STATEMENT OF SUSAN M. CARNEY
DIRECTOR
HUMAN RELATIONS DEPARTMENT
AMERICAN POSTAL WORKERS UNION, AFL-CIO

REVIEWING WORKERS' COMPENSATION FOR FEDERAL EMPLOYEES
BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
MAY 20, 2015

Chairman Walberg, Ranking Member Wilson, and Members of the Subcommittee,

My name is Sue Carney, and I am the National Human Relations Director for the American Postal Workers Union, AFL-CIO. On behalf of APWU President Mark Dimondstein and our members we appreciate the opportunity to present our views regarding the Federal Employees' Compensation Act (FECA) and its administration by the Department of Labor, Office of Workers' Compensation Program (OWCP).

The American Postal Workers Union represents more than 200,000 postal employees and retirees; 50,000 of whom are veterans. Our members work in the Clerk, Maintenance, Motor Vehicle and Support Services Divisions. We are employed in nearly 32,000 sites throughout the country; we handle 40 percent of the world's mail volume, process more than 155 billion pieces of mail annually and provide a trusted, universal, public service in every city, town and community in our nation.

Overview
Approximately 2.8 million postal and federal employees are covered by the FECA – of which 119,000 on average sustain workplace injuries, illnesses and death each year in performance of their duties. And while the APWU is not in a position to speak on behalf of *all* of these workers, or the unions that represent them, we assure you we stand united with every employee, their families and every other postal and federal union who represents them in opposition to many of the Department of Labor's proposed amendments and the White House's proposed budget cuts regarding FECA, which we fervently believe are inequitable and, if adopted as written, will have a negative and devastating impact on the lives and well-being of our nation's public servants and their families.

The guiding principles of FECA and anyone contemplating changes to it must be to leave the injured worker no better or worse situated as a result of their workplace injury. In the 112th Congress we accomplished that by passing the bipartisan bill H.R. 2465, which adopted at least ten of the recommendations made by the Office of the Inspector General (OIG), the Department of Labor (DOL), the Government Accounting Office (GAO) and the Office of Management and Budget (OMB). H.R. 2465 strengthened program integrity by allowing Social Security cross-matching and the subrogation of continuation of pay (COP). It improved elements of the statute

that are significantly deficient, such as burial expenses, and facial disfigurement, and it produced savings – although lawmakers should be mindful that not all of the costs related to workplace injuries are borne by taxpayers. For example, FECA benefits paid on behalf of postal employees and their survivors use no tax dollars.

During this hearing, Mr. Leonard Howie, OWCP Director stated on the record that "any opportunity to better serve workers should be encouraged". Yet the DOL has not been able to demonstrate that its proposed changes will "better serve workers". Under oath, neither OWCP Deputy Director Gary Steinberg, in past hearings, nor Mr. Howie presently, was able to offer plausible explanations to justify the DOL's proposed cuts to widows (ers) and their children whose spouses / parents died because of a workplace injury. In fact when Mr. Steinberg testified before the Senate on July 26, 2011 as the Acting OWCP Director he stated that a single pay rate (70%) would simplify processes for DOL. Lessening the DOL workload by cutting the income of working families is not how we accomplish better serving workers and it is exemplary of the Administration's misplaced priorities.

DOL officials have been consistently unable to defend its recommended cuts to families whose earners are injured on the job. They have also been unable to legitimize proposals that cut benefits of seniors who are incapable of funding their retirement because of an occupational illness or injury. In fact DOL is misleading lawmakers and the general public by cloaking the reduction as a "conversion" – implying that injured workers who reach retirement age will transition to the same benefits as their uninjured, retired co-workers, which is absolutely not the case. Injured workers are locked in at their date of injury (or first disability) pay rate and only receive a Consumer Price Index (CPI) cost of living adjustment (COLA), which has averaged just 2.1% over the past decade. Injured workers cannot increase their wage loss compensation with contract increases, contract colas or step increases. They are unable to enjoy career growth and are not permitted to make contributions to their Thrift Savings Plan through personal withholdings or with employer matching funds – all of which would otherwise factor into their retirement had they not been injured on the job.

DOL officials and some others, including Mr. Howie, have expressed a misguided notion that FECA creates a disincentive for injured workers to return to work but Director Howie's testimony contradicts that theory by declaring "less than 2% of the injured workforce covered by FECA remains on the long-term compensation rolls more than two years after sustaining their injury". To further help dispel the deceptive "disincentive" marketing strategy that is being promoted, I would respectfully direct the lawmakers to three unbiased studies that were conducted in 2012 by the Government Accounting Office (GAO) following our last "review" of the Federal Employees Compensation Act on May 12, 2011.

