



American Postal Workers Union, AFL-CIO

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March 26, 2010

From the Office of Susan M. Carney
Human Relations Director

Re: National President's Conference

OWCP / NRP and Human Relations Department Updates

COLA- Effective March 1, 2010, the CPI OWCP COLA adjustments is 3.4%. For FECA, the base month for comparison is December, and from Dec., 2008 to Dec., 2009. FECA Bulletin # 10 – 02

Consultation Codes - OWCP will adhere to the recent decision by the Center for Medicare and Medicaid Services (CMS) that was announced in MLN Matters, #MM6740. Effective March 1, 2010 OWCP will no longer accept the use of the AMA/CPT (Current Procedural Terminology) Consultation codes ranges 99241-99245 and 99251-99255 for outpatient and office settings. Any line items submitted with date of service on or after March 1, 2010 will be denied and returned stating "The requested procedure is not a covered service". For additional information please refer to CMS MLN Matters Number: MM6740 located at:

<http://www.cms.gov/MLNMattersArticles/downloads/MM6740.pdf>

2011 Budget Proposal- FECA- Included in the President's 2011 Budget Proposals is a rehashed provision from previous administrations. The proposal appears to: (1) change the waiting period to mirror that of postal employees (part of the Postal Accountability and Enhancement of 2006), moving the 3-day waiting period to the beginning of the injury/illness; (2) provide a retirement benefit based on the employees retirement-age; (3) permit the Department of Labor to collect compensation costs from responsible third parties; (4) cross match FECA records with Social Security records, seemingly to determine whether a FECA enroller has other work-related compensation; and (5) increase benefits have not changed since 1999. See attached excerpt entitled "Other Savings: FECA Reform". APWU is in the process of preparing a response to counter these proposals.

Pharmacy Providers - On December 1, 2009, DOL implemented a new policy for processing Schedule II drugs for claimants who are identified as recipients of the FECA Program.

<http://www.dol.gov/owcp/dfec/pharmacy-schedule-II-policy.htm>

USPS Timeliness Rating- The DOL reports that for the 1st Quarter of the Fiscal Year 2010 the USPS has a 92.6 (down 2.2% from 2009) timeliness rating [within 14 calendar days (10 work days) of first receipt] for CA1 and CA2 submissions (11,326) compared to all other Government agencies whose cumulative average timeliness rating is just 80% (up 3.2% from 2009) on a total 16,626 CA1 and CA2 forms submitted.

Lost Production Days (LPD)**FY2010 1st Qtr per 100 employees**

All Government	69.4
All Government, less USPS	34.2
US Postal Service	178.3

Death Gratuity - Amendment to the Federal Employees' Compensation Act, 5 U.S.C. § 8102a creates a death gratuity paying up to \$100,000 to the survivors of a federal employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation. This provision became effective on January 28, 2008, and OWCP is currently drafting regulations implementing the amendment. This one-time death gratuity is to be disbursed to the survivors of the employee in a specific, and somewhat complicated, order of precedence set forth in the statute. It is important to note that these beneficiary stipulations are unique to the new provision, and no existing DOL rules or guidelines cover these circumstances. The statute also provides the employee the opportunity to change the order of precedence in regard to certain survivors, as well as, to designate up to 50 percent of the benefit to any person. Since the death gratuity is now in effect, DOL believes that it is imperative that potentially affected federal employees be provided the opportunity to exercise the designation option for any death gratuity that unfortunately may be payable. Therefore, OWCP has created a form, copy of which is available on the DFEC web page, to be used by employees to designate the distribution of the death gratuity, should one be payable. An Interim Final Rule implementing this benefit was published on August 18, 2009 and appears at: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a0c37a>

AMA Guide- The Division of Federal Employees compensation has informed us that a new 6th edition of the AMA "Guides" has been published. OWCP will formally "convert" to the new "Guide", effective May 1, 2009.

ECAB Decision on LWEC- On March 10, 2009, the Appeals Board issued a decision (Docket No. 08-1286) addressing the payment of wage loss compensation after a formal lost wage-earning capacity (LWEC) determination has taken place. A formal LWEC cannot be modified unless the medical condition has materially worsened, there has been substantial financial rehabilitation, or the original LWEC determination was in error. However, ECAB ruled that even if the claimant has been determined to have a disability caused by the failure of the employer to provide medically suitable employment, such payment would not be considered a "modification" of the formal LWEC. Therefore, none of the three elements required for LWEC modification would have to be demonstrated.

Appeals- The Code of Federal regulations relating to ECAB (20 CFR Part 501) has some changes which became effective on October 20, 2008:

- **ECAB**- The principle change is an extension of the time limits for appeal to ECAB from 90 days to 180 days. It can be extended up to one year if the appellant demonstrates "compelling circumstances", i.e., "circumstances beyond appellant's control".
- **Oral Argument**- The other change of some significance is that a request for oral argument will no longer be automatically approved. The appellant (or rep) must request oral argument specifying the issues to be argued and providing a statement supporting the need to appear in person before ECAB.

Provider Search- A new feature called Provider Search is being offered to help claimants generate a custom list of providers by entering criteria that describes what they are looking for. When searching the database the search may include the program name, provider type, specialty, provider name, city, state, and zip code. You can access the new web feature on the ACS web portal web

page by connecting through DFEC>e-tools.

New Billing Requirements for OWCP Programs- Providers (excluding Pharmacy) must bill with their ACS OWCP provider number in box 33 of OWCP-1500 or box 51 of OWCP-04. If the number is not on the form, your bill will be returned.

Interactive Voice Response System- FECA users can access the Interactive Voice Response System (IVRS) to utilize bill status inquiry, claimant eligibility inquiry, and medical authorization inquiry functionality 24 hours a day. To access IVRS system, please dial (866) 335-8319 and select option '1' from the main menu.

COP Bulletin- is *still* pending. Changes to the law were signed into effect on December 20, 2006 by President Bush which imposed a 3 day waiting period for COP to Postal employees only.

Claimant Query System (CQS) - allows claimants to access information regarding their claim: benefits payments, benefits tracking, medical bill status, case status history, accepted conditions, employing agency information and CA-16 information. To access the system visit: <http://owcp.dol.acs-inc.com> then link to "Claimant" next to the FECA window, accept the agreement, input case file #, date of birth, date of injury and submit; on the next landing page you can link to CQS in the toolbar on the left side under "Inquiries".

EHSS (Employee Health and Safety System) - The USPS piloted and rolled out this system nationwide late September 2009 without bargaining with the unions. The system is intended to mandatorily replace accident reporting procedures (PS form 1769) and said to populate all input information to other relative form generated by the system. Although the APWU received two after-the-fact and very limited briefings, the USPS has yet to fulfill our request for information or give APWU access to the system to review all of its capabilities and components. A ULP charge was filed by APWU on January 29, 2010. It is important to note that this system populates CA forms and the USPS methodology requires the employee to dictate information to the supervisor who will then type the remaining information onto the forms. Members should be apprised that they have the right to refuse the system completed / generated form. Employees may demand to a blank copy of the CA forms to complete and sign own their own. Forms completed by hand must be accepted. The USPS advises under these circumstances the handwritten CA form will be submitted to OWCP but the information contained on the forms will still be input into the EHSS by the SDO to complete system records. Employees are cautioned that they should follow behind the SDO to ensure the SDO input the employee's written information exactly as submitted.

SF-8 "Notice to Former Employee about Unemployment Insurance" - Employees should request this form from the USPS because the withdrawal of any medically suitable work has "unemployed" for those lost hours. The USPS has advised it will only issue the form when requested. It is important to note that unemployment compensation eligibility varies from state to state, and that OWCP will not offset WLC for simultaneous UC but UC will likely have to be repaid to the state once WLC is approved/ received.

EEOC Class Action Certification (NRP) - On May 30, 2008, in the case of *Sandra McConnell et al v. United States Postal Service*, an Administrative Judge (AJ) for the Equal Employment Opportunity Commission (EEOC) certified a class action complaint alleging that the Agency had discriminated against all rehabilitation and limited duty employees on the basis of disability when it implemented the National Reassessment Process. The Postal Service disputed the claims and appealed the certification which defines class members as "all permanent rehabilitation and limited duty employees of the United States

Postal Service who have been subjected to the National Reassessment Process (NRP) from May 5, 2006 to present, allegedly in violation of the Rehabilitation Act of 1973." In its January 14, 2010 ruling, the EEOC rejected the USPS appeal and ordered the Postal Service to notify all potential class members. For more specifics refer to "EEOC Upholds Class Action" contained in this report.

