compensation Act (LHWCA): Overview of Workers' Compensation for Certain Private-Sector Maritime Workers*.

[23] Information on the GS-15 salary rate is taken from the website of the Office of Personnel Management (OPM) at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/22Tables/html/GS.aspx. Information on average federal salary is taken from the OPM FedScope system online at http://www.fedscope.opm.gov/.

[24] *Workers' Compensation: Benefits, Coverage, and Costs*, *2019*, pp. 94-100.

Wyoming allow self-insurance. Under the federal LHWCA, employers must purchase private insurance or self-insure.

Private insurance pays the majority of state workers' compensation benefits. In 2019, private insurers paid 58.8% of total state workers' compensation benefits whereas state funds paid 14.8% and self-insured firms paid 26.4%.[25] Thus, nearly three-quarters of all state workers' compensation benefits are paid through a system of third-party insurance rather than through the self-insurance model used by the FECA program.

Opioids

Opioids are drugs that bind to opioid receptors on nerve cells in the human body and brain. Through this action, opioids have an analgesic effect and are therefore most frequently prescribed and used for pain relief. As a class of drug, opioids include both natural derivatives of the opium poppy plant (referred to as opiates) and synthetic formulations that emulate the effect of opiates. Examples of opioids include heroin, fentanyl, morphine, oxycodone, hydrocodone, and codeine.

In addition to temporarily relieving pain, opioids can have other short-term effects, including euphoria, drowsiness, confusion, nausea, constipation, and slowed breathing. Repeated use of opioids can result in an increased physical tolerance for the drug resulting in a user's need for higher doses to get the same effects. Users may also develop dependence on the drug such that its absence in the body will result in withdrawal symptoms or an addiction to the drug in which the person compulsively seeks the drug despite increasing negative physical, psychological, or social consequences associated with its use. Another concern is the potential for overdose and death from the use of both illicit and prescription opioids. The increase in opioid-overdose deaths in recent years has been well-documented and the subject of significant attention from public health authorities, the public, and Congress.

Since March 2016, the Food and Drug Administration has required that all immediate-release opioids carry a boxed warning with information on the risks of misuse, abuse, addiction, overdose, and death associated with opioids. In addition, during that time, the Centers for Disease Control and Prevention (CDC) issued guidelines for prescribing opioids for chronic pain.[26] States, pharmacy benefit managers (PBMs), and private pharmacy companies have also issued their own guidelines and policies designed to limit the dosage and duration of opioid prescriptions.[27]

In part due to the nature of work injuries, which frequently involve pain, opioids have traditionally made up a large portion of the total utilization of prescription drugs in workers' compensation programs despite concerns over misuse, overuse, and abuse and questions about their effectiveness at improving workers' health and returning them to work. A 2019 study published in the journal *Industrial Relations* looked at the interaction of long-term opioid use and the duration of workers' compensation disability benefits and prospects for returning injured workers to their jobs.[28] In this study, which focused on individuals with employment-related low

[25] Ibid., pp. 24-25.

[26] Deborah Dowell, Tamara Haegerich, and Roger Chou, "CDC Guidelines for Prescribing Opioids for Chronic Pain-United States, 2016," *Mortality and Morbidity Weekly Report*, vol. 65, no. 1 (March 18, 2016), pp. 1-49. In February 2022, CDC proposed new guidelines for treating pain that remove dose limits, among other changes. These guidelines are open to public comment through April 2022 (CDC, "Proposed 2022 CDC Clinical Practice Guideline for Prescribing Opioids," 87 *Federal Register* 7838-7840, February 10, 2022).

[27] National Conference of State Legislatures, *Prescribing Policies: States Confront Opioid Overdose Epidemic*, June 30, 2019, https://www.ncsl.org/research/health/prescribing-policies-states-confront-opioid-overdose-epidemic.aspx.