GAO Studies

The GAO concluded that the proposal to use a single pay rate of 70% to compensate both claimants with and without dependents would reduce the beneficiaries' median wage replacement rates by 3 to 4 percentage points. The proposal to use a single rate of 66-2/3% would reduce the beneficiaries' median wage replacement rates by 7 to 8 percentage points. In fact if you were to use the median salary of $42,800.00 and apply IRS tax codes[1], the take home pay for single and

[1] The data driven analysis was conducted in 2013

married workers, with and without dependents – claiming 1 to 4 exemptions actually falls between 82.4 % – 89.4 % of their gross salary. The data demonstrates that the net pay of working employees is far greater than the 75% permitted by FECA for claimants with dependents and the 66 2/3% without.

It's important to point out that FECA beneficiaries also lose significant benefits. Employees collecting wage loss compensation are in a leave without pay status, so, in addition to less take-home-pay, and the physical, mental and emotional pain that workforce injuries bring, these workers cannot earn annual leave and sick leave. They cannot reap TSP advantages [2] nor benefit from over-time opportunities, promotion prospects, and other pay increase potentials. Their lost workdays erode their Family Medical Leave balance, and they are often separated because of their disabilities[3]. When separated for disability they stop accruing creditable service time and, if separated prior to achieving the retention of health benefits and life insurance, these benefits are forfeited. Compensationers cannot contribute to Social Security and cannot receive credit for substantial earnings. So contrary to the DOL's position and the misunderstanding of others, it can be readily demonstrated, for many reasons, that injured workers do in fact have an incentive to return to work.

If there is any disincentive, it lies in the statute's loss wage earning capacity (LWEC) determinations[4]. When injured workers are restored to work with their employer or when they are placed in OWCP's vocational rehabilitation program, which is *supposed* to be a benefit, they can expect to have their wage loss compensation reduced by their actual earnings which is just. What is unjust is: when these disabled workers are not successful in obtaining employment, their wage loss compensation is reduced anyway through a "constructed" LWEC. What is unjust is: a LWEC determination can also leave injured workers without an income when their employer alleges medically suitable work is no longer available. In our opinion, LWECs motivate and enable employers to refuse or withdrawal medically suitable work in order to escape a large portion of their chargeback liabilities; leaving injured workers destitute. Employees should not fear restoration, and any procedure that permits employers to game the system should be eliminated.

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[2] The TSP Calculator illustrates that an employee who is earning $40,000 annually, contributing 10% and receiving the employer's maximum 5% contribution over the span of a 30 year career, and who is earning an average of 5% interest is estimated to realize more than $416,000 towards his / her retirement savings

[3] Employers are permitted and generally do separate employees who are collecting wage loss compensation for one continuous year.

[4] Division of Federal Employees Compensation Procedure Manual Part 2 Chapters 0815 and 0816. These actions are known as loss wage earning capacity (LWEC) determinations. In basic terms, a LWEC is a comparison between wages of actual or potential earnings against wages at the time of injury. The difference is what the claimant is entitled to receive in wage loss compensation. For example, a worker was making $20 hr when injured. They normally would receive $15 in WLC if they have dependents, but if the Office finds a job that pays $18 hourly, the employee is then only entitled to receive 75% of the difference, which in this scenario would be $1.50 hourly, even when the employee was an unsuccessful applicant. And if the employee procured a job which is subsequently the job, the employee would still only be entitled to $1.50 per hour in WLC.

The GAO also simulated a mature Federal Employees Retirement System (FERS) to compare FECA benefits received by injured workers to the annuity benefits of uninjured coworkers, who, unlike their disabled counterparts, were able to enjoy 30-year careers and obtain a true high three. The GAO found that the median FECA benefit package under the proposed change would be 22 - 35% less than the median FERS retirement package; here again, the evidence is in opposition of the "disincentive" purported to exist. It's noteworthy to mention that all federal and postal employees first hired in 1984 or later are covered by FERS. In that it has been 31 years since FERS was implemented so it stands to reason the lion's share of our current postal and federal workforce fall under FERS. Therefore, it is not realistic nor would it be appropriate to rely on any analysis that used the Civil Service Retirement System as its base for comparison.