2010 Human Relations Conference – still time to register for this educational event featuring presentations by DFEC, Branch of Hearings and Review, ECAB, EEOC, MSPB, OPM and the VA. NRP updates will be offered and there will be several opportunities to participate in APWU community outreach programs which will enable us to say thanks to our troops. Registration fee is \$175.00. Deadline to register is April 22nd. Event location: L'Enfant Plaza Hotel and DOL (Washington, DC)

National Convention- We will be collecting fast food gift cards (\$5 - \$10 denominations) at the HRD booth to distribute to our deployed and recovering U.S. Service members. We hope you will participate.

Projected NRP Impact
As of February 2010

National Summary	LTD	Rehab	Total	On-Rolls	Percentage
	11,462	15,149	26,611	670,339	3.97

Results of Pilots which began in 2004 (MIMI Only)

MIMI Pilot Sites	Total Cases	Return to Full Duty	Retired	Assignment Change	NWA
NY Metro, W.NY	1054	210	83	413	180
San Diego					
Percentages -		(20%)	(8%)	(39%)	(17%)

A fluid 33,758 rehab and limited duty targeted nationwide. Earlier Projections based above percentages holding true: 6080 NWA, 1920 opting for retirement. Based on USPS estimates just prior to NRP Limited Duty being piloted (March 2009) approximately 60 employees were told NWA. (NRP MIMI P2 first district implementation occurred on March 8, 2007).

LD Pilot Sites	Total Cases	Full Day	Partial Day	NWA
LA, Sierra Coastal, Santa Ana,	2230	912	667	651
SE New England				
Percentages -		(41%)	(30%)	(29%)

Applying the LD pilot site percentages to the February 2010 employee summary totals, if the percentages hold true, the following can be projected:

Total Cases	Full Day	Partial Day	NWA
26,611	10,911	7,983	7,717

Impact on APWU cannot fully be projected because USPS claims they do not breakdown employees by craft until after the Districts report outcomes of NRP to Area and then Area to HQ. However, based on figures we just have received from December 2009 we can speculate 54% of the targeted employees belong to APWU bargaining units.

All Employees	Total Cases	Full Day	Partial Day	NWA
	26,611	10,911	7,983	7,717
APWU (54%)	Total Cases	Full Day	Partial Day	NWA
	14,370	5,892	4,311	4,167

PERFORMANCE CLUSTER SUMMARY

NRP/NAP FEBRUARY FY 2010

PFC	NAME	LTD	R	Total	*On-Rolls	% On-Rolls
A - NEW YORK METRO						
		725	572	1,297	52,738	2.46
006	CARIBBEAN	39	33	72	3,115	2.31
070	NORTHERN NEW JERSEY	159	180	339	13,421	2.53
100	NEW YORK	180	120	300	13,702	2.19
105	WESTCHESTER	55	48	103	5,738	1.80
110	TRIBORO	175	107	282	9,208	3.06
117	LONG ISLAND	117	84	201	7,554	2.66
B - NORTHEAST						
		718	721	1,439	46,883	3.07
020	GREATER BOSTON	153	195	348	11,355	3.06
028	SE NEW ENGLAND	102	140	242	6,336	3.82
030	NORTHERN NEW ENGLAND	105	126	231	9,428	2.45
060	CONNECTICUT VALLEY	314	161	475	12,695	3.74
120	ALBANY	44	99	143	7,069	2.02
C - EASTERN						
		1,924	1,660	3,584	91,625	3.91
080	SOUTH JERSEY	242	214	456	10,750	4.24
150	WESTERN PENNSYLVANIA	197	142	339	10,157	3.34
170	CENTRAL PA	110	103	213	10,690	1.99
190	PHILADELPHIA	349	290	639	9,943	6.43
250	APPALACHIAN	52	78	130	6,878	1.89
400	KENTUCKIANA	98	106	204	9,202	2.22
430	COLUMBUS	193	74	267	6,147	4.34
440	NORTHERN OHIO	262	351	613	10,837	5.66
450	CINCINNATI	372	242	614	9,952	6.17
140	WESTERN NEW YORK	49	60	109	7,069	1.54
E - WESTERN						
		1,177	2,078	3,255	105,372	3.09
590	BIG SKY	11	52	63	2,371	2.66
800	COLORADO/WYOMING	171	494	665	12,469	5.33
840	SALT LAKE	67	93	160	6,173	2.59
852	ARIZONA	118	157	275	10,112	2.72
890	NEVADA-SIERRA	75	81	156	4,697	3.32
970	PORTLAND	161	167	328	8,011	4.09
980	SEATTLE	206	279	485	12,889	3.76
995	ALASKA	45	37	82	1,665	4.92
500	HAWKEYE	106	170	276	8,323	3.32
553	NORTHLAND	96	240	336	14,501	2.32
570	DAKOTAS	19	41	60	4,781	1.25
640	MID-AMERICA	41	134	175	9,940	1.76
680	CENTRAL PLAINS	61	133	194	9,440	2.06
NATIONAL SUMMARY		11,462	15,149	26,611	670,339	3.97

PFC	NAME	LTD	R	Total	*On-Rolls	% On-Rolls
F - PACIFIC						
		1,233	2,734	3,967	75,057	5.29
900	LOS ANGELES	176	327	503	10,667	4.72
913	SIERRA COSTAL	86	289	375	9,408	3.99
920	SAN DIEGO	117	332	449	10,249	4.38
926	SANTA ANA	290	515	805	12,857	6.26
940	SAN FRANCISCO	177	323	500	8,477	5.90
945	BAY VALLEY	272	602	874	10,950	7.98
956	SACRAMENTO	106	315	421	9,812	4.29
967	HONOLULU	9	31	40	2,637	1.52
G - SOUTHWEST						
		1,613	2,245	3,858	69,791	5.53
870	ALBUQUERQUE	67	80	147	3,528	4.17
700	LOUISIANA	228	305	533	8,597	6.20
720	ARKANSAS	60	93	153	5,994	2.55
730	OKLAHOMA	92	270	362	7,469	4.85
752	DALLAS	522	694	1,216	12,735	9.55
760	FORT WORTH	210	289	499	7,799	6.40
770	HOUSTON	230	329	559	11,522	4.85
780	RIO GRANDE	204	185	389	12,147	3.20
H - SOUTHEAST						
		1,495	1,755	3,250	84,236	3.86
300	ATLANTA	206	300	506	13,099	3.86
310	SOUTH GEORGIA	65	89	154	5,982	2.57
320	NORTH FLORIDA	222	220	442	8,624	5.13
330	SOUTH FLORIDA	442	329	771	12,454	6.19
335	SUNCOAST	293	302	595	16,147	3.68
350	ALABAMA	63	206	269	9,177	2.93
370	TENNESSEE	180	263	443	13,547	3.27
390	MISSISSIPPI	24	46	70	5,206	1.34
J - GREAT LAKES						
		1,677	2,256	3,933	87,798	4.48
530	LAKELAND	208	368	576	11,928	4.83
630	GATEWAY	122	228	350	11,523	3.04
460	GREATER INDIANA	171	238	409	11,996	3.41
480	SOUTHEAST MICHIGAN	186	170	356	6,672	5.34
481	DETROIT	247	226	473	7,636	6.19
493	GREATER MICHIGAN	55	137	192	8,882	2.16
600	NORTHERN ILLINOIS	144	339	483	9,754	4.95
604	CENTRAL ILLINOIS	232	252	484	11,339	4.27
606	CHICAGO	312	298	610	8,068	7.56
K - CAPITAL METRO						
		900	1,128	2,028	56,839	3.57
200	CAPITAL	181	274	455	8,284	5.49
210	BALTIMORE	121	155	276	8,235	3.35
220	NORTHERN VA	106	141	247	6,007	4.11
230	RICHMOND	104	166	270	8,328	3.24
270	GREENSBORO	236	165	401	10,127	3.96
280	MID CAROLINAS	99	164	263	9,178	2.87
290	GREATER SO CAROLINA	53	63	116	6,680	1.74

