

U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, D.C. 20210



File Number:

JUN - 6 2013

Cliff Guffey, President
American Postal Workers Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005

JUN 10 2013

Dear Mr. Guffey:

The purpose of this letter is to inform you of certain steps that the Department of Labor (DOL) is taking in order to fulfill our obligations under the Privacy Act to protect the privacy rights of Federal Employees' Compensation Act (FECA) claimants by preventing the unauthorized disclosure of FECA documents by the United States Postal Service (USPS). DOL has concluded that, as the administrator of FECA, we have exclusive authority to control the disclosure of FECA records, including those in the possession of USPS. We have consulted with the Department of Justice (DOJ), and DOJ agrees with our legal conclusion. Nonetheless, USPS remains unwilling to abide by DOL's restrictions on the disclosure of FECA documents. In order to avoid the unauthorized disclosure of FECA records by USPS, DOL is suspend transfer of certain FECA information to USPS except in very limited circumstances where disclosure would be permitted by the Privacy Act or required to avoid unduly penalizing USPS employees.

We have notified USPS that as of July 1, 2013, DOL's Office of Workers Compensation Programs (OWCP), which administers FECA, will suspend electronic transfer of FECA information and documents to USPS, suspend USPS access to the Agency Query System, and suspend access to specific case documents through electronic kiosks in OWCP FECA District Offices. In addition, OWCP will limit access to copies of correspondence sent to a claimant. Information requested by the USPS Office of the Inspector General (OIG) and the Postal Inspection Service for investigatory activities within the scope of their investigative authority will continue to be provided.

This suspension follows USPS's refusal to sign the Memorandum of Understanding (MOU) and Interconnection Security Agreement (ISA) with DOL required to support continued electronic transmission of FECA data to USPS. The MOU and ISA require conformance with the Privacy Act. USPS's refusal to sign the MOU and ISA results from its disagreement with DOL over which agency controls disclosure of FECA documents. No other federal agency that participates in FECA has claimed an independent right to disclose FECA records and thus refused to sign the MOU and ISA.

I am sure that you are most interested in the practical effects on your members of the actions we are taking. One effect of this suspension of data will be that USPS may find it difficult to provide sufficient information to its pharmacy contractor (PMSI) and its physical therapy contractor (Align Networks) to permit them to perform activities relating to USPS employees who have active FECA claims as well as those who experience new injuries. In terms of immediate effects on your members, we suspect that your members may not be able to get

information about their FECA claims (such as compensation payments and medical bill inquiries) from USPS injury compensation specialists. While much of this information has been available (and will continue to remain available) to your members through the Claimant Query System (CQS) and through the Call Centers in the OWCP FECA district offices, we are aware that some members are unfamiliar with the CQS system, and we anticipate that the information exchange process will undergo challenges during the transition. OWCP staff will be available to assist claimants in accessing information regarding their claim.

In view of the scope of this action, I am providing further explanation for our decision. As DOL has long maintained, and as DOJ concurs, FECA itself gives DOL the exclusive authority to control disclosure of FECA records. As you know, FECA establishes a government-wide system of federal employee compensation for work-related injury and disease. FECA explicitly gives the Secretary of Labor (the Secretary) the exclusive authority to “administer and decide all questions arising under [FECA],” 5 U.S.C. § 8145 (2006), and also authorizes the Secretary to “prescribe rules and regulations necessary for the administration and enforcement of [FECA],” 5 U.S.C. § 8149 (2006). Pursuant to these authorities and in light of significant privacy interests often implicated by FECA records, DOL has promulgated regulations requiring any disclosure of FECA records—including FECA records held by other agencies—to comply with a government-wide system of records notice, entitled DOL/GOVT-1, that limits the circumstances in which all agencies participating in FECA, including the USPS, may disclose FECA records. *See* 20 C.F.R. §§ 10.10-11 (2012). DOL published DOL/GOVT-1 pursuant to its obligations under the Privacy Act.

