

**Statement of Elliot P. Lewis
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Office of Inspector General
U.S. Department of Labor
Before the Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
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Good afternoon Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to testify on the work of the Office of Inspector General (OIG), U.S. Department of Labor (DOL), in the Federal Employees' Compensation Act (FECA) program. My name is Elliot Lewis and I am the Assistant Inspector General for Audit at the OIG. Today I will highlight some of our recent audit and investigative work in FECA and outline legislative recommendations for improvement of this important program. I am accompanied by Stephen J. Cossu, Assistant Inspector General for Labor Racketeering and Fraud Investigations, who oversees investigations related to the program. He and I will be available to answer any questions the Subcommittee may have regarding the OIG's work in the FECA program.

Background – Federal Employees' Compensation Act

The U.S. Department of Labor (DOL) administers several programs and statutes designed to provide and protect the benefits of workers. FECA is a comprehensive workers' compensation law covering some 3 million Federal and Postal employees. It is designed to provide medical benefits, income replacement, and certain supportive services to

Federal employees with work-related injuries or, in the case of deaths, survivor benefits to family members. The Office of Worker Compensation Programs (OWCP), which is within the Employment Standards Administration (ESA), is responsible for making eligibility determinations and for the initial reconsideration if a claim is denied. Benefits are paid from the Employees' Compensation Fund, which is principally funded through chargebacks to the Federal agency that employs the injured worker. Therefore, the FECA program affects the budgets of all Federal agencies, and quasi-Federal agencies such as the United States Postal Service.

Recognizing the need to improve this program, this past January the Administration launched a Government-wide initiative to improve workplace safety and health and reduce the costs of injuries to workers and taxpayers. Known as the SHARE (Safety, Health, and Return-to-Employment) initiative, it calls for all Departments to establish goals to lower workplace injury and illness case rates; lower lost-time injury and illness case rates; improve the timeliness of reporting injuries and illnesses; and reducing lost productivity days due to work injuries and illnesses. The Secretary of Labor has been designated to lead the initiative in terms coordinating the development of goals for each Department and measuring their performance. The OIG is encouraged by the goals of this initiative.

OIG Activities Relating to FECA

Mr. Chairman, effective and efficient management of the FECA program works to the benefit of every claimant, Federal agency, and taxpayer. Through our oversight of the program, we have highlighted several challenges regarding internal controls and procedures. Our concerns have been included in our Annual Management Challenges Report for several years. Weaknesses in internal controls increase the risk of improper payments to FECA claimants across the Federal government, and medical providers who serve them. Over the years, we have made recommendations to OWCP for improvement in the areas of customer service and program integrity and OWCP has recognized the need to implement changes in response to our concerns.

Financial Statements Audits

However, Mr. Chairman, we continue to identify weaknesses in several areas in the program. For example, during our audit of the FY 2003 DOL Financial Statements, we found that OWCP is not ensuring that claimants submit medical evidence to support continuing eligibility for compensation and medical benefits. Claims Examiners are required to obtain and review medical evidence on a periodic basis to determine continuing claimant eligibility. Our audit found the lack of current medical evidence in 18 percent of sampled cases, which appeared to be due to OWCP's failure to comply with its own procedures rather than a lack of responsiveness on the part of the claimant. The ineffectiveness of this control increases the susceptibility of this multi-billion dollar program to fraud and overpayments.

Social Security Data

Another area of concern involves the use of Social Security Administration (SSA) data. Use of this data is integral to the effective operation of the FECA program. In a September 2000 audit, we reviewed the potential use of crossmatching FECA data and SSA data to combat fraud and overpayments within the program. As a result of our crossmatch, we identified and referred for investigation, 33 cases that showed a potential cost recovery and cost avoidance of \$7 million over 10 years for the FECA program. We believe that legislation allowing OWCP access to SSA wage data could provide a cost-effective tool to identify and remove dishonest claimants who conceal their earnings.

Customer Service

Our 1999 evaluation of OWCP's FECA customer service surveys revealed the existence of methodological flaws in several areas, including survey design, measurement of customer service, sampling, response rate, and survey operations. As a result, we made a number of recommendations to enhance the accuracy of the data by improving the survey methodology and thus helping OWCP judge and improve the quality of customer service provided. The agency agreed with most of our recommendations and incorporated them in its subsequent survey. However, OWCP has conducted no written survey since 2000, focusing instead on telephone surveys.

A 2002 OIG report on FECA performance measures recommended, and the Department agreed, to establish a performance goal for customer satisfaction. We are looking at the

Department's implementation of our recommendation as part of our current evaluation of FECA customer service, which I will address in a moment.

Hotline

The OIG receives complaints via our hotline that cover a variety of matters and allegations. During FY 2003, the OIG Hotline received 116 complaints related to OWCP and the FECA program. These complaints involved allegations of poor customer service, unfair practices, privacy concerns, mismanagement by OWCP, and fraud against the program. Some complaints are referred to OWCP for action and those dealing with allegations of fraud remain with the OIG.