[28] Bogdan Savych, David Neumark, and Randall Lea, "Do Opioids Help Injured Workers Recover and Get Back to

back pain, the authors conclude that long-term use of opioids is linked to longer disability durations, stating

> We find that prolonged prescribing of opioids leads to longer duration of temporary disability benefits among workers with work-related low back injuries. Our estimates indicate that longer-term opioid prescriptions roughly triple the duration of temporary disability benefits, compared to similar workers with similar injuries who do not get opioid prescriptions. Thus, we do not find evidence, on average, of beneficial effects of opioids prescribed in workers' compensation cases—benefits that would need to be weighed against the costs of opioid use.[29]

OWCP Opioid Prescribing Guidelines and Policies

2017 Guidelines

On June 6, 2017, OWCP issued guidelines for prescribing opioids in the FECA program.[30] These guidelines followed earlier OWCP guidelines for prescribing Schedule II drugs[31] and the specific opioid fentanyl.[32]

The 2017 guidelines received some criticism for being too permissive when compared with state workers' compensation policies and CDC guidelines. For example, in a May 2018 hearing on opioids and the FECA program, Joe Padua, president of CompPharma, a consortium of PBMs, testified that FECA was "five or six years behind the rest of the workers' compensation industry" and that the 2017 guidelines were "far too permissive and wildly inconsistent with all credible opioid guidelines."[33]

2019 Guidelines

OWCP updated its opioid prescription guidelines for the FECA program on September 9, 2019.[34] The 2019 guidelines apply only to noncancer cases in which no opioid had been prescribed in the

---

Work? The Impact of Opioid Prescriptions on Duration of Temporary Disability," *Industrial Relations*, vol. 58, no. 4 (October 2019), pp. 549-590.

[29] Ibid., p. 586. The study did not find a causal effect of short-term opioid use on return to work, and the authors caution that "our results do not imply that opioids cannot be beneficial in treating injured workers. Rather, it is the longer term prescribing behavior that appears to be problematic."

[30] Department of Labor, Office of Workers' Compensation Programs, *Opioid Prescribing Guidelines*, FECA Bulletin No. 17-07, June 6, 2017, https://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2016-2020.htm#FECAB1707.

[31] Department of Labor, Office of Workers' Compensation Programs, *Division of Federal Employees Compensation: Pharmacy Schedule II Policy*, December 1, 2009, https://www.dol.gov/owcp/dfec/pharmacy-schedule-II-policy.htm. The Controlled Substances Act (CSA) establishes five schedules for various types of drugs, plants, and chemicals, with Schedule II drugs, such as Vicodin, morphine, cocaine, methadone, and fentanyl, having the highest potential for abuse and dependence of any drugs available by prescription. For additional information on the CSA and drug schedules see CRS Report R45164, *Legal Authorities Under the Controlled Substances Act to Combat the Opioid Crisis*.

[32] Department of Labor, Office of Workers' Compensation Programs, *Usage Guidelines for Fentanyl Products*, FECA Bulletin No. 11-05, May 3, 2011, https://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2011-2015.htm#FECAB1105.

[33] U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Workforce Protections, *The Opioid Epidemic: Implications for the Federal Employees' Compensation Act*, 115th Cong., 2nd sess., May 8, 2018, testimony of Joe Padua.

[34] Department of Labor, Office of Workers' Compensation Programs, *New Opioid Prescribing Guidelines in the FECA*

prior 180 days. The guidelines also limit initial fills of opioids and require letters of medical necessity for fills after 28 days of opioid treatment.

2021 OWCP PBM Policies

In March 2021, OWCP announced that all prescriptions paid for by the FECA program will be provided through the services of a PBM.[35] A PBM is a third-party company that manages access to prescriptions through a number of techniques such as establishing formularies, giving preference for generic drugs, and requiring preauthorization and ongoing utilization reviews for certain medications. On November 23, 2021, OWCP announced the implementation of new policies regarding the provision of opioids to FECA beneficiaries through a PBM.[36] These policies are designed to enhance, rather than fully replace, the 2019 guidelines.

Under these new policies, all authorizations for opioids and other drugs will be made by a PBM rather than OWCP, with the claimant having the right to request a formal decision from OWCP and to appeal OWCP's formal decision. The PBM will pay only for drugs on the OWCP formulary, which will be created and updated by OWCP.

The PBM policies went into effect on December 9, 2021, and apply to the following classes of beneficiaries with opioid prescriptions:

- Beneficiaries who have not had any FECA claims for opioids in the past 180 days are immediately subject to these policies.
- Beneficiaries who had prior authorization for opioids before December 9, 2021, are subject to these policies once their authorization periods end.
- Beneficiaries who do not require authorization for opioids because their treatments pre-date the 2017 or 2019 guidelines are subject only to the retroactive drug utilization review policy.