* WebEIS - PP25 CY2009
 (11/21/2009 - 12/04/2009)
 ISC/BMC Included

National Reassessment Process MMI Phase 1 Validation - Phase 2 Implemented

	2/12/2010				Phase 2 Status		
	Area	District	P1 Validation	P2 Start	Search Step	Job Offer Step	NWA Step
1	Western	Dakotas	2/21/2007	3/6/2007	completed	completed	Rehab Completed
2	Northeast	Northern NE	2/23/2007	3/13/2007	9	4	15**
3	Western	Salt Lake City	4/5/2007	4/24/2007	completed	completed	4
4	New York	Westchester	4/5/2007	4/18/2007	completed	completed	Rehab Completed
5	Pacific	San Diego	4/26/2007	5/9/2007	completed	completed	Rehab Completed
6	Southeast	South Georgia	5/1/2007	5/17/2007			15
7	Western	Mid America	5/16/2007	5/24/2007	completed	completed	Rehab Completed
8	Northeast	Boston	6/12/2007	6/28/2007	9	4	15
9	Pacific	Honolulu	6/26/2007	7/9/2007	completed	completed	Rehab Completed
10	New York	Caribbean	6/26/2007	7/9/2007	completed	completed	Rehab Completed
11	Eastern	Cincinnati	7/6/2007	8/8/2007	9	4	
12	Southeast	South Florida	8/28/2007	9/28/2007	8	6	15
13	Northeast	Connecticut	9/14/2007	10/10/2007	9	4	15
14	Southwest	Oklahoma	9/19/2007	10/9/2007	9	6	
15	Eastern	South Jersey	9/21/2007	10/10/2007	9		
16	Cap Metro	Baltimore	9/24/2007	10/22/2007		6	
17	New York	Northern New Jersey	9/27/2007	10/5/2007		6	
18	Great Lakes	Northern Illinois	10/18/2007	11/14/2007	8		
19	Cap Metro	Richmond	11/7/2007	11/13/2007		6	
20	Eastern	Erie	11/14/2007		Consolidated		
21	Great Lakes	Gateway	1/11/2008	3/6/2008		4	
22	Southwest	Fort Worth	1/17/2008	2/22/2008	9	6	
23	Western	Central Plains	1/23/2008	3/27/2008	completed	6	4
24	Northeast	Massachusetts	1/25/2008		Consolidated		
25	Southeast	Suncoast	2/15/2008	4/1/2008	8	6	15
26	Great Lakes	Detroit	2/28/2008	4/3/2008		4	
27	Northeast	Southeast New England	3/27/2008	6/13/2008	9	6	15
28	Pacific	San Francisco	3/28/2008	4/29/2008	9	6	
29	New York	Central New Jersey	4/15/2008		Consolidated		
30	Southeast	Mississippi	4/16/2008	8/11/2008	8	3	
31	Great Lakes	Greater Michigan	4/23/2008	7/24/2008		4	
32	Southeast	North Florida	4/30/2008	7/31/2008	8	6	
33	Southwest	Albuquerque	5/9/2008	6/24/2008	9	6	
34	Northeast	Albany	6/2/2008	7/16/2008	9	4	15
35	Great Lakes	Central Illinois	6/5/2008	7/29/2008		4	
36	Cap Metro	Greater South Carolina	6/5/2008	7/9/2008		6	
37	Northeast	Maine	6/18/2008		Consolidated		
38	Western	Colorado/Wyoming	6/25/2008	7/29/2008	7	6	
39	Pacific	Sierra Coastal	7/17/2008	8/19/2008	9	6	
40	Eastern	Kentuckiana	8/5/2008	10/30/2008	8		
41	Great Lakes	Greater Indiana	8/7/2008	9/16/2008	HOLD		
42	Western	Arizona	8/15/2008	10/23/2008	6	6	
43	Great Lakes	Southeast Michigan	8/21/2008	10/21/2008		4	

44	Western	Northland	8/28/2008	10/8/2008	6	6	
45	Southeast	Central Florida	8/29/2008		Consolidated		
46	Eastern	Western PA	9/4/2008	11/13/2008	7		
47	Pacific	Santa Ana	9/5/2008	9/22/2008	7	6	
48	Pacific	Sacramento	8/22/2008	10/14/2008	HOLD		
49	Southwest	Dallas	9/11/2008	10/1/2008	9	6	
50	Cap Metro	Northern Virginia	9/19/2008	10/7/2008		4	
51	Western	Nevada-Sierra	9/19/2008	11/3/2008	7	6	
52	New York	Triboro	9/23/2008	10/22/2008		6	
53	Cap Metro	Greensboro	9/26/2008	10/31/2008	7		
54	Southeast	Alabama	9/18/2008	12/16/2008	8	4	
55	Southeast	Tennessee	9/30/2008	11/13/2008	8	3	
56	Western	Big Sky	10/8/2008	4/28/2009	8	6	
57	Western	Alaska	10/3/2008	5/12/2009	6	6	
58	Pacific	Los Angeles	12/23/2008	1/14/2009	5		
59	New York	Long Island	1/7/2009	1/28/2009		6	
60	Cap Metro	Mid-Carolinas	1/8/2009	4/8/2009	7		
61	Southwest	Rio Grande	1/9/2009	1/14/2009	9	5	
62	Eastern	Philadelphia	1/15/2009	2/9/2009	7		
63	Great Lakes	Chicago	2/10/2009	2/24/2009	7		
64	Western	Hawkeye	1/5/2009	5/5/2009	5		
65	Western	Spokane	2/20/2009		Consolidated		
66	Western	Portland	3/6/2009	5/19/2009	6	6	
67	Great Lakes	Lakeland	3/6/2009	4/28/2009	7		
68	Southwest	Arkansas	4/10/2009	5/6/2009	7		
69	Pacific	Bay Valley	5/8/2009	5/27/2009	5		
70	New York	New York	5/14/2009	6/9/2009	6		
71	Eastern	Appalachian	5/20/2009	6/10/2009	7		
72	Southwest	Houston	6/25/2009	7/22/2009	8		
73	Eastern	Northern Ohio	7/8/2009	8/5/2009	7		
74	Cap Metro	Capital	9/11/2009	9/30/2009	6		
75	Eastern	Central PA	9/11/2009	10/6/2009	6		
76	Southwest	Louisiana	11/5/2009	12/8/2009	5		
77	Southeast	Atlanta	12/17/2009	2/24/2010	1		
78	Eastern	Columbus	1/8/2010	2/24/2010	1		
79	Western	Seattle	1/29/2010	2/24/2010	1		
80	Northeast	Western NY	Pilot Site	Pilot Site	completed	completed	Rehab Completed
Phase 2 Implemented:				74			
Phase 2 pending validation:				0			

**NRP Phase 2
Limited Duty
Implementation / Projection**

Area 2/19/2010	District	Implementation Date Projected Date
Capital		
	Greater SC	8/18/2009
	Baltimore	9/22/2009
	Richmond	10/6/2009
	Northern Virginia	10/27/2009
	Greensboro	3/15/2010
	Mid Carolinas	4/19/2010
	Capital	4/27/2010
Eastern		
	Kentuckiana	7/28/2009
	Western PA	8/26/2009
	Cincinnati	10/16/2009
	South Jersey	11/3/2009
	Philadelphia	11/5/2009
	Appalachain	1/27/2010
	Northern Ohio	3/9/2010
	Western NY	3/17/2010
	Central PA	3/2/2010
	Columbus	4/6/2010
Great Lakes		
	Northern Illinois	7/27/2009
	Detroit	9/1/2009
	Central Illinois	10/22/2009
	Southeast Michigan	12/2/2009
	Gateway	2/23/2010
	Greater Michigan	2/9/2010
	Greater Indiana	
	Lakeland	3/4/2010
	Chicago	2/4/2010
Northeast		
	Southeast New England	4/20/2009
	Northeast New England	7/21/2009
	Albany	9/1/2009
	Greater Boston	10/15/2009
	CT Valley	11/19/2009
	Long Island	7/15/2009
	Westchester	8/18/2009
	Triboro	9/9/2009
	Northern NJ	10/6/2009
	Caribbean	10/26/2009
	New York	1/21/2010
Shaded Cell = Implemented District		

