



# Department of Veterans Affairs Office of Inspector General

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## Workers' Compensation Program (WCP) Operating Changes

*Implementing key WCP operating changes would enhance the detection of fraud and improve the effectiveness and efficiency of program operations in VA and at other Federal agencies.*

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**DEPARTMENT OF VETERANS AFFAIRS**  
**Office of Inspector General**  
**Washington, DC 20420**

**TO:** Assistant Secretary for Human Resources and Administration (006)

**SUBJECT:** Workers' Compensation Program (WCP) Operating Changes (Report No. 05-00949-89)

1. The Department of Veterans Affairs (VA) Office of Inspector General (OIG) reviewed Workers' Compensation Program (WCP) operating policies to identify opportunities to improve program management and better control costs. The key operating changes we identified require legislative changes involving the Federal Employees Compensation Act (FECA).<sup>1</sup> The need for these changes is based on our audit experience involving VA's WCP, the Department of Labor (DOL) OIG work, and legislative changes proposed by DOL that were not enacted.

2. The following WCP operating changes need to be implemented:

- Authority to compare WCP and Social Security Administration (SSA) records.
- WCP retirement at a pre-determined age.
- A 3-day waiting period before WCP benefits can start.

3. A WCP operating change is needed to enhance WCP fraud detection through routine access and electronic matching of WCP and SSA records. This would greatly reduce the amount of time and effort needed to identify claimants' working and not reporting earnings. This would facilitate more effective verification of claimant income reporting and identification of fraudulent claims. Currently, verification of earnings must be obtained through third parties rather than from SSA. Our experience in VA has found that this has required a significant amount of work to accomplish. Also, the lack of this matching authority can delay the identification of fraudulent claims with increased loss to the government.

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<sup>1</sup> FECA is administered by the Department of Labor Office of Workers' Compensation Programs and provides a variety of benefits for federal employees who are injured in the performance of duty. This includes medical benefits, income replacement, and certain supportive services to employees receiving work-related injuries. In the case of death, survivor benefits are provided to family members.

4. A WCP operating change is needed to reduce the incentive for beneficiaries to get on and remain on the disability rolls long after they reach an appropriate retirement age. Current FECA beneficiaries are not required to retire at any age. Beneficiaries may remain on the WCP disability rolls until they die. This situation provides an incentive for beneficiaries to remain on the WCP rolls since FECA benefits are tax-free and may be higher than either their taxed income from work or from any Federal retirement benefits that would be received.

5. In 2004, DOL-proposed FECA amendments included a provision for lower WCP benefit payments once a claimant reaches retirement age as defined by SSA laws.<sup>2</sup> WCP compensation payments would be reduced to 50 percent of a claimant's monthly wages once a claimant reaches retirement age. Compensation payments would no longer be reduced or terminated due to the claimant not actively seeking work or turning down a job offer. This change was expected to encourage claimants to return to part-time work and later retire and collect both Federal retirement and WCP compensation benefits. This change would in effect create a WCP retirement system because claimants would no longer have to actively seek work after reaching retirement age.

6. Implementation of a retirement type benefit plan would provide the opportunity to remove qualifying claimants off the WCP rolls and eliminate employing agency charge back<sup>3</sup> costs associated with these claimants. At VA, this type of operating change would significantly reduce WCP costs, making additional resources available for delivery of health care benefits to the Nations veterans. Based on a minimum full retirement age of 65, we reviewed VA's WCP rolls for Charge Back Year (CBY) 2004 and found that 1,763 claimants (36 percent) had reached age 65 or older. Implementation of a retirement benefit plan for these claimants and movement off of the WCP charge back rolls could reduce VA's future annual program costs by an estimated \$44.5 million. Potential avoidable lifetime<sup>4</sup> WCP claimant costs could total \$487.8 million.