When confronted with the findings of these impartial GAO studies, the DOL refuses to abandon its imbalanced and daunting proposals, arguing instead that FECA "is not a surrogacy program" and declaring that its recommendations are "based on experience" (opinion), rather than substantiated facts. Howie's written testimony stated "the proposals are based on internal studies" yet under oath he readily confessed that DOL has not conducted an analysis. The truth is DOL has not created a report that supports its position nor have they been able to authenticate how projected savings stemming from its recommendations were derived, which mind you change each time a DOL official presents testimony despite their recommendations remaining constant. On one occasion a total of $400 million, on another $500 million from augmentation alone, and on this occasion $360 million (each over the span of a 10-year period).

Stakeholders

The Department of *"Labor"* has however seemingly abandoned its workers – according to Director Howie, OWCP stakeholders and partners include OIG, OPM, and OMB but never once did he refer to the laborers and their families as stakeholders. According to his testimony Federal and Postal employee unions are viewed as "outside parties", when in fact we are the voice of 2.8 million employees covered by FECA– that's a stakeholder, not an outside party. He informed legislators that the proposed changes were shared with the unions and members of the disability community, which could easily be misconstrued as our being part of the discussions and being granted input, and that is simply not true. It must be clarified for the record that we were invited to one briefing, during which their proposals were presented as innocuous. When we saw through the charade and attempted to voice our concerns, we were adamantly advised by DOL officials that our views would not be considered. Instead the DOL used the occasion to gauge our response, rather than consider the validity of our concerns, consequently amending some of their tactics to make the proposal seemingly more palatable.

History and Examination

It is essential that we appreciate that the FECA represents a longstanding covenant that our government made with postal and federal workers. Each side gave up something to make it equitable and fair to both parties. Its primary purpose is to shield injured postal and federal employees and their families from loss, while limiting the employers' liabilities. "*The employer relinquished the defenses enjoyed under the common law, but this loss was offset by a known level of liability for work-place injuries and deaths. The employee gave up the opportunity for large settlements provided under the common law, but receives the advantage of prompt payment of compensation and medical bills. These tradeoffs make the federal workers' compensation system fair and equitable to both parties. However, where either party does not receive the*

benefits of this covenant, the system becomes unacceptable. When FECA was amended in 1974, Congress stated it is essential that injured or disabled employees of all covered departments and agencies, including those of the United States Postal Service, be treated in a fair and equitable manner. The Federal Government should strive to attain the position of being a model employer".[5]

As we continue with our examination, it is important to understand that the wage loss compensation and death benefit costs have remained stable since 2001; however war risk hazard payments and escalating costs for medical and rehabilitation services and supplies brought a combined $367.3 million increase to the program[6]. It's our understanding that this figure includes all OWCP directed medical exams. It is also essential to recognize that postal and federal workers are injured on the job because of the circumstances they encounter in performing a public service.

These employees are victims of traumatic injuries, such as slips and falls, muscle tears and herniated disc injuries. They are victims of poor ergonomic working conditions, like those that cause repetitive stress disease, making it difficult to perform simple tasks that involve grasping, holding and reaching. They suffer motor vehicle accidents, sustain injuries caused by faulty equipment, and are innocent victims of unforeseeable, heinous crimes. Workplace injuries and diseases change lives, in many cases forever. No one ever goes to work wanting it to be the day they are injured or the day they will not return home to their family.

FECA is supposed to be a non-adversarial, yet many workers and their treating physicians would disagree. In addition to the losses that were previously presented, we need to share just a few examples of the adversarial scrutiny they are often subjected to. Physicians are frustrated. OWCP demands an extraordinary amount of paperwork from them and pays poorly for medical services- just 5% over the Medicare fee schedule. It is not enough for treating physicians to give their expert-medical opinion, confirming that a condition is work-related based on their physical examinations, medical testing and findings; their medical narratives are often rejected by claims examiners (who have no medical background) stating the doctor's opinion is insufficient because the physician failed to share his or her reasoning. Prescribed medical treatment is often delayed or denied. In previous testimony presented by then OWCP Acting Director, Steinberg stated, "overcoming actual physical limitations exact a high price", which "means a more costly program". Taken in context, he seemed to imply that the program will forgo the expense of medical treatment if it won't clearly result in a return-to-work.

Additionally, claimants are subjected to second opinions and independent medical examinations, rather than trusting the opinion of the claimant's treating physician who understands the extent of the disability and is responsible for prescribing medical treatment. All of this needlessly adds to the cost of the program. These factors have made it difficult for claimants to find and keep doctors. When claimants do find doctors who are willing to treat them, claimants have been

[5] Excerpt from Joseph Perez's statement when appearing before The House Government Reform and Oversight Committee Government Management, Information and Technology Subcommittee on July 6, 1998. Perez is a former OWCP DFEC Claims Examiner and currently practices law.