**NRP Phase 2
Limited Duty
Implementation / Projection**

Area	District	Implementation Date Projected Date
Pacific	Los Angeles	4/13/2009
	Sierra Coastal	4/20/2009
	Santa Ana	4/20/2009
	San Francisco	7/13/2009
	Bay Valley	8/10/2009
	San Diego	10/5/2009
	Sacramento	
	Honolulu	
Southeast	South Florida	7/27/2009
	South Georgia	9/29/2009
	Suncoast	4/27/2010
	Atlanta	
	North Florida	2/17/2010
	Alabama	3/23/2010
	Tennessee	4/13/2010
	Mississippi	3/30/2010
Southwest	Ft Worth	8/11/2009
	Albuquerque	8/25/2009
	Oklahoma	10/19/2009
	Dallas	11/19/2009
	Louisiana	4/6/2010
	Arkansas	3/23/2010
	Houston	3/9/2010
	Rio Grande	2/17/2010
Western	Colorado / Wyoming	7/29/2009
	Sierra/Nevada	9/1/2009
	Big Sky	10/8/2009
	Dakotas	10/29/2009
	Mid-America	12/1/2009
	Northland	2/9/2010
	Hawkeye	6/16/2010
	Central Plains	5/5/2010
	Salt Lake	5/5/2010
	Arizona	4/14/2010
	Portland	3/17/2010
	Seattle	8/11/2010
Alaska	6/16/2010	
Shaded Cell = Implemented District		47 Sites Implemented

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2, SEARCH PROCESS

RESPONSIBLE TEAM MEMBER	ACTION	DESCRIPTION	OUTCOME
STEP 1 - HQ IC Team Leader	Meet with Area and first selected District NRP teams	Train the area and first selected District NRP teams on the phase 2 Search process of the NRP and also an overview of the entire Phase 2 process	Area NRP and first selected District NRP teams will be prepared to initiate the NRP phase 2 search process
STEP 2 - Area NRP Team	Meet with District senior staff	To introduce and initiate NRP Phase 2 and to confirm full support and District NRP team implementation	District Senior Management will have been briefed on Phase 2 Search and Job Offer processes
STEP 3 - District Senior Management; Area and District Managers Injury Compensation, Injury Compensation Team Leaders, Operations Team Leaders and Managers Labor Relations	Schedule and hold a meeting with representatives of all unions associated with the district	To inform the unions the NRP Phase 2 will be initiated	All unions will have been briefed on the NRP process - Phase 2
STEP 4 - Area Injury Compensation Team Leader, (D) Injury Compensation staff	Update and adjust NRP workbook	Update and adjust the NRP workbook to have all MMI employees listed on the rehabilitation tab and the non-MMI employees listed on the limited duty worksheet	NRP workbook will be prepared for Phase 2 implementation of the NRP
STEP 5 - Area NRP Team	Conduct a meeting with District NRP team to cover the NRP Phase 2	Conduct a meeting with District NRP team to introduce the District NRP Operations team members to the NRP process. Necessary work will be defined and discussed	District Operations NRP team members will have canvassed all offices/facilities within their area of responsibility to identify and list all identified necessary work

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2, SEARCH PROCESS

RESPONSIBLE TEAM MEMBER	ACTION	DESCRIPTION	OUTCOME
STEP 6 - Area and District NRP Team	Prepare Local Commuting Area (LCA) documentation	The Area and District NRP teams will identify the LCA and prepare the LCA documentation for each installation.	Area and District NRP Teams will have determined the LCA for the installations of all MMI employees
STEP 7 - Area NRP Team	Meeting with district NRP team	Meeting to commence 546 searches for all (MMI less than one year) employees. Every reasonable effort must be made to identify potential rehabilitation modified positions for all MMI less than one year employees within the Local Commuting Area (within the district boundaries).	District NRP team members will have been introduced and conducted the 546 searches for all MMI less than one year employees within the LCA (within the district boundaries), following the 546.142 procedures.
STEP 8 - Area and District NRP Teams	Meeting with district NRP team	Meeting to commence 546 searches for all (MMI greater than one year) employees. Every reasonable effort must be made to identify potential rehabilitation modified positions for all MMI greater than one year employees within the local commuting area (within the district boundaries).	District NRP team members will have been introduced and conducted the 546 searches for all MMI greater than one year employees within the LCA (within the district boundaries), following the 546.142 procedures.
STEP 9 - Area and District NRP Teams	Conduct a meeting with all District Operations Team members	Hold a meeting to discuss the status of all MMI employees	The Search process of NRP Phase 2, within the District boundaries, will have been completed on all MMI employees

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2 JOB OFFER PROCESS

RESPONSIBLE TEAM MEMBER	ACTION	DESCRIPTION	OUTCOME
STEP 1 - Manager Injury Compensation (D) and District Operations team members	The Operations team member submits the DAT approved Proposed Duties for Rehabilitation Modified Position worksheet to the senior manager for approval	The Operations Team member submits the DAT approved Proposed Duties for Rehabilitation Modified Position worksheet to the Senior Manager for approval. The Senior Manager approves or modifies the worksheet and returns it to the Operations team member	A potential Rehabilitation Modified Position has been identified, submitted and approved by a senior manager
STEP 2 - District Injury Compensation staff and Operations Team Leaders	Prepare formal Rehabilitation Modified Position offer and Rehabilitation Modified Position description	Complete the formal Rehabilitation Modified Position offer and the Rehabilitation Modified Position description	The formal Re-employment/Reassignment Rehabilitation Modified Position offer and position description has been completed
STEP 3 - District NRP Team members (Operations and Injury Compensation) and District Labor Relations Team Member	Prepare an interview schedule to present/discuss the proposed Re-employment/ Reassignment Rehabilitation Modified Position offer	In conjunction with the NRP team members, for the employee (Injury Compensation, Labor Relations and Operations) prepare a schedule to discuss and present the Rehabilitation Modified Position offer. Prepare and mail the employee and the Union notification letters	The interview schedule has been completed and the employee and the Union have been notified
STEP 4 - District NRP Team	Conduct Re-employment / Reassignment Rehabilitation Modified Position offer interview	As per the interview script for Rehabilitation Modified Position offers, complete interactive interview with the employee	The employee interview and presentation of a Re-employment / Reassignment Rehabilitation Position Offer has been completed

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2 JOB OFFER PROCESS

RESPONSIBLE TEAM MEMBER	ACTION	DESCRIPTION	OUTCOME
<p>STEP 5 - District NRP Team members, Manager Injury Compensation, District NRP Labor Relations Representative</p>	<p>Track and follow-up to ensure response to Rehabilitation Modified Position offer</p>	<p>Two weeks after the interview, ensure the employee has responded to the Rehabilitation Modified Position offer</p>	<p>A follow-up has been conducted on the employee's acceptance or refusal of Rehabilitation Modified Position offer</p>
<p>STEP 6 - (D) Manager Injury Compensation</p>	<p>In coordination with the new job offer installation, Injury Compensation will complete and send the Report to Duty Notification 11.11a to the employee</p>	<p>When Rehabilitation Modified Position offer is accepted, Injury Compensation will coordinate with new installation head the appropriate reporting date and complete and send the employee the Report to Duty Notification 11.11a</p>	<p>Action has been initiated to formally place the employee in their new Rehabilitation Modified Position</p>

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2 NWA PROCESS

RESPONSIBLE TEAM MEMBER	ACTION	DESCRIPTION	OUTCOME
STEP 1 - Manager Injury Compensation (AO), Injury Compensation Team Leader (AO)	Meet with OWCP District Director	Have a meeting with the OWCP District Director to discuss NRP and present preliminary NWA list	OWCP will have been briefed on the NRP and a document flow process will be agreed upon between the USPS and OWCP
STEP 2 - Area and District NRP Teams	Review preliminary NWA list files and all Search documents	Area and District NRP Teams will review all NWA employee files and all Search documents for accuracy and thoroughness	The Area and District NRP teams will have reviewed all preliminary NWA employee files for proper and complete documentation
STEP 3 - Area and District NRP Team Leaders	Prepare sign-off packages and meet with District senior managers responsible for 546 and Light Duty Search sign-off packages to explain their responsibility and required actions	A meeting will be scheduled and held with the District Managers direct reports to give the status of the NRP and to discuss the required sign-offs to be completed by the senior managers	546 sign-off and Light Duty sign-off packages will have been prepared and a meeting will have been held with all senior managers covering the search process steps with the District boundaries
STEP 4 - Area NRP Team Leaders	Meet with the Manager, HR for all surrounding districts represented by the LCA information to discuss the completion of the sign-off packages	Schedule and hold a meeting with the Manager, HR for all surrounding districts represented by the LCA information to discuss the overall NRP and the District's responsibility in completing 546 and Light Duty Search and the completion of the sign-off packages	The surrounding districts will have been briefed on the NRP; and the 546 and the Light Duty Search sign-off packages will have been delivered and the process will have commenced
STEP 5 - District Injury Compensation staff and District NRP Operations Team Leader and members	Track and file all 546 and Light Duty Search packages as they are returned	All sign-off packages both from within the District and also the surrounding Districts within the LCA will be tracked and filed when they are returned	All 546 and Light Duty Search sign-off packages will have been returned and filed