7. The government-wide impact of this type of benefit change would be significant. During CBY 2004, 18,884 claimants (with 3 or more years on the WCP rolls<sup>5</sup>) had reached age 65 or older government-wide. Based on the annual reduction in VA's future WCP costs, we estimate that government-wide costs could be reduced by \$477 million. Potential avoidable lifetime WCP claimant costs could total over \$5.2 billion.

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<sup>2</sup> SSA retirement is based on a sliding age scale with early retirement at age 62 and full retirement starting at age 65 or greater, depending on the date of birth. For purpose of our analysis, we selected a potential retirement age of 65, since this is the minimum age for full retirement.

<sup>3</sup> The DOL Office of Workers' Compensation Program makes payments related to FECA claims out of the Employees' Compensation Fund and bills the employing agency annually. The employing agency then reimburses this fund through annual operating appropriations.

<sup>4</sup> Lifetime estimates were calculated using the Veterans Benefits Administration (VBA) life expectancy table for net worth determinations contained in VBA Manual M21-1, Part IV, Chapter 16, Addendum B. The annual dollar impact was multiplied by the number years of life expectancy. The estimates did not include future increases in WCP benefits.

<sup>5</sup> Information on all claimants over age 65 was not available. Claimants on the WCP rolls 3 or more years are considered long-term disability cases with little expectation that the claimants would return to work. In VA, only 19 of the 1,763 claimants age 65 or older were on the WCP rolls less than 3 years.

8. In addition to reduced WCP costs, individual agency case management workload could also be reduced because WCP cases moved to a retirement plan would no longer require oversight and tracking by case managers. This would free up staff resources for other use. In VA, these resources could be used to help address case management issues identified in VA OIG audits.<sup>6</sup>

9. There is also a need for a WCP operating change to help discourage the filing of frivolous claims. Workers should be required to use any accrued sick leave, annual leave, or leave-without-pay for a three-day waiting period before their benefits could begin. Under the current process, the waiting period is at the end of the Continuation of Pay (COP)<sup>7</sup> period, which provides no disincentive to file a claim.

10. The report recommends that VA submit a legislative proposal to the Congress to modify FECA in each of the areas discussed. (See page 4 for the recommendation.) These operating changes would provide the opportunity to improve detection of fraudulent claims or payments and reduce future WCP costs and case management workload at VA and at other Federal agencies. You agreed with the recommendation areas and the estimated monetary benefits. In addition, we would like to acknowledge the support of the VA Workers' Compensation Program Steering Committee. (See Appendix B on pages 7-8 for the full text of the Assistant Secretary for Human Resources and Administration comments.)

*(original signed by:)*

MICHAEL L. STALEY  
Assistant Inspector General  
for Auditing

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<sup>6</sup> Follow-up Audit of Department of Veterans Affairs Workers' Compensation Program Cost, Report No. 02-03056-182, August 13, 2004. Audit of VA's Workers' Compensation Program Cost, Report No. 8D2-G01-067, July 1, 1998.

<sup>7</sup> FECA provides eligible Federal workers who suffer traumatic injuries with salary COP benefits for a period not to exceed 45 days. After the 45<sup>th</sup> day, there is a 3-day waiting period before a wage-loss benefit begins.

## Results

### Introduction

FECA covers some three million Federal and postal employees. WCP costs incurred by all Federal agencies during CBY<sup>8</sup> 2004 was about \$2.3 billion, of which VA's WCP costs of \$155.4 million accounted for about 7 percent of this total. Government-wide, VA has the fourth largest WCP costs. Currently, over 15,400 VA employees are receiving workers' compensation.

The WCP operating changes discussed in this report are not new issues, but they continue to need consideration for implementation because of the potential impact on the economy, efficiency, and effectiveness of program operations. In May 2002, the DOL Inspector General (IG) discussed the need to address these issues in congressional testimony.<sup>9</sup> The VA IG supported the need to address these issues and submitted written support to this testimony.<sup>10</sup> In 2004, DOL prepared a legislative proposal to address these issues, but it was not enacted by the Congress.