The PBM policies related to opioids are as follows:

- For the initial fill, only one seven-day supply of a fast-acting opioid, at a dose of no more than 90 morphine milligram equivalents (MME), that is on the formulary will be permitted for noncancer pain without prior authorization;[37]
- All fills beyond the initial fill require prior authorization and with each such authorization lasting 60 days, with limits of no more than a 30-day supply per fill;
- No more than two opioids may be provided at the same time;
- Extended release/long acting (ER/LA) opioids will not be authorized within 90 days of the injury and will be authorized only if they are on the formulary and the beneficiary has developed a sufficient opioid tolerance to safely use ER/LA drugs

Program Limiting Initial Fills to Seven Days and Imposing LMN at 28 Days, FECA Bulletin No. 19-04, September 9, 2019, https://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2016-2020.htm#FECAB1904.

[35] Department of Labor, Office of Workers' Compensation Programs, *New FECA Pharmacy Benefits Management System*, FECA Bulletin No. 21-07, March 9, 2021, https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECAB2107.

[36] Department of Labor, Office of Workers' Compensation Programs, *New FECA Prescription Management Policies*, FECA Bulleting No. 22-02, November 21, 2021, https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECAB2202.

[37] MMEs, also referred to morphine equivalent dose, is a standardized measure of the potency of an opioid. It is calculated by converting the dose of a given medication to the equivalent dose of the drug morphine.

or meets other ER/LA requirements mandated by the Food and Drug Administration;

- If more than six months have passed since the beneficiary's last opioid prescription, the next opioid fill will be treated as an initial fill and subject to the seven-day and 90-MME-per-day limits;
- All beneficiaries with opioid prescriptions are subject to concurrent and retroactive drug utilization reviews, which may include outreach to beneficiaries and medical providers to ensure that the beneficiaries are receiving appropriate therapies and letters from the PBM identifying concerns and risks associated with the beneficiary's current use of opioids and other drugs; and
- Claimants with doses of 90 MME or more are subject to "dose locks" at pharmacies that will prevent them from receiving any additional opioid doses without approval of the PBM.

FECA Benefits for Anomalous Health Incidents (Havana Syndrome)

Beginning in 2016, a number of federal employees assigned to work outside of the United States reported unexplained sensory disturbances followed by a range of medical symptoms such as headaches, pain, nausea, and disequilibrium. While formally referred to by OWCP as anomalous health incidents (AHIs), this phenomenon has come to be commonly known as "Havana Syndrome," because the first group of people who reported these events and symptoms were stationed at the U.S. embassy in Havana, Cuba.[38] Injuries and illnesses incurred by federal employees in the line of duty, even if that duty is outside of the United States, are compensable under FECA. However, the difficulty in demonstrating a link between the symptoms of AHIs and the circumstances of a person's federal employment has presented a challenge to those seeking FECA benefits for AHIs.

There is no presumption of FECA eligibility for federal employees who experienced AHIs. Thus, as with other injuries or illnesses, claimants must demonstrate a connection with their federal employment. On January 12, 2022, OWCP issued guidance on the processing of FECA claims for AHIs.[39]

Establishing the Facts of the AHI

The guidance provides that if a claimant's employing agency concurs with the claimant that the AHI occurred in the course of federal employment, OWCP will accept that the incident is covered by FECA. If the employing agency does not concur or does not provide an opinion on whether or not the AHI occurred in the course of federal employment, OWCP will request a formal statement from the employing agency as part of its development of the facts of the claim. If the employing agency fails to provide a formal statement on the AHI, OWCP may accept the claimant's statements as factual and accept the FECA claim. If the agency's formal statement is ambiguous,

[38] For additional information on AHIs and "Havana Syndrome," see CRS Insight IN11850, *FY2022 NDAA: Care for Anomalous Health Incident Victims*.

[39] Department of Labor, Office of Workers' Compensation Programs, *Processing Claims for Anomalous Health Incidents (AHI) under the Federal Employees Compensation Act (FECA)*, FECA Bulletin No. 22-03, January 12, 2022, https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECAB2203.

OWCP may convene a conference with the claimant and his or her employing agency to assist in determine the facts of the case.