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2 NWA PROCESS

RESPONSIBLE TEAM MEMBER	ACTION	DESCRIPTION	OUTCOME
STEP 6 - District NRP Team	Prepare a schedule for all preliminary NWA interactive interviews.	Once all 546 and Light Duty Searches have been returned and verified, the Manager Injury Compensation will work with NRP Operations Team members and Labor Relations team members to prepare a schedule for the first interactive interview	A tentative schedule for the first interactive interviews will be completed
STEP 7 - Area NRP team	Inspection Service and OIG notifications	The Inspection Service and the OIG will be briefed on the NRP and NWA interviews	The Inspection Services and the OIG will have been briefed on the NRP process and NWA interviews, and will be prepared to assist
STEP 8 - Area NRP Team, District Labor Relations Team Member and District Operations Team Leader	Schedule and meet with Unions on preliminary NWA employees	Each local Union President will be invited to a meeting to present them with a list of ongoing interviews including preliminary NWA employees	The Unions will have been given a list of ongoing and preliminary NWA employee interviews
STEP 9 - District NRP Team	Prepare the District Employee Resource Guide (ERG) and meet with all local ERG representatives	The ERG will be prepared and the District NRP Team will meet with the required representatives listed on the ERG to discuss the final steps of the NWA process	The ERG will have been prepared and the District NRP team will have met with all employees listed on the ERG
STEP 10 - District NRP team	Prepare and send employee notification letters	Employee notification of interview will be prepared and sent to employees and at least 14 days in advance	All employees will have been notified of the first interactive meeting
STEP 11 - Area NRP Team	Meet with the District NRP Team to discuss the preliminary NWA interactive interviews	District NRP teams will be briefed on the interactive interview script and interview team leaders will be selected	All team members will be prepared for the preliminary NWA employee interactive interviews
STEP 12 - District NRP team, Area Operations Team Leader, Area Injury Compensation Team Leader	The District NRP Team will conduct the first interactive interviews with all preliminary NWA employees	All preliminary NWA employees will have their first interactive interview in compliance with the script of the first interactive interviews	Employee first interactive interviews will have been completed and the second interactive interview will have been scheduled

NATIONAL REASSESSMENT PROCESS (NRP) PHASE 2 NWA PROCESS

RESPONSIBLE TEAM MEMBER	ACTION	DESCRIPTION	OUTCOME
STEP 13 - District NRP Operations Team Leader or member	Notification to the installation heads of all preliminary NWA employees	The installation heads of all preliminary NWA employees will be notified of the upcoming second interactive interview	Installation heads will have been briefed on the second interactive interview
STEP 14 - District NRP team, Area operations Team Leader, Area Injury Compensation Team Leader	The District NRP team will conduct the second interactive interview with all preliminary NWA employees	The second interactive interview will be completed in compliance with the script for the second interview	The second interactive interview will have been completed
STEP 15 - District Injury Compensation staff and Operations Team Leader and members	Track all internal USPS activity for all NWA employees	The District NRP team must track and identify any internal USPS activity for all employees placed on the rolls of OWCP due to the result of a NWA determination	All internal activity due to NWA determinations will be tracked

**NATIONAL REASSESSMENT PROCESS (NRP)
 PHASE 2 - LIMITED DUTY PROCESS
 WORK STATUS MEETINGS - OVERVIEW**

Responsible Team Member	Action	Description	Outcome
STEP 1 - HQs / Area / District NRP Teams	Meet with Managers and Supervisors to determine implementation readiness	Review all proposed assignment determinations for accuracy (Full Day/Partial Day/Complete Day No Work)	Managers and Supervisors will be cleared to conduct Work Status Meetings with injured employees
STEP 2 - HQs / Area / District NRP Teams	Train facility Manager or Supervisor on Work Status Meeting format	Walk through all possible Work Status assignment determinations	Manager or Supervisor will be prepared to conduct Work Status Meeting with injured employees
STEP 3 - DAT	Conduct review of all Modified Assignment Documentation	DAT will review all Modified Assignment documentation for compliance	DAT will have completed a review of all Modified Assignments documentation
STEP 4 - Manager or Supervisor	When required, conduct Daily Work Status Meetings with injured employees	On a daily basis, the Supervisors will review available necessary tasks and make assignment determinations and then hold a daily work status meeting with the employee.	Injured employee's status will be reviewed and the employee will have been advised of the Daily Work Status determination



American Postal Workers Union, AFL-CIO

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Memorandum

1300 L Street, NW
Washington, DC 20005

From the Office of Susan M. Carney
Human Relations Director

When OWCP Denies Compensation Based on a Previous Lost Wage Earning Capacity (LWEC) Determination

Some employees who have had their medically suitable job withdrawn by the Postal Service as a result of the National Reassessment Process (NRP) are being denied wage loss compensation by OWCP because of a previous LWEC decision. How does this happen?

OWCP procedures require that when an employee with an accepted claim has returned to work for at least 60 days, the claim examiner (CE) should determine if the salary that the claimant is being paid fairly and reasonably represents that employee's actual wage earning capacity. If the CE determines that the employee's pay does represent his or her actual ability to earn a wage, then a formal LWEC decision is issued.

When injured Postal Service employees return to full time work following their injuries, whether returning without restrictions or to a limited duty or rehabilitation job (OWCP calls such medically restricted jobs "light duty"), the Postal Service pays them the salary that they would have acquired had there been no injury or disability (See *Chapter 546.143.e. of the Employee Labor Relations Manual*).

Therefore, they have been restored to their normal wage and have not lost any capacity to earn a wage. In such cases the CE will determine that there is no loss of wage earning capacity and will issue a formal decision indicating that the employee has a 0% LWEC.

The Employees' Compensation Appeals Board (ECAB) has ruled repeatedly that once a formal LWEC has been issued, it can only be changed in three circumstances:

- The original LWEC rating was in error;
- The claimant's medical condition has changed; or
- The claimant has been vocationally rehabilitated, *i.e.* is working in a new job which pays at least 25% more than the current pay of the job he or she was working when the original LWEC was performed.

So, as a result of these policies, this is what can happen. An employee returns to work following a disabling workplace injury, and subsequently receives a 0% LWEC as described above. Then, as a result of the NRP the modified job is withdrawn. Based on the loss of the medically suitable assignment, the employee files a *CA-2a, Notice of Recurrence* and a *CA-7 (or 7a), Claim for Compensation*. OWCP will review the claim and probably accept the recurrence of disability claim, but would not authorize the payment of wage- loss compensation because the claimant has a 0% LWEC rating, and none of the three permitted reasons for changing that

determination exist. A formal decision denying compensation would be issued along with an explanation of the claimant's appeal rights.

It is our opinion that most claimants who find themselves in this unfortunate situation and receive such a decision from OWCP would want to exercise their appeal rights. We have prepared a **guide** which lays out the arguments that we believe would be the most effective in challenging this denial of compensation.

We also believe that the most appropriate appeal option would be a "**Review of the Written Record**". This review would be conducted by an OWCP hearing officer at the Branch of Hearings and Review in Washington, DC. Their address is listed on the appeal rights notice.

Guide for the Appealing the Denial of Compensation Based on a Previous "Lost Wage Earning Capacity" (LWEC) Determination

(Date)

Dear Sirs:

My name is (), my address is (), and my OWCP file number is ().

I am appealing the OWCP decision dated () which denied me wage loss compensation. This decision stated that I was not entitled to compensation because a Loss of Wage Earning Capacity (LWEC) evaluation was conducted after I returned to work following my disability, and that a formal decision was issued at that time declaring that I had a 0% LWEC.

