

**MEMORANDUM**

June 3, 2025

**To:** House Committee on Education and Workforce, Subcommittee on Workforce Protections  
Attention: Daniel Nadel

**From:** Scott D. Szymendera, Analyst in Disability Policy, [sszymendera@crs.loc.gov](mailto:sszymendera@crs.loc.gov), 7-0014

**Subject:** Responses to Questions for the Record for the May 6, 2025, Hearing “FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayer Dollars”

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This memorandum provides responses to questions for the record for the House Committee on Education and Workforce, Subcommittee on Workforce Protections hearing, “FECA Reform and Oversight: Prioritizing Workers, Protecting Taxpayers Dollars,” held on May 6, 2025.

If you would like any additional information or have any additional questions, please contact me by phone at x7-0014 or email at [sszymendera@crs.loc.gov](mailto:sszymendera@crs.loc.gov).

**Questions for the Record from Rep. Robert C. “Bobby” Scott**

- 1. You compared current FECA policies against prevailing practice in state workers’ compensation programs and mentioned arguments in favor of adopting state practices (e.g., return-to-work incentives) without mentioning any of the countervailing arguments or research about the impact of such policies on benefits adequacy, extent to which state workers’ compensation absorbs the cost of occupational illness and injury, or related matters. To balance the record, please address the following:**
  - a. Approximately what percentage of the total economic cost of occupational illness and injury is absorbed by workers’ compensation?**

While workers’ compensation systems are designed to pay all the costs of medical care for covered conditions, no system covers all compensation lost to occupational disability. In all systems, including the Federal Employees’ Compensation Act (FECA), benefits replace less than 100% of wages lost.<sup>1</sup> In addition, workers’ compensation generally does not provide compensation for the loss of employer-provided fringe benefits, such as health insurance for non-occupational conditions or pension benefits. Finally, the costs of home production, which include daily activities such as raising children, preparing meals, and tending to the household, are not directly paid by workers’ compensation.

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<sup>1</sup> Under FECA, the basic benefit rate for total disability is equal to two-thirds of a worker’s pre-disability wage, or three-quarters of the pre-disability wage if the worker has a spouse or dependents.

In addition to structural features of workers' compensation that ensure that some costs borne by injured workers are not compensated, there are other policy factors that contribute to the differences between the total economic costs of work injuries, illnesses, and deaths in the United States, and the total value of the benefits provided by state and federal workers' compensation systems. These policy deficiencies led Congress to include in the Occupational Safety and Health Act of 1970 (P.L. 91-596) a provision establishing a national commission to study state workers' compensation laws.<sup>2</sup> The national commission's report included 84 recommendations, of which 19 recommendations were deemed "essential" (e.g., full coverage for work-related diseases). While states adopted many of the recommendations of the national commission during the 1970s and early 1980s, these reforms eventually slowed.<sup>3</sup> The last thirty years have seen rollbacks of many of the national commission-era reforms and other policy changes in the states that have impacted the amount of the economic costs of occupational injuries, illnesses, and deaths covered by workers' compensation benefits.<sup>4</sup>

In order to estimate the portion of the economic costs of occupational injuries, illnesses, and deaths that are covered by workers' compensation benefits, J. Paul Leigh of the University of California, Davis (UC Davis) created a methodology to estimate the total economic costs of work injuries, illnesses, and deaths.<sup>5</sup> This methodology allows for estimates of direct medical costs (e.g., related to hospitals, physicians, pharmaceuticals, and nursing homes) and indirect costs (e.g., current and future earnings, fringe benefits, and home production) associated with work injuries, illnesses, and deaths. Leigh's methodology also accounts for costs associated with the portion of cancer and circulatory, respiratory, and other diseases that may be attributed to conditions encountered in the workplace but are not likely to be the subject of workers' compensation claims.

While the total costs of workers' compensation benefits are published annually by the National Academy of Social Insurance (NASI),<sup>6</sup> Leigh and his UC Davis colleague James Marcin created their own methodology to estimate workers' compensation medical and disability benefits that, unlike NASI's estimates, look at estimated current and future benefit costs for occupational injuries, illnesses, and deaths incurred in a given year, rather than total costs paid in a given year for all previous cases.<sup>7</sup>

With the estimates for the total costs of occupational injuries, illnesses, and deaths, and the estimates of total workers' compensation benefits paid, it is possible to estimate that portion of the costs of work injuries, illnesses, and deaths covered by workers' compensation. Using data from 2007, Leigh and

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<sup>2</sup> See §27 of P.L. 91-596. For additional information on the work of this commission, see National Commission on State Workmen's Compensation Laws, *The Report of the National Commission on State Workmen's Compensation Laws*, Washington, DC, July 1972.

<sup>3</sup> Department of Labor, *Does the Workers' Compensation System Fulfill its Obligations to Injured Workers*, 2016, pp. 2, 12, <https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSystemReport.pdf>.

<sup>4</sup> DOL, *Does the Workers' Compensation System Fulfill its Obligations to Injured Workers*, pp. 12-20; and Emily A. Spieler, "(Re)Assessing the Grand Bargain: Compensation for Work Injuries in the United States, 1900-2017," *Rutgers University Law Review*, vol. 69, no. 3 (2017), pp. 934-955.

<sup>5</sup> J. Paul Leigh, "Economic Burden of Occupational Injury and Illness in the United States," *Millbank Quarterly*, vol. 89, no. 4 (2011), pp. 728-772.

<sup>6</sup> See, for example, Tyler Q. Welch, Griffin T. Murphy, and Michael Manley, *Workers' Compensation: Benefits, Costs, and Coverage (2002 data)*, National Academy of Social Insurance, November 2024, p. 2, <https://www.nasi.org/wp-content/uploads/2024/11/2024-WC-Report-2022-Data-Final.pdf>

<sup>7</sup> J. Paul Leigh and James P. Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," *Journal of Occupational and Environmental Medicine*, vol. 54, no. 4 (April 2012), pp. 445-450.

Marcin estimated that 20.72% of the total costs of occupational injuries, illnesses, and deaths were paid by workers' compensation.<sup>8</sup>

### Costs of Occupational Injuries, Illnesses, and Deaths Paid by Workers' Compensation

Estimates for 2007, in 2007 dollars

	Medical Costs (billions of \$)	Indirect Costs (billions of \$)	Total Costs (billions of \$)
Total costs of occupational injuries, illnesses, and deaths	67.09	182.54	249.64
Paid by workers' compensation	29.86 [44.51% of medical costs]	21.87 [11.98% of indirect costs]	51.73 [20.72% of total costs]

**Source:** J. Paul Leigh and James P. Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," *Journal of Occupational and Environmental Medicine*, vol. 54, no. 4 (April 2012), p. 449.