### Scope of Work

We completed research on prior WCP legislative proposals/testimony that addressed the issues discussed in the report. We obtained Federal government-wide WCP information reported by DOL. We reviewed prior VA IG audit and investigative review results concerning program management and fraud detection results. We obtained selected data and input on VA's WCP operations from VA's Office of the Assistant Secretary for Human Resources and Administration.

We reviewed information on WCP claimants from VA's Workers' Compensation – Management Information System. We identified WCP claimants in CBY 2004 that received compensation payments during the year and were age 65 or older. This information was used to determine the impact on future WCP benefit payments and case management workload if a retirement age benefit adjustment was implemented. We also reviewed data on VA's COP costs.

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<sup>8</sup> A CBY begins on the first day in July and ends on the last day in June. The WCP costs for work-related injuries and deaths are billed to employing agencies at the end of DOL's fiscal accounting period. The CBY 2004 period was July 1, 2003, to June 30, 2004.

<sup>9</sup> Statement of Gordon S. Heddell, Inspector General, U.S. Department of Labor, before the Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, U.S. House of Representatives, May 9, 2002.

<sup>10</sup> Letter from the VA IG to the Chairman, Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, House of Representatives, May 22, 2002.

## Results

The following WCP operating changes could improve program management and better control costs, but legislative changes are required before they can be implemented.

### **Access to SSA Records Could Help Identify Dishonest WCP Claimants**

Currently, no legislative authority exists for access to SSA records to routinely electronically match them with WCP records to identify potential claimant fraud or overpayments. The May 2002 DOL IG testimony highlighted the need for this authority.

“The Department does not currently have legislative authority to conduct these routine cross matches of data without going through a cumbersome procedure. Nonetheless, we concluded that running these types of automatic cross matches on a routine basis could provide a cost-effective tool to ferret out dishonest claimants, which would be less expensive administratively than the Department’s existing methods, which were largely manual, and would provide better assurance of claimants’ continued eligibility. Among other things, we recommended that legislation be pursued to allow OWCP to conduct a computer cross match between the Social Security numbers of FECA claimants on the periodic roll and earnings reported to SSA; and to take appropriate action, such as termination or reduction of benefits, if warranted, on all cases with earnings. (*Automated Crossmatches With SSA Would Result in Program Savings – September 28, 2000*)”

The DOL IG testimony also highlighted the adverse impact this had on program fraud detection.

“We found that while 905 of the 27,050 claimants in our sample had total earnings of \$2.9 million, almost 5 percent of the Social Security numbers were incorrect. Unfortunately, we did not have access to individual information on the 905 claimants who showed income; therefore, it was not possible to review their claims to determine whether the earnings were reported or whether there was potential fraud or overpayment.”

Our experience involving fraud detection in VA’s WCP also supports the need for access to SSA records. Our 2004 follow-up audit showed that the WCP continues to be at risk for inappropriate claims due to unreported earnings. Our work has shown that if authority was given to compare WCP and SSA records, the amount of time and effort needed to identify claimants’ working and not reporting earnings would be greatly reduced. This would facilitate more effective verification of claimant income reporting and identification of fraudulent claims.

In one of our fraud cases, \$320,000 in WCP benefits was inappropriately paid because the claimant reported no earnings for over 12 years while his actual earnings ranged from \$25,000 to \$680,000 annually. With the ability to compare WCP and SSA records, it is

likely that this fraud could have been identified much earlier and the loss to the Federal government could have been reduced. The ability to compare WCP and SSA records would also offer the opportunity to act as a deterrent to those claimants that might otherwise submit fraudulent claims.

