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By [Greg Jones](#), Western Bureau Chief

A Congressional committee on Wednesday approved a bill that would make modest changes to the federal government's workers' compensation program, which paid out close to \$3 billion last year.

The legislation, introduced last Friday by a bipartisan group of ranking members of the House Committee on Education and the Workforce, doesn't propose a drastic overhaul of the system, but lawmakers are asking questions about spending on the system at a time when President Barack Obama is negotiating with House Republicans for a deficit reduction plan to avoid a financial crisis as the nation nears its debt ceiling.

Steven E. Brown, an attorney in Westlake Village, Calif., who represents injured federal employees, said the evidence suggests that budget issues at the federal level are driving lawmakers to look for ways to reduce the costs associated with FECA.

"I've been handling these cases for 35 years, and this is the first time I've seen such a flurry of activity since the last major rewrite in '74," he said. "Everybody is looking at every single program to find ways to save money."

Cutting benefits for injured workers is not an appropriate way to try to balance the federal budget, he said.

[House Resolution 2465](#) was presented by supporters as an attempt to modernize the Federal Employee Compensation Act (FECA). The bill was authored by Rep. John Kline, R-Minn., chairman of the Education and Workforce Committee and is co-sponsored by committee members, including Reps. George Miller, D-Calif.; Tim Walberg, R-Mich.; and Lynn Woolsey, D-Calif.

The legislation, titled the Federal Workers' Compensation Modernization and Improvement Act, contains a provision that would increase funeral expenses from \$800 to \$6,000 and would also increase the maximum award for an injury resulting in serious disfigurement of the face, head or neck from \$3,500 to \$50,000.

Other provisions in the bill would authorize nurse practitioners and physician assistants to treat injured workers and allow the Department of Labor to crosscheck a claimant's reported earnings with information held by the Social Security Administration.

While the bill doesn't propose cuts to benefits, the lawmakers who introduced it did send a letter to the U.S. Government Accountability Office (GAO) asking for an analysis of the effects of making cuts, including reducing benefits when claimants hit retirement age, and instituting a three-day waiting period before a worker can start collecting benefits.

That query marked the second time this year the GAO has been asked to analyze FECA. In January, Sen. Susan Collins, R-Maine, asked the accounting office to look at whether claimants are milking the system. She said there are more than 1,000 U.S. Postal Service workers over 80 who were collecting benefits, including 132 who were over 90 and three who were 98.

Collins said she wanted to know if the practice of continuing to pay benefits to workers past the retirement age created an incentive for them to stay on workers' compensation rolls instead of returning to work or retiring.

Benefits paid under FECA are not taxed. Additionally, they tend to be higher than those paid by the federal retirement system, Collins said.

Long-term disability wage-loss benefits under FECA are calculated based on a worker's pre-injury wage and whether he has dependents. A worker without dependents collects wage-loss benefits up to 66 2/3% of his pre-injury wage. A worker with dependents collects benefits up to 75% of his pre-injury wage.

FECA contains a continuation-of-pay provision through which an injured worker receives his full wages for the first 45 days of absence due to a work-related injury. After this time, a worker must wait three days before he can start collecting long-term wage loss benefits.

Once a worker starts collecting long-term wage loss benefits, he can continue collecting these benefits until he dies.

Collins contrasted that with retirement payments for federal workers, which are taxed and typically pay only about 56% of a federal employee's gross wages at the time of retirement.

In addition to asking the GAO for more information, Collins introduced a bill titled the Federal Employees' Compensation Reform Act of 2011 that would require FECA beneficiaries to transition to the Civil Service Retirement System of the Federal Employees Retirement System when they reach Social Security retirement age.

The bill by Collins was referred to the Committee on Homeland Security and Government Affairs, which has not heard the measure.

President Obama made a similar recommendation to transition injured workers off of FECA and onto a retirement pension at age 65 in his 2011 budget. No action was taken on the president's proposal because lawmakers didn't pass a budget in 2010.

The lawmakers who introduced the Federal Workers' Compensation Modernization and Improvement Act asked the GAO to analyze the impact of reducing the conversion factor to calculate wages when a worker hits Social Security retirement age to 50% of pre-injury wages. Specifically, they asked for a comparison of payments under the current FECA method, the proposed reduction and the federal retirement program for workers in all government service income brackets, for workers with and without dependents, for workers in states with and without income taxes, and for workers with long tenures of federal service, versus those with shorter tenures.