Establishing a Causal Relationship Between an AHI and a Claimant's Symptoms

The guidance provides that if a claimant with a compensable AHI is diagnosed with a traumatic brain injury (TBI), no medical opinion on causation is required for the TBI to be compensable. For a condition other than a TBI, a "well-rationalized opinion" from a physician establishing a causal relationship between the AHI and medical condition is required for this condition to be compensable.

Relationship Between FECA and Benefits Under the HAVANA Act of 2021

The Helping American Victims Afflicted by Neurological Attacks Act of 2021 (HAVANA Act, P.L. 117-46), authorizes the Department of State, the Central Intelligence Agency (CIA), and any other federal agency to provide payments related to AHIs. Payments may be made by the agencies to Department of State and CIA employees and their dependents—and other federal employees detailed to or affiliated with the Department of State or CIA—who incur brain injuries from hostile acts or other incidents designated by the Secretary of State or CIA director while assigned to duty in the United States or anywhere in the world. The OWCP AHI guidance provides that there is no offset of FECA benefits if a beneficiary also receives benefits under the HAVANA Act.

Appendix A. FECA Scheduled Benefits

Table A-1. FECA Scheduled Benefits for Partial Disability Compensation

Loss of Use of Body System	Number of Weeks of Compensation
Scheduled benefits provided by statute [5 U.S.C. Section 8107(c)]	
Arm	312
Leg	288
Hand	244
Foot	205
Eye	106
Thumb	75
First finger	46
Great toe	38
Second finger	30
Third finger	25
Toe other than great toe	16
Fourth finger	15
Loss of hearing in one ear	52
Loss of hearing in both ears	200
Scheduled benefits provided by regulation [20 C.F.R. Section 10.404(a)]	
Breast	52
Kidney	156
Larynx	160
Lung	156
Penis	205
Testicle	52
Tongue	160
Ovary	52
Uterus or cervix	52
Vulva or vagina	52

Source: Congressional Research Service, withe information from 5 U.S.C. §8107(c) and 20 C.F.R. §10.404(a).

Note: Compensation is equal to two-thirds of the pre-disability wage of a single employee or 75% of the pre-disability wage of an employee with dependents for the number of weeks indicated.

Appendix B. Legislative History of FECA

The FECA program has its origins in a law from the late 1800s that covered only the employees of a federal agency that has long since ceased to exist on its own. The modern FECA system has its roots in legislation enacted in 1916; many of the basic provisions of this original law, such as the basic rate of compensation, are still in effect today. Congress passed major amendments to the 1916 legislation in 1949, 1960, 1966, and most recently in 1974. Although these amendments made significant changes to the FECA program, the basic framework of the program endures as does the overall intent of Congress through the years to maintain a workers' compensation system for federal employees that is in line with the basic principles that have governed workers' compensation in this country for a century.

Limited Workers' Compensation for the United States Life Saving Service and Other Hazardous Federal Occupations

The first workers' compensation law for federal employees was enacted in 1882 and provided up to two years of salary to any member of the federal United States Life Saving Service disabled in the line of duty and two years of salary to his or her survivors in case of a line of duty death.[40] In 1908, Congress passed a more comprehensive workers' compensation law for federal employees engaged in certain hazardous occupations, such as laborers at federal manufacturing facilities and arsenals or workers at the construction of the Panama Canal. This law provided workers with up to one year of salary, after a 15-day waiting period, if disabled due to an employment-related injury, and provided their survivors with up to a year of salary in case of death.

The 1882 and 1908 federal workers' compensation laws did not provide universal coverage for all federal employees. It is estimated that one-fourth of the federal workforce was covered by the 1908 law, and the law was clearly designed only to provide coverage for what were seen to be the most hazardous jobs in the civil service.[41] President Theodore Roosevelt recognized this shortcoming of the law he would eventually sign. Before the 1908 law's passage, he called on Congress to pass a workers' compensation bill that would cover "all employees injured in the government service" and stated that the lack of such a comprehensive workers' compensation law was "a matter of humiliation to the nation."[42]

In addition to only covering a small portion of the federal workforce, the 1882 and 1908 laws did not provide for medical benefits for disabled workers, and the 1908 law only applied in cases of disability or death arising from injuries and not illnesses.