[6] War risk hazard payment $86.2 million(WHCA); increase cost for medical services $281.1 million

barred from using them if they are located further than 25 miles away. To the contrary, OWCP regularly finds it acceptable to send claimants more than 100 miles away for their directed exams. DFEC also refuses to adjudicate questionable job offers for suitability; rather a claimant is required to refuse a job offer and risk going without income while the program takes months to make a suitability determination. These factors, coupled with OWCP's most recent and sweeping rulemaking changes[7] and portions of the DOL's current recommendations, all bring additional favor to employing agencies, cause unnecessary harm - in many cases irreparable harm to injured workers and their families - and do little to promote the non-adversarial program FECA is intended to be. These Division of Federal Employees Compensation (DFEC) practices should not be permitted to stand.

We also appreciate legislators giving consideration to the significance of other recommendations that are being proposed by the Administration and allowing us to share our views as follows:

Vocational Rehabilitation

We agree measures should be taken to help all injured workers return to suitable employment when their treating physician states that they are physically capable; however, granting authority to place employees with temporary medical restrictions into OWCP's vocational rehabilitation program is an objectionable approach. It would serve as another disincentive to employers who believe workers with disabilities are crippling their production. Currently, only employees with permanent medical restrictions can be voc-rehabbed. The reality is employers regularly refuse work to these employees because they can escape chargeback through OWCP's vocational rehabilitation program due to loss wage earning capacity determinations previously discussed. Comparatively, employers are more compelled to return employees with temporary restrictions to employment because they cannot be voc-rehabbed. In addition, premature vocational rehabilitation could interfere with the employees' prescribed recovery process or force employees to exceed their physical capacities. For example, it is not uncommon for Rehab Counselors to require disabled workers, who are only capable of working a few hours per day, to interview for fifty jobs in the span of a week.

Additionally, OWCP has not disclosed the specifics of its new Return-to-Work Plan for employees who are physically unable to be voc-rehabbed, nor has it shared if or how the employee's treating physician will be partnered into its processes. As earlier stated, OWCP statistics confirm less than 2% of the workers covered by FECA remain on the long-term compensation rolls more than two years after sustaining their injury. This surely demonstrates there is little need to burden the program with additional rehabilitation costs.

To accomplish the goal of returning injured workers more readily to employment, we recommend that OWCP be more prompt in authorizing all recommended medical treatment, including physical therapy and surgeries, which are often denied or delayed for extended periods of time.

[7] RIN 1240-AA03

Assisted Reemployment Program
The APWU can appreciate the OWCP's efforts to subsidize federal employment opportunities where suitable work does not actually exist within the worker's own employing agency; however, we are gravely concerned that such efforts would result in a reduction of compensation benefits. Again, the problem lies within the Office's LWEC procedures. DFEC procedure permits a reduction to wage loss compensation based on actual earnings, which alone is not objectionable, but, when the subsidized employment ends and residual disabilities remain, there is no mechanism to reinstate the compensation that was eliminated. Another DFEC procedure, which was touched on earlier in this statement, permits LWECs based on constructed positions. Essentially, this permits a reduction in compensation even when the worker is unsuccessful in procuring a position. How is this fair and equitable? How does this better serve workers?

We recognize that federal work cannot be used as a basis for making LWEC determinations, but the reality is that DFEC has advised it will look to comparable private sector positions to LWEC employees who are placed in the Assisted Reemployment Program.

The Office has offered its Private-Sector Assisted Reemployment Program as an indicator of potential success for its Federal Assisted Reemployment Program. Interestingly, the Office still has not disclosed how many private-sector program candidates they successfully placed in the program, nor has it advised how many LWEC's were issued as a result of the program, but we do know, based on figures previously provided by OWCP, that 45% of the employees who secured private –sector subsidized employment were not hired at or beyond the 3 year agreement period consequently leaving many injured workers and their families in peril.

We recommend employers be required to provide compelling evidence when they assert that they do not have medically suitable work for partially recovered employees, and prove that they have taken all mandated measures to make reasonable accommodations for their disabled workers before these workers are sent looking for work with other employers. In our opinion, the Federal "Assisted" Reemployment Program would only be favorable if changes were made to reinstate lost compensation when employment stops and if constructed LWECs were eliminated. These actions would aid in facilitating employer cooperation, they are conducive to the President's Executive Order 13548, and would compel employers to retain their injured employees. On the surface, this proposal with all of its employer incentives could appear to inspire employers to hire injured workers; however, when you examine the existing procedures that it would trigger, failure to incorporate our recommended changes creates the potential to bring irreparable harm to workers.

