

**STATEMENT OF CHARLES C. MASTEN
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SUBCOMMITTEE ON WORKFORCE PROTECTIONS
U.S. HOUSE OF REPRESENTATIVES
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Good morning, Mr. Chairman and Subcommittee members. Thank you for inviting me to testify in my capacity as the Inspector General of the U.S. Department of Labor. I am pleased to appear before you today to present a summary of the OIG's work concerning the Federal Employees' Compensation Act (FECA) program. From the outset, I would like to emphasize that any views expressed today are mine as Inspector General and may not be the official position of the U.S. Department of Labor.

FECA is a major Federal benefit program which affects the budgets of all Federal agencies. This year, FECA costs will total approximately \$1.85 billion. The OIG has devoted significant criminal investigative resources to detecting and preventing specific cases of fraud and abuse within the FECA program. Given the magnitude of this program, my office has also evaluated and audited many aspects of it for almost 20 years, enabling us to identify various systemic vulnerabilities which we believe should be addressed, either by Congress or by the Office of Workers Compensation Programs (OWCP). These vulnerabilities can lead to inefficiencies, loss of Federal funds, and a means by which Federal employees can collect benefits without having real incentives to return to work.

Before going any further, I would like to take this opportunity to acknowledge the good working relationship and the cooperation between my office and OWCP. While many program agencies within the Department of Labor sometimes view the OIG as an adversary, OWCP has consistently worked with us to improve the efficiency of the FECA program and decrease the level of fraud and abuse. My office often receives complaints about the program, primarily from claimants dissatisfied with the handling of their claim. OWCP has been responsive to addressing these complaints and taking appropriate action.

OIG Investigations of FECA Fraud and Abuse

I cannot tell this Subcommittee precisely how much fraud exists within this \$1.85 billion program. However, speaking from the critical perspective of an Inspector General, I would maintain that any level of fraud in this program is too great and needs to be decreased, and my office will continue in its efforts to accomplish this objective.

Criminal fraud within the FECA program generally falls within three categories:

- ! Claimant fraud committed by individuals who are not truly injured and/or disabled as claimed.
- ! Claimant fraud committed by individuals who are not reporting, or are under reporting, their outside employment income to OWCP. Pursuant to OWCP's regulations, FECA claimants must report their outside employment income to OWCP, which then determines whether or not the individual's FECA benefits should be commensurately reduced.

- ! Fraud committed by service providers. Over the years, our investigations have uncovered schemes wherein doctors, clinics, pharmacists, physical therapists, medical technicians, and providers of medical equipment have billed the Government for services that were not rendered, filed multiple bills for the same procedure, billed for non-existent illnesses or injuries, or overcharged for services.

Since 1990, OIG's investigations of FECA fraud have resulted in 278 indictments, 268 convictions, and monetary recoveries or savings exceeding \$33 million. In addition, in 1994 Congress enacted legislation, in response to the OIG's investigative findings, which required the immediate termination of FECA benefits for claimants convicted of FECA fraud (18 U.S.C. 1920) or any other Federal or state crime related to fraud with respect to an application for FECA benefits. According to OWCP, as of September 13 of this year, 98 Federal employees have had their benefits terminated as a result of this provision, resulting in a recognized savings of almost \$4.7 million. Some recent examples from our investigations include:

- ! A former Federal coal mine inspector defrauded the FECA program by submitting false statements concerning income he received during a period that he was also receiving FECA compensation benefits. He fraudulently received nearly \$120,000 in compensation payments by concealing his employment and income as a minister, and he was sentenced to 21 months incarceration and 3 years of supervised probation, in addition to making restitution to the program.
- ! A former U.S. Marshal led Amazon tours, taught jungle survival, and offered sport fishing adventures in Peru, while on total FECA disability benefits. He had been receiving FECA benefits following a 1981 job-related back injury caused by moving a television. OWCP estimates that approximately \$217,000 was paid to him during the period in which he failed to report his

business activities. He was convicted on 9 counts of mail fraud and 6 counts of false statements, was sentenced to a year and a day in jail with 3 years of probation, and ordered to pay over \$218,000 restitution.

- ! A licensed osteopathic physician was convicted for filing false medical claims after creating and submitting fraudulent bills for payment for Hubbard tank therapy and whirlpool therapy services that were allegedly rendered to his patients. However, neither he nor his clinics even owned a Hubbard tank or a whirlpool. Also, he falsified the medical reports pertaining to his patients' medical conditions and injury status. He was paid \$387,333 for his alleged medical services to Federal and State claimants over a 4-year period.

Mr. Chairman, I would be pleased to provide the Subcommittee with additional examples of specific FECA fraud cases worked by the OIG.