**Notes:** Components may not add to totals due to rounding.

While Leigh and Marcin's methodology and estimates that less than 21% of the total costs of occupational injuries, illnesses, and deaths being covered by workers' compensation are now more than a decade old, they continue to be cited in published research.<sup>9</sup> Since the publication of Leigh and Marcin's estimates, the percentage of workers' compensation benefits attributable to medical costs have changed, medical prices have increased, and the Affordable Care Act was enacted and implemented. However, the lack of major state reforms that would increase workers' compensation generosity or coverage suggests that a significant increase in the portion of the economic costs of occupational injuries, illnesses, and deaths covered by workers' compensation since the publication of Leigh and Marcin's estimates is unlikely.

#### b. Where is the remainder of the cost burden discussed in (a) shifted?

In their study of the costs of occupational injuries, illnesses, and deaths and the portion of those costs paid by workers' compensation, Leigh and Marcin also estimated the other sources used to pay the costs not covered by workers' compensation.<sup>10</sup> While workers' compensation was estimated to pay 20.72% of the total costs of work injuries, illnesses, and deaths in 2007, an estimated 50.02% of these costs were paid "out-of-pocket" by injured workers' and their families. Private health insurance paid 13.19% of total costs, and federal, state, and local benefit programs, such as Social Security Disability Insurance (SSDI), Medicare, and Medicaid, paid 16.07% of costs.<sup>11</sup> Leigh and Marcin also estimated that in 2007, Medicare paid \$7.16 billion (10.67%) and Medicaid paid \$5.47 billion (8.15%) of the medical costs of occupational injuries and illnesses.<sup>12</sup> Leigh and Marcin's specific estimates of the costs paid out-of-pocket and by private medical insurance and public medical programs do not account for changes in the private health insurance market and eligibility for Medicaid in some states resulting from the enactment and implementation of the Affordable Care Act.

<sup>8</sup> Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," p. 449.

<sup>9</sup> See, for example, David Michaels and Gregory R. Wagner, "OSHA Injury Data: An Opportunity for Improving Work Injury Prevention," *American Journal of Public Health*, vol. 115, no. 4 (April 2025), pp. 588-595.

<sup>10</sup> Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," pp. 445-450.

<sup>11</sup> Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," p. 449.

<sup>12</sup> Leigh and Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness," p. 448.

**c. With respect to lump sum or “compromise and release” settlements, what does the empirical evidence suggest are the consequences for workers who enter into such settlements?**

Compromise and release and other types of settlements of workers’ compensation claims are not permitted for FECA claims. However, the settlement of workers’ compensation claims are a common feature of most state workers’ compensation systems.<sup>13</sup> Workers’ compensation settlements of claims under the federal Longshore and Harbor Workers’ Compensation Act (LHWCA) are permitted, subject to the approval of the Department of Labor (DOL) or an administrative law judge.<sup>14</sup> While state laws differ on the legality and specific requirements of workers’ compensation settlements, there are generally three elements of workers’ compensation settlements:

- a compromise between the workers’ claim and the employer’s offer concerning the amount of cash and/or medical benefits to be paid;
- the payment of the compromised amount in either a lump sum or some other structured manner; and
- the release of the employer from further liability for the consequences of the occupational injury, illness, or death.<sup>15</sup>

The national commission on state workers’ compensation laws established by the Occupational Safety and Health Act of 1970 was critical of the overuse of compromise and release settlements and stated that “the extensive use” of such settlements “is not consistent with our recommendations for an active workers’ compensation agency” and warned that such settlements have the potential to “seriously deprive the employee of his rights.”<sup>16</sup> In its final report, the commission included the following three recommendations regarding workers’ compensation settlements:

- “We recommend that the workmen’s compensation agency permit compromise and release agreements only rarely and only after a conference or hearing before the workmen’s compensation agency and approval by the agency.”
- “We recommend that the agency be particularly reluctant to permit compromise and release agreements which terminate medical and rehabilitation benefits.”
- “We recommend that lump-sum payments, even in the absence of a compromise and release agreement, be permitted only with agency approval.”<sup>17</sup>

While noting that “there have been surprisingly few empirical studies” of workers’ compensation settlements, H. Allan Hunt and Peter S. Barth, in a report commissioned by the Washington Department of Labor and Industry, summarized several major empirical studies that examined the impact of settlements on workers’ compensation systems and workers.<sup>18</sup> The summarized studies were published between 1959 and 2001.

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<sup>13</sup> Spieler, “(Re)Assessing the Grand Bargain: Compensation for Work Injuries in the United States, 1900-2017,” p. 945.

<sup>14</sup> Title 33, Section 908(i), of the *U.S. Code*.

<sup>15</sup> National Academy of Social Insurance, *Workers’ Compensation: Benefits, Costs, and Coverage (2002 data)*, p. 65.

<sup>16</sup> National Commission on State Workmen’s Compensation Laws, *The Report of the National Commission*, pp. 109-110.

<sup>17</sup> National Commission on State Workmen’s Compensation Laws, *The Report of the National Commission*, p. 110.

<sup>18</sup> H. Allan Hunt and Peter S. Barth, *Compromise and Release Settlements in Workers’ Compensation: Final Report*, W.E. Upjohn Institute for Employment Research, Report prepared for the State of Washington, Department of Labor and Industries, Kalamazoo, MI, November 21, 2010, p. 9, <https://research.upjohn.org/reports/178/>.

The first notable empirical study of workers' compensation settlements was a 1959 study of 485 workers' compensation claims in Michigan.<sup>19</sup> This study found evidence that the actions of workers' compensation insurers can have an influence over the decisions of injured workers to settle their cases. Claimants who worked for companies represented by insurers were more likely than those who worked for self-insured firms to settle their cases. Surveys with workers' compensation claimants found that those who eventually settled their cases were more likely to have encountered difficulty in obtaining benefits and more likely to have had their benefits suspended at some earlier point, even after controlling for the legal strength of the workers' claims as measured by an independent referee who reviewed the cases.

The Michigan study also demonstrated that claimants' immediate financial needs may have been a factor in their decisions to settle their cases. The study found that 6% of workers who settled their cases used their lump-sum settlements for further vocational rehabilitation and that lump sums from settlements were more commonly used to pay down debt incurred after an injury or for daily living expenses.<sup>20</sup> In terms of the economic value of the settlements, the study concluded that "Most of the contested settlement cases appear to have been settled for less than the worker would have received in weekly payments."<sup>21</sup>

A 1961 study of 150 workers' compensation beneficiaries who had settled their cases in California also found a correlation between financial need and settlements as those with settled cases had a lower annual median income before their injuries (\$3,996) than the annual median income for all permanent disability worker's compensation claimants in the state (\$5,000).<sup>22</sup> Interviews with these beneficiaries with settled cases found that those who chose to receive lump-sum payments and had a plan for their use generally reported successful outcomes of their plans (81.2% "successful" and 8.3% "partially successful").<sup>23</sup> This group made up a minority of the sample of beneficiaries with settled claims as 62% reported having no plans for the use of their lump-sum payments. Ultimately, similar to the results from the Michigan study, the most common use of lump-sum settlement money was to pay down debt or pay for current living expenses.<sup>24</sup>

A 1971 study of 4,628 cases in Texas found evidence of power and information asymmetries between the two parties (the employer or insurer and the worker) negotiating a workers' compensation settlement.<sup>25</sup> In 84.5% of the settled cases, the worker was not represented by an attorney and in 92.6% of the cases the worker was not represented by a physician. In 4% of the settled cases an injured worker had representation by both an attorney and physician of their choosing. Overall, in 80.7% of the settled cases, the injured worker negotiated with the employer or insurer without the assistance of an independent attorney or physician.<sup>26</sup> The Texas study also found that in 20% of the settled cases, the settlement was completed before the injured worker received the formal notice of the workers' compensation process and their rights from the state workers' compensation agency.<sup>27</sup>

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<sup>19</sup> James N. Morgan, Marvin Snider, and Marion G. Sobol, *Lump Sum Redemption Settlements and Rehabilitation: A Study of Workmen's Compensation in Michigan* (Ann Arbor, MI: Cushing-Malloy, Inc., 1959).