The Federal Employees' Compensation Act of 1916

President Woodrow Wilson signed the Federal Employees' Compensation Act (P.L. 64-267) into law on September 7, 1916, and in so doing extended the protections of the modern workers'

[40] Act of May 4, 1882, ch. 117, 22 Stat. 55 (1882). In 1915 the United States Life Saving Service was merged with the Revenue Cutter Service to form the United States Coast Guard.

[41] Willis J. Nordlund, "The Federal Employees' Compensation Act," *Monthly Labor Review*, September 1991, p. 5. (Hereinafter cited as Nordlund 1991.)

[42] U.S. Congress, House Committee on Education and Labor, Subcommittee on Safety and Compensation, *Amendments to Federal Employees' Compensation Act*, hearings on H.R. 1196 and other bills to amend the Federal Employees' Compensation Act, 86th Cong., 2nd sess., February 10, 23, 24 and March 8, 23, 24, 1960 (Washington: GPO, 1960), p. 124.

compensation system to nearly all federal employees. This original FECA law remains the basis for the workers' compensation system for the federal civil service.

The FECA law provided coverage for nearly all civilian employees of the federal government injured or killed in line of duty. Coverage was not provided for occupational illnesses. The law provided full medical coverage for covered injuries to be provided by government physicians and hospitals or private medical services selected by the government. Disability compensation was provided, after a three-day waiting period, at a rate of two-thirds of the worker's wage for total disability, with adjustments for partial disabilities. Disability benefits were subject to minimum and maximum levels specified in the law and neither benefits nor these levels were subject to any cost-of-living or other annual adjustments. The survivors of an employee killed on the job were entitled to cash benefits based on the worker's wage and were also entitled to a benefit to help offset funeral costs.

The 1916 legislation created the Federal Employees' Compensation Commission, with three members appointed by the President with the advice and consent of the Senate, to administer the FECA program. Benefit and administrative costs associated with the program were paid out of the Employees' Compensation Fund created by the law and financed with permanently authorized appropriations.

Congressional Intent

Bringing the Federal System in Line with the States

Congress had several clear intentions when drafting the FECA program in 1916. One such intention was to bring the protections offered to federal employees in line with those being offered by a majority of the states at the time, with the House Judiciary Committee reporting that such state laws were "working with most excellent results."[43] In addition, the committee reported that the schedule of compensation for disability in FECA was "in line with the best precedents found in State compensation acts," especially those in Massachusetts, New York, and Ohio.[44]

Providing Coverage to all Federal Employees

An additional intention of Congress was to provide workers' compensation coverage to all federal employees regardless of occupation, thus correcting what was seen as a shortcoming of the 1908 act. The House Judiciary Committee's report on the 1916 FECA legislation criticizes the limited coverage of the 1908 law and states,

> The present law, in denying compensation to an injured employee if his occupation was not "hazardous" goes counter to the theory on which all compensation acts are based, viz, that the industry shall bear the burden of injuries caused by it.[45]

This criticism of the limited coverage provided by the 1908 act, and the intention of the FECA legislation to correct this shortcoming, was echoed by the FECA legislation's sponsor in the

[43] 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), p. 7.

[44] Ibid., p. 9.

[45] Ibid., p. 8.

Senate, Senator George Sutherland. Senator Sutherland, in a Senate Judiciary Committee hearing on the legislation, stated,

> The theory upon which compensation laws are drawn is that you are to compensate for the injury, not for the risk that the man ran in bringing about the injury; and under modern thought there is no logical reason for making distinction between what is hazardous and non-hazardous employment.[46]

Senator Sutherland reinforced his point with a rather graphic example stating "the clerk who has his leg cut off in his work about a store is just as effectively deprived of his leg as if it was cut off by a machine."[47]

Major FECA Amendments

Congress has passed major amendments to the FECA program in 1949, 1960, 1966, and most recently in 1974. In addition, coverage for occupational illnesses was added to the FECA program in 1924 by P.L. 68-196.

1949 Amendments

The Federal Employees' Compensation Act Amendments of 1949 (P.L. 81-357) brought about the first set of significant changes to the FECA program since its inception in 1916. The 1949 amendments, in the words of the House Committee on Education and Labor, sought to "modernize and liberalize" the FECA program, which, according to the Senate Committee on Labor and Public Welfare, provided "only illusory security for most workers or their families."[48]

Increased FECA Coverage

The 1949 amendments expanded the scope of workers covered by the FECA program to include those classified as "officers" of the United States. The amendments also doubled the maximum disability benefit level, thus providing for a replacement of a larger portion of federal employee pay.