As you know, the Employees' Compensation Appeals Board (ECAB) has ruled that after a formal LWEC decision has been issued; a claimant seeking modification must establish that one of three circumstances occurred: that the original rating was in error, that the injury-related condition has worsened, or that the claimant has been financially rehabilitated.

I believe that the facts establish that original LWEC determination was in error.

The limited (light) duty job in which I was working when the LWEC was performed was not a duty assignment and not part of the authorized complement. It was created solely for me, would not exist except for the Postal Service's obligation to provide me with medically suitable employment, and would disappear as soon as I left it. It was never available for bid or application by any other employee. Therefore, it was an odd lot or make-shift job as defined by a number of ECAB decisions, and any LWEC determination based on this assignment would be in error.

My limited (light) duty job was created to meet my particular needs and was not available to other employees. In the Postal Service a "funded" or "classified" position (to use terminology used in other federal sectors) is called a "duty assignment". A duty assignment is a set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty. These individually identified and numbered duty assignments make up the "authorized complement" of any Postal Service installation. To seek assignment to one of these specific duty assignments, an employee must submit a written request by either bid or application.

My medically suitable assignment did not constitute an actual, bona fide, established, duty assignment available to other employees. It consisted of *ad hoc*, unclassified duties. Therefore, the limited (light) duty job that I was performing when the LWEC rating took place was an odd-lot, or make-shift position.

The ECAB has established in cases such as *Baggett, 50 ECAB 560; Wade, 37 ECAB 556 (1986); Rowe, Docket No.88-1179 (issued September 27, 1988); and Moss, Docket No. 89-846 (issued July 26, 1989)*, that wage earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions.

They further established in *Woolever, 29 ECAB 114*, that a make-shift job is one which is designed for an employee's particular needs, and, therefore, it does not constitute an identifiable, regular position of a type readily available on the general labor market.

In *Emory, 47 ECAB 371*, and in *Weisman, 50 ECAB 418*, ECAB reiterates the principle that actual earnings do not fairly and reasonably represent a claimant's wage earning capacity if those earnings are derived from a make-shift position designed for the claimant's particular needs.

Therefore, I am requesting that the previous LWEC be declared in error and set aside, and that the decision denying me wage loss compensation be vacated.

(signed)

2-0814-7 Determining WED based on Actual Earnings

c. Issuance of Decision,

(1) After the claimant has been working for 60 Days, the CE will determine whether the claimant's actual earnings fairly and reasonable represent his or her WED. If so, a formal decision should be issued no later than 90 days after the date of return to work. If not, the CE should proceed with a constructed LWEC by asking the Rehabilitation Specialist (RS) to identify two suitable jobs and applying the factors set forth under 5 U.S.C. 8115(a) (see paragraph 8 below). Only one job may ultimately from the basis of a WEC determination.

2-0814-8 Determining WEC Based on Constructed Position

8. Determining WEC Based on Constructed Position. In some situations, vocational rehabilitation efforts do not succeed, and the claimant's WEC must be determined on the basis of a position deemed suitable but not actually held. In making this determination, the test is whether the claimant's WEC based on the selected job appears reasonable, giving due regard to the factors specified in 5 U.S.C. 8115. A Federal or other civil service position in which the claimant is not actually employed may not be used to make an LWEC decision (see Rudy Solovic, 28 ECAB 105, Charles Brown, 31 ECAB 435, and Ann Rich, 34 ECAB 277). See also J.E., Docket No. 08-1582 (issued March 3, 2009). ECAB held that it was inappropriate for OWCP to base appellant's wage earning capacity on the constructed position of eligibility worker, as the position is a state or government position and there was no evidence as to whether the position was available in the general labor market.

On March 26, 2010 apprised by Linda DeCarlo, DFEC, Chief Branch of Technical Assistance. This is an approved OWCP letter and all NRP displaced employees can expect to receive one.

File Number:
1049ny-nyc-O-F

INSTRUCTIONS ON SEEKING EMPLOYMENT

File Number:

When you are no longer totally disabled because of your injury, you must seek employment which is suitable to your improved condition (including light duty or part-time employment, if applicable). At such time, you should report to the agency where you last worked; it will advise you of your reemployment rights. If that agency does not have employment suitable for you, then register, without delay, with the nearest office of your State Employment Service. The state furnishes employment services free of charge. You may obtain the address of your State Employment Service from your local postmaster or from a telephone directory. It is incumbent upon you to seek employment suitable to your improved condition. Refusal by a partially disabled employee to seek, accept, or continue suitable work is lawful grounds for the reduction or termination of compensation.

DO NOT file claims (Form CA-7) unless you are requested to do so. If you return to your former job or obtain other employment, submit the following information to the OWCP at once.

1. Name and address of employer.
2. Date you returned to work.
3. Type of work you are performing.
4. Your weekly pay rate.
5. Number of hours worked per week.

Your pay rate should include not only cash wages, but also "wages in kind," such as board and lodging. If you are self-employed (for example, as a farmer or a store operator), you must report as your pay rate what it would have cost you to hire someone else to do the same work.

You must also report any retirement income, disability income, or compensation benefits from any Federal agency. This is because a recipient of compensation benefits under the Federal Employees' Compensation Act is not permitted to receive benefits under certain other Federal programs, including the Civil Service retirement program.

If you are receiving or have filed for Social Security disability benefits, please contact your local Social Security office about this award.

Also, keep accurate records of your efforts to obtain employment, including information which tells when, where (address), and to whom (personnel officer or other official of the establishment or business) you applied for work.

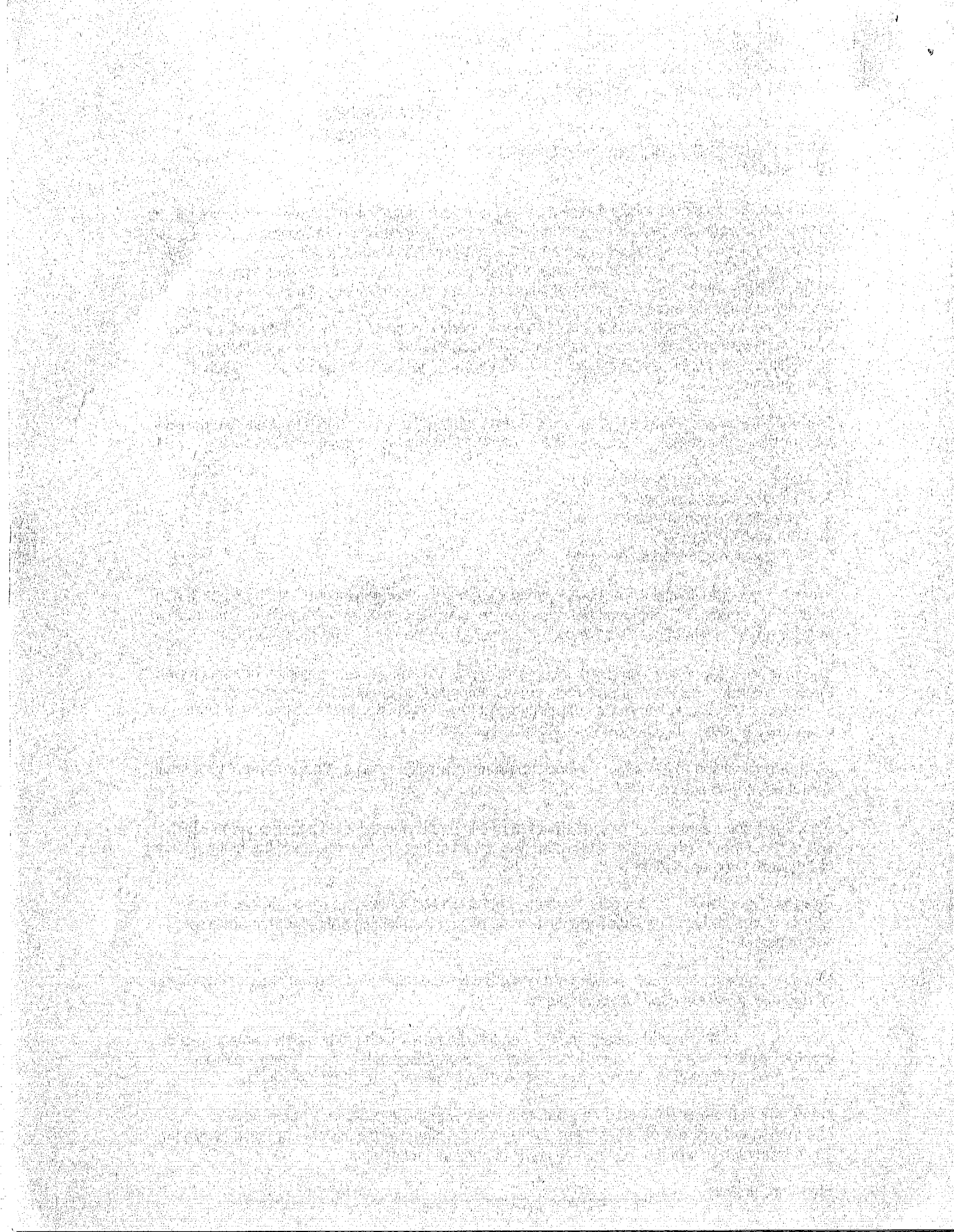
Please advise this Office immediately of any change in residence or mailing address or any change in the status of any dependents claimed by you to establish entitlement to additional compensation.