OIG Medical Providers Task Force

OIG's Offices of Investigations and Audit have conducted a joint project relating to the identification of potentially fraudulent medical providers. We are in the process of issuing our final report, which concludes that OWCP could save millions of dollars annually by utilizing commercial systems to screen billings for medical provider code manipulation. Our sample of Fiscal Year 1995 bills, reprocessed by a commercial vendor specializing in code manipulation detection, showed at least a \$7 million loss because of improper or abusive medical provider billings. Our projection is on a test of \$242 million in payments (54 percent of total medical provider billings made during FY 1995.) The full universe of medical payments could not be tested because of FECA bill processing system limitations and code manipulation software constraints. Although the percentage of FECA dollars lost to improper billings is small (about 3 percent), the volume of payment activity translates to significant dollar losses. The majority of abusive

billings resulted from providers who charged for multiple procedures when they should have billed for only one, and the overpayments were the direct result of improper billings by service providers coupled with the absence of a code manipulation detection control in the FECA bill payment process.

Generally, we found no indications of widespread fraud in the analysis of the improper FECA medical provider billings. Although we cannot make projections as to what this portion would be, some of these billings may, in fact, be fraudulent.

The FECA Billing Payment System (BPS) does not contain controls to detect code manipulation on provider billings. If providers accidentally or intentionally submit inflated, or abusive billings, then most likely they will be processed and paid by the FECA program. It would be physically impossible to have FECA personnel manually examine each of the nearly 2 million bills that were processed during our test period. Further, the complexities of the code manipulation process makes it unlikely that manual examination would have uncovered many of the improper billings. The BPS does contain controls which perform a variety of evaluations including identifying some type of duplicate billings and assuring that bills are for legitimate FECA claimants. However, the system is totally dependent upon the accuracy and honesty of the persons preparing the bill coding. If an improperly coded bill is submitted, it most likely will be paid without question.

OIG reviewed each improper billing with OWCP to determine if current FECA regulations and the size of the improper billing warranted collection. We provided OWCP with automated printouts by vendor for use in recovering \$1.4 million from about 1,600 providers. We are recommending to OWCP that it procure a commercial code

manipulation detection package. Using a pre-screening detection package can stop payments from being made. By using such a system, medical providers that continue to submit improper billings can be more easily identified and targeted for education assistance or, if warranted, criminal investigation.

I would also note that, based upon the task force analysis, our Office of Investigations is opening criminal investigations on 20 providers. Twelve other providers identified by the audit as having questionable billing practices were already under investigation by the OIG.

Although this project had some early successes in isolating potential problem providers for further investigations, more can be achieved. Over the next two months, we will continue to analyze and refine payment data to provide more information to investigators on the cases they have opened. We also expect that our continued analysis will isolate additional providers that may be referred for investigations.

Recent Program Evaluation Activities

Employees of the United States Postal Service (USPS) file a significant percentage of FECA claims. For this and other reasons, OIG's Special Projects Office, in conjunction with the Postal Inspection Service, reviewed the FECA program for USPS employees and issued a report in May 1995. This report found that USPS had already undertaken many efforts designed to improve its management of the program. However, the report also found that material problems still existed, both from an agency and a claimant perspective, including:

- ! Claims for compensation benefits were often not submitted to OWCP in a timely manner by USPS offices, resulting in interruptions in the incomes of over half of the injured employees whose claims we reviewed. In addition, authorizations for medical expenses under FECA were not routinely made available to Postal employees, as required.
- ! Communications between the Injury Compensation Unit (ICU) and OWCP District personnel relative to challenged or controverted FECA benefit claims were not always sufficient to ensure the effective and efficient resolution of these claims.
- ! Communications indicating that some Postal Service Officials may have hindered, delayed or discouraged the filing of compensation claims and notices of traumatic injury/occupational disease in violation of the FECA were not consistently brought to the attention of OWCP managers and/or referred for investigation, when appropriate.
- ! About 30percent of the 125 USPS claimants reviewed received benefits for prolonged periods after medical reports confirmed their ability to perform limited duties.
- ! Two of the four OWCP District Offices which were reviewed had not established fraud tracking systems to manage investigative materials, as required by OWCP policy.

In response to the findings in this report, USPS instituted a new system to require supervisors to report all on-the-job injuries to the Injury Compensation Units within 24 hours of notification and revised its procedures to address the remaining issues. USPS has also provided additional budgetary incentives to encourage local operating managers to offer limited duty assignments to partially disabled employees. OWCP expanded its special reviews directed towards identifying long-term claimants with work capability and revised its approach to technical assistance for employing agencies. OWCP also initiated actions to ensure that all District Offices have adequate fraud tracking systems.

In June of this year, the OIG issued a report concerning the Early Nurse Visitation Program (ENVP), a pilot program instituted in several Federal agencies and regions. We specifically evaluated the cost effectiveness of the Boston Region's ENVP in achieving the pilot's goals of producing more timely returns to work by FECA claimants, at a lower cost to the Government.