In addition to better meeting the goal of universal coverage of all employees, the inclusion of federal government officers was intended to provide FECA protections to previously excluded employees, such as Foreign Service Officers, who may serve in dangerous overseas areas. The increase in the maximum benefit level was necessary since, at the time, it was estimated by the Department of Labor (DOL) that 90% of FECA cases involved workers with wages that were essentially not covered by the program because of the low maximum benefit level which resulted in these workers not receiving full benefits.[49]

---

[46] U.S. Congress, Senate Committee on the Judiciary, *Accident Compensation to Government Employees*, hearing on S. 2846, 64th Cong., 1st sess., February 26, 1916 (Washington: GPO, 1916), p. 27.

[47] Ibid.

[48] 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. 23, hereinafter cited as H.Rept. 81-729; 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. 29, hereinafter cited as S.Rept. 81-836.

[49] Nordlund 1991, p. 10.

Increased FECA Benefits

Several provisions of the 1949 amendments effectively increased FECA benefits for workers and their survivors. The three-day waiting period for FECA disability compensation was eliminated in cases of disability lasting more than 21 days. A schedule of benefits for permanent partial disabilities was created for the first time, which permitted partial disability benefits to be paid without regard to actual impairment or wage loss. The elimination of the waiting period and creation of a benefits schedule were intended to bring the FECA program in line with state workers' compensation programs and the federal Longshore and Harbor Workers' Compensation Act program.[50]

The 1949 amendments provided for augmented compensation, in the amount of 8.33% of a workers' pre-disability wage, in cases in which an injured worker had at least one dependent. This augmented compensation, along with the standard compensation rate of two-thirds of the workers' wage, brought the level of FECA benefits for workers with dependents up to the current level of 75% of the worker's pre-disability wage. The benefit level for survivors was similarly increased. The intent of the augmented-compensation provision was to better ensure that disabled workers and the survivors of workers killed on the job could provide economically for their dependents. The two-thirds benefit level for dependents was criticized by the House and Senate committees that reported the bill as "not sufficient as to ensure reasonable economic security to a family of a deceased worker where there is a large family."[51] Similar concerns over the adequacy of the two-thirds benefit level were expressed at a House Committee on Education and Labor hearing on the 1949 amendments.[52]

Reduced Benefits at Age 70

Although the 1949 amendments generally increased the level of FECA benefits, the amendments also required the FECA administrator to review the amount of compensation paid to any person aged 70 or older. The administrator was provided the authority to reduce the amount of such benefits if it was determined that 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. They testified 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.[53]

Provisions for Vocational Rehabilitation

The 1949 amendments permitted the FECA program administrator to send beneficiaries to receive vocational rehabilitation services at the government's expense. The amendments also created a

---

[50] The Longshore and Harbor Workers' Compensation Act Program was created in 1927. 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*.

[51] H.Rept. 81-279, p. 11; and S.Rept. 81-836, p. 20.

[52] 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.

[53] Ibid.

special supplemental benefit for workers participating in vocational rehabilitation programs. These provisions were intended to improve the return-to-work prospects of FECA claimants, which, it was thought, would ultimately benefit both the employee through a return to earning wages and the government through a reduction in FECA-benefit costs.[54]

The Exclusive Remedy Rule

The 1949 amendments established that the FECA program would be the exclusive remedy against the federal government for federal workers with employment-related injuries, illnesses, and deaths. This provision prohibited employees from seeking to recover economic or noneconomic damages from the government for injuries, illnesses, and deaths covered by FECA and brought the FECA program in line with one of the general principles of workers' compensation that was already written into the workers' compensation laws in the states.