<sup>20</sup> Morgan, Snider, and Sobol, *Lump Sum Redemption Settlements and Rehabilitation: A Study of Workmen's Compensation in Michigan*, p. 12.

<sup>21</sup> Morgan, Snider, and Sobol, *Lump Sum Redemption Settlements and Rehabilitation: A Study of Workmen's Compensation in Michigan*, p. 15.

<sup>22</sup> Earl F. Cheit, *Injury and Recovery in the Course of Employment* (New York: John Wiley & Sons, Inc., 1961), p. 279.

<sup>23</sup> Cheit, *Injury and Recovery in the Course of Employment*, p. 276.

<sup>24</sup> Cheit, *Injury and Recovery in the Course of Employment*, p. 276.

<sup>25</sup> Sam B. Barton, "Compromise Settlements: Equity for Injured Workers?," *Industrial Relations*, vol. 10, no. 3 (October 1971).

<sup>26</sup> Barton, "Compromise Settlements: Equity for Injured Workers?," p. 266.

<sup>27</sup> Barton, "Compromise Settlements: Equity for Injured Workers?," p. 267.

The Texas study also found a link between settled cases and delays in the payment of benefits which could indicate pressure from the employer or insurer to settle a case. In cases that were ultimately settled through a compromise and lump-sum payment, weekly benefits were paid before the settlement in 1.6% of cases. By contrast, 88.2% of claims that did not settle received weekly payments before a final disposition of the case.<sup>28</sup> In their review of this study, Terry Thomason and John F. Burton, Jr. referred to this data as an “indication of underwriter pressure” to compromise and settle cases.<sup>29</sup>

Thomason and Burton tested the hypotheses that insurer activities increase the acceptance of settlements and that the amount paid to workers through settlements is discounted over time from what the workers would have received had their cases been adjudicated without settlements. Thomason and Burton tested these hypotheses by examining a stratified random sample of 977 New York workers’ compensation claims with nonscheduled permanent partial disability awards from injuries that occurred in 1972. Regression analysis was used to determine the impact of insurer activities such as suspending or reducing benefits on the probability that a case would be settled. The results of the regression analysis then formed the basis for a simulation of the total amount of the awards that each claimant would have received if the claim had been settled or adjudicated without a settlement.

Thomason and Burton found that insurers do try to increase the probability of settlements through their interventions. However, the positive correlation between suspensions and reductions of benefits that were later overturned by the state workers’ compensation agency (indicating that they were not proper) and the probability of case settlement was not statistically significant.<sup>30</sup> Regression results also showed that insurer activity to influence settlement decisions was based more on the claimants’ ability to withstand economic pressure (shown in the study by a variable measuring English language proficiency) than the merits of the claim.<sup>31</sup>

The simulation model shows that the total amount paid to claimants with lump-sum settlements is significantly less than what those claimants would have received had their cases not been settled, even when controlling for the severity of injury. Thomason and Burton estimate that lump-sum settlement awards are discounted annually by approximately 24% from the lifetime benefits that would have been paid in these cases had they not been settled.<sup>32</sup>

As part of a larger study comparing New Mexico’s workers’ compensation outcomes with those of several other states, researchers with the RAND Institute for Civil Justice estimated earnings losses and total workers’ compensation cash payments for 5,996 New Mexico permanent partial disability cases with injuries that occurred between 1994 and 1998.<sup>33</sup> RAND estimated that claimants who settled their cases would have higher post-injury income losses and lower total workers’ compensation benefits than those without settlements. The estimated replacement rates (the percentage of lost income replaced by workers’ compensation benefits) were 30.8% (pre-tax) and 40.7% (after-tax) for settled claimants versus 46.8% (pre-tax) and 60.6% (after-tax) for claimants without settlements.<sup>34</sup>

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<sup>28</sup> Barton, “Compromise Settlements: Equity for Injured Workers?,” p. 268.

<sup>29</sup> Terry Thomason and John F. Burton, Jr., “Effects of Workers’ Compensation in the United States: Private Insurance and the Administration of Compensation Claims,” *Journal of Labor Economics*, vol. 11, no. 1 (January 1993), p. S11.

<sup>30</sup> Thomason and Burton, “Effects of Workers’ Compensation in the United States,” p. S27.

<sup>31</sup> Thomason and Burton, “Effects of Workers’ Compensation in the United States,” p. S33.

<sup>32</sup> Thomason and Burton, “Effects of Workers’ Compensation in the United States,” p. S31.

<sup>33</sup> Robert T. Reville, Leslie I. Boden, and Jeffrey E. Biddle, et al., *An Evaluation of New Mexico Permanent Partial Disability and Return to Work*, RAND Institute for Civil Justice, Prepared for the New Mexico Workers’ Compensation Administration, Santa Monica, CA, 2001.

<sup>34</sup> Reville et al., *An Evaluation of New Mexico Permanent Partial Disability and Return to Work*, p. 30.



**d. What policy considerations led Congress to pass the Medicare Secondary Payor Act and related reforms with respect to compromise and release settlements?**

Medicare has always been a secondary payer to workers' compensation.<sup>35</sup> The original Medicare legislation, included the following provision:

Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service under a workmen's compensation law or plan of the United States or any state....<sup>36</sup>

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173) established the current rules regarding Medicare as a secondary payer to a variety of health and other insurance systems, including workers' compensation. Section 1862(b)(8) of the Social Security Act [42 U.S.C. §1395y(b)(8)], as added by Section 111 of P.L. 110-173, requires a workers' compensation system to provide information on workers' compensation claimants that may also be eligible for Medicare to the Secretary of Health and Human Services.

The coordination of benefits between workers' compensation as a primary payer and Medicare as the secondary payer can become complicated in cases of workers' compensation settlements. Compromise and release settlements often provide a lump-sum payment for anticipated future medical costs related to the occupational injury or illness. The claimant is expected to use this money to pay for these future expenses as these future expenses will no longer be paid directly by workers' compensation. Claimants who also participate in Medicare may use that program to cover future medical expenses, rather than paying for those expenses out of their lump-sum settlement. When this occurs, Medicare becomes the primary payer in violation of federal law and the clear intent of Congress when creating Medicare.