FECA creates a claims process that expressly calls for the creation of records in filing a compensation claim, requires agency participation in the creation of certain of these records, and gives DOL substantial control over the information these records are required to contain. *See, e.g.*, 5 U.S.C. §§ 8119-8121. Given the centrality of records to the FECA scheme, DOJ agrees with DOL that controlling disclosure of such records falls well within the Secretary’s authority to “administer and decide all questions arising under [FECA].” *Id.* § 8145. And DOL has concluded that the protection of FECA records is “necessary for the administration and enforcement of [FECA],” *id.* § 8149, especially in light of the sensitivity of the information contained in FECA records, the desire to preserve incentives for FECA applicants to provide DOL with all the information necessary to process FECA claims, and DOL’s long history of protecting such records against disclosure. *See, e.g.*, 20 C.F.R. § 1.21(a) (1938). DOJ believes that DOL’s conclusion in this respect is reasonable in light of DOL’s statutory authority.

As is usual for government-wide systems of records under the Privacy Act, DOL’s system of records for FECA establishes a number of routine uses that allow the disclosure of FECA documents in specified circumstances. But USPS has argued that it has independent authority to disclose FECA records including in contravention of DOL’s routine uses. Although USPS has a unique status within the federal government in light of its independence from many federal statutes, the Postal Reorganization Act of 1970, as amended, 39 U.S.C. §§ 101-5605 (2006 & Supp. V 2011) (PRA), explicitly provides that officers and employees of USPS are covered by FECA, including the FECA provisions giving the Secretary broad authority to issue regulations for the administration of FECA. *See* 39 U.S.C. § 1005(c) (2006). In addition, the PRA section exempting USPS from many federal statutes expressly states that the PRA may elsewhere subject USPS to other federal statutes, and the PRA in fact does elsewhere subject USPS to

FECA. *See* 39 U.S.C. § 410(a) (2006). DOL has therefore concluded that USPS, like other federal agencies, is subject to the Secretary's administration of FECA. DOJ also concurs in this conclusion.

USPS has also argued that the National Labor Relations Act, 29 U.S.C. §§ 151-169 (2006) (NLRA), gives it independent authority to disclose FECA records. While the NLRA imposes certain information sharing requirements on parties in collective bargaining, no provision of the NLRA directly addresses or mandates the disclosure of FECA records themselves, and there is no suggestion in the statute's text that the NLRA was intended to displace the Secretary's authority under FECA. Therefore, DOL has concluded that the NLRA does not give USPS independent authority to disclose FECA records beyond the disclosures already authorized by DOL's routine uses. Again, DOJ agrees with our conclusion.

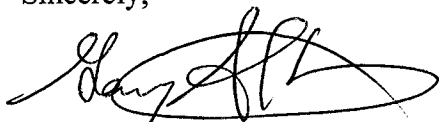
We have tried to resolve the issue of control over FECA records for many years. Most recently, at USPS's suggestion, Ms. Deborah Giannoni-Jackson, the then-USPS Vice President, Employee Resource Management and I negotiated over this matter for a period that extended considerably beyond the thirty day period originally agreed upon in a January 7, 2013 conference call between USPS and DOL. While DOL offered an operational approach that would minimize the burden on USPS in making disclosures that DOL considers appropriate under the Privacy Act, USPS has indicated that it intends to continue to disclose FECA documents in circumstances DOL has determined would be inconsistent with the Privacy Act. Thus, DOL has informed USPS of the imminent suspension of the electronic transfer to USPS of FECA documents and information except to the extent necessary to avoid unduly penalizing USPS employees.

We expect that, as a result of this action, DOL will experience increased telephone calls and written inquiries from USPS injury compensation specialists and USPS employees/claimants, DOL also expects to receive increased inquiries from USPS OIG and the Postal Inspection Service, DOL OIG and the Department of Justice for information relating to cases under active investigation. DOL will also need to immediately take over handling of FECA Third Party subrogation cases previously handled by USPS. Notwithstanding these challenges and difficulties, DOL is committed to ensuring that USPS claimants continue to receive the benefits and medical care that they are entitled to receive under FECA in a timely and high-quality manner.

DOL will continue to attempt to resolve this matter with USPS even after the suspension of information and document transfer. We regret having to take these steps, but DOL must fulfill its obligation under the Privacy Act to protect records it gathers in the course of administering FECA and to protect the Privacy Act rights of all FECA claimants. In addition to informing appropriate members of Congress about this action, DOL has also written to the heads of the Postal unions explaining this situation and will be posting an explanation on its website.

We are available to answer any questions and to discuss any concerns that you have over this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary A. Steinberg". The signature is fluid and cursive, with a large loop at the end.

Gary A. Steinberg, MBA
Director, Office of Workers' Compensation Programs (Acting)
United States Department of Labor

cc: Sue Carney