When the FECA program was created, an exclusive remedy rule was seen as unnecessary because of the general prohibition against suits against the federal government. However, by 1949, three factors had combined to result in significant numbers of federal employees choosing to bring lawsuits against the federal government rather than file for FECA benefits. First, the passage after 1916 of laws, such as the Federal Tort Claims Act, which permitted some suits against the government. Second, some injuries to federal employees occurred while they worked for government corporations subject to lawsuits. Finally, because FECA benefits are limited by statute to partial wage replacement and medical benefits, employees felt that they could secure greater financial benefits from the courts than from the FECA program.[55]

1960 Amendments

The Chargeback Process

The Federal Employees' Compensation Act Amendments of 1960 (P.L. 86-767) created the chargeback process in which the Secretary of Labor is required to bill each federal agency for the costs of FECA benefits provided to their employees in the previous fiscal year so that these agencies may reimburse the Employees' Compensation Fund. In addition, these amendments required that government corporations also pay their "fair share" of FECA administrative costs to the government. The chargeback process was intended by Congress to "further the promotion of safety" among federal agencies by making the agencies ultimately responsible for the costs of injuries, illnesses, and deaths of their employees.[56]

1966 Amendments

The Federal Employees' Compensation Act Amendments of 1966 (P.L. 89-488) made two significant changes to the FECA program. These changes continue to be in effect today.

---

[54] H.Rept. 81-279, p. 16; and S.Rept. 81-836, p. 24.

[55] H.Rept. 81-279, p. 14; and S.Rept. 81-836, p. 23.

[56] U.S. Congress, House Committee on Education and Labor, *Federal Employees' Compensation Act Amendments of 1960*, report to accompany H.R. 12383, 86th Cong., 2nd sess., June 2, 1960, H.Rept. 86-1743 (Washington: GPO, 1960), p. 3; and U.S. Congress, Senate Committee on Labor and Public Welfare, *Federal Employees' Compensation Act Amendments of 1960*, report to accompany H.R. 12383, 86th Cong., 2nd sess., August 27, 1960, S.Rept. 86-1924 (Washington: GPO, 1960), p. 3.

Use of the GS Scale to Set Minimum and Maximum Benefit Levels

Prior to the enactment of the 1966 amendments, the maximum and minimum levels of FECA benefits were set by statute and not subject to any automatic adjustments. In 1966, FECA benefits were still subject to levels enacted as part of the 1949 amendments. According to the Senate Committee on Labor and Public Welfare, the statutory maximum provided for full benefits for more than 99% of claimants in 1949, but only 85% of claimants by 1966.[57] To address the difficulty inherent in using statutory changes to keep pace with the growth in federal employees' wages, the 1966 amendments provide for use of the general schedule (GS) scale as the basis for the maximum and minimum FECA benefit levels with the maximum level set at 75% of the highest rate of basic pay at the GS-15 level and the minimum level set at 75% of the lowest rate of basic pay at the GS-2 level for all beneficiaries, including those without dependents.

Cost-of-Living Adjustment for Benefits

The 1966 amendments provided for an annual cost-of-living adjustment for FECA benefits.[58]

1974 Amendments

The Federal Employees' Compensation Act Amendments of 1974 (P.L. 93-416) made three major changes to the FECA program. These three changes remain key elements of the program today.

Continuation of Pay

The 1974 amendments provided for up to 45 days of continuation of pay from a worker's employing agency in cases of traumatic injuries covered by FECA. During this period, an injured employee may receive his or her full pay rather than FECA compensation. Because continuation of pay is considered income rather than a benefit, it is subject to the federal income tax and is reduced by all standard payroll deductions.

Congress felt that 45 days of continuation of pay were needed because of the time it often took for FECA claims to be processed and compensation benefits to begin. In its report on the 1974 amendments, the Senate Committee on Labor and Public Welfare cited a General Accounting Office report that stated that the average processing time for FECA claims was between 49 and 70 days, a delay that the committee found "creates economic hardship on the injured employee and his or her family and causes difficult administrative problems for the Secretary of Labor and the employing agencies."[59]

Employee Choice of Physician

The 1974 amendments authorized employees to select their own treating physicians rather than use doctors employed or selected by the federal government. The right of employees to have free choice over who provides their medical care was one of the recommendations of the National

---

[57] U.S. Congress, Senate Committee on Labor and Public Welfare, *Federal Employees' Compensation Act Amendments of 1966*, report to accompany H.R. 10721, 89th Cong., 2nd sess., June 16, 1966, S.Rept. 89-1285, p. 3.

[58] The current cost-of-living adjustment is made each year on March 1 and is based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W; all items-United States city average) as measured in December of each year.