To remedy this, the Centers for Medicare & Medicaid Services (CMS) has established a voluntary system of Workers' Compensation Medicare Set-Aside Arrangements (WCMSAs).<sup>37</sup> There are no laws or regulations that require a WCMSA. A WCMSA is a voluntary financial agreement in which a portion of the amount of the workers' compensation settlement is dedicated to the payment of future medical expenses covered by workers' compensation. The amount of the settlement that should be placed in the WCMSA is the estimated amount of future medical expenses that would otherwise be paid by Medicare, but that should be covered by workers' compensation, for the life of the person. The amount in the WCMSA must be exhausted before Medicare will pay any medical expenses related to a workers' compensation claim, thus ensuring that Medicare does not pay medical expenses that should be paid by workers' compensation and ensuring that Medicare's remains a secondary payer in workers' compensation cases. A WCMSA that meets certain requirements may be submitted to CMS for approval with approval establishing that the parties to the settlement have met their burden of protecting Medicare from improperly paying for workers' compensation medical expenses.

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<sup>35</sup> For additional information on Medicare secondary payor provisions, see CRS Report RL33587, *Medicare Secondary Payer: Coordination of Benefits*.

<sup>36</sup> Section 1862(b) of the Social Security Act, as established by Section 2 of the Social Security Amendments of 1965 (P.L. 89-97).

<sup>37</sup> For the current CMS guidance on WCMSAs, see Centers for Medicare & Medicaid Services, *Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide: Version 4.3*, April 7, 2024, <https://www.cms.gov/files/document/wcmsa-reference-guide-version-43.pdf>.

**e. Please describe the process by which impairment ratings are decided in the *AMA Guides*.**

During a 2010 hearing of the House Committee on Education and Labor, Subcommittee on Workforce Protections on workers' compensation, a statement prepared by the American Medical Association (AMA) was entered into the record.<sup>38</sup> In this statement, the AMA described the process used to update its *Guides to the Evaluation of Permanent Impairment (AMA Guides)* to the sixth edition.

The AMA stated that the process of updating the *AMA Guides* began in 2004, with the publication of the sixth edition completed in 2008. The AMA invited medical specialty societies and state and county medical associations to nominate physicians with expertise in disability or impairment to serve as authors, content contributors, or reviewers and received nominations from 45 organizations. An 11-member editorial panel selected from AMA members prepared a set of recommendations for changes to be made for the sixth edition. These recommendations were sent to 16 additional physicians for their input. The editorial panel then adopted the following axioms that would guide preparation of the sixth edition:

- Adopt the terminology, definitions and, conceptual framework of disablement of the International Classification of Functioning, Disability and Health (WHO, 2001) in place of the current and antiquated ICIDH terminology (WHO, 1980).
- Make greater use of evidence-based medicine and methodologies.
- Wherever/whenever evidence-based criteria are lacking, give highest priority to simplicity and ease of application, and follow precedent unless otherwise justified.
- Stress conceptual and methodological congruity within and between organ system ratings.
- Provide rating percentages that are functionally based whenever possible, unless/until science supports otherwise.<sup>39</sup>

Six members of the editorial panel were selected to serve as section editors, with each section editor responsible for two to four chapters. Section editors then assigned nominated physicians to write chapters based on the physicians' specialties and expertise. Draft chapters were reviewed by all section editors, then sent for peer review to the remaining members of the editorial panel and outside reviewers.

An advisory committee was formed, made up of nominees from various specialty societies, state and local medical association, and other stakeholders. The advisory committee solicited comments from their respective societies and associations and submitted them to the editorial panel. The list of members of the editorial panel and advisory committee, and lists of contributors and reviewers are provided in the sixth edition of the *AMA Guides*.<sup>40</sup>

Since the publication of the sixth edition in 2008, the *AMA Guides* have been updated in a digital format in 2021, 2022, 2023, and 2024. The current digital edition is referred to as "AMA Guides Sixth 2024."<sup>41</sup> As part of its process of making digital updates to the *AMA Guides*, the AMA has convened an editorial

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<sup>38</sup> U.S. Congress, House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., November 17, 2010, Serial No. 111-76 (Washington: GPO, 2010), pp. 53-58.

<sup>39</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 54.

<sup>40</sup> *Guides to the Evaluation of Permanent Impairment, Sixth Edition*, ed. Robert D. Rodinelli (American Medical Association, 2008), pp. vi-ix.

<sup>41</sup> AMA Guides Sixth 2024 can be accessed on the AMA website at: <https://ama-guides.ama-assn.org/>.



panel made up of 12 members and five advisors.<sup>42</sup> The AMA is soliciting, via its website, proposals for updates and editorial changes and comments on proposed changes during public comment periods.<sup>43</sup> For the current, AMA Guides Sixth 2024, the proposed changes were posted online for public comment on September 12, 2024, and the final edition was published online on December 1, 2024.

**f. What did the American Public Health Association conclude about the extent to which the AMA Guides impairment ratings are evidence-based?**

In its 2017 policy brief, *The Critical Need to Reform Workers' Compensation*, the American Public Health Association (APHA) concludes that the impairments ratings in the *AMA Guides* are not evidence-based.<sup>44</sup> The APHA states:

Also, many states are allowing the use of different versions of guidelines prepared by the American Medical Association for determination of partial or total impairment even though these guidelines are not evidenced based and do not consider physical and mental impairment in the context of an individual worker's education and ability.

The APHA also includes the following as one of the “elements of a workers’ compensation reform proposal” that it supports:

State governments should ensure that assessments of disability under workers’ compensation occur through an evidence-based system that considers physical and mental impairments in the context of an individual worker’s education and abilities and the available job market. Use of the American Medical Association’s guidelines on evaluating permanent impairment does not meet this standard.

**g. The 6th edition of the *AMA Guides* in particular has proven a source of controversy among some experts in the workers’ compensation field. Please summarize those criticisms.**

The sixth edition of the *AMA Guides* was published in 2008 and is the current edition in print. However, the AMA has produced digital updates to the sixth edition in each year from 2021 through 2024. It is the policy of the Department of Labor, Office of Workers’ Compensation Programs (OWCP) to use the sixth edition of the *AMA Guides*, without any of the annual updates, in the FECA program.<sup>45</sup>

The development and publication of the sixth edition of the *AMA Guides* was accompanied by controversy and criticism from some in the workers’ compensation community. There was also controversy in the workers’ compensation community over the development and publication of the fifth edition of the *AMA Guides* and Emily A. Spieler, a member of an AMA steering committee for the fifth

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<sup>42</sup> Information on the current editorial panel is available on the AMA website at: <https://www.ama-assn.org/practice-management/ama-guides/ama-guides-editorial-panel-members>.

<sup>43</sup> Information on the submission of proposals and comments is available on the AMA website at: <https://www.ama-assn.org/practice-management/ama-guides/ama-guides-proposal-submissions>.