Current Work

In further response to hotline complaints received and as a follow-up to our past work, we have several current work projects underway in the FECA program:

- Customer Service Evaluation – In this on-going review we are evaluating OWCP's handling of claimant complaints of poor customer service. Our objectives are to determine:
 - The extent to which one OWCP district office responded to and resolved complaints;
 - If employing agencies are satisfied with OWCP customer service; and
 - If OWCP telephone surveys provide an adequate indication of customer satisfaction.

We would be pleased to share the results of our work upon its completion.

- Data Mining – We are currently assessing the extent to which data mining techniques can be used by the OIG and the Department to identify patterns of improper FECA payments, fraud, and abuse.
- Financial Statement Audit – The FECA program has implemented a new medical bill-processing system during FY 2003. Our DOL financial statement audit work for FY 2004 will look at payments generated by the new system.
- FECA Data Validation – We are reviewing the accuracy and validity of Government Performance and Results Act performance data reported by the Department with respect to FECA.

Fraud

From an investigations point of view, the OIG investigates claimant fraud and fraud committed against the FECA program by service providers. In FY 2003, the OIG opened 154 cases, had 59 indictments, 49 convictions, and over \$14 million in monetary results in the FECA program area. We also closed 153 cases from FY 2003 and prior years.

The following cases are representative of the types of fraud we regularly investigate:

- A former Department of Army employee was sentenced to six months' home confinement, 100 hours of community service, two years of supervised probation, and ordered to pay more than \$150,000 in restitution for receiving benefits for an employment-related injury while he sold hay and livestock and, for a fee, delivered topsoil and gravel.
- A former Postal worker was sentenced to six months' home detention and five years' probation and ordered to pay \$101,206 in restitution after pleading guilty to charges of making false statements to obtain Federal workers' compensation benefits. He was operating a tax business and a limousine business and not reporting this to OWCP as required. This investigation was conducted jointly with the U.S. Postal Inspection Service.

- An orthopedic clinic specializing in sports medicine agreed to pay \$2.65 million to settle allegations of overbilling by 17 of its physicians. This investigation, also conducted jointly with the U.S. Postal Inspection Service, was the result of a *qui tam* action filed by an employee who alleged that the clinic and its physicians knowingly overbilled government healthcare programs, including \$110,000 in overcharges to DOL's FECA program.

Recommendations to Improve the FECA Program

In the past, the OIG has made recommendations to strengthen the program. These include:

- **Changing the Continuation of Pay (COP) Period**
FECA currently has a provision that allows employees who sustain disabling job-related traumatic injuries to receive continuation of their regular pay for a period not to exceed 45 calendar days after the injuries. Currently, a three-day waiting period, before FECA benefits could begin, is *at the end* of the COP period, which does not serve to discourage frivolous claims. We recommend returning the three-day waiting period (before FECA benefits can start) to the beginning of the 45-day continuation-of-pay period. This would require employees to use any accrued sick leave, annual leave, or leave-without-pay for that three-day waiting period, before their FECA benefits could begin. (Should the claim be approved by OWCP, any leave used during this three-day waiting period would be restored.)
- **Establishing a Retirement Age for Beneficiaries**
Currently, FECA beneficiaries are not required to retire at any age. Therefore, beneficiaries may remain on disability for life. This results in a strong incentive to continue to receive FECA benefits, since the tax-free benefits are much greater than any retirement earnings would be. The OIG recommends that a suitable retirement age be established under the Act for FECA claimants. Once the beneficiaries reach the specified retirement age, their retirement benefits would be adjusted downward to a specified level; however, medical benefits could still be paid by OWCP.
- **Accessing Earning Information**
Accessing Social Security wage information and the National Directory of New Hires, which is maintained by the Department of Health and Human Services, could be used by OWCP to document whether a claimant has outside employment. If it is determined that the claimant has unreported outside employment or income, any inappropriately paid benefits can be reduced or withdrawn. Access to Social Security wage information would also be useful to verify the validity of any Social Security numbers provided by the claimants. Unfortunately, OWCP can only access Social Security wage information if the claimant gives OWCP permission to do so. A refusal to grant such authorization has no adverse impact on the claim. Also the

National Directory of New Hires, which contains employer-reported information on newly hired individuals, is not currently available to OWCP. Claimants who are defrauding the FECA program are unlikely to willingly grant OWCP or the OIG the authority to access information about their earnings. Provisions in law would be required for OWCP and the OIG to have access to Social Security data and the National Directory of New Hires, similar to the access already provided to several other Federal agencies.

Conclusion

In conclusion Mr. Chairman, our findings and recommendations have focused on helping to make the FECA program operate more effectively and efficiently, while ensuring the integrity of the program. This concludes my written statement; Mr. Cossu and I would be pleased to answer any questions you or the other members of the Subcommittee may have.