Traditionally, OWCP has not assigned nurses until after claimants filed for compensation benefits, generally after their 45-day continuation of pay period expires. However, under the ENVP project, following a claimant's disability of 14 consecutive days, the employing agency agrees to refer all traumatic injury cases to OWCP for early nurse intervention. After OWCP sends the referral to the nurse, she or he is expected to assess the medical situation of the claimant and to contact the injured worker in person to discuss the medical treatment plan.

The nurse is also expected to contact the treating physician to discuss medical treatment plans and continue to monitor the progress of treatment. When work capability is evidenced, the nurse is instructed to communicate directly with the physician concerning the claimant's progress and to obtain concrete work limitations. Once work potential is confirmed, the nurse's role is to contact the employing agency and assist in developing an appropriate light duty position.

We found that the ENVP pilot was not implemented in a manner fully consistent with the original design and intent of the program. The Postal Service, which was the primary participant in the pilot program, decided on its own to refer only the cases that

they believed were most complex to the ENVP. In addition, some cases were delayed or not referred due to inadvertent administrative problems. Boston ICU personnel attributed the low referrals to frequent staff turnover and the resulting inability to keep ICU Specialists properly trained regarding the ENVP program. Delayed receipt of injury notifications from employees' supervisors was also cited by the Boston ICU officials as a contributing factor in the late submission of ENVP referrals.

Nevertheless, numerous interviews with all parties involved in the ENVP program indicated a high level of customer/stakeholder satisfaction and support for the ENVP program. For instance, OWCP claims examiners considered the ENVP to be very effective and advised that the pilot should be expanded, primarily because the nurses provide assistance in easing their workload. Officials of two participating agencies expressed the opinion that the initial increase in their chargeback medical costs for the services of the contract nurses is more than offset by later savings through decreased total compensation and medical costs. Even in cases where injured workers could be expected to return to work unassisted, the ENVP resulted in earlier and more stable returns to the workplace. In addition, both agencies referred to the positive impact of the nurse's role and acceptance as an impartial third party.

PCIE's FECA Review

As I have indicated, my office has done quite a bit of oversight and investigative work related to the FECA program. In addition, during the first quarter of 1996, the

President's Council on Integrity and Efficiency (PCIE) issued a Consolidated Report on FECA which summarized the results of audits conducted by 13 participating Inspectors General. However, although 13 agencies participated in the overall project, some agencies were not involved in every aspect of the study. Under the leadership of my office, the Report concluded that employing agencies generally needed to improve the management of their workers' compensation programs.

Nine of 10 employing agencies did not have effective return-to-work programs and the PCIE concluded that employing agencies were not effectively monitoring the work status of injured employees. Seven out of 10 IG's reported claimant files were out of date or missing altogether. Moreover, there was a perception in many agencies that claimants receiving compensation from OWCP were no longer the agencies' concern.

Twelve of the 13 employing agencies were not adequately verifying their FECA chargeback cost reports, which reconcile chargebacks between OWCP and employing agencies. Most agencies had concluded that it was not cost effective to verify the chargeback reports. As a result, many employing agencies were paying more in FECA costs than was necessary.

In addition, five of the IG's reviewed FECA claim forms processing and all five found that their agencies were not processing the forms in a timely manner. As a

result, many injured employees had no income while waiting for their FECA benefits to begin.

Major Program Concerns

Mr. Chairman, based upon all of the work which my office has done with respect to the FECA program, we are of the opinion that certain changes need to be made to improve the efficiency of the program, decrease the level of fraud and abuse, and decrease the costs to the taxpayers. These concerns are not necessarily the result of any specific audits, evaluations, nor investigations, but they have been developed after the identification and analysis of certain situations and circumstances which regularly occur within this program.

- ! Current FECA beneficiaries are not required to “retire” at any age. Therefore, beneficiaries may remain on the disability rolls until they die and there is no reason to ever get off of the FECA disability rolls. In fact, there is an actual incentive to remain on the rolls, because benefits may be greater than their actual earnings would be if they were working and are often much greater than retirement benefits.
- ! FECA beneficiaries with dependents who are on the temporary total disability rolls receive, tax free, 75 percent of the salary that they drew before their injury, as their compensation for the loss of their wage-earning capacity. The level decreases to 66 2/3 percent if the claimant has no dependents. Because the compensation is not taxed, the benefits are often higher than the employee’s net salary would be if he or she were still

working. The relatively high benefit level and tax-free status may serve to decrease the incentive to return to work.

! OWCP can only access Social Security earnings information if given permission by the claimant, and the refusal to grant such authorization has no adverse impact on the claim. Claimants who are defrauding the FECA program by not reporting outside employment income are unlikely to willingly grant OWCP or the OIG the authority to access information on their earnings.

Mr. Chairman, this concludes my testimony. I would be glad to answer any questions you or other Subcommittee members may have.