<sup>44</sup> American Public Health Association, *The Critical Need to Reform Workers' Compensation*, November 7, 2017, <https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2018/01/18/the-critical-need-to-reform-workers-compensation>.

<sup>45</sup> Department of Labor, Office of Workers' Compensation Programs, *Retention of the American Medical Association's Guides to the Evaluation of Permanent Impairment, 6th Edition (2009)*, FECA Bulletin No. 21-11, September 1, 2021, <https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024#FECAB2111>. OWCP does incorporate the “Clarifications and Corrections” document issued by the AMA in August 2008 in its use of the sixth edition.

edition testified before Congress that many of the concerns raised by that steering committee regarding the fifth edition were not addressed in either the fifth or sixth editions of the *AMA Guides*.<sup>46</sup>

In 2010, the House Committee on Education and Labor, Subcommittee on Workforce Protections, held a hearing on several issues facing state workers' compensation programs, including the use of the sixth edition of the *AMA Guides*. Much of the controversy over the sixth edition was discussed at this hearing by several witnesses from the workers' compensation community. In her testimony, Spieler provided the following six issues with previous editions of the *AMA Guides* that she felt were also problems with the sixth edition:

- The impairment ratings in the *AMA Guides* are not based on evidence and have not been subjected to validation studies.
- There has never been any attempt to correlate the percentages of impairment in the *AMA Guides* to the ability to work.
- The process by which the impairment rating percentages are developed is “opaque” and not subject to public comment or input. This concern was shared by an independent task force established by the state of Iowa to study the sixth edition of the *AMA Guides*.<sup>47</sup>
- The scale used in the *AMA Guides* presumes that a 100% rating “represents a state close to death” and that a 90% rating requires total dependence on others, thus depressing all ratings in regards to the ability to work.
- The *AMA Guides* use a formula to combine multiple ratings, rather than adding ratings together.<sup>48</sup>
- The *AMA Guides* are not “broadly acceptable to the many constituencies involved in workers' compensation” in part because there is no scientific basis for the ratings.<sup>49</sup>

In addition to the criticisms of earlier editions of the *AMA Guides* that persist in the sixth edition, several experts in the field of workers' compensation have raised concerns with specific elements of the sixth edition. The sixth edition of the *AMA Guides* uses the World Health Organization's International Classification of Functioning, Disability, and Health (ICF) as a model for its impairment ratings.<sup>50</sup> Spieler is critical of this approach, noting that the ICF model uses different terminology from earlier editions of the *AMA Guides*, workers' compensation programs, and the Americans with Disabilities Act which may

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<sup>46</sup> Emily A. Spieler, Peter S. Barth, and John F. Burton, Jr., et al., “Recommendations to Guide Revisions of the *Guides to the Evaluation of Permanent Impairment*,” *Journal of the American Medical Association*, vol. 283, no. 4 (January 26, 2000), pp. 519-523; and House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 54.

<sup>47</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 40-41. The full report of the Iowa task force is included in the hearing record on pages 69-82.

<sup>48</sup> This formula can be expressed as:  $Combined\ Rating = A + B(1 - A)$ , where A and B are individual ratings expressed as values ranging from 0 to 1. For example, if a person has two impairments, one rated 25% and the other rated 50%, his or her combined rating would be determined using the following formula:  $0.625 = 0.25 + 0.50(1 - 0.25)$ . Converting the combined rating into a percentage, and rounding to the nearest whole number, would yield a combined impairment rating of 63%, rather than a rating of 75% if the two ratings were added together. This formula is repeated if there are more than two combined impairments.

<sup>49</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 14-15.

<sup>50</sup> *AMA Guides, Sixth Edition*, pp. 3-6.

lead to confusion.<sup>51</sup> In addition, the ICF model is not a model of work disability and uses evaluations of ability to perform activities of daily living (ADLs) like taking care of personal hygiene that may indicate a level of impairment but may not be relevant to an evaluation of one's ability to work.

The sixth edition of the *AMA Guides* no longer provides for a 3% rating for pain associated with any organ system, but rather purports to incorporate pain into its base ratings. The additional rating for pain of up to 3% is only permitted in the sixth edition in cases in which there is no underlying rating scale for an organ system. Spieler was critical of the loss of the subjective nature of a rating for pain.<sup>52</sup> Similarly, Spieler was critical of the loss of a measure of range of motion in spine and pelvic impairments and the greater scrutiny given to reports from treating physicians as opposed to independent examiners.<sup>53</sup>

The sixth edition includes new definitions for a variety of legal terms associated with workers' compensation, such as causality and apportionment, that may go beyond the scope of the evaluation of a person's level of impairment. Spieler was particularly concerned with the sixth edition's treatment of the concept of apportionment, which provides for different ratings based on the existence of pre-existing conditions in accordance with the "local jurisdiction's guidelines" regarding the treatment by workers' compensation of subsequent injuries.<sup>54</sup> States differ in how their workers' compensation programs compensate subsequent injuries. Spieler expressed concern that incorporating apportionment into the *AMA Guides* "may have a troubling normative effect on programs in which apportionment is not currently appropriate, and further reduce the adequacy of benefits for injured workers."<sup>55</sup> These concerns were shared by an independent task force established by the state of Iowa to study the impact of changing from the fifth to sixth edition of the *AMA Guides*, as reported in congressional testimony by Christopher James Godfrey, that state's Workers' Compensation Commissioner.<sup>56</sup>

Spierer noted that there are several "unexplained changes" to how certain body systems are evaluated and rated and that most of these changes will likely lower an individual's impairment rating versus what they would have scored under previous editions of the *AMA Guides*.<sup>57</sup> This perception is buttressed by data presented to Congress by John Nimlos, a physician and occupational medicine consultant who also referred to the changes in the sixth edition as "unexplained." In his testimony before Congress on the use of the sixth edition of the *AMA Guides*, Nimlos presented his own analysis of 35 ratings found in the *AMA Guides* that showed that whereas six ratings were decreased from the fourth to the fifth edition, the transition to the sixth edition resulted in 21 ratings being decreased.<sup>58</sup> Nimlos also cited a study in North Dakota by Sedgwick Claims Management Services that found that of the 52 impairment ratings it examined, ratings under the sixth edition would be the same or higher than under the fifth edition in six

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<sup>51</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 11-12.

<sup>52</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 12.

<sup>53</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 12-13.

<sup>54</sup> *AMA Guides, Sixth Edition*, pp. 25-26.

<sup>55</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 13.

<sup>56</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 39-40.

<sup>57</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, pp. 13-14.

<sup>58</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers' Compensation Systems*, p. 30.