Program Integrity and Conversion of Benefits at Retirement Age
We must eradicate the illusionary idea that the FECA is fraught with workers who game the system. This grossly exaggerated pretense is evidenced in OIG's recent Semiannual Report to Congress, where only five convictions for medical provider and claimant fraud were reported[8]. We agree fraud should not be tolerated, but when you compare the very few to the number of FECA beneficiaries, the percentage is miniscule – less than one-tenth of one percent. Frankly,

[8] OIG USPS Semiannual Report to Congress October 1, 2014 – March 31, 2015; 1 medical provider and 4 claimants were cited as convicted of committing compensation fraud.

OIG is guilty of committing a higher percentage of fraud if you compare convicted agents to its complement.

Existing regulations and procedures are so stringent it is virtually impossible to "milk" the system *as is too frequently implied*. Compensationers are required to provide medical documentation on a fairly regular basis to support their disabilities in order to remain on the OWCP rolls. Claimants are not permitted to self-certify, so it is meaningless for anyone to assert that injured workers may have an incentive "to cling to the self-perception of being permanently disabled." Even if they had that perception, it wouldn't be enough to keep them on the rolls. Furthermore, FECA beneficiaries are regularly subjected to OWCP directed second opinion and independent medical examinations.

Additionally, there is the existing and unforgiving OWCP Vocational Rehabilitation Program, so we must presume that many, if not all, of the "less than 2%" long-term compensationers are permanently and totally disabled; otherwise, regardless of their age, they would have been placed in OWCP's Vocational Rehabilitation Program to seek alternate employment. As illustrated in the GAO's findings and as detailed earlier, it is wrong to infer that OWCP is a lucrative retirement program marked by disincentives that preclude employees from returning-to-work. As previously mentioned the GAO report solidifies the median FECA benefit package under the proposed change would be 22 - 35% less than the median FERS retirement package

It is additionally noteworthy that, unlike their uninjured coworkers, who can work after retirement to supplement their income, totally disabled compensationers are incapable of performing any work. The loss injured workers sustain is monumental. To reduce their compensation to 50% at a pre-selected and arbitrary age on the basis that CSRS annuitants receive a slightly higher but taxable percentage than that, which is being proposed, has been proven to be unfounded.

Further, to assume any age a "normal" retirement age would be unjust, age discriminatory and presumptive. To help put this in a better perspective, forty-nine of our country's 100 Senators, and 157 House Representatives are 62 years of age or older, and we are not suggesting they retire because they achieved a particular milestone age. In fact the Bureau of Labor Statistics reported that more senior employees are opting to work well into their golden years to stay active and because they cannot afford to retire.[9] Do we really want to penalize seniors with work-related medical restrictions because of their age?

We would be remiss to assume that our senior compensationers would have retired had they not been injured. We have to presume, based on existing OWCP procedures, that these employees are incapable of working; otherwise OWCP officials would be derelict in performing their duties.

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[9] The Bureau of Labor Statistics indicates that as of 2007, 56.3% of workers age 65 and older have opted for fulltime employment over part-time employment. That employment of workers ages 65 and over has increased 101 % between 1977 and 2007: men rose by 75%; women climbed by 147%; while workers 75 and over had the most dramatic gain, increasing by 172%. There is also an apparent failure to acknowledge that projected growth in the labor force for workers between the ages of 65 and 74 is predicted to soar by 83.4 percent between 2006 and 2016. The number of workers age 55-64 is expected to climb by 36.5 percent. By 2016, workers age 65 and over are expected nearly double its participation in the total labor force from that of 2006.

For those who have temporary medical restrictions, it's important that we recognize they may be capable of returning to work sooner if OWCP approved all prescribed treatment in a more timely fashion. We must also heed the importance of giving employees access to appropriate care and adequate recovery time that is consistent with the nature of their injury. It would be punitive to reduce wage loss compensation based on age and the time spent on the rolls. Recovery for extensive injuries can often take longer than a year.

Several measures can be taken to make FECA more fair and equitable. Laws could be changed to allow TSP withholdings and matching contributions or a retirement fund, comparable to TSP could be created for compensationers that would permit employee withholdings and mandate employer contributions. Compensationers could be afforded the option to elect retirement based on an estimation of what their high-three would have been had they been able to continue their federal career. As it currently stands, employing agencies are the only benefactors.