[59] U.S. Congress, Senate Committee on Labor and Public Welfare, *Federal Employees' Compensation Act of 1970*, report to accompany H.R. 13871, 93rd Cong., 2nd sess., August 8, 1974, S.Rept. 93-1081 (Washington: GPO, 1974), pp. 3-4, hereinafter cited as S.Rept. 93-1081; and U.S. General Accounting Office, *Need for a Faster Way to Pay Compensation Claims to Disabled Federal Employees*, B-157593, November 21, 1973, p. 1.

Commission on State Workmen's Compensation Laws in 1972; this provision brought the FECA program in line with that recommendation as well as with some other workers' compensation systems.

Elimination of Reduced Benefits After Age 70

The 1974 amendments removed the provision, enacted as part of the 1949 amendments, requiring that FECA benefits be reviewed and permitting FECA benefits to be reduced after a claimant reached the age of 70 to account for the reduced earning capacity that may come with age independent of any disability. 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.[60]

Recent FECA Amendments

There have been no major amendments to the FECA program since 1974. However, the 109th and 110th Congresses did make changes to FECA that partially address two of the issues currently facing the program.

Change to the FECA Waiting Period for Postal Employees

Section 901 of the Postal Accountability and Enhancement Act (P.L. 109-435) changed the way the FECA three-day waiting period for compensation is applied to employees of the USPS. This provision requires that postal employees satisfy the three-day waiting period before the continuation of pay period can begin. All other federal employees continue to serve the three-day waiting period after the conclusion of the continuation of pay period and before FECA compensation benefits begin.

This provision was based on a recommendation of the President's Commission on the USPS. The commission's recommendation was part of a larger package of FECA reforms for postal employees intended to reduce the USPS's workers' compensation costs. Because of what the commission termed the "unique businesslike charter" of the Postal Service, the commission recommended that the service's workers' compensation system become more in line with the state workers' compensation systems that provide coverage for most private-sector businesses.[61]

Death Gratuity for Federal Employees Killed While Serving Alongside the Armed Forces

American military operations in Iraq and Afghanistan have been supported by an unprecedented number of civilian employees, some of whom are serving in hostile areas alongside the Armed Forces. These deployed civilian employees are covered by FECA, but concerns have been raised

[60] S.Rept. 93-1081, p. 7.

[61] President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service*, Report of the President's Commission on the United States Postal Service, July 31, 2003, p. 134.

about the adequacy of FECA benefits for those injured or killed while serving in areas of combat, especially when compared with the benefits available to members of the Armed Forces from the Departments of Defense and Veterans Affairs.[62]

Section 1105 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) provides for a death gratuity of up to $100,000 to be paid by the FECA program to the survivors of any federal employee, or employee of a nonappropriated fund instrumentality, who "dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation." This death gratuity is paid in addition to the regular FECA compensation for survivors, but is offset by any other death gratuities paid by the federal government.

Presumption of Eligibility for COVID-19 Cases

Section 4016 of the American Rescue Plan Act of 2021 (P.L. 117-2)F created a presumption of eligibility for FECA benefits for federal employees with COVID-19. FECA benefits determined in accordance with this presumption are time-limited and are scheduled to be terminated on September 30, 2030, regardless of the disability status of the employee or continued eligibility of a deceased employee's survivors.[63]

Author Information

Scott D. Szymendera
Analyst in Disability Policy

[62] See, for example, U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Post Office, and the District of Columbia, *A Call to Arms: A Review of Benefits for Deployed Federal Employees*, hearing, 111th Cong., 1st sess., September 16, 2009; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Deployed Federal Civilians: Advancing Security and Opportunity in Afghanistan*, hearing, 111th Cong., 2nd sess., April 14, 2010.

[63] Pursuant to Section 313 of the Congressional Budget Act of 1974, as amended (P.L. 93-344, 2 U.S.C. §644, commonly referred to as the Byrd rule), a provision that would increase the deficit in any fiscal year beyond the budget window provided in the budget resolution is considered extraneous and subject to a point of order in the Senate. Thus, this provision in H.R. 1319, a budget reconciliation bill, limited federal spending to 10 years to comply with this rule. For additional information on budget reconciliation and the Byrd rule, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"*.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.