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cases and lower in 46 cases with the average rating for impairment of the cervical spine decreasing from a rating of 24.8% to 12.2%. Nimlos testified that Sedgwick concluded that North Dakota would save \$1.1 million per year in permanent partial disability compensation by adopting the sixth edition of the *AMA Guides*.<sup>59</sup>

A 2018 study of 249 injured workers in Amsterdam found the median impairment rating for those evaluated under the fifth edition of the *AMA Guides* was 7% versus 4% for those evaluated under the sixth edition with a relative reduction of 36.4% in impairment rating from the fifth to the sixth edition.<sup>60</sup> The study concluded that “the sixth edition of the *AMA Guides* provides systematically lower impairment ratings for injured workers than the fifth edition.”<sup>61</sup>

The Iowa task force raised concerns about possible cultural and linguistic biases in some of the measures used in the sixth edition, specifically the DASH (Disabilities of the Arm, Shoulder, and Hand) and Quick DASH questionnaires used to evaluate certain musculoskeletal impairments. Godfrey testified that the Iowa task force was able to confirm that these questionnaires were not tested for cultural or other types of sensitivity and that when asked about this, Robert D. Rondinelli, medical editor of the sixth edition, “suggested that given the lack of cultural sensitivity in these tools, the questionnaires simply not be utilized with members of a minority population.”<sup>62</sup>

**h. Please summarize the findings of the National Academy of Social Insurance Study Panel on Benefit Adequacy with respect to the impacts of the prevailing trends in state workers’ compensation.**

In 1998, the workers’ compensation steering committee of the National Academy of Social Insurance (NASI) convened a study panel to review the adequacy of disability benefits provided by state and federal workers’ compensation programs. The work of the Benefit Adequacy Study Panel culminated in a 2004 report, a seminar hosted by NASI and the Social Security Administration (SSA), and an article in the *Social Security Bulletin*.<sup>63</sup>

The NASI study panel evaluated the adequacy of workers’ compensation disability benefits from the early 1970s to 1998, a period that included reforms of state workers’ compensation laws inspired by the findings of the National Commission on State Workmen’s Compensation Laws as well as reforms intended to reduce workers’ compensation costs in the 1990s.

Benefit adequacy between 1972 and 1998 was measured using three methods. In the first method, statutory benefit levels were compared against the federal poverty threshold. The study panel found that for a four-person family, the average expected weekly benefit for temporary total disability rose from 80% of the federal poverty threshold in 1972 to 107% in 1998, with the largest period of growth

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<sup>59</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers’ Compensation Systems*, p. 31.

<sup>60</sup> Jason W. Busse, Marieke M. de Vaal, and S. John Ham, et al., “Comparative Analysis of Impairment Ratings From the 5th to 6th Editions of the *AMA Guides*,” *Journal of Occupational and Environmental Medicine*, vol. 60, no. 12 (December 2018), pp. 1108-1111.

<sup>61</sup> Busse, et al., “Comparative Analysis of Impairment Ratings From the 5th to 6th Editions of the *AMA Guides*,” p. 1108.

<sup>62</sup> House Education and Labor Committee, Workforce Protections Subcommittee, *Developments in State Workers’ Compensation Systems*, p. 42.

<sup>63</sup> *Adequacy of Earnings Replacement in Workers’ Compensation Programs: A Report of the Study Panel on Benefit Adequacy of the Workers’ Compensation Steering Committee of the National Academy of Social Insurance*, ed. H. Allan Hunt (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2004); and H. Allan Hunt, “Benefit Adequacy in State Workers’ Compensation Programs,” *Social Security Bulletin*, vol. 65, no. 4 (May 2005), pp. 24-30.

occurring in the mid-1970s.<sup>64</sup> In 1998, average temporary total disability benefits in 16 states were below the federal poverty threshold.<sup>65</sup>

The second method used by the study panel to evaluate benefit adequacy compared statutory benefit levels for a standard distribution of work injuries against the benefit levels prescribed by the revised Model Workers' Compensation act designed by the Council of State Governments in 1974, based on the recommendations of the National Commission on State Workmen's Compensation Laws.<sup>66</sup> The average level of all workers' compensation disability benefits rose from 37% of the revised Model Act's guidelines in 1972 to 47% in 1998, with the greatest period of growth occurring in the mid-1970s.<sup>67</sup> Temporary total disability benefits have consistently been the closest to those recommended by the revised Model Act, ranging from just over 60% of the revised Model Act levels in 1972 to nearly 90% in 1998. Permanent total disability benefits have been the least like those recommended by the revised Model Act, never exceeding 20% of the revised Model Act's recommended levels between 1972 and 1998.

The third method used by the study panel measured the percentage of wage loss due to disability replaced by workers' compensation benefits, using simulations of future wages of workers' receiving benefits. When future wages are held constant, simulating no wage growth over the life of the worker, workers' compensation benefits in 1972 replaced an average of just under 20% of lifetime wage losses and just under 26% in 1998.<sup>68</sup> When accounting for wage growth, simulated using a nominal growth rate of 6% annually until a worker reaches 65, the percentage of lifetime wages replaced by workers' compensation ranged from an average of 10% in 1972 to 13% in 1998. Similar to the comparisons of benefits against the poverty threshold and the revised Model Act, benefits relative to wage loss grew slightly in the mid-1970s then faced a slight decline to the 1998 levels.

The study panel also examined wage loss studies of workers' compensation in the 1990s in California, New Mexico, Oregon, Washington, and Wisconsin. The study panel concluded that wage loss studies "are the best yardstick to measure the adequacy of benefits."<sup>69</sup> These studies test the adequacy of workers' compensation benefits by measuring the percentage of wage loss (the difference in actual wages earned before and after an injury) replaced by workers' compensation benefits. These studies, summarized by the study panel, found average wage loss replacement rates at 10 years after an injury of 37% for California, 46% for New Mexico, 42% for Oregon, 41% for Washington, and 29% for Wisconsin.<sup>70</sup> These results indicate that in the 1990s, workers' compensation benefits in these states were not actually replacing an average of two-thirds of a worker's wage loss, as might be expected by looking only at the statutory benefit provisions.

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<sup>64</sup> *Adequacy of Earnings Replacement in Workers' Compensation Programs*, pp.72-75; and Hunt, "Benefit Adequacy in State Workers' Compensation Programs." p. 25.

<sup>65</sup> *Adequacy of Earnings Replacement in Workers' Compensation Programs*, p. 73.

<sup>66</sup> The provisions of the revised Model Act are at: *Adequacy of Earnings Replacement in Workers' Compensation Programs*, pp. 99-100.

<sup>67</sup> *Adequacy of Earnings Replacement in Workers' Compensation Programs*, pp.84-89; and Hunt, "Benefit Adequacy in State Workers' Compensation Programs." pp. 26-27.

<sup>68</sup> *Adequacy of Earnings Replacement in Workers' Compensation Programs*, pp.89-96.

<sup>69</sup> *Adequacy of Earnings Replacement in Workers' Compensation Programs*, p. 132.

<sup>70</sup> *Adequacy of Earnings Replacement in Workers' Compensation Programs*, pp.106-122; and Hunt, "Benefit Adequacy in State Workers' Compensation Programs." pp. 27-28.