Augmentation
Currently workers with dependents receive 75% of their pay, while workers without dependents receive 66 2/3%. DOL originally offered its proposal to convert all compensationers to 70% on the premise that workers with dependents do not earn more than those without – as previously mentioned that conception was disproven by the GAO analysis.

Although it is true that workers with dependents do not earn more than those without, tax deductions for workers with dependents are less. This creates a larger net check to better support their families; workers without dependents net less, which has been affirmed by performing simple calculations using existing IRS tax codes. As for DOL's argument that FECA benefits frequently exceed the employee's pre-injury tax-home pay, there is no equity in being locked in at a rate that does not allow your usual pay increases.

Additionally, uninjured coworkers are able to recoup tax withholdings by filing annual tax returns to add to their income; compensationers cannot.

It is a ridiculous belief that claims examiners are being challenged by wage loss calculations with the technology that is available. The installation of a computer program or the use of a calculator would resolve the nuisance without going to the extreme of reducing benefits of worker families. APWU is opposed to any change that would burden families, or penalize workers because they are married and /or have children.

Scheduled Awards
Our primary objection to this proposal is based upon the change in pay rate percentages. It is our opinion that claimants should continue to receive their benefits based on their dependent status (75% dependents, 66 2/3% no dependents) for reasons we offered relevant to augmentation.

Moreover, we object to the GS 11 Step 2/3 rate ($53,639.00) being used to calculate the value of scheduled awards. Historically, the employee's actual pay rate at time of injury or first disability, whichever is greater, has been used to calculate scheduled awards. Today, this change would result in an increase for some claimants but a decrease for others. In the future however, it is likely that the designated rate would be even less reflective of the actual pay rates for some

workers. Coupled with the DOL's adoption of the AMA Guide Sixth Edition, which significantly reduces impairment ratings and in turn considerably reduces the value of scheduled awards, the utilization of the GS 11 Step 3 rate would be a double-blow to compensationers who suffer a permanent loss of use.

It is also illogical for DOL to attempt to assert that an arm of one wage earner is always valued equally to another's. Comparing the surgeon's hand to a phlebotomist, a quarterback's arm to the arm of his coach depicts how appendages are valued. In order to be equitable and fair the APWU recommends that scheduled awards remain based on the employee's pay rate.

We also strongly urge mandates be implemented that eliminate the utilization of the AMA Sixth Edition. Relying upon the AMA Guide Fourth or Fifth Editions would facilitate a more accurate means to rate impairments. There are no regulations that require DOL to use the latest edition of the AMA. In fact, AMA Guides Task Force Member, Matthew Daker reports the AMA Sixth Edition is flawed and produces flawed results, as did Christopher James Godfrey, Chief Judge and Chairman of the DOL Employees' Compensation Appeals Board.

Mr. Godfrey testified before this Subcommittee on November 17, 2010 in his capacity as the Iowa Workers Compensation Commissioner. He shared his strong views on the paradigm shift in the Sixth Edition that blurred boundaries between medical and legal determinations. He cited a number of troublesome principles that conflict with statutory and case law, and illuminated Dr. Christopher Brigham's[10] self-interest—his business was primarily focused on employer-insurance carriers.

The conclusion of the Iowa Workers Compensation's designated Task Force, in a 7-1 vote, was to reject the use of the AMA 6th Edition. Ironically Dr. Christopher Brigham was hired by DOL to perform evaluations – another example of the Administration's misplaced priorities. And while we recognize that an ECAB judge does not set policy, it would likely prove productive to compel the SOL and OWCP officials to explore Mr. Godfrey's views with Mr. Godfrey.

Death Benefits
Our objection to this proposal is based upon the change in pay rate percentages. It is our opinion that survivors should continue to receive their benefits based on the historic compensatory rate of 75%. A reduction does little more than swipe income from the spouses and children of federal workers who died providing a public service to our country.

Definition of New Claim for Disability – *perhaps the slyest of all the DOL proposals*
APWU has strong objections to this proposal. This is a veiled attempt to corral all compensationers, even those with existing approved claims under the new FECA, if changes are passed. Passage would gather individuals submitting short-lived disability claims caused by a need to recover from physical therapy, spinal injection, surgery or other intermittent medical treatment. It would net claimants that experience a spontaneous worsening of an already accepted medical condition, and would also capture claimants who have medically suitable job offers withdrawn by employers, as occurred within the Postal Service in cataclysmic proportion.