The lawmakers also want GAO to examine how federal employee health benefits are maintained during the course of an injury covered by FECA and after a claimant reaches retirement age and to identify policy options to ensure equitable treatment of all injured federal employees.

At the same time, lawmakers asked the Congressional accounting office to assess the impact of a proposed change to award benefits at 70% of the pre-injury wage, regardless of whether a worker has dependents.

Finally, the lawmakers asked GAO to analyze the effect of repositioning the three-day waiting period so it comes before a worker can collect his full wages under the continuation-of-pay provision.

"One rationale for a pre-benefits waiting period is that workers with minor injuries may be discouraged from filing for benefits and entering the program if they are required first to use their own accrued leave," the lawmakers wrote.

The request stems from a hearing of the Education and Workforce Committee's Workforce Protection Subcommittee in May, during which Chairman Walberg and ranking Democrat Woolsey said they were concerned about legislating any changes in benefit payments without knowing how it will impact injured workers.

Woolsey said she was not comfortable supporting any changes to benefit levels without a GAO analysis. Noting that FECA hasn't been updated since 1974, she said any changes the subcommittee makes will be in place for a long time.

"I would like to make sure we don't set up a system that in the long-run doesn't work out so well," she said

during a House committee hearing in May. "These questions merit more consideration before we legislate any changes to this complex program, because it impacts so many workers, and once we change something, it won't get changed again, at least not in our lifetime."

Gary Steinberg, acting director of the U.S. Labor Department's Office of Workers' Compensation Programs (OWCP), spoke in favor of reducing payments after a claimant hits retirement age. He said the current practice could create a disincentive for employees to return to work because FECA benefits are generally more generous than the federal pensions administered by the Office of Personnel Management (OPM).

"Because returning to work could mean giving up a FECA benefit in favor of a lower OPM pension amount at eventual retirement, injured workers may have an incentive to consciously or unconsciously resist rehabilitation and instead, in certain cases, may cling to the self-perception of being 'permanently disabled,'" Steinberg said.

Susan Carney, director of human relations for the American Postal Workers Union AFL-CIO, testified in May that FECA isn't a lucrative retirement system and that workers aren't gaming the system.

"Injured workers do not lack motivation to return to work, nor do they reap greater benefits," she said.

Carney said injured workers miss out on scheduled pay raises that would increase the size of their retirement payments, and that these individuals can't supplement their retirement income with other jobs because they're disabled.

"To reduce their compensation to 50% at a pre-selected and arbitrary age on the basis that (Civil Service Retirement System) annuitants receive a slightly higher but taxable percentage than that which is being proposed, is unfounded," Carney said. "It would be punitive to reduce their wage-loss compensation based on age and the time spent on the rolls."

Carney also said it was not fair to lower benefit levels for injured workers with dependents from 75% to 70% and at the same time raise benefits for other claimants from 66 2/3% to 70%. She said that while workers who are married or have children aren't paid more than those who are single, their take home pay is typically higher because they are entitled to tax deductions and the FECA structure reflects this difference.

"This creates a larger net check to better support their families," she said.

OWCP's Steinberg said at the subcommittee hearing that using a different multiplier to calculate wages for injured workers with dependents, compared to injured workers without dependents is difficult to administer. He said basing all awards on a calculation of 70% of the pre-injury wage would eliminate the requirement to collect and verify information about the eligibility of a dependent.

Eliminating the administrative burden alone could net savings of more than \$500 million over the next 10 years, he said.

Elliot Lewis, assistant inspector general with the U.S. Department of Labor, testified that a single rate of 70% would also cut down on overpayments. Lewis said an analysis by the Office of the Inspector General in 2007 found 13% of FECA claims were paid at the maximum rate, even though the worker did not provide evidence of an eligible dependent. Additionally, he said in some cases payments continued at the maximum rate, even after a claimant provided information that indicated a reduction was warranted.

Brown, the Southern California attorney who handles FECA claims, said while administrative costs for the system are low because there are limited opportunities to litigate compensation determinations, there is waste in the system.

"The waste is in the gross incompetence of the U.S. Department of Labor Office of Workers' Compensation Programs," he said. "You file a claim and they act like they can't read English."

Brown said OWCP is very slow in approving claims, does little to communicate with injured workers,

attorneys or doctors when denying claims or payments, and is simply difficult to work with.

"The major problem is the difficulty in dealing with DOL, not in their decisions, but they take forever to do anything," he said. "It's not a well-run organization."

However, Brown noted that it is difficult to legislate a fix for the inefficiencies he sees within OWCP.

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