**i. Please summarize the findings of Bhushan and Leigh (2011) with respect to what drives the cost of workers' compensation premiums since the reforms of the 1990s.**

In 2011, Abhinav Bhushan and J. Paul Leigh published the results of a study of trends in work injury rates and workers' compensation costs, in the form of insurance premiums, from 1973 to 2007.<sup>71</sup> Using linear regression, Bhushan and Leigh found that for the period from 1973 to 2007, variables measuring medical inflation (the medical price index) and lost time injuries were positively correlated with insurance premiums while variables measuring potential returns on financial investments made by insurance companies (the Dow Jones Industrial Average and the U.S Treasury bond rate) were negatively correlated with insurance premiums. For the period from 1992 to 2007, the only significant correlation with insurance premiums was the Dow Jones Industrial Average (negative correlation). From these results, Bhushan and Leigh conclude that for the period from 1973-2007, medical price inflation and declining returns on insurance company investments were drivers of workers' compensation costs. For the period from 1992-2007, declining investment returns drove workers' compensation costs. Rising workers' compensation insurance premiums, especially after 1992, were more likely the result of declining insurance company investment returns than increased work injuries or growth in workers' compensation claims. Bhushan and Leigh report that these findings are consistent with the idea that insurance company profits come more from investments than underwriting and that insurers may adjust premiums to account for declining investment returns.

**2. In considering FECA reform proposals over the past decade, GAO and CRS have issued multiple nonpartisan studies analyzing the adequacy of FECA benefits. For example, GAO issued reports in late 2012 (GAO-13-108; GAO-13-142R; GAO-13-143R) and in 2020 (GAO-20-523), and CRS issued reports in 2015 (report RL30387) and 2023 (report 98-972).**

**a. What do these studies say about how FECA benefits at retirement age compare to what federal workers would have received under FERS had they not been injured, both under current compensation structures and proposed reductions at retirement age?**

In 2012 and 2020, the Government Accountability Office (GAO) evaluated how total federal benefits available under the Federal Employees' Compensation Act (FECA) at retirement would compare with what workers would receive at retirement under the Federal Employees' Retirement System (FERS) for a sample of federal beneficiaries and annuitants.<sup>72</sup> Comparisons were made under current law and under a proposal by the Department of Labor (DOL) to reduce the amount of FECA benefits to 50% of a worker's pre-injury wage when the worker reaches the Social Security Full Retirement Age (FRA).<sup>73</sup> The total package of federal retirement benefits under FECA included FECA compensation and the amount in a beneficiary's Thrift Savings Plan (TSP). Under FERS, the total federal retirement package included the FERS annuity, the TSP, and the amount of an annuitant's Social Security retirement benefits.

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<sup>71</sup> Abhinav Bhushan and J. Paul Leigh, "National Trends in Occupational Injuries Before and After 1992 and Predictors of Workers' Compensation Costs," *Public Health Reports*, vol. 126 (September 2011), pp. 625-634.

<sup>72</sup> U.S. Government Accountability Office, *Federal Employees' Compensation Act: Analysis of Proposed Program Changes*, GAO-13-108, October 2012, <https://www.gao.gov/products/gao-13-108>; U.S. Government Accountability Office, *Federal Employees' Compensation Act: Analysis of Proposed Changes on USPS Beneficiaries*, GAO-13-142R, November 26, 2012, <https://www.gao.gov/products/gao-13-142r>; and U.S. Government Accountability Office, *Federal Employees' Compensation Act: Comparisons of Benefits in Retirement and Actions Needed to Help Injured Workers Choose Best Option*, GAO-20-523, July 2020, <https://www.gao.gov/products/gao-20-523>.

<sup>73</sup> For additional information on the Social Security FRA, see CRS Report R44670, *The Social Security Retirement Age*.



The 2012 reports compared federal retirement packages for both non-postal and postal employees in 2010. For both non-postal and postal employees under current law, the median benefits available under FECA were more than 30% higher than under FERS. Under the DOL proposal, FECA benefits for non-postal employees were slightly less than under FERS and equal for postal employees. One limitation of the analysis in the 2012 report was that FERS had not yet been in place for 30 years, thus preventing any FERS employee from having the 30 years of service required for a full annuity. For both non-postal and postal employees, the length of federal service was an important factor in how FECA compared with FERS. Generally, under current law, as the years of federal service increase, the gap between FECA and FERS decreased. However, under the DOL's proposal, increased length of service resulted in an increased gap between FECA and FERS. This is the result of the FERS annuity increasing with additional years of federal service.

The GAO replicated its comparison study in 2020 and now had the benefit of a “mature” FERS that had been in law for more than 30 years. In addition, the 2020 study only looked at Social Security retirement benefits attributable to federal service, unlike the 2012 study which looked at all Social Security benefits available to a FERS annuitant. The results were similar to what was found in 2020 for non-postal employees, while results for postal employees were not comparable to the 2012 results due to changes in the postal employee wage scales.

**b. What do these studies say about how FECA and FERS benefits compare for workers who are injured at younger ages and earlier in what would have been lengthy federal careers?**

The 2020 GAO study compared benefit ratios (median total FECA benefits available in retirement as a percentage of median total FERS benefits available in retirement) under current law and the DOL's proposal to reduce FERS benefits at the Social Security FRA for non-postal FERS annuitants with 25-to-29-year federal careers and non-postal FECA beneficiaries injured at various ages and stages of their federal careers.<sup>74</sup> The GAO found that the age or period in a federal career when an injury occurred had “substantial effects” on the comparisons between FECA and FERS.<sup>75</sup>

Workers whose injuries occurred at age 60 or older or at least 20 years into their federal careers had median FECA benefit packages under current law that were nearly 20% greater than FERS benefits, as they benefited from ample time in their careers to accrue pay increases and contribute to the TSP. The benefit ratio flipped, however, under the DOL's proposal, as the median FECA package was now nearly 10% less than what was available under the FERS package.

For workers whose injuries occurred before they reached age 40 or less than 10 years into their federal careers, the impact of the DOL proposal was more significant. These workers already had negative benefit ratios under current law (i.e., FECA benefits less than FERS benefits). The DOL proposal dropped their benefit ratios such that their median total FECA benefits were now approximately 40% of what would have been available to them had they not been injured and were able to claim the full package of FERS benefits.<sup>76</sup>

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<sup>74</sup> GAO-20-523.

<sup>75</sup> GAO-20-523, p. 17.

<sup>76</sup> GAO-20-523, p. 18.

**c. What do these studies say about the wage replacement rate of FECA beneficiaries with and without dependents, after accounting for taxes on normal wages and the non-taxable FECA compensation?**

In 2012, to determine the wage replacement rate of FECA, the GAO compared FECA benefits for injured workers with the “take home pay” those workers would have been expected to receive had they not gotten injured.<sup>77</sup> Median wage replacement rates were calculated for all workers, non-postal and postal, and then for workers with and without dependents. Under current law, the 2010 simulated median wage replacement rate for all non-postal workers was 80% (81% for workers with dependents, 78% without dependents). For all postal workers, the median FECA wage replacement rate was 88% (89% with dependents, 86% without dependents).