[10] Brigham was one of the primary medical practitioners involved in the development of the AMA Guide to Impairment Ratings, Sixth Edition

This is perhaps the slyest of all the DOL proposals. Making the amendments prospective would in and of itself be unjust, but the DOL is attempting to leave lawmakers and others with the impression that prospective changes will only affect individuals with "new" claims; what the DOL is actually attempting to accomplish is to change the understood definition of what is "new".

Passage of this proposal would afford employing agencies even greater favor by burdening a significantly greater number of injured workers and their families. All Compensation Act submissions require adjudication but traditionally only two are considered new claims. The definition of a new claim should remain limited to the acceptance or denial of newly filed traumatic injuries and occupational disease claims.

Burial Expenses
Currently at $800, this benefit is long overdue for an update. APWU would suggest the benefit be more reflective of actual final expenses. According to the most recent information available through the National Funeral Directors Association, the median cost of an adult casketed funeral with a vault, which is usually required by most cemeteries, was $8,343.00 in 2012.

Computation of Pay
Workplace injuries are not supposed to cause loss to workers. Therefore, compensation is purposeful in including all of the pay factors that an employee would have been entitled to, had they not been injured. Traditionally, compensation is based on an employee's salary, including night differential, Sunday premium pay and holiday pay, and for some workers includes overtime. Quite simply, APWU objects to compensation being paid at any rate other than the employee's actual pay rate at time of injury or first disability, inclusive of all usual entitlements to Sunday premium, night differential, holiday pay and where appropriate overtime pay. It should not be based or capped on an arbitrarily selected GS rating, which would create a pay increase for some employees and a decrease for others. It is neither fair nor equitable to generate savings for employers off the backs of injured workers. Furthermore, we will restate that it is a ridiculous notion that claims examiners are being challenged by wage loss calculations with the technology that is available.

Waiting Period
Continuation of Pay (COP) is only paid for timely filed traumatic injury claims. Its very spirit is stated in its name and it is in place to ensure employees and their families have an income while OWCP adjudicates their claim which regularly takes 60 – 120 days depending on the complexities of the claim. The APWU is opposed to federal employees being subjected to a three-day waiting period as we have been. As we understand it, the average COP usage is just 66.3 hours per traumatic injury. Implementing a three-day waiting period would impose a 37% slash to the worker's pay that, if not for the workplace injury, would be earned.

As for the argument that the three-day waiting period would discourage "frivolous" or "non-meritorious" claims, this reasoning implies that it is permissible to penalize the worker whose injury was not severe enough. All workplace injuries are real, even minor ones. This fact does not make them frivolous or non-meritorious. Employees are subjected to the same scrutiny and

requirements for minor injuries. They still need to meet the same five requirements as severe injuries to achieve claim approval, one of which includes a medical narrative with medical reasoning. The report is expected to have probative value, be written with reasonable medical certainty, and demonstrate a causal connection between the injury and the work environment. Non-meritorious claims are going to be denied by OWCP. When the claim is denied, the employee must reimburse the employer either by substituting leave for the COP, or by paying out of pocket. Therefore, these non-meritorious claims are not a cost factor for the employer, and a three-day waiting period is simply a pretext for an inequitable reduction of a reasonable wage loss payment for the worker.

In 2006, a three-day waiting period was unjustly imposed upon postal workers in order to save money for the employer. The same should not be imposed upon federal workers. APWU would request the three-day waiting period be removed from COP for postal workers. This action would satisfy the stated goal of uniformity and enable COP to fulfill its intended purpose.

Sanction for Non-Cooperation with Nurses
To impose sanctions for non-cooperation with nurses means to eliminate eligibility for wage loss compensation and scheduled awards. The nurse intervention program is already fraught with overzealous nurses who attempt to impede or redirect the prescribed medical treatment of the claimant's treating physician, and who impose themselves in private examinations and doctor patient discussions. APWU is opposed to giving these nurses the authority to have sanctions initiated without first giving claimants access to due process.

Compensation for Foreign Nationals
Upgrades to this provision are long overdue. However, since these foreign nationals are performing a public service for our country, APWU believes they should be compensated using the same percentage ratings that apply to our claimants (75% dependents, 66 2/3% no dependents).

Conclusion
It seems the Department of Labor officials have lost compass of its mission "to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights"; and are overlooking the substance of their Department's name – *of Labor, aka the workers*.