Please sign/date below after reading the terms below and return this original page to this office immediately. Make a copy for your records.

I have read the above and understand the conditions under which I may receive compensation and the items I must report to the Department of Labor, Office of Workers' Compensation Programs, in connection with my claim and I agree to be bound by these conditions.

I understand that willful failure on my part to comply with these conditions can result in termination or forfeiture of benefits and liability for resulting overpayments. I am also aware that any falsification or willful omission may result in criminal prosecution.

Signature (in ink) _____ Date _____



Susan M. Carney
Human Relations Director
Advance Release March/April 2010
APWU Postal Worker magazine article

EEOC Upholds Class Action

On May 30, 2008, in the case of *Sandra McConnell et al v. United States Postal Service*, an Administrative Judge (AJ) for the Equal Employment Opportunity Commission (EEOC) certified a class action complaint alleging that the Agency had discriminated against all rehabilitation and limited duty employees on the basis of disability when it implemented the National Reassessment Process. The complainant made numerous claims which the presiding AJ categorized into four broader complaints: The NRP fails to provide a reasonable accommodation; creates a hostile work environment; wrongfully discloses medical information; and has an adverse impact on disabled workers.

USPS Appeal

The Postal Service disputed the claims and appealed the certification which defines class members as "all permanent rehabilitation and limited duty employees of the United States Postal Service who have been subjected to the National Reassessment Process (NRP) from May 5, 2006 to present, allegedly in violation of the Rehabilitation Act of 1973." The USPS asserted that the decision was in conflict with applicable legal authority and alleged that the class complaint [employees?] failed to meet the class prerequisites of numerosity, commonality, typicality, and adequacy of representation for any of the claims presented against the Service regarding NRP.

The Postal Service argued that the only common thread was that all class members have been or will be reassessed, and maintained that any denial of reasonable accommodation should be heard on a case-by-case basis. Likewise, the agency argued that the "theoretical" claim that the NRP creates a hostile work environment would also have to be addressed on a case-by-case basis in the absence of a policy or practice promoting "severe and pervasive" workplace harassment.

The agency also asserted that no policy or practice had been identified regarding the charge that NRP wrongfully discloses medical information. And in a misleading attempt to demonstrate that reassessment does not typically result in "No Work Available," determinations, the USPS argued that only a "small percentage" of employees have fallen into this category. Finally, in an attempt to minimize its exposure, the Postal Service requested that the EEOC limit the class to rehab employees who worked in the Western New York District and were told there was no work available during the pilot phase of the NRP.

In its Jan. 14, 2010 ruling, the EEOC rejected the USPS appeal and ordered the Postal Service to notify all potential class members. Although the certification was upheld as proper, and the threshold issues were resolved, the validity of the complaints will remain undetermined until the Merits Phase of the process.

(cont.)

Meeting with the Litigators

Following the decision, I met with the lead attorneys for the class agent[?], and was informed that the Postal Service had been granted an extension to comply with the order because of the large number of potential class members. The litigating law firm [class' attorneys?] is currently attempting to ensure the notice is satisfactory and reaches everyone who is included in the class. I advised the attorneys that USPS figures indicate that more than 33,000 employees will need to be notified. I also emphasized that it is vital to include the APWU in the notification and outreach process in order to ensure no one is overlooked and collective bargaining rights are not violated. Currently we are awaiting a copy of the finalized notice [from who?] detailing what necessary actions, if any will need to be taken by effected employees.

All employees who meet the definition of the class should automatically be included, even if they did not file an EEOC complaint. In the interim, employees who feel discriminated against because of NRP activity can still file an EEOC complaint within 45 days of the discriminatory action. Filing will ensure that they are not overlooked and that their entitlement does not lapse should their fact circumstances differ from those specified in the EEOC case. However, this is unlikely due to the broad definition of the class members. The APWU agreed to remain available to the law firm for consultation as the case proceeds.

Documents about the case can be viewed on the Human Relations page of the APWU website, at www.apwu.org.



American Postal Workers Union, AFL-CIO

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From the Office of Susan M. Carney
Human Relations Director

Limited Duty For New Injuries and Existing Modified Assignments National Reassessment Process (NRP), Phase 2 Pilot

Pilot Sites: Los Angeles, Sierra Coastal, Santa Ana, SE New England

Pilot Dates: LA- March 17th – April 17th, Others March 23rd – April 23rd
All have been extended to May 24th. No additional notice received to date. Anticipate nationwide forthcoming.

Purpose: To “test the application of established processes used for rehabilitation employees in National Reassessment Process (NRP) Phase 2 in making modified assignments for employees with temporary medical restrictions (Limited Duty)”.

New Protocol: Will impact limited duty employees *and those MMI (rehab) employees who have not yet gone through Phase 2*. This officer believes the USPS is testing this new protocol because existing NRP has not yielded the results the company was looking for. Additionally, early out is also not producing the yield USPS had calculated in addition to decrease in mail volume.

USPS: Advised that the “assignments made or modified during this pilot test will be consistent with current relevant regulations”.

- APWU NRP Step 4 Disputes (craft seniority, separation-disability, commuting area) still applicable, as is the
- “When a Limited Duty / Rehab Assignment is Withdrawn” document posted on the Human Relations Department > Federal Injury Compensation web pages within the USPS Reassessment Process Background web article dated June 2006.
- Locals still directed to file “operational necessary” vs. “medically suitable disputes – Article 19 violation ELM 546.

Distinct and fundamental differences between “NRP Phase 2” and the new NRP protocol:

- Daily Determinations - frontline supervisor Step 1 -2, District NRP Team Step 3-8
- No interview notification to employee or to union.

- Every “reasonable effort” rather than “every effort”- new Article 19 violation (ELM 546.142)
- Previous NRP 60 NWA at best, new NRP 179 CA-7s filed in first week of application for San Francisco OWCP DO

Other Information / Concerns:

- In some instances employees being denied union representation
- APWU believes it's impossible for front line supervisor and district team to meet its obligation of “must make every effort” on a daily basis.
- Job offers of less than 4 hrs to employees whose medical documentation states capable of working 4 or more hours are not considered suitable.
- OWCP only requiring one “initiating” CA-2a (adjudication as to whether employee has at least one residual disability remaining from an accepted claim).
- CA7's can be submitted per occurrence. USPS compelling employees to submit just one per pay period. USPS has obligation to forward every CA-7 submitted within five business days upon receipt.
- No leave buy back. USPS does not consider a Recurrence Claim to be a new claim. Leave Buy Back dispute filed in July 2001 still pending, still applicable.
- Appropriate to notate “IOD-withdrawal of medically suitable work” in remarks box of 3971
- Article 8 guaranteed work hours: USPS allowing employee to hit the clock. USPS sending employees home (those working their bid (core essential duties) and those in a modified assignment.
- Can find no language in FECA, CFR, or CBA that permits daily determinations. Regulations are silent.
- Limited Duty employees cannot be placed in OWCP's voc-rehab program. USPS may be applying pressure to treating physicians to change employee's condition status from temporary to permanent.
- Request to be reasonably accommodated under the Rehab Act - under expansion of disability definition (ADA, Rehab Act), the majority of injured workforce meets new definition. Will have greater standing before EEOC when an adverse action is taken against them. The USPS should schedule an interview with DRAC.
- In addition to individual grievances, employees should consider filing:
 - MSPS appeal – failure to restore following a compensable injury (all compensationers, not just veterans preference)
 - EEOC discrimination complaint -Unemployment compensation claim – USPS has unemployed or underemployed you (Form SF-8)

May 2009



American Postal Workers Union, AFL-CIO

Reference letter regarding 8106 sanctions, job offers less than 4 hours for individuals capable of working 4 or more hours, and daily determinations.