**d. What do these studies say about the effects of compensating all FECA beneficiaries at a single compensation rate, regardless of whether they have dependents, and which beneficiaries this most affects?**

In 2012, the GAO compared wage replacement rates under current law to wage replacement rates under two proposals: (1) a DOL proposal to eliminate augmented compensation for dependents and set FECA benefits to a single rate of 70% of a worker’s pre-injury wage and (2) a 2012 Senate proposal to eliminate augmented compensation for dependents and set FECA benefits to a single rate of 66.67% of a worker’s pre-injury wage.<sup>78</sup> The median FECA wage replacement rate for all workers decreased under both proposals. Workers with dependents experienced decreased in their wage replacement rates, while those without dependents saw gains under the DOL proposal and no change under the Senate proposal. The table below summarizes the GAO’s findings.

**Median FECA Wage Replacement Rates, 2010 (GAO Simulations)**

	Non-Postal			Postal		
	All Workers	With Dependents	Without Dependents	All Workers	With Dependents	Without Dependents
Current Law	80%	81%	78%	88%	89%	86%
DOL Proposal	77%	76%	82%	84%	83%	90%
Senate Proposal	73%	72%	78%	80%	79%	86%

**Source:** Congressional Research Service (CRS) table with data taken from GAO-13-108; GAO-13-142R; and GAO-13-143R.

**Note:** “GAO” is Government Accountability Office. “DOL” is Department of Labor.

**e. What do these studies say about how much of a federal worker’s final salary FERS retirement benefits are expected to replace (FERS annuity, TSP, and Social Security, combined), based on various assumptions, including how long their career was?**

In 2015, using wage data from that year, the Congressional Research Service (CRS) prepared estimates of the percentage of a federal worker’s final salary would be replaced in the first year of retirement by Social

<sup>77</sup> GAO-13-108; and GAO-13-142R.

<sup>78</sup> The Senate proposal was included as Section 303 of the 21<sup>st</sup> Century Postal Service Act of 2012 (S. 1789) as passed by the Senate in the 112<sup>th</sup> Congress.

Security,<sup>79</sup> the FERS annuity, and the TSP, under a variety of assumptions.<sup>80</sup> CRS's estimates are provided in the tables below and apply only to 2015 wage levels.

### Percent of Final Year Salary Replaced by Retirement Components in First Year

Employee Retiring in 2034 at the Age of 62 After 20 Years of Service

Retirement Estimates	Final Pay Grade (2015 Wage Levels)			
	GS-4	GS-8	GS-12	GS-15
Social Security	39.0%	32.3%	25.0%	25.0%
FERS Annuity	21.2%	21.2%	21.2%	21.2%
TSP				
TSP monthly annuity with only 1% agency contribution	1.3%	1.3%	1.3%	1.3%
TSP monthly annuity with 5% from employee and 5% from agency	13.2%	13.2%	13.2%	13.2%
TSP monthly annuity with 10% from employee and 5% from agency	19.8%	19.8%	19.8%	19.8%

**Source:** CRS table with data from CRS Report RL30387, published in 2015, and additional analysis.

**Notes:** Estimates of income from the TSP are based on a level, single-life annuity at the January 2015 annuity interest rate of 2.375%. Assumes 6% nominal annual rate of investment return on TSP; federal salary at step 8 of pay grades in retirement year; future, average federal salary increases of 4.0% per year; and average inflation rate of 2.7% per year.

<sup>79</sup> Based on estimates from the Social Security Administration (SSA) and calculations by CRS using SSA estimates taken from Table V.C7 of the 2014 *Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds*, for individuals who retire at the age of 65 in 2014, Social Security benefits would replace about 39.0% of career-average earnings for a "scaled medium earnings" hypothetical worker, who has career-average earnings of about \$46,787. This earnings profile is similar to a GS-4 federal employee. For a "scaled high earnings" hypothetical worker retiring at the age of 65 in 2014, who has career-average earnings of \$74,859 and could be compared with a GS-8 federal employee, Social Security benefits would replace about 32.3% of career-average earnings. Finally, GS-12 and GS-15 employees could be compared with a "steady maximum earnings" hypothetical worker (with career-average earnings at or above the contribution and benefit base of \$117,000 in 2014) for whom Social Security benefits would replace about 25% of \$117,000 for retirement at 65 in 2014 (\$29,209), based on estimates from SSA.

<sup>80</sup> CRS Report RL30387, *Federal Employees' Retirement System: The Role of the Thrift Savings Plan*.

### Percent of Final Year Salary Replaced by Retirement Components in First Year

Employee Retiring in 2044 at the Age of 62 After 30 Years of Service

Retirement Estimates	Final Pay Grade (2015 Wage Levels)			
	GS-4	GS-8	GS-12	GS-15
Social Security	39.0%	32.3%	25.0%	25.0%
FERS Annuity	31.7%	31.7%	31.7%	31.7%
TSP				
TSP monthly annuity with only 1% agency contribution	2.3%	2.3%	2.3%	2.3%
TSP monthly annuity with 5% from employee and 5% from agency	23.2%	23.2%	23.2%	23.2%
TSP monthly annuity with 10% from employee and 5% from agency	34.8%	34.8%	34.8%	34.8%

**Source:** CRS table with data from CRS Report RL30387, published in 2015, and additional analysis.

**Notes:** Estimates of income from the TSP are based on a level, single-life annuity at the January 2015 annuity interest rate of 2.375%. Assumes 6% nominal annual rate of investment return on TSP; federal salary at step 8 of pay grades in retirement year; future, average federal salary increases of 4.0% per year; and average inflation rate of 2.7% per year.

#### f. What do these studies say about the average career length of new federal retirees?

A 2023 CRS report compiled the following data on the average career length of new federal retirees in FY2022, under both the Civil Service Retirement System (CSRS) and FERS, based on data from Office of Personnel Management (OPM).<sup>81</sup>

<sup>81</sup> CRS Report 98-972, *Federal Employees' Retirement System: Summary of Recent Trends*, pp. 6-7.

**Average Length of Service, in Years, at Retirement**

Annuitants who Retired in FY2022

<b>Civilian Retirement Category</b>	<b>CSRS</b>	<b>FERS</b>
Normal Retirement	40.6	24.3
Disability Retirement	23.7	13.2
Involuntary Retirement <sup>a</sup>	32.7	24.6
Voluntary Early Retirement	28.1	26.3
Special Provision Retirement <sup>b</sup>	37.6	25.1
<i>Total All Retirements<sup>c</sup></i>	39.2	23.6

**Source:** CRS Report 98-972.

- a. Discontinued service retirement after an involuntary separation not due to misconduct or delinquency.
- b. Includes law enforcement officers, firefighters, air traffic controllers, and Members of Congress.
- c. Includes other, unclassified retirements not shown separately.