### **Establishing a WCP Retirement Benefit Could Reduce Program Case Workload and Costs**

A key issue discussed in the DOL IG testimony and the proposed legislation concerns the need to convert WCP disability claimants to a retirement status when they reach a pre-determined retirement age. The DOL proposed legislation provided that “Benefits for total disability recipients, called ‘conversion entitlement,’ would be reduced to 50 percent of a claimant’s monthly wages when the injured employee reaches ‘retirement age’ as defined in section 216 of the Social Security Act or one year after the employee began receiving compensation, whichever is later.”

This type of benefit change would move qualifying claimants into a more appropriate retirement type benefit plan. WCP case workload and costs could be reduced by moving these claimants off of employing agency charge back rolls. Oversight and tracking of these cases by employing agency WCP case managers would no longer be required, freeing up staff resources for other use. In our view, this change would help redirect the purpose of FECA that was never intended to be a retirement system.

Based on a potential retirement age of 65, we identified 1,763 claimants that were age 65 or older on VA’s WCP CBY 2004 rolls. Movement of these claimants into a WCP retirement type benefit could reduce VA’s annual program costs by an estimated \$44.5 million. Potential avoidable lifetime WCP claimant costs could total \$487.8 million. (Details are presented in Appendix C on page 9.)

Implementing this program operating change could also reduce government-wide WCP case workload and program costs. DOL reported WCP data for CBY 2004 showed that 18,884 claimants had reached age 65 or older (with 3 or more years on the WCP rolls). Based on the annual reduction in WCP costs identified for VA cases, we estimate that these costs for all Federal agencies could be reduced by \$477 million. Potential avoidable lifetime WCP claimant costs could total \$5.2 billion. (Details are presented in Appendix C on page 9.)

### **A Benefit Waiting Period is Needed to Help Deter Frivolous Claims**

Both the DOL IG testimony and proposed legislation highlighted the need for a benefit waiting period before workers can collect WCP benefits to discourage the filing of frivolous claims. The proposed legislation noted that “Prior to the 1974 amendments, the FECA had a three-day waiting period at the beginning of compensation entitlement. However, with the advent of continuation of pay in the 1974 amendments, the three-day



waiting period was placed after the 45-day continuation of pay period, so that the waiting period had no effect in the great majority of cases. The amendment is intended to reinvestigate the effectiveness of the three-day waiting period.”

Our experience in VA also supports the need for a benefit waiting period. During our audit work, we were told about cases of workers with no leave who always seem to get injured around the opening of hunting season or other annual events and return to work before the end of their 45 days of COP. If these workers had to take leave without pay first, they may not be as quick to file a WCP claim.

Reducing frivolous claims could also help avoid unnecessary COP costs and eliminate questionable claims that would not need to be disputed or controverted.<sup>11</sup> If frivolous claims could be eliminated, it could provide the opportunity to better control COP costs. In fiscal year 2004, VA's estimated COP costs totaled about \$6 million.<sup>12</sup>

## **Conclusion**

Implementing the key WCP operating changes discussed in the report would enhance the detection of fraud and improve the effectiveness and efficiency of program operations in VA and at other Federal agencies.

## **Recommendation 1**

We recommend that the Assistant Secretary for Human Resources and Administration prepare a legislative proposal to enact WCP operational changes in the following areas:

- a. Authority to compare WCP and SSA records.
- b. WCP retirement at a pre-determined age.
- c. A 3-day waiting period before WCP benefits can start.

## **Assistant Secretary for Human Resources and Administration Comments**

The Assistant Secretary for Human Resources and Administration agreed with the recommendation areas and the estimated monetary benefits.

(See Appendix B on pages 7-8 for the full text of the Assistant Secretary's comments.)

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<sup>11</sup> While an employing agency has no authority for approval or denial of claims filed under FECA, the employing agency may challenge paying COP. This process is known as controversion of claim. There is an appeal process for injured employees if the claim is denied by DOL.

<sup>12</sup> We calculated VA's COP cost by multiplying the number of reported fiscal year 2004 COP staff days (30,812.97) x VA's average daily staff pay (\$194.50) = \$5,993,122.67.