It's disturbing that our Secretary of Labor would allow officials under his charge to take a meat ax to the basic benefits of injured workers and their families in order to gain modest "pay for" savings, or that he would be willing to appease the White House and its proposed FECA budget cuts rather than having the courage of his convictions to reject the proposals and admonish the makers. I imagine France Perkins would be as gravely dissatisfied with the Department as we are.

Although we are very disappointed with many of the proposed changes that are being recommended regarding the FECA, and disillusioned with OWCP's unbalanced approach in administrating applicable statute provisions, regulations and procedures, we still believe the

Department of Labor is the best means available to handle the claims process for all federal and postal workers. APWU feels strongly that the Federal Workers Compensation Program (OWCP DFEC) should continue to strive to be a model program, not work to be comparable to insufficient state programs.

To help OWCP meet its burden, more claims examiners are needed. To eliminate some of the erratic decisions claimants are receiving, all claims examiners should be required to receive, on a regular basis, more comprehensive training regarding regulations, procedures and precedent setting Employees Compensation Appeals Board decisions.

It is also our judgment that OWCP should be granted moderate enforcement authority to compel employers, who have been skirting return-to-work and reasonable accommodation obligations, and other responsibilities, to comply. We would also implore the Committee to work to create more meaningful safety and health mandates to protect workers, and provide better mechanisms to enforce them. These initiatives alone could reduce the overall cost of workplace injuries and disease.

We think efforts should be made to recreate the non-adversarial atmosphere that the Program is intended to be. To help accomplish this, we recommend more substantive outreach to employee representatives and more meaningful technical assistance to treating physicians and claimants, who are often confused by the processes. Efforts should be made to make the Program more appealing to doctors. Many forgo treating claimants because of the extraordinary reporting requirements and low reimbursement rate for services.

We also believe that officials who possess an "injured workers sit around eating bonbons" mentality, as well as those who are incapable of seeing anything but the bottom line of a financial statement should be retrained or relocated to positions that do not impact the livelihood and well-being of injured workers and their families. Everyone must remember that there are real people, with real and painful injuries and losses who have real bills to pay that are attached to the pieces of paper that we call claims.

Bending policy and recreating procedures to favor agencies do little to maintain a fair and equitable atmosphere. Shrouding them as "modernization, return-to-work and administration simplification" is disingenuous. As we examine the FECA and its purpose, we would request that we be mindful not to regress but rather progress. Before anyone considers passing legislative changes, we must ensure they are meaningful changes and examine how the consequences of our actions will impact workers and their families. It is important to understand the losses compensationers presently suffer before we consider asking more of these workers. That being said, we find balance and improvement in the bipartisan bill H.R. 2465 and encourage legislators to do the same.

We thank you for your time and consideration regarding this paramount issue.

Susan M. Carney
Director
Human Relations Department
American Postal Workers Union, AFL-CIO

Ms. Susan M. Carney is an ardent advocate for injured workers and their families. She been a career employee with the United States Postal Service since 1989. She has 26 years of union experience serving the American Postal Workers Union, AFL-CIO membership.

She has held numerous positions within her APWU Local and State organizations, including: Shop Steward, Trustee, Secretary-Treasurer, Executive Vice-President and President of the New Jersey State APWU. In 2001, she was elected the APWU National Human Relations Director and currently serves full-time as a resident officer in Washington, DC in that capacity.

Ms. Carney serves as the senior committee member of the USPS National Employees Assistance Program (EAP); the AFL-CIO Union Veterans' Council, the AFL-CIO Civil, Human and Women's Rights Committee; and also serves on the Postal Employees Relief Fund as the senior Executive Committee member.

Under Ms. Carney's direction, the Human Relations Department is responsible for providing guidance to the APWU membership in relation to a number of issues, including: the EAP, veterans' rights, members' assistance programs, illegal discrimination, community services, disaster relief; civil, human and women's rights; reasonable accommodation, and workplace injuries and illnesses, which is a top priority of the department.

She implemented the union's first National Injury Compensation Training Program. She has conducted hundreds of training seminars - educating thousands of labor representatives, attorneys and medical professionals throughout the country. Ms. Carney has created countless resources to assist members navigate their way through the OWCP processes and to help representatives achieve justice for injured workers.

Ms. Carney understands first-hand the impact of workplace injuries and is painfully aware of what it means for employees and families to live with disabilities. She herself suffers from carpal tunnel and thoracic outlet syndromes which were caused by her employment as a mail processor; as a result she endures a combined 44% permanent loss of use to her arms.