1300 L Street, NW, Washington, DC 20005

July 14, 2009:

Susan M. Carney
Human Relations Director
202-842-4270 (Office)
202-216-2634 (Fax)

Edward Duncan, Deputy Director, Operations and Claims Management
Stephanie Semmer, Chief, Branch of Technical Assistance
Department of Labor, Office of Workers Compensation Programs
Division of Federal Employees Compensation
200 Constitution Avenue, Suite 3229
Washington, D.C. 20210

Re: Suitability determinations and payment of wage loss compensation

National Executive Board

William Burrus
President

Cliff Guffey
Executive Vice President

Terry R. Stapleton
Secretary-Treasurer

Greg Bell
Director, Industrial Relations

James "Jim" McCarthy
Director, Clerk Division

Steven G. Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Bill Marley
Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

Elizabeth "Liz" Powell
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Dear Ed and Stephanie,

I appreciate each of you taking the time to meet with me and Richard on June 25, 2009 at your headquarter office. As we shared with you, APWU anticipates disconcerting issues will continue to surface as a result of the USPS National Reassessment Process. Therefore, we certainly appreciate DFEC's willingness to issue guidance to its District Offices as an effort to ensure that the proper application of the FECA regulations and procedures is understood and adhered to. However, as you are aware we repeatedly expressed our concerns during the meeting regarding the issue of job suitability determinations, particularly regarding wage loss compensations under the "four hour" rule. As I am sure you can understand, this issue remains a paramount concern for APWU. We would like to take this opportunity to reiterate our position and to discuss the applicable controlling language which we believe supports our position.

→ The APWU strongly rejects the idea that employees who are capable of working four or more hours but are offered less than four hours of work will be denied wage loss compensation by DFEC for the hours of work they were offered. At our meeting, reference was made to 5 USC 8106(c) 2 as being supportive of your position regarding this issue; however, this cited section of the FECA in fact states, "A partially recovered employee who - refuses or neglects to work after *suitable* work is offered to, procured by, or secured for him; is not entitled to compensation" (Emphasis added.)

Furthermore, The Federal (FECA) Procedure Manual Part2, Chapter 814-4b(1) makes a clear distinction by stating, "A job which involves less than four hours of work per day where the claimant is capable of working four or

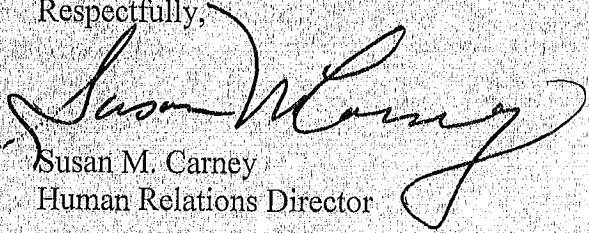
more hours per day will be considered unsuitable” Clearly, based on this language, such work cannot be considered suitable, and 5 USC 8106 specifically requires that work be **suitable** in order for DFEC to deny payment of *any* wage loss compensation. Additionally, Part 2 of the Procedure Manual at-813 -12 defines a sanction decision as “any reduction or termination of benefits applies to compensation for wage loss, whether total or **partial**” (Emphasis added.) Therefore, it continues to be the opinion of APWU that if a job is “unsuitable” there can be no denial of compensation, be it sanctioned or “*unsanctioned*”.

On the other major issue we continue to stand firm in our opinion that employing agencies do not have the right to make “daily determinations” in respect to making job offers to partially recovered employees. As evidenced in the USPS document which we presented you with at the meeting, it is clear the Service’s intention is to make “day-to-day, daily determinations” regarding the availability of work for partially recovered employees. Such daily determinations of work availability must be construed as an offer of a temporary position, and, according to the Procedure Manual - Part 2,814-4b (3), “A temporary job will be considered **unsuitable** unless the claimant was a temporary employee when injured *and* the temporary job reasonably represents the claimant’s WEC. Even if these conditions are met a job which will terminate *in less than 90 days* will be considered **unsuitable**.”(Emphasis added.) Therefore, logic requires the conclusion that a job offer that can appear or disappear on a daily basis can only be described as “temporary” and therefore “unsuitable” for a career employee.

In regards to these two issues, since FECA regulations and procedures dictate that such offers should be declared unsuitable, it is our opinion that DFEC would be violating its own regulations and procedures in denying payment of wage loss compensation to claimants who found themselves in these circumstances. Despite the Postal Service’s desire to diminish its chargeback liability as a result of the economic plight it has put itself in, the APWU continues to assert that the FECA regulations and procedures, fully support the position that we have taken in regards to job suitability determinations.

The ECAB has consistently held that the Office must follow its own regulations and procedures in assessing the suitability of a job offer, e.g. Dantzler and the Department of Veterans Affairs, Veterans Hospital, Docket No. 97-2760. Therefore, the APWU anticipates that DFEC will continue to take the necessary action to ensure compliance with its regulations and procedures.

Please Note:
On July 15, 2009 APWU forwarded to DFEC, ECAB decision: Nolan and the Department of Veterans Affairs, Veterans Hospital, Docket No. 05-1710 in further support of our position.

Respectfully,

Susan M. Carney
Human Relations Director

cc: William Burrus, President

SMCads



OTHER SAVINGS: FECA REFORM

Department of Labor

Acting on longstanding Government Accountability Office (GAO) and Inspector General recommendations -- as well as numerous SAVE award nominations -- the Administration proposes legislation to improve and update the Federal Employees' Compensation Act (FECA); adopt best practices of State workers' compensation systems; and strengthen incentives for beneficiaries to return to work as early as appropriate.

Funding Summary
(In millions of dollars)

	2011	2012	2013	2014	2015	2011-2015	2011-2020
Baseline Outlays.....	180	174	179	185	190	908	1,963
Proposed Change from Current Law.....	-10	-14	-7	-10	-20	-61	-310

Justification

FECA provides wage-replacement and medical benefits to Federal civilian employees who suffer occupational injury or disease. Benefits are paid by the Department of Labor (DOL), which is then reimbursed by Federal agencies for benefits paid to their employees. FECA pays up to 75 percent of the individual's basic pay, adjusted annually for inflation. Under current law, individuals can receive FECA benefits indefinitely, as long as their injury or illness diminishes their wage-earning capacity.

The program has not been substantially updated since 1974, and needs to be reformed. FECA benefits typically exceed Federal retirement benefits, an incentive for individuals to remain on FECA beyond the point when they otherwise would have retired. While State workers' compensation systems have waiting periods for benefits to deter frivolous claims, FECA has a 3-day waiting period that for non-Postal employees only comes after the 45-day period during which an employer must continue to pay the individual's salary while the claim is being processed. In addition, the Federal Government currently has no legal basis to obtain refunds of compensation costs paid to employees when they receive recoveries from third parties liable for their injuries.¹ The law also needs to be updated -- the maximum benefits for burial expenses, for example, have not been increased since their establishment in 1949.

The 2011 Budget acts on longstanding GAO, Congressional Budget Office, and Office of the Inspector General recommendations -- as well as numerous SAVE Award nominations -- to amend FECA to convert prospectively retirement-age beneficiaries to a retirement annuity-level benefit, impose a uniform up-front waiting period for benefits for all beneficiaries, streamline claims processing, permit DOL to recapture compensation costs from responsible third parties, authorize DOL to cross-match FECA records with Social Security records to reduce improper payments, and make other changes to improve and update FECA. The table above reflects net savings to the FECA account and does not include projected reductions in Federal agencies' payments for FECA benefits paid to their employees. These changes would generate net savings of more than \$300 million, and Government-wide savings of more than \$400 million.

Citations

¹ Government Accountability Office, *Redefining Continuation of Pay Could Result in Additional Savings to the Government*, GAO/GGD-95-135, <http://archive.gao.gov/t2pbat1/154363.pdf> (June 1995).