## **Office of Inspector General Comments**

The Assistant Secretary's comments are acceptable.

## Monetary Benefits in Accordance with IG Act Amendments

<u>Recommendation</u>	<u>Explanation of Benefit(s)</u>	<u>Better Use of Funds</u>
1 (b)	Estimated VA WCP costs that could be potentially avoided for projected lifetime claimant benefits by establishment of a WCP retirement benefit.	<u>\$487,832,913</u>
	Total	\$487,832,913

## Assistant Secretary for Human Resources and Administration Comments

**Department of  
Veterans Affairs**

# Memorandum

Date: February 11, 2005  
From: Assistant Secretary for Human Resources and Administration (006)  
Subj: Legislative Proposal for Workers' Compensation Program Operating Changes  
To: Assistant Inspector General for Auditing (52)

1. Thank you for the opportunity to review and comment on the OIG request for review and comment to the proposed legislative proposal for operating changes to the Federal Employees Compensation Act. The material was reviewed by members of VA's Workers' Compensation Program Steering Committee (WCSC) and their comments are provided on the attached page. I concur with your recommendations and offer my support of your efforts to amend the Federal Employees Compensation Act. I also agree with your estimated dollar impact for audit recommendation 1 (b).
2. I would also appreciate acknowledgement in your proposal of the efforts and accomplishments of the newly-formed VA WCSC. This group benefits from the generous participation of your office and has prepared an action plan that I believe will have significant positive impact on the administration of this employee benefit program.
3. I am pleased to add that VA's Senior Management Council unanimously approved the Steering Committee's Strategic Plan.
4. For additional information please contact Gary Steinberg, Principal Deputy Assistant Secretary for Human Resources and Administration, on 202-273-4901.

*(original signed by:)*

R. Allen Pittman

Attachment

## Attachment

Members of the VA Workers' Compensation met on February 10, 2005, to review the proposed OIG legislative proposal and offer the following comments and recommendations:

- The Departments of Labor and Defense have indicated they also intend to submit similar legislative proposals in FY 2005 to amend the Federal Employee Compensation Act. We recommend that OIG coordinate this legislative proposal with the appropriate DOL and DOD organizations to ensure that a consistent set of recommendations is presented to Congress. The presentation of consistent documents by our three Departments may provide additional leverage in Congressional consideration of the proposals.
- The Committee members support the OIG initiative to augment current dual-benefit review processes with both the authority and means to compare WCP and SSA records. This support is given with the understanding that such access and authority would necessitate appropriate safeguards and limitations to maintain employee privacy. The WCSC believes that the OIG should be granted access to SSA income data to support investigations of potential fraud and abuse. Due to privacy and administrative issues, the WCSC does not believe that SSA data should be provided to other VA organizations to assess income associated with Workers' Compensation cases.
- The Committee members support the pre-determined age retirement proposal.

## Summary of Estimated Annual and Lifetime WCP Cost Reduction

Claimants 65 years or older	Estimated Annual Reduction	Estimated Lifetime Reduction
VA -- 1,763	\$44,533,247	\$487,832,913
Average Cost for 1,763	\$25,260	\$276,706
All Federal Agencies -- 18,884	\$477,009,840	\$5,225,316,104

The above table shows the results of our analysis of estimated annual and lifetime WCP cost reduction. Our review of the 4,893 WCP cases in CBY 2004 with WCP costs identified 1,763 cases (36 percent) where the claimant is age 65 years or older. We obtained DOL data that showed there were 18,884 cases for all Federal agencies where the claimants were 65 years or older and had been on WCP rolls for over 3 years. We estimated the annual and lifetime cost reductions for all Federal agencies using the average cost from our analysis of VA data.

## IG Contact and Staff Acknowledgments

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OIG Contact	Stephen Gaskell, Director, Central Office Operations Division (202-565-4098)
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Acknowledgments	James Farmer, Project Manager
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Marilyn Barak, Information Technology Specialist

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